

MEETING MINUTES
Zoning Board of Appeals
June 6, 2019

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2019 AUG 13 P 12:15

Members Present: Anthony Jarvis; Kathleen Bernardo; Manuel Lopes; Joseph Wlodyka; Alan Aubin

Members absent: Nicole Parker

TOWN OF LUDLOW

First Order of Business: Pledge of Allegiance

The Board voted to reorganize as follows: Anthony Jarvis, Chairman; Kathleen Bernardo, Vice-Chairman; members Manuel Lopes, Joseph Wlodyka, and Alan Aubin; and Associate Member Nicole Parker.

The Board held a public hearing on the application of Erica & Carlos Dos Santos Jr., for the property located at 38 Goddu Street, Ludlow, MA (Assessors Map 12A, Parcel 32C, Zoning: Residential A). The subject of the hearing is a variance of 6 feet to the side yard setback where 10 feet is required according to Ludlow Zoning Bylaw Table 2 – Table of Dimensional Regulations for an existing deck.

Mr. Dos Santos: My name is Carlos Dos Santos; my wife and I own 38 Goddu Street. Just a brief history of what happened with this property was, when I purchased the property, you'll see the first map that you see in there is a map, a mortgage loan inspection survey of what I thought was my property lines showing the right side was a cement wall and the left side was evenly in the middle between my neighbor to the left of me facing my property and my property. Upon trying to sell my house we discovered that the property lines were now, on the second survey, the neighbor's property line was going through my kitchen and my property line was going through the neighbor's house. So essentially I had a second opinion survey done and the second opinion survey also confirmed that the property lines going from West Street all the way down the street are off, are all off and that the whole neighborhood has an issue with property lines. So over the past two years I've been working on trying to remedy my problem which is essentially that I'm kind of held hostage to this house now and I can't sell it. I have worked out a deal that obviously I'm finishing up here, with the deal I'm working on but on the right hand side of the property I have struck a deal with the neighbor to purchase my ten feet back and now the issue I'm having on the left-hand side is that there is an existing deck that was there when I purchased the house and it is a six-foot wide deck leaving me within four feet of what I would like to make the property line. My neighbor and I each had ten feet for what we originally thought but we don't so the only way I can do right by the neighbor and by myself is I'd like to give him his ten feet but I would need a variance on my deck to be within the ten feet from the line.

Mr. Jarvis: can you just take a look at those two photographs to see if that is a correct representation of what you have?

Mr. Dos Santos: this picture right here I've been to the assessor's office, that is not the picture of my house, that's the picture of Mr. Costa's house, they accidently put it on my assessors and they had my house on his.

Ms. Bernardo: this whole neighborhood is a mess.

Mr. Dos Santos: the whole neighborhood is a mess. They have since switched it, I've been back to the Assessor's office and they switched the pictures but that is not my house but as you can see in this photo,

that is his house this is my house, that's the deck in question, we had thought that the line was right there in the middle all along and that's what I'd like to restore with the variance.

Mr. Wlodyka: so then it goes 38 then to 34

Mr. Dos Santos: yes

Mr. Wlodyka: the brown house is 34 because I noticed that, I had all kinds of pictures here I was gonna question about that as well.

Mr. Dos Santos: yes the pictures were incorrect.

Mr. Lopes: so let's back up a little bit, so right now where the property line actually is your deck is four feet away

Mr. Dos Santos: no, no because what the actual property line is, mine goes through his house

Mr. Lopes: well where it's being put

Mr. Dos Santos: where it's being put it will be within four feet of that deck

Mr. Lopes: that's what you're proposing?

Mr. Dos Santos: yes because that's what I thought we, I was originally purchasing and the original mortgage loan inspection you'll see that's what was shown to me which is a whole other issue, I'm not sure where that survey company, how they got that survey but I've since had two surveys done and that's where, you know, we're stuck with properties with property lines going through.

Mr. Lopes: so right now you own half of Mr. Costa's house?

Mr. Dos Santos: I own his wall and my neighbor owns my wall.

Laughter

Mr. Lopes: Mr. & Mrs. Costa.

Ms. Bernardo: so let me ask you this, is there a bigger plan to readjust all the boundary lines in your neighborhood?

Mr. Dos Santos: I don't know what has happened with other houses in the neighborhood, there is no grand plan, what I needed to sell my house was to purchase the right side land and then on the left side I was told that it's actually not an issue in terms of getting title insurance but I don't want to just fix one side, to me if someone is buying my house and my neighbor's house is on my property, that's an issue so I want to just fix this to give them ten feet, I got ten feet because there's 20.6 feet between both houses and there's enough to split it in half but not with the deck with the way it currently is.

Mr. Jarvis: and that was what I was looking at when I got your application, I was trying to research it and I'm saying this is totally screwed up, I'm looking at, I believe it was the brown house to the right, and I'm

saying this doesn't match, what the heck's going on here, that's why the questions came up as to what are you trying to do.

Mr. Dos Santos: I'm just trying to be able to sell my house and not have to pay two mortgages anymore.

Mr. Lopes: so just so that I understand, the two maps here, this map, this is proposed

Mr. Dos Santos: okay let me go over it, so

Mr. Lopes: the current as-is is, it's marked at the top right or to the right of the map, it says current as-is right?

Mr. Dos Santos: yes that's the way it currently stands

Mr. Lopes: your house is number 38 on the map so it shows that the right side of your house is right on the property line right?

Mr. Dos Santos: yup

Mr. Lopes: and the left side, your left property line is right up against Mr. Costa's, Mr. & Mrs. Costa's

Mr. Dos Santos: yup

Mr. Lopes: and the, there's an arrow, kind of an arrow to the right of your property where it says north eighty-six degree fifty-seven feet, there's another line to the right of that plus or minus seven or eight feet, what is that? Seven foot eight?

Mr. Wlodyka: seven foot eight, concrete retaining wall?

Mr. Dos Santos: yeah the proposed line will go slightly beyond that concrete wall. That is what I am buying from the neighbor, not yet completed, their attorney recommended that I try to also fix the other side and I understand and I don't want it like that either like I said.

Mr. Lopes: you haven't done that yet?

Mr. Dos Santos: which side?

Mr. Lopes: you haven't acquired that parcel, that

Mr. Dos Santos: no they're waiting on my variance hearing because I wanted to have it all handled at once. But they have agreed to sell me that land and they're using Attorney Fernandes.

Mr. Lopes: do you have anything in writing?

Mr. Dos Santos: no, I have emails from the attorneys but that's about it but I didn't bring them with me. And actually Mrs. Marques is here, I am, she'll confirm that I'm purchasing land from them.

Mrs. Marques: what happened?

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TOWN OF LEWISTON

Mr. Dos Santos: I'm just confirming that I am purchasing land from you, I'm just trying to get a,

Mrs. Marques: yes

Mr. Dos Santos: today I'm here for the variance on the opposite side but I have worked out a deal with her.

Mr. Lopes: my concern I guess is that if we approve a variance to shorten his property on the left-hand side without a permanent marker on the right then we're essentially narrowing the property even more without, you know what I mean?

Mr. Wlodyka: you're making a non-conforming lot

Mr. Bernardo: well we're not changing the boundary though.

Mr. Dos Santos: I would not be, I can't

Mr. Lopes: it's more non-conforming without the right side being moved over.

Mr. Dos Santos: I would only be, it would actually, it would all be done, I'm trying to do it at the same time but obviously the right is what I have to do first prior to being granted the variance, I just want, I was trying to do the hearing to have it all done by the attorneys and the surveyor at once.

Mr. Jarvis: I believe you could always put a condition on there stating the variance will only be effective upon completion of purchase of the property on the north side or whatever it is, to the right side.

Mr. Lopes: I just wanted that out.

Mr. Aubin: is your house currently under contract or no?

Mr. Dos Santos: no, the buyer backed out

Mr. Aubin: because of this

Mr. Dos Santos: because of this, they wanted nothing to do with it.

Mr. Jarvis: unfortunately these things come to light only in your particular situation.

Mr. Dos Santos: yeah, like

Ms. Bernardo: actually how did this come to light, I mean, it's not as if these are all brand new houses, they've been bought and sold and constructed and, just out of curiosity how did this come up?

Mr. Dos Santos: how was it brought to my attention?

Ms. Bernardo: yeah

Mr. Dos Santos: it was brought to my attention the day of my closing when I showed up at the closing

office and they said we have a big problem. And the buyer's survey showed the difference in the property lines, at that point they stayed in the deal until I got a backup survey to try to prove their survey wrong, my surveyor came back and confirmed their surveyor's findings.

Ms. Bernardo: and the whole street is like that?

Mr. Dos Santos: from what I'm being told because it was off ten feet from West down and it shifted everybody's lines over ten feet.

Mr. Jarvis: I can somewhat agree with you, I had a piece of property on John Street and there became a conflict over where I figured my property line was,kids play area and the surveys came out, my property was right, the guy next door to me lost ten feet.

Ms. Bernardo: was your property pinned when you bought it?

Mr. Dos Santos: I was never shown any pins, all I had was the mortgage loan inspection survey that was done for me and which, you know, the title company I actually tried to file a claim with my title insurance company and they denied me, they said that that doesn't count as proof of the lot line shifting.

Mr. Jarvis: any other comments, questions, concerns? It is one of those complicated issues that does not appear to be the fault of the present property owner, something that just accumulated over the years.

Mr. Wlodyka: do you have any of your mailing receipts?

