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Dr. Moore give his testimony at this time. Dr. Moore stated that he and his wife have owned the property for 24 years. Attorney Gibbons asked Dr. Moore to summarize his application to the board. Dr. Moore said his application was denied. Attorney Gallina said his application was approved by resolution on February 27, 2013. When the improvements to the property were done, it was found that they were not in conformance with the plans that were submitted & approved by the board which brought him back to this board for the variances he needed. Attorney Gibbons asked Dr. Moore if these plans are the amended plans. Dr. Moore said yes. Since the house had to be raised after Hurricane Irene, they had to have a raised platform which was built for the air conditioner unit. They had to go up five feet. He removed the oil service which was a hazard in case of another flood and installed propane tanks instead.

Attorney Gibbons said at one point there was a generator. Dr. Moore said yes. Attorney Gibbons asked if there has been any expansion of the home. Dr. Moore said no. Attorney Gibbons noted that there are pre-existing conditions on the property, referring to lot width, setbacks side yards, rear & front yard and lot area. Attorney Gibbons asked Dr. Moore to clarify that what they are seeking is relief for the A.C. Unit and to install the propane tanks on a concrete base within 5' of the property line. Dr. Moore said yes. Attorney Gibbons asked Dr. Moore if he was going to intensify the use of the property. Dr. Moore said no. Dr. Moore said his wife has unfortunately a chronic pulmonary condition and she requires extreme filtration of an A.C. Unit which they have installed and is ready to operate once they get approval. Ms. Glashoff noted that Dr. Moore hasn't been sworn in. Attorney Gallina swore in Dr. Moore at this time. Ms. Glashoff asked if Engr. Essig was going to give testimony. Since he will be giving testimony, Attorney Gallina swore in Engr. Essig. At the conclusion of Dr. Moore's testimony, Chairman Terzuolo asked if the board had questions of the witness. Mr. Abuchowski stated that the variance is for the utility platform which will house the AC Unit. Dr. Moore said yes. Mr. Abuchowski noted the house is 3.1' from the property line and with the utility platform it will be 1.8/10 from the property line. The pad for the propane tanks will be 5' from the property line.

Mr. Abuchowski asked which three variances the applicant is requesting. Attorney Gibbons stated the three 3 variances are: 1. Utility Deck, 2. the Propane Tanks and 3. Concrete base for the propane tanks which will be 5' off the property line. Attorney Gibbons noted they will be removing some of the Utility Deck since a small part was over the property line. Mr. Perry asked if the 22" that needs to be removed have been taken care of. Engineer Essig said no, once you take the 22" off, the 1.8' is the minimum that it will be to the property line. Engineer Essig said before the Hurricane it was always 1.8'. Mr. Perry asked about the generator and asked if it is now not part of the plan. Attorney Gibbons said yes, it has been removed. Chairman Terzuolo said he has a problem, which is not being able to reconcile the fact that removing the generator and the statement Dr. Moore's made about his wife needing the extreme filtration of the air conditioning unit. Chairman Terzuolo asked Dr. Moore why he was giving up the generator when his wife needs the air conditioner for medical reasons. Dr. Moore said if they lose power they can go to their other residence. Chairman Terzuolo said because of the size of these lots, you need a variance for everything.

Chairman Terzuolo stated when the board originally granted the variances it was to do whatever had to be done. He said that was his recollection. Engineer Essig interjected and said the reason for the size of the platform was to be able to read the electric meter. Engineer Essig said the Electric Co. needs so many feet in order to get around the air conditioning unit. The carpenter made the platform as large as he could to accommodate. Chairman Terzuolo asked if the board had any additional questions. There were none. Chairman Terzuolo opened the hearing to the public for questions of the witness. There were none.

