

North Middleton Township Zoning Hearing Board

Township Building
2051 Spring Road
Carlisle, PA 17013

Minutes of the Zoning Hearing Board Tuesday, April 14, 2009

The meeting was held at the North Middleton Township Building on Spring Road, in Carlisle, PA.

Attendance

Board Members- **Henry Weeks** (Chairman), **Mark Carpenter** (Vice-Chairman), and **Charles McCreary** (Secretary)

Solicitor-**Michael Rundle**

Zoning Enforcement Officer-**Ruben Lao**

Board of Supervisors-**James Hare**

Reporter-Ramona Devlin

Visitors

Jean Kuebler-854 West Louther Street, Carlisle, PA
Donald A. Wolf-500 North Mountain Road, Newville, PA
Michael House-850 West Louther Street, Carlisle, PA
McNerny House-850 West Louther Street, Carlisle, PA

Call to Order

Henry Weeks called the meeting to order at 7:00 p.m. He asked Mr. Lao to lead the Pledge of Allegiance.

Introduction of the New Zoning Hearing Board Member, Mr. Chuck McCreary

At this point Mr. Lao introduced and welcomed Charles McCreary as the newest member of the Zoning Hearing Board. Mr. Lao provided some biographical information about Mr. McCreary and noted that he has been a resident of North Middleton Township for approximately 23 years.

Reorganization of the Zoning Hearing Board

Mr. Weeks noted that a slight reorganization was necessary because one previous member of the Zoning Hearing Board has left and a new member has come on. Mr. Weeks suggested that he take the position of Chairman, and that Mr. Carpenter move up to Vice-Chairman, with Mr. McCreary taking the position of Secretary. All members agreed that this would be acceptable.

Henry Weeks moved that the following lineup be adopted:

- ***Chairman-Henry Weeks***
- ***Vice-Chairman-Mark Carpenter***

- **Secretary-Chuck McCreary**

Mark Carpenter seconded. All votes were in favor, and the motion carried.

Ms. Jean N. Kuebler, #09-01, Special Exception/Variance Request

Chairman Weeks turned over the proceedings to Solicitor Rundle. Mr. Rundle read the Application as follows:

This is Application 09-01. The Applicant is Jean N. Kuebler. She resides at 854 West Louther Street.

(Recording Secretary's note: The correct pronunciation of the Applicant's last name is "KEE-bler.")

Mr. Rundle asked Ms. Kuebler the following:

It's my understanding Ms. Kuebler, you correct me if I'm wrong, that you are filing this application for a Special Exception to expand a current nonconformity on the property and alternatively for a Variance to side yard setback if the Special Exception is not granted. Is that correct?

Ms. Kuebler replied, "I believe so."

Mr. Rundle continued to read through the Application:

The address of the property is 854 West Louther Street. It is in the R-1 Zoning District. It presently has a single-family dwelling with a 12 by 18 garage. The proposed use is a single-family dwelling with a 16 by 20 garage. The date of the Application is March 23, 2009.

Ms. Kuebler was sworn in at this time. She identified herself as Jean Kuebler of 854 West Louther Street, Carlisle. She testified that she is the owner of the property and that she has owned it for 20 years. Mr. Rundle asked Ms. Kuebler what is currently located on the property. Ms. Kuebler stated that there is a house and a "falling down garage."

Mr. Rundle then marked as Applicant's Exhibit A-1, a sketch that was made part of the Application. He noted that A-1 shows an existing house and an existing garage. Ms. Kuebler acknowledged that this was correct. Mr. Rundle asked Ms. Kuebler if he was correct that what she wants to do on the property is that she wants to tear down the garage and build a new garage. Ms. Kuebler replied, "Correct." Mr. Rundle asked if the house itself is going to remain exactly where it is now. Ms. Kuebler answered, "Yes." She went on to state that an expansion of the back of the house is planned for later this summer. Mr. Rundle noted that the expansion of the house is not presently before the Zoning Hearing Board. Ms. Kuebler acknowledged that this was correct.

Mr. Rundle referred to A-1. He noted to Ms. Kuebler that the house appears to sit 56 feet back from the right-of-way of West Louther Street. Ms. Kuebler answered, "Yes." Mr. Rundle noted that the present garage is 107 feet back from the right-of-way of West Louther Street. He asked if this was correct. Ms. Kuebler stated, "Yes." Mr. Rundle referred to the existing garage and noted that a dimension on A-1 indicates that the garage is 20 inches from the side property line. He asked if this was correct. Ms. Kuebler stated, "For all practical purposes it's right along the boundary there, so yes."

Mr. Rundle noted an arrow with an "S" shown on the right side of A-1. He asked Ms. Kuebler if this was a designation for the direction of south. Ms. Kuebler stated that it would be. Mr. Rundle asked Ms. Kuebler if it was correct that the front of her house faces north and the back of the house faces south. Ms. Kuebler acknowledged that this was correct. Mr. Rundle asked if it was correct that the garage is on the east side of the lot. Ms. Kuebler acknowledged that this was correct. She stated that the driveway comes along the east side of the property.

