

**LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT  
REGULAR MEETING  
OCTOBER 9, 2019**

**CALL TO ORDER BY CHAIRMAN GARY**

**SILENT PRAYER**

**PLEDGE OF ALLEGIANCE**

**OPEN PUBLIC MEETINGS STATEMENT:** “adequate notice of this meeting has been provided indicating the time and place in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star-Gazette and The Express-Times and by posting a copy on the bulletin board in the Municipal Building”.

**ROLL CALL:**

**Present:** Members Rutledge, Unangst, Bittone, Woolf and Chairman Gary. Also Present Attorney Bryce, Engineer Wisniewski and Planner Ritter

**Absent:** Member Horun, Vice-Chairman Larsen

**OLD BUSINESS:**

- Approve the Regular Meeting Minutes from September 11, 2019

**Motion by:** Member Bittone

**Seconded by:** Member Rutledge

**ROLL CALL:**

**AYES:** Members Bittone, Unangst, Rutledge, Woolf and Chairman Gary

**NAYS:** None

**NEW BUSINESS:**

- Robert Samson – Belview Road – Block 95, Lot 11.03 –Referral of Special Question/Interpretation ROM Zone District Permitted Use.

Attorney Bryce: Chairman, right now, before the Board, is a question that was referred to by the Planning Board. Uh, by way of background, uh, there’s an application made to the Planning Board, uh, for a septic and excavation business in the ROM Zone District. There was an objection interposed as to whether or not the proposed use, uh, which would be a permitted use within the ROM Zone District. The Planning Board, uh, after hearing some arguments and, um, having some discussion, though that it would be wise to refer the matter to this Board for legal interpretation as to whether or not the proposed use is in fact permitted within the Zone District. So that’s why this hearing tonight is for this Board to make a legal determination as to whether or not the proposed use is permitted within the

Attorney Bryce (Cont): ROM Zone District. We know that we have some interested parties here that have positions. I know that the Board's and the municipality's consulting planner does have a position as well. Uh, so, that is the nature of Mr. Samson's application.

Chairman Gary: All right. So, if I, uh, just to clarify, um, I think I might have missed something, um, can you just backup to, uh, the ROM Zone is the Research, Office, Manufacturing, correct?

Attorney Bryce: That is correct.

Chairman Gary: And so, and so, for us to interpret that use, um, that, that's where I'm a little stuck. So, can you help me help there Jim?

Attorney Bryce: Yeah, absolutely.

Chairman Gary: I'm not, I'm not speaking for the rest of the Board, maybe they're clear on it, but

Attorney Bryce: And, I'll, I'll give you actually my, my summary, cause this will give you the full import of what we're doing here tonight. All right, so the matter that's actually before the Zoning Board is the special question, the interpretation of the zoning ordinance that was referred to by the Planning Board. By way of the background, there was a site plan application that was made to the, uh, to the Planning Board, um, that the objection that was interposed claimed that the proposed use, which is for a septic and excavation company was not permitted within the ROM Zone District. Um, outside, if it was not a permitted use within the ROM Zone District, it would require a "D" Variance

Chairman Gary: Uh huh.

Attorney Bryce: and it would not be within the jurisdiction of the Planning Board. It would be the jurisdiction over the application would lie here and the Zoning Board of Adjustment. So, ultimately, um, this Board does have original jurisdiction to consider the zoning ordinance and its meaning. It is statutory, uh, and that is presumed to N.J.S.A. 40:55D-70B, and the issues is that properly before this Board for that interpretation. The Board here sits as judges of the law. You guys sit to interpret the actual ordinance and what the ordinance's meaning is. So, it's not me; it's not the planner; it's not Council; it's you guys that determine what the law is. So, this specific question before this Board is whether the proposed excavation and septic business use, that has the office; the associated private garage; outdoor bulk storage; is a permitted use within the ROM Zone District. And it's simply a legal question. In resolving this question, it's the Board's opinion that matters. As I indicated, you're sitting here as judges of the ordinance and therefore the law. Uh, you're probably going to hear some arguments tonight and some positions as to what the meaning §243:75-A4 of your ordinance means. Tonight you're not going to be under any obligation to follow any specific, um, position that's offered to you. It's going to be your position that matters. There's some, some principals that's should guide you, uh, when it comes to interpreting an ordinance and I can help you with that at a later time. But I'll tell you right now, §243:75-A, which is the ROM Zone District, allows amongst it Permitted Uses, Principal Uses, offices for business, executive professional and administrative purposes. §243:75-B1, covers accessory uses and those accessory uses include uses that are covered by §243:74B. These uses include private garage space for storage of business vehicles used in conjunction with permitted businesses and outdoor storage (inaudible) bulk storage is also permitted as an accessory use within the ROM Zone District. So, here it's going to be a question as to whether or not this business and what's being proposed fits within the Principal Use as defined in the ROM Zone District and the Accessory Uses that

Attorney Bryce (Con't): are incidental there too. Just as a way of background, and I think that it is important to point out, that your ordinance does have some guidance in-so-far as, uh, there is a distinguishing factor between an accessory use versus a principal use. §243:5 distinguishes an accessory use as one that is customarily subordinate and incidental to a principal use of a building lot or land or port thereof. And, the principal use is really the primary use and what the, the primary use of a property is. So, in this situation, the ROM Zone District has principal uses that are permitted. In this particular occasion, the, uh, applicant does believe that the business and the business office is the principal use and the associated private garage space and the outdoor storage is incidental and accessory thereto, which is also permitted in the ROM Zone District. I don't want to make the argument for Counsel, because Counsel's certainly here and quite able to do so. The other argument to the Board is going to be, this really isn't, uh, primarily an office, permitted office use. It's more of a storage, contractor's storage yard use and it's not permitted in within the Zone District. So, that's really where we are at this point and time and that's the matter that's before the Board.

Chairman Gary: Okay, thank you. Anyone on the Board have any questions for Mr. Bryce? Any thoughts? There is, uh, Mr. Bryce in that, uh, if I'm not mistaken, there's a, a number 8. I don't know what all those numbers represent, are they addendums; whatever they may be, and It, it mentions that the exception for the ROM Zone situate along Belview Road. That seems kind of ambiguous. Uh, Belview Roads a couple of miles

Attorney Bryce: Do you know what section you're referring to?

Chairman Gary: Uh, well it's in the ROM.

Attorney Peck: It's A-8.

Attorney Bryce: Oh, that's for wireless communication.

Chairman Gary: Okay, that's, okay. I just wanted to make sure that that didn't, uh

Attorney Bryce: That, that doesn't have any applicability

Chairman Gary: Okay.

Attorney Bryce: to this particular issue.

Chairman Gary: All right.

Attorney Bryce: I think, and fairly framed, the application is for primarily, or stated to be, under 75: A (4) for offices for business executive professional administrative purposes.

Chairman Gary: Okay.

Attorney Mandry: I would think (inaudible).

Chairman Gary: Okay. Thank you. Uh, guys, any, any thoughts; any questions? Uh,

Attorney Mandry: Chairman, uh, my name is Bill Mandry, I represent Mr. Samson. Um, and, uh, perhaps with your permission, if I just help the Board understand the nature of Mr. Samson's business, it would help to, uh, illuminate, uh, the

Chairman Gary: Surely.

Attorney Mandry: the situation with, with your permission sir.

Chairman Gary: Yes. Please.

Attorney Mandry: I just, a couple of questions, is that okay? Please stand. Do you want Mr. Samson sworn Mr. Bryce?

Attorney Bryce: Please.

Attorney Mandry: Okay.

Attorney Bryce: Just raise your right hand and repeat after me. Do you swear that you'll, swear affirmly, the testimony that you give this Board is the truth, the whole truth and nothing but the truth?

Mr. Samson: Yes.

Mr. Bryce: Okay. Thank you.

Attorney Mandry: And, this is picked up on the mic?

Chairman Gary: Yes, please, so

Attorney Mandry: Um, Mr. Samson, uh, you're the owner of Samson Septic and Excavating, LLC, is that correct?

Mr. Samson: Yes.

Attorney Mandry: And, uh, how long have you owned that business?

Mr. Samson: I want to say maybe three years.

Attorney Mandry: Okay. And, and what's the current location of the business?

Mr. Samson: Uh, 120 South Main Street.

Attorney Mandry: And, uh, do you have a business office at that location?

Mr. Samson: Yes.

Attorney Mandry: And are you under contract to purchase property on Belview Road that's the subject of this application?

Mr. Samson: Yes I am.

Attorney Mandry: All right. And you have a site plan prepared, is that correct?

Mr. Samson: That's correct.

Attorney Mandry: All right. And, uh, let's, let's go over a little bit about, uh, the nature of your business. Um, you're currently at 120 South Main Street, um, do you store any equipment there?

Mr. Samson: Uh, no, no I don't. I keep all the equipment on a farm out in Harmony Township.

Attorney Mandry: Okay. And then, is the farm all, is the equipment always stored at the farm in Harmony Township or does the building (inaudible)? Can you give us a little bit of the background on that please?

Mr. Samson: Uh, yeah. So, the, the equipment, uh, just kind of goes from job, to job, to job, to job. Uh, the only thing that's there every night are the dump trucks, um, you know, besides that the equipment. You know, the, the only time that it's there for, uh, extended periods is in the winter time, obviously when it's too cold for us to do any kind of work outside.

Attorney Mandry: All right. And, uh, what, let, let's just say you conduct (inaudible) at 120 South Main Street, if, uh, you were granted the authority to operate along Belview Road, would your activities be substantially similar to what you do at 120 South Main Street?

Mr. Samson: Yes, it would be exactly the same.

Attorney Mandry: Okay. And, and can you illuminate, uh, for the Board members, what activities occur at that location, please?

Mr. Samson: Uh, so, we have one secretary that's in the office full-time. Uh, you know, she does all the payables, receivables, all the, uh, you know, emails and phone calls and, you know, stuff of a clerical, uh, nature.

Attorney Mandry: All right. And, and could you operate your, your business without that office?

Mr. Samson: Absolutely not.

Attorney Mandry: And, and can you explain to the Board members why sir?

Mr. Samson: We have to have, we have to have a headquarters, um, you know, where we can do all that kind of work. I can't, I, you know, I, I do the pricing and all that stuff, but I also do the work. So it's impossible for me to, you know, do both at the same time. So, there's no way that we could do it, uh, without an office.

Attorney Mandry: All right. And, uh, do you have one, and, and this is your intention to keep that one full-time, uh, system there at the Belview site?

Mr. Samson: Yes.

Attorney Mandry: Um, will there be any other employees that will be present in the office building during regular working hours?

Mr. Samson: No, we, we have jobs, well, the, the guys come in the morning. We have two drivers, they come and get the trucks; the trucks go. Um, but other than that, when we have jobs they, they drive right to the job. There's no, you know, she, she's the only person there all day.

Attorney Mandry: All right. And, and do you ever, uh, do any work yourself there? For instance, at 120 South Main Street, do you have a desk?

Mr. Samson: Yes, I do.

Attorney Mandry: And that's where you're handling your business? Your phone calls and your

Mr. Samson: Yes.

Attorney Mandry: estimates?

Mr. Samson: Yep.

Attorney Mandry: All right. And, could you conduct your business without that organizational factor as part of what you do?

Mr. Samson: No.

Attorney Mandry: And, uh, is this your letterhead Mr. Samson, is that correct?

Mr. Samson: Yes.

Attorney Mandry: And could you read into the record what the address is, please?

Mr. Samson: Samson Septic and Excavating, LLC, 120 South Main Street, Suite A, Phillipsburg, New Jersey, 08865.

Attorney Mandry: All right. And, is it, is it your intention to also have a similar, same or similar head, letterhead, uh, with the Belview address if you're granted, uh, the use?

Mr. Samson: Yes.

Attorney Mandry: Okay. Um, and, would you, could you elaborate with, uh, to the Board members a little bit about what a typical day would be like in terms of, uh, where the equipment is stored and, and, does it come back to the site, does it stay and go from job to job, or what happens?

Mr. Samson: So, typically, we, you know, we have a fairly large internet presence and so, that's where a lot of the inquiries come from. Um, you know, I'll, I'll be out in the field with the equipment, doing the work and stuff and then she'll get the email or whatever at her desk and then she'll send it out to me. You know, then, then at some point, you know, I'll come back and I'll take a look at it; I'll price everything. Um, but we, we have them, you know, we're so overwhelmed for some reason, uh, with the

Mr. Samson (Con't): septic jobs this year, that the stuff never comes back. It's always, like I said before, it goes from job, to job, to job.

