

**BOROUGH OF RIVER EDGE  
LAND USE BOARD  
MEETING MINUTES  
ZOOM MEETING  
July 8, 2026**

**NOTE** – Public meetings of the Municipal Land Use Board of the Borough of River Edge will be held in person in the Council Chambers on the second floor of Borough Hall, 705 Kinderkamack Road, River Edge, NJ 07661 unless further notice is provided. Meetings will be held concurrently via ZOOM ,(Hybrid). Members of the public may attend meetings in person or via ZOOM. To join the ZOOM meeting via smart phone, computer or tablet. The log in information and a link to the meeting will be posted on the Borough’s website at <https://www.riveredgenj.org/landuse>.

Chairman Caslin calls the Meeting to order at 7:30 p.m.

Roll call:

|                 |         |                    |                      |
|-----------------|---------|--------------------|----------------------|
| Mayor Papaleo – | Excused | Chairman Caslin –  | Present              |
| Ryan Gibbons –  | Present | Councilman Glass - | Present              |
| Eileen Boland - | Excused | Mr. Chinigo –      | Absent               |
| Mr. Gautier -   | Excused | Mr. Salva -        | Present at 7:50 p.m. |
| Michael Krey -  | Present | Ms. Levine -       | Present              |

ALSO PRESENT: Marina Brown, Esq., Mr. Depken (via Zoom), Mr. Costa, Jessica Hall and Lisa Ciavarella

Chairman Caslin states that there will be a curfew of 10:00 p.m. this evening.

**APPROVAL OF MINUTES**

None

**CORRESPONDENCE**

None

**MEMORIALIZATIONS**

Mellow Bagels & Café LLC  
101 Midland Avenue  
Block 296, Lot 3

Application for Site Plan Approval for a Retail Food Establishment. No exterior improvements are contemplated, except changing the name on the existing signage.

A draft of the Resolution was submitted for the Board’s review prior to this evening’s meeting and

Chairman Caslin opens to the Board or questions and comments. Ms. Brown states this application did not require any variance relief and the applicant had agreed to conditions regarding working with the Borough and Board professionals for any odors, coordinating deliveries so they don't impede with driveway access, installing signage to discourage parking in the adjacent southern lot, and complying with all other comments and recommendations in the Board professionals reports. Motion to approve the resolution was made by Councilman Glass and seconded by Mr. Krey. Only those eligible to vote - Chairman Caslin – yes; Mr. Krey – yes; Mr. Gibbons – yes; Councilman Glass – yes; and Ms. Levine – yes. Motion passes.

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Sweetspot River Edge LLC  
75 Rt. 4 East  
Block 1415, Lot 1.01

Variance for the square footage of the main and secondary signs to improve visibility from traffic.

A draft of the Resolution was submitted for the Board's review prior to this evening's meeting and Chairman Caslin opens to the Board or questions and comments. Ms. Brown states that there was a condition that the applicant would remove the free-standing signage on the Regency's pylon if they received DOT approval for the easternmost driveway in the Resolution, she had it as dual access, but the applicant is asking for ingress only at that third driveway. She will update that in the Resolution otherwise the applicant was approved for a variance for total number of signs, the signage area, the free-standing sign and the setback of that pylon sign from the front yard. There being no questions or comments from the Board Chairman Caslin looks for a motion from the Board. So made – Mr. Krey; Second – Mr. Gibbons. Only those eligible to vote – Chairman Caslin – yes; Mr. Krey – yes; Mr. Gibbons – yes; and Ms. Levine – yes. Motion passes.

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Resolution appointing conflict Board Attorney  
IAAT Services LLC  
41 Grand Avenue  
Block 1405, Lot 4

A draft of the Resolution was submitted for the Board's review prior to this evening's meeting and Chairman Caslin opens to the Board or questions and comments. Ms. Brown states that this is for Mr. Liebman's continued representation of the Board in the litigation that was filed by this applicant. There being no questions or comments from the Board Chairman Caslin looks for a motion from the Board. So made – Mr. Gibbons; Second – Mr. Krey. Only those eligible to vote – Chairman Caslin – yes; Mr. Krey – yes; Mr. Gibbons – yes; Councilman Glass – recuses and Ms. Levine – yes. Motion passes.

### **OLD BUSINESS**

Michael & Melanie Schweiger  
265 Adams Ave.  
Block 506, Lot 3

Construction of an outdoor living space where none exists.

Ms. Brown states that for the record the applicants and their contractor were sworn in at the June 10<sup>th</sup> meeting and they remain under oath this evening. The application was deemed complete on June 10<sup>th</sup> and was carried to June 24<sup>th</sup> and then on June 24<sup>th</sup> it was further carried to this evening's meeting without further notice.

Melanie Schweiger reads a statement prepared by herself and her husband and reads it to the Board giving them a background as to how they came about purchasing a home in River Edge and then purchasing this newer home at 265 Adams Avenue in September 2025 after construction and inspections of the home were completed. She stated that at the time of the purchase they had no knowledge that the home was oversized for the one or that they were purchasing a non-compliant house. She thanked Mr. Depken for providing clarification documents and the zoning review memo. After analysis it was determined that these conditions existed before the applicants purchased the home and it was unknown to the applicants at the time of their closing. So, the applicants believe the hardship is straight forward. It is both an undersized lot and a pre-existing non-conforming property. The lot contains only 600 sf in an R1 zone where a conforming lot would contain 7,500 sf. Because the lot is significantly undersized it does not enjoy the same development flexibility as a conforming lot. She continues stating that a homeowner on a conforming lot would reasonably construct similar outdoor amenities they are requesting without seeking the relief they are requesting this evening. She continues, had this been a conforming lot they would not be before the Board this evening. She further continues stating that they purchased a newly constructed home thinking it had been built and approved in accordance with the applicable requirements. Their purchase documents specifically state that the home was constructed in compliance with applicable building codes zoning ordinances and other legal requirements. Again, they had no knowledge of this non-compliance and they were not informed of any such information prior to their closing. When they purchased the property, they were fully aware of the Borough's ordinance preserving 5% of lot coverage for outdoor amenities. Based on that ordinance the applicants intentionally designed their proposed deck to remain within the 5% allowance. She further states that instead, because of mistakes that predate their ownership they are now seeking variance relief for 277 sf covered deck which falls within this outdoor type amenity that this ordinance was intended to accommodate. To their family she states that this project is much more than a deck to them. They were hoping to provide a safe and functional outdoor space for their growing family where they can play games, eat, host family gatherings and just enjoy everyday moments together outside just as they did in their previous home. Ms. Schweiger asks the Board to look at the poster board to visually show them the backyard on all three sides. Ms. Brown asks if these were previously submitted to the Board, to which Mr. Scott responded that they are bringing them this evening for the first time. They write on the board Exhibit A1 and they will send a digital photograph of it to the Clerk, Jessica Hall. Ms. Brown asks for an explanation of the photographs. Ms. Schweiger states that there is a photograph of the property on the west side up the hill from the applicant's property – you can see that there is a retaining wall and a fence. Those neighbors have plenty of privacy and should not be impacted. The bottom left picture is the house to the east of the applicants – the applicants have spoken with both neighbors on Adams Avenue neither has had any water damage or any issues with the applicant's proposed project. The top photographs are from the rear taken from their back door. There is a six-foot fence and then there is a side view picture showing how dense the shrubbery is. Melanie Schweiger took the photographs sometime last week on or about 7/1/26. Ms. Schweiger states that they are committed to work with the Borough to make improvements to protect their neighbors more specifically for storm water management.