Mr. Rundle then referred to a stack of photographs that had been provided by Ms. Kuebler. Mr. Rundle said that he would be picking out a few of them to be marked as exhibits. He stated to Ms. Kuebler that she could have any of the other ones introduced if she wished to. Mr. Rundle then referred to a photograph that he had marked as A-2. He said that it appeared to have been taken from the front of the property looking back toward the garage. Ms. Kuebler acknowledged that this was correct. Mr. Rundle pointed out that it shows a white fence along the left side of the photograph. Ms. Kuebler indicated that this was correct. Mr. Rundle asked Ms. Kuebler if this is a dividing fence between her property and the property to the east. Ms. Kuebler stated, "Yes, the McNerney's built that." Mr. Rundle again referred to A-2 and asked if this shows the present condition of the garage. Ms. Kuebler responded, "Yes, it looks worse the closer you get." Mr. Rundle noted that there appears to be some driveway shown in the photo. Ms. Kuebler acknowledged that this was correct. Mr. Rundle asked if the driveway is blacktopped. Ms. Kuebler testified that it is blacktopped all the way back to the garage.

Mr. Rundle then referred to another photograph he had marked as A-3. He asked Ms. Kuebler if it was correct that the photo appears to have been taken from somewhere in the middle of the yard facing east and shows the west side of the garage. Ms. Kuebler stated, "Correct, yes." Mr. Rundle asked if the garage is on a foundation. Ms. Kuebler answered, "Sort of but it's crumbling and pitiful." She described it as "a pad."

Mr. Rundle referred to another photograph that he had labeled as A-4. He asked Ms. Kuebler if this was a photograph taken from the back of her property looking toward West Louth Street. Again, Ms. Kuebler indicated that this was correct. Mr. Rundle asked Ms. Kuebler if the right-hand side of the photograph shows the white boundary fence between her property and the neighbors. Ms. Kuebler answered, "Yes." Mr. Rundle asked if this photo shows that the garage is somewhat equidistant, a short distance from the property line. Again, Ms. Kuebler answered, "Yes."

Mr. Rundle then referred to a photograph that he had marked as A-5. Mr. Rundle noted the previous discussion about the foundation. He asked Ms. Kuebler if A-5 shows the foundation of the garage, or at least a few feet of it. Ms. Kuebler testified that this was correct. She indicated that she couldn't say offhand which corner is being depicted. Mr. Rundle asked if this photo shows the general condition of the foundation. Ms. Kuebler stated that this was correct.

Mr. Rundle asked Ms. Kuebler if there were any other photographs in the stack that she specifically wanted to have the Board see, or have the builder discuss. Ms. Kuebler responded that the builder could speak to that.

Mr. Rundle then referred to what he had marked as A-6. He described this as another sketch that had been made part of the Application, and noted that it had been labeled "Proposed Plot Plan." Mr. Rundle asked Ms. Kuebler if this shows what she wants to do. Ms. Kuebler replied, "Yes." Mr. Rundle then compared A-6 to A-1, which had been noted to be the Existing Plot Plan. Mr. Rundle referred to A-1 and noted that it shows an existing house of 22 feet, 6 inches by 48 feet. Ms. Kuebler indicated that this was correct. Mr. Rundle then referred to A-6 and pointed out that it shows the existing house again and also what is called a "new addition" on the back of the house. Mr. Rundle asked if it was correct that the new addition is not there yet and is not before the Board. Ms. Kuebler acknowledged that that was correct. Mr. Rundle referred to the eastern boundary of the property as shown on A-6 and pointed out what appears to be a proposed garage at 16 feet by 20 feet. He noted that the proposed garage appears to be set back 20 inches from the eastern boundary line of the property. Mr. Rundle asked Ms. Kuebler if this was correct. Ms. Kuebler stated, "Yes."

Mr. Rundle continued with his questions. He asked Ms. Kuebler why she wants the garage to be bigger. Ms. Kuebler responded, "Because it's really not much more than a shed as it is right now, and it would be nice to have a little more storage space." Mr. Rundle noted that the existing garage is 12 feet wide and 18 feet deep. Ms. Kuebler indicated that that was correct. Mr. Rundle asked Ms. Kuebler if she puts a car in the garage. Ms. Kuebler stated that she hasn't done that for probably 15 years because the garage has been "broken" and is crooked on the foundation. Mr. Rundle asked if it would be correct to say that it looks somewhat dilapidated. Ms. Kuebler answered, "Yes, oh yeah." Mr. Rundle asked Ms. Kuebler if it

was correct that she has used the garage to store vehicles since she has owned the property. Ms. Kuebler replied, "Yes." Mr. Rundle asked if a vehicle will fit in the garage. Ms. Kuebler responded, "Yes, if you're very careful." Mr. Rundle summarized to Ms. Kuebler that she wishes to expand the garage to a 16-foot width and that she wishes to extend the depth of it by 2 feet. Ms. Kuebler indicated that this was correct. Again Mr. Rundle asked Ms. Kuebler why, in her view, it is necessary to do that. Ms. Kuebler stated, "It's more desirable, I suppose, just to have a little more storage space and a little more maneuvering room to get in and out of a car."

Mr. Rundle referred to the proposed plan. He noted that Ms. Kuebler is proposing that the front of the garage be set back 117 feet from the right-of-way line of West Louther Street. Ms. Kuebler stated, "That would be maybe 10 feet farther back from where it is, yes." Mr. Rundle asked Ms. Kuebler if it was correct that she wants to move it back 10 feet. Ms. Kuebler answered, "Yes." Mr. Rundle asked Ms. Kuebler why she wants to move it back 10 feet. Ms. Kuebler testified that she is hoping to build onto the kitchen. She noted that this is the proposed addition to the house that is not before the Board tonight. Mr. Rundle asked Ms. Kuebler if her "ultimate plan" is that she wants to put a 16-foot addition onto the back of the house at some point. Ms. Kuebler replied, "Yes." Mr. Rundle asked Ms. Kuebler if she was saying that if the garage were left in its current position, there wouldn't be enough room to put the 16-foot addition. Ms. Kuebler responded, "Correct, the space between the line of the garage and the house, you could barely get a lawnmower through there. "

Mr. Rundle asked what the problem would be with moving the proposed garage closer to the center of the lot, and taking it farther away from the eastern boundary of the lot. Ms. Kuebler gave the following testimony:

Well, the basic idea is that the driveway goes straight back to the garage and if you move it over much then you get into turning the driveway and not much space and a very awkward entry in and out. And also, again, it would start running into where the house is and where the house would be.