Attorney Mandry: And do you ever meet with, uh, clients on site or is everything field to you?

Mr. Samson: Everything is in the field.

Attorney Mandry: Okay. Yeah. All right. Nothing further.

Chairman Gary: Any questions? I would, I would

Member Woolf: (Inaudible).

Chairman Gary: Oh go, go ahead Gary.

Member Woolf: During the winter or non-working time frame, you said you had two dump trucks?

Mr. Samson: Yes.

Member Woolf: Do you have a backhoe?

Mr. Samson: Yes.

Member Woolf: Do you have a lowboy?

Mr. Samson: No.

Member Woolf: How do you truck this backhoe?

Mr. Samson: Oh, you, you, so any kind of trailer you're saying, "Lowboy"?

Member Woolf: Yes.

Mr. Samson: Generic, yeah, yeah, yes.

Member Woolf: But that's something that would be parked on site when not in use?

Mr. Samson: Correct.

Attorney Mandry: And there's a cover there, correct Robert?

Mr. Samson: Yeah, that's, that's why we're asking for the, uh, you know, for the, uh, the other building there so that we can park the stuff there.

Chairman Gary: Just, just for clarity, you mentioned that, uh, that would, nothing would be different at Belview than, than at, um, South Main Street? Uh, just so I understand, I mean, there would be a difference because you have trucks coming and going, you know, when them come and go, right?

Attorney Mandry: I was referencing the office use.

Chairman Gary: You're just referring to the office use, okay.

Attorney Mandry: I'm sorry.

Chairman Gary: No, no, thank you. No, that's okay. Okay.

Attorney Mandry: And just a final question, maybe I asked this, could you operate your business without that office?

Mr. Samson: Absolutely not.

Chairman Gary: Okay. Okay. Uh, any

Attorney Mandry: Do you concur with Mr. Ritter's opinion?

Mr. Samson: Yes. Yes.

Attorney Bryce: It hasn't been offered yet.

Chairman Gary: Oh, we didn't hear Mr. Ritter's

Attorney Bryce: No, it hasn't been offered yet, but

Chairman Gary: We'll take that, we'll do that first? We'll do that before

Attorney Bryce: Let people question him first.

Chairman Gary: Okay, thank you. Anyone from, okay.

Member Bittone: So this is primarily a, uh, a 9 to 5 type of business or is it, you're looking for 24 hour a day, 365 day a year,

Mr. Samson: It's typically

Member Bittone: operations?

Mr. Samson: Yeah, from, the hours would be 6 in the morning till 8 at night. Uh, we do emergency snow plow for the state in the wintertime, so, that would, you know, I don't know how that would play out, but.

Chairman Gary: Okay. Thank you.

Mr. Samson: You're welcome.

Chairman Gary: Uh, is there anyone from the public that would who would like to, uh, who has any questions or any, anything they'd like to add or? Yes sir?



Attorney Peck: No, I'm, I'm just, we have uh, we have our own case to put on, but I

Chairman Gary: Okay. No, I'm, I'm talking about questions for, for Mr. Samson.

Attorney Peck: Yeah, (inaudible).

Chairman Gary: Anyone? Okay, Mr. Peck, I think that you can come. Uh, excuse me, did, somebody's pointing.

Mr. Kowalchuk: I'll wait.

Chairman Gary: Okay.

Attorney Peck: Thank you very much Mr. Chairman. Uh, for the record, my name is Mark Peck. I'm an Attorney with the Florio, Perrucci, Steinhardt & Cappelli Law Firm. I'm representing, uh, Jeff and Kathleen Decker, who live at 1292 Strykers Road. Uh, to be clear, we're not here tonight, uh, and you're not here tonight to judge the merits of whether or not, uh, the Samson Septic, you know, can operate at this location; whether or not it's a good business. You know, it's a good business. They provide a necessary service. But what we're here to say is that it's not a permitted use in the ROM Zone District. We're not saying that maybe down the road they shouldn't be allowed to do, that's not the question here tonight. The question is, is which Board should have jurisdiction over this. If, if the Zoning Board, if, if you decide tonight that it is a permitted use, then they go back to the Planning Board with their site plan application and basically assuming, they, they touch all the bases, uh, in the site plan ordinance, they can build and operate their business out of right. Whereas, if the Board agrees with, with us and with the Decker's, that this is not a permitted use, well then the Samson application will come before the Board for a use variance, where you can access the, you know, whether there's any positive, uh, you know, access the positive criteria and the negative criteria. Whether there are any detriments and you can then impose reasonable conditions to mitigate against any detriments if you decide it should go forward. If you take the applicant's contention, that this is an office use, what isn't permitted in the ROM Zone District? I can't think; I was sitting there during the testimony thinking, what business can exist without an office? Without somebody operating the phones; getting the mail; doing things like that. But you heard in Mr. Samson's own testimony, there won't be clients there. They don't, uh, you know, he, they have, he has an assistant there who, who fields phone calls; takes the mail. Uh, right now, they're in a separate location, you know, they keep all their equipment up in Harmony, they just have the, the assistant there. It's not important that these two operations be together. Uh, it's not an office use. The applicant is an excavating company and what their plan that was before the Planning Board, is to construct a 7200 sq. ft. building. Of that, 48 sq. ft., or two-thirds of the building, would be garage space and only 2400 sq. ft. would be an office. Uh, the applicants own notice to the Planning Board stated that the applicant wishes, among other things, to create "a storage yard for equipment and vehicles necessary to operate the excavating business". It's not an office use. It's not an office driven use. It's the trucks. It's the excavating. And again, not making any, any, you know, not impugning the, the nature of that. It's just, it's not one of the enumerated listed permitted uses in the ROM Zone. Uh, it's a contractor's yard, and a contractor's yard has been defined as a site used for storage, maintenance and staging of vehicles, equipment and materials relating to contracting work in any of the building trades; landscaping, road building, sewer installation, transport and hauling, or similar professions in which work is princip, principally conducted off site. I think that exactly describes what Samson, uh, Septic and Excavating does. And contractor's yards in similar type uses aren't permitted in the ROM, uh, Zone District. Um, you know, this needs a use variance application. Again,

Attorney Peck (Con't): where this Board can balance the positives and negatives and if it deems a use variance appropriate, it can impose reasonable conditions. But I'm not going to get into that any further, cause I do have a planner who will give some testimony, uh, so I'd like to introduce him and have him give, uh, further testimony on this question.

Attorney Bryce: Uh, Mr. Peck, just for the Board's clarification, did site a definition regarding a contractor's storage yard.

Attorney Peck: Not from the zoning ordinance.

Attorney Bryce: Okay, so, the contractor's zoning yard definition that you

Attorney Peck: Does not appear anywhere.

Attorney Bryce: Not within our municipality?

Attorney Peck: That's just, yeah, that's just found, I found that like a planners, uh, handbook.

Attorney Bryce: Okay. Thank you.

Attorney Peck: It's nowhere defined.

Attorney Mandry: Mr. Bryce, may I, may I just speak for a moment; or Mr. Chairman?

Chairman Gary: Sure, go ahead.

Attorney Mandry: Uh, I haven't received a written report from this gentleman. Didn't know he was coming. I'm sideswiped here. Uh, I leave that up to you to decide whether or not you will let him testify.

Attorney Bryce: Well it is an open public meeting. People are allowed to

Attorney Mandry: But he's going to give his opinion though.

Attorney Bryce: He is going to do that.

Attorney Mandry: If he gives his opinion, it's got to be in writing, in, in my opinion.

Attorney Bryce: Well,

Attorney Mandry: Just, just for the record, that's my opinion.

Attorney Bryce: That's fine sir. This isn't a court of law. There is, uh, it is kind of a fluid thing, where we don't have discovery processes in, in place, so. I think that the Board ought to allow it. Because it

Attorney Mandry: All right. We'll, uh

Attorney Bryce: Sir, do you swear and affirm that the testimony you're about to give this Board is the truth, the whole truth and nothing but the truth?

Planner: Yes.

Attorney Bryce: Please state your name.

Mr. Snyder: My name is Eric Snyder. S-n-y-d-e-r.

Attorney Peck: Thank you. Mr. Snyder, uh, what do you do?

Planner Snyder: I'm a Licensed Professional Planner in the State of New Jersey and a Zoning Officer.

Attorney Peck: Can you give the Board the benefit of some of your educational and employment history?

Planner Snyder: I have a Bachelor's Degree in Conservation from Cornell; Master's in City and Regional Planning from Rutgers. I'm a Charter Member of the American Institute of Certified Planners. I have been a licensed planner since 1977. I teach for Rutgers; the Zoning Officer's Certification courses and Land Use Administrator's courses. And testifying before Boards like this and in fact this Board before, uh, for a little over forty years.

Attorney Peck: And, over the course of your career, what kind of, uh, entity's do you look for?

Planner Snyder: I've worked for municipalities and I've worked for private entities as well.

Attorney Peck: I move Mr. Snyder is an expert in the field of planning.

Chairman Gary: Yes.

Attorney Peck: Okay. Thank you very much. Mr. Snyder, uh, uh, the floor is yours, but can you, uh, give your opinion to the Board as to whether the proposed, uh, septic and excavating use is a permitted use in the ROM Zone District?

Planner Snyder: Very quickly, I have an exhibit that, uh, I got off the (inaudible). Um,

Member Woolf: Thank you.

Planner Snyder: So, hopefully this, uh,

Attorney Bryce: Just for the, just for the record, the exhibit that he handed out, we're going to mark as Exhibit S-1.

Planner Snyder: All right, this just shows the, uh, location of the property that is that wooded section between the, uh, residential development along Strykers Road. Um, it sits just past the corner opposite the, uh, Warren County Farmer's Field. As Mr. Peck said, the real issue here is which is the tail and which is the dog. Which is the more important and more intense use of the property? So, which is, in fact, the principal use and which is an accessory use? Mr. Peck correctly pointed out, almost any use

Planner Snyder (Con't): can be, um, offered as a permitted use in an office zone in the ROM, if there's an office attached. And, and one of the reasons that I'm here, because Mr. Peck and I on opposite sides of the table; I as the Zoning Officer in Liberty Township, made the same call where it was a contractor's yard with a, with an office. But the real and most intense part of the application is the contractor's yard. It's the truck storage. It's the bulk storage. If you look at the building itself, more than two thirds of the building is for garage space. So what really is going on, on the property? It's a contractor's yard. There's nothing wrong with a contractor's yards except for one thing, they're not permitted in the ROM Zone and there's an accessory office. You have one person, one person in a, and a desk for the principal here, in 2400 sq. ft. But everything else; the bulk storage, as defined in the ordinance, which includes the parking of trucks, equipment, and so forth. If you look at the overall use of the property, the bulk storage piece and the garage dedicated to, uh, vehicles, which is the part that has a much higher, uh, overhead door, is five times greater than all of the office space proposed. That's not counting the parking spaces shown in front of the building. So it's my opinion, as a Professional Planner and as a Zoning Officer that the use here is, in fact, a contractor's yard. That's its principal impact. Because when you start talking about uses and, and how they fit in your zoning code, the question really becomes, "Well, what were they thinking when they allowed uses in the ROM Zone"? Well, here we have an ROM Zone that immediately abuts a residential development; been there for a long time on Strykers Road. So the question then is, "What's the thought process that the Planning Board went through when they adopted the Master Plan and recommended the ordinances in the (inaudible) did when they adopted the ordinances"? What kinds of uses are in fact reasonably consistent with what's around here? Well, I would argue that contractor's yards are not part of that. You don't define them in the ordinance. The definition that Mr. Peck came up with is out of Moskowitz's, uh, Definitions Book that published by Rutgers University and it speaks for itself. What is the more intense piece of issues? It's the contractor's yard. It's the trucks. It's the lowboy. It's the backhoe, and so on and so forth. So that's my opinion. And, that's the call I made back in Liberty Township and that's the call I (inaudible) to make here.

Chairman Gary: Thank you. Anyone have any questions? Questions? Yes sir?

Attorney Mandry: Uh, Mr. Snyder, um, was that decision in Liberty Township that were subject to judicial review?

Planner Snyder: No.

Attorney Mandry: So,

Planner Snyder: They said (inaudible-speaking over each other) use variance.