Mr. Scott speaks to the Board with regard to the storm water management. He states that he received some information from the Borough engineer regarding the storm water system that is already in place.

They have updated the plan to show the location of that and then included another Cultec 150 to basically captures 3 inches of water over the square footage of the increase of 277 sf of impervious coverage. He states he hopes that addresses the issue the Board had.

Ms. Brown wanted to clarify some of the dates of the plans. She states the Board received a full size copy of plans titled "Site plan deck plan prospective overview" consisting of 3 sheets it has an original date of 7/6/26 but then it was revised 4/10/26 and then she received a similar exhibit that existed of 3 sheets entitled "Site Plan Prospective Overview" with an original date of 7/3/26 with a revision date of 7/3/26. She asked that the applicants clarify those two. Mr. Scott asks if she is talking about the physical copies he just gave her. Ms. Brown responded the physical large-scale set is dated 7/6/26 and then the one that was provided last week is dated 7/3/26. Mr. Scott said that was an update for the storm water, the calculations and the Cultec chamber detail on page 3. There was also a note on the side denoting the location being proposed. Chairman Caslin states that they have a submission that has a revision two with a July 3, 2026, date but the July 6<sup>th</sup> submission does not have that similar notation, so for clarity they need to be clear on what they are reviewing and approving the Board needs that to catch up. Mr. Scott stated they would get a letter out on that.

Mr. Costa addressed the Board stating that after the last meeting he went back to his office and pulled the old file, they had photographs of where the tanks were. It may be actually closer to where the actual proposed addition is going but again the only way to find out is to dig it up. The as-built that was provided to his office was inaccurate and that is where he believes the problem lies. So, when the as-built was provided to Mr. Depken and the construction official at Mr. Costa's office it is not correct based on the new drawings before the Board tonight. Mr. Costa continues to state as to who is to blame, who to go after that he cannot - - at a minimum based on the information in front of the Board this evening the applicants have a house that is not conforming so at a minimum the Board might want to consider if they don't approve this to at least approve what the applicants have there today that it is a nonconforming situation. Mr. Costa reiterates that it is not because of the applicants they took ownership in September and the documents that were submitted and based on what Mr. Costa reviewed that is what he thinks. Councilman Glass states that does not answer the question - that we are talking about as-built drawings - what about when the application was submitted for the construction of the house was that conforming? Mr. Costa stated that what he told Mr. Depken was that from now on they can check to a millimeter so if they get those files, they will check the coverage very closely and very easily. Mr. Costa does not know how it got to that point. Mr. Krey asks what the inaccuracy is. Mr. Costa responded that basically the as-built stated that they were conforming their plans and based on his knowledge they were conforming but based on this submission and based on what is there today and what got built is not and the as-built that was certified to the town is not correct. Mr. Scott states that there are at least four or five percent issues with the as-built, there's percentage, there's miscalculations, things are not where they are supposed to be, permeable pavers that are shown on the as-built that are not there and the whole point of the applicants coming forward and documenting this on these new plans is to protect the applicants because they bought it under the impression that was there. Councilman Glass wants to really understand why this house was built, it wasn't conforming and didn't have a variance. Ms. Brown suggests maybe Mr. Depken can go through his memo of June 18, 2026, to just explain the history.

Mr. Depken asks if everyone received the letter/interpretation that he sent out with all the documents dated June 18, 2026. Mr. Depken continues stating that he went back to see how this started from the very beginning before the house was renovated and the builder was proposing what they wanted to do. He continues - document number 1 was the zoning review and that zoning review was amended February 21, 2025. The proposed building coverage at 24.95%, lot coverage at 29.93% therefore they issued a

compliance letter stating that it complied with the codes and that they can proceed with construction. He continues – document number 2 the architects proposed building coverage also stated the same. They also indicated 24.95% for building coverage. 29.93% for lot coverage and that would be under the 30% and then plus the 5% for amenities. When they did the final as-built and it was completed on September 2, 2025, it indicated 1,500 sf, 25% building coverage which was compliant and then lot coverage was 34.48% without amenities. So, when they did the as-built when it was submitted it indicated on there that the applicants were under the total 35% but they encroached into that 5% amenities and at that point they suggested that the only thing the applicants could do to rectify that at the time was to put permeable pavers in the driveway and a walkway. Mr. Depken continues for the sake of the applicants he thinks there should be some consideration in regard to the amenities but unfortunately the project that the applicants are doing also includes building coverage and, in that respect, they would be over the building coverage by 31.5% which is not compliant and the lot coverage would be 47.8% and the rear yard setback would be 12.95 feet. So giving the approval for a patio you're eliminating the building coverage that would remain the same and they could use the patio as living space on the exterior as they go through the summer, spring & fall months and as far as the variance needed, he states Mr. Costa is right, if nothing going to be done issue a variance for the nonconformity with the lack of the 5% but it would also be the building coverage, lot coverage and rear yard setback. Mr. Depken states that there always seems to be a problem with these amenities. The architects don't understand it he has to explain, the contractors don't understand it, and the property owners don't understand it. Mr. Depken thinks the Board should look into amending the ordinance. He would recommend for lot coverage 40% and building coverage 25% - with that it all encompasses the size of the lot, the minimum size and the coverages. It makes it a lot easier, the 40% isn't that much more than the 35% and it's easy for the amenities to --- Chairman Caslin interjects that, that is a whole other conversation. Councilman Glass adds that Mr. Depken just explained that the applicants submitted a compliant set of plans when they applied for a building permit, so they understood because they came in right under 30 – the builder. They (the architect) submitted a compliant set of plans and then they built something different and then they did not even accurately reflect final conditions on the as built. Councilman Glass stated that the Board needs to think about taking some type of action against the architect who filed those plans. Mr. Gibbons had a question stating that he believed what was said was that it was realized in early September that the as-built was incorrect before the house was sold. He asked if he heard that correctly – that it was known. To which Mr. Depken responded – yes.

