

TOWN OF NEW WINDSOR

ZONING BOARD

January 12, 2015

MEMBERS PRESENT: HENRY SCHEIBLE, ACTING CHAIRMAN
FRANCIS BEDETTI
RICHARD HAMEL
PATRICK TORPEY
GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
ZONING BOARD ATTORNEY

CAMMY AMMIRATI
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN

MEETING AGENDA:

1. Pierre Belle (14-27)
2. Pierre Belle (14-28)
3. Pierre Belle (14-29)
4. Vera Porath (14-30)

REGULAR MEETING:

MR. SCHEIBLE: I'd like to begin our meeting of January the 12 this evening.

APPROVAL OF MINUTES DATED 12/8/14

MR. SCHEIBLE: Is there a motion to accept the minutes of the 12/8/14 meeting as written?

MR. HAMEL: So moved.

MR. TORPEY: Second it.

ROLL CALL

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| MR. HAMEL | AYE |
| MR. TORPEY | AYE |
| MR. BEDETTI | AYE |
| MR. BIASOTTI | AYE |
| MR. SCHEIBLE | AYE |

PRELIMINARY MEETINGS:

PIERRE BELLE (14-27)

MR. SCHEIBLE: First, second and third on tonight's agenda is Pierre Belle seeking a variance of 4.04 acres for gross minimum lot area, 49.1 feet for required rear yard and 190 square foot for minimum livable area located on 6 Belle Court in an R-5 zone.

MR. BLOOM: Good evening, Mr. Chairman.

MR. SCHEIBLE: Good evening, Daniel.

MR. BLOOM: Good evening members of the board, my name for the record is Dan Bloom, I'm with Bloom & Bloom in New Windsor and I'm going to be representing Mr. Belle on this presentation this evening. First of all, I just would like to clarify the record a little bit on the agenda with respect to the applications for the area variances, we're seeking minor modifications which were certainly understandable the way the agenda was presented because of the confusing nature of three separate applications and three separate contiguous buildings but for the record does everyone this evening have a copy of the site plan that was submitted? If not, I have extra copies here. Would anyone like an additional copy? You're all set, okay, good. If I may just initially refer to the section of it indicating the specific variances, area variances that are being sought this evening. If you look at the site plan, you'll notice that Belle Court precedes generally in an easterly direction off Mt. Airy Road and my client's properties which are the subject matter of this application are referred to on the site plan as lots two, three and four. And then if you proceed to look at the upper right quadrant of the site plan, you'll see zone five multiple family use and the variances requested. So my client is seeking with respect to lot 12.22 which is lot two on the map is seeking a minimum lot area variance of 4.04 acres. He's also seeking a rear yard setback variance of 49.1 feet and he's also seeking 190 square foot area variance for the livable floor area for each unit and there are four units in each building. Proceeding then to lot three on the map which is referred to as lot 12.23 on the tax map it's a 4.27 acre variance being sought with a 47.9 foot minimum rear yard setback variance sought and a 136 square foot variance sought on each of the units for livable area. And finally on the third lot lot 12.24

referred to as lot three on the map we're seeking a 2.67 acre area variance and it's a little bit complicated on the livable area on the two top floor units, it's an eight square foot variance sought, on the two bottom units it's a 136 square foot unit sought, variance on each unit. So with that if I may proceed to the application itself.

(Whereupon, Mr. Chanin entered the room.)

MR. BLOOM: The property is as you can see from the map is located just off Mt. Airy Road. To the north of the property is the Silver Stream Mobile Home Park and immediately to the south of it along the south we have the New York City aqueduct. So for openers so to speak the visibility of the project to surrounding properties is fairly minimal. By way of a little history on the project as I'm sure you're all aware this project comes with a history and we had hoped that the history was coming to a conclusion with the changing of the zone and that's what occurred here. My client is before the board this evening seeking these variances because the zoning was changed from R-3 to R-5. When that occurred, these immediate area variances became a mess in order for my client to obtain Certificate of Occupancy for each of the units. And in that regard, I might say that he has spent a small fortune in upgrading each of these buildings to code and they are all at code and they're ready for Certificates of Occupancy conditioned obviously upon the approval of this board for these variances. So the first consideration, the question is on the application is can we achieve this result in some other fashion? And I respectfully suggest to the members that the only other manner in which it could be achieved would be obviously to take the buildings down. They have been there since 1987, the first building was built in 1987, the second in '89 the third in '91. They have been four families ever since then and they have been taxed as four families ever since then.