Mr. Jarvis: any questions comments from the audience on Goddu Street?

Mr. Dos Santos: these are all from me mailing them out, these were all the return receipts I received in the mail.

Mr. Wlodyka: thank you.

Mrs. Costa: that house that Carlos, his house now, that house has been sold about three or four times already, I don't know why they just giving him a hard time now.

Ms. Bernardo: that's why I'm surprised that this just came to light with all of these houses being ten feet off being bought and sold.

Mrs. Costa: our two houses are the newest ones there so why were they allowed to be built there?

Ms. Bernardo: that's why I was wondering if any of them had pins.

Mr. Dos Santos: yeah they only found one pin, one out of four pins and that one pin they said confirmed the findings that the lot lines are off, so you know, I don't know, I believe the pin was on the back right hand corner of my lot but they're waiting, there's no pins there now besides that one pin and they're gonna put the pins down once this is complete and that won't be an issue anymore but it's, you know, it just keeps adding up, no pins, no shifting lines.

Mrs. Costa: the street is like this too.

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TOWN OF LUTHER

Mr. Lopes: so the surveyor that you hired found the problem?

Mr. Dos Santos: no, the surveyor from the previous buyer found the problem, this is the buyer, the buyer for my house this was the survey that they had done, that one, then this was my survey when I bought the house and this, and the survey from, my current survey and this is my current survey done by my surveyor for the second opinion.

Mr. Lopes: which is basically what we have here?

Mr. Dos Santos: yeah you have the one with the, that's showing my, yeah I gave you all of them.

Mr. Lopes: and this was done in 2017, 1/11/2017 when they first

Mr. Dos Santos: that's when I was trying to sell.

Mr. Lopes: John Sommers from West Springfield.

Mr. Dos Santos: this was done by Chapdelaine in Chicopee, this was done by Holmberg & Howe in Easthampton.

Mr. Lopes: but that one is apparently wrong right?

Mr. Dos Santos: this one was the one that was originally done for me when I bought the property which led me to believe that these were my property lines. And those were the property lines that my neighbors had believed were the property lines.

Ms. Bernardo: I know John, he rarely makes a mistake.

Mr. Jarvis: so you're looking for a variance of six feet?

Mr. Dos Santos: yes

Ms. Bernardo: four I thought.

Mr. Dos Santos: well my deck is six feet so as of right now if I was to try to get the ten feet for each of us I would be four feet away from the line.

Mr. Jarvis: I was looking at that, okay.

Mr. Dos Santos: this is the original, that was from March of 2009 when I bought the house. And it took me two years to figure this whole thing out, where I'm at right now.

Ms. Bernardo: I can imagine.

Mr. Jarvis: so theoretically we should be anticipating more requests for variances along your side, at least your side of the street.

Mr. Dos Santos: I would, as people put their houses up for sale and these issues come up, I believe Mrs.

Marques when she, when they purchased the house, they were the first people that it was brought to their attention and her attorney actually had said that they, they had talked with me which they never talked with me, I don't know why he would even say that but they were able to close on their property even though my house was on their land.

Mr. Lopes: and Mrs. Marques is the one

Mr. Dos Santos: has worked out a deal to sell me some land.

Mr. Lopes: that's the woman over there. I'm surprised they were able to close with part of her house on your lot.

Mr. Dos Santos: my house on her lot, vice versa.

Mr. Lopes: I'm just looking at this other line here on the

Mr. Jarvis: that is a reason that we added the policy of having a current surveyed site plan of the property because we've been finding out there's numerous problems that have developed over the years with sheds or part of their house is on the neighbor's property line.

Mr. Dos Santos: I actually received a call from another real estate agent because I am a real estate broker and she was selling a house one street over and she had heard of my issue and she was wondering how I fixed it or if I sold, you know, if I was able to fix it because they also ran into the same issue one street over so I'm not exactly sure of the extent of everybody's issues within that whole neighborhood but it's, it seems pretty messed up.

Ms. Bernardo: the proper thing to do would be submit this to land court and have them resolve it and that would be the proper thing to do.

Mr. Dos Santos: yeah I was told that if I wanted to take this to land court I would probably get it resolved and win but it would take years and years and years to do.

Mr. Jarvis: yes, state your name for the record please.

Ms. Hodgeman: Elaine Hodgeman, I'm curious if she sells you some property to make yours conforming will that make her property un-conforming?

Mr. Dos Santos: she has more, Mrs. Marques has I believe two acres or more

Ms. Marques: what's that?

Mr. Dos Santos: how much land do you have, it's over two acres right?

Ms. Marques: ten feet right

Mr. Lopes: no the amount of

Ms. Marques: I'm sorry, I have a hearing problem and it's hard to hear here.

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Mr. Costa: no she was asking the whole land, is it two acres that you have?

Ms. Marques: I don't know if it's two acres.

Mr. Dos Santos: it might be on the survey

Mr. Wlodyka: on here it looks like about 150 foot of frontage

Ms. Marques: it's a large piece of land.

Mr. Dos Santos: yeah it's 2.23 acres they have or no sorry,

Mr. Wlodyka: it's the one-hundred and fifty foot by one-hundred foot right next to yours.

Mr. Dos Santos: and the parcel behind their house also belongs to them.

Mr. Jarvis: that's all residential?

Mr. Wlodyka: I believe it is yeah, they're all very small lots.

Mr. Dos Santos: her lot is actually pretty big in size, it's mine and Mr. Costa's lot that are each, were supposed to be five-thousand square foot lots.

Mr. Wlodyka: so according to the map that we have here that you submitted with your package, this is your lot here, correct, oh no I'm sorry, 32C number 38 and then this is her lot here

Mr. Dos Santos: yes

Mr. Wlodyka: which shows one-hundred and fifty-foot frontage on Goddu Street, fifty feet and then a larger piece in the back

Mr. Dos Santos: yes, exactly

Mr. Wlodyka: that wouldn't make her lot non-conforming.

Mrs. Hodgeman: thank you.

Mr. Dos Santos: yeah essentially, it looks like the two smallest lots are the ones being affected by it, myself and Mr. Costa.

Mr. Lopes: the front yard is still

Mr. Jarvis: so you may want to look at your situation and see what you may want to do in the future.

Mr. Costa: right now I just want to take care ofI get my ten feet and Carlos gets his ten feet, I mean, we should be all set like that and he already bought on the other side

Mr. Dos Santos: going to yeah.

Mr. Costa: that's all we want.

Mr. Jarvis: because you're on existing non-conforming lots at this point, which means that those lots were created prior to what the current zoning requirements are today which back then the frontage could have been ninety feet, could have been seventy-five feet, we don't know until you look at the records, but right now it's a minimum of ninety foot of frontage and fifteen thousand square feet.

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Mr. Costa: I have a record of my house.

Mr. Lopes: so his, your, the Costa's property will now be

Mr. Jarvis: should remain the same.

Ms. Bernardo: it should be justified for them at this point too.

Ms. Jarvis: yeah

Ms. Costa: we've been there thirty-two years, that's what we always thought was the property, we were always told that.

Ms. Bernardo: once they get their ten feet they'll be in compliance with their side yard requirement.

Mr. Lopes: their left side yard isn't being adjusted so they actually are gonna end up with more frontage than is currently

Ms. Bernardo: right

Mr. Lopes: so the Costa's lot isn't

Ms. Bernardo: this is helping their non-conformity

Mr. Lopes: right it's helping their lot, it's actually giving them more frontage and it's not affecting their non-conformity at all it's actually helping the Costa's non-conformity and it's bringing yours back into the what was, it was supposed to be.

Mr. Dos Santos: yeah.

Mr. Jarvis: any other questions, comments

Mrs. Costa: ours will be short?

Mr. Lopes: no, bigger.

Ms. Bernardo: no, yours will actually be bigger now, your parcel, because you're gaining ten feet on one side.

Mrs. Costa: right but if they're taking, if he needs, are they taking, Carlos, you had said four, are you taking, is it four feet from your deck extra?

Mr. Dos Santos: what I'm trying to get approved is to be within ten feet from

Mrs. Costa: no but I'm just saying because downstairs you were saying four feet, now you guys are saying six feet

Mr. Dos Santos: I'm currently at four feet from the proposed line which the proposed line would be to give you guys the ten feet but by giving you guys the ten feet I'm no in compliance with zoning code, so for me to give you your ten feet I have to get the variance approved and if that's approved I can then give you the land without hurting myself and you're, you end up

Mrs. Costa: how can we both of us be in compliance?

Ms. Bernardo: you'll be in compliance if we say yes.

Mrs. Costa: oh okay.

Mr. Aulin: who he's buying the land from they have plenty of frontage so it's just kind of shifting.

Mrs. Costa: this is a nightmare, we've been there thirty-two years and this is a nightmare, I mean, we saw his house being sold and sold so when he came to us with the problem, sorry I'm nervous and when I'm nervous I ramble.

Mr. Dos Santos: I went to them and I explained to them.

Mrs. Costa: when he came to us

Ms. Bernardo: it's hard to hear and try to wrap your head around.

Mrs. Costa: we said how could his house, we saw it, because we were, we're the only ones that have been in our house, we saw his house kept being sold and keep being sold and now to come and tell us well everything is off well where was all that?

Ms. Bernardo: I wish I knew that.

Mr. Lopes: well if it's all off the left side of your property line could be off too so.

Ms. Bernardo: we're not gonna raise that issue right now.