Attorney Mandry: the level, your opinion, no one (inaudible – coughing) other than what you believe to be the correct, the correct pitch.

Planner Snyder: Oh no, the Board interpreted the code and then the applicant applied for a use variance.

Attorney Mandry: So, it was never

Planner Snyder: No.

Attorney Mandry: So, it was taken to a higher level, it was just taken for, correct?

Planner Snyder: No. It was not taken for

Attorney Mandry: And, was there, was there any, uh, case law or any type of other interpretation that was entered in conjunction with your opinion that you have? Which I suggest to the Boards, a net opinion, which is an opinion which is not substantiated by the facts or by any other correlation related to either case law standards or any other type of evidence which, which support an opinion. So, for the record, I do object to the opinion as a net opinion. It's unsubstantiated; it, it is incorrect under any type of evidentiary standard. Now, I can stand up there and say that the sun is blue, and, and if you accepted that, that would be, you know, accepted. I think you need to use your objective, uh, analysis of what this nice gentleman's said. I think if the determination is to whether or not because, just because it happened in one district, which wasn't subject to judicial interpretation, whether or not it would be relevant in this area. All right. And, then if I can, Mr. Snyder, the, uh, are which is, uh, I believe to the south of 210 Belview Road, are you familiar with that area?

Planner Snyder: Define south, if you don't mind.

Attorney Mandry: Well, okay. If, if I can help you, maybe you're not trying to do the Boy Scout thing here. You can take a look here, I believe that's south,

Planner Snyder: Uh huh.

Attorney Mandry: okay?

Planner Snyder: Okay.

Attorney Mandry: All right. Is that (inaudible) also the ROM Zone?

Planner Snyder: I believe so.

Attorney Mandry: Are there, are there offices located in that zone?

Planner Snyder: I didn't go on that property to say.

Attorney Mandry: Okay. And, and how about, uh, Precast Concrete. Do you know about that location?

Planner Snyder: No.

Attorney Mandry: Okay. Is that a location that's also in a, in the, uh, ROM Zone?

Planner Snyder: I don't know.

Attorney Mandry: Okay. Do you know that there's just an office there with many other types of activities? Are you familiar with that? Are you familiar with the area? Are you familiar with how this Board traded these types of scenarios where the ordinance was originally adopted in no one objected to it?

Planner Snyder: My opinion is based on the site

Attorney Mandry: Well, answer my question. I'm asking a question. I don't want your opinion.

Attorney Peck: (Inaudible – they are all speaking at same time)

Planner Snyder: If you don't mind, I will answer your question.

Attorney Mandry: He's not answering my question. He's giving us opinion

Attorney Peck: But you're not giving him a chance Bill, come on.

Planner Snyder: All right. My opinion is based on the facts in front of the Board right now. It is not based on what somebody else may have done elsewhere (inaudible).

Attorney Mandry: You just said it was based upon what you did in other jurisdictions.

Planner Snyder: That I did elsewhere. But not here.

Attorney Mandry: But you're using that to substantiate your opinion here. That's incorrect.

Planner Snyder: It's consistency. It's based on numbers. It is not unsubstantiated. It's a simple fact and you can do the arithmetic on site, as to which use is the principal use on the property. That's my point.

Attorney Mandry: So, is it your opinion that, because only 33% of the principal structure is office; 33%, okay, is office.

Planner Snyder: Right.

Attorney Mandry: What that means, that, that is an accessory use to the storage yard. Is that your opinion?

Planner Snyder: No, I'm, yes, basically yes. The office is

Attorney Mandry: (Inaudible – speaking at same time)

Planner Snyder: if you'd let me finish, the office is, in fact, accessory to the contractor's yard. That is my opinion, yes.

Attorney Mandry: All right. So is that opinion based upon a percentage of the office itself, as opposed to, in the principal structure now which is 33%, are basing it based on the size of that office?

Planner Snyder: I'm basing it based on the size of the office as a part of the overall plan, which incorporates the bulk storage area to the rear of the building.

Attorney Mandry: All right. So would you be surprised that we were at the, at the Planning Board meeting and there was some very extensive cross-examination by Council, that it was the opinion of the Planner of this Township that the size or the volume of that office was inconsequential as to whether or

Attorney Mandry (Con't): not the use was primary as an administrative office? So you disagree with, with the opinion of the Planner of this Township

Planner Snyder: I do.

Attorney Mandry: about the size?

Planner Snyder: Yes, I disagree with Mr. Ritter.

Attorney Mandry: Okay. And tell me why. Give me some sort of a thought for your opinion.

Planner Snyder: I just gave you the same reasons.

Attorney Mandry: Give me your opinions, your thoughts.

Planner Snyder: My reason is the fact that, with all respect, the area devoted to the contractor's yard is not inconsequential. In fact, it is overwhelmingly the principal use of the property.

Attorney Mandry: But what facts

Planner Snyder: The off, if you let me finish please,

Attorney Peck: Will you let him answer please.

Planner Snyder: the office is ancillary to the contractor's yard. That's my answer and it has been my answer.

Attorney Mandry: So, so, you disagree with Mr., Mr. Samson's (inaudible – several speaking at same time).

Planner Snyder: Mr. Samson that he needed the office and I understand that he needs the office.

Attorney Mandry: Let me finish the question sir.

Planner Snyder: Okay. You disagree with Bob Samson, who says, "I can't run my business without an office".

Planner Snyder: I agree there's an office. I agree that he needs an office. But it's not the principal use on this property.

Attorney Mandry: Are you aware that a majority of the, of the machinery is not stored on site, that it goes from job to job to job? Does that change your opinion sir?

Planner Snyder: I am aware that the bulk storage area that's defined in your site plan and in Mr. Ritter's report, incorporates storage of the vehicles at some point, certainly during the winter, and the testimony has been that there are snow plowing jobs, so on, so forth. So there's a level of activity involving heavy trucks on this site that is inconsistent; typically with the kind of activity that you have

Planner Snyder (Con't): with just an office, an ordinary office envisions passenger vehicle traffic. The testimony is, people don't show up at the office. They don't come to the office to look for jobs to be done. All right? The parking is all about the machinery, the equipment.

Attorney Mandry: But isn't that the nature of the business in, in this modern age? They start over the internet without people, necessarily, having face to face contact. Isn't that a fact, sir?

Planner Snyder: I don't know what that has to do with the use of the property.

Attorney Mandry: Well you told me that people don't come to the property, so therefore it's not an office.

Planner Snyder: No

Attorney Mandry: An office is visited by

Planner Snyder: With all respect, that's not what I said. It is an office. Your client testified that it's an office. I'm saying that it's an accessory structure as part of the contractor's yard.

Attorney Mandry: And are you aware that your learned opinion is in direct contravention to the opinion of the Planner for the Township of Lopatcong?

Attorney Peck: That has been (inaudible – all speaking at once).

Planner Snyder: Yes I am.

Attorney Mandry: And, and are you also aware that there are also the same or similar uses in the ROM Zone, uh, in Lopatcong Township for which, uh, an office has been determined to be the primary use?

Planner Snyder: There may be.

Attorney Mandry: Done an analysis sir?

Planner Snyder: No, I haven't done an analysis.

Attorney Mandry: Okay, All right. I have no further questions.

Attorney Peck: Well, I, I have a thought. Do you know how some of these others uses got their approvals? Where they, do you know if they were built as of right or if they got a use variance?

Planner Snyder: No I don't.

Attorney Peck: Do you have any idea about any

Planner Snyder: No, no.

Attorney Peck: You're only testifying about this particular matter?



Planner Snyder: That's correct.

Attorney Peck: Okay.

Chairman Gary: Uh, Rich?

Member Bittone: I have a question for Mr. Mandry. Uh, you confused me a little bit. You referenced, uh, Precast Manufacturing as being in the ROM Zone?

Attorney Mandry: That's just my understanding. I'm sorry if I was incorrect about that.

Attorney Bryce: I don't think you were.

Member Bittone: That end of Strykers Road is actually our Townships Industrial Zone and that use is permitted.

Attorney Mandry: I'm sorry. I didn't mean to

Member Bittone: (Inaudible – coughing), I was confused

Chairman Gary: (Inaudible) Rich, good point.

Attorney Mandry: I agree.

Member Bittone: Thank you.

Chairman Gary: Uh, is there, uh, before we hear from Mr. Ritter is there any, anyone, uh, from the public who'd like to, uh, has, has any questions for Mr. Snyder? Yes sir.

Mr. Sohn: I do have a question.

Attorney Mandry: I just have one more, if I may follow up.

Chairman Gary: Uh, sure.

Attorney Mandry: I'm, I'm sorry. Mr., Mr. Snyder, are you, are you also aware that in this area, which is said was to the south of the project, that there are also individuals there that have offices and store equipment that they use on site? And those areas are (inaudible – noise) out by the owner of this property? And, and for, for the record, it's, uh, if I'm looking at this photograph, it's to the right of the designation, 210 Belview Avenue, where there are same or similar activities of that which my client proposes an office, where they also store, um, and use equipment off site.

Planner Snyder: I have no idea

Attorney Mandry: (Inaudible).

Planner Snyder: I have no idea

Attorney Mandry: Hmm.

Planner Snyder: whether or not those uses were permitted under the current zone or how they were permitted and so I don't count them as being necessary to (inaudible) my opinion.

Attorney Mandry: Well, don't you think that would be important?

Planner Snyder: No, I do not.

Attorney Mandy: Don't you want, don't you want continuity in the ROM Zone?

Planner Snyder: No, I want clarity and I want precision, but continuity implies that there's really no need to interpret it, you simply look around and see what else is there and say, "Well, that's fine".

Attorney Mandry: But you didn't do that.

Planner Snyder: That doesn't work.

Attorney Mandry: You didn't look to see whether or not that area

Planner Snyder: Because I don't think that (inaudible – speaking over each other).

Attorney Mandry: had the same or similar uses with offices with contractor's that had equipment. You didn't do that, did you sir?

Planner Snyder: Because it's not appropriate.

Attorney Mandry: And why isn't it appropriate?

Planner Snyder: Because it has no bearing on my opinion as to how this ordinance should be interpreted in this case; based on this property; based on the site plan that's been submitted.

Attorney Bryce: That, the, the site plan is not submitted before this Board.

Planner Snyder: Well,

Attorney Bryce: It's a legal question as to whether or not the proposed business use is permitted within this zone district and is encompassed

Planner Snyder: Understood.

Chairman Gary: I do have a few follow up questions. Sir, do you have a question for this witness? Would you mind coming forward?

Attorney Bryce: Is this a comment or a question?

Mr. Sohn: Well it's in reference to the property he's referring to the right. That's me.

Attorney Bryce: Okay.

Mr. Sohn: And I can give the answer to that problem.

Attorney Bryce: Not right now. Right now we are doing questions.

Mr. Sohn: Okay.

Attorney Bryce: Thank you. All right, sir, there was some discussion earlier and I know Mr. Peck brought up, the contractor storage yard.

Planner Snyder: Yes.

Attorney Bryce: That's not part of our particular Board.

Planner Snyder: That's correct.

Attorney Bryce: When you were talking about the prior, forgive me, I forget the town,

Planner Snyder: Liberty.

Attorney Bryce: Liberty, do they have the exact same zoning ordinance that we have?

Planner Snyder: No.

Attorney Bryce: Okay, does, do they have an ROM Zone District like we have?

Planner Snyder: They have what's known as the B1 Business Zones, not the ROM Zones.

Attorney Bryce: Okay. And the B1 Business Zone, I assume, is substantially different from what is permitted or defined as permitted for accessory, defined as accessory within the Lopatcong Zoning?

Planner Snyder: It has fewer businesses that are permitted, than does Lopatcong's ordinance, as an office building.

Attorney Bryce: Okay. So they're different, correct?

Planner Snyder: Yes.

Attorney Bryce: Okay. Now I, just following up with, um, you're understanding of, of the outdoor storage yard. You would agree with me that in the ROM Zone District, which is §75, a permitted accessory use is outdoor bulk storage?

Planner Snyder: Yes I would.

Attorney Bryce: Are you familiar with the definition of the outdoor bulk storage?

Planner Snyder: I am.

Attorney Bryce: Okay. Do you agree that the storage of construction equipment would meet the definition of Lopatcong of outdoor bulk storage?

Planner Snyder: Yes.

Attorney Bryce: I have no further questions. Thanks.

Chairman Gary: Okay, anyone else?

Planner Ritter: Um, you can yes.

