

**TOWN OF MILLVILLE
BOARD OF ADJUSTMENT
Thursday, July 28, 2011 (7:00 PM)**

ATTENDANCE

Present: Board Members: **Mr. Lyons, Mr. Reeve** and **Mr. Droney**. Town Solicitor **Mr. Thompson**;
Town Manager/Recording Secretary **Ms. Botchie**; Code and Building Administrator **Mr. Evans**.

CALL TO ORDER - TOWN SOLICITOR MR. THOMPSON

Mr. Thompson called the July 28, 2011 Board of Adjustment Meeting to order at 7:00 p.m.

PLEDGE OF ALLIGENCE

NOMINATION & SELECTION OF BOARD OF ADJUSTMENT CHAIRMAN (ITEM #3)

Mr. Lyons made a motion to appoint **Mr. Reeve** as Chairman of the Board of Adjustment and seconded by **Mr. Droney**. The motion was unanimously carried.

ADOPTION OF BOARD OF ADJUSTMENT HEARING RULES (ITEM #4)

Mr. Thompson stated each Board member had been provided a draft set of rules and asked the members if they had any questions. He reminded the members the rules had been part of their training. Mr. Droney motioned to adopt the Hearing Rules as written and seconded by **Mr. Lyons**. The motion was unanimously carried.

ADOPTION OF MINUTES (ITEM #5) – NONE

PUBLIC HEARINGS (ITEM #6 A & B)

Mr. Thompson stated there were two (2) Public Hearings on the Agenda.

Consideration of BOA-01-12

Mr. Thompson asked the Code and Building Administrator **Mr. Evans** to identify the matter before the Board. Mr. Evans stated item A BOA 01-12 submitted by Woodcrest Acquisition, LLC, Tax Map Parcel #1345-12.00-2673; 2674; 2676 thru 2684; 2686 through 2688, Woodcrest, III (a/k/a The Meadows), for a variance from Article V, Section 155-10 F, (1) (a) [5] & [7], which requires a 40 ft minimum front yard setback. Mr. Thompson asked Mr. Evans if it was Article V or Article VI. He stated the application and agenda reflected Article VI. Mr. Evans apologized and stated it was Article VI.

Mr. Thompson asked if there was a published notice in this matter and would like it read for the record. Chairman Reeve stated the notice was published on July 13, 2011. He read the notice as follows: Town of Millville Public Notice Board of Adjustment Hearing July 28, 2011 (7:00 pm)

NOTICE IS HEREBY GIVEN BY the Board of Adjustment for the Town of Millville that a Public Hearing will be held at 7:00 pm, on Thursday, July 28, 2011, at the Millville Town Hall located at 36404 Club House RD, Millville, DE, to consider the following applications:

Public Hearing Consideration of BOA 01-12 submitted by Woodcrest Acquisition, LLC, Tax Map Parcel #134-12.00-2673; 2674; 2676-2684; 2686-2688, Woodcrest, III (a/k/a The Meadows), for a variance from Article VI, Sections 155-10 F. (1) (a) [5] & [7], which requires a 40 ft minimum front yard setback. If granted, this variance would permit either the front yard setback be reduced from 40' to 30'; or that the front yard setback be reduced to 20' and the rear yard setback be increased to 20'.

Mr. Thompson asked the Board to turn to their newly adopted rules; asked the Town Building Administrator to give a brief synopsis of that. Mr. Evans stated the applicants were requesting a front yard setback reduction. The code when the subdivision was approved, the front yard setbacks were 40', side yard setbacks were 10', the rear yard setback was 10' and the lot sizes were permitted to be 60' wide with a 7,000 square foot minimum. The current code states the setbacks were still the same; however, the minimum lot sizes for a residential development would be a 75' minimum width, with a 100' minimum depth and 10,000 square foot lot area. The original subdivision was approved on October 29, 2003 and is currently a legally non-conforming subdivision. Mr. Thompson asked if there were any background. Mr. Evans stated that was all he had.

Mr. Thompson asked the Board if they had any questions regarding the background. No questions from the Board. Mr. Thompson stated at this point could the party come forward and take a seat at the table. The party asked Mr. Thompson if this hearing was being recorded; Mr. Thompson stated yes. The party addressed himself a Jim Waehler the attorney for Woodcrest Acquisition and he was also the builder for Thirty Six Builders, Inc., which was the builder involved in this application. He stated the principal of Woodcrest Acquisition was Mr. Nate Cann and he lived in Colorado and would not be in attendance. Mr. Waehler stated he was Mr. Cann's representative as well as Mr. Lisle, President of Thirty Six Builders, Inc., which trades as Insight Homes which was in attendance. He informed the Board that he and Mr. Lisle had discussed this application in length with Mr. Cann and they had authority to speak on his behalf.

Mr. Waehler stated Mr. Lisle had been intimately involved in this whole matter since the negotiations with Artisan's Bank, which led to the acquisition of the remaining lots in Woodcrest III, by his LLC. He informed the Board that one of the lots that was acquired, number 66, was not subject to this application; the lot holds the retention pond which has already been conveyed into a newly formed homeowners association. Therefore, they were only asking for the 14 remaining lots to be granted a variance. He added there were 3 other lots in Woodcrest III, that were owned by private individuals; lot 49 owned by Louis Travalini; lot 52 owned by the Ingram's; lot 62 owned by Charvat. He stated the Charvat's had already agreed to subject themselves to the restrictions that had been placed on Woodcrest III, and to join the homeowners association. Mr. Cann was attempting and believed he would be successful in having the Ingram's also join the association having everyone a part of the association and subject to the restrictions except for Mr. Travalini who owned a vacant lot and preceded all the development here.

Mr. Waehler asked at this time that the application of Woodcrest Acquisition, including the attached certified copy of the subdivision, be considered at the applicant's exhibit "1" for part of the record. Mr. Thompson asked for the record if there was anybody that wanted to be identified as a party for purposes of participating at this point. He stated if anyone did not want to participate as a

party; however, would like to make a statement about the matter, that would be a separate item and there would be a time for that. Mr. Thompson stated for the record no one was identifying themselves as such and the Board was ready to receive evidence from the applicant.

Mr. Waehler stated he would like the application of Woodcrest Acquisition, including the attached certified copy of the subdivision, be considered at the applicant's exhibit "1" for part of the record. He also brought forth the Covenants and Restrictions for Woodcrest III that had been placed on as exhibit "2" and the agreement of the Charvat's to join the association which would subject themselves to the restrictions as exhibit "3". Mr. Thompson handed the exhibits to the Ms. Botchie so she could mark the exhibits for the record. Mr. Waehler stated there would be more exhibits entered with Mr. Lisle's testimony and it was he hope and belief that his testimony and the exhibits offered would meet the exceptional practical difficulty standard that had to be met in the variance request.

Mr. Thompson asked the Board if they had any questions for Mr. Waehler which no one replied. Mr. Waehler called his witness Mr. Lisle and was sworn in by Mr. Thompson. Mr. Waehler asked Mr. Lisle to state his full name and business location for the record which he answered, Robert M. Lisle in Bridgeville, DE. He asked Mr. Lisle what company he was affiliated with and he answered Insight Homes. Mr. Waehler asked what did Insight Homes trade as and he answered Thirty Six Builders/Insight Homes. Mr. Waehler asked him if he adopted this part of his testimony the justification statement attached to the application; Mr. Lisle answered he did. Mr. Waehler asked if listened to and adopt as part of his testimony the opening remarks Mr. Waehler made; he answered yes. Mr. Waehler asked Mr. Lisle if he had had the opportunity to view the 14 lots that were subject of the application and asked him to describe the surrounding area. Mr. Lisle stated the area was a pretty isolated spot and felt this would not be too much affect on anybody out there knowing about it; basically wrapped in woods and there were a couple of houses out there and was located on its own private road not a County Road. Mr. Waehler asked if there were any other uses out there besides residential; Mr. Lisle answered no. Mr. Waehler stated two of the lots, 52 & 62, had improvements located on them and asked Mr. Lisle if that was correct and he stated yes. Mr. Waehler asked Mr. Lisle to describe how his company was connected to the applicant of Woodcrest Acquisitions. Mr. Lisle stated they were given a very short period of time to make decisions on buying the note from WSFS, short period of time to buy the lots and get to settlement and they didn't have enough information to make a decision and he assumed the setbacks would be similar to any other neighborhood where the setbacks were 30'. He went on the say that they didn't have much information other than the overall lot dimensions. It was decided they should be able to build their house widths and thought the backyards were narrow, but should be able to work with it as no one backs up to each other except for a few lots. They decided their houses sell well and their most popular would fit on the lot; therefore, Nate Cann bought the property for him, but Mr. Lisle stated he measured wrong. Mr. Waehler declared for the record that it was Artisans Bank and not WSFS and Mr. Lisle agreed.

