ZONING BOARD OF APPEALS
REGULAR MONTHLY MEETING, MONDAY, June 10, 2013
ERLINGHAUSER ROOM, 7:00 PM

The Ansonia Zoning Board of Appeals held its regular monthly meeting on Monday, June 10, 2013. The meeting began at 7:15 p.m. and the following applications were acted upon.
Roll Call:

Claudia Degnan	Present
Laura Gagnon	Absent
Joseph Jaumann	Present
Nicolas Gentile III	Absent
John Sanza	Absent
Ron Vaccaro	Present
Jeff Gould	Present
Florence Camilleri	Present
Jamie Puro	Absent

5 Present, 4 Absent
Also present: Atty. George Boath
ZEO James Tanner

A quorum was present

Mrs. Degnan declared the meeting open at 7:05. The meeting began with the pledge of allegiance to the flag. A quorum was present. Mrs. Degnan entertained motions to approve the minutes. Mr. Jaumann made a motion to approve the minutes. The motion was seconded by Mr. Gould. All were in favor of the motion.

1. Joan Hudobenko, 51 Franklin Street, Ansonia, for property located at the same address, is seeking an appeal of the Zoning Enforcement Officer cease and desist order.

Atty. Dominic Thomas was present representing the applicant. He stated that this is an appeal of the Zoning Enforcement Officers cease and desist order with respect to the construction of a garage. He then stated that the situation was that the applicant spoke to her son-in-law, Robert Sojka, a licensed contractor, about replacing the garage a few weeks prior to Hurricane Sandy as the structure had started to lean. Mr. Sojka then replaced the garage in exactly the same footprint and made it so that it resembled the existing house with regard to color and shape. Mr. Sojka did this without getting any permits. The building official came out and spoke to him and Mr. Sojka stated that he would go and get the permits the following Monday. When he went to the office, he was not issued a permit and

was given a cease and desist letter instead. Apparently the garage is a couple of feet higher than the original garage. He then stated that it is their position that the height is irrelevant simply because the nonconformity of the garage is not the height. The nonconformity that is in question relates to the fact that it was a violation of the setbacks which were passed long after the property was built in 1903. With respect to this area of Franklin Avenue, he will present pictures so that the board can see that most of the garages in the area are similar. His client built on the exact footprint and the garage is now more stable than the original one was. Atty. Thomas felt that it was strange that when his client went and asked for a permit, he was told that he had to apply for a variance. He feels that he did not have to apply for a variance in this circumstance. He then presented a number of photographs to the board. He then stated that it is their position there is no requirement to get a variance as the garage was built in the exact footprint as the original garage. The regulations, he believes, support their position.

Mr. Robert Sojka, 36 Hidden Pond Lane, Trumbull then addressed the board. He stated that the garage at 51 Franklin Street had a bad "list" to it. It dates back to over 100 years old. He stated that his mother-in-law was quite concerned about the safety of the structure and requested that he raze it and replace it with a new structure. He then stated that the building department has strange hours and it's difficult to get there. He then explained that the garage that they razed was 18'6" from the garage floor slab to the inside of the ridge beam. The new garage is 20'. The new garage was built completely on the same slab. The only difference is the extra foot in height. Atty. Thomas asked if there were supporting beams in the old structure and was the 2nd floor used for storage. He was told that it did have supporting beams and that it was used for storage. Atty. Thomas asked if the upstairs of the garage was usable for human habitation. He was told that it was completely uninhabitable.

Mrs. Degnan asked what the second floor is currently being used for. She was told that it is just the attic. It's only about 3 feet tall. The only space that is free is the center section and that's used for storage.

