BOROUGH OF OCEANPORT

PLANNING/ZONING BOARD

MINUTES ● MARCH 22, 2022

Regular	Clement V. Sommers Municipal Building	7:00 PM
	910 Oceanport Way, Oceanport, NJ 07757	

I. **Call to Order:** Chairman Whitson called the meeting to order at 7:00 PM

II. **Open Public Meetings Statement:** This meeting complies with the Open Public Meetings Act by adequate and electronic notification on January 20, 2022 of this meeting and its location, date and time to the Asbury Park Press and Two River Times and by the posting of same on the municipal bulletin board and Borough's Web Site.

III. **Flag Salute:** Chairman Whitson led attendees and members of the Board in the flag salute.

IV. **Board Policy:** Chairman Whitson advised of the following Board policies: It is Board Policy that no application will be opened after 10:00 P.M.; no new testimony will be taken after 10:30 P.M., except at the discretion of the Board.

V. **Roll Call:**

Attendee Name	Title	Status	Departed
James Whitson	Chairman	Present	
John (Jack) Kahle	Vice Chairman	Present	
Patty Cooper	Mayor's Designee	Present	
Thomas Tvrdik	Class III	Present	7:57 PM
Joseph Foster	Environmental Commission Liaison	Present	
Christopher Widdis C	Class IV	Absent	
Robert Kleiberg	Class IV	Absent	
Darren Davis	Class IV	Present	8:36 PM
Michael Dailey	Class IV	Present	
Leslie B Widdis L	Alternate I	Present	
Jeanne Smith	Board Secretary	Present	
Kevin Kennedy	Board Attorney	Present	
William White	Board Engineer/Planner	Present	

VI. **Board Business:**

1. Report of Pending Applications - Ms. Smith advised of one application scheduled for April 12th for 199 Comanche Dr to remove an existing garage and construct new 3-car garage and install pool.
2. Resolution of Approval - Barker's Circle. As the resolution was distributed to the Board in advance, Mr. Leckstein and Ms. Smith summarized the resolution and the conditions. Board members noted that changes were needed to remove any language regarding subdivision approval as the site was subdivided by deed through the purchase with FMERA; language that there will be a generator for each building in a zoning compliant location; clarify package room for residents, installation of 5 community grills, require larger and more bicycle racks. After which Mr. Tvrdik made a motion to approve the resolution as amended which was seconded by Mr. Kahle and received the following roll call:

RESULT:	**ADOPTED AS AMENDED [UNANIMOUS]**
MOVER:	Thomas Tvrdik, Class III
SECONDER:	John (Jack) Kahle, Vice Chairman
AYES:	Whitson, Kahle, Cooper, Tvrdik, Foster, Davis, Dailey, Widdis L
ABSENT:	Widdis C, Kleiberg

VII. **Approval of Minutes:**

1. Planning/Zoning Board - Regular - Feb 22, 2022 7:00 PM – Rescheduled for April 12, 2022
2. Planning/Zoning Board - Regular - Mar 8, 2022 7:00 PM - Approved

RESULT:	**ACCEPTED [7 TO 0]**
MOVER:	John (Jack) Kahle, Vice Chairman
SECONDER:	Patty Cooper, Mayor's Designee
AYES:	Whitson, Kahle, Cooper, Tvrdik, Davis, Dailey, Widdis L
ABSTAIN:	Foster
ABSENT:	Widdis C, Kleiberg

VIII. New Business:

1. PB2022-03 Dalton, Edward

23 Ithaca Avenue
Block 29, Lot 12
Proposed installation of in-ground pool seeking relief for:
Maximum Impervious Coverage - 37% permitted; 42.0% existing; 51.5% proposed

EXHIBITS:
A-1 Land Development Application
A-2 "Survey of Property," prepared by Charles Surmonte P.E. & P.L.S., dated June 23, 2021,
A-3 "Pool Variance Plan," prepared by R.C, Burdick, P.E., P.P., P.C. dated November 16, 2021
A-4 Colliers Engineering Review Letter dated February 22, 2022

Mr. Kennedy asked if there was anyone from the public with a question as to the sufficiency of the notice, hearing no objections, stated that he and Ms. Smith had reviewed the notice and found it to be in order. Mr. Kennedy then described and marked Exhibits A-1, A-2, A-3, A-4.

The following persons were sworn in: William White, Board Engineer/Planner

Edward Dalton, Applicant/Owner was sworn in.