Mr. Waehler questioned Mr. Lisle if his relationship with Woodcrest Acquisition was for Mr. Lisle's company would be taking down the lots as the homes were sold and if so, did Mr. Lisle have an agreement in place; Mr. Lisle answered yes. Mr. Waehler asked Mr. Lisle to describe his company and what types of homes he builds and what makes his company special. Mr. Lisle affirmed they started their house building company as an experiment during the worst time to start home building company in our history; but, they have done quite well and their sales have grown in their worst year by 40% and doubled last year in sales. He continued by stating lately they have been going into troubled properties and solving the bank's problems. His company is in the top 1%

in the nation for energy efficiency; they are in the top 1/10 of 1% in the nation for indoor air quality and their house exceeds the building code for the year 2025 that their trying to enact for the energy code and less than 1 in a 1,000 houses in this country meet their indoor air quality. He stated their average power bill is less than \$85 per month; they have a 10 year parts and labor warranties on all the major mechanicals, so they lower the overall cost of living in a house and that's why their sales are doing so well. He went on to say with a lot of builders the sales have been going down and people are getting hurt with \$3-4-5-600 power bills, our new customers have \$30-\$40 power bills in the spring and fall so sales have grown with very little marketing it has been through family and friends who have spread the word that the power bills are real, the indoor air quality is real and the house has a lot of standard features. He stated his company was going into a neighborhood down the road named Fairway Village as well and thought this was a good neighborhood to add onto due to some people like to have a more isolated, secluded neighborhood instead of being a part of 200 lots and large HOA fees and that's how they ended up in there. Mr. Lisle said it was a nice area and was surprised by the number of people that lived around that didn't even know it was there, not far from the beach and they'll have houses started in there for around \$225,000.

Mr. Waehler showed Mr. Lisle a pamphlet which said the future of home building is Insight and asked Mr. Lisle if this was the general pamphlet describing the company and the construction; Mr. Lisle answered yes. Mr. Lisle stated they try to educate the consumer on building a better house and what makes it better, what makes it last longer and had worked pretty well so far. It showed the standard things what the company does in all of their houses and what makes them more efficient, what makes it last longer, what gives them lower maintenance and how they solve indoor air quality problems such as mold and humidity. Mr. Lisle stated all of their houses are rated Gold on the Green for Green program, they are also ansy on the green ranking scale, they're gold on the ansy scale and they're lead certified. He went on to say they have more green certified houses built than all of the other builders in the State combined and it's just a better house and the website says it all. Mr. Waehler inquired how many homes had he built and he stated this year they are on track to build 80; last year they settled on 55 for a total of around 190 houses. Mr. Waehler stated he would like the pamphlet to be applicant's exhibit "4".

Mr. Waehler asked Mr. Lisle if he was asking the Board to grant a variance to reduce the front yard setback from 40' to 30', or alternatively reduce to 20' and add 10' on the rear yard; Mr. Lisle answered yes. Mr. Waehler asked Mr. Lisle if one of the two alternatives preferable in his opinion; Mr. Lisle answered he thought giving the 20' on the front yard and 20' on the back yard would be what most people would want giving them a larger back yard due to the fact there was a wooded strip all the way around it so it would give a nicer back yard to be able to put in a deck or something like that. It would cut down the length of the driveway and again most people don't use their front yards and they thought having a larger back yard would be better; however, he stated they could work with either one. Mr. Waehler asked Mr. Lisle that in his opinion, would granting of either of those variances negatively impact upon any of the surrounding residential properties; Mr. Lisle answered he didn't even know if anybody would notice, the property was pretty much incased in woods other than the two houses that were there. Mr. Waehler asked Mr. Lisle if it was his position that if the Board should decline to grant this variance that this would create exceptional practical difficulty for Woodcrest Acquisition and his company; Mr. Lisle replied yes, he didn't know how they could sell, the goal would be to have all of those sold within the next year. He stated the only plan they currently have that fits on the current building envelope out of the 80 sales they would do this year, there would be only two of them that would fit on the lots which was the Abbott model, the smallest model and they felt there were a couple of negative about them; number 1, they don't think they were going to sell many of them; number 2, it would pull down the average

value of the area because they were going to be \$290,000 and the smallest house and no structural options could be added to it to pull the price up. He went on to say where a lot of people buy their other plans, 85% of their houses were either the Jerry or Vandalay model, and yes they were named after the Seinfeld characters. The most of them come from those two plans, the Vandalay and the Jerry and that people add options to it, sunrooms, kitchen nooks, bonus rooms, stuff like that and they are just about 5' too deep to fit on those plans. He stated it was not a width issue, but a depth issue and it was totally his fault, but when they got limited information from the bank at a limited time, they just made the assumption like every other neighborhood in the County that they dealt with would have a 30' setback.

Mr. Waehler brought forth the house plans for the Abbott as applicant's exhibit "5". Mr. Waehler reiterated to Mr. Lisle that the Abbott was the only one that the company built now that could fit on the current lot size; Mr. Lisle answered yes; and out of the 80 last homes that he has sold, how many people wanted Abbotts; Mr. Lisle answered 2. Mr. Waehler asked where those 2 homes were located; Mr. Lisle answered Wind stone located the north end of Milton. Mr. Waehler asked Mr. Lisle, that in his opinion, was there much of market for that home in this area; Mr. Lisle answered no. Mr. Waehler asked Mr. Lisle what were the best selling models right now; Mr. Lisle answered the Jerry and the Vandalay were 85% of their total sales. Mr. Waehler designated the Jerry as exhibit "6" and the Vandalay as exhibit "7". Mr. Waehler asked Mr. Lisle if these homes were going to be offered in Fairway Village; Mr. Lisle answered yes. Mr. Waehler stated Fairway Village, if not granted a variance, would be competing against you with a larger home; Mr. Lisle answered yes. Mr. Waehler when Mr. Lisle would be commencing to build in Fairway Village and he answered he was just waiting on the permit from the Town and he had received the permit from the County.

Mr. Waehler stated the justification in the application that the 14 lots have to be placed on hold as far as any construction if a variance isn't granted, would this be a genuine possibility. Mr. Lisle stated they would be selling from the model at Fairway Village which is the Jerry, so they'll walk in that, but they would not be able to offer that model at Woodcrest and he reiterated that the two out of the last 80 were Abbotts, so there is a good chance that one of those would not have been able to fit anyway. Mr. Waehler asked Mr. Lisle that when he and Mr. Cann were involved in negotiations with Artisans Bank, had anyone mentioned that there was a 40' setback; Mr. Lisle answered no and he should have done more checking into it and when he had heard it was a private road and neighborhood, he just assumed it had the same 30' setback as every other neighborhood that they had been in. Mr. Waehler asked Mr. Lisle if he had experienced a setback in any of the developments that he had been in; Mr. Lisle answered no, that they were all 30'. Mr. Waehler asked Mr. Lisle when he had become aware of the requirement. Mr. Lisle stated right around the time they settled on the property and when they went to the County, the County told them that the normal neighborhood setback was 30' and there were no dimensions on the sheet of paper that they had received. He went on to say that the County actually had this neighborhood under 3 different names; it was a little tricky to try and find out information and actually the guy that does all of their finances lives in Lord Baltimore across the street which he didn't even know it was there and he had lived there for 10 years.