MR. TORPEY: Can we move them?

MR. BLOOM: I'm open to suggestions, even at my age I'm always learning. And then so I suggest that that's just not a practical, there really are no practical alternatives. The next question becomes then are the variances substantial? And I think we'd be less than candid if I suggested otherwise, they are substantial. And again, there isn't much we can do about them. In

fact, I respectfully suggest there isn't anything we can do about it except to say that the manner in which my client has upgraded the buildings both internally and externally and landscaped them has I would suggest minimized the impact on the neighborhood in general. I realize I obviously have a slanted perspective here but having viewed the property myself quite frankly I find it a very pleasing presentation, certainly more pleasing than many others that might be considered less density. But at least I felt it's a very presentable pleasing appearance that one is faced with when they proceed down Belle Court in a generally easterly direction. The next question is will it have any adverse environmental or other adverse impacts upon the neighborhood itself? And again, I think the reference here again is going back to 1987, '89, '91 when these buildings were built they have been the same ever since. The only difference they have been upgraded and they have a very pleasing aesthetic effect so I don't think that's is consideration. And then of course the question becomes was the problem self-created? Well, the problem for which we're here this evening for these specific area variances was obviously created when the zone changed and the buildings were then imposed with these restrictions which they couldn't readily address inasmuch as the construction was already in place. With that, I would conclude by simply suggesting to the members of the board that my client is here ready to answer any specific question anyone may have and that I am not capable of addressing myself. And I might also suggest that I believe that if this is approved that my client will continue to be the good neighbor that he has been. I have a substantial number of letters from his tenants, from neighbors testifying to that and we of course will be prepared to present more at the public hearing. And I feel that under those circumstances I think given the difficulties my client is faced with I feel that it be appropriate this board set us up for a public hearing within your sole discretion obviously.

MR. TORPEY: Just curious, what happens if we don't?

MR. BLOOM: I guess we go back to the drawing board.

MR. BEDETTI: What does that mean we go back to the drawing board?

MR. BLOOM: I guess it means the original drawing board in 1987.

MR. CHANIN: Counselor, hello.

MR. BLOOM: How are you this evening?

MR. CHANIN: I apologize for being late, can you please--

MR. BLOOM: No apology necessary.

MR. CHANIN: -- please advise the board whether and to what extent you're going to be cutting down any vegetation?

MR. BLOOM: To my knowledge, not at all, am I correct in that statement?

MR. BELLE: Yes.

MR. BLOOM: There will be no removal of vegetation.

MR. CHANIN: Can you please advise the board whether and to what extent the proposal if approved would create any ponding, erosion or other runoff problems or anything of that nature?

MR. BLOOM: I will defer to my client on that one. Peter?

MR. BELLE: No.

MR. BLOOM: None.

MR. BELLE: No, there's nothing to be changed.

MR. BLOOM: Would you stand up and address the stenographer?

MR. BELLE: It's there.

MR. SCHEIBLE: Your name?

MR. BELLE: Pierre Belle.

MR. TORPEY: We've just got to ask these questions.

MR. BELLE: Sure.

MR. CHANIN: So how if at all necessary have you addressed the issue of whether or not there will be

ponding, erosion, runoff, any problems such as that?

MR. BELLE: There shouldn't be any problems with that because it's been there, it's all existing.

MR. CHANIN: Don't let me put words in your mouth but your answer is that it has never been a problem, the natural contour, the nature of the property itself has never experienced that kind of a problem and you don't anticipate that kind of problem in the future, is that correct?

MR. BELLE: No.

MR. SCHEIBLE: Where is the runoff going, Pierre, which direction? Does it go to the end? Naturally, you're going to have runoff, drainage.

MR. BELLE: There is a low area between the lot number one and lot number two, there's a low point right there and there's a french drain that goes along the sewer line into Rockefeller and Lombardi which is an empty 29 acre parcel, I believe.

MR. SCHEIBLE: Is that going onto the aqueduct property?

MR. BELLE: No, no, it's opposite side.

MR. SCHEIBLE: That's the reason my question came up.

MR. BELLE: There's a swamp like right across from just down from the cul-de-sac.

MR. BLOOM: My client's referring to the swamp that is north of the property.

MR. CHANIN: So that french drain that you refer to is preexisting and it's always been sufficient to address the problem and you don't think that there will be a problem in the future, is that correct?

MR. BELLE: No.

MR. CHANIN: Last question then. Does your proposal if approved implicate any easements, right-of-ways or any other rights of property enjoyed by a third party?

MR. BELLE: Third party?

MR. CHANIN: Somebody other than you?

MR. BLOOM: Other than you?

MR. BELLE: No, won't hurt anybody else.

MR. CHANIN: No easements, no right-of-ways, no other--

MR. BELLE: No.

MR. BLOOM: No.

MR. TORPEY: Kind of like by yourself there.

MR. BELLE: I am.

MR. TORPEY: You're not next to no developments?

MR. BELLE: Well, there's a trailer, the mobile home park is there.

MR. TORPEY: There's no developments adjoining the property?

MR. BELLE: No.

MR. BLOOM: No.

MR. CHANIN: Could you tell us please do you know the history of this property, was it subdivided at some point in the past?

MR. BLOOM: His property has a history. It was originally subdivided back in 1987, '86, '87, the first house Pete built in 1987 as a two family and then he, after completing it, realized in 1987 he couldn't pay his bills with a two family so he proceeded without advice of counsel and without the advice of anybody at town hall to build, change it into a four family. And then he proceeded to construct in 1989 another one, same results, four family, no C.O., no building permit, no counsel. And similarly in 1991 the third one was constructed. After that, some period of time elapsed and eventually violations had been issued against him. He retained counsel, he sought a use variance, it was denied understandably, an Article 78 was taken and understandably it was upheld, the decision of this board was upheld and then a period of time elapsed, probably about another four, five, six years and Mr. Belle contacted my office for the purpose of reapplying

to this board for a use variance. And after researching it and pursuing it, I told him can't do it, can't get a use variance. So then we decided to implore the town to consider a rezoning and the town did rezone it and as a result the situation became legal on the condition that he would secure an upgrading of all the improvements so that it would qualify for a Certificate of Occupancy under current standards which he did at an enormous economic expense but he did. Having achieved the change in zoning now while he has arrived at his goal which is to become legal in one sense and the other sense the last hurdle he's got are these area variances.

MR. CHANIN: Thank you very much, counselor.

MR. BLOOM: In short, I would characterize it as a road of redemption.

MR. SCHEIBLE: Came back to haunt you.

MR. CHANIN: Any other questions by the board?

MR. BEDETTI: Are there any other multi-family buildings in that general area?

MR. BLOOM: Are you aware of any?

MR. BELLE: There are, yes.

MR. BLOOM: Where would they be?

MR. BABCOCK: Across Mt. Airy Road they're multi-family.

MR. CHANIN: Speak loud enough for the stenographer.

MR. BELLE: They're in the neighborhood.

MR. CHANIN: I think I heard the gentleman in the audience say there are some on Mt. Airy Road.

MR. BABCOCK: Yes, on Mt. Airy Road.

MR. CHANIN: What's the nature of the multi-family units, it's four family?

MR. BABCOCK: Two, two family.

MR. CHANIN: Two-family units on Mt. Airy Road?

MR. BABCOCK: Yes.

MR. CHANIN: Board members?

MR. BEDETTI: When were these made into four-family units?

MR. BLOOM: 1987, '89 and '91.

MR. BEDETTI: As four-family units?

MR. BLOOM: Yes, and they have been taxed as such.

MR. CHANIN: They were taxed as such but he paid taxes but as counsel said earlier they were done extra legally outside the formal legal process. So counsel has characterized this as a redemptive process to try to clean up past omissions and make everything legal, is that correct?

MR. BLOOM: I couldn't of phrased it better, counselor.

MR. BEDETTI: Or the town owes you a refund or something.

MR. CHANIN: Actually, a legal phrase, lawyers use Latin because they can charge more if they use Latin, nunc pro tunc is the legal phrase and it means now for then, would that be fair?

MR. BLOOM: That's more than fair and it's an attorney's saving grace.

MR. CHANIN: Sometimes local government saving grace as well.

MR. BLOOM: Yes, sometimes.

MR. HAMEL: I have a question, number one which is not involved with this, is that a private residence?

MR. BELLE: That's mine, yes.

MR. BLOOM: That's where my client resides.

MR. HAMEL: Okay.

MR. CHANIN: Just for the record board members the fundamental rule of procedure governing corporate

bodies such as this one is that if you wish if all five of you agree and you wish to vote on a motion to schedule a public hearing you have the right as a board to make that motion to vote on the three applications collectively. But if any one member doesn't take a majority, if any one member wants to vote on the three applications separately, any one member can insist on that and it's not subject to a majority rule. The reason is because an individual member of a board has the right to separate things that address technically different subject matter individually so any one member can say that but if none of you object you can vote on all three collectively.

MR. TORPEY: All three.

MR. CHANIN: If you have more questions, ask them. If you don't have more questions we're ready for a motion.

MR. BIASOTTI: I'll make a motion that we set up a public hearing for the variances on all three for lot section 32, block 2, lot 12.22, 12.23 and 12.24.

MR. HAMEL: Second it.

ROLL CALL

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| MR. HAMEL | AYE |
| MR. TORPEY | AYE |
| MR. BEDETTI | AYE |
| MR. BIASOTTI | AYE |
| MR. SCHEIBLE | AYE |

VERA PORATH (14-30)

MR. SCHEIBLE: Vera Porath, 14-30. Variance of 28 foot required for rear yard setback for an existing screened porch located at 35 Clarkview Road in an R-4 zone.

MR. CHANIN: Your name for the record?

MR. PORATH: Steve Porath, P-O-R-A-T-H, son of the owner, Vera Porath, I'm representing her tonight.

MR. CHANIN: Tell us briefly what this is all about, please

MR. PORATH: Sure. My parents bought the house back in 1957, just as an aside it's, I actually sit on the Stony Point Rockland County Zoning Board of Appeals so I'm conscious of, I'll try to be as conscious of your priorities, not ramble aimlessly, I'll try and tell a little story about it. My parents acquired the house, it's right down the street on the corner of Clarkview and Union Avenue, it's that corner house. They bought it in 1957. At some point in the mid '80s I believe 1985, I was already out of the house, they put on the screened-in porch on the back of the house. I'll fast forward to last spring, actually last fall, my father passed away last fall and my mother was living there by herself and then late spring, early summer it just became obvious that it was just too much for her. She wanted to sell the house, she moved up by my sister who lives in Poughkeepsie. We got lucky, found a buyer and then come late August, early September we discovered there's no C.O. for the porch. I can't explain why it wasn't done in 1985. I know this is easy for me to say knowing my father that's just out of character, he's one of those who follow every rule, dot every I kind of person, I can't explain why there was no C.O. at the time. So this is requested today to see if we can correct that, get a variance and have the house in a position where my mother can sell it. It's sitting there empty, she's paying taxes on it, maintaining it and we'd like to see it in a position where we can get it sold or at least on the market so it can sell if there's a buyer.

MR. CHANIN: What you're telling us is that the porch has been in existence since 1985 and it wasn't until it became appropriate for your family to sell it that you realized that the porch had no C of O and you're here to correct that deficiency, is that correct?

MR. PORATH: That's correct.

MR. CHANIN: Is there any cutting of vegetation involved here?

MR. PORATH: No, no, in fact--

MR. CHANIN: Is there any issue with respect to ponding, runoff, erosion, anything like that?

MR. PORATH: None at all.

MR. CHANIN: And is there, are there any easements enjoyed by a third party running through the property that will be affected by this application?

MR. PORATH: No, there isn't.

MR. SCHEIBLE: Quite a few different for sale signs popping up there.

MR. PORATH: It's interesting just as an aside I think this is a neighborhood oddly enough you almost can pick out the original owners from back in the '50s but I think it's finally turning over, like my mother's 86, the old folks that were there are finally, you know, they're moving out, it's turning over into a younger family neighborhood again. Oddly enough, the people that would be most impacted by that porch if there was an impact are directly behind the house on Union Avenue, they're one of the original owners as well, actually the daughter lives there now and but there are for sale signs.

MR. CHANIN: What you're telling us also is that your immediately adjacent neighbors who'd be most impacted about the existence of this porch by the board granting you a variance have been there for a long time and they have lived with the porch there for a long time and there never were any comments or complaints?

MR. PORATH: Not at all, not at all.

MR. CHANIN: Okay, and are there other screened-in porches in the neighborhood attached to residences or decks?

