

**Planning Board Meeting
Borough of Watchung
August 15th, 2006
Minutes**

Chairman Speeney called the meeting to order at 7:32 p.m. and stated that notice of this meeting had been posted at Borough Hall, filed with the Borough Clerk and given in the way of notice to the Courier News, Echoes Sentinel, the Reporter and Star Ledger in conformance with the N.J.S.A. 10:4-6 et seq.

Present at the call of the roll were: Speeney, Boyd, Havas, Haveson, Addario, Pennett, Schaefer and Spratford. Mayor Ellis arrived at 7:39. Also present were Planning Board Attorney Robert Rusignola, and Mark Healy, Borough Planner from Heyer, Gruel & Associates.

Chairman Speeney indicated that there was a quorum to conduct business. He asked for a motion to waive the reading and to approve the minutes of the Meeting of July 18th, 2006. Mr. Havas made the motion and it was seconded by Mr. Boyd, and approved on voice vote. Chairman Speeney stated that PB06-06-Cingular Wireless asked for a continuance until the September 19th, meeting, as did PB06-08-Phyllis Rohling. Chairman Speeney asked the Board to agree to both PB06-06 and PB06-08 until the September meeting. Mr. Addario made a motion to continue these cases and was seconded by Mrs. Schaefer. Mr. Rusignola said that on Cingular wireless there was an entire presentation and only one modification to the noise level that had to be done. Apparently the applicant has found difficulty lowering the decibel levels as the Board had suggested. The new application will apparently call for an additional structure. The letter asking for an adjournment asked that no further notification be given. Mr. Rusignola stated that he feels now that this is a substantially different application, and has composed a letter to the Applicant suggesting to him that for the next hearing in which Cingular will be on the agenda, that there should be notification to all parties within 200'. Chairman Speeney said he would support that. Mr. Rusignola said he would send a letter notifying Cingular of this.

Havas read :

PBO6-R12 -Resolution to accept the Open Space and Recreation Plan as an amendment to the Master Plan. Chairman Speeney accepted the reading into the record as a motion to approve, and asked for a second, which was given by Mrs. Schaefer. Chairman opened it up for discussion, and there was none. It was approved unanimously on a roll call vote.

Chairman Speeney opened up a discussion for review of OR:06/19 -An ordinance amending and supplementing Chapter 138 zoning, specifically section Chapter 138-29 entitled "R-R Rural Residential District" by amending section 138-29C as it pertains to

accessory apartment use as a conditional use. Chairman Speeney explained that it would expand the accessory apartment issue to all Somerset County Roads in the Borough of Watchung to get the 10 apartments for the COAH obligations that we have. The discussion was opened up to the public but no one spoke to the Ordinance. Chairman Speeney opened the discussion back to the Board, and Mr. Havas asked how many more apartments the town needed, and Chairman Speeney said two more, because the obligation is ten units. Mayor Ellis said it wouldn't guarantee the Borough getting two more units, but that it would expand the area. Mrs. Spratford had some questions about how the COAH apartments were set up, and a short discussion ensued about accessory apartments and COAH obligations. Chairman Speeney said that Lauren Fellin has been doing a fantastic job, and that he wanted to support her in her efforts toward the adoption of this ordinance, and recommended that the Board make a motion to recommend the adoption of OR:06/19. A motion was made by Mr. Haveson to recommend the Ordinance for adoption by the Mayor and Council, and seconded by Karen Pennett. A roll call was taken and the vote was Speeney- yes, Boyd-yes, Havas-no, Haveson-yes, Addario- yes, Pennett-yes, Schaefer-yes, Spratford-yes, Ellis-yes.

Havas read:

PB06-R13 – Granting approval to JDN Properties for Villa Domenico 72 Stirling Road Block 40.01 Lot 3, 4. Chairman Speeney accepted the reading of the Resolution into the record as a motion to approve and asked for a second. Mayor Ellis seconded and a roll call vote was taken. Speeney- yes, Boyd-yes, Havas- yes, Haveson- yes, Addario- yes, Pennett- yes, Schaefer-yes, Spratford- yes, Ellis-yes.

