

EDWARD G. DONOVAN
Mayor

CONSTRUCTION DEPARTMENT

FRANK F. DiROMA
Supervisor of Code Enforcement

THOMAS F. FLARITY
Municipal Administrator

BOROUGH OF MANASQUAN
COUNTY OF MONMOUTH

ALBERT "SANDY" RATZ
Construction Official

The Manasquan Planning Board held a Regular Meeting on May 7, 2019 at 7PM in the Council Chambers. Chairman Hamilton asked everyone present to please stand and salute the Flag.

ROLL CALL:

Board Members Present: Mayor Donovan, John Muly, Robert Young, Mark Apostolou, Neil Hamilton, John Burke

Board Members Absent:

Councilman Mike Mangan, Greg Love, Kevin Thompson, Leonard Sullivan, Mark Larkin, Barbara Ilaria (Mayor's Alternate)

Professionals Present:

**Albert Yodakis, Board Engineer/Planner – BORO Engineering
George D. McGill, Planning Board Attorney**

George McGill read the Open Public Meetings Statement in its entirety.

Approval of Minutes – April 2, 2019 – Mark Apostolou made a motion to approve, seconded by Bob Young, all in favor none opposed. Mayor Donovan abstained.

Approval of Vouchers made by Bob Young, seconded by Mark Apostolou.

Board Members Voting to approve:

Mayor Ed Donovan, John Muly, Bob Young, Mark Apostolou, Neil Hamilton and John Burke.

RESOLUTION #12-2019 – Reinhert, Craig and Vicky – 360 Cedar Avenue – Mark Apostolou made a motion to approve with the amendments by Robert Young who seconded the approval.

Board Members Voting Yes:

John Muly, Robert Young, Mark Apostolou, Neil Hamilton

APPLICATION #11-2019 – Shadlun, Evan – 539 Brielle Road – Block: 191 – Lot: 12 – Zone: R-5 – Keith Henderson is the attorney representing the owner/applicant. Keith said we started this a few months ago and the Board asked the applicant to reconsider some points, they did and submitted revised plans. The also got a revised denial from Richard Furey, Zoning Officer dated April 21, 2019. They re-noticed and re-published. The file was found to be in good order the Board accepted jurisdiction. Mr. McGill said this is a continuation of the first hearing that was held on February 5, 2019. Those that were absent from the February meeting are not present tonight so everyone sitting on the dais can hear the application and vote. Mr. Henderson proceeded with the application stating the Board was concerned with height and building coverage. They eliminated the height variance and the amount of building coverage is reduced considerable and they also tried to make the

house a little bit more conducive to the architecture in that area. The Board members have a drawing in their packets. They can provide new testimony. Al's report addresses the height. George asked for the architect to come forward and discuss what these plans show. She has been sworn in and has been qualified. Keith said we had a catchall in our notice and there is a question on one issue which they did not notice for. There are a number of conflicts in the Ordinance itself dealing with the definition of the stairwell dormer and the issue pertains to whether a stairwell dormer has to be set back 2-feet or not. In a nutshell the various provisions of the Ordinance are in conflict. Keith said he thinks what happened is when they corrected the R-4 criteria with A and B plans part of that just didn't get amended, it just was lost. As a matter of caution we are asking for a variance for that. That is the only other thing which has changed and then we talked about the building height and Sally has found a way to lower that to comply with the Ordinance. She is confident she can comply in measuring from the top point of that curb. Sally said the BFE which is where the curb is sits at 3-feet, plus 8, level one top finished floor is 11-feet. That's why we have level one is 11 BFE but 8-feet off the top of the curb. She is adding 2-feet of free board even though Manasquan only requires one. Al said his only concern there is the grade is about 6-inches higher than the top of curb as you move back of the lot. You are going to lose about 6-inches, he wants her to be aware of that. Keith pointed out to the applicant that this Board is not receptive to changes after the fact and he suggested to the applicant that he have the Surveyor shoot that when he gets it framed just to make sure there are no issues and we are very confident we can comply with that requirement. Keith said Al has a couple of points he raised in his letter, the A/C units are within the setback now, they will comply. The applicant will comply with #4, #5 and #6 was just discussed on the BFE, #7 will comply, #8 will be provided prior to construction, #9 we've agreed to, #10 we have also complied with that if you look at the map there is not much landscaping that will survive on Brielle Road, we do have native grasses that will survive there. #11, #12 and #13 they will comply with also. Keith said he went through the legal arguments for C-1 and C-2 but he did that last time. Al asked for the setback to be clarified 3.1-feet or 3-feet 1-inch. Sally responded it is 3-feet 1-inch they will stipulate to that setback. Al said the building coverage is going down to 41 and ½%. Mark Apostolou made a motion to open to the public, seconded by Bob Young, all in favor none opposed.

There was no audience participation. Mark Apostolou made a motion to close the public portion seconded by John Burke, all in favor none opposed.

Keith said everybody sitting on this Board knows what a difficult Street that is, it floods badly. The applicant grew up in Manasquan and is well aware of the condition and he is going to address that, I think the Board should welcome that investment with open arms, that's a hard area to build on. The American Timber property which we had approved about two years ago hasn't been touched and that had a building coverage on a larger lot. Neil said we have three variances, we are looking at the building coverage, side setbacks and then the stairwell dormer issue. John Burke made a motion to approve the application with all of the comments the Chairman just mentioned, seconded by John Muly.

