LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
OCTOBER 14, 2015 – 7:00 pm

Time started at 7:15, to wait for Engineer, Paul Sterbenz, per our Attorney, Anthony Sposaro.

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, Bittone and Vice-Chairman Gary. Also present, Attorney Sposaro and Engineer Paul Sterbenz.
Absent: Members Horun and Chairman Barcik

OLD BUSINESS:

- Approve the Regular Meeting Minutes from July 8, 2015

Motion by: Member Rutledge **Seconded by:** Member Marchie

ROLL CALL:

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

- Memorialize Resolution 15-09 – Kevin Nollstadt – 292 Stonehenge Drive, Block 138, Lot 17 – to install an above ground pool and fence. Denied for Rear and Side Yard Setbacks. # 207.3.

BOARD OF ADJUSTMENT
TOWNSHIP OF LOPATCONG
WARREN COUNTY, NEW JERSEY
CASE NO.: 2015-09
PREMISES: BLOCK 138, LOT 17
292 STONEHENGE DRIVE
LOPATCONG TOWNSHIP, NEW JERSEY
APPLICANT: KEVIN NOLLSTADT

WHEREAS, Kevin Nollstadt has made application to the Zoning Board of Adjustment of the Township of Lopatcong for variance relief for the erection of an above ground pool and fencing on the lands designated on the tax map of Lopatcong Township as Block 138, Lot 17, with a street address of 292 Stonehenge Drive; and

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, July 8, 2015 held at the Municipal Building, 232 South Third Street, Morris Park Phillipsburg, New Jersey 08865; and

WHEREAS, the applicant submitted a proper and complete Affidavit of service of notice of the instant proceeding upon all property owners within 200 feet of the subject property; and

WHEREAS, the applicant submitted a proper and complete Affidavit of Publication; 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. Application for Variance;
2. Site Plan, consisting of one sheet, prepared by Kevin K. Nollstadt, P.E., dated June 18, 2015; and
3. Correspondence addressed to Kevin Nollstadt from Wayne Degan, Zoning Official, dated July 1, 2015.

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

1. The property in question is designated as Block 138, Lot 17, with a street address of 292 Stonehenge Drive. The property is presently developed with a two story dwelling and is situated at the corner of Stonehenge Drive and Jade Lane. The property in question is located in the R-120 zone district ("Small-Lot Single Family Dwelling Units) and is approximately .019 acres in size.

2. The applicant proposes erecting an aboveground pool with dimensions of 15' x 26'. The proposed location is behind the dwelling existing on the property (the front of the dwelling faces Stonehenge Drive). In its proposed location the pool triggers the need for rear yard and front yard setback relief.

3. As proposed, the pool is approximately 23' from the front yard lot line closest to Jade Lane and 10' from the rear property line. The rear yard setback requirement in this zone district is 30' and the front yard setback requirement is 25'. A review of the plans reveals that the pool could be moved closer to the house to lessen the rear yard setback violation, but this would result in the pool being moved closer to Jade Lane, thereby exacerbating the front yard setback deviation. As a practical matter there is no other location on the property to locate the pool. With dimensions of 15' x 26' the pool is appropriately sized for this property as well.

4. Variance relief is also needed for the fencing proposed by the applicant. The plans depict a six foot fence running along the rear of the property and along a portion of Jade

Lane. The fence is solid, defined in the ordinance as having less than 50% of the fencing material open. Section 243-64.1 B (2) of the ordinance prohibits a fence more than 2 feet in height in the front yard of any zoning district.

5. Additionally, fences are not permitted to be installed within drainage or utility easements by Section 243-64.1 B (9) of the ordinance.

6. Zoning Board Engineer, Paul M. Sterbenz, P.E. testified that there are approximately twenty-five properties in the area that are effected by municipal drainage easements. Unfortunately, there is nothing on the final plat for this subdivision identifying the restrictions associated with these drainage easements. After the final plat was filed an ordinance was adopted (referenced above), but this ordinance is not recorded in the chain of title. It appears that many homeowners constructed fencing within the confines of the drainage easements in this development.

7. In this particular drainage easement there are no swales, but there is an underground storm sewer pipe. The applicant stipulated that should this storm sewer pipe need repair or replacement, he would be responsible for the removal and reinstallation of the fence at his sole cost and expense. A deed restriction to this effect shall be filed within the chain of title.

8. As for the fence along Jade Lane, the Township Engineer expressed the view that it would not impede sight distance and from the standpoint of both aesthetics and safety, it would be better to have a consistent six foot fence for this project.

9. The variance relief for the pool location is a function of the size of this lot, its shape and the location of the house constructed thereupon. The pool cannot be erected without violating some setback requirement. It is in the optimum location. Consequently the positive criteria for variance relief have been satisfied.

10. The same holds true for the proposed fence. There is no practical way to erect a fence around this property for both privacy and pool security without the need for variance relief as well. Although located in a utility easement, with the applicant stipulating to its removal and reinstallation at his expense should the storm sewer pipe need repair or replacement, the Township's interests have been adequately protected.