Havas read:

PB06-04 Shelly Davimos
47 Cedar Road Block 33.01 Lot 5
Minor Subdivision with Variance(s)

Mr. Murray Attorney for the Applicant was present, as was Mr. Leland Titus of Titus Surveying and Engineering, and Mr. David Zimmerman. Planner for the Applicant. Mr. Murray made a statement that he was satisfied with the reconstruction of the minutes after losing power on the digital recording of the meeting last month. Mr. Rusignola asked the Planning Board if they were satisfied with what had been reconstructed, and that there should be a quick resolution to that effect. Mayor Ellis made a motion to accept the content of the minutes. Mr. Havas seconded the motion and Chairman Speeney said he supported the content. No one from the Board had any issues with the minutes. A voice vote was taken and the content of the minutes were passed. The transcript is reported to reflect that for the vacant portion of the meeting on the tape, the minutes were sufficient to reflect what happened. Chairman Speeney said that Planning Board Clerk Carolyn Taylor was still recused in this matter, and that she could sit in the room and take notes.

Chairman Speeney said that they would start with asking the public if they had any questions from the testimony of Borough Planner Mark Healy. There were no questions from the public and Chairman Speeney asked the Board if they had any questions. Speeney asked about the character of the neighborhood. He asked if the different size lots represented the character of the neighborhood. Mr. Healy said that the different lot sizes and lot widths were indicated in his report. He said that what he found was that the vast

majority of the lots (12 of the 19) either exceeded the 15,000 sq. foot lot area requirement, or were just under. He said that 4 of the 19 were 20,000 sq. feet or above. He said that only 3 of the 19 lots were 11,250 sq. feet or less, so that the general characteristic of the neighborhood are lots that comply.

Mr. Murray stated that the Applicant was removing any proposal to construct the house that was described at the last meeting, and that they were removing from the application any representation as to the size of any house, and that they were just here for the lot creation. Mr. Murray said that they wanted to bring up Mr. Leland Titus again to indicate how he would reduce the impervious coverage on the lot with the existing house on it to approximately 31%. Mr. Murray said that that would leave them with a variance for lot coverage and a variance for lot area. Mr. Murray showed a schedule written by Mr. Ed Kerwin the house size with the garage and the area of the lot encompassing the greater region. Mr. Murray said they would be calling Mr. Zimmerman back to see whether he had a opinion as to whether he has a change in his opinion due to the removal of the proposed house at the size that was indicated by the Applicant, and the reduction of the impervious coverage that Mr. Titus will testify to.

Mr. Murray called Mr. Lee Titus to testify. He was still sworn in from last month. Mr. Ellis asked if the removal of the proposed house in any way changes the Application. Mr. Rusignola said no, and that it was actually more consistent with the original application to just address the subdivision. They introduced Exhibit A-12, which was Sheet #3 of the Application and has red areas on it that are areas of existing impervious coverage that could be removed from the site. The garage as it is now, is 3 cars. A portion of the garage could be removed and it would still be a two-car garage, and in addition to that, the driveway that services that 3rd bay of the garage could also be removed. That would be an area of 512 square feet. Mr. Rusignola stopped the testimony to say that he needed definitive testimony from Mr. Titus, not testimony of what could happen. Mr. Murray said that the Applicant is proposing to reduce impervious coverage by removing a portion of the driveway pavement and a portion of the existing driveway and a portion of the sidewalk area that leads to the swimming pool also. He said that the swimming pool does not count in impervious coverage calculations. Mr. Titus said that the pool does count in impervious coverage, but that it was previously proposed to be removed. Mr. Davimos stated that she agreed with this testimony. Mr. Titus said that the other area would be 224 square feet that would be removed and that it will reduce the impervious coverage to 3,514 square feet, which would be 31.2% of the 11,250 square feet of the proposed lot as compared to the prior impervious coverage that was 37.8%. Mr. Titus said that the pre-subdivision impervious coverage including the pool and everything as it now being 5,302 square feet which is 23.6%. This would be a reduction of 6.6% in impervious coverage since the last meeting.

