

TOWN OF NEW WINDSOR

ZONING BOARD

APRIL 25, 2016

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
 HENRY SCHEIBLE
 FRANCIS BEDETTI
 RICHARD HAMEL
 PATRICK TORPEY

ALTERNATE: GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
 ZONING BOARD ATTORNEY

 STEPHANIE RODRIGUEZ
 ZONING BOARD SECRETARY

MEETING AGENDA:

1. Gysel Giglio
2. Carpet Mill Outlet
3. Kenneth and Anna Kiskis
4. Jointa Lime

REGULAR MEETING:

MR. KANE: I'd like to call the Town of New Windsor Zoning Board of Appeals regular session for April 25, 2016 to order.

APPROVAL OF MINUTES DATED 3/28/16

MR. KANE: Motion to accept the minutes dated 3/28/16

MR. BEDETTI: So moved.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE AYE

APRIL 25, 2016

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

PRELIMINARY MEETINGS:

GYSEL GIGLIO (16-07)

MR. KANE: Preliminary meeting. Tonight's first meeting is Gysel Giglio, excuse me if I mispronounce names. A variance of 18 foot three inches is requested to permit a proposed 14' x 26' side addition that will not meet the minimum 30' side yard setback. Located at 324 Chestnut Avenue in an R-4 zone. So you understand what we do in New Windsor is we hold two meetings. We hold a preliminary meeting so we can get a general idea of what you want to do and you have the proper information to give us. Other towns in the area hold one meeting, if you don't come in with all the right stuff you lose, we don't see you for six months. So all of our decisions have to be made in the public forum by law. So what happens here in a preliminary meeting will be the same thing in the public meeting except that at that point the public will be involved. Joseph, good to see you.

MR. MINUTA: Good evening, how are you?

MR. KANE: You're on.

MR. MINUTA: So--

MR. CHANIN: Your name just for the record.

MR. MINUTA: Joseph Minuta, Minuta Architecture representing Gysel Giglio. So it's pretty self-evident, they'd like to put an addition onto the house. It's an existing home, bi-level and they have pretty extreme side yards, one side is 53 feet and the other one is currently 25.7 so they'd like to place it on this side of the house simply due to the configuration of the existing house so that the rooms tie into one another. Very simply, otherwise it will be on the garage side here which is not going to work. So that's essentially what we're looking for. We meet both side yard requirements, exceed by five foot four inches even if this variance is granted for the one side so that's pretty much the sum and substance of the project.

MR. KANE: Cutting down any substantial vegetation or trees in the building of this?

MR. MINUTA: No.

MR. KANE: Creating any water hazards or runoffs?

MR. MINUTA: No.

MR. KANE: Any easements running through that particular area?

MR. MINUTA: No.

MR. KANE: Putting an addition onto the house will it keep it similar in size and nature to the houses in the neighborhood?

MR. MINUTA: Yes.

MR. KANE: And the reason why possibly you couldn't put it on the back of the house therefore not needing a variance?

MR. MINUTA: Well, there's an addition currently that was permitted four months ago, three or four months ago, they're putting the addition here, just running out of room in the house.

MR. KANE: Okay. Further questions from the board at this time?

MR. BEDETTI: The addition that you just talked about, not the, this new one that you said, the one you said you already have a variance that doesn't show on the drawing.

MR. MINUTA: This was, they were submitted approximately the same time so the building permit was then issued thereafter so by the time we submitted this, just timing.

MR. BEDETTI: So there's not going to be two?

MR. MINUTA: There's an addition that's being placed right here, it's under construction, alright, so at the time this was not on the table when we submitted it.

MR. BEDETTI: Got it.

MR. SCHEIBLE: The original house that was built there, Mr. Minuta, how long ago was that just out of curiosity how long has this house been there?

MR. MINUTA: I can't speak to the age of the house, it's a bi-level relatively new, probably circa 1970s. And to that end the zoning did change so we have some existing nonconformities but due to the existing lot that's pretty much why we're coming for this.

MR. KANE: Any other question?

MR. HAMEL: What's the size of the house that's there now? I see the width is 20 foot, 26 feet but what's the length of it?

MR. MINUTA: Sure.

MR. HAMEL: Is it 48 or 50 foot?