Mr. Rundle noted that it appears on A-6 that there will be some distance between the back of the proposed addition and the front wall of the proposed garage. Ms. Kuebler stated, "Correct." Mr. Rundle pointed out that this distance is not marked on A-6. He asked Ms. Kuebler if she could estimate what that distance might be. Ms. Kuebler testified that it would be about 6 feet. Mr. Rundle also noted that there appears to be some very slight proposed overlap of the garage and the house right now. Ms. Kuebler indicated that that was correct. She stated, "There's not a whole lot of room in there to play with, just for even foot traffic."

Mr. Rundle again referred to A-6. He noted what had been labeled as a "large tree" in the center of the lot. Ms. Kuebler stated, "It is a large tree." Mr. Rundle asked Ms. Kuebler if she had a photograph of that tree. Ms. Kuebler did not have a photograph to submit. She said that it is about halfway between the back of the house and the south end of the property. She added that it is a large mulberry.

Mr. Rundle then had a photograph labeled as T-1, or Township Exhibit 1. He showed it to Ms. Kuebler. Mr. Rundle asked Ms. Kuebler if he was correct that T-1 appears to have been taken from the rear of her property, towards the back of the house, and that the photograph does show a tree in the center. Ms. Kuebler replied, "It does." Mr. Rundle asked if this is the large tree that is shown on A-6. Ms. Kuebler responded, "It would be." Mr. Rundle asked Ms. Kuebler if it was her intention to leave this tree on her lot. Ms. Kuebler stated, "Yes."

Mr. Rundle said he knew that Ms. Kuebler wanted her builder to be able to give the Board some more detailed information on the type of structure she is planning to put up and things of that nature. Mr. Rundle asked Ms. Kuebler if there was anything else that she wished to testify to personally this evening. Ms. Kuebler gave the following testimony:

I think the basic idea is that the current structure is in pitiful condition and needs to be replaced to be useful and responsible and the existing structure is right along twenty inches or so from the property line

and it just doesn't seem like there is much other practical place to put it than more or less in the area where it is now. So that's the basic idea.

Mr. Rundle asked for any questions from the Board for Ms. Kuebler. Mr. Carpenter asked Ms. Kuebler if she is the sole owner of the property. Ms. Kuebler responded, "I am." She explained that her husband, Cyril Dwiggin, died two months ago. Mr. Carpenter had no other questions at this point. Mr. McCreary had no questions. Mr. Weeks asked Ms. Kuebler if she had considered an attached garage. Ms. Kuebler said that she had thought about it. Mr. Weeks asked if there was something unique to the property that would prevent an attached garage to replace the existing garage. Ms. Kuebler responded to Mr. Weeks' question:

Again, there would be the problem with how to get through to the back yard from the driveway, and if the garage were attached to the back of the house, then I wouldn't be able to look...then I wouldn't have windows in the kitchen. I mean, so we talked...I've thought about and my husband and I had thought about could there be a connecting passageway or something, but again it has seemed crowded.

Solicitor Rundle noted that members of the public were present. He asked if any member of the public wished to ask a question of Ms. Kuebler. No member of the public came forward.

Mr. Rundle asked Ms. Kuebler if she wished to have her builder testify. Ms. Kuebler indicated that she did. Mr. Wolf was sworn in at this time. He identified himself as Donald Wolf. He testified that his occupation is general contractor for Wolf & Son Construction. Mr. Rundle asked Mr. Wolf if he had been retained by Ms. Kuebler to perhaps build a garage on her property. Mr. Wolf answered, "Yes." Mr. Rundle marked as Applicant's Exhibit 7 a packet of numerous pages which show on the first page a proposed 16 by 20-foot garage. Mr. Wolf stated, "That's correct." Mr. Rundle asked Mr. Wolf if he would like to go through this exhibit page by page and tell the Board what is being shown. Mr. Wolf indicated that he would.

Mr. Wolf gave the following commentary on the first page of A-7:

On your first page is just showing the basic 16 by 20 garage, 9-foot garage door, 9 by 7. Your standard 3-0 or 3-foot entry door, and I have a total of three windows; only one that you can see on that first drawing. This is basically just an overall shot of what the finished product will look like.

The second sheet was noted to be the Overall Dimension Plan. Mr. Wolf gave the following commentary:

This just gives you guys overall dimensions of the 16 by 20. Show you placement of windows, placement of doors and the overall, again, dimension of the 16 by 20.