Mr. Murray had no further questions of Mr. Titus. Chairman Speeney asked Board Members if they had any questions of Mr. Titus. Mr. Haveson asked what would replace the areas that would be removed, and Mr. Titus said grass. Mr. Havas asked how many habitable square feet are in the existing dwelling. Mr. Murray said that the Assessor provided him with house size and he had that it house was 2,148 square feet and the garage was 576 square feet. The combined total acreage was .51. Mr. Boyd asked if those numbers were actually the footprints of the structure. Mr. Murray said that was what he was told. Mr. Rusignola said that was taken by measuring the perimeter of the building. Chairman Speeney asked if Board Members had any other questions. There was some discussion as to whether or not the numbers were correct, and how they were

figured. Mr. Havas asked again, and Mr. Murray stated that he did not know the habitable living space figure for sure, because he didn't know how the number from the Assessor was figured, and what he used to calculate to that number, so that he didn't know what the number represented. At this point, Mr. Healy said that he calculated that the habitable living space would be approximately 1500 square feet. Mr. Murray said that they were proposing a house to be 3400 square feet, and that was what Salustro Partnership testified to. Mr. Murray said that when he first submitted to the zoning officer, he had no floor plan and nothing submitted to him with regard to house size. Chairman Speeney said that he understood the reason for all the confusion, but that if the Board could just get back into the mindset that the second lot is unencumbered they could move on. Mr. Rusignola asked Mr. Titus to run through all the variances that would be required. Mr. Titus said that lot 5.02 would require a lot area variance. Lot 5.01 would require a variance for lot area. Front yard setback variance would be required as well as one side yard, and one for impervious coverage. A variance for the accessory structure would be required for rear yard. Mr. Murray asked Mr. Titus if the accessory structure of 3.5 feet together with the side yard on the northerly side and the front yard setback of 29.9 are all pre-existing conditions. Mr. Titus said yes. Chairman Speeney said that the area is short due to the depth. Mr. Murray agreed. Chairman Speeney asked the Board if they had questions. Mr. Addario said that removing the proposed dwelling from the application, leaves it wide open for speculation as to what is going to go there now. Mr. Murray said that if they had come in without any proposal, he didn't think the Board would let them proceed without something to go on that lot. He said that is not required under the ordinance, and if they had come in without anything from the beginning, that Mr. Addario's question would still be applicable at this point. He said that the testimony of Shelly Davimos was that she wanted to build her own house on the vacant lot and convey the other lot. Mr. Addario asked how old the existing home is. Mr. Murray said that Mrs. Davimos indicated that it was built in approximately 1926. Chairman Speeney opened questions to Mr. Titus to the Public. Bill Funcheon, of 54 Cedar Road asked if the existing lot had 23.6% impervious coverage. Mr. Titus said yes. Mr. Funcheon asked if the lot that they are proposing creating one lot with impervious coverage of 31.2%. Mr. Titus said yes. He said that he would hope that if a house was built on the proposed second lot, it would be comparable in size and have about 30% impervious coverage, and would create about 60% impervious coverage on the same amount of square footage after subdivision as exists now before it is subdivided. Mr. Titus said no, and a lengthy discussion ensued trying to explain the premise. Rachel Funcheon of 54 Cedar Road asked Mr. Titus what the intention of subdividing the lot, if you have no intention of building a house. Mr. Murray said he assumes the intention of creating a subdivision is to create a building lot. There were no further questions for Mr. Titus from either the Public or the Board. Mr. Murray called Mr. Zimmerman, Planner for the Applicant who was still under oath from last month's meeting. Mr. Zimmerman testified to the fact that he heard the testimony about the withdrawal of the plans for the proposed house. He stated that he heard testimony regarding the reduction of impervious coverage. Mr. Murray asked Mr. Zimmerman if he had any comments with respect to that testimony. Mr. Zimmerman said that in respect to the 19 lots on Cedar Road, his data indicates that seven are the same size being proposed or smaller. Mr. Zimmerman gave his explanation of what he used to define the neighborhood, talking about the character of the neighborhood, and explained that lot frontage was something he used to define the "character" of the neighborhood. He said there were a variety of lot sizes, and he didn't

