

**BOROUGH OF OGDENSBURG
LAND USE BOARD REORGANIZATION MINUTES FOR
January 28, 2025
AT THE OGDENSBURG
MUNICIPAL BUILDING, 14 HIGHLAND AVE.
OGDENSBURG, AT 7:00pm**

Ms. Hough called the meeting to order at 7:00pm.

Ms. Hough led the Pledge of Allegiance.

STATEMENT OF COMPLIANCE

The notice requirement of P.L. 1975, Chapter 231, Sections 4 and 13 have been satisfied with a schedule of all meetings together with the time, location and agenda of same being sent to the NEW JERSEY HERALD and the NEW JERSEY SUNDAY HERALD and posted on the bulletin board at the Borough Hall on January 24, 2024.

MS. HOUGH ADMINISTERED THE OATH OF OFFICE TO THE FOLLOWING LAND USE BOARD MEMBERS:

OATH OF OFFICE TO THE FOLLOWING LAND USE BOARD MEMBERS:

Mayor George P. Hutnick	Class I Member	Term Expires 12-31-2025
Mike Marceau	Class II Member	Term Expires 12-31-2025
Caren Ruitenberg	Class III Member	Term Expires 12-31-2025
Ken Poyer	Class IV Member	unexpired term 12-31-2027
John Fierro	Class IV Member	Term Expires 12-31-2028
Patrick Fitzgibbons	Class IV Member	Term Expires 12-31-2028
Bill Andrews	Alternate II	Term Expires 12-31-2026

ROLL CALL: Andrews, Cahill, Connolly, Fierro, Fitzgibbons, Honig, Mayor Hutnick, Marceau, Poyer, Ruitenberg

Absent: Nasisi

Also present: Roger Thomas, Board Attorney, Mike Vreeland, Board Engineer

ELECTION OF CHAIRMAN

Ms. Hough asked if there were any motions for a chairman.

Mr. Fierro made a motion to elect Elliott Honig as Chairman of the Land Use Board. Second by Mr. Fitzgibbons.

Ms. Hough asked if there were any other nominations.

Upon Roll call Vote:

Yeas: Andrews, Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer
Nays: None Absent: Nasisi Abstain: None

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Chairman Honig took over the meeting at this time.

ELECTION OF VICE CHAIRMAN

Mr. Fierro made a motion to elect Pat Fitzgibbons as Vice Chairman of the Land Use Board. Seconded by Mr. Poyer.

Chairman Honig asked if there were any other nominations.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Honig, Hutnick, Marceau, Poyer, Ruitenberg

Nays: None Absent: Nasisi Abstain: Fitzgibbons

ELECTION OF SECRETARY

Chairman Honig asked of a motion to elect a Secretary to the Land Use Board.

Chairman Honig made a motion to elect Robin Hough as Secretary to the Land Use Board. Seconded by Mayor Hutnick.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer, Ruitenberg

Nays: None Absent: Nasisi Abstain: None

RESOLUTION FOR PROFESSIONAL SERVICES

Mr. Fitzgibbons made a motion to adopt resolution authorizing the award of Non-Fair and Open Contracts for Professional Services in 2025 for Mike Vreeland, Engineer and Joseph Vuich, Planner from Van Cleef Engineering. Seconded by Mr. Poyer.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer, Ruitenberg

Nays: None Absent: Nasisi Abstain: None

RESOLUTION FOR PROFESSIONAL SERVICES

Mr. Fitzgibbons made a motion to adopt resolution authorizing the award of fair and open contract for Professional Services for 2025 Land Use Board Attorney to Roger Thomas, Dolan and Dolan. Seconded by Mr. Fierro.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer, Ruitenberg

Nays: None Absent: Nasisi Abstain: None

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RESOLUTION FOR 2025 MEETING DATES AND OFFICIAL NEWSPAPER

Chairman Honig clarified for the record the motion will include the meeting dates and the NJ Herald as the official newspaper.

Mayor Hutnick made a motion to approve the meeting dates and the official newspaper.
Seconded by Mr. Fierro. All were in favor.

APPROVAL OF THE MINUTES

Mr. Cahill made a motion to approve the **regular meeting minutes** for November 26, 2024.
Seconded by Mayor Hutnick.