Mr. Jarvis: that's why I said you may want to explore your issue yourself to find out where you stand so in the future if you wish to do something you'll be prepared. I mean I had an issue years back when I bought my land, it was a vacant piece of property and I brought the surveyor's in because I was hearing one thing and another, as a matter of fact, like you I had to have it surveyed twice.

Ms. Bernardo: I would presume, and I probably should not, but I would presume that Chapdelaine when they did this plan, actually measured from the street and came up with

Mr. Dos Santos: yeah I had to pay extra for that.

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Ms. Bernardo: with the proper boundary line for the Costa's, hopefully.

Mr. Dos Santos: he contacted me and told me that that it looks like the findings from the other surveyor was correct, he would have to measure from West Street down, and he found the pins up on West Street and from that point he measured down and it all equaled to confirm the findings that the property lines were off.

Mr. Lopes: that's the key and that's the key to surveying is the starting point has to be the right point.

Mr. Jarvis: so you can keep in mind either Chapdelaine or the other surveyor that was involved they already have some information

Ms. Bernardo: so if this ever comes up

Mr. Jarvis: if you ever choose to do anything you might want to look at.

Mrs. Costa: someday I just want to retire and no headaches.

Laughter

Mr. Lopes: my concern was that if we did this it would affect the other property lines as well but apparently it's not gonna happen because of the, Mrs. Marques' property is wide enough that, you know, it's not gonna affect, it's just gonna shorten her front yard by ten, by 7.8 feet or whatever, she has enough frontage.

Mr. Dos Santos: even if he at some point works something out with the neighbor on the opposite side that lot is much bigger too where to me, it's really between me and him that we need to fix the problem and we're half way there with Mrs. Marques having agreed to sell the land it's just, to me, one of the last hurdles I have to jump here.

Mr. Jarvis: any more questions, comments, concerns, if not I'll entertain a motion.

Ms. Bernardo: Mr. Chairman, I make a motion that the Board approve the applicant's request for a variance of six feet to the southerly boundary of his parcel thereby leaving him with a side yard of 4 feet, finding that the error in surveying the property lines on Goddu Street are not of his doing or any other property owner and to let the issue go unresolved would be a financial hardship.

Mr. Jarvis: is there a second?

Mr. Wlodyka: for discussion, do we want to make mention of the other property line to be, a condition, on the motion, on the approval?

Mr. Lopes: the right side of the property.

Ms. Bernardo: that's up to you guys.

Mr. Lopes: well I think it needs to because if that property, if that falls through then that makes this lot very narrow.

Mr. Aubin: I would agree, I would add the condition.

Ms. Bernardo: okay.

Mr. Jarvis: so state your condition.

Mr. Wlodyka: state the condition, that the property line on the right side of the house that he's purchasing from Mrs. Marques be consolidated with the moving of his southerly property line so that we can keep from creating a non-conforming lot.

Ms. Bernardo: further non-conforming lot.

Mr. Wlodyka: or further non-conforming lot.

Mr. Jarvis: call in favor of the amendment?

Mr. Aubin: I would just simplify it to say that the variance approval is subject to the closing of the sale of the ten feet.

Mr. Wlodyka: say that again?

Mr. Aubin: I would just simplify the language to say that the variance is, approval is also subject to the closing of the purchase of the ten feet of the property north of him. It just simplifies the language.

Mr. Wlodyka: in lesser words, sure.

Mr. Lopes: it's actually not ten feet, is it actually ten feet?

Mr. Wlodyka: yeah it's ten feet.

Mr. Lopes: ten feet, okay.

Mr. Dos Santos: yeah because I believe it's actually as it currently falls I'm like seven, about eight feet, the wall is eight feet from my house so I, they're selling me a little over that wall just to make it the ten feet conforming.

Mr. Wlodyka: and it's 7.8 on the other side?

Mr. Dos Santos: currently from my house to the wall it's 7.8

Mr. Wlodyka: and you're purchasing

Mr. Dos Santos: the wall has nothing to do with anything at this point because the property line is actually going through my house.

Mr. Wlodyka: okay, on the left side of your house, that you're selling to Mr. Costa

Mr. Dos Santos: I'm not gonna sell it, I'm gonna give him the ten feet, I'm not selling him anything, I just

want to fix the problem.

Mr. Wlodyka: that's ten feet because I think I heard on the motion that it was 7.8 feet

Mr. Lopes: that's what the, that's where I was confused too because there's, on one of the maps it shows 7.8 feet on the right side

Ms. Bernardo: right it's 7.8 feet from his house to the stone wall

Mr. Dos Santos: yes

Ms. Bernardo: which is on the Marques' property

Mr. Lopes: but the property line will actually be ten feet over.

Mr. Dos Santos: yes

Mr. Lopes: okay, that was the confusion.

Ms. Bernardo: so you get a wall out of this.

Mr. Lopes: so Allen's statement about ten feet is correct.

Mr. Aubin: that's what I heard was ten feet.

Mr. Jarvis: so we all in favor of the amendment to the motion?

Mr. Lopes: do we need a second on that?

Ms. Bernardo: yes.

Mr. Lopes: second.

Mr. Jarvis: all in favor of the main motion to allow the variance for, left side of the property?

Mr. Dos Santos: variance, well if you're facing the house, the left-hand side

Ms. Bernardo: it's on the southerly side

Mr. Jarvis: variance of six feet

Ms. Bernardo: variance of six feet on the southerly boundary of the parcel.

Mr. Jarvis: all in favor? Vote 5-0 all in favor.

Mr. Dos Santos: thank you.

Mr. Jarvis: I commend you for taking on a very technical issue.

Ms. Bernardo: commend everybody for working together to fix this.

Mr. Dos Santos: thank you.

Ms. Bernardo: that's what a neighborhood's about, very good.

Mr. Jarvis: now we have twenty days to get our information into the Town Clerk's office, which time that's an appeal period after that so you got to figure it's gonna be about thirty days by the time all the paperwork is completed. You'll have to file with the Registry of Deeds.

Mr. Dos Santos: okay, alright and we'll go from there.

The Board held a public hearing on the application of Sheila A. Marois, for the property located at 664 Fuller Street, Ludlow, MA (Assessors Map 8, Parcel 32, Zoning: Agriculture). The subject of the hearing is a Special Permit to allow the construction of a new two-car attached garage with a 15 foot 3-inch side yard setback where Ludlow Zoning Bylaw, Table 2 – Table of Dimensional Regulations calls for a 20-foot side yard setback.

Mr. Jarvis: I did speak with Mr. Cauley who is a representative for the applicant. In that I was looking for information as one of the things we were looking at is a special permit, we did not have any information from the plan submitted by the engineer stating what the actual size of the existing house is.

Mr. Cauley: correct

Mr. Jarvis: that started kind of the wheels rolling and which I looked at it and sent the information to Town Counsel for review of which we just got the information in today. So what you have is a little bit of a complicated issue as I mentioned I believe to you when I spoke to you. There's encroachment on the side yard setback and that, in my opinion, back then was that you needed a variance for that issue not a special permit. The information that came back from Town Counsel supports that and I'll just read a short portion of this comment from the Town Counsel. "My position is that the proposed project 1) requires and variance and 2) may require a special permit depending on the determination that needed to be made as set forth below because I suggest that the Building Inspector makes determinations, some of these initial determinations I suggest that it makes sense for the applicant to proceed as follows (and these are bullet points): 1) withdraw the special permit application without prejudice; 2) go back to Justin to make determination as to whether the special permit is needed and 3) if a special permit is required, applicant should apply for a special permit and a variance, if no special permit is required, applicant should be apply for a variance only." So you can try to explain what you want to do and then we're gonna take it from there.

Mr. Cauley: so here is what you requested when I spoke with you two days ago from the surveyor showing the size of the existing home.

Mr. Lopes: don't we have this already or no?

Mr. Cauley: you have that but it did not show the dimensions of the existing house, we didn't know the existing house was gonna come into play for the garage addition to the right side.

Mr. Lopes: okay.

Mr. Cauley: when I originally applied down at the Building Department it was under the suggestion of the Building Inspector to apply for a special permit, not a variance. So that's why we're applying for a special permit and not a variance because we're, if I understood correctly, variances are due to topography, soil conditions, things of that nature which does not apply here. What does apply is that we're trying to put a two-car garage, this is my mother-in-law, a two-car garage on to the property which does not conform, the lot does not conform to today's frontage, we only have 119.91 feet and where the house is spotted and we put the garage on, a two-car garage, we are at 15 foot, I believe it's 3 inches or something like that. So that being said, we have, and I believe you folks have a copy of the print, I think what is throwing a wrench in all of this is that little extension of a proposed roof from a three-season breezeway over to the garage to give

Mr. Lopes: that's what I was noticing.

Mr. Cauley: Sheila coverage in the rain to exit her garage to go into her house, that is the only reason why this is, by language, attached. The structure is not attached except for a roof so yes it is attached. So that's why we're here. I'm just trying to give Sheila some protection from the weather and the rain so she doesn't go from the garage to the house.

Mr. Lopes: otherwise your side yard would be, if it was detached,

Mr. Cauley: if it was detached we would just be asking for a side setback.

Mr. Lopes: I don't think you'd even need that if it's detached.

Mr. Jarvis: that triggers a whole other section of the bylaw which addresses unattached structures, there's another section thatjust that.

Mr. Lopes: what's this zoned?

Ms. Bernardo: agricultural.

