

1 **MEETING IS CALLED TO ORDER:**

2
3 MR. LEVITON: I'm going to call this meeting to order and
4 ask you all to stand for a salute to our flag.
5

6 **SALUTE TO THE FLAG**
7

8 MR. LEVITON: Pursuant to section five of the Open Public
9 Meetings Act, notice of this meeting of the Manalapan Township Zoning
10 Board of Adjustment was sent and advertised in the Asbury Park Press.
11 A copy of that notice was posted on the bulletin board where public
12 notices are displayed here in the municipal building. In addition, a
13 copy of this notice is and has been available to the public and is on
14 file in the office of the municipal clerk. Accordingly, this meeting
15 is deemed in compliance with the Open Public Meetings Act. Roll call,
16 please.
17

18 **ROLL CALL**
19

20 MS. MOENCH: Mr. Shalika?

21
22 MR. SHALIKAR: Here.

23
24 MS. MOENCH: Mr. Weiss is not with us. Mr. Harrington?

25
26 MR. HARRINGTON: Here.

27
28 MS. MOENCH: Ms. Klompus?

29
30 MS. KLOMPUS: Here.

31
32 MS. MOENCH: Mr. Mantagas?

33
34 MR. MANTAGAS: Here.

35
36 MS. MOENCH: Mr. Wechsler is not with us. Mr. Pochopin?

37
38 MR. POCHOPIN: Here.

39
40 MS. MOENCH: Ms. Levenson is not here. Ms. Latilla?

41
42 MS. LATILLA: Here.

43
44 MS. MOENCH: Mr. Hughes?

45
46 MR. HUGHES: Here.

47
48 MS. MOENCH: Chair Leviton?

1
2 MR. LEVITON: Here. Okay our first order of business tonight
3 is to memorialize two resolutions. The first one is ZBE2525, Mr.
4 Marmero.

5
6 MR. MARMERO: Sure Mr. Chairman, so the application as the
7 Board remembers is a situation where the applicant was looking to
8 legitimize existing, non-conforming conditions that were created by
9 pool equipment and a pool patio. Those items created several different
10 encroachments, and then while reviewing that application it was
11 determined other inconsistencies and non-conformances located at the
12 property as well. So, this resolution was grant that variance approval
13 and then attach various conditions to the other existing, non-
14 conforming.

15
16 MR. LEVITON: Mr. Marmero, there were discrepancies after
17 the fact when the resolution was written. Were they resolved?

18
19 MR. MARMERO: Yeah, I wouldn't call them discrepancies. I
20 think everyone on our side is accurate. We discovered --- discrepancy
21 he had everything --- The only thing we did add was we attached
22 timelines to them rectifying some of the situations and what we did
23 was a ninety-day time period that we attached. At the end of the day
24 we --- on our end we did agree to language that says excluding delays
25 outside of the control of the applicant. So if for some reason
26 something is outside of your control and it's looking like you can't
27 make the ninety days then perhaps you can forgive them for that, but
28 other than that it's the ninety days.

29
30 MR. LEVITON: Thank your sir. Will someone make a motion?

31
32 MS. KLOMPUS: I'll make the motion.

33
34 MR. LEVITON: Thank you Ms. Klompus.

35
36 MR. SHALIKAR: I'll second.

37
38 MR. LEVITON: And thank you Mr. Shalika.

39
40 **ROLL CALL**

41
42 MS. MOENCH: Mr. Shalika?

43
44 MR. SHALIKAR: Yes.

45
46 MS. MOENCH: Ms. Klompus?

47
48 MS. KLOMPUS: Yes.

1
2 MS. MOENCH: Mr. Mantagas?

3
4 MR. MANTAGAS: Yes.

5
6 MS. MOENCH: Mr. Pochopin?

7
8 MR. POCHOPIN: Yes.

9
10 MS. MOENCH: Chair Leviton?

11
12 MR. LEVITON: Yes. The next one is, I'm sorry that one was
13 ZBE2515. This one is 2525.

14
15 MR. MARMERO: Sure, ZBE2525, this is a situation where the
16 applicant had an existing fence. The applicant was here to legitimize
17 that fence. There were some issues with the existing fence --- that
18 it's located in the side yard setback. The property is essentially a
19 lot that is on a curve. So, we have two front yards, and then due to
20 the location there was the height issue as well and both of those
21 variances were granted in this resolution.

22
23 MR. LEVITON: Thank you counselor.

24
25 MR. MARMERO: Sure.

26
27 MR. LEVITON: Motion?

28
29 MR. HARRINGTON: I'll make a motion to accept.

30
31 MR. LEVITON: Thank you Mr. Harrington, and a second?

32
33 MR. POCHOPIN: I'll second.

34
35 MR. LEVITON: Thank you Mr. Pochopin.

36
37 MS. MOENCH: Mr. Pochopin is not eligible.

38
39 MR. MANTAGAS: I'll second then Mr. Chairman.

40
41 MS. MOENCH: Who was that?

42
43 MR. LEVITON: Thank you Mr. Mantagas, and Daniel you are not
44 eligible, but thank you anyway.

45
46 **ROLL CALL**

47
48 MS. MOENCH: Mr. Harrington?

TOWNSHIP OF MANALAPAN
MINUTES

ZONING BOARD MEETING
SEPTEMBER 4, 2025
PAGE 4

1
2 MR. HARRINGTON: Yes.

3
4 MS. MOENCH: Ms. Klompus?

5
6 MS. KLOMPUS: Yes.

7
8 MS. MOENCH: Mr. Mantagas?

9
10 MR. MANTAGAS: Yes.

11
12 MS. MOENCH: Ms. Latilla?

13
14 MS. LATILLA: Yes.

15
16 MS. MOENCH: Chair Leviton?

17
18 MR. LEVITON: Yes. Okay, we are at the public hearing
19 portion of our meeting. First one is 2527, Mr. and Mrs. Miller. Mr.
20 Miller, come on up. Mr. Marmero will swear you in, then you can sit
21 and be comfortable.

22
23 MR. MANTAGAS: Yeah, just push the button on the bottom.

24
25 MR. MILLER: Hello?

26
27 MR. MARMERO: Okay I'll get you sworn in. Do you swear that
28 the testimony you will provide tonight will be the truth, the whole
29 truth, and nothing but the truth?

30
31 MR. MILLER: I will, yes, I do.

32
33 MR. MARMERO: Okay.

34
35 MR. LEVITON: Did that get picked up Janice?

36
37 MS. MOENCH: ---

38
39 MR. LEVITON: The light has to turn green.

40
41 MS. KLOMPUS: I think it is. Yeah, it's green.

42
43 MR. MILLER: Yes, I do.

44
45 MR. LEVITON: Okay.

46
47 MR. MILLER: Should I get closer?
48

1 MR. LEVITON: Yeah, take a seat, be comfortable, and these
2 proceedings are recorded and then later transcribed by someone who is
3 not in attendance. So, it's a very sensitive system. If you wouldn't
4 mind just pulling it closer to you. It should be about.

5
6 MR. MILLER: Sure, is this good?

7
8 MR. LEVITON: That's good.

9
10 MR. MILLER: I apologize. I'm not a public speaker. I'm
11 shaking a little bit.

12
13 MR. LEVITON: You don't need to be. We're your neighbors.

14
15 MR. MILLER: Yes. My wife had to work so she wasn't home
16 with the kids, but she's in agreement with the variance obviously. I
17 don't know if I should give you some background or what not.

18
19 MR. LEVITON: Well, let me first ask you. You're here
20 because you're putting in a pool and as part of that process, the
21 driveway that exists was identified as non-conforming.

22
23 MR. MILLER: Yes.

24
25 MR. LEVITON: And as a condition of the permit for the pool,
26 you agreed to either cut back the driveway or come here and have us
27 legitimize the driveway.

28
29 MR. MILLER: Yes, I'd prefer to keep some of it, but that's
30 why I'm here trying to get a variance.

31
32 MR. LEVITON: So, this is a case where your driveway extends
33 all the way to the lot line.

34
35 MR. MILLER: Yes.

36
37 MR. LEVITON: That's a heavy lift. Did Mr. Boccanfuso or Ms.
38 Moench talk to you about the municipal land use law?

39
40 MR. MILLER: Yes.

41
42 MR. LEVITON: That is the document that governs our decision
43 making here. Do you understand about the variance relief that you
44 need? It's either a C1 or C2.

45
46 MR. MILLER: Yes, C2 that's what I'm seeking.

47

1 MR. LEVITON: You're going for a C2. A C1 would've been
2 extremely difficult for you to establish a hardship. Hardships run
3 with the land. A C2 is equally as difficult. I don't know how you're
4 going to do this. You need to prove to the board that your driveway as
5 it exists promotes one of the uses of land development.

6
7 MR. MILLER: This is all foreign to me, I'm sorry. Honestly,
8 I bought the house. I don't know if you saw my case of if it was
9 discussed, I bought the house prior to the new zoning laws. Now you
10 guys review it. I bought the house with the driveway and for many
11 different reasons I'd like to try to keep some of it, if not majority
12 of it. We thought we were buying a fine house and when we went to go
13 put in the pool there was an issue regarding the driveway being in the
14 setback which we didn't know anything about. For us, there's no
15 drainage issues. I provided some pictures. There's plenty there.
16 There's never been a complaint about it.

17
18 MR. LEVITON: So, Mr. Miller, I'm going to interrupt for a
19 moment. This board needs to look at the driveway as if it's not there.
20 As if you're coming and asking permission to build it. So, you've
21 testified you're here for a short time before we changed our rules.
22 You moved in in 2019.

23
24 MR. MILLER: Yes.

25
26 MR. LEVITON: I believe it is correct that Manalapan
27 Township, after you moved in, now has a ZCCO program that necessitates
28 all sellers to establish that there's conformity to ordinances before
29 they get a CO for a buyer. So, you are right. That did happen, but
30 nevertheless this board needs to look at your driveway not through the
31 prism of you in particular, but for all time and one of the, two of
32 the things that this board doesn't really abide well by are more than
33 one shed on a property and zero lot lines, and what it does when a
34 driveway goes all the way to a lot line it removes the buffer between
35 properties and that increases the likelihood of conflict. I wish I had
36 a nickel for every time I sat here where a neighbor complained that
37 lights from the adjacent home shined into their bedroom.

38
39 MR. MILLER: That's why I have my neighbors, actually came.

40
41 MR. LEVITON: They can't speak at this time.

42
43 MR. MILLER: Okay.

44
45 MR. LEVITON: They are invited to come up when that part of
46 our hearing comes and you'll be sworn in and you'll be able to speak,
47 but again it's because everything is transcribed later and then is
48 available to the public.

1
2 MR. MILLER: So, part of my issue is.

3
4 MR. LEVITON: So just a minute.

5
6 MR. MILLER: Sorry.

