

ROCKAWAY TOWNSHIP  
BOARD OF ADJUSTMENT  
TUESDAY, JULY 19, 2022  
COMMENCING AT 7:30 P.M.

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IN THE MATTERS OF:	)	TRANSCRIPT OF
	)	PROCEEDING
RESOLUTIONS	)	
BOA #22-06	)	
LISCHIN, 27 CRESCENT RIDGE ROAD	)	
BLOCK 30705 LOT 68	)	
"C" VARIANCE	)	
	)	
BOA #22-03	)	
DeVENEZIA, 884 GREEN POND ROAD	)	
BLOCK 40801 LOT 30	)	
"C" VARIANCE	)	
	)	
BOA #22-08	)	
LAKATOS, 13 HILLSIDE ROAD	)	
BLOCK 40702 LOT 9	)	
"C" VARIANCE	)	
	)	
BOA #22-07	)	
SCIELSO, 35 ROBIN STREET	)	
BLOCK 11113 LOT 7	)	
"C" VARIANCE	)	
	)	
BOA #22-04	)	
HOFFMAN, 135 LAKE SHORE DRIVE	)	
BLOCK 21806 LOT 10	)	
"C" VARIANCE	)	
	)	
PUBLIC HEARINGS	)	
BOA #22-11	)	
LAURICE	)	
17 HIGHLAND AVENUE	)	
BLOCK 10302 LOT 8	)	
"C" VARIANCE	)	
	)	
BOA #21-31	)	
BEAUTIFUL FARMS	)	
91 JACOBS ROAD	)	
BLOCK 40801 LOT 95	)	
"B" VARIANCE/"C" VARIANCE/"D"	)	
VARIANCE/MINOR SITE PLAN	)	

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**LAURA A. CARUCCI, C.S.R., R.P.R., L.L.C.**  
**LauraACaruccillc@gmail.com**

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B E F O R E: ROCKAWAY TOWNSHIP BOARD OF ADJUSTMENT  
THERE BEING PRESENT:

JASON SMOLINSKI, CHAIRMAN  
RAY TAHAN, VICE CHAIRMAN  
JAMES LOFTUS, SECRETARY  
TIMOTHY SCHERWA, MEMBER  
SUSAN ROYEK, MEMBER  
KATEY PLATTS, MEMBER  
ROBIN GARCIA, ALT. 3

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Attorney for the Interested Parties

A L S O P R E S E N T:

SHELLEY KAHN, Board Secretary  
DAVID NOVAK, P.P., AICP, Board Planner

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Speaker/Witness

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**ANDREW LAURICE**

8

Board/Professional Questions

9

Mr. Novak

9, 15

Chairman Smolinski

14

Vice Chairman Tahan

16

**BOA #21-31**

Beautiful Farms

17

91 Jacobs Road

Block 40801 Lot 95

Speaker/Witness

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**MR. HANTMAN**

28

E X H I B I T S

	<u>NO.</u> <u>DESCRIPTION</u>	<u>ID</u>	<u>EVID</u>
20			
21	(None marked)		
22			
23	12. New Business		59
24	13. Old Business		60
25	14. Adjourn		60

1     1. Call to Order

2                     CHAIRMAN SMOLINSKI: This meeting of  
3 the Rockaway Township Board of Adjustment is called  
4 to order.

5     2. Notice to the newspapers was via email

6                     CHAIRMAN SMOLINSKI: This meeting is  
7 held pursuant to the New Jersey Open Public Meetings  
8 Act.

9                     Notice has been properly posted and  
10 filed with the Municipal Clerk of Rockaway Township,  
11 mailed to all those persons requesting notification,  
12 and provided to the citizens of Morris County in The  
13 Daily Record on December 8, 2021.

14                     Notice to the paper was via email.

15                     Formal action may be taken this  
16 evening.

17     Attendance

18                     MS. KAHN: Mr. Smolinski?

19                     CHAIRMAN SMOLINSKI: Aye. I'm here.

20                     MS. KAHN: Mr. Loftus?

21                     MR. LOFTUS: Here.

22                     MS. KAHN: Mr. Scherwa?

23                     MR. SCHERWA: Here.

24                     MR. KAHN: Mr. Tahan?

25                     VICE CHAIRMAN TAHAN: Here.

1 MS. KAHN: Ms. Royek?

2 MS. ROYEK: Here.

3 MS. KAHN: Ms. Platts?

4 MS. PLATTS: Here.

5 MS. KAHN: Ms. Garcia?

6 MS. GARCIA: Here.

7 MS. KAHN: Mr. Bell?

8 MR. BELL: Here.

9 MS. KAHN: Mr. Novak?

10 MR. NOVAK: Here.

11 3. Flag Salute

12 CHAIRMAN SMOLINSKI: Please rise for  
13 the flag salute.

14 (At this point in the proceeding all  
15 rise for a recitation of the Pledge of Allegiance.)

16 4. Approval of Minutes - June 21, 2022

17 CHAIRMAN SMOLINSKI: Okay. First order  
18 of business is the approval of the minutes from June  
19 21, 2022.

20 I'll ask for a motion.

21 VICE CHAIRMAN TAHAN: I make a motion  
22 to approve.

23 MR. SCHERWA: Second.

24 CHAIRMAN SMOLINSKI: All those in  
25 favor?

1 (Chorus of ayes.)

2 5. Correspondence

3 CHAIRMAN SMOLINSKI: Okay. Any  
4 correspondence?

5 MS. KAHN: No.

6 6. Open to the Public

7 CHAIRMAN SMOLINSKI: Okay. At this  
8 point in time I would open it to the public for  
9 anything that is not on the agenda this evening.

10 Seeing none, I'm going to close it.

11 7. Regular Order of Business

12 CHAIRMAN SMOLINSKI: All right. We're  
13 going to go to the regular order of business at this  
14 time.

15 8. Resolutions

16 CHAIRMAN SMOLINSKI: We're going to  
17 move the resolutions to the end.

18 9. Committee Reports

19 CHAIRMAN SMOLINSKI: I'm going to say  
20 we have no committee reports.

21 10. Other Matters

22 CHAIRMAN SMOLINSKI: I don't think we  
23 have any other matters.

24 11. Public Hearing - BOA #22-11 - Laurice

25 CHAIRMAN SMOLINSKI: And I'm going to

1 go right to our first application, which is BOA  
2 #22-11. This is Laurice, 17 Highland Avenue, Block  
3 10302, Lot 8.

4 The application is for a variance for a  
5 shed.

6 MR. LAURICE: Yes.

7 CHAIRMAN SMOLINSKI: Please come  
8 forward.

9 I hope I pronounced the last name  
10 correctly.

11 MR. LAURICE: You did.

12 CHAIRMAN SMOLINSKI: All right.

13 MR. BELL: Would you please raise your  
14 right hand.

15 Do you solemnly swear that the  
16 testimony that you will present to this board tonight  
17 is the truth, the whole truth, and nothing but the  
18 truth?

19 MR. LAURICE: I do.

20 **A N D R E W L A U R I C E**, having been duly  
21 sworn, testifies as follows:

22 MR. BELL: Is there any reason why this  
23 board, as presently constituted, can't render a fair  
24 and objective decision regarding his variance?

25 MR. LAURICE: No.



1                   CHAIRMAN SMOLINSKI: Mr. Laurice,  
2 normally what we do is we'll go through real quick  
3 completeness. I'll let Mr. Novak run you through  
4 that. You may have received a letter.

5                   MR. LAURICE: Yes.

6                   CHAIRMAN SMOLINSKI: July 5th.

7                   MR. NOVAK: Good evening to the board.

8                   For the record, this is David Novak,  
9 N-O-V-A-K, with Burgis Associates, Township Planning  
10 Consultant.

11                   We had issued a memo dated July 5,  
12 2022. As the Chairman indicated, one aspect of that  
13 memo is regarding completeness. I'll run through  
14 those items right now that need additional comment or  
15 testimony.