Mr. Dalton described his application to install a pool that requires a bulk variance due to impervious coverage. They would like to install a 17x33 foot pool in their side yard per the pool variance plan. All setbacks have been observed and input into the plan. The pool plan complies with all town guidelines, but for the impervious coverage level on the property, which is currently at 42%, with the pool would increase to 51.5%, which is above the town limit of 37%. There will be 3-4' of concrete around the pool but on the north side it will be expanded to permit chairs next to the pool so it will be wider. On the pool variance plans there is a section next to the deck steps and by the entrance to the pool that appears in the plan that it would be concrete, those areas planned to be steppingstones separated by grass, and will serve as a walkway, which would lessen the impervious coverage. Mr. Dalton said they purchased the house last summer from Allison DePalma who is an Engineer by trade. Mrs. DePalma designed the property and built it from the foundation up in 2018. All the houses gutter, and drainage systems are brand new. Drainage on the property is very good. Much of the property's impervious coverage comes from the longer curved driveway on the property. The property naturally slopes from the north-east side, where the pool will be located down towards the street, where there's been new paving and curves put in along the streets, which channels all water towards the sewers on Port Au Peck Avenue. Mrs. DePalma installed a new recharge system on the property when she built the house, and there are no pop outs on the property for drainage. Mr. Dalton said he has not witnessed any pooling or draining issues to date since he bought the home.

Mr. Tvrdik advised that he represented Mrs. DePalma on the selling to Mr. Dalton. They didn't feel there was a conflict.

Mr. White said one correction in his letter is that the pool equipment must be above elevation 12.4. Mr. White said they are required to have compliant pool fencing with self-closing feature.

Chairman Whitson invited questions from Mr. White and the Board.

Mr. Kahle asked questions regarding fencing, walkways, lighting, drainage and whether the impervious coverage could be reduced in any way. Mr. Dalton said they were keeping fencing that was already compliant, no walkways and lighting would be minimal in the pool. There was discussion about paver materials and distancing with grass. Mr. Dalton added that he had never witnessed pooling or flooding in that area of the property which generally slopes towards the street. Mr. Kahle asked if there was a drywell on the property. Mr. Dalton answered he didn't believe so.

Mr. Davis asked if there was any evidence that a recharge system was on Mr. Daltons property? Mr. Dalton said that's what he was told by previous owner but has no documentation on it.

Mr. Davis asked if lighting would be downward facing and was told yes, and there is a buffer of trees around the perimeter of the pool.

Mr. Dailey commented it looks like minimum pitch and it appears that it will collect behind the garage and not be able to get out and sees that being an issue. Mr. Dalton said he hasn't seen any issues there at present and there are stones back there. Mr. Dailey commented but that's without a pool and asked Mr. White if he was ok with that – around the playhouse and existing concrete patio. Mr. White responded that it may require a little work than what's shown on the plans, but he already has 4% across there along with the property line. So if he gets down to 2%, which is what we typically look for, and we go as low as 1% no support because we're so flat. He has positive pitch.

Mrs. Widdis asked the depth of the pool and if there will be a diving board? She asked if they could make the pool smaller? Mr. Dalton responded 6' deep, no diving board and they did not want to make pool smaller.

Mr. Kahle asked how high the deck is off the ground and if there are railings? Mr. Dalton said deck was 2' off the ground and there are railings and steps all around. Mr. Kahle pointed out that it was only 7' to the pool and expressed concerns for anyone that may try to jump from it to the pool and wanted the Applicant to be aware of his liability which Mr. Dalton acknowledged.

Mr. Foster asked Mr. White what the minimum setback is between the pool and the house? Mr. White answered it was 7', 10' from side yard and 10' from rear yard. Mr. Foster expressed his concerns for the amount of impervious coverage and asked if there was any other way to reduce the coverage and suggested the one patio area in the back if it wasn't used could possibly removed. Mr. Dalton responded said it was mostly a traffic back and forth from garage to the house.

Chairman Whitson expressed same concerns as other members regarding the impervious coverage.

PUBLIC: Chairman Whitson opened the hearing to questions from the public of this witness. As there was no one from the public, Chairman Whitson closed that portion of the meeting.

PUBLIC: Chairman Whitson opened the hearing to statements from the public on the application. As there was no one from the public, Chairman Whitson closed that portion of the meeting.

Councilman Tvrdik asked Mr. White that to get below the 50% he would need to remove approximately 225 sq. ft which Mr. White confirmed.

The Board members gave Mr. Dalton suggestions how to reduce the coverage to 50%. They suggested he speak to his engineer and consider modifying the plans.

Mr. Dalton asked the Board to carry his application until the next meeting in order to have revised plans prepared.