see anything about what was proposed that wouldn't be compatible with the neighborhood. Mr. Murray had no further questions. Chairman Speeney questioned Mr. Zimmerman about whether or not he felt that adding additional houses to the neighborhood would change the "character" of the neighborhood. Mr. Zimmerman replied that lot width, in his opinion was the dominant characteristic of the neighborhood. Mr. Murray asked Mr. Zimmerman, if this maintains the density of the neighborhood. Mr. Zimmerman asked to look at the Master Plan. He said he didn't think that this is dealing with a vacant tract, explaining that he was of the mind that vacant tract meant a large parcel of land. He said he didn't think of this as redevelopment of land either. Mr. Murray said he was done questioning Mr. Zimmerman. There were no questions from Board Members. From the public Bruce Ruck from 13 Lakeview Avenue asked about whether or not they are considering Lakeview as part of the neighborhood due to the fact that there are several lots on Lakeview of similar size that could be subdivided in an "avalanche" of subdivisions if this application goes through setting precedent. He asked if Lakeview Avenue was considered as "consistent with Cedar Road". Mr. Zimmerman said that by quick count, he found 24 lots on Lakeview. Of that number there are only two lots that are undersized, and he found that substantially different from Cedar Road. He said that he found Lakeview very different in character from Cedar Road as well. Mr. Ruck said that he disagreed with that. Charlie Neiss, a member of the Board of Education and resident of Dogwood Lane said that Mr. Zimmerman focused in on Cedar Road said that Mr. Zimmerman said that he has direct knowledge of that neighborhood, and asked if he knew of how the residents in this area perceive what the boundaries of the "neighborhood" are. (Not Mr. Zimmerman's perception, but those who actually live there). Mr. Zimmerman said that with all due respect, he could only testify as to his opinions. Mr. Rusignola said that Mr. Zimmerman didn't know how the residents who live in the neighborhood perceive it, did he? Mr. Zimmerman answered "no". Colleen Spring, of 44 Cedar Road asked if indeed Mr. Zimmerman had testified for a prior application on Cedar Road that involved Lot number 8, and Mr. Zimmerman said yes. She asked if that subdivision was approved. Mr. Zimmerman said that it was not. At this time Mr. Murray stated that he had no further witnesses. Chairman Speeney asked if Mr. Healy had any further comment to the Board, and Mr. Healy clarified that he had evaluated two different areas which he presented at the last meeting and was also in his report. He said that he evaluated Cedar Road in the applicant's block in particular, consisting of 19 lots. He said he also evaluated the R-B Zone as a whole. Mr. Healy said that he based his assessment on the GIS system, and that Mr. Zimmerman based his assessment on the Borough's map. Looking at the map that is in the file, he agreed with Mr. Zimmerman's count, but said it did not change his evaluation of that street. Mr. Murray asked Mr. Healy looking on Cedar Road both sides from Park Place down to Stirling Road, how many lots at a 75-foot width or less are there? Mr. Healy counted 15 out of 33. Mr. Murray asked if as driving along the length of Cedar Road, do those 15 lots account for a substantial amount of the streetscape of Cedar Road. Mr. Healy said that he thought that the two blocks of Cedar are somewhat different, and that the block between Stirling and Valley View Road have a greater amount of lots in excess of 75 feet, whereas the block to the North between Valley View and Park is more common to the 75 foot lot, especially on the left hand side going from Valley View to Park. Mr. Murray asked how many lot on the entire street are 150 feet in width. Mr. Healy said that he counted 5. Mr. Murray asked if the lots of 150 feet width fit in with the other lots. Mr. Healy said no, that he thought that they fit in with the varying lot widths on that

street. Mr. Murray said to Mr. Healy, “So the character of the street is one of varying lot widths”. Mr. Healy said that he thought that was an accurate statement. Questions were opened to the Board. Mr. Addario said that most of the homes on substandard lots today were built many years ago. He asked when the ordinance was changed. Mr. Healy said that he did not know. He asked what happens when someone comes before the Board with a lot width of 140 feet and wants to subdivide into two 70-foot lots. How would it affect the neighborhood? Mr. Healy said that the Board has been presented with that situation a number of years ago, in Lot 8.