Atty. Thomas passed out additional plans and photographs that are more detailed of the garage. Atty. Thomas said that the regulations **(Section 110.3 Building Accessory)** state that a detached accessory building over fifteen feet in height **or** one story in height shall observe the same setbacks as for main buildings. He further explained that even though there are stairs inside the structure, which would make it an attic, according to the definitions, "Attics not used for human occupancy shall not be considered a story." Therefore, the garage is a "one story building" according to the regulations. If it was non-conforming before, it is not conforming after. Atty. Thomas then stated that it had to have the same setbacks as the main building. In the B zone, the main building had to be 20 feet from the front yard, 10 feet from the side yard. He then stated that both side yards are 25 feet from the rear yard. He further explained that when the regulations were passed, almost all of the properties are non-conforming in regards to setbacks. He stated that their position is that they did not expand the non-conformity in any way. He stated that the non-conformity is not the height. He stated that the regulation on the 15 feet simply says detached accessory buildings over 15 feet in height or one story in height shall observe the same setbacks for a

main building. Atty. Thomas then stated that the only time that there is an expansion or a difference would be if that building were to be constructed to 35 feet (**Schedule C of the Zoning Regulations**). He then stated that his client went to apply for the proper permits and was denied. He was told that he would have to go for a variance. Atty. Thomas believes that he does not need a variance as this was built on the same footprint. It was constructed appropriately. The original building as it existed was in poor condition. He then read Section 245.3.1 to the members. He then added that because the structure was leaning and in danger of falling over and then recited Section 245.4. He then stated that the previous existing structure was a garage with some storage above it, the new structure is the same. He reiterated that it is on the same footprint so it doesn't increase the nonconforming setbacks. The height issue, no matter what it is, is irrelevant under the zoning regulations. He then stated for the reasons he has stated, the board should sustain the appeal and leave the garage as it currently is.

Mr. Jaumann then asked if the applicant is stating that it was "an act of God" that caused this problem. Atty. Thomas stated that it was a damaged garage that needed to be reconstructed, but it was on the same footprint. The structure was damaged and was leaning and the building was structurally not safe.

Mr. Gould asked if there were any pictures of the original garage. He was told that what had been submitted was the best he could provide. Atty. Thomas stated that according to the regulations, you can rehabilitate the structure and improve in a manner which does not enlarge or increase the nonconforming status. At that point, you need to determine what is the nonconforming status. All that is making this nonconforming is the setbacks. Whether you determine it to be accessory setbacks which is six feet which was in violation, or the fact that since it was over 15 feet, it should have been 20 and 10, which again, they didn't increase either of the nonconformities. It was built right on the same footprint.

Mr. Jaumann then asked in regards to the cease and desist letter that was received by the applicant, how do you get past 230 and 235 of the regulations? Atty. Thomas stated that the applicant went to the ZEO's office and was denied the permits.

Mr. Gould then asked when they went to apply for the permits (on Monday); how far along was the project? Mr. Sojka stated that Mr. Tanner was at the site two days earlier (on Saturday) and had indicated to them at that time to continue working on the project. When they went in on Monday, they were given the cease and desist order. Mr. Sojka then stated that he was unaware that there was a problem until he went in to finish the building application, "at that point, it was done."

Atty. Thomas stated that when you go down to apply for a certificate of Zoning Compliance, the Certificate of Zoning Compliance is asking if this is an appropriate an appropriate use. It's their position that this is an appropriate use. Mr. Gould then stated that he felt that the structure shouldn't be higher than the existing garage. Atty. Thomas stated that it's ten feet higher. Atty. Thomas then stated that the numbers in the regulation are 15 and 35. The height of the building in no way increases the nonconformity. Mr. Gould

stated that he understands that, he just was confused about the fact that the board was told that it was only a difference of two feet. Atty. Thomas stated that is because the picture isn't as clear as it could be. Mrs. Degnan asked if anyone else had any questions at this time for Atty. Thomas. No one else had any further questions at this time.