Mr. Rundle referred to the area to the left of the main garage door. He noted a dimension of 3 feet, 4½ inches. Mr. Rundle asked Mr. Wolf if there was something "magical" about that number. Mr. Wolf replied, "No, every time I made an adjustment there on my program, for some reason it kept kicking back to that dimension to try to get the door in there centered." Mr. Rundle asked Mr. Wolf if it is necessary to have the garage door centered. Mr. Wolf answered, "Yes, that's how I build. That's the way it looks correct and proper." Mr. Rundle said he was sure that aesthetically it does look proper. He asked if structurally there is any reason to have it centered. Mr. Wolf testified that there would be no structural sense behind it and would be more for appearance when pulling in. Mr. Rundle asked Mr. Wolf, "If, hypothetically, if the Board wanted the structure to be set back farther from the current 20 inches from the eastern property line, would that eastern wall of the garage be moved closer to the center of the garage without causing structural problems?" Mr. Wolf responded that it wouldn't cause structural problems. He asked Mr. Rundle if he was saying to throw the door out of center and make the left or right wall smaller than the other. Mr. Rundle replied, "Or just make the overall garage narrower to have the eastern wall farther from the property line." Mr. Wolf gave the following statement:

Well, you've got to figure your average car is what, 7-foot, 7-foot 6 in width. I can come down to an 8-foot garage door, but until you pull a 7-foot, 7-foot 6 car through an 8-foot garage door, your mirrors are...

Mr. Rundle stated, "It's tight." Mr. Wolf acknowledged that this was correct. He explained that this is why the 16-foot width was chosen, and that this would allow Ms. Kuebler to get a 9-foot garage door. He added, "But to answer your question, structurally it wouldn't make a bit of difference."

Mr. Rundle noted that the next page of A-7 was the Full Elevation Plan. Again, he asked Mr. Wolf to explain what this shows. Mr. Wolf stated the following:

Again, basically this is just showing what's going to be underground. The 16 by 20. I'm showing approximately where the grade is going to finish off at. Down at the very bottom, the underside would be your concrete footer, and there's more details throughout the pages that will go into detail regarding the actual specs, but this is just showing your foundation part of the garage.

Mr. Rundle asked Mr. Wolf to provide the overall height of the garage. Mr. Wolf testified that it will be roughly 8 feet to the overhang and approximately 14 feet to the peaks at the highest point. Mr. Rundle asked how this compares to the existing garage. Mr. Wolf replied, "It's going to be pretty close, actually."

Mr. Rundle then noted that the next page of A-7 was marked as Foundation Plan. He asked Mr. Wolf if there was anything he wanted to point out on this sheet. Mr. Wolf gave the following testimony:

The Foundation Plan just goes into a little more detail of what I'll be installing into the foundation. From block to the concrete footer to a rebar that goes in the block that goes in the footer...backfilled with stone, plastic, just showing everything pretty much in a step by step of how I go about doing my foundations.

Mr. Rundle noted that the next page of A-7 is also marked Foundation Plan. Mr. Wolf stated, "Yes, this is just showing the footers for the 16 by 20. Mr. Rundle noted that the next page appears to show the actual trusses, etc., and above-grade construction. He asked Mr. Wolf if this was correct. Mr. Wolf responded, "Yeah, this is just a layout of the framing, for the most part."

Mr. Rundle asked what the last page shows. This page was noted to be the Electrical Plan. Mr. Wolf stated, "This is just a plan to show what electric is going to go into that garage, from outlets to switches to light fixtures." Mr. Rundle asked what the exterior of the structure will be. Mr. Wolf testified that it will be vinyl siding. Mr. Rundle asked Mr. Wolf if there will be any lighting on the exterior of the building itself. Mr. Wolf answered, "Yes." Mr. Rundle asked where it will be. Mr. Wolf testified that there will be a total of four exterior lights. He described these as two for the garage door, one for the entry door, and a floodlight. Mr. Rundle asked where the floodlight will be. Mr. Wolf noted that he didn't show the floodlight on A-7, and explained that this is "kind of an option for my customer." He said that it would likely be on either the south side or the west side to light up the back yard. Mr. Rundle asked what lighting will be on the front of the garage, facing north. Mr. Wolf testified that there will be a light fixture on each side of the garage door.

Mr. Rundle then referred back to A-1, which is the Existing Plot Plan. Mr. Rundle asked Mr. Wolf if it was correct that the garage has to be moved back to put in a future addition to the house. Mr. Wolf replied, "That's correct." Mr. Rundle asked Mr. Wolf if not for the future addition to the house, would the garage be exactly where it is now, only larger. Mr. Wolf stated, "Well, if that wasn't in her plans I would think that she would possibly still prep for that for in the future if she did want to add on."

At this point Mr. Rundle asked Mr. Wolf to tell the Board what kind of "heartburn" it would create to have this garage moved farther in towards the center of the lot, or what would be farther west. Mr. Wolf asked if it was correct that the required setback is 10 feet for structures over 200 square feet. Mr. Lao acknowledged that 10 feet is correct. Mr. Wolf responded with the following testimony:

If we get within that setback, basically the addition's going to be set in there at like a 45-degree angle roughly, just to compromise and work with the Township. Appearance-wise that makes no sense. She's sitting in her new kitchen or even in her existing kitchen right now and all she sees is this garage on an angle. If we move it to basically the center of the yard, still she's staring at it, but the yard itself is only 64 feet.

Mr. Rundle asked Mr. Wolf to assume hypothetically that the garage was moved to a setback of 5 feet from the side yard. He asked Mr. Wolf what problems this would create. Mr. Wolf responded with the following:

Well, other than the fact that she wants to keep it where it's at, and she wants to of course move it back, I mean my point to you is, you take...like my truck is 19-foot long. Her car measures a little over 13 feet. You take your 64 feet in the width of the existing property, you take out the property setbacks, until you get a curve in your driveway to comfortably pull in to that garage, I mean there's just no room...and I mean that's just based on her having the car that she has now. What happens if she steps up to something like a Suburban in the future? It's just as she stated, it's just too tight. The garage has sat there for how many years. It hasn't hurt anybody. It's falling over. She just wants to demo it, move it back, build it a little bit larger so she can actually get full use out of it, and get what she's paying for.