16                   First would be Item No. 2 on my list,  
17 Item 12, protected covenants.

18                   Can the applicant just confirm that  
19 there's nothing in your deed or any protected  
20 covenant that would restrict you from putting a shed  
21 on the property?

22                   MR. LAURICE: Correct.

23                   MR. NOVAK: The applicant will need  
24 waivers from:

25                   Form 11, Item 3, scale of map.

1 Form 11, Item 5, zoning district.

2 Form 11, Item 11, existing and proposed  
3 topographic contours.

4 Form 11, Item 13, floor plans for  
5 existing and proposed buildings.

6 Form 11, Item 15, existing and proposed  
7 signs, which the applicant has indicated is not  
8 applicable.

9 And for Form 11, Item 17, existing and  
10 proposed utility service.

11 Does the applicant know if there's any  
12 utilities located within the vicinity of the proposed  
13 shed?

14 MR. LAURICE: There is not. There is  
15 no utilities.

16 MR. NOVAK: For the board's  
17 consideration, this is an application for a shed.

18 The applicant has provided site  
19 photographs of the project area, which I think helps  
20 illustrate what the work is that's being conducted.  
21 Therefore, for the sake of continuing with this  
22 application, I think the board can deem this  
23 application complete, unless the board sees during  
24 the course of the hearing that they need additional  
25 information or items provided by the applicant, you

1 always have that ability to request that at a later  
2 hearing.

3 CHAIRMAN SMOLINSKI: Okay. I believe  
4 the applicant did also provide some details of the  
5 shed that you also will provided testimony to,  
6 correct?

7 MR. LAURICE: Correct.

8 CHAIRMAN SMOLINSKI: Okay. I think the  
9 application can be deemed complete for completeness  
10 purposes for all of these items.

11 I make a motion to deem the application  
12 complete.

13 MS. PLATTS: Second.

14 CHAIRMAN SMOLINSKI: All in favor?

15 (Chorus of ayes.)

16 CHAIRMAN SMOLINSKI: Please proceed.

17 MR. BELL: Tell us what you are  
18 proposing.

19 MR. LAURICE: I want to put a shed on  
20 my property on a grounded pad. I need storage,  
21 because I mean, I've got 30 years of stuff that I've  
22 acquired. Right now I got -- we just moved out of  
23 Pompton, I got all my equipment at my mother's house,  
24 and I need to get it out, and I have nowhere to put  
25 it so I need a shed.

1 MR. NOVAK: Moved out of Pompton Lakes?

2 MR. LAURICE: Yes, Pompton Lakes.

3 MR. NOVAK: I grew up in Pompton Lakes.

4 MR. LAURICE: You might know my kids.

5 MR. NOVAK: I don't think there's any  
6 conflict but --

7 [LAUGHTER]

8 MR. BELL: You're before us because you  
9 need a variance.

10 MR. LAURICE: I need a variance, yes.

11 MR. BELL: And tell us why you need a  
12 variance.

13 MR. LAURICE: The reason why I need a  
14 variance is because I applied for a permit for the  
15 shed and it was denied because of impervious  
16 coverage. My impervious coverage, according to what  
17 I got from the town, is I'm only allowed 25 percent.  
18 Right now I think I'm at 39 percent.

19 MS. PLATTS: And you're only asking to  
20 go from 39.12 percent to 40.45 percent, correct?

21 MR. LAURICE: Correct.

22 MS. PLATTS: So it's a difference of  
23 just in excess of one percent, but because you're  
24 already over the 39, you require a variance -- I'm  
25 sorry, because you're over the 25, you require a

1 variance, correct?

2 MR. LAURICE: Right.

3 CHAIRMAN SMOLINSKI: And you're looking  
4 for roughly about 120 square feet or so?

5 MR. LAURICE: Yes, 10x12.

6 CHAIRMAN SMOLINSKI: 10x12, correct?

7 MR. LAURICE: Yes.

8 MR. NOVAK: So for the statutory  
9 criteria, one of the things that the board can  
10 consider is the physical features, that's what we  
11 look at, exceptional narrowness, shallowness or the  
12 shape of the property, whether there is exceptional  
13 topographic conditions or physical features or by  
14 reason of extraordinary or exceptional situation that  
15 uniquely affects this specific piece of property.

16 That being said, the lot does have a  
17 lot size of 7,500 square feet. It's located in an  
18 R-13 district, which would typically require 13,125  
19 square feet. So that lot size is approximately half  
20 the size, so that's something that the board can  
21 consider in this.

22 I did drive out to the site, and it  
23 looks like right behind your driveway the property  
24 does slope down. That's correct?

25 MR. LAURICE: Correct.

1                   MR. NOVAK:   So in order to access your  
2 rear patio, you have that extra staircase that goes  
3 down, and that's adding to additional impervious  
4 coverage.

5                   MR. LAURICE:   Correct.

6                   MR. NOVAK:   Okay.   A couple of items  
7 for the board to consider.

8                   CHAIRMAN SMOLINSKI:   Yes.

9                   And having seen the site and gone past  
10 the site, it doesn't look like there's much in the  
11 way of opportunity to reduce any existing impervious  
12 coverage to balance it out --

13                   MR. NOVAK:   There's not.

14                   CHAIRMAN SMOLINSKI:   -- on the  
15 property.

16                   MR. NOVAK:   No, I would agree.

17                   CHAIRMAN SMOLINSKI:   Most of it is  
18 house and driveway and a small patio in the rear.

19                   MR. NOVAK:   Yes.

20                   CHAIRMAN SMOLINSKI:   Okay.   Dave, in  
21 terms of the lots in this area, is this one of the  
22 smaller lots?   Are they all roughly about that same  
23 size?

24                   MR. NOVAK:   It varies.

25                   So Lot 9, which is located to the

1 immediate southwest of the subject site, is slightly  
2 larger. The property to the northeast, which is Lot  
3 7, is roughly the same size. But then you have  
4 properties along George Street, specifically Lots 16,  
5 17, and 18, which are larger than the subject site.  
6 So there are sites in the area that are certainly  
7 larger than this one, some that are around the same  
8 size but some that are larger.

9 CHAIRMAN SMOLINSKI: And they all have  
10 the same similar, let's say, issues with lot  
11 coverage?

12 MR. NOVAK: Yes.

13 CHAIRMAN SMOLINSKI: Okay.

14 MR. NOVAK: Just two questions.

15 I don't think there are any trees that  
16 are being removed from this. Is that correct?

17 MR. LAURICE: That's correct.

18 MR. NOVAK: And just confirming that  
19 that setback will be eight feet from the dwelling and  
20 seven and a half feet from the property line?

21 MR. LAURICE: Correct.

22 CHAIRMAN SMOLINSKI: That's a question  
23 I was going to ask, the separation distances.

24 MR. NOVAK: Great minds think alike,  
25 Mr. Chairman.

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CHAIRMAN SMOLINSKI: Okay.

VICE CHAIRMAN TAHAN: There's no drain clean-out or sewer clean-out underneath where the shed is going to be?

MR. LAURICE: Absolutely not.

VICE CHAIRMAN TAHAN: Okay.

CHAIRMAN SMOLINSKI: Okay. Any other questions for the applicant from the board?

Any other questions from our professionals?

MR. NOVAK: No other questions from me. Thank you.

CHAIRMAN SMOLINSKI: At this time I'm going to open it to the public.

Seeing none, I'm going to close it.

MR. LOFTUS: I would like to make a motion that we accept the application based on the size of the lot and minor adjustment in terms of the coverage there.

MS. ROYEK: Second.

VICE CHAIRMAN TAHAN: Second.

CHAIRMAN SMOLINSKI: I think Susan got it first.

MS. KAHN: Mr. Smolinski?

CHAIRMAN SMOLINSKI: Yes.



