

**LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
JULY 8, 2015 – 7:00 pm**

CALL TO ORDER BY VICE-CHAIRMAN GARY

PLEDGE OF ALLEGIANCE

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

ROLL CALL:

Present: Members DeGroff, Marchie, Unangst, Rutledge, Larsen and Vice-Chairman Gary. Also present, Attorney Sposaro and Engineer Paul Sterbenz.

Absent: Members Horun, Bittone and Chairman Barcik

OLD BUSINESS:

- Approve the Regular Meeting Minutes from June 10, 2015

Motion by: Member Rutledge

Seconded by: Member Marchie

ROLL CALL:

AYES: Members DeGroff, Marchie and Rutledge

ABSTAIN: Members Unangst, Larsen and Vice-Chairman Gary

- Memorialize Resolution 14-09A – Miles Van Rensselaer – River Road, Block 4, Lot 1 and Block 1, Lots 3 & 3.01 – Granting Final Major Subdivision Plan Approval.

**BOARD OF ADJUSTMENT
TOWNSHIP OF LOPATCONG
WARREN COUNTY, NEW JERSEY**

CASE NO.: 14-09A

**PREMISES: BLOCK 4, LOT 1 AND BLOCK 1, LOTS 3 & 3.01
RIVER ROAD, LOPATCONG TOWNSHIP, NEW JERSEY
RESOLUTION GRANTING FINAL MAJOR SUBDIVISION PLAN
APPROVAL TO MILES VAN RENSSELAER**

WHEREAS, Miles Van Rensselaer has made application to the Zoning Board of Adjustment of the Township of Lopatcong for final major subdivision plan approval of the lands designated on the tax map of Lopatcong Township as Block 4, Lot 1 and Block 1, Lots 3 and 3.01;

WHEREAS, the within matter was heard and considered at the regular open public meeting of the Zoning Board of Adjustment of Lopatcong Township on Wednesday, June 10, 2015 held at the Municipal Building, 232 South Third Street, Morris Park Phillipsburg, New Jersey 08865; and

WHEREAS, the aforesaid open public meeting was noticed, advertised and held in accordance with the Open Public Meetings Act; and

WHEREAS, this matter was opened to the public for both the questioning of witnesses and comments (no one from the public presented any questions or offered any testimony); and

WHEREAS, the Zoning Board of Adjustment considered the following:

1. Drawing entitled "Cover Sheet-Major Subdivision for 1352-1354 River Road- Block 1 Lots 3, 3.01 and Block 4, Lot 1, Lopatcong Township, Warren County, New Jersey" prepared by Wayne Ingram, P.E. of

- Engineering and Land Planning Associates, Inc., dated August 11, 2014 and revised through May 13, 2015 (Sheet 1 of 3);
2. Drawing entitled "Boundary and Topographic Survey 1352-1354 River Road- Block 1 Lots 3, 3.01 and Block 4, Lot 1, Lopatcong Township, Warren County, New Jersey" prepared by James T. Sapio, P.L.S. of JTS Engineers and Land Surveyors, Inc., dated August 9, 2014, and revised through May 13, 2015 (sheet 2 of 31);
 3. Drawing entitled "Final Major Subdivision Plat- Major Subdivision-1352-1354 River Road- Block 1 Lots 3, 3.01 and Block 4, Lot 1, Lopatcong Township, Warren County, New Jersey" consisting of one sheet, prepared by Wayne Ingram, P.E. of Engineering and Land Planning Associates, Inc., dated August 27, 2014 and revised through May 13, 2015 (Sheet 1 of 1);
 4. Draft Conservation Easement for proposed Lot 1.02 in Block 4 prepared by Robert M. M. Van Rensselaer of Carter, Van Rensselaer and Caldwell, dated May 14, 2015; and
 5. Report prepared by Paul Sterbenz, P.E., P.P., Zoning Board Engineer, dated June 5, 2015.

WHEREAS, the Zoning Board of Adjustment does hereby make the following findings of fact:

1. The property in question is designated as Block 4, Lot 1 and Block 1, Lots 3 and 3.01. In September 2014 the Zoning Board granted the applicant use variance, bulk variance and preliminary major subdivision approval. This approval was memorialized in Resolution 14-09, adopted on October 8, 2014. The Resolution granted approval subject to the satisfaction of various conditions.

