

TOWN OF NEW WINDSOR

ZONING BOARD

March 14, 2016

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
 RICHARD HAMEL
 PATRICK TORPEY
 FRANCIS BEDETTI
 GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
 ZONING BOARD ATTORNEY

 STEPHANIE RODRIGUEZ
 ZONING BOARD SECRETARY

ABSENT: HENRY SCHEIBLE

MEETING AGENDA:

1. Stephen Jones
2. Shop Rite
3. Rachel Miller
4. Anthony Fiorini
5. Jointa Lime

REGULAR MEETING:

MR. KANE: I'd like to call the Town of New Windsor Zoning Board of Appeals regular session March 14, 2016 to order.

APPROVAL OF MINUTES DATED 2/22/16

MR. KANE: Motion to accept minutes of 2/22/16 as written sent via e-mail on 3/1/16.

MR. BEDETTI: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

PRELIMINARY MEETINGS:

STEPHEN JONES (16-04)

MR. KANE: Tonight's first preliminary meeting is Mr. Stephen Jones. An area variance of 20 feet for rear yard setback is required for a proposed 16 x 24 rear deck as well as an area variance of 15 feet for a front yard setback is required for proposed 12 x 14 front porch. Located at 81 Steele Road. For those of you here for a preliminary meeting, what we do here is we hold two meetings, by law we have to make a decision in a public meeting. We prefer to get the correct information from you and see if there's anything else we need so we're very informed and you're informed as to what we need. A lot of other towns hold one hearing, you don't walk in with the right information, you lose, goodbye, see you in six months. So that's why we do a two step process here, it will be very similar as in the public portion, same type of questions coming back at you but at that point everybody within 500 feet of your home will get a notice, they can come in and ask questions at that point and our decision will hit at that point. So please step up, tell us your name and address, speak loud enough for that young lady over there to hear you and tell us exactly what you want to do.

MR. JONES: Okay, basically, I bought the house, it had a smaller front deck on it, it was--

MR. CHANIN: You're Mr. Jones?

MR. JONES: Yes.

MR. CHANIN: You're speaking to 81 Steele Road?

MR. JONES: Yes, I'm sorry. I bought the house on 81 Steele Road, had a small deck on the front of the house which was deteriorated, standard 6 x 8 is what you're allowed. I ended up having to tear it down so I want to go replace it with a 14 foot wide by 12 deck, new decking and obviously, it's encroaching on the property line there. As far as the rear deck, it's also deteriorated to the point where I have to replace it and I'm just wanting to change, make it a little bit bigger in the back and eliminate the side on it.

MR. TORPEY: Bigger's always better.

MR. JONES: More room, yes.

MR. KANE: Even though these were existing, some of the questions may seem silly but I have to ask them, cutting down trees, substantial vegetation for either the front or back deck?

MR. JONES: No, sir.

MR. KANE: Creating water hazards or runoffs?

MR. JONES: No, sir.

MR. KANE: Any easements running through those particular areas?

MR. JONES: No, sir.

MR. KANE: The deck in the back is that similar in size and nature to other decks that are in your neighborhood, so not oversized, you know?

MR. JONES: Not oversized, as far as decks, I've only noticed one, okay, one on the other side of the property line which is off the other street, they have one that's a little bit, probably about the same size or a little bit bigger than the one I want to build.

MR. KANE: So 16 x 24 is the length of the house portion of that?

MR. JONES: Yes.

MR. KANE: So you're coming 16 feet out of the back?

MR. JONES: Correct.

MR. KANE: Without the deck there, you'd have an exit out onto that deck, without it would be considered a safety issue?

MR. JONES: Yes.

MR. KANE: The front deck is a little larger than normal but other homes in your area that have more front decks to their home?

MR. JONES: Not really, no.

MR. CHANIN: What's your name, please?

MS. HAMECK: Laurie Hameck (phonetic).

MR. CHANIN: Your relationship to the applicant?

MS. HAMECK: He's my fiance'.

MR. CHANIN: Is it alright with you, Mr. Jones, if Miss Hameck speaks?

MR. JONES: Yes.

MR. CHANIN: What is it that you want to tell us?

MS. HAMECK: The house right across from the driveway they have a front porch, yes.