Board Members Voting Yes:

Mayor Donovan, John Muly, Robert Young, Mark Apostolou, Neil Hamilton, John Burke

APPLICATION #15-2019 – Falkowski, Brian and Abby – 255 First Avenue – Block: 182.01 – Lot: 19 – Zone: R-5 – George McGill swore in Brian Falkowski, owner/applicant, Darren Vickery, RA, architect, Tom Bateman, builder and Al Yodakis, Board Engineer/Planner. Mr. Falkowski was the first to testify, he said he is seeking variances for lot coverage, frontage, building coverage and setbacks. The file was in good order and the Board accepted jurisdiction. He introduced his family who was present in the audience, his wife Abby, his sons Jack, Wyatt and Owen. They purchased this property back in April 2018, they spent last summer there and had a great time and they pretty much spend weekends there throughout the Fall and a little bit in the winter. They are avid surfers and fishermen. Upon purchasing it the house is in some need of repair it's been there since 1921. It's kind of shifted a little bit on its foundation, the roof is sagging a little bit. They knew they wanted to tear it down and put up a new structure. They spent a lot of time driving around Manasquan searching for a home they thought would meet what they were looking for, they chose Tom Bateman as their contractor because they liked his designs. We put together a book for you just to make it a little bit easier to get through this description. The first page shows the residence in the center, currently it's less than 600 square feet of living space. Two bedrooms, one bathroom, a small galley kitchen, small living room on top of a two-car garage. He took the Board through the booklet he put together. There is a two-car garage on the ground level, the entry way is now indoors, you go into the south side, go into an internal stairway. They also have a storage area that is compliant as required by zoning. The next level is the main floor, the entire structure is a little over 1000 square-feet but they were able to fit in a half-bath, a great room, a covered porch, there is a small galley kitchen as well as an eat-in kitchen area. The upper floor level they fit in a full hallway bathroom to serve two small bedrooms, and a master bath with a master closet for the master bedroom. We basically fit in everything we possibly could in this very small structure, while at the same time being cognizant that we are asking for Bulk Variances and as we get further in we will show what we have done to reduce the structure from its current size. We do have as much landscaping in the back as much as we could fit in there with a small backyard. We even put a little landscaping on the front with the window boxes. Next he pointed out the BFE and the north elevation as well. But, the front elevation points out that even with a 6-foot 5 individual we have a small bump out there for a fireplace. There is plenty of head clearance there for egress purposes. In addition, we have a height restriction of 33-feet, we are purposely constructing the building at 32-feet, 9-inches to give us a little tiny bit of play there. As heard in the last application we will also shoot the structure during framing. Moving on to the next page, the south elevation, rear elevation and an enlarged head clearance detail for our A/C platform. This particular A/C platform is smaller than our current A/C location, now it's at grade and sitting right where that human is placed on this picture. We are pointing out that is above BFE and we are providing plenty of head clearance for the individual there. What you see in the back is a garage door opening, that door is just to open up and expose the storage area and bring the outside in such it's such a small backyard. It doesn't pass all the way through to the front of the garage it stops at the wall. The last page he feels is very important, he showed the existing building and the proposed structure which will be

shifted back to give more frontage and they have also shrunk the building coverage. He highlighted the improvements in green, they are proposing to reduce the building coverage from 589 square-feet to 567 square-feet, they are mindful that they are asking for variances, it is such a small property but they are doing their best to conform as best they could and still make a livable structure. They propose a lot coverage reduction from 665 square-feet to 576 square-feet. They have centered the structure which will increase the 1.5-feet from the next door neighbor to 3.5-feet. The East front setback is increased from 2.75-feet to 4.0-feet. They eliminated the need for an exterior staircase as he explained and they placed that into the living level internally again to reduce that footprint. That took a lot of square footage from livable space. Finally, they improved the aesthetics of the home as the Board can see from the rendering within the allowable height restriction. The A/C platform is reduced greatly in size from where it currently sits on grade. It is a small structure, the architect was able to do this and they are seeking Bulk Variances. Neil told the applicant he made a very fine presentation as a pro-se homeowner. Neil asked if the architect needs to add to this or should we go to the engineer's report. George McGill said we need to place Mr. Vickery's qualifications placed on the record. He said he is licensed in NJ and Carb certified. He has been licensed since 2010 and he has testified in front of other Boards and accepted as an expert on about eight occasions. Neil said we can accept his credentials. Al Yodakis said the variances are all pointed out in his report, we have two for lot area and frontage, Mr. Falkowski went through the building coverage which is going down. Two side yards, rear yard and front yard setbacks which are all indicated there. The other comments in his report are informational, there are several, we need details for re-construction along First Avenue, a grading plan will have to be provided, the requirement for a discharge system, we need something if you are asking for relief from that showing that the water table is too high there to effectively do that. I imagine it would be but we need something to demonstrate that. Al asked if they agree with the other comments outlined in his report as far as utilities go, replacing curb and sidewalk. They said they will comply. John Burke asked if the garage would still be pitched and Mr. Falkowski said it will all be at grade. Mark Apostolou made a motion to open the meeting to the public, seconded by Robert Young, all in favor none opposed. There was no audience participation. Mark Apostolou made a motion to close the public portion, seconded by Robert Young, all in favor none opposed.

