

**TOWNSHIP OF OCEAN
Zoning Board of Adjustment
Regular Meeting
May 15, 2008**

7:30 P.M.

STATEMENT: Pursuant to the provisions of the New Jersey, Open Public Meetings Act, sending copies of the notice of meeting properly provided adequate notice of the meeting to the Times-Beach, the Asbury Park Press and the Atlantic City Press. Notice was posted on the bulleting board in the Administration Building.

The regular meeting of the Zoning Board of Adjustment was held on the above date and time, Chairman Dennis Tredy presided and called the meeting to order.

ROLL CALL

Members Present

Nick Bonamassa
Edward Covtiz
Joe Lachawiec

Ron Bruno
Anthony Mercuro
Antonio DeAlmeida

Stanley Bystrek
John Petrosilli
Dennis Tredy

Step down
Step down
Callomer

Professionals Present: Brian Rumpf, Esq.
Wayne McVicar

Board Attorney
Board Engineer

Pledge of Allegiance

Administrative

Chairman Tredy announced that one of the board members, Stanley Bystrek has a conflict with all three applicants this evening so at this time I would like to ask the board if they would like to have him excused which they did so he left

Chairman Tredy asked if everyone read the minutes and if there were any corrections to them?

Edward Covitz made a motion to approve the minutes and Nick Bonamassa seconded it. Roll Call (Ayes) Covitz, Bonamassa, Bruno, Mercuro, Petrosilli, Tredy

Chairman Tredy stated that in the packet there was a list of vouchers presented for payment and asked for a motion.

Edward Covitz made a motion to approve the vouchers for payment Ron Bruno seconded it. Roll Call (Ayes) Covitz, Bruno, Bonamassa, Mercuro, Petrosilli, Tredy

BOARD COMMENTS

Chairman Tredy stated that our secretary had put a note in our packets in reference to there being a problem with the tapes because the microphone picks up everything including any background talking. It makes it impossible for her when she has to do the minutes. So what I ask is if you

have to make a comment between yourselves please press the mute button. He also asked that you try to avoid that back and forth comments so that we can give as much attention to the applicants as possible.

Chairman Tredy asked if there were any other board comments. Tony Mercurio said yes he would like to ask one questions of the board and the attorney. He stated that he goes down Railroad Avenue every day and he sees that man who was before us a couple of months ago. He had such a small portion of a porch that he came to us for a variance. There can't be \$150.00 worth of material in the whole job. Couldn't that have been done within our zoning office, maybe reviewed by Laurie, the zoning officer and perhaps the Chairman to get input from us? This man had to spend \$400 or \$500 to come before us and it is so small of a job, isn't there some way that we could short circuit that and not deny the public its say?

Brian Rumpf said unfortunately there is not a procedure that could apply. What can be done is a change to the actual ordinance which regulates situations such as that to allow more flexibility but the question of course comes as to where you can draw the line and what standards you apply.

Wayne McVicar said that if someone wants to make the call that the engineer doesn't have to look at a job because it is so small that would save the money normally spent for the engineer to go our and look at it and generate a letter. You could make that call and just send it to the board.

Mr. Mercurio said that we should inform the committee of this kind of thing and use that as an example.

Mr. Rumpf said Lacey Township has a similar procedure where there is no engineering review on minimal applications.

Ms. Clune asked who determines that. Mr. Rumpf said that you would. Ms. Clune asked if she had anyone to ask about it and Mr. Rumpf said that she could speak to the Chairman on it.

Ed Covitz stated that maybe if the material to do a job is less that what the engineering fee would be could more or less be the standard.

Mr. McVicar stated that someone would have to go out to the site in order to make that call. Sometimes there are hidden variances to make sure that there is nothing else needed.

Mr. Petrosilli stated that the wording would be critical as you know the people will try to take advantage of every situation and the wording in my opinion would have to be real specific and to what limitations are and what the dollar figure is so that we don't run into someone that has other problems.

Chairman Tredy said he can't help but feel that the engineer will have to be somewhat involved otherwise you are putting a lot on the zoning officer and would have to decide what is brought up to request a variance and other variance issues may crop up.

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Chairman Tredy said that he liked the idea but he doesn't know how they can go about it. Do the board members feel that this might be something that you would like to have a memo sent to the Township Committee asking them to look into it in order to help the residents?

Mr. McVicar said there would be no reason to change the fee schedule at all, collect the same fees but if I am not called in to do a review, and at the end of the process the money left over in the escrow could then be returned.

Chairman Tredy asked Laurie to draw up a memo to the Township Committee? Mr. Mercuro stated to make it a point to make them somehow aware of this little porch application.

Chairman Tredy said at the last meeting he and Tony had been discussing what would require a new survey and he said that they would get together during the course of the month and because of different circumstances we didn't get a change to. We did have a phone conversation and in that conversation we decided that we would try to get together this month only we would expand it to try to have meeting with Ms. Clune because she deals with the surveys and get her input.

OLD BUSINESS

Resolution No. 13.08.BA
Block 272, Lot 438
Docket # 01.08.BA
F & G Builders
107 Stillwater

Edward Covitz made a motion to accept the resolution and Nick Bonamassa seconded it. Roll Call (Ayes) Covitz, Bonamassa, Bruno, Mercuro, Petrosilli, Tredy

Resolution No. 14.08.BA
Block 156 Lot 4
Docket # 02.08.BA
Robert & Ellen Sheffield
8 Davey Jones Way

Ron Bruno made a motion to accept the resolution and Edward Covitz seconded it. Roll Call (Ayes) Bruno, Covitz, Bonamassa, Mercuro, Petrosilli and Tredy

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Resolution No. 15.08.BA
Block 239 Lot 59.01
Docket # 16.07.BA
Raymond & Eileen Longstreet
Marine Road

Edward Covitz made a motion to accept the resolution and John Petrosilli seconded it. Roll Call (Ayes) Covitz, Petrosilli, Bonamassa, Bruno, Mercurio, Tredy

Chairman Tredy announced that if anyone was here tonight for the variance for 6 Starboard Way it was not going to be heard tonight or 207 Eighth Street will not be heard tonight either.

Docket No. 04.06.BA
Convery Investments (Cody Marine)
Route 9
Block 47 Lot 3
Certification of Use Request

Chairman Tredy asked Mr. Papp to introduce who was with him tonight.

Mr. Papp introduced Mr. Cotagno Jr. who is the son of the owner and the operating officer of Cody Marine.

Mr. Cotagno was sworn in by Attorney Rumpf.

Mr. Papp said that when we were here on the remand from Judge Grasso's decision here for the limited purpose that he set forth in his decision. Which stated that there were to be no physical changes to the structures. It was agreed that we would submit a drawing give a visible design so that you could see a little bit even though we are not required to have a site plan. What we did submit is a drawing on the survey to show the board that there are sufficient parking spaces and storage spaces for the proposal that we had submitted originally. We had offered to limit the number of boats on the site to forty (40) and parking spaces to twenty (20). That is the proposal that we had submitted subsequent to Judge Grasso's decision. We never got any response to that so we came back and had the discussion and so that we submitted the drawing. He just received at 7:30 as he walked in, Mr. McVicar's review of this so obviously we have not had an opportunity to plot this out or see if there are any alternatives to what he suggests. Although if we look at its conclusion it is not that far off in that he is saying his conclusion is a total of 35 boats and 24 parking spaces. I don't think it is that far different in what we are proposing. With a little tweaking of this I am not sure that it wouldn't be possible for us to come up with a design that Mr. McVicar would agree to. Forty boats and 20 parking spaces is certainly a possibility without infringing on the wetlands and set backs or any other zoning requirements.

Chairman Tredy asked Mr. McVicar if he would like to make any comments on his memo.

Mr. McVicar apologized for handing you the letter at the last minute. He stated that he had received a plan which came directly to him and he did review it but then a second plan came

which was more reasonable and it was actually to scale. He stated that he took a look at the second plan and he looked at the stacking that was proposed. You indicated that the spaces for the boats were 12 x 30 and you laid it out on the property. What I see is on this site you have a wetland issue just off site to be conservative I am assuming the buffer on that. He also put in a residential landscape buffer because the property north is a residence. Then I worked with the areas that you put on your plan and came up with numbers basically 12 x 30 for your boats, and 10 x 25 for parking spaces.

Mr. Papp said that the plan was based on Mr. Tart's layout of 40 boats.

Mr. McVicar said that he looked at the picture of Mr. Tart's and it was haphazard not like your stacking plan.

Mr. Papp said that they were trying to upgrade it.

Chairman Tredy asked who laid out the plan that was presented. Mr. Papp stated that Mr. Cotagno did.

Chairman Tredy stated that an engineer worked on your plan and he felt that it was to your benefit which was our expense to help work out the problems that we perceive on your property. Our engineer indicates 35 boats and 24 parking spaces what do you think, it is your (Mr. Cotagno) property.

We figured that each station would be 30 x 12 but remember that we also have smaller boats. So if you put a couple of small boats it would be four feet narrower. So we could have 3 or 4 smaller boats that would take up 2 spots. We could probably put 40 boats in the space that Mr. McVicar stated by using large and small boats.