Mr. Waehler asked Mr. Lisle if he had to request variances in any other of these neighborhoods that you've built in; Mr. Lisle replied no. Mr. Waehler asked Mr. Lisle were the alternate variances he was asking for the minimum amount that you need in order to construct the models he thought would sell. Mr. Lisle stated the problem was that people buy different options, so the minimum he would need would be 6' on one; 8' on another so if they went to the standard

30' setback like they did in all the other neighborhoods, frankly he thought it would not look out of place at all. He really thought this was kind of an odd setback; all of the lots on either side of it are much deeper lots. If you would to look at either end of the neighborhood, not being in that neighborhood, but on Reba RD, they are all 125/150' wide deep lots, so the 40' setback was not a problem at all, this one they just squeezed it in there. He thought they were all 100/102' minimum depth lots which works if you have a 30' setback but tough with the 40. Mr. Waehler inquired about the current status of the retention pond and roads in Woodcrest III. Mr. Lisle stated the retention pond just needed to be cleaned up, but it was functioning and the roads need a top coat. Mr. Waehler asked Mr. Lisle if Woodcrest Acquisition and his company intend to take of those items; Mr. Lisle answered yes and they offered to pay for it for the people already living in there as well. Mr. Waehler asked Mr. Lisle about the weeds and grass on the vacant lots and if they had been taken care of as well; Mr. Lisle answered yes and they have contracted to keep the lots cut and would be putting signs out there and start marketing as soon as they know what they can actually sell in the neighborhood. He went on to say that the problem was there were not enough lots to design a special house for it and none of the other neighborhoods they had been talking to or involved in would need that shallow of a house; when you make the house that shallow is that you really limit the amount, you would have to make it a two-story, which is not as popular at the shore, or you have to limit the front elevation and you don't get a lot of depth of change in a front elevation because you really need that entire box to fill in for the house. Mr. Waehler asked Mr. Lisle if he had anything further to say in support of the application; Mr. Lisle stated no. Mr. Waehler stated this concludes his direct examination and Mr. Lisle's direct testimony. Mr. Waehler asked the Board, Mr. Thompson, Ms. Botchie or Mr. Evans if they had any questions, they would be glad to answer them.

Mr. Thompson asked if any members of the Board if they had any questions. Mr. Thompson stated while the Board was thinking, he just had a couple; if stated they mentioned the concept was energy efficiency and wanted to know if there was any correlation to the shape; Mr. Lisle answered no and they were the only country in the world that doesn't use the International Energy Code that follows the International Building Code and it was really how you build the house; it has to do with insulation and windows. He went on to say that the average house in this country, when you try to heat or cool it, they have so many leaks in the wall which was literally like having two windows fully open, so they make the houses much tighter and how they work on indoor quality with better filtration through the vacuums; they actually give you a central vacuum standard that actually exhaust all the fine particles outside that really don't pass through a vacuum bag, they control humidity's so one doesn't have dust mites or mold growing in it. They work on stuff with different building scientists on coating which goes on windows that blocks 70% of the heat transference on a sunny day and literally on the displays in their models, they have a heat lamp and a btu meter and they switch from one brand of window to another, and the windows they use block more heat than those windows would if the shades were down. They use different technologies that unfortunately in the US we don't use and they benefited the rest of the world for the past 20 years and we are the only country in the world that still stores hot water. Mr. Thompson reiterated that Mr. Lisle mentioned that there were two current homes and he wanted to know how would, well to start, did he plan on clearing the lots and Mr. Lisle answered they were already cleared. Mr. Thompson stated if the setback were granted, and he guessed he would just start with the option where the setback was changed to the 30' setback, how would that compare in terms of, Mr. Lisle jumped in to say the one house in the middle would be about 10' further back and he could work with that because they get that sometimes in neighborhoods where people want to be a little further back. He stated there were only 3 to 4 lots in the middle and they could work with that.

Mr. Reeve asked Mr. Evans from looking at the plans and the interior lots to see if the smaller of the options was he looking at a building area of 2,500 sq. ft. on those. Mr. Evans asked Mr. Reeve if he was speaking of an actual building area and he answered yes besides the setbacks. Mr. Evans stated they were approximately 50 by 50 which 2,500 sq. ft was. Mr. Reeve stated he was having a hard time understanding what the problem is since the Vandalay with the options will fit within the setbacks. Mr. Lisle stated the issue was the front to back setbacks. Mr. Reeve inquired what the depth was and Mr. Lisle answered 55 to 58 feet depending on the options they take. Mr. Reeve asked if there was any way to re-adjust them. Mr. Lisle replied, they only had 14 lots, all of their houses were panelized and the average construction time is 70 days and they do this very affordably, so to re-design 4 house plans for 14 lots when we are right down the road where we wouldn't have to re-adjust anything, so there would be no additional fees. He went on to say to the Board that he didn't know if they were familiar with panelized construction, but literally the house breaks ground on day one and 45 to 60 days later they are living in it and meets all of the standards they we've talked about. Mr. Lisle stated to make changes to the panelized plans to do something like that there would be additional fees, so based on the options they got you would have to break the panel package up and start changing depth. Mr. Reeve stated his understanding practical difficulty is here he needed to understand about the additional fees. Mr. Lisle stated even if you would look at cost fees of \$5,000 to \$10,000 per house, is just the design time and it would slow the process down and most people now can't move into the new house until they sold their old house, so you would have to then let them get their old house to settlement, then get their new house built, which it becomes a major issue at that point because they don't have to wait in a rental house as long. He went on to say you don't want to design a house for them until they have their house settled; some people have had their houses on the market for 2-3 years and then walk in a sign a contract and want to move in quickly. Mr. Reeve stated what they were talking about situations currently, now we're talking about theoretically situations, and he was interested in what time frame he was talking about as far as making changes. Mr. Lisle stated, and no theoretical involved at all, through real situations, if somebody made these changes and you would have to redesign the house, you would probably be 45 additional days in redesign back and forth with the plan. Mr. Reeve asked Mr. Lisle if he had pending contracts at the moment waiting for this to happen; Mr. Lisle answered no, but you wouldn't want to change the panels and you would have to do all new literature for just those 14 and you would still have to do the 3 or 4 house plans because you wouldn't want all of them to be just one plan. Mr. Thompson asked Mr. Lisle is the house would cost more; he answered yes and he stated they wouldn't get anymore for that cost, so down the road they would ask themselves why they were paying more if they could be at either end for less money. He went on to say they couldn't walk through it, feel it and see it because they have houses under construction or models of everyone of the plans that are in there they could walk through, but this one you would have to explain they would shift the garage back on this which would make this bedroom little smaller; it just confuses people, they can't a sense of plans, not like walking through their house and then they want and if you make the littlest change it throws them.

Mr. Lyons asked Mr. Lisle if there were any negatives to making these adjustments that he knew of, and he wanted to know if anybody here (in gallery) knew of any. Mr. Thompson stated he would ask for statements from the audience after they presented their evidence. Mr. Waehler stated it was their position that there were no negatives and the 2 people that were there know about this application and had no complaints and indicating they were going to join. Mr. Lisle stated he would be willing to bet that nobody knew it happened. Mr. Reeve asked Mr. Lisle to help him understand, that his was not a mechanical issue per se, it is aesthetic issue, a design issue. Mr. Lisle answered yes. Mr. Reeve made statement saying that this was not prohibiting him from putting in the basic functions of the house or mechanical system; Mr. Lisle answered no but it