Neil asked the applicant to present to the Board the positive and negative criteria. Mr. Falkowski said the positives are it's a new house, will increase the value of the houses around it. Visually it adds to the Community, the sidewalk needs re-construction, the building is not in a safe condition. The negative is it could obstruct the view from the resident behind them however they do have plenty of views from different locations of their front of their house. Other than that he doesn't see any negative criteria.

Mark Apostolou made a motion to approve the application as submitted, he thinks they did an excellent job, he congratulated them for being cognizant of the height restriction, they reduced a lot of the requirements subject to Al's comments which have been complied with by the applicant, seconded by John Burke.

Board Members Voting Yes:

Mayor Ed Donovan, John Muly, Robert Young, Mark Apostolou, Neil Hamilton and John Burke.

APPLICATION #19-2018 – DaCruz, Janet – 32 Rogers Avenue – Block: 157 – Lot: 39.03 – Zone: R-2 – Lawrence Luttrell is the attorney representing the applicant. Mr. Luttrell said in the midst of this application they took a change in direction in this long and tortuous application. There was more than one variance, the height, a curb cut beyond 12-foot, and the allowance of a pre-existing detached garage. The last time he was here he advised the Board that the application was being modified to the extent that we are only asking for the height variance with the stipulation that his client if approved of the height variance is going to utilize the attached garage, abandon the detached garage and remove it and tonight we are prepared to offer subject to any other recommendations that the Engineer may require to install some flood mitigation to retain storm water. Mark Apostolou asked if Mr. Luttrell didn't say last time that the applicant was going to create a gazebo. Mr. Luttrell said we had indicated that was something that we would consider doing but in response to a very pointed question by one of the Board members that night that it would be bigger than anything we've ever seen in this Borough, that has been withdrawn. The curb cut is going back to 12-feet regardless of the outcome of the application, so it's really just removing that detached garage. His client is here, she has been through a great ordeal, she has a story to tell, dating all the way back to Hurricane Sandy and actually a little bit before when she had this house constructed in 2009. She was actually before this Board for an application to subdivide the property. He has a number of Exhibits ranging from A through N, after his client reads her prepared statement she will reference the exhibit, as that exhibit is referenced he will hand it to the Board and then it can be passed down. Mr. McGill asked if those exhibits are marked then he swore in Janet G. DaCruz. George asked Mary to follow along the Exhibit A through N packet as each page is referenced in Ms. DaCruz's statement. Mr. Luttrell then asked Ms. DaCruz to read her statement. She proceeded to read a very lengthy statement. Exhibit A is a copy of Resolution #1-2007, Minor Subdivision, memorialized March 6, 2007. Exhibit B is a copy of a Handicapped Disability placard for Ms. DaCruz. Exhibit C is a letter deeming 32 Rogers Avenue substantially damaged signed by Albert P. Ratz, Construction Official. This letter shows the damage to her home at \$341,381. Exhibit D is a Flood Elevation Certificate in 2013 which revealed that her new home was actually 6-inches below the required elevation. Exhibit E is a copy of the scope of work, requiring the home to be elevated at least 5-feet. The State of NJ gave her a Grant in the amount of \$150,000 this was known as REM money. Mr. McGill asked Mr. Luttrell to elaborate on the last statement. Mr. Luttrell said the first floor of your living space has to be one-foot above the BFE, so if the BFE is 8 the first floor of living space has to be at 9, in this particular instance it was only at 8.5-feet. It shouldn't have been that low. A home of new construction should never have been built at that number. Bob Young asked do we know how high it was prior to Sandy? Mr. Luttrell said the elevation certificate shows 8.5. Bob Young said but it's supposed to be grade, you are talking apples and oranges here. Mr. Luttrell asked to have Ms. DaCruz continue