7
8 MR. LEVITON: I'm trying to tell you it's not just for you
9 and your current neighbor. It's ten years down the line. It's fifty
10 years down the line, seventy-five, a hundred. So, conflicts emanate
11 from not just cars, but snow, runoff, maybe not now, but down the
12 line. That's the way this board is going to look at it. So, you have a
13 heavy lift tonight. So, if you want to explain to the board what
14 purposes of the MLUL are advanced by your driveway, feel free and you
15 can get your C2 variance if you're successful.

16
17 MR. MILLER: So, I understand that Janice spoke to me a
18 couple days ago that I can't use money as an excuse to not do it, but
19 my property is irregular.

20
21 MR. LEVITON: Wait you can't use what?

22
23 MR. MILLER: Money as an excuse to keep it, but my property
24 is.

25
26 MR. LEVITON: This board is precluded from considering any
27 issues that are monetary.

28
29 MR. MILLER: Okay, either way my property is irregular and
30 comes in because I'm on a curve.

31
32 MR. LEVITON: If you talk about an irregular shape of the
33 property, you're trying to get yourself a C1 variance. You're trying
34 to establish a hardship, but I'm going to remind you that two minutes
35 ago you told me you're looking for a C2 variance.

36
37 MR. MILLER: I apologize.

38
39 MR. LEVITON: You don't have to be sorry. You do need to
40 establish something that this board can hang their hat on.

41
42 MR. MILLER: Okay.

43
44 MR. LEVITON: You're frustrated.

45
46 MR. MILLER: I wish I would've --- I'm not going to go
47 there. Well, the drainage issue isn't an issue, but I know.

1 MR. LEVITON: It's not an issue today.

2
3 MR. MILLER: Yeah.

4
5 MR. LEVITON: Anytime there is covering of impervious
6 material, it increases the likelihood of runoff and in your case
7 runoff onto your neighbor's property.

8
9 MR. MILLER: Okay I mean I have reasons to not move it
10 because it's already there, but I'm assuming that that's not going to
11 fly for you guys.

12
13 MR. LEVITON: You can.

14
15 MR. MILLER: I mean just.

16
17 MR. LEVITON: Well, it may well not but you can. You're not
18 precluded from asking or telling us.

19
20 MR. MILLER: That's fine just the carcinogens from breaking
21 up the driveway and then replacing it someplace else, the smell. I'm
22 just trying, I'm reaching.

23
24 MR. LEVITON: Yes, it's a creative stretch. I'll give you
25 that, but it's not a hardship. Hardships do run with the land. They're
26 topographic. They're irregular shapes. Something where the property is
27 rendered into inutility so that this board can say yeah, the MLUL
28 didn't account for that, but not what you just said.

29
30 MR. LEVITON: So essentially, I know you're going to, I was
31 going to bring up the safety of the street. The street is on a curve.
32 Someone's car got actually almost totaled the other day on our block
33 having to park into the street and removing the driveway.

34
35 MR. LEVITON: The MLUL doesn't recognize that as a hardship
36 either. Most homes in Manalapan are on a curve somewhere even in a
37 Cul-de-sac, it's not.

38
39 MR. MILLER: Okay so I guess my only argument is which I
40 wish I found out about the C2 yesterday when I went to go meet, but
41 the only.

42
43 MR. LEVITON: I feel badly for you. I'm human. We are all
44 human. Some of us have sat in that chair. We know the pressure that
45 you're under. We understand what it is that you need and what you want
46 and that you're recognizing that you may fall short.

47
48

1 MR. MILLER: I mean I guess I'll get my money's worth
2 because I paid for this and it seems like I don't really have a leg to
3 stand on. The fact that.

4
5 MR. LEVITON: Were you advised when you decided to come
6 before the board? I read the denial. The denial talks about a
7 condition of the pool would to be either to cut it back or to come
8 before the board. Were you advised that this is a gamble?

9
10 MR. MILLER: It was discussed that I would probably lose
11 part of it, maybe not all of it, but.

12
13 MR. LEVITON: Did you come with an alternative plan that you
14 want to propose? We don't generally negotiate, but.

15
16 MR. MILLER: I'm willing to cut back half of it, but I mean
17 I'm at the point where my mom died. She gave us money for a pool. I
18 bought the pool for my kids. I paid for it in full. The pool was
19 either you have to remove the whole driveway which then I would just
20 have a one lane driveway.

21
22 MR. LEVITON: Not the whole driveway, just the extension.
23 The part that encroaches into the setback, that's all.

24
25 MR. MILLER: Which the extension has been there since '07
26 maybe even before that. I sent a picture to you guys for it. It's on
27 Google Maps.

28
29 MR. LEVITON: We've seen it.

30
31 MR. MILLER: So the driveway was like that. I was told
32 either I need to remove it or I can file for the variance. Those were
33 the two options. I wasn't given a timeframe like you have X amount of
34 time to remove it because I'm tapped out. Things are tough.

35
36 MR. LEVITON: Again, I hear you, but I've got to cut that
37 type of talk off because it's under the municipal land use law. There
38 are no provisions for our consideration.

39
40 MR. MILLER: Okay, but my thing is I bought the house like
41 this. We didn't know and this is just a surprise and it's either we
42 filed for the pool in April and the pool didn't get put in until
43 August and it was just it's either you do this or this and there's no.
44 You don't have a time frame to remove it like to wait for your tax
45 money. It's just the process is crazy that this is what I have to go
46 through to get the pool or either remove it which is more than the
47 variance was. So, I don't know.

1 MR. LEVITON: Well, the process exists to keep our town
2 looking really nice. We don't want it, I don't want to name or
3 besmudge other towns, but we don't want it to look like other towns
4 and our ordinances exist to ensure for the beauty and for conformity
5 through the years, not just while you're living there, and believe me
6 I'm an old man it goes quickly.

7
8 MR. MILLER: I don't know if you've seen my house. We try to
9 keep it up. We try to keep it as best we can, but having to either
10 remove it or move it is going to take away from what we could do to
11 keep our house beautiful. It's just.

12
13 MR. LEVITON: I can't, I can't.

14
15 MR. MILLER: I understand, it's just.

16
17 MR. LEVITON: I need to look at it like you're asking for
18 permission and that is the way I'm going to view it. Let's go to Mr.
19 Shalika. We'll go to everyone on the board.

20
21 MR. SHALIKAR: So, my understanding is that it's been there
22 for over twenty years. I don't think a C2 variance is the right
23 approach. I think a C1 variance is a better approach as a hardship,
24 but I think you have to get creative with informing the Board as to
25 how it's a hardship. Obviously, money isn't a reason. I think we've
26 made that clear. There are other avenues that you can tap into that
27 you were hinting at around safety, other things like that that you
28 have to lean into, but we can't really give you that. That's part of
29 your testimony. Again, we've seen cases or testimony in front of us in
30 terms of it's been here forever. We understand that. We look like the
31 bad guys unfortunately when that happens, but the ZCCO is not on us.
32 That's something that we are governed by or at least the land use law.
33 So, this is one of those scenarios where the pressure is on you to
34 come to us for that. I think you understand the two options. Number
35 one either you cut back which isn't favorable because it does take
36 resources to do that and then number two is to come to us for
37 testimony or with a testimony that makes sense in terms of hardship.

38
39 MR. MILLER: Can I apply for the hardship with the shape of
40 my land and the safety and everything?

41
42 MR. SHALIKAR: Sure, absolutely, but I would take a minute
43 and I have no problem with you. You can ask the Board if they have a
44 problem. If you want to collect some thoughts and think about it and
45 talk to us about why safety would be a factor. Why the shape of your
46 property would be a factor and the benefits of having that cut out as
47 it has been since you've lived in the house and tell us that.

1 MR. LEVITON: So, a hardship can be established by
2 narrowness, shallowness, irregular shape, and exceptional topographic
3 condition or some other unique condition, or physical feature that
4 affects the property.

5
6 MR. SHALIKAR: I'll put it this way you were articulate in
7 the building blocks to your case, keep going.

8
9 MR. MILLER: Okay.

10
11 MR. SHALIKAR: Don't stop.

12
13 MR. MILLER: Alright thank you. I appreciate it.

14
15 MR. SHALIKAR: And don't focus on the money.

16
17 MR. MILLER: Okay I apologize, sorry.

18
19 MR. SHALIKAR: No, no, don't apologize. I understand. We
20 seem intimidating because we're in this irregular shape of a U looking
21 at you. We're not intimidating. We're all the same here. Right? This
22 is just what we volunteer to do. So, take a second, collect your
23 thoughts, and go ahead.

24
25 MR. MILLER: I feel bad for my neighbors.

26
27 MR. LEVITON: Would you like?

28
29 MR. SHALIKAR: They're here for the show.

30
31 MR. LEVITON: Let's get through all of the board's
32 questioning and then I'll invite them to come up. Mr. Mantagas?

33
34 MR. MANTAGAS: Hi Mr. Miller. I was at your house yesterday.
35 I observed your driveway. I could see right up to your neighbor's
36 property line and I noticed there's plenty of room between that
37 property line and to where your car was. Did you ever explore
38 expanding the other way a drop to go to the other side?

39
40 MR. MILLER: I'm very much so into the aesthetics and beauty
41 of Manalapan. I love it here. It's beautiful and I do have room to go
42 the other way, but I question how it would look and I never really
43 seen a house with the driveway directly in front of the house as
44 opposed to.

45
46 MR. MANTAGAS: Now I notice it doesn't go all the way down.
47 It's just a box out.

1 MR. MILLER: Yeah.

2
3 MR. MANTAGAS: So, the car that was in the driveway and also
4 in the picture that I have in front of me is probably three feet,
5 three to four feet away from maybe three feet away from that edge.

6
7 MR. MILLER: If it's three, four feet I understand I can't
8 be at lot line zero. I'm more than willing to abide by anything you
9 guys come up with or say.

10
11 MR. MANTAGAS: I think I'd be more comfortable if there was
12 a little bit of a buffer between your neighbor's property line and the
13 edge of your driveway so.

14
15 MR. MILLER: I have my basketball hoop there, my kids play,
16 I feel like in the street on the curve. Safety wise, it's very unsafe.
17 I'm very much okay with that as long as I can still --- my kids ---
18 cars in the driveway for safety wise that's why I'm here. I'd prefer
19 to keep part of my driveway.

20
21 MR. MANTAGAS: Do you have a number in mind that you'd be
22 willing to give away?

23
24 MR. MILLER: Three feet. I think three feet I'd still have
25 enough room to park there, but also move my car when my kids are
26 playing and what not. I don't know if you can hear me or not. We're
27 good?

28
29 MR. MANTAGAS: Okay. Now was that driveway, did you just
30 repave the driveway? It was like that when you bought the house.

31
32 MR. MILLER: The pictures are on Zillow. I bought the house
33 as is, just like that.

34
35 MR. MANTAGAS: That's how it was when you bought it. Okay
36 great.

37
38 MR. MILLER: I just had a sealant put on it or whatever.