Mr. Papp stated that the discussion is going along the line of a site plan. We are here for a limited purpose and what Judge Grasso was specific when he said the maximum number of boats based on the prior use and the only testimony before this board is that the maximum boats on the site under the prior owner was 40 (forty). There has been no other testimony about that. It seems to me that is the issue. We are trying to accommodate you by doing what you requested even though as I indicated before and you were upset about that I didn't think we were required to do it. We tried to provide you with something as a means of discussion within the perimeters as to what Judge Grasso said. And that is what the maximum continuing use. As not as to how many boats can fit on the site in accordance with a site plan review but what is the maximum number of boats based on the prior use. The second thing is, is there a requirement for additional off street parking? He didn't believe there was unless Mr. McVicar can tell us that there is some kind of requirement. Mr. Cotagno testified last time we were here about the limited number of people that are there at one time. That is why we presented 20 twenty parking places based upon that information. There shouldn't be a need for any more than that at any one time.

Mr. Mercurio stated that he leans toward the idea that if the applicant stays within Wayne's blocked out spaces he can arrange to get more boats than Wayne is saying he can only because the discussion of 12 x 30 spaces. The applicant is in this business and he is stating that he can get more than one boat in that space.

Mr. Papp said that the applicant does not have any problem staying within the blocking area. We don't disagree with what Mr. McVicar has blocked out is inappropriate. We agree that this 50 foot buffer on wetlands we will abide by the 10 foot on the other side, I don't concede that is a requirement but the applicant can live with that. We will abide by his blocking out in accordance with the suggestion of Mr. Mercurio, all we are looking for if we can reach an agreement is to we will limit to a maximum of 40 boats at any one time within the blocking as set forth by Mr. McVicar. We will ask the board to do what Judge Grasso indicated should be done and that is granting us a certificate of continuing occupancy.

Mr. Mercurio asked if there would be any night operation. Where we would have to ask for site lighting.

Mr. Papp indicated that they would have normal business hours, which would be most of the time 9:00 a.m. to 6:00 P.M. and occasionally until 8:00 P.M.

Mr. Mercurio said well again, some minimal lighting if you are going to operate after dark would be appropriate. I know that you are not required to provide any but don't you think it makes sense?

Mr. McVicar said that there is a utility pole in which you call lot 4 that area in the parking area. Does that have lights on it?

Mr. Papp stated yes.

Mr. McVicar said that there is some lighting out there.

Chairman Tredy stated that there were two sets of lights there.

Mr. Mercurio asked about the sign issues. Mr. Mercurio asked if they were going to abide by the sign ordinance.

Mr. Papp stated that what they had proposed is to put the sign back at the location it was because there is already electric at that site and that is where the other sign was.

Chairman Tredy stated that even if this is a continuing use our ordinance which has been in affect for many years indicates that if a sign comes down, when a new one goes up it has to conform with the current standards and current ordinance. So we have no control over that and we are not going to give you any kind of variance on that. You will have to conform, so if you are going to put a sign up on that pole and it is not in the right place and someone from the town comes and tells you to tear it down, don't blame us.

Chairman Tredy asked the board if anyone disagreed with that. No one stated any objection.

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Mr. Mercuro asked what they were going to do tentatively in the landscape in ten feet. We are not going to tell you to put sprinklers and so forth but maybe you could put some white pines in there that will grow up and buffer your operation from the residential.

Mr. Cotagno said that the way the boat business is right now we are being cautious as to spending, if you could give us some time we could do it.

Chairman Tredy asked if Mr. McVicar could comment on the boat situation.

Mr. McVicar stated that based upon the different size boats and moving them around on the site it is an operational thing. They are utilizing the spaces indicated.

Mr. Petrosilli asked how much support equipment they intend to have, if they were going to have a boat lift etc.

Mr. Cotagno said that they have them but right now they are using a hydraulic trailer.

Mr. Mercuro asked if that trailer will be utilizing parking spaces or boat spaces.

Mr. Cotagno said that no, it drops the boats and moves on. It will not be stored there it will put the boats in position and then moved to their other locations.

Mr. Lachawiec asked if they have other locations throughout New Jersey.

Mr. Cotagno said yes, they have.

Mr. Lachawiec asked how many, Mr. Catagno said that there are four.

Mr. Lachawiec asked are all of the locations sales and service and storage, or would one or more be more of a storage area rather than a sale?

Mr. Catagno said no.

Mr. Lachawiec asked so you are stating that this area here tonight will not be strictly storage as in support of your other operations.

Mr. Catagno said that they will be selling boats.

Mr. Lachawiec said that his concern is that this area will be more storage for your other locations.

Mr. Catagno said that he tries not to move them around. When the boats come to this lot they are intended for sale here.

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Mr. Lachaweic asked when you did your business plan did you anticipate this location to be equal to or in some way different then the revenue that you receive from all four of your locations.

Mr. Catagno said that it has a good potential but that they haven't had a chance to get started yet.

Mr. Lachaweic asked Mr. Papp if it is your understanding that Judge Grasso decision that the issue in question on total number of boats is strictly a total number of boats and not the number of boat spaces. Will there be a potential for stacking boats here?

Mr. Papp stated yes. Mr. Papp said to clarify is what we are talking about is certificate of continued use and there can not be an increase in that use. The testimony of the original hearing of Mr. Tart was that the maximum number of boats that he had there at any one time was 40 boats. We are trying to abide by the testimony that was presented at that time. Mr. Papp's understanding of Judge Grasso's decision is yes that if we all agree that 40 is the number and your certificate of continuing use would say that the maximum number of boats at any one time will be 40.

Mr. Mercuro said that any they will stay within Wayne's block so I don't think that we can much more on the number of boats in questions. Mr. Mercuro stated that Mr. Tart very clearly stated and Judge Grasso told us that it is boat sales.

Mr. Papp said boat sales and service.

Mr. Mercuro said very limited service that is in the testimony; there are no motors getting yanked, things like that. With boat sales and limited service you are not going to have a store that is selling aerators, radios and all of that other stuff.

Mr. Catagno said that he did have that in his other locations.

Mr. Mercuro said that Judge Grasso did not agree to that.

Mr. Papp said that he disagreed with that.

Mr. Mercuro said that he does not disagree with that because Mr. Tart did not sell anything but boats.

Mr. Papp said you are saying that he would not be able to sell supporting equipment?

Mr. Mercuro said that if it is not on the boat he cannot sell it in his opinion. What I am saying is that someone cannot go in there and buy a radio for some other boat. Judge Grasso did not say that you can do it that would be a change in use. I would want that in the record.

Mr. Papp said that he disagrees with that, it is not his interpretation.

Chairman Tredy asked if anyone else had anything.

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Mr. Bruno said that the trees in front of the place, most property owners once they have the business they have to confirm to the particular ordinance.

Mr. Mercurio said that the Judge told us that they don't have to do that, they have a gravel drive and no site plan improvements to comply with.

Wayne explained that if a site plan was triggered than it would be required but the issue is that a site plan should not be required because it is a continuation of an existing business.

OPEN TO PUBLIC

Seeing none

CLOSED TO PUBLIC

Chairman Tredy said that he thinks that we are close enough to an agreement. As far as he is concerned that 40 boats are okay, within the perimeters of the design.

Mr. Mercurio said that no store, sales have to be strictly boats, no sales out of a store to the public. If it is not attached to the boat it can not be sold out of some bin in the house or that store sold to someone in the public. That is not what Mr. Tart ever did.

Mr. Petrosilli said that he did not have the minutes in front of him from that meeting but he recalls that that question was asked and either you or your father said that there would not be any additional sales of life jackets and all of that type of stuff.

Mr. Papp stated that electronics, coast guard kits other equipment that are solely in conjunction with the boat.

Mr. Mercurio said that he agrees but it has to go out with the boat it can't be sold to the general public. That would be considered a new use and it could get out of hand. It has to go out with the boat. Mr. Tart never sold any kind of Marine accessories or anything else.

Mr. Papp said that he feels it is an unreasonable restriction to say that if he has a customer who he sold a boat to and they say that they want a radio for their boat. Your saying he can't sell him a radio just because he is not selling it on the boat that is going out. The Judge did make it clear that this is a change in use but it is still permitted in that zone and I don't think that you can restrict the uses that are permitted within that zone. I am asking for an opinion from your counsel as to whether he thinks that this board can vote on a restriction on something that is permitted within that zone as an adjunct not as an equipment store or marine type store but in junction as both sales and service that he can sell equipment that goes on the boat that doesn't have to be on a new boat and that a customer of his comes in and wants a radio for the boat that he already sold him that he should be able to sell the radio to his customer.

