

Borough of West Paterson

Board of Adjustment



Passaic County, NJ

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BOARD OF ADJUSTMENT MINUTES
July 26, 2010

MEETING CALLED TO ORDER AT 7:32 P.M. by Chairman Holloway.

OPEN PUBLIC MEETING LAW: THIS MEETING IS CALLED TO ORDER PURSUANT TO THE NEW JERSEY OPEN PUBLIC MEETING LAW, AND AS STATED IN NOTICES OF THE TIME, PLACE AND DATE PUBLICIZED IN ACCORDANCE WITH THE STATUTE. IT WAS INCLUDED IN A LIST OF MEETINGS FORWARDED TO THE HERALD NEWS AND THE RECORD AS REQUIRED NOTICES. IN ADDITION, THIS LIST HAS BEEN POSTED IN A PUBLIC PLACE BY THE BOROUGH CLERK, AND A COPY OF THIS HAS BEEN FILED IN HIS OFFICE FOR PUBLIC INSPECTION. PROPER NOTICE HAVING BEEN GIVEN, THIS MEETING IS CALLED TO ORDER AND THE CLERK IS DIRECTED TO INCLUDE THIS STATEMENT IN THE MINUTES OF THE MEETING.

MEMBERS IN ATTENDANCE: JIM IANNIELLO, RUSSEL JUZDAN, GIANNI INTILI, TRACY KALLERT, RUTH PATTERSON, TONY ORLANDO, GARY HOLLOWAY AND VINNIE DECESARE

ALSO PRESENT – JOHN FIORELLO, BOARD ATTORNEY
WILLIAM STEMMEL FOR TOM SOLFARO, BOARD ENGINEER
BOB PERRY, BOARD PLANNER

FLAG SALUTE

Vinny DeCesare was sworn in as a regular member by Mr. Fiorello.

Ruth Patterson was appointed and sworn in as Alternate # 2 at this month's council meeting.

Chairman Holloway noted that they received Mr. Kiss's resignation letter. He asked for a motion to appoint a new Vice Chair. A motion to appoint Ms. Kallert was made by Mr. DeCesare, second by Mr. Orlando and approved by a vote of 8 -0.

A motion to approve the minutes of the June 28, 2010 meeting was made by Mr. Intili, second by Mr. Juzdan and approved.

RESOLUTIONS

DOCKET # 10-05 – A. FREEMAN – 57 QUARRY DR. – BLOCK 113 LOT 12.01 – BULK VARIANCE – Application is hereby approved by a vote of 5 – 1.

DOCKET # 10-07 – CLIFTON SAVINGS BANK – 1530 ROUTE 46 WEST – BLOCK 122 LOT 11 & 12 – SIGN VARIANCE – Application is hereby denied by a vote of 3 – 3.

ORDER OF BUSINESS

DOCKET # 10-08 – 75 JACKSON AVE.,LLC – BUSH AVE. – BLOCK 42 LOT 36.01 – BULK VARIANCE

Chairman Holloway announced the Board received a letter from the applicant's attorney requesting the application be carried to the August 23, 2010 meeting with no further notice and waiving time restraints.

DOCKET # 10-03 – QUICK CHEK, CORP. – BROWERTOWN RD. – BLOCK 122 LOTS 10 & 10.02 – PRELIMINARY & FINAL SITE PLAN – USE & BULK VARIANCES –

Peter McArthur, attorney for applicant, stated they are here tonight for an application for 355 Browertown Rd. Block 122 Lots 10 & 10.02 along with a small triangle of property located in Little Falls. The property is located in a Neighborhood Commercial zone but a service station under the ordinance is not permitted in that zone. They are here for a use variance and preliminary and final site plan. The site has 1.07 acres and they are proposing a convenience store of approximately 4,500 sq. ft. with 6 pumps and a couple of diesel pumps. They are providing 33 spaces and 30.03 spaces are required and size required is 200 sq. ft. and they are proposing 10' X 18'. There will be testimony on all of these issues from the experts. They are providing a loading zone and the hours of operation are 24/7. There will be 6 seats inside the food store and two tables outside with 4 seats per table. The canopy over the service station is 47' X 90' or 4230 sq. ft.

Mr. G. Dolph Corradino, attorney for objector, Levco Corp., owners of the property northwest of the subject property, made a motion to dismiss the application because it is faulty. He called the Board's attention to question # 7 of the application which requests reasons why relief should be granted. There is a response by the applicant which was only inclusionary and statutory language and there is nothing that gives a reason. He felt this paragraph requires a factual response and reasons. He asked that the application be dismissed at this time.