Mr. Gibbons wanted to know how did they get a CO. Mr. Depken stated that it was inadvertently missed. Mr. Depken stated that when it came up he stated to the contractors now what can they do – he advised that they were in a spot and he would suggest making the driveway and walkway permeable because they changed the size of the driveway and they changed the walkway. He further stated that maybe at that time he should have gone after them to amend everything and rip everything out and go forward but apparently, we did not. Mr. Gibbons asks again – if they got a CO that was not related to the applicants as buyers if we knew that they needed the variance why are the Schweiger's asking for a variance not the builder asking for a variance. He continues – if it was realized in early September that it was wrong, the builder should have gotten the variance to amend – they should not have gotten a CO to sell the house. Mr. Costa interjects – they submitted an as-built and said it was conforming (there is a disagreement between several board members, they are going back and forth so it's hard to distinguish what exactly is being said). Mr. Depken tells Mr. Costa to look at Kesner's as-built. Mr. Costa state – Kesner's as-built puts it in compliance. They are looking at Kesner's survey which states 27 is less than but then he says the number is less than 25. Mr. Depken states that is building coverage and that is compliant. The improved lot coverage right beneath that – its compliant – Mr. Costa states but it's not compliant for the amenity, to which Mr. Depken stated correct. Mr. Costa states that was not on there, but as compliance for lot coverage and building coverage, according to that as built they met it, he continues, this application

submits a set of drawings with different numbers on it than that as built. Mr. Costa states that after the last meeting they pulled the soil movement and when they compared the two, he said now what – he then called Mr. Depken to ask who did the numbers on this, let's get to the bottom of this and do our own calculations, read the CAD and let's see what's going on. That plan is inaccurate and this plan is accurate. When the applicants purchased the property it's not that number it's this number and they are not in compliance with building coverage, lot coverage forget about the amenity coverage. Councilman Glass asks what the lot coverage was on the as-built - Mr. Costa stated 34 – Councilman Glass stated that is nonconforming because they had no amenities. (Some disagreement going back and forth between the Board members) Mr. Gibbons states that the Borough knew that this was wrong and a CO was given and a Seller knew and they purchased a property and were lied to potentially by the seller and they were given a CO on something that had 34.5% where they should be getting the variance, not the applicants. So, it was known that they were over and it was allowed and that's on the Borough. Mr. Depken states that, that being said they are now over on building coverage as that is not a deck that gets a deduction before amenities. It's a living space, it's got a fireplace, a roof, a structure it's screened so it would be building coverage also. Ms. Schweiger states that it is only going to be a 4-season room, it's going to be used for the summer months just to be outside as a family. Mr. Depken states that he understands that, but it can be very easily converted into another room. Councilman Glass states it not about lot coverage, it's about runoff and what it does to the neighborhood. Mr. Depken somewhat disagrees - it's also about building coverage and the rear yard setback. Chairman Caslin asks what the typography is in the rear yard. The applicant stated flat. Councilman Glass stated that he thinks you can find where storm water drains are on the property easily you don't have to dig anything up. Ms. Brown states that the difference between the lot coverage that was indicated in the final as built and what is actually existing is around 8% difference because in the as built it said 34.8 and the existing is actually 43.2. Ms. Brown asks if the applicants know what the physical improvements were that pushed it over – was it the building being a little bigger, did they add a little bit more patio. Mr. Scott replied there were multiple, the approved plans that they submitted show the driveway a different shape than what they actually built. It was revised to show permeable pavers which are not there either on the driveway or the sidewalk. Again, there is about five different calculation issues with this. They show it as 25% to be conforming saying the dwelling is 1,500 sf but the dwelling itself is 1,500 sf, there's a covered porch on the front that sticks out beyond that so they are actually not conforming to the building coverage as Mr. Depken alluded to – they are over. There is nothing but errors on this – this is what someone is saying is here, but this is not what is there.

Mr. Scott thinks they tried to do their due diligence, they tried to research this and protect themselves to make sure they looked at everything and you get a document that states this is what is here you assume it to be true. So, there is lot coverage issues, building issues, there area number of issues on here that are not reflected accurately. It also states that the coverage is 27.17% which is less than 25% which we all know is not true. There are a number of inaccuracies that no one really caught until this point. Councilman Glass asked the applicants since the last time they were before the Board what modifications have they made to improve their application in the eyes of this Board. Mr. Scott replied that the biggest concern as they understood it from the Mayor was addressing storm water, so they got the existing system to the best of their knowledge - what is there, where it is and they are proposing catching all of the storm water for the 277 SF, 3 inches of rainfall over that coverage, store that on site in a Cultec chamber. They are adding an additional chamber to cover every square foot to what was already on site.

### **Questions and Comments from the Board**

Ms. Brown asks – with the existing storm water management and the proposed will that capture the runoff for all of the improvements. Mr. Scott responded – yes. Mr. Scott wanted to address what Mr.