giving her statement then he will address Bob's concerns. She continued addressing Exhibit F, the Planning Guide for the Residential Hydraulic elevator. She learned that she needed to elevate her home at least 7.8-feet in order to allow sufficient clearance for the use of her existing elevator. Neil asked if the elevator is in the structure now. Mr. Luttrell said the frame, shaft is there. The car itself had to be disassembled and taken out while the structure was elevated. It is sealed up as a safety requirement per the Building Official. Ms. DaCruz continued on, as a result this meant that the height of the peak of her roof would exceed 38-foot height limit for her zone by about 1.6-feet. Accordingly, she applied for a height variance and appeared before this Planning Board on March 3, 2015 with her architect. While making their presentation it appeared as though she was met with a significant amount of resistance to her height variance application. At her architect's advice to her to withdraw the variance application and he would design the plans to include a lowering of the roof so that the elevator could still be used and the structure would not exceed the 38-foot height limit, a copy of the transcript is attached as Exhibit G. Exhibit H is a work proposal by Visionary Homes to lower the roof and elevate the structure. Mr. Luttrell had paperwork to enter as Exhibit A-2 which is Mr. Almechenko's plans for lowering the roof. A- Exhibit I, Ms. DaCruz explained that the builder only elevated the structure, demoed much of the interior, took all of her money. As a result, she filed a Police Report and a complaint with the State of NJ. A copy of the Police Report and certification of facts prepared by the Office of the Attorney General of the State of NJ are attached as Exhibit I and J, respectively. Neil asked Ms. DaCruz how much money she gave the contractor and she said \$190,000. He asked if that was half. She said yes. He asked what he did, and she said he elevated the house and gutted the inside. Mr. Luttrell said the house went up roughly 5-feet, 9-inches to 34-feet, 9-inches height from the top of the curb. The house is now at 40.7-feet. It went up roughly 5.9.5-feet. Ms. DaCruz said next the contractor took all of her available REM grant money, and her last bit of savings. A copy of the breakdown of the funds taken are attached as Exhibit K. Exhibit L is a copy of a letter dated June 20, 2018 from Paul K. Lynch, Land Surveyor stating the top of the roof of the structure is 40.7-feet above the top of curb. This is about 5.9.5-feet higher than the original height of her home before it was elevated as a result of the flood damage. A copy of the letter from Robert H. Morris, Landscape Surveyors dated February 3, 2015 is attached as Exhibit M. This states the height of the roof of the dwelling is 34-feet, 9-inches above the top of curb. The most recent Elevation Certificate from January 3, 2018 shows that the BFE is now 9-feet and the first floor of her living space is at 5.7-feet above the BFE, this is Exhibit N. Ms. DaCruz said she believes that cutting down her roof to accommodate the height issue will make her home appear out of character and appearance from the rest of the surrounding neighborhood as none of the houses have flat roofs. A copy of the roof lowering plans she recently had drawn are attached as Exhibit O. Accordingly, she is back before this Board to renew her height variance application, if granted she is agreeing to abandon and remove the detached garage that now sits on the property, she will also agree to install one more storm water retention well or other flood mitigation method on her property that may be recommended by the Borough Engineer. She also believes that the circumstances here are unique and extraordinary that warrant

variance relief. Mr. Luttrell asked her if she currently owns any licenses and she said yes, she is a real estate agent. She has been licensed since 2001. She is familiar with real estate in the Borough of Manasquan. He asked if any of her neighbors have a flat roof and she answered no. She feels the flattening of her roof will affect the value of her home. She feels that it would also affect the value of the neighboring homes. Mr. Luttrell said there is a story here, he feels it's important to elaborate on. This was not handled the way he would have handled it had he been in control of this application from 2015 forward and any time before that. Ultimately, he wants to make it clear that this is not Ms. DaCruz thumbing her nose at this Board. After Hurricane Sandy many residents were subjected to the same circumstances, that is trying to comply with the Flood Elevation, rehabilitate and comply with the height zoning requirements. He feels this is unique and he has never seen an application like this in 20 years. She is a victim this is not a self-imposed hardship, it's not something she has created, it's something that has happened to her. He asked the Board to not only consider not only a C-2 Variance but also a C-1 Variance, specifically by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property, or the structure lawfully existing thereof. If she is not given this variance she has to lop off her roof. Lowering the house is not a practical option. She has had to vacate her house, presently she is residing at 563 Salmon Avenue. That lease continues until May 23. She has a deadline within she has to comply with for the REM program by October 1st otherwise she has to forfeit the \$132,000. she received from them. She needs a Certificate of Occupancy and the State of NJ has to come in and inspect the house and make sure that she has complied with all the conditions that the State has put upon her. She has had other deadlines and they were extended because of the extraordinary circumstances, specifically the Consumer Fraud Complaint that was filed and lack of funds. Mr. Luttrell had an e-mail from Judy Thomas from the REM Program issues with Visionary Development. That was marked as Exhibit A-3 and also Exhibit A-4 is a Conditional Project Deadline Extension Approval sent by the Housing Recovery Program dated 4/14/2016. Mr. Luttrell proceeded to give his closing argument covering all the issues already addressed. He said in order to use the elevator for access to all of the floors there has to be enough clearance for that elevator clearance. George McGill addressed Mr. Luttrell stating there is nothing on record that is driving the height, whether it's the elevator or the garage. That was the focal point of the 2015 hearing. Mr. Luttrell said he stipulated at the previous meeting when he agreed to get those transcripts that would be part of this record. Mr. McGill said and Mr. Almenchenko said in that record that it wasn't the elevator that was driving it, that it was the garage itself and the need to have a motor in it and he actually said in that transcript that he could design a structure where the elevator could be accommodated without the garage. In that hearing we did discuss (George wasn't here) but it was discussed the need for the garage and possible alternatives. That's in that transcript. Mr. Luttrell said and that's why we submitted the design specifications as part of the record. Mr. McGill said you submit that without any expert testimony and nobody really has had an opportunity to take a look at that. Mr. Luttrell said it speaks for itself, it's a business record and certainly acceptable as evidence. Mr. McGill said we went through many exhibits, I was trying to read J which was a certification of maybe 6 pages long or