Attorney Bryce: You know what, Mr. Ritter, I'm just going to swear you in for the (inaudible) of this. You don't have to (inaudible – several speaking). I wasn't here for the first meeting of the year to swear him in, so. Please raise your right hand. Do you swear and affirm that the testimony that you're about to give the Board is the truth, the whole truth and nothing but the truth?

Planner Ritter: I do.

Attorney Bryce: Thank you.

Planner Ritter. Uh, yes, uh, the, the thought that went into making the determination that, at least in my opinion, that this was a permitted use. Uh, went through several, uh, letters. I, I agree with the, uh, the objector in this case, or the person seeking your opinion, that the building that's being proposed to be put on the site is 7200 sq. ft., and that 2400 sq. ft. or about 33.3% of it is the office portion. The remainder of the building is intended to be used to store his various vehicles. So, I don't think there is any dispute there on that. Uh, the thing that I think, though, that weighs on this is first of all, there was an imposition of, of, that was being proposed here is a very intense use in the ROM District; outdoor storage, contractor yards. Just to put it into some perspective, in an ROM Zone, you can build a warehouse. You can have a distribution center for trucking. You can have industrial manufacturing types of activities; manufacturing types of activities, manufacturing of light machines, assembly of electronic products, printing and publishing. And, yes, one of the things that is also allowed, is offices for business, executive, professional and administrative purposes. The thought that was had in relation to Mr. Samson's septic application, is that yes, he's proposing, essentially to run an office for business or administrative purposes, whatever you want to look at it. But that's, that's primarily the use of the site. That is, he's going to have that as his use, his office and business. The code then allows certain accessory uses as permitted uses. I'm sorry, as permitted accessory uses in conjunction with a business office. Uh, basically §243:74b1 allows as an accessory use, private garage space for the storage of business vehicles in conjunction with a permitted business use. So, clearly, you can have a garage. You can clearly park your, whatever your business vehicles are. Whether they be a dump truck or a van or whatever, you can have a garage as an accessory use. Also, in the District, you can have outdoor bulk storage as an accessory use. So, even, I guess you could look at it that even if you had nothing but an office on the site, you could have associated with that, outdoor bulk storage in the ROM Zone. And the outdoor bulk storage, uh, in the code, uh, goes on as the stockpiling or warehousing of vehicles, merchandise, materials and machinery outside of the close confines of a building, including but not limited to sand, gravel, soil, asphalt, lumber, pipes, plumbing supplies, medical, I'm sorry, metal, concrete, insulation, construction equipment, construction vehicles, construction materials, storage trailers and containers. So, essentially, uh, it was my opinion on looking at this, that the Samton, Samson Septic business fit within these categories. That is to say that the office use was permitted, the

Planner Ritter (Con't): garage use was accessory to, uh, the business, which is also permitted in the code. And the fact that he does still have some outdoor storage that is also accessory to his type of business. And really, that's how we came to, or I came to the conclusion that this was a permitted use in the ROM District. Uh, and clearly, outdoor storage has been recognized as, in the ROM District, at least since I've been involved in the town, outdoor storage has always been one of the accepted principals of the district. We've allowed outdoor storage. Uh, well, Precast is probably the best example. All of the, uh, pipe, uh, boxes, concrete material that he has stored over that whole site in the ROM District has been recognized as, as acceptable, uh, use. And that's how we came to the conclusion that this was a permitted use in the district and that they should proceed in front of the Planning Board to have their site plan reviewed.

(Inaudible – several speaking at once)

Chairman Gary: Thank you.

Attorney Bryce: I have another question of, of the witness. (Inaudible).

Chairman Gary: Can I ask first if anybody has any questions for Mr. Ritter?

Attorney Bryce: Oh yeah, that's very good.

Chairman Gary: Anyone have any questions for Mr. Ritter?

Member Rutledge: What's the route going to be from the outside to that property? Down Strykers Road? (Inaudible).

Member Bittone: Down Strykers Road.

Planner Ritter: Well, yes. I mean, well, no, (inaudible – several speaking at once). Well, to be quite frankly, I'd have to look at the maps to tell you what the most logical way would be to get there. It would really depend where his business is and where he's headed.

Chairman Gary: That's more of a question for Mr. Samson.

Planner Ritter: Than, than, than us. I will point out though, that, uh, we do have the remainder of the ROM District there that is fully developed and exists today. So, I mean it is, the ROM District is there regardless of how this is interpreted. The district itself exists.

Chairman Gary: Well, let's, let's (inaudible). I just have a quick question. You, you mentioned manufacturing

Planner Ritter: Yes.

Chairman Gary: that that would be (inaudible), correct?

Planner Ritter: That's correct.

Chairman Gary: So, if, if there were manufacturing there, would, would that also mean that there would be, uh, trucks, pickup, delivery, trucks coming and going?

Planner Ritter: Clearly.

Chairman Gary: Okay. Just, just a thought, that's all. Anyone have any questions for, uh, Mr. Ritter? Anyone? Please come forward. Yes.

Mr. Kowalchuk: Uh, excuse me.

Chairman Gary: State your name.

Member of Public: Yeah. Bill Kowalchuk, uh, 1286 Strykers Road. Uh, Mr. Ritter you, you were just comparing the, uh, Precast Concrete that's located in the Industrial Zone, that Mr. Bittone just mentioned on the south end of, uh, 57. That's zoned Industrial over there?

Planner Ritter: It is, it's the same, it's the same (inaudible – speaking over each other).

Mr. Kowalchuk: You're comparing that with an ROM, uh, Zone, zoning?

Planner Ritter: It's the same district. The same activities that take place at Precast, could take place here.

Mr. Kowalchuk: Well, the Industrial Zone, I know it's, it's, uh, Precast Concrete is one of the, uh, allowable uses. Uh, the asphalt plant is one of the allowable uses.

Planner Ritter: It is a conditional use. To be, uh, completely (inaudible), it's not a permitted use, it's a conditional use. There are conditions, but yes, that is permitted in the ROM Zone.

Mr. Kowalchuk: Okay. All right. Okay.

Engineer Wisniewski: Just, just to interject one thing. Just looking at the zoning map, uh, the ROM Zone is, uh, is within that, that area where Precast is; where Barry Plastics is. So it's not necessary, it's not named an Industrial Zone, it's the ROM Zone. So it's the same Zone District.

Chairman Gary: But it looked like, so, so, so we're all clear, it's ROM, but it's not the same as the, uh, uh, Industrial, I mean, what is on Strykers Road.

Engineer Wisniewski: Correct.

Planner Ritter: It, no, it, it's the same zoning district, it's just in a different location in town.

Attorney Peck: Attached.

Planner Ritter: It's not attached.

Attorney Peck: I just want to make sure that, kind of refocus. So the question here is whether, you know, you're getting kind of into site planning issues and, and whether, you know, as if they actually had

Attorney Peck (Cont'): the variance application. Uh, before the question here is whether the Samson Septic use is primarily an office use. Or is it more a contracting type use. Which would then, you know, basically I'm just, I'm asking you guys to give yourselves more work, uh, to say they have to come here and, and again get a variance where they have to put on the proofs and, and you can impose conditions.

Attorney Bryce: Mr. Peck, I have a question for you.

Attorney Peck: Yes sir.

Attorney Bryce: Let's say that Samson Septic came forward and they had a, a separate office building that was 2300 sq. ft. in size, and with their site plan they put a wall up where some 3' separation between their business office and a pole barn and they also had outdoor storage. Would it then be a permitted use within the Zone District?

Attorney Peck: Well, we'd have to say, I mean if this is something like its Toll Brothers National Headquarters and occasionally, you know, and it's again, primarily an office use; you'd have people doing office functions within the building and if they happen to have some, you know, construction equipment come by, uh, you know, yeah, then I could see. Because in that case, the property's main driver, it's main use would be the office type use. With the hypothetical you posed, I can't answer that cause I don't know the level of activity. But clearly the level of activity that would be happening here, the office use is one secretary, taking phone calls and, and handling the mail and, and paying the bills. The rest of the property is going to be used to stage trucks, you know, and, and when it's septic time they'll be taking care of the septic. When its winter time, they're going to be, you know, snow plowing. It's going to be, the function of the property is going to be, you know, truck and contractor based. It's not office based.

Chairman Gary: Anyone else?

Member Rutledge: I still didn't get an answer, I think, to my question.

Chairman Gary: Well, okay, I, I guess we can ask Mr. Samson then if, uh, if he could answer that question.

Member Rutledge: What, what, what road are you going to use to get to the property?

Mr. Samson: There are, there are two

Chairman Gary: Would you mind coming up to the microphone, please?

Mr. Samson: There, there are two truck routes right there. The one that goes behind, um, it goes, it goes down Strykers Road. There's actually a, a trucking outfit right there. That would be one of the routes. Going back up Belview, towards Belvidere Road, has a restriction, uh, a four ton restriction. Also, going up Strykers towards the school had a restriction. But going from Belview to 519, I believe is not restricted and there's no restriction going behind the Warren County Fair Grounds. Um,

Chairman Gary: That's the one you mentioned first?

Mr. Samson: Yeah. Past the other contractor where the old, um, there used to be a restaurant there, I think, but it's a,

Chairman Gary: Yeah, there's a trucking outfit there.

Mr. Samson: there's a trucking outfit there. Yeah.

Member Rutledge: To get to, to get to 519, you got to cross the bridge there that, uh, from my observation, I would suggest it's just not heavy enough to carry.

Mr. Samson: There's no, there's no, either way that you would go, there would be a bridge on that truck route and there's no restriction there.

Member Rutledge: The bridge over, uh,

Mr. Samson: There's a small bridge right by Forrest's place. There's another bridge

Member Rutledge: What's the tonnage on that bridge?

Member Bittone: There's no rating on that bridge.

Mr. Samson: There is no rating. There's no restriction.

Chairman Gary: (inaudible). Thank you.

Attorney Bryce: Open it up for

Chairman Gary: Yeah. Uh, anyone, any comments, any questions? Yes sir.

Attorney Bryce: Sir, are you going to be testifying tonight?

Mr. Sohn: I'm going to state something, so I'm going to say something.

Attorney Bryce: Just raise your right hand to be safe.

Mr. Sohn: Okay.

Attorney Bryce: Do you swear and affirm that the testimony you are about to give this Board is the truth, the whole truth and nothing but the truth?

Mr. Sohn: I do.

Attorney Bryce: Good. Please state your name for the record.

Mr. Sohn: I'm Forrest Sohn, S-o-h-n.

Attorney Bryce: Thank you.



Mr. Sohn: Now, I like Bob. Bob's a great guy, okay? We have had a couple of conversations, rather it be at Arby's or Home Depot, or wherever. But at first, when he wanted to buy the property, he said, "I'm going to sneak it in as tree farm. My attorney told me to do that".

Mr. Samson: Not true.

Mr. Sohn: Yes, I have a witness that says it. I have a witness.

Attorney Mandry: You know, what's the relevance as to

Mr. Sohn: Wait a second. The relevance is

Attorney Mandry: You need to control this.

Mr. Sohn: the relevance to this is that you really don't know what the truth is. He told Mr. Woolf, here, he had two trucks. He told me he has three. Now, what is the truth?

Attorney Mandry: It's irrelevant.

Mr. Sohn: But, but my point is, if that when it all comes down to it, what is the truth? He also told me he was going to use it as a mechanic shop.

Chairman Gary: Yeah, I, I, I don't know that we're here to, um, (inaudible – several speaking at once).

Attorney Mandry: (Inaudible) Mr. Samson's.

Mr. Sohn: They are uses. These are all uses. Because the use as a mechanic shop and to bring other people in,

Chairman Gary: I, I know, but what's your, what's your, uh, point? Questioning his character, it should not be the test

Mr. Sohn: It should go before the Board and to see what the use is. Because that's to me, would be a different use.

Chairman Gary: I know, sir

Mr. Sohn: (Inaudible) He's bringing my property up and saying, "What is those uses next door to it"? Now there are offices and there is, uh, manufacturing there.

Chairman Gary: Hm.

Mr. Sohn: So, I do have that. Okay? And, I do have some equipment there; there's no question about that. And, that's what is used to clean my property off and to, um, do other things. But that's been a pre-existing use forever. I have six residencies on there. So six residents does not comply with an ROM. And it's been that long ago that it's there. Okay? The thing I'm trying to say is this, you know, I like him. He's a nice guy. I just want him to do what he's supposed to do. If he says it's going to be an

Mr. Sohn (Con't): office, it should be an office. If he's gonna take and do anything other than that, I say that you guys should hear that.