Depken stated about the roof having it closed in – in their previous home they put a louvered roof on which was very disappointing because they got the shade but the sun would still come in on an angle, and the insects and if it rained, they still got hit sideways. So, this project will have an overhead with a little roof to protect them, so they do not have to run inside if it is pouring out and the screen is for the fact that Mr. Schweiger cannot stand insects. It's not an indoor addition, it's just to eat outside. Chairman Caslin states that the problem is while they may be okay with using it as a three-season room as they intend to use it, when the applicants go to sell the home, the next owners might possibly convert it into additional living space. Ms. Brown asks if there are any other changes on the site that the applicants can make to – she knows that they purchased it with basically everything is new but is there anything that they can change to make the coverage a little bit more compliant. Could the applicants install some permeable pavers on a walkway or something. Mr. Schweiger stated that they really did not consider that as there was so much confusion from the last meeting, they feel like they didn't even get a chance to discuss the proposal that they have in mind so they wanted to ask for what they want and changing the size of the addition is not really feasible because it is already very narrow with the setback that they have and with the furniture layout and it's also a very big investment so they do not want to cut it down so it looks ridiculous so they did not think that 277 was – it was in the 5% that they thought they had.

Mr. Depken states that on Kessner's survey it states permeable paver driveway. Chairman Caslin states he believes that has already been proven to be incorrect. Mr. Depken continues stating this is an as-built survey. Chairman Caslin states that it is not representative of what the field conditions are. Mr. Depken states that is what the as-built survey is. When they do an as-built survey, they go out, and they document everything on site and whether it's permeable or not and they state that they are permeable pavers. If that is the case and they are not there, then there is a major issue. Someone stated tht it's already been established that there is a major issue here. Mr. Depken continues that, that was the reason to try to correct the situation was to put permeable pavers in there so they stayed under the 30% or they had a 5% that they could use. Councilman Glass asks that now the applicants are at 43.2 that accurately reflects the existing condition. Mr. Depken states that is proposed. Councilman Glass states no - 47.8 is proposed 43.2 is existing based on actual verified field condition not on the inaccurate as-built drawing. What's trying to be understood is if there are other opportunities to lower the lot coverage somehow. Mr. Costa states – what is known is that there was an as-built that was provided to the town and certified which is incorrect. He thinks this needs to go to a higher level. He continues stating that this Board does not have police powers and he thinks it needs to go Mayor and Council and then he thinks the builder possibly needs to be dragged in or Mr. Kessner who did the as-built or a combination of all of the above and say gentlemen something needs to change and they fix it. Mr. Costa continues – unless this Board says they do not want to go through that and they approve the variance otherwise he believes it needs to get to that level. The Board goes back and forth on this point. Chairman Caslin states this is not something the Board can address this evening. Mr. Costa states that Board has an application in front of them, they can do one of two things – they can say come back again, we can say thank you very much and it goes down in flames or the Board can say they approve it. The Board can clean up the past if it wants to and if it doesn't then he believes it should go to the Mayor and Council, the Borough attorney, himself Mr. Depken and then say now what? Mr. Gibbons states what is there is there, a house was built and the Schweiger's own this home. Mr. Costa state the house was built and as an as-built it states that there are permeable pavers and the builder had to put them in and for whatever reason does not, Mr. Costa states that he needs a phone call telling him to come to the applicants property, rip up the driveway and put in what they were supposed to, otherwise they can fall into litigation with the town. Mr. Gibbons is strongly advocating for the applicants. Councilman Glass states that this is not a good starting point. He agrees with Mr. Costa – it needs to be worked out the right way and then the Board can move forward with the application because it's too much of a mess right now. He states that there is not a clear path forward because everything is a

mess. Mr. Krey asks how much relief do they get for the permeable pavers. Ms. Brown asks that the property survey that was from Lantelme, is that an accurate survey, dated September 24, 2025? Mr. Gibbons states that the big plans the Board has in front of them state the driveway is 764 SF – so is the Board in agreeance that, that is accurate, so half of that would be the credit. Everyone is speaking at once. Mr. Depken states that the Kessner survey they took the permeable paver discount. Ms. Brown states that it was determined by the Schweiger's contractor that, that did not actually occur and that is just regular pavement. Mr. Scott states that they can pretend that it's not there but the best thing that can be done is to clear the air and put all the facts on the table so the applicants are protected and this Board can decide to right the wrong and say this application is a mess and move forward – there are a ton of issues in every direction and none of them were cased the Schweiger's. Chairman Caslin states that the Board gets that and what the Board is trying to do here is balance their obligation as a public body but also look at it from the equitable side because they are coming into this with clean hands so to speak. Councilman Glass states that they want to do the right thing for them but also do it the right way. Chairman Caslin states that the Board is trying to balance it the right way – process, compliance, equity, it's their home and the Board is sensitive to that and they appreciate that so it all comes together at some point. Mr. Gibbons speaks regarding a similar application that came before the Board some years ago and they brought a home from a builder and they realized that they were over and they had to get that variance and the Board did approve that and forgive the sins of the builder and he does not know what the Borough did after that. He believes the Board has the ability to approve what is on site and still go after a builder, an architect whomever to take care of that because the house is not going to be taken down because they own and they won't allow it to happen so he doesn't see why it's up to the Board to approve or not. Mr. Salva states his concern is that down the road if the applicants want to sell the property, title report, CO and other stuff, so if the Board makes an approval do they compound the problem without going through the process that Mr. Costa has laid out. He further states the Board making a problem that was not their fault, is the Board making it worse and then unintentionally exposing the applicant and even the town to further liability if they compound the problem. Ms. Brown states that if the Board approves an application for whatever is existing right now or what the applicants are proposing that would protect the applicants in the future so there would not be this problem going forward. Mr. Krey states that if the Board looks at this as if they will go after the builder for corrective action and they fraudulently submitted as built drawings and he did not execute on things that he committed to do but meanwhile there is an applicant who wants to do something – if the Board takes 382 SF of relief of permeable driveway that brings the proposed lot coverage down to 41 in change. If the Board approves it based on the assumption that this Borough is going to take action against the builder to correct the paver issue, does it makes sense to say okay the applicants can proceed with the addition as so they are not stopped from moving forward but recognizing that the other problem has to be addressed because it's not their problem – they didn't cause it. The Board missed somewhere by accepting an as-built that was incorrect, so the Board takes that under its wing to get it corrected and in the meantime if the Board can live with the 41 in coverage can the Board allow the applicants to move forward. Chairman Caslin states that certainly it's a cost to the applicants to do that – to which Mr. Krey states that they leave the pavers as is until the Board adjudicates with the builder. The assumption is the town will bring the builder in and lay out all the things he didn't do properly – go fix the paver issue as it his responsibility to do so and if he doesn't the town will take action. In the meantime, the applicants can do what that want to do in their backyard. It's two separate issues and it's two steps to solve it. One is does the Board accept 41% assuming the pavers get done and two make the pavers a separate issue that the town will take care of.