Mr. Rundle noted that the point is she wants to make it bigger. Mr. Wolf acknowledged that this was correct. Mr. Rundle pointed out that even leaving it where it is, it's going to stretch farther into the interior because it's going from a 12-foot width to a 16-foot width. Mr. Wolf stated, "That's correct." Mr. Rundle referred to the earlier testimony from Ms. Kuebler. Mr. Rundle noted that she wants it bigger to have it bigger, basically. Mr. Rundle asked Mr. Wolf if there was any other testimony that he wanted to offer to the Board. Mr. Wolf replied, "No, I think we said everything we needed to say."

Mr. Rundle asked for any questions for Mr. Wolf from the Board. Mr. Carpenter asked the following:

I was looking at your exhibits, the existing and proposed exhibits; A-1 and A-6. On the existing, the distance from the existing house to the southern property line is 162 feet. On the proposed, the distance from the new addition to the property line is 140 feet. 162 minus 140 is 22 feet, but it looks like the addition is only shown as 16 feet deep. How deep is the addition?

Mr. Wolf testified that the overall finished product of the addition is going to be 16 feet, but he explained that Ms. Kuebler has approximately 10 feet there right now of existing kitchen that is going to be incorporated into the proposed kitchen addition. Mr. Carpenter indicated that what he was saying was that the math didn't quite add up when he looked at the property. Mr. Carpenter then asked this:

The same goes the existing garage. It's shown as 140 feet from the southern property line on your existing plan. The new garage is shown 128 feet from the property line, yet you only moved the garage back 10 feet. I guess that's because of the larger size of the garage. Is that it?

Mr. Wolf responded, "I believe so." Mr. Carpenter said he felt that there was a little trouble with those measurements on the house part of it. Mr. Carpenter continued with his questions:

My other question, along the lines of Mike's. What would exclude you from building a 16 by 20 garage and moving it back further on the lot and setting it 5 feet off the line? You're testifying that there would be trouble getting a car into the garage?

Mr. Wolf responded to Mr. Carpenter:

I don't think there would be a difficult of pulling it in. I just think it's the appearance of when you come up into that new driveway and seeing that the garage is slightly cockeyed a little bit. You know, if you're going to have it like that, you might as well turn it and position it in there that the driveway does flow, but again it's going to be tight, not to mention that she's not going to have any back yard. It's all going to be building and driveway, to get around to go to the back part of the property.

Mr. Carpenter noted that he had viewed an aerial of the property and had also driven by and looked at it. He said that there seems to be plenty of room between the house and the mulberry tree to place the garage and have it 5 feet off the property line without even angling the garage. He asked Mr. Wolf, "You don't agree with that?" Mr. Wolf responded to Mr. Carpenter's question:

I don't think it is reasonable. It is possible. I mean to try to back out of that in the nighttime without catching the corner of the house or the new addition based on getting that 5 feet to...I mean I guess where you guys are coming from is trying to compromise.

Mr. Carpenter asked Mr. Wolf if he had considered a side-entry garage at all, where the garage would be in the center of the yard at the back and the entry would be from the side. Mr. Wolf stated:

No, and again it's...we just feel when you start laying out how much room you're going to need to make the turn in the blacktop and some room to come up onto the garage before you actually pull in, that 64 feet with the garage and the setbacks disappears extremely quick.

Mr. Carpenter asked to look at A-6, which is the Proposed Plot Plan. He asked Mr. Wolf how the car in the garage will get back out to West Louther Street once it is pulled into the garage. Mr. Wolf replied, "You'd back right out." Mr. Carpenter asked if the fact that there is no turnaround isn't really a problem. Mr. Wolf responded, "If it's where it's sitting right now, but larger and set back 10 feet, there would be no turnaround. You would pull in and pull right out." Mr. Carpenter had no further questions at this point.

Mr. Weeks noted that there are no rain gutters shown in the diagrams on the east side. He pointed out that the water runoff will be splashing into the 20-inch space. Mr. Wolf testified that there will be gutters. He stated that if they are not shown, it was a mistake on his part. He added that the gutters are shown in the copy of the contract. Mr. Weeks asked what direction the water runoff will be directed. Mr. Wolf responded that it will probably be run to the southern end.

Mr. Weeks mentioned that Mr. Wolf had talked about lighting. Mr. Weeks asked Mr. Wolf if it is clear that the North Middleton Township Ordinance says that if outdoor lighting is used, it cannot impede on a neighbor. Mr. Weeks noted that the garage is 20 inches away from the neighbor. He asked Mr. Wolf if he was aware that this is a requirement. Mr. Wolf answered, "Yes."

Mr. Weeks referred to the width of the blacktop. He asked Mr. Wolf how wide it is. Mr. Wolf testified that right now it is approximately 9 feet. Mr. Weeks mentioned the 3-foot, 4-inch panel that will be added to the eastern side of the proposed garage. He noted that the distance from the outside wall is really being expanded. Mr. Weeks asked if the blacktop is going to be shifted, and if some more blacktop is going to have to be done at a slight angle. Mr. Wolf gave the following answer:

Well, right now with the contract between me and Ms. Kuebler, the blacktop is going to end right now where the existing garage sits, and then from there will be to-be-modified stone that will come in that will come right up to my concrete pour until she can get over this hump and this phase of everything she's going through and then in the future to re-blacktop.