Atty. George Boath, representing ZEO Jim Tanner asked if he could ask Atty. Thomas a few questions. He was told that he could. He then reiterated that according to his testimony that no permits were pulled for the project. Atty. Thomas stated that his client attempted to pull the permits on the Monday and was unable to do so. Atty. Boath asked if his client submitted any scale drawings in his attempt to get the permit. Atty. Thomas stated that his client was prepared to submit any materials that were requested. Atty. Boath then stated that there is no definitive evidence regarding the overall height of the old garage before it was razed. Atty. Thomas stated that his client's testimony is that the old garage before it was razed was approximately eighteen feet. Atty. Boath then questioned that they have no definitive measurement. Atty. Thomas stated that Mr. Sojka did measure it and he said that he measured it. Atty. Boath stated that Mr. Sojka measured it to the inside. Atty. Boath asked if this was built on the existing foundation or was a new slab poured for it. He was told that a new slab was poured. He then asked what the depth of the footings was? He was told that they never touched the original slab. They poured a six inch slab over the original one. He then asked when this was started. He was told that they started about three days before the letter was issued. Atty. Thomas stated that Mr. Sojka started around the 17th or 18th (of October). Atty. Boath asked if the footing was completely up when the Zoning Enforcement Officer went to inspect the site on (Wednesday) the 17th. Mr. Sojka stated that they were putting on the roof on that date. Atty. Boath then asked if they had gotten a demolition permit to take down the old structure. He was told that they did not. Atty. Boath then asked if they had gotten an inspection done by the building official from the city of Ansonia or a civil engineer as to the soundness of the structure.

Mrs. Degnan then asked three times if there was anyone who wished to speak in favor of the appeal. There was no one who wished to speak. Mrs. Degnan then asked if there was anyone who wished to speak against the appeal.

Mr. James Tanner, Zoning Enforcement Officer stated that when he was at the site, the roof was being installed. He informed the applicant "to make the building safe". He then stated that the contractor was instructed to come into the zoning office on the 22nd. At that time he did have the dame Google photos that have been presented as evidence. There was no submission of any existing drawings, or conditions before the application as required in Section 230.1, which states, "No building or other structure, or part thereof, shall be constructed, reconstructed, enlarged, extended, moved or structurally altered" prior to zoning compliance. He then stated that there was no further contact until October 22nd. A cease and desist letter was sent out on November 19th. It was received on the 21st (of November). An appeal was filed on December 5th. Mr. Tanner then read Section 245.3.1 which states, "Such nonconforming structure shall not be structurally altered or reconstructed unless such alterations are required by law". He then stated that the building was enlarged. He then stated that "no building that requires a certificate of occupancy shall

be issued for a building, use or structure until such is conforming in use or is valid non-conforming use under such regulations." He then stated that if it were a valid non-conforming use, it would have been a requirement under section 245.6. There was no ability to verify the non-conforming status of the structure.

Mrs. Degnan asked if there was any one that had any questions. Mr. Jaumann asked in regard to the registration of "non-conforming use", do they come out prior to inspect to see if it's a recognizable nonconforming use and could Mr. Tanner give instructions on how to proceed. He was told that 245.6 requires that structures be previously registered as non-conforming. Atty. Boath stated that generally speaking, regarding non-conforming properties come forward and they indicate that they have a situation on the property and request the inspector come to the location and look at it. It's been in existence for a long period of time and then the Zoning Enforcement Officer with the Building Official will do an inspection and then it is registered. In this way it's protected against any future changes. Mrs. Degnan then asked if anyone had any further questions. No one else had any other questions. She then asked three times if there was anyone else that wished to speak against the appeal. There was no one else that wished to speak against the appeal. Mrs. Degnan then closed the hearing to the public.

Atty. Thomas requested that he be allowed to respond to the ZEO's statements. Mrs. Degnan allowed him to speak. He then stated with respect to the issue of registration of non-conforming uses, he stated that Mr. Tanner quoted only the first line of 245.3.1 ignoring the rest of the item which states, "nonconforming structures which are basically sound or historically valuable, shall be permitted to be rehabilitated and improved in a manner which does not enlarge or increase the non-conforming status…" So, cardinal rule number one, if you're going to quote regulations, read the whole regulation. The full regulation, the nonconforming status of that garage is the setbacks. Second of all, the garage is not a nonconforming use. Garages are permitted accessory buildings in the resident zone.

