

Florence, New Jersey 08518-2323
June 23, 2015

The regular meeting of the Florence Township Planning Board was held on the above date at the Municipal Complex, 711 Broad Street, Florence, NJ. Chairperson Hamilton-Wood called the meeting to order at 7:30 p.m. followed by a salute to the flag.

Chairperson Hamilton-Wood then read the following statement: "I would like to announce that this meeting is being held in accordance with the provisions of the Open Public Meetings Act. Adequate notice has been provided and posted in the main hall of the Municipal Complex."

Upon roll call the following members were found to be present:

Mildred Hamilton-Wood	James Molimock
Tim Lutz	Council Representative Ted Lovenduski
Wayne Morris	Mayor Craig Wilkie
Ray Montgomery	Thomas McCue
William Federico	

ALSO PRESENT: Solicitor David Frank
Engineer Hugh Dougherty
Planner Tim Kaluhiokalani (for Planner Barbara Fegley)

ABSENT: None

RESOLUTIONS

- A. Resolution PB-2015-07 continuing the application of Paul Konrad for minor Subdivision with bulk variances for property located at 1270 Emerick Avenue, Roebing until June 23, 2015.

Chairperson Hamilton-Wood explained that even though the resolution was on the agenda, it was not part of the Board's packet and would not be voted on this evening.

MINUTES

It was the Motion of Lutz, seconded by Montgomery to approve the minutes of the Regular Meeting of April 29, 2015. All ayes.

CORRESPONDENCE

- A. Compliance Review No. 1 from Engineer Dougherty dated June 5, 2015 regarding Florence Retail, LLC, Dollar Tree.
- B. Invitation to Ribbon Cutting Ceremony and Open House for affordable

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apartments at 220 Foundry Street, Florence.

- C. Letter from Burlington County Planning Board dated June 8, 2015 regarding Cedar Lane South Industrial Park site plan, Block 155.47, Lot 12.02.

It was the Motion of Lutz, seconded by Morris to receive and file Correspondence A through C. All ayes.

APPLICATIONS

Chairperson Hamilton-Wood explained that the order of the agenda was going to be adjusted at this time. She has a conflict with 2015-03 and will be recusing herself. She requested that the application be heard second. Application 2015-04 will be heard first.

- B. Application PB#2015-04 for Wawa, Inc. Applicant is requesting Amended Final Major Site Plan approval to allow construction of a trash compaction/storage unit and dumpster for storing cardboard on property located at 2060 Route 130. Block 163.02, Lot 13.01, 13.02, 13.03 & 13.04.

Tyler Prime came forward on behalf of the applicant, Wawa, Inc. The application relates to the existing Wawa convenience store and gas station located at 2060 US Route 130 North. Wawa originally received and subsequently constructed a convenience store with gas at this location. At the time of the original approval Wawa utilized an internal trash collection system. The company-wide position now is to move away from that and have an external trash and recycling system. The applicant is seeking approval for that.

There are a few reasons for the change. The old system that is internal had a collection of trash that was sometimes up to twenty regular garbage cans. For collection purposes these were dragged out individually, emptied, then brought back into the store. It takes about twenty minutes and has to be done at least once every day.

The new enclosure system with the trash compactor eliminates these totes all together. It goes from once a day to two or three times a week and each pickup will only take about five minutes instead of twenty minutes. Overall there will be less noise, and less site disruption. In addition there will be a recycling dumpster that will be picked up once or twice a week depending on the volume.

The compactor that is being used is quiet and water tight. It is the most state of the art unit that is available. The noise is 63 decibels at three feet. This is similar to an office fax machine. The enclosure will be locked at all times and will have a key pad. It will be accessible by the drivers and the store employees.

He said also with him this evening was Douglas Grysko from Dynamic Engineering. Mr. Grysko said he is a professional engineer and has been licensed in the State of New Jersey for 10 years. Mr. Grysko and the Board Professionals were sworn in at this time.

Mr. Grysko said he has been practicing Civil Site Engineering for over 15 years. He has a Bachelor's of Science in Civil Engineering from the New Jersey Institute of Technology. He also has a Bachelor's of Science in Physics from Seton Hall University. He has not been before this Board before, but he has testified before numerous other boards throughout the State and for many Wawa applications as part of the trash enclosure program they are presenting. He was accepted by the Board as qualified.

Exhibit A-1 was accepted as evidence. Mr. Grysko said it is a color enhanced version of the site plan that was provided to the Board previously. It is dated June 23, 2015. The Wawa is located at the northeast corner of Route 130 and Bustleton Road. The trash enclosure would be located in the northeast corner of the site near Hunt Circle Drive. It is a 14'X18' area. It would be surrounded by an 8' high white vinyl PVC fence. The gate will be at the front to permit access to a recycling dumpster and a trash compactor.