Motion to Carry Application to April 12, 2022 with no further notice required

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Patty Cooper, Mayor's Designee
SECONDER:	Darren Davis, Class IV
AYES:	Whitson, Kahle, Cooper, Tvrdik, Foster, Davis, Dailey, Widdis L
ABSENT:	Widdis C, Kleiberg

2. PB2022-05 DeLuca, Joseph

38 Oneida Avenue

Proposed construction of in-ground pool seeking relief for:

Maximum impervious coverage, 37% permitted, 49.5% proposed

EXHIBITS:

A-1 Land Development Application

A-2 "Pool Permit Plot Plan," prepared by Morgan Engineering and Surveying, LLC, dated Jan. 9, 2022, last revised March 9, 2022

A-3 "Boundary and Partial Topographic Survey" prepared by Morgan Engineering and Surveying, LLC, dated Dec. 6, 2021

A-4 Colliers Engineering Review Letter dated March 11, 2022

Mr. Kennedy asked if there was anyone from the public with a question as to the sufficiency of the notice, hearing no objections, stated that he and Ms. Smith had reviewed the notice and found it to be in order. Mr. Kennedy then described and marked Exhibits A-1, A-2, A-3, A-4.

The following persons were sworn in: William White, Board Engineer/Planner

Joseph and Melissa DeLuca, Applicant/Owners were sworn.

Mr. DeLuca described for the Board his application to put in a pool 25'x16.5' approximately 413 square foot and an apron to go around which was 4' on three sides and 10' on one. They proposed a matching fence to the neighboring properties 54 inches compliant to code to go around the property. They proposed a drywell and recharge system to accommodate 1,047 square feet of impervious coverage which is with the addition taking us to 49.5% lot coverage. They also suggested to plant seagrass every 2' around the boundary to help with water.

Mr. White stated the DeLucas are asking 49.5% coverage of impervious coverage where 37% is permitted in the R3 zone and 40.7% is existing. Mr. White wants to add that any pop out drain be located on the property not in the right of way for any future road projects.

Chairman Whitson invited questions from the Board.

Mr. Tvrdik asked about lighting. Mr. DeLuca said they will not be increasing lighting and that they have down facing lighting now.

Mr. Kahle asked questions about drainage and impacts on neighbors and if they have stone on the property line? Mr. DeLuca said yes and was thinking about extending the stone and doubling it and putting in a trench so there is more drainage.

Mr. Kahle asked if the down spouts at the rear of the house were going to connect to the trench as well? Mr. DeLuca said that his Engineer will be tying the down spouts in, so they won't head south.

Mr. Davis asked what the purpose of the recharge as the water table, surface and grade and concerned it wouldn't reach the recharge system. Mr. Dalton responded that he wasn't an engineer and couldn't dispute it. Mr. White commented that he couldn't make a determination without a test pit. Discussion ensued on whether the recharge was necessary and the Applicant's Engineer proposed it to offset some drainage. Mr. White added that it was better to do a pop-up with an inlet in the front yard. Mr. Davis commented that he would like to see surface drains rather than the recharge. Mr. Dalton asked questions about what a pop-up is.

Mr. Davis also asked about the proposed fencing. Mr. DeLuca said it will be a 54 inch that matches the existing fencing around the property and the neighbors. Fence was a liberty post aluminum fence and would be solid with plantings all along it.

PUBLIC: Chairman Whitson opened the hearing to questions from the public of this witness.

Dr. Barton Halpern of 35 Oneida Avenue was sworn in. Dr. Halpern expressed concerns with the drainage. He feels that the street already has a lot of flooding issues and drainage problems and with the design of the DeLucas backyard it will cause more issues with the water runoff. Mr. White commented that the flooding was influenced by tidal whether it goes to Port Au Peck or Oneida and it was his opinion that if the entire lot was impervious it still wouldn't have an impact because it's a tidal issue. Dr. Halpern rebutted that the design would still direct the water to Oneida with the pop-up drains. There was additional discussion on the topic.

Mr. Dalton responded that he couldn't address anything other than what was on his property and believes the plan addresses his site.

PUBLIC: Chairman Whitson opened the hearing to statements on the application.

Dr. Halpern reappeared and expressed concern that two residents are expressing the issues of flooding for the street and that the Borough should do something about it. Councilman Tvrdik responded that the Borough Council had authorized tidal check-valves and this street had been added to the list and would be funded for the first phase.

As there was no one else from the public, Chairman Whitson closed that portion of the meeting.

Mr. Davis said he wanted the service drains addressed and asked that the Applicant work with the Board Engineer to resolve.

Mr. Davis asked about the fencing and landscaping. Mr. DeLuca testified they have a solid fence with landscaping around the entire boundary and definitely along the border of Port Au Peck Ave.