39
40 MR. MANTAGAS: A sealant right, okay.

41
42 MR. MILLER: Yeah.

43
44 MR. MANTAGAS: Alright great, thank you.

45
46 MR. MILLER: No problem.

47

1 MR. HARRINGTON: I think that my questions have already been
2 answered.

3
4 MR. POCHOPIN: So, I guess I'm a big advocate for safety. Is
5 it safe to say that safety and you said from the street and that extra
6 width you'd be willing to cut it back which you surmised it? Is it
7 safe to back out and pull out of the driveway from there so you're not
8 backing out into blindside traffic? Is that what you do? Is that what
9 you're asking for perhaps also?

10
11 MR. MILLER: Yes too, yes for safety.

12
13 MR. POCHOPIN: Okay --- thank you.

14
15 MR. MILLER: Thank you.

16
17 MS. KLOMPUS: That was my same question, that was yeah. So,
18 this way you can see your kids playing, back up just a little and give
19 them the space to be okay.

20
21 MR. LEVITON: Except this is Chaucer Drive. It's a straight
22 line from one side to the other.

23
24 MS. KLOMPUS: Listen I have kids that are running all over
25 my street. I know that. I'm on Sandpiper so. It's very active there.

26
27 MR. LEVITON: Yours is more active because it cuts between
28 two streets.

29
30 MR. MILLER: In terms of that we're parallel to the park. So
31 whenever that road is out, we're the detour road and people do, I
32 don't want to say speed, but people speed.

33
34 MR. LEVITON: I see. Either way it's not a condition that
35 establishes a hardship. But Patrick?

36
37 MR. HUGHES: No, my questions were already asked.

38
39 MR. LEVITON: Okay then at this time I will open up to
40 public and folks if you want to come up and testify, you're free to do
41 so. You'll be sworn in, yes.

42
43 MR. MARMERO: Are you both going to be providing testimony?

44
45 MRS. GUILD: Yes.

46
47 MR. MARMERO: Okay so if you'll both raise your right hand,
48 I'll get you both sworn in. Do you swear the testimony you will

1 provide tonight will be the truth, the whole truth, and nothing but
2 the truth?

3
4 MRS. GUILD: Yes.

5
6 MR. GUILD: Yes.

7
8 MR. MARMERO: Okay and what are your names?

9
10 MRS. GUILD: Barbara and Gary Guild, G-U-I-L-D.

11
12 MS. MOENCH: Can you turn that microphone on please?

13
14 MR. GUILD: There it is.

15
16 MRS. GUILD: Okay.

17
18 MR. MARMERO: And what was the last name? My apologies.

19
20 MRS. GUILD: Guild G-U-I-L-D.

21
22 MR. MARMERO: Gotcha.

23
24 MRS. GUILD: Okay.

25
26 MR. LEVITON: Hello Mrs. Guild.

27
28 MRS. GUILD: Hi.

29
30 MR. LEVITON: Hello Mr. Guild.

31
32 MR. GUILD: Hello.

33
34 MR. LEVITON: You want to offer some testimony?

35
36 MRS. GUILD: Yes.

37
38 MR. LEVITON: You want to address the board? Feel free.

39
40 MRS. GUILD: Well, I guess I don't know a little bit of
41 both.

42
43 MR. GUILD: Move closer.

44
45 MRS. GUILD: We're living at 10 Chaucer. They're 12 and
46 we're living there since December of '86.

47
48 MR. LEVITON: Yours is the bi-level.

1
2 MRS. GUILD: A bi-level, correct.

3
4 MR. LEVITON: And your bi-level, when you look at the homes
5 from the street it's to the right of Mr. Miller's property.

6
7 MRS. GUILD: We're on the, right correct.

8
9 MR. LEVITON: His driveway goes right up to your property
10 line.

11
12 MRS. GUILD: Exactly right. We have a little L too and he's
13 got like a little nook, and there's a barrier between the two.

14
15 MR. LEVITON: Your L is above his?

16
17 MRS. GUILD: Probably yes. So, I know that you had said
18 something about the weather or things like that with rain and things
19 that that could be a problem, but me, I'm living there that long. The
20 people that lived before, I don't know if he ever put any permits or
21 whatever. I just know that it's there and Charlie and his wife bought
22 the house I guess six years ago and it was flipped and I know that
23 because the guy used to talk to me and tell me the things that he was
24 doing and all that kind of stuff. So, and I know that when you flip a
25 house because we were looking to buy one that they just buy the house
26 and that's it. They don't care what permits or whatever is there. They
27 purely buy the house, fix whatever they want, and if you don't like it
28 don't buy it which we just learned. So, my question is he's innocent
29 in the sense that he bought a house in a fabulous neighborhood, great
30 for the schools. I worked in the schools. I think you did too and it's
31 an ideal place to have your children and to have them raised. We've
32 lived there all that time and we've gone through Sandy which was
33 pretty horrendous as far as storms go and thank God, I lost one little
34 tree. Nothing with the driveway. No water, no erosion, no nothing. The
35 only thing I get are leaves from everybody else's trees because I'm on
36 a turn so I have to clean a lot which I love, but that's about the
37 extent of it. So that's pretty much what I'm trying to say is as far
38 as the kids playing, there's no issue. They don't impact on anything.
39 There has never been any swamping of anything. If anything, on the
40 other side of my driveway on my lawn I had a little swamp thing which
41 I don't even know how that came, but as far as what you were saying
42 about weather and erosion and anything like that that could possibly
43 affect it or the future owner I don't see it happening cause I'm there
44 forty years nothing ever happened and the last thirteen years after
45 Sandy, nothing ever happened and with all these little storms we're
46 having and these earthquakes we're having, nothing ever happened.

47
48 MR. LEVITON: Let me throw out as a hypothetical.

1
2 MRS. GUILD: Go ahead.

3
4 MR. LEVITON: This shouldn't really be a discussion, but
5 just hypothetically what if he piled up all his snow on that nook and
6 then it melted and you'd have another swell of water on both sides of
7 your property?

8
9 MRS. GUILD: Right, but what I'm saying is after almost
10 forty years we've gone through many different weather patterns. I
11 remember when my kids were in school in the nineties, there was one
12 period there where they were in soccer and they had to go to soccer
13 all the way into June because it was such a bad snowy winter that they
14 kept closing the schools and everything was pushed back and we never
15 had any issues with any flooding or any snow or any of it. We've gone
16 through so much weather in the forty years that I'm living there that
17 I think if that was an issue, it would've popped up. He's had his
18 driveway sealed and it's fine. We've had our driveway sealed, it's
19 fine and I don't really see that it's that much of an issue because
20 I've lived through it. If I didn't live through it, I would say okay
21 that may be a problem, but I also feel that maybe he could be
22 grandfathered in and not made to pay for somebody else's negligence.

23
24 MR. LEVITON: It doesn't work that way.

25
26 MRS. GUILD: They don't do that?

27
28 MR. LEVITON: No.

29
30 MRS. GUILD: Okay, I just because I wanted to really address
31 the weather issue what you were saying as far as because it hasn't
32 happened yet.

33
34 MR. LEVITON: And I appreciate your testimony. The board
35 appreciates it.

36
37 MRS. GUILD: Okay.

38
39 MR. LEVITON: Mr. Guild?

40
41 MR. GUILD: The other side of that is our property where
42 Charlie's driveway end is, is significantly inclined towards the curb.
43 So even when we have our lawn sprinklers or sometimes, I'll put it on
44 a lot when the grass is burnt. It gets a little dry so it just rolls
45 right off onto the curb.

46
47 MRS. GUILD: Yeah, it's not an issue.
48

1 MR. GUILD: Now the water we had on the other side of
2 property is because of the neighbor's sump pump.

3
4 MRS. GUILD: Right.

5
6 MR. GUILD: He was pumping his basement water onto our lawn.

7
8 MRS. GUILD: Right.

9
10 MR. GUILD: That was puddling and sinking the soil and
11 damaging the grass that I had to fix two or three times. We know the
12 owner who had the house before. I don't know what he filed, but the
13 flipper was responsible to get a C of O and I don't know if it got
14 missed or he didn't make mention of it or it wasn't a close enough
15 inspection, but he got the C of O in order to sell it to Charlie and
16 I'll tell you how honest Charlie is. We both shared the cost with my
17 next door neighbor on the other side to put in the PVC fencing. So, we
18 both took our survey side by side and we made sure that that center
19 piece went right down the boundary line.

20
21 MRS. GUILD: That's right, that's right.

22
23 MR. GUILD: And we weren't encroaching on either one's
24 fence.

25
26 MRS. GUILD: Right and that was approved because we went
27 through everything legal.

28
29 MR. GUILD: Everything for that and we had one side we had
30 an offset. We had to change our fence design and on Charlie's side we
31 had the survey line go all the way down and I got a re-survey of my
32 house just to make sure the fence is on the right line.

33
34 MR. LEVITON: That was very nice of you and I'll tell you
35 that it's lovely and it made a difference. So, we thank you for that.

36
37 MR. GUILD: Yeah, and the thing is I'm in construction so I
38 know about setbacks and easements and stuff like that. I've been doing
39 construction for fifty years and I know that we have had zero water
40 problems, snow problems because we both use plow services to clean the
41 driveway and they plow it down to the street.

42
43 MRS. GUILD: Right.

44
45 MR. GUILD: I have more problems with Manalapan Township
46 leaving a four foot hill at the foot of my driveway and I can't get
47 out. That's the problem I have. Not on the side. Everybody we hire
48 brings the plow up to the garage and plows backward to the street. So,

1 I'm never going to get a snow wall there, never had ice, never had
2 water. Otherwise, my grass would soak and submerged underwater. I just
3 had it seeded and aerated today. I never had any issues with water.
4 It's been here forty years. We've seen every possible weather that we
5 can and Charlie's an honest guy and I think he might've got duped a
6 little bit because the guy who flipped the house probably didn't do a
7 proper filing for the C of O. He just bought the house the way it is.

8
9 MR. LEVITON: That's really not what happened here. The law
10 changed after Mr. Miller moved in.

11
12 MR. GUILD: Okay.

13
14 MR. LEVITON: Manalapan Township now goes out. We send our
15 zoning officer or his proxy and an inspection is done and all
16 infractions need to be addressed at that time or there will be no CO.

17
18 MR. GUILD: And you're telling me that this board never
19 grandfathers anybody in over the last forty years?

20
21 MR. LEVITON: No, I'm not. There's no question of
22 grandfathering. This board looks to the Municipal Land Use Law of New
23 Jersey as its guide. Everything is established in the MLUL.

24
25 MR. GUILD: Yes, it's a guide.

26
27 MR. LEVITON: No, yes, it is.

28
29 MR. GUILD: You said it's a guide.

30
31 MR. LEVITON: This board has the capacity to grant variance
32 relief.

33
34 MR. GUILD: Yes.