11. With respect to the negative criteria, the applicant must still demonstrate that the variance relief can be granted without substantial detriment to the public good and without substantially impairing the intent and the purpose of the zone plan and zoning ordinance. Based upon the testimony offered and the specific findings of fact set forth above, there would appear to be no detriment to the public good and that the relief requested will not substantially impair the intent and the purpose of the zone plan and zoning ordinance.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Lopatcong, State of New Jersey, that Case Number 2015-9 of Kevin Nollstadt be and is hereby approved subject to the following:

1. Recordation of a deed restriction requiring the applicant or any successor in title to remove and reinstall that portion of the fence to be erected in the utility easement should the storm sewer pipe situated in the easement need repair or replacement, subject to the review and approval of the Board Engineer and Board Attorney.

2. 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.

3. Prior to the issuance of any construction permits all conditions of any approving resolution shall be addressed satisfactorily.

4. Prior to 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.

5. 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.

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

7. 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.

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

9. 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.

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

11. 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.

12. 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.

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

14. 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.

15. 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.

16. The within variance shall expire within one year of the date of entry of the determination of this Board unless construction shall have commenced or the applicant has applied for an extension.

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 October 14, 2015.

Phyllis D. Coleman

Phyllis D. Coleman

Motion by: Member DeGroff **Seconded by:** Member Rutledge

ROLL CALL:

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

NEW BUSINESS:

- John S. Hawrylo – Tabled from the July 8, 2015 meeting as they didn't notice the Warren County Planning Board, his property is bordered within 200' of the township boundary. The application is for the 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.

Mr. Piasecki: Good evening to the Board, my name is Ed Piasecki, from the Law Office of Graziano, Piasecki & Whitelaw and I'm representing, uh, John Hawrylo on this application. Uh, as was just stated, the application, uh, is for, uh, a variance to construct a driveway along the right-of-way which, uh, ran along, uh, Spring, uh, Run Lane, uh, to access property that he owns, uh, within the township. Um, as you may be aware, there's a township ordinance, uh, 105-4b that requires all driveways to be, uh, 25' from, uh, adjoining driveways. The way the property is, uh, so constructed and, uh, because Spring Lun Rai, Spring Run Lane had not been extended as initially planned, uh, that is, uh, virtually impossible, uh, and therefore, uh, Mr. Hawrylo is here to, uh, ask for a variance, uh, so that he can access the property. Um, with that, I'll, uh, call Mr. Hawrylo up, uh, so the Board can ask him questions and he can explain a few more, specifically what he is looking for.

Secretary Coleman: Mr. Piasecki, how do you spell your last name?

Mr. Piasecki: It's P, as in Peter,

Secretary Coleman: Oh, P.

Mr. Piasecki: i-a-s-e-c-k-i.

Secretary Coleman: Thank you.

Attorney Sposaro: Would you raise your right hand please; do you swear and affirm the testimony you will give in this matter is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Hawrylo: I do.

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

Mr. Hawrylo: John Hawrylo Jr., H-a-w-r-y-l-o.

Attorney Sposaro: Thank you, go right ahead.

Mr. Hawrylo: Okay, uh, basically, uh, I'm looking to, uh, put a driveway in, uh, through a property that, uh, obviously had the easement in my deed when I, uh, purchased that from, uh, it, it was basically out, out of the Crouse Farm. Uh, about 18 acres, and, um, due to the Highlands Act and the deed change and the property,

um, I'm no longer going to be able to build any number of homes there. So, I'm just planning on building one. So in order, really to make that, uh, any financial, you know, uh, hardship, I'm asking for a driveway rather than putting a road in.

Attorney Sposaro: Does anybody have any questions of this witness? I think we need to talk, probably hear from your engineer and get an explanation, uh, and an answer of some questions, uh, especially to those questions, uh, that are raised in Mr. Sterbenz report, dating back to July 6th of this year. So, does anybody from the public have any questions of Mr. Hawrylo?

Mr. Swick: Uh, for the record, my name is James Swick. I'm an attorney in Phillipsburg. I'm representing one of the, uh, neighboring owners, uh, Mr. John DiPeppo. Um, do you have any, uh, drawing or diagram or survey showing where this road is and where your property is?

Mr. Hawrylo: Yeah, that's here.

Mr. Swick: Can we see that or have it marked.

Mr. Piasecki: Why don't, why don't we wait till the engineer

Mr. Swick: All right, I was just;

Mr. Piasecki: (Inaudible).

Mr. Swick: well, it might help, but okay. Um, well let me shed some (inaudible). Um, I, I have here, and maybe we can mark this for identification. Um, I don't know what, P1? I don't know.

Attorney Sposaro: That's fine.

Mr. Swick: Well, do you want to mark it?

Secretary Coleman: Uh huh.

Mr. Swick: All right, thank you.

Secretary Coleman: Uh huh.

Mr. Swick: Um, I'm showing you what's been marked as P1, and it indicates this is a, uh, location survey drawn by Van Cleef Engineering in, um, February of, uh, 2003. Now this shows the cul-de-sac where Spring Run Lane ends. Is that correct?

Mr. Hawrylo: Yes.

Mr. Swick: And this is my client's property. I don't know if you know that,

Mr. Hawrylo: Yes.

Mr. Swick: but your property is down here.

Mr. Hawrylo: Yes.

Mr. Swick: Just on this map. Can you, is it, can you show where you plan to build the house on this, on the property?

Mr. Piasecki: You swearing him in?

Attorney Sposaro: Yeah, I think it's probably appropriate. Raise your right hand; do you swear and affirm to the testimony you will give in this matter is the truth, the whole truth and nothing but the truth, so help you God?

Mr. Parker: Yes I do.