MR. KANE: The porch itself that you intend to build in the front as an entryway porch, will that make the house stick out further, closer to the road than the other homes in your neighborhood?

MR. JONES: No, sir.

MR. KANE: If you looked down the line, you're not going to stick out like this?

MR. JONES: No, sir.

MR. KANE: Further questions from the board?

MR. BEDETTI: I'm good.

MR. HAMEL: What do you have in the back now, looks like it's just an open field basically?

MR. JONES: In the back there is a screened in area, it's about eight foot wide and I'm going to take that out to 16 and then--

MR. HAMEL: No, but I just meant to--

MR. TORPEY: The property in the back.

MR. HAMEL: There's nothing back there now?

MR. JONES: No, the property line's back here, this is from the side view, okay, this is standing.

MR. TORPEY: You're not encroaching on any neighbors?

MR. JONES: No, sir.

MR. TORPEY: Don't you mean that?

MR. HAMEL: Thank you.

MR. JONES: Thank you.

MR. CHANIN: Any other questions from the board?
Motion?

MR. KANE: Got enough pictures, I'll accept a motion if there are no further questions.

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

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: Your next steps, there's always paperwork, take that and if you have any questions, give Steph a call.

MR. JONES: Thank you very much.

SHOP RITE, BHC BIG V LLC (16-05)

MR. KANE: Shop Rite, BHC Big V LLC. Variance is requested to permit a second 50.2 square foot round facade sign. Located at 366 Windsor Highway in an HC Zone.

MS. MANNING: Good evening, I'm Liz Manning from Lewis Sign Company and we're representing Shop Rite. They're renovating the existing Shop Rite store--

MR. KANE: Yes, they are.

MS. MANNING: -- in Vails Gate and part of the renovation of the facade will include putting up new signs. We requested two large eight foot diameter logos to be placed on the front and since only one is allowed per code, we need a variance for the second round logo. And then we also got approval for two entrance signs, just the word entrance. In the course of this renovation, they're taking down a lot of the signs that were approved 10 years ago, such as the Vision Center and I can't remember--

MR. KANE: Bank if I remember correctly, might have been, there were a couple, I was here.

MS. MANNING: Lawn and Garden, that's all gone so the facade will look a lot--

MR. KANE: On the facade, just going to have the two round Shop Rite signs is what you want instead of all the other little signs that were there previously?

MS. MANNING: Yeah, the two logos plus the word entrance twice and the pharmacy sign will remain.

MR. KANE: The sign is illuminated?

MS. MANNING: Yes.

MR. KANE: Non-flashing?

MS. MANNING: Correct.

MR. KANE: Internal illumination?

MS. MANNING: Yes.

MR. KANE: Questions from the board?

MR. BEDETTI: You had mentioned one of the signs that's coming down was for the Vision Center?

MS. MANNING: Yes, I believe that will be removed.

MR. KANE: I think it's gone already.

MR. BEDETTI: They have the right to put up a facade sign.

MR. KANE: Right, but they're not doing it so--

MR. BEDETTI: Do we know that for a fact?

MR. KANE: They took it down and it's gone.

MR. BEDETTI: Okay, no, I didn't know whether it was taken it down temporarily or going to go back up after construction is complete, okay.

MR. KANE: Could you check for the public portion of the hearing?

MS. MANNING: Certainly.

MR. KANE: That would be needed information. Further questions? I'll accept a motion if there are none.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Shop Rite for a variance request to permit a second 50.2 foot square foot round facade sign located at 366 highway in an HC Zone.

MR. TORPEY: Second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: More paperwork, there you go, those are your next steps, any questions, give Stephanie a call.

MS. MANNING: Thank you.

PUBLIC HEARINGS

RACHEL MILLER (16-01)

MR. KANE: Public hearings, Rachael Miller. An area variance of 20 feet is requested to permit an existing 18 foot by 20 foot rear deck located at 5 Coutant lane.

MR. CHANIN: So just quickly restate what you just stated the first time on February 22 about why you're looking for this variance.

MS. MILLER: Okay, so when I bought the house in 1999, the deck was on and I'm selling the house and I'm being told that I need a variance for the existing deck.

MR. CHANIN: That's because when you were here last time you told us you didn't have a C.O. and you can't sell?