35
36 MR. LEVITON: But Mr. Miller needs to establish that his
37 driveway advances one of the sixteen purposes of the MLUL. What he
38 needs to establish that there's a hardship that runs with his land.
39 Both are heavy lifts and he hasn't done either yet.

40
41 MRS. GUILD: Alright.

42
43 MR. GUILD: No, I just wanted to say our piece.

44
45 MRS. GUILD: We just wanted to say, yeah.

46
47 MR. LEVITON: We appreciate your testimony and we thank you
48 for it.

1
2 MRS. GUILD: Okay.
3

4 MR. LEVITON: Okay. Anyone else from the public want to
5 address the board or ask Mr. Miller a question? Seeing none, I'm going
6 to close public. Mr. Miller, I'm going to give you a chance to
7 summate.
8

9 MR. MILLER: Hello?
10

11 MR. LEVITON: Yeah.
12

13 MR. MILLER: If possible, I would like to apply for the
14 safety portion of keeping my driveway, the C1 was it?
15

16 MR. LEVITON: There is no safety portion.
17

18 MR. MILLER: Oh, the hardship, I'm sorry.
19

20 MR. LEVITON: You need to establish a hardship if you can.
21 Safety is not one. Safety won't get you there.
22

23 MR. MILLER: Am I able to use the irregularity of my
24 property?
25

26 MR. LEVITON: Yes, but it's not irregular.
27

28 MR. MILLER: In terms of?
29

30 MR. LEVITON: An irregular shape would be for example
31 someone's backyard looks like a Z and there's no place to put their
32 pool in without encroaching on a setback. Yours doesn't look like
33 that. It's pretty normal.
34

35 MR. BOCCANFUSO: Mr. Chairman, if I could maybe jump in and
36 just provide a little guidance and clarification for the board. So,
37 the C1 variance is a very difficult case here. I think we started
38 there and we're kind of back to there now. Yes, the property is
39 somewhat irregular in its shape. An irregularly-shaped property is
40 criteria for a C1 hardship, but it's really difficult to connect the
41 dots between that irregular shape and the need for this relief. I
42 think that's where the disconnect is on the C1. Is it impossible for
43 the board to get there? I wouldn't say impossible. I think it's very
44 much a stretch. The C2, on the other hand, is probably the more
45 reasonable path and safety is an avenue towards a C2. That is
46 something that the board can consider. Now I think we all recognize by
47 this point; this is a very challenging application for a couple of
48 reasons. The first of which is the human element. We've all accepted

1 and understand that Mr. Miller bought this problem. He didn't create
2 it. It's very unfortunate the timing of the ZCCO process because had
3 that been in place a year prior than it was, we wouldn't be sitting
4 here right now, and the builder or the previous owner would've had to
5 answer for this driveway. Unfortunately, the ZCCO process is in place
6 now and the primary reason that it is in place now is exactly why
7 we're sitting here. Folks like Mr. Miller bought properties that had
8 problems and they were kind of left holding the bag. It's certainly
9 not his fault, but it is a reality. We heard some conversation
10 particularly from Mr. and Mrs. Guild about grandfathering. As I think
11 the board knows by now it's a term that I really do not like. There is
12 no grandfathering. It suggests that you can get something legalized or
13 legitimized by getting away with it for a period of time either
14 intentionally or unintentionally. So, there isn't grandfathering, but
15 there is the ability to try to legitimize things which is what Mr.
16 Miller is here seeking to do. So, if we're talking about whether it's
17 a C1 or a C2 variance, the negative criteria must also be satisfied
18 and he has to prove that there is the benefit. If it's a C2 that the
19 benefits of the deviation substantially outweigh any detriment. It's
20 not the benefits of the improvements itself, but it's the benefits of
21 the deviation that substantially outweigh the detriment. We heard
22 testimony from long-time neighbors with regard to drainage impact and
23 their testimony under oath is that there has never been any drainage
24 impact. So, I think that the board could consider that to some extent
25 as far as satisfying the negative criteria. Whether it justifies a
26 zero lot line, that's a different question entirely because a zero lot
27 line as you all know is really a heavy lift. So perhaps you could
28 accept the negative criteria and come up with some type of compromise.
29 I know that we don't, shouldn't be negotiating with applicants, but
30 perhaps we heard some testimony from Mr. Miller in the three to four
31 foot range maybe that's something you would be amenable to. Mr.
32 Shalika mentioned that as well. I'm not sure if any of the other
33 board members did, but maybe that's some way to kind of bridge the gap
34 between satisfying the negative criteria where there's no substantial
35 detriment and also addressing the positive criteria where Mr. Miller
36 talked about safety. He also did speak about aesthetics which can be
37 used as positive criteria. However, I think that's a difficult one
38 because to say that it's more aesthetically pleasing to put it on the
39 right side than on the inside, I think that's aesthetically beneficial
40 to the property owner themselves more so than the neighborhood. Maybe
41 the board can get there, maybe not. So, I hope I was able to kind of
42 connect the dots here. I know Mr. Miller is nervous. It's difficult.
43 We do this all the time. I've done this hundreds of times. You guys
44 have done this many, many dozens or scores of times. This is his first
45 time. So, it's tough to sit there especially when you don't really
46 understand the legal criteria that the board has to consider when
47 determining how to handle these applications. The real world situation
48 is it's difficult and it's a financial hardship. We all understand

1 that. In the real world that is absolutely a hardship for just about
2 everybody, but the fact of the matter is everybody here understands
3 now is that you can't consider that. The law does not allow it. So I
4 hope I was kind of able to provide some guidance for everybody. It's
5 certainly not a recommendation, just some input that the board can
6 consider as you deliberate and decide how to move forward.

7
8 MR. LEVITON: I do appreciate that. However, as you Mr.
9 Boccanfuso well know that safety is really a charge to municipalities
10 not homeowners. It's the first purpose of the MLUL and I'm going to
11 read it. It says to encourage municipal action, to guide the
12 appropriate use or development of all lands in this state in a manner
13 which will promote the public health, safety, morals, and general
14 welfare. It's a stretch to apply it to Mr. Miller's home. So, I do
15 appreciate your input, and I definitely appreciate his problem which
16 in the real world we all understand and this board is precluded from
17 considering. Mr. Shalika?

18
19 MR. SHALIKAR: Yeah, I think you're getting the vibe here
20 where with the zero setback it's very, very hard case to plead, right?
21 You have a lot of space on top of that nook, right? It's completely
22 grassed going towards your fence?

23
24 MR. MILLER: Yes.

25
26 MR. SHALIKAR: Right? Okay so whatever you ask for tonight
27 if you want to come and amend your ask and say I'll cut back X amount.
28 It's up to you what your recommendation is. I think you should be
29 understanding where we're at position wise potentially. Ask for
30 everything. So you can ask for, I need relief whatever the number you
31 want to choose and state your intention.

32
33 MR. LEVITON: Joshua, why would we do that? Basil points
34 out aptly that to the left of his driveway it's all open. If he's
35 going to make any changes, why not go left and there's no
36 encroachment.

37
38 MR. SHALIKAR: That's fair. I'm going off of him saying he
39 doesn't want to do that, that's why. I'm simply stating what the
40 applicant had stated, that's it.

41
42 MR. LEVITON: I think it's important for this board also to
43 consider when we allow one zero lot line that opens the floodgates to
44 other zero lot lines. That's not what we're about.

45
46 MR. SHALIKAR: Just to be clear I'm not saying zero lot
47 line. I made that very clear just now. That is a very hard case.

1 MR. LEVITON: Mr. Miller was given a choice. Bring the
2 property back into conformity or come here. He chose to come here.
3 That's a gamble. He made the choice. He was explained.

4
5 MR. SHALIKAR: Agreed Chairman, absolutely agree. What I'm
6 saying is.

7
8 MR. LEVITON: And now we have to make a decision.

9
10 MR. SHALIKAR: I'm not advocating either way. I'm saying
11 that he came here, I'm assuming.

12
13 MR. LEVITON: You're very nice. You're a very nice man and I
14 like that because it's in my image. So, to offer him an off ramp is
15 very nice and I'm only one vote.

16
17 MR. SHALIKAR: I know.

18
19 MR. LEVITON: They all seem to be amenable to that so. Go
20 ahead, make your proposal.

21
22 MR. SHALIKAR: I know that. It's also a bit of education
23 also. I believe there's a bit of a lack of education here on what and
24 granted. I'm not undermining Janice and all the consultation. I'm sure
25 it was wonderful and excellent and perfect, but this is an
26 intimidating process. I've sat through it. We all know that. I'm
27 saying if you came here saying I want to keep what I have, I think
28 you're getting an understanding that's probably not going to happen.
29 Right? So, if you want to amend your ask for the variance and for the
30 relief, this is your opportunity to do that. No one's saying you can't
31 do that.

32
33 MR. MILLER: I didn't realize I thought it was just you guys
34 make the judgment on how far. I am more than willing to.

35
36 MR. SHALIKAR: That's all you. You have to tell us what you
37 want.

38
39 MR. MILLER: I'm willing to take out three feet. I'm willing
40 to take out four feet if I need to. I can't use the word hardship.
41 Just the idea of moving it.

42
43 MS. KLOMPUS: So, are you looking to amend your original
44 application?

45
46 MR. MILLER: Yeah, I certainly am, yes.

47
48 MS. KLOMPUS: So, what are you asking for then?

1
2 MR. MILLER: Just to remove three feet. Yeah to remove three
3 feet from the property line so it's not zero line.

4
5 MS. KLOMPUS: And you were originally applying for a C1
6 variance?

7
8 MR. MILLER: I'm sorry?

9
10 MS. KLOMPUS: Were you originally applying for a C1
11 variance?

12
13 MR. SHALIKAR: I think it stated C2.

14
15 MR. MILLER: The C2 I think.

16
17 MS. KLOMPUS: He's applying for a C2? Okay good just making
18 sure I thought originally C1. Okay so I think that's what we're
19 looking for. You tell us what you're looking to get approved.

20
21 MR. MILLER: I would like to apply for the C2 variance and I
22 apologize I'd like to adjust my application to say three feet from the
23 property line.

24
25 MS. KLOMPUS: Okay, thank you.

26
27 MR. MILLER: Thank you.

28
29 MR. LEVITON: So, your application is being amended to a
30 three foot encroachment into the setback. You will cut back from the
31 property line three feet?

32
33 MR. MILLER: Yes. I don't know if it would be seven feet
34 encroachment because is it five or ten feet?

35
36 MR. LEVITON: Yes, you are correct. It'll be a seven foot
37 encroachment. I don't see how he gets a C2 variance, but that's just
38 me.

39
40 MR. SHALIKAR: Can you restate the justification for that?

41
42 MR. MILLER: I would like to apply for it because one, wait
43 just give me one second, I'm sorry. Being that there's no drainage
44 issues now, I don't know if me removing it and moving it someplace
45 else would cause a drainage issue.