Mr. McArthur stated that this application has been deemed complete by the Board and its professionals for quite some time. He felt Mr. Corradino's objection was not jurisdictional in nature and it goes to completeness which has been determined by this Board and the professionals. Mr. Corradino disagreed and the mere fact that someone reviewed the application doesn't affect his motion. The motion is a matter of law and the application is deficient because the application asks for reasons why it should be granted and there are no reasons there. There is nothing in the application that indicates any factual reason why it should be granted. Mr. McArthur said there is nothing in the case law that supports Mr. Corradino's position. The Board should note that he does not cite any statute or case law that supports his position. They have brought with them an army of experts to testify tonight as to the positive and negative criteria and they will present that to the Board. In fact they have submitted the expert reports that have been on file for quite sometime that clearly indicate as a collective whole the reasons they think they are entitled to an approval. He asked to be allowed to continue with the hearing. Mr. Fiorello asked if either of them had

any statutes or case law to back up their motions. Mr. Corradino said he did not have any statutes or case law except a simple legal position because there are no factual reasons. He is merely stating that the application filed for relief is defective because there are no reasons. Mr. McArthur said Mr. Corradino has now done this for the third time and asked the Chairman to please have a ruling. He felt Mr. Corradino had no support in case law or the MLUL and he knows that means something to the Board. Mr. Fiorello requested 5 to 10 minutes to read over some statutory and case law.

RECESS – Call to order 8:02 p.m.

Mr. Fiorello said after his review it appears the applicant can go ahead for the following reasons. According to Mr. Cox the application must meet the requirements of the Board and then the Board deems it complete. This has happened here with all the information this Board said it required. There was a check list which was complied with. Also there are cases he cited that the Board can require more information and this Board has required a lot of information as requested by the planner and engineer. The information was passed on and he knows that for a fact, so there was much more than just the application with more detailed information that was supplied to the Board. Mr. Fiorello cited several cases for the Board's information. He believes the motion by Mr. Corradino should be denied. Mr. Corradino deferred to Mr. Fiorello's decision.

Mr. McArthur stated before he continues he would like to make absolutely sure that Mr. Corradino does not have anything else up his sleeve. If he has any other objections to the application he would appreciate it if he would let him know so he would not be interrupted.

Mr. Corradino said he does not know how to respond to that. He knows they are well aware of the proper procedures they are engaged in. He felt if an objection is applicable and a motion has to be made in an attempt to represent his client properly he is going to do it. He does not know of any requirement for a lawyer to give a preview of what he intends to do by way of tactics in a trial. He asked what statutes or rules they have that obligate him to explain his tactics. Mr. Fiorello asked they proceed and any objections will be handled as they come up. Mr. Corradino said he does not intend to sit here and take all of the little jabs. He is a lawyer and he is representing a client. If he does anything improper Mr. Fiorello and the Board will be the first ones to come down on him. He is not going to do anything improper but will represent his client vigorously. This may not be a trial but it is a hearing that has certain procedures and requirements that have to be followed under the law. Mr. Fiorello said they are going to be here a long time and both Mr. McArthur and Mr. Corradino are qualified, experienced attorneys and know the rules. This is a quasi-judicial hearing and they all know that so he would ask that they keep their gaze on what they are after and proceed. He is sure both of them will conduct themselves in a manner they both know is correct and proper.

Mr. McArthur said he was about to talk about some of the arguments they would be advancing for the variances they are seeking. They are asking for a use variance for the gas component of the retail use. The NC zone does not permit motor vehicle stations. The definition of a motor vehicle station is an establishment not used as a public garage where

automobiles may be serviced with gasoline, oil, grease and accessories for profit. It is the inclusion of the phrase of oil, grease and accessories which the planner will testify is really a traditional gas station use as opposed to what the gas station use has evolved to here in 2010 which is exactly what Quick Chek is applying for here. They will argue they are permitted but they will present those proofs for the use variance. He referred to the variance for the side yard setback on the canopy, the requirement is 20' and they provided 17.2'. The code here in Woodland Park does not define a building or structure. The side yard definition talks about unobstructed open space between a building and the side line. The canopy is not a building and does not have walls so they would argue the structure is not in the side yard definition that they would not need a side yard variance but they will present those proofs. They are also providing for a 6' fence within 15' of the property line where 3' is permitted. They have a number of sign variances, the first one is on the principal sign, the size permitted is 101.4 sq. ft. and they are proposing 104.3 sq. ft. Also the height permitted is 2' and 4.6' is proposed. On the secondary signs, one sign is permitted and they are proposing two. The next variance is 30% of the principal sign proposed for the secondary sign is 30.4' and they are proposing two at 104.3'. The freestanding sign, 12 sq. ft. per side and they are proposing 79.6 sq. ft. and the maximum height of a freestanding sign is 10' and they are proposing 17'. They will present planning testimony on all sign issues. They will also be arguing based on a case he cited that generally an application for a "C" variance and a "D" variance cannot co-exist. If the application is for a use not permitted in the zone the bulk regulations designed for that zone cannot be applicable to the intended use. A zoning board in considering a use variance must then consider the overall site design and in essence the C variances are subsumed in the D variance. They will be advancing that argument as well. He pointed out to the Board that they do have county planning board approval of this application and both Little Falls and Woodland Park have agreed Woodland Park will assume jurisdiction of this entire matter including the triangle of 800 sq. ft. in Little Falls.