Mr. Weeks asked if it was correct that the 9-foot straight path is going to have to expand. Mr. Wolf responded, "That's correct." Mr. Weeks asked Mr. Wolf if there is some unique characteristic of this property, other than the tree, that prevented him from adhering to the Township Ordinance in laying out the design. Mr. Wolf answered, "No." Mr. Weeks had no other questions for this witness.

Mr. Rundle asked if any member of the public wished to ask a question of the witness. Mr. House came forward. He identified himself as Michael House of 850 West Louther Street. He stated that he is the next door neighbor to the east. He asked the following question of Mr. Wolf:

I just wondered, have you made any provisions for removal and replacement of the fence in kind? I assume that if the building is constructed as proposed, the fence is going to be in the way...the boundary fence, and I just wondered if you had made any provisions for replacing that fence only because I know the rock is shallow there so there's...those posts are poured in concrete and if you do any excavation near that it's going to affect the fence.

Mr. Wolf acknowledged that the fence will be affected. Mr. Rundle asked him what he plans to do with the fence. Mr. Wolf gave the following answer:

Well, we're going to have to take a portion of it down during construction and in scope and plans with the work is to reuse the fence, take it down without damaging it and put it back up. I've already done plenty of work at this residence and believe me we definitely know about the limestone but unfortunately I can't really tell you exactly how it's going to go back up until we start drilling holes and digging, but right now the plan is to take it down, keep it in good condition, and save it and reuse it.

Mr. Rundle asked Mr. House if he had any other questions. Mr. House asked Mr. Wolf what type of roof will be used. Mr. Wolf stated that it will be asphalt shingles. Mr. House asked about the pitch. Mr. Wolf said he believed that he will have a 6/12 on it for a truss. Mr. House had no other questions.

Mr. Rundle asked Mr. House if he wished to offer any testimony this evening. Mr. House replied, "No, I don't." Mr. Rundle asked if any other member of the public wished to offer testimony. No member of the public came forward. Mr. Rundle asked Ms. Kuebler if she had any other testimony to offer. Ms. Kuebler responded to the question of the side-entry garage as follows:

Partly because the straight entry to the garage, backing in and backing out is the most practical and I'd be bumping into the fence probably if it...with the room there is to get around. Also, because I think the point of having a back yard is to have a yard with lawn and shrubberies and garden and so on and there's things I like there like apple tree and lilac and so on that are nice in the area where the garage would go if it were sideways, and also there is a septic tank under there sort of in the middle, you know, where the septic tank used to be, that's still kind of...

At this point Mr. Rundle asked Ms. Kuebler if the property has public sewer there now. Ms. Kuebler stated that there is sewer there now. Mr. Rundle asked Ms. Kuebler if she was testifying that there is an existing tank that is no longer hooked up. Ms. Kuebler replied, "Right." Mr. Rundle asked Ms. Kuebler if she had anything else. Ms. Kuebler continued her testimony:

And again, I think that the 16 by 20, or if it's 15½ by 19½, that's not really a big deal, but 16 by 20 seems like a reasonable and modest enlargement of the existing structure.

Mr. Weeks asked Ms. Kuebler if a 14 by 20 garage would satisfy her. Ms. Kuebler noted that this would be a little wider than it is now and a little deeper than it is now. She stated, "Yeah." Ms. Kuebler also mentioned lights. She stated, "I'm kind of minimal on the lights." Mr. McCreary referred to the existing fence that is there. He asked Ms. Kuebler if this is her fence. Ms. Kuebler testified that it is not her fence and that it is the House/McNerny fence. Mr. McCreary noted that a window is being proposed on that side of the garage. He asked if this window will have a view or if it will just be looking at fence. Ms. Kuebler answered that right now it is fence/garage/fence. She added that it would be up to them if they want to put fence up and that right now the garage is on the boundary instead of fence. Mr. McCreary asked if the fence goes the whole way to the back of the property. Ms. Kuebler indicated that this was correct, but clarified that what she was saying is that there is no fence where the garage is.

At this point Mr. Rundle said he wished to add some clarification. He labeled as A-8 another photograph from Ms. Kuebler. Mr. Rundle asked if it was correct that this was a photograph of the east side of the garage taken from the House property. Ms. Kuebler testified that this was correct. Mr. Rundle asked if the photo shows that the fence comes from the road to the front of the garage and then goes from the back of the garage towards the rear of the property. Ms. Kuebler answered, "Yes, except actually it doesn't go all the way out to the road." Mr. Rundle asked if it goes towards the road. Ms. Kuebler acknowledged that that was correct.

At this point Mr. Carpenter asked Mr. Rundle if it was correct that the first alternative is a Special Exception for the expansion of a nonconforming use. Mr. Rundle indicated that this is the first alternative. Mr. Carpenter asked where this is in the Ordinance. He referred to Section 204-16.C and said that he couldn't find it when he printed it offline and noted that he didn't see it. Mr. Rundle suggested that a recess be taken.

The hearing went off the record at 7:47 p.m. The hearing resumed at 7:51 p.m.

Mr. Rundle said he wished to note that the Application asks for the Special Exception under Section 204-121, and that the correct section is 204-112. He added that there had been a transposing of the numbers on the Application. He addressed Ms. Kuebler:

Correct me if I'm wrong Ms. Kuebler. What you want to do is expand a current nonconformity on the property. The nonconformity being the 12 by 18 garage to a 16 by 20 garage. Am I correct?