2. Based upon the memorandum from Paul M. Sterbenz, P.E., Board Engineer, to the Zoning Board it appears that three conditions remain outstanding. The first is County Planning Board approval. County Planning Board approval is pending. The second is revision of the subdivision plans and production of a final plat. Mr. Sterbenz' memorandum of June 5, 2015 indicates that the final plat requires minor corrections. The

third outstanding condition is the preparation of a conservation easement. The conservation easement has been prepared, however certain additional language set forth in Mr. Sterbenz' report needs to be added.

3. Mr. Sterbenz has recommended granting final major subdivision plan approval subject to the satisfaction of the three conditions referenced above. The applicant stipulated that he would modify the plans and conservation easement as set forth in Mr. Sterbenz's memorandum.

At the conclusion of the public hearing the Zoning Board voted to granted final major subdivision plan approval with conditions.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Lopatcong, State of New Jersey, that the application of Miles Van Rensselaer for final major subdivision plan approval for property identified on the Township of Lopatcong tax map as Block 4, Lot 1 and Block 1, Lots 3 and 3.01 be and is hereby approved subject to the following conditions:

1. Approval by the Warren County Planning Board.
2. Modification of the subdivision plans and plat satisfactory to Board Engineer, Paul Sterbenz.
3. Modification of the conservation easement satisfactory to Board Engineer, Paul Sterbenz.
3. Copies of all applications and supporting data for permits issued by other agencies, responses thereto and copies of all governmental permits are required to be submitted to the Board Engineer.
4. Prior to the signing of any maps or the issuance of any construction permits all conditions of any approving resolution shall be addressed satisfactorily.
5. Prior to the signing of any maps or the issuance of any construction permit, proof must be received from the Township Tax Collector or other designated official, that no taxes or assessments for local improvements are due or delinquent on the tract.

6. No work shall be done without permission from and an inspection by the Board Engineer or his designee. No underground installation shall be covered until inspected and approved. The Board Engineer's office shall be notified of all phases of the work.

7. During construction, the developer shall comply fully with all requirements of the ordinances of the Township of Lopatcong.

8. All improvements made on the premises shall conform to building standards and other regulations as set forth in any applicable, federal, state, county or municipal statute, regulation, code or ordinance at the time of the installation of such improvements.

9. All improvements made on the premises shall conform with the plans hereby approved by the Board.

10. The Board reserves the right to withdraw any approval hereby granted in the event there is any deviation from or alteration of the plans hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Board. Minor deviations and field changes may be authorized by the Board Engineer.

11. Any deviation from or alteration of the plans as hereby approved shall render this approval void and of no further effect.

12. The acceptance of this approval by the applicant, its successors and assigns and the performance by the applicants, its successors and assigns of any further work on the project in reliance of this approval shall operate as an agreement by the applicants, its successors and assigns to be bound by the terms and conditions set forth herein.

13. In the event any other required regulatory approval conflicts with or materially alters the terms hereof, or in the event applicant or applicant's successors or assigns fail to post any tax map review fee, review fee, inspection fee or other financial imposition of the municipality, then in any such event, the Board reserves the right to withdraw, amend or supplant the within approval.

14. The applicant shall pay any outstanding invoices for fees and costs incurred in connection with this application prior to the issuance of any permits.

15. This approval shall be null and void unless the applicant obtains a statement from the Chief Financial Officer of the Township of Lopatcong within 60 days that the

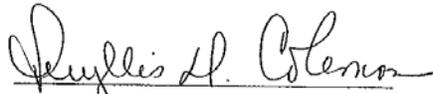
applicant has paid all outstanding fees and costs associated with this application and further that sufficient monies have been deposited to pay all anticipated disbursements and finally that deposit monies are not overdrawn from prior applications.

16. The applicant shall certify to the Board Engineer that all requisite governmental and regulatory agency approvals required before the start of construction have been obtained.