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

Mr. Parker: Steve Parker, P-a-r-k-e-r.

Attorney Sposaro: And Mr. Parker, I take it you're a professional engineer?

Mr. Parker: Yes I am.

Attorney Sposaro: Have you testified before Boards previously?

Mr. Parker: Yes I have.

Attorney Sposaro: You prepared this plan?

Mr. Parker: Yes.

Attorney Sposaro: Mr. Parker is qualified as a professional engineer, perhaps he can answer some of the questions that counsel has put to your client?

Mr. Swick: Well, maybe we have something better, than P1 or something larger, do you, and I, and I don't have what's been submitted, so, uh, I'm a little at a loss here. Can we mark, uh, or, can we show, or allow what your plan is, what your?

Mr. Parker: Yeah, this, this, this plan that I have here is, does not need marked. It was what was submitted to the Board.

Mr. Swick: Okay.

Mr. Parker: It's the plan that was prepared by our office. Um, this is the, um, uh, we called it a variance map; it's a sheet, one sheet, uh, it's with a date of, uh, uh, December 9, 2014 and what it shows is, it shows, um, there is an area map in the upper left hand corner and then below that there is more of a detailed area of what, uh, what Mr. Hawrylo is proposing, uh, for this application. And that is, it shows the existing conditions at the end of Spring Run Lane, uh, and it also shows where his proposed driveway is and it will service, uh, Lot 12.01, which is, um, you know, just to the, uh, to the left of, uh, that, that detailed area. (Inaudible). So, what we're requesting is, you know, the construction of a driveway through that right-of-way, uh, that Spring Run Lane right-of-way, uh, which was created when the subdivision was created; that, that right-of-way was, was intended for a future roadway for Spring Run Lane to be extended to, uh, Lot 12.01. It was Mr. Hawrylo's intent at the time to develop, uh, with a subdivision of several homes on Lot 12.01. As he explained, that's not his plan any longer. Uh, but he'd like to construct one new, uh, home on the property. So instead of a road in

that right-of-way, we're just proposing to construct a driveway. Um, when you look at the, the location of the existing driveway for Lot 6, um, the, the township ordinance requires a 25' separation between driveways. Uh, whether they are on the same lot or on adjoining lots, um, but, but the only access for Mr. Hawrylo's property is through that right-of-way, uh, extension, uh, that we show on the plan there. There is no way that we can get a separation of 25' between that existing driveway, where it is, uh, and where, where we can put it, put a driveway out to Mr. Hawrylo's lot. We just can't make, there's not enough room to stay within that right-of-way because the driveway for Lot 6, uh, extends into the right-of-way already; um, so we just can't fit it within that right-of-way and maintain a separation as required by the ordinance. So that's really why we're here tonight. That's the, the relief that we're requesting, that's the variance that we're requesting; is for that separation of those two driveways. What we're proposing is really just a shared driveway opening on Spring Run Lane and then you can see almost immediately after, um, the driveways, you know, leave the roadway, they would separate, uh, with the driveway for Lot 6 basically remaining in its present location and then the driveway for Mr. Hawrylo's lot, just breaking off and preceding back to his lot, uh, on Lot 12.01.

Mr. Swick: All right, um, do you know who owns the property? I realize there's a, a, an easement and a right-of-way and (inaudible) but do you know actually owns the title to that?

Mr. Parker: Uh, I, I, I do not know who owns title to that. I, I would assume it's a right-of-way extension, but, but I'm not sure.

Mr. Swick: Well, I don't want to testify, but I'll represent, and my client's here to testify, my client, the owner of, um, Mr. DiPeppo, the owner of Lot 7, owns that area. It's subject to the right-of-way, the lot, he owns that. And I guess my next question is, do you, have you or your attorney or anyone that you know, asked Mr. DiPeppo, the owner of that property, to grant an easement to put this driveway in?

Mr. Parker: Um, I don't believe there's been any request for an easement, I think the easement already exists. The right-of-way was created with the intent of allowing, actually, a future road, uh, going through that area. Um, I think that that was the, the, uh, the intent when the subdivision was filed and the final map was created, that, that right-of-way was created with that purpose of extending a roadway through that area. So, I, I don't believe any further easement is required to use that area.

Mr. Swick: Well, uh, this leads to my next question that, that say you don't believe. Uh, the easement is for a public roadway; this is not a public roadway. Do you agree with that?

Mr. Parker: That's, that's correct, right.

Mr. Swick: And do you have any authority, legal or otherwise, or engineering to state that somebody can put a private driveway over a easement that was gi, given for purposes for a public thoroughfare?

Mr. Parker: Well there is, there already is a private driveway in that area right now; that's the owner of Lot 6. His private driveway is already in that right-of-way. And, and I, I, I don't think that, certainly our argument would be that,

Mr. Swick: Right.

Mr. Parker: this, what we're proposing is, is such a, a less intense use, uh, of that, uh, of that easement than what was actually allowed; um, that's what we're proposing, it's just a single driveway for a single home back there.

Mr. Swick: But you don't know whether the owner of Lot 6 obtained an easement from my client to have this driveway, on a, a portion of Lot 7, to, to intersect with the cul-de-sac, uh, on Spring Run Lane.

Mr. Parker: Yeah.

Mr. Swick: Do you know that for a fact?

Mr. Parker: I, I, I don't, I don't know that for a fact, no. I, I'm assuming, again, that was a right-of-way.

Mr. Hawrylo: The right-of-way was deeded in my purchase when I bought that, uh, bought that, that piece of property. That was part of the Crouse's farm and he was developing it, that's when I bought that property; when he was in the development stages of that. And I, I exchanged the property in Lopatcong for this property. I gave him the right-of-way to connect into your subdivision like you built down below. That's in my deed.

Mr. Swick: But where, what right-of-way are you talking about?

Mr. Hawrylo: The 50' right-of-way into that, that par, that parcel there.

Mr. Swick: Well, I think there's a difference between a public easement or a public right-of-way, by the drive

Mr. Hawrylo: It allowed me to go, it allowed me to go there.
.
Mr. Swick: You don't have that with you? You don't have any evidence of that, written evidence of that?

Mr. Hawrylo: In my, in my deed.

Mr. Swick: You don't, do you have your deed with you then, that's my next question.

Mr. Parker: I think, I might

Secretary Coleman: Mr. Hawrylo, can you speak into the microphone?

Mr. Hawrylo: This, this was all done before this development was built. I built Woodside, uh, Hollow, the subdivision down below and I swapped him 10 acres there so he could make the connection to have another entrance to this subdivision.

Mr. Parker: So what I have here, this is a copy of, of the, of the deed that was, uh, indicates a purchase, uh, of the right-of-way by Mr. Hawrylo from, uh, D.C. Partners; which was a limited partnership, um, the owner, prior owner of the property, yeah, and it, and it indicates what that, uh, you know, it says, I can read that, it says: "Grantor further conveys to Grantee a non-exclusive right-of-way for road purposes over Road B, Road C and the 50' wide easement dedicated to the future extension from Road C". Road C is this, what's now become Spring Run Lane.

Mr. Swick: Well now, where Road D and Road C, are, there must be a

Mr. Parker: There's a map, there's a map (inaudible).

Mr. Swick: Where, where is Spring Run Lane?

Mr. Parker? (Inaudible), I'll show you.

Mr. Swick: Road C is Spring Run Lane?

Mr. Parker: Right.

Attorney Sposaro: Okay, let's see if we can, counsel, if you don't mind I have a few,

Mr. Swick: Yeah, go ahead.

Attorney Sposaro: few questions.

Mr. Swick: Yeah, that, that's fine, I'll just listen.

Attorney Sposaro: Before the hearing, um, Mr. Parker, you were kind enough to share with me a copy of the filed subdivision map, I believe when Lot 12.01 was created. Was that, was that accurate?

Mr. Parker: Well, it was for the subdivision, the Spring Run Lane subdivision. I think it's called Scott's Mountain; I believe is what it was called.

Attorney Sposaro: Okay. And, I, I am assuming, but I don't know for a fact, that Lot 12.01 formally was part of Lot 12, does that, that seem accurate?

Mr. Parker: I don't have any proof of that, but I, I mean that would make sense, just from, from preliminary

Attorney Sposaro: And I believe there is reference on that, uh, filed map to an access easement to Lot 12.01, cross Lot 12, being as Route 57, is that accurate?

Mr. Parker: That's correct, yes.

Attorney Sposaro: And there's reference to a filed, uh, a filed document in the County Clerk's Office, there's a deed book and page reference, is there not?

Mr. Parker: Yes, that's correct.

Attorney Sposaro: Do you have a copy of that document?

Mr. Parker: I do not have that.

Attorney Sposaro: Paul do you have the copy of that?

Engineer Sterbenz: I do, I have that document. I just have a deed that references the easement you were just talking about.

Attorney Sposaro: Thank you. It, it would appear that the owner of Lot 12.01 has access in Greenwich to a public road in that municipality. So the question is, why can that easement not be utilized? I understand that practically it may be less expensive, it's less land disturbance given where you client proposes to construct the home, uh, it may make a lot of practical sense, but generally speaking, if you're going to construct a home in a municipality, you want access to a public street in that municipality; for police and fire protection, and, and

probably for a variety of other reasons. Have you explored the feasibility of constructing a driveway on that access easement, across Lot 12, onto Lot 57, to, to Route 57?

Mr. Hawrylo: When I was purchasing that property, I talked to Dale about that, Dale Crouse, which is who I purchased it from. And he couldn't get any resolve on that easement being there. There was an old barn on that property that was right in that easement at one time, but he could never get anything clear that there was an easement there that he could use.

Attorney Sposaro: Okay, there

Mr. Hawrylo: And my, and my, when, when I purchased this property, I purchased it with the thought, you know, that the value was in it that I'm coming off of his subdivision at the time.

Attorney Sposaro: And if Spring Run Lane had been extended, that may well have been the case and that may have been preferable, I don't know.

Mr. Hawrylo: Yeah, uh

Attorney Sposaro: But I think at this point, and I don't

Mr. Hawrylo: On that

Attorney Sposaro: Paul can certainly, let me just finish this, Paul Sterbenz, our engineer, can certainly speak for himself, but his comments on page 21C, says, "Testimony to show that there are no other feasible means to provide access to Lot 12.01 and Block 3, the applicant should address why the 30' wide access easement within Block 12, I'm sorry, Lot 12, Block 3 in Greenwich Township cannot be utilized". With, unless we see that easement and we know what the lay of the land is over Lot 12, I don't think we know whether it's practical or impractical, or possible or impossible to access Lot 12.01 through, uh, over Lot 12.

Mr. Piasecki: We're not claiming a hardship here. That, that, that's the only, this is the only way we can get access to the lot. Certainly, you know, Mr. Hawrylo has the option of constructing a road, extending Spring Run Lane to his property.

Attorney Sposaro: Okay.

Mr. Piasecki: That, that's certainly one of the options that, that he has available to him. We don't think that's a good option. We don't think the neighbors or the neighborhood would want that either. Um, but that is an option. What we think, what we're proposing is, I haven't explored that because that really hasn't ever been the intent. I think Mr. Hawrylo's indicated he purchased the easement, um, across that area where Spring Run Lane is with the intent of developing this in, in the future. I think his intent is still to, to develop in that fashion with a single family home, because I just think I makes more sense, for those different various reasons.

Attorney Sposaro: Unless we know with certainty where we stand with respect to access over Lot 12, how can you, as a practical matter, address the positive and negative criteria for a variance? I, I'm just for-warning you that without knowing where you stand with Lot 12, uh, I'm troubled with the proofs in establishing the positive and negative criteria for a variance, because we have nothing to compare it to. Just don't know. Um, I don't think the Board can just blind, and, and it may turn out that what you propose here is a better design, it may result in less land disturbance and, and at the end of the day maybe you, your client can sustain his burden of demonstrating, uh, the proof, demonstrating the variances appropriate. But without knowing more about this access through Lot 12, I don't, I think it would be premature for the Board to, to act. I'm not gonna tell you

how to put on your case. If you want to put it to a vote after we're done, without knowing more about that, that is your prerogative, but that would not be my advice to you.

Mr. Hawrylo: Well, you see, I, I'm pretty sure Van Cleef was the one that gave, uh, Crouse's that information on that (inaudible), and I know they did that subdivision and they, they did work on this property for me also, when they were doing it, so; cause I've used Van Cleef in the past on other subdivisions. So, I'm, I'm almost positive that that's not going to be able to happen. On the other hand, that, that property allows me to build two homes on it, within the Highlands Act

Attorney Sposaro: Uh huh.

Mr. Hawrylo: and it, if I had to build the both of them, I, I would go that way.

Attorney Sposaro: Understood and that may be yet another reason why you're entitled to variance relief, we don't know. But unless, unless we can get out hands on that access easement and get some testimony about the land over which that easement is located, what structures are there, what the topography is, what the environmental constraints may be, if any; whether there's site distance issues out to Route 57, there's a whole host of issues that may, may be in your favor. But we don't know. There is just too much that we don't know about this and I don't want to steal anybody's thunder, but I just thought I'd cut right to it

Mr. Hawrylo: Yeah.

Attorney Sposaro: and let you know what I think every one's concerns are. Paul, why don't you jump in and add

Engineer Sterbenz: Well, I agree with what you're saying, so I don't want to belabor it. Uh, I agree, I think this easement needs to be researched, we need to get some mappings and testimony on it and if that easement doesn't exist or if it's been compromised or we find out it's in an area of Route 57, where there is horrible site distance, where it's, you know, unsafe for, for a, uh, a motorist to enter and exit the property, things like that. Then, uh, you know, perhaps that's not the best way to provide access, so we need to look at the access that Mr. Hawrylo's' proposing right now. But I, you know, this is a very unusual situation, providing access to a lot in one town from another lot and it's, it's really not in accordance with the final plat. I mean, technically, it's actually extended public road.

Mr. Hawrylo: DOT looking at the plans, not gonna give you access on 57 for residential, when you have access from a private street. It's almost impossible to get. But I'll look at the, the situation with you and we'll give you a

Engineer Sterbenz: Mr. Parker's a good engineer, so I'm sure he could put a little repor, report together for the Board; looking at all the, uh, issues as far as constructing access, you know, from that particular location into your lot.

Attorney Sposaro: Steve, Steve, Steve when you get, uh, a copy of that easement, if you would send a copy to Paul and to my office, I would appreciate it.

Mr. Parker: No problem, yep.

Attorney Sposaro: I, I don't want to see it the night of the meeting and try and

Mr. Parker: Yeah, I'll send it.

Attorney Sposaro: Maybe we propose to send a copy (inaudible – lot of background noise).

Engineer Sterbenz: I mean, as far as just the other issue, uh, you know, if we find that with that easement is inappropriate for access, we need to then look back at the particular access Mr. Hawrylo is looking at. Uh, it is true he could build an extension from the public road, the final plat is very clear on that, but he would have to provide some sort of a turn around, probably on his own property, um, at least not in Lopatcong. The problem would have to be to our standards, it's, you know, kind of private then, but, he would have to provide some sort of a, uh, turn around. But it's going to be very disruptive to that area; it's gonna require the Lot 6 driveway to be redone, uh, to require the current turn around to be torn out and then the whole area would be restored

Mr. Hawrylo: Yeah.

Engineer Sterbenz: and, so, uh, it's gonna be very messy and, uh, it's gonna cost a lot of money. I'm not sure what we're really accomplishing by it, so, probably, uh, you know, my most, the thing that troubled me the most is having the two driveways attached together, because I know common driveways don't work well. Engineer Sterbenz (Con't): There always seems to be prob, problems between neighbors and with that, my suggestion was to find a way to separate the two if that's the direction you're going here. But again, going back to where we, we were talking a few minutes ago, I think first we need to foreclose on the fact that you can get access from Route 57, for its use that, it's referenced in the deed. I think we need to look at that first.

Mr. Piasecki: I think the Board's been very fair about, you know, more information on, on the easement from 57. Is there any other questions, uh, that you have for Mr. Parker, Mr. Hawrylo, before, you know, kind of regroup and get the answers, uh, that the Board, uh, would love to hear.

Attorney Sposaro: I don't have any of this on. Counsel, I didn't mean to cut you off,

Mr. Swick: Well, yeah, that's all right. Uh, a, again, and, and I read the deed. I have to think about this a little bit more, but I still think that, um, this deed that he's been reading, that he has a right-of-way over this, 50' wide easement, I still, it's over my client's property. I think we still need to get an easement from my client, as the owner of that lot, to put in this driveway. Uh, if you can convince me I'm wrong, I'm, I'm open to looking at it, but I, I still maintain that that's an issue.

Attorney Sposaro: Your position is certainly noted counsel. I appreciate it.

Engineer Sterbenz: Okay, the fact of the matter is, though, I, I think Mr. Hawrylo was correct before. I think he can go build an extension to the road if he wants to and it's contemplated in the approved construction plans for Scotts Mountain Estates in the final plat, so, uh, he can, he can do that in my opinion.

Mr. Parker: Yeah, well yeah, I mean the road can certainly be extended. I think it's an issue of whether he can build a private driveway over that, over that (inaudible).

Attorney Sposaro: It's a fair question. It's a fair question.

Mr. Hawrylo: Well, that's what I was thinking; to minimize the impact on

Mr. Swick: No, I understand, yeah, I understand why you're, why you're proposing it.

Attorney Sposaro: All right. Is there anyone from the public that has any questions of the witnesses who's testified this evening?

Michael Turner: Michael Turner, from Block 93.02, Lot 6. My question is, I know you, you talked about it being best for the project, but you're talking about putting in a driveway that's going to be attached to my driveway. Causing not only disruption but, what I would assume, and I, I, I'd like to find out more, understand from the Board, what impact this would have on the property value. But on safety, there is no other property in

Attorney Sposaro: You have to ask questions? You'll get your chance to testify.

Mr. Turner: Okay.

Attorney Sposaro: You gotta ask questions.

Mr. Turner: Perfect. Thank you then, I'll wait and testify. (Inaudible). Is there, has there been any other assessment in terms of, I mean, I just, what I'm not hearing is, question in terms of 25'. Why are you looking for a variance to put a driveway within 25'? Um, I mean, what other option is there that you explore, when you report every other option of where you can put access to your property. Through any of the other properties, were the other properties (inaudible), um, that's there that has access to

Mr. Hawrylo: No, this, this easement goes to (inaudible) access.

Mr. Turner: But what, what's your rational to violate the zoning restriction on the driveway within 25'?

Mr. Hawrylo: Well, because otherwise I've got to put the road in.

Mr. Turner: Okay. (Inaudible). Yeah, I prefer the road, but I'll, I'll

Mr. Hawrylo: Yeah, but that, that's the thing, yeah. (Inaudible).

Mr. Turner: (Inaudible).

Engineer Sterbenz: Do you understand that if he, if he does extend the road, your driveways gonna be modified? You do understand that? (Inaudible), I was asking you a question. Do you, do you understand that

Mr. Turner: Yes sir, my, my property

Engineer Sterbenz: Okay.

Mr. Turner: as it currently exists has this much access to the road. So, when I bought this property, it was under the full intention that this road would be continued and I would release the (inaudible) part of my property. My driveway would be adjusted, go right into the street, I'd have clean access to the road; it would continue on, I'd have no other driveway within 25', for it to look like every other driveway in the neighborhood and the property. I'd actually be in a safer, uh, position; I'd have no problem with the road extending, getting a clean front for my property. Right now my property is under easement; my driveway crosses over his property to reach the road. So I have no right way to access the road without it, so if they want to put in a road, I'd be fine putting in a road.

Engineer Sterbenz: So you'd have no problem with your driveway being squared off if there was

Mr. Turner: I'd have no problem.

Engineer Sterbenz: (inaudible).

Mr. Turner: It's too long anyway. Less to, less to

Engineer Sterbenz: Okay, that's what I wanted to find out; get it on the record. Thank you.

Mr. Turner: Yeah.

Engineer Sterbenz: Appreciate it.

Mr. Swick: If I can add that as a (inaudible), if the road is extended, then this, uh, current cul-de-sac and, and my, you know, my clients driveway only goes to the cul-de-sac, that cul-de-sac would end and his driveway would have to be extended. And obviously he doesn't want to pay the cost of that. So that would be something that the, the, if, if that's the way this ends up, the applicant to, uh, bear that cost. I mean my client Mr. Swick (Con't): shouldn't be disadvantaged or made to extend his driveway because of some variance that the applicant is seeking.

Attorney Sposaro: If he extends the driveway, extends, extends the road, he may not need any variance relief. If the roads extended

Mr. Swick: Right.

Attorney Sposaro: but

Mr. Swick: Right, yeah, yeah I got that he would, right.

Attorney Sposaro: There's lots of moving parts here.

Mr. Swick: Yeah,

Attorney Sposaro: Why don't we see if we can nail down where we are with the access over Lot 12. We'll start to sort this out and see if we come up with a solution that makes everybody happy, maybe.

Member Rutledge: That other access is going into, uh, Phillipsburg onto 57,

Attorney Sposaro: I'm sorry, I didn't hear the question.

Member Rutledge: The other access that we're talking about

Attorney Sposaro: Yes.

Member Rutledge: is going to go on to 57

Attorney Sposaro: Correct. When the lot, when Lot 12.01 was created, it appears from what we have that it was contemplated that access to Lot 12.01 would be over the easement that is located on Lot 12 to Route 57. Whether that still makes sense is one of the issues that's before us tonight.

Member Rutledge: Is there any limitation on, uh, the number entrances into a state highway?

Attorney Sposaro: DOT controls that, uh, I, I don't know the answer to that question.

Engineer Sterbenz: So, on the highway access code, something that Mr. Parker's going to research.

Attorney Sposaro: The easement may be, may be there, but if the DOT says no, that, uh, then we have to wrestle with what happens if that (inaudible). You know, as I said, there's lots of moving parts and I trust that, uh, Mr. Parker will share whatever information he finds with, with everyone, so, when you all come prepared to the next meeting. Do we have any problems with, uh, time? On acting on this application do we have the necessary extensions?

Secretary Coleman: Yes.

Attorney Sposaro: We do? Okay.

Engineer Sterbenz: Does, does the Board, I know the next 2nd Wednesday is on the 11th, Veteran's Day, do we have a meeting that night, or is it being shifted?

Secretary Coleman: Um, it is on the 11th, but we can move it to the 12th.

Engineer Sterbenz: I was just asking the question, so, you know.

Attorney Sposaro: Right now, if it's the 12th I've got two applications in one town and two in another town, not that I have hair to pull out, but, I'm already looking to figure out how I can cover those four, so, if we're going to do this, please don't do it for the 12th.

Engineer Sterbenz: The 12th's no good for me either. I prefer to keep it on the 11th.

Secretary Coleman: That's fine.

Vice-Chairman Gary: Does anyone on the Board have any problems?

Member Rutledge: The 11th is what, a Tuesday?

Engineer Sterbenz: It's a Wednesday. It's just a holiday around the state, so, that's all.

Member Rutledge: Oh, Veteran's Day.

Attorney Sposaro: If we can just keep in on for the 11th.

Vice-Chairman Gary: Yeah, let's figure.

Attorney Sposaro: Sir, you had a question?

Mr. DePeppo: Yes, I'm John DePeppo. I'm the owner of the property the easement goes through, through the cul-de-sac. Um, my question is around, you know, if we do find that it doesn't have a, an access point through, that it's not feasible through, um, the, the property in Greenwich Township, um, and we're back to using the easement, uh, through the cul-de-sac or road, my question is around ex, exploring the costs of maintenance and as my, as my counsel asked a question about who's responsible for extending the driveway and paying for that. Not only that, when you chop up the, the cul-de-sac, um, I was under the impression that becomes my

front property, so do, do they chop up the, the pavement, put grass down, put trees, you know, the whole, who's responsible for those costs? So there's quite a lot of activity that have to happen, quite, quite a lot of disruption as you, as was noted earlier, as far as a very large area; pavement, sidewalk, curb, road, trees, that has been established for, for about 15 years. So, um, who's responsibility is it to pay all of those costs to chop up the pavement, plant trees, extend my front lawn, extend my driveway, uh, in that area that gets disrupted?

Attorney Sposaro: There are lots of parts to that question. I don't know that I can answer all of them, but my advice would be this, if we get to a point where it does not appear that access from Route 57 is feasible, for whatever reason there may be and there may be more than one or there may be not. But if there are reasons why, then I would strongly urge you, you've got very competent councel, to sit down with the applicant and, uh, and this other gentleman, the three of you should sit down and see what you can resolve and see if you can come together and present a plan that makes sense for all of you that's cost effective for all of you. Uh, that would be my advice, because ultimately the Board will have to make a decision and somebody may walk away unhappy.

Mr. DePeppo: One other concern, and I just want you folks to hear, uh, when I purchased this property around 13 years ago, the folks that purchased property on a cul-de-sac paid premium to be on a cul-de-sac. So, another consideration as far as property value, um, what we paid up front to be on a cul-de-sac; safety of children and privacy. And on that cul-de-sac there are three houses, uh, the gentleman here, Mr. Turner, myself, and another, uh, uh, family, Thomas's, where there are five children that play in that cul-de-sac. We all paid a premium to be there, so I just want that to be part of the considerations as well.

Attorney Sposaro: Understood.

Mr. DePeppo: And then one other thought and the last one here, uh, the lot that's in question was subdivided, and I think it was noted earlier, that, that before that was subdivided there was another access point to Mr. Hawrylo's property. That was sold off to the Post Office. So, if, if, if there's a hardship here, and it's land locked, that was something he brought on himself by selling off premium pieces of parcels of land to make, uh, to make a dollar. And I don't begrudge anybody making a dollar, but this, this hardship I don't see when you're selling, you're developing, making a lot of money, where as Mr. Turner and myself and, and Mr. Thomas, we have one house. We have one house for our children that we are trying to provide for in, in a safe environment. We paid a premium for the cul-de-sac; this gentleman sold off more property to the Post Office, locked himself in and now it, it becomes this towns, uh, issue as well as three families issue, when it's a different town trying to access. So, we're Lopatcong, they're Greenwich, that kind of thing, so, just wanted you to hear all of those factors as well.

Mr. Hawrylo: But I didn't lock that property in. I had access to the other 42 acre, 52 acres and this access when I bought it. I traded, actually, that Greenwich piece for a piece in Lopatcong that connected the Woodside Hollow. So, I, I had, he didn't, couldn't finish that subdivision without access, so that's how that all evolved. But I wasn't giving up access anywhere when I was giving him access to a major subdivision.

Mr. DePeppo: So you made like a swap with the access that was

Mr. Hawrylo: Yeah.

Mr. DePeppo: benefited both of you guys on both parts?

Mr. Hawrylo: Yeah, those last three lots were you go into Woodside Hollow there, that was 10 acres that were mine.

Mr. DePeppo: Right, you own both pieces, right?

Mr. Hawrylo: Yeah.

Mr. DePeppo: And you sold off that piece that had access, so, you had two ac, essentially you had a few access points, but by selling off that other land, you, you, you

(Inaudible – both speaking at same time).

Mr. Hawrylo: I bought the one that is by you, the one that we're talking about here, way before I sold that property. I had the access there, so, (inaudible) there's no need to use that other access. You're right, (inaudible) and if I developed that whole piece in there, you know, and we ended up on putting in ten, then I would the two there, and then the eighteen here, then, then I would have used both access, you know. When you come in through the one on the lower side of that subdivision and then the road came out to the other side. You know, with the Highlands,

Mr. DePeppo: (Inaudible). Yeah, there, there's a lot of moving parts as this, uh, attorney explained earlier. I just, you know, I guess we have to take it one step at a time, see what's going on here, to bring the easement appeal from there that, you know, I, I don't want this Board to think that I'm okay with anything once we hear that, and we have to take it to the next step, one at a time.

Mr. Hawrylo: Yeah.

Mr. DePeppo: You know, there's a lot of concerns that I have with the (inaudible), having neighbors in that area and it got complicated very quickly. I don't think anybody expected that. Uh, so, I certainly appreciate all of you hearing my thoughts and questions and, uh, having this discussion.

Mr. Hawrylo: Sure, I, I agree with you, that what I'm pre, presenting here, is we're proposing the, the least amount of impact. That you know, if we do, we just gotta figure out how to make the driveways.

Mr. DePeppo: Thank you.

Mr. Swick: Before we go, can I keep this, or is your, okay thanks.

Mr. Turner: Uh, yes, Michael Turner, um, I just want to make a statement, cause I came in with the understanding that this was relative to putting a driveway within 25' of another driveway within our township. And being on the property that is addressed, I just want to address that point and just put on the record, I'm just, completely against that. Um, just from the issue of, of safety in this neighborhood; there are no other houses in this neighbor with driveways that are even closer than 50', even within a 100', we can look at the property and (inaudible) that, so it's completely against what was purchased into this property and neighbor In terms of looks. This is a neighborhood that was purchased in exclusive properties, 2 acre lots, in a private area to have remote separate, um, location to have access off the road that's very clean, very away from neighbors, we paid a premium for the property at the end of the driveway. I've already seen that property value drop by well over $150,000.00 since purchase. I have a significant concern of what would happen if having to sell a property that has a driveway attached to it. I have not seen any other house that has a 2 acre; there's another house in the neighborhood, or in the entire township with a 2 acre plus property that has an attached driveway. I'd like to see documentation of that and where that is, cause I think we're looking at something that's creating an issue that's going to bring the property value down, but also again, just to state, having a, completely against having a driveway attached at the lot. I have two kids, I'm just really concerned about anything, whether they're on bicycles now, on scooters or when we go out the drive. Just trying to back

out and just, and not me trying to back out of a long driveway backwards, worrying about a neighbor trying to pull out and then trying to figure out, now we have three houses at the end of that cul-de-sac. That wasn't originally designed for that; maybe in other neighborhoods where houses are closer to the street and have better access to that. If my house were closer to the street, I'd have no problem with closer driveways, I wouldn't have had a problem when I lived on Haze Way; this is amuch different environment. So I just think, it just, I want to put out I'm just against it from the safety perspective but then also just from the aesthetics of the neighborhood and what would, I would feel would be a decrease in my property value. If I need to come in and bring document of what that would do, I'll talk to a real estate attorney and find out.

Attorney Sposaro: Thank you.

Mr. Turner: Thank you.

Vice-Chairman Gary: Anyone else who'd like to, uh, comment or any other questions? Board have anything else before, uh, these gentlemen leave?

Application carried to November 11, 2015 meeting.

PAYMENT OF BILLS:

Motion to pay Anthony J. Sposaro, Esq.	Attend Board Meeting July 8, 2015	$250.00
	Prepare Resolution for Kevin Nollstadt	$300.00
	Total	$550.00

Motion by: Vice Chairman Gary **Seconded by**: Member Bittone

ROLL CALL:

AYES: Members Degroff, Marchie, Rutledge, Unangst, Larsen, Bittone and Vice-Chairman Gary.
NAYS: None

PUBLIC COMMENT:

No public comment

MOTION TO ADJOURN:

Motion by: Vice-Chairman Gary **Seconded by**: Member Marchie

ALL IN FAVOR: Aye
NAYS: None

Respectfully submitted by,

_____ _____

Phyllis D. Coleman
Secretary, Zoning Board of Adjustment

Fred Gary
Vice-Chairman

Adjourned at 8:20 pm