Rachel Funcheon, of 54 Cedar Road asked Mr. Healy if whether or not subdividing the lot and putting another house in and adding two more smaller lots to the list that you’ve just enumerated would be a benefit or a detriment to the neighborhood. Chairman Speeney asked if Mr. Healy would read an excerpt from the Land Use Element of the Master Plan which stated that “current minimum lot sizes and densities for development in each of the existing zoning districts be maintained as currently zoned”. Mr. Healy was asked if the 2005 reexamination maintained this content and Mr. Healy said yes. Mr. Murray asked Mr. Healy if it would be beneficial to the zoning to take the existing lot and leaving it alone for a potential knockdown and the building of a potentially substantial sized house on the combined two lots. He asked it was a consideration for determining whether this subdivision would provide a benefit to the community or to this neighborhood. Mr. Healy responded that it could be, but the problem with giving a precise answer to that is in the absence of a proposal on lot 5.02, he didn’t know what the comparison is. Mr. Murray said the ordinance controls and the judicial interpretations of the C-2 variances are applicable. Mr. Healy agreed that the Planner for the Applicant provided testimony in accordance with the C-2 criteria. Mr. Murray said he had no further questions for Mr. Healy.

Chairman Speeney opened a portion of public comment. Colleen Spring of 44 Cedar Road said that she stands on behalf of her neighbors, and said that she didn’t think that this subdivision would benefit the characteristic of the neighborhood. She has been a long time resident, and doesn’t want another house squeezed in, and the reason she bought this property was because of Watchung’s reputation of being a nice area. Ms. Spring said that she did not think this subdivision would benefit the property values, and was very much against it. Rachel Funcheon, of 54 Cedar Road read an excerpt from the Rowe Subdivision in 1995 Cedar Road Block 33.01 Lot 8 which stated that the detriments outweighed the benefits. It also stated that the approval of this subdivision was not consistent with the Master Plan. She also thought that the light air and open space would be compromised with two houses. Mr. Murray asked to see a copy of the Rowe Resolution PB96-R5. The Board gave him a copy of the Resolution to view. Mr. Murray noted that there was no determination made by the Planning Board in the Resolution that used the term “substantial”. Bruce Ruck, from 13 Lakeview Avenue asked the Board to consider the whole neighborhood in his decision, not just Cedar Road. He asked them to consider the potential avalanche of subdivisions in the neighborhood. Charlie Neiss, of 71 Dogwood Lane said that the Board of Education has two concerns. One is the potential runoff as the result of the development, and the other is potential impact on school population. He said that Mr. Titus said in his testimony that there would be a change in the grade, however the plans submitted did not show any change in the grading. Mr. Neiss said in terms of school population that he would not argue that in terms of this one house with two potential bedrooms it would significantly impact the school population, but that it sets a precedent, where there could be additional

development to this street, this block, this neighborhood, or town. He said if they approve this application, what would the Board's standard be to disapprove any others like it. It does have the potential, he said, for very negatively impacting the school population. Debra Whitley Yock, of 33 Cedar Road, the direct neighbor of this property said that she felt this would very negatively impact her, and impact her the most. Ms. Yock said she was especially concerned about the runoff, the soil erosion and the overflow that would possibly run into her basement. She stated that she doesn't want to live in a closed in row house appearance. Now she has open space, and wants it to remain so. She stated that she would be very upset if this subdivision was approved. Maureen Hemsworth, of 75 Cedar Road said her home was one of the existing large lots on the corner. She said a few years ago when Valley View School was added on to, she lost her view from her kitchen window, and now looks at a brick wall. She is aware that it benefits the children, but she said that the residents of Cedar Road do not need any more crowding. Mrs. Hemsworth said that the residents of Cedar Road need all the open space that they have left, and that is why the residents of the street are so emotional about this application. She stated if this subdivision goes through, she could technically knock down her two-car garage and subdivide that lot. She said she doesn't want to do that, or do that to her neighbors, but that it is something to be considered that others in that zone might start subdividing. She said that they don't want to overcrowd the town. Chairman Speeney asked for a motion to close the public portion of the meeting, which was made by Mr. Addario, and seconded by Mayor Ellis. The motion was carried by a unanimous voice vote.