Mr. Cauley: we're agricultural. I mean there's two acres but very narrow

Mr. Lopes: for a detached garage, for a detached garage your side yard is different than an attached garage is where I'm going.

Ms. Bernardo: can you even call this attached?

Mr. Lopes: I have that question on the back of my mind too

Mr. Cauley: it's touching

Mr. Lopes: because the foundation is not attached

Mr. Jarvis: she addresses it in the opinion.

Ms. Bernardo: it says if we find that to be the case, right? Isn't that what she said?

Mr. Jarvis: no, once, if there's a roof

Mr. Lopes: I thought it would be the foundation attached myself but according to, I read that,

Ms. Bernardo: not the foundation but at least one of the walls

Mr. Lopes: right

Mr. Cauley: the structure itself is not attached other than coverage, roof coverage, for entering and exiting the garage to the house and I suppose I could still do that extension of roof and put it down on some piers, some posts but it would not look very nice and not attach that roof to the garage and have it an inch away but that's not what we're trying to do, we're trying to, I mean, it's a beautiful house as it is, it's very well maintained, Sheila's been there for forty plus years, you know, she's always wanted a garage and my thought for her would be a two-car garage to, for one ease of driving in and out with a larger door and two to put all her yard equipment in there, snow equipment for the winter etc. And in the rear of the property there is a very old shed/barn type of structure that's been there forever which we would remove because it is an eyesore once this garage is completed to house her equipment and, you know, yard tools etc.

Mr. Aubin: so that walkway is five feet looks like, is that what I'm seeing

Mr. Cauley: there is an existing little porch there now which is about three and half to four feet, I suggested five feet for one so Sheila can, what I like to say, age in place and if she ever needs assistance coming and going with a walker two people can climb up there at the same time; number two when we do excavate, if we excavate, for this garage we'd like to stay away from that existing three-season porch as much as possible because I do not know how that is, it's on some sort of piers, it's not on a foundation to my knowledge, it was built back in the sixties I believe so if we can stay away from that

Mr. Aubin: that was gonna be my question, if you move it over the five feet, right, that's your five feet difference

Ms. Bernardo: and actually attach it?

Mr. Aubin: yeah

Mr. Cauley: yes but now you can't get into the house without going through the garage so her company now would have to go through the front door. Her main entrance right now is up those stairs and through that

Mr. Aubin: the front? I have a picture

Mr. Cauley: to the right

Mr. Aubin: on the side

Mr. Cauley: on the side, correct, yeah, you go through the jolisee window there, that three-season room, if you will or porch, and then you enter into the kitchen. Pretty much nobody uses the front door.

Mr. Aubin: I have a house like that. Everybody uses the side.

Mr. Cauley: I'm surprised the front door even opens the stairs are right there. So by definition yes it is attached because of the roof so I suppose, you know, we could eliminate the roof but I'm trying to keep her in the house, protected from the rain and some snow, etc., it's not enclosed, it'll be open right through front to back.

Mr. Jarvis: another thought, what about if you made it an oversized one-car garage?

Mr. Cauley: we could do that but I was thinking for future resale for her or anyone that in the future, pretty much everybody has two plus car garages nowadays, that's pretty much the standard in the industry. Up and down the street there's a mix of one-car, two-car, oversize one-cars so we could put a one-car, with all due respect, she's not a very good backer-upper or driver into a garage, so it would have to be, that's why I suggested two-car with a sixteen foot door, she can drive right in the middle and I wouldn't be over there repairing things.

Mrs. Marois: he's right.

Mr. Cauley: plus with all the, you know, she has a large piece of property, it's very well maintained, tractors and lawnmowers and snowblowers and trash barrels, anything else, it eats up that area pretty quickly.

Ms. Bernardo: what is the requirement for a detached?

Mr. Lopes: that's what I'm looking for.

Mr. Jarvis: I was just trying to find it.

Mr. Aubin: I found it, I think I found it

Mr. Lopes: did you find it, okay.

Ms. Bernardo: what is it?

Mr. Aubin: I was looking, well if we consider it an accessory building, one-story accessory building

Ms. Bernardo: agricultural

Mr. Aubin: doesn't say

Mr. Wlodyka: what section are you in?

Mr. Aubin: I'm in 3.3.1.

Ms. Bernardo: and I disagree, she didn't make the determination that it's attached.

Mr. Jarvis: yes she did.

Ms. Bernardo: "I will assume you will determine if the answer is yes based on your distinction and understanding that the garage is attached."

Mr. Jarvis: it's connected.

Ms. Bernardo: but she didn't make the distinction

Mr. Lopes: it's connected but not attached.

Ms. Bernardo: she's going on what we said to her

Mr. Lopes: it's connected but not attached, I consider an attached garage that the foundations would be attached, that's how I view them, that's how I've always viewed it.

Ms. Bernardo: not even, the walls would be attached.

Mr. Lopes: walls, walls and foundation

Ms. Bernardo: or the foundation.

Mr. Aubin: so if it's an accessory building it's five feet on the side and ten feet to the rear.

Mr. Lopes: could be wrong.

Mr. Cauley: as a detached?

Mr. Aubin: yes. Unattached one-story building under accessory buildings.

Mr. Lopes: say that again please Alan.

Mr. Aubin: it's five feet to the side and ten feet to the rear

Mr. Jarvis: 3.3.1b2

Mr. Aubin: under accessory buildings

Ms. Bernardo: can you look in the back Alan or I will, what is the definition of attached?

Mr. Wlodyka: there isn't one.

Ms. Bernardo: there isn't one?

Mr. Wlodyka: no. There isn't one for attached, there isn't one for detached under definitions.

Mr. Aubin: I know there's one for accessory buildings because I remember that one.

Mr. Wlodyka: but under this 3.3.1b number 1, it says an accessory building attached to its principal building shall be considered an integral part of the principal building and as such shall be subject to the open space requirements applicable to the principal building. It doesn't say how its attached, whether it's by foundation or by roof or by a deck in between.

Ms. Bernardo: I'm sure the building code would define whether it's attached or not.

Mr. Lopes: probably.

Mr. Wlodyka: probably would. That's an assumption on our part.

Mr. Lopes: so the Building Inspector said that it was attached?

Mr. Jarvis: I don't know.

Mr. Lopes: did he mention that it was considered attached? He's the one that sent you here so.

Mr. Cauley: he, to my knowledge, he's the one that sent me here, he didn't put a whole lot of into this, I went to Ann to fill out the app, he looked at it he said, told him what I wanted to do and he said, you know, my recommendation or suggestion would be to go for a special permit, it was really very limited discussion if any on being attached.

Mr. Wlodyka: in the legal notice towards the end of it, it says that the subject of this hearing is a special permit to allow the construction of a new two-car attached garage, so on and so forth so he did make a distinction of an attached.

Mr. Jarvis: the application says attached garage.

Ms. Bernardo: but her language says "I interpret your explanation of the facts below as understanding the answer to the inquiry to be yes. In addition based on your email I assume that the Board considers the structure to be attached if it's connected by a roof or deck which this appears to be."

Mr. Lopes: assumes

Ms. Bernardo: that to me, is not I've looked at it and definitively I think it's attached. So if we assume and we consider then it is. But I'm, I guess I am not secure in the fact that just because there's this overhang, this little roof to protect you from rain, that that makes it attached.

Mr. Jarvis: I'm not gonna open up that Pandora's Box.

Mr. Aubin: so just a quick, I just did a quick search....., so the attached garages that do connect to a home by continuous roof are often referred to as attached, an attached detached garage.

Ms. Bernardo: that's what we got?

Mr. Aubin: that's what it says.

Ms. Bernardo: attached detached?

Mr. Cauley: that's as clear as muddy water.

Mr. Wlodyka: Kathy were you

Ms. Bernardo: a continuous roof

Mr. Aubin: well it is continuous because it goes from, I believe, it's going from that

Mr. Cauley: porch to, right

Mr. Aubin: it didn't say anything about foundation

Mr. Wlodyka: that little awning that you have over that breezeway is, that's gone

Mr. Cauley: that's still there

Mr. Wlodyka: but it's gonna be gone when this, if this is approved.

Mr. Cauley: right, so what that little awning is doing now is somewhat protecting her to put her groceries down to-unlock the door to get in but.

Mr. Wlodyka: so then like if we look at the front elevation here, the breezeway is this roof is gonna continue, a continuous roof from the house

Mr. Cauley: well that roof is there now on the breezeway, I'm just gonna continue it five feet.

Mr. Wlodyka: continue this roof five feet

Mr. Cauley: correct

Mr. Wlodyka: so that awning is gonna be gone

Mr. Cauley: correct

Mr. Wlodyka: it's not gonna be a temporary kind of thing, it's gonna be

Mr. Cauley: correct

Mr. Wlodyka: okay.

Mr. Cauley: and again the reason for that is to get rid of the awning and just make the house

Mr. Lopes: look clean

Mr. Cauley: look clean and look

Mr. Wlodyka: look like it belongs.

Mr. Cauley: look like it belongs, as it will.

Mr. Aubin: also looks like part of the plan, looks like you have steps built going out

Mr. Cauley: correct

Mr. Aubin: yeah so those are attached to the garage.....

Mr. Cauley: they don't have to be though

Mr. Aubin: no I'm just saying why I think the determination was made as being attached.

Mr. Cauley: the roof.