Attorney Gibbons had Engineer Essig give testimony at this time. Engineer Essig said that all the bulk variances have been discussed. The Moore property consists of 1/3 acre in a 3 acre zone. The propane tank will now be closer to the house and is outlined on the plan. The tank will be 5' off the property line. At the conclusion of Engineer Essig's testimony, there were no questions of the board. Planner Bolan asked to clarify something. Planner Bolan noted the house to the property line is actually 2.4', not 3.1' at the back corner and asked if that was 1.8'. Engineer Essig said when Dr. Moore bought the property it was 1.8' and in raising the house it moved a little. The offsets have changed a little bit. Chairman Terzuolo asked if there were any questions of the witness. There were none.

At this time, Chairman Terzuolo had Construction Official Charles Rogers sworn in to give testimony on behalf of the board. Mr. Rogers stated he is the Construction Official for

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Tewksbury Township and Lebanon Township. Mr. Rogers said this job is full of hardship. Dr. Moore had a flood due to Hurricane Irene. The house was damaged more than 50% and according to the law (FEMA/DEP). Mr. Rogers said that Dr. Moore had to raise the house if he wanted to keep his FEMA Insurance. Dr. Moore had the house raised, came in for a variance before this board. On the variance plan he showed the location of the air conditioner. Mr. Rogers gave a handout to the board which said that utilities can not be below the elevations and that it had to show that the units would be on an elevated platform. The electrical box is in the same area. A set of steps were installed in order to reach and read the electrical meter. Mr. Rogers showed the board a picture of another house that was raised 10'. Mr. Rogers said from attending seminars that you have to have access to these meters and the access has to be safe. They also said they want them to be on a working platform that won't go under water and won't float away.

Mr. Rogers said that the platform went over the property line and which he was informed by the next door neighbor. Mr. Rogers informed Dr. Moore that he would have to take care of the infraction. Regarding the propane tanks, they have to be on a concrete base and anchored down to keep them from floating away. This is a requirement. Mr. Rogers said Dr. Moore is so compromised with this job that he deserved the variances he is requesting. Mr. Rogers stated regarding the generator that everyone has one but it is up to him on whether he chooses to have one. Mr. Rogers stated when you have health problems it is important to have a generator for the air conditioner and for heat. At the conclusion of the testimony, Chairman Terzuolo asked if the board had questions. Mr. Maurizio said that Mr. Rogers was very thorough. Mr. Abuchowski asked if there was another place to have the generator. Mr. Rogers said you want to have the generator as close to the electrical panel as possible. Also, you can't have a generator near a propane tank because of ignition. At this time, Attorney Gallina marked the following into evidence: **B1-Submission by Construction Official Rogers, ASCE-SE1 24-05-Section 7-Utilities General Manual Requirements. Page 76 of the General Manual-Photos of the meter location.** Chairman Terzuolo asked if Planner Bolan had any questions. Planner answered no. Chairman Terzuolo opened the hearing to the public for questions. There were none.

Planner Bolan was sworn in to give testimony on behalf of the board. Planner Bolan said this is a classic C1 variance. There is no impact of the zone plan or the Master Plan. Planner Bolan noted that the lots along Raritan River Road are extremely undersized. Planner Bolan said it is not uncommon to grant relief for these lots. Chairman Terzuolo asked if the board had questions of Planner Bolan. There were none. Chairman Terzuolo opened the hearing to the public for questions. There were none.

Chairman Terzuolo opened the hearing to the public for statements and comments at this time. The following person was sworn in to give testimony: Gene Slowinski of 186 Raritan River Road. Attorney Gallina noted for the record that Mr. Slowinski is the spouse of board member Kathryn Koch. Mr. Slowinski thanked the board for giving him the opportunity to oppose Dr. Moore's application. Mr. Slowinski said he opposes the platform and the placement of the air conditioning condenser which is on the north side of Dr. Moore's property which is between his house and Dr. Moore's. Mr. Slowinski said he doesn't mean that Dr. Moore's shouldn't have an AC unit but the placement of the unit. Mr. Slowinski said the correct term for this is a self created hardship and that he will go through each point and will use this term many times. Mr. Slowinski said he will start with self created hardship. He said he thinks the application is looking for the board to fix a self created hardship and a self created hardship is a hardship that results from action taken by the applicant or property owner and the deck fits that definition. The deck was built without giving the neighbors the required notice and opportunity to comment and also, without the required engineering study and built without Board of Adjustment approval. Per Mr. Slowinski it is a pain in the neck to fix a mistake, it's money, time, permits and hassle.

If the Board approves this application, Dr. Moore's hardship goes away, but the hardship Mr. Slowinski said it will get shifted to him. Mr. Slowinski said he believes there is a solution but this application isn't it. He asked that Attorney Gallina guide the board as to whether or not the board can use a self inflicted hardship to grant the variance application. Attorney Gallina said the board will discuss that during deliberations. Mr. Slowinski said he was going to give the board a summary of his position. Dr. Moore has created a hardship for himself by building a platform in the setback without giving the neighbors the required notice and opportunity to comment. That is why he is objecting now after platform was built and would say the same thing before it was built. Dr. Moore did not require an engineering study that is why the platform was built over the property line. And finally Dr. Moore did not follow the JCP&L requirements for building a utility platform for his electric meter. If the board approves this application it will

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create a hardship for him per Mr. Slowinski. Mr. Slowinski asked for the board to reject this application for 2 reasons. First, it shifts the burden from Dr. Moore to him. Second, Mr. Slowinski said if he can work together with Dr. Moore they could find a mutual acceptable solution which would minimize the burden to both of them. Mr. Slowinski said he was advised that the board will use 3 criteria's in deciding whether to grant this application. The first, do the benefits outweigh the detriments, second, does the application conform to all relative regulations and third, are the neighbors offended. Mr. Slowinski noted there are errors on the application and went over them for the board. The board is asked to make decision based on the documents they have in front of them and they need to be correct. Mr. Slowinski reviewed for the board the errors that appear on the application. Mr. Slowinski said the application does not show what the JCP&L requirements are for building a utility platform. Mr. Slowinski went on to say that the platform does not meet JCP&L requirements. Mr. Slowinski referred to question #6 on the application. "If the relief is granted can it be granted without substantial detriment to the public good and without substantially impairing the intent and plan of the zoning ordinance and will the relief if granted offend adjoining property owners in anyway". Mr. Slowinski said the answer that is on the application is "the whole neighborhood has changed to meet the flood hazard threat. The need for emergency services should be reduced". Mr. Slowinski noted that both answers on the question are wrong and explained to the board why they are wrong and that Dr. Moore did not answer the question about the neighbors being offended. Mr. Slowinski said he is offended.

Mr. Slowinski noted that he is now going to refer to the air conditioner compressor. The platform has been built, the air conditioning compressor is not on the platform but the generator is on the platform. Mr. Slowinski said he had photos he would like to share with the board. Attorney Gallina marked the following into evidence: **01-5** photo showing the location of the platform to the proximity to Mr. Slowinski house. All photos were taken from the Slowinski property. Mr. Slowinski said the 2nd floor roof line is a clam shell shape. This acts like a megaphone and collects sound, amplifies it and directs it into his bedroom window. Engineer Essig objected to the comment and asked if Mr. Slowinski was an engineer. Attorney Gallina said the board will hear the comment but it will go to it's weight. The next photo **02-**with the megaphone affect is 15.5' from the bedroom window. Mr. Slowinski said he has no problem with the air conditioner except for the location. Mr. Slowinski gets to hear the air conditioner compressor go on and off all night long through the megaphone 15.5' from my bedroom window. Attorney Gallina asked if the photo was taken from the bedroom window. Mr. Slowinski said yes. Mr. Slowinski said he believed he and Dr. Moore could find another location for the A.C. compressor because it is offensive to him and finding another location that would be less offensive. Mr. Slowinski said that he hopes that he and Dr. Moore could find a jointly agreeable solution and come back to the board next time.

Mr. Slowinski asked if there were any questions regarding the compressor. Mr. Kozlowski asked if the compressor has been installed. Mr. Slowinski said no, but the generator is on the platform and it has been running when we had a blackout. Mr. Slowinski was informed by Attorney Gibbons that the generator is being removed so it is not an issue. At this point there was some heated discussion regarding the platform and the generator. Mr. Slowinski said that the general contractor needs to know of JCP&L requirements. Mr. Slowinski said the steps leading up to the platform are only 2' wide and the requirement of JCP&L is 3' in width. Mr. Slowinski said a Union Meter Reader can refuse to go up those steps. All Dr. Moore has to do is widen the steps. But in widening the steps Dr. Moore will be encroaching on the property line. Lastly, there were 4 houses that were destroyed by the Hurricane. They were able to get FEMA monies. The Township got a grant which helped those home owners and they were also able to get an additional \$30,000.00 for rising of each of those houses which was greatly appreciated. Mr. Slowinski summarized his comments.

Chairman Terzuolo asked if the board had questions of Mr. Slowinski. Mr. Kozlowski asked if Dr. Moore had an air conditioner before the Hurricane. Dr. Moore interjected and said yes long before Mr. Slowinski bought his house and was in the same location as now. Dr. Moore said that when they built the new house it was 8' closer to his property line then the old house. Dr. Moore said Mr. Slowinski created his own hardship by moving the house closer to the property line. Mr. Kozlowski asked Mr. Slowinski if any attempt was made to discuss this issue regarding the compressor before this meeting. The answer was yes. Attorney Gibbons said from speaking to his client, there have not been any negotiations that he is aware of. Mr. Slowinski responded stating that at the June meeting that was rescheduled due to the fact of not having a quorum to hearing this application, Dr. Moore, Ann Moore, Engr. Essig, Maryann Boles and himself met in The cafeteria to try and come to a better solution, unfortunately they were not able to resolve the issues. Ms. Glashoff asked where the cafeteria is located. Mr. Slowinski said he was referring

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to the kitchen. Mr. Abuchowski said the air conditioning unit is not the issue tonight only the deck and the propane tanks. Mr. Abuchowski said Dr. Moore can put the air conditioner anywhere. The issue with the deck is if it is approved and JCP&L approves it then that's it. We will have in our Resolution conditions for the approval that will have to be met. It will be out of our purview. Mr. Slowinski said the deck is a self created hardship. Mr. Abuchowski said the deck is because of the meter and if JCP&L doesn't like the deck, it is out of our hands. Chairman Terzuolo told Mr. Slowinski, Mr. Abuchowski is not arguing with you, he was asking a question given your testimony and basically stating where we are. Chairman Terzuolo said the board is here to consider the deck and the pad for the propane tanks. Mr. Slowinski said his argument is the deck. Attorney Gallina asked for clarification and asked was the air conditioner previously in that location before it was put on the deck. Mr. Slowinski said yes. Mr. Slowinski said his house was located in a different place then where it is now. Attorney Gallina said the only difference with the air conditioning unit is that it is now on the deck. Mr. Slowinski said it was in the same general location that it was in before the Hurricane. Mr. Perry said JCP&L hasn't objected to where it is. Attorney Gallina injected saying this is outside agency approvals. Mr. Perry said maybe the applicant won't want to have a meeting to discuss this. It is not in our purview to make that happen. Mr. Slowinski said he would just like the chance to negotiate. Attorney Gallina said it is not up to the board to make that happen.

Attorney Gibbon said he would like to bring Engr. Essig & Dr. Moore back to rebut comments made by Mr. Slowinski. Dr. Moore said when the Slowinski's changed the location of their house and brought it 6' closer to his house it was magnified by the previous air conditioner. Dr. Moore said he has changed the brand of the air conditioner which has a much lower decimal level compared to the other unit. This was done due to the objections of the Slowinski's. Dr. Moore said he has reached out to resolve that issue. Chairman Terzuolo stated that before Engr. Essig makes his comments, the board will take a brief recess. The board recessed at 9:00 p.m. When the board reconvened at 9:10 p.m. Engineer Essig said he would like to respond to comments made by Mr. Slowinski. Engr. Essig said the side yards are correct on the plan. Planner Bolan and Attorney Gallina agreed with Engr. Essig. Engr. Essig referred to the comment that the distance from the Slowinski bedroom is 15.5' to the Moore's air conditioner which is incorrect. Engr. Essig said the original air conditioner was right at the corner of the house before the Hurricane/flood. Engr. Essig stated the self imposed hardship is Mr. Slowinski not Dr. Moore's. The Slowinski's repositioned the house and built a much larger house then what was originally there. The original house was on an angle and further away from Dr. Moore's house. Ms. Glashoff injected stating that she has the pictures from the original application for the board to see. These were passed around to the board at this time. Engr. Essig said the air conditioning unit is very quiet with much lower decimal level. The noise level would only go about 3-4' and the Slowinski's bedroom window is about 20' away. Engr. Essig referred to the meeting that was held back in June in the kitchen. Engr. Essig said the suggestions that were presented were ridiculous. It was suggested that the air conditioning unit be placed in the garage over 150' away which was not practical. Mr. Maurizio asked if the automatic switch was going to be removed. The answer was yes. Mr. Locker asked if Engr. Essig was going to design a new deck. Engr. Essig said no, they are going to cut back on the exiting deck. Mr. Locker asked about JCP&L's specifications. Engr. Essig didn't know if there were any specifications. Engr. Essig clarified that the deck was not built under his supervision.

At the conclusion of the board's questions, Chairman Terzuolo had Attorney Gibbons give his summation at this time. Chairman Terzuolo announced that the evidence taking portion of the hearing is now closed. The board deliberated and during the deliberations noted that Dr. Moore did not create his own hardship. At the conclusion of the board's deliberations, motion by Mr. Abuchowski and seconded by Mr. Locker to grant the variances requested with the following conditions:

- a. The applicant will pay all necessary fees and escrows payable in connection with the application.
- b. The applicant will comply with all outside agencies having jurisdiction.
- c. All permits to be obtained within 18 months of the adoption of the resolution.

ROLL CALL Yes: Mr. Kozlowski Mr. Perry **No:** None
Mr. Maurizio Mr. Locker **Absent:** Mr. MacQueen
Mr. Terzuolo Mr. Eberle
Mr. Perry

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Attorney Gallina will prepare the Resolution to be on the next Agenda for September 24, 2014.

Ms. Koch returned to the dais at this time.

PRESENTATION OF BILLS:

- | | |
|------------------------|---|
| a. John Gallina, Esq. | \$250.00 – Attend July 23, 2014 Meeting |
| b. Court Stenographer | \$250.00 - Attend August 27, 2014 Meeting |
| c. Staples | \$ 13.35 - Gail Glashoff |
| Total: \$513.35 | |

Mr. Kozlowski informed the board of an additional bill from the Agenda Addendum for Attorney Gallina in the amount of **\$156.25**. This will bring the new total to **\$669.60**. Motion by Mr. Kozlowski and seconded by Mr. Perry to approve the bills as amended. Unanimously approved.

CORRESPONDENCE:

- a. Law of the Land Articles
- b. NJPO Newsletter May/June Issue
- c. Law Bulletin – August 2014

Being no further business to come before the board, nor comments from the public, motion by Mr. Kozlowski and seconded by Mr. Abuchowski to adjourn the meeting at 9:37 p.m. Unanimously approved.

CHAIRMAN BRUCE TERZUOLO

GAIL W. GLASHOFF, BOARD SECRETARY