Mr. McArthur noted the names of his professionals. He asked the Chairman how they would proceed. Mr. Fiorello said that normally they would present one witness and then be subject to cross examination. The Board would then have an opportunity to ask questions and then any one from the general public would ask questions. They would then proceed that way with their other witnesses.

Mr. Fiorello said he had a question for Mr. McArthur. He asked if he was saying that he did not need any bulk variances. Mr. McArthur said they would be presenting the proofs for bulk variances but they will be making the argument that there they are subsumed into the use variance. Mr. Fiorello asked if he was saying they did not need them. Mr. McArthur said they will be putting in proofs for bulk variances in any event but will be arguing in the alternative. Mr. Fiorello said he understands his position but said he would like to know if his position now is that they don't need them. The reason he asks is that they did receive a letter of denial that stated they do need them and they did not appeal that. Mr. McArthur said that is why they are presenting the proofs but he cited a case that indicates the C variances are subsumed in the D variance. Mr. Fiorello asked that he submits that citation since they did not submit it ahead of time. Mr. McArthur said he would give it to him now if he would like.

Mr. Corradino asked to be heard. He said it was his understanding that the applicant is here on use variance and bulk variances. He said he was confused because if he understands the opening statement they are going to proceed on a use but they don't need a use. Mr. Fiorello said he does need a use variance and felt Mr. McArthur was conceding that but will be presenting proofs for the bulk variances even though he doesn't believe he needs them. Mr. Fiorello asked if he was saying that this Board has no criteria to determine side yard, front yard or anything else because bulk variances are subsumed into the D variance. Mr. McArthur said he is saying the argument is that is that it would appear they do not have to present the proofs but they are going to present them anyway. Mr. Fiorello asked how the Board would determine whether or not the side yard is good, bad or indifferent or meets any type of criteria if they can't go by what they have. Mr. McArthur said he is simply indicating to the Board what the arguments are going to be. Mr. Fiorello said before they meet again he would like to have the citation. Mr. McArthur said he would give it to him tonight. Mr. Corradino requested a copy also.

Mr. McArthur stated that Mr. Gibbons from his office who was sitting to his left has done some research on an issue and he would like him to be heard before he calls his first witness. He would like to make an argument before this Board concerning the proceedings.

James Gibbons, associated with Azrak & Associates, submitted a brief to the Board. He stated that Mr. Corradino indicated to the Board earlier that he wanted to follow the rules and it is their position that he should follow the rules. The cited court rules that indicated a sitting judge in a municipality or in his case the presiding judge of all the municipalities in Passaic County is not permitted to appear before this Board or is his firm. It is a relatively simple concept and the concept is a judge sitting in a community has a conflict when he appears before the Boards of that community because it gives an appearance of impropriety. It looks as though he could say something to you and get a better hearing. The intent of the rule is to prohibit what is about to go on here which is allowing a judge to stand in front of you and give that appearance of impropriety to the public. There is case law that he has cited and he can give more that is recent. The presiding judge has the option in this state to set bail for people in this town and if there is a problem with the court administrator he can rule on that. He has an impact and the whole concept of a presiding judge is to preside. He is also a sitting judge in Little Falls which is part of this application. He has no legitimate basis for being here nor does any one from his firm. The law is plain and the rule is plain which he has attached to his letter. The Board will see that what they are saying is correct.

Mr. Corradino said about ten minutes ago the attorney for the applicant asked about tricks and things under his sleeve and if he had any he should set them forth now. He stated the applicant was aware of his representation when they were before the county and never once raised this baseless objection but if they are going to press it he would ask the Board for an adjournment in order for him to prepare a legal response. There has never been an assertion in Bergen or Passaic County when anything came up that a judge can't participate in trial practice before the Superior court judges. He asked if this attorney was trying to say he can't appear before a zoning board in other municipalities other than Little Falls where he does sit. As far as he is concerned there is no impediment for him appearing in front of this Board or any other Board. However, he just received this document and he would think if

this applicant has any credibility before this Board when they make an assertion that they want everything to be above board and want Mr. Corradino to reveal his strategies and tactics he would like time to respond. He felt the Board should take note of this tactic and felt it was a cheap move by coming in at the last moment and trying to disqualify him when they knew he was in this case when they were before the county.