He is correct in saying that 245.6 says registration of nonconforming use or structure. Any non-conforming use of land or structure shall be registered in the office of the Town and City Clerk within one year after the adoption of the Zoning Regulations. Which basically means at this point that sometime around the 1950's maybe early 60's, everybody on Franklin Street, should have been rushing down to register the buildings. It further states that "Such registration shall include the identification of the premises and the description of the nature of the nonconforming use and if necessary to description, a plot plan, drawn to scale, showing property lines, all structures and any other pertinent information. And an affidavit by the owner as to the date since which such nonconforming use has existed'. So those two sentences refer only to uses and of course this is not a nonconforming use. This is a garage. "Failure to so register shall place the burden of proof on the property owner that any alleged nonconforming use of land or structures legally existed at the time this ordinance or any amendment thereto became effective."

The only testimony you have before you is that this garage has been there since the main building was built. It predated zoning. Mr. Tanner presented to you no evidence that the

garage did not exist on that footprint prior to zoning regulations which imposed setbacks. Therefore, the fact that they didn't register, all it does is put a burden on the person and it is this kind of regulation is normally put there when there were markets in residential neighborhoods. When they zoned those streets for residents only, and those were nonconforming uses, people didn't want them coming back thirty years later after they had been used for something else and saying "Oh by the way, that's a store. I want to be able to use that as a store." At worse, it is a legal preexisting nonconforming structure. The use of it is not nonconforming in a B zone. Residential zones in the City of Ansonia, you are allowed to have garages. The use is appropriate. It is simply a garage. Finally, Mr. Sojka went to the Zoning Office on that Monday, with everything that was requested. He was not allowed to pursue anything any farther because he was told that he had to go for a variance. The fact is that he does not have to go for a variance. If there were problems with the structure with the foundation or the height, the building official has total control over all of that, once it gets to the building official. It doesn't get to the building official without a certificate of zoning compliance. They are here because they feel that a certificate of zoning compliance should be issued because they didn't increase the nonconformity and because they were appropriate with 245.3.1 when they improved the building and improved the structure in the neighborhood.

Atty. Boath stated that he wished to reply to Atty. Thomas' statements. He stated that by not coming in to the Zoning Officer and submitting scale drawings with elevations showing the foundation, slab, overall height of the building, height of the interior walls, height of the second story interior, the property owner deprived the City of Ansonia's building officials and zoning officials the opportunity to make their own independent determination as to whether or not a variance was required. I look at (the word) "enlarge" as "make something bigger". I think he made this garage bigger just by looking at the pictures. It's kind of hard for him to imagine this homeowner in 1903 when this house was built having the foresight to erect a two car garage when cars were only in their infancy. The regulations provide that the owner shall submit a request to the Zoning Enforcement Officer before getting a building permit. You go through zoning first. If you get your pass, then you move on to the building department. That's the way the process works. It works for everybody else in the town. There isn't an exception just because this garage might have been leaning and someone took it upon themselves to knock it down and rebuild. Not shore up. Not modify to improve the existing structure, but tear it down, put up new walls and go straight up. That is significantly different than adding an interior staircase. I doubt very sincerely whether or not you would have had the headroom in the old garage that you now have in this garage. That's a second floor. I don't care what anybody says. It's a second floor. It's an apartment waiting to happen.

Atty. Thomas stated that since he has the burden, he gets to go last. My response to this is that we are not here on a building permit. The fact of the matter is we are here on the issuance of a zoning certificate of compliance. When you go down to get a certificate of zoning compliance and say I'm going to reconstruct a garage, it does not affect the building permit. You can say it's a second story but unfortunately the zoning regulations that I gave you, unequivocally, clearly and without a doubt say that an uninhabitable attic, which at the

