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Zoning Board Members
Anthony Pilozzi
Joseph Anzelone

Alternate Board Members
Bernard Frezza
Costanzo Caparrelli, Sr.

Recording Secretary
Susan Leonardi

JOHNSTON ZONING BOARD OF REVIEW

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MINUTES

December 20, 2007

The Zoning Board of Review held its monthly meeting on the 20th day of December, 2007, at 7:00 p.m., in the library at the Ferri Middle School, 10 Memorial Avenue, Johnston, RI. All persons interested in the following proposals had been requested to be present at this time.

Present: Chairman Kenneth Aurecchia, Vice Chairman Richard Fascia, Anthony Pilozzi, Bernard Frezza, Joseph Anzelone, Costanzo Caparrelli, Sr., Secretary Douglas Jeffrey

Also present: Joseph R. Ballirano, Town Solicitor, Susan Leonardi, Recording Secretary, Bernard Nascenzi, Building/Zoning Official and Dianne Edson, Stenographer

Mr. Pilozzi made the motion to accept the minutes of the November, 2007 meeting. Mr. Fascia seconded the motion. A voice vote was taken, all in favor.

File 2005-57

Owner: John Ruggieri
Applicant: Valentino Cairo
Location: 43 Golden View Drive, AP 45 - Lot 232
Lot Dimensions: Frontage 100'±; Depth: 200'±; Area: 20,000± square feet
Zone: R-40 (Residential – 40,000 sq. ft.) Zone
Attorney: Alfred Russo, Jr., Esq.
Present use: Vacant Land
Proposed: Single Family Dwelling, 1,410 ± square feet on a 20,000 square foot lot

Dimensional Variance petitioned under Art. III, Sect. F, Table III-F-1.

Required Left Side Setback: 35 feet. Proposed Left Side Setback: 28 feet. Relief requested for 7 feet left side.

Required Right Side Setback: 35 feet. Proposed Right Side Setback, 27 feet right yard, Relief requested for 8 feet.

Mr. Aurecchia made the announcement that this application would not be heard tonight. It will be put on a future agenda.

File 2007-67

Owner: Joseph Baginski, LLC
 Applicant: Joseph Baginski
 Location: Leading Street, AP 15- Lot 122
 Lot Dimensions: Frontage: 40 ft.; Depth: 90 ft.; Area: 3,600 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone
 Surveyor: Kirk Andrews, P.L.S.
 Attorney: John Reilly and Associates
 Present use: Vacant Land
 Development
 Proposal: Construct a 24' x 38' (912 sq. ft.) single family dwelling

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Size Required: 15,000 sq. ft.; Minimum Lot Size Requested: 3,600 sq. ft.; Relief Requested for 11,400 sq. ft.

Minimum Lot Frontage Required: 100 ft.; Minimum Lot Frontage Requested: 40 ft.; Relief requested for 60 ft.

Minimum Lot Width Required: 100 ft.; Minimum Lot Width Requested: 40 ft.; Relief Requested for 60 ft.

Minimum Rear Yard Setback Required: 45 ft.; Minimum Rear Yard Setback Requested: 27 ft.; Relief Requested for 18 ft.

Minimum Right Side Yard Setback Required: 20 ft.; Proposed Right Side Yard Setback Requested: 9 ft.; Relief Requested for 11 ft.

Minimum Left Side Yard Setback Required: 20 ft.; Proposed Left Side Yard Requested: 9 ft.; Relief Requested for 11 ft.

Paul Crowell, attorney for the application, explained that he is accompanied by Joseph Baginski, applicant and Edward Pimentel, an expert in Planning. Mr. Baginski and Mr. Pimentel were duly sworn. Mr. Crowell presented the application to the Board. Variances are being requested for lot size, front, side and rear setbacks. Mr. Pimentel explained his education to the Board. Mr. Pillozzi stated that Mr. Pimentel has appeared before this Board many times. Mr. Pillozzi made the motion to accept Mr. Pimentel as a qualified witness. Mr. Fascia seconded the motion. A voice vote was taken, all in favor. Mr. Crowell asked Mr. Pimentel if he had reviewed the application and the variances being requested. Mr. Pimentel stated that he had. Mr. Pimentel also stated that he has visited the neighborhood on several occasions and did an analysis of the area.

Mr. Pimentel stated that he analyzed 239 lots in the neighborhood. The average lot size in the neighborhood is 7,500 sq. ft. There are only fourteen lots in the neighborhood that close to the 15,000 sq. ft. required lot size. The area actually conforms to an R-7 Zoning designation. In other words, most of the lots in the area are substandard. The home being proposed conforms to the neighborhood. To deny the variances would mount to more than a mere inconvenience, it would extinguish all beneficial uses to the property. Mr. Crowell verified that the applicant is requesting the least relief necessary. Mr. Pimentel stated that the use conforms to the Comprehensive Plan, meets the goals and objectives for developing existing lots where public sewer and water already exist and are available. Mr. Baginski asked that the

written copy of Mr. Pimentel's report be made part of the official record. Mr. Aurecchia stated that the written report was given to the Board as part of the meeting document packets and is already a part of the official record of the meeting.

Mr. Baginski stated that he wishes to build a small single family home on a small lot in an existing area of small single family homes on small lots. The lot is serviced by public sewer and water. Mr. Pillozzi asked if this plan was similar to the home previously approved on Hedley Avenue. Mr. Baginski stated that it is smaller. Mr. Pillozzi asked if the abutters, Mr. and Mrs. Emerson had been told that their chain link fence is encroaching on the subject lot. Mr. Baginski stated that he had not informed them.

Mr. Frezza stated that there is a financial gain for Mr. Baginski, because he intends to sell the home. Mr. Anzelone agreed. Mr. Baginski stated that the phrase is actually, "greater financial gain". That would mean he was looking to split the parcel and build a home on each lot or build a multifamily home.

Mr. Anzelone verified that the off-street parking would be for 2 cars. Mr. Anzelone asked how far away the abutting homes were located. Mr. Baginski stated that the house on the left is about 20 feet off of the property line and the driveway for that home is between the subject home and the home. The house on the right is about 12 feet off the property line. Mr. Pillozzi stated that there was enough room for an emergency vehicle to get between the homes.

Mr. Pimentel stated that most of the lots in the area are undersized. Mr. Frezza stated that Mr. Pimentel had said that the average lot size was about 7,500 sq. ft. and was in conformance. Mr. Frezza stated that those lots are not in conformance. Mr. Baginski stated that Mr. Pimentel actually said that if the area was zoned R-7, the lots would be in conformance. Mr. Pimentel stated that out of the 239 lots he analyzed, over 200 of them are comparable to what is being proposed. Mr. Frezza stated that he did not believe that over 200 of the surrounding lots were 3,600 sq. ft. or less. Mr. Pimentel stated that the average lot is 7,500 sq. ft. The area is in conformance to an R-7 Zoning, not an R-15. Mr. Anzelone stated that he feels that the project does not conform to the area.

Mr. Aurecchia stated that there was a similar situation not too long ago. The Board denied the application; it went to Court and was overturned. Does the Board want to waste time and taxpayer's money again? Mr. Aurecchia warned the abutters that the reasons to object to the project and the Board's reason to deny must be based on fact. Not hearsay or "just don't want it there".

Mr. Frezza asked Mr. Nascenzi if there is a water problem on Leading Street. Mr. Nascenzi stated that there was a flooding problem at one time. There still is a problem. Mr. Frezza asked if this would add to the problem. Mr. Nascenzi stated that the Town has a "zero-runoff" policy and the applicant would have to adhere to the policy. The Town Engineer would review the site plan to assess the drainage system. Mr. Anzelone stated that the lot is too small for a 3 bedroom home. There will be children in the school system. Whether the Town spends money for the children to go to school or to fight it out in court, it's still going to be spent. Mr. Pillozzi stated that maybe there won't be any children living in the home, we can't deal in probabilities, only in facts. Mr. Pillozzi stated that we are here to grant or deny the application only. The Town Engineer will deal with soil erosion and water. The Building Official's office will ensure that all laws are followed.

Mr. Baginski stated that he will install dry wells to alleviate any run-off from his property. Mr. Nascenzi stated that there will be water displacement if a foundation is dug. Mr. Baginski may be required to put the house on a slab.

Patrick Jones, abutter, after being duly sworn, stated that he lives next door to the subject lot. The majority of the homes in the area are raised ranches or split levels, not shotgun ranches. It will be one of the smallest homes in the area. Mr. Jones stated that the application and the site plan do not match. Mr.

Baginski stated that the foundation will be cantilevered; that explains the difference. Mr. Jones stated that the front elevation of the home on the plan shows no cantilever. Mr. Pillozzi stated that if the application is approved, the Building Official will double check all setbacks and square footages. Mr. Jones stated that the lot is not level. There is a slope on the lot. His lot is higher than the subject lot. Mr. Aurecchia stated that Mr. Baginski will not be letting water run onto Mr. Jones lot because Mr. Jones' lot is higher. Just the opposite may occur. Mr. Jones also questioned the side entrance of the home and how wide the stairs will be. He is concerned that they will be close to his property. Mr. Baginski stated that he is willing to address the issue and work with Mr. Jones. Mr. Jones asked about the asphalt berm on Leading Street to guide the rainwater. Mr. Baginski will be removing part of the berm for the driveway. Mr. Baginski will be putting a lip on the driveway to keep water off of it. Mr. Jones is also concerned about emergency vehicles being able to access the left side of the property. The property on the left has a garage very close to the property line. If the garage or house should catch fire, it could spread easily.

Mr. Pillozzi asked Mr. Ballirano if anyone purchasing a substandard lot can be denied relief. Mr. Ballirano replied that they could not be denied relief. Mr. Jones stated that the house will be too small for the neighborhood. Mr. Aurecchia stated that Mr. Baginski could build a bigger home. Mr. Jones stated that that would be even worse because of the lot size.

Mr. Aurecchia stated that the lot is a substandard recorded lot of record. It is entitled to be built upon. Mr. Jones stated that originally it was two lots and they were merged. Mr. Pillozzi asked for facts. Mr. Jones did not have any. Mr. Jones is concerned about the burden of the home on the water and sewer systems. Mr. Pillozzi stated that Mr. Jones would have had to bring an expert to prove that the proposed home would be a burden.

Mr. Scott Allen, abutter, is duly sworn. Mr. Allen stated that he is co-owner of the abutting property. He stated that this property has been before the Board several times. The Supreme Court has a doctrine of administrative finality that states that it can't keep coming back again and again. Mr. Pillozzi asked if Mr. Allen had a case that supports the doctrine. Mr. Allen stated it is Marks vs. Zoning Board of Review of Providence. Mr. Pillozzi stated that in Johnston, a case can come back after 24 months. Mr. Allen stated that this was true, if it is felt that the decision was capricious and there were extenuating circumstances. Mr. Allen stated that Mr. Baginski was the owner of the property every time it has been heard. Mr. Allen submitted documents to the Board showing the Zoning Board of Review's decision from 2003, citing several reasons it was denied. Mr. Pillozzi stated that maybe Mr. Baginski did not have an attorney or an expert witness at the previous hearing. Laws have changed over the years. There are several reasons why it might be granted this evening. Mr. Crowell stated that the doctrine predates the Rhode Island Zoning and Enabling statute. It is basically a common law measure that is applied in cities that do not have a period, such as Johnston does, to wait to come back for re-hearing. Mr. Allen asked if Mr. Baginski would be selling or renting the property. Mr. Baginski stated that he would probably sell the home once it is built.

Ronald Tremblay, abutter, after being duly sworn, stated that he lives directly across the street from the subject lot. Mr. Tremblay stated that the subject lot is a mess. No one takes care of it. The proposed home will not be much better. It will be a small ranch, when all other surrounding properties are raised ranches. Mr. Tremblay stated that it will be out of place in the neighborhood.

Mr. Allen stated that he previously tried to purchase the lot from Mr. Baginski. Mr. Pillozzi asked what the offer had been. Mr. Allen stated that he had offered \$5,000.00 for the lot and Mr. Baginski turned it down.

Joseph Wells, Town Councilman for the area, stated that he has reviewed the history of the subject lot. He stated that based on review of the 2003 decision, too much relief is being requested. The proposed home is larger than the one proposed in 2003. Mr. Wells stated that he could understand a smaller home,

but not a larger one. The neighborhood is over-developed, the sewer system is taxes, and there are drainage problems in the area.

Mr. Crowell stated that the applicant is attempting to build an economically viable home. The expert testified that is in conformance with the neighborhood.

Mr. Pimentel stated that the greatest difficulty is the balancing act trying to achieve some beneficial use of the property and maintain the character of the neighborhood.

Mr. Fascia asked Mr. Aurecchia to call for the question.

Mr. Pillozzi stated that there is currently another home being built near St. Rocco's Church. It is very small. The Board denied it and now they are allowed to build. Mr. Pillozzi stated that if the house is down-sized, it also has less value.

Mr. Anzelone made a motion to deny the application. Mr. Aurecchia stated that that was not what was called for. Mr. Aurecchia stated that there is a motion to call for the question, is there a second. Mr. Pillozzi seconded the motion to call for the question. Mr. Aurecchia asked for all of those in favor of granting. Mr. Fascia, aye; Mr. Aurecchia, aye; Mr. Jeffrey, aye; Mr. Pillozzi, aye. Motion to move for the question is passed.

Mr. Fascia made the motion to grant the application. This was seconded by Mr. Jeffrey. A voice vote was taken. Mr. Jeffrey, aye; Mr. Fascia, aye; Mr. Aurecchia, aye; Mr. Pillozzi, aye; Mr. Anzelone, nay. Application is granted.

File 2007-48 – Continued from the September, 2007 meeting

Owner:	F. Stephen Serzan
Applicant:	1481 Realty, LLC
Location:	Dayton Avenue, AP 45 - Lot 115
Lot Dimensions:	Frontage: 120 ft; Depth: 40 ft; Area: 4,800± square feet
Zone:	R-40 (Residential – 40,000 sq. ft.) Zone
Attorney:	Alfred Russo, Jr., Esq.
Present use:	Vacant Land
Development	
Proposal:	Construct a 44' x 24' (2,112 sq. ft.) single family dwelling

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Size Required: 40,000 sq. ft.; Proposed Lot Size Requested: 4,800 sq. ft.; Relief Requested for 35,200 sq. ft.
Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage Requested: 120 ft.; Relief Requested for 20 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width Requested: 120 ft.; Relief Requested for 20 ft.

Minimum Front Yard Setback Required: 40 ft.; Proposed Front Yard Setback: 10 ft.; Relief Requested for 30 ft.

Minimum Rear Setback Required: 75 ft.; Proposed Rear Setback: 6 ft.; Relief Requested for 69 ft.

Maximum Lot Coverage Allowed: 15 %; Proposed Lot Coverage: 22%;
Relief Requested for 7%.

Mr. Manni, attorney for the applicant, presented the application to the Board. He stated that Lee Bailey, contractor, is also present with him tonight. Mr. Manni stated that the application was continued for more information. There was a question about the septic system and the location of wells in the area. Mr. Jeffrey asked if those plans were available. Mr. Manni stated that he believed the plans were forwarded to the Board. Mr. Aurecchia stated that the Board did not have the plans. The plans should have been submitted to the Zoning Office prior to the meeting. Mr. Bailey stated that a copy of the plan had been submitted to the Building Official. Mr. Nascenzi stated that he did not have a copy of the plan. Mr. Jeffrey stated that the Board has to be very careful in regard to wells and septic systems.

Mr. Manni stated that he has plans in his possession this evening that show any existing wells in the area. Mr. Jeffrey stated that he would not be comfortable voting on the application until he has had time to review the plans.

Mr. Manni asked for a continuance to submit the plans so that the Board may review them. Mr. Jeffrey made the motion to continue. This was seconded by Mr. Fascia. A voice vote was taken, all in favor.

File 2007-02-IN- Continued from the October, 2007 meeting

Owner:	Kenneth A. LaFazia
Applicant:	R.C. Builders, Inc.
Location:	Ostend Street, AP 15- Lot 28
Lot Dimensions:	Area: 13,080 square feet
Zone:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Richard T. Bzdyra, P.L.S. – Ocean State Planners
Present use:	Vacant Land
Development	
Proposal:	Construct a 24' x 44' (1,056 sq. ft.) single family dwelling

Dimensional Variance petitioned under Article III, Section F,
Table III-F-1

Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size
Requested: 13,080 sq. ft.; Relief Requested for 1,920 sq. ft.

Minimum Right Side Yard Setback Required: 22 ft.; Proposed Right
Side Yard Setback: 20 ft.; Relief Requested for 2 ft.

Kenneth LaFazia, after being duly sworn, stated that the application was continued so that the Building Official and the Town Engineer could visit the site. The reports were handed to the Board at the beginning of the meeting. Mr. Aurecchia asked Mr. Nascenzi to submit them to the Zoning Secretary prior to the day of the meeting. Mr. Nascenzi summarized the reports for the Board. He found no evidence of water infiltration on any abutting lots. With proper drainage and soil erosion controls, there should be problem with run-off. There would have to be a contingency for new DEM approval. The DEM approval does not travel to new owners. It must be reapplied for. Mr. Aurecchia asked Mr. Nascenzi to get Mr. LaFazia copies of the reports.

Mr. Aurecchia asked Mr. LaFazia if he would like to continue the application until DEM approval is received. Mr. Pillozzi made the motion to continue the application. A voice vote was taken, all in favor.

File 2007-56 – Continued from the October, 2007 meeting

Owner:	Mirza Montenegro
Applicant:	Complete Contractors, LLC
Location:	24 Merino Avenue, AP 14- Lot 284
Lot Dimensions:	Frontage: 80 ft.; Depth: 120 ft.; Area: 7,345 square feet
Zone:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Richard T. Bzdyra, P.L.S. – Ocean State Planners
Architect:	Karen Hughes
Present use:	Single Family Dwelling with 1 car detached garage
Development	
Proposal:	Construct a second floor addition to existing garage for office and bathroom. Construct deck and outside stairway on garage. Dimensional Variance petitioned under Article III, Section F, Table III-F-1
	Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size Requested: 7,345sq. ft.; Relief Requested for 7,655 sq. ft.
	Minimum Lot Frontage Required: 100 ft.; Proposed Lot Frontage Requested: 80 ft.; Relief Requested for 20 ft.
	Minimum Lot Width Required: 100 ft.; Proposed Lot Width Requested: 80 ft.; Relief Requested for 20 ft.
	Minimum Rear Yard Setback Required: 45 ft.; Proposed Rear Yard Setback Requested: 25 ft.; Relief Requested for 20 ft.
	Minimum Left Side Yard Setback Required: 20 ft.; Proposed Left Side Yard Setback Requested: 9 ft.; Relief Requested for 11 ft.

John Chaves, contractor, and Manuel Paneda, son of the owner, were duly sworn. Mr. Chaves stated that the application was continued because there were questions that only the owner could answer. One question involved whether the home was a single or a two-family. Mr. Nascenzi stated that the home is a two-family. Mr. Frezza verified that the office will be located on the second floor of the detached garage.

James Buckley, abutter, after being duly sworn, handed a written statement from another abutter to the Board. Mr. Pillozzi made the motion to accept the statement as Exhibit A for the abutters. Mr. Buckley stated that he opposes the project. Mr. Buckley stated that it is a two-family house. Mr. Aurecchia agreed. That issue was already resolved. Mr. Buckley asked if Mr. Nascenzi visited the cellar of the home. Mr. Nascenzi stated that he did not. He saw no safety issues and cannot legally enter the cellar of a property unless there is a safety violation. Mr. Buckley is concerned that the area over the garage will be another apartment. Mr. Nascenzi stated that he will ensure that the new space over the garage is only office, not an apartment. The plans approved here are exactly what will be built. If Mr. Buckley should see people sleeping there, take photos and contact Mr. Nascenzi. Mr. Nascenzi will send out a violation notice and enforce fines.

Mr. Jeffrey asked who would be using the office. Mr. Paneda stated that it is for him. He owns an electrical company and he will be using it for his business. Mr. Jeffrey verified that it will not be rented out. Mr. Jeffrey asked how many employees Mr. Paneda had. Mr. Paneda stated that he has 3, but they do not work in the office. There will be a desk, TV, maybe a pool table, but no bedrooms. Mr. Pillozzi stated that Mr. Paneda will have to get a business license from Town Council. Mr. Paneda has one van for his business.

Mr. Frezza stated that the Board is voting to allow a home office to operate in a residential neighborhood; that does not currently have a business license. Mr. Nascenzi stated that the office would need a Special Use permit before he could operate his business out of the office.

Mr. Buckley stated that there is a new bathroom being installed in the basement. Mr. Nascenzi stated that he is unaware of any permits for that. Mr. Buckley needs to come into the Building Department and file a complaint, and then Mr. Nascenzi will investigate. Mr. Buckley stated he did file a complaint. Mr. Nascenzi stated he saw no evidence of a bathroom. Mr. Nascenzi sent the Minimum Housing Inspector to the property; the Inspector saw nothing going on.

Mr. Fascia made a motion to approve the project. This was seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

File 2006-54 – Extension of Prior Approval

Owner/Applicant: Jacob and Marisa Abbruzzese
 Location: 5 Capri Drive; AP 20 - Lot 167
 Lot Dimensions: Frontage: 95± feet; Depth: 83.39± feet; Area: 7,922 sq. ft.
 Zoning District: R-15 (Residential, 15,000 square feet) Zone
 Existing Use: Single Family Dwelling
 Development
 Proposal: 480 sq. ft addition for additional living space
 Dimensional Variance petitioned under Art. III, Section F, Table III-F-1

Front Setback Required: 25 feet; Proposed front setback: 24.7 feet; Relief requested for .3 feet.

Rear Setback Required: 45 feet; Proposed rear setback: 23.9 feet; Relief requested for 21.1 feet.

Right Side Setback Required: 20 feet; Proposed right side setback: 9.8 feet; Relief requested for 10.2 feet.

Minimum Lot Frontage Required: 100 feet; Proposed lot frontage: 95 feet; Relief requested for 5 feet.

Minimum Lot Width Required: 100 feet; Proposed lot width: 95 feet; Relief requested for 5 feet.

Approval granted in September, 2006. Approval posted on November 9, 2006 and expired on November 9, 2007. Applicant is requesting a six-month extension.

Jacob and Marisa Abbruzzese, after being duly sworn, stated that they are requesting a six-month extension of the prior approval because the contractor's price came in higher than they expected and there were other problems with utilities and wetlands. The issues have all been resolved. Mr. Aurecchia verified with Mr. Nascenzi that all problems have been addressed. Mr. Nascenzi confirmed. Mr. Pilozzi made the motion to grant the application for an extension. This was seconded by Mr. Fascia. A voice vote was taken, all in favor.

File 2007-63

Owner: Bethlind DiCarlo
 Applicant: Bethlind DiCarlo
 Location: 16 Green Valley Drive, AP 48- Lot 276
 Lot Dimensions: Frontage: 103 ft.; Depth: 100 ft.; Area: 10,494 square feet
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Surveyor: Peter V. Cipolla, P.L.S.
 Present use: Single Family Dwelling
 Development
 Proposal: Construct a 782 sq. ft. addition to the existing single family dwelling

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Size Required: 40,000 sq. ft.; Minimum Lot Size Requested: 10,494 sq. ft.; Relief Requested for 29,506 sq. ft.

Minimum Lot Frontage Required: 140 ft.; Minimum Lot Frontage Requested: 103 ft.; Relief requested for 37 ft.

Minimum Lot Width Required: 140 ft.; Minimum Lot Width Requested: 103 ft.; Relief Requested for 37 ft.

Minimum Front Yard Setback Required: 40 ft.; Minimum Front Yard Setback Requested: 24 ft.; Relief Requested for 16 ft.

Minimum Rear Yard Setback Required: 75 ft.; Minimum Rear Yard Setback Requested: 19 ft.; Relief Requested for 56 ft.

Minimum Right Side Yard Setback Required: 35 ft.; Proposed Right Side Yard Setback Requested: 13 ft.; Relief Requested for 22 ft.

Minimum Left Side Yard Setback Required: 35 ft.; Proposed Left Side Yard Requested: 11 ft.; Relief Requested for 24 ft.

Bethlind DiCarlo, after being duly sworn, stated that she would like to build an addition on the rear of the home for herself. Her daughter and son –in-law would take the main house.

Mr. Armand Monaco, attorney for abutter Eleanor Santillio, stated that he is objecting to the application for several reasons. 1. No facts presented to the Board in support of the request for a

dimensional variance; 2. This lot is a legal, non-conforming lot that had dimensional variances previously granted and this application is an extension of those dimensional variances, which is in violation of Johnston's rules. It is clear that there can be no expansion of a non-conforming use and there is no evidence to substantiate her request. The Board has no option but to deny this request. If you do approve this application, please make specific findings of fact so that the appropriate appeal can be filed.

Mr. Pilozzi verified which lot was owned by the abutter Mr. Monaco is representing. The lot is next door to the subject lot. Mr. Fascia asked when the prior variance was granted. Mr. Monaco stated that he did not have the exact date but the plan submitted does not meet current zoning. He has no written approvals and could not tell the Board when they were granted. The existing structure does not meet current zoning requirements, which means they did not meet zoning requirements when the house was built. Mr. Pilozzi stated that prior to 1994, the requirements were different. Ms. DiCarlo stated that the house was built in 1967; she has owned it for about 6 years. Mr. Monaco asked what expert witnesses Ms. DiCarlo brought with her. Ms. DiCarlo stated that she has no expert witnesses this evening. She will represent herself and explain the hardship herself.

Ms. DiCarlo stated that the property has a 1,600 sq. ft. home with three bedrooms. Her daughter and son in-law will live in the home and she will live in the addition as her home. She has had five cancer surgeries in the last two years. The house is too large for her to keep up alone. The addition will be on the rear of the home; on the opposite side of the Santillio's. Ms. DiCarlo stated that she has spoken to the neighbor on the other side, where the addition will be located, and that neighbor has no problem with the project. Mr. Frezza stated that the in-law apartment does not go with the sale of the home. The next owner's would have to legalize the unit.

Mr. Pilozzi asked if the unit would have a separate entrance. Ms. DiCarlo stated that it would. Mr. Monaco stated that the application does not request approval for an in-law apartment. She has also not proven hardship.

Mr. Nascenzi stated that the unit will be open to the rest of the house. There cannot be a separate entrance. We are not here for an in-law apartment. The application is for an addition, not an accessory family dwelling unit. There cannot be a separate entrance. Ms. DiCarlo stated that her plan shows a separate entrance. Mr. Nascenzi stated that the application is for an addition, not for an in-law apartment. Ms. DiCarlo agreed not to have a separate entrance to the unit.

Mr. Pilozzi made the motion to grant the application. The hardship is due to the unique characteristics of the land or structure, not to the general characteristics of the surrounding area. The hardship is not the result of any prior action of the applicant. The granting of the request variance will not alter the general character of the surrounding area or impair the intent or purpose of the Comprehensive Plan. The relief granted is the least relief necessary to provide the applicant with the beneficial use of her property. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor.

Mr. Pilozzi stated that Mr. Monaco said he is intending to appeal. Please wait the 20 days after the decision is posted before beginning the project.

File 2007-69

Owner:	Dr. Fred McMillen
Applicant:	Alan Berry Architect Ltd.
Location:	1226 Hartford Avenue, AP 21- Lot 232

Lot Dimensions: Frontage: 160 ft.; Depth: 170 ft.; Area: 24,462 square feet
 Zone: B-2 (General Business) Zone
 Present use: Medical Office
 Development
 Proposal: Construct a 15' x 32±' (450 sq. ft.) addition for additional exam space
 Dimensional Variance petitioned under Article III, Section F, Table III-F-1
 Minimum Front Yard Setback Required: 40 ft.; Minimum Front Yard Setback Requested: 36.3 ft.; Relief Requested for 3.7 ft.
 Minimum Right Side Yard Setback Required: 40 ft.; Proposed Right Side Yard Setback Requested: 10 ft.; Relief Requested for 30 ft.
 Minimum Left Side Yard Setback Required: 40 ft.; Proposed Left Side Yard Requested: 36.8 ft.; Relief Requested for 3.2 ft.

Fred McMillen and Eric Army were duly sworn. Dr. McMillen stated that he is requesting to build a small addition for additional exam space. He is an orthodontist. Mr. Pillozzi verified that the sign would not be changed. No abutters appeared for or against the project.

Mr. Fascia made the motion to approve the project. This was seconded by Mr. Aurecchia. A voice vote was taken, all in favor.

File 2007-65

Owner: Rhode Island Resource Recovery
 Applicant: Michael V. D'Ambra
 Location: Scituate Avenue, AP 31- Lot 61
 Lot Dimensions: Frontage: 973 ft.; Depth: 665 ft.; Area: 666,904 square feet
 Zone: I (Industrial) Zone
 Surveyor: Matthew Sullivan, P.L.S. – Crossman Engineering, Inc.
 Attorney: Joseph DeAngelis, Esq.
 Present use: Single Family Dwelling
 Development
 Proposal: Asphalt and concrete plant with office, maintenance building, and truck scale
 Dimensional Variance petitioned under Article III, Section F, Table III-F-1
 Maximum Building Height Allowed: 40 ft.; Maximum Building Height Requested: 91ft.; Relief Requested for 51ft.
 Special Use permit petitioned under Article III, Section D, Table III D-1, Section 14.1

Mr. Joseph DeAngelis, attorney for the applicant, presented the application to the Board. He stated that the applicant wishes to conduct business as an asphalt and concrete facility on the site. It is zoned Industrial, which requires a Special Use permit. They also are requesting a dimensional variance on the height because the cement silo will exceed 91 feet.

Michael D'Ambra, applicant, was duly sworn. Mr. D'Ambra states that he owns D'Ambra Construction, currently located at 800 Jefferson Boulevard in Warwick, RI. He has operated there for over 23 years. The surrounding area is a mix of residential and commercial properties. There haven't been any complaints from neighbors in over 20 years. He has never had a problem with DEM. Mr. D'Ambra explained the site layout to the Board. Traffic would not come through any existing residential areas, would not go near the Landfill or near the Power Plant. There are wetlands on the site, but the business will not encroach on those. The buffer will be observed.

Mr. D'Ambra explained the procedure for making asphalt. There is an oil tank on site for this process and the tank will be above-ground, insulated and encapsulated. The conveyor belt used for the asphalt is completely enclosed. Mr. Fascia asked what the hours of operation would be. Mr. D'Ambra stated that the official business hours are 7 a.m. to 5 p.m. Occasionally, they start at 6:30 and very rarely stay after 5. In 2006, they had a few jobs required by the Department of Transportation to pave at night-time. Our silos hold the asphalt and keep it warm so no production would be done at night.

Mr. Pillozzi asked at what stage in the process does the particulate come out of the silo. Mr. D'Ambra stated that no particulate comes out of the silo. The "dust" that Mr. Pillozzi referred to is created in the process of sand and stone going into the dryer. There is a vacuum system and cleans the dust as it is created. This dust is actually reintroduced back into the asphalt. The vacuum system cleans 72,000 cubic feet a minute. The other source of dust is called fugitive dust. This is created when the loader puts the sand in the bins and the dust gets on the dump truck wheels and tracked around the yard. We sweep our yard every other day to reduce this dust.

Mr. Fascia asked if silica dust is present. Mr. D'Ambra stated that there is an expert later in the evening that can adequately address the question.

Mr. Anzelone asked how tall the asphalt plant is on Jefferson Boulevard. Mr. D'Ambra stated that it is about 65 feet high. Mr. Frezza asked if the operation ran 12 months a year. Mr. D'Ambra stated that they work about 39 weeks a year. They shut down today and will do maintenance until April. Mr. Caparrelli asked how late in the evening the plant would run. Mr. D'Ambra stated that they usually shut down at 5 p.m. Mr. Caparrelli asked about the back-up alarms on the trucks. He lives on Simmons Lake and can hear the trucks at Florida Power and Light. Mr. D'Ambra stated that the latest he has ever run into the evening is 6 p.m.-7:00 p.m. Mr. Caparrelli states that he lives 2650 feet from the area and can hear the trucks at 6 a.m. Mr. D'Ambra offered some plantings to help quiet the alarms. Other companies in the Industrial Park have the same type of alarms on their trucks. Mr. Caparrelli would like to see a stipulation placed on operating hours because of these alarms.

Mr. Fascia asked why Mr. D'Ambra was not expanding his current facility, rather than move. Mr. D'Ambra explained that the State of Rhode Island, by eminent domain, has taken a piece of his property for the new train station. He would like to develop the remaining property someday.

Mr. Anzelone asked Mr. D'Ambra about hazardous materials. Mr. D'Ambra explained that his is the only facility in the state that has a soil remediation permit. That operation will not be brought to Johnston. The Board is welcome to make that a stipulation of approval. Mr. Pillozzi stated that Reliant Energy, who first put the power plant in, had stipulated to eleven items. The power plant was then sold to Florida Power and Light and none of the stipulations have been adhered to. There was a State Board, the "Energy Facilities Citing Board" that over-ruled the stipulations. Mr. DeAngelis stated that that Board would have no control over this operation. Mr. Pillozzi

asked what will happen with contaminated soil if Mr. D'Ambra will no longer handle the operation. Mr. D'Ambra stated that it will go out of state. Because of the nature of his business, he will not be moving the operation until next winter. He also has further work regarding his permits. It will take two to three months to move the plant.

Mr. DeAngelis asked Mr. D'Ambra how tall the current asphalt plant was. Mr. D'Ambra stated that the current stack is 65 feet tall. Cement silos are a little different and he needs to reach a height of 91 feet. Cement stacks are totally sealed; no exhaust comes out the top. Mr. Pilozzi asked why the cement silo needed to be so tall. Mr. D'Ambra explained that the powdered cement is stored vertically because it does not flow. Mr. Fascia asked how the cement dust is removed. Mr. D'Ambra stated that it is pneumatically pumped from the tank truck into the silo. There is a circulation system that recycles the dust from the bottom back into the cement powder. It is a wet mix process to make the cement.

Mr. DeAngelis asked Mr. D'Ambra about the new cement plant. Mr. D'Ambra stated that the cement plant will be completely brand new. It is purchased as a unit. It is state of the art and couldn't be any cleaner or more efficient. The silo comes as part of the package.

Mr. Anzelone asked about the smell from the asphalt plant. Mr. D'Ambra stated that the offices are within approximately 150 feet of the plant and the secretaries are not bothered by it. The asphalt he uses is shipped as liquid and maintained as liquid.

Mr. Fascia asked about fire suppression. Mr. D'Ambra stated that there is a witness later in the evening that can testify to that. Mr. Fascia stated that a cement plant in Massachusetts exploded in 2006 and the dust covered two square miles. The nearest fire station is on Atwood Avenue and the response time could be 10-15 minutes.

Mr. DeAngelis verified that this plant will pay taxes and there are no special deals. Mr. D'Ambra confirmed this.

Mr. Caparrelli revisited the noise issue. Mr. D'Ambra stated that he would be willing to look into other types of back-up alarms. Approximately 90% of the movement of his trucks is forward, not backward.

Mr. Anzelone asked about fuel for the trucks. Mr. D'Ambra stated that the trucks do refuel on site. Mr. D'Ambra stated that he is looking into getting concrete fuel tanks. He offered to institute a policy at his company that all trucks fuel up in the morning, not in the evening. He has never had a complaint at his current location about noise.

Mr. Caparrelli asked about the sale of asphalt to other companies. Mr. D'Ambra stated that they do not sell to other companies.

Mr. Fascia asked about the use of solvents. Mr. D'Ambra stated that they use an environmentally-friendly compound, no solvents.

Mr. Fascia asked about the cement process. Mr. D'Ambra stated that there are four bins containing different sizes of stone and sand. Conveyor belts are used to move the material to a central area, where it is mixed with the appropriate amounts of water, then dumped into a mixer and carted off to the job site. There is a vacuum that handles any dust and brings it back into the process. There are certain types of mixes that use micro fibers, retarder chemicals, or accelerators. Those are also brought by conveyor. There is no reclaimed cement used. All new materials.

Bruce Hagerman is duly sworn. He stated he is a civil engineer working for Crossman Engineering for sixteen years. Mr. Pilozzi made the motion to accept Mr. Hagerman as a qualified witness. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor. Mr. Pilozzi made the motion that his resume be accepted as Exhibit A for the applicant. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor.

Mr. DeAngelis asked Mr. Hagerman if he was the engineer that prepared the plans that were submitted to the Board. Mr. Hagerman confirmed this. Mr. DeAngelis asked that the plans and the accompanying be marked as Exhibit B for the applicant. Mr. Pilozzi made the motion to accept these items as Exhibit B. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor.

Mr. Hagerman stated that the proposed site is approximately 14.8 acres and owned by Rhode Island Resource Recovery Corporation. Site contains several wetland areas. The total wetland and buffer areas compromise about 4.7 acres. The site is part of the new Lakeside Commerce Center. There is public sewer and water available. There will be one ingress and egress. Mr. Hagerman explained where the offices, asphalt plant, cement plant; storage areas, etc...would be located on the site. The nearest residence is approximately 1000 feet away. The site has DEM permits to construct the plant. The site also has a RIPTEES permit. A RIPTEES permit is necessary for any construction activity over one acre.

David Brashears, a mechanical engineer, was duly sworn. Mr. Brashears stated that he has 40 years of experience and is licensed in Florida and Ohio. He is not licensed in Rhode Island. He has over 15 patents involving hot mix asphalt equipment. Mr. Pilozzi made the motion to accept Mr. Brashears as a qualified witness. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor. Mr. DeAngelis asked that his resume be marked as Exhibit C for the applicant. Mr. Pilozzi made the motion to accept the resume as Exhibit C. Mr. Aurecchia seconded the motion. A voice vote was taken, all in favor.

Mr. Brashears stated that he is employed by Gencor Industries. Gencor is the manufacturer of the asphalt facility that Mr. D'Ambra uses. Mr. Brashears has expertise in the area of particulates and emissions. In Rhode Island, DEM required several types of permits. Two of which are the major source and minor source. D'Ambra Construction is requesting a minor source permit. The difference between major and minor is the emission rate of various pollutants. He must employ the best available control technology. He has to demonstrate to DEM that he is using the best technology available. He also must demonstrate that his facility will have no adverse effect on the neighbors. Mr. Pilozzi asked what the maximum emission was for a minor source permit. Mr. Brashears stated that it is different everywhere, but he believes it is 50 tons per year of nitrous oxide, an emission. This measure is different for different emissions and particulates. Mr. Brashears could not tell the Board what the measure was for particulates. Mr. Pilozzi asked if this would affect drinking water wells. Mr. Brashears stated that it would not. Mr. Brashears stated that he know of no problems with respect to air quality or emissions at the current plant in Warwick. Gencor Industries will be relocating and building the new asphalt facility. It will have technology that surpasses the current plant. The new facility will burn natural gas, the same type that is used in homes. There will be some particulate emitted, but the percentage is extremely small. Mr. Fascia asked what the particulate will consist of. Mr. Brashears stated that it depends on what was being processed. The EPA did a study and it was determined that hot mix asphalt plants are a minor source.

Mr. Fascia asked if the following materials were considered non-pollutant: arsenic, beryllium, cadmium, chromium, lead, manganese, nickel, phosphorus and selenium. Mr. Brashears confirmed the list. Mr. Brashears explained that those items are in the atmosphere and exist in minute amounts in everything. Mr. Brashears stated that the gasoline we pump in our cars everyday is much more toxic than the particulates emitted by the asphalt plant. Mr. Fascia stated that he is concerned about exposure over a long period of time. Are the particulates being contained in the best way possible? Mr. Brashears confirmed that this plant is utilizing the latest technology available? Hot mix asphalt has been used for over one hundred years. Hot mix asphalt fumes have not been found to be carcinogenic or have any other serious health affects. Any exhaust from the furnace is bagged and reintroduced back into the process. RIDEM will regulate the exhaust.

Mr. Fascia asked about the sound levels. Mr. DeAngelis indicated that that expert was coming up next. Mr. Brashears stated that the noise level from about 100 feet away would be equivalent to normal traffic.

Mr. Fascia asked why the stack on the asphalt plant needed to be 65 feet high. Mr. Brashears stated that in order to maintain a level of productivity, you need a certain amount of space. The hot mix asphalt is held in vertical storage.

Mr. Brashears addressed the fire suppression issue. He explained that asphalt does not have many volatiles in it. It will not readily burn. Even if the tank should rupture, the asphalt will only flow so far before it solidifies. Gencor Industries does not supply fire suppression equipment; it is the responsibility of the owner. It is based on what the Fire Marshal requires.

Mr. DeAngelis asked if this proposal was compatible with neighboring uses in the area. Mr. Brashears stated that it was.

Mr. DeAngelis asked Mr. Brashears about the silica dust. Mr. Brashears stated that silica dust can cause a lung disease known as silicosis. That takes heavy and prolonged exposure. He knows of no silicosis issues related to hot mix asphalt. Mr. Brashears also stated that Mr. D'Ambra is working at one-tenth the capacity his DEM permit allows. Mr. D'Ambra's emissions and particulates will be much less than he is allowed.

Mr. Pillozzi asked how much water Mr. D'Ambra will use each year. Mr. D'Ambra stated that his water usage depends on the amount of business he has. He can estimate that it is probably around 1,500 gallons a day. The site has Providence Water Supply. No wells.

Mr. Caparrelli asked about the possibility of using burnable scrubbing methane gas for fuel. Mr. Brashears verified that Mr. Caparrelli was talking about the landfill gases. Landfill gases are being used very successfully at some hot mix asphalt and power plants. Landfill gases are produced when bacteria break down the trash and the result is carbon dioxide and methane, which is the same as natural gas. This gas can be piped over to the power plant or to the hot mix asphalt plant. It is environmentally friendly to use this, but there are no plans at the moment.

Howard Quin, was duly sworn. Dr. Quin stated that he is employed by Tech Environmental of Waltham, MA. He is a geophysicist by trade; spent 25 years in noise and vibration studies. He has a Ph.D. in geophysics from Columbia University. Mr. Pillozzi made the motion to accept Dr. Quin as a qualified witness. Mr. Aurecchia seconded the motion. A voice vote was taken, all in favor.

Dr. Quin stated that he has been engaged by Mr. D'Ambra to perform a study of the potential noises of the plant. He took readings from 3 different places; the closest residence, the 2nd closest neighborhood and the closest industrial receptor. All were measured during the afternoon and between midnight and 1:00 a.m. Tree shielding and terrain were not incorporated. It was determined that the levels will be below the acceptable levels as determined by Town Ordinance.

Mr. Pillozzi asked if Dr. Quin did the study at the Brayton Point Power Plant in Swansea. Dr. Quin stated he did a study there in 2006. Mr. Pillozzi stated that that was after the explosion. The Power Plant lost their court case and will have to build cooling towers. They were using Mount Hope Bay and then dumping the water back into the bay.

Dr. Quin stated that he did not measure the noise levels for the back up alarms for the trucks. He also did not measure the area that Mr. Caparrelli lives in. Mr. Caparrelli stated that the alarms echo down the power lines and across the lake.

Mr. Fascia asked how close the closest residence was located. Dr. Quin stated that it is approximately 1100 feet away. During the day the decibel reading was 50, at night it was 49. Mr. Pillozzi verified that Dr. Quin had the machine set at a maximum sound pressure level of 65.

Beyond 100 feet, the sound cannot go any higher than that. It will start dissipating at somewhere between 500 and 1000 feet.

Mr. Caparrelli asked how many trucks would be on site at one time. Mr. D'Ambra stated that the number is unclear. He would be willing to use strobe lights instead, which are allowed by law. It will help alleviate of this problem. Mr. Aurecchia stated that most of the problem is going to come from other companies in the industrial park.

Mr. Pilozzi made the motion to accept Dr. Quin's resumes as Exhibit D and E for the applicant. Mr. Fascia seconded the motion. A voice vote was taken, all in favor.

Mr. Fascia asked how tall the piles of sand and stone would be. Mr. D'Ambra stated that they are normally about ten to fifteen feet high. Mr. Fascia asked about the possibility of building a drop zone. It is an area where the trucks would back up and dump the load over a grate into a contained pile. The material is removed from below with a front end loader. Mr. D'Ambra stated that they do not have the room for that type of operation. However, all the sand and stone he buys is washed. It contains much less dust than the unwashed.

Thomas Sweeney, real estate broker/appraiser, was duly sworn. He has appeared before this Board on numerous occasions. Mr. Pilozzi made the motion to accept Mr. Sweeney as a qualified witness. Mr. Aurecchia seconded the motion. A voice vote was taken, all in favor.

Mr. Sweeney stated that he is familiar with the existing site in Warwick and the proposed site. The industrial park contains the State Landfill, Florida Power and Light and a number of smaller industrial businesses. The use is compatible with other companies.

Mr. Pilozzi made the motion to accept Mr. Sweeney's resume as Exhibit F for the applicant. Mr. Aurecchia seconded the motion. A voice vote was taken, all in favor.

Matthew Shandel, Regional V.P. of Florida Power and Light, was duly sworn. Mr. Shandel handed documents to the Board. Mr. Aurecchia stated that these documents should have been submitted prior to this evening. Mr. Shandel stated that he would be willing to withdraw the document and speak regarding it. Mr. Aurecchia stated that the Board would keep it, but did not have time to review it.

Mr. Shandel stated that Florida Power and Light is also the owner of Rhode Island State Energy Center (RISE). He is responsible for the performance of the northeast plants. Mr. Pilozzi asked where the corporate headquarters were located. Mr. Shandel stated that they are located in Juneau Beach, FL. Mr. Shandel stated that they have only known about the proposal for two weeks. They have not had enough time to determine if this will have any effect on their business. He strongly objects to the project until his company has had enough time to fully study the situation.

Mr. Jeffrey asked if Mr. Shandel had any specific concerns relating to DEM air quality or EPA quality. Do you have specific concerns regarding the operation of your facility? Mr. Shandel stated that they don't have enough facts to make specific statements. He is concerned about the particulates that create problems for the intake valves for the cooling towers. Mr. Shandel stated that they do not have enough information to about their operating limits and how the plant will work; or regarding limits on the number of trucks that can be operated. Mr. Jeffrey asked if Mr. Shandel had any experts who could testify about the affects of asphalt or cement plant on the power plant. Mr. Shandel did not bring any experts with him this evening. Mr. Shandel stated that it isn't appropriate to grant a project that hasn't been fully studied. Mr. Anzelone stated that the project must also appear before Planning. Mr. D'Ambra stated that the project must also go before the Industrial Performance Commission, RIDEM for air quality and the Johnston Planning Board. There is plenty of time for studies to be done.

Mr. Shandel requested a 2-month extension in order for the studies to be completed. Mr. Jeffrey asked why Mr. Shandel just requested 2 months and the paperwork he submitted to the Board asks for 6 months. Mr. Shandel stated that some air studies can take up to 6 months to complete. Mr. Aurecchia verified that Florida Power and Light are concerned about the cooling towers. Mr. Shandel confirmed. Mr. Aurecchia stated that the cooling towers use gray water from Scituate. Again, Mr. Shandel confirmed. Mr. Aurecchia asked how much sludge was removed from the bottom of a cooling tower each week.

Peter Holspel, Plant Manager of Florida Power and Light, was duly sworn. Mr. Holspel stated that the sludge is removed from the cooling towers twice a year. The cooling tower is emptied, the sludge dries out and it is swept out, weighed, and disposed of properly in the landfill. Mr. Aurecchia stated that if the cooling towers are only cleaned out twice per years and gray water is being used in them, he doesn't see how some particulates in the air would affect them.

Mr. Holspel stated that certain particulates cause an insulating effect preventing the heat from reaching the water. This means that they have to spend more money on fuel costs.

Mr. Shandel stated that they are concerned about the fugitive dust that will be raised by the trucks. Mr. Frezza stated that other companies in the industrial park also raise fugitive dust. Mr. Shandel stated that those companies are farther away. If it were only a trucking company, we wouldn't be as concerned. This is a company that deals with sand and stone, raising much more dust. Florida Power and Light is concerned because they don't have a lot of information.

Mr. Aurecchia asked why his company wasn't concerned when construction was going on earlier this year in the industrial park and clouds of dust were everywhere. Mr. Holspel stated that those clouds were being created on the opposite side of the plant, not in relation to the air intakes. Mr. Aurecchia stated that the clouds of dust will follow the direction of the wind. It doesn't matter what side of the park they are being created in. Mr. Aurecchia asked what kind of filter system was installed on the cooling towers. Mr. Holspel stated that it is a two stage filter. Mr. Aurecchia asked how well the gray water was treated before it was used. Were the particulate levels in the water tested before it was used in the cooling towers?

Mr. Piloizzi stated that Mr. D'Ambra has a strict schedule for permitting and moving the company from Warwick to Johnston. Any continuance is going to hurt his company financially. He operates under one of the most stringent air quality permits in the country.

Mr. Shandel stated that they are not trying to hurt the company or even object to the company operating there. They just want time to complete studies to ensure that his company will not injure theirs.

Richard Beretta, attorney for Florida Power and Light, stated that Florida Power and Light was initially going to present a Power Point presentation, but because of the time, decided just to and out the documents. The gentlemen from Florida Power and Light do not have enough information to make the determination that the asphalt and cement plant will not adversely affect their company. They were not notified until two weeks ago. They have already engaged experts who have started speaking with Mr. D'Ambra, they just want information. They are willing to pay to have the studies done quickly. If they had been aware previously, they could have started their studies. Mr. Aurecchia asked when the notices were sent out. Ms. Leonardi stated that they were sent approximately 2 and one-half weeks ago. Mr. Aurecchia stated that a company the size of Florida Power and Light should have been able to gather their experts in that amount of time.

Mr. Shandel is concerned about the soil remediation permit. Mr. Aurecchia stated that that license is only viable at the Warwick location. That work will not be performed in Johnston. It is on the record earlier this evening.

Mr. Beretta stated that the expert earlier this evening could not testify to the impact of the particulates on power plants. Mr. Pillozzi stated that the power plant has had an explosion and they are worried about what might happen if an asphalt/cement plant moves in.

Mr. Aurecchia stated that there are still many permitting processes to go through before this operation moves into the area. The power plant has plenty of time to study the situation.

Mr. DeAngelis stated that there were three points brought up that he would like to address. The first is traffic. The standard is 100 vehicle trips per day. The operation will not be anywhere near that size. The second is soil remediation. Mr. D'Ambra is not bringing that part of his operation to Johnston. The last item is capacity. Mr. D'Ambra is operating at one-tenth the capacity allowed by his permit.

Mr. D'Ambra is prepared to testify that Florida Power and Light were contacted four months ago in an attempt to purchase some of their property for this operation. Mr. D'Ambra stated that he contacted Mr. Scovill at Florida Power and Light and asked who would be the appropriate party to speak to in regard to the purchase. Mr. Scovill put him in touch with Mr. Oliver. He spoke to Mr. Oliver and told him that the company would be moving to Johnston and wished to purchase land to increase the size of their lot. Mr. Oliver stated that he would have to get back to Mr. D'Ambra. Mr. Oliver spoke to Mr. D'Ambra and stated that the land was not for sale. They wished to retain it for future expansion. There was no other contact between the companies until they received their notice regarding tonight's meeting.

Tim Oliver of Florida Power and Light was duly sworn. Mr. Oliver stated that when Mr. D'Ambra contacted him, he was new to the project and was unaware of the business Mr. D'Ambra was in. Mr. Oliver stated at no time did Mr. D'Ambra state that he was moving his operation to Johnston from Warwick. When Florida Power and Light did find out what was happening, they contacted Mr. D'Ambra and told him they had concerns over the operation and would be attending the meeting to voice those concerns. A conference call was immediately set up between Mr. D'Ambra's team and the Florida Light and Power engineers. No solutions were reached during the call. They have only known about the exact scope of the project for a couple of weeks.

Mr. Pillozzi made the motion to grant the application. He feels that the Special Use permit is in compliance with the Zoning Code of the Town of Johnston. Granting of the Special Use permit is compatible with the neighboring uses and will not adversely affect the surrounding neighbor's use and enjoyment of their property or their property values. Granting of the Special Use permit will be compatible with the orderly growth and development of the Town of Johnston and will not be an environmental detriment. The best practices and procedures to minimize the possibility of any adverse affects on neighboring property, the Town of Johnston and the environment have been considered and would be employed including but not limited to consideration of soil erosion, water supply, protection, septic disposal, wetland protection, traffic limitation, safety and circulation. Granting of Special Use permit will not result in or create conditions that will be inimical to the public health, safety, morals and welfare of the community. However, that being my motion, I would like to add a stipulation to it. I would like the stipulation that Mr. D'Ambra strongly enforce the trucks entering and leaving – the ingress and egress - without going into reverse causing their reverse alarms to go on. I feel that the applicant met the burden for the Special Use permit.

Mr. Jeffrey seconded the motion. The applicant met the burden of proof. Florida Power and Light will have adequate time to do due diligence and address their concerns before Boards and governing authorities.

A voice vote was taken, all in favor.

Mr. Pillozzi made the motion to allow the height variance. Mr. Jeffrey seconded the motion.

A voice vote was taken. Mr. Jeffrey, aye; Mr. Pilozzi, aye; Mr. Anzelone, aye; Mr. Fascia, nay; Mr. Frezza, aye. Mr. Aurecchia recused himself from the vote.

Mr. Fascia stated that he would like to state his objection for the record. Under Section P, the granting will not be compatible with neighboring uses. It may affect the surrounding neighbors. It may or may not be environmentally compatible with the neighboring properties. It may create or result in conditions that may not be inimitable to the public health, safety and welfare of the community. He is uncomfortable with fugitive dust, leaching of heavy metals into the ground as a result of manufacturing these products. He has not heard details of a fire suppression or explosion suppression plan.

Mr. Frezza made the motion to adjourn. Mr. Fascia seconded the motion. A voice vote was taken, all in favor.

Adjourned at 11:45 p.m.