

**MINUTES OF THE REGULAR MEETING  
OF THE TOWNSHIP OF JACKSON  
ZONING BOARD OF ADJUSTMENT  
APRIL 6, 2005**

The April 6, 2005 Jackson Township Board of Adjustment meeting was called to order at 7:30 p.m. with a salute to the flag by all present. Attorney Robert Rothstein read the Open Public Meetings Act Statement.

**ROLL CALL:** Peter Clute, V. Chair  
Larry Hartman  
Peter Maher  
Robert Paneque  
Scott Weinstein, Sec'y.  
Donna Hopkins, Alt. #2  
Michael Kelly, Chairperson

**ABSENT:** Meredith Acacia  
Kevin Sullivan, Alt. #1

**ALSO PRESENT:** Richard Megill, Director of Planning and Zoning  
Robert Rothstein, Board Attorney  
Evan Hill, Board Engineer, T&M Associates  
Leah Furey, Planner, Ragan Design Group  
Steven McCrystal, McCrystal Reporting

**MEMORIALIZATION OF RESOLUTIONS:**

**2005-020** –Sonia Mendoza- Block 34, Lot 33.11- Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher & Weinstein. **VARIANCE GRANTED**

**2005-021** – Richard & Joyce Aubin.– Block 32.01, Lot 69.08 – Motion to approve by Hartman/Weinstein. YES: Clute, Hartman, Maher, Weinstein & Kelly. **VARIANCE GRANTED**

**2005-022** – John Stevenson - Block 128.01 Lot 31.02 – Motion to approve by Hartman/Clute. YES: Clute, Hartman, Maher, Weinstein & Kelly. **VARIANCE GRANTED**

**2005-023** – Franklin A. Piper – Block 126.46, Lot 1 – Motion to approve by Weinstein/Hartman. YES: Clute, Hartman, Maher, Weinstein & Kelly. **VARIANCE GRANTED**

**2005-024** –Carl & Denis Anderson – Block 94.01, Lot 14.25 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Weinstein & Kelly. **VARIANCE GRANTED**

**2005-025** – Lucy & Fares Troncoso – Block 152.01, Lot 15 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Weinstein, Hopkins & Kelly. **USE VARIANCE GRANTED**

**2005-026** – Friendship Manor, Inc. – Block 135.20, Lot 11.01 - Motion to approve by Clute/Weinstein. YES: Clute, Hartman, Maher, Weinstein, & Kelly. **APPLICATION DISMISSED**

**2005-027** – Walter Earle Corporation – Block 16, Lot 1.02 & 1.03 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Weinstein, Hopkins & Kelly. **APPEAL FOR CONTINUED CERTIFICATE OF OCCUPANCY AND BULK VARIANCES APPROVED**

**2005-028** – Pine Belt London, LLC – Block 117, Lot 1.01 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Weinstein, Hopkins & Kelly. **FINAL MAJOR SUBDIVISION APPROVED**

**2005-029** – Kinder University– Block 113, Lot 27.01 – Motion to approve by Weinstein/Clute. YES: Clute, Hartman, Maher, Weinstein & Kelly. **PRELIMINARY AND FINAL SITE PLAN APPROVAL GRANTED**

**The voucher for the recording secretary was approved.** Motion by Maher/Hopkins. YES: Unanimous among those present.

**The Minutes for March 2, 2005 were approved.** Motion by Weinstein/Clute. YES: Unanimous among those present.

**ANNOUNCEMENTS**

Mr. Megill asked that Item #7, Catherine Fulton, be carried to May 4<sup>th</sup> with renote and republication because the applicant wishes to change her application by increasing the size of the shed she is proposing to construct. Mr. Megill also asked if it was OK with the Board to move item #10 to number 1 as the applicant had young children with him. Mr. Kelly agreed.

Mr. Rothstein stated Application #16, Ashlie Plaza, would just be a board discussion this evening. He said there is an issue with the subdivision of the mother lot of this application, wherein the Planning Board approved the minor subdivision creating two lots: one residential and the other Neighborhood Commercial. The Neighborhood Commercial lot is the subject of the application before the Zoning Board. The applicant has not yet perfected the minor subdivision and has requested an extension of time to the Planning Board, which would allow them to perfect the minor subdivision. Because this application includes a lot created by the Planning Board, a question has been raised as to jurisdiction.

Edward Liston, attorney for adjoining property owners to the subject application, stated he doesn't see how the Board can proceed without the subdivision being perfected; the subject lot doesn't exist. He said the Board can consider the application, but a judge can say the application had no jurisdiction. He objects to the application going forward.