Mr. Foster reiterated that the goal is to recharge the runoff on the property and be absorbed into the ground. Based on the conditions of the area that wouldn't work so the next best thing is to redirect it away from other people's properties and towards the right of way for the street. His estimate is that the Applicant and his engineer have looked at that and taken correct approach.

Councilman Tvrdik asked Mr. White to confirm with the Borough Administrator that this site is on the check-valve list.

Motion to Approve Application with Conditions

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	John (Jack) Kahle, Vice Chairman
SECONDER:	Michael Dailey, Class IV
AYES:	Whitson, Kahle, Cooper, Tvrdik, Foster, Davis, Dailey, Widdis L
ABSENT:	Widdis C, Kleiberg

At 7:57 PM Councilman Tvrdik exited the meeting recusing himself from the next two matters.

IX. Old Business:

1. Resolution of Approval - 47 Seneca Place *- Added*
   As the resolution was provided in advance, Mr. Kennedy summarized the resolution and its conditions. Mr. Davis asked that it be noted that the landscaping would be down the street and return to the house. Mr. Kahle made a motion to approve the resolution as amended, seconded by Ms. Cooper and received the following roll call:

RESULT:	**ADOPTED AS AMENDED [UNANIMOUS]**
MOVER:	John (Jack) Kahle, Vice Chairman
SECONDER:	Patty Cooper, Mayor's Designee
AYES:	Whitson, Kahle, Cooper, Foster, Davis, Dailey, Widdis L
ABSENT:	Tvrdik, Widdis C, Kleiberg

2. Resolution of Approval - 72 Bridgewaters Drive *- Added*
As the resolution was provided in advance, Mr. Kennedy summarized the resolution and its conditions which was moved by Mr. Kahle, seconded by Ms. Cooper and received the following roll call:

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Joseph Foster, Environmental Commission Liaison
SECONDER:	Darren Davis, Class IV
AYES:	Whitson, Kahle, Cooper, Foster, Davis, Dailey, Widdis L
ABSENT:	Tvrdik, Widdis C, Kleiberg

3. PB2021-09- Galvao Investments, LLC
73 Monmouth Blvd.
Block 13, Lot 24
Variances requested:
Driveway setback of 5' from property line required, 0' setback exists
Maximum Impervious Coverage - 37% permitted, 42% proposed
CARRIED from February 8, 202

EXHIBITS:
A-5 "Alterations to: 73 Monmouth Boulevard," prepared by Parallel Architectural Group, last revised Feb. 24, 2022
A-6 Colliers Engineering & Design Review Letter dated March 4, 2022
A-7 "Alterations to: 73 Monmouth Boulevard," prepared by Parallel Architectural Group, last revised March 10, 2022
A-8 Colored Version of Exhibit A-7

Mr. White the Board Engineer was sworn in.

Mr. Kennedy noted that the hearing was a continuation and asked Ms. Smith if all members present were eligible to participate. Ms. Smith advised that Mr. Davis was not present for the first hearing date but had since watched and listened to hearing and certified same.

Mr. Kennedy then described and marked Exhibits A-5, A-6.

Paul Edinger, Attorney for the Applicants, advised they had submitted revised plans and a colored version of same. Mr. Kennedy marked as Exhibits A-7 and A-8.

Mr. Edinger advised that they revised plans were prepared in order to reduce the amount of impervious coverage. The applicant took the advice of the Board from the last meeting and made some changes on the plans. They added a recharge trench. The new drawing reduces coverage down to 42%.

Anthony Scalise, Applicant's Architect, was sworn in and having previously appeared before this Board was accepted as an expert in architecture, described the changes to the plan including reduction of the patio side and size in the rear, the gravel was significantly reduced in the back, the challenge of a large right of way on the front, added a recharge even though he didn't believe it was a high water table area. Mr. Scalise requested to use steppingstones to the backyard rather than gravel if the Board would approve. The steppingstones would bring the impervious coverage up by 117 sq. ft..

Chairman Whitson invited questions from the Board.

Mrs. Cooper asked if the stone on the right had been removed? She also asked what kind of stones would be used for the steppingstones? Mr. Scalise said the stone to right was gone. They were not specific yet to what kind of stone. Mrs. Cooper asked if they would consider blue slate with grass in between? Mr. Scalise said that was more of what they were thinking. Mrs. Cooper asked if the gravel area past the gate can be reduced? Mr. Edinger responded that the Applicant did not want to reduce that area in case he needed it for parking.

Geraldo Da Silva, Applicant, remaining under oath, testified that they were looking to keep the stone in the backyard. Mr. Edinger added that it would not be for heavy equipment but for something like a boat trailer.