Chairman Gary: Okay. All right.

Mr. Sohn: Okay.

Chairman Gary: Thank you.

Mr. Sohn: Thank you.

Attorney Mandry: Mr. Chairman, could I just rehabilitate Bob on that? I mean, you know, you heard all this (inaudible)

Chairman Gary: Um, I, I, I, I think

Attorney Mandry: (Inaudible).

Chairman Gary: Well, I, I don't really

Member Bittone: It's not necessary.

Attorney Mandry: (Inaudible).

Chairman Gary: I, I, I don't really think it's necessary. I think we understood what, um, the gentleman had to say.

Attorney Mandry: For the record, Bob disagrees,

Chairman Gary: Yeah,

Attorney Mandry: and, and there's nothing that's truthful and fair for him to impugn Bob.

Chairman Gary: Yeah, okay. For the record. Uh, Mr. Kowalchuk, you had another

Mr. Kowalchuk: Just one other, um,

Attorney Bryce: Just raise your right hand, cause you're going to be commenting now, right?

Mr. Kowalchuk: Uh,

Chairman Gary: Are you asking or are you going to make a statement?

Mr. Kowalchuk: No, I, I just, I just want to bring something up to the Board's attention.

Attorney Bryce: I need to swear you in, just so that

Mr. Kowalchuk: Okay.

Attorney Bryce: we're covered. Do you swear and affirm that the testimony you are about to give the Board is the truth, the whole truth and nothing but the truth?

Mr. Kowalchuk: Uh, yes.

Attorney Bryce: Thank you. We already have your name.

Mr. Kowalchuk: Okay. Uh, this really, well this is, I don't know if past precedent means anything or, or whatever, but, this same piece of property back in 2007 came before this Board, and this Board granted a variance, uh, for, uh, to build two residential homes on that. Uh, that was challenged and it went through the courts, uh, courts, or, uh, excuse me, uh, Judge Coyle, uh, sided with the, uh, Township, uh, and he, uh, I mean, uh, Miss Coleman, do you have this resolution in the file as,

Secretary Coleman: No.

Mr. Kowalchuk: uh,

Attorney Peck: I actually, I can say I did previously provide a copy of that resolution.

Attorney Bryce: Yeah, is this regarding the, uh, subdivision?

Attorney Peck: Yes.

Mr. Kowalchuk: Yes.

Attorney Bryce: And the subdivision, just for clarification, was never protected.

Mr. Kowalchuk: That's correct. That's correct. But what I'm getting at is, it went all the way through the courts. The court agreed with the Zoning Board, uh, that the best use for this property was a residential use. Uh, now, 2012 when the Township redid the Master Plan, uh, you know, you can't change whatever happened there, but this, this property should have been changed to a residential zoning instead of, kept as ROM. That's all I have. If anybody wants to look at the copy, I, I have a copy here.

Chairman Gary: All right. Thank you.

Attorney Peck: If I may, since it was, since it was brought up, that resolution, the Zoning Board did adopt Resolution 07-02, on July 11, 2007. It did effect this property. They did make some Findings of Fact and, you know, since the door's been open; Findings of Fact #5

Attorney Bryce: No, wait, whoa, whoa, the was door was not opened by, by the applicant and did

Attorney Peck: No by the applicant, but I'm saying, you know

Attorney Bryce: And Mr. Peck, right now, in all fairness, the zoning ordinances were designing ordinances.

Attorney Peck: Okay.

Attorney Bryce: We don't need to go tractor and person, the history and, and things that are

Attorney Peck: Under, understood. Okay. I wasn't going to bring it up and he brought it up, so I thought maybe I'll (inaudible), in finding that it undersized for the yard work.

Chairman Gary: Any other questions or comments?

Member Woolf: One quick, did our zoning officer say this was a (inaudible) use?

Attorney Bryce: It never went to the zoning officer as far as I know. There was a direct application made to the Planning Board.

Member Woolf: Should go to the zoning officer for approval first, shouldn't it?

Attorney Bryce: Uh, no, it doesn't necessarily have to under the Municipal Land Use Law.

Member Woolf: Okay.

Attorney Bryce: And, and, and rightly so. Even regardless of that, if there was any type of disagreement with an applicant or someone else regarding the zoning officer's determination, you'd get it anyway.

Member Woolf: Well, yeah, but I'm say, yeah, if he said approved or disapproved then we would have something to look at.

Chairman Gary: All right.

Attorney Mandry: Can I respond to that briefly? You've got your planner. An educated man that made that decision, with all due respect. That's our decision. We concur with Mr. Ritter:

Chairman Gary: Can you some this up for us Mr. Bryce? What were, what were exactly going to be talking, I mean what we're going to vote on then?

Attorney Bryce: Yes. From the testimony that you heard and the positions of the factual, uh, uh, I think, basis for this if fairly undisputed. There's an application to establish any, a septic and excavation business at the location. Uh, that business will have an office. It will have outdoor storage. It will also have a, a, a garage area to store vehicles in it. The question for you guys is whether or not that is a principal use for a business, um, executive, professional and an administrative office. Um, and, whether the other things that occurring on the site are appropriately incidental and customary to them. Um, that is the question that's before the Board. The question is based on that fact and what was being proposed as, that in fact, the permitted use in the ROM District. Just to go over that language again, if you'd like that, I can do that. I've done it and George has done it, um, but I will just do it for point of clarification again. In relevant part, §243:75 reads, "The following regulations shall apply in the ROM Research Office and Manufacturing Zone".

(A) Principal permitted uses shall be as follows: (More directing this to Sub 4.)

(4) Offices for business, executive, professional and administrative purposes.

That is the question; the primary question that you have. And then, the zoning ordinance then goes into §B of §75, and it says, "Permitted accessory uses shall be: all accessory uses permitted in §243:74B". When you look in §243:74B, "An accessory use for the HB Zone, includes private garage space for storage of business vehicles used in conjunction with a permitted business use". And when, it goes on, it says, "No. 2: Outdoor Bulk Storage subject to the provisions of §243:64.2". When you revert back to that question, outdoor bulk storage, includes the storage of stockpiling and warehousing of vehicles, merchandise, materials and machinery, outside the enclosed confines of the building including but not limited to sand, gravel, soil, asphalt, lumber, pipes, plumbing supplies, metal, concrete, insulation,

Attorney Bryce (Con't): construction equipment, construction vehicles, construction materials, storage trailers and containers". In zone districts where outdoor bulk storage is prohibited as an accessory use, the following, uh, requirements apply, which we did not go through here. So, the question is, from your legal interpretation as what's being proposed as a septic and excavating business here, meeting the definitional standards of the ROM Zone District with the accessory use as, intended, intended as proposed. Um, that's the, the question.

Chairman Gary: Any thoughts? Can we have a, a discussion without anybody

Attorney Bryce: No, this is really, you know, this is an open discussion.

Chairman Gary: (Inaudible).

Attorney Bryce: I'm not familiar with any particular exception to do this. It's not really; there's no penalty involved that would bring it out. It's an open discussion. It's an open discussion. You have nothing to fear.

Chairman Gary: (Inaudible) So, what do you think? Yeah, we can talk openly with the public.

Member Bittone: I can see; I just, I can appreciate the argument on both sides. Uh,

Chairman Gary: So, I, I, I wonder how, uh, my, my thoughts are as far as it being, um, how it may impact the residential area.

Public: Yes, thank you.

Chairman Gary: Well, I didn't finish. Okay. But at the same time it seems to fall, uh, um, within the confine, if you will, of the ROM. Uh, that are, that are in the, uh, um, as part of the ordinance, so, or the zoning, uh, plans. So, it's, it's a tough one.

Attorney Bryce: I can, I can add this to the consideration that you brought up Chairman. It's not a question about planning and it's not a question about policy. It's not, the question before you is not whether it's right; whether it's good; whether it ought to be. That happens through Master Planner Examination Reports and that happens at the Governing Body level, when they go to move legislation for Zoning Ordinances. Right now, it's not a question whether or not it's good. This is clearly an ROM Zone District property. It's not a question as to whether it's a good thing; whether this property is in the ROM Zone District. The question is whether what's proposed on this property is permitted within the ROM Zone District. So, so if a plumber was coming in with a similar thing, would they fall within the same confines of the ROM Zone District? If some other type of contractor was coming in that had a small office and a garage and outdoor storage, would they fall within the ROM Zone District? That is the question. It, it's not, unfortunately for this Board, it is not; it is a legal interpretation of the ordinance. Not whether or not the ordinance is good; not whether or not the, the zoning of the tract is good. It is just what the ordinance means.

Chairman Gary: All right. So, if we, uh, if we, if we resolve that it is, uh, an acceptable use, then it just goes back to the Planning Board? Is that right?

Attorney Bryce: This is correct.

Chairman Gary: And if we said that it's not, then it has to come before us

Attorney Bryce: That is correct.

Chairman Gary: And what are the ramifications of each? Just

Attorney Bryce: Its different Board; different jurisdiction; different, uh, levels of proof. But that really shouldn't inform your decision. To be honest with you, this is an interpretation of this zoning ordinance. Where it ultimately goes doesn't really matter. It's whether or not this, this use is permitted within the zone.

Chairman Gary: Gus, have any thoughts? Rich? I'll just go right

Member Rutledge: How, how it affects the neighborhood, doesn't matter?

Attorney Bryce: For the purposes of the, this determination, no it doesn't.

Chairman Gary: Gary, have anything that, you want, anything to add?

Member Woolf: No. I don't want to drag it out like the asphalt plant.

Chairman Gary: Yeah. Uh, so then I guess we; I guess we have to make a decision.

Attorney Bryce: You do, yeah. The decision just has to be by a majority of those present.

Chairman Gary: All right.

Attorney Bryce: You have a question

Chairman Gary: Oh.

Mrs. Abrams: I, I, sorry, but I do not have a question, but I would ask you to please think of what I'm going to say because it will affect us tremendously. It will be very bad for us and please think about us. I know you said, "No, but please.

Chairman Gary: When, when you; let me ask you this, when you said think about us, what, what are, are you talking about the residents in the area?

Mrs. Abrams: Yes.

Chairman Gary: Okay.

Mrs. Abrams: All of us will be effected.

Chairman Gary: And

Mrs. Abrams: I'm sorry, the lawyer said that he's not our neighbor. Yes he is. He (inaudible). His house is at the end of the cul-de-sac

Chairman Gary: Okay, yeah, that's kind of immaterial, but, um, I, I, you know, I don't know if I,

Attorney Bryce: You can ask us

Chairman Gary: but how, how would this affect, I, I really would like to know how it would affect you if

Mrs. Abrams: (Inaudible – speaking over each other), broke down, that's one; two, the noise. We pay a lot of taxes to have that view (inaudible). We don't deserve that. I'm sorry.

Chairman Gary: Okay.

Secretary Coleman: Can I have your name?

Member of Public: Karina Abrams. And it's going to be heard that (Inaudible).

Chairman Gary: Okay. All right.

Mrs. Abrams: If you have anything to do, you have to decide, but please think of us in your decision.

Chairman Gary: Okay. Thank you, thank you

Mrs. Abrams: (Inaudible).

Chairman Gary: All right. Thank you. Thank you.

Attorney Bryce: Let the Board deliberate. We are closed at this point.

Attorney Mandry: You're closed? But you opened it up to her. It's all right.

Chairman Gary: I know.

Attorney Mandry: The zoning is, what the zoning is. It should have been objected to when the Town Council made their decision. That horse is out of the barn.

Chairman Gary: All right. So

(Inaudible) people in audience speaking.

Chairman Gary: Is there, okay. All right. Uh, so is there a motion to, excuse me, uh, okay, please. Uh, is there a motion to, um, accept this or to accept this as an accepted use, is that right?

Attorney Bryce: Yeah, I think that if, the way that the question can be posed,

Chairman Gary: Yeah. Please.

Attorney Bryce: is that whether the excavation and septic business use, that is being proposed, with the outdoor storage of equipment and the, uh, private garage with a building with proportional square footage as described, is the permitted use with the zone. The question is, it is a permitted use or it is not. So, that would, your motion would be that is a permitted use.

Chairman Gary: Okay. Oh, just, just one quick question. Uh, the building itself, the building in question, uh, a Morton Building? Or I mean what

Mr. Samson: Correct.