46
47 MR. LEVITON: That's a hardship.

1 MR. MILLER: I apologize.

2
3 MR. LEVITON: You're conflating variances.

4
5 MR. MILLER: Okay.

6
7 MR. LEVITON: C2 promotes one of the purposes of the
8 municipal land use law. You're trying to hang your hat on purpose one
9 which includes the word safety, but I don't see how it's applicable.

10
11 MR. MILLER: Alright then I will go with the safety term in
12 terms of how the street is and also just.

13
14 MR. LEVITON: The curve in the street.

15
16 MR. MILLER: The curve in the street.

17
18 MR. LEVITON: The bump in the street compromises the safety
19 of the property?

20
21 MR. MILLER: Yes.

22
23 MR. LEVITON: That's what you're saying.

24
25 MR. MILLER: Yes.

26
27 MR. LEVITON: Okay, let me go back out to the public again
28 since we've had more conversation in this manner. Does anyone want to
29 address the board or ask Mr. Miller a question? Seeing none, I'll
30 close public. Does anyone up here on the dais want to ask Mr. Miller
31 any questions before we go forward? Mr. Boccanfuso, anything further?

32
33 MR. BOCCANFUSO: No sir.

34
35 MR. LEVITON: Mr. Marmero?

36
37 MR. MARMERO: No, --- the testimony. We started out with the
38 testimony being that this was a side yard setback variance with
39 essentially a zero foot setback so no setback. The applicant has now
40 amended the application to essentially a three foot setback so it will
41 be a seven foot encroachment. The applicant has provided some
42 testimony regarding safety with respect to the driveway and the
43 applicant's provided some testimony regarding the lack of substantial
44 detriment to the surrounding area including the lack of any kind of
45 drainage issues. So you have that variance before you this evening so
46 --- and file for a motion.

1 MR. LEVITON: Before the motion is made, Mr. Miller, if the
2 board is so inclined to grant you variance relief it's going to
3 impose a time frame and I'm going to ask you first. How long do you
4 think that you're going to need to get this done?

5
6 MR. MILLER: If it's the lesser amount, I think.

7
8 MR. LEVITON: We're talking about cutting back three feet.

9
10 MR. MILLER: Oh, three feet? I would have to get a
11 contractor. I don't know what the normal time frame is, a month or
12 two? I don't want to under-exaggerate that within three months?

13
14 MR. LEVITON: Sixty days, is that enough time?

15
16 MR. MILLER: Sixty days, yeah.

17
18 MR. LEVITON: Okay will someone make a motion?

19
20 MS. KLOMPUS: I'll make the motion. I make a motion to
21 accept.

22
23 MS. MOENCH: Need your microphone on.

24
25 MS. KLOMPUS: I'll make a motion to accept it as described
26 with the three foot setback.

27
28 MR. LEVITON: Will someone second that?

29
30 MR. POCHOPIN: I'll second it.

31
32 **ROLL CALL**

33
34 MS. MOENCH: Mr. Shalika?

35
36 MR. SHALIKAR: No.

37
38 MS. MOENCH: Mr. Harrington?

39
40 MR. HARRINGTON: No.

41
42 MS. MOENCH: Ms. Klompus?

43
44 MS. KLOMPUS: Yes.

45
46 MS. MOENCH: Mr. Mantagas?

47
48 MR. MANTAGAS: No.

1
2 MS. MOENCH: Mr. Pochopin?

3
4 MR. POCHOPIN: Yes.

5
6 MS. MOENCH: Ms. Latilla?

7
8 MS. LATILLA: Yes.

9
10 MS. MOENCH: Chair Leviton?

11
12 MR. LEVITON: No. Your motion to cut back was denied. Your
13 property needs to be brought back into conformity. How long does he
14 have for that Mr. Marmero?

15
16 MR. MARMERO: It's not for me to establish.

17
18 MR. BOCCANFUSO: Yeah, it's a condition of the zoning permit
19 that's been issued for the pool. There's no timeframe attached to it
20 consistent with policy in the zoning department with regard to
21 permits. We don't apply a timing deadline.

22
23 MR. LEVITON: He just can't put his pool in until it's done.

24
25 MR. BOCCANFUSO: Oh no he can put his pool in. The
26 expectation is that the work will be done as part of the pool
27 construction. If he doesn't, I mean I suppose code enforcement could
28 issue notices of violation, but the real recourse comes when any
29 future permit applications are submitted or when he goes to sell the
30 property. So the real trigger is going to be if he seeks a permit
31 application to do anything else, we're going to ensure that the
32 condition of the previous permit has been satisfied or when he goes to
33 sell the property as we know we now have the ZCCO process. It's
34 obviously going to come to light then. So there's no strict timeline
35 as far as removal. It's a condition of the permit issued for the pool.

36
37 MR. LEVITON: It was a tough case. We are human. We do feel
38 for you. Your family is lovely. We hope that you thrive in Manalapan
39 and you enjoy it for many years to come.

40
41 MR. MILLER: Thank you guys. I appreciate it.

42
43 MR. LEVITON: You're welcome.

44
45 MR. MILLER: So, I don't have to wait. I can take off? My
46 kids have school in the morning.

47
48 MR. LEVITON: You're good to go.

1
2 MR. MILLER: Okay thank you.
3

4 MR. LEVITON: You're welcome. Does anyone need a restroom
5 break or stretching? Okay, we're good. Basil? Go ahead Basil. He's an
6 older, yeah pause it. Let the record reflect that Mr. Harrington is
7 now seated at the dais and present for these proceedings, and I will
8 call our next case ZBE2524, Mr. Amar. All three of you are invited to
9 come up. There are only two chairs, but you can pull one over. Mr.
10 Marmero will swear anyone who's going to speak in. Remember you were
11 here for my charge earlier about the microphone so bear it in mind.
12 Come closer and Mr. Marmero, go ahead.
13

14 MR. MARMERO: Okay, if you just raise your right hand, I'll
15 get you sworn in. Do you each swear that the testimony you will
16 provide tonight will be the truth, the whole truth, and nothing but
17 the truth?
18

19 MR. AMAR: I do.
20

21 MR. MARMERO: Okay and sir can you state your name for the
22 record please?
23

24 MR. AMAR: Gabriel Amar.
25

26 MR. MARMERO: Okay so you're the applicant and sir could you
27 state your name for the record?
28

29 MR. ESHEWSKY: Peter Eshewsky, I'm with Crest Engineering
30 Associates. I'm a licensed land surveyor and planner in the state of
31 New Jersey and Pennsylvania and representing a client.
32

33 MR. LEVITON: Please voir dire him.
34

35 MR. ESHEWSKY: I'm sorry?
36

37 MR. MARMERO: --- your last name?
38

39 MR. ESHEWSKY: Peter, last name E-S-H-E-W-S-K-Y.
40

41 MR. LEVITON: Eshewsky?
42

43 MR. ESHEWSKY: Eshewsky.
44

45 MR. LEVITON: Eshewsky, okay.
46

47 MR. MARMERO: Mr. Eshewsky, have you testified before this
48 board before?

1
2 MR. ESHEWSKY: I have.

3
4 MR. MARMERO: --- Mr. Chair?

5
6 MR. LEVITON: I don't remember your testimony here.

7
8 MR. ESHEWSKY: Over the years. I've been doing this for
9 forty some odd years. Five years ago, maybe for Union Hill Builders.

10
11 MR. LEVITON: They wanted to put a Yeshiva in?

12
13 MR. ESHEWSKY: I'm sorry?

14
15 MR. LEVITON: Did they want to put in a school?

16
17 MR. ESHEWSKY: No, a single family residence on Pension Hill
18 Road.

19
20 MR. LEVITON: Okay, we accept your credentials and we beg
21 forgiveness that we don't recall.

22
23 MR. ESHEWSKY: No problem. I don't do this much.

24
25 MR. LEVITON: Please sit down gentlemen and Mr. Amar.

26
27 MR. AMAR: Yes, hi.

28
29 MR. LEVITON: Tell the board what it is that brings you here
30 tonight and what you need from us.

31
32 MR. AMAR: I'm building a new house.

33
34 MR. LEVITON: You're building a new house on McCaffrey Road?

35
36 MR. AMAR: Yes.

37
38 MR. LEVITON: Next to the one you're living in right now?
39 Next to the home you're currently living in.

40
41 MR. AMAR: Yes, yes next to the one, my house.

42
43 MR. LEVITON: It's one piece of property right now that you
44 plan on dividing?

45
46 MR. AMAR: No, no.

47
48 MR. LEVITON: It's already divided?

1
2 MR. AMAR: Divided, yes.

3
4 MR. ESHEWSKY: The lots have already been created.

5
6 MR. LEVITON: The lots have been created. Okay, so there's
7 going to be a need for relief as it relates to encroachment into the
8 side setback exclusively, not the front.

9
10 MR. AMAR: Yes, --- I don't understand anything about this
11 kind of question. It's only more engineer.

12
13 MR. LEVITON: Okay.

14
15 MR. ESHEWSKY: Yeah, it's only the side yard. It's not the
16 front.

17
18 MR. LEVITON: Mr. Eshewsky, he's yielding to your testimony.
19 So why don't you talk to us?

20
21 MR. ESHEWSKY: Excuse me, it's an existing lot that was
22 created I believe in 2019 by subdivision. The lot is currently vacant.
23 It does have an older home there that's currently unoccupied and I
24 believe it's in the process of being raised. There were some out
25 buildings on the site that have already been removed. There's an old
26 cesspool that's going to have to be removed as well. Mr. Amar owns the
27 property. It's roughly 3.3 acres. It's in the RAG zone. Mr. Amar lives
28 to the east, currently lives to the east of this particular lot. The
29 lot is basically rural residential. The characteristic of the lot is
30 basically rural residential area. Half of this particular lot is
31 pretty much lawn area which is maintained by Mr. Amar. The rear
32 portion of the lot is completely wooded and contains wetlands off into
33 the distance, off to the back of the property where there's a stream
34 that creates the rear property line. Properties to the east or to the
35 west? Properties to the west are also residential lots, heavily wooded
36 lots. I believe the properties across the street are mostly rural
37 agricultural. They contain dwellings, but they appear to be larger
38 lots and the dwelling seem to be, appear to be offset fairly far from
39 the street. The lot as it was created, I believe complies with all of
40 the requirements of the RAG zone except for the lot frontage and the
41 lot width. Mr. Amar is proposing to build a new home there for
42 himself, a new residence for himself. The lot that he's proposing to
43 build will require encroachments upon the outside setback lines on
44 both sides, on both side lots. There is no hardship per se for the lot
45 for his proposed development. So there's no request for a variance due
46 to hardship. So that would bring us to a C2 variance. The enhancements
47 to allowing this would be that the home that is going to be, is
48 proposing to build here would be more in conformance with the newer

1 homes that are constructed in the area and will basically increase the
2 value of neighboring homes at the site. The detriment is that if it's
3 approved the detriment would be that allowing encroachments into the
4 side setbacks.