Attorney Rumpf stated that his opinion is that they were directed to issue a certificate of continued use and we have to base that upon the prior use of the property and I think what we agree is the number of boats and the number of cars with the appropriate restrictions. In terms of whether or not the sale of additional retail merchandise which is not attached to a vessel being sold would be permissible or whether that would expand the scope of the operation I would suggest that a role in this particular case is to certify what did exist in terms of proposing any new conditions I don't know that would trigger an additional requirement within the ordinance if it is to become more of a retail boat accessory sales operation there may be additional parking requirements and there may be other additional items contained within the ordinance that would trigger and be subject to the interpretation of the zoning officer. I would suggest if it appears that the operation is in fact changing from what has been approved apparently if the board should be so inclined to direct the issuance of that certificate what I am suggesting is we don't necessarily need to answer that question this evening but obviously if it does trigger additional requirements within the ordinance that the zoning officer would be proper in alerting the applicant.

Mr. Mercurio stated that in thinking a little bit further if there is going to be the equipment in the building it would then be commercial and it would require additional parking, access requirements, stairs, the doors. They are saying that it is just their sales office. If they start selling accessories it is going to change drastically.

Attorney Rumpf said that is an excellent point. It may very well trigger additional requirements for its certificate occupancy or whatever the case might be if it becomes more of a retail sales operation is not incidental to the sale of new boats. He would suggest that within the certificate of continued use we mention those items already agreed upon which is 40 boats within the designated marked out spaces showed upon the plan prepared by Wayne. I would further suggest that we mention the issue of the wetlands buffer being maintained any sign which may go up must conform to the ordinance with regard to the issue of ancillary sales the board I think is certainly within its authority to specify that they find there was no engagement by the prior owner of retail sales which is not essential to the sale of the vessel itself.

Mr. Papp said that is like saying you can have an auto dealer but you can't sell parts. If you have a new car dealer the primary use is the sale and repairs of automobiles. If you tell him that he cannot sell any parts, if I walk into a dealer and buy a part to a car even though I didn't buy the car there that is not permissible under the ordinance as designated as auto sales and service. That is the designated zone in which this property is located.

Mr. Mercurio said the Judge told us that we could continue the business as is. Now if the man was selling cars and sold his business and the man that bought it wanted to sell cars and parts that is a new issue.

Chairman Tredy said that he thought this could be settled, to get the motion of approval we will have Mr. Rumpf add to his resolution for continuing use and the original use there was no retail business.

Chairman Tredy asked if he could get a motion for continuing use and conditions as read by Attorney Rumpf.

Nick Bonamassa made a motion for continuing use and the conditions as read by Attorney Rumpf.

Attorney Rumpf stated as he understood the conditions were no more than 40 vessels on the subject property and the applicant further agrees with delineation of the area in which those vessels may be displayed for sale within the boundary lines marked by Wayne on the plan that was submitted to the board in which counsel now has a copy of. The applicant shall maintain the 50 wetlands buffer which is also shown on the plan which has been prepared by the board engineer. (Wayne interjected that the plan may be identified by "Plan # 2"). Cars on the site shall be limited to 24 which represented on Plan # 2 submitted by our board engineer, any sign which the applicant may choose to put up on the property must conform with the present sign ordinance of the Township of Ocean. And the certificate of continued use is for sales and limited service of vessels whether they be new or used with respect to their condition and the board more specifically also finds that there was no prior use which would continue of any retail sales of parts and equipment ancillary to the sale to a new or used vessel which is on display on the subject property to the general public in the form of a retail store essentially.

Motion seconded by Joe Lachaweic. Roll Call (Ayes) Bonamassa, Lachaweic, Bruno, Covitz, Petrosilli, Tredy.

Mr. Papp asked that the following be put in the record: Judge Grasso said "However the matter remanded to the board to consider whether there is an increase which can require off street parking and or changes to exterior changes to sites or features of any building. In the event plaintiff satisfies the requirement of the ordinance 10.70.0303 then site plan approvals shall not be required and the board to issue a certificate of continued use.

James and Ruby McGeoch
Docket # 03.07.BA
Block 84, Lot 12.02
31 Dock Avenue

Chairman Tredy said before we start this case we have two members of our board will step down due to conflict. Joe Lachaweic and Antonio DeAlmeida.

Attorney Pam Snyder stated that her client was here for a two fold purpose. The first was for an interpretation of an ordinance and the second is for a potential variance. What she would like to do is conclude the issue of the interpretation of the ordinance. This ordinance is 18.6.010 and as a reminder to the board is our position on that is that the McGeoch's garage is part of the principal structure and therefore is not an accessory building that requires a variance. The last time they were before the board there was some questions in regards to 22 Walker Lane. The applicant referred as an example of similar structures in Waretown of garages attached by breezeways. I also went through the records and there are some documents that might help the board in their decision and she brought copies of those documents for the board to look at. The

papers regarding 22 Walker Lane show that there a 30 x 30 garage. The house is a total of 1059 square feet, so therefore the garage itself is more than 50 % of the house's square footage. That is actually shown on the survey plan.

Chairman Tredy said that when this was carried from last month you indicated that there would be additional witnesses this month.

Ms. Snyder said that they are not going to be here. The additional witnesses were to be Larry Leonard as well as the landlord of Jim McGeoch's Marina. Larry Leonard was not able to make it here tonight and he advised us that he was not available until September. So what we have done in the interest of wrapping this up tonight we decided to proceed without Mr. Leonard. Mr. Lange is also not available tonight and we are going on the interpretation tonight and testimony from Mr. Lange would not be necessary for that.

Ms. Snyder presented Exhibit A-9 survey, as you can see the proposed garage. The floor plan shows that the garage is connected to the house by a covered breezeway and that is not shown on the actual survey. The second document that says elevation will be A-10 and this other document A-11.

Mr. Mercurio said that he thought it was established before that these were his plans so let us move on.

Ms. Snyder I believe that there were some questions as to whether or not there was an actual variance.

Laurie was directed to see if it involved a variance and Mr. Leonard had related to Mr. Corliss at the time if he connected it there would be no variance needed. So that is part of the record and again after she checked there is nothing contrary to that. Also there was a determination by the board before the current owner bought it to make sure that his mother could live in the garage.

Ms. Snyder in reference to the interpretation of the ordinance she referred the board to the uniform construction code as well as the 2006 International Building Code and the International residential code 2006 all of which has been adopted in the state of New Jersey. In none of those codes is the word attached defined. Those codes then say if a word is not defined it is to have its ordinary and accepted meaning. I do have excerpts from those building codes.

Mr. Petrosilli asked if we were interpreting an ordinance that no longer exists.

Chairman Tredy said it appears to be.

Mr. Petrosilli said the ordinance that changed and I have a copy of it here, tells you specifically how to attach a building. The old ordinance did not specify that but the new ordinance does. So are we talking about the old ordinance?

Ms. Snyder said that was correct. There is case law on if an ordinance is changed after someone has received a permit and if they have substantially relied on that permit then in essence the

municipality is stopped from changing its mind and saying that the permit is invalid or no good. I can sight the case law for the attorney.

Brian Rumpf said that there is case law regarding the ordinance change, Counsel is correct is suggesting that case law exists in respect to what occurs after the issuance of a building permit. I believe that it is not as straight forward as to what Counsel has stated with respect to various factors that weigh in to the consideration as when the new ordinance in fact becomes applicable. I believe that from what I understood the board headed in the direction at the last meeting we were getting beyond that issue with respect to interpretation and I think that one of the primary concerns of the board and one of the reasons the applicant has returned this evening is more to address the issue of the use which is currently being put to the subjects garage.

Ms. Snyder on that issue we are not here on a use variance application and Mr. McGeoch has certainly explained how he has been using the garage but again we are not here for a use variance I would also like to remind the board that a permit cannot be denied for basically improper use on the grounds that the board might think that there may essentially be a use that violates municipal regulation. Mr. McGeoch has certainly explained what he has been using the garage for and since the board members have visited it.

Mr. Mercuro said that if the board members feel that there is a non permitted use going on this particular property. Has there been a complaint or the zoning officer gotten involved with the operation of that garage.

Brian Rumpf said no, and he asked Laurie if there was a summons issued for the use nonconforming for residential. However there was discussion at the last hearing and apparently there was on several occasions perhaps a use which was perhaps being permitted within the structure that would conceivably equate to a commercial business.

Mr. Mercuro said that is what we should dwell on the remainder of this hearing. I think that we have made up our mind about the building issues. Mr. Mercuro stated that in his opinion there was an ongoing, continuous commercial operation in that garage.

Chairman Tredy said perhaps we should direct questions.

It was determined that Mr. McGeoch is still under oath.

Chairman Tredy stated that Mr. McGeoch indicated that the garage that was built as his dream garage it was something that you wanted to tinker in etc. Is the garage being used for private use, a hobby or is it used for business?

Mr. McGeoch said as he stated last time right now in the garage there is one car, there are three dirt bikes, weightlifting equipment, pinball machine, benches, and there are no phone lines, filing cabinets. When the board members came over what was the day like that day. The first day when the two gentlemen visited it was snowing that day, so we were working inside. The second time that one person visited it was raining cats and dogs that day. What I do just to keep my people working, now I only have eleven people working for me and at the time that the board

members visited, there were four plus myself. They were polishing a boat, painting the boat just busy work; the other five or six people were at the Marina working. I only had them doing busy work. If someone would like to write me a violation, please do because I am not doing a business out of my garage.