The recycling dumpster will be for co-mingled recycling. The trash compactor itself is for trash only and it is locked with a keypad. It is water tight and very quiet. It will not have an impact on the site. No parking will need to be removed; it is currently a landscaped area. It is a more remote corner of the site. A standard trash truck would be picking up. It could come in off Bustleton Road and circle around the back of the site and go into the enclosure. It is a very quick process, probably not more than five minutes. The totes that are being wheeled out currently have to be picked up one by one, dumped, put down and so on. It could take up to twenty minutes or more depending on how many are there.

Electric and water will be run from the building for the compactor. There will be two lights installed within the enclosure to provide lighting inside the enclosure. There will be one light outside for the safety of the employees. They are no higher than the fence. Employees from the store would come from the store and go to the access gate on the side, unlock it, enter the enclosure and then return to the store.

Mr. Grysko said pick-ups for the trash would be down to three times a week for this particular store. With the totes it is currently picked up every day because of the amount of trash that is generated. The recycling would be picked up one to two times a week.

He had an opportunity to review the Board Professional's review letters. The Planner's letter asked how the recycling would be addressed. He said this was addressed, there would be a dumpster for comingled recyclables. He said his testimony also addressed questions regarding pick-up, impact on operations and the types of vehicles. He discussed previously the decibels of the compactor.

There were comments regarding landscaping. The applicant is proposing new arborvitae species to provide the visual landscape buffer around the enclosure. There will also be the 8' white fence.

Mr. Grysko referred to the Engineer's review letter. The utilities will be extended from the existing building to bring electric and water to the enclosure. There will be a light pole inside the enclosure and one just outside the gate. They are 8' LED fixtures.

There were comments regarding paving details. The applicant agrees to provide the details. The Engineer also asked about circulation on the site. Mr. Grysko said it would depend on where the truck was entering from but most likely it would be from the side entrance on Bustleton Road. They would then circulate around the back of the site and travel up to the enclosure, empty a receptacle, close the gate and leave. It is a very quick process.

The last item in the Engineer's review was providing a Performance Bond estimate for the site improvements. The applicant agreed to that as a condition of approval. The Fire Official also provided a letter of no comment on the application.

Engineer Dougherty said on the completeness checklist there were some items that were not applicable because this had been a previous application. He was in agreement with that. He didn't know if waivers would be needed for some of the items. The applicant had addressed the issues in his letter through his testimony.

Member Lutz asked if there was going to be any additional signage or striping for the pick-up area. He is concerned about the small entranceway into the truck parking area. Mr. Grysko noted that is an exit only. Member Lutz said cars would be trying to use it and maybe not see the truck. Mr. Grysko said the truck would only be there for a very short period of time. Chairperson Hamilton-Wood said once the truck is in there, it will probably have to do some backing up and if cars are trying to exit as the truck is maneuvering, there could be a problem. She asked what the procedure was for pick-up, such as cones being put out. Mr. Grysko said the driver could use cones. Member Lutz said the high school is on the same road and there could be kids during the day coming to the store and not paying attention. All agreed a warning cone was acceptable.

It was the Motion of Lutz, seconded by Federico to deem the application complete with waivers and approve Application PB#2015-04 with the conditions that were discussed.

Solicitor Frank said the usual conditions would be included and also that the applicant agrees to the comments in the Board Professional's reviews and there will be a warning cone at the rear entrance during pick-up.

Upon roll call the Board voted as follows:

YEAS: Federico, Hamilton-Wood, Lutz, Molimock, Morris, Lovenduski, Wilkie,
Montgomery, McCue

NOES: None

ABSENT: None

At this time Chairperson Hamilton-Wood recused herself and relinquished her position to Vice Chairman Lutz.

Mayor Wilkie asked that the record show that Mr. Konrad and his professionals were not present at 7:30pm and they are being located.

A. Application PB#2015-03 for Paul Konrad. Applicant is requesting Minor subdivision with bulk variances to subdivide Lot 9 into two (2) lots on property located at 1270 Emerick Avenue, Roebing. Block 144, Lot 9.

Vice Chair Lutz called for the applicant. Jonas Singer, attorney for the applicant, said a prior application for this lot was before the Board in 2014. There were comments by the Board members as well as by the public. He believes that what is presented now responds to those comments. The plans have been substantially redesigned. His client will testify to the changes that have been made. He believes it is a better plan, and he hopes it will be well received.

He said there were two witnesses for this evening, the applicant and a professional planner. Paul Konrad and James Miller were sworn in by Solicitor Frank. Solicitor Frank said Mr. Miller is a professional planner and has appeared before many Boards in the County and suggested he be accepted as qualified.

