MEETING IS CALLED TO ORDER:

MR. LEVITON: Okay, call the meeting to order and ask you to stand for a flag salute.

SALUTE TO THE FLAG

1 2

MS. MOENCH: Make sure you have the microphone on when you are speaking, please.

MR. LEVITON: You all hear that? Okay, pursuant to section five of the Open Public Meetings Act, notice of this meeting of the Manalapan Township Zoning Board of Adjustment was sent and advertised in the Asbury Park Press. A copy of that notice was posted on the bulletin board where public notices are displayed here in the municipal building. In addition, a copy of this notice is and has been available to the public and is on file in the office of the municipal clerk. Accordingly, this meeting is deemed in compliance with the Open Public Meetings Act. Roll call, please.

ROLL CALL

MS. MOENCH: Mr. Shalikar? Not here. Mr. Weiss?

MR. WEISS: Here.

MS. MOENCH: Mr. Harrington?

MR. HARRINGTON: Here.

MS. MOENCH: Ms. Klompus?

MS. KLOMPUS: Here.

MS. MOENCH: Mr. Mantagas?

MR. MANTAGAS: Here.

MS. MOENCH: Mr. Wechsler? Absent. Mr. Pochopin? Absent. Ms.

40 Levenson?

MS. LEVENSON: Here.

MS. MOENCH: Ms. Latilla?

MS. LATILLA: Here.

48 MS. MOENCH: Mr. Hughes?

48

1 2 MR. HUGHES: Here. 3 4 MS. MOENCH: Chair Leviton? 5 MR. LEVITON: Here. Okay, we need to accept minutes from 6 7 August 7th. Will someone move to do so? 8 9 MS. KLOMPUS: I'll move to accept them. 10 MR. LEVITON: Thank you Ms. Klompus, and will someone second 11 t.hat.? 12 13 MR. MANTAGAS: I'll second that. 14 15 16 MR. LEVITON: Thank you Mr. Mantagas. 17 18 ROLL CALL 19 20 MS. MOENCH: Ms. Klompus? 21 MS. KLOMPUS: Yes. 22 23 MS. MOENCH: Mr. Mantagas? 24 25 26 MR. MANTAGAS: Yes. 2.7 MS. MOENCH: Ms. Levenson? 28 29 MS. LEVENSON: Yes. 30 31 MS. MOENCH: Chair Leviton? 32 33 34 MR. LEVITON: Yes. There are no resolutions to memorialize so we are moving right into our public hearing tonight, and there's 35 just one application, it's ZBE2525 Ms. DiLella, did I say that right? 36 37 MS. DILELLA: DiLella. 38 39 40 MR. LEVITON: DiLella, please come on up. Our Board attorney, Mr. Marmero, is going to swear you in so if you'll raise 41 42 your right hand. 43 MR. MARMERO: I'll get you sworn in. Do you swear the 44 testimony you will provide tonight will be the truth, the whole truth, 45 and nothing but the truth? 46

MS. DILELLA: Yes.

4

5

6 7 8

9

10

11

12

13

14 15

16

17

18

19

20

21

2223

24

25

27

28

29

30

31

32

33 34

353637

38

39 40

41 42

43 44 45

46

48

1 MR. MARMERO: Okay.

MR. LEVITON: And now if you'll sit and be comfortable. We know that you're here to legitimize your fence and if you'll just tell the board a little bit about it.

MS. DILELLA: Alright, hi, good evening everyone. My name is Aubrey DiLella and I'm the homeowner of 34 Sutton Drive. I'm here respectfully requesting a variance to allow our existing fence to remain in its current place even though its current setback is between fifty-two to fifty-eight feet which is slightly under the required sixty foot setback. We purchased our home in February in its current condition. The fence was already installed when we purchased it. At the time of the sale the township issued the seller the zoning certificate of continued occupancy which gave us confidence that the property including the fence met township approval or at least considered acceptable at the time. As part of the process, we notified all relevant neighbors about the variance request. I've personally spoken to several neighbors who received the notice helping them to understand what it meant and no objections have been brought to me and the fence does not negatively affect any neighboring properties. Our property is a corner lot which I understand can carry some unique challenges when it comes to zoning and visibility. However, the current fence condition, location does not create any line of sight issues or obstruction of views for pedestrians or drivers. Relocating the fence to meet the sixty foot setback would require some changes including digging into existing concrete, additional construction and demolition, new permits, and potentially new variances. All of would to be to adjust a few feet despite the current location being safe, functional, and aesthetically aligned with the neighborhood. In closing, in summary respectfully just requesting that the fence remain in its current place.