prohibits sales. Mr. Droney asked if the sewer lines were all ready in place; Mr. Lisle answered yes. Mr. Droney asked if they moved homes from one to another, were they going to have closer distance to the main sewer line, would that have any affect; Mr. Lisle answered no, the sewer lines were on the easement right of way just sticking up there, so that you were pulling it 10' forward, so you wouldn't know where, a normal house that would be a problem anyway because you really don't know where it is coming in. He went on to say that really some of those houses it could just be the garage that was in that setback; there would not be any living space in the setback. Mr. Droney asked if there was public water available and Mr. Lisle stated he was told Tidewater services was there and they were also told you could get a well there which was very odd because there are watering lines sticking up out there. Mr. Reeve asked Mr. Evans if he was aware of any situation out there; Mr. Evans answered he thought Tidewater was out there. Mr. Droney stated why would both be there; Mr. Lisle stated it was weird to him, but he was told by Tidewater that one could put a well out there which usually Tidewater isn't going to let you put a well out there if they have a shot of getting you. Mr. Waehler stated they called Tidewater and was told that didn't service that area and they were also confused with the 3 different names that were used out there and then after calling them again they said, oh yes we do serve the area; but they also indicated that you could still have a well. Mr. Waehler informed the Board he owned a Cedar Drive, Woodcrest II and he seemed to remember when he connected to the central sewer he was told he didn't have to connect to Tidewater, he could keep the well. Mr. Lyons stated he lived on Cedar Drive and that's what he was told as well; he stated he had no obligation to hook up to that by a certain date. Mr. Reeve stated if you had an existing well, you were not required to hook up to Tidewater, if you did not have well on the property; you were required to hook up. Mr. Lisle stated that makes total sense; however, the 2 houses out there aren't on Tidewater and they were built recently. Mr. Waehler stated Tidewater was a private company and its county sewer so the county has powers to impose connection requirements that a private company does not have. Mr. Reeve stated they were not actually dealing with that issue. Mr. Thompson said that sparked a question on his mind, with the confusing with the different names, did that lead or cause this situation. Mr. Lisle answered that the county couldn't look it up so they couldn't get real drawings from them and when they heard it was private road and not a public road, he figured it had to be the standards setbacks as in every other neighborhood they were in; they dealt with 14 neighborhoods and everyone of those private roads have a 30' setback. Mr. Reeve asked Mr. Lisle if he was not aware that this was a municipality. Mr. Lisle answered yes, but even the ones that are, Town of Seaford, Town of Delmar, if it is on a private road, they always had the normal 30' setbacks and again normal meaning the 14 neighborhoods they're in. Mr. Reeve asked Mr. Lisle if was not aware that Millville had its own zoning regulations; Mr. Lisle answered again that he thought on a private road, no one would be concerned about the depth. Mr. Waehler stated he had pointed out to Rob, that on the recorded plot, it mentioned the front setback as 40', but as Rob has testified, the bank when they were negotiating, they did not give him the recorded plot they just gave him a part of it that just showed the lots. Mr. Lisle reiterated he was given very limited time to make a decision on it, but they had a blow-up of this, they didn't have the name of the engineer on it, because they tried to track down who the engineer was. Mr. Thompson asked if Mr. Lisle could describe for the record what he was speaking of; Mr. Lisle stated it was basically a blow-up of just the lots, there were no lot numbers are dimensions of the stuff next to it, it was poorly blown-up so they couldn't even read the dimensions of what was there, and they looked at it and said well they're a 100' deep and it looks like about a 10' thing off the back which again pretty common and 10' side setbacks which again is pretty common, so he stated he was the idiot and went with the pretty common on the 30' front.

Mr. Droney asked if this was going to be an adult complex; Mr. Lisle answered no then Mr. Droney said he didn't see anything pertaining to children at all. Mr. Lisle reiterated it was only 14

lots and about 75% of their sales go to retirees. Mr. Thompson said in essence, there were not going to be amenities. Mr. Droney commented “no playgrounds.” Mr. Waehler stated it wasn’t approved with amenities. Mr. Lyons asked the Code Enforcement Officer if there were a negative impact with anything. Mr. Evans answered there should be negative impact in regards to fire and ambulance, police identification and he didn’t really want to throw his 2 cents worth in, but if the setbacks were moved forward, then it provides additional buffer between any properties to the rear of these and separates the structures if the lots butt up to additional properties, the center lots currently would be instead of 20’ apart, if they move forward, they would now get a 40’ separation. He repeated there should be no negativity towards emergency purposes, the radius and all should have been approved by the fire marshal’s office when the subdivision was approved. Mr. Thompson asked the Board if they had any other questions. Mr. Lyons questioned that they were dealing right now with only the 10’ setback and they mentioned the 20’ swap were you could go 20’ in the front and 20’ in the back and he wanted to know if there was one that the Town favored or the Board rather than granting of the 10’ variance. Mr. Thompson stated that the Town was not taking a position one way or another. Mr. Lyons stated he heard him mention it and that is why he asked and he knew that would create a bigger buffer between the center lots and it’s more of a swap. Mr. Thompson stated if it is posed to the applicant then he asked did they see one better in terms of sales. Mr. Lisle said he agreed with you (did not mention a name) and he believed it was their idea to get the bigger back yard and again if you pull the house to the front and they get the 30’ setback on the front, they were not going to use all the spots in the back, but it does give 20’ between the buildings and he felt people would rather have a bigger back yard than a front yard. Mr. Thompson asked the Board if they had any other questions; he then asked Mr. Waehler if he had anyone else to speak and Mr. Waehler stated no. Mr. Thompson asked if the public had any statements in favor at this point. There was no response. Mr. Thompson stated there were no opponents. Mr. Thompson asked if there were any statements from the public in opposition. There was a lady in the audience who asked if she ask a question or would that be out of line. Mr. Thompson informed her she could make a statement and perhaps Mr. Waehler and his client would like to address it in terms of rebuttal and informed her she could not ask them questions because she was not a party in opposition but she could surely make a statement, that’s why we have these public hearings. She stated that it didn’t fall into that category but it was based on his dissertation. Mr. Thomson said we would love to hear from you. The lady stated when the details were given on the home, she asked if this was a home built on site or was it a modular home. Mr. Lisle answered they were built on site. The lady stated you said it was going to sell for \$225,000; Mr. Lisle replied the Abbott the smallest house will start in there at \$225,000, their average house would be about \$275,000. Mr. Thompson asked if Mr. Waehler or Mr. Lisle if they wanted to present anything in rebuttal; saying they really didn’t have any actual opposition it was more of a clarification. Mr. Waehler said they didn’t have anything to rebut and they stated their position as to why they would like to have the variance granted and why they think exceptional practical difficulty for Mr. Lisle and his company and Woodcrest Acquisition which are both tied together by their contracts. Mr. Thompson asked them if they would like that to serve as your closing argument and again this hasn’t been a long drawn out meeting but they could identify any specific facts they you think could give rise to the exceptional practical difficulty, that’s fine as well, I don’t know if they would be helpful to the Board or not.

Mr. Waehler commented that Mr. Lisle had been through the practical difficulties, this development could have essentially be competing against its own houses in the other development, plus other contractors that only build this one small house and are very limited market and he sold only 2 of the small houses out the 80 sold, so if he’s left with having to only put that home on there, then the sales will take a long time and this place would sit vacant for a long time, unfortunately;

granted he and Mr. Cann should have researched this whole process a little better, but the law says, even if you know that there is a matter that would require you a variance, that doesn't preclude a variance from being granted and I think through inadvertence, Mr. Lisle did not discover until they were on the eve of settlement and basically they were required to settle with the bank with this potential problem and this is really unique because I know the county only requires 40' on public roads and every other place with interior wall developments are basically 30' and there is some precedence, he thought were Millville has approved less than 40' setbacks anyway in some of the approved subdivisions and master plans, so if you look at it together and look at the fact there is really no harm in granting this and no one is objecting to it, he's going to be able to have quick hopefully sell out of this area and he has taken an area that overgrown and an eyesore, and he is going to turn it in to a very nice community so it's going to benefit Mr. Lisle and also benefit the Town and I can tell you he sells a very well built product and a very economical product; in fact I live in one of his homes and I can attest how well and efficient they are. Mr. Thompson stated he neglected to do one item just prior to that, he wanted the record to reflect that we didn't receive any written comments.