Mr. Singer asked Mr. Konrad if he was the owner of the property that is the subject matter of the application. Mr. Konrad confirmed he is. Mr. Singer asked if it was Lot 9, Block 144. Mr. Konrad concurred. Mr. Singer said part of the application is seeking a minor subdivision. Mr. Konrad said it was. Mr. Singer asked if part of that subdivision required variances as a result of the subdivision. With respect to this evening's application, were there changes made from the last application that was submitted. Mr. Konrad said there were major changes. Mr. Singer said with respect to Lot 9A, the lot on which his home is situated, what changes were made to it as a result of this application. Mr. Konrad said the original application had impervious coverage of 47.7%. He made a change and moved the shed, that is about 10' x 15', to the new proposed lot. He is also removing the aluminum shed. That would cause a 2.9% reduction of the impervious coverage. It would also remove one of the structures that was an issue with the first application. Mr. Singer said regarding the proposed lot 9B that is going to be created, what would be the lot coverage for the new application versus the old application. Mr. Konrad said the lot coverage indicated by the engineer was 42% estimated. The new application that was prepared by a surveyor says it will be 19.6%. Mr. Singer said the engineer reported to the board that the new coverage was 32.2%. He asked if Mr. Konrad knew why there was a difference. Mr. Singer said when he did the calculation it appeared that the engineer included the driveway as impervious coverage. Mr. Konrad said he is installing a stone driveway. Mr. Singer asked the engineer if the driveway was included in his calculation.

Engineer Dougherty asked if there needed to be a completeness determination first. Then he would be able to address the items in his review letter. There is a variance application checklist as well as the minor subdivision application checklist. The variance application checklist was in order. On the minor subdivision checklist there was a request for a waiver of submitting an Environmental Impact Statement. He had no objection to this.

The applicant was requesting a waiver of the requirement to provide a delineation of stream encroachment. There isn't a floodplain in the area so it really is not applicable. An additional waiver is requested for showing utilities and drainage. These are existing lots and they will be served by public sewer and water so he would not object to the Board granting that waiver. The final is a request for a waiver of the requirement to provide a table showing the residential site improvement standards and how it corresponds to the site. This is a single unit being proposed in addition to the one that is already there. He would agree with that waiver also.

Engineer Dougherty said the checklist is incomplete currently, but if the Board granted the waivers he would not have any objections.

It was the Motion of Federico, seconded by Lovenduski to deem the application complete. All ayes.

Engineer Dougherty said there are variances being requested. The actual calculations done by the surveyor were not provided. The applicant is indicating the impervious coverage is 19.6% and it is noted on the plan that it is based on proposed improvements. He said when he did the calculations he did include the proposed stone driveway because in the definition of the ordinance it is considered impervious. Compacted stone generally is impervious. The definition in the ordinance states that impervious coverage is a surface that had been covered with a layer of material that is highly resistant to infiltration by water. It is his opinion that the stone surface, with vehicles compacting it more, or even without the vehicles, fits the definition of impervious coverage. That would need to be included for the calculation of impervious coverage. That does put the applicant over the 19.6% that the applicant said he has. The maximum allowed is 20%. Engineer Dougherty said he does not know how the applicant derived the 19.6%. Engineer Dougherty said in his calculations he included the driveway so that put it up to 29.3%. The maximum allowed for the proposed shed is 5%. The total impervious coverage on the lot could be up to 25% without a variance. In this case the total coverage is 32.2% so a variance would be required.

Mr. Singer asked if Mr. Konrad would consider using a pervious material for the driveway to fall within the 25% coverage. Mr. Konrad said he would. Mr. Singer asked if Mr. Konrad was aware of any materials that would be suitable. Mr. Konrad said recently a contractor working on Olive Street told him that pavers are considered pervious and that he would use those.

Engineer Dougherty said there are a couple things the Board might want to consider. The pavers are not porous; it is the gravel around them. It is a very specific detail that would have small bricks or concrete paver blocks. The area between the pavers would have very porous stone. It would be coarse and allow water to penetrate through it. There would be a receiving well underneath the bricks that would store the percolated water. A detail would have to be provided that would verify it was in fact an impervious coverage. The only other thing the Board would need to consider would be long term enforcement. It would need to be deed restricted. If the variance is not granted and the site is restricted

to the 25% there is a chance that down the road someone may come in and say they want to pave the driveway. They could just go get a building permit and it is paved. Then the infiltration ability is lost. That would need to be a consideration for the Board, to further restrict the property and have it run with the land. Solicitor Frank said he preferred deed notices.

Mr. Singer said if for some reason the applicant could not create pervious coverage, would he agree to shorten the driveway to meet the 25% coverage requirement. Mr. Konrad said he would agree to that, he wouldn't go over the 25%. Mr. Singer said the applicant would provide a plan showing the impervious coverage would not be exceeded or he would shorten the driveway to meet the requirement. Right now the driveway is running along-side the home. Mr. Konrad said he could provide evidence from a contractor that said he has done work in Florence Township in the new development behind Summer Street. He told Mr. Konrad he has done paver driveways there recently and they were considered pervious coverage. Engineer Dougherty said the applicant would have to show the proof to the construction official at the time of construction.

Solicitor Frank said his concern about the agreement to shorten the driveway would be the off-street parking requirement. The applicant would have to remain compliant with that.