MR. LEVITON: Basil?

MR. MANTAGAS: Hi.

MS. DILELLA: Hi.

MR. MANTAGAS: What is this, a metal fence? What type of metal fence like cyclone fence? I didn't get a chance to take a look at it.

MS. DILELLA: Like an aluminum fence.

47 MR. MANTAGAS: Aluminum?

MS. DILELLA: Yeah.

MR. MANTAGAS: About how high is it?

MS. DILELLA: Five foot.

MR. MANTAGAS: Five foot? Okay, thank you.

MR. LEVITON: Adam?

MR. WEISS: Yes hi, good evening. So, I noticed, couldn't help but notice that you have a baby with you.

MS. DILELLA: Yes.

MR. WEISS: And part of the reason that the fence is there is to contain and make it safe for your children, your child?

MS. DILELLA: Yes.

MR. WEISS: In terms of the fence itself, my recollection is that it lines up with the front of your house. Thatit's not behind your house and it's not in front of your house. It's actually along the front facade of your house, correct?

MS. DILELLA: Right, correct.

MR. WEISS: Okay, and do you have any idea how long that fence has been there?

MS. DILELLA: I assume when they built it, when they put the pool in.

MR. WEISS: Okay and in looking at the zoning officer Mr. Boccanfuso's observations, it indicates that the fence is a picket-style fence, but that it's approximately, I believe it's zoned for should be three feet, but it's six feet. Is that correct Mr. Boccanfuso?

MR. BOCCANFUSO: So, the three foot requirement is for fences that are twenty-five feet or greater from the front yard line, but less than the setback requirement. So, it's kind of a which way you look at it type of thing. We can look at it and say that the setback is compliant, but the height exceeds the three feet or we can say the height is permitted, but the setback doesn't meet the standard. It's really one form of relief depending which way you look at it.

MR. WEISS: And the setback if I remember correctly it's supposed to be sixty feet, but we're talking about somewhere between fifty-two and fifty-five is what the actual.

1 2

MR. BOCCANFUSO: That's correct. It varies. It's not parallel to the front property line along that frontage. So, it varies from fifty-two to fifty-eight feet, and if I can, if I can just correct something for the record. You asked if the fence is parallel to the facade of the home. It actually is not. It does project out several feet perpendicular to the facade of the home before going along the frontage. I don't have the scale with me, but it appears to be six feet probably. It's about the width of a gate because there's a walkway that comes off the driveway. You can see that pretty clearly on the plan if you have it available.

MR. WEISS: Yeah, I do have the plan. Thank you for referring to it. The applicant has testified that in order to bring this into compliance if we were to enforce the setback if you will, they'd be having to dig into hardscaping that's already there. Is that accurate?

MR. BOCCANFUSO: Potentially yes.

MR. WEISS: Okay.

MR. BOCCANFUSO: It is potentially accurate and while I certainly will acknowledge that that is a hardship for the applicant. I don't know that that's something that the Board can really consider as a hardship. There was a permit application that showed a compliant location. This certainly wasn't Ms. DiLella's fault that it wasn't built that way.

MR. WEISS: Right.

MR. BOCCANFUSO: But in considering whether or not to grant the variance relief I think that the board should focus more either on the hardship of the property. Ms. DiLella indicated it was a corner lot which isn't entirely accurate. It's on one street, but ---

MR. WEISS: It's on a bend.

MR. BOCCANFUSO: It functions like a corner lot.

MR. WEISS: Right.

MR. BOCCANFUSO: As well as the aesthetic and safety benefits that she spoke about. I don't think the hardship associated with the reconstruction is something the Board can really consider

because unfortunately if it was done right in the first place that's not something that.