Ms. Bernardo: so this makes a lot of sense, attached garage is attached to the house, if you drive into your garage and have access to the house through the garage

Mr. Cauley: we do not because we're exiting the garage to going outside to go back in again.

Ms. Bernardo: it's an attached detached garage.

Mr. Jarvis: I ain't going there.

Mr. Lopes: that's how I see it.

Ms. Bernardo: the door to the garage does not directly open up into the house.

Mr. Jarvis: whatever we do here goes forever.

Mr. Cauley: that is correct.

Mr. Wiodyka: are there any other issues that come into play?

Mr. Jarvis: well the issue right now is we only advertised for a special permit so if you're gonna look at getting involved with the variance that's where the withdrawal without prejudice comes into play so that the application can be filed, re-filed correctly.

Mr. Lopes: so I read this, can you explain again where the, why the, where the variance comes into play?

Mr. Jarvis: it's affecting the side yard setback.

Mr. Lopes: the side yard needs a variance.

Mr. Jarvis: it's encroached inside the side yard setback.

Ms. Bernardo: if it's attached.

Mr. Lopes: right, why couldn't we address that with a special permit?

Mr. Jarvis: why could we what?

Mr. Lopes: why can't we address that side yard with a special permit?

Mr. Jarvis: because variances are for any setback issues.

Mr. Cauley: due to topography, soil conditions

Mr. Jarvis: it doesn't meet any of them.

Mr. Cauley: right so that's why it was

Mr. Lopes: with a variance?

Mr. Jarvis: with a variance.

Mr. Cauley: right so it would be denied anyways.

Mr. Lopes: but why isn't it addressed, why can't we address it as a

Ms. Bernardo: we don't usually.

Mr. Lopes: address side yards with a special permit? We don't usually do that. Okay.

Mr. Cauley: there's always a first time.

Mr. Jarvis: well you got to remember whatever we do for you goes on the books forever.

Ms. Bernardo: I'd rather call it a detached garage.

Mr. Wlodyka: I have a question

Mr. Jarvis: so whatever, whoever applies for something later, if it's not, you know, maybe similar but not exactly what you got, we have no choice but to honor what we did on your case.

Mr. Cauley: correct, I understand.

Mr. Jarvis: so that's where we get into this.

Mr. Cauley: so under the variance language, it's what, topography

Mr. Jarvis: soil, shape and topography

Mr. Cauley: which we do not have any issues with that, so it would be denied if we came in for that because the soil conditions are fine, topography is fine, it would be denied. Hence, we then have to make a smaller garage,

Mr. Jarvis: correct

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Mr. Cauley: period, black and white.

Ms. Bernardo: how about we find somebody to tell you this is a detached garage?

Mr. Cauley: I could just not put the roof on it and then we just move forward and she can get wet. You know what I mean, I mean.

Mr. Jarvis: you still got to move it because you got to be five feet away from the side yard setback.

Mr. Cauley: what would be the setback, you said it would be five feet as a detached? I'm fifteen feet

Mr. Aubin: if we consider it an accessory building

Mr. Cauley: if you consider it an accessory building so

Mr. Jarvis: an unattached structure, an unattached one-story building shall be placed no nearer than five feet to a sideline and five feet to a rear-lot line and two-story unattached accessory structures shall be placed no nearer than ten feet to a sideline and ten feet to a rear lot line.

Ms. Bernardo: so you can be five feet from the side yard.

Mr. Cauley: we would be fifteen foot three

Mr. Lopes: so he's fine with that.

Mr. Cauley: so I'm fine with that, I'd be fifteen foot three, if we consider

Mr. Jarvis: as long as you don't touch that side line, the minute you touch that sideline

Mr. Cauley: we're nowhere near it

Ms. Bernardo: what sideline?

Mr. Cauley: the five feet

Mr. Jarvis: yup

Mr. Cauley: right, so if I get rid of the roof it's an accessory, right, and I can build up to five feet, well I'm fifteen foot three away and the reason for that is to get equipment back there in case she ever needs to get to her septic.

Mr. Lopes: yeah you want to keep the fifteen three

Mr. Cauley: oh yeah

Mr. Lopes: the question is that five feet, the roof over that five foot

Mr. Cauley: right I would still leave that five foot there to get

Ms. Bernardo: the space

Mr. Cauley: her in and out in the future or

Mr. Lopes: you wouldn't need a variance but we're still talking about a special permit for another reason right?

Mr. Jarvis: well the other thing

Ms. Bernardo: because it's a pre-existing non-conforming?

Mr. Jarvis: yeah

Mr. Lopes: frontage

Mr. Jarvis: but then it was

Mr. Aubin: it's ninety-three, frontage is ninety-three, no it's more than that

Mr. Cauley: no, it's 119.91

Mr. Aubin: yeah it is 119, sorry the 26

Mr. Wlodyka: the assessor has it at 124

Mr. Cauley: assessor has it at 124?

Mr. Jarvis: the other part was does it come under the enlargement of 25% greater in volume.

Ms. Bernardo: not if it's not part of the principle residence, it's not attached.

Mr. Lopes: it's not attached. So that was my question, it's the 25% issue

Mr. Jarvis: I thought that's what you were looking at.

Ms. Bernardo: but if it's detached, it's not an issue is it?

Mr. Lopes: correct.

Mr. Aubin: correct.

Mr. Lopes: it goes up to fifty percent.

Ms. Converse: if it's detached I believe you can do fifty percent.

Mr. Jarvis: that fifty percent comes into play somewhere and I can't find it.

Ms. Bernardo: see what getting rid of a roof can do for you.

Mr. Cauley: but I mean,

Ms. Bernardo: it's better than nothing.

Mr. Jarvis: so now it would be called an accessory building.

Mr. Cauley: which we can and I could put two awnings in either direction and there you go but it's gonna

Mr. Aubin: as long as they don't touch

Laughter

Mr. Cauley: well they can touch but they can't be secured together.

Mr. Lopes: no they can because they're not permanent, they're temporary.

Mr. Cauley: right they're temporary but that would look awful.

Mr. Jarvis: 3.3.1.b4, total area of all unattached accessory structures in all residential and agricultural districts is limited in size not to exceed fifty percent of the square footage of the principle square structure.

Mr. Wlodyka: he's over by 38.32 feet.

Mr. Cauley: now is that square footage or living space?

Mr. Jarvis: square footage.

Mr. Cauley: and did you, do we take into consideration the porch, the living space on the porch as well

Mr. Wlodyka: yes.

Mr. Cauley: as the house?

Mr. Jarvis: yup.

Mr. Wlodyka: my figures came up 140 feet on that porch

Mr. Cauley: okay

Mr. Wlodyka: 10 by 10, 10.4 by 14.1 and 839.36 for the house.

Mr. Cauley: okay.

Mr. Wlodyka: do you agree with that?

Mr. Cauley: yup.

Mr. Wlodyka: okay and then that comes up to a 979.36 square foot total, fifty percent of which would be 489.68.

Ms. Bernardo: so then this is wrong, the total square footage, the living space for the property isn't 1,428?

Mr. Cauley: it's a cape so the total 1428 is the first floor, second floor and the porch.

Mr. Wlodyka: oh there's a second floor

Mr. Cauley: there's a second floor, that's why I asked you if you'd take into consideration living space but you said

Mr. Wlodyka: okay, I didn't take.

Mr. Cauley: okay so your total is 1428 now.

Mr. Lopes: per the assessor, on this one here.

Mr. Wlodyka: okay.

Mr. Cauley: so fifty percent, that would be 714

Mr. Wlodyka: 714 yup okay

Mr. Cauley: and we're well below that.

Mr. Aubin: 528 I think square footage on the garage.

Mr. Wlodyka: my mistake, I'm sorry.

Mr. Cauley: so is there another avenue or direction we can take without removing that roof other than a couple of

Mr. Aubin: shrink the size of the garage by five feet

Mr. Cauley: yeah but it's still attached. See the other thing is too having it this wide the internal set of stairs is on the left side wall to the left of the door as you see, so when you drive in you won't drive into a set of stairs, if we shrink it now the stairs are jutting into the drive lane and that's useless now. You have a ten-foot wide door let's say, you can only drive into seven feet of it or eight feet of it maybe. Because as it is now it's about four feet, sixteen feet door, sixteen-foot door and approximately four feet so the internal set of stairs to get up onto that landing for her to go right in is not gonna be in the drive lane when you pull in.

Mr. Lopes: you're talking about the stairs in the garage?

Mr. Cauley: inside the garage, correct. See I've got them tucked in in the line of sight if you will, so she'll, you know what I mean, driving in, even if she had two cars you could still just about drive by it without having it into the drive lane.

Mr. Lopes: so there would be a storage space above the garage?

Mr. Cauley: no

Mr. Lopes: what's that, where do those stairs go?

Mr. Cauley: the stairs here,

Mr. Lopes: I'm a little confused here.

Mr. Cauley: so you drive into the garage, this is the three-season room with the jolisee windows, so you drive in you come up a set of stairs onto this landing and then in under the proposed roof.

Mr. Lopes: how many treads

Mr. Cauley: it'd be approximately four total. I mean originally it was going to be a free-standing garage and then in my infinite wisdom I says well why don't we just put a roof over it that way you don't have to come out and around, go up the stairs in the rain, up the stairs in the winter with the ice and the snow, let's put an internal set of stairs, you're under cover once you're in, unload your groceries, etc., under the cover of roof and go straight into the house. Not realizing the can of worms.