most you can call it, is not a story. When the Zoning regulations define a story, you're bound by the Zoning regulations. The other issue is he had the practical aspect to our client. What is the Zoning Enforcement Officer saying? I want you to sustain it so I can make him take it down and come back in so I can make him submit a set of plans to rebuild a garage on the same location. Is that what he's saying? You have to read your own regulations. Say all you want about permits. We're not here because we're challenging, we're not saying we don't have to submit an application. We're not saying that. When my client went down, he was refused the opportunity to submit an application for a certificate of zoning compliance. So we are not saying that. We are saying you need to issue a certificate of zoning compliance because the height issue is irrelevant. If its ten feet higher and you want to change the regulations, then write a letter to the planning and zoning commission and tell them to change the regulations. The way it's drafted right now, the best evidence you have before you is that it's over fifteen feet and therefore it is not in any way shape or form, that nonconforming use is not increased. It's on the same slab. There's no evidence that it isn't on the same slab. There's none. The only evidence you have before you is that it was built exactly on the same slab. If you look at the two buildings, you can tell, it's no wider than the preexisting structure. Therefore, we are not here to appeal or to say we don't have to file a permit. It's improves on without increasing the nonconformity.

Mrs. Degnan then asked if anyone wished to rebut. No one wished to rebut. Mrs. Degnan then closed the hearing to the public.

Mr. Jaumann stated that the issue that he has is that because there was no application and no permit being applied for, they have been denied the opportunity to determine whether or not a variance would be necessary. All the rest seems like fluff to me. We have no measurements as to anything to know… The cease and desist order says specifically that no application or permit were applied for.

Mr. Gould then stated that the only issue that he has is basically that we have no evidence or any proof that it was about to fall down. It's your word against ours. Basically, who's to say that the building wasn't stable? A lot of storms have been coming through and you take it upon yourselves to tear down the garage because of the hurricane that was coming. I look at it as basically if I want to go and take down my garage and make something like this with a second story instead of just having rafter storage, I should just go and tear it down, start building it and then go down for the permits. Which I know I'm not going to get away with that. I think if you went with the proper procedures and with going down for the permits prior to it being a contractor which is the normal way of doing business. I think we wouldn't be sitting here right now. You probably would have gotten through with it and had the inspections done. The nonconforming issues it is what that is, but I still… We have no proof stating that this building was about ready to fall down. The picture, the Google picture really, you can't go by that because it's not a very good picture.

Mr. Jaumann made a motion to deny and support the Zoning Enforcement Officer. Mr. Gould seconded the motion.

Roll Call:

Claudia Degnan	Yes
Laura Gagnon	Absent
Joseph Jaumann	Yes
Nicolas Gentile III	Absent
John Sanza	Absent
Ron Vaccaro	Yes
Jeff Gould	Yes
Florence Camilleri	Yes
Jamie Puro	Absent

The appeal was denied. Mr. Jaumann stated that his reason to deny the appeal and support the Zoning Enforcement Officer's decision is based on the fact that no permits were requested prior to construction and that no plans were submitted to the Zoning Enforcement Officer in compliance to the regulations.

1. Eileen Ryan, 281 Wakelee Avenue, Ansonia, for property located at the same address, is seeking an appeal of the Zoning Enforcement Officer's cease and desist order.

Atty. Dominic Thomas is present representing the applicant. He stated that the property is located at 281 Wakelee Avenue. He stated that the situation is that the existing fence on the property was destroyed as a result of Hurricane Sandy. The fence was 6 foot high. After battling with the insurance company, they were able to rebuild exactly the same style fence in exactly the same location, exactly the same height. The only difference was that instead of wood, they chose to change the material to white vinyl instead of wood. Atty. Thomas then passed out pictures of the original fence that had been damaged and the posted placard. The Zoning Enforcement Officer, while the contractor was working on the fence, in the accompaniment of police officers, went to the property and issued the cease and desist order on March 29th. It alleged that they didn't follow Section 330.04 and 330.04.4 which regulations defer to the fact that fences, after this one was constructed, that are on the front of the street or face on the street, have to be four feet in height. 330.4.4 states "No fence wall, hedge or barrier located within the front yard setback or within 30 feet of the street shall be higher than four feet if picket fence style (see through) is used, or three feet if solid for the purpose of the subsection fence height shall be the average height. He then stated that this regulation was passed after this fence was put in. Ms. Ryan can explain to you when this fence first went up.