MS. MILLER: Right.

MR. CHANIN: And you told us that your deck was pre-existing, similar to others in the neighborhood and you've got no complaints and that the door's four and a half feet off the ground, so if you didn't have the deck there would be a danger from people exiting the house?

MS. MILLER: That's correct, all correct.

MR. CHANIN: You told us that?

MS. MILLER: Thanks for reminding me.

MR. CHANIN: In terms of the new deck that you're proposing, you haven't cut any significant vegetation, not creating water hazards and there are no easements, all of that is what you told us the first time?

MS. MILLER: That's correct.

MR. KANE: On those standards, we'll take it and open it up to the public. Anybody here for this particular hearing that would like to speak? So we'll close the public portion of the meeting and ask Stephanie how many mailings we had.

MS. RODRIGUEZ: On the 23rd day of February 2016, I compared 57 addressed envelopes, sent them out and

received no response.

MR. KANE: Any further questions from the board? Then I'll accept a motion.

MR. BEDETTI: I'll make a motion we grant Rachel Miller a variance of 20 feet for an existing 18 x 20 foot rear deck located at 5 Coutant Lane in an R-4 zone.

MR. TORPEY: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: See, you went right for the paperwork.

MS. MILLER: Appreciate it, thank you.

ANTHONY FIORINI (16-02)

MR. KANE: Tonight's last public hearing, Anthony Fiorini. An area variance of 24 feet is requested to permit a 20 foot by 16 foot screened porch. Located at 42 Fox Hill Run in an R-1 zone. How you doing? Same thing as the preliminary, name, address, speak loud enough for this young lady over here to hear you and tell us exactly what you want to do.

MR. FIORINI: Anthony Fiorini, 42 Fox Hill Run, Rock Tavern. We're, currently on the back we have a 16 x 12 deck, we'd like to extend the deck eight feet and screen it in.

MR. KANE: Will you be creating--do you want to read that?

MR. CHANIN: You told us Mr. Fiorini last time you were here that you have not substantially and don't intend to substantially intend to cut vegetation, not going to create any ponding, erosion or water hazards and there are no easements running through the property involved in that deck?

MR. FIORINI: Yes, sir.

MR. CHANIN: You told us that this was not adjacent to the pool, is that correct?

MR. FIORINI: Correct.

MR. CHANIN: You were also asked last time to bring in photos.

MR. FIORINI: Yes, it's not the best quality but shows how far I am.

MR. KANE: That's fine.

MR. CHANIN: You also told us that you have owned the house and the current existing deck since the year 2008?

MR. FIORINI: No, that's when it was built, it was a model home so it was unoccupied but we bought it last November.

MR. CHANIN: Okay, but the house and the deck as it currently exists has been there since 2008?

MR. FIORINI: Right, if I, if I'm taking from the deck out.

MR. BEDETTI: I see the corner of the deck and that's the existing deck?

MR. FIORINI: Correct.

MR. CHANIN: If this variance were granted and you were given permission to increase the size of the deck to approximately 16 x 20, would that new increased size make it similar to other decks in the neighborhood?

MR. FIORINI: I believe so, you know, people have multi-layer decks but overall size, yeah.

MR. CHANIN: Just tell me what the basis of your belief is that it would be similar?

MR. FIORINI: From being on the neighbor's, I got a good friend and another neighbor that I've been on their decks, I saw the neighbor's decks, two of them.

MR. KANE: At this point, I'll open it up and ask if there's anybody here for this discussion? Seeing as there's not, we'll close the public portion of the meeting and ask Stephanie how many mailings we had.

MS. RODRIGUEZ: On the 23rd day of February 2016, I compared nine addressed envelopes, sent them out and got no response.

MR. KANE: Any further questions from the board? If not, I'll accept a motion.

MR. BEDETTI: I just have one question.

MR. KANE: Absolutely.

MR. BEDETTI: It looks like there's quite an elevation change from the house behind you?

MR. FIORINI: Yes.

MR. BEDETTI: Approximately where does your property line--

MR. FIORINI: It's kind of an odd line, I don't know if it's cause--

MR. BEDETTI: Is it part way up the hill?

MR. FIORINI: Back here up the hill and kind of cuts at an angle down to the road.