MR. WEISS: Understood.

MR. LEVITON: I just want to pick up on that. The financial hardship of having to dig into a hardscape cannot be considered by this board. It's precluded from consideration in the MLUL, the Municipal Land Use Law of New Jersey, that guides our decision making. Also, for the audience and for the board's edification, hardship relates to narrowness, shallowness, topography, shape of the land, or other unique physical conditions that may affect the property, never financial concerns or matters.

MR. WEISS: Thank you, and so my thought is and this is just me speaking for myself, the fact that the requirement if you will of a three foot fence, I think would be problematic as it relates to children and animals to the extent you have any dogs or anything like that. From my perspective, the setback is while it's not in compliance potentially with the prior permits that the prior property owners had, I think, in my opinion only, that the amount of the encroachment into the setback is rather de minimis. So I thank you for your time and I'll pass along to my other zoning board members.

MS. DiLella: Thank you.

MR. WEISS: Thank you.

MR. LEVITON: Before we move on, Brian I don't remember where I read it, but I believe you quantified the amount of time that the fence was there as fifteen years and may have been replaced in its same footprint by a previous owner.

MR. BOCCANFUSO: Yes, I mean it's difficult to say. I'm reviewing aerial images and available street view images and trying to piece it together. I mean it looks to me like it has probably been there for over fifteen years, but because of the varying qualities of resolution when you're looking at aerial images, sometimes it looks wider than others. I can't rule out the possibility that it was replaced at some point, but if it was it was replaced virtually in kind in almost the exact same location. I suspect it probably was not replaced and is probably the same fence that's been there for fifteen plus years.

MR. LEVITON: And Mrs. DiLella I'm confident that Janice spoke to you about the ten year rule? Janice, did you talk about the ten year rule?

MS. MOENCH: No.

 MR. LEVITON: I will tell you now then, but before I do let me ask you about the, I read it and my memory isn't that good and I can't put my finger on it right now. You have an agreement with the previous owner that had you holding onto three thousand dollars that they put in escrow for you so that if this board ruled unfavorably for the variance relief that you seek you would have money to make the adjustments, and I believe I noted and I'm not that bright, that's why I'm asking you, a discrepancy in the time frame. I'm somewhat certain that you're beyond it, that the date of this meeting superseded the agreement that you had and that that deal is no longer in effect.

MS. MOENCH: No.

MR. LEVITON: I'm wrong about that? I'm asking. Let her tell

 me.

MS. DiLella: So.

MS. MOENCH: She made an application before June 1st.

MS. DiLella: Right, it was.

MR. LEVITON: Oh, see good thing I asked. As long as she makes the application before, she's good even though the time that she had to do so passed. Albert, can you confirm that?

MR. MARMERO: Yes, she has the application that's fine.

MR. LEVITON: Okay it made a difference to me. I really just, I read it and it didn't jive I wanted to ask. Okay so the ten year rule is such that if you can prove that the relief that you seek has been in existence for ten years, you don't have to change it right now, but down the line it needs to be changed, and that rule only pertains to, I forget their name, but the people who sold the home to you, they could have invoked that rule. Janice, is that right?

MR. BOCCANFUSO: Not exactly Mr. Chairman.

MR. LEVITON: Tell us Brian. How does it work?

MR. BOCCANFUSO: The way that the regulation reads is that the zoning department has discretion if a buyer or seller can prove that a non-compliant improvement has been there for ten years. It's not automatic. It is a factor that we can consider and if we invoke that privilege, then the buyer has to sign an affidavit basically acknowledging that it's non-compliant and agreeing that if they ever

change it, they will bring it into compliance. It's not a 1 2 ratification. It's not automatic. It's a judgment call on our end, and we use discretion. It depends on a lot of circumstances. In this case, 3 I don't think that the ten year provision was applied to the fence. 4 Partly and likely because there was a permit issue that showed a 5 compliant location, and it's a front setback issue. Usually with these 6 ten years, it's a shed that's too close to the property line that's 7 been there for twenty years or a patio that's a couple feet closer 8 than it's supposed to be. With front setbacks we really try to ensure 9 that the improvements are compliant and consistent with any permits 10 that were issued. So, in this case, Ms. Hoffman and the rest of the 11 department felt it was appropriate to get this corrected either via 12 corrective work or via variance relief from you. 13

14 15

MR. LEVITON: Thank you Brian, and Adam I agree de minimis. So, let's move on to John.