Chairman Gary: Okay. All right. So, um, is there a motion, uh, that this would be a permitted use?

**Motion by:** Member Unangst

**Seconded by:** No second

Chairman Gary: Okay, so, that being said, then it sounds to me like we're going to, uh, say that this is not permitted and then this would have to come back before us. Correct?

Attorney Bryce: That is ultimately so, yes.

Chairman Gary: Um, if that's the case, then, uh, is there, is there a motion to bring this back before us?

Attorney Bryce: Well, is it a; the motion would be, uh, is this not a permitted use within the zone district.

Chairman Gary: Okay. So, so is there a motion that this is not a permitted use within the zone, uh, within this district, within the ROM?

**Motion by:** Member Rutledge

**Seconded by:** No second

Chairman Gary: Well, I'd say this is a first for me so, I, I, I'm at a loss. I, I apologize to everybody. I'm, I'm at a loss. How do we resolve this Jim?

Attorney Bryce: Well, the Board does have to make the decision. I'd have to actually look in my book, cause it's never happened to me.

Attorney Peck: I'll send you Robert's Rules so you can

Attorney Bryce: So, um, well we have, we have two motions made that weren't seconded that never actually made it in front of the Board for actions. So the Board does have to take an action. Can we take a quick, uh, adjournment so I can take a quick look?

Chairman Gary: Sure.

Attorney Bryce: Just to a motion.

Chairman Gary: Yeah, um, motion to adjourn, uh, for our attorney, yeah, our attorney can do a little research.

**Motion by:** Member Bittone

**Motion by:** Chairman Gary, calling meeting back to order.

Chairman Gary: Um, we're going to try this again. Um, I would entertain a motion that we, um, deem that this is an accepted use in the ROM. Is there a motion?

**Motion by:** Member Unangst

**Seconded by:** Member Woolf

## **ROLL CALL**

**AYES:** Members Bittone, Unangst, Woolf and Chairman Gary

**NAYS:** Member Rutledge



Attorney Bryce: Motion carries.

Chairman Gary: The motion carries.

Attorney Bryce: All right. Done. Chairman, with your permission, I'll, uh, draft a letter for your signature to transmit to the Planning Board informing them of the determination so they can continue and prepare a resolution to a determination for adoption at the next meeting.

Chairman Gary: Okay.

Attorney Peck: (Inaudible) resolution?

Attorney Bryce: There will be Counsel.

Chairman Gary: Okay, may; so, just again, just so we all understand, um, this goes back to the Planning Board, correct?

Attorney Bryce: That is correct.

Chairman Gary: And, and then, uh, they have, um, you know, whatever restrictions or limitations or whatever, whatever comes of this, uh, this is not just a carte blanche for, for Mr. Samson.

Attorney Bryce: Yeah, I think that right now the use has been deemed permitted. Uh, the Planning Board has the ability to look at the site plan and make sure that the site plan makes sense. Make sure the site plan makes, uh, sense, or makes this conforming to the ordinance. Uh, we know that there are some variances that are being requested, uh, as part of that site plan and

Attorney Mandry: Just bulk variances; just bulk; just bulk.

Attorney Bryce: Bulk variances and, uh, you know, the Planning Board certainly has the power to, uh, mitigate any type of concerns that are associated with the variances and mitigate, the site plan issues that are used by any type of project. So.

Chairman Gary: All right. Thank you.

Attorney Mandry: Thank you Mr. Chairman, gentlemen.

Attorney Bryce: All right. Done. Chairman, with your permission, I'll, uh, draft a letter for your signature to transmit to the Planning Board informing them of the determination so they can continue and prepare a resolution to a determination for adoption at the next meeting.

Chairman Gary: Okay.

Attorney Peck: (Inaudible) resolution?

Attorney Bryce: There will be Counsel.

Chairman Gary: Okay, may, so, just again, just so we all understand, um, this goes back to the Planning Board, correct?

Attorney Bryce: That is correct.

Chairman Gary: And, and then, uh, they have, um, you know, whatever restrictions or limitations or whatever, whatever comes of this, uh, this is not just a carte blanche for, for Mr. Samson.

Attorney Bryce: Yeah, I think that right now the use has been deemed permitted. Uh, the Planning Board has the ability to look at the site plan and make sure that the site plan makes sense. Make sure the (inaudible) makes, uh, sense, or makes this conforming to the ordinance. Uh, we know that there are some variances that are being requested, uh, as part of that site plan and

Attorney Mandry: Just bulk variances, just bulk, just bulk.

Attorney Bryce: Bulk variances and, uh, you know, the Planning Board certainly has the power to, uh, mitigate any type of concerns that are associated with the variances and the, mitigate, the site plan issues that are used by any type of project. So.

Chairman Gary: All right. Thank you.

Attorney Mandry: Thank you Mr. Chairman, gentlemen.

Chairman Gary: All right. Moving on, the next order

- Edward Sambucci – Block 18, Lot 3 – 401 Aurora Street – The applicant original was seeking site plan and use variance approval to permit a three family residential structure in the R-75 Zone. As a consequence of plan reviews with the Board professionals, the applicant has decided to proceed seeking two residential units instead. A letter from the applicant's Attorney, Mark R. Peck, Esq., would like the letter he sent, dated September 9, 2019, to be accepted as the applicant's amendment of the application. The applicant now seeks site plan and use variance approval to use the existing building on the property as a two family residence.

Chairman Gary: Uh, Mr. Peck.

Attorney Peck: Good evening again. For the record; Mark Peck, Florio, Perrucci, Steinhardt and Cappelli; on behalf of the applicant Edward Sambucci. Uh, before we get going, we have, uh, published and served all the requisite noted. So, we did provide affidavits, um, to the Boards. So, jurisdiction is properly here with this Board.

Attorney Bryce: Uh, Mr. Chairman, I did review the Affidavit of Proof of Service notice and the notice itself and it legally sufficient.

Chairman Gary: Thank you.

Attorney Peck: Very good. This is for property located at 401 Aurora Street. It's located at the intersection, uh, of Aurora and North Fourth Street. It's also known as Lot 3 and Block 18. It's currently known by Lynx Asset Services. The acquired, uh, title to the property in March of 2013, uh, in a foreclosure. Uh, its property, it's, uh, .27 of an acre. It's a corner lot in the R75 Zone. If, it's, uh, I

Attorney Peck (Con't): understand it's currently vacant. Uh, it's unoccupied. But it's most recent use was as a three family residence. Um, and is noted, we did originally apply for a, a variance to continue that use, uh, to permit the three family use to continue. But, you know, we had a lot of back and forth with, uh, with Mr. Ritter and, and Mr. Sterbenz and, and his team, and, uh, we decided to apply for a two family use instead. Primarily cause parking was tight. We would have had to get into site issues. Right now, we're not proposing any, uh, exterior changes to the building at all. You know, maybe a paint job, uh, down the road. But that said there is an encroachment of the garage; it goes 7', approximately, over the adjacent property line. So, if, uh, if we can't reach an accommodation with the neighbor, uh, about the garage, we will, we do have plans to pull the garage back. You know, basically we reconstruct it so it would be within the property; a foot off the property line. Uh, there is currently sufficient parking, uh, for a, a two family use. There's, uh, six spaces, maybe five, cause there's an internal garage space. Two spaces in the driveway next to the garage, plus there's another parking area, uh, that can accommodate three cars. Uh, so, even if you rule out the interior garage space, you have space for five cars. Um, we do have Mr. Sambucci here as the applicant to give a little bit of testimony. And we also have Mr. Snyder, uh, who you just heard from. Uh, briefly, though, there, there is an interesting, uh, note here and I'll get into it a little more. I have (inaudible) copies of these. Um, although there was, apparently, never an approval given by the Township to use this residence as multi-family home, uh, the Township did, uh, have some, uh, knowledge that it was used as a, as a two family home. We did; Mr. Sambucci, did an OPRA Request, uh, and got property records and it does show that as far back as January of 1990, it shows that there is a conversion use; uh, two living rooms, two kitchens, two bedrooms, two bathrooms. There is a 1998 appraisal that shows it as a two family home. That was an appraisal done for mortgage re-fi, but it was in the Township's records; we got through the OPRA Request. And that says that it's a two family home as a "Grandfathered Use". Uh, property tax records from April of 2006, show that it's a "Multi-Family 3". Um, having again, the two living rooms, two kitchens, two bedrooms, two bathrooms, with the addition of an ex, one more living room, one more kitchen, two more bedrooms, two more bathrooms and a rec room. And then again in 2013, uh, the property tax records from the Township show that it's three units, Multi-Family 3. So we're not proposing something that hasn't been happening on the property, we're just really looking, uh, to get a blessing for that which, uh, has been happening; and at a less intensive use, cause we're only looking for a two, uh, units instead of three. I know we're eager to, uh, move along with the proceeding, so I'd like to call Mr. Sambucci.

Attorney Bryce: I have a question for you.

Attorney Peck: Yeah, yeah.

Attorney Bryce: I might have missed it. Mr. Sambucci, what's his relationship with Lynx? Is he a contract/purchaser?

Attorney Peck: He, he works, uh, for Lynx and he is a contract/purchaser. But, I was gonna go through that.

Attorney Bryce: And, and another thing counselor, just, (inaudible) on what you were just talking about and the history of this. And, it is, just to be clear; you're looking for a "D1" Variance.

Attorney Peck: That is correct.

Attorney Bryce: Okay.

Attorney Peck: We couldn't, we, determining when, you know, the applicable zoning ordinance was adopted and when; easier to just go for a "D1"

Attorney Bryce: Okay.

Attorney Peck: as opposed to trying to prove that it was a pre-existing, non-conforming use.

Attorney Bryce: So, there's no claim that it was a pre-existing, non-conforming?

Attorney Peck: Well, there is, but I'll for the record, that's not the relief we're seeking.

Attorney Bryce: Okay.

Attorney Peck: So, anyway, um, do you want to swear Mr.

Attorney Bryce: Absolutely. Please raise your right hand. Do you swear and affirm that the testimony you're about to give the Board is the truth, the whole truth and nothing but the truth?

Mr. Sambucci: I do.

Attorney Bryce: Thank you. Mr. Sambucci, just state your name for the record.

Mr. Sambucci: Edward Sambucci.

Attorney Peck: Very good. And, uh, and Ed, as, as was indicated before, what is your interest in the property?

Mr. Sambucci: Um, as an investment property.

Attorney Peck: Okay. And, uh, do you have a relationship with Lynx?

Mr. Sambucci: Yes. I was a property manager for the company for ten years.

Attorney Peck: Okay. And who currently has title to the property?

Mr. Sambucci: Lynx Assets does.

Attorney Peck: Okay and you're the contract/purchaser?

Mr. Sambucci: Yes.

Attorney Peck: And, when did Lynx get the property?

Mr. Sambucci: Uh, I believe it was foreclosed on in 2013.

Attorney Peck: Okay. And, when Lynx foreclosed on the property, how was the property portrayed? What did Lynx think it was getting when they foreclosed on the property?

Mr. Sambucci: Well, at the time, it was rented to three; it was three separate units; three tenants.

Attorney Peck: And, uh, how did you ultimately find out that multi-family use was not permitted?

Mr. Sambucci: When we went for a CO inspection.

Attorney Peck: Okay. And, you were denied?

Mr. Sambucci: Yes.

Attorney Peck: Okay. On the basis of it's not permitted as a multi-family use. And, then as a consequence of that, um, did you make an OPRA request?

Mr. Sambucci: Yes.

Attorney Peck: Okay. And, before we get going, I'd like to mark this, by the way, as, uh, A-1. And, I'll date it; today is the 9<sup>th</sup>. Ed, looking at, um, looking at what I just marked as A-1, uh, did you take those photographs?

Mr. Sambucci: Yes.

Attorney Peck: And, they show the, uh, the property from four different angles?

Mr. Sambucci: Yes sir.

Attorney Peck: This is extra, A-1 being (inaudible). So, okay, so, that's, that's what we have. And, then you've got documents, uh, pursuant to an OPRA request, correct?

Mr. Sambucci: Yes.

Attorney Peck: Do you recognize, um, this document that we're handing out right now? I'm marking it as A-2.

Mr. Sambucci: Yes.

Attorney Peck: And, this shows a property, uh, tax record, uh, dated January 21, 1990. Uh, and that shows that its conversion (1) shows two living rooms, two kitchens, actually, 3 bathrooms, 3 bedrooms, a rec room and an office. Correct?