Mr. Singer asked Mr. Konrad what the proposed setback was. Mr. Konrad said 11.33'. Mr. Singer asked if that was the side yard setback. Mr. Konrad said it was one of the sides. The other side would be as required. Mr. Singer asked if the prior application was 7'. Mr. Konrad said it was. Mr. Singer asked about the front yard setback. He noted that previously it was at 11' and the new one is 35' in accordance with the ordinance. Mr. Konrad confirmed this and noted it is now more than what is required by the ordinance. Mr. Singer said there was a request for a garage on the proposed lot, the new plan does not propose a garage. Mr. Konrad confirmed this. Mr. Singer asked if he was moving the shed from the existing lot onto the proposed lot. Mr. Konrad said that is what he intends to do. He is also planning to remove the other shed. It will meet the required setbacks. It is a 10' X 15" shed.

Mr. Singer said there were some comments during the last application regarding the house from the Board and members of the public. One comment he remembered was that the house would be a monstrosity. He asked Mr. Konrad the size of the home now being proposed. Mr. Konrad said the initial application was 1504 sq. ft. that was in line with what was there but he decided to make it into a two story to make the footprint about half the size and the house will be about 768 sq. ft. Mr. Singer said as part of the application there was an aerial view of the neighborhood. It was entered into evidence as A-1. Mr. Konrad said he went to the Burlington County Department of Information and Technology in Mt. Holly and asked for the aerial shot. He indicated where the properties in question were located.

Mr. Singer asked Mr. Konrad if he compiled a summary of the sizes of his neighbors' properties. Mr. Konrad said he did. Mr. Singer asked Mr. Konrad to explain how he did

that. Mr. Konrad said he measured things that were accessible without him going on private property. He measured driveways. He explained he already had measured some of the houses previously. Mr. Singer asked Mr. Konrad if he went to the Tax Office to obtain the lot sizes for each lot. Mr. Konrad said he reviewed tax records on the website for Burlington County Tax Records. Mr. Singer asked if the information included lot sizes and size of the homes. Mr. Konrad said it did. He reviewed the information for five lots to the right and left of the subject property. Mr. Singer asked if at Mr. Konrad's request, did Mr. Singer provide a chart summarizing the information that Mr. Konrad gathered for each lot? Mr. Konrad said that was correct. Exhibit A-2 was entered. It was a summary of the lot information. A-3 was a chart summarizing the information.

Solicitor Frank questioned that some of the information was from a website called Trulia. He questioned the validity. Mr. Singer said those were only for the photos. The information regarding lot sizes and sizes of homes were taken from tax records. Mr. Singer referred to the summary regarding the property at 100 Parrish Lane, which is Lot 12. Mr. Singer asked if the impervious coverage was 66%, the lot measured 51' X 30' and the home was 816 sq. ft. Mr. Konrad confirmed this. Mr. Singer said in addition to the home there was a shed and a sidewalk. Mr. Konrad concurred.

Mr. Singer said with respect 1265 Highview Avenue, which is Lot 18, what is the lot area? Mr. Konrad said the lot area was 50' X 97'. Mr. Singer asked in addition to the home, what other impervious coverage exists? Mr. Konrad said there is a concrete driveway. Mr. Singer asked if the home was 1717 sq. ft. Mr. Konrad said it is. Mr. Singer asked where the information was from. Mr. Konrad told him it was from tax records. Mr. Singer asked if Mr. Konrad calculated the lot coverage to be 48%. Mr. Konrad said that was correct.

Mr. Singer asked about 1273 Highview Avenue, Lot 17 regarding the dimensions. Mr. Konrad said that lot is 50' X 101'. Mr. Singer inquired about the size of the house. Mr. Konrad said it is 1040 sq. ft. Mr. Singer asked about impervious coverage on the property. Mr. Konrad said there is a garage and a concrete driveway. He said the coverage is 47.5%.

Mr. Singer asked about Lot 14, 1291 Highview Avenue. Mr. Konrad said that lot is 48' X 100' and the house is 936 sq. ft. Mr. Singer asked if there were other improvements on the property. Mr. Konrad said there is a concrete drive and a two car garage that is about 20' X 24'. He calculated the impervious coverage to be 42%.

Mr. Singer asked about Lot 13, the property that is on the corner of Parrish Lane and High View Avenue, 1295 Highview Avenue. Mr. Konrad said the lot is 28' X 61' and the house is 1059 sq. ft. Along with the house there is a concrete walk, steps and sidewalk along the front and side of the house. He said he calculated the impervious coverage at 57.8%.

Mr. Singer asked what the coverage will be on proposed Lot 9A, with Mr. Konrad's existing home, once the shed is removed. Mr. Konrad said it will be 45%. Mr. Singer

asked if Mr. Konrad had an opportunity to acquire land from neighbors. Mr. Konrad said there is a vacant lot but it is no longer on the market. Mr. Singer said Lot 17 is very close to what Mr. Konrad is proposing. Mr. Konrad said it is. Mr. Singer said Lot 15 is smaller. Mr. Konrad agreed.