Mr. Fiorello said he is a little upset and stated to Mr. McArthur that he knew they had this case they just cited where they did not have to pay attention to the zoning ordinance which they did not present to him and they did not present this document regarding Mr. Corradino to him. They expect him to rule on issues that they had time to research. They know he is involved in this case and has been up front with them when they had the problem with the little piece of property in Little Falls which he cleared up and no one played any games with them. He felt this was game playing with this Board. He said he would like for them to give permission to put this off and he would like them to waive the time requirements. If they don't he would advise the Board to dismiss the application without prejudice so they have all the information they want to present to this Board. All information and cases should be submitted ahead of time so the Board can have the proper representation from him. If they don't want to do that it's fine. He asked Mr. McArthur what his position was. Mr. Fiorello stated they should start being fair to the Board.

Mr. McArthur stated he has not meant to offend any one on the Board. The case he put on earlier was an argument he said he would present during the hearing. The situation that Mr. Gibbons just put on the record as an objection is very common just as Mr. Corradino did. He did not complain about being sand bagged when he made an objection about what was and was not in their application. Mr. Fiorello asked if they wanted to wait another ½ hour in order for him to read the document. Mr. McArthur said he would consent to the adjournment and provide Mr. Fiorello with all the documentation he requires. Mr. Fiorello asked if they would waive time requirements for the Board to make a decision. Mr. McArthur said of course he would consent to waive time until the next meeting. Chairman Holloway stated they had talked about a possible special meeting so the Board could concentrate one meeting for this application. He asked if that date was still amenable. Mr. Corradino said he has a problem with this situation because they met to pick a date in August and this was not even mentioned when they spoke. They agreed to a date in August and Mr. Gibbons comes up with this document saying he had a conflict. He asked if this was a trick. Mr. Fiorello suggested that Mr. Corradino should have sufficient time because there has been research by the applicant in order for him to submit a brief. He felt the regular meeting date of August 23, 2010 was time enough for Mr. Corradino to submit the brief and they could decide on a date for a special meeting at that time. Mr. Fiorello would submit a written opinion ahead of time. Mr. Corradino noted that if a decision is made that he cannot represent the objector they would have to get another lawyer. They waited to the last minute to drop the grenade and you just don't do that.

Chairman Holloway said the next scheduled meeting is August 23rd. It can be addressed at that time but would depend on what his decision is. Mr. Gibbons said he wrote this brief today. He felt that Mr. Corradino is the judge and he should know the rules. Mr. Corradino said he knows the rules and these are underhanded cheap tactics. Mr. Fiorello said they

were all out of order at this point. Mr. Fiorello said this will be held until August 23rd. He asked how much time Mr. Corradino needed to submit a brief. Mr. Corradino said he needed two weeks. Mr. Fiorello said fine and then he will write a written opinion and submit it to both attorneys. If Mr. Corradino has to have someone take over the case of his client he will request the applicant adjourn it so the objector can be properly represented. He felt the applicant should feel this was fair. He did not think it would be hard to make a decision when he had both briefs.

Mr. Fiorello said he would have the opinion to both of them and the Board. Mr. Corradino said he would submit his reply in two weeks. Mr. McArthur asked if they could answer his response. Mr. Fiorello said no.

The application will be heard on August 23rd and the applicant agrees to waive time restraints.

Call to order 8:45 p.m. Roll call. All present except for Mr. Orlando who left at 8:45 p.m. Ms. Patterson will act in her capacity as alternate member #2.

Chairman Holloway noted that the Quick Chek application will be carried until August 23, 2010 with no further notice and waiving time restraints in order for Mr. Fiorello to reach an opinion on the matter.

Mr. Decesare asked if the Board would give them another special date in order to accommodate other applicants. Chairman Holloway said both side were amenable originally to only appear for a specific amount of time tonight and then have a special meeting in August. There are other applicants who waited until August and it would not be fair to them. The Board Secretary noted they may do the same next month by only using a specific amount of time and the scheduling a special meeting for that application only.

DOCKET # 10-09 – O. & S. ZYM – 59 QUARRY DR. – BLOCK 113 LOT 12.01 – BULK VARIANCE

Mr. Zym, applicant, was sworn in he stated he is seeking a variance to install a bathroom in his basement. He is requesting this variance because of medical reasons. He stated his wife has had several operations in the past. They always thought they would have a bathroom in their basement. He submitted a floor plan of his home that was marked A-1. Photos of his home, building and the area around it were marked A-2 through A-12. He described the photos to the Board. There is no parking in the front of the building. They are allowed 2 vehicles and only 3 people are allowed to live in the unit. The only access to the basement would be through the front door, the door in the rear has no lock on the outside. They cannot be opened from the outside. There are no sidewalks or walkway from the road to the rear of the building. The outside door goes out to a patio and grass area. The basement is just a big open area which they like. He showed the area where the bathroom would be located.