Chairman Tredy said you did say that you had people working there, but yet you say you are not using it as a business. It is either a business or not.

Mr. Mercurio said those boats were there, they were broken down, someone was burning the bottom of the boat, people working on an engine. Those didn't get run in there because it was snowing out, they had been there.

Mr. McGeoch said no they didn't, the two boats that you saw in that garage are still presently in that garage. If we were working on those boat continually they would have been done by now. They are there for when we need busy work because of weather.

Mr. Mercurio said it is not for a commercial enterprise.

Chairman Tredy said that you operate your mobile marine business out of Holiday Harbor.

Mr. McGeoch said he pays a large amount of money to Holiday Harbor Marina just to exist there.

Mr. Mercurio said if you have maintenance buildings there why do you have to bring work home?

Mr. McGeoch said that it is his hobby, he works on cars, motorcycles and I do work on these boats at night. That is why I built this garage so that I could tinker on these projects. I have not had one complaint about that garage except the people that are jealous of that garage. The reason I was served a summons is because I needed a variance for hat garage because that was an accessory building. It is not termed an accessory building because it is attached by a breezeway.

Chairman Tredy said that it is currently termed an accessory building.

Mr. McGeoch said an accessory building is unattached.

Chairman Tredy said you will have to read the new ordinance. But we aren't talking about that now. I have a feeling that the board does not have the intention to make you tear down this garage. But they want some straight answers when we ask. If it is your contention that this is just for your hobby then if we go through this list of variances and approve any of them there are going to be conditions on there that are going to hold a tight rein on what you can do and when you can do it. If you continue to say it is a hobby we will also put a condition that it can be inspected at any time and if the inspection deems that there is some sort of commercial enterprise taking place you will be summoned and you will have to come back here for a use variance. I was at your building one day and there were four employees that said they work for you.

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Mr. McGeoch asked what the weather was like that day.

Chairman Tredy said it doesn't make any difference. Snow doesn't change the condition.

Mr. Mercurio said all we are saying is you are going to have to give us some assurances that there will be no commercial operation. If you want one why not come in with a site plan?

Mr. McGeoch said the two board members that are sitting behind me are very familiar with my operation, one of which has his boat in my yard.

Mr. Mercurio said that is fine, but they are sitting in the audience.

Mr. McGeoch said they understand what I do and where I work.

Mr. Mercurio said you were told way back that you could secure your property when you got your red sticker and stop work order, now how long has that been.

Mr. McGeoch said it has been five years.

Mr. Mercurio said what bothers him is after that stop work order you went ahead and finished your building. So you ignored the fact that we told you could secure your property and went ahead finished your building and occupied it. In other words you thumbed your nose at us. So you will have to provide us with some guarantees that you are not going to work on those boats again unless it is a hobby and doesn't mean four employees working on multiple boats and different tasks all day long, rain, snow, sunshine whatever.

Chairman Tredy said that he received in the mail an advertisement on the back that said Mobile.

Mr. McGeoch said that yes he has that business and it is performed at Holiday Harbor Marina.

Mr. Mercurio said what we saw going on in there ---

Mr. McGeoch said what you saw ---

Mr. Mercurio said if you brought in a site plan we would be permitted to ask you what you did with your swept up waste. What do you do for vapors in the building, that is hazardous material, what do you store in there? We have a right to know that if you want to be a business. What we are saying is you spent a lot of money to come in here and straighten this out put a site plan together, so you think it wouldn't get approved if you followed all of the ordinances. Then you could do whatever you wanted in there. It would also give your neighbors, who you say don't have complain and opportunity to come in and speak. If you want to work in there, work in there but bring us a site plan.

Chairman Tredy asked if the sandblasting is ever done in your garage.

Mr. McGeoch said he cannot.

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Chairman Tredy do you ever do fiber glassing or whatever you do with that business.

Mr. McGeoch said that is done at Holiday Harbor Marina

Chairman Tredy said one of the variances you are going to need is creation of habitable space.

Mr. McGeoch said I don't understand people can live in a shed if they want to.

Chairman Tredy said "not in Waretown they can't"

Chairman Tredy asked did you create habitable space.

Mr. McGeoch said it is a garage with a bathroom in it. Upstairs there is a loft with weightlifting equipment and a pinball machine in it.

Chairman Tredy said at one point it was mentioned that the roof was lowered so it wouldn't create habitable space.

Wayne McVicar said that one of the variances was that there would be no habitable space on the second floor.

Chairman Tredy said someone sent in a plan that the collar ties are done and they are not done.

Mr. McGeoch said no they are not done, neither is the electric, installation and how can you comment on something that has not been inspected or completed.

Chairman Tredy said he is only commenting on the fact that it was indicated to us that it was done.

Mr. McGeoch said not by his knowledge at all.

Wayne McVicar said on his letter on item #6 the variance I noted was that a variance was required for second floor height. Our ordinance states a roof pitch and height may fluctuate so long as the underside of any rafter shall not be greater than six feet ten inches above any second level floor or attics floor measured at a point 21 inches horizontally offset from the highest point of the roof. What he pointed out was the plan that he saw after he generated this letter was the applicant provided a revised construction plan of the side view of the building which showed rafters that at were six feet nine inches. I also pointed out that the plans appear to contradict the picture of the second floor which does not show these rafters. Basically if you look at the picture you will see rafters and if you look at that section of the building the rafter has been drawn in at six foot nine inches.

Ms Snyder said just for clarification these were the plans that Jim McGeoch originally had approved in order to build the garage. I am sure that Mr. McGeoch would agree that he would comply and abide by all ordinances of the municipal land use. That would allow the board to

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officials to go and do random inspections. It should give the board some assurance that Mr. McGeoch is going to do what he is allowed to do under the ordinances and if for some reason he doesn't then at that point of time he could come before the board for a use variance and he will have to deal with municipal court.

Chairman Tredy asked if Ms. Snyder could explain to her client that rain or sleet has nothing to do with the use of the building. If it rains outside it doesn't change the ordinance, the ordinance says you can not be doing business in the garage if it is a private garage.

Ms. Snyder said that she understands that but there is the home occupation exception and if Mr. McGeoch decides that his business will fit within the perimeters of the home occupation, my understanding is that we would then come before the board for that approval.

Mr. Mercurio said according to his testimony it is not a home occupation. A home occupation by definition is I am working out of my house and that is it. This is an extension of his huge enterprise.

Chairman Tredy also indicates that family members are working and limits the amount of employees.

Ms. Snyder is not going to disagree with you that when you visited yes, there were employees there. She is looking on a more forward basis and what Mr. McGeoch intends to use the property for. She asked Mr. McGeoch did you have employees in the past week during the torrential downpour there working on your boats.

Mr. McGeoch said only himself on the past Monday. No employees working there since the board members visitation.

Mr. Mercurio said that we agreed to a lot of things tonight, and quite frankly I wish I could trust him a little more, I can see him doing what he wants to do. If we gave the stipulation that all is well and lets move forward and it is what it is, no employees, no business and we or the zoning found that there was a violation or felt a violation should be issued, would he go for a stipulation in the resolution that says if we see it we will vacate the building. I don't want it to go on for another seven months with him ignoring us again. In other words I don't want to wait for a hearing and there are people that are in zoning violations in town and get ticket after ticket and it is never resolved. So in the resolution I would recommend to the board that if there is any discrepancy if there is any questions about a commercial enterprise in there without an approved site plan which is always his option, that the building be vacated. Completely!

Ms. Snyder said she would advise her client not to agree to that verbiage but he would agree that he would abide by the ordinances. What if an officer said he was in violation and it turns out that he is not? Mr. McGeoch is not going to give up the right to contest whether or not he has violated the ordinance.

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Mr. Mercurio said if we found employees in there it would be obvious that he thumbed his nose at our resolution. How can we tie that to our resolution? He said if there are employees in there working on boats that are not his then that is it.

Ms. Snyder said that from a legal perspective I think that it could then get into the definition of a home occupation.

Wayne McVicar said just for the record in my letter on page 3 the home occupation ordinance is listed.

Chairman Tredy stated that Mr. Mercurio brought up issues in town and I guess it comes under Ms. Clune's jurisdiction. So he asked Ms. Clune if it was her job to go out into town on these cases and issue summons.

Ms. Clune said correct.

Chairman Tredy asked if the summons was issued how quick could that get into court. What are the different scenarios that take place?

Ms. Clune stated it depends upon the violation, we give a notice of violation first, that in itself gives them 30 days, you give them 10 days to clean it up if they do not comply you do another site visit by the time you mail out the summons you have to wait for a court date then they have to get an attorney, can postpone it.

Chairman Tredy said what ultimately can happen?

Mr. Mercurio said how can we get a more speedy decision on a violation? How do we get him to stop what he is doing if we find him doing it again?