17. Approval of this major subdivision shall expire 95 days from the date of execution by the Board Chairman and Secretary of a plat conforming with this approval and the provisions of the "Map Filing Law", P.L. 1960, C.141 (46:23-9.9 et seq.) or a deed clearly describing the approved major subdivision, unless within this period such a plat or deed is filed by the developer with the County Recording Officer, the Municipal Engineer and the Municipal Tax Assessor. The subdivision plats or deeds must be submitted to the Township for review and approval at least thirty (30) days prior to the filing deadline.

CERTIFICATION

I, Phyllis D. Coleman do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Board of Adjustment of the Township of Lopatcong at a duly called meeting of the Board of Adjustment held on July 8, 2015.


Phyllis D. Coleman

Motion by: Member Rutledge

Seconded by: Member Marchie

ROLL CALL:

AYES: Members DeGroff, Marchie and Rutledge

ABSTAIN: Members Unangst, Larsen and Vice-Chairman Gary

Vice-Chairman Gary: Motion is carried.

NEW BUSINESS:

- John S. Hawrylo – Construction of a driveway through a right-of-way between block 93.02, Lot 6 & 7 in Lopatcong Township, to access Block 12.01, Lot 3 in Greenwich Township.

Vice-Chairman Gary: Moving on to New Business, uh, Kevin Nollstadt.

Attorney Sposaro: You maybe want to announce the first one.

Vice-Chairman Gary: Oh, I'm sorry, uh, the application, John S. Hawrylo

Attorney Sposaro: Hawrylo.

Vice-Chairman Gary: Hawrylo, I tried, construction of a driveway through a right-of-way between Block 93.02, Lot 6 an 7 in Lopatcong Township, to access Block 12.01, Lot 3 in Greenwich Township. That is, has been, uh, will be carried to the, um, September, uh meeting.

Attorney Sposaro: And let, if I can, just offer a brief, brief explanation. Uh, Phyllis contacted me early this afternoon and she had still not received an affidavit, well she had received an affidavit notice, but there was some ambiguity as to whether everyone on the list had been notified. We went through it and it was determined that no notice, no notice had been provided to the Warren County Planning Board. Since this application involves, uh, property within 200' of a municipal boundary, the adjoining municipality and the County Planning Board, by state statute, must notified. Notice is jurisdictional. I contacted the attorney's office representing the applicant, they acknowledged that the County Planning Board had not been noticed and as a result, uh, it recommended that the matter be carried.

Vice-Chairman Gary: Thank you.

Attorney Sposaro: Good catch Phyllis, thank you.

Secretary Coleman: Thank you.

Vice-Chairman Gary: Moving on.

Audience Member: I'm, I'm here for one of the, uh, neighbors. You said September, can you give me the day?

Attorney Sposaro: September 9.

Secretary Coleman: 9th.

Vice-Chairman Gary: 9.

Audience Member: 9/9.

Attorney Sposaro: I'm, I'm sorry you didn't receive notification, but

Audience Member: Well, I know. That's all right.

Attorney Sposaro: We didn't know of your involvement; we certainly would have reached out to you.

Audience Member: No problem. Okay, thank you.

Attorney Sposaro: Short night.

Audience Member: Yeah, yeah, I can go home.

Vice-Chairman Gary: Kevin Nollstadt – 292 Stonehenge Drive, Block 138, Lot 17 – to Install an Aboveground Pool; Denied for Rear/Side Yard Setbacks, 207.3. Mr. Nollstadt.

Attorney Sposaro: Um, maybe I can swear you in. Do you swear and affirm the testimony that you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Nollstadt: I do.

Attorney Sposaro: State your name for the record and spell your last name please.

Mr. Nollstadt: Kevin Nollstadt, N-o-l-l-s-t-a-d-t.

Attorney Sposaro: Thank you.

Mr. Nollstadt: Um, I'm looking to construct, uh, a fence and an aboveground pool and my backyard is small. So, the current zone, uh, ordinance is, you know, there's offsets for the rear yard and also a corner property which brings in some other issues too, with the side being considered a front yard. So, um, I, I guess you guys have the plan; I'm looking for a variances to, you know, uh, the rear yard out front and the side (inaudible – papers rattling into the microphones).

Attorney Sposaro: Can you tell us, uh, the distance between the pool as you propose it and I'll call it your side yard.

Mr. Nollstadt: The side yard, from the pool to the side yard is 23'.