Mr. Aubin: make the project bigger and attach the garage and put a door in the, have, I don't know what the inside of that porch looks like

Mr. Cauley: it's beautiful and she has mature plantings and trees that are meticulously maintained out front there it would just ruin the whole front.

Mr. Aubin: I'm just trying to give you options.

Mr. Cauley: well we thought of all these options but they were not even remotely on the game plan for that. This was the easiest, cleanest and it'll look like it was always there.

Ms. Bernardo: well if we go with this as being an attached then I absolutely agree that we have to redo this so that we have two issues, the special permit and we have to go with a variance. If it's not attached, then we don't have to be here at all. But either way if we just grant a special permit that's not going to address the variance issue. And that's what I get from legal counsel, if I read that letter correctly.

Mr. Lopes: yup.

Mr. Wlodyka: but aren't there other issues as far as the frontage?

Mr. Jarvis: well it's a pre-existing, non-conforming lot.

Mr. Wlodyka: so then we would have to determine that it's no more detrimental.

Mr. Jarvis: detrimental to the neighborhood, yeah.

Mr. Cauley: you've seen the house.

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Mr. Jarvis: I mean I don't have an issue in that it's not more detrimental to the neighborhood but as you mentioned there's mixed all the way up and down the street, I don't have an issue with that.

Mr. Lopes: can we open it up to?

Mr. Jarvis: yeah, one minute. But the fact is, the way it's published, it's in the information that we've gotten from Town Counsel they're conflicting so, there was no mention of any variance in the initial posting so technically we can't deal with an issue, the variance issue.

Mr. Cauley: well the posting didn't say variance by language

Mr. Jarvis: that's right

Mr. Cauley: but it's special permit to allow construction of a two-car attached garage with a fifteen-foot three-inch side yard setback where Ludlow Zoning Bylaw Table 2 requires a twenty-foot side yard setback.

Mr. Jarvis: it wasn't mentioned about a variance so technically if we don't state that we're looking at a variance

Ms. Bernardo: we can't give you one.

Mr. Jarvis: we can't do it, it wasn't published that way. Which goes back to whether or not you want to withdraw the application without prejudice and figure out at this point, which direction you're gonna go.

Mr. Cauley: so if we withdraw without prejudice and we leave it as is, where is and ask for a variance for the side yard setback

Mr. Lopes: you'll be back here.

Mr. Cauley: we'll be back here with a denial stamp because of topography, soil conditions, etc., right, so

Mr. Jarvis: a chance.

Mr. Cauley: no, right, I mean, I'm just trying to save us a lot of publishing and all this and money and for something that is going to be denied, we're all just sitting here, if I just take the roof off we're all good, you know. I mean I, it was recommended

Mr. Jarvis: if it's an accessory structure, if it's not attached you're using it as an accessory structure you're taking out, you're not encroaching on that side yard setback

Mr. Cauley: I understand that but talking with Justin it was, his recommendation was a special permit, there was no discussion of a variance and that's why we did what we did, I know he's not a lawyer but I would think when he mentioned that and that's the direction we took that was the direction we're supposed to take. I mean I didn't come up with the special permit application all on my own, you know.

Ms. Bernardo: a special permit would be required if you're going to extend and alter a pre-existing non-conforming structure so that would be appropriate for him to say. If it's going to then impede on the side yard setback then that's another issue which Town Counsel indicates we have to have two, we have, we

can't grant you a variance if you're asking for a special permit so you would have to ask for a special permit and a variance in that situation.

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Mr. Lopes: special permit because?

Ms. Bernardo: alteration of a pre-existing non-conforming structure

Mr. Lopes: more than twenty-five percent

Ms. Bernardo: extending it, well no you can take all that out of there, it's actually a section 6 finding, we're gonna start getting really complicated with which box you check off.

Mr. Cauley: so then I was basically steered down the wrong road how to apply for this, point blank. I mean that's what

Mr. Lopes: it's a little confusing sometimes, you know.

Mr. Cauley: well

Mr. Jarvis: that's why it was sent to legal counsel before we, Town Counsel before we even opened this, once I started going through it right at face value you start saying yeah this is okay, yeah that is okay, when you start getting down to the nitty gritty all of a sudden these things start popping up that says this is a question, this is a question, this is a question.

Mr. Cauley: understood, but if it's a side yard setback day one and that means variance day one, you know what I mean? I mean why would he have me go through special permit if it's not even, I mean, we've, she expensed knocking on everyone's door, registered letters, this that, got a letter from all the abutters all in favor.

Mr. Jarvis: you got a question.

Audience Member: no I'm the next-door neighbor, her garage is gonna be right near my house, that's why I'm here to see.

Mr. Lopes: do you have anything to say?

Audience Member: no I think its fine, I'm for it, I have no problem with it.

Mr. Jarvis: name for the record?

Audience Member: Ann Martin.

Mr. Jarvis: go to cover the bases.

Mr. Cauley: I mean its kind of too bad the process when this first got sent in somebody didn't say well they're applying for the wrong thing, just stop the tracks right there, nothing gets published, none of this gets done, we get a phone call, you need to reapply for a variance instead of special permit. Fine, instead we go through this whole thing, do all the mailings expense all of this, knock on doors, wait two more

weeks and now it's we shouldn't have applied this way. It's just a little disheartening when an official from the Town recommended this is what we do, I'm just confused.

Ms. Bernardo: I understand.

Mr. Cauley: I don't get it. Because the variance with topography, soil conditions, etc. does not apply. We just need three and a half feet so we can get a two-car garage. So the simple answer would be variance denied, make it smaller, so if that's the case we wouldn't come for a variance, we would have just made it smaller. If it's an automatic denial because of the conditions, you know what I mean, that's pretty much black and white.

Mr. Lopes: well it's not always automatic and the Building Inspector can't really make that determination that you don't meet all three requirements so he'll

Mr. Cauley: well, no but soil conditions, somebody's gonna want a soil analysis, we're not gonna pay for that, I'm sure it's fine, somebody's gonna want, you know what I mean, cha-ching, cha-ching, cha-ching.

Mr. Lopes: shape, topography

Mr. Cauley: shape, topography, there's nothing wrong with topography or the shape there, it's fine.

Mr. Lopes: your lot is kind of set on an angle so the side of your garage doesn't meet the same line as the side of the property, that could

Mr. Cauley: that's true but

Mr. Lopes: it could

Ms. Bernardo: it could.

Mr. Lopes: I'm not saying it would but if everybody

Mr. Cauley: but they're all, all the lots are askew like that and, you know what I mean

Mr. Lopes: I'm just saying it's not up to Justin to make that particular determination.

Mr. Cauley: no it's up to you folks.

Mr. Lopes: that you do or do not meet, you know, variance requirements, you know, so that just, just for side yard, you know, just doesn't come up automatically, I'm just trying to go back to you that he should have known that, you know, that you wouldn't meet a variance.

Mr. Cauley: well looking back now we probably should have applied for both at the same time, you know what I mean.

Mr. Lopes: well that's, that's where this recommendation is coming that you should have done that and by, you know, that you could still do that by, what's the wording here, lost my train of thought, by pulling back,

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Ms. Bernardo: withdraw without prejudice

Mr. Cauley: withdrawing without prejudice but how [unclear] supposed to know the one-hundred percent abc

TOWN OF BULLOCH

Mr. Jarvis: I can tell you what was told to us, the applicant should seek legal counsel before they even file the application, that's what was told to us.

Mr. Cauley: you know, and right, but and I know it's no small thing but it's just a garage, we're not building a pot factory or a Walmart, you know what I mean, somehow those things get in right away anyway, you know what I mean, but.

Mr. Jarvis: that's why I said an easy, probably an easy way out for you was just to make it a car-and-a-half size garage and go from there. Don't even mess with the side yard setback.

Mr. Cauley: well maybe that's what we'll do. It's unfortunate though that, you know,

Mr. Jarvis: that's why, you know, my opinion would be is you may want to withdraw without prejudice and go through and see what exactly all your options are and try to pick one that's.

Mrs. Marois: can I ask a question?

Mr. Jarvis: sure

Mrs. Marois: if it's a, not attached, I don't have to do any of this, right?

Mr. Aubin: still have to get a permit.

Mrs. Marois: I just have to get a permit

Mr. Cauley: except get a permit.

Mrs. Marois: I don't have to send out any more of those certified letters or anything?

Ms. Bernardo: would they be required to come in for a section 6 finding?

Mr. Cauley: what is that?

Ms. Bernardo: a section 6 finding is, section 6 is Chapter 40A of the Mass General Laws which says pre-existing, non-conforming use or structure cannot be altered, extended, enhanced without a finding that it's not more detrimental to the neighborhood and

Mr. Cauley: but we're not touching the structure

Ms. Bernardo: right, that's why I'm posing the question, just to make sure.

Mr. Cauley: right.

Ms. Bernardo: we're good with that right?

Mr. Lopes: I lost what you said there, there was something else going on over here.

Ms. Bernardo: oh I'm sorry.

Mr. Aubin: because this was, I agree, I think because this is under the auspices of an accessory building.

Ms. Bernardo: right so we

Mr. Aubin: it's a shed.

Ms. Bernardo: let us recall, let us recall our issue with a certain repair shop which because it was an accessory building it did not have to come before us for

Mr. Aubin: yes

Ms. Bernardo: right

Mr. Aubin: and that was attached.