Attorney Rumpf said that there are two ways where the municipality can proceed against someone that is operation in violation of the zoning ordinance. 1. You issue a summons and proceed to the municipal court with respect to the violation and subsequent remedial action and penalty. 2. The other in limited circumstances the municipality may have the ability to proceed to show cause in superior court to compel compliance with the zoning, which is obviously perhaps a more expansive effort but it may very well be quicker.

Chairman Tredy asked who would initiate that kind of show cause.

Attorney Rumpf said in the present case just to add a summary as to where we are at essentially as I understand the board's direction we are looking to provide some finality to the ongoing situation by offering a resolution of interpretation perhaps counsel freely admits that her client would gladly subject himself to various conditions and counsel states one condition is that he would comply with all local ordinances. Obviously he is required to do that whether or not it is a condition. I had several conversations with counsel since we were last present on this application and frankly what I suggested to counsel is that we consider what conditions could possibly be imposed to prevent the sort of activity that the applicant freely admits has occurred

and perhaps continues to occur in the subject garage not be the commercial use of that garage whether or not home occupation is not an exercise that we need to resolve today but obviously four employees doing work as Mr. McGeoch himself testified as part of his business is something that is not permissible for that zone, he has not made application for a use variance and has not submitted a site plan and should not be occurring. He did acknowledge violations on at least two occasions. He has testified candidly on that regard.

Mr. McGeoch said that he is not trying to lie or hide anything.

Attorney Rumpf suggest that in any memorializing resolution on this matter that we would specifically made a finding that the applicant does acknowledge violations that already have occurred and I would suggest perhaps that counsel would consent to a stipulation that the applicant specifically invites random inspection as counsel had indicated and acknowledges that based upon violations having occurred already that he in fact would waive even the issuance of notice of violation which would result in immediate issuance of the summons if he should be found to be there with employees doing commercial business. Attorney Rumpf asked Ms. Snyder if they would consent to such a stipulation.

Ms. Snyder said that she would recommend to her client

Mr. McGeoch asked what the intention was.

Attorney Rumpf said that the garage is a residential garage and could be used as such. You would certainly have the ability to entertain your hobbies, as you suggested park your motorcycle, have your pinball machine but you may not have employees in there doing business.

Mr. McGeoch said that he understood. Ms Snyder also informed him that he would also have to agree to occasional inspections. Which Attorney Rumpf added that the inspections would be by code enforcement or zoning officer not board members?

Mr. McGeoch said that he would agree to it.

Attorney Rumpf said that Mr. McGeoch would also agree to waive the notice of violation because you have already acknowledged the violation that is here on the record.

Mr. McGeoch accepted that if someone finds him working with employees in the garage do business they won't have to give him a notice it would go directly to a summons.

Mr. Covitz relates to income. The activity that is performed in that garage does it generate income.

Mr. McGeoch said yes.

Mr. Covitz said does that indicate commercial or not.

Attorney Rumpf said that we will make mention that but in perspective of his hobbies, such as a classic car enthusiast can work on his cars and then sell his car and make money off of it. That can be differentiated from being part of his business at the Holiday Harbor Marina.

Ms Snyder said that she does not want to waive any of Mr. McGeoch's rights, let us say that ten, twenty years from now he decides he no longer is going to be at Holiday Harbor and he just wants to be a one man show and if he fits within the definition of a home occupation he should be aloud to come to the board.

Chairman Tredy said that he can always come to the board.

Ms. Snyder said she does not want to waive that right.

Attorney Rumpf said that wouldn't be waiving any rights that he might have to come before the board on a later occasion should he believe that he can make use of that garage as a home occupation we are not addressing whether or not what he has done so far in the garage would constitute a home occupation that is not before the board nor the request for a use variance and there has been a specific acknowledgment that we are not here to address the issue of a use variance because the applicant has consented and agreed to keep the business elsewhere. Would you also agree with my comment in terms of Mr. Covitz's hobby versus business?

Mr. Petrosilli asked if he sold any boats at all is he strictly service.

Mr. McGeoch said service and maintenance.

Ms. Snyder said she would like to have mark it into evidence the building code that there is no definition of attached and the general definition of attachment from Webster's dictionary. Attorney Rumpf said he believes that counsel is referring to the BOCA code.

Mr. Petrosilli asked if we had accepted the breezeway connection.

Chairman Tredy said no we have not yet.

Chairman Tredy said the definition of attached is 50% of an adjoining wall has to be attached and be part of the building. He would suggest that we grant the variance for an accessory structure at this point.

Ms Snyder said is that first we are seeking an interpretation of the ordinance.

Ms Snyder stated that their interpretation is that the garage is attached to the main house so it is part of the principal structure. So therefore no variance is required.

Mr. Petrosilli said so that means the breezeway is a legitimate connection.

Chairman Tredy said not according to the new ordinance. Mr. Petrosilli said we are not talking about the new ordinance.

Chairman Tredy said that is why I said we should grant a variance for an accessory building so that in the future no one can come back and say, here is one that is attached by a breezeway.

Mr. Mercurio said that the breezeway is so ugly; I think the board should let him tear it down.

Chairman Tredy said that is why he is saying a variance for an accessory structure and he can do anything he wants with that breezeway.

Mr. McVicar said that he wanted to make sure to remember the variances mentioned on page two.

Chairman Tredy said that he would like to see the board grant a variance for an accessory structure not part of the main building because that is the way the ordinance reads now and ----

Mr. McGeoch interrupted and said that is not what the ordinance said when I started.

Chairman Tredy said "does it matter to you what we say as long as you keep your building"?

Mr. McGeoch said yes it does it a matter of principle.

Mr. Tredy said we have principles also.

Ms Snyder said if you need a decision right now on the variance versus the interpretation issue because I would like a few minutes to speak to Mr. McGeoch.

Chairman Tredy said he was just informed that we are running out of time, you can come back next month.

Chairman Tredy asked if he could have a motion to be carried to next month.

John Petrosilli made a motion to carry, seconded by Tony Mercurio. Roll Call (Ayes) Petrosili, Mercurio, Bonamassa, Bruno, Covitz, Tredy

Attorney Rumpf asked if the board would like him to contact counsel to see if they could work out some of the details to streamline the presentation before the board next month.

Chairman Tredy said yes, he would hope that next month would only take about 15 minutes.

Wayne McVicar said that he is still looking for testimony with regards to two of the variance listed on page five and seven.

Mr. McGeoch said you are already saying that it is an accessory structure and it is not attached. If it is attached I have a maximum height of 35 feet which you know but if it is an accessory structure I cannot exceed 24 feet. It is already built.

Ms Snyder said that just for clarification we do not have to re notice for next month is that correct?

Chairman Tredy said that is correct.

NEW BUSINESS

Docket No. 04.08. BA
Daniel & Charlene Collamer
24 Bay Parkway
Block 65 Lot 7.01
Zoning Ordinance Interpretation

Mr. John Petrosilli stepped down.

Thomas Butz Esq. on behalf of the applicant and we are here tonight on an appeal of a decision by the zoning officer refusing to issue a permit for an accessory building on the property. Although in one sense its interpretation it is an appeal from that decision under the municipal land use act. The basis of the appeal was at the time we were denied a permit for an accessory building the zoning officer was wrong in the interpretation of the ordinance in denying. We filed an appeal from that determination. That was filed at the end of February or early March. The matter was set down for a hearing before the board on March the 20th of this year. But no notice was ever given to me or my client of that. Mr. Rumpf had the courtesy of calling me a few days before that hearing and telling me that it was on for the 20th. My letter to him is dated the 20th because that is the day that Mr. Rumpf called me. Obviously we were not prepared and it was carried to April the 17th because of that. In the mean time we received Mr. McVicar's letter of March 17th reviewing the application, and it was copied to Mr. Collamer. In that letter he indicated that when he reviewed the plans that the actual area of the garage comparing it to the requirement of 50% for an accessory building did not meet the ordinance because the proposed accessory garage was 54.2 % of the principal structure at that time and therefore in his letter he indicated that a variance would be required. He was correct no question in that determination in that March 17th review letter. We then wrote to the board and said we would submit some revised plans for the detached three car garage to reduce it in size so that it would be less than 50% of the detached principal structure as was the standard under the ordinance at that time. I.e. an accessory building could not exceed 50% of the square footage of the principal building. So the matter was supposed to be heard on the 17th of April. I then received a notification that the matter was not going to be heard on the 17th because Mr. McVicar had been requested by somebody to go out and physically measure the building. Even though we had submitted plans that were not sufficient with the survey and everything else. As a result of that over my objection at that time the meeting was adjourned on the 17th of April until tonight. Again I wrote a letter to Mr. Rumpf objecting that and he was kind enough to advise me as a courtesy that he would not require me to come here because you were not going to hear it that night. So rather than me come up here he would put in the record my objection to the adjournment and I know that he did that. That brings us here. What is concerning me in this case we are now apparently dealing or maybe dealing with an amendment to the ordinance. And I know that an ordinance was adopted on second reading I believe on May 8th in affect limiting accessory buildings to one accessory building on any individual lot. Obviously my client already has on his several acres

property more than one accessory building so this proposed garage would be at least a second accessory building. The issue is I don't know whether or not that ordinance is in effect as we sit here tonight because unless it has been published according to law it is affective. It is not affective than we are here for an interpretation under the old ordinance which says 50% and doesn't limit the number of accessory buildings. So the first issue that needs to be addressed is which ordinance we are dealing with.