Mr. Singer asked if Mr. Konrad testified that he is proposing a three bedroom home. Mr. Konrad said that was correct. Mr. Singer said a 35' driveway should be sufficient for parking. Engineer Dougherty said that would not be sufficient for off-street parking. The applicant would need at least 40' to 44' for two cars to park. A typical parking space is 10' X 20' and a car fits in there. Usually on-street parking spots are 22' to allow for backing in so 20' would be a minimum. The driveway would have to be at least 40' to leave some space between the cars. Mr. Konrad said he is agreeable to using the pavers. He was told they are pervious so he would be surprised if he was told to pull them up. Engineer Dougherty said paver block can be pervious if it is done by design. He recommended not waiting for the building permit stage, but rather have a design reviewed by this Board. He also thinks there would need to be some kind of deed restriction.

Mr. Singer said when the home, driveway and shed are added the impervious coverage is at 32.2%. Mr. Konrad said the driveway is going to be shorter than the length Engineer Dougherty used in his calculation.

Solicitor Frank asked where on the tax records it shows the square footage of the house. Mr. Singer indicated where. Member Lovenduski said that the square footage on the record would include area on a second floor. He noted the information says some of the properties are two stories. Mayor Wilkie said that is not actually the lot coverage, it is the square footage of the house. He said that is not an accurate interpretation of lot coverage.

Mr. Singer said he interpreted it to be the footprint of the house. Solicitor Frank said it is a measure of the heated space of the house. Solicitor Frank said he does not know that the data submitted can be used. Mayor Wilkie said Lot 14, a two story home, looks substantially smaller footprint wise than what is being stated.

Solicitor Frank said there are data issues and Mr. Konrad's work is problematic. There are problems with the credibility of the evidence given those issues. Mr. Singer was under the impression the information was for the footprint and not the entire house. He does understand what the Board is saying. Solicitor Frank said he doesn't absolutely know it is incorrect, but he also does not absolutely know it is correct.

Mr. Singer said looking at the aerial view that was submitted, visually many of the lots are consistent with what is being proposed. Solicitor Frank said whatever the Board's impression may be from what they see from the aerial, he isn't sure the Board could rely upon the data presented in the charts because of the questions about the underlying information. Mr. Singer said with respect to impervious coverage, it really pertains to

what exists, existing Lot 9A. Solicitor Frank said he can discuss the impression the aerial makes, that is observable.

Member Lutz said the Board does not visually have what is being proposed for the vacant lot. Mr. Singer said the Board was provided with a footprint on the survey. Member Lutz said he doesn't know that the aerial would help. Solicitor Frank said it can be used to assess the improvements on surrounding lots based on the impressions of the aerial. The analysis in the charts really isn't substantiated. Member Lutz agreed about the information in the charts. When the application was previously heard he had an issue that the charts weren't prepared by a professional. In his opinion this proves why a professional should have prepared the data.

Mr. Singer said the problem is that there is no access. Member Lutz said that is correct, but the applicant can't clarify the actual square footage of coverage per house is because he doesn't know if that square footage represented is the actual footprint or the entire dwelling.

Member Montgomery said he had a problem with the calculations. He asked who prepared them. Mr. Konrad said he prepared them. Member Montgomery questioned his qualifications. Mr. Konrad said he is not a professional but was pretty good at doing them.

Mr. Singer said he had no more questions for this witness and called Mr. Miller. Mr. Singer asked him to describe his credentials. Mr. Miller said he is a Licensed Professional Planner in the State of New Jersey and is also certified by the American Institute of Certified Planners. He has been previously qualified by this Board and also by the Zoning Board of Adjustment. Mr. Singer asked if he was familiar with the application. Mr. Miller confirmed that he was. Mr. Singer asked what he had done to prepare for the hearing. Mr. Miller said he reviewed the plan and the ordinances and also went out to the site to confirm that the conditions haven't changed since the prior hearing. Mr. Singer asked him to describe what is being proposed.

Mr. Miller said what is being proposed is the restoration of the lot line which historically created two lots in this location where there is currently one. The lots would be approximately the same size, a little over 5000 sq. ft. The subject property is in between Emerick Avenue and Highview Avenue. It is zoned NC Neighborhood Commercial. Mr. Singer asked Mr. Miller to describe some of the surrounding uses. Mr. Miller said within the blocks near the property the uses are residential. Further to the west there are commercial uses and there is a church to the immediate north.

Mr. Singer asked him what was being requested this evening. Mr. Miller said the applicant would like permission to subdivide the property in a manner which is non-compliant with several areas of the bulk standards but which would create a lot that was somewhat undersized. There would also need to be some setback relief to allow a home to be constructed comparable to the homes in the balance of the area.