Mr. Murray summarized his case going over the salient points of testimony that was previously given. He mentioned that in creating the second lot, the law says you cannot create a hardship, and then use that hardship for variance support. Mr. Murray said for the C-2 variance, the applicant must first show that there are some benefits arising from the proposal. The Applicant then has to weigh those benefits with any detriments that perceivably exist. If that step is pursued successfully and the Board agrees, then the Board concerns itself as to whether or not there is a substantial impairment of the zone plan, public good or zoning ordinance of the community by creating this second lot. Mr. Murray said that the open air between the buildings is the same as if this were a 15,000 square foot lot. The dimensions on the side yard are the same. The dimension in the front yard is the same. The dimension in the rear yard is the same, but the entire area is not the same as 15,000 square feet, it is short. The benefits to be considered are that the plan meets 90% of the zoning requirements. Mr. Murray stated that they are carrying out the general intent of ordinance by promoting the general welfare. Mr. Murray said that the property backs up to the Board of Education site, which has large open space. An additional benefit is that the setback distances required for fire safety are met. He said that the fact that it could produce extra students in the school system was irrelevant in the determining of a decision by the Board. He said that the area is unique in that there is such a mix on the street. He asked the Board to look at the specifics of this lot, of the goals of the Planning Board, the Master Plan, and the street itself.

Mr. Rusignola placed on the record that Mr. Murray's affirmative case has rested. Chairman Speeney turned to the Board to deliberate. Chairman Speeney said he disagreed with a few of the points Mr. Murray made in terms of looking for more uniformity. Chairman Speeney stated that back in 1994 when he sat on the Board at the time that the current lot size and minimum densities were developed and he feels ownership to those decisions. He said that the existing zoning districts be maintained.

Chairman Speeney said that over the years, he has been worried about infill development, and this is clearly a case of that. Chairman Speeney said that he did not believe that this application furthers the zone plan of this Borough, and would at this point, not be in favor of the application. He opened the discussion to other Board Members for comment. Mr. Addario said that he was aware that the applicant took the plan of the proposed home off the board, and asked if that also eliminates all of the features that would be built into this proposed home supporting the environment. Mr. Murray and Chairman Speeney said yes. Mr. Addario said that he has been on this Board for many years and he didn't remember ever changing any lot size when an application came before this Board in over 20 years. He said he was afraid that if the Board made an exception, other applicants would start saying the same things. Mr. Addario said that he could not vote for it. Mr. Havason agreed with the comments made before, but said Mr. Murray did make a compelling argument for some positive aspects, but that he thought from the beginning that a change to the lot sizes in that area would change the character in that area. Mr. Havason said that he too, would have to vote against this proposal because he didn't feel it was right for that area. Ms. Schaefer said she feels that there are ordinances supported by the Master Plan for a reason and to change the conformity of that along with the neighborhood would not be good, and agreed with the Mayor that infill could be a problem in the future. She agreed that she could not support this application. Mr. Boyd said he shared the same thoughts. He said that in this day of teardowns, on the two streets of Cedar and Lakeview there are a total of 10 properties that have 150 foot frontage that have much the same situation as the Applicant, so he could see that if there are 10 properties that have these characteristics, we could end up with 20 homes and not just 10. He said that it also flows over into other properties in different parts of the town where people own property that is very close to being at the standard size. He thought that the arguments have been very compelling, but he would not be in favor of this. Mayor Ellis commented that one of the tenants of governing in a Municipality and the State is consistency. Mr. Ellis said that he thinks the comments made earlier support that. He said that constantly the Council is approached to make changes of one sort or another, and one of the constant tenants that he tries to institute with the Council is the precedent setting and he is concerned about that here. He said Mr. Murray has made some good arguments on the counter side of that, but that he feels the consistency is an important thing, and he didn't see that a change in this particular zoning from 15,000 square feet to 11,250 will make any benefit to the neighborhood, and he could not support it either. Mr. Rusignola said that the Board could either call for a vote or call for a resolution to be drafted. Chairman asked the Board what they would like to do, and the Board overwhelmingly wanted to take the vote on this evening. Chairman Speeney asked if there was a motion to vote in the affirmative, and no one made that motion. He then asked for a motion for denial of the application, and Mr. Havas, seconded by Ms. Schaefer. Chairman Speeney said that a Yes was a vote for denial. A roll call was taken and it was: Speeney- Yes, Boyd-Yes, Havas-Yes, Havason- Yes, Addario-Yes, Pennett-Yes, Schaefer-Yes, and Ellis-Yes. Chairman Speeney said that the application is denied, and that the action of the Board will be memorialized next month, and the application is closed.