Chairman Tredy said I cannot answer that.

Attorney Rumpf stated that he candidly admitted to you prior to the hearing that the ordinance was in fact adopted on May 8th and you obtained that same knowledge. I frankly don't know as we sit here the details to the publication. I suggest that we note for purposes of the record that in fact our board secretary does have a copy of the ordinance which is shown to have been passed at the meeting of May 8th. Publication I don't know.

Attorney Butz said that he understand and my client has advised me and given me a copy and I think my client was here at the Township Committee meeting and we are aware that the ordinance was adopted on the second reading last week. The issue is whether or not it is in affect this evening. And it part that depends whether or not it has been published, if it has not been published it is not in effect and my client is entitled to a ruling on the ordinance which has been in existence for a number of years and was in existence at the time that he made his application for a permit. One of his concerns in this case is that it seems to look like this case has been adjourned in order for the town to adopt an ordinance which denies the right to the relief that he seeks under the ordinance that was in effect when he applied to the zoning office. That does upset me if that is the case. As far as our application is concerned I would like to introduce into evidence the most recent revised plan that Mr. McVicar has received. The revised plan be submitted Exhibit A-1 the other thing I would like to have marked as Exhibit A-2 is Mr. McVicar's review letter of April 15th in which he notes that on April 14th he received the set of revised architectural plans with a revision date of March 26th and his letter indicates that the garage size has been reduced from 793 square feet to 728.5 square feet and he indicates it based on the filed subdivision map that principal building is 1463.2 square feet as a consequence the ratio for the proposed accessory building to that of the principal is 49.8 % and that of course bring it under the 50% maximum limit for accessory buildings. Then he notes that considering the calculated ratio is based upon a map filed in July 18, 2001 we have been instructed to perform a site inspection to confirm that the size of the principal building. Mr. Tredy asked Mr. McVicar to do this inspection and that is what caused the adjournment of our meeting from April 17th. Those two Exhibits and your ordinance as it previously existed clearly indicate that my client met the terms and the conditions of the ordinance that was in effect then and in effect at the time that Mr. McVicar did his review. And that we were entitled to a building permit to put that accessory building up. I don't know what testimony can be added by my client because the issue is simply that. At the time that we made the application it was totally conforming to your then ordinance and I have no idea what the basis of the denial was because clearly in that ordinance was nothing to indicate that you are only entitle to one accessory building on an individual lot. As a matter of fact it is obviously because of that situation that the township introduced and apparently last week at a second reading adopted an ordinance which now limits you to one accessory building. So as I previously indicated it seems to me that the only issue

before this board on this application which ordinance is in affect and if it is in fact the original ordinance and the revised ordinance is not in affect then my client is entitled by law to a decision of this board and to get a permit for his accessory building and if the second is in affect then unfortunately I can see that he can't. If the second ordinance is in effect then the result is that the adjournments of this hearing have enabled the board to be put in the position to tell my client no.

So I go back to the issue of the ordinance. As far as I know the only ordinance that is in effect at this moment is the one that was in affect when my client was denied the permit.

Chairman Tredy stated that Mr. Butz brought up a number of items just as you try to get things onto the record, the board needs to get things on the record also. It is ordinary procedure that when an application comes that our engineer goes out and makes a site visit. Initially, it is my understanding that the first request that Mr. Collamer had before the board was strictly on an interpretation, the second request was to determine if this building he was going to build needed a variance or not.

Mr. Butz said that was absolutely correct, the only application to this board and which is before the board is an appeal from the zoning officer to his denial for the permit for the accessory building. There is no request for a variance before this board.

Chairman Tredy said that when Mr. Butz started speaking to the board he mentioned a variance. Chairman Tredy told Mr. Butz that he mentioned two things.

Mr. Butz said no he did not

Attorney Rumpf said Mr. Butz did refer to an interpretation and in looking at the actual application that was filed I believe by Mr. Collamer directly he is requesting an appeal based upon the decision of the zoning officer where a residential detached garage suggesting an alleged error and involving a request for an interpretation of the ordinance. Those of the two items that were checked off on the original application.

Mr. Butz said that is correct, so I disagree Mr. Tredy, we did not then and have never asked for a variance. We are strictly here on an appeal under the municipal land use which allows a property owner who is aggrieved by a decision of an administrative official with the regard to the interpretation of an ordinance or the denial of permit to appeal to this board on that issue and that is what we have done. We did not couple with a request for a variance.

Mr. Rumpf said to take it one step further there was no notice of a request for variance relief which would be a requirement should you wish the board to consider the issuance of a variance, so in fact we do not have the jurisdiction to issue a variance this evening.

Mr. Butz said he agreed with Mr. Rumpf, we are here strictly for the appeals to interpretation issue. That is why I will again go on to say that Mr. McVicar going out there although he may normally do a visit for a site plan this was strictly an interpretation of a decision by the zoning. We revised the plans to show that we are within the 50%. All I am saying and I will say it again is we had been allowed to present our case on the 17th of April there is no question that no new

ordinance had even been adopted at that point we would have been entitled to the relief as a matter of law.

Chairman Tredy said that “you are making an assumption, Mr. Butz that the old ordinance would have allowed the construction as you indicated.” Mr. Tredy said that he is not an expert on the zoning ordinance but was under the understanding that there was a condition where the combined square footage of the accessory building were there more than one it could not exceed 50% of the main structure.

Mr. Butz asked to present Exhibit A-3 the Chapter 18.46 Accessory Buildings and Uses, the old ordinance was in affect when my clients permit was denied. It does not say anything at all about the number of accessory buildings. I think that clear reading of this ordinance indicates that for the zoning officer to assume that you can only have one is totally contradictory to the language of the ordinance itself. It doesn't appear there; as a matter of fact I believe that is exactly the reason why the township amended that ordinance.

Board members stated that they disagreed with that statement.

Mr. Mercuro said that they have been working on this ordinance for some time because of other issues in town with breeze ways; it was not amended to harass Mr. Collamer.

Mr. Butz said that the case that Mr. Mercuro is referring to is totally different. Mr. Butz said look at the ordinance, there isn't anything in that ordinance that says that his client can only have one accessory building. All it says is whatever accessory building I have cannot be more than 50% of the total square footage of my principal structure.

Mr. Mercuro said that there are two things we have to resolve. 1. If the ordinance is published and in affect tonight and 2. What you are alleging is that we delayed your client just so our ordinance could go thru. Is that really what we are discussing?

Mr. Butz said it is but with regard to your second point there isn't a heck of a lot that I can do about that other than complain.

Mr. Mercuro said then what we need to know is if the ordinance was published or not.

Mr. Butz said that he assumes that the board secretary must know because she has the ordinance.

Mr. Mercuro said who does the publishing?

It was stated that the Town Clerk does that.

Mr. Mercuro said then we don't know if it was published or not.

Mr. Butz said then his suggestion as a way to solve that then you vote to approve my clients appeal subject to the condition that the ordinance has not been published as of this date.

Chairman Tredy stated that you Mr. Butz, just handed us an ordinance and we haven't read it so how do we know that what you are saying is correct.

Mr. Butz, said there are two points here, you could ask your attorney and the other thing is I just read to you Mr. McVicar's letters and you can look at both of them, he clearly indicates under the ordinance that I just brought in that it is okay except in his first letter he said you are just over in the percentage. We revised the plan and Mr. McVicar and he comes back that we are under the percentage needed. His only statement in his original letter about needing a variance is because we were over 50%.

Attorney Rumpf said just for the record we already marked A-1 thru A-3 the documentation which goes to the essence of the case, I believe it is also important just to bring up to the members of the board this being an appeal to the zoning officers decision the actual decision which I know Mr. Butz has as well dated 2/20/2008 with regard to the request for the permit by Mr. Collamer our zoning officer's response to Mr. Collamer that the zoning application that he submitted on 2/20/08 was denied for the following reason: total square feet for accessory structures greater than 50% of the principal building. Sighting the ordinance that Mr. Butz just had submitted as Exhibit A-3.

Mr. Butz said the zoning officer in doing that assumed obviously the same thing that Mr. Tredy said a few minutes ago that you have to count all of the accessory buildings, but you don't that is my point the ordinance does not say that and if you look in spite of what Mr. Mercurio said the amendment relating to the guy ahead of me, the big change in that ordinance that was introduced was to limit you to one accessory building per lot.

Mr. Mercurio said that it specifically said that for the accessory structure to be considered attached to a principal building at least 50% of one of the structural walls of the accessory building shall be coincident with the principal structure. So there were two major changes in the ordinance.