Mr. Foster wanted to know what the impervious coverage will be with adding the steppingstones in? Mr. Scalise said no more than 43% coverage. Mr. Foster asked about runoff, drainage, and down spouts? Mr. Scalise said there are down spouts, and they introduced the rear re charge trench to mitigate and there were no plans to change the topography of the lot and maintain existing conditions.

Mr. Kahle commented his appreciation that the Applicant has responded to the Board's concerns by adding more grass, reducing the coverage. He asked if any utilities were planned for the back or lighting that would impact neighbors and was told no.

Mr. Davis commented that the revised plan was much better than the previous one but requested clarification on some items. He asked why did they get rid of the driveway instead of removing all the stone and put in a black top driveway. It will reduce the coverage, create parking, safer way of getting in and out of driveway on the busy street. If stone doesn't perc and blacktop doesn't perc, what is the difference. Mr. Davis commented the whole blue area on the plan is undrainable, correct? Mr. Scalise answered yes. It was

Mr. Davis' opinion that all the stone should be removed and put in a paved driveway that is safer and reduces the coverage to 38-39% in his view. Mr. White commented that he agreed with the asphalt as the stones are an issue spilling into the street.

Mr. Dailey said he agreed with Mr. Davis and wants to know what the issues are with paving the driveway?

At 8:25 PM, the Board took a 2-minute recess to allow the Applicant to conference with his professionals.
At 8:28 PM, the meeting resumed with all members previously in attendance present.

Mr. Scalise came back and said his client Mr. Da Silva agrees with putting pavers or asphalt down and making a driveway.

Chairman asked what would be the new impervious coverage? Mr. Scalise said 42% or less with the steppingstones and a paver or asphalt driveway as discussed.

Mr. Foster asked for clarification if the driveway hard surface will be to the street through the right of way? Mr. Scalise said yes, from the curb cut, meaning once you get pull off the street, you will have a hard driveway surface that is the right of way, and then also goes onto the property. There will be a buffer in front of the house that will be esthetically pleasing, reduce on the left side of property take a little bit off the stone replace with the asphalt or pavers.

Mr. Davis asked about the size of the walkway in the rear. He suggested they reduce the size of the walkway, make it 3' and make it pavers and match with the driveway. Mr. Scalise said his client agreed with this idea. They told Mr. Kennedy the new conditions-they're doing a 3' wide paver walkway, driveway will go from a gravel to a hard surface, also reduce the portion of the gravel driveway in the front and add planting beds. It will go from 20' to 18'. Also no parking on the right side of the house.

PUBLIC: Chairman Whitson opened the hearing to questions from the public of this witness. As there was no one from the public, Chairman Whitson closed that portion of the meeting.

PUBLIC: Chairman Whitson opened the hearing to statements on the application. As there was no one from the public, Chairman Whitson closed that portion of the meeting.

Motion to Approve Application as Amended with Conditions

RESULT:	**ADOPTED AS AMENDED [7 TO 0]**
MOVER:	Darren Davis, Class IV
SECONDER:	John (Jack) Kahle, Vice Chairman
AYES:	Whitson, Kahle, Cooper, Foster, Davis, Dailey, Widdis L
ABSENT:	Widdis C, Kleiberg
RECUSED:	Tvrdik

At 8:36 PM, Mr. Davis recused himself from the next matter being the owner of the adjacent property and exited the meeting.

5. PB2021-11 Richard Veltri

9 Pocano Avenue
Block 39 Lots 6,7
Minor Subdivision with Variances (Lot Line Adjustment)
DFD 3/31/2022
CARRIED from February 22, 2022

EXHIBITS:
A-5 "Location Survey" for Lot 6 of Block 39, prepared by Land Control Services, LLC dated February 20, 2021
A-6 "Location Survey" for Lot 7 of Block 39, prepared by Land Control Services, LLC dated February 20, 2021,
A-7 "Minor Subdivision (Lot Line Adjustment)," prepared by Land Control Services, LLC., last revised Feb. 15, 2022
A-8 Colliers Engineering & Design Review Letter dated March 22, 2022
A-9 Memorandum of Owner History by Salvatore Alfieri, Esq. with Attachments, 24 pages.
A-10 Architect Plan entitled "Proposed Floor Plans", 2 Sheets, prepared by Piro Studio, dated Feb. 3, 2022
A-11 Architect's Rendering of Proposed Dwelling for Lot 6, 2 Sheets, March 22, 2022
A-12 Exhibit A-7 Marked & Highlighted by Christine Cofone, Professional Planner, March 22, 2022

William White, Board Engineer/Planner was sworn in.