Ms. Brown does not think the Board would want to condition an approval upon potential Borough action because the Board can't force the Borough to take that action and the applicants purchased the home as you see it today – maybe not to the untrained eye could you tell that it's not a permeable paver driveway



but they purchased the home with the driveway that exists today so Ms. Brown thinks that would add an additional burden on the applicant if that were pursued. Then there is also the possibility of them selling in the future to which the Schweiger's stated that they love their home and don't intend on selling. Ms. Brown asks what the life cycle is of a driveway, the one that is existing now. Someone stated twenty years. Mr. Costa states that since these documents are now in front of the Board, the applicants have a nonconforming situation - Ms. Brown states approve what exists - Councilman Glass states how about a deed restriction or easement that's going to a whole different place. Ms. Brown asks if a permit is needed to replace the driveway in the Borough. Mr. Depken responded yes. Ms. Brown states so it would be in the Boroughs records that this resolution says that. Mr. Costa - right now because of these documents that were submitted to the town and the previous documents, the Board knows whether it's an error, negligence or fraud pick one of the above. Now the applicant closed on a home that it existing nonconforming where they thought it was conforming, and now they have on the record its nonconforming. So, they need to make it conforming and that is the reality. He further states that this Board can grant a variance and say you know what we are going to grant the variance and not put the applicants through any of these hassles or it's going to go to the Borough attorney, whether its Steve that's going to do it or whether its himself and it's going to play its course. Councilman Glass adds to this by stating that the Borough issued a CO to a nonconforming build without a variance. Mr. Costa states that one way or another it needs to be cleaned up, because now there is a cloud on the title. Mr. Krey asks if both things can be true - to provide the applicant with the variances, get them clear and still have the Borough pursue the builder. Mr. Depken states that as construction official he can send out a notice of violation and penalty falsifying records and if they want to make changes to correct that, that would be their option and if they decide that they don't then it would be whether the Mayor and Council want to go legally after them. He further states, that being said this is just the lot coverage - say the lot coverage is conforming they are still dealing with building coverage and rear yard setback. Mr. Costa states that they would have the right to their administrative remedies which could be this Board denies, they appeal and the game continues. Chairman Caslin asks who Mr. Depken would be issuing the violation to. He responds it would be the builder on the project. Mr. Gibbons thinks that at the very least they need to fix the problem that happened and at the very least he thinks a variance is appropriate for someone who brought a house who didn't know tht there was an issue. He further states that the borough issued a CO on a house that needed a variance and now they are asking the homeowner to get a variance for something they didn't do. He continues that at the very least if they don't agree that this project should happen he thinks a variance has to be approved or variances to make their property whole, so if they did want to sell their house tomorrow, they can sell it tomorrow without any issues.

Councilman Glass would like to see is a qualified legal professional give the Board an opinion about how they should move forward with this. He believes this to be a rational approach for the municipality. Ms. Brown states Mr. Depken's issuance of any violation can occur separate from the Board's review of the application. There are many avenues that the Board can consider - what is being presented right now, granting the variances that are proposed for rear yard setback, building coverage, lot coverage for this new covered deck saying that they are not approving the additional deck but will approve what is existing today to at least protect the homeowner for what they purchased as existing of the Board does not have to do that at all and say we need to pursue the process in full and once that is sorted out then the property owner can come back to the Board with all the correct information and make the application, it's up to the Board. If the Board wants a memo about all of the Boards options, she can do that. Mr. Gibbons asks if the Board were to approve just what exists on the property that doesn't actually change the application that is in front of the Board. Mr. Gibbons asks if it is an option to approve what is currently on property and still leave this open for a second approval. Councilman Glass and Ms. Brown simultaneously say no. Councilman Glass continues that there is no application, there is no paperwork, they can't just throw out

approvals. Ms. Brown states that the applicant did submit what is existing on the property - the Board can say they are not approving the deck but they will memorialize what is on the property existing, that's an option the Board can do and that was Mr. Costa's recommendation. Mr. Costa responded - here is the caveat if the applicants state right now that they want to amend the application what's existing today and grant these variances, and the Board certainly has the power to do it - he thinks it opens a Pandora's box that if anybody does anything wrong no big deal you come before the Board and no problem. Councilman Glass states that they don't have a complete application for the existing variances. Mr. Gibbons states that the Board has what is on the property here, the Board knows what the variances would be. Chairman Caslin states that the application is part of the deck but does the Board have sufficient standing at this point that the application being made to approve the variances for what the current conditions are, does the Board have authority right now to do that. He continues - in other words because the application is for a deck - Ms. Brown states it's a site plan approval for a deck. Chairman Caslin continues - instead of approving a deck does the Board have the authority to approve just the current conditions, the house, the driveway, everything that is existing today. The Board knows it exceeds the permitted coverages. So, he asks if the Board can take action alone just to approve that on this application or does a new application need to be made by the applicants as a procedural matter - do they have to file a new application just to say we want you to approve the existing conditions plus the deck. Ms. Brown does not think that is necessary, the Board has done that in the past where they have approved what is existing and not the proposed addition or change. She doesn't feel as if the applicants would agree to that as they have made it clear that they want the deck application to go forward. Councilman Glass states - Ms. Brown is saying the Board can approve all of the existing conditions which all require multiple variances without an application for any of those variances. (several board members are speaking all at once). Mr. Krey states that the variances that are being asked for are for building coverage, lot coverage and side yard. There are some manipulations of coverage - the driveway versus the new structure etc., the Board does that all of the time. Wherein you take out a piece of patio here, you add in some pavers over there. Councilman Glass states that the Board's professionals didn't evaluate any of the existing variances or the existing conditions - they got an application for a deck which accompanied variances for the construction of a deck and they evaluated that. Mr. Gibbons states that all the applicants are doing is if the Board adapts and takes this project off, they are decreasing the lot coverage and the building coverage that they are asking for a variance for. So, whatever the numbers are the Board is taking that deck off, doing the math which the Board does at every single meeting, they would be taking this application for now, changing the lot coverage to whatever that number would be, the building coverage would change and the Board does that every month. Councilman Glass responded that is not true and stated that an application for a variance has many questions that need to be answered by an applicant to justify the variance and there is none of that in the existing application. Mr. Gibbons states that it's there because they are asking for more than what they would be asking for they are decreasing what they are asking for and the Board has the ability to change what - Mr. Costa steps in and states - actually no. Right now, your assumption is this, the existing conditions are this and one would think there was relief given to get it to that, there wasn't and now the applicants are going for an addition. So, if the Board approves what is in front of it tonight it's not really correct because what the existing condition was never permitted in the first place, it's CO'd. He continues - based on the documents that were submitted to the Board it was incorrect - Mr. Gibbons states but a CO was given to which Mr. Costa stated it does not matter if the CO was given and it was done negligently - Mr. Gibbons states that it was testified that the Borough knew that part of that was not right and it was allowed, Mr. Depken testified to that this evening. Mr. Gibbons continues that the Borough knew that it was not in compliance that a variance was required - Councilman Glass interjects that two wrongs do not make a right, the Borough made a mistake and that is why there needs to be a legal opinion for a path forward and maybe they need an application for the existing conditions that varied from the code and then the Board can evaluate a path forward. He continues stating

that there is nothing in front of them to approve there is no application for the existing variances. Mr. Scott asks – if there is not also the issue that the applicants closed on the house after the ordinance was approved and put into effect that preserved the 5%, is that not also an issue? He continues that they have talked about going after the builder, possibly the professionals who prepared the as-built as all things the Board can do. He states that none of that happens overnight and that can be a long expensive journey for whoever is involved in it. There's a solution to fix this tonight to at least make the applicants whole.

Mr. Costa asks – what is the basis of the variance. The basis of the variance is that the builder didn't do what he was supposed to do, he submitted fraudulent and possibly negligent documents and the Board should just approve it. He continues, is that the basis to get a variance - no. He further states he is a Borough official and at the last meeting and based on pulling the old file and based on what Steve pulled from his file there was a mistake. The reality is that the applicants purchased the house, an as-built says permeable pavers, which they get credit for - they don't exist. So, rip them out and put in what is stated on the as-built and put in what was and then that number will come down into compliance. The walkway and the driveway. Mr. Scott states that should not be the applicant's problem. Mr. Costa responds – they own the house its theirs. Whether they want to take action against someone but the reality is that the document that was issued, however it was issued incorrectly, fraudulently but that is what exists today and the Board would have to grant relief on that and what is the basis of the relief – the builder didn't do what he was supposed to do and they brought it he doesn't think it rises to that level. The applicant responds that she thinks it is a hardship. She further states that the town knew and that there is testimony to that.

Ms. Brown states that in aid of the applicant, in support of your requested variance relief under the municipal land use law there are certain elements that can be met to establish a variance. You have to at least provide some testimony as to why that variance relief can be granted before the Board. The applicants have addressed the storm water issue but there are other variances requested and if they want relief for the existing and she knows it wasn't caused by the applicants necessarily they need to at least present something to the Board to say why the Board can grant even the existing overages and you have to look at the municipal land use law to see what actually is a hardship or there are alternate forms of relief based upon the balancing of public benefits and negative. Ms. Schweiger states so now the burden of the variances and the purchase of the house are now falling to them – she wants to be super clear here. Ms. Brown states – because they are coming before the Board to ask for additional relief, now the burden is yes, on you the applicant. To explain why the Board should grant the application. Ms. Schweiger asks if the Board thinks that is fair to the River Edge homeowners. Ms. Brown states that is what every applicant that comes before the Board is required to do. Councilman Glass states that it's not fair, but they did not cause it. Mr. Scott states is that what you submit for the letter of denial for, the applicants submitted a plan detailing the existing conditions – isn't the letter of denial supposed to stipulate specifically what variances they are to obtain? Ms. Brown states that it is up to the applicant to request specific variances from the Board. It's not up to the zoning official to tell the applicant what they need to ask for the applicant is the one asking for the relief. Mr. Scott states – right its either approved or denied for said reasons and that is why you go in front of the Board. They have a letter from him that was revised a couple of times. Ms. Brown states that they have to provide the proofs to the Board based on the municipal land use law in which the Board can grant those requests. Mr. Scott responds- we think we know how by the Board approving the proposed request. Ms. Schweiger states that she isn't even following now. Ms. Brown states that the applicants are requesting relief for building coverage, lot coverage and setbacks. In order for the Board to consider those variances, the applicants have to explain to the Board why the Board should grant them using criteria that is set out in the municipal land use law. Ms. Brown stated that she cannot give the applicants that legal advice the applicants have to do that.

Mr. Scott states that there are a few things going on denoted on the plan. There are some existing nonconformities, the biggest one being the lot size. It's an undersized lot for the zone 6,000 sf where 7,500 sf is required. The lot width is also nonconforming 60 feet where 75 feet is required. These were all approved conditions when the lot was subdivided and built upon. There is an existing side yard setback that is existing nonconforming of 4.6 feet where 10.5 feet is required. Those are all existing nonconformities that were approved on prior plans he would assume. He continues stating that there is an as-built that shows there is an existing nonconforming coverage of 27.17% that is less than 25% and they know that not to be true. They know that the as-built shows permeable pavers when in fact they are not permeable pavers. There is an existing building coverage of 26.8% where 25% is permitted and that is an existing non-conformity. There is an existing lot coverage of 43.2% where 35% is permitted another existing non-conformity. What the Schweiger's are seeking relief for is building coverage of the proposed coverage of 31.5% from the 26.8% non-conforming and 47.8% lot coverage from the existing non-conforming coverage of 43.2% within the 5% the applicants thought they had the allowable amenity coverage as per the ordinance. Mr. Scott states that he knows they are talking about building coverage 26.8%, they thought it was conforming – it was conforming. If you add up the numbers on the as-built that were submitted to the town, they add up to those numbers. They don't add up to what is here. If you add up the 1,500 sf and the front porch, these numbers are there. There is a lot of mistakes on this. Mr. Depken states the building coverage was accurate when he did it. He goes by the foundation and that is how he gets the square footage of the house and there is an overhang so maybe the applicant is calculating the overhang in their building coverage. Mr. Scott states that there is a covered front porch typically an overhang is determined by a maximum height or maximum width of 18 inches, he doesn't know River Edge in particular. Mr. Depken states they have a two-foot overhead on the as built on the entire back of the structure. Mr. Scott states they know the as-built is not accurate, so that is in effect what the applicants are asking permission for. The only non-existing condition they are proposing relief for is the rear yard setback. The applicants are proposing 12.9% where 25% is required, the exiting is 26.66%. Ms. Brown states that they have provided testimony that there is fencing and shrubs in the rear yard. She asks if the side yard setback encroachment is the side yard where the neighbor doesn't have any windows facing – Mr. Scott states the side yard is existing, the proposed is not. The proposed meets both side yard requirements.

A motion to open to the public is made by Councilman Glass and Seconded by Mr. Gibbons. All in favor aye. There being no one in the public a motion is made to close to the public by Councilman Glass, Second – Mr. Gibbons. All in favor aye.

There is some discussion as to where to go at this point. Chairman Caslin states that he will leave it up to the Board for discussion. Mr. Gibbons asks again if the applicants can ask to have the variances that are needed to allow what is currently on the property to be passed, have a vote if that is how they so choose and still not affect potentially doing what they want in a second vote or tabling that part to another day until more information can be had. Ms. Brown states that unless the applicants amend the application the Board would be essentially denying the deck request under those circumstances. Mr. Gibbons states do the applicants then have the option to see how it goes with a vote – it can still be voted on if it is motioned and seconded or it can be continued and the applicants can decide what they want. He just wanted to be clear as to what options are on the table for the applicants to get this and if they just ask to fix what's on the property and that's passed or not passed after today. Mr. Depken asks if it would be possible to poll the Board to see what the applicants want, take the lot coverage issue out of it and with the other two variances be acceptable. It would give the applicant an idea of where they are going and what they would need to do to correct the situation. Ms. Brown adds and if the Board wants additional

information either from her office or the professionals before they make a decision. Chairman Caslin states – the suggestion is take out the variance for the deck with the lot coverage – Mr. Depken adds – take out the lot coverage say that is compliant and the applicants can build whatever they wanted with the lot coverage. He asked if they would be amenable to the increase in building coverage and the rear yard setback. Councilman Glass states that he was fine with that. Councilman Glass is a little uncomfortable with the setback, but they have the screening, he's generally okay with the building coverage and the variance to the rear setback. Mr. Gibbons states unfortunately there was a mistake, whatever happened happened, property owners buy a property assuming they can do something that they can't at this point, so seeing that the backyard neighbors aren't going to see anything he would be inclined to approve because – the builder's issue is a different issue and that should be perused. We have an applicant that is trying to build something and be reasonable and build something for their backyard he would be okay with the application as proposed. Mr. Salva stated he had some problem with the CO that was issued so as long as the Board is not exposing the applicants to any further exposure he agrees with Mr. Gibbons on moving forward and then at the same time working with the town to clean up what happened and hopefully grandfather it what should have been variances years ago. Mr. Gibbons adds that the Board can also stipulate in a resolution if this were to pass very clearly so that this can never be turned into a living space and have it on the record. Mr. Gibbons continued that the next people would have to come for a permit anyway but he would have that as a stipulation in clear letter that this could never be turned into a living space, have real walls or however it needs to be said to make it very clear to them and whoever may buy it next. Mr. Salva agreed with that. Ms. Levine agrees with Mr. Gibbons and Mr. Silva. She further states that the variance should be granted but also pursue the other issues with the town so that there is no fallout on them down the line, who knows how long that will take and she doesn't think it is fair to make the applicants wait. Ms. Levine continues that she tends to agree with Mr. Gibbons and Mr. Salva. Mr. Krey asks for clarification as to what is being talked about. Ms. Brown states that the question was – are you okay with the application not considering the lot coverage discussion that was held. Mr. Krey states he is not sure he understands what that looks like. Councilman Glass all they are asking is if he is okay with the variance for the rear yard setback and the variance for building coverage. Mr. Krey responds – got it and the short answer is yes. Councilman Glass states he does not know where this gets the Board. Chairman Caslin states that the thing that he is struggling with – first of all the Board is trying to right the wrongs that the applicants have no responsibility for which clearly the Board understands. The problem is opening up this Board to future applicants that come in and basically say there is an issue, can you help us fix it. He further states that's not what this Board is here for. The Board is here to help with hardships that exist that may or may not impact the use of someone's property so, that is where he is trying to balance the obligations of the Board to make sure that the land use in the borough is done in compliance with applicable code and regulations but also enabling people to enjoy and use their homes. Councilman Glass states that at one time he thought he heard that Ms. Brown's office could do a thorough investigation/evaluation he thinks that is the proper thing to do. He further states that all of this is just a bunch of opinions, he thinks the Board is getting to a lot of facts, but they need to be all in one place, clearly described and evaluated and that recommendations, a legal basis that complies with the codes and regulations. He further states that they all have experience and opinions, but they need it all in one place and calmly and professionally analyzed, documented and reported on. Chairman Caslin stated that his suggestion would be that they carry this so that further analysis can be done without prejudicing them in terms that there will be no re-noticing. Mr. Gibbons asks what does the Board need to understand their legal standing, he thinks the Board understands what is here and, on the property, and what is being asked for, so what further information does the Board need. Chairman Caslin states that it is more procedural to understand it's not so much the technical side its more procedural. What happens if there is approval, denial where does that leave the state of affairs depending on what action is taken. Mr. Gibbons states but if the Board has what seems to be a general consensus that this is