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Mr. Sonnenblick, attorney for the applicant, stated the application before the Board is one lot, to be subdivided. Since the minor subdivision is not perfected, the application can go forward. He said the time extension is not relevant to this application. He stated he would speak to any members of the public in the hallway if they have any questions regarding this application. Ms. Furey said the applicant is correct – the entire site was noticed and we should just confirm the notice was adequate. Mr. Hill stated the applicant is in the final stages for the minor subdivision from an engineering standpoint. He, too, said the minor subdivision has no bearing on this application. Mr. Kelly said he agrees to hear the application before this Board. We will keep it on this agenda, but it would probably not be reached, due to the large number of applications on the agenda. Mr. Rothstein agreed the Zoning Board has jurisdiction in this matter.

Mr. Sonnenblick suggested having the Zoning Board hear the entire application – that of minor subdivision and use variance for site plan – and they would withdraw their application for minor subdivision approval with the Planning Board. He wanted the board to consider this at the Zoning Board meeting in two weeks (April 20). Mr. Kelly explained the second meeting of the month is for emergency situations only. He went on to state there was an issue of unpaid property taxes on this lot. Mr. Sonnenblick stated the taxes were paid.

Mr. Hill asked if the application would be for the same subdivision as the Planning Board approved. Mr. Sonnenblick stated yes, they are looking for 5 commercial lots and one residential lot. Mr. Megill stated the application for the Planning Board is for minor subdivision only. He feels that should be perfected in its entirety, and then the applicant can request site plan approval with the necessary use variance. Mr. Kelly agreed with Mr. Megill.

Mr. Liston stated the applicant couldn't withdraw their application from the Planning Board as the office is closed. He stated this appeared to be a land use sleight of hand. Mr. Sonnenblick returned if the minor subdivision is never perfected, the same application is before this Board. Mr. Kelly stated this would be scheduled for May 4<sup>th</sup>. Mr. Maher asked what if the subdivision is not perfected by May 4<sup>th</sup>? Ms. Furey clarified for the Board that lot 17.02 was zoned both residential and commercial – 3 acres residential and 15 acres commercial. There is no subdivision approved or applied for on the commercial piece. The applicant wants to take the 18 acres and create a 6-lot subdivision. Mr. Maher commented it seems as though the applicant is looking for the best deal. Mr. Sonnenblick answered the Board's concern is the five lots for commercial use.

Mr. Kelly indicated the Board wants this matter to go back to the Planning Board first. Mr. Sonnenblick answered the minor subdivision will be withdrawn from the Planning Board. They will not proceed with the Planning Board.

**Motion to take jurisdiction and to carry this application to June 1, 2005 by Hopkins/Maher. YES:** Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

The Board accepted jurisdiction on this application conditioned on withdrawing its application to the Planning Board, the payment of additional fees and submission of a revised map to show the residential lot to be created. No further notice is required as the current notice was complete.

Steve McCrystal swore Mr. Megill, Ms. Furey, and Evan Hill.

**APPLICATIONS**

**10. JOSEPH & MARY DOPICO (VARIANCE #2438)**  
**BLOCK: 94.05 LOT: 13 ZONE: R-3**  
**LOCATION: 40 OVERLOOK DRIVE**

The applicants wish to construct an above ground pool with deck 10' from their side property line where 20' is required. Mr. Weinstein asked if the neighbors had a problem with this request. Mr. Dopico said no, when he spoke with his neighbor about the plan, the neighbor said to go for the variance. Mr. Hill asked the size of the pool and was told 15' x 30' above ground. Mr. Hill stated it appears the pool will be constructed between the well and the house and cautioned Mr. Dopico about the water line.

**Motion to approve by Hopkins/Weinstein. YES:** Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**9. RICHARD & SHELLY TONESKE (VARIANCE #2437)**  
**BLOCK: 126.33 LOT: 9 ZONE: R-9**  
**LOCATION: 2 HAWAII ROAD**

Richard & Shelly Toneske sworn. They removed a chain link fence on their property and put up a 6' solid vinyl fence in its place. As they are on a corner lot, they received a violation because a 6' solid fence is not allowed in the front yard. Mr. Kelly noted the decorative fencing shown on the plan must be removed as it is in a sight triangle. The fencing can be further back. Fencing in a sight triangle could be the cause of an accident and the applicants could be sued. Mr. Rothstein furthered that nothing over 30" is allowed there as it is a liability issue. Mr. Toneske replied he saw other properties in town and thought it was OK to put the fencing there. He asked how long he has to remove the fencing. Mr. Hill offered Mr. Toneske to call him to determine where the sight triangle is.