Havas Read:

PB06-05 K & R Valley
113 Valley Drive Block 65.02 Lot 14
Preliminary Major Subdivision & Variance

Mr. Joseph Murray was the Attorney for the Applicant. Mr. Murray said that this is an application for a 2 lot Major Subdivision, being major because of a new street existing of a cul-de-sac involved in the creation of these two lots. One of the issues with respect to the application is the location of a lot width, where that is measured from and assuming that we have a corner lot it is the position of an objector that the present ordinance provisions require the lot width to meet the ordinance standards on both streets. Mr. Traynor, attorney on behalf of the objector (Jeff Tobey) who is a neighbor submitted a letter to the Board late last week. Mr. Murray said he responded to it last Friday. Mr. Murray said that it spoke to the issue that if this Board is to concern itself with an interpretation of what constitutes a front yard, or what constitutes the lot that is required to meet the lot width requirements under the ordinance, that is a question of interpretation of the ordinance and it is required to submit that question to the Board of Adjustment for analysis and resolution. This Board can't do it. Mr. Murray sent a memo to Mr. Rusignola citing case law to the support the premise that the Board has inherent authority to interpret it's own zoning and land use regulations. He said that the only time a Board does not have a right to interpret a zoning ordinance is wherein the interpretation is for the purpose for determining whether it has jurisdiction to act. A common situation involving that is whether we dealing with a use variance or not. He said you couldn't decide that we are not dealing with a use variance and therefore have jurisdiction. Mr. Murray said that the question of interpretation as to whether a lot fronts on one street or fronts on another street doesn't deprive this Board of jurisdiction. At best he said if you do not agree with the applicant's interpretation of the zoning ordinance in that respect, you say you need another variance if your lot doesn't front on the requisite street under the ordinance. Mr. Murray supplied information to the Board and to Mr. Rusignola that said the front yard is the area on which the lot width is to be determined. He said the zoning ordinance defines front yard as that portion of the property that the house is facing. Mr. Traynor, with the firm Porzio, Bromberg and Newman, (attorney for the opposition Jeff Tobey) stood up saying that they were getting into substantive matters, and away from jurisdiction. Mr. Murray said he was there to try and determine whether this Board is going to take the position that any interpretation of it's zoning ordinance in the processing of the case before it, we would have to stop the case and send it over to the Board of Adjustment for consideration. Chairman Speeney said that what he wanted to do was to ultimately ask the Board to make a decision on either keeping or not keeping the application. Mr. Rusignola said he described this as a threshold issue. Mr. Rusignola said when an application comes before the Board, in this case the Planning Board; there has been a preliminary determination by the Construction Code Official and also the Engineer's Office that this is the proper forum for this particular case. The point that has been made by Mr. Murray is that the only place where the Board does not have the jurisdiction to make a decision is where it says it has or it has not jurisdiction. Before giving an opinion, Mr. Rusignola said that he would like the Board to hear Mr. Traynor's side. Mr. Traynor stood up and said he absolutely agreed that this Board has jurisdiction. He said he had never once stated or insinuated that this Board does not have jurisdiction. It's clear that this is a major subdivision, which the Planning Board has original

jurisdiction to hear. What he said he stated in his letter was that this Board doesn't have the jurisdiction to consider whether a variance is required or not with respect to lot width. That has already been decided Mr. Traynor said. The zoning Officer made that determination. When it was originally submitted back in March, it went to the Zoning Officer to review. Mr. Bennett reviewed the application and made a ruling that a variance was required for lot width. Mr. Traynor said this goes back to almost a year ago when the applicant came in with a flag lot subdivision. He said he sent a letter on September 9th of last year basically raising this issue about corner lots and whether lot width has to be applied to narrower of the two or to both of them. The Applicant has known since September 9th that this was an issue. Mr. Traynor said that they withdrew that application. They had 11 months Mr. Traynor said, where they could have gone to the Board of Adjustment and said that there was an issue about some discrepancy in how we interpret lot width in this ordinance. Mr. Traynor said that is the normal way you do things. He said he agreed that in certain cases the Planning Board does have jurisdiction to decide interpretations if it is a pending application. He said instead of going to the Board of Adjustment, they withdrew the application and submitted a new one in either February or March. He said when they submitted that new application; they basically ignored the fact that they needed a variance for lot width. That was picked up on by the zoning officer who submitted a written determination on the zoning application that said, "Denied, variance required lot width." Mr. Traynor continued that a Municipal Officer made a determination that a variance was needed. Once that determination was made if the Applicant disagreed with that and felt that there wasn't a variance needed, at that point it would be an appeal. Mr. Traynor stated that the only Board that can hear an appeal is the Board of Adjustment.