1 MS. KAHN: Mr. Loftus?  
2 MR. LOFTUS: Yes.  
3 MS. KAHN: Mr. Scherwa?  
4 MR. SCHERWA: Yes.  
5 MS. KAHN: Mr. Tahan?  
6 VICE CHAIRMAN TAHAN: Yes.  
7 MS. KAHN: Ms. Royek?  
8 MS. ROYEK: Yes.  
9 MS. KAHN: Ms. Platts?  
10 MS. PLATTS: Yes.  
11 MS. KAHN: Ms. Garcia?  
12 MS. GARCIA: Yes.  
13 MS. KAHN: Approved.  
14 MR. LAURICE: I'm approved?  
15 CHAIRMAN SMOLINSKI: Approved.  
16 MR. LAURICE: Thank you. Thank you.  
17 CHAIRMAN SMOLINSKI: You'll need your  
18 resolution first.  
19 MR. LAURICE: Okay. You can tell me  
20 how to get all that, right?  
21 CHAIRMAN SMOLINSKI: Shelley will help  
22 you.  
23 Public Hearing - BOA #21-31 - Beautiful Farms  
24 CHAIRMAN SMOLINSKI: Okay. We have one  
25 other matter this evening before resolutions, it's

1 BOA #21-31, Beautiful Farms, 91 Jacobs Road, Block  
2 40801, Lot 95.

3 MR. BELL: We had a public notice that  
4 was posted in our official newspaper and  
5 municipality, and letters were provided to counsel  
6 for the applicant and noticed accordingly that this  
7 is a matter that will be open to the public and the  
8 board's consideration concerning the procedural  
9 disposition of this application.

10 As previously provided to counsel and  
11 as well as to objectors' counsel, since we've been  
12 uniform in our approach of providing both sides with  
13 all of the information that has been provided to us,  
14 that there is an outstanding escrow balance that  
15 exceeds, I believe the letter that I sent to Mr.  
16 Rittie was \$10,900.50, which may not be exact, it may  
17 be more than that because of all of the additional  
18 time that has been expended by professionals on their  
19 behalf.

20 So the matter is listed tonight for  
21 procedural issues only, not the substance of the  
22 application or the activities, just on the procedural  
23 basis only. Then the board will decide how they want  
24 to address the fact that the escrow remains unpaid,  
25 in violation of not only the Municipal Land Use Law

1 but the ordinance that governs the Township of  
2 Rockaway.

3                   Unfortunately, I don't believe that  
4 I've ever encountered something of this nature before  
5 and there's very little written on this particular  
6 matter except for one little paragraph in Cox, which  
7 I will address later, but I think you may want to  
8 open this at this time to the public for anyone who  
9 wants to discuss this application.

10                   It may be important that we read Mr.  
11 Rittie's letter. Would you be so kind to do that.  
12 It's dated this date, July 19, 2022.

13                   MS. KAHN: You want me to read the  
14 whole letter?

15                   MR. BELL: Yes, please.

16                   MS. KAHN: "I have received the various  
17 letters dated June 28, 2022, June 30, 2022, and July  
18 11, 2022, concerning night's Zoning Board of  
19 Adjustment hearing to consider whether to  
20 administratively dismiss the pending zoning  
21 application for lack of prosecution due to the  
22 outstanding approximate \$10,900.50 escrow. I have  
23 also discussed this matter with the Applicant and  
24 advised them accordingly.

25                   "As previously indicated to you, the

1 Applicant is not currently in a financial position to  
2 make a lump sum payment of \$10,900.50 to bring the  
3 escrow current at this time. Their initial budget  
4 for this application has been exhausted for the  
5 moment, and the Applicant will require additional  
6 time to gather funds necessary to satisfy the escrow  
7 and continue paying forward. As of today, I cannot  
8 provide a definite timeframe for Applicant to be able  
9 to satisfy the significant escrow shortage.

10 "The application is scheduled for the  
11 August 16, 2022 public hearing; provided however, the  
12 outstanding escrow amount is significant, and does  
13 not also account for any additional fees and expenses  
14 being incurred by applicant's professionals to  
15 address the township's professionals' various review  
16 reports. Applicant's professionals require more time  
17 to review, edit and modify the proposed site plan.  
18 We are also looking into various matters relating to  
19 the comments received in the professional planner and  
20 engineer review reports. Also, as previously  
21 indicated, the anticipated revisions to the site plan  
22 may require an amendment to the zoning application to  
23 make the application a request for preliminary and  
24 final major site plan, which I am unable to confirm  
25 until the site plan has been revised in accordance

1 with the review reports' comments.

2 "I do not anticipate the revised site  
3 plans and any potential amendment to the application  
4 will be ready for the August 16, 2022 public hearing  
5 due to cost restraints at this time. However, should  
6 this matter be allowed to continue to proceed,  
7 applicant would request that the Zoning Board of  
8 Adjustment hold a public hearing on the  
9 interpretation aspect of this pending application,  
10 which would not require submittal at this time of a  
11 revised application and/or revised site plan. We  
12 believe the applicant has provided enough testimony  
13 on the proposed operations, uses, hours of operation  
14 and the like for the Zoning Board of Adjustment to  
15 review and consider the interpretation component of  
16 the applicant. Applicant would provide any  
17 additional operational testimony and/or answer any  
18 additional questions from either the board or members  
19 of the public, and applicant would present  
20 professional planning testimony on the interpretation  
21 of the ordinances. As I recall, applicant and the  
22 Zoning Board of Adjustment had discussed at prior  
23 public hearings dealing with the interpretation part  
24 of the application in order to potentially narrow the  
25 scope of any potential use variance(s) and/or site

1 plan revisions for subsequent public hearings. It  
2 would be applicant's intention to present the  
3 interpretation part of the application at the next  
4 public hearing, on legal notice to all residents  
5 within 200 feet of the property and newspaper notice.

6 "Based upon the above explanations,  
7 applicant will not be attending tonight's Zoning  
8 Board of Adjustment. If you have any questions, do  
9 not hesitate to contact me.

10 "Jason R. Rittie."

11 MR. BELL: Okay. With that in mind,  
12 there was plenty of notice provided to the applicant  
13 and his counsel as to the outstanding monies that are  
14 due the professionals for their time, energy and  
15 effort that has consumed a considerable period of  
16 time beginning, I believe, last January up until this  
17 morning. I know that Mr. Smolinski was with us over  
18 the weekend telephonically, and Mr. Prior (phonetic)  
19 and myself in reviewing all aspects of the  
20 application. I know Mr. Novak, Mr. Ten Kate, and  
21 also Shelley and the staff were all involved in this,  
22 in order to be completely transparent. But you know,  
23 we do have an ordinance, we do have a Municipal Land  
24 Use Law that requires that the accounts be made  
25 current and payable. Quite frankly, if you look at

1 the list, it's \$10,900 something dollars, and that's  
2 only as of probably the end of June that is  
3 outstanding, so we cannot go forward.

4 MR. HANTMAN: It was earlier than that.

5 MR. BELL: But procedurally we're only  
6 going to discuss that aspect this evening, not as to  
7 the merits of their variance request.

8 So it's up to you now, Mr. Smolinski,  
9 how you want to address it through the board or  
10 through testimony from people that are gathered here  
11 tonight.

12 CHAIRMAN SMOLINSKI: Yes, I think at  
13 this point, I'm going to turn to the board. The last  
14 time that we were here was back in March. There's  
15 been at least one or two council meetings since then.

16 So at this point, again, we're looking  
17 at \$10,000 plus, once everything is counted.

18 MR. BELL: Bearing in mind that we had  
19 to provide for the advertising and the notice for  
20 this evening's meeting as well.

21 CHAIRMAN SMOLINSKI: So procedurally,  
22 you know, I'll first turn to my board members.

23 We're here this evening because of the  
24 fact that we have an application that was before us.  
25 I've never seen this before, but we're now at a

1        juncture where we don't know when the applicant is  
2        going to come due.

3                        MR. BELL:    Neither does counsel.

4                        CHAIRMAN SMOLINSKI:    Nor the applicant,  
5        and quite a bit of opportunity has been given.    And  
6        at some point this evening -- I want to think about  
7        this over the course of the next few minutes or how  
8        long it takes here about what the next course of the  
9        process is.