Mr. Kennedy described and marked Exhibits A5 through A-9.

Mr. Kennedy noted that the hearing was a continuation and asked Ms. Smith if all members in attendance were eligible to participate. Ms. Smith advised yes and clarified that Exhibit A-9 would include the 20-page attachment with the memo.

Ms. Widdis stated that she had not attended the first meeting in December. Mr. Kennedy advised that she was welcome to participate with comments and questions but if there was a vote tonight, she would not vote and if no vote, she would be able to vote if she listened to the initial meeting.

Salvatore Alfieri, Applicant's Attorney, stated they had also submitted a revised Architectural Plan Set and Architectural Rendering. There was discussion about copies not available for the Board. Ms. Smith exited to check office for the additional copies.

In the interim, Christine Cofone, Applicant's Professional Planner was sworn in and having appeared before this Board on a number of occasions was accepted as an expert.

Richard Veltri, Applicant, was re-sworn in.

Ms. Smith returned and advised she had not located them. There were some copies available which were shared amongst the Board.

Mr. Kennedy described and marked Exhibits A-10, A-11

Mr. Alfieri continued with a summary of the application for a lot line adjustment, there is a garage that lies on two lots, 6 & 7. They would like the adjustment so that the garage would be located solely on the rear property. They received Mr. White's latest report marked Exhibit A-8. The applicant would stipulate that it will address all the conditions and comments that are within the report, including the relocation of the shed, which is located on lot seven currently. It requires a variance to remain in the same location. They agreed to relocate the shed so there wouldn't need to be a variance. They are seeking to build a single-family home on the front lot. There is an 8' wide access easement that leads to rear lot 7 the applicant was proposing to eliminate that and create a new 12-foot-wide easement to the rear of the property. They can keep the 8' easement If the board were concerned with it, they just felt it would be a better design, safer design to make 12 feet.

Mrs. Cofone the applicant's planner described the property and why the applicant was seeking relief. It is an existing developed property. There are two separate lots currently. Those lots are lot six, which maintains frontage on Pocano which previously had a dwelling on it that Mr. Veltri said he demolished, that's the front lot. Then there's a rear lot 7. Lot 7 is known as 9A Pocano. There is a dwelling on the back lot. There's an existing garage in between the two lots that is on both properties. They are seeking a lot line adjustment, they are not creating any building lots, the lots already exist. They want to take a 14 by 30 by 50 foot wide which is the dimension of the property which amounts to 714 square feet. They're taking that from the front lot 6 and shifting it to the back and giving it to lot 7 making it bigger by the 714 square feet. The reason they're doing that is so the existing garage, which currently has the lot line between existing lot 6 and existing lot 7 going through the middle of it. The proposed lot 6.01, which is the new lot will be non-conforming with respect to area, because it will have 5000 square feet. It will also be non-conforming with respect to the lot width. Those would be the only two variances that would be associated with front property. The new dwelling will conform in every aspect with the bulk requirements of the R3 zoning.

Chairman Whitson asked what the setbacks for the garage are?

Mrs. Cofone said it sits currently 1.67 feet on the sideline and its proposed to sit 3.59 feet from the new lot line.

Mr. Alfieri asked Mrs. Cofone to describe the proposed single-family home that would be on new lot 6.01 referring to A-10 and A-11.

Mrs. Cofone said proposed home would be a 4 bedroom with a 2-car garage underneath the structure. The home would be approximately 1,100 square feet. New lot 7.01 where it requires 12,000 it has existing 7934. If the Board approves this, it gets those 714 square feet more for 8649. It similarly has the same problem with width of 50 versus 120 being required. It conforms to the depth, conforms to the front yard setback, but they do need to request that side yard setback for 6.3 feet for the existing condition, which, again, will not be impacted by this. It was her opinion that the application was a "textbook, C1 hardship case" with two statutory criteria being met including unique circumstances with the structure straddling two lots and has been there a long time and this is an opportunity to clean up that situation. She continued that if the Board said they don't see the hardship, it is her opinion that the Board could grant variance relief under the C2 statutory criteria which eliminates a zoning situation and provides a better zoning alternative, the line would be moved in such a way that it would not change the configuration or layout of the neighborhood, doesn't increase density and that it promotes the general welfare and efficient use of the land. She further testified that the negative criteria statutorily that the Board not hold any applicant to such a standard that there be no detriment – only that the benefits outweigh any detriment. It is her opinion that she is challenged to find any detriments to the application since it involves the moving of a lot line on paper that neighbors will not be able to detect but certainly cleans up the circumstances. She further testified that the application satisfies the C1 and C2 criteria and any detriment was outweighed by the benefits.