The portion of the fence that is nonconforming is the portion of the fence that is on the street side. The regulations provide restoration of damaged structures (**Section 245.4**). "Any structure legally nonconforming in use which is damaged or destroyed by fire, explosion, act of God or the public enemy may be rebuilt and the use continued, but not to any greater extent than in the previously existing structure." This fence is exactly the same height, in exactly the same location, in exactly the same style as the other fence, so it should be allowed to be constructed. Atty. Thomas then stated that he believes that opposing council will state that this is a moot issue as the applicant complied with the order and the

individuals that were there took the fence down that was along the street. He then stated that since the Zoning Enforcement Officer and the police were at her location, they tend to scare people. Secondly, there is no law anywhere in any case in any statute that says that you have to continue to do the violation, the alleged violation, in order to appeal. The statute clearly states that in certain cases the order is stayed and in certain cases it is not stayed. The individual that is appealing has the right to appeal within thirty days. There is no requirement that they have to leave the fence up to appeal it. They want to appeal without the alleged violation being there so that they wouldn't potentially incur any fines in the future. In this case, given the fact that they cited the regulation, which came into effect after and the fact that the nonconforming use section clearly states it can be reconstructed. What seemed to be a relatively simple answer that this should be allowed to be put up. He then requested that Mrs. Eileen Ryan address the Board.

Mrs. Eileen Ryan, 281 Wakelee Avenue, stated that the fence was destroyed during Hurricane Sandy. She stated that she submitted a claim with her insurance company. When the claim was done, she contacted a contractor to put up a fence in the same location. There was nothing different in regard to the sign other than the new fence is white vinyl and the original was wooden. All of the correct permits were pulled. Atty. Thomas asked if she had applied for a variance to put up the fence in a different way. She stated that she had. They had wanted the fence to be further towards the corner so that they would have more property. She stated that this was the Corner of Wakelee Avenue and Hull Street. When they applied for the variance, they were denied. They modified their plans so that the fence would be in compliance with the regulations that were in place at the time. Atty. Thomas then asked if there was any regulation at that time regarding the height of the fence. She told him that there were no regulations regarding height at that time.

Mrs. Degnan then asked three times if there was anyone that wished to speak in favor of the appeal. No one wished to speak.

Mrs. Degnan then asked if Mr. Tanner had anything that he wished to say at this time. Mr. Jaumann requested to ask Atty. Thomas a question. He asked about when the applicant "originally applied for a variance", he asked if that was when the original fence was constructed. He was told that the applicant wanted to place the fence up to the corner and the regulations didn't allow that. The variance was denied and they put the fence up so that they would be in compliance. Mr. Jaumann asked if there was any variance filed after Hurricane Sandy. He was told that no variance was applied for after the Hurricane.

Mrs. Degnan then asked Mr. Tanner to address the board. Mr. Tanner stated that "as of today, the property is in compliance." He further commented that the violation no longer exists. Mrs. Degnan then asked if that was because the fence was no longer up. He stated that if they put the fence up they would be in violation. There were only three sections that were destroyed due to the storm.

Mrs. Degnan then asked if there was anyone that wished to speak against the appeal.

Atty. Clifford Hoyle, 7 Elizabeth Street, Derby, he is here representing himself and his own interests and Ms. Coughlin, 279 Wakelee Avenue, Ansonia. He stated that his office and his employees see this property every day. He indicated that there were three panels that were blown out due to the storm. The applicant took down the rest of the fence after the storm. His client has his fence approximately three feet from the sides of the house. It still meets the code. When this was erected, "it was such an aberration that the city changed the regulations just so this couldn't happen again." The applicant is trying to replace this with something different. It was originally wood, which tends to fade in color. Now they want vinyl. He then stated that he feels that this an expansion of nonconforming use. He then stated that they have no objection to them keeping the fence where it complies and no objection to them complying with the law as changed. This fence has had an enormous effect on his client's property value.

Atty. John Sponheimer stated that he was involved in the original application. Atty. Thomas is making references to the original application and stating that they wanted "to bring the fence back", that is 100% incorrect. They wanted to bring the fence right up to the corner of Hull Street and Wakelee Avenue. This would totally "knock out the sight lines there." He just wanted to clarify that statement. He further stated that he firmly opposes this appeal as they have been property owners for over thirty years.

Atty. George Boath, representing James Tanner, stated that what the board has before them are two issues. One is really is there an appeal pending? The property was issued a cease and desist order. The property was brought into compliance. The property owner asked for a reinspection. Mr. Tanner found the property to be in compliance. That issue is closed. The appeal should be dismissed. The issue is moot. There is nothing before you. If you choose to move forward and listen to the case on its merits, what we have here was a wooden fence. It doesn't make people happy to have a different style of fence, a different type of fence, even erected in the same original position and configuration when only three panels along the side of the property were destroyed in a storm. Those panels could have been replaced. They could have been replaced without any zoning enforcement action whatsoever. The homeowner elected to go with a different style fence. It's a change in character. It is an expansion of a preexisting nonconforming use. You have those two issues this evening. You can act upon either one. If you decide to act on the merits, just be very clear with your reasoning why you either uphold or oppose the Zoning Enforcement Officer's decision.

Mrs. Degnan then asked if anyone else wished to speak against the appeal three times. No one else wished to speak.

Atty. Thomas stated that he gets the opportunity to address the comments of Atty. Boath. He stated that the only reason that he mentioned the original variance request was that basically back when this fence was put up; it was in compliance with zoning. After the fence was up, they changed the zoning requirement to make it that a fence along the street line had to be a different height, three feet or four feet. Four feet if it was a picket fence, three feet if it was a stockade fence. He then stated in response to the issues, call Brian

Ryan and request that he address the board.

Brian Ryan, 43 Holbrook Place, Ansonia, stated that Eileen Ryan is his mother. Atty. Thomas asked him if he was aware of the destruction of the fence. Mr. Ryan stated that he was aware of it. He responded to it as it was coming down. He stated that the other sections of the fence were up because they tied them up. He explained that many of the supports of the fence broke because the winds were so strong, others the dirt around the supports were loosened which allowed the fence to lean and endanger the public. Atty. Thomas asked if they had a fence expert inspect the fence. He was told that one of Mr. Ryan's friends installs fences for a living and inspected the fence. At that time, he was told that the fence was "hopeless." When the insurance company inspected it, they stated that the entire fence needed to be replaced. After the building official issued the cease and desist order, he contacted him for a reinspection. He wanted to make sure that they were okay. They wanted to make sure that they were not going to be fined. When the cease and desist order was issued, they received a copy of Statute 8-12 which dealt with criminal proceedings.

Atty. Thomas then stated that the zoning regulation that was put into effect with respect to the abutter has no impact upon the abutting property. In other words, the fence along the abutting properties can still be right where it is and six feet tall. The only thing that they are talking about here is in regard to Section 330.4.4 "No fence wall or hedge or barrier located in the front yard or within thirty feet of the street shall be higher than 4 feet if picket fence style (see through) is used or three feet if solid. For the purpose of this subsection, fence height shall be measured from the average height of the front yard." The fact is there is no law; there is no requirement that an individual has to continue an alleged violation in order to appeal. You have thirty days to appeal. Statute 8-7 specifies that. We appealed within the time. The reason people comply, especially in this case, is because when the Zoning Enforcement Officer came out with Police Officers and handed the fence person a copy of 8-12 or explained to him, either handed it to him or explained to him. Statute 8-12 which is the provision in the Statutes that permits circumstances, criminal prosecution and/or penalties, civil fines or civil penalties, criminal fines or criminal penalties to an individual that continues to violate the zoning regulations. The procedure that you follow is that you appeal. Whether you want to leave the building up, leave the fence up, leave the use going on, or stop it, is a decision that you make. In this case, the people chose to take the fence down and to appeal, so that they wouldn't incur the possibility of fines. However, no matter what was said, the fact of the matter is, when the fence is damaged, you have testimony before you is that the insurance company approved replacement of the whole fence. Therefore, they did so and it was done at the same height and at the same location. The fact that it goes from wood to vinyl is immaterial. There is nothing in any regulation that says that vinyl is an extension of the nonconformity. The people have the right, a legal regulation because it was destroyed by an act of God to replace the fence. They can replace it. The fact of the matter is when court or anyone would look at the issue with respect to the nonconformities and what you allow to be done to nonconforming uses; you go back to the section quoted in the last hearing. (**Section 245.3.1**) The fact is that in a situation where there is even a sound building, structure that is nonconforming it can be improved or made better. So they would have no problem even without Hurricane Sandy replacing that fence

with a vinyl fence when it became in any way deteriorated. In this case, we did have damage from Hurricane Sandy. It is not a moot issue. You have to deal with it on its merits and in fact they are putting it in the same location and therefore it is an appropriate reconstruction after the hurricane damage.

Atty. Clifford Hoyle stated that he wished to point out a fact. There were three panels down. Someone tells you that they replaced the others with rope, but they left three panels down. Atty. Hoyle and others from his office go past the property many times a week and none of them saw any part of the fence tied up with ropes. Also, they took down the fence themselves. He then stated that he is interested in the section from the building line forward and across the front. They don't care what they do in the rear of the property. Did they just take this down on their own? They took this down on their own. They decided that they wanted something different. When they did, the front part became subject to the regulations.

Mr. Gould asked if the new regulations are only for the front yard, correct. Mrs. Degnan stated that the house is on a corner and has two front yards. Atty. Hoyle stated that it's from the building line forward, basically the street line back, 30 feet or where the house is and all the ways along the front. Atty. Hoyle then stated that we have heard about the insurance company, but they have no representative here talking about the entire fence being destroyed.

Atty. Thomas stated that he has given the board a series of photographs. He then asked Mr. Ryan who took the photographs. He stated that he had taken the photos. Atty. Thomas presented the board with additional photographs taken after the storm. The photographs show broken poles and other damage in addition to the three panels being down. The fact of the matter, when you look at the extent of the damage, there is nothing to contradict that this fence was damaged severely and had to be replaced. There is nothing in the regulations that prohibits them from putting up a vinyl fence in the same location even if that fence was not damaged. When you go to the other page of the regulations, it say that of that fence deteriorates you get to do that. The reason you have that regulation is so that people will improve their fence even if its nonconforming. The photographs show that it's more than just three panels that were damaged.

Mr. Gould stated that Mr. Ryan indicated that all the dirt around the posts were loose. He asked if the posts originally put in concrete or were they just in the dirt. He was told that they were just in the dirt. He then said that the contractor said that they couldn't put it in concrete. Mr. Gould then stated that because they were just put in dirt, that's the primary reason that they came down. Dirt is not going to hold up a wooden fence that heavy. He then stated that all of the post should have been put in concrete.

Mrs. Degnan asked if there were any further questions. There were none. She then closed the session to the public.

Atty. Jaumann stated as to the issue of mootness, he doesn't feel that it's moot. He feels that

the board has a right to rule on the merits of the case. He then stated that he doesn't believe that the homeowner has to continue doing… According to 245.4.1, it says that the homeowner has a year for restoration of damage. He then stated that he doesn't feel that the change from wood to vinyl is a great change. It's the same height and shape and location as the original. Atty. Jaumann made a motion to sustain the appeal, with the caveat that it must be completed within one year of the damage which would be October 27th 2013. The motion was seconded by Mrs. Camilleri.

Roll Call:

Claudia Degnan	Yes
Laura Gagnon	Absent
Joseph Jaumann	Yes
Nicolas Gentile III	Absent
John Sanza	Absent
Ron Vaccaro	Yes
Jeff Gould	No
Florence Camilleri	Yes
Jamie Puro	Absent

The appeal was approved.

Mrs. Degnan asked if there was any further business to come before the board. There was none. She then entertained motions to adjourn.

Mr. Jaumann made a motion to adjourn. The motion was seconded by Mr. Gould. All were in favor of the motion.

The meeting ended at 8:45.

Respectfully submitted,

Carol Sardinha
Secretary