10                      VICE CHAIRMAN TAHAN:    My opinion is  
11        that if they don't have the wherewithal to proceed,  
12        then they need to withdraw the application.    I mean,  
13        if they don't have the means to go forward with it.

14                      CHAIRMAN SMOLINSKI:    That procedurally  
15        would be, I guess, for us to dismiss the application  
16        without prejudice.    If I'm correct, Mr. Bell?

17                      MR. BELL:    Correct.

18                      CHAIRMAN SMOLINSKI:    Okay.

19                      MR. BELL:    That's after you've heard  
20        from the public.

21                      CHAIRMAN SMOLINSKI:    Correct.

22                      MR. BELL:    And any board members.

23                      CHAIRMAN SMOLINSKI:    So I just want to  
24        put that on the table.

25                      MR. LOFTUS:    One thing I'd like to know



1 is have they made any payments so far and to what  
2 amount for escrow so far during these proceedings?

3 MS. KAHN: I don't have the exact  
4 amount but --

5 CHAIRMAN SMOLINSKI: I have what's in  
6 front of me.

7 MS. PLATTS: Since March 15, 2022.

8 MS. KAHN: You can see kind of what  
9 they did.

10 CHAIRMAN SMOLINSKI: January 19th I  
11 think was the last payment made.

12 MS. KAHN: So you can see what they  
13 deposited. So they deposited a little over \$6,000  
14 and now they still owe over \$10,000.

15 MS. PLATTS: So they haven't made a  
16 single payment since?

17 CHAIRMAN SMOLINSKI: January 19th.

18 MS. PLATTS: I come from the position  
19 that we must treat every single resident equally and  
20 that we have rules in place exactly for that reason,  
21 so that no one is treated specially or differently,  
22 and I don't think that should occur here. We  
23 obligate all applicants to follow the rules. We've  
24 given them sufficient time. It's not as though we've  
25 suddenly come to them and suggested that they owe

1 this amount. They have been incurring these costs  
2 with knowledge they would incur them. And I know,  
3 for example, there has been additional legal memos  
4 drafted, we've asked for some opinions. There's a  
5 stenographer here this evening, I would imagine  
6 that's related to the application. The advertising.  
7 So they are incurring additional costs.

8 Dismissal without prejudice means they  
9 can come back before this board and make another  
10 application if they do become current. So I would be  
11 in favor of dismissing without prejudice at this time  
12 solely because they simply haven't complied with the  
13 requisite obligations in terms of any applicant.

14 VICE CHAIRMAN TAHAN: I agree with  
15 that.

16 CHAIRMAN SMOLINSKI: Yes, so that will  
17 be food for thought, and I think if nobody else has  
18 anything at this moment.

19 MS. ROYEK: Did they give a reason?

20 MR. BELL: No.

21 MS. ROYEK: They didn't give a reason

22 --

23 MR. BELL: No.

24 MS. ROYEK: -- that we can see?

25 MR. BELL: No, just the letter from

1 counsel that was part of the record.

2 CHAIRMAN SMOLINSKI: Yes.

3 VICE CHAIRMAN TAHAN: The letter states  
4 that they don't have the financial wherewithal.

5 MR. BELL: Although, he did indicate to  
6 me that they were going to come in either last week  
7 or the latest Monday or Tuesday with a payment.

8 As of 11:20 this morning, I believe I  
9 received this letter that indicated that they were  
10 not going to be able to satisfy their obligation.

11 MS. PLATTS: Well, the letter also sort  
12 of implies that they need to pay their own  
13 professionals first, because I think it's almost  
14 explicit in this letter is that they, "they" being  
15 the applicant, are required to pay their own  
16 professionals in order to come forward with the  
17 application. Maybe that's just my interpretation,  
18 that may be up to interpretation, but I think there's  
19 some other fees that must be paid before they can  
20 even pay this fee, so it seems that it's not  
21 forthcoming.

22 CHAIRMAN SMOLINSKI: Yes, Tim.

23 MR. SCHERWA: A question.

24 The last payment was January 19th?

25 CHAIRMAN SMOLINSKI: January 19th, yes.

1                   MR. SCHERWA: How many times since then  
2 till now were they notified officially that there was  
3 a shortfall in the escrow?

4                   MS. KAHN: If I had to guess, probably  
5 at least 6 to 8 times.

6                   MR. SCHERWA: Okay. Thank you.

7                   CHAIRMAN SMOLINSKI: With that, I would  
8 open it to the public.

9                   Mr. Hantman, you may.

10                  MR. HANTMAN: I just want to clarify a  
11 couple of things.

12                   There's a letter dated April 29, 2022  
13 from Mr. Rittie. It reads exactly the same as the  
14 letter he sent today.

15                   It says: I've received your April 27th  
16 --

17                  MR. BELL: Allen, if you would, please,  
18 we have a record.

19                  MR. HANTMAN: I have received --

20                  MR. BELL: Would you please state your  
21 name for the record.

22                  MR. HANTMAN: I'm Allen Hantman. I'm  
23 an attorney in Denville. My office is Morris &  
24 Hantman, 64 Diamond Spring Road. I represent a group  
25 of interested parties. We have submitted previously

1 a list of the names, so I don't have to go through  
2 all of them now. Some of them are sitting behind me  
3 today.

4 In preparation for tonight, I went back  
5 through some of my files and I found a letter of  
6 April 29, 2022, which was addressed to Mr. Bell.

7 It says:

8 "Dear Joe:

9 "I received your April 27, 2022 letter  
10 and accounting of the outstanding escrow fees, and  
11 I've reviewed the same with the applicant. The  
12 applicant is not currently in a financial position to  
13 make a lump sum payment of \$10,900.50 to bring the  
14 escrow current. Their initial budget for this  
15 application has been exhausted for the moment and the  
16 applicant will require additional time to gather  
17 funds necessary to satisfy the escrow and continue  
18 paying forward.

19 "As of today, I cannot provide a  
20 definitive timeframe for applicant to be able to  
21 satisfy the significant escrow shortage."

22 So we're now doing something that's at  
23 least 3 or 4 months old, and from what I can see, all  
24 the work that's been done in the last four months  
25 hasn't even been billed yet or it's not part of this

1 accounting, so it's going to be much, much, much  
2 higher.

3 I believe the ordinances of Rockaway  
4 Township specifically say the board is not to hear an  
5 application when there is this kind of escrow. I  
6 don't know that there's a substantial amount of  
7 leeway. I think the board is obligated at this time  
8 to dismiss without prejudice. What they do or how it  
9 comes back is a whole different issue, which we'll  
10 fight about at the time.

11 MR. BELL: Well, you know it's  
12 interesting, in researching this particular issue, I  
13 don't think that we've ever been faced with something  
14 of this nature in the years that I've served, and  
15 with Mr. Novak as well as and Mr. Smolinski, drawing  
16 upon them.

17 But there is a little section in Cox in  
18 the 2022 edition, under Section 13-3.

19 It says: "Unfortunately, the statute  
20 never addresses an applicant's failure to deposit  
21 additional escrow funds other than providing that  
22 such deposits must be made within a 'reasonable  
23 time.'"

24 Now, I think we can argue that we've  
25 provided a reasonable time in connection with this

1 particular applicant.

2 "The statute does appear to contemplate  
3 that until such funds are deposited, the municipal  
4 agency has no duty to proceed with the applicant's  
5 case. While a court probably would not find  
6 statutory approval where the board fails to proceed  
7 with an application while the escrow fund remains  
8 depleted, the better practice will be"...to dismiss  
9 the application without prejudice until additional  
10 funds have been placed into the escrow account. The  
11 board may provide in its resolution of dismissal that  
12 the applicant may revive the application without  
13 paying a new filing fee after the additional required  
14 escrow deposits are made. Note, however, that in  
15 most cases, the applicant would have to give new  
16 notice to all those entitled pursuant to Statute  
17 40:55D-12."

18 MR. HANTMAN: Just for your  
19 information, there is a subdivision when you come up  
20 Stony Brook Road on your right side, right past the  
21 bridge, brand new houses, like 4 or 5 of them. That  
22 was before the planning board and that was dismissed  
23 administratively for failure to pay the fees and it  
24 was restored about four years later, when the fees  
25 were paid.

1 MR. BELL: Then we're historically on  
2 the right path of being the same.

3 MR. HANTMAN: It was the planning  
4 board, but yes, it's consistent.

5 MR. BELL: The sister body.

6 CHAIRMAN SMOLINSKI: Anybody else from  
7 the public?

8 MR. HANTMAN: I think they're all mine.

9 CHAIRMAN SMOLINSKI: They're all yours?  
10 So at this time can I close it to the  
11 public?

12 AUDIENCE VOICE: No, we're good.  
13 Nothing to add. You know what's up.

14 CHAIRMAN SMOLINSKI: So at this point  
15 in time we're going to close this to the public.

16 The public portion is closed and we  
17 have a decision to make.

18 MR. LOFTUS: I'd like to make a motion  
19 to dismiss.

20 CHAIRMAN SMOLINSKI: Without prejudice?

21 MR. LOFTUS: Without prejudice, based  
22 on the testimony we've heard so far.

23 CHAIRMAN SMOLINSKI: Second?

24 MS. PLATTS: Second.

25 CHAIRMAN SMOLINSKI: Do we need to add



1 anything to that, Joe?

2 MR. BELL: I don't think so. It will  
3 all be finalized in a resolution at the next meeting.

4 CHAIRMAN SMOLINSKI: Okay. Please call  
5 the roll.

6 MS. KAHN: Mr. Smolinski?

7 CHAIRMAN SMOLINSKI: Yes.

8 MS. KAHN: Mr. Loftus?

9 MR. LOFTUS: Yes.

10 MS. KAHN: Mr. Scherwa?

11 MR. SCHERWA: Yes.

12 MS. KAHN: Mr. Tahan?

13 VICE CHAIRMAN TAHAN: Yes.

14 MS. KAHN: Ms. Royek?

15 MS. ROYEK: Yes, as long as they know  
16 they can reapply, and they will know?

17 CHAIRMAN SMOLINSKI: Yes, that will be  
18 on the resolution.

19 MS. KAHN: Ms. Platts?

20 MS. PLATTS: Yes.

21 MS. KAHN: Ms. Garcia?

22 MS. GARCIA: Yes.

23 MR. HANTMAN: Thank you very much.

24 Resolutions

25 CHAIRMAN SMOLINSKI: Okay. Now we can

1 move on to resolutions.

2 MR. BELL: What I thought we could do,  
3 if you don't mind, Mr. Chairman.

4 CHAIRMAN SMOLINSKI: I don't mind, Mr.  
5 Counsel.

6 MR. BELL: I'm going to read it by  
7 title and ask that our administrative agent read the  
8 entire body into the record, unless there's any  
9 objection from any of the members.

10 This is a resolution of the Zoning  
11 Board of Adjustment, Township of Rockaway, approving  
12 the application of Jeffrey and Renee Lischin for a  
13 "C" variance approval for a front yard fence height  
14 of six (6) feet; and

15 WHEREAS, the subject property is known  
16 as 27 Crescent Ridge Road, also known as Block 30705,  
17 Lot 68, in Rockaway Township; and

18 WHEREAS, the Applicants represented  
19 themselves; and

20 WHEREAS, the Board is in receipt of the  
21 following reports;

22 Water/Sewer Department, approved with  
23 no comments.

24 Fire Department, approved with no  
25 comments.

1 Health Department, approved with  
2 comments, "Heavy equipment machinery and vehicles  
3 should not be driven over or placed upon the septic  
4 system."

5 Building Department, approved with no  
6 comment.

7 David Novak, P.P., A.I.C.P., report,  
8 dated April 19, 2022, with comments;

9 WHEREAS, a hearing was held on April  
10 19, 2022, and the application having been deemed  
11 complete by the Board prior to commencing the public  
12 hearing, and the Board subsequently having heard the  
13 Applicant's case including the following evidence and  
14 testimony:

15 1. Mr. Lischin testified in support of  
16 the application.

17 2. He noted that there is a  
18 substantial deer population in the area and he is  
19 concerned not only about deer eating vegetation, but  
20 also jumping the fence and then being unable to leave  
21 the yard, so the higher fence should deter entry.

22 3. Additionally, pedestrians use the  
23 Applicant's property, a corner lot, as a cut-through,  
24 as well as some motorized quads.

25 4. No trees are proposed to be

1 removed, in order to install the fence.

2 5. He presented photographs in support  
3 of the application.

4 6. As noted in Mr. Novak's memo, the  
5 finished side of the fence should face outwards  
6 toward the public, although both sides will be  
7 similar in appearance. Also as noted by Mr. Novak,  
8 the decorative fence will be located along the  
9 Crescent Ridge Road frontage and the remainder will  
10 be the chain-link fence.

11 7. The hearing was opened to the  
12 public and there were no comments.

13 NOW, THEREFORE, BE IT RESOLVED, by the  
14 Zoning Board of Adjustment of the Township of  
15 Rockaway, that it does hereby make the following  
16 findings of fact and conclusions of law:

17 1. The property is a corner lot,  
18 thereby having two (2) front yards, by ordinance  
19 definition, and the Applicants have suggested  
20 sufficient reasons for the Board to conclude that the  
21 property is in a hardship situation, that the  
22 Applicants have satisfied the statutory positive  
23 criteria requirement.

24 2. Based on the testimony, there will  
25 be no adverse consequences, especially as there will

1 impact on sight distance, so the negative criteria  
2 are satisfied.

3 NOW, THEREFORE, BE IT RESOLVED, by the  
4 Zoning Board of Adjustment of the Township of  
5 Rockaway, that it does hereby GRANT "C" variance  
6 approval as follows:

7 Section 54-30.6(G)2, front yard fence  
8 height, maximum four (4) feet permitted, Applicant  
9 proposes six (6) feet front yard fence height.

10 These approvals are based upon survey  
11 dated November 28, 2000, by Jack Held, P.L.S., which  
12 survey has been marked up by hand by the Applicant,  
13 depicting the fence setbacks.

14 BE IT FURTHER RESOLVED, by the Zoning  
15 Board of the Township of Rockaway, that the aforesaid  
16 approvals are granted, based upon the following  
17 conditions:

18 1. The Applicant shall comply with any  
19 and all representations made to the Board orally or  
20 in writing, during the course of the hearing on this  
21 matter.

22 2. This application is subject to  
23 approval by any other governmental agency that may  
24 have jurisdiction, if any, including any Municipal,  
25 County, State or Federal agency.

1                   3. Building permits shall not issue,  
2 if required, unless there is confirmation that a)  
3 property taxes are current and b) the escrow account  
4 for professional review fees is current, with  
5 sufficient fees to pay all current and anticipated  
6 professional fees.

7                   4. The Applicant shall comply with any  
8 and all requirements regarding fire codes and  
9 building codes, given the proximity of the structure  
10 to existing property lines.

11                   CHAIRMAN SMOLINSKI: Okay. Shall we  
12 vote on each one?

13                   MR. BELL: Yes.

14                   CHAIRMAN SMOLINSKI: I will make a  
15 motion to approve the resolution.

16                   VICE CHAIRMAN TAHAN: Second.

17                   CHAIRMAN SMOLINSKI: All in favor?

18                   (Chorus of ayes.)

19                   CHAIRMAN SMOLINSKI: Next is BOA  
20 #22-03.

21                   MR. BELL: This is a resolution of the  
22 Zoning Board of Adjustment, Township of Rockaway --

23                   CHAIRMAN SMOLINSKI: Ray is off that  
24 one, Jim, and Tim.

25                   MS. KAHN: Ray can't second that.

1 CHAIRMAN SMOLINSKI: Just got to do the  
2 vote. That we got to be careful. So you got Jason  
3 on that one, Susan is good, Katie is good, and that's  
4 it, we got three.

5 MR. BELL: This is the second time.  
6 Hopefully the next meeting, we'll have other members.

7 MR. LOFTUS: If there is a copy of the  
8 recording, if you supplied it to the other board  
9 members who are absent, that will help push it along  
10 next time.

11 MR. BELL: Yes.

12 CHAIRMAN SMOLINSKI: All right. The  
13 next one is #22-03, David.

14 MS. KAHN: We're holding that.

15 CHAIRMAN SMOLINSKI: That's DeVenzia,  
16 we have to hold?

17 MR. BELL: Yes.

18 CHAIRMAN SMOLINSKI: So the next one is  
19 #22-08?

20 MR. BELL: No, #22-06.

21 CHAIRMAN SMOLINSKI: #22-06, we're  
22 holding.

23 MR. BELL: How about DeVenezia, do we  
24 have the votes on that?

25 MS. KAHN: We have to hold that too.

1 That's the same night.

2 CHAIRMAN SMOLINSKI: All right. Next  
3 one, that's going to be Lakatos, #22-06.

4 MR. BELL: This is a resolution of the  
5 Zoning Board of Adjustment, Township of Rockaway,  
6 approving the application of Richard and Ann Marie  
7 Lakatos for a "C" variance for front yard setback,  
8 variance for a front porch and small addition to a  
9 single family dwelling.

10 WHEREAS, Richard and Ann Marie Lakatos  
11 (hereinafter referred to as "Applicants") made  
12 application under NJSA 40:55D-70(c) for "C" variance  
13 approval for a variance to construct a new porch and  
14 small addition to an existing single-family dwelling;  
15 and

16 WHEREAS, the subject property is known  
17 as 13 Hillside Road, also known as Block 40702, Lot  
18 9, in Rockaway Township; and

19 WHEREAS, the Applicants represented  
20 themselves; and

21 WHEREAS, the Board is in receipt of the  
22 following reports:

23 Water/Sewer Department, approved with  
24 no comments.

25 Fire Department, approved with no



1        comments.

2                                Health Department, approved with one  
3        comment, "due to proximity of the well, caution  
4        should be taken when working and digging in that  
5        area."

6                                Building Department, approved with no  
7        comments.

8                                David Novak, P.P., A.I.C.P., report  
9        dated May 10, 2022 with comments.

10                                WHEREAS, a hearing was held on June 21,  
11        2022, and the application having been deemed complete  
12        by the Board prior to commencing the public hearing,  
13        and the Board subsequently having heard the  
14        Applicant's case, including the following evidence  
15        and testimony:

16                                1.    Richard Lakatos and Ann Marie  
17        Lakatos testified as the Applicants.    He would like  
18        to put an eight foot porch on his house with a small  
19        addition.

20                                2.    The Applicants had previously  
21        requested similar variance relief, but the variance  
22        expired prior to the Applicant filing for permits, so  
23        a new application was filed.

24                                3.    He presented several photographs of  
25        the property and the neighborhood, and noted that

1 there were no dwellings across the street from the  
2 property and there were similar properties in the  
3 neighborhood with porches similar to the proposed  
4 porch of the Applicants.

5 4. Mr. Novak asked about a "trail"  
6 shown on a map of the property and Mr. Lakatos  
7 explained that it may be due to some local historical  
8 use, but that there is no actual trail on the  
9 property at this time.

10 5. As noted in Mr. Novak's report and  
11 confirmed by the Applicant, the Applicants propose a  
12 front yard setback of 51 feet, where the Zone  
13 requires 65 feet and the existing setback is 54 feet.

14 6. The hearing was opened to the  
15 public and there were no comments.

16 NOW, THEREFORE, BE IT RESOLVED, by the  
17 Zoning Board of Adjustment of the Township of  
18 Rockaway, that it does hereby make the following  
19 findings of fact and conclusions of law, which are  
20 actually a reiteration of the prior findings:

21 1. The house on the property is  
22 located at the front of the property, and there is a  
23 substantial depth to balance of the property, and the  
24 rear yard is vacant. Accordingly, the location of  
25 the house is such that the Board can find that there

1 is a hardship; if the house were farther back within  
2 the potential building envelope, no variance would be  
3 needed. Additionally, the elimination of a hazardous  
4 condition involving ice buildup during the winter, as  
5 described by the Applicant, warrants granting the  
6 variance.

7 2. With respect to the negative  
8 criteria, the magnitude of the proposed variance is  
9 certainly modest and the Board finds that there was  
10 little to no impact upon the zone plan and zoning  
11 ordinance. There would also be no detrimental impact  
12 upon the public good, and the Board notes that there  
13 was no public comment on the application.

14 NOW, THEREFORE, BE IT RESOLVED, by the  
15 Zoning Board of Adjustment of the Township of  
16 Rockaway, that it does hereby Grant "C" variance  
17 approval as follows:

18 Section 54-30.22.e.5, front yard  
19 setback 65 (sixty-five) feet required, 51 (fifty-one)  
20 feet proposed.

21 This approval is based upon an  
22 architectural plan prepared by Zimmerman Architects,  
23 dated February 15, 2022, with no revision dates, as  
24 well as a marked-up portion of an untitled map or  
25 survey depicting the Applicant's lot, and has the

1 notation "Revised 2/15/22."

2 BE IT FURTHER RESOLVED, by the Zoning  
3 Board of the Township of Rockaway, that the aforesaid  
4 approvals are granted, based upon the following  
5 conditions:

6 1. The Applicant shall comply with any  
7 and all representations made to the Board orally or  
8 in writing, during the course of the hearing on this  
9 matter.

10 2. This application is subject to  
11 approval by any other governmental agency that may  
12 have jurisdiction, if any, including any Municipal,  
13 County, State or Federal agency.

14 3. Building permits shall not issue,  
15 if required, unless there is confirmation that a)  
16 property taxes are current and b) the escrow account  
17 for professional review fees is current, with  
18 sufficient fees to pay all current and anticipated  
19 professional fees.

20 CHAIRMAN SMOLINSKI: This one we're  
21 good.

22 MR. LOFTUS: We have six.

23 CHAIRMAN SMOLINSKI: We have six:  
24 Katie, Susan, Tim, Jim, Ray, and me. We're all good  
25 on this one.

1 I make a motion to approve.

2 MS. PLATTS: Motion.

3 CHAIRMAN SMOLINSKI: We got a second?

4 MR. SCHERWA: Second.

5 CHAIRMAN SMOLINSKI: All in favor that  
6 can.

7 (Chorus of ayes.)

8 CHAIRMAN SMOLINSKI: All right. BOA  
9 #22-07.

10 MR. BELL: This is a resolution of the  
11 Zoning Board of Adjustment, Township of Rockaway -- I  
12 spelled Rockaway incorrectly, Shelley.

13 MS. KAHN: What was that?

14 MR. BELL: I spelled Rockaway  
15 incorrectly. Can you make that change?

16 Approving the application of Bill and  
17 Mindi Scielso for a "C" variance for impervious  
18 coverage with regard to a pool and patio.

19 WHEREAS, Bill and Mindi Scielso  
20 (hereinafter referred to as "Applicants") made  
21 application under NJSA 40:55D-70(c) for "C" variance  
22 approval for impervious coverage;

23 and

24 WHEREAS, the subject property is known  
25 as 35 Robin Street, also known as Block 11113, Lot 7,

1 in Rockaway Township; and

2 WHEREAS, the Applicants represented  
3 themselves; and

4 WHEREAS, the Board is in receipt of the  
5 following reports:

6 Water/Sewer Department, approved with  
7 one comment, "please do not bury peepholes for  
8 sanitary sewer if located in your backyard."

9 Fire Department, approved with no  
10 comments.

11 Health Department, approved with no  
12 comments.

13 Health Department, approved with one  
14 comment, "due to proximity of the well, caution  
15 should be taken when working and digging in that  
16 area."

17 Building Department, approved with no  
18 comments.

19 David Novak, P.P., A.I.C.P., report  
20 dated May 10, 2022 with comments.

21 Peter Ten Kate, P.E., report dated  
22 June 10, 2022 with comments.

23 WHEREAS, a hearing was held on June 21,  
24 2022, and the application having been deemed complete  
25 by the Board prior to commencing the public hearing,

1 and the Board subsequently having heard the  
2 Applicant's case, including the following evidence  
3 and testimony:

4 1. Bill Scielso and Mindi Scielso  
5 testified as the Applicants. The Applicant installed  
6 a pool and pavilion. Previously, a deck was  
7 installed. The pool brought the impervious up to  
8 25%, and the pavilion was constructed prior to  
9 obtaining approval for a further increase in  
10 impervious coverage. A variance application was  
11 filed subsequent to construction. The pool and  
12 pavilion have been in place for approximately one (1)  
13 year.

14 2. Mr. Novak noted that the property  
15 is undersized for the zone and asked the Applicants  
16 if other properties in the neighborhood have similar  
17 improvements, and they responded affirmatively.

18 3. The Applicants testified that there  
19 are existing seepage pits installed by the  
20 Applicants' contractor. There are pool pavers that  
21 do not drain toward any neighbors' properties.

22 4. The hearing was opened to the  
23 public and there were no comments.

24 NOW, THEREFORE, BE IT RESOLVED, by the  
25 Zoning Board of Adjustment of the Township of

1 Rockaway, that it does hereby make the following  
2 findings of fact and conclusions of law, which are  
3 actually a reiteration of the prior findings:

4 1. The lot is undersized, and although  
5 the property does not suffer from pronounced hardship  
6 elements other than size, the Board notes that there  
7 are essentially no negative elements, as the  
8 testimony was that other properties in the area have  
9 had similar improvements, and they have no issues  
10 with runoff or drainage from this level of impervious  
11 coverage. On balance, the Board finds that there is  
12 sufficient cause for variance relief.

13 2. Given the absence of any adverse  
14 effect, the Board does not see a need for any new  
15 drainage requirements.

16 NOW, THEREFORE, BE IT RESOLVED, by the  
17 Zoning Board of Adjustment of the Township of  
18 Rockaway, that it does hereby GRANT "C" variance  
19 approval as follows: Section 54-30.23.e.9, front  
20 impervious coverage, 25% maximum permitted, 38%  
21 existing and proposed.

22 This approval is based upon plans of  
23 Careaga Engineering, dated May 11, 2021.

24 BE IT FURTHER RESOLVED, by the Zoning  
25 Board of the Township of Rockaway, that the aforesaid



1       approvals are granted, based upon the following  
2       conditions:

3                   1.   The Applicants shall comply with  
4       any and all representation made to the Board orally  
5       or in writing, during the course of the hearing on  
6       this matter.

7                   2.   This application is subject to  
8       approval by any other governmental agency that may  
9       have jurisdiction, if any, including any Municipal,  
10      County, State or Federal agency.

11                  3.   Building permits shall not issue,  
12      if required, unless there is confirmation that a)  
13      property taxes are current and b) the escrow account  
14      for professional review fees is current, with  
15      sufficient fees to pay all current and anticipated  
16      professional fees.

17                  CHAIRMAN SMOLINSKI:   This is the same  
18      night.   So this one is all in favor that can, same as  
19      the last one.

20                  Do we have a motion to approve?

21                  MR. LOFTUS:   Motion to approve.

22                  VICE CHAIRMAN TAHAN:   Second.

23                  CHAIRMAN SMOLINSKI:   All in favor?

24                  (Chorus of ayes.)

25                  CHAIRMAN SMOLINSKI:   Okay.   Then we got

1 #22-04, Hoffman. This was the same night, so it's  
2 going to be the same ones.

3 MR. BELL: Okay. This is a resolution  
4 of the Zoning Board of Adjustment, Township of  
5 Rockaway, approving the application of David Hoffman  
6 for "C" variance relief to construct a new detached  
7 garage.

8 WHEREAS, David Hoffman (hereinafter  
9 referred to as "Applicant") made application under  
10 NJSA 40:55D-70(c) for "C" variance approval for a new  
11 detached garage; and

12 WHEREAS, the subject property is known  
13 as 135 Lake Shore Drive, also known as Block 21806,  
14 Lot 10, in Rockaway Township; and

15 WHEREAS, the Applicant represented  
16 himself; and

17 WHEREAS, the Board is in receipt of the  
18 following reports:

19 Water/Sewer Department, reviewed with  
20 one comment, "Please do not build over your curb box  
21 and/or bury your water meter."

22 Fire Department, approved with no  
23 comments.

24 Health Department, approved with no  
25 comments.

1 Building Department, approved with no  
2 comments.

3 David Novak, P.P., A.I.C.P., report  
4 dated May 10, 2022 and June 13, 2022 with comments.

5 Peter C. Ten Kate, P.E. report dated  
6 May 5, 2022, revised June 14, 2022, with comments;.

7 WHEREAS, a hearing was held on June 21,  
8 2022, and the application having been deemed complete  
9 by the Board prior to commencing the public hearing,  
10 and the Board subsequently having heard the  
11 Applicant's case, including the following evidence  
12 and testimony:

13 1. David Hoffman testified as the  
14 Applicant. He explained the proposal to construct a  
15 new three (3) car garage in the front yard of the  
16 property.

17 2. Jess Symonds, P.E. testified as the  
18 Applicant's engineer. He explained that the  
19 Applicant proposed a garage in the front yard and an  
20 18'x18' gazebo in the rear yard. The lot is  
21 undersized for the zone and he regarded the frontage  
22 as unusual, due to a prior relocation of Lake Shore  
23 Drive. He described the current drainage patterns.  
24 The driveway will be partially relocated. He  
25 reviewed the impervious coverages.

1                   3. In response to Mr. Novak's  
2 questions and reports, Mr. Symonds stated that the  
3 Applicant did not propose pervious pavers as the  
4 driveway is very long, and the other driveways in the  
5 area are all asphalt. For aesthetic purposes the  
6 Applicant proposed asphalt.

7                   4. Mr. Novak referenced Section  
8 54-29.13.d.1, regarding the slope of unpaved areas  
9 adjacent to buildings, which is a design standard and  
10 does not require variance relief, and inquired if the  
11 Applicant was addressing that and Mr. Symonds  
12 described how the Applicant was addressing drainage.

13                   5. Mr. Novak inquired about DEP  
14 approvals, given the location of the riparian zone.  
15 Mr. Symonds stated that the gazebo would not require  
16 a separate approval, but would be under the "permit  
17 by rule" classification of DEP. For the Garage, due  
18 to the "truncated" riparian zone regulations, it  
19 would also be a "permit by rule" situation.

20                   6. The Applicant is under 5,000 square  
21 feet, so it will not require Morris County Soil  
22 Erosion/Sediment Control Approval.

23                   7. The Chairman asked about the  
24 existing garage. Mr. Hoffman said that the existing  
25 garage would remain and will be used for storage.

1 This will be helpful as the house does not have a  
2 basement and has limited attic space. Mr. Hoffman  
3 indicated that additional storage of the new garage  
4 is an incentive for this application.

5 8. The Chairman asked why the garage  
6 is not attached, as that is the prevailing pattern  
7 along the lake shore. Mr. Hoffman stated that he  
8 would like to do that, but the front door and the  
9 stairs cannot be moved, so locating the garage on  
10 either side would not provide enough width for the  
11 garage.

12 9. The Chairman asked about any other  
13 opportunities to reduce the impervious coverage. Mr.  
14 Hoffman said that he did not foresee any drainage  
15 problems, and could not come up with any other  
16 solutions.

17 10. Mr. Ten Kate asked about pulling  
18 the driveway about two (2) feet off the property  
19 line, and that would reduce the impervious somewhat,  
20 and there would still be a sufficient backup area.  
21 Mr. Hoffman agreed to do so as a condition of  
22 approval, and the Applicant will work with the Board  
23 engineer to agree on the reduced amount.

24 11. Mr. Novak noted that the planter  
25 box is located in the front yard setback.

1                   12. Bill Byrne testified as the  
2 Applicant's architect. The garage will be 22 feet in  
3 width, and 35 feet deep. The doors will be 9 feet  
4 wide. There are three (3) bays. There is an  
5 internal stairway to the loft for storage. There is  
6 a front facing gable. The style is designed for  
7 consistency with the existing house. He reviewed the  
8 various elevation drawings that were submitted to the  
9 Board.

10                   13. He also addressed whether or not  
11 the garage could be attached to the house and  
12 expressed the same position as Mr. Hoffman, in terms  
13 of the rationale for a detached garage.

14                   14. Mr. Novak noted the maximum garage  
15 height was 16 feet, and the proposed garage is  
16 proposed at 15 feet, 10 inches.

17                   15. Mr. Byrne addressed the pavilion  
18 proposed for the rear of the property. Mr. Novak  
19 asked if there would be gutters and Mr. Byrne stated  
20 that gutters can be problematic for collecting the  
21 rainwater. Mr. Novak stated that the issue was  
22 whether or not rainwater would go onto adjoining  
23 properties. Mr. Hoffman stated that the water would  
24 drain to the west, south and north of the pavilion,  
25 onto his property, and would not drain onto other

1 properties.

2 16. Mr. Hoffman noted several trees  
3 that would need to be removed.

4 17. The garage will not be used for as  
5 a dwelling unit. The Applicant may put in heat and a  
6 bathroom on the first floor, but not for residential  
7 occupancy.

8 18. Mr. Novak reviewed the variances  
9 that he found that are required by the application:

10 Section 54-30.8A(3) Accessory  
11 structure within the front yard.

12 Section 54-30.29E(9) Maximum  
13 impervious coverage, 25% permitted, 50% proposed,  
14 with some slight reduction due to the driveway  
15 alteration.

16 Section 54-30.8A(1) Rear yard  
17 accessory structure area, 25% of rear yard permitted,  
18 58.4% proposed.

19 Section 54-30.10J Shore Line  
20 Development, no buildings within 100 feet of any body  
21 of water greater than one acre.

22 19. There was some discussion as to  
23 the pavilion (also referred to as a gazebo or pergola  
24 during the hearing) and whether it would require a  
25 variance, as it may be structure but is not a

1 building. Since it is not a building, and since the  
2 garage was not within 100 feet of the shoreline, it  
3 was determined that the Applicant does not require a  
4 shoreline development variance.

5 20. There was further discussion as to  
6 the impervious coverage, and if the Applicant could  
7 reduce the scope of the impervious coverage variance,  
8 so that it would not exceed 45%. Mr. Hoffman, after  
9 consultation with his professionals, suggested that  
10 he could install a strip of pervious pavers in front  
11 of the garage that would be twelve feet wide, and  
12 would be overall 420 square feet. That along with  
13 the 2 feet reduction in driveway width as noted  
14 earlier would be 520 square feet of impervious  
15 coverage removed from the original proposal, so the  
16 impervious coverage would be 45% overall.

17 21. The hearing was opened to the  
18 public and there were no comments.

19 NOW, THEREFORE, BE IT RESOLVED, by the  
20 Zoning Board of Adjustment of the Township of  
21 Rockaway, that it does hereby make the following  
22 findings of fact and conclusions of law:

23 1. The property is long and narrow,  
24 and is obviously constrained by the lake existing to  
25 the rear. The location of the existing house



1 effectively narrows the Applicant's options with  
2 regard to any new structures on the property, and the  
3 house being on a slab does limit the Applicant's  
4 amount of storage space. The positive criteria for  
5 hardship are satisfied.

6 2. Any impact on adjoining properties  
7 on those in the area would be negligible, at most.  
8 There should be no runoff on such properties, and the  
9 garage is consistent with other similar lakeshore  
10 properties in the area. The negative criteria are  
11 satisfied.

12 NOW, THEREFORE, BE IT RESOLVED, by the  
13 Zoning Board of Adjustment of the Township of  
14 Rockaway, that it does hereby GRANT "C" variance  
15 approval as follows:

16 Section 54-30.8A(3) Accessory  
17 structure within the front yard.

18 Section 54-30.29E(9), Maximum  
19 impervious coverage, 25% permitted, 50% proposed,  
20 with some slight reduction due to the driveway  
21 alteration.

22 Section 54-30.8A(1) Rear yard  
23 accessory structure area, 25% of rear yard permitted,  
24 58.4% proposed.

25 These approvals are based upon variance

1 plans dated February 2, 2022, revised June 1, 2022,  
2 by Ferriero Engineering, Inc. and architectural  
3 renderings prepared by Byrne Design Associates, LLC,  
4 dated February 4, 2022.

5 BE IT FURTHER RESOLVED, by the Zoning  
6 Board of the Township of Rockaway, that the aforesaid  
7 approvals are granted, based upon the following  
8 conditions.

9 1. The Applicant shall comply with any  
10 and all representations made to the Board orally or  
11 in writing, during the course of the hearing on this  
12 matter.

13 2. This application is subject to  
14 approval by any other governmental agency that may  
15 have jurisdiction, if any, including any Municipal,  
16 County, State or Federal agency.

17 3. Building permits shall not issue,  
18 if required, unless there is confirmation that a)  
19 property taxes are current and b) the escrow account  
20 for professional review fees is current, with  
21 sufficient fees to pay all current and anticipated  
22 professional fees.

23 4. Consistent with the water  
24 department report, the Applicant shall not build over  
25 the curb box or bury the water mater.

1                   5. The garage shall not be used for  
2 residential dwelling purposes, although the Applicant  
3 may install plumbing and heating on the first floor.

4                   6. The Applicant shall "pull back" two  
5 feet of the proposed driveway from the property line,  
6 as discussed during the hearing, to reduce the  
7 proposed impervious coverage.

8                   It is up to the Applicant whether or  
9 not it will utilize impervious pavers in the front of  
10 the garage or some other configuration of the  
11 pervious pavers, as a further to ensure that the  
12 impervious coverage does not exceed 45%.

13                   VICE CHAIRMAN TAHAN: I make a motion to  
14 approve.

15                   CHAIRMAN SMOLINSKI: Ray Tahan is the  
16 first.

17                   MR. LOFTUS: Second.

18                   CHAIRMAN SMOLINSKI: We have a second  
19 by Jim.

20                   All in favor that can?

21                   (Chorus of ayes.)

22                   12. New Business

23                   CHAIRMAN SMOLINSKI: Okay. Now, we've  
24 got any new business?

25                   MR. BELL: Yes, do I, but I want to do

1 it off the record.

2 13. Old Business

3 CHAIRMAN SMOLINSKI: Any old business?

4 No old business.

5 14. Adjourn

6 CHAIRMAN SMOLINSKI: Can I get a motion  
7 to adjourn?

8 VICE CHAIRMAN TAHAN: Motion to adjourn.

9 MS. PLATTS: Second.

10 CHAIRMAN SMOLINSKI: All in favor?

11 (Chorus of ayes.)

12 (Whereupon, the Board of Adjustment  
13 Meeting is adjourned at 8:06 p.m.)

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C E R T I F I C A T I O N

I, KIM O. FURBACHER, License No. XIO1042, a Certified Court Reporter, Registered Diplomate Reporter, Certified Realtime Court Reporter, and Notary Public of the State of New Jersey, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with Regulation 13:43-5.9 of the New Jersey Administrative Code.



KIM O. FURBACHER, C.R.C.R., C.C.R., R.D.R.  
License #XIO1042, and Notary Public  
of New Jersey

My Commission Expires:  
7/11/2024

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