**PUBLIC SESSION OPENED**

No one came forward.

**PUBLIC SESSION CLOSED**

**Motion to approve by Clute with the condition the decorative fencing be removed/Seconded by Weinstein. YES:** Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

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- 1. ROBERT & KIMBERLY FAHNHOLZ (VARIANCE #2427)**  
**BLOCK: 131 LOT: 1.12 ZONE: R-3**  
**LOCATION: 476 PFISTER ROAD**

Robert Fahnholz sworn. He is requesting a variance to construct an addition to his home on a corner lot and needs relief for both front setbacks – where 60 ft. is required, he can provide 48' and 54'. Mr. Hill asked if he is adding bedrooms. Mr. Fahnholz said no, just increasing them in size. Mr. Kelly noted he is adding to the front and side of his home, and Mr. Fahnholz explained the new layout to the Board.

**PUBLIC SESSION OPENED**

No one came forward.

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Hopkins.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

- 2. DEBBIE & SCOTT SHACK (VARIANCE #2429)**  
**BLOCK: 130.04 LOT: 18 ZONE: R-3**  
**LOCATION: 29 SUMMERHILL AVENUE**

Scott Shack sworn. He is requesting a variance to install a fence on his corner lot and had a question on whether he was encroaching on the sight triangle. Mr. Hill asked if he is clearing trees and was told yes. Mr. Shack showed pictures of the property. Mr. Hill determined there are no sight triangle issues.

**PUBLIC SESSION OPENED**

No one came forward.

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Hartman.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

- 3. JEFFREY MORRISSEY (VARIANCE #2430)**  
**BLOCK: 135.06 LOT: 9 ZONE: R-3**  
**LOCATION: 365 BARTLEY ROAD**

Jeffrey Morrissey sworn. He wishes to construct a wood deck to the rear of his home, allowing a 40' rear setback where 50' is required. Mr. Rothstein asked the size of the deck. Mr. Morrissey said the existing deck is 12' x 16', and he wants to extend it an additional 4' toward the rear and then down the side of his house. Mr. Megill stated the new dimensions would be 19'9" x 40'. Mr. Kelly noted a difference in addresses, and Mr. Megill said the applicant's notice is correct.

**PUBLIC SESSION OPENED**

No one came forward.

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Hartman.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

- 4. JANINE & EDWARD MITREUTER (VARIANCE #2431)**  
**BLOCK: 132.02 LOT: 1 ZONE: R-5**  
**LOCATION: 2 TOPAZ DRIVE**

Janine and Edward Mitreuter both sworn. They are seeking a variance for a 6' solid fence and shed. The fence would be placed in tandem with the neighbor's fence behind them. Mr. Hill asked how far from the property line, and this was established. Mr. Mitreuter stated he wished to remove the application for the shed, as he wants a larger shed than he applied for. It was determined the shed would be a separate application.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve the fence only by Hopkins/Clute.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

- 5. TODD & KRISTINE MOLNAR (VARIANCE #2432)**  
**BLOCK: 147.02 LOT: 55.02 ZONE: LM**  
**LOCATION: 143 DIANA ROAD**

Todd Molnar sworn. He is seeking a variance to construct a detached garage for his home in the LM zone where the rear setback requirement is 50', and he proposes 10', and the side setback requirement is 30' and he is proposing 10'. Mr. Kelly asked if there is a driveway to the garage, and was told yes. Mr. Hill asked how wide the driveway is, and how far from the house and property line as well. Mr. Molnar answered it is 10' from the house and 30' from the property line. Mr. Megill stated he will ask Mr. Molnar to show the location on his application for a zoning permit, and he may need a tree permit as well. Mr. Hill asked if there would be electricity in the garage and was told yes. Mr. Kelly asked if the garage would be used for storing cars and was told yes. Mr. Kelly asked if any commercial work would be performed there and was told no. Mr. Hill asked if there would be plumbing and was told no. Mr. Hill asked if well and septic served this property and was told yes. Mr. Hill asked were the septic is and was told 15' – 20' to the

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right in the rear yard. Mr. Hill advised his to follow any applicable septic regulations and Mr. Molnar agreed. There were no comments from the Board.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Clute/Weinstein.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

Mr. Kelly reminded Mr. Molnar to work with Mr. Megill on the location of the driveway.