Upon Roll call Vote:

Yeas: Andrews, Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer
Nays: None Absent: Nasisi Abstain: None

Mr. Fitzgibbons made a motion to approve the **special meeting minutes** for December 10, 2024.
Seconded by Mr. Poyer.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer
Nays: None Absent: Nasisi Abstain: None

APPROVAL OF RESOLUTION

Mayor Hutnick made a motion to approve resolution in the matter of LUB 07-2024 James Lame, to appeal of Administrative Denial Decision and bulk variance application for Block 2 Lots 7 and 8. Seconded by Mr. Fierro.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer
Nays: None Absent: Nasisi Abstain: None

APPLICATIONS FOR COMPLETENES:

There were no applications for completeness

APPLICATIONS TO BE HEARD

LUB 01-2024 Kamel Yassin, Minor Site Plan, Bulk Variance, Use Variance, Block 3.01 Lot 61.

(This application was carried at the November 26, 2024 meeting until January 28, 2025 meeting.)

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Chairman Honig commented this was carried from November 26, 2024 to the January 28, 2025 meeting. It has been asked to carry it again until the February meeting.

Mr. Thomas commented this matter has been carried for a considerable period of time; you can certainly carry it again however because of the length of time people tend to lose track if they have an interest. The alternative is to say the matter is dismissed without prejudice. That then takes it off the agenda with the understanding that if they decide to come back within a period of time; you pick the period of time three months/six months and during that period of time; if they continue to end up not being ready during that period then he would recommend their escrow be returned and they would be required to refile. It doesn't affect their application because you are doing it without prejudice. You are simply getting it off the record so you aren't constantly carrying time after time.

Chairman Honig commented this started in June, 2024 the completion was the month prior. Chairman Honig made a recommendation that we at the very least dismiss it without prejudice and put a time frame on that. He would like to keep the time frame some what short just so it can move on.

Mr. Thomas commented it is up to the Board; [the time frame] if they come back in three months with a letter that they would like to have it resurrected and they would be required to re-notice.

Chairman Honig commented at this point he recommends that for a three-month period. Mayor Hutnick made that motion. Seconded by Mr. Fierro.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer

Nays: None Absent: Nasisi Abstain: Ruitenberg

LUB 04-2024 John Mulcahey, Variance "shed" Block 11 Lot 27.

(This application was carried at the November 26, 2024 meeting until January 28, 2025 meeting.)

Chairman Honig explained the applicant requested to withdraw his application. Chairman Honig asked Mr. Thomas if we have to do anything.

Mr. Thomas explained no, as long as the record reflects the fact he is withdrawing the application.

Chairman Honig commented for the record the Land Use Board 04-2024 Block 11, Lot 27 has been withdrawn.

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**LUB 06-2024 Ramos, Bulk Variance, Front Porch, Block 3.04 Lot 32.
(Voting eligibility: All members that are present and alternates as needed.)**

Chairman Honig commented this is for a variance for a front porch for Block 3.04 Lot 32.

Mr. Thomas swore in applicants Lydia Ramos and Adelis Ramos, 31 Madison Dr. Ogdensburg at this time.

Mike Vreeland, Board Engineer commented as we indicated during our completeness portion of our review; we reviewed the application, visited the site, we did not issue a technical report. In the application that was submitted there is a letter dated May 16, 2024 indicating the zoning permit that was applied for a front porch was denied because there is inadequate front yard setback. Mr. Dixon put forth the analysis he did on the setback and the scaling for the exhibit and basically there is a 35-foot front yard setback requirement based on section 3405E of the code. There was a little discrepancy between what the scale width of the front porch was and what was indicated in the text portion of the exhibit. Essentially the house is parallel to the property line therefore the front yard setback would be roughly 25.7 feet vs the 35-foot requirement.

Mr. Vreeland commented we had asked the applicant as part of the completeness to provide some kind of exhibit to illustrate what the front porch would look like and they provided a sketch of a front elevation that had some dimensions on it. The sketch also showed a side deck addition extending 8 feet from left side of the house and that was not illustrated on the survey that was reviewed by Mr. Dixon. If in fact that is going to be constructed and be 8 feet wide as illustrated it appears there would still be ample room and that would not be located in the side yard setback. We should get some clarification from the applicant to confirm if their intention is to construct the front deck and the side deck. If they do move forward with the side deck that is within the building envelope and does not require a variance.

Mrs. Ramos testified at first, we went for permitting for a deck however when we found out that we couldn't do a porch unless we go before the board that was put on hold. We got a permit and cleared for process until we clarify the porch situation. In the future if we have to renew the permit we will do so.

Mr. Thomas asked so you are only dealing with the front porch not the side deck.

Mrs. Ramos commented correct.

Mr. Vreeland commented he doesn't have anything more to add for the application it is pretty straight forward.