Chairman Whitson asked if there were any questions from the Board?

Mrs. Cooper asked questions about the history of the garage and questioned why are they taking an under sized lot and making it smaller? Mrs. Cofone said they are also taking an under sized lot and making it larger. Yes, they will make the front lot smaller, but they will be making the back lot bigger.

Mr. Foster expressed concern for expansion of a non-conforming use and appeared to him the better solution was to move the garage. The goal doesn't eliminate any variances for either lot. Mrs. Cofone responded that they goal was to eliminate a lot line going through a structure. The two lots currently exist and the purpose is to eliminate the situation on an existing structure that was recently refurbished. They believe it more practical to move the lot line than to move the building. She doesn't believe the lot line shift makes a substantial detriment to the zone plan nor a big difference from a planning point of view. Mr. Foster asked about the other variances – Mrs. Cofone responded they are existing conditions.

Mr. Foster asked if there had been any attempt to purchase land to reduce the variance. Mr. Alfieri responded that he didn't believe that needed to be demonstrated for existing condition – different story if it were for new construction.

Mr. Kahle asked if any consideration was given to moving the lot line towards the water, and building a new garage? Mrs. Cofone said the garage is used with 9A the house in the back. Ms. Cofone responded that the garage was used by the rear lot which would create an accessory structure on the front lot without a principal structure creates a zoning issue.

Mr. Dailey asked if they move the line wasn't it creating a front yard setback on the garage. Ms. Cofone responded that yes, whether you call it a rear yard setback for the front lot or front yard setback for the rear lot, its still 3.59' from proposed new lot line. Mr. Dailey asked additional questions about the change in lot areas and expressed concern that the front lot reduced area expanded the non-conformity and places a potential coverage area in the future for a patio or other improvements. Mr. Dailey asked about the easement and was told they were not looking to eliminate it but widen it.

Mr. White commented that the easement was filed in 2000 and was also a private easement for access to the water.

Mrs. Widdis questioned why the moving of the lot line was practical? What made it practical and not leave it where it is other than the fact they now want to the building structure on front lot. Mrs. Widdis stated she heard the testimony that they are making one property worse and one better but the fact is that they are making the small lot even smaller. Ms. Cofone countered that it was difficult to sell a property with the lot line going through the garage and reiterated her position why it was better planning to move the lot line and because the garage is associated with the rear lot, they've moved the lot line accordingly. In doing so it is not changing density or the number of dwellings. Mrs. Widdis questioned the need for 4-bedroom house and the amount of people living in there. Ms. Cofone responded that the proposed house will have a 2-car garage under that and described the additional storage and amenities of the proposed house. Mrs. Widdis asked questions about the easement. Mrs. Widdis asked why the garage wasn't moved when it was refurbished. Ms. Cofone responded that the didn't structurally alter it, didn't move any walls, just renovated its cosmetic appearance. Mrs. Widdis asked what was the proposed lot coverage for the front lot and was told it would meet the zoning, the 37% limitation.

Chairman Whitson commented that he found it boggling why they would make the larger lot larger and the smaller lot smaller.

Mrs. Cooper asked when they refurbished the garage who owned the front property? Mr. Veltri said he did. Mrs. Cooper asked if he thought at the time he should have done something about the lot. Mr. Veltri responded that he hadn't thought of it at the time but as he testified at the last meeting he probably should have.

Mr. Foster asked questions about the property conditions when the Applicant acquired it, were they purchased separately. Mr. Alfieri referred him to Exhibit A-9 that details the ownership history and the case law that eliminates the merger doctrine issue.

PUBLIC: Chairman Whitson opened the meeting to the public for questions of this witness only.

Bryan Keeshen, 25 Hiawatha Ave, was sworn in and asked if the three lots were going to be merged by the same ownership? Mr. Kennedy said it was vetted by Mr. Alfieri referring to Exhibit A-9 memo that they did not have the same ownership and had not merged. Mr. Alfieri reviewed the memo and details of the memo's case law references as to why there was no merger of the lots.

Mr. Keeshen asked Mr. Kennedy if he confirmed the details of the memo. Mr. Kennedy responded based upon what was said in the memo there was no common ownership at the same time for lots 6 & 7. Mr. Keeshen pressed if Mr. Kennedy himself had reviewed the research. Mr. Kennedy explained the basis of the doctrine of merger and that the testimony was that the lots had not been owned by same entity at any point in time. Mr. Alfieri added that because both lots were developed they wouldn't merge because you can't create two principal uses on one lot – creates entirely new variance conditions. There was additional discussion concerning why the issue wasn't addressed when the garage was renovated when the issue was known when the Applicant purchased the property.