MR. MINUTA: Roughly, 48 feet.

MR. HAMEL: So it's going to make it a 62 foot house?

MR. MINUTA: Correct.

MR. HAMEL: That's similar to what's in the neighborhood?

MR. MINUTA: There's a mixed variety of the homes in the neighborhood.

MR. HAMEL: Maybe before the next meeting can I suggest bringing some of the pictures of the surrounding houses?

MR. MINUTA: Surrounding homes, sure, absolutely. There's, I don't know if you can see it here, but this is the existing home.

MR. KANE: Further questions? If there's none, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Gysel Giglio for a variance of 18.3 feet for a proposed side addition located at 324 Chestnut Avenue in an R-4 zone.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE AYE
MR. BEDETTI AYE

APRIL 25, 2016

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MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: You know the drill.

MR. MINUTA: Yes, thank you.

MR. KANE: Have a good evening.

PUBLIC HEARINGS:

CARPET MILL OUTLET (16-06)

MR. KANE: Tonight's first public hearing is Carpet Mill Outlet. A variance is required to permit an existing freestanding sign that does not maintain constant intensity or color of light at all times. Located at 294 Windsor Highway in an HC zone. Basically, they're adding an LED light to the freestanding light. So Carpet Mill, come on up. Same as the preliminary hearing, speak loud and clear, let that young lady over there hear you and name, address and in your own words tell us exactly what you want to do.

MR. BORDEN: Kenneth Borden, 294 Windsor Highway for Carpet Mill Outlet. It's an LED advertising sign, it posts different things that are going on in our store. It's capable of doing Amber Alerts for the state. It gives time and temperature, it goes off at a certain time at night, it only goes up to 12:30 and then it goes dark, only time and temperature so it's not intrusive to the nighttime. I think that it will bring added business to the area, to the neighborhood and it will do us a lot of good as far as bringing business for us.

MR. KANE: Okay, the light itself is illuminated, obviously interior illumination?

MR. BORDEN: Yes.

MR. KANE: Non-flashing where it wouldn't blind a driver coming down?

MR. BORDEN: No, it fades in and out it, does not flash, it fades.

MR. KANE: Do you remember how long it is between messages?

MR. BORDEN: I timed it, it's between five seconds and 15 seconds and I timed the other ones, the other ones are also five seconds and ten seconds.

MR. KANE: That would be Devitt's and Walgreens?

MR. BORDEN: Devitt's and Walgreens.

MR. KANE: Okay, open it up to the board for further questions.

MR. BEDETTI: You said the messaging interval is between five seconds and 15 seconds?

MR. BORDEN: Correct.

MR. BEDETTI: I'm assuming there are different messages that are being portrayed?

MR. BORDEN: That's correct.

MR. BEDETTI: And some of the messages are of a longer display time than others?

MR. BORDEN: Correct.

MR. BEDETTI: Just wanted to know whether you set it for five seconds or set it for 15 seconds but you say it's a mix?

MR. BORDEN: It's a mix, yes.

MR. BEDETTI: Thank you.

MR. KANE: Further questions from the board?

MR. HAMEL: The sign that's there now is that the same size as the one before that there was a sign there?

MR. BORDEN: It's the same size, actually we got rid of two signs for one so we made it smaller, actually two for one.

MR. KANE: Okay, alright, at this point, I'll open it up to the public and ask if anybody is here for this particular hearing? Seeing as there's not, we'll come back to Stephanie and ask how many mailings we had.

MS. RODRIGUEZ: On the 12th day of April 2016, I compared 21 addressed envelopes containing the public hearing notice, sent them out, I received no response.

MR. KANE: We'll open it up to the board for any further questions at this point?

MR. BEDETTI: I'd just like to make a comment relative to this. Well, I've seen the sign, I've seen it before, even before you came here, I personally think

that the five second interval is too short. I mean, I think the last thing we need is people driving and trying to read a sign and drive at the same time with changing messages. I realize our code currently does not require a timing, our code really doesn't, is not updated to a point where it specifically identifies requirements for this digital type sign. I think our building department is addressing that as we speak. But personally I think from a safety point of view that the five second interval is much too short. Fifteen seconds is not bad. I personally I would like to see that you show this interval be not less than 15 seconds.