5
6 MR. LEVITON: Mr. Eshewsky, you've seen the report from CME?

7
8 MR. ESHEWSKY: Yes.

9
10 MR. LEVITON: And you're amenable, your client is amenable
11 to meeting all of the requirements in it?

12
13 MR. ESHEWSKY: Yeah, we'll have to create a plot plan
14 obviously, submit for township review by the township professionals,
15 FSCD, the health department. We did soil testing for septic
16 suitability which were witnessed and approved by Freehold Area Health
17 Department. Wetlands are well outside of the area of proposed
18 development. I did a --- for wetlands for the property a year or so
19 ago. So there are wetlands on the site, but nowhere near the area
20 that's proposed to be improved.

21
22 MR. LEVITON: Our Board of Health retired and we share our
23 services with Freehold, but you're going to meet all of the
24 requirements?

25
26 MR. ESHEWSKY: Yes, yes.

27
28 MR. LEVITON: Okay, let's go out to the board.

29
30 MR. ESHEWSKY: Yeah, they witnessed the soil logs so we do
31 have approved soil logs from Freehold Area.

32
33 MR. LEVITON: Okay.

34
35 MR. ESHEWSKY: We still need a soil log for the foundation,
36 but we'll do that during the engineering portion of the plot plan if
37 he's permitted to proceed.

38
39 MR. LEVITON: What will Mr. Amar do with the property he
40 currently lives in?

41
42 MR. AMAR: I'm going to sell it.

43
44 MR. LEVITON: Oh, you're going to sell it?

45
46 MR. AMAR: Yes.

47
48 MR. LEVITON: Okay. Patrick, any questions?

1
2 MR. HUGHES: I do not. I was looking at the CME report.

3
4 MR. LEVITON: Okay, let me know if you want me to come back
5 to you. Just give a yell. Temika?

6
7 MS. LATILLA: Nothing right now, thank you.

8
9 MR. LEVITON: Sure. Stacy?

10
11 MS. KLOMPUS: So, you're building this from ground up, brand
12 new, this empty land. So, what made you decide to go into the
13 encroachment versus turning the house a little bit so that you're not
14 encroaching?

15
16 MR. ESHEWSKY: We tried turning the house. By placing it
17 askew like this, we're parallel to the road. By angling it so that
18 it's parallel to the property line, it'll have a weird angle to it and
19 it'll just look funny especially to the neighboring lot where Mr. Amar
20 currently lives.

21
22 MS. KLOMPUS: So, if we didn't approve this, what would you?

23
24 MR. ESHEWSKY: For aesthetic purposes really.

25
26 MS. KLOMPUS: So, but if we didn't approve it then what
27 would happen? Would you go back to changing the shape or, it would
28 shorten your house, right? So, I guess I'm trying to understand.

29
30 MR. ESHEWSKY: We have to do what we have to do.

31
32 MS. KLOMPUS: If you're building it from ground up, what was
33 the reasoning?

34
35 MR. ESHEWSKY: Correct so. It's an empty pallet right now
36 so.

37
38 MR. LEVITON: Dan?

39
40 MR. POCHOPIN: So, on your general notes here, item four
41 obtain a variance from a side setback.

42
43 MR. ESHEWSKY: Yes.

44
45 MR. POCHOPIN: --- your house for aesthetics you stated. How
46 close is that again? I just ---
47

1 MR. ESHEWSKY: The side setback requirements are thirty-five
2 feet. The one house corner, I guess the closest to the southeast would
3 be approximately twenty feet shown on this plan, and twenty-one feet
4 for the northwest.

5
6 MR. POCHOPIN: So, but like you said you just stated now
7 that house in the front that will be demoed when this is done?

8
9 MR. ESHEWSKY: Yeah, that'll be demoed before we commence
10 with construction.

11
12 MR. POCHOPIN: So that has no correlation of.

13
14 MR. ESHEWSKY: No.

15
16 MR. POCHOPIN: What you stated that that house would look
17 funny the way it's shaped when it's done?

18
19 MR. ESHEWSKY: No, no, no that house has nothing to do with
20 it. It just still happens to be standing.

21
22 MS. KLOMPUS: I think he's referring to the other lot.

23
24 MR. POCHOPIN: Oh, okay is that what you --- I'm sorry.

25
26 MR. ESHEWSKY: I'm sorry.

27
28 MR. POCHOPIN: You're referring to the other lots next to
29 him, not the existing home?

30
31 MR. ESHEWSKY: Oh, yes. See Mr. Amar lives here right now to
32 the southeast and has a large, very attractive home here and again by
33 turning the lot, we'll still need side yard setback variances
34 regardless whichever way it's configured. This appears to be more
35 aesthetically pleasing from McCaffrey Road and from the neighboring
36 lots as well.

37
38 MR. POCHOPIN: Okay thank you.

39
40 MR. HARRINGTON: Okay just a couple quick questions about
41 topographic.

42
43 MR. ESHEWSKY: It's flat.

44
45 MR. HARRINGTON: Yeah, no I was at the property. I know it's
46 flat and I know that you're indicating to the back of the property
47 it's a stream.

1 MR. ESHEWSKY: There's a stream on the lot? The depth of the
2 lot is twelve hundred feet so the stream is roughly twelve hundred
3 feet from the roadway so it's almost a quarter of a mile.

4
5 MR. HARRINGTON: And you're bringing that where the wetlands
6 are?

7
8 MR. ESHEWSKY: And the wetlands are in the back in a heavily
9 wooded area and that area will not be touched.

10
11 MR. HARRINGTON: So the question I really have because
12 there's no, you're not showing certain things on your sketches.

13
14 MR. ESHEWSKY: Oh no, no, no. Obviously we'll have to do a
15 topographic survey to engineer the site.

16
17 MR. HARRINGTON: Yeah so, I was going to question the dirt
18 piles and the mounds that are there.

19
20 MR. ESHEWSKY: That'll all be subject to FSCD approval.
21 We'll need to provide soil erosion sediment control and whatever else
22 they're going to require, silt fences.

23
24 MR. HARRINGTON: Yeah, so is that going to be leveled out
25 prior to you building the property?

26
27 MR. ESHEWSKY: No, there's nothing really to level out now.
28 Obviously, there'll be some grading. I'm sure there'll be some soil
29 either from the excavation or I don't believe we'll have to import
30 anything, but I'm sure there's going to be some fill required to grade
31 it properly so that we don't impede on the adjoining lots with the
32 runoff.

33
34 MR. HARRINGTON: Okay I was just more concerned on that
35 being placed over the wetlands.

36
37 MR. ESHEWSKY: Oh no, no that will be nowhere near the
38 wetlands.

39
40 MR. HARRINGTON: Okay because I didn't get an opportunity to
41 walk to the very back of the property so I wasn't quite sure how.

42
43 MR. ESHEWSKY: No, I went out there today and I walked as
44 far as the trees and I'm tired of getting ticks this season so that's
45 where I stopped.

46
47 MR. HARRINGTON: I don't blame you. That's my only question,
48 what you had on that.

1
2 MR. LEVITON: Josh?

3
4 MR. SHALIKAR: I don't actually think I have any questions.
5 It sounds like the C2 variance really isn't much of an argument for
6 the C2, right? It's just, for either variance.

7
8 MR. ESHEWSKY: I'm sorry?

9
10 MR. SHALIKAR: There's not much of an argument for either
11 variance C1, definitely not, C2 is.

12
13 MR. ESHEWSKY: Definitely not C1. There's no hardship.

14
15 MR. SHALIKAR: Right, I'm just trying to figure out
16 justification for the testimony. So C2, what was the justification
17 again? I'm sorry.

18
19 MR. ESHEWSKY: The enhancement to the increase in property
20 values, enhancement to the aesthetics of the area. It'll be an
21 aesthetically pleasing home and basically in conformity with all the
22 newer homes that are being built along the road.

23
24 MR. LEVITON: That works.

25
26 MR. SHALIKAR: Okay thank you. I have no further questions
27 Chair.

28
29 MR. LEVITON: Basil?

30
31 MR. MANTAGAS: Okay, hi Mr. Amar.

32
33 MR. AMAR: Hi.

34
35 MR. MANTAGAS: Now I noticed you have a very long driveway
36 going all the way to the back. Is that going to be asphalt or pavers?
37 Do you have any plan?

38
39 MR. AMAR: I have no plan yet.

40
41 MR. MANTAGAS: Just whatever it's going to be it's going to
42 be.

43
44 MR. AMAR: We're going to make it nice, whatever.

45
46 MR. MANTAGAS: It's going to be surface, solid surface,
47 right?

48

1 MR. ESHEWSKY: It'll be some type of solid surface.

2
3 MR. MANTAGAS: Right.

4
5 MR. ESHEWSKY: And - - -

6
7 MR. MANTAGAS: And what is it off of the property line, the
8 setback? The edge of the driveway.

9
10 MR. ESHEWSKY: The edge of the driveway right now is at five
11 feet.

12
13 MR. MANATAGAS: Five feet.

14
15 MR. ESHEWSKY: And I believe the requirement is ten feet.

16
17 MR. MANTAGAS: Ten feet.

18
19 MR. ESHWEWSKY: Yeah so, we're going to have to do something
20 with that.

21
22 MR. MANTAGAS: Yeah.

23
24 MR. LEVITON: Or get relief which you're asking.

25
26 MR. ESHEWSKY: Or get relief which we're asking.

27
28 MR. LEVITON: Let me interrupt for a moment Basil.

29
30 MR. MANTAGAS: Yes.

31
32 MR. LEVITON: You asked them about their driveway and they
33 testified that there would be some type of nice surface which they're
34 not qualifying at this time, but on McCaffrey Road there are plenty of
35 homes that only have three-quarter rock as a driveway, but you're
36 testifying you're going to put a nice surface.

37
38 MR. AMAR: Of course, yes. I'm going to put a nice house.
39 I'm going to put nice driveway.

40
41 MR. LEVITON: It's going to be a beautiful house.

42
43 MR. AMAR: It's part of the house.

44
45 MR. LEVITON: I'd like to make it a condition anyway just
46 because out there on McCaffrey Road you never know. I've seen nice
47 homes with rock driveways. It's not aesthetically pleasing and.

1 MR. AMAR: Oh no, I know.

2
3 MR. LEVITON: You're using aesthetics to get your variance
4 and I want to ensure that there's a nice driveway.

5
6 MR. AMAR: Yes of course.

7
8 MR. LEVITON: So, our attorney is going to make it a
9 condition. I know you don't mind, but we're just going to make it a
10 condition.

11
12 MR. MARMERO: How are we proposing it? It's just no rock or?
13 - - - What do you want to say?