Mr. Thompson informed the Board of Adjustments they were permitted to discuss the matter at this time; take an action now and you need to issue a written decision within 60 days. If you are going to discuss the matter it would have to be a properly noticed meeting which today constitutes, so if they wanted to discuss it now that's fine, or your options could be to table the matter; think about, again if you are going to discuss it would have to be at a properly noticed meeting, but again the decision has to be rendered within 60 days. Mr. Droney asked if he wanted a motion. Mr. Thompson stated it was up to him, again, you can discuss it now and then there can be a motion as to whether to approve or deny and discuss the reasons therefore, or if the Board wants to give it some more thought, then there would need to be a motion to table. Mr. Reeve wanted to make a statement that we are not basing our decision on what other municipalities are doing or the county; he wanted the Board to remember that this is not a MPC or RPC, it's in a residential district and based on a older version of the code. Mr. Lyons stated he did not see the hardship but he did see you point (Mr. Reeve) what he was talking about, but if there are other areas in Millville that has already been granted or other subdivisions in Millville with 30' setbacks and since this was such an isolated area, he had a hard time seeing a way to deny it and he had heard hearsay that there are other subdivisions within Millville that already have a 30' setback and if that's true and that's what has been granted, then he would hesitate to against them. Mr. Thompson stated just to be clear, hearsay is admissible on these items unless something is rebutted were you are weighing an issue of fact, so in essence if the record reflects one issue and there isn't some other presentation to the contrary, then the assumption is that it is accurate. Mr. Reeve statement that is something that worries him about if we were talking about MPC/RPC and would like to pose a question to Mr. Evans as to the acknowledgment of variances or allowances from the residential zoning requirement of 40' setback to something less than, did he know of any incidents if that were the case. Mr. Thompson commented to Mr. Waehler to be clear he would be given a chance to ask any questions. Mr. Evans asked Mr. Reeve if he wanted to know if there had been a variance granted; Mr. Reeve reiterated to Mr. Evans if there had been any variances been given in a residential district, not RPC, not MPC, but in a residential district to lessen the front setback from 40'. Mr. Evans answered not to his knowledge, but he'd only been with the Town for a year. Mr. Reeve asked did he have knowledge of the plans of the subdivisions in place, or would you rather not attest to that fact. Mr. Evans answered he could not attest to anything built previously or approved previously, ones that were going currently are RPC's and MPC's. Mr. Thompson asked Mr. Evans what setbacks did they have; Mr. Evans answered they vary; he had some 20'/30' and stated these districts have a more relaxed setback to get a community feel. Mr. Reeve commented to Mr.

Evans that as far as residential communities, not RPC not MPC, he was not aware of any incidences where a variance was granted to a primary residence and Mr. Evans answered that was correct. Mr. Thompson stated he wanted to be clear if they were talking about variances that were previously granted versus what the actual code provides; in essence, a variance would be just that, a deviation from the code; he wanted to make sure he understood and the record is clear, is it that we have RPC's that allow for, in essence the code itself as it applies to RPC's and MPC's is less than 40'; Mr. Evans answered correct. Mr. Thompson stated it was not a variance at that point it was just part of our code and Mr. Evans answered correct. Mr. Reeve stated it was allowable by what it is, MPC or RPC, this is not a high density zoned area. Mr. Thompson asked Mr. Waehler if he had any questions for Mr. Evans on this. Mr. Waehler answered no; he said when he spoke he said there are setbacks in Town that are less than 40', he was speaking of these planned communities, he wasn't saying that there had been other variances granted that he knew of or had been allowed and there may have been in the past but he did not have any compilation of those decisions and he didn't think Mr. Evans had any compilation, but he was just saying that there were other homes that were setback that distance in Millville and there is no harm in this little isolated community.

Mr. Thompson asked if there were any other questions or discussions. Mr. Droney stated if the setback were granted, there would be 3 lots that were not within in this setback that they were already established; lot 49, lot 66 and lot 52. Mr. Waehler stated one was vacant and one has two structures upon it. Mr. Thompson commented the application only applies to the 14 lots. Mr. Lisle commented that lot 49 was not buildable and he thought it was all wetlands. Mr. Reeve stated maybe they should table this until further consideration.[INAUDIBLE] Mr. Thompson stated that the terms of the evidence from the applicant tonight the standard is exceptional practical difficulty not unnecessary hardship is not the standard for an area variance only a use variance so that's a more rigorous standard that you have to have when you come in and ask to change the use of something that is permitted, here we have the lesser standard to meet, at least that is my opinion, I think Mr. Thompson agrees with me. Mr. Thompson: In essence the way Delaware case law

[Sections below transcribed by Donna Schwartz@ 1:01:41 on the recording]

Mr. Thompson: In essence the way Delaware case law is involved a use variance requires more in terms of proof than an area variance, obviously here we are dealing with an area variance where he is just looking for a dimensional, in this case a reduction in the setback, verses a use variance where you would attempting to use the property in a different manner. So, part of the issue is then obviously we need to apply our code, which doesn't -- our variance language in section 155-59 references both, but it is also [inaudible] so in essence the language is it would result in unnecessary hardship or an exceptional practical difficulty.

? [Inaudible]

Mr. Thompson: And truth be told, and that is right, our code seems to refer to special exceptions. So the bottom line is the way our code applies I think there is a good argument to be made that it could be either because of the use of the word "or." If it is alright for me to walk through the code, again the Board of Adjustment is authorized to hear cases for such variances from terms of the zoning chapter as would not be contrary to the public interest and owing to special exceptions a literal enforcement of the provisions of this chapter would result in an unnecessary hardship or an exceptional practical difficulty. So based on that language again there needs to be some resolution

as to whether or not this is contrary to public interest and the other problem would be if the applicant has shown that it is an unnecessary hardship or an exceptional practical difficulty.

Mr. Droney: I would like to make a motion at this time. I would like to make a motion that we grant this setback the 30ft front yard setback as it is here, it would from 40 to 30. I would like to make a motion that we grant that.

Mr. Thompson: Do you have a second?

Mr. Lyons: Second

Mr. Thompson: Okay let's have discussion on the motion because the record needs to reflect your reasoning one way or the other.

Mr. Droney: My reasoning is that the fact that the 30ft, the point is definitely out it won't even come close to the ones that are going to be more than this, the ones that are already granted. And if there is room to stay within 10ft why go 20ft. That's my reasoning, other than that I don't see any other reason.

Mr. Thompson: So just so I am clear, you are not in favor of the 20 and 20 change based on the fact that it would not be comparable to the two homes in existence.

Mr. Droney: No, I don't think it would be, no. I think the 20 verses 40 which is quite a big difference, I think 30ft, rather than 40 would be the better deal of the two.

Mr. Thompson: What do you feel the basis of a finding of an exceptional practical difficulty or an unnecessary hardship?

Mr. Droney: Well I think it would be a hardship if they plan on putting these single-family homes in there and the only way they can do it is with a variance for the setback. The way the market is now the single family home would probably be the one to sell.

Mr. Thompson: And again, it's zoned for those, it has been approved for those, I guess the focus whether these homes fit in this lot, whether this variance is warranted based on this particular applicants

Mr. Droney: I think obviously they would fit because they [inaudible]

Mr. Thompson: You're talking about the new homes?

Mr. Droney: Yes.

Mr. Reeve: I don't know what your [inaudible]

Mr. Thompson: The unnecessary hardship or exceptional practical difficulty.

Mr. Lyons: The exceptional practical difficulty to me is understandable to me because they already made financial commitments to the community, they've already made improvements to the community, so their intention is to make substantial improvements to that area and since I saw no objection and the upside would benefit the Town rather than do it harm. And due to its isolation I don't see where allowing this exception is one that is going to set precedence. It is isolated, it has very little effect on the adjoining neighborhood, and that's my reason.

Mr. Thompson: You mentioned objection, I want to make sure we are focusing on that public prong that requires finding whether it is contrary to public interest. Is that what you are referring to?

Mr. Lyons: I don't believe it is contrary to public interest, I'm voicing that by saying there is and obviously there are no objections from the public. [Inaudible]

Mr. Thompson: Any further discussion on the motion?