Mr. Butz said what you said is correct except it also says in the ordinance that there is only one accessory building will be allowed. That is what I am talking about if only one was permitted in the old ordinance why it was change in the new one?

Chairman Tredy said for clarification, it was always dealt with as one.

Mr. Butz said, but that is illegal you can't just because you think that, if the ordinance doesn't provide it you can't limit me. There is nothing in that original ordinance that limits you to one accessory building.

Attorney Rumpf said that he disagrees with the characterization that it is illegal. I believe that there is an interpretation which was the common practice for the township of ocean in years gone by to add the accessory structures together for the purpose of determining percentage, perhaps you may disagree with that interpretation that the zoning officer gave but it doesn't rise to the level of being illegal.

Mr. Butz said maybe it was a bad word to use, let me say that I don't mean it is the sense that you use the word illegal what I mean is that in proper reading of that ordinance by your administer is why we took the appeal.

Attorney Rumpf said that is why we are here. One other point I think that you already admitted on the record that in fact the original permit which was applied for was for an accessory structure which was at 54% prior to the revised plans. There is an acknowledgement that the denial was proper even if for only that reason. There is no specification within the denial as to whether he was factoring in only the building as proposed on the original plans or that building and additional structures.

Mr. Butz said he understood the point.

Attorney Rumpf said that the reason he brought that up for the boards edification should you find there to be an inability to arrive at a consensus with regard as to whether or not to add the additional accessory structure you have the ability to decide the appeal of the original denial based upon the original plan clearly showing there to be 54.something % which is greater than the 50% as acknowledged by Mr. Butz on behalf of the applicant. So the denial would have been proper for that reason as well at the time it was issued on February 20, 2008.

Mr. Mercurio stated that if he understood it right, he never made an application to zoning with the reduced plans or did he?

Answer was no

Mr. Mercurio said so the only denial we are talking about which was proper was 54 %. If he had gotten a denial from Laurie and Wayne for 50% then perhaps you have an issue. Is that what we are talking about?

Attorney Rumpf said correct and that brings into question what Mr. Butz has been arguing whether or not to include the additional accessory structure or structures on the property. That seems to be a matter of some debate.

Mr. Mercurio said but again there was only one denial and it was because of 54%.

Mr. Butz said that he disagrees with that is our position is the denial was because she added all of the buildings together, all of the accessory buildings together and that was the basis of denial at that time. I do not deny that obviously what Mr. McVicar said in his letter that when he did it the first time it was 54% and the reason was if you included the exterior porches on the principal drawing that it would have been under 50% but Mr. McVicar in his first letter talked about excluding them. I agree, you would not in calculating the square footage of a principal structure include a deck or a front porch so when he made that calculation that is when he said calculating the principal structures without the porches that it is 54%.

Chairman Tredy you mentioned numerous times about the denial we have with us our zoning officer and I am going to ask her some questions.

Chairman Tredy asked Laurie Clune, the zoning officer to explain to the board why you denied

Mr. Butz interjected that she should be sworn in and Attorney Rumpf said yes it is appropriate although Ms. Clune is the Board secretary and she is going to be questioned as to her role as the zoning officer.

Attorney Rumpf swore Laurie Clune in.

Mr. Mercurio stated that Laurie was the zoning secretary not the zoning officer who he was told that she was indeed the zoning officer as well as the zoning secretary.

Attorney Rumpf said that once again he just wanted to educate the board that the reason for the denial contained in the form of a written document that has the date of February 20, 2008 in which Ms. Clune denied the application because the total square feet of the accessory building was greater than 50% of the principal building. The board is being asked to overrule that interpretation and that reason for denial.

Mr. Covitz is that how variances come into the conversation because it is 54%?

Attorney Rumpf said that that structure has been acknowledged to be 54%. So the reason for the denial is that the total square feet of the accessory structure is greater than 50% and it has been acknowledged that it is 54%.

Mr. Covitz said is that how the word variance comes into the conversation?

Attorney Rumpf said yes it is although there is no variance application before the board. The board from a technical standpoint does have the right to make a decision on the appeal. What you have in front of you that is marked as Exhibit A-3 as well as the actual written denial.

Chairman Tredy asked Laurie Clune to explain to the board the process that you went through in making the denial.

Laurie Clune said that she totaled up the accessory structures.

Mr. Butz said all of them.

Laurie Clune said yes.

Chairman Tredy said and that is how you come up with the 54%?

Laurie Clune said that she never came up with 54% the engineer did.

Chairman Tredy said that just in general you took a look at it and it was pretty obvious that it was over 50% with the six or seven other detached structures. That is why you came up with the denial?

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Laurie Clune said yes.

Mr. Mercurio said that was without the new garage application?

Ms. Clune said yes.

Mr. Mercurio asked if that was standard procedure with accessory buildings.

Ms. Clune said yes.

Chairman Tredy said in other words you are saying the way you as a zoning officer interpreted the old ordinance was that you calculate all of the accessory structures in order to come up with the percentage.

Laurie Clune said yes.

Mr. Mercurio said an accessory structure would be a structure larger a legal shed. So this excludes the sheds?

Laurie Clune said yes.

Attorney Rumpf said to clarify you did not measure the proposed accessory structure that was in the plan that was submitted and derive at that 54% figure, that was factored out later by Mr. McVicar. At the time you denied the application you didn't go into that examination and that occurred some time later. Is that correct?

Laurie Clune said yes.

Mr. Butz asked if Laurie if she had Exhibit A-3.

Chairman Tredy said the only thing he was going to ask is that all questions are asked of the table.

Laurie Clune said yes she did have a copy.

Mr. Butz asked Ms. Clune if she could tell looking at Ordinance 18.46 that existed on the day you denied the permits. What section of that ordinance limits any property owner to one accessory structure?

Ms. Clune said that it is defined as maximum square feet of each.

Mr. Butz said would you read that into the record?

Ms. Clune read – maximum square feet of accessory building.

Mr. Butz said it says any accessory building.

Ms Clune read maximum square feet of any accessory building. Maximum square feet of any accessory building shall not exceed 50% of the square footage of the principal building which said accessory use is intended to serve.

Mr. Butz said and that does not say multiple accessory buildings, does it?

Ms. Clune said that is how she interprets it.

Mr. Butz said that is how you interpret it. And it is based upon that interpretation because Mr. Collamer had several existing accessory buildings when he was denied for the garage. Is that correct?

Ms.Clune said correct.

Mr. Mercurio asked Ms. Clune if there was one building preexisting frame garage that was by itself was already bigger than 50% of the principal structure.

Ms. Clune said yes

Mr. Mercurio said that it looks like it is and so that is a preexisting non conforming use that Mr. Collamer was already here in 2000 or 2001 justify that. That building was already 50% and much more than 50%.

Mr. Butz said I think the record will show that there was a variance granted for that one. So that is not part of this mix. That was before this board for a variance.

Attorney Rumpf said because Mr. Collamer has given testimony we should swear him in.

Mr. Collamer was sworn in. Mr. Rumpf asked of Mr. Collamer that it was he that spoke a few minutes ago and he stated that there was a variance in 2000 or 2001.

Mr. Collamer stated that was correct.

Mr. Butz asked Mr.Collamer when he went in to Ms. Clune for this current three car detached garage permit did she tell you at that time that she denying based on the fact that you have other accessory buildings which exceed 50%.

Mr. Collamer said no there was no verbal denial at the time. The denial that I got was by letter by mail.

Mr. Butz asked Mr. Collamer if he is the owner of the property.

Mr. Collamer said yes he was.

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Mr. Butz said that the proposed structure that is the subject of this appeal is a detached three car personal garage for your personal use.

Mr. Collamer said yes.

Mr. Butz, said not for commercial

Mr. Collamer said no

Chairman Tredy asked if any of the board members had any questions before it was opened to the public.

Seeing none

OPEN TO THE PUBLIC

Attorney Rumpf swore in Bill Edwards of 30 Pennsylvania Avenue, Waretown. Mr. Edwards feels that if the new proposed garage is within the 50% why wouldn't it be approved.

Chairman Tredy said that one of the contentions is that how is it calculated. I have always calculated in my mind when I looked at properties I put all of the accessory structures together to come up with a calculation for my total. The total if considered that way would require a variance.

Mr. Edwards said it would have to be 50% less than the primary structure is that right. His garage is 49.8 %.

Chairman Tredy said when you add it in to all of the other structures that are already there which are accessory –

Mr. Edwards interjected that it does not say that

Chairman Tredy said that is what Mr. Butz says, that is his interpretation, and it may not be mine or anyone else's

CLOSED TO PUBLIC

Chairman Tredy asked the board if they had anything to say. Mr. Tredy said it seemed to him that although Mr. Butz makes a strong argument, but that is only because he is a strong attorney that you could tend to lean in his direction. I know from past experience that the ordinance that Mr. Butz is trying to allude to that has been changed on the behalf of trying to prevent his applicant from doing something is totally false. We have been working on this since last year, it had come up time and time again how to correct it and it went through the slow movement the way city government works and possibly Mr. Collamer got caught up in it at that particular time. I can assure you that it was not intended towards Mr. Collamer. I know from working in and around the town for many years and on many, many boards that we always did calculate ??