16 17 18

MR. HARRINGTON: Just a question, there were permits pulled for the fence being installed, correct?

19 20 21

MR. BOCCANFUSO: That's correct, yes.

22 23

MR. HARRINGTON: Were the permits that were closed once that fence was installed? Do we know?

242526

27

28

29

30

31

32

33 34

35

36

37

38

39

40

41 42

43

44

45

46 47

MR. BOCCANFUSO: So, the way it works is there are a couple different pieces to a permit. One is the zoning permit. When it comes to zoning permits, the vast majority of zoning permits don't get closed out. In that there's no final inspection or as-built. The exceptions to that are if it's a new single-family dwelling. In the case of a fence, zoning permit would have been issued. It would've shown a compliant location. Zoning officer would have signed off on it, and then there's an expectation that the applicant is going to comply with that permit, and it's their responsibility to do so. There's no as-built. There's no follow up. Now in the case of a fence that's used to enclose a pool, there is also a permit from the construction department because the pool code requires the pool to be enclosed by a fence for safety so a child can't get in there and God forbid something terrible happens. That construction department permit would include a final inspection, but they would just be looking for is the spacing correct, is the height correct, does it have a selfclosing, self-latching gate that opens a certain way, etc. They would not be looking at the location and even if they were it's unlikely that they would notice that the fence was a couple feet off. I mean if it was fifty feet off, they might say hey zoning you might want to look into this, but if it was just a couple of feet, they wouldn't look at it. So, the answer to your question is yes. There is a close

out permit, close out procedure in the construction department, but not in zoning.

MR. HARRINGTON: Not in zoning, okay.

MR. BOCCANFUSO: And that's why it was non-compliant apparently for so many years without anyone realizing until such time as the previous owner went to sell the property.

MR. HARRINGTON: Okay, and I don't have any questions for you, but thank you for coming in. My questions have been answered.

MS. DiLella: Thank you.

MR. LEVITON: Stacy?

MR. HARRINGTON: My questions have been answered.

MS. KLOMPUS: I was going to ask you about permits as well so I have no questions.

MR. LEVITON: Jessica?

MS. LEVENSON: I don't have any questions, thank you.

MR. LEVITON: Temika?

MS. LATILLA: The only question is did we have that confirmation of where it was permitted? I didn't see it in any of the documentation to show where the approved location was.

MR. BOCCANFUSO: I don't know if you have it. The township and the zoning department do have it. Yeah, there was a permit on file.

MS. LATILLA: Okay.

MR. BOCCANFUSO: It was many years ago. That wasn't in the packet, was it? Do you have it?

MS. MOENCH: It was included in the packet I distributed to the Board.

MR. BOCCANFUSO: Okay. We do have it and that's how we knew there was a discrepancy because it was the originally-approved permit application for the fence basically showed it a continuation of that facade of the house which would've complied.

 MS. LATILLA: Yeah.

MR. BOCCANFUSO: And then when the owner built it, they said Hey it would be a good idea to have a gate there and from a practical standpoint I don't disagree with that. It just doesn't comply with the zoning and wasn't what was permitted.

MS. LATILLA: Okay, that's it.

MR. LEVITON: Thank you Temika. Patrick?

MR. HUGHES: I have no questions, thank you.

 $\,$ MR. LEVITON: Okay then at this time I'm going to go out to the public.

MR. BOCCANFUSO: Mr. Chairman just a couple quick things before you do. I just want to bring a few things up. As I was reviewing the application and preparing for tonight with Janice, we noticed a couple of things that we'd like to bring to the board's attention. First of all, the survey that was submitted does show some improvements that are within a township drainage easement, and I'm actually surprised no one asked about it. Usually somebody will catch that and ask about it. Perhaps it's because you realize that Ms. DiLella already got a revocable license from the township to permit those improvements. You have a tiny bit of the shed in the rear property corner as well as a meandering portion of the pool patio that's within the township's drainage easement. Those have been approved via a revocable license issued by the township.