Mr. Reeve: I guess I'm having problems actually seeing [inaudible] not knowing exactly what financial [inaudible] what cost would be passed on to the prospective buyer. Is there any way of understanding that? Or is that something [inaudible] not a basis to make decision on? [Inaudible]

Mr. Thompson: Again, the applicants bring forth the evidence in terms whether you felt they met their burden is really yours that is really your determination. As far as procedurally with a motion on the floor, either that motion needs to be withdrawn or it has to be voted upon. If you are going to vote upon it you need to do it on a roll call just so it is clear what people are voting for and again you've had a discussion if you can incorporate by reference or again reiteration, your reasoning when you vote if you're going to vote, just so that the record is clear why you voted that way.

Mr. Reeve: Am I clear there is a motion that has been seconded? So are we obligated to vote?

Mr. Thompson: Unless the motion is withdrawn.

Mr. Lyons: Having already voiced my opinion, I'll vote in favor of granting the 10ft variance to reduce it to a 30ft front yard setback.

Mr. Droney: Since I made the motion, I am in favor of accepting, granting the variance.

Mr. Thompson: And is that based on the reasons you gave previously?

Mr. Droney: Yes. One other thing, this area Woodcrest has gone on for years and years, from owner to owner, has not benefited the Town.

Mr. Thompson: Okay.

Mr. Reeve: I do vote to grant it, the reduction from 40ft to 30ft front yard setback. I'm having trouble seeing the exceptional practical difficulty, but as far as the other qualifications it is certainly with keeping with the zoning as it is already regulated and it does not adversely to surrounding properties.

Mr. Thompson: Motion carries. 3 – 0. Thank you very much.

MR. THOMPSON: Asks if anyone needs to take a break, or should we keep going on with the agenda? Okay, if we could move to Item 6B. Mr. Evans if you could identify that item.

(ITEM #6B) Consideration of BOA-02-12

Public Hearing: Consideration of BOA 02-12 submitted by Millville Town Center Associates, LLC, Tax Map Parcel #134-12.00-411.00, M&T Bank (formerly Wilmington Trust), for a variance from Article IX, Section 155-46 C (3), which would allow for additional square footage for replacement signs.

MR. EVANS: The applicant asks Board of Adjustment for consideration of Case #02-12 submitted by Millville Town Center Associates LLC, tax map & parcel 1-34 12.00 411.00 M&T

Bank formally Wilmington Trust Bank for variance for article 9 section 155-46 C(3) which allow for additional square footage of, for replacement signs.

MR. THOMPSON: Do we have a notice that should be read into the record?

MR. REEVE: Read top portion of that? or just the section which relates to this?

MR. THOMPSON: Just the portion that relates.

MR. REEVE: NOTICE IS HEREBY GIVEN BY the Board of Adjustment for the Town of Millville that a Public Hearing will be held at 7:00 pm, on Thursday, July 28, 2011, at the Millville Town Hall located at 36404 Club House RD, Millville, DE, to consider the following applications: Consideration of BOA 02-12 submitted by Millville Town Center Associates, LLC, Tax Map Parcel #134-12.00-411.00, M&T Bank (formerly Wilmington Trust), for a variance from Article IX, Section 155-46 C (3), which would allow for additional square footage for replacement signs.

MR. THOMPSON: Okay, thank you. Mr. Evans if you could give us some background this.

MR. EVANS: Well the applicant is requesting a variance for signage square footage as per the town code each commercial use including those within a shopping center may have one lighted or unlighted sign displaying the name of the store, or use, not exceeding an area equivalent to 5% the front of the building or 100sqft whichever is smaller. Where the building(s) is designed for rear or side entrances, one unlighted sign may be attached flat against the building at the rear and side entrances, each sign not to exceed an area equivalent to half that of the sign on the front of the building. Per the code's author the intent of front of building is length times the height of the front of the building. So I went out and I measured the height of the building from grade sidewalk to the soffit and came up with 10'3" approximately. I didn't have a ladder but I did hold the tape up to it. The building is approximately 95' long which gives them a building square foot frontage of 973.75sqft. The approved signage per the code then for the front of the building would be 46.68sqft, the current signage on the building is 65.33sqft, and the proposed signage that M & T is proposing is 25.48sqft that sign is not an issue. The rear of the building the approved signage per the code would be 24.34sqft, the current signage that Wilmington Trust has is 38.52sqft and the proposed signage 35.36 the free standing sign the approved signage per code is not permitted, the current signage for the building is 31.16sqft and that is the blade portion, not for the standing post. That is for the blade portion of the sign. Proposed signage for the building is 74.56sqft and it is a blade style sign from the ground up, the whole blade is the sign it doesn't have a projection coming off of it horizontally from it. And that includes the base which has a portion that holds up to it. The property was formally a C-1 Zoning and has since been rezoned to C-2. And all that information is before you.

MR. THOMPSON: Any questions for Mr. Evans?

MR. REEVE: I'm curious as to why blade in the existing sign was not included in the total square footage for the building [Inaudible]

MR. EVANS: I never went off and measured it, I went off the plans they were replacing.

MR. THOMPSON: It looks like part of a logo

MR. EVANS: Like I said, I took figures they had when they were replacing it I never went out and measured each individual sign I went off what was proposed. The figure I did go out and get was the height of the building I went out and measured that one.

UNKOWN: So that's why we don't know what the combined square footage with the blade... [Inaudible] or why that was permitted?

MR. THOMPSON: Are we speaking about the logo that's kind of a [Inaudible]

MR. REEVE: Yes that seems to be part of the sign structure...

MR. THOMPSON: Right.

MR. REEVE: [Inaudible]

MR. THOMPSON: Seemingly it's there in order for people to recognize what it is

MR. REEVE: [Inaudible]

MR. THOMPSON: Chuckle.

MR. EVANS: It was included in the calculation because like I said I never went out and measured the signs, I took the calculations that was presented to us. The signs that were presented to us that's what M & T, or the sign company had figured was the sign, was the blade, the actual horizontal blade going on the actual dimensions of it.

MR. THOMPSON: Any other background questions, then obviously we can ask additional questions. Okay, if we can have the applicants come forward. He's been waiting patiently.

MR. REEVE: I was interested in seeing how that case turned out last time so I would have made it down here anyway, but thanks for having me. How's everyone doing tonight?

MR. THOMPSON: Thank you. Thanks for coming. If you can give your name please.

MR. REEVE: My name is Gary Brennan representing Gable Signs and also representing M & T Bank. Can you guys hear me okay? Okay.

MR. THOMPSON: If you want to give an opening statement, or if you want to... certainly, it's up to you.

MR. BRENT: What you guys have is the only exhibit we have submitted as sign plans. I would say in response to the discussion to the blade that was something we did want to bring up that wasn't part of the calculation initially which may have been which skews this in the opposite direction that we are trying to accomplish. That blade is actually three feet wide and eighteen feet tall. So if you literally counted that whole surface area which would be consistent with even counting the lower base of the M & T proposed sign you are looking at an existing sign that is over 100 sqft. It would be 103.16sqft. If you calculated using that whole [Inaudible] area every component of that existing signs.

MR. THOMPSON: I guess, as we are moving into evidence, which is fine, I just need to swear you in.

MR. BRENT: Okay sure. I can come up there.

MR. THOMPSON: Thank you.

MR. BRENT: You have a longer walk.

MR. THOMPSON: Okay, and other hand, you swear to tell the truth the whole truth and nothing but the truth?

MR. BRENT: I do.

MR. THOMPSON: Thank you. If you want to continue...

MR. BRENT: Okay, sure. So I guess in general our position is there is, I guess two major areas to discuss. One is the existing signage currently of Wilmington Trust based only on the signs we are replacing the aggregate amount of signage that is currently existing is 134.91sqft, and that didn't calculate the roughly 60, 55 to 60 square foot of post area of the existing sign so essentially about 190sqft we are proposing 126.42 sqft so it is a substantial decrease in the existing signage. Also what you don't see in here along those lines are some of the signs that are currently existing monument style signs that thank you for banking at Wilmington Trust and monument signs that you may have seen out there those signs are proposed to be removed so that's why it was not part of our application. There's not we're not replacing them we're taking them and we're disposing of them. So I don't have a calculation on what is existing there, but roughly in most of these branches around 60sqft of I guess additional signage that isn't going to be replaced. And then the second point we wanted to make comparing our sign package to the neighbor next door Wells Fargo their existing signage is 133.67 and we are proposing again 126.42 which is less square footage than they have and the height of their building is similar to, in other words the square footage allowance for their building is similar to what we are allowed at M & T Bank. And I'll take any questions you have; I think that's all the presentation that I have.

MR. THOMPSON: Any questions from the Board? I have just a few; I think you probably heard our conversation previously in terms of the standard that needs to be met as to whether granting variance would be contrary to the public interest and whether there is an unnecessary hardship or an exceptional practical difficulty. It might be [Inaudible] if you could speak to that if in essence if this isn't granted what difficulty will you run into?

MR. BRENT: Well, as far as the first point, contrary to...

MR. THOMPSON: Public interest?

MR. BRENT: Public interest, sorry about that, drew a blank, we feel that these signs are currently existing at Wilmington Trust. The signs that are illuminated remain illuminated the signs that are not illuminated remain non- illuminated. Again it's a substantial decrease in signs if anything it would be more in the public interest to grant this variance verses what's existing. As far as a public hardship we're a bank, or M & T Bank is a bank that has to compete in a neighborhood with other banks and again the direct next door neighbor, based on the calculation that Eric said we were allowed, would have almost double square footage signage that we would have, again. So the practical difficulty is they have to compete with the banks in the neighborhood and [Inaudible] puts everybody on a level playing field I guess. Hopefully. Does that speak to that?

MR. THOMPSON: I think it does. Is there any - are the signs predesigned is there any element of that?

MR. BRENT: There are the blade sign on the free standing sign is a standard M & T Bank version of a freestanding sign. As these are unveiled over the course of the next month at the 50 locations in the State of Delaware you are going to see this sign at almost every location, or a sign similar to this. The sign on a building, I'm sorry, the sign on the building is also another typically blade- plate, non illuminated plate letter sign standard where there are existing non illuminated signs the bank the has this is a standard sign that you would see replacing, in a replacement manner. Then of course the sign on the rear, or the side, depending on how you look at it, facing the shopping center, that is also a standard 33sqft sign that again will be sign throughout the conversion, throughout the State.

MR. REEVE: Again that is [Inaudible] sign?

MR. BRENT: The existing sign is 38.52sqft so we... it's been reduced, essentially every sign, guess I could speak to that, the last sign on the rear is 33sqft proposed replacing a 38.52sqft sign, the sign on the front, the existing 65.33sqft we are proposing a 25.92sqft, which is a substantial decrease and again depending on how the calculation is done on the front sign our proposed sign is 67.5 and the existing sign is around 100 is I think is what I mentioned.

MS. BOTCHIE: Freestanding?

MR. BRENT: Free standing, yes Madame.

MR. REEVE: In regards to the attorney's question, I'd like to find out if the signs are prefabricated already, or whether they can be adjusted size wise to the [Inaudible].

MR. BRENT: That's a good question. They are not intended to be prefabricated but the unveiling is scheduled for the end of August we have a very tight production schedule as you may imagine, so not that I want have the board feel that this is a reason to grant this, but yes, the signs have been fabricated and they are ready to install once the permits are approved.

MR. DRONEY: Did I get you wrong, you said the existing sign which has lighting and everything would be removed and everything would go, and your drawing shows

MR. BRENT: Which sign is that? I'm sorry

MR. DRONEY: The freestanding one.

MR. BRENT: No, the existing sign is illuminated, the proposed sign is illuminated. The sign on the wall is non-illuminated, front wall and that is proposed to remain non-illuminated. I'm sorry.

MR. THOMPSON: Sir?

MR. REEVE: What kind of remedy would have to be done to bring this into compliance? What are we looking at exactly as far as actions that would have to be taken to bring this into compliance?

MR. THOMPSON: is it an issue of approving exactly approving the square footage of the sign? Is that... [Inaudible]

MR. REEVE: Are we talking about working with the freestanding sign or the ones on the building are not a problem. Is there an issue of how much replacement we're doing, and that's the problem? Or what?

MR. EVANS: I think the problem would be the rear sign, to go into compliance with the current, you would have to reduce your rear building sign to 33.56 approximately and remove the freestanding sign permanently.

MR. REEVE: And that defeats the zoning change? Is that correct?

MR. EVANS: And the town code, and if we will still see one...

MS. BOTCHIE: I don't normally speak, but can I speak

MR. THOMPSON: You can.

MS. BOTCHIE: Okay. Just trying to clarify this to the Board of Adjustment. This property was previously zoned to C-1 zoning. When the new zoning code was approved in 2007 that property became non-compliant. Every sign there for C-1 was not conforming. They were not allowed freestanding signs. So Artisan's has a freestanding, Wilmington Trust has a freestanding, as well as now Wells Fargo has a freestanding. So all these properties were non-conforming. The code states by 2009 the Council had the ability to go to all the business and to tell them they were non-conforming which ended up being 98% of the town. Which that wasn't going to happen. The Comprehensive plan was adopted in December 2010 these larger properties were, where M & T is located, and you have to understand that is one parcel, okay it is not several parcels, was rezoned to C-2. Now we are talking about another different sign code okay. So they've gone from C-1, non-conforming in C-1, now they are in C-2 and still not conforming. Which, but they great a larger square footage of signage on their building but freestanding signs are not permitted in C-2 district.

MR. REEVE: And which parcel was converted to C-2?

MR. EVANS: The whole shopping center.

MS. BOTCHIE: The whole Giant Shopping Center

MR. REEVE: The whole shopping center was changed and freestanding were still not allowed is what you are saying is...

MS. BOTCHIE: That is correct, now because of our code says if you go in to change, what 50%?

MR. EVANS: Correct.

MS. BOTCHIE: 50% of your current signage then you fall under the new regulations. See that's how we changed them. Wachovia changed from Wells Fargo, however, they did not change the actual sign they changed the sleeves, the skins. I call them sleeves, the skins. So

because M & T would like a change to a different type of sign they just can't change the skins on that blade sign. With me? So now they are falling in under the new regulations.

MR. EVANS: Hence the variance request.

MS. BOTCHIE: And I apologize that... [Inaudible]

MR. EVANS: That is history...

MS. BOTCHIE: That's history, and that's before Eric's time...so that needs to be said because we still have the banks with all this signage and Planning & Zoning is currently revisiting this because the Town... [Inaudible]

MR. THOMPSON: I don't know if that prompted anything on the applicant's part, if you want to say anything, or a response, or if that's your understanding

MR. BRENT: That is my understanding. I guess our part our position there are certainly precedence out there with a lot of other businesses including most, all banks do have non conforming signs so, we would be I guess thankful if the Board would continue to look at our, not to take a position that this bank has to be now considered conforming when none of the others are. If that makes sense. Does that make sense?

MR. THOMPSON: In terms of where the blade sign is located I guess how much wider is the proposed sign than the current post?

MR. BRENT: The new blade is three feet, so yes, about 20" 20 1/2 inches actually.

MR. THOMPSON: And that area, obviously it looks like there is a parking lot and as well as Route 26 is there any issue in terms of that causing a traffic problem there, a visibility problem?

MR. BRENT: It didn't appear to me the entrance, these are all internal roads, what you can't see behind the sign picture is just a continuance of an internal road that essentially loops around the corner and into the drive-through. There is actually a curb cut dividing what's behind that, dividing Wells Fargo from M & T, there is no egress, no entrance or exit and anywhere in the area into the shopping center. The entrance to the shopping center in front of Giant and the whole strip center which has Subway and some of the other retailers in there, its 300, maybe 200 feet in front of that so there's no, in our opinion, doesn't appear that there would be any visual impact to drivers or pedestrians or anything in that area.

MR. REEVE: Being that is on Route 26 do we have any idea how far the intersection... [Inaudible]

MR. REEVE: You mean Cedar Drive? Do you know how far it is from Cedar Drive?

