TOWN OF NEW WINDSOR

ZONING BOARD

July 11, 2016

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
FRANCIS BEDETTI
HENRY SCHEIBLE
RICHARD HAMEL
GREGORY BIASOTTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
ZONING BOARD ATTORNEY

STEPHANIE RODRIGUEZ
ZONING BOARD SECRETARY

ABSENT: PATRICK TORPEY

MEETING AGENDA:

1. Willoughby 103 Realty
2. Gennaro Acierno
3. Bohmann
4. Thomas Palmer
5. Dahlin/Pushman

REGULAR MEETING:

MR. KANE: I'd like to call the Town of New Windsor Zoning Board of Appeals July 11, 2016 meeting to order.

APPROVAL OF MINUTES DATED 6/13/16

MR. KANE: Motion to accept the minutes of 6/13/16 as written sent via e-mail 6/28/16.

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

PRELIMINARY MEETINGS:

WILLOUGHBY 103 REALTY (16-13)

MR. KANE: Willoughby 103 Realty. Variance for 56 square feet is requested to permit a freestanding sign 20 square foot total all faces. Located at 103 Executive Drive in an HC zone. For everybody here for preliminary hearings what we do in New Windsor is we hold two hearings, the prelim so we can get a general idea of what you want to do, make sure you have enough information for us to make a good decision. Then we, the second meeting is the public hearing where we make our decision and the public is asked to speak at that point. Other towns hold one meeting, you go in, you don't have the right information, you lose right off the bat. So that's why we do two. Hi, come on up, speak your name please, address, speak loudly enough for this young lady over here to hear you.

MS. ROTUNDO: Hi, I'm Maria Rotundo from Light Bright Signs. I'm representing Mr. Lieberman.

MR. CHANIN: Tell us what your application is all about, speak loud enough for everyone to hear you.

MS. ROTUNDO: So basically, we're requesting more square footage, it's a very large, almost 30,000 square foot building and he needs eight spots to be legible. So we feel that the allowable square footage is not enough to get that done so that's basically what our application is about.

MR. CHANIN: Can you describe the sign?

MS. ROTUNDO: Yes, it's a five foot by 12 foot illuminated box sign we call it or a cabinet sign. It's going to have eight tenant spots, the overall height as 138 inches but the lighted area is five foot by 12 foot.

MR. CHANIN: How is it illuminated?

MS. ROTUNDO: Fluorescence bulbs.

MR. KANE: Non-flashing?

MS. ROTUNDO: Yeah, non-flashing with a ballast.

MR. CHANIN: And the businesses advertising will only

be the businesses at that location?

MS. ROTUNDO: Oh, yes.

MR. CHANIN: Is there anything there now?

MS. ROTUNDO: Yeah, he has the 64 square foot allowable sign. I submitted photos, if you can tell by the photos, it's very hard to see the names but yeah, he does have one that we'd remove, of course, if we're granted the variance, we would remove the existing and install the new one in its place.

MR. CHANIN: Any removal of significant vegetation, trees, shrubs?

MS. ROTUNDO: No.

MR. CHANIN: And there are any right-of-ways that would be interfered with by the new sign?

MS. ROTUNDO: If there is, we'll make sure there's not. I mean, we want to put it where the existing sign is but we haven't gone over, you know, the setbacks yet.

MR. CHANIN: Well, we need to know if there's any right-of-ways that this new sign would intrude upon. Would the work involve any ponding or collection of water or erosion or anything like that?

MS. ROTUNDO: No.

MR. KANE: Doublecheck for me, didn't we give a variance previously on this property for those signs out there for at least one of them? There's two freestanding signs, get some information on that, I seem to remember that.

MS. ROTUNDO: Two freestanding signs?

MR. KANE: These two freestanding signs whether yours or not.

MS. ROTUNDO: That's somebody else's property.

MR. KANE: I understand, which freestanding sign are you talking about?

MS. ROTUNDO: Well, the existing one that Mr. Lieberman has, let me just see the photos, yeah, this is the

opposite corner from him, here we go, this is his existing monument sign.

MR. KANE: The little black sign over here?

MS. ROTUNDO: Yes, it's not illuminated.

MR. KANE: It's not these?

MS. ROTUNDO: No, that's the opposite corner. As far as the setbacks, are you referring to DOT setbacks?

MR. CHANIN: I'm referring to whether or not any other party other than the owner has a right-of-way on the property where you're proposing to put your new sign, whether it be a private right-of-way, a private easement, a private covenant, a municipal easement or right-of-way or covenant, anything like that which would be interfered with if the new sign were approved.

MS. ROTUNDO: Okay.

MR. SCHEIBLE: Question, on these signs do you know the total number of people that have offices there or is there an intention of more to be, you know, more to be added onto that sign?

MS. ROTUNDO: Yes, he's capable of eight tenants, he currently has six and he's negotiating an additional tenant now but he wants a total of eight. I mean, it's a 27,000 square foot building so each floor I was told is 9,000 square feet and it's three floors.