Ms. Bernardo: and that was okay so in this instance it's an accessory building, it's not really an extension or an alteration of the pre-existing non-conforming structure which would be the primary residence, so it would not require a section 6 finding. I just want to make sure that everybody agrees with that before we send these poor people down another road. Because it's an accessory structure. Do you agree?

Mr. Aubin: I agree it's an accessory structure.

Ms. Bernardo: so no section 6 finding necessary?

Mr. Cauley: well if we were to withdraw without prejudice and we were to come back hypothetically for a variance due to the shape of the lot because the lot is askew, you really can't turn the garage because of the Town has a large tree there, stone walls, etc., is that an avenue or a direction that the Town may be happy with or the Board?

Mr. Lopes: the Town has a wall where?

Mr. Cauley: well she has a wall but there's a large, large oak tree right out front, I mean it's right there.

Mr. Lopes: well that's way up front by the curb.....

Mr. Cauley: right but then you would have to change the angle of the driveway etc. I mean, I don't want to reinvent the wheel here, you know, I just want to put a roof over her head to get from the garage to the house. So is the lot, the house being parallel with the street, but the lot being askew is that, pardon my pun, an angle I can go with for a variance?

Mr. Aubin: going back to what Tony said, I think you should seek legal counsel, it goes back to seeking legal counsel.

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Mr. Cauley: no.

Mr. Aubin: we can't give you advice.

Mr. Cauley: I'm not looking for advice, I'm just asking for

Ms. Bernardo: you want an answer, a hypothetical answer.

Mr. Lopes: it's a possibility, you know, that the Board could agree with that.

Mr. Cauley: I mean, I'm sure you all know things are not cheap to build anymore and legal counsel is ching, ching, ching, and everything is ching, ching, ching and next thing you know you're into for five to seventy-five hundred dollars and you haven't even built anything yet. I mean there's a point where we got to stop the bleeding.

Mr. Aubin: right, I mean part of this Board is to uphold the bylaws and the state laws so

Mr. Cauley: understood, understood

Mr. Aubin: and that's always trying to do the right thing for the majority not the minority.

Mr. Cauley: and right, in my opinion the right thing would be to grant it for a five-foot roof, I mean, it's a five-foot of roof, it doesn't do anything to anybody, you know. Doesn't obstruct anyone's view, it's not detrimental to the neighborhood or the house, you know. I mean I'm not gonna certainly go and hire an attorney to research different special permits or variances that were granted, it's not feasibly worth doing that for this but I'm probably sure at some point something has been granted one way or another along the lines similar to this, I would think, it can't be the first one, you know what I mean?

Mr. Aubin: yeah, I don't know.

Mr. Cauley: but, you know, two more, another advertisement in the newspaper is not a big deal but then we have to go through all this again, which you're gonna want these right?

Mr. Wlodyka: yes please.

Mr. Cauley: we got to go through all that again and it's probably not worth, it's probably not just worth the effort and, just for that.

Ms. Bernardo: in my heart, that little overhang to that, that doesn't make it attached to me. That's all I'm saying.

Mr. Lopes: I agree with that I mentioned it earlier, I'm in agreement with that but, you know, that's my opinion.

Ms. Bernardo: whether you extend this out, it is not as if this roof goes right into the roof of the garage, to me, that is not attached, as proposed, that is not attached. And I'll go on the record, I'm willing to live with the 15.3 feet from this because I don't think that's attached, even with that little roof so the poor woman doesn't get wet. I'm alright with that. And just for the record if this is detached, if they choose

to come back and it's detached I don't think a section 6 finding is necessary either because it's an accessory building.

Mr. Jarvis: I, I mean, if you're gonna go that route then in my opinion the only thing to do is refer back to Town Counsel and do you recognize this as attached or what is your definition of attached.

Mr. Lopes: but she already made her opinion on that and said that if we decided it was attached she assumed that we would decide that it was attached.

Mr. Jarvis: my point is if something touches two sides it's attached. If it's permanently there, it's attached. If it's removable it's not attached.

Ms. Bernardo: could you remove that piece of roof without disturbing the garage?

Mr. Jarvis: it's gonna defeat his purpose of trying to keep her out of the weather.

Ms. Bernardo: just asking, if you would put that up and then something happened and you had to take that little piece of roof off that walkway between the breezeway and the garage would it hurt the garage?

Mr. Cauley: no the garage would be fine.

Mr. Lopes: would it hurt the structure, the existing structure?

Mr. Cauley: no

Mr. Jarvis: they're all self-supporting, correct?

Mr. Cauley: well if I took the two-car garage away, that little roof would probably eventually settle, that five feet, I mean, because it's

Mr. Jarvis: well that's what I'm saying, without the roof the garage is up

Mr. Cauley: it's fine, it's freestanding, correct.

Mr. Jarvis: the porch is freestanding; the garage is freestanding.

Mr. Cauley: correct

Mr. Jarvis: the minute you put the roof and they connect the two points

Mr. Cauley: she stays dry

Mr. Jarvis: she stays dry and it's attached, it's a permanent fixture.

Ms. Bernardo: but that's my point, how permanent is it, it's not essential to either structure.

Mr. Cauley: structurally, no. But I thought someone read somewhere that an attached structure or garage is where you can access the garage directly to the house

Ms. Bernardo: correct

Mr. Cauley: this you have to exit the garage to the outside and then back in to the garage so now is it detached?

Mr. Lopes: in the, there used to be a lot of houses that were built that way and I don't know what the rulings were on those and that little space between the garage and the house was called a breezeway.

Mr. Wlodyka: because the breeze blew through.

Ms. Bernardo: Alan wants to call it the attached detached garage.

Mr. Lopes: attached detached?

Ms. Bernardo: attached detached.

Mr. Aubin: that's the common language.

Mr. Lopes: and how does that affect the

Ms. Bernardo: he found it on Google.

Mr. Lopes: any kind of rule.

Mr. Cauley: well then it must be true.

Ms. Bernardo: then it must be true.

Mr. Cauley: everything out there is true.

Mr. Aubin: well there's a lot of language and very similar type cases, I was just doing some other reading.

Ms. Bernardo: because attached is defined as being able to go directly through the garage, from the garage to the interior of the house, this is not.

Mr. Lopes: definitely does not meet that definition, that definition, it meets the definition of detached. The roof line one was the one that made it

Mr. Cauley: I don't want to sound like a wise guy but if there was no roof there and a gutter went from the three-season room and continued over to the garage does that mean it is attached? The structure is attached because of the gutter is secured to the breezeway and the garage as one long trough?

Mr. Lopes: the gutter isn't, wouldn't be considered a permanent structure.

Mr. Cauley: but its permanently nailed or screwed, you know what I mean.

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Mr. Lopes: but it's not a, it's, it'd be like if you put an awning all the way across and, you know, attached, you know, as a roof, you know, or a cover, that wouldn't be considered permanent either, you know, that's temporary. Does this fall into that category? Maybe.

Mrs. Hodgeman: can you make it attached, I mean make it from the garage to the house?

Mr. Cauley: what I could do, yes, but then the only problem with that is a driving rain coming in would then hit the garage and roll down the garage wall and potentially create issues with, you know, New England with freezing and ice, you know what I mean, because if I don't connect the, I could come up with two posts if you will along side the garage to hold up the roof that is connected to the breezeway and leave an inch but

Mrs. Hodgeman: well that's ridiculous

Mr. Cauley: well that would be how, that would be detached.

Mrs. Hodgeman: why don't you blend them together? Can you blend them?

Mr. Cauley: we can't, no. You didn't see it.

Mrs. Hodgeman: no I didn't, I'm just

Mr. Cauley: that's okay. Boy it's hot in here or is it just my seat? (He shows Mrs. Hodgeman the plan.)

Mr. Lopes: it's been a little warm.

Mr. Cauley: I'm in the hot seat. Look even a cigarette burn in there.

Mr. Jarvis: that's a new one.

Mrs. Marois: at one time he said his elderly mother-in-law.

Laughter

Mr. Jarvis: I use the term Senior Citizen.

Mrs. Marois: yes I didn't like elderly.

Ms. Bernardo (looking at her cell phone): this is priceless, did you get the response,

Mr. Aubin: no I didn't get that far.

Mr. Jarvis: what's that?

Ms. Bernardo: this is mostly a building code forum that, but "I'll say planners tend to be a fickle bunch, I found their opinions and interpretations a lot of the time depend on the mood they are in at the moment." Don't that make you feel better?

Mr. Jarvis: what is that?

Ms. Bernardo: "that being said, if the definition of attached detached is as straight forward as you've posted then it certainly appears that the breezeway your neighbor's planning will not qualify as attached."

Mr. Aubin: I think because they said the foundation was separate.

Ms. Bernardo: "Dig deep into your town code." There's the answer to that. Stay out of trouble and call it a detached.

Mr. Jarvis: so where we at?

Mr. Lopes: did we make a determination whether it's considered attached or detached?

Ms. Bernardo: I did.

Mr. Jarvis: I would say you need to go back and see what the building code calls it.

Mr. Wlodyka: you want to ask for a continuance at this point?

Mr. Jarvis: we could.

Ms. Bernardo: well I think that's the only fair thing to do. I don't think we should make a decision as to whether the applicant has to split this and make it into two without knowing whether that's really necessary and that's just adding salt to a wound, if you ask me. If this can all go away by the definition of attached versus detached then.

Mr. Wlodyka: but then as far as the posting goes though, it's posted as an attached so if he's gonna all of a sudden go for a detached it has to be a re-post, doesn't it?