Mr. Zym said he would go through all the restrictions there are in the complex but he knows the Board has heard them before. He would not be permitted to put a lock on the door without approval from the association. Chairman Holloway asked if he thought about asking if he could close up the door and put in a window. Mr. Zym said he has not. Chairman Holloway said the reason he was asking because the ordinance allows a bathroom in the basement if there is no outside door. Mr. Zym said he liked the walkout basement.

Mr. Intili asked if he is proposing a bathroom in the basement and asked what the bathroom would consist of. Mr. Zym said the bathroom will consist of a commode and wash basin. There would be no tub or shower at this time. Mr. Intili asked if it would be a powder room. Mr. Zym said he would call it a bathroom because his wife may want to ultimately put a shower in there. Mr. Intili asked him about the health reasons he mentioned. Mr. Zym said his wife has had 2 knee surgeries, 1 hip replacement and open heart surgery. Mr. Intili asked if he needed a tub or shower. Mr. Zym said he would not want a tub and did not know if it would be viable there. The possibility of a shower exists but is not in the plans at the moment. He has researched an ejection system that looks good to him. Mr. Perry said they do work in situations like this.

Mr. Decesare asked why she can't use the first floor bathroom. Mr. Zym said when she is downstairs it would be more convenient to have the bathroom down there. She only goes up and down the stairs once a day and they would like to use the room to its fullest. Mr. Decesare asked about a chairlift. Mr. Zym said the way the stairway goes up it would not work.

Ms. Kallert asked how long they have lived there. Mr. Zym said they moved in January of 2006. Ms. Kallert asked how many people currently reside there. Mr. Zym said just his wife and him but their grandson has been with them for a while. Ms. Kallert said the main floor looks very big and asked if he thought about putting the sewing machine in one of those rooms. Mr. Zym said their grandson is visiting them and he is using the other bedroom. Ms. Kallert suggested the grandson use the downstairs. Mr. Zym said he is using the bedroom with the adjacent bathroom. He did not know if he wanted his grandson downstairs. He stated his grandson was 20 years old.

Chairman Holloway said he would like to clarify that he stated he was proposing a powder room and if it was approved the resolution would say it was a powder room. Mr. Zym asked if it was to his advantage to request a full bathroom. The Board discussed what a powder room was. Mr. Intili said a bathroom by definition would include somewhere to bathe. Mr. Zym said they have two full bathrooms in the unit now. Mr. Intili felt they have two large facilities in order to bathe. Mr. Zym thought a shower downstairs would be convenient for his wife if she goes outside.

Ms. Patterson asked if the majority of the time his wife is outside. Mr. Zym said no and she has not enjoyed some areas of the home. Ms. Patterson asked what she is doing outside. Mr. Zym said she is only sitting but he hopes to get her to the point where she can plant some flowers.

Mr. DeCesare asked what the applicant was looking for. Chairman Holloway said the letter of denial refers to a full bathroom. Mr. DeCesare said he just wanted to be sure of what he is asking for. Mr. Ianniello read the ordinance section that prohibits the full bathroom. Mr. Zym noted again that you cannot get into the basement if the door is locked. Chairman Holloway noted the ordinance read full or partial basement is only permitted if the only access is through the existing dwelling.

Mr. Fiorello asked if he said the association would not permit a lock on the outside door. Mr. Zym said he could almost guarantee that even a lock would need permission from the association. Mr. Fiorello asked if he had permission if he could put the lock in. Mr. Zym said he probably could if he received permission.

PUBLIC OPEN – CLOSED

A motion to deny was made by Mr. DeCesare, second by Ms. Patterson and denied by a vote of 6 – 1.

Mr. Zym asked the Board to reconsider since his next door neighbor was approved for the same variance. Mr. Fiorello said the law states that an approval of a variance does not set a precedent for the entire area. Each case depends on its own facts and circumstances. He would have to prove the hardship of the property and personal hardships are not cognizant by the Board. Mr. Zym said the physical topography is that no one can get into the basement. Mr. Fiorello stated he would have to ask the Mayor & Council the reasons for the ordinance prohibiting the bathroom in the basement. Chairman Holloway suggested he approach the Mayor & Council in order to discuss the ordinance.

DOCKET # 10-10 – E. GENCARELLI – 30 WEASELDRIFT RD. – BLOCK 85.01 – LOTS 3 & 4 – USE & BULK VARIANCES

Richard Briigliodoro, attorney for applicant, stated the property is located at 30 Weasel drift Rd. and located in a Residential B zone. Mr. Gencarelli lives in the home with his wife and children. He has lived in town for 30 years. There are no changes proposed to the footprint of the building and there will be no expansion. The lot is larger than most of the lots in the area. The property has been taxed for many years as a two-family. They are requesting a use variance to convert a single family home to a two-family home where two family homes are not permitted in a Residential B zone. They are also requesting bulk variances which are all pre-existing and not aggravated at all by this application.