MR. LEVITON: From 1997?

 $\,$ MR. BOCCANFUSO: Those improvements may have been there for that long, but the revocable license was just recent.

 ${\tt MS.}$ MOENCH: The revocable was from.

MR. LEVITON: There are two.

MR. BOCCANFUSO: That was for the fence.

MS. MOENCH: The fence was before.

 MR. BOCCANFUSO: Right. Yeah, the revocable for the fence was many, many years ago. It was part of the original permit, but if you look at the survey that was submitted you can see a small portion of the pool patio actually encroaches into the easement and it does

comply with zoning regulations. The original permit for the pool did not show that encroachment into the easement.

MR. LEVITON: Okay do talk about it, and the township committee does talk about it from this year.

MR. BOCCANFUSO: Yes.

MR. LEVITON: It's going to be replaced. It needs to be brought back into conformity.

MR. BOCCANFUSO: That may be, the pool patio.

MR. LEVITON: Yes.

MS. MOENCH: The patio, the pool, and the light.

MR. LEVITON: Yes.

MR. BOCCANFUSO: Yeah, there's a sliver of the pool that's within. I mean it's like an inch literally.

MR. LEVITON: Okay so Albert's taking notes.

MR. BOCCANFUSO: This is really just an FYI.

MR. LEVITON: What he's doing is he's identified some minor things and we're going to subsume them into your application and ratify everything. Anything else Brian?

MR. BOCCANFUSO: Yeah, two other things. So, there's a shed in the southwesterly right rear corner of the property. As you can see it's set back 4.9 feet. Five feet is required. We're talking about an inch and a quarter here. Certainly not a big deal. No matter what the board decides, that shed does not need to be moved, but I think it would be considerate for the board to at least think about it, think about legitimizing it and ratifying it so that it's legal if it ever gets knocked down you can put it in the exact same place. I mean I don't know who's going to notice an inch besides the surveyor anyway, but the numbers are the numbers. So, I would recommend that the board at least consider granting the necessary relief for that existing, non-compliant shed.

MR. LEVITON: By trade he's an engineer. He's a civil engineer. When he identifies the part of the shed that's non-compliant as a sliver, I think that's an industry term.

MR. BOCCANFUSO: Highly technical.

MR. Leviton: Yeah.

MR. BOCCANFUSO: Similarly, we have it's somewhat of a hybrid of a walkway and a patio in the westerly portion. I'm sorry the easterly portion of the property right near the fence in question. Walkways are permitted in a front yard, patios are not. I assume that when Ms. Hoffman went through the ZCCO process, she was content to call that a walkway and therefore it was permitted. However, some of it is probably more like a patio so I think that it would probably be appropriate for the board to consider the variance relief for a patio, existing, non-compliant patio in the front setback.

MR. LEVITON: I'm good with that, but I think it's a walkway

 too.

MR. BOCCANFUSO: Okay.

MR. LEVITON: I mean Adam talked about it. I know where that bump out is. I was there. To me that's just a walkway.

MR. BOCCANFUSO: Whatever makes you happy.

MR. LEVITON: Why do you think it's a patio? What defines it as a patio?

MR. BOCCANFUSO: I think it's a gray area and I think we have Ms. DiLella here and she's presented her testimony and I think this is an opportunity to perhaps legitimize it either way.

MR. LEVITON: Okay.

MR. BOCCANFUSO: Even if all of us here agree that it's a walkway, perhaps a zoning officer some number of years from now when Ms. DiLella goes to sell the property is going to say there's a patio in the front yard and there's no permits and no approvals for it. She went to the zoning board. It was not discussed. That's got to be removed. So this would be an opportunity to afford her some protection.

MR. LEVITON: Then I will compliment you on finding it and bringing it to the board's attention.

MR. BOCCANFUSO: Sure thing. I think Janice caught it actually.

MR. LEVITON: Thank you Janice. She's so good.

MR. BOCCANFUSO: That's all I have.