MR. BEDETTI: That's good, I'm good.

MR. KANE: I'll accept a motion then.

MR. HAMEL: I'll make a motion that we grant Anthony Fiorini the variance as requested for the 24 feet.

MR. TORPEY: I'll second that.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	NO
MR. KANE	AYE

MR. KANE: Motion passes four to one, your next steps.

MR. FIORINI: Okay.

DISCUSSION

JOINTA LIME (16-03)

MR. KANE: And that concludes our public meetings for the evening. We now have a discussion Jointa Lime an interpretation and/or variance must be obtained with regard to the status of the proposed project equipment as to if the same is considered a structure and requires compliance with the bulk table setbacks which would require area variances or if the equipment is not subject to the bulk table setbacks. If variances are needed, the applicant should identify the necessary setback and/or height variances required. Located at World Trade Way in an AP zone. So Pat had brought up that he personally needs a little bit more information to have this discussion. So either from the town attorney or from the planning board, looking to get some more information and so that we can have a good discussion and make a good decision on how we feel.

MR. TORPEY: At least we know what we're discussing.

MR. BEDETTI: Is that, I thought this was an extension of the lease, where their lease was, are they buying the property?

MR. KANE: My understanding they want to make it a semi-permanent thing, I don't know if the town is selling the property or leasing it out, that I don't know, but all of that is what we don't know so we need a lot more information to make any kind of decision.

MR. TORPEY: Our first meeting was about if we should be involved in it in the first place, that's what they were asking us if the, is the town allowed--

MR. KANE: You mean the first one going back when they were first the--

MR. TORPEY: Yeah, it was about the town.

MR. KANE: That was different, that was a--

MR. TORPEY: That's the only thing we discussed.

MR. KANE: The permits were turned down and then it was a decision whether the zoning board should be able to handle something like that and they according to our rules they didn't have standing to come in front of us.

MR. CHANIN: According to the law.

MR. TORPEY: And so we were out of it at that point. It was my understanding it was originally supposed to be a temporary type of blacktop place to help with the airport doing re-pavement and that kind of stuff.

MR. CHANIN: Correct.

MR. KANE: Now they're going to turn it into a more permanent situation, I don't know about land ownership or leases or whatever, which means we've got to decide the issue whether they need a variance. So I would prefer that the planning board or Mike Blithe come in and explain exactly what we're looking at.

MR. TORPEY: Really the discussion wasn't about that, the discussion was about the town changing the rules around because the town can do that to themselves.

MR. KANE: That was part of our discussion, that's why the town is not subject to those, yeah, we did talk all about that, but the gist was that we didn't make any kind of a decision because there was no standing to be in front of us. But yeah, we did cover all that and talk about all that stuff, that's kind of for our own knowledge.

MR. BEDETTI: Again, going back to my original question, I think ownership of the property is significant because the town is not bound by the bulk table where the private enterprise if they purchase the property then they--

MR. KANE: Like anybody else so we need a heck of a lot more information.

MR. TORPEY: What if they're leasing or renting the property again?

MR. KANE: Then it's a legal question, if you're leasing it out to somebody it's not town used property then do they have to follow rules. Tricky question, we need a lot more information before we can really talk about this. I don't feel comfortable with what I have right now.

MR. TORPEY: It's an industrial area, it's not a bad thing but what's the truth, that's really--

MR. KANE: I guess what I read into this about the equipment is it could be and I might be totally off base with this, it could be that they consider their equipment temporary, okay. Almost like in the pool business an inground pool is considered permanent and it's a taxable situation, an above-ground pool is not considered permanent so you don't get a tax on it. So I think they're looking to say that their equipment is movable and therefore not permanent therefore shouldn't require, that's what I'm guessing here. But I'd like to get a heck of a lot more information before I really talk about it.

MR. BEDETTI: Yeah.