Jill Hartmann, planner, was sworn in. Ms. Hartmann has been previously qualified by the Board. She was accepted as an expert witness. Ms. Hartmann said they are all familiar with Weasel drift Rd. The corner lot is oversized having 8,943 sq. ft. It contains a two-story residence with a driveway for 4 plus vehicles and another driveway with access to a two-car garage. There is a potential for at least 6 off street parking spaces.

Ms. Hartmann said this application is for a use variance to permit the existing residence to gain legal two-family residential status. As noted before the site is being taxed for the last

18 years as a two-family. The existing floor plan will have no changes and she described the floor plan of the house. The basement has a study, a recreation room, a full bathroom and a laundry area which is related to the first floor unit. The first floor has a kitchen, living room, full bathroom and one bedroom. The second floor has a kitchen, living room, dining room, laundry room with a ½ bath, 3 bedrooms and a full bath. She prepared an exhibit that shows the surrounding neighborhood as well as the site itself. The exhibit was marked A-1. The exhibit was a board of 7 photos and the existing survey. Nothing will change with the survey. She has noted the parking spaces on the survey. She described the photos of the existing homes in the area. The lots in the area range from 50' wide by 82'-95' deep. They are generally 2/3's smaller than the subject site. Photos of the subject site are also shown on the board. They are requesting a D variance to make the house legal. They require two C variances that are pre-existing for front yard setback and side yard setback.

Ms. Hartmann said the site is well suited for the proposed use because there is no expansion proposed and there is adequate parking. No new construction will be required. The site has been taxed as a two family for 18 years. The one bedroom unit will be available which will provide for a need of that type of household. It will promote the general welfare and appropriate population densities. The use variance they are requesting can be granted without detriment to the public good or Master Plan or zone plan. The site is oversized and has adequate parking for the uses being proposed. It will remain consistent with the neighborhood with no impact to it.

Mr. Briigliodoro asked about parking. Ms. Hartmann said the ordinance requires 2 parking spaces per unit. There are two spaces inside the garage and two outside and another driveway that can easily provide 3 spaces. They do meet the ordinance requirement. Ms. Hartmann reviewed the Board Planner's report. She has focused in on any substantial detriment to the neighborhood and there will be none. The planner asked about traffic. Ms. Hartmann said they are existing and adequate driveways. The oversized site has adequate off street parking that is unique in the neighborhood. The property will not change at all.

Chairman Holloway read the letter of denial from Mr. Esposito. He noted it read single family home and they both mentioned the property is being taxed as a two family. Mr. Esposito had indicated it is a single family home. Mr. Briigliodoro said he was right and they are not trying to mislead the Board. They are here for a use variance because there is a difference between zoning and tax assessment purposes and that is why they are here. Ms. Patterson said she is familiar with the house and asked if the top deck was the main floor of the house. Ms. Hartmann said the upper deck is off the second floor where there are 3 bedrooms, living room, laundry room, full and half baths and dining room. The first floor is a one bedroom unit. Ms. Patterson said it is a two-family. Ms. Hartmann said the first floor unit is connected to the basement. It is functioning as a two-family house and has been that way for 18 years. Mr. Ianniello asked if the second floor exists now. Ms. Hartmann said nothing is changing. Mr. Briigliodoro said his client bought this house in 2004 as it is now and he has not touched it. They are trying to legalize it. Chairman Holloway said presently the Gencarelli family lives there as a one family unit and it is not rented out. Mr. Briigliodoro said that was correct. Ms. Patterson asked if it was previously rented. Mr. Briigliodoro said Mr. Gencarelli has informed him that it was not rented out.

Mr. DeCesare said before someone said his family was getting larger and asked if they wanted to rent it or live in it.

Enzo Gencarelli, applicant, was sworn in. He stated he would like to legalize it and rent out the first floor unit because his second floor suits him perfectly.

Ms. Kallert said it was mentioned that this house is consistent with other houses in the neighborhood. When she rode by she did not see any other two-family homes there. Ms. Hartmann said she was speaking of the existing condition of the house which would not have to be renovated or altered. Ms. Kallert asked why it would promote the general welfare of the area. Ms. Hartmann said she spoke to the Master Plan purposes and one of them is to provide different housing types for different income levels. Ms. Kallert said they keep saying it is an oversized lot but actually for a two-family home it is not oversized. The requirement is 100' X 100' for a one family. The lot is 74' X 114'.