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Mr. Vreeland commented based on their visits and observations there are a few houses along that street that have some type of structure located in front of the house; several are porch structure coming off of the side area. It is consistent with the front of other houses.

Mr. Thomas asked do you feel there is a substantial negative impact to the zoning ordinance or any substantial detriment to the public good.

Mr. Vreeland commented we didn't feel there was anything obvious to a substantial negative impact or substantial detriment; in fact, what they are proposing to do is consistent with the streetscape and other houses in that area.

Mr. Thomas explained if you agree with there is no substantial negative impact or substantial detriment you can grant the variance other than that would be conditions of payment of the appropriate fees and taxes.

Chairman Honig asked if there were any questions or comments from the Board. There were no comments.

Mayor Hutnick made a motion to open the meeting to the public for any questions or comments regarding LUB 06-2024. Seconded by Mr. Fierro. All were in favor.

There were no comments from the public.

Mayor Hutnick made a motion to close the meeting to the public for any questions or comments regarding LUB 06-2024. Seconded by Mr. Poyer. All were in favor.

Mr. Thomas explained if you are in favor of this variance you grant the right to allow for the porch; if you are voting no you are voting against it.

Mr. Fierro made a motion to approve the variance. Seconded by Mr. Cahill.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer, Ruitenber

Nays: None Absent: Nasisi Abstain: None

LUB 05-2024 Greg and Katarzyna Stanislawczyk, Bulk Variance, Certificate of Non-Conformity or variance if required. Block 11 Lot 26.

Chairman Honig commented this application was carried from the November meeting.

Mr. Thomas explained there have been some discussions and he sees that both Counsel are here.

Mr. Thomas commented for the record Mr. Fitzgibbons stepped down.

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Mr. Thomas commented he thinks Mr. Breslin will go first; he knows there have been some correspondence with regard to possibly reopening this matter. He believes the matter was closed he thinks the record reflects that fact. There has been a position on behalf of the application indicating the matter is closed and should not be reopened for additional testimony. Mr. Thomas explained his response to that is the board controls the procedure; therefore, can keep the matter closed if you should choose to do that and then listen to the closing statements of the two attorneys'. Or if you choose you can reopen the matter for purposes of hearing additional testimony. He thinks it is probably a good idea to hear the argument on both sides from both attorneys since they are here and they spent the time and effort to come.

Mr. Breslin, Attorney, Newton NJ representing an objector Victoria and John Mulcahey. Mr. Breslin commented if you were to open the hearing he would just ask he doesn't think there was any other opportunity for any objections from any other parties in the public. He knows he had closed his case. The husband and the wife testified and he has no intention of having them testify again but he there maybe some people in the public that may want to say something.

Mr. Wood, Attorney for the applicant commented it was closed on the record and he is curious who in the public was here last time and here now because he doesn't recognize any of the faces. He does believe that it was closed in the sense that the board did make reference to anyone else here. His client had his experts here last time; his planner and engineer. We didn't learn of the latest information until a couple of days ago and we learned that the applicant may be looking to take testimony maybe two days ago. He couldn't get his experts here, therefore the matter is closed and to reopen would prejudice his client because he doesn't have the experts here tonight. That is their position. He would note that counsel could have made that objection last time he was here representing the [objector] who knows the Municipal Land Use Law.

Mr. Breslin commented there are people here tonight that were here last November that did not get the opportunity to speak.

Chairman Honig commented we didn't open to the public last time.

Mr. Thomas commented you did open to the public because you allowed the Mulcahey's to testify they are the public.

Chairman Honig commented he apologizes we didn't do a separate thing of opening to the public.

Mr. Thomas commented the question becomes whether or not the board closed the meeting to the public and second even if you did; does the board wish to reopen it in light of the fact that there may be additional testimony that you could hear tonight that may or may not have been available at the last meeting. He doesn't have a specific recollection. He does note the meeting did go at

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least by Ogdensburg standards very late. If you feel as though you would like to hear additional testimony if that is true and there are members of the public then of course Mr. Wood has the right to cross examine them and that may or may not [mean] you will be finished tonight. If he has to bring in his witnesses he will be prejudice potentially by not having them hear so he would then have the right for those individuals be present at the next meeting.

Chairman Honig explained to be clear the minutes that were just approved it was stated “Mr. Thomas commented we need to be in a position to decide if you want to keep on going or if you want to hear another five minutes of testimony”. Chairman Honig explained we had basically said we would allow Mr. Wood to testify for another five minutes because at that point we weren’t going to be making a decision but we want to kind of move on because we still had other business. Chairman Honig commented so at this point he is going to make a recommendation because he doesn’t feel in good conscious personally without having to open it to the public and allow other members of the public to speak. That is his personal opinion. Any comments or questions regarding that statement.

Mr. Fierro asked Mr. Breslin is he representing an of the other people that will be speaking.

Mr. Thomas commented no.

Mr. Fierro asked if we do hear it does it prejudice the applicant in any way if something comes that is unknown.

Mr. Thomas commented correct and if you ultimately decide to reopen and hear additional testimony then Mr. Wood if he feels he needs to bring in some rebuttal testimony either by way of his own witness his own client or by some of the witness he had the last time. Mr. Thomas commented he would strongly recommend that he would be given the opportunity to do that which means you will have to carry to the February meeting date.

Chairman Honig asked if there were any comments questions or concerns? Chairman Honig asked Mr. Thomas to frame up that motion.

Mr. Thomas commented he thinks what you would be asking in the motion to do is to reopen the matter to the members of the public who have not otherwise testified because we already heard testimony from the applicant as well as from the Mulcahey’s and it is just reopening for those people who had not previously testified.

Mr. Fierro asked are there people that were here at the last meeting that didn’t have the opportunity?

Mr. Thomas asked Mr. Breslin if he knows are there people here tonight that you think will testify that were here at the last meeting in November?

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Mr. Breslin explained he knows of at least two.

Mr. Thomas commented that would be the motion.

Chairman Honig asked for a motion.

Chairman Honig commented there is no motion then this does not move forward.

Mr. Thomas commented that is correct, it means the meeting would be closed and what you are asking for at this point would be a summary from the attorneys. Mr. Thomas suggested that Mr. Breslin present his position and then Mr. Wood would close with his position.

Mr. Breslin commented the applicant has the burden to prove a hardship that caused him to request a C Variance. This applicant has failed to do so. He could have moved the building left, he could have moved the building back towards the rear yard. There was no testimony by any of his experts that the topography of the property prevented him from moving his if your facing the house to the left or to the back. There was no showing of an exceptional practical difficulty related to the physical feature uniquely affecting his piece of property. There was testimony by the architect as to the reasons why he decided to put the house footing within the ten-foot setback. The footing was actually put in within four and a half feet within the ten feet. There was testimony by the architect as to why he built the house and there was a lot of talk and testimony because he has a disabled son and he wanted to build a room for him. That should not be considered for purposes whether or not you are going to grant the applicant application for a variance.

Mr. Breslin continued this applicant was placed on notice by his client that where he wanted to put the fittings violated the ten feet area where he was not allowed to dig. In fact, they warned him multiple times you heard the testimony and his response was not my problem it is the architect's problem. The architect doesn't own the land. When there was an objection made prior to him starting to dig he had an obligation to do his diligence so that any work that he did do was legal and he would not encroach upon his client's property. In this case the property was never flagged he just started cutting trees and ripping out bushes on his client's property and digging holes. He then put the fittings in at which time his client went out there and they objected and there was a verbal agreement between parties that they would go back to the town and they would make sure whoever was correct; the party that was not correct would make any changes that would not infringe upon the other persons property. This agreement didn't last long in fact the applicant decided it is not his problem it is the architect's problem, it's the engineer's problem, not his problem and he started to build the house. He did it, he got all the way up to the first floor at which time his clients were so distraught and upset that they reached out to Mr. McGovern to get a stop work order. Then there was another plan done and it showed in fact that the footings where they were placed violated the ten-foot requirement.

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Mr. Breslin commented it was his client's testimony that in fact after the applicant had already put the footings in that he and his worker took a string line from the back-yard marker to the front yard marker and at that time they realized they were wrong.

Mr. Wood objected that is not in the record. Mr. Thomas commented you will get the opportunity to respond.

Mr. Breslin commented there was an agreement that the parties would go back to the town and figure this out; but the applicant chose to ignore the verbal agreement he had. The structure he built; he would hope the Board had an opportunity to go out and see it; he doesn't think the pictures do it justice. It is a monster house and it encroaches upon his client's back yard. Mr. Breslin commented he thinks in this case the applicant if he had gone back to the town and if he had stopped with the footings he wouldn't have continued and he wouldn't have according to Mr. Wood one hundred thousand dollars building this house. Which is just the first floor; there is going to be a second floor and a roof. It is going to clearly infringe upon his client's enjoyment and property rights of their property. They can't sit in their back yard now because this huge monstrous building has been put up when it could have been pushed over, off the ten-foot setback or back. He doesn't believe there was any testimony from the experts saying that this couldn't have been done. Any hardship the applicant is suffering is self-inflicted; he chose to ignore the fact that he knew at least from when the footings were put in that his drawing/plan was wrong. He ignored it; he told his clients he was going to go to the town and we don't believe he did so and just continued to build. In fact, that week when he decided to build his crew was there in the middle of the night with car lights on so they could get past and through because he knew that he was encroaching upon their property and he didn't want the town to find out.

Mr. Breslin commented there is no hardship proven by the applicant as it relates to the configuration of the property. The financial hardship that he is claiming has to relate to the unique feature of the property. You can't just say you spent one hundred thousand dollars and therefore you have a financial hardship. There has to be some relation to some unique feature of the property that he had chosen to build where he did. That has not been proven. He hopes the board has been to the property to see for themselves. There is a reason why there is a ten-foot setback. His clients are upset because it is a clear violation for their property rights. He would ask the board to deny the application set forth by the applicant.

Mr. Wood, Attorney for the applicant commented he wanted to confirm that the board is in receipt of the memo he submitted to the Board.

Mr. Thomas commented they have not that was a memo between me and you; he [Mr. Thomas] read it.

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Mr. Wood commented we wouldn't be here if the neighbor had provided a copy of their survey to his client. They never did. My client requested it, they never gave him a copy of that survey. If you look at the documents when his client had the approvals the approvals started in October not just the permits; the approvals. The approvals for the slab and foundation were October and November. By December 14th the day they submitted their survey there was a stop work order done. So, what you see on the property was completed before the neighbors submitted their survey.

Mr. Wood commented he is going to go through the legal argument here then the factual behind it. The applicant has to demonstrate that he had exceptional difficulties too or exceptional and undo hardship upon the applicant arising out of the exceptional shape of the property by reason of exceptional property conditions or by reason of extraordinary and exceptional situation affecting the property. The applicant has demonstrated that they will suffer an exceptional undo hardship upon the applicant arising out of the extraordinary and exceptional affect the property specifically what happened here. His client went to the building department, they got a zoning permit, they got a building permit they relied upon a survey that was prepared by a licensed surveyor. They submitted that all to the town and they needed it to be accurate. The town accepted it believing it to be accurate. The architect testified that he could rely upon a survey within ten years. Everything he did followed the law; he even got periodic inspections on the foundation, the slab and as a reminder it is not just an ordinary slab and explained. It is not just a matter of moving the slab there is testimony from he believed both the architect and his client that within that slab the plumbing exists. Not only the plumbing but radiant heating. So, you have the plumbing and heating if you have to move that structure right now you have to cut that radiant heating; you have to dig that whole slab up and put all new plumbing and radiant heating.

Mr. Wood commented having said that there is case law in point, when an applicant makes an application to the municipality and they rely upon their professionals there are two lines of case law. Mr. Wood referred to the two-case law and explained one of them was a case where there was a side yard setback, the applicant submitted his plans and, on those plans, there was a mistake it said there was a four-foot setback. The building inspector missed it the courts held he is going to get his variance because the building inspector missed it.

Mr. Wood commented there was a case Cohen and explained this case there were plans submitted to the municipality the plans were wrong. After the work began objectors brought it to the engineer and there was a stop work order. It turned out that the court ruled that the variance could be granted because under that analysis when you have a client that lays out substantial money that could be considered a financial hardship. In addition, they specifically found in that case that the board was erroneous in concluding that the applicant made misrepresentations. In doing this applicant lied.

Mr. Wood explained his client followed the law, we had experts testify to the positive and negative criteria. Mr. Bona the architect testified that there is little or no impact to the neighbor

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in addition the engineer testified there is no drainage issues; he was there during the rain. There are no drainage issues to the property and also it was testified that all the adjoining property owners all but one have side or front yard setbacks in the neighborhood. It is really strange neighborhood with twenty or thirty properties and only one of them that doesn't have a setback violation on the principal structure or the secondary structure. It is in conformance with the neighborhood as far as the set back is concerned.

Mr. Wood commented going to the facts there was a dispute at some point. His client requested from the neighbor a copy of his survey, if I tell anyone on the board I don't believe where your line is what is the first thing you would do. Here is my survey. Then you know you have an issue. Wouldn't you give the neighbor a copy of your survey. Neither survey showed bushes on their property. Mr. Wood explained he would content that those bushes were on his client's property and he contents further that is the reason she didn't want to turn her survey over. The reason we are here today is because the Mulcaheys didn't give us a copy of their survey. He will tell you they retained Mr. McGovern on December 7th. By December 14th we know there is a problem his client retained his office. There is a letter to Mr. McGovern office asking to give us a copy of your survey and we will find out where the discrepancy is. That is when there was a dispute. So, then you find out which is right. The field evidence supports their line is correct. But up until then his client had the right to rely upon his professionals and surveyors. To have him move this now which is specifically designed for his handicap son and explain the previous testimony regarding the needs of his son.

Mr. Wood commented the application should be granted with the facts and the law and he would remind the Board to look on exhibits 30 to 36 on dates that his client received his permits and approvals and explained the permits. We are not on their [Mulcahey] property at all we are looking for a side yard setback variance, it was supposed to be ten feet the foundation at one section is four feet and in the other section it is five feet, a foot and a half hanging on the roof onto the resident property. Mr. Wood explained the dates of the approvals and what it was for and that Mr. Wentick had explained it was consistent with the Master Plan.

Mr. Thomas explained the record indicates that he had offered to both Counsel to provide briefs. He did receive a brief that was dated recently he had not received one from Mr. Breslin. Mr. Wood was submitted by way of letter dated January 25, 2025. Prior to that time, he had done some research on his with regards to what he thought would be the issues involved in the case. You have heard a lot of testimony. The question becomes somewhat of a fact of law case. In Mr. Wood brief he made reference to the Cohen case. He did his own research and he also found the Cohen case. Let me tell you how the Cohen case may or may not be relevant.

Mr. Thomas explained it reference to the fact the Hill case which was an early case it said there had been a mistake on the plans. The building official had missed that mistake and said there have been building permits issued and they had done some work. Ultimately the Hill case they granted the variance there was an objector that said they shouldn't. The Appellate Division

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which is the next level up; ending up reviewing the Hill case [determined] it did not apply in the Cohen matter. It talked about issues of hardship; hardship should be related to the property, size of the property that sort of thing.

Mr. Thomas explained to the Board you are the finder of facts he is here to try to help you find those facts in relation to the law. So, the question is there an issue in terms of the Hill or Cohen case. In the Cohen case there was no mistake in the plans that were submitted. The Cohen case ultimately said two things and explained the two things.

Mr. Thomas explained the principal of law and of facts. What you have heard is that his client had the right to rely on his survey which was the survey that was within ten years which is acceptable. That survey showed the house was in fact acceptable for the ten-foot setback. That survey was then relied upon by the architect; who then designed the house. They sent that to the building department. They issued the permits etc. Their position is we had a right to rely upon that because we had a survey that was reasonable and reliable and it was only until such time they became aware of an alternative survey which they ultimately agreed was a more correct survey. By that time various building had begun.

Mr. Thomas explained in response to that the Mulcahey's told them they thought there was a problem. Mr. Thomas explained he believes the testimony; they indicated the conversations that occurred prior to December 14th and they indicated the house was being to close to the property line. Their survey was never presented to the applicant and they continued to have these discussions that there was a discrepancy. Is that discrepancy sufficient enough that the applicant relied upon a survey that his experts said was a reliable survey because it was within the ten-year period. That is really the only factual issue that make a difference. Mr. Thomas repeated some of the discussions from the previous meetings.

Mr. Thomas commented the fundamental question is does the applicant have the right to rely upon a survey until such time they are given proof that there is a discrepancy. They didn't have that until they received the Pilney Survey; then there was a stop order at that time anyway. The Mulcahey's are saying they told them there was a problem is that enough to put an applicant on notice when they had a survey they thought was perfectly reliable. That is the decision you have to make. It is clear from the Cohen case if they take down the house it is going to cost a substantial amount of money that is a substantial hardship. These are the facts you have to rely on.

Mr. Thomas asked if the Board members had any questions.

Mayor Hutnick asked you bought a piece of property you were going to knock down a house you are relying on a survey that is approximately ten years old that you are hoping is good why wouldn't you get the property re-surveyed since you are planning on moving the house and

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knocking it down. Why would you not confirm that everything is set up the way it is supposed to be.

Mr. Thomas commented that is the questions that is raised by the Mulcahey's. The response to that according to Mr. Wentick testimony when you have a survey within ten years that should be considered a reliable survey. Mr. Thomas commented he testified [Mr. Wentick] that it is a reliable survey and, in the industry, you would want to rely on. That is Mr. Wentick's testimony. You will have to decide whether or not that testimony is accurate and reasonable. You have a statement by the Mulcaheys and you have Mr. Wentick with his background and whether or not you find him an expert in that area to make that determination. Mr. Wentick indicated he is a surveyor therefore he is familiar with the industry. That is a decision you have to make.

Mayor Hutnick asked what was the process of choosing the location of the house. The new constructed home is moved forward on the property vs. where the old home was which was pushed back.

Mr. Thomas explained his recollection is they were originally coming in for a variance to retain the one house and then came and said they would eliminate the existing house. Therefore, his recollection is this is only for a variance with regard to a setback and explained the setback and what is the reason for the setback.

Mayor Hutnick asked when it was noted that there was potential issue why wasn't everything stopped at that point why did it keep going? Just to confirm.

Mr. Thomas explained again my neighbor is telling me I'm doing something wrong, my neighbor hasn't shown me anything to make it clear that I am wrong until they ended up producing the survey at which point the construction had begun.

There was a brief discussion on when there is a closing of a house if a survey is required.

Mr. Fierro asked it was discussed about shrubs that were taken down that may have been on the Mulcaheys property. Moving forward if we were to approve this one way or another can we demand to have shrubs replaced.

Mr. Thomas commented you all know that everything you do is based upon conditions; you have every right to end up conditioning any action that would be reasonable and gave some examples.

There was a discussion on replacing the shrubs, maybe a fence and to have some sort of landscaping conditions.

Mr. Andrews commented he has some questions he doesn't know if he is a voting member on this.

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Ms. Hough commented yes you are.

Mr. Andrews asked did this board review any of these plans or make this decision or was that through the State [referring to the building department].

Mr. Vreeland commented the zoning issue would be reviewed by the zoning officer and a zoning permit is required prior to construction. The normal process is to submit plans review for zoning by the zoning officer and the zoning officer finds they are compliant with the zoning requirements then you apply for construction. If they are not complying with the zoning requirements then relief is needed and they generally come to the Board to get that variance or relief.

Mr. Andrews asked so they [the building department] would be reviewing the plans after the zoning permit was approved and the zoning permit was going off of the one survey that the applicant had produced. His other question is instead of stopping construction with just the neighbor saying this is in the wrong place; he doesn't know if he would have stopped himself he thinks it would be on the neighbor to take make the proper steps instead of just waiting to see if something else happens.

Chairman Honig asked about drainage; there was testimony regarding drainage issues whether they happened or not. Chairman Honig asked Mr. Vreeland would there be recommendations you would make if the Board decided to approve this variance.

Mr. Vreeland explained one recommendation would be that if there are any gutters associated with the roof and the down spouts that they would not be directed close to the adjoining property owner. Further onto the site we had in the past requested some kind of storm water management be provide for any potential runoff and changes in the roof area. That is something that is usually imposed as a condition if there is going to be an increase of coverage and in this case, there is and explained the storm water conditions and some type of landscaping.

There was a discussion regarding a landscaping and stormwater management plan and the location of the house.

Mr. Thomas commented what he would suggest is to make a motion to approve the variance; he would suggest also to include what would be conditions; that way if you vote yes you are voting in favor of allowing the setback and the house will remain as is. If you vote no you are voting against the construction and therefore they would be required to do things that Mr. Wood has talked about.

Chairman Honig commented at this point we are going to consider a motion for approval; the question then becomes what conditions are we willing to set on this that we feel would be a

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benefit to the neighborhood that would be in good faith and public interest to allow it to fit in with the neighborhood.

Mr. Thomas explained what conditions are designed to do.

There was discussion on what conditions there should be, Mr. Vreeland suggest a storm water management system, the applicants engineer would design the plan and the board engineer would approve the plan.

The board then discussed a landscape plan that would be prepared by the applicants professional and approved by the board engineer, a fence vs and landscape plan, if there is enough room between the house and property line to put a fence in, replacing shrubs that have been removed, what type of shrubs and if there was a fence put in what should the height be.

Mayor Hutnick asked what are we gaining to have this move six feet is it going to make any difference.

Mr. Vreeland commented it isn't going to make the house disappear, whether it is 15 feet 10 feet or 5 feet. It's a house, it meets the height requirement but it is a significant structure and it isn't going to make a difference if you move it a few feet away form the property line.

There was a discussion in where the house was being constructed vs where the preexisting house was, the board members asked questions about the location of the house, a fence and a landscape plan.

Mr. Connolly asked based on the foundation for this would it be a major hardship if we asked them to take two feet off of their garage space because he would imagine that wouldn't have any plumbing in it then you would have a little extra space there; maybe for some plantings.

Mr. Vreeland asked to take off the front of the garage or the side.

There was a discussion on a two-foot difference referring the plans provided.

Mr. Thomas commented from what he heard it would be approval of the variance as request subject to a stormwater management plan by the applicant and reviewed by the board engineer to insure that there would be no adverse consequences with regards to additional impervious coverage to any property owner and that there would be a landscape plan presented by the applicants engineer to be reviewed by the board engineer to include the maximum efforts to shield the property particularly form the southerly direction.

Mr. Vreeland commented he would like to make one more suggestion. Early on in the application you heard that if this was to be approved the living space in the garage is to be vacated and that would be no longer a habitable structure.

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Chairman Honig commented it was upon granting the approval and the granting of the CO.

Mr. Thomas commented now the question is do you have a motion.

Mr. Fierro made the motion. Seconded by Mr. Poyer.

Upon Roll call Vote:

Yeas: Andrews, Cahill, Connolly, Fierro, Poyer

Nays: Honig, Hutnick, Marceau Absent: Nasisi Abstain: None

Mr. Thomas commented motion carries.

Ms. Hough commented 5 yes's 3 no's; it passed.

OLD BUSINESS/NEW BUSINESS

Chairman Honig commented we do have more business on the agenda for tonight. Chairman Honig table these items to the next meeting.

- a. Local Planning Services Grant
- b. Zoning Map & zoning ordinance review
- c. Budget 2025

CORRESPONDENCE

Chairman Honig explained the correspondence.

- Public Notice regarding an application for freshwater wetlands general permit 24 for 36 Richardsville Road, Block 26.01 Lot 18.
- Notification regarding an application for freshwater wetlands permits regarding JCP&L Company)
- CCO and Zoning Permit report for 2024

BILLS/VOUCHERS

Mr. Fierro made a motion to approve the bills and vouchers. Seconded by Mayor Hutnick.

Upon Roll call Vote:

Yeas: Cahill, Connolly, Fierro, Fitzgibbons, Honig, Hutnick, Marceau, Poyer

Nays: None Absent: Nasisi Abstain: Ruitenberg

- Invoice # 6202-57 from VanCleaf Engineering, Mike Vreeland, Board Engineer for General Land Use Matters in the amount of \$73.50.
- Invoice #6290025-1 from VanCleaf Engineering, Mike Vreeland, Board Engineer in the amount of \$73.50 to be charged to escrow account from application LUB 06-2024 Ramos.

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- Invoice # 6290026-1 from VanCleaf Engineering, Mike Vreeland, Board Engineer in the amount of \$294.00 to be charged to escrow account from application LUB 07-2024 Lame.
- Invoice #6290023-1 from VanCleaf Engineering, Mike Vreeland, Board Engineer in the amount of \$147.00 to be charged to escrow account from application LUB 04-2024 Mulcahey.
- Invoice #6202-56 from VanCleaf Engineering, Mike Vreeland, Board Engineer, for General Land Use Matters in the amount of \$73.50.
- Invoice #6290024-1 from VanCleaf Engineering, Mike Vreeland, Board Engineer, in the amount of \$147.00 to be charged to escrow account from application LUB 05-2024 Stanisalawczyk.
- Invoice #6290024-2 from VanCleaf Engineering, Mike Vreeland, Board Engineer, in the amount of \$808.50 to be charged to escrow account from application LUB 05-2024 Stanisalawczyk.
- Statement #952018 from Dolan and Dolan, Roger Thomas, Board Attorney, in the amount of \$1,695.19 to be charged to escrow account from application LUB 05-2024 Stanisalawczyk.
- Statement #952019 from Dolan and Dolan, Roger Thomas, Board Attorney, in the amount of \$1,224.26 to be charged to escrow account from application LUB 07-2024 Lame.
- Statement # 952020 from Dolan and Dolan, Roger Thomas, Board Attorney, in the amount of \$108.38 to be charged to escrow account from application LUB 06-2024 Ramos.

PUBLIC PORTION

Mayor Hutnick made a motion to open the meeting to the public. Seconded by Mr. Poyer. All were in favor.

Mr. Thomas commented for items that were not on the agenda tonight.

Chong-Hee Choi 32 Highland Ave. Ogdensburg, asked if those conditions are forever.

Mr. Thomas explained conditions runs with the land.

Ms. Hee asked about a structure on her property.

Mr. Fitzgibbons made a motion to close to the public. Seconded by Mayor Hutnick. All were in favor.

ADJOURN

Ms. Ruitenberg made a motion to adjourn. Seconded by Mr. Poyer. All were in favor. Chairman Honig adjourned the meeting approximately 9:06pm.

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Prepared by
Robin Hough, RMC/CMR