**6. JOHN & PAULA JEANNE ALDARELLI (VARIANCE #2433)**  
**BLOCK: 5.03 LOT: 1 ZONE: R-3**  
**LOCATION: 9 GREEN TREE DRIVE**

Paula Jeanne Aldarelli sworn. She is asking for a 6' solid fence on her corner lot and an inground pool outside the allowed setback. Mr. Hill asked if the fence is outside the sight triangle. Ms. Aldarelli stated the fence would be 26' from the street, 16' from the property line and 100' from the other corner. Mr. Kelly noted it is not in the sight triangle.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Maher/Hopkins.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**7. Application was previously carried**

**8. GREGORY & KIM SHAPIRO (VARIANCE #2436)**  
**BLOCK: 75.05 LOT: 33 ZONE: R-9**  
**LOCATION: 57 VILLANOVA DRIVE**

Gregory Shapiro sworn. He seeks a variance for a 6' solid fence on his corner lot, replacing an existing chain link fence. Mr. Hill asked the distance the fence would be from the property line. Mr. Shapiro replied it would be 20' from the curb line and was told it needed to be 18' from the curb. Mr. Rothstein stated the Board usually works from the property line, not the curb line. Mr. Hill suggested the fence be 20' from the property line, to which the Board agreed. Mr. Rothstein stated the fence would then be 26'-28' from the curb line, which Mr. Shapiro agreed to.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Clute.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**#9 & 10 were heard previously.**

**11. BRENDAN & LAURA SULLIVAN (VARIANCE #2439)**  
**BLOCK: 135.15 LOT: 44 ZONE: R-3**  
**LOCATION: 9 KNIGHTS BRIDGE**

Brendan Sullivan sworn. He proposes to construct a 17' x 34' deck with roof to the rear of his home and needs a variance for rear setback: 50' is required and 30' is proposed. Mr. Hill had no engineering comments.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Hartman.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**12. PASQUALE & DAWN MICELI (VARIANCE #2410)**  
**BLOCK: 101.01 LOT: 4 & 5 ZONE: R-3**  
**LOCATION: 201 W. COMMODORE BLVD.**

Pasquale Miceli sworn. Lorali E. Totten, P.E., sworn and credentials accepted. Warren Peterson, Esq. represented the applicant. Ms. Totten stated this property is ½ acre in the R-3 zone on the corner of Commodore and Liberty or Lombardi Street. The Micelis own two lots with a small, 1,000 square foot dwelling on it. Her client wants to construct a 1,500 square foot, 3-bedroom home and turn it so it fronts on Lombardi versus Commodore. The benefits of doing so include providing greater side and front setbacks, although bulk variances are still needed. The septic design is approved by the Ocean County Health Department, and Ocean County Soils has given its approval. Mr. Peterson asked the size of the lots in the area. Ms. Totten replied they are also undersized lots, and even if the Micelis could acquire additional land, their lot would still be undersized. She said they are adding a basement and full ceilings. Apparently the existing home has 6' ceilings. Ms. Totten stated this construction would be in keeping with the area. She sees the application as good, consistent with the zoning plan of Jackson Township.

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Mr. Miceli is a resident of Jackson, and said he has a small home and just wants one a little larger to be more comfortable and to provide more storage. The existing home needs a new well and additional work. He wants to live in his home while constructing the new one, and then demolish the old home.

Mr. Hill requested a concrete driveway to be installed, copies of soil borings, a deed restriction to Route 526, and the plan revised to show revised grades. Mr. Peterson agreed with the foregoing, and added letters were sent to adjoining property owners to purchase additional property, but received no response. These letters were marked Exhibit A-1.

Ms. Furey stated the applicant addressed her March 2, 2005 letter. The lot has frontage on Commodore, but she wants a deed restriction for the roadway. Ms. Totten responded the house and septic could be moved back to avoid a front setback variance. Mr. Hill stated it is common practice to request a right of way. Ms. Furey asked if there was a response from the MUA. Mr. Miceli stated he received a response from them and it would be at least 7 years for water and sewer to be available there.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Clute/Hopkins.**

Mr. Rothstein questioned Leah Furey regarding affordable housing. Ms. Furey agreed the differential value of 1% is collected for affordable housing per Ordinance 109-115. 6 ½' is dedicated to the roadway.

YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**Recess at 9:05 pm. Reconvened at 9:10 pm**

**13. STREVENS BUILDING (VARIANCE #2428)  
BLOCK: 147.04 LOT: 65 & 66 ZONE: R-3  
LOCATION: SUNSET DRIVE**

Bill Stevens of Property Development Services sworn and credentials accepted. Mr. Pesciotta, Esq., represented the applicant. The applicant wishes to construct a single family dwelling, and although lot size variances are needed, the house will meet setbacks. He sent buy/sell letters to adjoining property owners but no responses were received. He asked if the Board would request jurisdiction and Mr. Rothstein replied yes.

Mr. Stevens stated this property is on the north side of Sunset Drive near Eltone Road. This is an isolated undersized lot requiring 130,000 square feet and the applicant has .97 acre. He needs lot width and lot depth variances. The house can conform to the other bulk requirements for the R-3 zone. Mr. Rothstein asked if the 2,700 square foot home includes the garage.

Mr. Megill stated Block 146.01 Lots 4 & 5 have not been changed on the tax map by our maintainer. The lot and block numbers were changed by subdivision of Four Seasons at Metedeconk.

Mr. Stevens stated this is Phase 3 of the Four Seasons project. This will be non-age restricted homes including 7,500 and 5,200 sf lots. The current application is five to seven times the size of the adjoining parcels. He added Hovnanian is building roadways and improvements. Mr. Hill asked if this was part of Hovnanian's project. Mr. Stevens answered no, this was a small residential subdivision in the area of the Metedeconk Golf Course. It was originally proposed for residences and the Sambol property. This is not part of Metedeconk; Strevens is buying the land from another party. Mr. Hill noted it is not impacting any previous approved buffer requirements. Mr. Stevens added the lot is not cleared; the road is under construction, but it can be reached by truck. Mr. Maher stated he was there yesterday, and thought the lot was cleared.

Ms. Furey referred to her letter of March 28, 2005 and stated this is near a C-1 waterway but it is exempt. She clarified this home would be served by water and sewer and asked for a timeframe for construction – would it be until the road is finished? Mr. Stevens answered the applicant needs all improvements before a Certificate of Occupancy is issued. The applicant is relying on those improvements and will build it at his own risk. Ms. Furey stated he needs Forester approval and can't clear more than 20,000 square feet. Mr. Stevens agreed. He also said the lots are to be consolidated as part of the approval.

Mr. Hill asked if there was a copy of a Letter of Interpretation from the DEP with a description of the buffer. Mr. Stevens said yes, there is an LOI from K. Hovnanian.

Mr. Hartman asked if Sunset Drive was gated. Ms. Furey answered no, it is a public road. Mr. Megill stated this is not a gated community; there are single-family homes, some are non-age restricted. He said this is a township right-of-way and it can't be closed off.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by Weinstein/Clute.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins and Kelly.

**14. APPLICANT: CHARLES BAKER/SERGEY DIETZ (VARIANCE #2383)  
BLOCK: 6 LOT: 28.04 ZONE: R-3  
LOCATION: SERGEY ROAD**

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James P. Kovacs, Professional Engineer and Licensed Surveyor, sworn. He stated he has been licensed since 1967 and Mr. Kelly accepted his credentials. Ron Gasiorowski, Esq., represented the applicant, Charles Baker. The applicant is seeking approval for variances to construct a single-family dwelling. Variances for pre existing conditions and one new variance for side yard setback is required, where 50' is needed and 20' is proposed, per R-3 zoning requirements. Mr. Rothstein noted the adjoining property owner, Widel, offered to buy the property for fair market value. Mr. Gasiorowski stated he will address that, and he needs 30 days to perform due diligence. He said the amount offered is less than fair market value.

Mr. Kovacs prepared the plan and submitted the application to the town. He also revised the plan on January 7, 2005, which was marked as an exhibit. He submitted the plans to the Board of Health for the ability to construct a septic system and received approval for it. While the lot is undersized, the dwelling can be constructed with the appropriate septic bed. He spoke of the variances required plus the side setback of 20' on the southerly side and 27' on the other. He noted there are other small lots in the immediate area. He responded to comments on storm water runoff that would possibly affect a neighbor by noting a stone recharge pit is designed to avoid this.

Mr. Kelly asked if the Board had questions; there were none. Mr. Hill asked if there would be a concrete driveway apron. Mr. Kovacs agreed to comply with everything in the T&M Associates letter. Mr. Hill then asked the Board to discuss curb and sidewalks that don't exist on adjacent properties.

Ms. Hopkins asked for clarification of the storm water runoff, which Mr. Kovacs explained. Mr. Gasiorowski added there is no increase in storm water runoff as a result of construction of this house. Mr. Kovacs submitted drainage calculations, and Mr. Hill noted they exceed standards of most applications. He wanted to discuss technical issues of the recharge pit. Mr. Gasiorowski agreed that any approval could be contingent on meeting those conditions.