Mr. Keeshen next questioned why the structure was being referred to as a garage when in fact it is a short-term rental property and expressed concern that the plans did not label the structure properly. Chairman Whitson asked if the concern was it was being used as rental property. Mr. Keeshen testified that it is being used as a rental and is in fact listed on VRBO and that the testimony talks about it being a garage but the plan should reflect it properly.

Mr. Alfieri asked Mr. Veltri what kind of utilities (unclear), there are no bathrooms.

Mrs. Widdis asked if it (the structure with the lot line going through it) has ever been rented out. Mr. Alfieri stated that it is a garage – there is no plumbing, just an electrical outlet.

Mr. Kennedy asked Mr. Veltri for the dimensions of the garage and was told roughly, scaled from the drawing, 21'x21', one story, and has no plumbing, bathroom or sewer and is used by a garage currently by the owners of Lot 7.

Mr. Keeshen asked if the garage was a short-term rental and Mr. Veltri answered no.

Mr. Alfieri asked Mr. Veltri if he had advertised anything of the 3 lots. Mr. Veltri answered yes, the house in the rear is listed on VRBO and it does not rent out, they don't rent it, whenever its used its by family or friends and would remove the ad today if the desired.

Mr. Keeshen stated he was a member of the Shrewsbury Yacht Club and a guy had stopped in looking to rent a boat and identified himself as renting Mr. Veltri's house of VRBO, maybe he was a family member.

PUBLIC: Chairman Whitson opened the meeting to statements from the public on the application.

Mr. Keeshen stated he would like to know for sure that this residence and no structure on the 3 lots are not being rented out. Mr. Alfieri stated they couldn't discriminate against rental versus ownership. Mr. Keeshen stated there is a Borough ordinance that limits short-term rentals. He also commented that he noticed a gas line opening in the roadway for installation of a gas line.

Mr. Foster asked Mr. Veltri concerning the renovation of the ½ of the garage and who owned the other half – was told the Harmons.

Mr. Kahle asked if there was work going on in his back yard needing a gas line. Mr. Veltri responded that a dock was being built and landscaping installed. No permits needed.

Mr. Alfieri concluded their presentation and asked the Board to approve the application and if they looked favorably upon it to please indicated how the Board wants to handle the driveway.

Mrs. Widdis asked Mr. Veltri if he doesn't rent the house why was it listed on VRBO. Mr. Veltri answered I don't know. Mrs. Widdis asked if he had ever rented it through VRBO and Mr. Veltri answered no, just to family members.

Chairman Whitson asked the Board for any comments and to detail the reasons supporting their comments/decision.

Mr. Alfieri requested that Mr. Kennedy have marked as Exhibit A-12, the marked up version by Mrs. Cofone of Exhibit A-7 which was marked as such.

Mr. Foster commented that he was not comfortable with the application as he felt they had not addressed the existing variances, even though they are existing issues particularly if the owner was looking to sell the property they would want to eliminate as many of those variance conditions as possible. Mr. Foster commented that the professionals may disagree with him but he believes the application is very incomplete; he sees 2 non-conforming lots with existing conditions that could be remedied, may eliminate some of them, and suggested that the Applicant go back and clean up and bring back a cleaner application.

Mrs. Cofone interrupted that there was no way to eliminate the existing non-conformities.

Mr. Foster stood firm and stated that his point is if they come back with a variance that needs to be adjudicated by the Board they may be more apt to do it – eliminating those variances that could be eliminated and working with the Applicant if the Applicant is willing to work with the Board. This is his statement and his vote will be according to his views on this.

Chairman Whitson stated he had a concern with making one lot larger and the small lot even smaller.

Mr. Kahle made a motion to deny the application based on making an undersized lot even smaller which was seconded by Ms. Cooper. Motion to DENY Application

RESULT:	**ADOPTED [5 TO 0]**
MOVER:	John (Jack) Kahle, Vice Chairman
SECONDER:	Patty Cooper, Mayor's Designee
AYES:	Whitson, Kahle, Cooper, Foster, Dailey
ABSENT:	Tvrdik, Widdis C, Kleiberg
INELIGIBLE:	Widdis L
RECUSED:	Davis

X. Petitions from the Public: Chairman Whitson opened the meeting to Petitions from the Public. As no one from the public wished to be heard, Chairman Whitson closed that portion of the meeting.

XI. Adjournment: As there was no further business, the meeting was adjourned at 9:46 pm on a motion by Mr. Foster which was seconded by Mr. Whitson and approved by the Board.

Respectfully submitted,

Jeanne Smith
Board Secretary