Mr. Sambucci: Yes.

Attorney Peck: And, what we're going to mark as A-3, uh, that's an appraisal from 1998. Do you recognize that?

Mr. Sambucci: Yes.

Attorney Peck: Part of the records you got from that OPRA request?

Mr. Sambucci: Uh huh.

Attorney Peck: And, you'll note, that this appraisals, uh, dated March 31, 1998, shows that it's a non-conforming, two family use in the R75 Zone, grandfathered use exists. Correct?

Mr. Sambucci: Yes sir.

Attorney Peck: And, you go that from the Township, correct?

Mr. Sambucci: Yes sir.

Attorney Peck: All right. And, then next, I'm going to mark as A-4, is a property record from May 8, 2013. And, you'll see that that shows three units.

Mr. Sambucci: Yes.

Attorney Peck: And, again, these are tax record from the Township, correct?

Mr. Sambucci: Uh huh.

Attorney Peck: And, it shows that's its classified, type and use, is multi-family three.

Mr. Sambucci: Yes.

Attorney Peck: That's on the third page of that handout. And, you, you obtained all those records (inaudible).

Mr. Sambucci: Yes sir.

Attorney Peck: I have nothing further. Thank you. I would, next, like to call, uh, unless anybody has questions here?

Chairman Gary: Any questions, uh, for Mr. Sambucci? Anyone? All right, continue,

Attorney Peck: Okay, very, very good. I would like to call up, uh, Mr. Ed. Snyder.

Attorney Bryce: Do you swear and affirm that the testimony you are about to give this Board is the truth, the whole truth, and nothing but the truth?

Planner Snyder: Yes.

Attorney Bryce: Thank you Mr. Snyder.

Attorney Peck: Uh, Mr. Snyder has previously been accepted as an expert, uh, by this Board. So, uh, let's just move forward.

Attorney Bryce: Yes.

Attorney Peck: All right. Uh, Mr. Snyder, uh, did you, have you had the opportunity to review both the R75 Zone District Regulations as well as, uh, the subject property?

Planner Snyder: Yes.

Attorney Peck: And, do you have an opinion

Planner Snyder: Yes.

Attorney Peck: as to (inaudible).

Planner Snyder: Um, to give the Board some background, uh, the R75 Zone requires a minimum lot area of 9000 square feet. Uh, the property is about 12195 square feet, which is just shy of 1.4 times the minimum area required. Um, in the event that we actually get to keep the garage, working it out with the Planner Snyder (Con't): neighbor, uh, that will increase the effective lot size, because, basically, we're encroaching on somebody else's property. Um, that said, the proposal, as you've heard, is to take what has operated as a three bedroom house; reduce the non-conformity to two bedrooms. Um, as you also are quite aware, uh, we're here for what's called a "D1 Variance", i.e. a variance for a use not permitted in this zone. The zone permits residential uses, but only single family residential uses. This is being proposed as a two family use. Uh, the criteria that we must meet, obviously out of the Bianchi Decision, are that we must demonstrate that there are special reasons that would warrant your granting this variance. That this site is particular suited to the use. That it's not inconsistent with the Master Plan. And, then of course, we have the negative criteria, that there be no substantial negative impact on the neighborhood and zone plan. So, um, it's my opinion that we have these special reasons that we can offer. I have some exhibits. These are aerial photos, um, taken from various sources. One shows the property lines and the property. In the other, are close-ups of the property and the neighborhood (inaudible).

Attorney Peck: So, this will be, uh, are those two separate exhibits?

Planner Snyder: These are three separate pictures, um,

Attorney Peck: So, A-5, 6 and 7?

Planner Snyder: of the neighborhood. Put these together so the Board could get a pretty get sense

Attorney Peck: It's (inaudible) visibly 5, 6, and 7?

Planner Snyder: of the neighborhood. Certainly you all know what the neighborhood is like. One of the things that I've been fortunate in doing in the course of my career, is being an air photo interpreter. Um, so I like aerials. Um, the first one is the overall, uh, neighbor with the tax map superimposed on it. Uh, it is that that I used to analyze lot areas in the area. Um, we are somewhat larger than the average lot, uh, in the area, but, uh, not hugely. Um, the average lot area is about .24 acres; we're at, uh, little bit larger than that, .28, uh, a couple of thousand square feet more. The reason that I mention that is because we're talking about the intensity of use here. Um, the zone says single family home; we're talking about a two family home. And, so that really is, is a function of lot area and log coverage. Second photo is a close up of the residence itself. Um, you can see the intersection of North Fourth and Aurora. Um, we are next door to a large home with a home business. We are cattycorner across the street from a commercial building, um, as well. And, so, my characterization of, of the immediate neighborhood here is it's a mixed use. The commercial building, cattycorner across the street; if you look at, um, the second photo, you may see that the driveway actually bleeds into the residential lot next door. Um, not that that's a problem, but, the mixed use concept is something that exists in this neighborhood and I would argue that, uh, our intensity is no, not significantly different from what's already there. Um, the, um, the property in question will be improved, uh, through this. We are going to clean up the parking. Uh, certainly there will be improvements to the home. And as, uh, Mr. Sambucci testified, we are probably going to clean up the outside as well with some, uh, at least a paint job and probably some landscaping. And, so, special reasons; special reasons, as you know, are the purposes of planning and zoning. It's like the (inaudible) in, uh, Section 2 of the New Jersey Municipal Land Use Law. Uh, it's my, my contention here, is that, uh, this will directly improve health, safety and welfare. We're taking (inaudible) to the fact that this has Planner Snyder (Con't): operated as a three family house for years (inaudible). And, in reducing that, we're reducing what, technically speaking on, on paper, is a negative impact and we're turning it positive. Uh, we are also adding aesthetic improvements. Um, and, we're providing housing opportunities. Every municipality in the State of New Jersey tries to provide a variety of housing options. This is a housing opportunity that we can provide. And, I think it will, uh, conduce to the benefit of the neighborhood. You talk about whether the property is particularly suited to the use; it's been operated as a three family home for years; uh, it works. There haven't been any kind of complaints and the only reason that we're here is because when my client purchased the property, he came and he asked for a CO inspection. This is not a case of somebody who was busted by the zoning officer and caught. This is simply a case of, this is what it was assumed to be; this is what the records indicated it was. Not true, it isn't. So, that's why we're here asking for your approval to continue what's been going on in reduced scope. It's not inconsistent with the Master Plan because there is nothing in the Master Plan that says two family uses should not be permitted in a single family zone; nothing whatsoever. And in fact, it's not uncommon in municipalities and this part of the world, to allow conversion of a one to a two to provide less expensive.



Planner Snyder (Con't): Not Mount Laurel, but, less expensive housing opportunities because this zone exists. Um, finally, uh, we have the negative criteria. And, we have to indicate to you that there will be no substantial negative impact in the neighborhood zone plan. I offer the fact that this has been operated successfully, without complaint, for years and years and years. That, in and of itself, is a demonstration there's no negative impact. Couple that with the fact that the improvements, that are going to be made, will actually make the property work better. So, my conclusion is that there will be no substantial negative impact to the neighborhood or the zone plan. I think it's a win. It cleans up a situation that makes it work better. And, so, we ask for your approval.

Attorney Peck: And, that would, uh, well, if you don't have any; well, you may have questions. I just, one, one thing to add, just to reiterate, you know the Township has been taxing the property as a two family for at least two decades. So, again, we're the Township (inaudible) didn't have a problem with taxing this

Member Bittone: They never do. They never do. True that.

Attorney Bryce: Open it up to

Chairman Gary: Uh, any, uh, let's ask the Board first. Okay. Anyone have any questions for Mr. Snyder? Gary? I didn't want to exclude you over there. Uh, anyone from the public have any questions for Mr. Snyder? Uh, Mr. Ritter have any

Planner Ritter: Uh, well, I have a few questions. Most of them, in your study of the neighborhood, did, is there, are there any other homes in the area that you've identified that have been converted?

Planner Snyder: Not to my knowledge.

Planner Ritter: So, so, you think it's primarily a, an existing single family neighborhood as it is.

Planner Snyder: Oh, it's, it's primarily use is a single family neighborhood, yes.

Planner Ritter: Uh, the other question is that one of the dwelling units, originally, was the one, the old, perceived as being a cellar. And, the Township code specifically doesn't allow dwelling units in the cellar. I know your clients has indicated they're going to drop one of the developed, uh, one of the units. Uh, can we assume that the unit that's going is the one that's in the cellar of the unit?

Planner Snyder: You can make that assumption.

Planner Ritter: Okay. Now, you indicated that they're going to do improvements. Uh, I think we heard at the beginning of this that there was no intention to do anything to the exterior.

Planner Snyder: Yeah. We're just going to clean it up.

Planner Ritter: Are they going to do anything about, I mean, there's patches of asphalt, uh, some of the areas that might have had parking on it. I, I, I'm just asking

Planner Snyder: Well, that's going to get, the, the driveway will be properly paved.

Planner Ritter: Well, the driveway to the garage is in pretty good shape. I'm talking about the stuff that's to the side and sort of

Attorney Peck: Yeah, I, I want to clarify; if I may, to, to interrupt, cause I'm going to be making a statement. Uh, when I made that statement, I just meant, we're not doing anything to the structure itself. Like, you know, we're not blowing out any walls. Adding to that, nor are we adding any other structures or be changing traffic patterns circulation. You know, there will be cosmetic, uh, improvements.

Planner Ritter: So, your intent would be if, if the asphalt's all falling apart in one of the parking spaces, you will re, you intend to repair that?

Planner Snyder: Absolutely.

Attorney Peck: Absolutely.

Planner Ritter: That's what I wanted to ask. (Inaudible).

Attorney Peck: Yeah, yeah, but you know, landscaping, paint, things like that.

Planner Snyder: Yes.

Planner Ritter: Um, those are basically my questions. Uh, as I say, the, uh, the observation we have when we were in the field, is that it's primarily; it is a single family neighborhood. This appears to be an anomaly in the neighborhood. How it got there; I can't tell you how it ended up with three apartments, uh, over the years. Uh, and, it is clearly used for that and there was, uh, parking areas defined and that sort of thing, originally at the house. So, it really goes now, I think, to the Board as to whether or; how, how much of that you want to grandfather, if any. And, whether you feel it's in character, in being with the character of the neighborhood.

Member Woolf: Do we have to be concerned about the encroachment?

Engineer Wisniewski: That's, that's what I was going to

Planner Ritter: Yeah, I, oh, go ahead. I, I thought that the last submission to the Board was that you were going to tear down a portion of the garage, so that we had, it was at least all on your property.

Attorney Peck: Right. And we would, we would ask that, you know, if the Board does grant the approval we seek, that as a condition of that approval, that would be an either-or. Either we reach an accommodation with the neighboring land owner and show proof to the Board, you know, that can use that, that garage even though it encroaches. And, if we can't come to an accommodation within some period of time that it would have to be chopped back.

Planner Ritter: Okay.

Engineer Wisniewski: So, would that be, so a lot line adjustment or an easement

Planner Ritter: There.

Engineer Wisniewski: for that encroachment?

Planner Snyder: It wouldn't be a lot line adjustment; it would probably be a side yard. You could classify it as a side yard variance and maybe, except for the fact that you are increasing the set back from less than zero to a foot or so. So, that really becomes the variance in question. (inaudible-several speaking at once).

Engineer Wisniewski: Well, there's a seven foot encroachment, would that become an easement area that permits the building to exist?

Planner Snyder: In the event that we're able to do it, it would be an easement on the adjacent property.

Engineer Wisniewski: Right, Okay. So, that would have to be filed;

Planner Snyder: Yes.

Engineer Wisniewski: prepared, filed and submitted?

Planner Ritter: Yeah.

Planner Snyder: That's right.

Planner Ritter: And, uh, if, if it ends up being cut back, so that it, that you retain the garage; 1 foot inside the property line, I would suggest to the Board, that, you would consider that as a variance. It would have to sit five feet off the line normally.

Planner Snyder: Right.

Planner Ritter: Uh, so, even though what they would be doing would be improving the encroachment, it would still require a relief.

Planner Snyder: Yeah. And, to that end, in the event that that has to happen, we would argue that that's a C2 Variance; that the purposes (inaudible) again, outweigh any negative that would come out of this.