Mr. Singer asked what would be the impervious coverage for proposed Lot 9A. Mr. Miller said he believes it is in the neighborhood of 45%. Mr. Singer asked what the impervious coverage is for proposed Lot 9B. Mr. Miller said he did some rough calculations and he believed it come out to be a little over 27% if you assume a driveway of 10' X 40', which is what the engineer indicated would be necessary. The lot would be non-conforming for lot coverage by about 2.5%. Mr. Singer asked what the applicant would need to show to obtain variance relief. Mr. Miller said these are bulk variances, under the statute they could be argued as either C1 variances or C2 variances. The C1 variance is a hardship variance. For the C2 variance the applicant needs to show the relief being sought is a better zoning alternative, where the benefits would outweigh the detriments. Mr. Singer said for the variance to be approved the applicant would need to establish positive criteria. Mr. Miller agreed. He said each variance should be addressed separately because in each instance there is a slightly different criteria to justify the relief that is being sought.

Solicitor Frank said specifically regarding the existing conditions that have not changed, he doesn't think they would require variances. Those don't need to be reviewed. Mr. Miller concurred. They would obviously be a hardship. The only exception with that is where an existing condition might be worsened as a result. For example he would have to address the impervious.

Mr. Singer said with respect to Lot 9A, Mr. Miller mentioned the need for an impervious coverage variance as well as a rear lot line variance. Also there is a lot size variance because the lot is going to be undersized.

Mr. Miller said in some cases he might cite the C1 criteria. Under the positive criteria of a C1 variance, which is a hardship variance, the applicant needs to show that due to exceptional conditions the strict enforcement of the regulation would result in peculiar difficulties or undue hardship to the landowner. For the C2 criteria the applicant needs to show that the variance would advance the purpose of the Municipal Land Use Law and that it would be a better zoning alternative and the benefits of the relief would outweigh the detriments. He believes there are three purposes of the Land Use Law that would be advanced by the relief the applicant is seeking. The first is to encourage municipal action to guide the appropriate use or development of all lands in the state in a manner that will promote the public health, safety, morals and general welfare. The second is to provide adequate light, air and open space. That applies to most bulk standards because that is the primary objective of setbacks. The final is to provide a desirable visual environment through creative development techniques and specific design and arrangement. Some of the relief being sought will make the neighborhood aesthetically more attractive through the design considerations.

The first variance he wanted to address was the lot size variances. The minimum lot size is 10,000 sq. ft. Proposed lot A would have an area of 5,237.5 sq. ft. and Lot B, the lot with no improvements on it currently, would be 5,237.5 sq. ft. also. He said he considers this a C2. This variance just establishes the lot line that historically was present at this location before the lots were consolidated. The lot line is continuous with the rear lot

lines of the adjoining lots. It basically creates an extension of the rear lot line that occurs throughout the block. It will eliminate a situation where all of the lots have buildings that are oriented to the street except for this lot that is a through lot. There is a rear yard where everyone else has a front yard. It makes the development pattern more consistent on Highview Avenue by dividing the lot line. These lots are comparable to the size of the lots in the area and also to their orientation. The lots would both remain large enough to accommodate dwellings consistent with the other dwellings within the block. By reestablishing the original lot configuration, he believes it is a better zoning alternative to the conditions that are there. He doesn't see any detriment from creating the second lot that will be completely consistent with the lots that are already present. He thinks the benefits outweigh any detriment.

The second variance is for lot frontage and lot width. The minimum width is 100' and the applicant is proposing 50' for both the lot width and the lot frontage. For proposed Lot 9A this is an existing condition in that the lot already has a 50' frontage and a 50' width. Lot 9B, is a mirror of the other lot. There was testimony presented that the only way to correct the situation would be for Lot 9A to acquire property from the church-owned property to the north of the lot. That isn't available. Regarding Lot 9B, there are structures that are existing right along the property lines on either side of the lot and both of the lots on either side of proposed lot 9B are also undersized. There is just no way to realistically make these lots conforming. He believes because of this it meets the hardship criteria. There just isn't any other option. It is an existing condition that can't be mitigated or corrected.

Member Lutz said Mr. Miller is saying it can't be done now but we are talking about a lot that this was done for to make it meet the criteria. We are in this position because this lot was consolidated into one lot to make it a conforming lot. He questioned why it was a hardship if the land next to it could be purchased to make it conform. Mr. Miller said there isn't an option to buy the lot next door because it is unavailable. The second reason is that the relief the applicant is seeking under this part of the discussion has to do with the width and the frontage, neither of which can be corrected in the case of Lot 9B because the lots next to it are non-conforming. The consolidation that occurred earlier made the lot conform for area but it didn't make it conform or change the width of the lot or the frontage of the lot. That condition can't be corrected at this point because there wasn't any land available to add and make the lot wider. From a planning and zoning standpoint, as a professional planner, he thinks it is better to have these two lots divided to replicate the land use pattern in the area.