14
15 MR. LEVITON: I'm going to leave that to your creativity
16 counselor. You're the one who passed the bar, not me. I have no clue.
17 Yeah, no rocks. I like that. Do you have ideas about what type of
18 surface you're thinking of? Is it asphalt? Is it concrete? Is it
19 pavers? Is it one of those three?

20
21 MR. ESHEWSKY: Yes.

22
23 MR. AMAR: One of them for sure.

24
25 MR. LEVITON: Then you can include those; asphalt, pavers,
26 and/or concrete and they have no problem.

27
28 MR. AMAR: Maybe pavers.

29
30 MR. LEVITON: That's fine.

31
32 MR. ESHEWSKY: Or a combination of all three.

33
34 MR. LEVITON: That's fine. He'll put that in too. He's so
35 thorough. You have no idea. Okay, Basil forgives me, continue.

36
37 MR. MANTAGAS: This is a house you're going to live in or
38 you're going to sell? This is a spec.

39
40 MR. AMAR: The house I'm living in now I'm going to sell.

41
42 MR. MANTAGAS: You're going to sell this one?

43
44 MR. AMAR: Yes.

45
46 MR. MANTAGAS: Just for my curiosity, doesn't really matter.
47 I think that's it really. That's all I have.

1 MR. LEVITON: Okay I have nothing further. Sir, would you
2 like to address the board or question Mr. Eshewsky or Mr. Amar? Yeah
3 so Ms. Moench will hand you a microphone.

4
5 MS. MOENCH: You want to stay there?

6
7 MR. LEVITON: We're very accommodating. Yeah, we're very
8 accommodating. So, accommodating, yes. We see you have a walker and
9 we're going to.

10
11 MR. SOLINSKI: Hello?

12
13 MR. LEVITON: Facilitate your testimony, hello. So you need
14 to raise your hand, Mr. Marmero will swear you in.

15
16 MR. SOLINSKI: Do I stand?

17
18 MR. LEVITON: No.

19
20 MR. MARMERO: Do you swear that the testimony you will
21 provide tonight will be the truth, the whole truth, and nothing but
22 the truth?

23
24 MR. SOLINSKI: Yes sir.

25
26 MR. MARMERO: Can you state your name for the record sir?

27
28 MR. SOLINSKI: William Selinski III.

29
30 MR. MARMERO: How do you spell the last name?

31
32 MR. SOLINSKI: S-O-L-I-N-S-K-I.

33
34 MR. MARMERO: Okay.

35
36 MR. LEVITON: Thank you Mr. Solinski.

37
38 MR. SOLINKSKI: Solinski.

39
40 MR. LEVITON: Solinski?

41
42 MR. SOLINSKI: Yeah.

43
44 MR. LEVITON: Mr. Solinski, forgive me and tell me sir. Do
45 you want to address the board? Do you want to ask Mr. Eshewsky a
46 question?

47
48 MR. SOLINSKI: Yes, yes, I would like to address.

1
2 MR. LEVITON: You want to address us, okay.

3
4 MR. SOLINSKI: Yeah, yeah. They've been building these new
5 homes. His house, 53 McCaffrey Road, certainly will sell enough lots
6 you're building new homes, right, by the road, but these new homes
7 they're building up, they're building up the property so there's no
8 basement. Our property is flat. They built these houses up and they
9 filled it up with the dirt. This past summer with the last really big
10 rain we had was the first time that all this rain collected in my
11 property, in my driveway. I had like two inches of water there. First
12 time in seventy-five, seventy-six years I've been here. I think all
13 these properties getting built up.

14
15 MR. LEVITON: Microphone, microphone, microphone.

16
17 MR. SOLINSKI: And like he said, oh I'm sorry. I'm sorry I
18 thought you could hear me anyway.

19
20 MR. LEVITON: Yeah, I can and we all can, but again it's,
21 yeah.

22
23 MR. SOLINSKI: Okay.

24
25 MR. LEVITON: For posterity.

26
27 MR. SOLINSKI: Proper procedures, okay.

28
29 MR. LEVITON: Yeah. No, it's not even procedural.

30
31 MR. SOLINSKI: He brought up a good thing there, your lawyer
32 or whatever you are, the swampland.

33
34 MR. LEVITON: Yeah.

35
36 MR. SOLINSKI: My father was paying his taxes for years
37 because it's wetlands back there.

38
39 MR. LEVITON: Yes.

40
41 MR. SOLINSKI: And I just had to put up a new leach field a
42 couple years ago and I had to go a hundred feet away from the well and
43 so forth and it's back out in the middle of the field. It cost me
44 forty grand and they had to put it above ground they say. It's above
45 ground. It's above ground and I'm afraid them building up the houses
46 if he comes in there maybe just built the house right on the ground
47 where it's at, it might be okay, but if he starts building. Already I

1 see five or six, maybe eight trail loads of dirt stuck out in the back
2 of his house now and I don't know what they plan on doing with it.

3
4 MR. LEVITON: So Mr. Solinski, let me just clarify
5 something. Mr. Eshewsky, you're an engineer?

6
7 MR. ESHEWSKY: No.

8
9 MR. LEVITON: You're an architect?

10
11 MR. ESHEWSKY: I'm a land surveyor.

12
13 MR. LEVITON: You're a surveyor?

14
15 MR. ESHEWSKY: I'm the environmental specialist at Crest
16 Engineering.

17
18 MR. LEVITON: Okay. I'm sorry that Mr. Sherman put up homes
19 that impacted negatively on your property sir. That development did
20 not.

21
22 MR. SOLINSKI: Excuse me, it wasn't so bad when he first
23 built the house he's living in now because they built up a wall of
24 dirt. A great big wall, but he tore it down. Whatever runoff is going
25 to come into my property.

26
27 MR. LEVITON: So again, what Mr. Sherman built did not come
28 from this board. They had nothing to do with us, but this board.

29
30 MR. SOLINSKI: No, we're going to the future here. What's
31 the past is the past, right?

32
33 MR. LEVITON: Yeah. We're going to talk about this
34 application.

35
36 MR. SOLINSKI: Yeah.

37
38 MR. LEVITON: He's not planning on building up. He may even
39 have to bring in, he testified, fill to close what he has. He's not
40 going to go up high so that there's going to be runoff onto your
41 property and to allay your concerns I'm going to ask Mr. Boccanfuso
42 who is an engineer. He's the township engineer and an engineer by
43 profession.

44
45 MR. SOLINSKI: Okay so he must be the guy that approved my
46 leach field, right?

47
48 MR. LEVITON: I don't know. Ask him.

1
2 MR. BOCCANFUSO: No, I wouldn't have approved the leach
3 field. That would've been through the Health Department.

4
5 MR. SOLINSKI: Oh well.

6
7 MR. LEVITON: And they're working through the Health
8 Department. There will be proper leach fields, septic tanks, whatever
9 the Health Department requires they will comply with.

10
11 MR. SOLINSKI: I'm sure they will. I'm just afraid that
12 they're going to keep building up their property.

13
14 MR. LEVITON: Let's talk about the runoff.

15
16 MR. SOLINSKI: Can they dig a ditch or something? So make
17 sure there's no drain off?

18
19 MR. LEVITON: Mr. Boccanfuso is going to talk to you about
20 the runoff. Brian, do you, you've reviewed the plans. Do you see any
21 negative, that will impact on Mr. Solinski's property?

22
23 MR. BOCCANFUSO: Well, the plan that's been submitted is
24 just preliminary in that it doesn't have any topography or grading as
25 Mr. Eshewsky alluded to.

26
27 MR. LEVITON: But he did testify that they're going to come
28 up with one.

29
30 MR. BOCCANFUSO: He did.

31
32 MR. ESHEWSKY: We need to, yeah.

33
34 MR. BOCCANFUSO: Not only did he say that they would, but
35 they have to. There are ordinance requirements in place that prohibit
36 substantial changes in the existing grading.

37
38 MR. LEVITON: So, Manalapan Township is looking out for Mr.
39 Solinski's interests?

40
41 MR. BOCCANUFUSO: Not him specifically, but all of our forty
42 plus thousand residents.

43
44 MR. LEVITON: Okay.

45
46 MR. BOCCANFUSO: But yes, the intent of the ordinance is
47 that and it's something that I noted in my memorandum that was
48 supplemented to the application. There's an ordinance in town that

1 does not allow developers to deviate from the existing grade by more
2 than a certain amount and it's something that will be reviewed by our
3 consulting engineer when the plot plan is prepared and submitted. The
4 intent of the ordinance is to prevent offsite drainage impacts such as
5 the one that Mr. Solinski's talking about. It's also to conserve the
6 natural topography of the land and essentially what it seeks to do is
7 to prevent drastic changes in the existing topography. Where you have
8 generally flat topography and all of the sudden you have this house
9 with tremendous deviations in the grade going up to the house. Now you
10 can change it somewhat because you do want to create some pitch for
11 surface runoff and you want to enable design engineers the ability to
12 manage that runoff through the use of swales and creative grading
13 techniques, but you can't fill the property by eight feet or something
14 of that nature. I believe the requirement is you can't deviate by more
15 than three feet from the existing grade. So you can fill it by three
16 feet in order to manage stormwater runoff, but you can't fill it by
17 eight feet so that you can have a basement in an area that has a high
18 water table. In addition to those grading requirements, there's also a
19 stormwater requirement that the applicant if they're approved or even
20 if they're not when they go to build the house, they will have to meet
21 that and essentially what needs to happen is there's a basic
22 stormwater analysis that will need to be done by the design engineer
23 comparing the existing conditions with proposed construction
24 conditions and they have to show that there's not going to be any
25 offsite drainage impact through the use of calculations. Sometimes
26 they have to implement stormwater management measures like drywells,
27 or recharged trenches, or swales, or things that will control
28 stormwater runoff and mitigate any negative impacts on offsite areas
29 and public right of ways. So, there are processes and requirements in
30 place to protect from the concerns that I think you have.

31
32 MR. SOLINSKI: My concern is just what you said. Even if he
33 builds it up three feet that's going to cause more runoff into my
34 property.

35
36 MR. BOCCANFUSO: It may, but.

37
38 MR. SOLINSKI: It may? It will.

39
40 MR. BOCCANFUSO: Not necessarily.

41
42 MR. SOLINSKI: Oh yes it will. I've been there seventy-five
43 years man I know what's. If my house sits right there on the corner
44 where the road bends after that it's a straight away, but when it
45 rains heavy, I could watch a river coming down the road. Yeah, on each
46 side of the road there's a stream running down the back because it's
47 low --- back behind us. So that's why I'm saying three feet might.

1 MR. BOCCANFUSO: I understand what you're saying.

2
3 MR. SOLINSKI: I'm sorry.

4
5 MR. BOCCANFUSO: Sir I'm not going to debate you. I
6 respectfully disagree. The fact that there's a river running down
7 McCaffrey Road.

8
9 MR. SOLINSKI: When it rains, no when it rains.