Attorney Peck: And, we would actually amend the relief that we're seeking, to, uh, for the C2 Variance, uh, for the one, one foot off the property line, just so we

Planner Snyder: Right.

Attorney Peck: wouldn't have to come back, um, so that would be part of the relief we would seek, also.

Planner Snyder: And,

Attorney Peck: Which, we hopefully don't have to ever exercise, but,

Engineer Wisniewski: Uh huh.

Attorney Peck: we have it if, if we need to. (Inaudible).

Engineer Wisniewski: So, the resolution will just have language covering both

Attorney Peck: Yes.

Engineer Wisniewski: scenarios, potential scenarios.

Planner Ritter: And, the other thing is, that the plan that was submitted shows no signage and I just want to confirm that if the Board approves this, there will be no signage. You know, like, Apartment Building X or whatever. It, basically, will have no signage to change the general character of what that building looks like, on it. (Inaudible).

Attorney Peck: Correct. There's no tycoon court.

Planner Ritter: Yes. I would

Planner Snyder: No.

Chairman Gary: All right. Any other questions? Gus, anyone? Any questions? Public? All right, is there a motion to approve the variance? Oh, I'm sorry. Any comment, uh, from the public? Now we could, right?

Attorney Bryce: Yes.

Chairman Gary: All right. Is there a motion to approve the variance?

**Motion by:** Member Rutledge

**Seconded by:** Member Bittone

## **ROLL CALL**

**AYES:** Members Bittone, Unangst, Rutledge, Woolf and Chairman Gary

**NAYS:** None

Attorney Peck: Thank you very much.

Chairman Gary: Oh, we gotta keep going. Is there, uh, any, anyone from the public has any comment or. Okay, please.

**PUBLIC COMMENT:**

Mrs. Kowalchuk: Ken and I won't belabor this, so, I can be on the other side of the desk and they can go on forever. Um, I'm Rosemary Kowalchuk, 1286 Strykers Road. I guess I have a comment and a concern. Most of the neighbors are pretty emotional tonight. At least fifteen of those properties, all our wells are in our backyard, about, his, um, Mr. Samson's, um,

Planner Snyder: Proposed, yes.

Mrs. Kowalchuk: business. And I guess, I guess my question is how do we go about protecting our wells? Because his septic system, from the plan that I saw, and I don't know how updated that is, or if that's the final plan. Maybe that was only a preliminary drawing. But, it looks like his septic system is going to be pretty close to, to at least three wells. I'm concerned because I don't know what happened to his, um, concrete company. I don't know if he doesn't have that anymore. But he does, he did have something, cause, he has a truck that says Sampson Concrete and he put the sidewalk in for one of the neighbors. So, I'm wondering is that not part of this business and will not never be part of that? And, maybe that was a question for him, but I can see how you wanted to get to the interpretation of the ROM. I guess my point is, as neighbors and citizens of the Township, where to do go? I know we don't come to the, to the Zoning Board with these questions. I guess we can call the Department of Health, because I know, for the Clean, or the New Jersey Safe Drinking Water Act, about, at least fifteen activities, she said, should not be occurring around your well. In seven of them, he has admitted, that's part of his business. So, that, like, sent up a red flag for me. Cause we can't go anywhere. I mean, that well, that water is what we drink. Um, I think it could have effect neighbors across the street. You didn't see any of those people here this evening, cause, they're not sure of the impact to their well. But, um, certainly it effects close to thirty neighbors; definitely fifteen, um, on our side of the street. Um, I'm concerned, cause this is the first we knew that he did snow plowing. It's not an easy job and his trucks are going to collect salt; our cars do. Where does he wash those off? Where does he get those cleaned? Mrs. Kowalchuk (Con't): Drops into the ground and that's in, that's in our wells. Um, I know the farmer down the street and, you know, nice guy, I mean, he had to have all kind of, of extra precautions because of our wells. That he had to wash his farm machinery and, and I think you probably will know that, um, large, I used to call it the reservoir, but he had to meet, it was very specific what he had to do to insure the safety of our wells and he's a mile away, a mile and a half away from most of our wells. So, I guess that's my comment and I guess my question, because when we get these certified letters, we're like, well this is the time we let them know what we're concerned about. Um, I think some members of the Planning Board were under the impression that we just didn't want anything behind us to ruin our view of the mountains or whatever, but, we were all expecting that two homes would eventually be built there. Because, you know, the last stop, the last official document we saw was that. And, we were all kind of expecting, "Well, it's our land, it will probably be an office in that kind of space, what else could you put in there". It's hard, it's a very, it's like a 90 degree turn. God Bless him getting some that equipment in and out. So, I, I guess my concern is, that both Boards where, where do we go? Do we go to Council?

Attorney Bryce: I, in, in all fairness you should go to the Planning Board.

Planner Ritter: The Planning.

Attorney Bryce: Um, but, don't forget when it comes to the septic and wells, specifically,

Mrs. Kowalchuk: Uh huh.

Attorney Bryce: that's outside of the jurisdiction of even the Planning Board. That really is the Board of Health.

Planner Ritter: Yeah.

Attorney Bryce: There are state codes with engineered (inaudible-speaking over each other)

Planner Ritter: Mark, Mark, can I, can I add one thing?

Attorney Peck: Yes, please.

Planner Ritter: Uh, if you have potable wells around that site,

Mrs. Kowalchuk: Uh huh.

Planner Ritter: okay, let the Planning Board know where they are. It's one of the questions in the review when you get there in front of the Board, as to identifying where those wells are. Because there is separation standards between potable wells, his septic fields, let them know

Mrs. Kowalchuk: Uh huh.

Planner Ritter: because that's a piece of information I'm sure they'd like to hear. If, if there are any wells that are in close proximity to his septic.

Mrs. Kowalchuk: I, I think it's like two hundred, fifty feet, so, I don't know. Does the contaminates stop if you are at two hundred, fifty five, you know.

Attorney Bryce: The state law is one hundred feet.

Mrs. Kowalchuk: One hundred feet? Oh, okay.

Planner Ritter: I, I just, I'm just asking whether you think septic (inaudible).

Engineer Wisniewski: Well, its a hundred feet from a well to a septic, from a well to a septic.

(Inaudible – several speaking at once).

Mrs. Kowalchuk: Yeah, that's what I meant, cause, I think I, I was (inaudible – several speaking at same time).

Engineer Wisniewski: That's not quite a separation, so, if it's not, the Board of Health wouldn't approve the septic plan. That's who approves it. The County Board of Health

Planner Ritter: Yeah.

Engineer Wisniewski: approves

Planner Ritter: Right.

Engineer Wisniewski: approves the septic plans.

Mrs. Kowalchuk: Uh huh.

Engineer Wisniewski: So, you know, and his survey would have had to shown if there was a well within a hundred feet. And, if you guys reviewed the plans,

Mrs. Kowalchuk: Uh huh.

Engineer Wisniewski: and his survey didn't identify them as wells, then you have to bring it up to the Board of Health.

Planner Ritter: Yeah.

Mrs. Kowalchuk: So, if our wells are beyond the hundred feet then

Engineer Wisniewski: Right. Then the state standards, you know, the DEP also has standards for subservice disposable of waste water. And, so, those are, those define the requirements as well, separation of (inaudible).

Mrs. Kowalchuk: And, then the, this New Jersey Safe Drinking Water Act, and I think we got, I got this from the Highland's Council.

Engineer Wisniewski: I'd have to review that. I

Mrs. Kowalchuk: Yeah.

Engineer Wisniewski: haven't read that myself.

Mrs. Kowalchuk: Cause, that's, that's where you getting the emotional base here.

Engineer Wisniewski: I mean, is he going to, like, dump oil? Is that your concern and things like that? I mean

Mrs. Kowalchuk: I don't think he's, would intentionally

Engineer Wisniewski: You would hope that wouldn't. I think he would go to jail for that.

Chairman Gary: Yeah, I, I think what you have to remember is, Rosemary, I understand.

Mrs. Kowalchuk: (Inaudible – several speaking at same time) Cause there's stuff dumped there already, number one.

Chairman Gary: But I think what you have to remember is, um, just because, um, of our decision, it doesn't mean that he can just go on and do anything he wants.

Mrs. Kowalchuk: No, I understand. You were very clear, I don't

Chairman Gary: Yeah, the Planning Board is,

Mrs. Kowalchuk: Yeah.

Chairman Gary: you know, they can, you know, call him to task for whatever, you know, that, uh, he just, he just can't go in there and go wild.

Mrs. Kowalchuk: Yeah. Uh, I think, um, my, in my last plan is, I think when the Zoning Board had that, um, and I'm going to call them law suit or resolution or whatever, and the interpretation and the judge said what he did, it was kind of what we were all thinking. Never imaging that in 2012, and I'm sure it was advertised to come to a Master Plan meeting, because it just seems like this little strip of land, filled with trees and bushes and streams and whatever, you know, I think it was the forgotten piece.

Chairman Gary: Uh huh.

Mrs. Kowalchuk: And, I'm well aware of all the construction, you know, and all the businesses on the other side of the road. I mean, we also understand his dilemma. I mean, my husband had to look for a year and a half to find somebody that would take the business, his business. I mean, these things aren't easy. But, I just don't think this was the right spot and especially now, after the rest of the road, all developed homes. Because, now, the older homes are, coming down Strykers Road, um, and some of the newer ones all have water. And, they did that, maybe ten years ago, uh, city water. And they have the sewer. We do not. All the newer homes and the homes, I think, across the road from us, up in Mrs. Kowalchuk (Con't): Meadow View and some of those areas, I'm not sure, are you up in that area Do you have, do you have septic and well where

Member Bittone: No.

Mrs. Kowalchuk: No.

Member Bittone: City water.

Mrs. Kowalchuk: Okay, cause I know, it came so far down and then I think when it got to Vista Court

Member Bittone: New ones across the street the Copperfields is all septic.

Mrs. Kowalchuk: Yeah. Okay. And our, and our homes all have the septics in the front yard. They're, yeah,

Planner Ritter: Well, if you can do that it would be



Member Woolf: You can blame that on the Highlands.

Mrs. Kowalchuk: Well, we, ours was re-perked. We have the Cadillac system installed, because we should never had to re-perk; we had to re-perk, yeah. I mean, the state came in and said, "Well, since your re-perked, here's what you're gonna get, and. I wanted to put glass over it, and, we spent over \$25,000.00 for your septic system, you know. I, I don't think that those things will be effected, but, we're, we're very concerned about our water; very concerned.

Chairman Gary: I understand. Yeah, just so you know, that we, we, we really don't, uh, make decisions on emotions, um, and I know that sounds callous,

Mrs. Kowalchuk: No, I, you can't.

Chairman Gary: but, yeah, so, I mean, so, we have to, uh, we have to do what we have to do, um, and I'm sorry if it didn't sit, you know, if it wasn't, if you don't perceive it as the right decision. But, um,

Mrs. Kowalchuk: Well, if you had to interpret that one piece, that, that's what had to be done. But,

Member Bittone: That was it. That was our job tonight.

Mrs. Kowalchuk: Yep, that's it. Your only job.

Chairman Gary: Yeah.

Mrs. Kowalchuk: We just wish, as neighbors, we all would have realized that they were going to change the decision by, by Judge Coyle, in 2007. And, just, when you say Strykers Road, there's a big difference at the end of, this end of Strykers Road

Member Bittone: Sure.

Mrs. Kowalchuk: and that end. That is definitely the Industrial Park.

Member Bittone: I agree.

Chairman Gary: Yeah.

Mrs. Kowalchuk: And, none of us, as neighbors, were expecting that that land was just gonna be like that. We expected, one day, there would be something built there. But, we figured it would be two residential homes or it was going to be an office, with, and the, and the business vehicles would be cars going in and out of an office, not what's going in and out of there now.

Member Bittone: Uh huh.

Mrs. Kowalchuk: All right. Thank you.

Chairman Gary: Thank you. Anyone else; Bill, anyone? Um, then is, uh, seeing no one else, uh, I would, uh, is there a motion to adjourn:

**Motion by:** Member Unangst

**Seconded by:** Member Rutledge

**ALL IN FAVOR:** Aye

**OPPOSED:** None

Meeting adjourned 9:13 pm

Respectfully submitted,

\_\_\_\_\_  
Phyllis D. Coleman  
Secretary, Zoning Board of Adjustment

\_\_\_\_\_  
Fred Gary  
Chairman, Board of Adjustment

Date: \_\_\_\_\_

Date: \_\_\_\_\_