Mr. Miller said Lot 9B also needs a variance for one side yard where the requirement is 15'. The applicant is asking for 11.3'. One side would conform and the other would be smaller. This is one of the variances that is a better zoning alternative. The reason is that by allowing a little bit of deviation on the side yard setback, it allows the home to be a little bit wider. That makes it more attractive and a better fit with the balance of the neighborhood. It provides the ability to create a good floor plan. The extra space allows for rooms to be side by side and not back to back. It enables a more attractive unit and is

45.

a better zoning alternative. The benefits outweigh the detriments that would occur as a result of having a slightly smaller side yard.

Mr. Miller said the next variance is for the side yard setback for an accessory structure. There are a couple variances for the accessory structure. One is the side yard setback and the other is the distance between the building and the accessory structure. The accessory structure is a shed which is now on Lot 9A but will be moved to Lot 9B. Part of what triggers the variances is that the applicant has moved the unit back 35', which is 10' deeper than the 25' setback. That starts to squeeze the back of the yard and that triggers the variance for the setback between the building and the accessory use, which has a requirement. The applicant is requesting 18.6'. He is also asking for the smaller setback from the side property line. The primary reason that this is a better zoning alternative is that there is the benefit of moving the house back. That was a preference the Board expressed at the earlier hearings. Also, depending on what happens with the driveway, having the house sit back will work well with it. There are many advantages with laying the lot out the way it is proposed. There isn't any significant detriment. Any detriment that would occur from the shed being closer to the house would be absorbed by the homeowner so there is no detriment to anyone outside of the confines of the lot. The 5' setback with the side yard line and the shed is consistent with what is found throughout the neighborhood. A lot of the sheds and garages have the shallower setbacks. There is no discernible negative impact from that. The design and layout benefits of this variance outweigh any detriment that might occur as a result of the relief.

The last relief being sought is for impervious coverage. In terms of Lot 9A, there are existing improvements that have long been present and which the neighborhood has become accommodated to. Primarily there are the driveway pad and a parking pad that is an extension of the driveway and a deck that is on the rear of the building. The applicant has taken some of the impervious coverage by transferring the shed to the other lot. There is a 2% difference. There isn't any significant impact from the driveway and deck. Requiring those to be renovated in some manner that would reduce the impervious coverage would do more damage than benefit. The deck is an amenity to the house. The driveway and parking is an amenity in that it allows the vehicles to be parked off-street. It is also probably necessary to comply with RSIS for Lot 9A. It would be a hardship for the homeowner to have to tear up all those improvements. It would decrease the value and utility of the home without any significant benefit to anyone. The variance for Lot 9A is satisfied by both the hardship criteria and the fact that it is a better zoning alternative to leave the driveway and the deck in place and maintain the existing conditions on the lot.

Regarding Lot 9B, the deviation appears to be about 2.5% if the driveway is assumed to be 10' X 40'. It could probably be shortened a little bit because cars are generally in the neighborhood of 16' to 17', but he agreed it is a good idea to have some extra room and not have them bumper to bumper. He said 38' to 40' would be the right size for the driveway. There is some latitude and probably some ways to tweak a little bit but given what is being presented he would argue that the board approve the 27.5% with the 2.5% deviation and allow the house to be built and allow the shed to be located in the proposed

location and allow the driveway to be deep enough to accommodate two cars. He does not think the 2.5% is a significant deviation. There isn't detriment with the addition of that 2.5% and the benefits of having a driveway with enough space to accommodate the two vehicles make more sense than shortening the driveway to make it conforming. The deviation gives a better design and justifies the relief.

In terms of the negative criteria, he needs to show there is no impairment of the intended purpose of the zone plan. He believes it is the opposite. This relief is going to enable development which is consistent with the zone plan and the character of the neighborhood. The sketch that was provided shows that the home that is proposed is consistent with what is in the neighborhood. The applicant has addressed a lot of the concerns the board expressed with the prior application. He felt the board clearly believed that lot was being overload. Those factors were corrected in this application and he thinks it is fully consistent with the neighborhood and the land use patterns. It satisfies the negative criteria, there is no impairment to the purpose of the zone plan. The use is permitted. As a whole the relief that is being sought is going to enable this development to be more attractive and more compatible with what surrounds it. He believes they have earned the board's approval.

Mayor Wilkie referred to Lot 9A. The reason everyone is here this evening is because the deck and driveway were installed. He said a reason was alluded to for justification of the driveway. If the deck wasn't there and this was before it was installed, what would the impervious coverage be? He asked what could be done to minimize the impacts to Lot 9A. He was told the deck is 200 sq. ft., so it is about 4%. Mayor Wilkie said if the deck wasn't there the coverage would probably be under 40% for lot coverage. There are certain things that could be done that may or may not get the application more conforming to the neighborhood.

Mr. Singer said he would like to request a break to consult with the applicant. He understands the concern and he feels he needs to bring in someone to do the calculations for the neighborhood properties so that the board has that information. He is reading the board and he sees that what he has provided is not convincing.