Mr. Lopes: no that would be a determination that we make and for, if we find, no?

Ms. Bernardo: I've already put my two cents out there. If this is detached, it's an accessory building, I don't think it needs or requires a section 6 finding.

Mr. Lopes: you want to make a motion on that?

Ms. Bernardo: I'm happy to make a motion on that but we haven't determined whether its detached or not.

Mr. Jarvis: so what you want to, I guess basically put it, the applicant go back to the Building Commissioner with those questions, based on the building code.

Mr. Aubin: can't we ask the Commissioner ourselves those questions?

Mr. Jarvis: what's that?

Mr. Aubin: can't we ask what ourselves what he considers to be, what the definition of an attached garage is?

Mr. Jarvis: well you're getting into two areas, one is what is the definition and what is the building code consider? I think my opinion would be whatever the building code says that's what you go with

Mr. Aubin: right

Ms. Bernardo: if it's not defined in our zoning bylaws

Mr. Lopes: but it's clear a lot of building codes are also written a certain way and they can be interpreted different ways and this I think is one of them, you know, you read one, the roof line thing was that a building code that you read

Mr. Aubin: I don't remember, I, yes that was one.

Mr. Lopes: you know, it could be, you know, determined differently by different people, you know.

Ms. Bernardo: without a doubt and depending on their mood, but here's the thing,

Mr. Cauley: which is true

Ms. Bernardo: it is true, and if there's ambiguity then fine, just say it's ambiguous and let us decide, then we feel better making that decision.

Mr. Lopes: well I think that's where it is.

Ms. Bernardo: so if it's gonna, if somebody says well that's really ambiguous, great, great, let us decide.

Mr. Jarvis: my opinion is, there again, I think you just want to reference go back and see what the code calls for then somebody's gonna come back later on and say well you didn't apply the code correctly.

Mr. Aubin: I mean a lot of the reading I'm looking here, it looks like the definition, so it's double wording again, it's a double-edge sword, it's attached detached garage so what, it's the order of the words, is it attached, it's like, because it's not, it's connected with the breezeway, not the breezeway, with the roof, the couple things that I read it's an attached detached garage, so it's both.

Mr. Lopes: yes. So by being an attached detached garage what side yard is required for that?

Mr. Aubin: its not in our bylaw.

Mr. Lopes: an attached detached, what?

Ms. Bernardo: we call that an accessory building.

Mr. Lopes: so you think that an attached detached would fall under an accessory building and the side yard would be the five feet?

Ms. Bernardo: mm-hm.

Mr. Jarvis: where you get into a problem is you got to substantiate why you're making a specific decision and you got to be able to back it up with documentation. That's kind of like where the ball falls.

Ms. Bernardo: does a concrete sidewalk that attaches to a detached garage make it attached? These roofs are not, it's not one consistent roof. This is dropped down how many feet from the peak of the roof of the garage?

Mr. Cauley: I'm gonna go on a limb and say three to four feet.

Ms. Bernardo: you don't walk from this garage right into her room,

Mr. Cauley: correct

Ms. Bernardo: you don't walk from this garage right into the kitchen, you have to go outside, it's still outside but you have the roof over it just covering you. I do not see that as an attached garage.

Mr. Lopes: you think it's being extended for convenience

Ms. Bernardo: mm-hm.

Mr. Wlodyka: so then the question comes in does the building code have anything in it

Ms. Bernardo: contrary to what I'm saying

Mr. Wlodyka: does it say that if you're gonna have a detached building does it have to be so far away from your main structure?

Ms. Bernardo: without any touching or connection whatsoever.

Mr. Lopes: so by extending, you know, it gives us the opportunity to look at that and come up with

Mr. Wlodyka: so then we need to come up with a punch list of what we need to find out and basically we're looking at the definition of attached versus detached

Mr. Lopes: or attached detached

Mr. Wlodyka: attached detached

Mr. Aubin: if that's even in our language.

Mr. Wlodyka: yeah

Ms. Bernardo: and I want Justin's opinion as to whether this constitutes an attached garage. And whether the code is so ambiguous as we can figure that out and make that determination.

Mr. Lopes: so we can send a request to him to explain it and name the building code that addresses it.

Ms. Bernardo: but I agree, any code you look at, any code you read all depends on who's reading it and interpreting it and what mood they're in at any given time. I absolutely agree with that.

Mr. Lopes: so it comes down to I mean, would you agree to extend?

Mr. Cauley: I would agree to extend, now do I go and see the Building Inspector tomorrow?

Mr. Lopes: you don't have to

Mr. Jarvis: well somebody's got to make a list to give to him what needs to be done.

Mr. Lopes: well I think we address that in a request to him from the Board.

Mr. Jarvis: so would you kindly make a list of the following items that need to be addressed concerning 664 Fuller Street, tell her what you want.

Ms. Bernardo: we want a definition from the building code as to what an attached garage is. I'd also like Justin to look at these plans for his opinion as to whether that constitutes an attached garage, whether it be under the building code or our zoning bylaws.

Mr. Lopes: also we'd like to know if there's anything in the building code that describes

Mr. Aubin: an attached detached garage, is there any language in the Massachusetts building law or the bylaws.

Mr. Lopes:garage or accessory building.

Mr. Wlodyka: I think we want to ask about accessory building rather than garage because if it's detached then

Mr. Aubin: if it's detached, it's an accessory building.

Ms. Bernardo: he's not gonna interpret that for us.

Mr. Jarvis: how much distance is there required between the main structure and an accessory building or detached garage.

Mr. Aubin: that was, but that was, I think that's in here.

Mr. Jarvis: I don't think so. It was talking about sideline setbacks but I didn't see anything about

Mr. Aubin: I want to say it's ten feet but that wouldn't help, I don't know, I'm trying to think what a shed is, really a detached accessory building is a shed.

Mr. Cauley: so the question right now you're looking up is how far a detached garage has to be away from a house to be considered detached?

Mr. Aubin: no, no, no, if it's considered an accessory building.

Mr. Cauley: oh a distance from the main house to be considered an accessory building, gotcha. Which then gets back to our side setback issue.

Mr. Jarvis: anything else? So if we're going to do that when do you want to continue this to?

Mr. Lopes: do we have any future meetings set up?

Mr. Jarvis: not at the moment.

Mr. Cauley: I'm free tomorrow.

Mr. Aubin: I'm on vacation in two weeks.

Ms. Bernardo: which two weeks?

Mr. Aubin: 20th

Ms. Bernardo: for how long?

Mr. Aubin: just for three days, Wednesday, Thursday, Friday

Ms. Bernardo: you here the 27th?

Mr. Wlodyka: I'm gone the 28th through the 6th

Mr. Lopes: I'm not available the 27th, sorry I'm going sailing.

Mrs. Hodgeman: meet next week, you've got a meeting next week.

Ms. Converse: we don't we meet the first and the third Thursday

Mr. Jarvis: so we have access to this facility the first and the third, Planning has it the second and the fourth so if we pick an off-week we have to get a different location. So that's why we have to set it now so we know where we're gonna be. It's trying to get everybody's schedules to connect.

Mr. Wlodyka: so the 20th would be the next time we could meet here

Ms. Bernardo: but Alan's gone.

Mr. Aubin: I'm on vacation.

Mr. Lopes: you're on vacation the whole week?

Mr. Aubin: no, I could do, Wednesday, Thursday, Friday so Tuesday.

Ms. Bernardo: the 18th?

Mr. Lopes: you're gone Wednesday, Thursday, Friday?

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Mr. Aubin: yes

Ms. Bernardo: you could do the 18th?

Mr. Aubin: yes

Ms. Converse: is that the third Tuesday? Selectmen will be in this room.

Ms. Bernardo: we'd have to go somewhere else.

Mr. Lopes: we'd have to go downstairs.

Mr. Wlodyka: I'm available.

Mr. Jarvis: is everybody available on the 18th?

Mr. Lopes: I am.

Mr. Jarvis: I am. All right so why don't we schedule it for Tuesday, June 18th for 7:00 pm, tentatively we'll use Conference Room 2, first floor. That's kind of like our backup plan. So as you come in the side door it's the first room on the right. Do I hear a motion to continue to Tuesday June 18th at 7:00 pm Conference Room 2?

Ms. Bernardo: so moved.

Mr. Wlodyka: second.

The Board voted 5-0 all in favor.

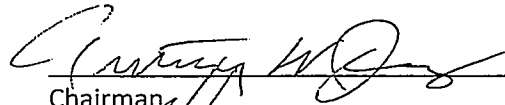
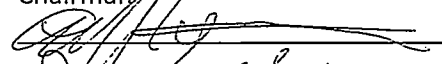
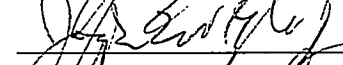
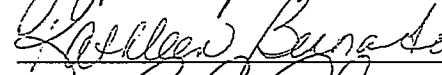

The Board voted to designate Anthony Jarvis to sign invoices and payroll and signed the designation form for the Accounting Office. Vote 5-0 all in favor.

The Board decided to table the discussion about the new application for the Zoning Board of Appeals.

The Board briefly discussed future training sessions for the Board of Appeals.

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Moved by Mr. Wlodyka, seconded by Ms. Bernardo, to adjourn. Vote 5-0 all in favor.


Chairman




Board of Appeals

Transcribed by:


Ann M. Converse, Administrative Assistant

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FRANCIS LEONARD