If you consider it that way I would recommend that the applicant be denied

Mr. because when you read H. of the ordinance it any accessory building it does not say all accessory buildings it say any that should not exceed 50%.

Chairman Tredy said that he believed that was one of the reasons that the Township Committee may have decided to make some corrections because even though it was being interpreted the way he described but perhaps it wasn't clear enough to clarify the ordinance.

Mr. Covitz asked if Mr. Collamer had a commercial operation there?

Mr. Collamer said yes he did.

Mr. Covitz said than that would cancel out these other buildings doesn't it?

Mr. Collamer said yes it does by use.

Mr. Covitz said if that is the case we are only talking about his house and the proposed garage. All of the other stuff is commercial, it is his business. I don't understand why we seem to be adding all of this commercial stuff.

Chairman Tredy said because it is a single lot.

Mr. Collamer said yes it is a single lot with mixed use.

Mr. Covitz said you have to divorce the commercial from the residential in this lot it seems to me. When we add up everything of course he is way over the 50% but that is commercial and that is what I can't get clear in my mind. If this is commercial then you only have to think about the house and the proposed garage.

Mr. Mercurio said he did believe that and Chairman Tredy said he didn't either.

Mr. Lachawiec asked on the existing frame garage is that in existence because of a previous variance of the same issue here. So some time in the past you came in and got a variance for that?

Mr. Collamer said it was not the same question being asked but yes it was a variance.

Mr. Lachawiec not including your new proposed garage, are all of the existing buildings that the zoning officer is counting now was that taken into consideration then or in fact did any of them exist at that time.

Mr. Collamer said all of those buildings existed when the variance was granted.

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Mr. Lachaweic asked Mr. Collamer to explain how all of that fit in. What was your interpretation of what happened way back when. How long ago was that by the way?

Mr. Collamer said he wasn't sure what Mr. Lachaweic was asking him to explain.

Mr. Lachaweic said at the time that you got the variance for the existing frame garage, give me the date and what ordinance was used to give you that variance. How did all of the existing buildings fit in in terms with calculating the square footage based on whatever ordinance was in affect at the time.

Mr. Collamer said it was in 2000 or 2001 he wasn't completely sure.

Mr. Butz said it was Resolution # 00-29 dated August 3rd 2000.

Mr. Collamer said what brought the whole thing about sort of a two fold affair myself and a neighbor owned the lot common that spanned both of our rear properties. The neighbor wanted to sell and move so we came to the township to divide the lot and add it to each of our pieces. When we came before the board it was brought to our attention that what we were doing there was not legal and we needed to come in for a use variance, which is exactly what we did. We came in for a use variance and after some time and a few meetings we were granted a use variance and the existence of what was on the lot presently.

Mr. Lachaweic asked if the did the size of that existing frame garage impact in any way on the issue at hand now regarding the 50% or was it totally removed from it.

Mr. Collamer said it had no effect because that ordinance was not in effect yet.

Mr. Lachaweic said what he is thinking is that the first thing we should do in the calculation if all of the existing buildings are used then the use variance should eliminate that building totally and I think that is what is bothering Mr. Covitz also.

Ms Clune said if you are going to look at it as two separate issues although it is one lot and it is mixed use I think that you should look at the resolution that is approved. I don't have that resolution with me.

Mr. Mercurio said we need to have all of the resolutions.

Attorney Rumpf said that his suggestion is that when the board finds it is ready to act that it act on whether or not the denial was appropriate and we have the reasons for the denial and should the board so wish it can offer its interpretation as well as to the old ordinance there seems to be varied opinions to that. Your first job if you will I would suggest it to either affirm or reverse the denial of Zoning Officer.

Mr. Bonamassa asked what other changes were made to the resolution other than the specifically identified that not more than one accessory building.

Attorney Rumpf said he don't believe so.

Mr. Mercurio asked Mr. Bonamassa what he meant.

Mr. Bonamassa said the confusion seems to be coming in because the interpretation of this is that one building cannot be more than 50% of the house. The reason it was denied is because multiple structures were taken in the calculation, my question is the when they issued a new ordinance on this was the new ordinance to specifically to clarify that you have to take each dwelling into account. If it is than it appears to me that someone along the line thought it could be interpreted either way and if that is true then it would be telling me that I don't think it should be denied. That is my question, did they only change that one thing.

Mr. Lachaweic said that is my question also, if you look at the wording any accessory building if the meaning was plural meaning all accessory building it there should have been an "s" on the end of building.

Mr. Butz said that the new ordinance says that there shall be only one accessory building.

Chairman Tredy said what he is going to do is try to bring the board back into focus and ask them to make a decision on one simple subject. That is the denial dated February 20, 2008. That is why we are here. The denial simply says that the structure was more than 50% of the principal building. That is the original application, that is what we are here for and we didn't need to talk about all of the other things. At the time it was completely clear that the design that was submitted to the zoning officer showed the building, the garage was over 50%. For us to say that that was incorrect would be absolutely mad. It was over 50% they have made changes since but the only question that came before us in the application. If Mr. Butz wants to throw up smoke screens I am not going to listen to them.

Mr. Butz interrupted and said that is not fair. You heard her testimony and you are ignoring her testimony which she said Chairman Tredy interrupted and Mr. Butz said wait a minute and Chairman Tredy said no you wait a minute he continued to say that the problem is we have a denial here and this is what we are supposed to be looking at. All of the other outside stuff has nothing to do with the original denial for which Mr. Collamer's application to this board is all about. Chairman Tredy asked Attorney Rumpf if he was incorrect in making that assumption.

Attorney Rumpf said yes there was an appeal from the denial and also Mr. Collamer requested an interpretation in addition to the appeal. The threshold issue obviously is the denial, does the board wish to hold the denial or reverse the denial.

Mr. Mercurio asked Ms. Clune if the letter of denial was generated before Wayne McVicar's input or after.

Ms. Clune said it was before because of the structure itself. It was asked of me how I looked at it and I do look at them all because I do look at the entire property but that particular structure is more than 50%.

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Mr. Mercurio said then what Ms. Clune is saying is the specific application for this building was over and that is the reason to deny and if you added then all of it was ten time over. So Ms. Clune didn't deny the application because of all of the accessory structures you denied him because it was obvious that this particular one was over 50%.

Ms. Clune said that is correct.

Mr. Butz said that is not what she said and in answer to Mr. Tredy's question she denied it because of the aggregate number of buildings and that is what she said. Now she is trying to backpedal.

Mr. Mercurio said she didn't say number of buildings she said collectively they exceed Mr. Butz interrupted and said "exactly" but Mr. Mercurio continued and said in retrospect even the building at issue was over 50%. So she had two reasons to deny one our standard practice for an aggregate which we always did and number two the building was over 50%. That is it and that was why it was denied.

Mr. Lachawic said it seems to him that there was probably miscommunication. In other words once the zoning officer denied the building than the gentleman went back and corrected it. So that meant that he did not understand that the aggregate was being taken in consideration.

Mr. Mercurio said he did not bring that second correct building in for an application, that was never formally submitted.

Mr. Bonamassa asked given that letter the fact that the structure that was submitted exceeded the percentage regardless of how it was taken into account that letter makes sense and is valid that you could deny this because one structure exceeds 50%.

Chairman Tredy said yes under the old ordinance or new ordinance.

Chairman Tredy asked the board that they understand that under either ordinance this particular denial should be upheld, we should vote favorably on the denial.

Attorney Rumpf said if that is the board's decision the motion should state it is a motion to affirm the denial.

Chairman Tredy said as chairman and explaining this and showing this simple letter which dates back to February 20 will someone make a motion to affirm the denial of the zoning officer on this application.

Ronald Bruno made a motion to affirm the denial of the zoning officer on this application, seconded by Nick Bonamassa. Roll Call (Ayes) Bruno, Bonamassa, Mercurio, DeAlmedia, Tredy. (No) Edward Covitz and Joseph Lachaweic

Chairman Tredy said that is where we stand Mr. Butz and Mr. Butz said not a surprise Mr. Tredy.

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Docket 05.08.BA
Todd A. Smith
6 Starboard Way
Block 121, Lot 3
Bulk Variance

Motion to carry without further notice was made by Ronald Bruno, seconded by Anthony Mercurio. Roll Call (Ayes) Bruno, Mercurio, Bonamassa, Covitz, Petrosilli, Lachaweic, Tredy

Docket 20.07.BA
Joseph Palmieri
207 Eighth Street
Block 272.01, Lot 94
"C" Variance

Motion to carry without further notice was made by Nick Bonamassa, seconded by Anthony Mercurio. Roll Call (Ayes) Bonamassa, Mercruo, Bruno, Covitz, Petrosilli, Lachaweic, Tredy.

OPEN TO PUBLIC

Seeing None

CLOSED TO THE PUBLIC

Meeting Adjourned

*Respectfully Submitted by
Laurie H. Clune*