Engineer Dougherty said he was perusing the data submitted this evening and he determined that the two-story information is not reflected as a footprint, it is the square footage of the houses. This means the percentages would be less than what was presented.

Solicitor Frank said if Mr. Singer would like to consult with his client about providing more evidence he is certainly within his rights to bring more evidence. The evidence presented does not appear to be a comprehensive view of the block in question, much less the surrounding neighborhood. There are other houses on the other side of Highview Avenue that contribute to the neighborhood as well. To be credible, the applicant should present a comprehensive view to the board, not just a few of the houses that are immediately adjoining but also more of a sense of what the neighborhood is.

Mayor Wilkie noted that there were members of the public in attendance. Solicitor Frank said the Chair of the Board can call for a break at any time and can also call to hear from the public at any time during the course of a hearing. Having said that, if the applicant will be back with additional proofs at another time, the public may want to reserve their comments to see the fullness of what is presented, or they may just want to comment tonight. The Chair has the latitude to have public comments as often as he would like.

At this time the board went into recess for Mr. Singer to consult with the applicant.

Solicitor Frank said during the course of the recess he spoke to Mr. Singer who had spoken to his client. It seems most likely that the applicant will be seeking additional information in regard to the surrounding properties. The information will be developed by a professional and will give the board some reliable dimensional information about lot coverages and the like. He recommended a brief session of public comment based upon what has been presented so far. After that there needs to be a brief closed session to discuss potential litigation matters.

PUBLIC COMMENTS

It was the Motion of Montgomery, seconded by Federico to open the meeting to the public. All ayes.

Monica Borota, 1273 Highview Avenue, said everyone has the right to make improvements or change their homes as long as it is done according to the codes. She objects to the application because it does not follow the requirements of the NC Zone. She feels it would be detrimental to the surrounding houses. Highview Avenue is already an established street and she is concerned the construction equipment would cause damage to the old houses that are there. They were built in the 1930's and 1940's. The codes at that time were residential. Her house is right next to the proposed house and she thinks it will lessen the value of her property. She wants to make sure that Mr. Konrad should have to follow the codes for the zone and she feels the house he wants to build is oversized for the lot and it is extremely close to her house.

Michael Hensley, 1291 Highview Avenue, said the aerial view with square footage that was presented is his property and he confirmed that the data was not correct. The proposed plan will not meet the zoning requirements and the impervious coverage will be over what is allowed. He asked if approval was given would it change the zoning for the area.

Solicitor Frank explained that if the variance were granted it would only apply to that property.

Eva Borota, 1048 Hornberger Avenue, wanted to emphasize the requirements for the zone. The applicant should be required to meet them. The houses in the area were all built at the same time. She is concerned with the construction equipment rattling the houses. The proposed house would not fit in with the neighborhood.

48.

It was the Motion of Federico, seconded by McCue to close the public portion. All ayes.

Solicitor Frank said the board will be returning to public session after closed session and will take action at that time.

It was the Motion of Federico, seconded by Morris to enter into closed session to discuss attorney-client matters and on-going litigation. All ayes.

The board returned to open session at 9:35 p.m.

Solicitor Frank said he spoke to Mr. Singer regarding the board's interest in having additional proofs presented regarding the issue of impervious coverage on surrounding properties.

Mr. Singer said he would like to have the opportunity to bring a professional to testify with respect to the lot coverages in the area. He also will provide setback information. He will ask his client to provide a rendering of the home that is proposed.

Solicitor Frank said Mr. Singer is requesting an adjournment to the August 25, 2015 meeting. This provides more time to gather the information. Also some of the board members will not be able to attend the July meeting.

Solicitor Frank said for the members of the public, the applicant is asking that the hearing be adjourned to August 25th so they can gather more evidence for the board to look at regarding impervious coverage and a drawing showing what the house is going to look like. This will show the scale of the house relative to the neighborhood. He said Mr. Miller's argument was that the scale of the proposed lot is consistent with what is in the neighborhood. There is also the scale of the existing dwellings to be considered. There is the burden of proving that the scale of the dwelling is consistent.

It was the Motion of Federico, seconded by McCue to adjourn the hearing to the August 25th meeting of the board. All ayes.

It was the Motion of Lovenduski, seconded by Federico to open the meeting to the public. All ayes.

Mr. Hensley said he will return in August, he wanted to know if everything was going to be discussed or would it just be the new information. Solicitor Frank told him everything will be discussed and nothing has been decided at this point. He said there will not be a new notice.

Eva Borota asked if someone bought the lot would the information be disclosed to the buyer. Solicitor Frank said the application could not be discussed, but in general any conditions of the board's approvals are put in writing in a resolution. The Construction and Code Office knows about those conditions.

49.

It was the Motion of Montgomery, seconded by Federico to close the public portion. All ayes.

It was the Motion of Federico, seconded by McCue to adjourn at 9:43 p.m.

WM/ak

Wayne Morris, Secretary