Attorney Sposaro: That would be the front yard, would it not? That would be the Jade Lane.

Mr. Nollstadt: Right. Yeah, the issue is (inaudible) amount of front yard.

Attorney Sposaro: And do you comply with the, uh, setback requirement, let's say to the north? It appears as though you do or you barely do. But it's the

Mr. Nollstadt: No, for the rear, for the rear yard, yes, it should be 15, I'm, I'm tight.

Attorney Sposaro: Okay.

Mr. Nollstadt: So that's, that's the variance, the side yard, you know. Look, I guess the issue, the question is, you know, it's, it's a corner property, it's actually considered a front yard.

Attorney Sposaro: Correct.

Mr. Nollstadt: Now, you know, it, it is a front yard, there's just, to make point of, there's nothing, nobody living across the street, it's a detention basin, so, it wouldn't

Attorney Sposaro: On, on the Jade Lane side?

Mr. Nollstadt: On the Jade Lane side, yeah.

Attorney Sposaro: In, in looking at the proposed location, first this is not a gigantic po, pool, 15 x 26. I think it's modest in size given the size of the property and, and the size of your structure. Is there anywhere, uh, that you could locate this pool and comply with the setback requirements?

Mr. Nollstadt: No.

Attorney Sposaro: I, I, I think you're right about that.

Mr. Nollstadt: It's a tight backyard, you know, it's

Attorney Sposaro: This, there bears some explanation what happened here. After, uh, Mr. Nollstadt had applied for and secured a permit to erect a 6' fence, where it's depicted on the plans, part of that fence is along the front yard of Jade Lane. Uh, there may have been some confusion or uncertainty about that with our zoning officer, but, uh, the permit was issued and the limits for the height of a fence in a front yard in this municipality are, especially when it is, uh, a, called a solid fence, 50% or more, um, is 4'. That was one issue. The fence is also located within a, uh, 10' wide, well it's, I think the drainage easement is total, total of 20' wide, but it's located within the drainage easement. Once that was picked up, uh, I, I recommended to Wayne that he revoke the, the permit for the fence. Uh, my understanding is that Mr. Nollstadt had already contracted with a, a, a fencing company, had laid out a considerable amount of money and the money went towards materials, and I think he stands to lose those funds if, in fact, he doesn't get a variance for the fence. But to be clear, he needs variance relief for the location of the pool, for the, uh, front and side yard setback. He would also need a variance for the height of the fence, to the extent it fronts along Jade Lane and, uh, he would also need relief because part of that fence is located in the drainage easement. I had a conversation with Mr. Sterbenz about this, brought it to his attention and, um, we sent him a copy of the plans. Sometimes he doesn't get involved in applications such as these, because they're rather straight forward, but given the involvement of the utility easement, we thought it would be appropriate for him to, uh, participate. I know Mr. Sterbenz has prepared a report, dated July 6. Paul, maybe you can jump in here.

Engineer Sterbenz: Yeah, just two things, just one correction, uh, the variances that Mr. Nollstadt needs are a pool in the front yard and then, which are part of 15' setback off the rear yard set, rear yard.

Attorney Sposaro: That's considered the rear yard?

Engineer Sterbenz: Yeah, the rear yard.

Attorney Sposaro: Okay.

Engineer Sterbenz: He actually could, could get a 15' setback, in my opinion, however the pool would end up being a little further into the front yard and it would be much closer to the house. So I think that the, uh, location that he depict, uh, gets it, uh, tucked behind the house to the extent possible. So I, personally, don't have a problem with the rear yard setback variance that he requested as well the, uh, the, uh, this, uh, variance for the front yard that goes along with that. There really is no good location within, within this area of the property to put the, uh, put the pool, quite honestly. So, with respect to the pool, I don't have a problem with the positioning of it, the variances that go along with it. Regarding the fence, um, there is a 20' drainage easement and that 20' drainage easement runs from Jade Lane all the way to the west, almost to Buckeley Hill Road. Um, there's a considerable number of properties that are affected by this drainage easement and I brought the tax map, I can tell you in a minute, we have uh, what do we have here, there's (inaudible), so that's 13, there's almost 25 properties here that have this, uh, easement within it. The, uh, easement is 20' wide, 10' on either side of the, uh, property boundary, the real property boundary of all these properties. Um, the township, and, and these are town, there's a township drainage easement, there's nothing on the file plat that created this subdivision that indicates what the restrictions are. The township did create an ordinance to, uh, create some restrictions on what homeowners could do within drainage easements. It was done about 12 years ago, in 2003, and it's in, uh, ordinance section 243:61, uh, I'll get you the proper section here, 61E-9, and, uh, specifically there's limitations as to fencing that could be put into drainage easements when there's only Engineer Sterbenz (Cont'd): swales, uh, present. And there's, uh, a prohibition against having a fence in an easement with a pipe in it. This particular easement has a pipe in it. So, um, so that's why Mr. Nollstadt needs the relief. Um, in looking at this particular issue an appeal, uh, looking at these, approximate 25 properties in the easement, most of the properties actually have an easement. I can actually, 1) give you my iPhone and you can look at the aerial photograph. I went out to the video sight to determine the aerial photograph. Uh, some places, uh, you know, people put fences on both sides and they marry up to one another. There's one location where there's a 5' gap, (inaudible) somebody left a 5' gap. But it, uh, pretty much the fencing has been installed along their rear line, right where, where the pipe is located. So, uh, this, and I don't know what the reason for that; maybe this predates the ordinance, I don't know, but, um, I think, I really, given the, the situation this particular block, I really don't think there's a problem, I guess, with this homeowner actually putting a fence there at this point. Um, one thing, there isn't really a swale in Mr. Nollstadt's yard, um there's a low point and, and, and the adjacent yard traps all the water, so we don't have to worry about the fence blocking the swale. Um, you know, and a lot of it is a concern that's, uh, spelled out in the ordinance for (inaudible). I think, uh, we probably could put something into the, uh, resolution that indicates if we ever have to do maintenance on the storm sewer pipe, that, uh, Mr. Nollstadt would be responsible for putting up the fence, putting back up the fence if we ever had to do that, if that were ever, uh, needed, you know, for easement, maybe so we have something for the record. I, I think when we talked about this with you, you didn't have a problem.

Mr. Nollstadt: Yeah, I', I'm okay with that.

Engineer Sterbenz: So, maybe just to, uh, show that we, you know, were try, we're sensitive to the ordinance and we're trying to, uh, you know, comply with the spirit with the ordinance here. So, uh, so with respect to the fence, I don't, I don't really have a problem with the fence as shown on his plans. The whole block is really in that existing condition right now and as long as we put something in the condition that we had to go in there, that Mr. Nollstadt would take the, uh, fence, fencing down and in that instance and put it back up. We wouldn't have the responsibility, I'm okay. And as far as the, uh, I guess, uh, plans shows a 6' fence along the right-of-way and it's only supposed to be 4', it's really the Boards call. Uh, there, there is no, uh, sight triangle easement affected, uh, by, by that. Um, I think it's

gonna look a little stupid if he has a 6' fence along the rear yard, yard line, a 6' fence close to the house where he has his gate and then all of a sudden we neck it down to a 4' fence in between those two sections. So I think for consistency's sake, if you could, not really, not really affecting any sight lines, I think it would be better, in my opinion, to show up with this to you, just to have a 6' fence in its entirety approved, granting that variance as well. That's my opinion.

Mr. Nollstadt: Thank you and all my neighbors, also, you know, they know what's going on.

Attorney Sposaro: When's the first pool party?

Vice-Chairman Gary: Uh, any questions from the Board; any, any discussion? Uh, I, I, uh, would assume that any, uh, (inaudible) review about the fence.

Attorney Sposaro: Yes.

Vice-Chairman Gary: Is there a motion?

Attorney Sposaro: Before we need to approve it, we need

Vice-Chairman Gary: Oh, I'm sorry, is there, I'm sorry. Go ahead.

Attorney Sposaro: Anyone from the public here that want's to comment or have any questions of the applicant?

Vice-Chairman Gary: Alright, seeing none,

Attorney Sposaro: Seeing none

Member Rutledge: I move to approve with the stipulations made by the engineer.

Member Unangst: I'll second that.

Motion by: Member Rutledge

Seconded by: Member Unangst

ROLL CALL:

AYES: Members DeGroff, Marchie, Unangst, Rutledge, Larsen and Vice-Chairman Gary

NAYS: None

Attorney Sposaro: I will, uh, prepare a resolution, uh, given the fact that the Board may not be meeting again until September, with the Board's permission I will notify the building department, uh, that the application has been approved and you're proceeding at your own risk. Theoretically someone could file an appeal, uh, I don't think it is very likely given the fact that no one has shown up and voiced any opposition, but we will allow the process to move forward and maybe you can get something left out of this summer.

Mr. Nollstadt: Yeah, the fence guy is ready to go, so I can give him the green light.

Vice-Chairman Gary: Are you on good terms with all your neighbors?

Mr. Nollstadt: Yes, yeah.

Vice-Chairman Gary: Good.

Mr. Nollstadt: Yeah, I already, they all got notified, so. Thank you.

Attorney Sposaro: Thank you.

Vice-Chairman Gary: Thank you. Moving on. I move that we, on the Payment of Bills, I move, I move that we pay the bills.

Motion by: Member Rutledge

Seconded by: Member Unangst

ROLL CALL:

AYES: Members DeGross, Marchie, Unangst, Rutledge, Larsen and Vice-Chairman Gary

NAYS: None

PUBLIC COMMENT:

Joe Pryor: Um, good evening. My name is Joe Pryor, uh, 583 Edward Street and, uh, I'm one of the names that was on the sign that, uh, occupied a good deal of discussion last meeting. Uh, I'm not here to appeal, I'm not here to, uh, get into it in depth, I'd just like to explain our side of it for the record. I Joe Pryor (Con't): see there was quite a bit of discussion devoted last week. Um, let me assure you, um, what we did was inadvertent. Um, the signs were 5 square feet. Um, our opponents made a complaint to the zoning board, or the zoning officer, and we received a letter not too far from election date, that would have put us at a sharp disadvantage. So we sought the advice of an, an attorney and, uh, the attorney advised us there are a lot of problems with the way the ordinance, the ordinance is written. Um, there's a lot of exceptions in the ordinance and there's, uh, a quick drive around town revealed, uh, there were problems with the way the ordinance was being enforced. So with that background, we, uh, made use of what's available to us in the law and in our own ordinance. The Municipal Land Use Law clearly gives us a right to appeal as does, uh, township ordinance and the ordinance very clearly reads, "An appeal to the Board of Adjustment shall stay. All proceedings and furtherance of this action", um, unless, and I'm not quoting anymore, unless there's a, a danger to, uh, life and property. Which I clearly don't think was the case, so. Uh, we did what the law and the ordinance allows us to do. Um, there's a lot of case law on our side. It's a problem that has to be resolved. Um, it's my understanding the Council will be looking at it, but, um, we followed our Constitutional Right and, uh, the law allows, allowed us to keep them up and, uh, that's what we did. So, hopefully this will be resolved.

Attorney Sposaro: I don't know what the ultimate outcome will be, but I can say that I, I've known Mr. Pryor for several years and his representations as to following his rights, uh, and abiding by the Land Use Act, are accurate. Once the appeal is filed, administratively we decided that it would just make more sense to let the signs remain; they had a right to let them remain. The meeting, uh, the next regular scheduled meeting was after the election and it really rendered the all of this mute. I guess some people who ran on the other side showed up, uh, at last month's meeting and wanted an explanation as to what had transpired. I do think that the Governing Body is the appropriate Body to wrestle with this issue. If someone comes to us for an interpretation, um, we will give them an interpretation. That is our statutory obligation, to interpret the zoning ordinance, but as things stand now, uh, I think the record is what it is and I appreciate your comments Mr. Pryor.

Joe Pryor: Well, thank you.

Vice-Chairman Gary: Thank you. Is there anyone else? I will accept a motion to adjourn.

Motion by: Member Rutledge

Seconded by: Member Marchie

ALL IN FAVOR: AYE

NAYS: NONE

Adjourned at 7:20 pm

Respectfully submitted by,

Phyllis D. Coleman
Secretary, Zoning Board of Adjustment

Fred Gary
Vice-Chairman