MR. PORATH: It makes a good point, that neighborhood, I don't know again who can explain it, the lots are

tight, there's screened porches, there's pools, decks, additions dotted throughout that neighborhood so I can certainly say with every confidence I know as a zoning board of appeals member myself this is something that's important, it certainly would not be out of character to the neighborhood, it would be if nothing else almost consistent with the neighborhood.

MR. CHANIN: Now I'm going to ask you a question that has nothing to do with the zoning board of appeals. Are you sure this is the only condition that needs to be corrected in order to convey good title?

MR. PORATH: Well, we took care of a couple other things. There was, I discovered amongst other things that with the, some interior work they had done did not require a variance, they needed some electrical approvals, things I've taken those measures. There's a metal shed on the property as well, I'm just going to take it down, it's not on a foundation, it's not, I suppose, and I'd have to ask the town, I can either pull it in six feet and it would be fine, might just be easier to take it down, I'm not going to even apply for a variance, if that has to go, that's an easy enough thing I can do that myself.

MR. CHANIN: Is the house listed?

MR. PORATH: Yes, but it's just kind of sitting there, word gets out the brokers realize there's no C.O.

MR. CHANIN: Have you got a buyer lined up?

MR. PORATH: Right now we do not.

MR. SCHEIBLE: You didn't, just like a lot of these situations that come up there's extra bathrooms, extra kitchen, there's no such thing as you only have one bath in that house?

MR. PORATH: No, I'm sorry, there's a bath downstairs. I think that's part of the process we need, my apologies, there's a bath downstairs, they converted, the rec room was unfinished when I was a kid growing up. At some point after I was out of the house, they finished it off and put a half bath downstairs so that's something else we have to take care of. I don't believe that needs a variance but it does need the process to get a C.O.

MR. CHANIN: Mr. Scheible and I raise that question because obviously you don't want to go through this process more than once.

MR. PORATH: No.

MR. CHANIN: And if there are extra bathrooms, kitchens, mother-daughter type arrangements.

MR. PORATH: There isn't.

MR. CHANIN: You don't want to find out that you need a variance or some sort of a decision of this board declaring this to be a one-family house if that's all that's allowed.

MR. PORATH: I can absolutely assure you it's not a mother-daughter, there's not an apartment, there's no kitchen, it's all original except at some point back in the late '80s my parents finished off the downstairs and put a half bath down there. So I guess it would technically be one and a half baths and I know we have to have I guess inspections done on that and that obviously it's in our interest to have that taken care of but no, it's not a two family, it's nothing like that at all, absolutely not.

MR. CHANIN: Board members?

MR. BEDETTI: It's on the market as a single-family dwelling?

MR. PORATH: Absolutely, yes.

MR. CHANIN: Motion?

MR. HAMEL: I'll make a motion that we schedule a public hearing for Vera Porath for the variance as requested.

MR. TORPEY: I'll second that.

ROLL CALL

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| MR. HAMEL | AYE |
| MR. TORPEY | AYE |
| MR. BEDETTI | AYE |
| MR. BIASOTTI | AYE |
| MR. SCHEIBLE | AYE |

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MR. CHANIN: Follow those instructions, get in touch with the office tomorrow and you're on your way.

MR. PORATH: Thank you very much everybody. Have a nice night and be safe going home.

FORMAL DECISIONS:

1. Cecil Martinez
2. Warwick Properties
3. 134 Lake Osiris Road, LLC

MR. SCHEIBLE: We have three formal decisions that have to be cleared here tonight. We can take them singular or put them together.

MR. BEDETTI: I'll make a motion that we accept formal decisions collectively for Cecil Martinez identified as 14-14, Warwick Properties, 14-25 and 134 Lake Osiris Road, LLC, 14-26 as written and distributed by e-mail.

MR. TORPEY: Second it.

ROLL CALL

MR. HAMEL AYE
MR. TORPEY AYE
MR. BEDETTI AYE
MR. BIASOTTI AYE
MR. SCHEIBLE AYE

MR. SCHEIBLE: Next meeting gentlemen will be on January 26.

MR. CHANIN: And we can discuss our continuing education at that time.

MR. SCHEIBLE: Motion to adjourn?

MR. HAMEL: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. HAMEL AYE
MR. TORPEY AYE
MR. BEDETTI AYE
MR. BIASOTTI AYE
MR. SCHEIBLE AYE

Respectfully Submitted By:

Frances Roth
Stenographer