Mr. Juzdan asked if the house was originally built with two kitchens. Mr. Gencarelli said he did not know but since 1992 it was taxed as a two-family. He said the house has been like that for 16 years but did not know what it looked like before that.

Ms. Patterson asked if there was an outside entrance to the basement. Mr. Gencarelli said there are metal doors to the basement.

Mr. Intili asked if there are two gas meters. Mr. Gencarelli said there is only one meter. Mr. Gencarelli said his home is zoned separately so he could split the services if necessary.

Mr. Intili asked about the basement with a full bathroom. Mr. Gencarelli said the basement is the same size as the first floor unit except for the kitchen area. It is a big L-shaped room with the full bath. There are laundry hookups and another room that is labeled by the architect as a study. Mr. Intili asked about the closet. Mr. Gencarelli said inside there is the furnace and hot water heater.

Mr. Bob Perry, Board Planner, asked Ms. Hartmann when she did the analysis of the neighborhood if she was aware of any other two-family residences in the area. Ms. Hartmann said no. Mr. Perry asked if that changes her testimony. Ms. Hartmann said no because she still believes this site is unique to the neighborhood for the reasons she gave. Mr. Perry said what bothers him and he wants the Board to understand they are creating two apartments so whether it has been taxed or not they are creating two apartments in a residential area that allows only single family homes. Mr. Perry asked if the testimony was there would be no changes to the interior and asked about the staircase that connects the units. He asked if that would be changed. Mr. Gencarelli said when you open the front door there is a wall to the right and left with a door. There are also rear entrances to both units. He has not done anything to the house.

Mr. Perry felt Ms. Hartmann addressed everything else. He is concerned about affecting the character of the area and if there were any other 2-family homes in the neighborhood.

Mr. Juzdan asked about how the house was built. The Board Secretary said she thought Mr. Esposito said there was an add-a-level done to this house. Chairman Holloway said he spoke to Mr. Esposito this morning and he told him he recalls there was an add-a-level done.

PUBLIC OPEN – Questions to Ms. Hartmann

Ron Gentile, 3 Garret Dr., asked how many water and gas meters they had. Mr. Briigliodoro said one of each. He asked Ms. Hartmann if she would call this a two-family house. Ms. Hartmann said what she said was the interior of the house is set up as a two-family house and the site is taxed as a two-family and felt they put in the proofs to show it can be converted to a two-family house. You do not need separate meters for separate units. Mr. Gentile said the house was the same size as his when it started which was a small house. There were several additions to this house by several different owners.

Chairman Holloway asked Mr. Gentile to wait and make a statement later.

Vince Cordo, 31 Weaseldrift Rd., stated he lives across the street from the subject site. He asked about impact on the area and asked Ms. Hartmann how she knows there will be no impact. Mr. Cordo said he has lived there since 1986. Ms. Hartmann said from a planning prospective there will not be any impact. Mr. Cordo said she does not know the people in the area and does not know the impact it will have on the area. Mr. Briigliodoro stated there will be no substantial impact on the area.

Lou Osorio, 45 Weaseldrift Rd., asked if there is a law stating the owner must live in this house or can he move and rent the whole house. Ms. Hartmann said the form of ownership is not a land use issue so what they look at is it a permitted use and not whether it will be owner occupied. Mr. Osorio suggested that the basement could be rented out also. Mr. Hartmann said this property has metal doors so it is not a form of door that would normally be considered a walkout and probably would not be considered a rental. Mr. Osorio said there is no parking on Weaseldrift Rd. and if he has guests they have to park on Garret. Ms. Hartmann said they have more than enough parking. Mr. Osorio said that is true as long as it is rented as a whole. If the owner decides to move or rent the basement there could be more cars. Ms. Hartmann said all kinds of things could happen but then it would become a policing matter. They are looking to hopefully create a legal development. The law does permit you to have a certain amount of people per square foot. Mr. Osorio said there is a concern because it is a single family neighborhood and it changes when there are rentals.

PUBLIC CLOSED FOR QUESTIONS TO PLANNER

PUBLIC OPEN FOR QUESTIONS TO APPLICANT - CLOSED

PUBLIC OPEN FOR COMMENTS

Ronald Gentile, 3 Garret Dr., was sworn in. He stated there is room enough to park 6 cars in the driveways and there are still cars on the street on the weekend. He asked why the applicant pays taxes on a two family. He said Weaseldrift Rd runs through 2 parks and if

the applicant converts his house to a two family it is only going to grow bigger. Many properties on Weaseldrift have a lot of property and they will want to change their homes too. He would not like to see this approved.