MR. KANE: So--

MR. CHANIN: If it's the board's pleasure then what you can do is ask me to be in touch with the officials of the town, the building department, the town attorney, the town board, the town supervisor and I'll try to get you as much information as you need or want so that you have some background and context so that you're first even able to intelligently discuss, let alone answer the question that's been presented to you. I also would like to ask them certain specific information. It seems to me at least at first blush that, you know, laws all about labels, we've discussed this many times and as Chairman Kane correctly said that depending on what label you put on consequences flow from that. Is something permanent or is it temporary and movable? In the context of buildings, you've heard the expression whether or not something is a fixture or not and there's all kinds of criteria that are used to answer what the correct label is. For example, if something is a fixture, what that means is that if you remove it you're necessarily doing damage to the building, you're removing it from such as an inground pool. You're leaving a gaping hole in the ground. If it is not a fixture, if it's temporary, if it's movable, you can remove an above-ground pool and still have the property the way it was before.

MR. TORPEY: What's the zoning there?

MR. KANE: We need to find all that out.

MR. CHANIN: All of that is information, not only do I think you as a board need to know but I need to know

also.

MR. BEDETTI: It's an AP zone.

MR. CHANIN: Right, so if it's your pleasure, if it's the board's pleasure then I'll be in touch with the town.

MR. KANE: Please.

MR. CHANIN: With the town attorney, with the building department and I'll get as much background information as I can for you hopefully in time for your next meeting so that you can have--

MR. KANE: Feel free to ask any questions.

MR. TORPEY: The big question is are they zoned for this.

MR. KANE: That's not our question. What they're asking us is an interpretation with regard to the status of the proposed project, equipment, that's what we're answering. If we decide that it, let me just finish, if we decide that it's a permanent fixture that we don't agree that it's a movable thing.

MR. CHANIN: Structure.

MR. KANE: Permanent structure then at that point the applicant will have to file for a regular variance then we can ask all those other questions.

MR. CHANIN: That's correct, on the other hand--

MR. TORPEY: We should go take a tour.

MR. CHANIN: If it's just equipment and it's not affixed and it's not intended to be there permanently, just somebody's equipment and they can move it, if that's your decision, then it's not a structure and it's not subject to requiring a variance. But so the label you put on it is all important and you can't make up your mind tonight what it is because you don't have enough information.

MR. TORPEY: Over by Argenio's they have the cement plant, it's a portable setup, they're there now but that can be taken down and moved so it's still in the same category.

MR. KANE: I don't think they're grandfathered in or anything.

MR. TORPEY: Still a cement and crushing plant, they just popped up, you know what I mean, it's movable.

MR. CHANIN: There's more than one criteria, you have to take all the criteria into account and do a balancing.

MR. TORPEY: Only thing that's permanent is going to be a garage.

MR. KANE: We're going to find out if there's anything on the Argenio cement thing, just to get some kind of precedence or whatever is going on over there, just to give us a basis.

MR. BIASOTTI: Argenio also did have an asphalt plant behind his place a few years ago so we're going to look at that.

MR. TORPEY: Even the asphalt plant that's there if that garage wasn't there that plant, that thing's like a tractor trailer that can be taken apart and moved.

MR. KANE: Right, so that's the question that really is before us but we don't have new information, we're just discussing.

MR. BEDETTI: I've gone up there and looked at the place and I'm a little bit familiar with the type of operation and the bulk of the equipment is in fact considered to be a mobile unit, the feed hoppers that probably could violate one of the ground rules for height, for example, looks more permanent than the rest of the thing does but from my own perspective the ownership of that property is vital to me, okay.

MR. KANE: I hear you, especially with what we went through before so you're on, Geoff, you've got a job, no spring vacation.

MR. TORPEY: Yeah, but all that property might be ours.

MR. CHANIN: But you're also correct, you know, I could own property and I could lease it to you and that means I'm still the owner and you're just the tenant. But if I lease it to you for 100 years and for all intents and

purposes the reality is different than the label so you have to take all these things into consideration.

MR. TORPEY: But the town owns it right now and we're the town.

MR. KANE: Again, that's not, it's really not what we're deciding right here. I know it's a factor that I want to know too what's going forward but we're deciding whether the equipment is permanent or not. So let's get all that information.

MR. HAMEL: Let me ask you a simple question, what brought this up now and not a year ago?

MR. KANE: Because they want to stay permanent, before that whole thing was a temporary thing so the issue has come up to my understanding. Any other questions for now? Okay, meeting adjourned.

MR. BEDETTI: So moved.

MR. BIASOTTI: Second it.

ROLL CALL

MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer