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**TOWN OF PATTERSON  
PLANNING & ZONING OFFICE**

**ZONING BOARD OF  
APPEALS**

Howard Buzzutto, Chairman  
Mary Bodor, Vice Chairwoman  
Marianne Burdick  
Lars Olenius  
Gerald Herbst

**PLANNING BOARD**

Shawn Rogan, Chairman  
David Pierro, Vice Chairman  
Michael Montesano  
Maria DiSalvo  
Charles Cook

**Zoning Board of Appeals  
June 17, 2009 Meeting Minutes**

Held at the Patterson Town Hall  
1142 Route 311  
Patterson, NY 12563

Present were: Chairman Howard Buzzutto, Board Member Mary Bodor, Board Member Marianne Burdick, Board Member Gerald Herbst, Board Member Lars Olenius, Carl Lodes, Attorney with Town Attorney's Office Curtiss & Leibell and Rich Williams, Town Planner.

Chairman Buzzutto called the meeting to order at 7:03 p.m.

There were approximately 7 members of the audience.

Sarah Wagar was the secretary for this meeting and transcribed the following minutes.

Chairman Buzzutto stated okay. Now roll call.

Roll Call:

Board Member Bodor	-	here
Board Member Burdick	-	here
Board Member Olenius	-	here
Board Member Herbst	-	here
Chairman Buzzutto	-	here

**1) CHARLES HOFFMAN CASE #09-09**

Mr. Charles Hoffman was present.

Chairman Buzzutto stated do you want to read the agenda.

The Secretary read the following legal notice:

**NOTICE IS HEREBY GIVEN BY THE TOWN OF PATTERSON BOARD OF APPEALS** of a public hearing to be held on Wednesday, June 17, 2009 at 7:00 p.m. at the Patterson Town Hall, 1142 Route 311, Patterson, Putnam County, New York to consider the following application:

**Charles Hoffman Case #09-09 – Area Variance; Held over from May 20, 2009 meeting**

Chairman Buzzutto stated okay. Mr. Hoffman who's first on the list here. Okay, you did give the oath the last time you were here. Alright, we took a site walk last night on the property, looked it over. This is for the...Okay, this is for the garage or the shed.

Mr. Charles Hoffman stated shed.

Board Member Bodor stated shed.

Chairman Buzzutto stated up on...over there. That basically is the only place where you could put the shed is where you described it, and put it there because of the terrain. What size is that shed here. What was that, 12' by...

Mr. Hoffman stated 10' x 20'.

Chairman Buzzutto stated 10' x 20'. And you're looking for a variance of...

Board Member Olenius stated front yard variance.

Chairman Buzzutto stated I'm sorry.

Board Member Olenius stated it's a front yard variance.

Chairman Buzzutto stated it's a front yard.

Board Member Olenius stated because there's...

Chairman Buzzutto stated oh, that's right.

Board Member Olenius stated two front yards.

Chairman Buzzutto stated two...

Board Member Herbst stated he has no backyard.

Board Member Bodor stated he has two front yards...

Chairman Buzzutto stated front yards, yeah.

Board Member Herbst stated yeah.

Board Member Bodor stated because he's facing on two streets.

Chairman Buzzutto stated that's right, yeah. I couldn't see anything wrong, except there's one shed there. What was...A question on that, was that whether it was a preexisting to...

Board Member Burdick stated what Mr. Hoffman explained while we were out there, and correct me if I'm wrong Sir, the property used to be two tax parcels and the shed was on that parcel for...how many years.

Mr. Hoffman stated quite awhile.

Board Member Burdick stated a long time.

Mr. Hoffman stated couldn't put a date on it.

Board Member Burdick stated and at one point within the last few years, they combined the two parcels so now the, you know, this shed is also on the piece that's considered a front yard. It was previously the only structure on that piece of property prior to the Town joining the two parcels together.

Chairman Buzzutto stated yeah. And as you suggested, we'll just read that in the reso to clarify that it was there.

Board Member Burdick stated we wanted to clarify it in the minutes that it was preexisting.

Chairman Buzzutto stated yeah, in the minutes. Yeah. And the other little shed, you say that that was there when you moved there. The little one.

Mr. Hoffman stated I just moved there about...Well, I'm living there about 3 ½ years now.

Chairman Buzzutto stated well, I mean originally though.

Mr. Hoffman stated that was there for as long as I can remember. Thirty-five years at least; the small one on the side of the house. And the other one is following it by a couple of years, I think. Thirty-something years.

Chairman Buzzutto stated did you see anything on that property that you would like to put in there.

Board Member Olenius stated honestly, no. It was pretty cut and dry.

Board Member Herbst stated no. I didn't see anything. I don't see anything on this one now.

Chairman Buzzutto stated no. I thought it was pretty much in line.

Board Member Herbst stated yeah. I agree.

Chairman Buzzutto stated okay. Do I have any input from the audience on this particular application. I'm hearing none. I'd like to close the public hearing.

Board Member Herbst stated I'll make a motion to close the public hearing.

Chairman Buzzutto stated second. Anybody...

Board Member Burdick stated second.

Chairman Buzzutto stated second. All in favor. Motion carried by a vote of 5 to 0.

Chairman Buzzutto stated okay. The public hearing is closed. Do you want to read something into the...

Board Member Olenius read the following resolution:

**IN THE MATTER OF THE APPLICATION OF  
*Charles Hoffman, Case #09-09*  
*For an Area Variance for a 10' x 20' shed***

**WHEREAS, *Charles Hoffman*** is the owner of real property located at 85 South Lake Drive (RPL-10 Zoning District), also identified as **Tax Map Parcel #36.32-1-2**, and

**WHEREAS, *Charles Hoffman*** has made application to the Patterson Zoning Board of Appeals for an area variance pursuant to §154-27(12) of the Patterson Town Code; Permitted accessory uses, in order to place a 10' x 20' shed in the front yard, and

**WHEREAS, §154-27(12)** of the Patterson Town Code states that a shed shall not be located in the front yard, and

**WHEREAS,** the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and

**WHEREAS,** a public hearing was held on the Application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on ***May 20, 2009 and June 17, 2009, and a site walk was conducted on June 16, 2009,*** to consider the application; and

**WHEREAS,** The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearings and finds that:

1. the proposed application ***will not*** produce an undesirable change in the character of the neighborhood ***because said property has frontage on two separate roads.***
2. the benefit sought by the applicant ***cannot*** be achieved by any other feasible means ***because of the physical conditions and terrain of the property.***
3. the variance requested ***is not*** substantial ***because of the fact that the property has frontage on two roads so in as much as the Code reads, there are two front yards.***
4. the proposed variance ***will not*** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ***because said area where the shed will be placed is already a paved driveway area.***
5. the alleged difficulty necessitating the variance ***was not self-created and is not sufficient*** so as to cause a denial of the requested variance.

**NOW, THEREFORE BE IT RESOLVED,** that the Patterson Zoning Board of Appeals hereby ***grants*** the application of ***Charles Hoffman*** for ***an area variance*** pursuant to §154-27(12) of the Patterson Town Code; Permitted accessory uses, ***in order to place a 10' x 20' shed in the front yard.***

Board Member Burdick stated second.

The Secretary read Roll Call:

Board Member Bodor...

Chairman Buzzutto stated wait a minute. This shed will never be used as a garage will it.

Mr. Hoffman stated no.

Chairman Buzzutto stated just as a shed because...

Mr. Hoffman stated lawn tractor.

Chairman Buzzutto stated shed, you know...

Mr. Hoffman stated tools, clothes.

Chairman Buzzutto stated fine. Alright, go on. I'm sorry.

Mr. Hoffman stated got a wooden floor.

**UPON ROLL CALL:**

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	yes
Chairman Buzzutto	-	yes

Resolution carried by a vote of 5 to 0.

Chairman Buzzutto stated okay. You just got to get your necessary permits for size and stuff like that. Then you have to go to the Building Department now to get your...

Mr. Hoffman stated Building Department.

Chairman Buzzutto stated yeah.

Mr. Hoffman stated okay.

Chairman Buzzutto stated yeah, that's right. The Building. Okay, fine.

Board Member Olenius stated you just have to get your permit.

Mr. Hoffman stated thank you very much.

Board Member Burdick stated thank you. Good luck.

Chairman Buzzutto stated good luck to you.

Mr. Hoffman stated thank you.

2) **CHRISTINA RIZZO CASE #10-09**

Mrs. Christina Rizzo was present.

Chairman Buzzutto stated okay. We got the next one on the agenda. You want to read that in Sarah Rizzo.

The Secretary read the following notice:

**Christina Rizzo Case #10-09 – Area Variances; Held over from May 20, 2009 meeting**

Applicant is requesting area variances pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations and §154-27(12) of the Patterson Town Code; Permitted accessory uses, in order to install a swing set/jungle gym in the front yard. §154-27(12) states that accessory structures are not permitted in the front yard (forward of the dwelling). The Code requires a 20' side yard setback; Applicant will have 2'; Variance requested is for 18'. This property is located at 14 Quaker Manor Lane (R-4 Zoning District).

Chairman Buzzutto stated Christina. Okay. You were here at the last meeting so you took the oath. Okay, we were up there last night checking the property. And where Mrs. Rizzo wants to put the jungle gym is basically the only place that she could put it there because of the terrain and the outcroppings of rock where the swimming pool is. And I don't think the whole thing will be in the front yard. I think partially will be in the front yard. Do you have anything to add to that.

Mrs. Christina Rizzo stated no.

Chairman Buzzutto stated so where that will be, it will be an area that's level, safe for the children. And I didn't see anything else wrong with it, to put it there.

Board Member Burdick stated the only other area that could even be looked at, the swing set would be positioned before some railroad ties and a...

Chairman Buzzutto stated oh, yeah.

Board Member Burdick stated a 6 foot elevation difference. And it just wasn't safe for kids to be swinging...

Chairman Buzzutto stated swinging and then jump off.

Board Member Burdick stated potentially jumping off...

Chairman Buzzutto stated because...

Board Member Burdick stated a 6 or 8 foot elevation.

Chairman Buzzutto stated that's right. It would be...

Board Member Burdick stated so, there was really no other...

Chairman Buzzutto stated no. There's no other place.

Board Member Burdick stated level area on the property.

Chairman Buzzutto stated and putting it there I don't think it will interfere with anything else or...

Board Member Burdick stated it's heavily screened...

Chairman Buzzutto stated that's right. So it will be...

Board Member Burdick stated along the property.

Chairman Buzzutto stated well placed, I think. Yeah. So do I have any input from the...what's left of the audience here. No input. I'd like to entertain a motion to close the public hearing.

Board Member Herbst stated I'll make a motion to close it.

Board Member Burdick stated second.

Chairman Buzzutto stated all in favor. Motion carried by a vote of 5 to 0.

Chairman Buzzutto stated okay. Did Jerry...Do you have anything on the reso or do you want to let Lars do it.

Board Member Herbst stated no, Lars. He's got it already written out.

Chairman Buzzutto stated I like the way you...

Board Member Herbst stated I know.

Chairman Buzzutto stated DNA test there.

Board Member Olenius stated you got to take notes. I don't have a memory I used to.

Board Member Olenius read the following application:

**IN THE MATTER OF THE APPLICATION OF**  
***Christina Rizzo, Case #10-09***  
***For Area Variances for a swing set/ jungle gym***

**WHEREAS, *Christina Rizzo* is the owner of real property located at 14 Quaker Manor Lane (R-4 Zoning District), also identified as **Tax Map Parcel #4.10-1-28**, and**

**WHEREAS**, *Christina Rizzo* has made application to the Patterson Zoning Board of Appeals for area variances pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations and §154-27(12) of the Patterson Town Code; Permitted Accessory Uses, in order place a swing set/jungle gym in the front yard (forward of the dwelling) 2 feet from the side yard line, and

**WHEREAS**, §154-27(12) of the Patterson Town Code states that accessory structures shall not be located in the front yard, and

**WHEREAS**, §154-7 of the Patterson Town Code requires a 20' side yard setback; Applicant will have 2'; *Variance requested is for 18'*, and

**WHEREAS**, the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and

**WHEREAS**, a public hearing was held on the application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on *May 20, 2009 and June 17, 2009*, and a site walk was conducted on *June 16, 2009*, to consider the application; and

**WHEREAS**, The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearings and finds that:

1. the proposed application *will not* produce an undesirable change in the character of the neighborhood *because all the properties in the area are well separated and private*.
2. the benefit sought by the applicant *cannot* be achieved by any other feasible means *because of the topography of the said property*.
3. the variance requested *is* substantial *however not so much as to cause a denial of the requested variance*.
4. the proposed variance *will not* have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district *because it's not an impervious structure*.
5. the alleged difficulty necessitating the variance *was self-created* but *is not sufficient* so as to cause a denial of the requested variance.

**NOW, THEREFORE BE IT RESOLVED**, that the Patterson Zoning Board of Appeals hereby *grants* the application of *Christina Rizzo* for *an area variance* pursuant to §154-27(12) of the Patterson Town Code; Permitted accessory uses, in order to allow the swing set/jungle gym in the front yard, and

**BE IT FURTHER RESOLVED**, that the Patterson Zoning Board of Appeals hereby *grants* the application of *Christina Rizzo* for *an area variance of 18' from the side yard setback of 20'* as required in the R-4 Zoning District as set forth by §154-7 of the Patterson Town Code; Schedule of Regulations, in order to permit a 2' side yard setback between the swing set/jungle gym and the side property line.

Chairman Buzzutto stated do we have to use the word "in the front yard" or can we use "partially in the front yard". Cause...

Carl Lodes stated if that's the facts. Sure.

Board Member Burdick stated it was.

Chairman Buzzutto stated that's a fact. It's not going to be completely. It's maybe a couple of feet in the front yard. So I'd like to know if we could change that.

Carl Lodes stated sure. You can amend your findings.

Chairman Buzzutto stated yeah. Just partial.

Board Member Olenius stated to somewhat forward of the...

Chairman Buzzutto stated yeah.

Board Member Olenius stated residence.

Board Member Bodor stated of a residence. Yeah, because...

Board Member Olenius stated partially forward of the residence.

Board Member Bodor stated front yard could be... Well, it sounds like it's right in front of the house somewhere.

Board Member Burdick stated yeah. And it's not.

Board Member Bodor stated and it's not.

Chairman Buzzutto stated no. It's...

Board Member Burdick stated side yard.

Board Member Bodor stated it's off to the side.

Board Member Burdick stated it's just that if you draw the line parallel to the front...

Board Member Bodor stated yeah.

Board Member Burdick stated that it would be within that plane partially.

Chairman Buzzutto stated yeah, so let's keep it at that.

Board Member Burdick stated okay.

Chairman Buzzutto stated okay. So that's the way we'll read it.

Board Member Olenius stated I request the Secretary insert that into the...

Chairman Buzzutto stated okay.

Board Member Olenius stated reso...

The Secretary stated will do.

Board Member Olenius stated in some such manner.

Board Member Burdick stated second.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	yes
Chairman Buzzutto	-	yes

Resolution carried by a vote of 5 to 0.

Chairman Buzzutto stated good luck.

Mrs. Rizzo stated thank you very much.

Chairman Buzzutto stated have fun.

Board Member Olenius stated tell your daughter happy birthday.

Board Member Bodor stated yeah.

Mrs. Rizzo stated oh, thank you.

Chairman Buzzutto stated your daughter will ask you tonight what happened.

Mrs. Rizzo stated she was asking, mom can I come with you. (Inaudible – too distant).

Chairman Buzzutto stated (inaudible). She wanted that for her birthday.

Mrs. Rizzo stated thank you.

Chairman Buzzutto stated okay. The next one here.

Board Member Herbst stated did you stop at the (inaudible – papers shuffling).

Chairman Buzzutto stated (inaudible) everything is very organized.

Board Member Bodor stated yeah, very. Yeah, I noticed. (Inaudible – papers shuffling) before you give it away.

Board Member Herbst stated Ginny asked me to (inaudible – papers shuffling) my neighbor which I did.

Chairman Buzzutto stated okay.

Board Member Herbst stated when I did, I found out that she called. Semo called. What are you asking me for if you were going to do it.

3) **JAMES STEAD CASE #11-09**

Mr. James Stead was present.

The Secretary read the following legal notice:

**James Stead Case #11-09 – Area Variance; Held over from May 20, 2009 meeting**

Applicant, who is acting on behalf of Jak Hee You, is requesting an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations, in order to construct a 50' x 45' garage with storage above. The Code requires a 20' side yard setback; Applicant will have 5'; Variance requested is for 15'. This property is located at 69 Quail Lane (R-4 Zoning District).

Chairman Buzzutto stated Mr. Stead. You were here at the last meeting. This is a held over case. We also were on a site walk last night to Mr. Stead's residence.

Mr. James Stead stated yeah.

Chairman Buzzutto stated and nice piece of property. It goes way out into the...Where you took the site walk last night, is that where the property goes around out there.

Mr. Stead stated yes.

Chairman Buzzutto stated I mean, where this is here [referring to a photograph] is this where you went way back into the...

Mr. Stead stated correct. Yes.

Chairman Buzzutto stated okay. Then that...Another question. On the size of this building, is the size that you want to put there, is it necessary to build it that big. It's what, 50% of the residence itself.

Mr. Stead stated yes it is. The number of tools and the machines and such that I would need, actually does take up that space. Storage shelves and such like that.

Chairman Buzzutto stated okay.

Mr. Stead stated quite honestly, if I thought I could get away with it, I would have tried to build a bigger building. But I don't physically have the space.

Chairman Buzzutto stated okay.

Mr. Stead stated that's beyond (inaudible).

Chairman Buzzutto stated now this was figured out as 50% of the residence, the main structure. I didn't see no figures on that though. How was that calculated.

Mr. Stead stated it's...the main structure is 4,650 square feet. 45' x 50' would give us 2,250 [square feet] I think.

Chairman Buzzutto stated and...

Board Member Bodor stated is this projected to be a single-story...

Mr. Stead stated yes.

Board Member Bodor stated structure.

Mr. Stead stated yup.

Board Member Bodor stated what is the height.

Mr. Stead stated I didn't calculate with the roof because I didn't know what pitch would be required for that size. But the ceiling height would be 12 feet from the...

Board Member Bodor stated what is the exterior maximum height of the structure.

Mr. Stead stated it's going to be probably 22', I would assume. And that would be at the peak of the gable.

Board Member Bodor stated that's what I'm looking at.

Mr. Stead stated yeah.

Board Member Bodor stated the peak.

Chairman Buzzutto stated yeah. Garage, workshop and storage. Now this is going to be quite a ways away from the main structure.

Mr. Stead stated it is.

Board Member Bodor stated how do you plan to get your vehicles back there.

Chairman Buzzutto stated yeah. That's what I was...

Mr. Stead stated well, I'm going to drive them down the side of the yard. I didn't plan to improve a driveway because there's really not going to be that much traffic. It's predominantly a storage and workshop, not a place where I would keep my daily driving automobiles. So then most of the traffic is going to be myself walking from the house to the garage and back.

Board Member Bodor stated but there's three garage doors on it, so to me that means there's...you've got the ability for three vehicles to be coming and going.

Mr. Stead stated yes. That exact structure is...was originally what I had planned, but now after looking at the trees some more, I don't think I'm going to have the three garage doors. It looks like it's going to be a single entrance, as far as appearance goes. But yes, it could potentially hold three vehicles but, like I said

again, there's not going to be a lot of traffic. They're going to be brought in...One of them is a trailer. It's going to sit there most of the time except when I'm taking a vehicle to a show or somewhere where it needs to go. So, the vehicles would go into the garage and they would stay there or be worked on. And again, they're just going to go out, you know, for special events. They're not daily...

Chairman Buzzutto stated do you have some sort of a hobby on vehicles, or...

Mr. Stead stated yeah. I restore historic vehicles.

Chairman Buzzutto stated older, you mean, antique...

Mr. Stead stated correct. Yes. Right now the vehicles I have been working on are from the 40's, early 40's.

Chairman Buzzutto stated are these going to be your own vehicles or are they going to be...

Mr. Stead stated they're...

Chairman Buzzutto stated worked on for profit for you or...

Mr. Stead stated nope. There's no commerce in this. There's no resale. It's all just a hobby for myself and for personal use.

Chairman Buzzutto stated and I assume that will be heated.

Mr. Stead stated yes.

Chairman Buzzutto stated electric I suppose, or...Well...

Mr. Stead stated probably...There is gas in the area so if that can be extended from the house, I would have to check with a plumber, and of course the Building Department, to see if that's acceptable. Then that's probably what I would do. If not, then it would be electric.

Chairman Buzzutto stated and as Mary indicated, it's just going to be one story.

Mr. Stead stated yes.

Chairman Buzzutto stated the first story would be...Are you going to have any lifts in there or...

Mr. Stead stated no. I don't...

Chairman Buzzutto stated no lifts. That would be at least a 20 foot...So there would be none of that lifting equipment in there. No pits to drive over.

Mr. Stead stated no.

Chairman Buzzutto stated nothing like that.

Mr. Stead stated none planned.

Board Member Bodor stated where, you know, is the wetland buffer indicated here. I was not there yesterday. Unfortunately I was not able to be there. I didn't make any of the trips yesterday. But with the wetlands so close to this structure there, is...should there be a concern regarding motor oil, fluids from the car.

Mr. Stead stated I don't believe so because, you know, I'm not building right up to the wetlands buffer zone, you know. The building is going to be off of those setbacks somewhat. And any kind of the usage, spillage of the small amounts of oil, is going to be within the garage. There's not going to be...Again, it not going to be a commercial enterprise where there's large storage of lubricating fluids and things like that. So we're not...there's not going to be a leak of the proportion that that would, you know, be a threat to the wetlands.

Chairman Buzzutto stated how many vehicles...You own these vehicles that you're going to be working on. How many vehicles do you...

Mr. Stead stated I have two right now, along with the trailer. And that's originally where the three bays came from. And I'm looking to add a third.

Chairman Buzzutto stated okay. And after you get them all renovated, whatever you got to do to them, you're going to maintain possession of them.

Mr. Stead stated yes.

Chairman Buzzutto stated or you're not going to fix them up and then sell them.

Mr. Stead stated no.

Chairman Buzzutto stated no. Okay.

Mr. Stead stated no.

Chairman Buzzutto stated so there'll be no turnover of anything whatsoever for profit or anything like that.

Mr. Stead stated no. No.

Board Member Bodor stated you have water back in there. Running water.

Mr. Stead stated yes. Yes.

Board Member Bodor stated okay.

Chairman Buzzutto stated from the well or wetlands.

(Laughing)

Mr. Stead stated from the well. It would have to be...

Chairman Buzzutto stated from the well.

Mr. Stead stated piped back there.

Board Member Bodor stated and bathroom facilities. A toilet. I mean, how far are you going to go with this.

Mr. Stead stated no. Because...No, I don't plan on going that far with it. I was about to say no because I believe it would be a complication to then pump it upwards to the top of the septic system and all. And it's just not worth that added effort.

Board Member Bodor stated and this...

Mr. Stead stated water would be necessary for, you know, cleaning my hands and such like that, but nothing along the lines of bathroom facilities or anything.

Board Member Bodor stated no. Okay. Are the walls going to be insulated in any way.

Mr. Stead stated yes.

Board Member Bodor stated alright. Where I'm going with this is the potential for turning this into living quarters down the road. That's where my questioning...

Mr. Stead stated okay.

Board Member Bodor stated is coming from. And we really are not interested in that.

Mr. Stead stated oh, I'm sure.

Board Member Bodor stated so there maybe conditions if this flies, put into that reso if that's okay with you.

Mr. Stead stated that's absolutely fine with me. I have no intention of doing that whatsoever.

Board Member Bodor stated you don't, but...

Mr. Stead stated right. And sure. By that means, I have no problem with any stipulations or a variance or that would prevent it from ever being used as such. That's not a problem for me.

Board Member Bodor stated and what about the storage area above now. Is that going to be open rafters to chuck stuff up there.

Mr. Stead stated yes.

Board Member Bodor stated or are you going to have it...

Mr. Stead stated well, I'll probably put some...

Board Member Bodor stated plywood flooring.

Mr. Stead stated plywood down, but it's not going to be the type of space where you can get an additional room or, you know, walk around in it. It's just going to be enough to stick boards in various parts and such; storage.

Board Member Bodor stated access that by way of an interior stairwell or just on a ladder or...

Mr. Stead stated I would...A ladder. I...There's not going to be any...

Board Member Bodor stated any...

Mr. Stead stated sheetrock underneath it or anything. You know, it's going to be open. There would be the final roof that would be insulated (inaudible).

Chairman Buzzutto stated a concrete floor to...so the oil don't seep into the...

Mr. Stead stated yes.

Chairman Buzzutto stated wetlands there. Okay. Do I have any input from the audience on this particular...Do I have any more input from the Board. Marianne.

Board Member Burdick stated I think the consideration for the location by the Applicant was so it wouldn't be visible from the neighbors coming down the road. Because if he tried to put it any closer on the backyard, it is a small backyard even though it is about 10 acres. There's a lot of constraints on the property. There's an area with a tree buffer that cannot be cut, so the backyard is small. And he can't really bring it up any closer to the property, away from the wetland area because of the expansion area for the septic system. And the consideration for where it is is for the neighbors so it wouldn't be visible as they were coming down the road.

Chairman Buzzutto stated and the size of this building, what was the size of the...

Mr. Stead stated 45' x 50'.

Chairman Buzzutto stated and that's 50%. So that's not counting the loft then. You don't count the loft as a...

Board Member Burdick stated no.

Chairman Buzzutto stated no. Just the...

Board Member Bodor stated the footprint.

Chairman Buzzutto stated okay. And the finish on this building will be the same as the house, or...

Mr. Stead stated yes. Vinyl siding.

Chairman Buzzutto stated materials used will be basically the same...

Mr. Stead stated yes.

Chairman Buzzutto stated okay. Anymore questions. Jerry.

Board Member Herbst stated no.

Chairman Buzzutto stated Lars. I'd like to entertain a motion to close the public hearing.

Board Member Herbst stated I'll make the motion to close the public hearing.

Board Member Burdick stated second.

Chairman Buzzutto stated all in favor. Motion carried by a vote of 5 to 0.

Chairman Buzzutto stated so be it. Okay.

Board Member Bodor stated oh. I just was looking at something here. The application for the building permit has the size at 59' x 39'.

Mr. Stead stated right. That was changed to the 45' x 50' to actually allow more setback from the wetlands.

Board Member Bodor stated okay. So our figures...

Mr. Stead stated are correct.

Board Member Bodor stated are correct. These are not at this point in time.

Board Member Olenius stated there was another letter I saw in the packet requesting that change. I saw it somewhere.

Chairman Buzzutto stated for the ZBA. The building is now 50' x 45'.

Board Member Olenius stated there. There it is.

Board Member Bodor stated yes. I see it. I got it now.

Chairman Buzzutto stated oh. That's the one you're reading.

Board Member Bodor stated yeah, I got it now.

Chairman Buzzutto stated okay. Let's see. There's two on Stead here [referring to the resolutions].

Board Member Olenius stated in...Can I...

Chairman Buzzutto stated which one you got there. Let's see.

Board Member Olenius stated you just...Those are duplicate copies.

Chairman Buzzutto stated yeah, okay.

Board Member Olenius read the following resolution:

**IN THE MATTER OF THE APPLICATION OF**  
***James Stead, Case #11-09***  
***For Area Variances for Construction of a Garage***

**WHEREAS, *Jak Hee You*** is the owner of real property located at 69 Quail Lane (R-4 Zoning District), also identified as **Tax Map Parcel #35.-4-111**, and

**WHEREAS, *James Stead*...**

Mr. Stead stated yes [referring to the pronunciation of his last name].

Board Member Olenius continued to read the following resolution:

has made application to the Patterson Zoning Board of Appeals for an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations, in order construct a 50' x 45' garage with storage above, and

**WHEREAS**, §154-7 of the Patterson Town Code requires an 20' side yard setback; Applicant will have 5'; ***Variance requested is for 15'***, and

**WHEREAS**, the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and

**WHEREAS**, a public hearing was held on the application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on ***May 20, 2009 and June 17, 2009***, and a site walk was conducted on ***June 16, 2009***, to consider the application; and

**WHEREAS**, The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearings and finds that:

1. the proposed application ***will not*** produce an undesirable change in the character of the neighborhood ***because the site for the garage is very well screened and to the rear of the property.***
2. the benefit sought by the applicant ***cannot*** be achieved by any other feasible means ***because of the wetlands buffer on one side and the deed restriction against tree clearing on the other, as well as the 100% expansion area for the existing septic forward of the building.***
3. the variance requested ***is*** substantial ***however not so much so as to cause the denial of the requested variance.***
4. the proposed variance ***will not*** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ***because said lot is in excess of 10 acres with many restrictions to reserve open space.***
5. the alleged difficulty necessitating the variance ***was self-created*** and ***is not sufficient*** so as to cause a denial of the requested variance.

**NOW, THEREFORE BE IT RESOLVED**, that the Patterson Zoning Board of Appeals hereby

*grants* the application of *James Stead* for *an area variance of 15'* from the side yard setback of 20' as required in the R-4 Zoning District as set forth by §154-7 of the Patterson Town Code; Schedule of Regulations, in order to permit a 5' side yard setback between the proposed garage and the side yard line.

With the resolution is subject to the following conditions:

1. The structure shall be no more than one story.
2. The structure shall never be used as living space.

Board Member Olenius stated is that enough for you.

Board Member Bodor stated yes.

Board Member Burdick stated second.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	yes
Chairman Buzzutto	-	yes

Resolution carried by a vote of 5 to 0.

Chairman Buzzutto stated is the name Steed or Stead.

Mr. Stead stated Stead.

Chairman Buzzutto stated Stead, okay.

Board Member Olenius stated that's why I looked up at you.

Mr. Stead stated you did very good.

Chairman Buzzutto stated I was calling you Steed.

Mr. Stead stated that's fine. I get it a lot.

Chairman Buzzutto stated good luck.

Mr. Stead stated thank you very much.

Board Member Burdick stated good luck.

Mr. Stead stated congratulations.

Board Member Bodor stated thank you.

4) **GABRIELLE & JAMES DUKE CASE 12-09**

Mrs. Gabrielle Duke and Mr. James Duke were present.

Chairman Buzzutto stated okay, now this last one here.

Board Member Bodor stated we have two more.

Board Member Burdick stated two more.

Board Member Olenius stated two.

Board Member Bodor stated two more. Duke is next.

Board Member Olenius stated that one's new.

Chairman Buzzutto stated two more.

Board Member Olenius stated the new stuff.

Chairman Buzzutto stated okay.

The Secretary read the following legal notice:

**Gabrielle and James Duke Case #12-09 – Area Variance**

Applicant is requesting an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations, in order to convert the existing one-car garage into a family room and add an attached one-car garage. The Code requires a 40' side yard setback; Applicant will have 14'±; Variance requested is for 26'±. This property is located at 31 McManus Road South (R-4 Zoning District).

Chairman Buzzutto stated alright Mr. Duke. Do you want to raise your right hand. Do you swear the testimony you provide tonight will be the truth and the whole truth.

Mr. James Duke stated yes.

Chairman Buzzutto stated okay, fine. You want to state your name and your address.

Mr. Duke stated James Duke. 31 McManus Road South, Patterson, New York.

Chairman Buzzutto stated okay. And you...

Mr. Duke stated there's actually one little correction to that.

Chairman Buzzutto stated that's what I was going to say. You heard the agenda...

Mr. Duke stated yeah. It's actually a...we're converting a two-car garage into the family room and we're looking to add on the one-car garage.

Chairman Buzzutto stated okay.

Board Member Herbst stated just a quick question. South McManus Road, that's on the [Route] 311 side.

Board Member Burdick stated no.

Board Member Herbst stated the other side.

Mr. Duke stated yeah.

Board Member Herbst stated okay. Just want to...

Mr. Duke stated yeah.

Board Member Burdick stated Chairman, before we begin, I just like to enter into the record that I live on the same road as the Duke's about a mile away, not within the notification area or not, but I do live at the end of McManus Road South.

Chairman Buzzutto stated oh, I see. You live as far as you can go without...You can't go no further.

Board Member Burdick stated yes. Yes. But...

Chairman Buzzutto stated okay.

Board Member Burdick stated I am a neighbor of the Duke's.

Chairman Buzzutto stated okay. Thank you.

The Secretary stated also, I wanted to let the Board know that we received a call today in the office from a neighbor Linda Telesco, and she said she was not notified. The address that we have on file though, was what it was sent to but it's not her address. So she called in today to let us know that she wasn't notified properly. But we did it to the address that we have on file, so...

Chairman Buzzutto stated was that an address that was given to you by...

The Secretary stated it's what the Assessor's Office has.

Chairman Buzzutto stated what the Assessor's have.

The Secretary stated it's what the Town...It's the official address that we have.

Chairman Buzzutto stated well, we can still proceed with the...

Carl Lodes stated yes.

The Secretary stated so I just wanted to let the Board know...

Chairman Buzzutto stated yeah, fine Thank you.

The Secretary stated that she did call and...

Chairman Buzzutto stated alright. You know this particular person.

Mr. Duke stated yes. That's our next door neighbor.

Chairman Buzzutto stated alright. Do you want to explain to...what you want to do. Do you want to go through it again just for the record on your...

Mr. Duke stated well, basically we're looking to convert our two-car garage...

Board Member Bodor stated which is attached.

Mr. Duke stated which is attached.

Chairman Buzzutto stated it is attached.

Mr. Duke stated into a family room. There will be no additional facilities such as a bathrooms, closets, that type of thing. It's just going to be an open space that we're going to, you know, close a bit more and carpet. And then we want to add onto that a one-car garage so that it will extend out from what's right now our garage.

Chairman Buzzutto stated oh, so you're changing the...

Mr. Duke stated it will maintain the same features of the house, it will just be...the garage will be basically extended so we can now turn, you know, adding on...

Chairman Buzzutto stated well, then the garage will be attached.

Mr. Duke stated yes.

Chairman Buzzutto stated still to that.

Mr. Duke stated so...

Chairman Buzzutto stated so you'll actually be changing the footprint of the...

Mr. Duke stated yes.

Chairman Buzzutto stated yeah. So it...

Mr. Duke stated yes.

Chairman Buzzutto stated be changed. Oh, you got pictures.

Board Member Bodor stated yeah.

Chairman Buzzutto stated okay.

Board Member Bodor stated doesn't everyone have pictures.

The Secretary stated yes.

Board Member Bodor stated oh.

Chairman Buzzutto stated yeah, I didn't...

Board Member Bodor stated I have pictures.

Chairman Buzzutto stated oh yeah. We have some good stuff here.

Board Member Bodor stated we've got some very nice pictures, yes. And the proposed addition is all lined out with paint on the macadam.

Chairman Buzzutto stated oh gosh. Wow.

Board Member Bodor stated how far out does that addition come.

Mr. Duke stated it will be...I believe it's 14 feet out.

Board Member Bodor stated is it 14 feet.

Mrs. Gabrielle Duke stated it's 24 [feet].

Mr. Duke stated 24 [feet] I'm sorry.

Board Member Bodor stated and that will be for a one-car or...The addition...

Mr. Duke stated that will be one car.

Board Member Bodor stated is for one car.

Mr. Duke stated yes. One car.

Board Member Bodor stated okay.

Mrs. Duke stated we didn't want to...Can I speak.

Board Member Bodor stated if you come up here to the microphone.

Chairman Buzzutto stated come up to the microphone.

Board Member Bodor stated so it's on the record.

Chairman Buzzutto stated just give your name.

Board Member Bodor stated and identify yourself.

Mrs. Duke stated Gabrielle Duke at 31 McManus Road South.

Board Member Bodor stated okay.

Chairman Buzzutto stated don't be bashful.

Mrs. Duke stated no.

Board Member Bodor stated you didn't want to...

Chairman Buzzutto stated go ahead.

Mrs. Duke stated we didn't want to block access to our backyard...

Chairman Buzzutto stated do you want to into the mic.

Mrs. Duke stated so we didn't want to do a two-car addition. We just want to do the one-car so that we have somewhere to go in the winter, for the car. But if we did a two-car attached, we'd block access to our back. We didn't want to do that.

Chairman Buzzutto stated oh, okay.

Mr. Duke stated it would be too far over.

Chairman Buzzutto stated fine.

Board Member Bodor stated well then the entrance to the proposed garage is going to be like from the front.

Mrs. Duke stated yup. We're going to have to...the walkway's going to...

Board Member Bodor stated widen your...Oh, okay.

Mr. Duke stated we'll just widen the driveway...

Board Member Bodor stated widen the driveway.

Mr. Duke stated in the front.

Board Member Bodor stated alright.

Chairman Buzzutto stated oh, I see. This way.

Board Member Bodor stated yeah. The proposed addition...

Chairman Buzzutto stated yeah.

Board Member Bodor stated is existing. They're going to build out here. Yes, okay good. She has a drawing that she's pulling out here. And the new garage door will be on the front of the house.

Chairman Buzzutto stated facing the road.

Board Member Bodor stated yeah. Yeah.

Chairman Buzzutto stated facing the road. So it's direct right into the...

Mr. Duke stated yes.

Chairman Buzzutto stated okay. That's logical.

Board Member Bodor stated thank you for all of these [referring to the pictures]. It will still give you access to the backyard right down the driveway too.

Mrs. Duke stated yes.

Board Member Bodor stated yeah.

Chairman Buzzutto stated yeah.

Mrs. Duke stated and that will be a grassy area.

Board Member Bodor stated yeah.

Mrs. Duke stated (inaudible – too distant) up the driveway there.

Board Member Olenius stated would this be the adjacent neighbor [referring to a picture]...

Mrs. Duke stated that's the neighbor.

Board Member Olenius stated this house that I'm seeing.

Mr. Duke stated yes.

Board Member Olenius stated so their home is set that far back.

Mr. Duke stated yes.

Board Member Olenius stated it's not...

Mrs. Duke stated oh, she's...

Board Member Olenius stated directly even.

Mr. Duke stated no.

Board Member Burdick stated their home is very far away from the Duke's.

Mr. Duke stated it's all driveway alongside of that.

Board Member Bodor stated there should be a survey.

Mr. Duke stated and that it is for most of the year, it's overgrown, you know (inaudible).

Chairman Buzzutto stated does she live over there. I wonder if that's the...

Board Member Bodor stated here. Buzzy. Here you go.

Chairman Buzzutto stated it's up here.

Board Member Bodor stated is this a shed you have in the backyard.

Mrs. Duke stated yes.

Board Member Bodor stated it's not on the survey. That's what we were looking at. To see where it was placed.

Mr. Duke stated oh, okay. Yeah, that was probably...I think that's our original survey from (inaudible – papers shuffling) type of land.

Board Member Bodor stated yes, could you locate that shed on here for us [referring to the survey]. It looks like there is quite a bit of side yard there.

Chairman Buzzutto stated I don't know where the...

Mrs. Duke stated it's actually closer up, Jim, towards the house.

Mr. Duke stated oh, is it.

Mrs. Duke stated it's closer to the (inaudible). Okay, that's good.

Board Member Bodor stated let's see where you put it. Oh, okay.

Mr. Duke stated that's approximate.

Board Member Bodor stated like almost in the middle of the backyard.

Mr. Duke stated oh, well...

Mrs. Duke stated depending on the pitch of the house.

Mr. Duke stated I mean, you see the way we have the grass set up.

Board Member Bodor stated yeah.

Mr. Duke stated it looks like it's at the corner.

Board Member Bodor stated yeah.

Mr. Duke stated but it's actually where the property would...The property continues further back.

Board Member Bodor stated your property goes back into the woods. The wooded area.

Mr. Duke stated yes.

Board Member Bodor stated okay. That's what I was trying to...

Mr. Duke stated yeah.

Board Member Bodor stated okay. So it is. It's basically half way between the house and the back property line, which is wooded back there.

Mr. Duke stated yeah. Yeah.

Mrs. Duke stated that's exactly...

Mr. Duke stated it slopes down.

Chairman Buzzutto stated so the back of the shed to the property line is approximately how many feet.

Mr. Duke stated it's about...

Mrs. Duke stated it actually, in that corner, as it extends out to that back corner, goes...I don't know.

Mr. Duke stated it kind of drops off and...

Mrs. Duke stated it's a very weird angle where our house is, so...

Mr. Duke stated yeah. You can see the property...

Chairman Buzzutto stated well, it's not close to the side...

Mrs. Duke stated no. Not at all.

Mr. Duke stated no.

Mrs. Duke stated no.

Board Member Bodor stated no, because this shows I think it's 95' between the house, it looks like, and the back property line. And the shed is like half way.

Chairman Buzzutto stated yeah.

Mr. Duke stated yeah.

Board Member Bodor stated so...

Chairman Buzzutto stated I just wanted to get it...

Board Member Bodor stated it's a good 40 [feet].

Chairman Buzzutto stated into the record.

Board Member Bodor stated yeah. It's a good 40 feet.

Chairman Buzzutto stated okay.

Board Member Bodor stated yeah.

Mr. Duke stated (inaudible). But I know if you walk in the back, you have a walk to go down into the woods.

Chairman Buzzutto stated do I have any input from the audience on this application. Hearing none.

Board Member Olenius stated has a variance already been granted on this property.

Mr. Duke stated it was...

Board Member Olenius stated or is this pre...

Mrs. Duke stated no.

Board Member Olenius stated like a 40 foot side yard.

Mr. Duke stated before we bought it, they had to obtain a variance I believe to get the driveway...to get access or something. But I think that was in like '97. It was a previous owner that got it and...

Board Member Olenius stated I just noticed that your existing garage is already encroaching on the side yard. Because you only have 31 feet now, and Code requires 40 feet. So you're already...

Mrs. Duke stated have a variance on that.

Board Member Burdick stated what was the Code prior though, because the house...

Board Member Olenius stated that's what I was questioning.

Board Member Burdick stated yeah. The house was there prior to the Code change. Wasn't it Rich. Yeah. It was there prior to the Code change.

Chairman Buzzutto stated okay.

Board Member Bodor stated and the nearest neighbor on that side is not right...

Mr. Duke stated on that side.

Board Member Bodor stated yeah.

Mr. Duke stated that would be the house you can see...just barely see in the photo. In the one photo. I wouldn't even know...It's suppose to be on...

Board Member Bodor stated which one is that [referring to the photos].

Mrs. Duke stated it's...

Board Member Bodor stated over in here.

Board Member Olenius stated all the way back.

Board Member Bodor stated oh. This is wooded behind there too.

Mr. Duke stated yeah.

Board Member Burdick stated that adjacent house doesn't come in straight off the road. It comes in and their driveway turns and angles away from the Duke's property. The house is quite a distance from them.

Board Member Bodor stated okay.

Mr. Duke stated there's no one across the way from us.

Board Member Bodor stated okay.

Chairman Buzzutto stated the structure of the garage will be finished off the same as the...

Mr. Duke stated yes.

Chairman Buzzutto stated the major dwelling. Okay. Same color, same...

Mr. Duke stated yes.

Board Member Bodor stated now is it going...Is the line of the current garage going to be extended to the new one. Or is it going to...What's...

Mr. Duke stated the...

Mrs. Duke stated yes.

Board Member Bodor stated the line of the roof.

Mr. Duke stated yeah.

Mrs. Duke stated yes.

Mr. Duke stated yes.

Board Member Bodor stated it's going to look like...

Mrs. Duke stated well, we're hoping to have somewhat of a dormer over the garage so it's not just the long... You know what I mean. So that it's prettier looking than just a...

Board Member Bodor stated a flat...

Mrs. Duke stated yeah.

Board Member Bodor stated roof.

Mr. Duke stated right. Just like a little architectural, you know...

Mrs. Duke stated sort of... Yeah.

Board Member Bodor stated over the family room area or over the garage.

Mrs. Duke stated over the garage.

Mr. Duke stated over the garage, yeah.

Mrs. Duke stated so it will almost look like a breezeway, roof.

Chairman Buzzutto stated the garage that you are going to put there is going to be the same width as this with one door.

Mrs. Duke stated going...

Mr. Duke stated with depth. It will have... No, depth. And then the front door will... the door will be...

Chairman Buzzutto stated oh, it's in the front. The...

Mr. Duke stated yeah, it's going to be in the front.

Chairman Buzzutto stated coming out to the front. Yeah, okay. It's one door. This is storage up in here I would assume. Crawl space, whatever.

Ms. Duke stated yes.

Mr. Duke stated yeah.

Chairman Buzzutto stated and getting up to that would be...

Mr. Duke stated pull down.

Chairman Buzzutto stated a pull down. Okay. What was this orange marked off here [referring to the pictures].

Mr. Duke stated that was just to give an idea of the boundaries...you know, the footprint of the...

Chairman Buzzutto stated okay. This...There's nothing on that.

Mr. Duke stated no. Just the footprint of where the garage would be.

Board Member Bodor stated so the existing garage door openings going to be completely obliterated.

Mrs. Duke stated yeah.

Mr. Duke stated yeah.

Chairman Buzzutto stated and this is going to be a...Family room rather. That's the garage. Will that have an exit to the outside.

Mr. Duke stated no.

Chairman Buzzutto stated it will not. You will have to...

Mr. Duke stated we'll have a door into the garage there, you know, into the garage itself.

Chairman Buzzutto stated yeah.

Mr. Duke stated just to make access between the two. But other than that...

Chairman Buzzutto stated no out...

Mr. Duke stated the only way in will be through the main house.

Chairman Buzzutto stated okay. Do you have any more on that.

Board Member Olenius stated I see from your survey your well is in your front yard, so am I to assume that your septic area is rear of the house.

Mrs. Duke stated yes.

Mr. Duke stated yes.

Chairman Buzzutto stated anything else you want to know about.

Board Member Bodor stated no. I'm okay.

Chairman Buzzutto stated okay. The whole house is cattycorner so...

Board Member Bodor stated yes.

Chairman Buzzutto stated on the property. I don't know why anybody did that.

Board Member Bodor stated (inaudible).

Chairman Buzzutto stated alright. Everybody's happy, I'd like to close the public hearing.

Board Member Olenius stated second.

Chairman Buzzutto stated all in favor. Motion carried by a vote of 5 to 0.

Chairman Buzzutto stated do you want to DNA this one. Pock marks there.

Board Member Olenius read the following resolution:

**IN THE MATTER OF THE APPLICATION OF**  
***Gabrielle & James Duke, Case #12-09***  
***For an Area Variance for construction of a One-Car Attached Garage***

**WHEREAS, *Gabrielle and James Duke are*** the owners of real property located at 31 McManus Road South (R-4 Zoning District), also identified as **Tax Map Parcel #23.-2-11**, and

**WHEREAS, *Gabrielle and James Duke*** have made application to the Patterson Zoning Board of Appeals for an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations, in order to convert the existing two-car garage into a family room and add an attached one-car garage, and

**WHEREAS, §154-7 of the Patterson Town Code** requires an 40' side yard setback; Applicant will have 14'; Variance requested is for 26', and

**WHEREAS, the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and**

**WHEREAS, a public hearing was held on the application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on *June 17, 2009*, to consider the application; and**

**WHEREAS, The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearing and finds that:**

1. the proposed application ***will not*** produce an undesirable change in the character of the neighborhood ***because of the way that the neighborhood is set-up, houses are not stacked, houses are very erratic and there's no one right on top of said addition.***
2. the benefit sought by the applicant ***cannot*** be achieved by any other feasible means ***because existing garage infringes on current Code regulations, and there are septic issues in the rear of the house and in front of the house would cross the existing well.***
3. the variance requested ***is*** substantial ***however not so much as to cause a denial of the requested variance.***
4. the proposed variance ***will not*** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ***because the described area is already impervious in nature due to the existing blacktop.***
5. the alleged difficulty necessitating the variance ***was self-created and is not sufficient*** so as

to cause a denial of the requested variance.

**NOW, THEREFORE BE IT RESOLVED**, that the Patterson Zoning Board of Appeals hereby *grants* the application of *Gabrielle and James Duke* for *an area variance of 26' from the side yard setback of 40'* as required in the R-4 Zoning District as set forth by §154-7 of the Patterson Town Code; Schedule of Regulations, in order to permit a 14' side yard setback between the attached one-car garage and the side property line.

Board Member Bodor stated second.

Chairman Buzzutto stated the family room will never become a bedroom, will it.

Mrs. Duke stated no.

Mr. Duke stated no. We're not going to. Not at all.

Mrs. Duke stated we need the room.

Chairman Buzzutto stated did you get a second on that.

Board Member Bodor stated I did.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	yes
Chairman Buzzutto	-	yes

Resolution carried by a vote of 5 to 0.

Board Member Bodor stated you're good to go.

Board Member Burdick stated good luck.

Mrs. Duke stated thank you.

Board Member Bodor stated now to the Building Department.

Mr. Duke stated okay.

Board Member Olenius stated good luck.

Mr. Duke stated thank you very much.

Board Member Bodor stated good night.

5) **JACQUELINE & MICHAEL DEVAUX CASE #13-09**

Mrs. Jacqueline Devaux and Mr. Michael Devaux were present.

Chairman Buzzutto stated okay. Do you want to read the next...

The Secretary read the following legal notice:

**Jacqueline and Michael Devaux Case #13-09 – Area Variance**

Applicant is requesting an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations, in order to replace and extend the existing wood deck and make it 13' x 29' and to and relocate the stairs to the deck. The Code requires a 15' side yard setback; Applicant will have 4'; Variance requested is for 11'. This property is located at 69 Newburgh Road (RPL-10 Zoning District).

Board Member Olenius stated Mr. Chairman, I respectfully request to recuse myself in this case because they are my close neighbors.

Chairman Buzzutto stated neighbors. Okay, fine. The last name is pronounced...

Mr. Michael Devaux stated Devaux.

Chairman Buzzutto stated Devaux. Okay, you heard the way the agenda read, is there any changes in that...discrepancies of the way Sarah read the...

Mrs. Jacqueline Devaux stated no.

Mr. Devaux stated no. That sounds like what we want to do. 13' by...

Mrs. Devaux stated 29'.

Mr. Devaux stated 29'. What we'd like to do.

Chairman Buzzutto stated and the purpose of this is to extend a wooden deck.

Mr. Devaux stated give us a...

Chairman Buzzutto stated oh, I'm sorry. Do you want to raise your right hand.

Mr. Devaux stated sure.

Chairman Buzzutto stated you swear the testimony you provide tonight will be the truth the whole truth.

Mr. Devaux stated yes I do.

Chairman Buzzutto stated okay.

Mrs. Devaux stated yes I do.

Chairman Buzzutto stated give your name and address.

Mr. Devaux stated Michael Devaux. 69 Newburgh Road, Patterson, New York.

Chairman Buzzutto stated very good.

Mrs. Devaux stated Jacqueline Devaux. 69 Newburgh Road, Patterson, New York.

Board Member Bodor stated what's the current size of your deck.

Mr. Devaux stated 6 ½' by... We haven't...

Mrs. Devaux stated 6 ½' what.

Mr. Devaux stated by 10'.

Mrs. Devaux stated 10'. In fact, I have pictures of the existing deck if you would like that.

Chairman Buzzutto stated okay. Oh, these are different pictures. I see. Oh, these are all different.

Mrs. Devaux stated they're just different angles of the yard.

Mr. Devaux stated yeah, pictures from each side of the house, from the back, and so forth. We've got some photos facing...

Chairman Buzzutto stated that's a small one.

Mr. Devaux stated our neighbors.

Mrs. Devaux stated it's a small deck.

Chairman Buzzutto stated very small.

Board Member Bodor stated it is. Where would you want to relocate the stairs.

Mrs. Devaux stated these stairs actually we're going to... Well, we want to actually not alongside of the house, but actually up from the center. You know, the back of the yard. So it would be alongside of the deck coming...

Mr. Devaux stated could you possibly show them on the drawing or picture.

Board Member Bodor stated currently they come up along...

Mrs. Devaux stated the side of the house.

Board Member Bodor stated the side of the house, yeah.

Chairman Buzzutto stated on this one there, yeah.

Mrs. Devaux stated that's the steps.

Chairman Buzzutto stated right on...

Board Member Bodor stated right. That's where they are now. Yeah, I have this. I'm trying to...

Mr. Devaux stated yeah, it's penciled in over the main...Basically, from the back of the house...May I see one of those pictures.

Chairman Buzzutto stated yeah (inaudible).

Mr. Devaux stated what we're proposing to do is...Right now it's 6 1/2' from the house to here.

Board Member Bodor stated right.

Mr. Devaux stated bring this out to here 13 feet...

Board Member Bodor stated yes.

Mr. Devaux stated and the 10 feet that it is from the corner of the house this way, we're going to bring this out to 26 feet, well past this, and at the 26 foot point, the stairs would come down this way.

Board Member Bodor stated toward the back.

Mr. Devaux stated towards straight...

Mrs. Devaux stated towards the back, yes.

Mr. Devaux stated right.

Board Member Bodor stated straight back.

Mr. Devaux stated facing the backyard. And that's the extra 3 feet came out of.

Mrs. Devaux stated and my understanding is that where the stairs would be...

Chairman Buzzutto stated did you want to see these pictures.

Carl Lodes stated I saw those.

Chairman Buzzutto stated oh, you saw them.

Carl Lodes stated yeah.

Chairman Buzzutto stated okay.

Mrs Devaux stated the property line there would be no issue because they...if you see the diagram of our property, it comes to a point.

Board Member Bodor stated yes.

Mr. Devaux stated yeah.

Mrs. Devaux stated and it actually goes further away.

Board Member Bodor stated this...

Mr. Devaux stated as the deck gets longer...I'm sorry to interrupt.

Board Member Bodor stated that's okay.

Mr. Devaux stated our property line moves...gets larger essentially.

Board Member Bodor stated right. Right. So where the stairs are coming down, they would come down and end just about where the backend...backside of the deck is.

Mrs. Devaux stated yes.

Board Member Bodor stated okay.

Mrs. Devaux stated yeah.

Chairman Buzzutto stated how would you extend that out. Would you have to put new...

Mrs. Devaux stated we have to...Yeah. New footings.

Chairman Buzzutto stated running right into the house. So you have to remove those.

Mrs. Devaux stated yeah.

Mr. Devaux stated well, the old deck...We're about to have the house resided. The siding...

Chairman Buzzutto stated oh, I see. I can see down...

Mrs. Devaux stated right.

Mr. Devaux stated remove the deck and just be thrown away.

Mrs. Devaux stated dismantled. Yes.

Mr. Devaux stated and they're going to re...put a, and I don't know the technical term, but I think it's a stringer across the house.

Chairman Buzzutto stated right.

Mr. Devaux stated and then they're going to build off the side of the house the way this one is.

Chairman Buzzutto stated yeah. Okay.

Board Member Bodor stated now this is not your property back in here.

Mrs. Devaux stated where the triangle...Yes. That's right. It's not.

Board Member Bodor stated right here.

Mrs. Devaux stated that's right. Yeah.

Board Member Bodor stated what's back there.

Mrs. Devaux stated it's just trees.

Mr. Devaux stated it's the farthest corner from our neighbor's property. His house is at the other end. We have pictures.

Board Member Bodor stated there's nothing right there but woods.

Mrs. Devaux stated yeah.

Mr. Devaux stated yeah.

Chairman Buzzutto stated that would be this here, wouldn't it here.

Mrs. Devaux stated yeah. Just woods.

Chairman Buzzutto stated deck there.

Board Member Bodor stated pretty much. Going this space...

Chairman Buzzutto stated going...Yeah. Okay.

Board Member Bodor stated is that the house way over there in red, or is that a tree [referring to a picture].

Mrs. Devaux stated well, the house is behind there, but that is actually...You know the swing set back there.

Board Member Bodor stated oh.

Mr. Devaux stated Ray's.

Mrs. Devaux stated yeah, that's Ray's.

Mr. Devaux stated at Ray's house.

Mrs. Devaux stated yeah. That's Ray's house. We also have letters from the neighbors. We've have...

Mr. Devaux stated our two immediate neighbors in the back of us on either side.

Board Member Bodor stated alright. I'll read these into the record.

Board Member Bodor read the following letter:

June 16, 2009

Town of Patterson Board of Appeals,

I, Raymond F. Kerins, Sr., residing at 32 Manchester Road, Patterson, New York, 12563, hereby state for the purpose of informing the Patterson Town Board, that I have no objection to Michael and Jacqueline Devaux' proposed construction of a 13' x 29' deck behind their home located at 69 Newburgh Road, Patterson, New York 12563.

Raymond F. Kerins, Sr.

Board Member Bodor read the following letter:

June 16, 2009

To Whom It May Concern:

I have spoken with Michael Devaux of 77 Newburgh...

Mr. Devaux stated that's...

Mrs. Devaux stated it's...Well, he has the correct map number.

Mr. Devaux stated I don't know where he got...

Mrs. Devaux stated I did not change that because it was...

Board Member Bodor stated okay. That's alright.

Board Member Bodor continued to read the following letter:

25.46-1-79...that's a map number. Concerning the placement of a rear deck which does not meet the minimum setback requirements. I have no complaint as to the construction nor placement of this improvement.

Sincerely,  
Sean Roche

Board Member Bodor stated and he's...

**TAPE ENDED**

Board Member Bodor stated he's at 29 Newton Road. Now is he...even though it's a different street address, he is your immediate neighbor.

Mrs. Devaux stated yes.

Mr. Devaux stated he and Ray Kerins are back to back.

Board Member Bodor stated okay.

Mr. Devaux stated he's on one...he's on Newton [Road]...

Board Member Bodor stated yes.

Mr. Devaux stated and Ray's on Manchester. And the back of our house faces both of them.

Board Member Bodor stated alright.

Board Member Burdick stated and that's reflected in the tax map parcels at the end.

Board Member Bodor stated yeah. He gives his tax map over here too.

Mrs. Devaux stated yeah.

Board Member Bodor stated which is 25.46-1-80. And you're 79. Okay.

Chairman Buzzutto stated no input from the audience so...Satisfied with the way things are...

Board Member Bodor stated yes.

Chairman Buzzutto stated setup here.

Board Member Bodor stated yes.

Chairman Buzzutto stated I hear no input. I'd like to hear a motion to close the public hearing.

Board Member Herbst stated I'll make a motion to close the public hearing.

Board Member Bodor stated I'll second.

Chairman Buzzutto stated okay. All in favor. Motion carried by a vote of 4 to 0.

Chairman Buzzutto stated so be it. You got anything written on it.

Board Member Herbst stated I've got nothing on it.

Board Member Bodor stated I'll do it.

Board Member Herbst stated that's Lars' role.

Board Member Bodor stated I'll wing it.

Chairman Buzzutto stated okay.

Board Member Bodor read the following resolution:

**IN THE MATTER OF THE APPLICATION OF**  
***Michael and Jacqueline Devaux, Case #13-09***  
***For an Area Variance for Enlarging an Existing Deck***

**WHEREAS, *Michael and Jacqueline Devaux are*** the owners of real property located at 69 Newburgh Road (RPL-10 Zoning District), also identified as **Tax Map Parcel # 25.46-1-79, and**

**WHEREAS, *Michael and Jacqueline Devaux*** have made application to the Patterson Zoning Board of Appeals for an area variance pursuant to §154-7 of the Patterson Town Code; Schedule of Regulations in order to replace and extend the existing wood deck and make it 13' x 29' and to relocate the stairs to the deck, and

**WHEREAS, §154-7 of the Patterson Town Code** requires a 15' side yard setback in the RPL-10 Zoning District; Applicant will have 4'; ***variance requested is for 11'***, and

**WHEREAS,** the proposed action constitutes a Type II action under 6 NYCRR Part 617, and therefore requires no further review under the State Environmental Quality Review Act (SEQRA), and

**WHEREAS,** a public hearing was held on the Application at the Patterson Town Hall, 1142 Route 311, Patterson, New York on ***June 17, 2009***, to consider the application; and

**WHEREAS,** The Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearing and finds that:

1. the proposed application ***will not*** produce an undesirable change in the character of the neighborhood ***because the existing deck will be removed and the enlarged deck will be an added feature to the rear of the residence which is completely out of sight of any of the neighbors due to heavy forestation.***
2. the benefit sought by the applicant ***cannot*** be achieved by any other feasible means ***due to the shape of the property line in the backyard.***
3. the variance requested ***is*** substantial ***because it is requested for an 11' variance, however it is not a negative point that would cause denial of this application.***
4. the proposed variance ***will not*** have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district ***because again, it is behind the home and not visible from neighbors or the road.***
5. the alleged difficulty necessitating the variance ***was self created*** however it ***is not*** sufficient so as to cause a denial of the requested variance.

**NOW, THEREFORE BE IT RESOLVED**, that the Patterson Zoning Board of Appeals hereby *grants* the application of *Michael and Jacqueline Devaux* for an *area variance of 11'* from the side yard setback of 15' as required in the RPL-10 Zoning District as set forth by §154-7 of the Patterson Town Code; Schedule of Regulations, in order to permit a 4' side yard setback between the 13' x 29' deck and the side property line.

Board Member Burdick stated second.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Herbst	-	yes
Board Member Olenius	-	recused
Chairman Buzzutto	-	yes

Resolution carried by a vote of 4 to 0.

Chairman Buzzutto stated I just want to ask a question about the...When it says RPL-10 Zoning, that's 10 lots, right. Is that the way that's...

The Secretary stated yeah.

Chairman Buzzutto stated that wouldn't be classified as 10 acres.

Board Member Bodor stated no.

Carl Lodes stated no.

Board Member Bodor stated no, no, no.

Board Member Burdick stated Put[nam] Lake.

Board Member Bodor stated that's over in Put Lake.

Board Member Burdick stated Put Lake.

Chairman Buzzutto stated but that's the way they would list it...

Board Member Burdick stated yeah.

Chairman Buzzutto stated always. As RPL-10.

Board Member Burdick stated yeah.

Board Member Bodor stated Put Lake is RPL-10.

Chairman Buzzutto stated okay. Just to...Okay, fine. Go to the Building Department now and get your papers. Good luck to you.

Board Member Bodor stated you're good to go.

Board Member Burdick stated good luck.

Mr. Devaux stated thank you very much.

Mrs. Devaux stated thank you.

Board Member Bodor stated so they're good to go.

Chairman Buzzutto stated good to go.

Board Member Bodor stated good to go.

Chairman Buzzutto stated now do we have the pledge.

Board Member Bodor stated yeah, let's do the pledge now.

Mr. Devaux stated thank you again.

Board Member Burdick stated have a good evening.

(Laughing)

Chairman Buzzutto stated I love you for it. I really do.

Board Member Bodor stated you better.

Chairman Buzzutto stated okay. Richie. Come up here.

Board Member Herbst stated I have a question.

Carl Lodes stated everybody wants to be an attorney.

Board Member Herbst stated what do you do with all these old papers from all these cases that are all finished. And I've got a stack at home that high. What do I do with them.

Board Member Bodor stated what.

Board Member Herbst stated the papers. These.

Board Member Bodor stated you shred them.

Chairman Buzzutto stated I shred them. I just save the minutes.

Board Member Bodor stated that's what I do.

Board Member Herbst stated the minutes I...

Board Member Bodor stated I just save the minutes.

Chairman Buzzutto stated save the...

Board Member Bodor stated but I hold on to the other stuff, you know, for a few months.

Chairman Buzzutto stated yeah.

Board Member Bodor stated I don't get rid of it immediately.

Chairman Buzzutto stated yeah. Okay.

Board Member Herbst stated well I've been holding on to it since when I got in January.

Board Member Olenius stated I have four years worth.

Board Member Herbst stated no, I went through that with the Town Board. And I'm still trying to get rid of stuff from there.

Chairman Buzzutto stated okay. We've got minutes to approve.

Board Member Bodor stated the minutes from May 20.

Board Member Herbst stated Richie...

Chairman Buzzutto stated well, you want to go to Al Steger.

Board Member Herbst stated you have any information yet.

Rich Williams stated did I get who.

Board Member Herbst stated any information yet.

Board Member Bodor stated what is all of this.

Rich Williams stated yeah. Ask him.

Board Member Herbst stated you got the information, on the caucus.

Board Member Bodor stated what.

Board Member Olenius stated oh, yes. I'll tell you after the meeting. We're still on the record.

Chairman Buzzutto stated why don't you copy it all and put it into the computer and then throw the other stuff away Jerry.

Rich Williams stated well I guess it depends who you are.

Board Member Herbst stated okay.

**6) OTHER BUSINESS**

**a) Minutes**

Chairman Buzzutto stated okay. Do we want to approve the minutes first and then go into Steger.

Board Member Bodor stated whatever you want to do Chairman.

Chairman Buzzutto stated let's approve the minutes first of previous...May the 20<sup>th</sup>. You have any questions about it.

Board Member Herbst stated huh.

Chairman Buzzutto stated the minutes.

Board Member Bodor stated I make a motion to approve the minutes from March 20<sup>th</sup>...May 20<sup>th</sup>.

Board Member Herbst stated I'll second.

Chairman Buzzutto stated May the 20<sup>th</sup>. Okay.

**b) Alan Steger**

Chairman Buzzutto stated alright, now. Other Business we are going to discuss is Steger reso. Did you read this new reso. I did.

Board Member Bodor stated no, I have not read this whole stack of stuff. I just got it tonight.

Chairman Buzzutto stated no, I mean...This is the lawsuit here. Does anybody want to read it so we can go over it, or just...

Board Member Bodor stated what are we going to do. What are we doing.

Chairman Buzzutto stated well, these are new minutes. Those...

Board Member Burdick stated it's a new reso.

Chairman Buzzutto stated to define...

Board Member Burdick stated to clarify some of the points in the denial.

Chairman Buzzutto stated to clarify some of the stuff.

Board Member Bodor stated this is a new reso...

Chairman Buzzutto stated yeah.

Board Member Bodor stated that clarifies the original reso that we made on that property...Steger property.

Chairman Buzzutto stated yeah.

Board Member Bodor stated on the record, I will say I have a problem with this. We did this with Patterson Crossing; we made a reso and we came back and we had to define it better. And alright, I was uncomfortable then, well, we did it. Now we're being asked again to clarify something that is in the past. And to me, that makes us look stupid that we didn't say it right the first time. And I'm not in favor of doing it over. I don't know...I can't...You know, that's my opinion.

Chairman Buzzutto stated well, is this more binding since we've got a lawsuit to go with this.

Carl Lodes stated yeah. Subsequent to the meeting on May 20<sup>th</sup>, I spoke to Rich Williams, who I thought had spoken to members of the Board...

Rich Williams stated I had.

Carl Lodes stated okay. On denying a use variance, in which we anticipate litigation, it had been my practice, honestly, in other towns where there is a voting no on the resolution on the record but then often the matter is put over to the following months so that there can be a more formal written decision, which at then, a court will review upon any subsequent lawsuit. So, that's why we had decided, and I had notified Mr. Liguori the next day, I don't know why he brought an action of it, I notified Mr. Liguori the next day on a letter saying that we were going to...the Board was going to issue a formal written decision within 30 days. Mr. Liguori is the counsel for...

Chairman Buzzutto stated yeah.

Carl Lodes stated Mr. Steger.

Chairman Buzzutto stated is this better because of the lawsuit. It...

Carl Lodes stated well, actually if you were to adopt the resolution, you know, his Article 78 is honestly dismissible because he's challenging a resolution which you have now superseded by a subsequent resolution which he was informed you were going to do, or were going to consider doing.

Chairman Buzzutto stated he was already informed that we were going to...

Carl Lodes stated I sent a letter to him on May 26<sup>th</sup> saying please be advised that the Zoning Board of Appeals has chosen to follow up the action they took last...this past Thursday, May 26<sup>th</sup>, with respect to your client's application for a use variance with a written decision. It is expected that such a decision will be issued within 30 days.

Chairman Buzzutto stated right. Is this a practice that's done on other zoning boards.

Carl Lodes stated yes.

Chairman Buzzutto stated that they...

Carl Lodes stated because honestly, you're being asked to speak extraneously after...particularly with Mr. Steger on a hearing going back until November. Now, you can choose to do that. I mean there's nothing wrong...

Chairman Buzzutto stated yeah.

Carl Lodes stated with what you did. But you can, you know, you're really looking to recollect what transpired over, I think, five hearings at the end of the public hearing and we know he is going to bring litigation. Now, again, there is nothing wrong with what you did. And you can certainly choose to refuse this.

Chairman Buzzutto stated yeah, but which one would be better to stand up in court.

Carl Lodes stated well, that's why...

Chairman Buzzutto stated yeah.

Carl Lodes stated there's a subsequent resolution drafted up. It would be my recommendation that, you know, on the applications you have tonight, it's perfectly fine to do what you did. I mean, there's nothing wrong with anything you did. And there's nothing wrong with the decisions that you rendered. But when you have an application that's going to take several public hearings to conclude or several hearings to conclude, it is the practice of some boards, and it may not be your practice of your Board, some boards to...

Chairman Buzzutto stated right.

Carl Lodes stated either indicate to the applicant at a public...at the conclusion of the hearing what the board's disposition is to do and then put it over for 30 days to when...

Chairman Buzzutto stated right.

Carl Lodes stated you would then render a decision.

Chairman Buzzutto stated in other words, when an applicant comes in four or five times and we go over it, it's better not to make the reso at that meeting.

Carl Lodes stated I would recommend that you not.

Chairman Buzzutto stated not.

Carl Lodes stated because...That you not. Because you're trying to make findings of fact based on a recollection over five or six months. And again, I'm not being (inaudible) you can certainly do that. I mean, I used to work in the court system and once a hearing went over four or five days, the judge I used to work for would order a transcript because his ability to recollect and make findings after four or five days of testimony...

Chairman Buzzutto stated the judge will actually order an updated reso.

Carl Lodes stated no, no. I'm just saying, when a judge is having a case which is going over four or five days, it's not unusual for that judge, if it's not with a jury, to order a transcript so that he can consider all of the testimony and then make his findings. All I'm saying, and this is not a criticism and I don't mean it to be a criticism and I don't intend it to be a criticism, but when you have a public hearing starting in November and concluding in May, you know, it's hard for someone to recollect and fully put forth the flavor of what the board intended to do. I mean, I think what we did in the resolution is pointed out his previous applications before the Board, which I think is an important criteria for the members that voted against the application, and summarize his financial testimony. And again, I'm...Again, I'm not being unequivocal; what you did was perfectly fine. But it is the practice of a lot of boards when there is a hearing that goes over several times, is to just adjourn it over and have a written decision rendered.

Board Member Bodor stated my point however is that the points that we used in the resolution were based upon the testimony from...

Carl Lodes stated yeah.

Board Member Bodor stated all those hearings.

Carl Lodes stated I don't, you know...Yes. This just amplifies it.

Board Member Bodor stated so, yeah. What you just said about the...

Carl Lodes stated yeah.

Board Member Bodor stated judge ordering the transcript, well that's essentially what...

Carl Lodes stated yeah.

Board Member Bodor stated you know, should be looked at.

Carl Lodes stated right. But his first point on this Article 78 that he filed is that the Board didn't make sufficient findings. Because this is a denial of a use variance which, you know, is going to be subject to review by a court, and that's his first point. It's not that you were wrong, he does market that you were wrong, but that you didn't make sufficient findings, for which a board then...for which a court then will probably going to remand back to this Board.

Chairman Buzzutto stated alright. By him saying that, and...

Board Member Bodor stated I don't understand didn't make sufficient findings.

Carl Lodes stated you have to set forth...When a court reviews an action of the zoning board, they want to know why you've denied something. They don't want to know...

Board Member Bodor stated which is in the transcripts, so to speak.

Carl Lodes stated right. But remember when you're making findings, you could of as a board member, rejected a certain part of that testimony that was in that hearing, accepted some of it. So that the court looking at this wants to know when you make findings that I found the report from Mr. Jones not credible, the report from Mrs. Jones credible, and we based our findings on that. So here, he submitted some financial evidence first by himself, and then from I think a real estate agent. You could have found the real estate agent's testimony credible, his not credible, vice versa. Well the board's looking...I mean a court's looking to what you actually found credible. Now you could find...you could make a finding of like I said, we found no evidence submitted by the applicant credible. And that's fine. But the court is not really suppose to substitute his judgment. It's supposed to look into what you found credible, not credible, persuasive. I mean I think the fact that twice before you denied him on application and then he went out and put apartments in, critical for a court looking at this. I don't mean to sound (inaudible) that was a long time...

Board Member Bodor stated and that's in there.

Carl Lodes stated but not specifically in your...

Board Member Bodor stated it's not on that piece of paper.

Carl Lodes stated exactly.

Board Member Burdick stated and I think the difference in this is that the original reso was put forth as an acceptance, and then three of us voted against so if it had started out with a denial...

Carl Lodes stated yes.

Board Member Burdick stated to begin with, these points probably would have been put in there. So when we voted against it, at that point, we could have brought these issues out to clarify why...

Carl Lodes stated yes, exactly.

Board Member Burdick stated so we're doing it after the fact. So I guess...

Rich Williams stated if you take a look at Mr. Liguori's lawsuit, what he's stating in the lawsuit, one of the deficiencies is defining the fact that it was made by the Board, specifically to Mary, was that she based her decision on the fact that he had prior apartments.

Carl Lodes stated right.

Rich Williams stated that's probably not the case. But there's nothing within the resolution because it was made to approve it, you know, saying exactly what your reasons were. Not having that in a resolution you're forcing a judge to try and second guess what you were thinking at the time and they don't like to do that. They really don't.

Board Member Bodor stated well, you know, I have a big problem with this; going back and redoing something that has been done. But more important than that, how can we prevent this from happening in the future.

Carl Lodes stated my recommendation to you is that when a hearing goes over several times that you just...several towns that, honestly, I do other work for will then at the...close the hearing and say our decision will be rendered 30 days from now. At that next hearing, you open it up for discussion and then you have a proposed written decision that you then vote on. And then adopt or not adopt.

Rich Williams stated if it's going to be a very complex...

Carl Lodes stated exactly.

Rich Williams stated case...right. Rather than make a decision, you do that night, step back, talk to Sarah, talk to me, give us your ideas about why you don't think it's appropriate. We'll memorialize that in the resolution and then you'll have it in front of you.

Board Member Bodor stated and have a ten page reso instead of two pages.

Chairman Buzzutto stated but this is...

Carl Lodes stated I don't say that that should be...

Rich Williams stated yes. Yes.

Board Member Bodor stated seriously.

Carl Lodes stated but I'm saying for your applications tonight, it's perfectly fine to do what you did.

Chairman Buzzutto stated this is not done before the meeting is closed, then a vote is taken. The vote is taken and it's denied. Then you can take the reso...

Carl Lodes stated no.

Chairman Buzzutto stated and make it 30 days later.

Board Member Burdick stated no. There's no vote.

Carl Lodes stated no, there's no vote.

Chairman Buzzutto stated there's no vote.

Carl Lodes stated I'm saying my recommendation is that you not...is you just close it and say no vote will be taken tonight. We're going to put this over to the next meeting and you're welcome to appear, you don't have to because you're just going to vote on the decision, but you're welcome to appear at that time. And then the proposed decision will be read into the record and voted on.

Board Member Burdick stated and at that point whatever comes up with, counsel can look at it and...

Carl Lodes stated right.

Board Member Burdick stated say yeah, it looks like it defendable, it's not defendable, and we have a chance to review it and make modifications to it. My request would be if you see us going down the road where we're attempting to vote on something that we shouldn't...

Carl Lodes stated yeah.

Board Member Burdick stated could you at some point...

Carl Lodes stated oh, I will.

Board Member Burdick stated intervene and say...

Carl Lodes stated yeah, I...

Board Member Burdick stated hold off.

Carl Lodes stated yeah. I definitely will. I mean, as I said, I do work for other towns, two other towns for what you did tonight would have done exactly what you doing. But anything that get over...

Board Member Bodor stated yes.

Carl Lodes stated a couple, like one or two hearings, or three hearings, or (inaudible) being contentious, they just close the hearing.

Board Member Bodor stated yes.

Carl Lodes stated and adjourn it over for 30 days.

Board Member Burdick stated because I agree with Mary. I feel uncomfortable doing things after...

Carl Lodes stated yeah.

Board Member Burdick stated the fact because it does look...I feel a little bit better about this one than Patterson Crossing...

Carl Lodes stated yeah.

Board Member Burdick stated because you did write them that we were...

Carl Lodes stated yeah.

Board Member Burdick stated going to be following up. But...

Rich Williams stated try to look at it this way. You made a resolution, it didn't go forward. Now you have to do another resolution for the direction you want to go, and you just haven't taken that step yet. So it's not...And Mary, you and I have had this conversation about, you know, being uncomfortable with it and...

Board Member Bodor stated yeah.

Rich Williams stated and I understand where you're coming from, but it's...the first resolution didn't work so now you have to find a resolution that the Board...the majority of the Board votes for.

Carl Lodes stated yeah.

Chairman Buzzutto stated but the...

Carl Lodes stated I'd also say just, and I mean, you can take it for your consideration, a court always, as long as it doesn't in effect prevent someone from, you know, taking (inaudible) can always un it's own motion because I've been...I've also...A lot of times, the court I worked for, the judge would like five days later say oh my gosh. I forgot to put that reasoning into my decision. We would just, it's called sua sponte, vacate the previous decision and notify everybody and issue a new decision. Because as long it was in the record, I mean, you're not adding anything that wasn't in those hearing minutes. You are just correcting it to reflect what your decision was and as long as you're giving someone their right to do an Article 78 you're not prejudicing anybody. And I don't...Obviously it's your opinion and your vote, but I...

Chairman Buzzutto stated and the second resolution is acceptable to the courts.

Carl Lodes stated sure. I mean, you're correcting it. And I would notify Mr. Liguori tomorrow saying, if in fact you (inaudible) the resolution tonight, I would notify Mr. Liguori tomorrow and I will call to him and also write to him saying for new information so that you're not prejudiced and this Article 78 doesn't get dismissed, the Board did vote a new resolution. It's going to be filed with the Town Clerk whenever, and then you can take...either amend your papers or take a new Article 78. You're not prejudicing him but you are hopefully reflecting better your views. Because I agree with Rich, particularly in this case, you know, where three members are voting for and two are against, it really wasn't a resolution that reflected totally why the members voted against him.

Chairman Buzzutto stated yeah. But this here resolution, the new one, would have a better chance at standing up...

Carl Lodes stated in my opinion...

Chairman Buzzutto stated against...

Carl Lodes stated in my opinion yes.

Chairman Buzzutto stated yes. I just want to do what's best for the...

Carl Lodes stated that's all I...

Chairman Buzzutto stated the Zoning Board and the Town. Even though it makes us look a little we don't know what we're doing at the first hearing. But...

Carl Lodes stated in my own personal opinion, and you can take it for whatever you...the (inaudible) said I have an eraser hard pencil like everyone else. So if I make a mistake, why would I perpetuate it...

Chairman Buzzutto stated yeah.

Carl Lodes stated you know, I mean if we did it every time we rendered a decision, sure, people might think like what are those people doing. But, you know, in a particular case to say, you know, we really want to clarify why we denied you your variance, I don't see that. I mean, I personally just don't see that.

Chairman Buzzutto stated yeah, well I agree too that if the hearing goes for maybe four or five months...

Carl Lodes stated yeah.

Chairman Buzzutto stated you can't...when a reso's made, you can't pick up everything at that meeting what you did four months ago.

Carl Lodes stated yeah.

Chairman Buzzutto stated because you don't remember. At least I wouldn't...

Carl Lodes stated I wouldn't either.

Chairman Buzzutto stated but of course for me it's different.

Board Member Burdick stated hey.

Carl Lodes stated the first thing I did, ask Richie...

Board Member Burdick stated what do you mean it's different.

Chairman Buzzutto stated well, come from...

Board Member Burdick stated are you using your age as an excuse.

Chairman Buzzutto stated yeah.

Board Member Burdick stated what do I have as an excuse then.

(Board laughing)

Chairman Buzzutto stated I mean, this guy had to weasel everything just to get out of writing that reso tonight. That's why he recused himself. You're ain't (inaudible – laughing) me.

(Board laughing)

Chairman Buzzutto stated alright, well I myself is in favor of...As long as this is going to be beneficial to us and not make us look too tipsy. I'm in favor of excepting the new reso here. Is...I've read it. Is there anything in here...I didn't see here about he has other means about getting what he wants to go to the Board...the Town Board.

Carl Lodes stated well, he's already done that, correct.

Rich Williams stated he has made application to the Town Board...

Chairman Buzzutto stated yeah.

Rich Williams stated to change the zoning of the district.

Chairman Buzzutto stated he did make application.

Board Member Bodor stated yes.

Rich Williams stated he did.

Chairman Buzzutto stated alright. Wouldn't that be in here, too, that he has other means of...

Carl Lodes stated it's really not a factor on a use variance.

Chairman Buzzutto stated it's not a factor.

Carl Lodes stated it's not a factor on a use variance.

Chairman Buzzutto stated okay.

Carl Lodes stated again, it's up to, you know, it's all up to the Board. The Board can just continue to adhere and I would just notify Mr. Liguori that you did not issue a written decision; his Article 78 stands. And everybody's fine. But if you decide to vote on the new resolution I would...

Chairman Buzzutto stated no, I mean...

Carl Lodes stated again, I would notify Mr. Liguori so he doesn't lose his right to an Article 78.

Chairman Buzzutto stated you as a lawyer understand these more than I do and you think it's more beneficial to us to apply this to the [Article] 78.

Carl Lodes stated yeah. I just think, like I said...

Chairman Buzzutto stated yeah.

Carl Lodes stated I was a law clerk for 13 years. I mean, a lot of times I'm looking at a zoning decision saying well, why did they do that, and then, you know, you read the minutes and you say, okay. I understand that. But why didn't they just say that in their decision.

Chairman Buzzutto stated yeah.

Carl Lodes stated that's...

Chairman Buzzutto stated well, that's my opinion. I'm in favor of whatever will get this lawsuit off our hands. I don't know how the rest of the Board feels.

Rich Williams stated don't look that way [referring to looking at Lars and Jerry].

Chairman Buzzutto stated sorry.

Rich Williams stated don't look that way.

Chairman Buzzutto stated don't look that way.

Rich Williams stated don't look that way.

Carl Lodes stated they voted for the assurance. I mean, it would just be that or just...

Board Member Olenius stated yeah. I won't be reading this one that's before us.

(Laughing)

Board Member Olenius stated that would go against what I did the last one.

Chairman Buzzutto stated well, what do we do. Take a vote on it or...

Board Member Burdick stated well, I think Mary's reading it. She hasn't had an opportunity to read it yet. So she's reading it.

Chairman Buzzutto stated oh.

Board Member Burdick stated thank you for sending it in an email. It was helpful.

Chairman Buzzutto stated well, what would they do with the first reso. They just get rid it.

Rich Williams stated no. Well...go ahead.

Carl Lodes stated that would stand. You're just reaffirming...

Chairman Buzzutto stated oh, I see.

Carl Lodes stated with a further...But I'm, you know, he's timed challenging (inaudible) from this new resolution.

Chairman Buzzutto stated oh, I see.

Carl Lodes stated and his point in his Article 78 would fail. I mean he can still make a case but he would fail. About the fact that they didn't make sufficient findings.

Board Member Herbst stated (inaudible – too many talking).

Chairman Buzzutto stated so you brought up a good point with...

Board Member Herbst stated build it anyway.

Chairman Buzzutto stated you brought up a hearing that's gone on for two or three or four months.

Carl Lodes stated yeah.

Chairman Buzzutto stated not make a reso.

Carl Lodes stated to think about it for a little while.

Chairman Buzzutto stated think about it, yeah.

Carl Lodes stated it's different when like tonight. Everything's before you. You have it fresh in your minds, you know.

Board Member Herbst stated (inaudible – too many talking).

Chairman Buzzutto stated yeah.

Board Member Herbst stated and what do you say to him. I said he's not making any money. In fact, he's losing money. At this point I don't know what to do. Maybe abstain.

Chairman Buzzutto stated well, by him putting application into Town Board for zoning change, don't that remove some of the...

Carl Lodes stated well, it wouldn't, you know, it wouldn't rule out his Article 78 because he could still lose...

Chairman Buzzutto stated yeah.

Carl Lodes stated his petition may not be successful so I'm sure he's going to want to go forward. You know, one of his, as I said...His Article 78 concludes with no findings were made by the Board to support its denial. And that's one of his main contentions. And also, he's also contending that the Board was biased because of his past zoning violations. But there's enough in the record of that.

Chairman Buzzutto stated yeah. Well that don't mean that if it...

Carl Lodes stated yeah.

Chairman Buzzutto stated goes before the Town Board that they'll change the zoning either.

Carl Lodes stated exactly.

Chairman Buzzutto stated I mean, they could just say no to that also.

Carl Lodes stated yeah.

Rich Williams stated I'm sure if they change the zoning that they'll dismiss...

Carl Lodes stated that they'll dismiss...yeah.

Rich Williams stated the Article 78, but they'll still keep it alive until that occurs.

Carl Lodes stated right.

Chairman Buzzutto stated yeah.

Board Member Herbst stated he's already asked for the...

Carl Lodes stated he's already filed...

Board Member Herbst stated is he going to be on their next meeting.

Carl Lodes stated I don't know what they're going to do.

Board Member Burdick stated he...yeah. He requested to be June 24<sup>th</sup>, I think it said.

Carl Lodes stated yeah.

Rich Williams stated yeah, but he also spelled Griffin wrong, so I don't know what they're going to do with it.

Carl Lodes stated number one point: don't spell the supervisor or the judge's name wrong. It doesn't...

Board Member Herbst stated their next meeting's next week, isn't it.

Rich Williams stated yes.

Board Member Bodor stated alright, I read it. I'm still uncomfortable with it and I think part of it is because it's coming so close on the heels of Patterson Crossing where we did the same thing. If there was a year or so between it, but it just follows so closely I...I understand...

Carl Lodes stated right. Well it's the Board's call.

Board Member Bodor stated where this is coming from.

Carl Lodes stated you can decide not to...Obviously put it up...You can decide not to put it up to a vote and the previous resolution stands and hey, the Article 78 stands. It's up...it's obviously up to the Board. And I would...

Board Member Bodor stated yeah, I would like to do what's best for the Town, but...

Board Member Herbst stated do we have to do this for tonight.

Carl Lodes stated it should be done, in my opinion. It should be because this Article 78 is already started and if in fact the Board was going to adopt a new resolution I would want to call Mr. Liguori and tell him there's a new resolution and he's supposed to then challenge that one, not the previous one. So...

Board Member Burdick stated do we have to read it in entirety or can say enter it as...

Carl Lodes stated I don't believe you have to. You can say that whoever...If you make a motion to adopt the resolution, and it's been read, I mean it's going to be adopt...You don't have to really read a resolution.

Board Member Burdick stated do you have a preference one way or the other Buzzy.

Chairman Buzzutto stated on reading it.

Board Member Burdick stated yeah. Are you okay with just...

Chairman Buzzutto stated well, would it ever come up that do we actually read it. Would that ever be a point in...

Rich Williams stated the general form is somebody's going to make a motion to enter...a motion introducing the resolution.

Chairman Buzzutto stated right.

Rich Williams stated the Chairman's going to say we're going to enter the resolution...

Chairman Buzzutto stated right.

Rich Williams stated as though read into the record.

Chairman Buzzutto stated as though read.

Rich Williams stated and what that does, that puts the resolution in the record as though it was read into the record without actually having to do the reading. And then you get a second.

Carl Lodes stated yeah. In County practice, the County very rarely reads resolutions. They just move the resolution as...

Board Member Bodor stated (inaudible).

Chairman Buzzutto stated well then...

Board Member Bodor stated and I never know what they're moving.

(Laughing)

Carl Lodes stated they don't either sometimes.

Chairman Buzzutto stated well, I would say...

Board Member Burdick stated are you okay with that since there is nobody in the audience to...

Chairman Buzzutto stated that's right. Yeah.

Board Member Burdick stated to hear anything that we're saying...

Chairman Buzzutto stated right.

Board Member Burdick stated are you okay with that.

Chairman Buzzutto stated I'm okay with that, yes.

Board Member Burdick stated okay. Is it okay to move forward.

Board Member Bodor stated oh yeah. We can go forward with it.

Chairman Buzzutto stated yeah. The way...it's okay. So who makes the motion...

Carl Lodes stated it sounds like...

Board Member Burdick stated okay. I'd like, if I can Chairman, I'd like to make a motion in the matter of the application of Alan Steger Case #16-08 for Use Variance for a Single-Family Residence.

Board Member Bodor stated I'll second the motion.

Rich Williams stated you'll enter the motion...

Chairman Buzzutto stated we'll take a name roll call.

Board Member Bodor stated yes.

Rich Williams stated you'll enter the motion into the record as though read.

Chairman Buzzutto stated yes. I'll enter the motion into the record as read.

**WHEREAS**, the Applicant, Alan Steger, has made application to the Zoning Board of Appeals for a use variance pursuant to §154-30 of the Patterson Town Code; Permitted principal uses, in order to allow for a single-family residential use on the site in the GB (General Business) Zoning District, and

**WHEREAS**, a Public Hearing was held at the Patterson Town Hall, 1142 Route 311, Patterson, New York, on November 24, 2008, January 7, 2009, February 18, 2009, and May 20, 2009 to consider the application of Alan Steger, and

**WHEREAS**, on November 29, 2008, the Zoning Board of Appeals conducted a site walk at the 5 Center Street/ 19 Front Street site, and

**WHEREAS**, the Patterson Zoning Board of Appeals has given careful consideration to the facts presented in the application and at the public hearings, and finds:

1. Applicant has not demonstrated that he cannot realize a reasonable return
  - (a) The financial information submitted by applicant is insufficient to satisfy the requirement that lack of a reasonable return be demonstrated by dollars and cents proof.
  - (b) The applicant submitted income and expense information for the years 2001 through 2007 which showed that Applicant received an average rate of return on the property of between 6% and 8% which is considered a reasonable return for the property.

- (c) The Applicant also submitted a “Financial Projection made by Dominic Benincasa” which provided that the Applicant was realizing a capital return of 3.5%. It was also noted that there was conflicting values between the Dominic Benincasa analysis and the financial information initially provided by Applicant including income received for the year in question. In addition, the expense deductions considered by Benincasa included expense deductions for vacancy rate and management.
  - (d) A portion of the lot is currently being used for conforming uses and is returning a profit even if the return might not be considered reasonable for the property as a whole.
2. The alleged hardship relating to the property in question is not unique to the Applicant, as there are several corner properties in the GB Zoning District which have frontage on a street used in common by other commercial properties, and also abut a street servicing an adjacent residential neighborhood.
  3. That granting the present application will not alter the essential character of the neighborhood since the portion of the property seeking a use variance for a single-family residence borders a Residential district, and
  4. The Alleged hardship demonstrated by Applicant has been self-created. Applicant purchased the property knowing that it was zoned commercial and residential use was not permitted.
    - (a) At the time the property was purchased the property was zoned NS-1 which allowed several commercial uses (Minutes 11/24/08 pg 3). In addition, the Applicant acknowledged that the property was used in its entirety for a conforming use. The property was purchased in December of 1987 for \$300,000 and at the time of purchase the building, in its entirety was used for commercial purposes which conformed to the zoning requirements of the district.
    - (b) The fact that the Applicant began renovations to the building with the consent of the Building Inspector is without merit. The Applicant has appeared before this Board on two past occasions requesting a residential use of the property, and was unsuccessful on both occasions. An application to allow residential use of the property was made in 1997. A similar application requesting a use variance for 2 apartments was made by the Applicant in 2006. Both of those applications were unsuccessful As such the Applicant was well informed that a residential use of the property was not permitted.
    - (c) The means that the Applicant has chosen to divide the building has contributed to the difficulty in leasing the space. The Applicant has rented separately that portion of the building which has frontage on the commercial street, has ADA compliant access and upon which a visible sign may be erected as commercial space. Further, shared parking that is available for the building is along Front Street. This has left the rear portion of the building with access from a side street, no visibility for any sign that might be erected, extremely limited parking and restricted visibility for any business that might occupy the space.

- (d) As indicated by the Building Inspector, the portion of the building in question has been rented for day care, liquor store, a real estate office and office (J&M Granite).

**NOW, THEREFORE BE IT RESOLVED**, that the Patterson Zoning Board of Appeals hereby reaffirms and re-adopts the May 20, 2009 resolution *denying* Alan Steger a use variance pursuant to §154-30 of the Patterson Town Code; Permitted principal uses, in order to allow for a single-family residential use on the site in the GB (General Business) Zoning District.

Carl Lodes stated any...

Board Member Burdick stated Mary seconded it.

Chairman Buzzutto stated do you want to take a name roll call or a...

Board Member Bodor stated yeah.

The Secretary read roll call:

Board Member Bodor...

Board Member Bodor stated although I'm uncomfortable with doing this method of business I will vote in favor of this reso.

Board Member Bodor	-	yes
Board Member Burdick	-	yes
Board Member Olenius	-	no
Board Member Herbst	-	no
Chairman Buzzutto	-	yes

Resolution passed by a vote of 3 to 2.

Board Member Bodor stated well is that okay to make a statement along...

Carl Lodes stated oh sure. Yeah.

Chairman Buzzutto stated so now this reso will go in...

Carl Lodes stated you're going to file it, I'll tell counsel...

Rich Williams stated okay.

Carl Lodes stated that (inaudible – papers shuffling)

Board Member Burdick stated and we have to (inaudible – papers shuffling) from Rimaldi. Do we have to do anything with or is this for our information.

Chairman Buzzutto stated can I ask why there were two no's on that. What the reason was.

The Secretary stated that's the first resolution.

Rich Williams stated I think we have the previous resolution which substantiates that we...or why they thought it should have passed.

Board Member Olenius stated I read the last resolution...

Chairman Buzzutto stated you read the last one.

Board Member Olenius stated positively, that I thought it should have passed.

Chairman Buzzutto stated okay.

Board Member Olenius stated so the reasons are in the resolution...

Rich Williams stated the first resolution, Buzzy...the first resolution we have their reasonings why they thought it was appropriate to grant the use variance. But we didn't have any other reasoning for the other three Board Members. Now we've got a reso that give their reasons. That's all you did.

Chairman Buzzutto stated okay. Okay, any other further business we have. That's it.

Board Member Herbst stated I make a motion we adjourn.

Board Member Olenius stated second.

Meeting adjourned at 8:34 p.m.

**TOWN OF PATTERSON  
ZONING BOARD OF APPEALS  
June 17, 2009**

**AGENDA & MINUTES**

	Page	
<b>1) Charles Hoffman Case #09-09</b>	1 – 6	Public hearing closed; Area variance for shed in the front yard granted
<b>2) Christina Rizzo Case #10-09</b>	6 – 10	Public hearing closed; Area variances for swing set/jungle gym granted
<b>3) James Stead Case #11-09</b>	11 – 19	Public hearing closed; Area variance for side yard setback for a garage granted
<b>4) Gabrielle &amp; James Duke Case #12-09</b>	20 – 33	Public hearing opened and closed; Area variance for a side yard setback for a garage granted
<b>5) Michael &amp; Jacqueline Devaux Case #13-09</b>	34 – 45	Public hearing opened and closed; Area variance for a deck granted
<b>6) Other Business</b>		
<b>a) Minutes</b>	45	May 20, 2009 minutes approved
<b>b) Alan Steger</b>	45 – 62	Readopted/reaffirmed Case #16-08 resolution