Vincent Cordo, 31 Weaseldrift Rd., was sworn in. He said he knows the applicant and his family who are very nice people. He said he has pictures of the house when it was a cape and he did not think the applicant knew it then. He said originally when the house was added on to it was approved by the building inspector as a mother-daughter. Thus the two kitchen and this owner had nothing to do with it. The entire family lived in this house together. He had no problem with that but he does have a problem with a two-family. People in the area bought residential, single family home properties. There are no two-family homes in the area and the closest one is possibly Rose Pl. or Rockland Ave. which is $\frac{3}{4}$ of a mile away. There are actually 3 or 4 parks in the area and is totally residential. There are 9 homes for sale in the general vicinity. He understands that because a variance is approved that others will also be approved but he would think they would have a hard time denying anyone else. He said the property size is 70' X 140' and someone said it was an oversized lot but he believes a building lot has to be 100' X 100' for a single family. He thought about a variance for the property across the street which is a little more than a $\frac{1}{2}$ acre but did not do it. He said the applicant did buy the house as is and the house was actually approved as a mother-daughter years ago in the 80's. He is a realtor and he owns a single family home across the street and he pays more taxes than the applicant. He did not feel it was being taxed as a two-family. Chairman Holloway asked how long he has been in the neighborhood. Mr. Cordo said he was born in this town. He built his house on Weaseldrift in 1986 and bought the house in front of him in 2000. Chairman Holloway asked if the applicant's house was a cape at one time and they added a level. Mr. Cordo said yes and he has aerial photos of the entire area.

Dawn Cordo, 31 Weaseldrift Rd., was sworn in. She said her worry was that typically families move into two-families and currently the cost for a pupil in the school is 11,000+ per pupil. If this family decides they don't want to live there they could rent out the second floor with 3 bedrooms and could potentially bring in 6 children who would cost \$ 66,000+ to educate. There is no way to know what would happen. If in fact other homes were granted two- family home you would not know what they would do to our already high school budget. She would not like the area to go two-family because they are already tax burdened by too many two-families.

Vince Cordo asked if the Board did decide to grant the approval if there was a way to put a condition on the approval that if he moved or sold the house it would go back to a single family. He doesn't want to hurt his neighbor but they are very concerned about the area turning into a two-family area. Mr. Fiorello said there can be time limits placed on variances, however, as has been brought out here they have all the facilities for a two-family house. If the present owner moves and it returns to a single family you would be talking about removing large areas of what is there. The problem with mother-daughter homes is a problem of enforcement. Mr. Cordo said it was a thought because he knows there are tough economic times for everyone but felt there was enough multi-family homes in the town.

Lou Osorio, 45 Weaseldrift Rd., stated he has friends on Jackson Ave. where there are many two family homes and they complain about parking all the time. He did not feel they could enforce any condition of returning it to a two family or the parking issue.

Mr. Fiorello asked Ms. Hartmann if she conducted any type of survey as to the need for apartments in Woodland Park. Ms. Hartmann said no but there is a variety of housing types and this is just an additional one. Mr. Fiorello asked if there already was a mix of housing types in the Borough. Ms. Hartmann said yes. Mr. Fiorello asked if she did a study as to a need for two-family homes. Ms. Hartmann said she did look visually in the neighborhood.

PUBLIC CLOSED

Mr. Brigliadoro felt there were unique aspects to this application. He does understand the concerns of the neighbors and that it is a single family zone. He noted again that if they grant one variance in one case they do not set a precedent with future applications. Some of the aspects are the size of the lot in connection with other lots in the area. Sufficient parking is provided on site. In this instance his client has owned the house since 2004. Prior to that improvements have been made to a house built in the 50's. They do not dispute the fact that the home was built as a cape cod. Over the course of time this house has been expanded and has been built in essence as a two-family. All these events occurred before the applicant bought the house. He is here tonight to legalize the situation and convert it to a two-family. The Board cannot control the form of ownership but his client intends to remain at the premises. Variances run with the land and are not personal to the applicant. They appreciate that Mr. Cordo has nothing against the applicant but is concerned about the area. They will be residing in the 3 bedroom portion and it is his intention to rent out the first level. The C variances currently exist today and will not be increased or aggravated at all. They ask the Board to approve the C variances. They feel they have complied with MLUL and satisfied the criteria for the Board to approve the use variance. He felt this was a unique situation and felt if the Board granted the use variance it would not open up Pandora's box and asked for the Board's support in granting the application.

A motion to deny was made by Mr. DeCesare, second by Ms. Kallert. Mr. Ianniello asked if they deny the application what changes with this two-family home. Mr. Fiorello said it would not be available for rent. Mr. Ianniello asked if it was rented now. Mr. Brigliadoro said it was not. Chairman Holloway said the house is what it is but you cannot rent the other unit. If the variance is granted he could move out and he would be able to rent both floors. Application was denied by a vote of 6 – 0 with one abstention.

A motion to adjourn was made by Mr. DeCesare, second by Ms. Kallert. All in favor. Meeting adjourned.