2 3

1

MR. LEVITON: Okay, Albert you got all those?

4

MR. MARMERO: Yeah. Did you want me to go over them now?

6 7

MR. LEVITON: I do. Just so Ms. DiLella can hear and she'll understand and I don't have a good memory myself.

8 9 10

11

12

13

14 15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

MR. MARMERO: Yeah, so the application as submitted is essentially for a variance that's necessary for the location of a fence which encroaches in the front yard setback. Where sixty feet is needed --- we can see the fence has a setback of approximately fiftytwo to fifty-eight feet depending on where it's located. That easterly side of the property --- easterly side a variance is needed. That's technically a front yard and because the property is on a curve so that is technically a second front yard essentially so that's really why the variance relief is needed, and then because a fence located in the front yard the maximum height of three feet is permitted, but this fence is in the five to six foot range, and then as pointed out by Brian and Janice, there's a couple of other existing, non-conformities that were discovered. There's the shed setback that's on the westerly side of the property where the setback looks like it's an inch off. So instead of five feet you have 4.9 feet, and then there are encroachments into the township drainage easement that have been recognized that they are permitted at least through a township revocable license, but since the applicant is here you can certainly legitimize those items as well, and then you just discussed the patio/walkway which encroaches into the front yard. If it's a walkway, it seems to not be an issue. If someone were to classify it as a patio in the future perhaps it could be an issue so the idea was perhaps legitimizing it if the board sees so fit.

32 33 34

MR. LEVITON: Thank you Mr. Marmero.

3536

MR. MARMERO: Sure.

373839

40

41 42

43

44

MR. LEVITON: Okay at this time it is customary to go out to the public, to the audience. The only one here is you Ms. Weiss and I'm going to ask; do you have any questions before I ask the board to make a motion to take a vote. None whatsoever? Okay, want to wave to daddy? He's so good, isn't he? That's a good girl. Alright, will someone make a motion? Seeing no one from the public with interest in questioning the board or cross-examining Ms. DiLella I'm going to close public, and now ask for the motion.

45 46 47

48

MR. WEISS: I'd like to make a motion to approve the application as submitted to also legitimize the current location of

48

adjourn? Brian?

the shed, to also legitimize the encroachment into the drainage 1 2 easement, and to also legitimize the easterly side walkway/patio whatever we're going to call it. 3 4 5 MR. LEVITON: Thank you Mr. Weiss. Will someone second that? 6 7 MS. KLOMPUS: I'll second it. 8 9 MR. LEVITON: Thank you Ms. Klompus. 10 ROLL CALL 11 12 MS. MOENCH: Mr. Weiss? 13 14 15 MR. WEISS: Yes. 16 MS. MOENCH: Mr. Harrington? 17 18 19 MR. HARRINGTON: Yes. 20 21 MS. MOENCH: Ms. Klompus? 22 23 MS. KLOMPUS: Yes. 24 25 MS. MOENCH: Mr. Mantagas? 26 MR. MANTAGAS: Yes. 27 28 29 MS. MOENCH: Ms. Levenson? 30 31 MS. LEVENSON: Yes. 32 33 MS. MOENCH: Ms. Latilla? 34 MS. LATILLA: Yes. 35 36 MS. MOENCH: Chair Leviton? 37 38 MR. LEVITON: Yes, congratulations folks. Welcome to 39 40 Manalapan and many happy years here. 41 42 MS. DILELLA: Thank you. 43 MR. LEVITON: You're welcome. Okay at this time I'm going to 44 go out to the public for any non-agenda items. Seeing none, I'll close 45

public and let's go back to Brian. Any additional thoughts before we

MR. BOCCANFUSO: Before we adjourn? No. MR. LEVITON: You folks are good to go. The application will be memorialized at our next regular meeting and you won't need to be here for that and if you have any questions, Janice will take care of you. MS. DILELLA: Sounds good. MR. LEVITON: Okay, Albert anything further before we adjourn? MR. MARMERO: No nothing on my end. MR. LEVITON: Then will someone move to adjourn. MR. HARRINGTON: Motion to adjourn. MR. LEVITON: We are in adjournment. **********