Ms. Kuebler acknowledged that this was correct. Mr. Carpenter referred to Section 204-112.A.(4) and asked Mr. Rundle if it was correct that it says that the yard should be in conformity with the existing ordinance when the nonconformity is expanded. Mr. Rundle answered, "It does say that." Mr. Carpenter then asked Ms. Kuebler if she is applying to expand a nonconforming use which is a garage that's dilapidated, and that she wants to replace and rebuild it with a slightly larger structure. Ms. Kuebler indicated that this was correct. Mr. Carpenter asked if the expansion is expanding the depth and width of the garage, thereby increasing the area. He asked if this is the expansion. Ms. Kuebler responded, "Right, it would do that." Mr. Carpenter asked if the expansion will be that the garage is 2 feet deeper and will still have a 20-inch side yard setback. He asked Mr. Rundle if this was correct. Mr. Rundle indicated that this was correct. He explained that more building is going to be within 20 inches of the side yard. Mr. Carpenter asked Mr. Rundle if the area was not the expansion since that is permitted as an accessory in that district. Mr. Rundle stated, "That is correct."

Ms. Kuebler spoke again at this point:

May I revise my answer to Mr. Weeks about would I be satisfied with a 14-foot wide garage, and on the one hand compared to what I've got now that seems good, but talking with the contractor during the recess he reminded me that 14-foot would still be tight getting in and out of the car and having room for anything else, so I'd be happier with a 16-foot just for it to be a useful garage.

Mr. Rundle noted that the depth of the building is being discussed and that the depth is what creates somewhat of the expansion. He asked Ms. Kuebler if she would have a problem with a 16-foot wide garage and leaving the existing depth at 18 feet. Ms. Kuebler replied, "The advantage of having those two more feet would be having a little more storage space." Mr. Rundle stated, "The question is, could you live with a 16-foot by 18-foot garage?" Ms. Kuebler responded, "Well, on the one hand I've lived with a 12 by 18 foot garage for the last twenty years and I'm here to tell the tale. On the other hand I would much prefer having the 20-foot depth to make it useful."

Mr. Weeks indicated that he wished to clarify one thing with the builder. He asked Mr. Wolf if he was saying that he could not put a 9-foot door in a 14-foot building. Mr. Wolf replied, "No, I did not say that."

The Board had no other questions at this point. Mr. Rundle asked that Mr. Lao be sworn in at this time. Mr. Lao was sworn in. He identified himself as Ruben Lao. He stated that he is the Zoning Officer of North Middleton Township. Mr. Rundle asked Mr. Lao if this hearing had been advertised in accordance with the Municipalities Planning Code. Mr. Lao replied, "Yes it has." Mr. Rundle asked if the property had been properly posted in accordance with the Municipalities Planning Code. Again, Mr. Lao answered, "Yes it has." Mr. Rundle pointed out that the public notice does make reference to Section 204-121. He asked Mr. Lao if he agreed that it should have been Section 204-112. Mr. Lao responded, "That's correct."

Mr. Rundle asked Mr. Lao if he had been out to see the property. Mr. Lao stated, "I have." Mr. Rundle noted that Mr. Lao had taken some photographs while he was at the property. Mr. Lao stated, "That's correct, I have." Mr. Rundle asked Mr. Lao if there were any photographs that he wished the Board to be cognizant of. Mr. Lao noted that he had photographs of the garage as it sits now, and also the drive to the garage, if it is of some help. He also explained that he had photos of the rear of the property showing the location of the existing septic tank which has been abandoned and, to his knowledge, is not being used. Mr. Rundle marked this photo as Township Exhibit #2. He showed this to Mr. Lao and asked if the middle

area of this photo shows a small cement pad where the prior septic system had been. Mr. Lao stated, "I believe that's it, correct." Mr. Rundle asked if this was the location of the tank underneath the pad. Mr. Lao replied, "Yes." Mr. Rundle asked Mr. Lao for anything else that he felt the Board should see. Mr. Lao again referred to the rear yard and pointed out a pipe coming out of the ground where the well used to be. He added that he didn't know if it was still operational or not. Mr. Rundle marked this photo as T-3. He asked Mr. Lao if there is public water on the property now. Mr. Lao replied, "I believe there is public water on the property, yes."

Mr. Lao introduced another photo which he said was taken from the rear of the yard, at what he believed to be the southernmost end of the property. Mr. Lao explained that this photo shows the depth of the yard, the tree, and where there is another building existing back there. Mr. Rundle marked this photo as T-4. He noted the building on the right-hand side of the photo and asked if this is on Ms. Kuebler's property. Mr. Lao said he believed that this building is on the property of the neighbor who testified earlier. Mr. Rundle asked if this is the property to the east. Mr. Lao acknowledged that that was correct.

Mr. Rundle asked Mr. Lao if he had anything else he wished to testify to. Mr. Lao had nothing else. Mr. Rundle asked Mr. Lao if the Township had taken a position on this application. Mr. Lao replied, "No." Mr. Rundle asked for any questions from the Board. The Board had no questions for Mr. Lao. Mr. Rundle asked Ms. Kuebler if she had any questions for Mr. Lao. Ms. Kuebler had no questions. Mr. Rundle asked if any member of the public had a question for Mr. Lao. No member of the public came forward.

Mr. Carpenter indicated that he had thought of a question. He asked Mr. Lao if the Township requires that a well be properly capped and sealed, and that a septic tank be properly abandoned by crushing it or removing it when public water and sewer are installed on a property. Mr. Lao gave the following response:

They don't...to the best of my knowledge once the city sewer and water is hooked up, I'm not aware that that's the case, to be honest with you. I think if they have an existing well and they wanted to use it for watering their grass or whatever, then they could still do that. As far as the existing septic tank, I believe it's supposed to be filled, but I don't know that it's mandated.

Mr. Weeks also indicated that he had thought of a question. He referred to the photographs submitted by Mr. Lao. He asked Mr. Lao if he saw anything in those photos that suggest that this garage cannot be moved back and further to the west. Mr. Lao answered, "From the pictures...no, it could be if that were the desire."

Mr. Rundle asked Ms. Kuebler if she had wanted to offer some more testimony to make some corrections. Ms. Kuebler gave the following testimony:

Just very small revisions on Exhibit T-2 that the concrete pad, it's currently a compost pile but that's where what I believe was the outhouse was in the original life of the house and I'm pretty sure that the little pipe coming up that you referred to is not for the well...no, that pipe was for the well, and there's another little pipe that marked where the entrance for the septic was, but the well and the septic are no longer working and they did whatever was needful when we made the transition so we're on city sewer, city water.

Mr. Rundle asked Ms. Kuebler, "And again but for some additional storage, a garage that was 16 feet wide by 18 feet deep, you would not want. Are you telling the Board that?" Ms. Kuebler replied, "I would prefer the 20 feet."

Mr. Carpenter had another question for Ms. Kuebler. He asked the following:

I understand the Application's amended to be for Special Exception of nonconforming use first, and in the alternative, a Variance. If the Special Exception was approved, but a 10-foot setback was required, would that be preferred over a Variance with somewhat less than a 10-foot setback.

Ms. Kuebler indicated that she didn't understand the language that Mr. Carpenter was using. Mr. Carpenter spoke again:

If we granted a Special Exception for expansion of a nonconforming use, but required that the building be set 10-foot off the property line, would that be preferred or would a Variance be preferred that would allow the new garage to be built somewhat less than 10 feet from the property line.

Ms. Kuebler indicated that she understood. She responded, "My preference would be for a new garage to be as close to where the current thing is as possible, so I guess that means the latter." Mr. Carpenter asked Ms. Kuebler if she was proposing any buffer or screening between the new garage and the neighboring property if she is allowed to locate it 20 inches from the property line as it exists now. He asked if there will be a fence or if the fence will be similar to the way it is now such that it breaks in the front and the back of the garage. Ms. Kuebler replied, "We haven't had that conversation but I would think that between the neighbors we'd work out something agreeable." At this point Mr. Weeks pointed out to Ms. Kuebler that she had been provided a paper with the requirements listed on it. Mr. Weeks suggested that Ms. Kuebler take a few minutes to review that with her builder so that she is aware of what she is asking for and is able to answer Mr. Carpenter's question.

A recess was taken at 8:04 p.m. The hearing went back on the record at 8:08 p.m.

Mr. Carpenter repeated his question. He referred to Section 204-112 under "expansion or alteration of a nonconforming use." He noted that #6 requires buffer or screening be provided to adequately protect the neighboring property. He explained that this includes fences, walls, planting, and open spaces. He asked Ms. Kuebler, "If you were granted the right to reconstruct the structure within 20 inches of the property line as it is today, would you be willing to have an adequate buffer between you and the neighbor?" Ms. Kuebler stated, "As I was saying before, the answer would be yes, if the neighbors felt they needed to be protected from my garage." Mr. Carpenter asked Ms. Kuebler if she would be willing to accept that as a condition if the Special Exception was to be granted. Again, Ms. Kuebler stated, "Yes."

Mr. Weeks asked for any other questions. None were offered. Mr. Weeks suggested that the record be closed at this time. The record was closed at 8:09 p.m. Ms. Kuebler made a closing argument. There was some discussion.

Decision: Ms. Jean N. Kuebler, #09-01, Special Exception/Variance Request

Regarding the Special Exception:

At 8:21 p.m., Mark Carpenter moved that the Special Exception be denied. Charles McCreary seconded. There was some brief discussion on the motion. Chairman Weeks called for a vote. All votes were in favor, and the motion carried.

There was some further discussion. Regarding the Variance:

Henry Weeks moved to grant the Applicant a Variance as requested to Section 204-16.F.(2)(b) to construct a garage as depicted in the exhibits with the following conditions:

- ***The structure may be erected no nearer than five (5) feet to the eastern property line of the Applicant's property.***
- ***The Applicant must comply with all other applicable federal, state, and local laws, rules, and regulations.***

Mark Carpenter seconded the motion. There was some brief discussion. Chairman Weeks called for the vote. All votes were in favor, and the motion carried

Mr. Rundle explained to Ms. Kuebler that she has a period of thirty (30) days in which to appeal this decision to the Court of Common Pleas if she feels this board has made an error. Mr. Rundle further explained that the neighbors also have a period of thirty (30) days in which they have a right to appeal this decision, if they so desire.

Mr. Rundle recommended that the Applicant wait until the end of the 30-day period before beginning any construction. He noted that any construction done before then will be done by Ms. Kuebler at her own risk. Mr. Weeks clarified that only the neighbors who were present tonight have the right to appeal this decision. Mr. Rundle confirmed that this was correct.

Minutes from Tuesday, January 13, 2009

It was noted that the Board had not received printed copies of the minutes from the January 13, 2009 Zoning Hearing Board meeting. Chairman Weeks suggested that this matter be postponed until the next meeting.

Adjournment

Chairman Weeks asked for anything else for the good of the order. Nothing was offered. With no further business before the Zoning Hearing Board at this time, the meeting adjourned at 8:42 p.m.

Respectfully Submitted,

Charles McCreary
Secretary
North Middleton Township
Zoning Hearing Board

Michael S. Medvid
Recording Secretary