MR. BRENT: That's the other intersection at the light further up, I guess where Wells Fargo is, is that it?

MR. REEVE: No, it's the other way,

MR. BRENT: Oh it's the...

MR. EVANS: No, it's in close proximity, the sign would be splitting that parcel in half...

MR. REEVE: Half way between Cedar...

MR. EVANS: Half way between Cedar and I believe that's Town Center. It may be two-thirds towards Cedar but it is...

MR. BRENT: Cause that's --

MR. EVANS: It is a good distance in both directions.

MR. THOMPSON: You can see the traffic light in the background in the picture

MR. REEVE: I guess where Banks is? [Inaudible]

MR. REEVE: Is there a reason why... [Inaudible]

MR. BRENT: No, I think that is pretty much the basis, with Wilmington Trust has their brand and I'm sure you've seen many of their signs and if you haven't, they all looked that, and so that is a Wilmington Trust brand. This is an M & T Bank brand and it is throughout, at least in the Northeast and Mid-Atlantic, which is the standard for freestanding signs; it pretty much wraps around that it's a branding for them. They're trying, they are growing into a new area, and although many people know who M & T Bank is, they've had no presence here until now. The branding pretty much encompasses the whole purpose of the design.

MR. THOMPSON: Any other questions for the applicant? And I didn't identify parties earlier but were are down to like two people and one of which is a member of the press and the other is the applicant. [Inaudible] So we don't have any statements in favor, we don't have any opponents evidence, we don't have any statements from the public in opposition, did we receive any written comments?

MS. BOTCHIE: No.

MR. THOMPSON: We don't need any rebuttal evidence, if you'd like to make a closing argument?

MR. BRENT: I think we're good unless you guys need me to make a closing argument.

MR. THOMPSON: So at this point again, the Board is free to discuss the matter, you can table the matter, you can vote on the matter. Again we will have to discuss the reasons why you are voting so the record can reflects that, if you table the matter a written decision needs to be issued... [Inaudible] any discussion needs.

MR. DRONEY: Has M & T already taken over the bank?

MR. BRENT: Well, they have but the unveiling is scheduled for the last week in August... like the name to appear or we are fired. Laughing.

MR. REEVE: [Inaudible]

MR. LYONS: My feeling is I just have a nagging question in the back of my head whether we grant a variance or a special exception. I agree the proposal decreases the signage in all cases my gut feeling is that is a good thing let's go ahead and do that reduce but the code reads, cause they are changing 50% the code says eliminate, that was the Town's intention, my question is if we grant the variance what does that do to the next person that comes

through? Is it a variance we have to grant or are we granting a special exception? The special exception is the competition all has it so let them have it too until all the signs fall down. I'm sort of spewing right now, but my gut still says they are reducing the size of the signage that's a worthy thing in itself, and it may be a hardship to ask someone to eliminate that sign and make it tough to compete, you know, very competitive, let's face it, how many banks do we have in Millville? You better be able to know where M & T is. I'm hard pressed to say no. I'm really on the fence here.

MR. REEVE: I understand your concern. I don't know if we have the ability to grant special exception rather than a variance.

MR. THOMPSON: Again, a variance is an area issue.

MR. LYONS: Does this variance go to this individual lot only; guess is my question, a specific lot and not the whole Town Center, just M & T Bank?

MR. EVANS: I think this would be a lawyer question, but my interpretation would be you would classify it to the M & T structure, they are the applicants. But that would be an attorney question.

MR. REEVE: So we are talking about the Center itself, are they expecting this to be a blanket variance?

MR. THOMPSON: It is going to be limited to what is in the application and as well as what you actually approve. Now, it is not limited to the applicant in the sense that it stays [Inaudible] so just like the prior skins could be changed the same thing could happen in the future. Let's say another bank comes along and is no longer M & T they are seemingly allowed to change the skins because the dimensions have been approved.

MR. EVANS: You could identify this per post office, or the street address.

MR. REEVE: Well is the street address for the Town Center as a whole is that,

MR. EVANS: M & T Bank

MR. REEVE: And is the parcel number just the parcel number just

MR. EVANS: That's the parcel.

MR. REEVE: See ... [Inaudible]

MR. THOMPSON: You would just need to make sure, and then again it could be in the written decision, but the written decision needs to reflect what is obviously voted on, so you are approving not only this parcel number, but specific location.

MR. REEVE: [Inaudible]

MR. LYONS: And that's within our purview to do?

MR. THOMPSON: Correct, truth be told, I mean that's really how the application reads; if they were synonymous you wouldn't have property location.

MR. LYONS: I'm inclined to grant to the property location [Inaudible] in the commercial aspect of it seems to [Inaudible]

MR. LYONS: So I would make a motion that we grant this variance specifically to the signs requested in this variance and not to any others on the property. My reasoning for that is really, as you'd say is the lack of negative impact the fact that they are reducing the signage and also I would believe there is a certain amount of hardship by having one bank, and a series of three banks right in a row having to take out a substantial sign logo from the public that may give the other banks an unfair advantage.

MR. REEVE: That's my reasoning. As to make the motion clear we are willing to grant a total square footage of signage 126sqft, including attached signs and freestanding blade.

MR. LYONS: That's right.

MR. THOMPSON: I guess I just want to make sure that whatever decision gets written up so you are approving a total square footage but it is also going, the approval is broken down in terms of the freestanding verses the wall;

MR. DRONEY: Okay, as requested

MR. THOMPSON: I just want to make sure I understand, so in other words someone couldn't put in a much larger freestanding sign and then a smaller wall sign.

MR. REEVE: Right.

MR. THOMPSON: Okay.

MR. REEVE: And then can we have a second on that

MR. DRONEY: Yes, second. I second that motion.

MR. REEVE: again it is particular to parcel now owned by M & T Bank at 38015 Town Center Drive that is specific to there?

MR. THOMPSON: Correct

MR. REEVE: It does not cover the entire Town Center

MR. THOMPSON: I think there was a second on the motion?

MR. DRONEY: Yes, I seconded the motion

MR. THOMPSON: so you guys just want to do an overall vote?

MR. DRONEY: I got a 67.5 freestanding, 58.9 wall 126.42 total.

MR. THOMPSON: Are your reasons within line with those?

MR. DRONEY: Yes, they are in line

MR. REEVE: So you are saying you are in favor of granting the variance?

MR. DRONEY: It would not be right for us to hold the M & T Bank up when it is right in between two other banks for one thing, the existing signs to my knowledge, and I haven't around here in a lot of years, they are all out of compliance with the code that was effective when I was here, so I'm not that sure about, but originally if you wanted a sign you had to be on that big marquee sign. Are you on that?

MR. BRENT: No, we are not currently on that multi tenant sign; no we are not on that.

MR. DRONEY: That's the way it was originally.

MS. BOTCHIE: Doing roll call right? You first, Tim second, for the reasons specified in Mr. Lyons motion.

MR. REEVE: Because the entire parcel is out of compliance it would be an unfair advantage for the other banks larger [Inaudible] because it is actually reducing the total square footage of the signs existing now and not causing problems to the surrounding properties I don't see where a change in square footage is going to cause us more trouble [Inaudible] as long as again is specific to that parcel alone and does not grant any other kind of variances.

MR. DRONEY: One thing we need to bring into this, that sign doesn't move any further to the east than it is now. If it has to be moved it has to be to the west because eventually [Inaudible] If it goes in the same place,

MR. BRENT: It is actually the same concrete footer and same steel pole the way to maintain the current setback is the sign is offset 10 inches, the current sign is set in the middle. It won't be any closer to the setback, the setback won't be any less than it currently is.

MR. THOMPSON: That being the case, the motion passed 3 – Nothing.

MR. THOMPSON: Let's move on to Item 7 on the Agenda, Adjournment

ADJOURNMENT (ITEM #7)

MR. LYONS: Motioned for adjournment.

MR. DRONEY: Seconded the motion.

All in favor. Motion carried unanimously.

MEETING ADJOURNED.

Respectfully submitted,

Ms. Botchie, Town Manager/Recording Secretary

Ms. Schwartz, Town Clerk