MR. BORDEN: I'll take it under advisement.

MR. BEDETTI: That your shortest interval be not less than 15 seconds.

MR. KANE: Any other questions? I'll accept a motion.

MR. BEDETTI: I'd like to make a comment. If I make the motion, I'd like to suggest that we include the interval minimum if that's acceptable.

MR. CHANIN: Here's what you would do. Whoever wants to make the motion and since motions should be phrased in the affirmative, somebody would make a motion, let's say Mr. Bedetti would say I move that we approve subject to the condition of, and then that would have to be seconded and then the board would vote on that specific motion. If the board votes that particular motion down, then somebody else could make a motion without that qualification and then the board would vote on the second motion that did not have that specific requirement in it. So if you want to make your motion subject to no intervals of less than 15 seconds.

MR. BEDETTI: I'd like to make a motion that we grant the variance for a permit for an existing freestanding sign that does not maintain a constant intensity of color at all times and that the current interval of five seconds is much too short, that the minimum interval should be no less than 15 seconds. And that's for Carpet Mill Outlet located at 294 Windsor Highway in an HC Zone.

MR. CHANIN: Now, if there's going to be a vote on that somebody has to second that.

MR. HAMEL: I'll second that.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: Always paperwork, your next steps and you're all set. Any questions, give Stephanie a call in the office tomorrow. Have a great evening, take care.

KENNETH & ANNA KISKIS (16-08)

MR. KANE: Next is Kenneth and Anna Kiskis. An interpretation is requested to allow a single-family dwelling with two kitchens. Located at 228 Leslie Avenue in an R-4 zone. How you doing? Same thing as the prelim, state your name, address, speak loud enough for that young lady over there to hear you.

MS. KISKIS: 228 Leslie Avenue, New Windsor, of course. And what I'm looking to do is make a mother-daughter with an additional kitchen downstairs for my sister-in-law.

MR. KANE: Your intent on the additional kitchen just to have a second kitchen, you're not making any kind of an apartment or separate--

MS. KISKIS: No, there's going to be a connecting staircase that will still be accessible, it's not closed off as an apartment, right.

MR. KANE: Single electric and gas coming into the home?

MS. KISKIS: Yes.

MR. KANE: No intention in the future of using this as rental space whatsoever?

MS. KISKIS: No.

MR. KANE: Further questions from the board?

MR. SCHEIBLE: I think we asked that question the last time around, there's no access, where is the access, is there an outdoor--

MS. KISKIS: There is a door in the back yard and then there's connecting staircases once you're into the room, there's a staircase going up into my kitchen.

MR. SCHEIBLE: Do you do the cooking in both kitchens?

MS. KISKIS: Well, that's the whole idea, well, hopefully, I don't cook too much.

MR. KANE: You're old enough to remember summer kitchens down in the basement. Has the cat moved?

MS. KISKIS: No, the cat has not moved yet and he hasn't cooked yet.

MR. BEDETTI: It didn't look like he was going to move.

MS. KISKIS: He looks like he eats though.

MR. KANE: I will ask if there's anybody here for this particular hearing? Seeing as there's not, we'll close the public portion of the meeting and come back to Stephanie and ask how many mailings.

MS. RODRIGUEZ: On the 12th day of April 2016, I compared 70 addressed envelopes containing public hearing notice, sent them out and received no response.

MS. KISKIS: I have the paper cuts to prove it.

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

MR. BEDETTI: I'll make a motion that we grant an interpretation that was requested to allow a single-family dwelling with two kitchens located at 228 Leslie Avenue in an R-4 zone. And that interpretation is that the house will remain a single-family dwelling that will not be rented nor will it be advertised for sale or for rent as anything other than a single-family dwelling. And that's located at 228 Leslie Avenue in an R-4 zone.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

MR. KANE: Any questions give Stephanie a call in the office. Have a good evening.

DISCUSSION

MR. KANE: That's the only thing left, we have no decisions to vote on. So the only thing left is our vote and whatever discussion we need on Jointa Lime. Have you been keeping up on this?

MR. TORPEY: Little bit.

MR. KANE: You're comfortable enough to make a vote or do you have any questions?

MR. TORPEY: Pretty much I can.

MR. CHANIN: Do you want me to reiterate just for the for the board's guidance? Again, the prevailing law when questions like this arise and this applies all over New York State, not just to Orange County or to the Town of New Windsor, is that each one of these cases stands on its own merits. And the board has the discretion to rule on this particular application, this particular set of circumstances, this particular location. So that is the prevailing law that each case stands on its own, the Latin phrase is *sui generis*. There are some criteria that the board can take into account and use as guidance but the final decision of the board has to be specific to this particular situation and these particular facts. The general outline which I previously shared with you includes a definition of real property. Again, your question that the board has to answer tonight is whether or not any of the material that's been described to you is real property subject to the zoning ordinance and whether or not once being found to be subject to the zoning ordinance whether or not an application for a variance is required or if it's not real property, if it's personal property or some other kind of property then it's obviously not subject to the zoning ordinance and the job of this board is done. The real property tax law of the State of New York Section 102 defines real property, you know, admittedly that's for taxation purposes and the very experienced and knowledgeable tax assessor of the Town of New Windsor, Mr. Wiley, has already ruled for taxation purposes that none of these materials or equipment is real property. That decision can guide you but it does not bind you. The real property tax law Section 102 definition of real property excludes machinery and equipment if that machinery and equipment can be moved for use in a different place, if it is not essential to support a

building or a structure, if it can be removed without significant damage to the ground or any other structures and if it is used for trade or manufacturer. So for taxation purposes, those are the criteria that are taken into account in defining whether or not something is or is not real property. But as I said before this application and this set of facts stands on its own and this board is free to make whatever decision it wants. Now, your decision making process is going to be two tiers, as I said before, first of all the board should decide whether or not this is or is not real property. If you decide that it is not then your inquiry is over. If you decide that it is real property, then in effect what you would be doing is referring Jointa Lime to the building department to file an application for a variance.

MR. TORPEY: Excuse me, so real property is basically this property's not collecting tax, they're not paying tax on this property?

MR. CHANIN: For the purposes of taxation, Mr. Wiley has determined that none of the materials or equipment or machinery that's before this board for an interpretation--

MR. KANE: Has nothing to do with property, has to do with the equipment that they're bringing.

MR. TORPEY: On the town's property.

MR. KANE: Right, but it's for taxation purposes. The tax guy doesn't feel that it's real property under the tax laws.

MR. CHANIN: Correct.

MR. TORPEY: Okay.

MR. CHANIN: With that refresher in mind, those are criteria I've shared with this board at previous meetings. But the board has to decide if it's ready to make a decision tonight whether or not to categorize this in the first place as real property or something other than real property. And once you make that decision then we'll know how to proceed after that.

MR. TORPEY: Whether it's the town's property.

MR. CHANIN: Jointa Lime is occupying that property

under a lease.

MR. TORPEY: So the town can make any variance or any rule or anything on that property cause it's the town's property.

MR. CHANIN: It is the town's property.

MR. TORPEY: So really we have nothing to do with this.

MR. KANE: Except they asked our opinion and we're going to give it.

MR. TORPEY: Zero. They can change that when they feel like it so doesn't matter what we would say.

MR. KANE: Well, we still have to vote.

MR. TORPEY: The town can change it.

MR. KANE: As Jointa Lime has said, they consider it a totally portable system.

MR. TORPEY: That's the easy part, who cares about that, we're talking about the property itself, we're the town.

MR. KANE: No, we're talking about the equipment.

MR. TORPEY: It's movable, not a permanent structure, move from this property to the next property.

MR. CHANIN: Here's what you're talking about, this material was distributed to the board at a prior meeting, you can see that these pictures--

MR. TORPEY: It's all movable.

MR. CHANIN: Right, it's on wheels.

MR. TORPEY: Pick up and go to Arizona tomorrow.

MR. KANE: Exactly, that's what they said. Now, my deal with getting a variance on the property is that the variance goes to the property, not the equipment. So if we give, if we make them come in for a variance on that, that variance sticks with the property right there.

MR. TORPEY: What happens when the equipment is moved?

MR. KANE: Doesn't matter, it goes to the property, not the equipment.

MR. CHANIN: What you're saying is right, that the underlying land is owned by the town and Jointa is using it under a lease. The question before the board does not concern the underlying land, it concerns the machinery, the equipment, materials which are possessed and owned by Jointa Lime. So the question before the board very narrowly and specifically is whether only those materials, equipment, machinery, et cetera, owned by Jointa Lime should be considered real property for the purpose of subjecting it to the jurisdiction of this board as to whether or not they should be required to get a variance, not the underlying land, the equipment.

MR. TORPEY: That's only if it was permanent.

MR. CHANIN: That's absolutely right, if you think it's not permanent, it's not subject.

MR. KANE: Then you would vote.

MR. CHANIN: So that would influence your vote.

MR. TORPEY: It's the truth.

MR. CHANIN: That's your opinion.

MR. SCHEIBLE: And in that lease agreement is there a stipulation of the number of pieces of machinery that will be, maybe you've discussed this already, but I just wanted to reiterate is there a stipulation in there that right now it's a pretty crowded little neighborhood which is fine, right, and since the New Windsor is the receiver of the lease do we know that that's as much as, as far as they're going to go and that's not a five year, it's a 10 year, am I correct?

MR. CHANIN: That's correct.

MR. TORPEY: They can go as far as they want.

MR. CHANIN: By the way, important point here, my understanding is, maybe Michael Blythe can correct me if I'm wrong, but my understanding is that the 10 year lease is before the town board but hasn't yet been approved, is that right?

MR. BLYTHE: That's correct.

MR. CHANIN: Yes, you're right, a 10 year lease is being proposed to succeed the prior lease which I think was only for four years. But again, you're talking about the lease, the question really is what is the nature of this machinery, equipment and material, is it real property? If it is then it may be subject to the zoning ordinance. If it is not, then it's not subject to the zoning ordinance.

MR. KANE: The one piece that would come into the zoning board would be the silo because of the height going in, everything else we wouldn't touch.

MR. TORPEY: The airport has a height restriction.

MR. KANE: No, if we're talking about the height of a building, the silo is higher than what the law would allow on that piece of property.

MR. TURNER: That's the airport.

MR. CHANIN: Well, no, listen, if the board should conclude that any part of the equipment, material, machinery, whatever it is should be considered to be real property then as real property it would then become subject to the town zoning ordinance. Now, my understanding is that because of where this machinery is located, it's not centered, it's near, too close to one of the side boundaries and my understanding is that because it's closer to the side boundary than the code provides it would then be subject to a height variance. In other words, if something is a big tall structure and it's in the center of a piece of property, it's sticking up in the center but if it's close to one of the boundaries there are, that's when the town ordinance kicks in with respect to height restrictions and because this--

MR. TORPEY: The town can change that, it's their property.

MR. CHANIN: Well, that's up to the town board to change their ordinance of course. But that's not the question before this board. The question before this board fundamentally is whether or not any of this material, equipment, machinery, what have you, whether any of that because of its permanence or whether it's

mobile, whether it's essential to support a building or a structure or not essential, whether it can be removed without causing damage to some other structure or to the ground, whether it's used for trade or manufacturing, using those criteria the question is whether any of this machinery or equipment is or is not real property. If you vote that it is not real property then the board's job is done. If you vote that it is real property then the conditions and requirements of the town code apply to that part of the machinery that you decide should be categorized as real property.

MR. TORPEY: That's like talking about a car port, it can be moved so it's really not.

MR. KANE: That's what they're asking us.

MR. CHANIN: Those are the criteria, this board has the right to make whatever decision it deems.

MR. TORPEY: I'm not involved.

MR. KANE: Any other questions?

MR. BEDETTI: Couple comments to make on the project. The initial lease was Jointa Lime coming here to do a particular job for the extension, for coating the runways, it was a short term lease. This lease is, obviously, it's not a situation where there is a company coming in bringing in a piece of equipment to do a job and they're going to leave, it's a mobile piece of equipment. The application is to come in and permanently use this site for this operation.

MR. KANE: That's not what they said when they were here. What they said was if conditions changed they can pack up that equipment and be off that site in one day and that would be their intent then they'd continue to pay out the lease. And that was part of the conversation, just correcting that they didn't say they'd be there permanent.

MR. BEDETTI: My interpretation of this application is they were looking at another site in town that they decided that it was not appropriate for their operation so they moved to an alternate site, they moved, their choice, to an alternate site to where they are right now.

MR. KANE: What's this all have to do with the equipment? Remember, we're only voting on the equipment, we're not discussing leases, that's not part of what we do.

MR. BEDETTI: I understand that but, I mean, by the same token you say well, we have a piece of equipment that's mobile, we can move it from job to job, it's got wheels on it. But we're going to move it here, we're going to be here for an extended period of time, perhaps up to 10 years possibility. My feeling is that the application that by their definition of what they want to do with it it's not going to be a portable piece of equipment where they're going to move from job to job, they can do that, I mean, you can do that with almost any structure.

MR. KANE: That's the way you'd vote then, Frank.

MR. BEDETTI: Understand. As far as again being town's property, the town is not using the property for the general good and welfare of the rest of the town. This is a lease project, alright, so it's not, the town has, I mean, the town has other pieces of building and pieces of property that were used for the service of the Town of New Windsor. This is a private--

MR. KANE: That would be a long argument on where does the lease money go, it goes into the town budget which is used for the people in the town.

MR. BEDETTI: That's a stretch.

MR. KANE: That's not a stretch, that's what happens to the money.

MR. TORPEY: That's a beautiful thing.

MR. BEDETTI: There's nothing wrong with that if they meet all the criteria that they have to meet, whatever we say they have to meet that's fine. I mean, I don't object to them even renting that property. But again, I believe that if they're there for an extended period of time and performing an operation that needs to be, that other issues need to be addressed, whether they be environmental or whatever the case may be that they should be addressed and they should be bound by the same rules and regulations that anybody else that went in there to do business would be bound by and that's, you know, that's a comment that I would make.

MR. KANE: Any other comments or questions?

MR. HAMEL: Well, my main concern where it is now and maybe it's not our business is that as far as I'm concerned it's a safety hazard where it is now.

MR. KANE: Again, that's not what we're here for. You can make the comment but you have to vote on what we're here for, guys. Alright, gentlemen, gentlemen, let's focus, okay, it's on whether it's real equipment or not real equipment, real property.

MR. TORPEY: We've got the same plant over on McArthur.

MR. HAMEL: There's a fence there.

MR. KANE: We seem to be going round and round so will you stop please, guys. This is a vote on whether it's real property or not. It has nothing to do with the environment, that's not what we're here for so I'll accept a motion.

MR. CHANIN: It should be phrased in the affirmative. So somebody can make a motion, well, of course now this makes it a little bit complicated because you can talk about different pieces of machinery and different pieces of equipment.

MR. TORPEY: The basic is real property they have to go by us.

MR. CHANIN: So perhaps if it's acceptable to the board, somebody can make a motion that this board finds that anything that you want to specify is real property and subject to the zoning ordinance. And then if you think it's not real property and not subject to the zoning ordinance then you would vote no. So is there somebody who can make that kind of a motion?

MR. SCHEIBLE: I make a motion to approve the situation that we've been discussing for the last 20 minutes that this is a real piece of property that the Town of New Windsor will be leasing it Jointa Lime, other than any discussion on the equipment.

MR. KANE: It has nothing to do with the property, it has to do with the equipment that we find the equipment is real property and therefore subject to the zoning laws of the Town of New Windsor.

MR. SCHEIBLE: Alright, not that--

MR. CHANIN: Let me put it to you this way. Is there anybody who wants to make a motion that this board finds that fill in the blank any part of this machinery is real property subject to the zoning ordinance? Does anybody want to make that kind of a motion with respect to any part of the equipment or machinery and materials or anybody else?

MR. BEDETTI: Yeah, I'll make a motion.

MR. CHANIN: Mr. Bedetti moves.

MR. BEDETTI: I make a motion that we grant an interpretation of a variance for, request for a variance that the equipment of Jointa Lime has out at World Trade Way is real property and subject to the zoning code.

MR. CHANIN: Do you want to be specific about specifically which part of the equipment or all the equipment?

MR. BEDETTI: Yeah, I believe the silo that is, that collects the coal and distributes the finished product.

MR. CHANIN: Your motion is that the silo should be considered real property?

MR. BEDETTI: The equipment.

MR. CHANIN: Specifically identifying the silo.

MR. KANE: You've got a choice, do it all or pick out pieces.

MR. BEDETTI: I will specifically take the silo as being--

MR. CHANIN: Mr. Bedetti has moved that this board should find that the silo specifically should be considered to be real property subject to the zoning ordinance and all that would follow from that. Is there a second to that motion?

MR. SCHEIBLE: I'll second it.

ROLL CALL

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

MR. CHANIN: Okay, the board's voted three to two with respect to the silo. So I assume that means that the building department will get in touch with Jointa Lime and notify them of the need for them to apply for a variance for the silo if the code so requires.

MR. BEDETTI: Yeah, well, may I make a comment to that?

MR. KANE: Go ahead.

MR. BEDETTI: I believe we're applying the code because I'm not even sure for example that the use of that property meets the code so maybe--

MR. TORPEY: The town can change that.

MR. BEDETTI: Well, that's fine, that's fine because if it's, I mean, there may be a permit, the planning board may have to issue a permit, the town board may have to issue a special permit.

MR. CHANIN: They may have to do that, that's not before this board.

MR. BEDETTI: Yeah, understand but, I mean, you know, we are invoking the bulk tables and part of that bulk table is the use of that property consistent with what they're doing and whether they're going to have the proper permits to do those.

MR. TORPEY: Got 747s landing there.

MR. KANE: Any other comments or questions?

MR. SCHEIBLE: The comments, maybe I misunderstood, my comment was that property and equipment are all taxable and subject to a lease, the lease that we're approving in Town Hall.

MR. TORPEY: But it's movable.

MR. CHANIN: We're not talking about taxation, we're talking about whether or not a piece of material,

whatever it is, is or is not real property. If it's real property just like other pieces of real property then it's subject to various legal requirements, including zoning. If it's not real property then it has no business being before this board. This board is concerned with real property and whether or not real property does or does not comply with the local zoning ordinance. So if you think that this is real property or as Mr. Bedetti's motion specified, if you think the silo is real property according to those criteria that I mentioned earlier then your finding that it is subject to the zoning ordinance and Jointa Lime as the owner of that property has to comply with the zoning ordinance, including applying for a variance if that's what the code requires. If you're finding that it is not real property then this board has nothing to say about it, there's no need for an application for a variance cause it's not real property. That was the question before you. So do you want to stick with your vote or do you want to change your vote?

MR. SCHEIBLE: I think I'd like to change the vote, go back to what you just discussed.

MR. CHANIN: So procedurally, if you want to change your vote, what you have to do is ask permission of the board to re-vote because of what we just discussed. Do you want to ask permission to have another vote?

MR. SCHEIBLE: Yes.

MR. TORPEY: Let's have a re-vote.

MR. CHANIN: Does everyone consent there should be a re-vote?

MR. KANE: One guy feels we should, we should.

MR. CHANIN: I will with your permission re-state Mr. Bedetti's motion. Mr. Bedetti's motion seconded by Mr. Hamel was, no, actually seconded by Mr. Scheible, his motion was that this board renders an interpretation that the silo should be regarded as real property and therefore subject to the zoning ordinance. That was your motion, was it not, Mr. Bedetti?

MR. BEDETTI: Yes, it was.

MR. CHANIN: Mr. Hamel seconded it, did you not, sir or Mr. Scheible actually seconded it. Okay, Mr. Scheible

is now rescinding his second. I'm going to ask the board is there a second to Mr. Bedetti's motion?

MR. HAMEL: Second it.

MR. CHANIN: Mr. Hamel seconds it. Now there's a motion and a second that this board specifically finds that the silo is real property and should be subject to the zoning ordinance. Roll call.

MR. SCHEIBLE: Very hard to be the first one polled here.

ROLL CALL

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

MR. CHANIN: Okay, so on the re-vote the vote now is one in favor and four opposed, meaning that by a four to one vote this board has determined that the silo and for that matter no other piece of machinery or equipment should be considered real property and therefore the owner of that machinery, Jointa Lime, is not subject to the zoning ordinance and need not apply to this board at least for any further approvals.

MR. KANE: Correct. Motion to adjourn?

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. TORPEY	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer