



**Letter from Ray Shea, Esq. re: Appeal #3643** – Sam Glen, Inc. 1621 Clifton Avenue, Block 106 Lot 4 R-10 zone. Use variance for an auto parts store. Requesting to carry this application to the August 6th meeting because their engineer was not available for the August meeting.

**Motion to carry until August 6, 2007 – Mr. Naftali**

Second – Mr. Gelley

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Zaks, Mr. Lankry, Ms. Goralski, Mr. Halberstam

No further notice and a waiver of time.

**APPEAL # 3651 – YITZCHOK LEVINE**

103 Arbutus, Block 22 Lot 5, R-12 zone. New single family home on an undersized lot.

Secretary read reports.

From: Jim Priolo, Engineer/Planner – Revised Review - June 29, 2007

1. The subject property is located on the corner of Arbutus Drive and Case Road and is within the R-12 (Single-Family Residential) Zone. The site contains an existing 2-story dwelling and garage. The applicant proposes to construct a new 2-story dwelling. The existing dwelling will be removed.

2. In accordance with Section 902.E of the Ordinance, bulk variances will be required for the construction of the proposed structure as follows:

	Required	Existing	Proposed
Minimum Lot Area	12,000 s.f.	9,263 s.f.	9,263 s.f.
Minimum Lot Width	90 ft.	53.75 ft.	53.75 ft.
Minimum Front Setback	30 ft.	20 ft. (Arbutus) 26.6 ft. (Case)	25 ft. (deck) (Arbutus) 15 ft. (Case)
Minimum Side Setback (Accessory)	10 ft.	2 ft.	2 ft.
Minimum Rear Setback (Accessory)	10 ft.	2.7 ft.	2.7 ft.
Maximum Lot Coverage	25%	19.2%	29.9% (w/deck) 34.3%(w/garage)

The zoning schedule should be revised to include the rear deck in the lot coverage.

The applicant must demonstrate to the Board that the requested variances can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and the zoning ordinance.

The applicant should address the Board regarding the visual impact that the addition will have on the surrounding properties.

3. Any approval should include a condition that concrete curb shall be replaced and sidewalk installed as directed by the Township Engineer.
4. The applicant should discuss if the existing detached garage will remain on the site.
5. The proposed rear deck should be shown on the elevations.

From: Ed Mack, Zoning Officer

Although the shape of this lot makes the design of the house more difficult, I don't think that the setback along Case Road is adequate.

Yitzchok Levine and Sarah Levine, 103 Arbutus Drive, affirmed.

Mr. Levine – The existing dwelling is 1,800 square feet. They have 6 children and need additional space. They redid the plans to try and fit the house better on the lot. They are not asking for any side yard variance. They have 2 fronts and a very irregular shaped lot and asking for a 15 foot setback from Case Road and 25 feet back from Arbutus Drive. There is a row of trees on Case Road and the home will not be seen from the road.

A-1 photo row of trees facing Case Road

Mr. Levine – the neighbors will not be effected by the construction of the home.

Mrs. Levine – the house will be a white siding 2 story colonial. Described the interior of the house. Agreed to replace concrete curb. Would like to keep the existing garage.

Mr. Priolo – the detached garage requires accessory side and rear yard setback variances.

Mrs. Levine – the garage is their only storage place. They hope to keep the existing trees.

Mr. Zaks – lot not typical because of the two frontages and the shape.

Mr. Mack – this is a very difficult lot, maybe the house could be narrower and try to conform more to the front yard setback of Case Road.

Mrs. Levine – there will be a basement but there will be no additional living space. They will be trying to keep the trees.

Open to Public. Closed to Public.

**Motion to approve with the garage to remain – Mr. Zaks**

Second – Mr. Lankry

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Zaks, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**APPEAL # 3619 – CHARLES PARNES**

Forest Drive, Block 12.01 Lot 24, R-12 Zone – single family home on an undersized lot.

Continuation from the March meeting.

Mark Williams, attorney for applicant. At the last meeting we described the physical nature of the application. Handled the other issues that arose about the 50 foot lot next door.

A-1 aerial shot

A-2 return letter from neighboring landowner indicating no interest in selling

A-3 & A-4 minutes and resolutions from previous meetings of the zoning board

A-5 tracing the title back

Mr. Williams – the issues are: 1) separate ownership of lots 8 & 24, 2 vacant 50 foot lots, 2) res judicata – whether the decision of the zoning board 18 years ago controls this boards decision and 3) self imposed hardship.

John Jackson – the Board needs to determine if this is a self imposed hardship. The Board found it to be a self imposed hardship and denied the application in 1989. Res judicata is tied into the self imposed hardship.

Mark Williams – the board's resolution of 1989 is not controlling because in the minutes it is clear that Mr. Reinhard his seller used to own the vacant lot next door but he sold it off. Was on the assumption that lot 24 was with lot 8. Lots 8 & lot 24 never had a common owner. Lots 8 & 24 were the same owner in 1952 by Carasaljo Pines. Lots 24 & 25 were in common ownership. The Boards decision clearly was based on the decision that 8 & 24 were in common ownership. In 1971 Mr. MacNamara and Mr. Twig created a self-imposed hardship. Together Mr. McNamara owned 150 feet. He deeded 150 feet to Mr. Twig. The same day Mr. Twig deeded 50 feet back to Mr. McNamara. The deed was created with a 50 foot lot. The town could have voided the transfer. Now the town would have merged the two properties. Up until 1985 they were shown as common ownership. Lot 24 should never have been deeded over.

Mr. Jackson – res judicata issue in 1989 and was there a self imposed hardship at that time. The purchase of an undersized lot does not make it a self imposed hardship.

Mr. Williams – in determining a self imposed hardship you balance the action of the Township against the person that owns the lot. The objector has the burden of proof that it is res judicata.

Roberta Burz, attorney for objector. The issue of res judicata means that if you come before a board and a final decision is made you cannot come back. In 1989 the application was denied. The applicant could have appealed that decision and he did not. That application was for a less than 2,000 square ft house – this application is for a much larger house. The basis for the denial was for a self created hardship. Lots 25 & 24 were owned by the same parties. The owner of Lot 8 was at the hearing, Jack Krupnick. The Board did not make a mistake. The Board was well aware that the common

ownership had to do with the prior ownership of Lot 24 and 25. This application is substantially similar which is a single family home on an undersized lot.

Mr. Jackson - the size of the house now is not res judicata.

Ms. Burz – when you buy an undersized lot the lot may not be buildable.

Mr. Halberstam - the board can take the testimony from a witness that is the objector into consideration.

Recess.

Linda Kelly, 60 Forest Drive, sworn. Resides on Lot 25 since 1985. Purchased home from Mr. Twig. Attended the Zoning Board of Adjustment meeting in 1989. She testified that there was no confusion about who owned lot 25. It was a known fact that Mr. McNamara had owned the two properties, lot 25 & 24. At the time of the hearing she owned lot 25 and Mr. McNamara owned lot 24. After the meeting she went to the office and listened to the tapes and transcribed her notes.

Ms. Burz - The testimony in 1989 was that Krupnick owned lot 8.

O-1 copy of notes of the meeting.

Ms. Kelly – Nothing has changed in the neighborhood since 1989. The houses are small and the lots are large – heavily treed. The zoning has not changed since 1956 and has always been an R-12 zone.

Mr. Zaks asked if the objector interested in purchasing lot 24.

Ms. Kelly – inquired but the price was astronomical and couldn't even be considered – they were asking \$250,000 for a 50 foot wide lot. Her property was assessed for \$240,000 and is 100 x 245.

Mr. Williams questioned Ms. Kelley about the transcript from the meeting of 1989.

Mr. Williams had no objection to the board receiving copies of Ms. Kelly's transcript.

Mr. Jackson recommended that the Board bifurcate the issue - determine the res judicata and the self imposed issue.

Chairman – Res judicata issue as one and if that passes then we will go to the next issue.

Open to Public.

Chairman - Strictly on the hardship or res judicata.

Mrs. Kangur, 80 Forest Drive, sworn. Owns lots 26 & 27 and the pond. Been a resident since 1964 and the neighborhood has not changed. Privacy would be lost for the existing residents. This request has been denied in the past. Traffic would be a problem.

Mr. Jackson said that comments should be limited to res judicata issue and hardship.

Closed to Public.

Chairman - If the house is bigger than what was proposed in 1989 why is that res judicata? Vote is only on res judicata and self imposed hardship.

Mr. Williams – the size of the house is irrelevant because it was never voted on. The Board ruled on the history of the lot not on the size of the house.

Mr. Jackson – this board has to make findings of fact – where they under common ownership in 1986 – is there an estoppels issue? has the circumstances changed? was it a self imposed hardship? The applicant might be able to go to the Planning Board to subdivide lot 24. The applicant has the burden of proof to show hardship.

Mr. Williams - Voting on two independent issues – one is res judicata and the other is a self imposed hardship that came along in 1971.

Ms. Burz - The applicant should have done a 60 year search and it would have shown a common ownership of lot 24 & lot 25.

Mr. Zaks – Board in 1989 clearly talking about Lot 24 & 25 and it was not a mistake. Suggested that the owner of Lot 24 apply to the Planning Board for a subdivision. This is a typical lot in Lakewood and should be built on.

Mr. Gonzalez – they were talking about lot 24. Application to build house asking for a variance to build house on lot 24. Could be a res judicata issue. Recommend subdivision by Planning Board.

Mr. Naftali – cannot believe that the Zoning Board made a mistake in 1989. The res judicata is not so precise. Would tend to move forward with the application. Development is inevitable.

Mr. Lankry – if this was a simple zoning issue I would approve this application. This is a legal issue. No convinced that the Board made a mistake and do think that there was some self-imposed hardship. .

Mr. Gelley – not convinced that the Board made a mistake, it seems that the lot was self-imposed. Times have changed. Would not deem this property unbuildable. Would approve something to be built on it.

Ms. Goralski – feels that from this information that it is part res judicata and a self imposed hardship.

Mr. Halberstam – Lot 24 & 25 was a self imposed hardship. Res judicata does apply.

**Motion to approve application – Mr. Naftali**

Second – Mr. Gelley

**Roll call vote:** affirmative: Mr. Gelley, Mr. Naftali, Mr. Lankry  
Nayes: Mr. Gonzalez, Mr. Zaks, Ms. Goralski, Mr. Halberstam

Motion to approve was denied.

**CORRESPONDENCE.**

**LETTER FROM ED MACK RE: 1416 MONMOUTH AVENUE** – board approved variance for single family home and during construction applicant wants to put 2 bedrooms and a bathroom in the attic.

**Motion to approve – Mr. Gelley**

Second – Mr. Gonzalez

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Zaks, Mr. Lankry,  
Mr. Halberstam  
Nayes: Ms. Goralski

**LETTER FROM ED MACK – MINOR DISCREPANCIES WITH “AS BUILTS”**

**Motion to approve – Mr. Zaks**

Second – Mr. Gonzalez

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Zaks, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**RESOLUTIONS**

**APPEAL #3633 – SHVARZBLAT REAL ESTATE,**

Cedarbridge Avenue, Block 536 Lot 77, B-4 zone. Resolution to approve minor subdivision.

**Motion to approve – Mr. Gonzalez**

Second – Mr. Gelley

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**APPEAL # 3646 – SHVARZBLAT REAL ESTATE HOLDING,**

Cedarbridge Avenue, Block 536 Lot 77.01, B-4 zone. Resolution to approve site conditions.

**Motion to approve – Mr. Gonzalez**

Second – Ms. Goralski

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**Appeal # 3644 – Somerset Mam,**

Cedarbridge Market, Block 761 Lots 1-3, B-3 zone. Resolution to approve the construction of a 2-story building consisting of a bank, retail and office space.

**Motion to approve – Mr. Naftali**

Second – Mr. Gelley

Roll call vote: affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**APPEAL # 3566 – ISRAEL KAY,**

Block 533.01 Lot 2.02 – resolution to approve a one-year extension to file subdivision map.

**Motion to approve – Mr. Naftali**

Second – Mr. Gonzalez

**Roll call vote:** affirmative: Mr. Gelley, Mr. Gonzalez, Mr. Naftali, Mr. Lankry,  
Ms. Goralski, Mr. Halberstam

**MOTION TO PAY BILLS.**

All in favor.

**MOTION TO ADJOURN.**

All in favor.

Meeting adjourned at 11:00 p.m.

Respectfully submitted,  
Fran Siegel, Secretary