an application that can be approved why can't there be a vote and approval for what is being asked for. Councilman Glass stated that he has heard everyone state that they want the applicants to be on solid ground in the future so that is where the Board is trying to get them to. So, there is no walking anything back, they have a firm, solid, basis for whatever action the Board takes, it's documented in a memo/letter and they are totally clean. Mr. Gibbons states but approving the conditions on site and what is proposed because they know this setback and that setback and the coverage, they know what the numbers would be and the variances that would be required to make this property whole. If the Board knows what that is, why does the Board need to delay this. Chairman Caslin states because Mr. Gibbons is looking at it at the land use aspect of this and there is the procedural aspect of this that has to be taken into account, and everyone is looking at this trying to arrive at the best analysis of this. He continues with, while the Board takes action that has good intentions and best intentions to get to reasonable outcome it may in the end not be the way it should have gone. Councilman Glass asks, has is the Board to know that. Chairman Caslin states based on the guidance they get from legal. Ms. Brown states it's important to lay out how any decision of the Board could impact any potential violations issued by the town. Mr. Gibbons states that the most important thing is making the applicants whole and that their title is clear if they want to sell the house tomorrow but also allow them to do the project they came here for if it is inclined to happen. Chairman Caslin states there is a tremendous amount of balancing that is going on here more so than the Board has encountered with other applications, so without prejudicing the applicant and without putting the Board some issue of precedence cause by precedent based on – he thinks that is the prudent course.

Ms. Brown states that now that the Board has more information from the applicant and Mr. Depken and then Mr. Costa about the history of what happened, she thinks her office can summarize that to provide some options. Mr. Depken asks if the applicants application is going for the maximum which is over what is required, negating the fact that there was an error with the survey and the builder could it be approved for that total coverage that is going over, because it seems to be that during the poll the Board would be in favor of the building coverage and rear yard setback doing the maximum lot coverage which would be over the required amount and then give the applicants the required variances, the town can go after the builder, the surveyor and so forth at a later date. Chairman Caslin states that he does not see any benefit in doing it piece meal quite honestly. Mr. Scott asks – can't they both be true though can't the Board grant the variances and the Schweiger's agree to, if there's any movement on the thing with the builder, that they will comply with whatever to put in the permeable pavers or allow that to happen if there needs to be. Mr. Costa asks Mr. Depken based on the CO issued and based on the as-built stating that they were permeable pavers, today the Board knows they are not permeable pavers, if the applicants rip out the pavers from the driveway and the sidewalk going into the house, then it's what he issued under the CO. So, the Board then it would reduce the amount of lot coverage based on what they are allowed to do under the ordinance based under the CO issued. If you are willing to do that, then the existing condition falls under and if Mr. Depken is correct that the applicant's added in the overhang then they meet building coverage today and lot coverage. They don't meet the 5% amenity because they probably get – Councilman Glass interjects that they won't meet lot coverage to which Mr. Costa responds – sure they do because they have almost 900 sf and they are taking out 450 sf, that's roughly 7-8%. Councilman Glass states that they net 12.8. Mr. Costa states they need 8% to get to 35 forget about the 5% amenity because they are providing the amenity – that is what was sent to the construction official and that was what he issued the CO on but in reality based on this – the permeable pavers based on the testimony they don't exist so you can't credit what is there.

Mr. Costa and Mr. Scott begin to speak about the builder. Mr. Costa states if the builder comes back and says what he did he did – no harm no foul except for the 5% amenity that was supposed to be there, but you are saying that took place after the fact so that probably doesn't fall into this. Mr. Scott said it should

have been because the ordinance took place before the house was sold. Mr. Costa states that you needed a variance because the 5% wasn't left over - they have the CO but they are underneath the 35% lot coverage if they put in the permeable pavers in the driveway and the walkway. Mr. Scott responds- you are asking me like I am the builder. Mr. Costa states that what he is saying that the applicants purchased the house based on those documents that got the CO - he continues - let me put it another way if Mr. Depken said wait a second this is not right and we are going to revoke your CO now the builder is going to come and now they are going to get into ridiculous litigation based on why did he do it, why are there fraudulent documents. Mr. Costa continues that the applicants might want to call their builder tomorrow and if they do those two things they fall under and then this application --- Chairman Caslin steps in and states that the Board has heard a lot of information tonight and the last thing anyone wants to do is to force anyone's hand in making a decision because he thinks there is still a fair amount of questions that are left to be resolved and his strong recommendation is that the applicants look to carry this. Mr. Salva had a question - before a legal opinion is obtained what is the time frame they are looking at. Ms. Brown states that she would have the legal opinion prepared by the next meeting. Ms. Brown asks Mr. Salva if he watched the June 6<sup>th</sup> meeting and he responds that he did.

Mr. Schweiger asks - just to be clear is there anything they need to do. Ms. Brown stated that their contractor did provide some background on the reasons for the variance relief but if they have additional support for that, that could be considered by the Board as a reason to grant as to what is above existing and what is existing. Mr. Scott wanted to add one more thing - there was talk about the building being as of right - the house being 1500 - he doesn't think that is accurate because the steps going onto it aren't calculated either and he thinks either way the number is over 25%. Mr. Costa states that he thinks the Board is willing - he would call the seller tomorrow morning and say we have a problem - Chairman Caslin steps in and states let's hear from the applicants to see if they are willing to carry the application to the next meeting. Mr. Schweiger asks if he can ask for a vote now or is that not an option. Ms. Brown explains that they can ask for that but if the application is denied they can't come back for the same application it would have to be substantially different. So again, Chairman Caslin states that he is strongly suggesting that they consider a request to carry. Councilman Glass asks how many votes they would need. Ms. Brown states there are six members present so they would need four votes. Mr. Schweiger states that he really is not sure what else it is they need to do on their end but of the Board needs to do things on their end and carry the meeting he would really appreciate that and he does appreciate how the Board is trying to protect them so they are okay with carrying. Motion to carry to July 22, 2026 - So Made - Councilman Glass; Second Mr. Gibbons. All in favor aye.

The application for 265 Adams Avenue, Block 506, Lot 3 will be carried to the July 22, 2026, meeting without further notice. Motion to adjourn - Mr. Gibbons; Second- Mr. Salva. All in favor aye. Meeting adjourned - 9:15 p.m.