Mr. Murray said that this is where he has a big problem. He said he filed his application, and at the last minute he received a phone call from the Secretary of the Board of Adjustment who said that he needed a "Zoning Officer denial". Mr. Murray said the case has already been pending for this application. Preceding that position by the Board of Adjustment Secretary, there was the question as to where the lot frontage was. He said that they had submitted the plan, which was a subdivision plan that showed full conformity. Mr. Murray said that his position was, "OK, lets a get a Zoning Officer denial". At this point Mr. Murray said, he had already submitted correspondence to Bob Rusignola to his (Mr. Murray's)"interpretation of the ordinance front yard, etc. Mr. Murray said he got a denial. He said, "What does that do, I had a pending application. Mr. Murray cited subsections a and b of the statute 40:55D 70-a & b granting power to the Board of Adjustment to decide interpretations of the zone map, or to appeal a decision made by the Zoning Officer. Mr. Murray said that they are there with a filed application with the clock running. If they now have to go to the Board of Adjustment, that clock keeps running. He said if the Board is mistaken, we get an application processed for default approval, and he doesn't want to do that. Mr. Murray said that he didn't think the Board had read his memo, and thought they were entitled to due process to have the Board review it. After much discussion, Mr. Rusignola said that his position would be, if the Code Enforcement Officer made a determination prior to the time when the Applicant's application was deemed complete, then the applicant either had to appeal that, or accept it. But if he made it after the application was made, then the application was deemed complete and you're before the Board, then the Board has the right to make a determination. Mr. Rusignola said it's a timing issue and once you go past that, it is very shaky ground. Mr. Rusignola said that the way he views this, the application could

go forward. He said that Mr. Murray should make an affirmative argument as it pertains to need for variance or no variance relief. Mr. Rusignola said he thinks as long as Mr. Murray's application has noticed the possibility of variance relief, the application can go forward. He said that he thinks the question becomes whether or not the Planning Board is bound by the determination of a Zoning Code Official that is made after the application has been filed. At this point Chairman Speeney sought a motion to continue this application and accept this application as complete. Mr. Addario made that motion, seconded by Mayor Ellis. A roll call vote was taken and it was: Speeney- yes, Boyd-yes, Havas-yes, Haveson-yes, Addario-yes, Pennett-yes, Schaefer-yes, Spratford-yes, Ellis-yes and was carried. Mr. Rusignola asked the Attorneys if either one of them could give him a sequencing of events as to how everything occurred. Chairman Speeney told Mr. Murray that this application would be heard next on the September 19th meeting with no further notice required. Mr. Murray stated that he might send out a new notice because he didn't want to rely on any catchall phrasing. The notice that he had sent out not only covered this application, but also in the event that there is a zone change that occurs between then and the hearing they were going for a variance from that zone change. The Board told Mr. Murray that was his call to do so. Mr. Murray agreed to a continuation, and gave the Board an extension through September.

Chairman Speeney asked for a motion to approve the vouchers as listed for payment. Mr. Haveson made that motion, seconded by Ms. Schaefer. A roll call vote was taken and it was: Speeney-yes, Boyd-yes, Havas-yes, Haveson-yes, Addario-yes, Pennett-yes, Schaefer-yes, Spratford-yes, Ellis-yes.

Chairman Speeney called the meeting at 11:10 p.m. until the next meeting of September 19th, 2006 at 7:30 p.m.

Respectfully Submitted,

Carolyn Taylor
Planning Board Clerk