something of statements made by Ms. DaCruz and he had to stop reading because the application was going on. He would have loved to finish reading that and take a look at specs and give specs to Al so he could take a look at it, ultimately all those documents are here say. Rules of evidence are relaxed here. George said there may be questions that someone needs to ask, if we had somebody sitting there saying this is why we have to build it like we say that's a different story but these are specs, you can hand them in but you are asking us to analyze them. Mr. Luttrell said respectfully just taking the elevation certificates at their face value which is not hard to do you can see that there is not much space between the ground floor, which is the pavement and the next floor of living space. Ultimately you cannot fit an elevator in there. That's why submitting that business record in frankly speaks for itself, it had to go up higher than what was necessary in order to comply with a 10-foot elevation for the BFE. Al Yodakis said from his brief look at the elevator specs submitted, it has here the required overhead heights, it looks like there were four (4) different options for elevators here. I don't know which one you have there, is it the smallest elevator. Mr. Luttrell said his position is it wouldn't matter simply because the ultimate issue even at 7-10. Al said he thinks it absolutely would and they are showing a very shallow pit here, most of his experience with elevators has been with commercial elevators where you are dealing with a four-foot plus deep pit. This pit is 10-inches minimum. I don't know that this clearly demonstrates one way or another. Mayor Donovan asked if there has been an arrest and Mr. Luttrell said the Attorney General's office from his understanding and this is from an e-mail, indicates that they are overwhelmed and they are attempting to get to the cases in due course. Mark Apostolou said he doesn't see a Manasquan Police report. Mr. Luttrell said this is outside the AG's office, actually it's a special prosecutor's office specifically for fraud. Mark Apostolou said Exhibit I item #31, that seems she terminated Mr. Marley. Mr. Luttrell said he was looking for more money. He then asked Ms. DaCruz if she has completed a reverse mortgage on her house, she answered yes. That did supply her additional money to finish some interior work on the property. She now has a new contractor and she said his name is Frank Smith. Mark said his reference specifically is that she terminated Mr. Marley but then rightfully so retained a new contractor. Mark said he is confused by the schedule. We don't know at what stage Marley was terminated. Mr. Luttrell said that was by his instruction and he believes the AG's office agrees with him in that they have taken it on. Neil Hamilton said regarding the site visit that was done the intent was to see what the house structure looked like and see what point you were at and in our opportunity to go up into that third floor attic, in his recollection we saw the shafts for the elevator and he doesn't recall that shaft going all the way up to the ridge. He would guess from the floor of the attic to the ridge you could be 12 or 13-feet, that's a high roofline up in there. I know the idea was to have that as a studio, workroom for Ms. DaCruz, that was her plan. Through all this time, and Al makes reference to options for an elevator and the clearances that are required that in order to get to that top you may be able to choose another type of elevator that could use the existing shaft, modify them and have an elevator that necessarily may not meet all that existing area to go up to that ridge that exists right now. Or, in fact under the circumstances you are not going to be able to use that attic via the

elevator. In all our time sitting on this Board and I've been here a long time, this Board to his recollection has never granted a height variance. We have had two possibly three issues that he can recall that the height was exceeded in making an error and the owner was responsible to reduce the height. One was pre-Sandy on Brielle Road. I don't know that's a factual comment that aesthetically a roof that was cut down that they are three or four-feet top flat, once you ride by you don't even see them. I understand her plight, if she was by herself, this got out of control, things went sour but I don't know that that is a hardship for this Board that we need to approve a height when I think there are other stipulations that you can do to rectify the situation, obviously it's going to cost you money. I don't know when you've lived in that house last but it's been quite a while, you cannot get a C/O from the Borough and to drag this on, I would think you are paying rent in another house, if you have to leave there, I would think at this point in time you will say I have to do what I have to do to get back in my home and move on. You have agreed to eliminate the garage, I have no problem with the curb cut and the driveway in the front, we can leave that. Parking is an issue on Rogers Avenue in the Summer, I get that. But, as far as the height I don't think you've proved your case Counselor and I feel sorry for the applicant but I don't know that this Board can start proving height issues as a blatant misunderstanding of all parties involved and I don't think that's a hardship this Board can accept. Mr. Luttrell said I appreciate your comments and concerns but it's not just a hardship we are seeking we also feel this benefits outweigh the detriments here, there is no detriment to the Town at all if a height variance is granted. Ultimately it's not blocking anybody's view, you are going to have a lopped off peak of the roof at a significant cost which certainly doesn't add to the aesthetic value of the house. Ed Donovan asked what is the other plan? The only plan you have is to chop the two-feet off the top, there is no other plan. She had another contractor to lower the roof, Mr. Luttrell asked Ms. DaCruz how much she paid him and she said \$10,000 as a deposit. Mr. Luttrell said he has indicated he is prepared to move forward on it however the current contractor is recommending against him doing it because my client has requested a refund of that money, he hasn't done any work and hasn't refunded any money. Mr. Luttrell said his client has been burned a number of time by contractors and ultimately there is a sense of urgency here, because REM is going to start saying look I demand that you pay me back the \$137,000 grant if you don't have your C/O by October 1st. That's likely not going to be extended again. Nobody's view is blocked; it's been there for a number of years. Mayor Donovan said and there have been many complaints about it and it's totally out of character with the neighborhood. Neil said he is surprised you don't have the objectors that we had at the last two meetings, neighbors who objected just out of principal. Bob Young said we had probably 12 or 13-feet of clearance in the attic and just for a minute to go back to my line of questioning from 45-minutes or so ago. Back when the house was dropped and I think you said 2009, the BFE I think was 8, the finished first floor was at 8-feet, 6-inches and the height was 34-feet, 9-inches. You were saying if the height had been at BFE plus one which would have been 9-feet, much of the damage Ms. DaCruz had incurred would have not taken place, is that correct? Mr. Luttrell asked Ms. DaCruz at what point the water line on her first floor was measured at and she said about 13-inches. Bob Young said I

understand, but I guess my point in all of this is that at that time, we are talking about a conforming lot, the maximum height was 35-feet. If the house had been dropped because it was a modular at 9-feet it would have been 35-feet, 3-inches, and a variance would have been required and none was sought. My argument would be the contractor at the time dropped the house as high as he could without worrying about exceeding 35-feet. Mr. Luttrell said Atlantic Modular was the company that did the work, the statute of limitations is coming up. Bob said right but my point is if the house had been at 9-feet, Atlantic Modular and Ms. DaCruz would have had to come in for a variance, and no variance was sought. Mr. Luttrell said or Atlantic Modular would have had to design or send back the house they procured for Ms. DaCruz. Bob said so you are claiming that the error was on Atlantic Modular? Mr. Luttrell said, correct. He said we have a law suit against Atlantic Modular at some point, that suit was withdrawn is that correct? Ms. DaCruz said it went to arbitration. Mr. Luttrell said there is an arbitration clause in a new home warranty that required all disputes to be held in arbitration. Litigation was put on the back burner, then Hurricane Sandy hits and my client's resources are dedicated to getting back into her house and to live not to litigate with Atlantic Modular. I've been retained in order to go after Atlantic Modular but there is no money to pay me to go forward in order to do that until this issue is resolved. Mark Apostolou asked if the arbitration still pending. Mr. Luttrell said it will cost \$5000. just for the filing fees with American Arbitration Association just to initiate the complaint. My client has to do triage with the limited amount of funds she has. She is 72 years old, she does not have any significant income in order to do this and she is down where she has had to garner the equity from her home in a reverse mortgage in order to have funds available to complete the construction. Metaphorically I can't get on my knees any more than I am and beg for this variance but I do offer that even if the structure can be physically lowered it doesn't significant the change what that house is going to look like. Personally, I have property in the Highlands, most of the Highlands homes since Sandy have been propped up 12-13-feet in the air, and I don't like it. I am one of the lucky ones that our area was re-zoned to where the commercial use can go on the first floor and residential on the second floor. My client is willing to go ahead and side for the rest of that, I don't know if that's a design standard that has been put in place, since Sandy but she is willing to do that and any other reasonable accommodation that this Board places conditions upon, a variance here is a very acceptable set of circumstances. Ms. DaCruz was trying her best to get the construction done under the circumstances as quickly as possible. Ultimately she has been burned in the process. If she is denied the variance her recourse is simply to go ahead and have to trust that process again in the hopes that it actually gets done with the limited amount of funds she has available. Bob Young said the May 6th plans of 2015 were to chop off the roof. Mr. Luttrell said he doesn't think they were. Neil asked if one of their contractors make application with the Borough for a permit to lower that roof. Ms. DaCruz said yes. Neil said so you made a decision at some point in time within the last year that we were going to do that, I heard the application came in and the garage was going to be flipped possibly for a gazebo or demoed. Now, we've changed our mind. We've decided not to do that. Mr. Luttrell said because of the time restraints here we have to burn the

wick at both ends. Mark Apostolou said you said at the last time you were doing it as a stop gap measure in case we rejected this you wanted to have their plans in place. Mr. Luttrell said correct, if this application is denied that is going to be an option she certainly seriously considers. Respectfully, I would submit I've also been prepared I have to file a prerogative writ in order to attempt to get that if it's denied. All I know is October 1st will come very quickly. Mark Apostolou said Freehold has not been issuing prompt rulings on appeals. Mr. Luttrell said she is handicapped, she is disabled and ultimately she should be allowed to continue the use of her elevator through all the floors of her home, she shouldn't be punished by the circumstances. Mark Apostolou said the problem is that Mr. Almenchenko testified in front of us, and it is part of the record that he could have designed that to be functional. Neil said as opposed to cutting the roof you are going to take the entire roof structure off that attic and re-build it. Mr. Luttrell said his client's opinion as a real estate sales person is that it would be more aesthetically pleasing than cutting off the peak. I don't know if it's feasible because of the cost. Neil said that cost is astronomical, you need to cut that ridge off, get it done and in a matter of a week or so get your C/O's and move on, I don't think aesthetically it's going to impact the value of the house. In the meantime, Ms. DaCruz has a place to live, enjoy your life in your new home instead of fighting the system and living down the Street, you can't get a C/O from the Borough until you do something. I don't want to be a hard nose but if you want to take an issue with us if we deny you and you take us to Court, now you are tied up again financially, you have to pay your attorney, you are not going to live in your house for God knows how many years. We need to get over this and move on. George McGill said in referring to the plans by Mr. Almenchenko, that we marked Exhibit A-2 it looks like they show the garage, the foundation plan then the square for the lift and that's on A-2 of A-2 and then when I look at the elevation it says 38-feet. It looks to me like Mr. Almenchenko designed a house that was at 38-feet that the garage was actually part of the house and the lift, the elevator was functioning all at 38-feet. Mr. Luttrell said he can't speak to that because he never had a conversation with Mr. Almenchenko. George McGill said these are plans that your client had drawn up, she is sitting right here, these are the plans that Mr. Almenchenko drew up for you, is that correct? Ms. DaCruz answered yes. Mr. McGill said alright it would be good if we had Mr. Almenchenko here so he could explain it because we are looking at documents that I need to ask questions about and the answer is I don't know, but that's what it appears to be to me. It looks like to me the argument is that this company came in and built it differently, am I getting that right? Mr. Luttrell said he can't speak to what the developer did other than part of his proposal was to be paid, he was the original contractor that was approved through REM which dates back to 2014. I don't have Mr. Almenchenko here, the costs to my client are significant. Mr. McGill said I have a hard time with the timeline, because when you were here in March 2015, the house was at 34.9-feet, it hadn't been built and Mr. Almenchenko was going to go back and redesign it. Bob Young said it had been built. George said oh yes it was built but it hadn't been raised and that's why you were here. But then somebody did work on it, was that the developer you had to chase after? Mr. Luttrell said correct, Visionary Developers initiated work in 2016. George said you don't know if they used these plans to do that work? Ms. DaCruz

said she doesn't know. George said ok I'm good now, I understand. Mr. Luttrell submitted a building permit to lower the roof by 2-feet. Mark Apostolou said that wouldn't be enough because it would still be over the 38-feet. Neil asked what the cost of work to lower the roof was. Mr. Luttrell said these permits are Exhibit A-5 which are to lower the roof. Bob Young made a motion to open to the public, seconded by Mark Apostolou, all in favor none opposed.

Audience Members Coming Forward: All were sworn in by George McGill

Tom Bateman – 43 Pearce Court – He said there are many ways to lower a roof. He does this. He has studied this house, thought about her circumstances which are really difficult. It's such an easy fix, it's a piece of cake. He asked if the attic had a finished ceiling and the answer was no. He said even easier, so it's just a matter of lopping it off, changing the pitch, done. You will have a gambled roof house that looks nice. Mark Apostolou asked if he could estimate the cost. Tom said he can't say, he'd have to give it to an estimator. He said an honest time frame would be probably a month from the time the permits were issued. Mr. Luttrell said if there were trusses as this is a modular home that would affect the cost would it not? Mr. Bateman said it would. He said he's just here to help her out. He did agree it would look much better with it pitched down instead of a haircut.

Judith Roman – 11 First Avenue – Prior to moving to First Avenue she lived at 37 Rogers Avenue, across the Street. When the house was elevated she felt that it decreased the value of her home because it dwarfed her home. She looked up at this tall, huge home from her front porch and say what will people think of my house because now my house is diminutive compared to that house and some of the others. She didn't feel comfortable with a house that high across the Street and the owners that are in the house that she used to own have been here testifying, George Lemback, he was here the last couple of meetings and couldn't make it tonight. The second point she wanted to make is when they moved to 11 First Avenue they moved to a non-conforming lot. Therefore, their height was restricted at 33-feet as opposed to 38-feet and we've invested well over a million and a half dollars in that home and they had to deal with a height restriction. When they approached their builder about coming here for a variance he said don't even try it, it's not going to happen. So, we are living in a home at 33-feet which is probably valued at a million, seven at least. Nothing against Ms. DaCruz, but the rest of us have had to live with it and it is what it is. Mark Apostolou made a motion to close the public portion seconded by Bob Young, all in favor none opposed.

Mr. Luttrell gave his closing argument. He said his client's goal is as this is too much house for her anyway is to sell this house once the REM Grant is done and she will downsize. She doesn't have the rental income she had before. She can't afford to live here any longer as it is. We believe what we submitted before this Board shows the benefits outweigh the detriments in favor of a C-2 Variance and also that there would be a hardship as he elaborated before.

Neil asked about the comment with the garage and what is your plan. Mr. Luttrell said the plan would be if his client is granted the height variance she will remove the detached garage. She will also install any number of flood mitigation measures as far as drywells and what nature are recommended by the Engineer. This would be a condition. That

would be placed on the approval. Obviously, if it's denied then my client has to make a financial decision of whether she is going to spend money to knock down a detached garage or simply just get rid of the garage door that's in the front of the house, or just wall it off. There is access from the side and the back which is used for wet storage and ultimately that would be a cost effective way for her to avoid having to remove the garage. Neil said should the garage stay you will need a variance for the size and the height. Mr. Luttrell said we are not proposing to keep the garage if it's approved. If it's not approved Ms. DaCruz has the ability to just keep her attached garage and then not use her detached garage. Neil said we just need to understand where we are going to go with our vote what variances you are seeking. Mr. Luttrell said I simply want the height variance and as a condition of that we will remove the detached garage. George McGill said so we have a height variance, we have the variance for the two garages, the curb cut is that going away. Mr. Luttrell said the original curb cut was 12-foot, it ran the full length of the driveway back to the detached garage, when the elevation was done and the attached garage was placed in there the curb cut was blinded to 18-feet, that was on the approved set of plans. It allowed access for the car to come out of the garage to come out otherwise there would be too much of an angle to make the cut to get back out. My client if denied then the curb cut is going back to 12-feet in the exact spot it was in before. If approved she is obviously going to put the curb cut back to 12-feet but just moved behind the attached garage instead of directly behind the detached garage where it exists now. In either circumstance it is going to 12-feet, we are not asking for variance for that. George asked Al about coverage and the A/C units. Al said at the last meeting there was a request for a more recent FE Certificate. Mr. Luttrell said we submit that the FE Certificate from 2018 shows that the condensers are at 10.2 or some degree over 10-feet. We believe we have complied with that. Al said they were also located in the side yard, which they can't be. Mr. Luttrell said that's a design specification we would ask for a variance to remain where they are now. George said I was trying to get the variances in order for a vote, I wasn't looking for further testimony. So no variance for A/C. Al said regarding the building coverage is still a variance requirement. Ed Donovan said if the plan is to leave the garage up you are still exceeding the coverage. Mr. Luttrell said this was part of the original variance that was approved. Mark Apostolou said we never approved that variance. Bob Young said the coverage is at 34% and it shouldn't have exceeded 30%, it shouldn't have happened. Mr. Luttrell said then we request that coverage issue. George McGill said if the height variance isn't granted then the height has to be made conforming, the building coverage issue we can't say we are either going to grant or not grant it, because there is 4% coverage that's over that would need to come out somehow. I don't know how it happened, and here it is. It's a pretty significant issue that if you don't grant the variance for the coverage that the coverage will have to be brought down to 30%, that's possibly a more significant issue than taking down a roof. Al Yodakis said he has his February 18, 2015 report from when this application originally came in and that was an issue back then as well. Mr. McGill said ask the public if they have anything they want to add. Mark Apostolic made a motion to reopen the public portion, seconded by John Burke, all in favor none opposed.

Tom Bateman – 43 Pearce Court – He is still under Oath. He asked the Board how it happened that the original house was built at 34% coverage where 30% was required. He was here for the original presentation, she presented to the Board a beautiful house designed by Chris Rice and then when the house was built it became a modular. An entirely different house than what was presented to the Board to begin with. He is assuming somewhere in that process of transitioning from the Chris Rice plan that conformed in all ways, but then when the house was eventually built it exceeded by 4%. If you are going to grant some kind of whatever, the garage should probably come down. And, the roof should come down. If you are going to allow them to exceed the lot coverage that's there, I'm not allowed to do it. No other builder is allowed to do it. I would make that a condition no matter what you do that the garage has to go away, that will eliminate the lot coverage issue, it is lot coverage right. He was told no, it's building coverage. Part of the package of what you are doing here is require the roof to be lowered, and because the house exceeds the building coverage remove the garage.

Mark Apostolic made a motion to close the public portion, seconded by John Burke, all in favor none opposed.

George McGill said it looks like we have three variances, they can all be voted on separately. We have a height variance, two garages and building coverage. The applicant has withdrawn variance request for the curb cut and the air conditioners.

Mr. Luttrell said to be clear if we are granted the height variance we don't need a variance for the building coverage because we are removing the detached garage.

George said ok we'll see where we go.

Neil Hamilton said he has heard all the particulars and certainly feels bad about the case and obviously that could be one that you could give relief to but I'm not convinced that this is the one, I suggest the height has to be reduced to be in conformity. Seconded by Robert Young.

Board Members Voting Yes to Reduce the Height to 38-feet this is a denial vote:

Mayor Ed Donovan, John Moly, Robert Young, Mark Apostolou, Neil Hamilton, John Burke

John Burke made a motion to deny two garages, Mark Apostolou seconded the motion.

Board Members Voting Yes to remove the detached garage as there are two garages:

Mayor Ed Donovan, John Muly, Robert Young, Mark Apostolou, Neil Hamilton, John Burke

Mark Apostolou made a motion to reduce the building coverage in the event that the applicant agrees to remove in totality the pre-existing garage and make it so it is an open space with nothing impervious, seconded by John Burke.

Board Members Voting Yes to the removal of the detached garage:

Mayor Ed Donovan, John Muly, Robert Young, Mark Apostolou, Neil Hamilton, John Burke

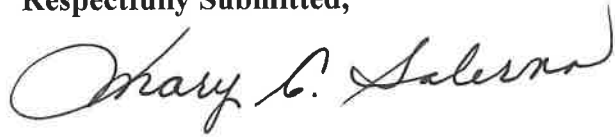
John Burke made a motion to cancel the second meeting in May, seconded by Mark Apostolou, all in favor none opposed.

Bob Young asked if there is anything for June? Al said there are three cases. Neil said if the applicants don't have their paperwork in the office then they will not be heard.

Mark Apostolou made a motion to close the meeting, seconded by John Burke, all in favor none opposed.

Meeting adjourned at 9:39pm

Respectfully Submitted,

A handwritten signature in cursive script that reads "Mary C. Salerno". The signature is written in dark ink and is positioned above the printed name.

Mary C. Salerno
Planning Board Secretary