Victor Furmanec, Planner, sworn and credentials accepted. He stated he reviewed the professionals' letters and visited the subject site. He reviewed the types of lots in the area. An aerial photo by the DEP was submitted as an exhibit. The site is wooded and vacant with single-family residences of varying sizes, this one being about the same as three of them. The lot appears to be part of a very old subdivision from 15-20 years ago. He said the lot to the north is 1 acre and the lot to the south is 17,000 square feet. This application requires a variance to build the home. The type of home, 30' x 40', two stories, and 4 bedrooms would not have a negative impact on the existing neighborhood.

Mr. Maher asked if the applicant could purchase adjoining property. He was told adjoining properties are non-conforming in lot size. The only available property is a 10-acre piece, and the property owner declined. Even if the property could be purchased, that would not change the building footprint and variances would still be needed.

Mr. Baker sworn. He visited adjoining property owners and spoke with Mrs. Shaffer when he was purchasing this property. He explained who he was and left his card, asking her to call him if she had any questions. He met another neighbor, but as there was a language barrier, he is not sure if the neighbor understood him. He contacted the listing agent of another property, Century 21, but as it is a narrow lot, if it were to be purchased, they would have no driveway. Any other lots are undersized and it is not possible to acquire land from them to make this lot conforming. The buy/sell letters were submitted as exhibits.

Mr. Gasiorowski asked if interest was expressed in purchasing his (Mr. Baker's) property. Mr. Baker replied yes, an appraisal was received on his property in the \$100,000-\$300,000 range. Mr. Kelly would not accept the appraisal as evidence as the appraiser was not present tonight to question him. Mr. Rothstein stated the appraisal could be accepted, but the board does not have to give it credence. Mr. Gasiorowski agreed, stating he knows it is hearsay. Mr. Maher asked what type appraisal it was. Mr. Gasiorowski stated, "limited." Mr. Maher stated it should only be used by the applicant, and not entered as evidence. Mr. Gasiorowski asked to approach the dais.

**Recess: 10:10 pm. Reconvene: 10:12 pm**

Mr. Gasiorowski marked the appraisal as Exhibit A06.

Mr. Baker explained the offer to purchase the property was after the application was submitted to the town and all the engineering work had been done. The application was carried in October to allow the appraisal to be completed. Mr. Gasiorowski stated all he had is a letter from the real estate agent for the property of lot 28.03 stating the value is \$100,000-\$130,000, but it was not from an actual appraiser.

Mr. Baker submitted architectural plans of the proposed house, a contemporary marked A-7 and a center hall colonial marked A-8. He has built both homes; A-7 is a 1,800 square foot home and A-8 is a 2,500 square foot home. He stated he has constructed more than 100 homes in Jackson, and this home would not have a negative impact on the area; in fact, it would bring adjoining property values up. He showed pictures of adjoining homes, marked A-9-A14.

Ms. Hopkins questioned the property appraisal of \$130,000 – is that a buildable lot? Mr. Gasiorowski clarified that would be on this lot with a variance. Mr. Maher stated other lots in the area aren't that high in value. Mr. Baker furthered the price includes engineering costs associated with gaining approvals. Mr. Rothstein added the value is as if the variance was granted.

Mr. Gasiorowski stated he has an offer of \$100,000, but no contract, with thirty days due diligence to think about it. Mr. Baker commented when he first approached the neighbors, there was no interest to purchase the property, but now, after all the preparation with the application for the variance, there is interest.

**PUBLIC SESSION OPENED**

Peter Tober, Esq., representing the Shaffers, stated he has a bone fide offer of \$100,000 and Mr. Baker will not suffer a hardship. He stated it seems this is a self-created hardship. Mr. Rothstein asked when this was

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subdivided. Mr. Tober stated sometime between 1962 and today. Mr. Gasiorowski objected, stated this is not a subdivision hearing. He went on to say this is the first time he is hearing of this attorney representing the Shaffers, and feels he should have been notified. Mr. Megill was checking the records to see if the lot was part of a subdivision.

Frank Shaffer, 597 Sergey Road, sworn. He is opposed to this application. He owns the property north of the applicant. This is a wooded, secluded area, downhill of this applicant and is unsure where the well and septic will be. If it is upstream, he feels there will be runoff problems. He stated trees were cut and the swath caused runoff problems. The house would be close to his and he likes the privacy of the existing woods. Mr. Baker offered \$95,000 for their property, and a title search, marked Exhibit O-1, was submitted.

Elizabeth Shaffer, 597 Sergey Road, sworn. She said she offered to buy the property at fair market value, which \$100,000 is not. The house will not fit in the neighborhood. She stated there are environmentally sensitive areas.

**PUBLIC SESSION CLOSED**

Mr. Megill stated Mr. Dietz owned the property since 1985. He said there could have been a subdivision by deed before the zoning ordinance was codified. Mr. Rothstein agreed.

Mr. Tober stated the offer is there for fair market value and there are environmental issues, runoff, and title issues creating a hardship by the applicant himself. Mr. Gasiorowski directed everyone's attention to the key map and sizes of surrounding properties. This is an existing undersized lot with Health Department approval, and the Board professionals gave their approval. He has no testimony stating they will get \$100,000 for the lot. He thanked the Board for its time.

Mr. Kelly asked if the Board wants to wait and see if the offer is true, and the Board agreed. He asked Mr. Baker if he were willing to wait. Mr. Baker responded if the people really wanted to buy this property, why did they wait so long? At the last minute, they object after all the money spent on this application. Mr. Gasiorowski granted consent to carry 30 days. He has no gripe and will entertain serious offers. He thanked the Board again.

**APPLICATION CARRIED TO MAY 4<sup>TH</sup>.**

**15. APPLICANT: ELLIOTT & ISABELLA BATES (VARIANCE #2423)  
BLOCK: 140.01 LOT: 7.03 ZONE: R-3  
LOCATION: 394 CHANDLER ROAD**

Elliott Bates sworn. Alan Kaplan, Esq., represented his applicant. He stated they are seeking a variance to park vehicles over 6 tons. Mr. Bates lived there since 1992 and owned 22.22 acres with paper streets on them. There exists a long driveway to Chandler Road paved with asphalt for about 1,000'. It is a heavily wooded property. Mr. Bates owns road driven vehicles, one of them a 16-ton dump truck to haul dirt. Mr. Bates is in the excavating business. There is no business conducted on the premises and there are no neighbor complaints. There is a curve on Chandler Road, but one can see 500'-600' toward Jackson Mills Road and 2,000' toward Hyson Road. There are no sight issues while exiting the driveway. There is one house and two detached garages on the property with stone driveways for truck turnaround.

Ms. Furey asked if there was only one truck. Mr. Kaplan said there was only the dump truck. Mr. Bates has two other vehicles, but they are not road worthy. Mr. Kelly asked if the empty truck comes and goes. Mr. Bates testified he hauls no hazardous materials, only dirt, sand and concrete. Mr. Kelly asked if he was the owner, and Mr. Bates said yes. Mr. Bates also said he is requesting permission for 4 vehicles to be parked overnight there, needing them as backup. Mr. Kelly noted the driveway is not safe to pull out of, per the Police. Mr. Kaplan offered to post a "Hidden Driveway" sign on Chandler Road.

Mr. Bates noted nothing was ever said about his trucks on the property until he built the garages. Ms. Hopkins asked if there were ever any accidents and was told no. Mr. Clute asked the speed limit and was told 40 mph. Mr. Hill referred to his April 4 letter, and Mr. Kaplan stated he did not receive it. When provided with a copy, Mr. Hill stated his comments were mostly plan related, with improvements not constructed. Mr. Bates stated he merged lots three times to get to 22 acres. Mr. Hill asked if there were wetlands, and Mr. Bates said no.

Mr. Megill stated the reason the applicant is here tonight is due to a complaint by a neighbor. If this application is approved, maybe some buffer could be provided. Mr. Kaplan stated there were 600'-700' of woods to the neighbor.

Mr. Kelly said if four vehicles were approved, he wants the sizes of the trucks specified. Mr. Bates replied two dump trucks, using one as a backup, 15 tons empty. Mr. Rothstein said if this is approved, they want to lock in the size, 4 commercial tank vehicles, not to exceed 15 tons.

Mr. Weinstein asked what time the truck leaves in the morning. Mr. Bates replied generally 7:30, rarely but sometimes at 6:30 am. Mr. Weinstein expressed his concern for safety and requested the signage for the hidden driveway. Mr. Megill stated we could request Public Works to put up the sign.

**PUBLIC SESSION OPENED**

George Loretta, of the Plantation Development, sworn. He objected to the pole barn when Mr. Bates applied. He was told then not to park commercial vehicles in there, now he is applying to park commercial vehicles there. He did not complain about the noise. This is a residential neighborhood, and it is turning

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into a commercial site. He does not want this. Mr. Kaplan replied the applicant is not to use the building for commercial purposes. He proposed to put the vehicles outside and not in the building. Ms. Furey asked if he has a permit for a home professional office. Mr. Kaplan replied other contractors have offices in their homes where they receive phone calls.

Mr. Megill clarified if the applicant did not want the location of the buildings where he requested them he could have put them elsewhere with only a zoning and building permit. He only needs a variance for parking overnight from 9pm to 6am. The vehicles can come and go all day by code.

Mr. Rothstein recapped he wants to park up to 4 vehicles: 2 dump trucks at 15 tons each, a tractor, and a service vehicle for personal company use. The hidden driveway sign would be at Mr. Bates' expense. This variance would be only for his business; if the business were sold, the variance would only continue if it were exactly the same as what is in existence.

**PUBLIC SESSION CLOSED**

**Motion to deny by Weinstein. No one seconded the motion.**

**Motion to approve by Hopkins/Paneque.** YES: Clute, Maher, Paneque, Hopkins. NO: Hartman, Weinstein, Kelly.

Mr. Rothstein stated the motion did not carry because the applicant did not receive the necessary 5 votes. He asked the board if any changes to the request would change the vote. Mr. Weinstein said they should limit the number of trucks further. Mr. Bates stated commercial trucks are not in the building. Mr. Weinstein wants to save the property as it is, and the safety issues need to be addressed. Mr. Hill stated the signage is a good idea and it can be provided.

Mr. Kaplan stated they would cut their request to three trucks instead of 4. Mr. Kelly called for another vote, this time for three trucks – 2 dump trucks, not to exceed 15 tons each, and a tractor.

**Motion to approve by Weinstein/Paneque.** YES: Clute, Maher, Paneque, Weinstein, Hopkins. NO: Hartman, Kelly. *The motion carried, 5-2.*

**17. APPLICANT: SOUTHVIEW DEVELOPMENT/ALL STAR KENNEL (VAR #2426)  
BLOCK: 152.01 LOT: 10.01 ZONE: LM  
LOCATION: 470 W. COMMODORE BOULEVARD**

Daniel Olszak represented the applicant. The kennel is a permitted use and there is one residential apartment unit and another rental unit. Diane Hinze, 470 W. Commodore, sworn. She has been involved with animals for 47 years, currently operating All Star Kennel. The caretaker apartment is very important to oversee the kennel with coverage when the owner is not present. She is a single mom with two children. The house is the same and the present unit has been occupied for 12 years, a continued use since 1992. There is a large area for parking and a two-car garage. The asphalt driveway is wide by the kennel. The driveway apron is asphalt and in good condition. If Commodore Blvd. is widened, they will install a concrete apron. The caretaker is there for the dogs and children, 7 days a week, 24 hours a day. Ms. Furey noted the applicant's total response to her review letter.

Mr. Megill stated there was never a certificate of occupancy issued on the apartment. Occupancy was never registered as a landlord. The resolution states it could not be used as an apartment. Mr. Rothstein stated this is not a rental unit. The applicant needs a variance because there are two residential uses on one property. Mr. Megill stated there are construction issues.

Richard Wojewodzki, 9 Hayward Hills Drive, Holmdel, sworn. He stated when they closed on the property, they thought the certificate of occupancy was for the whole property. They found out later the c of o was for the residence and not the kennel. He stated there were a number of violations that have been corrected. Mr. Megill agreed under the housing code the dwelling is probably ok. The single-family residence over the kennel requires fire separation and other code requirements. Mr. Wojewodzki agreed they would want to be sure the premises is made safe for anyone living there. Mr. Olszak agreed to comply with Ms. Furey's letter and any construction requirements. He added this business provides a good public service and they are seeking the necessary variances to remain there.

Mr. Kelly said if it remains a caretaker apartment, that would be ok, subject to fire and plumbing inspections. Ms. Hopkins added her concern to getting a proper certificate of occupancy.

**PUBLIC SESSION OPENED**

No one came forward

**PUBLIC SESSION CLOSED**

**Motion to approve by HOPKINS/HARTMAN.** YES: Clute, Hartman, Maher, Paneque, Weinstein, Hopkins, and Kelly.

**Motion to adjourn at 12:00 a.m. by Hopkins/Clute.** YES: by affirmation.

Respectfully submitted,

Janice Kisty  
Zoning Board Recording Secretary