10
11 MR. BOCCANFUSO: Has nothing to do with whether a three foot
12 grade change is going to impact you. It can be successfully mitigated
13 through appropriate design and stormwater management measures. If it's
14 not properly designed, you're absolutely right. It can impact you, but
15 if it's properly designed there's a way to mitigate it and it will not
16 impact you, and that's what the ordinance requirements.

17
18 MR. LEVITON: And we're going to leave it at that.

19
20 MR. SOLINSKI: It all sounds real fair.

21
22 MR. LEVITON: Yeah, Mr. Solinski, this board is satisfied
23 that when the applicant submits its plot plan that the township will
24 review it with certified engineers and that all possible runoff will
25 be mitigated in the best way possible to have the least impact on you.

26
27 MR. SOLINSKI: Okay.

28
29 MR. LEVITON: Is there anything else you'd like to ask us or
30 say to us?

31
32 MR. SOLINSKI: I can still have my chickens, right?

33
34 MR. LEVITON: You're so colorful. We could use more of you.
35 Take his microphone away before he says something else.

36
37 MR. SOLINSKI: I was thinking of getting pigs too. I got a
38 real ---

39
40 MR. LEVITON: Thank you Mr. Solinski.

41
42 MR. SOLINSKI: Okay --- done here?

43
44 MR. LEVITON: Yes, sir you can leave. We'll take your
45 testimony and your comments into consideration and you have our seal
46 of approval. Be well.

47
48 MR. SOLINSKI: Alright, be safe.

1
2 MR. LEVITON: Okay. Alright, Brian anything further?
3

4 MR. BOCCANFUSO: Yeah, a couple things Mr. Chairman. I know
5 it was in my report, but I want to make sure that it gets on the
6 record. There was a subdivision, fairly recent subdivision, that
7 created this lot. The application began in 2018 and was concluded in
8 2019. The associated subdivision map was filed in 2021. There were
9 variances granted. So, I think that we heard testimony relative to the
10 aesthetic benefit. I think another piece to that puzzle is that the
11 previous application allowed for and legitimized the existing
12 structure that has a non-conforming front setback and a side setback
13 that also does not comply with the zoning regulations. So, the
14 elimination of that structure in favor of a modern and aesthetically-
15 pleasing structure also speaks to the aesthetic benefit. The board I
16 think can find that if you're considering the C2 criteria, and the
17 relief that was granted in connection with that previous application
18 is summarized in the supplemental review memo. There are a few other
19 things I just want to make sure that we talked about. I had a comment
20 about the topographic and grading information. I think we've beaten
21 that horse sufficiently to death now. Any approval granted will be
22 conditioned upon compliance with the applicable grading and stormwater
23 regulations and no adverse impact on neighboring properties. I'm sure
24 that Mr. Amar and Mr. Eshewsky are comfortable with that condition. Is
25 that correct?
26

27 MR. ESHEWSKY: Yes.
28

29 MR. BOCCANFUSO: Okay. There was also, any time there's an
30 application before the planning or zoning board, the township
31 development regulations require the construction of curbing and
32 sidewalk pursuant to the design standards in the township's code. Now
33 the planning or zoning board in this case can grant a waiver from that
34 requirement subject to a payment in lieu provision. So, the applicant
35 does not have to construct the physical improvements, but they do have
36 to pay into the pedestrian safety fund so that the sidewalk and
37 curbing can be constructed by the municipality either in this area in
38 the future if it's appropriate or in another part of town. While it's
39 ultimately up to the board to decide, I think that a waiver in this
40 case could certainly be justified. There's virtually no sidewalk or no
41 sidewalk along McCaffrey Road. There's virtually no curbing or no
42 curbing and I think that a waiver could be viewed as preserving the
43 natural conditions and the existing surface drainage patterns along
44 the roadway. So, I would just ask that if there is a motion and an
45 approval, that the board address that at some point whether you're
46 willing to grant the waiver with the payment in lieu or whether you're
47 going to strictly require the sidewalk and curb construction.
48

1 MR. LEVITON: I'm not going to enforce it like he said. I
2 like that there's consistency in the neighborhood and on McCaffrey
3 there are no sidewalks. Are you amenable to making the payment in lieu
4 of constructing a sidewalk?

5
6 MR. AMAR: I make a payment for?

7
8 MR. LEVITON: You make a payment.

9
10 MR. ESHEWSKY: Contribution to.

11
12 MR. AMAR: The town?

13
14 MR. ESHEWSKY: Yes.

15
16 MR. AMAR: I don't care. Yes, I'll do that.

17
18 MR. LEVITON: Okay.

19
20 MR. BOCCANFUSO: I mean it's really one or the other. The
21 board has no ability to completely waive the requirement. You either
22 require the sidewalk and curbing to be physically constructed or you
23 grant a waiver and that waiver is conditioned upon the payment in
24 lieu.

25
26 MR. LEVITON: This board is opting to grant the waiver. The
27 applicant has agreed to make the payment in lieu of the construction
28 of the sidewalk and Mr. Marmero will include it as a condition.

29
30 MR. BOCCANFUSO: And the only other thing I have to offer is
31 just to make sure that the record is clear. The applicant has no
32 choice, but to comply with the Health Department requirements. Mr.
33 Eshewsky noted that there were some soils evaluations performed for
34 the Health Department. I just want to point out that they issued a
35 recent letter just a few weeks ago. It's dated August 8th and in the
36 letter, they indicated that the quote original soils evaluation Health
37 Department witnessed on December 18, 2024 will need to be redone as the
38 location in December will now place the septic system across the
39 driveway. So, I don't know if that's true or not. I'm just pointing it
40 out for the record and I want to make clear that the applicant, you
41 have to do whatever the Health Department tells you have to do.

42
43 MR. ESHEWSKY: Yeah, if we need to, that's fine. We still
44 have to go out and do the.

45
46 MR. BOCCANFUSO: Maybe there's a misunderstanding of some
47 kind, but I just wanted to make sure that we're all.

1 MR. ESHEWSKY: I'll take a closer look at it, but as you
2 know we have to be fifteen feet from the soil log so I don't know if
3 that actually applies.

4
5 MR. BOCCANFUSO: I didn't do a deep dive to see where those
6 logs were performed or anything.

7
8 MR. ESHEWSKY: And we still need to do the foundation logs
9 so we can do them at the same time if need be.

10
11 MR. BOCCANFUSO: Outstanding. Yeah, so maybe it would be
12 appropriate to reach out to them so you don't have to mobilize twice
13 for soil logs.

14
15 MR. ESHEWSKY: Oh yeah absolutely, yeah.

16
17 MR. BOCCANFUSO: That's all I have Mr. Chairman.

18
19 MR. LEVITON: Well, the Board thanks you Mr. Boccanfuso.

20
21 MR. BOCCANFUSO: Sure.

22
23 MR. LEVITON: Mr. Marmero, anything else?

24
25 MR. MARMERO: No just again you've heard testimony from the
26 applicant. Have we --- topography yet? We did.

27
28 MR. LEVITON: Yeah, it was. He needs ginseng. Ginseng,
29 Solinski.

30
31 MR. MARMERO: So, you've heard testimony from the applicant.
32 You did hear from --- the applicant's here tonight for several
33 variances. There's a side yard variance on the left side, and a side
34 yard variance on the east side. There also is a side yard variance for
35 the location of the driveway as well which we discussed a little so
36 essentially, it's three side yard variances that we're dealing with.
37 The applicant indicated that there is no hardship. It's more of just a
38 C2 flex variance situation. The testimony seemed to be kind of an
39 aesthetic thing that'll fit well that neighborhood and then we heard
40 from Brian as well who indicated that the subdivision essentially
41 allows the existing structure that's the subject property to be
42 demolished in favor of this new structure. In terms of conditions that
43 we discussed, after you started the presentation again the subject
44 property the applicant indicated that there was existing structure
45 will be demolished and the cesspool has to be removed. Is that
46 accurate? We talked about the existing.

1 MR. LEVITON: Let the record reflect that Mr. Eshewsky is
2 nodding in the affirmative.

3
4 MR. ESHEWSKY: Yes, yes.

5
6 MR. MARMERO: And then he indicated with respect to the
7 driveway that it will be finished either asphalt, paver, or concrete,
8 or one of the three. I suppose --- something else. The applicant
9 indicated that he would comply with the CME report with review of the
10 plot plan and of course any applicable outside agencies including, but
11 not limited to the Freehold Area Health Department which Mr.
12 Boccanfuso discussed a little while ago. The applicant agreed if the
13 board were to grant a waiver that the applicant would pay into the
14 pedestrian safety fund in lieu of providing sidewalks and curbs.

15
16 MR. LEVITON: Thank you barrister. Will someone make a
17 motion?

18
19 MR. SHALIKAR: I'll make the motion to approve with the
20 stipulated conditions.

21
22 MR. LEVITON: Thank you Mr. Shalikar. Will someone second?

23
24 MR. MANTAGAS: I'll second that Mr. Chairman.

25
26 MR. LEVITON: Thank you Mr. Mantagas.

27
28 **ROLL CALL**

29
30 MS. MOENCH: Mr. Shalikar?

31
32 MR. SHALIKAR: Yes.

33
34 MS. MOENCH: Mr. Harrington?

35
36 MR. HARRINGTON: Yes.

37
38 MS. MOENCH: Ms. Klompus?

39
40 MS. KLOMPUS: Yes.

41
42 MS. MOENCH: Mr. Mantagas?

43
44 MR. MANTAGAS: Yes.

45
46 MS. MOENCH: Mr. Pochopin?

47
48 MR. POCHOPIN: Yes.

1
2 MS. MOENCH: Ms. Latilla?

3
4 MS. LATILLA: Yes.

5
6 MS. MOENCH: Chair Leviton?

7
8 MR. LEVITON: Congratulations.

9
10 MR. AMAR: Thank you very much.

11
12 MR. ESHEWSKY: Thank you very much.

13
14 MR. LEVITON: You're very welcome. Have a good evening.

15
16 MR. ESHEWSKY: Thank you.

17
18 MR. LEVITON: At this time, I'm going to go out to the
19 public and ask if there's anyone here who wants. You're all done. You
20 can go. Your application will be memorialized at our next regular
21 meeting. You don't need to be here.

22
23 MR. AMAR: Thank you very much. His driveway with the
24 stones.

25
26 MR. LEVITON: Good for him, outstanding. So he's a neighbor
27 and he's driving with stones. He's part of the problem. Okay, have a
28 good night.

29
30 MR. AMAR: Thank you guys.

31
32 MR. ESHEWSKY: Thank you. Have a good evening.

33
34 MR. LEVITON: Alright, again if there's anyone who wants to
35 address the board about non-agenda items now would be the time to.
36 Seeing no one I'll close public and ask for someone to make a move to
37 adjourn.

38
39 MR. HARRINGTON: So, adjourned.

40
41 MR. LEVITON: Thank you Mr. Harrington. We're in adjournment
42 and.

43
44
45
46 *****
47
48