MR. BEDETTI: It looks like the existing sign would accommodate the additional two tenants.

MS. ROTUNDO: I can't read them and it's not illuminated and with a building that massive, I don't think the code's written for, you know, a 27,000 square foot building.

MR. BEDETTI: Yeah but, I mean, the building versus the sign, it's not something--

MS. ROTUNDO: Actually, he had tenants complaining that people cannot find their location because they can't read the sign so that's what led him to hiring our company.

MR. KANE: Any further questions?

MR. HAMEL: Yeah, the sign which is on the other corner, the closest one there is, there's two signs, you have ENT Associates.

MR. KANE: Those signs aren't part of this.

MS. ROTUNDO: It's the opposite corner.

MR. HAMEL: It's the same tenant that's on that sign.

MR. KANE: That's on different property, different property owner, has nothing to do with it.

MR. HAMEL: So we can't make them take that sign down?

MR. KANE: No, different property, different property owner that was handled in a variance I forget when going back.

MS. ROTUNDO: 2008 they received a variance and it's a four foot six inch by seven foot illuminated sign.

MR. KANE: Right, yeah, that's on a different property, has no bearing on this particular piece of property.

MR. HAMEL: Even though it's the same tenant, same building?

MR. KANE: Doesn't matter.

MR. BEDETTI: Now we don't know that those tenants are in the same building, they may be further down the road.

MR. KANE: ENT is in that building, yes.

MS. ROTUNDO: So let me just understand this sign right here which is the opposite corner of Lieberman's building, can you show me on your photos?

MR. KANE: That one right there.

MS. ROTUNDO: Can I see a little closer? My eyes. So ENT is renting from Mr. Lieberman?

MR. KANE: Yeah, ear, nose, throat, I go there.

MS. ROTUNDO: Why is his sign on the opposite?

MR. KANE: Negotiation with a different owner to put a sign on different property and they got it, not your property owner, the renter is right there and a different property owner. He negotiated a sign on their property so it has nothing to do or no bearing on your situation whatsoever.

MS. ROTUNDO: Okay.

MR. KANE: Further questions?

MR. BIASOTTI: I just have one question. Looking at where the sign is now currently, looking at the survey map, it looks like it's off of Lieberman's property and into that area between the two, between 207 and the driveway which to me is off his property.

MS. ROTUNDO: Can you show me?

MR. CHANIN: You have to speak loud enough for the stenographer to hear you.

MR. BIASOTTI: That sign looks like it's in this area here and the property says point beginning here and the metes and bounds around it through the parking area here this would put it out, it's too small for me to read, something to the Town of New Windsor.

MR. KANE: So you'll want to doublecheck your placement on the signs with the exact measurements.

MS. ROTUNDO: So I might have to secure a larger site plan, it's zoomed in here, can you see it better there?

MR. BIASOTTI: Highway abandonment to the Town of New Windsor.

MR. KANE: We don't need to address that right now, this is the prelim. But for the public hearing, you're going to need to address that question, make sure the sign is where it's supposed to be actually on his property with measurements please.

MS. ROTUNDO: We could mark the site of the proposed sign in the correct location.

MR. KANE: Yeah, but again take a look at that sign too, we want to make sure that sign is on the property it's supposed to be on so just have those measurements and where the new sign is going to go.

MS. ROTUNDO: Okay.

MR. KANE: Once you come in, you open the door and we look at everything.

MS. ROTUNDO: Oh, yeah, that's fine.

MR. KANE: We want to make sure that sign is also in good shape. Okay, any further questions? Then I'll accept a motion.

MR. HAMEL: I'll make a motion that we schedule a public hearing for the Light Bright Signs, Inc. for the variance as requested.

MR. BIASOTTI: I'll second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: Next paperwork.

MS. ROTUNDO: Thank you.

MR. KANE: Your welcome.

GENNARO ACIERNO (16-14)

MR. KANE: Tonight's next preliminary meeting Gennaro Acierno. Variance of 8.1 feet for side yard, 23.16 total side yards is requested in order to permit a proposed 12 by 25 addition. Located at 7 Carpenter Road in an R-1 zone.

MR. CLEARWATER: My name is James Clearwater. I'm a land surveyor with MJS Engineering. I'm here on behalf of Mr. Acierno. I think I laid it out pretty well in this paperwork that we submitted. But I'll go through it briefly. This lot was, this lot was created in 1963, zoning in the Town of New Windsor, was adopted in 1966 so this lot was created before the adoption of the zoning. There is currently a mobile home on the site and Mr. Acierno wants to renovate that mobile home and add an addition on the back. Now, back in 1963, the subdivision plan laid out setback requirements for all the lots on that in that subdivision. Minimum lot size was 18,000 square feet, lot width was 100, front yard minimum 40, side yard minimum 15 and lot depth of 200. There was no mention on the subdivision plan of total lot or total side yards or rear yard. Now, the existing zoning in the Town of New Windsor requires much bigger lots and much bigger yards which makes this lot and everyone out in that subdivision non-compliant. With this addition on the back of this mobile home, if the original zoning or the original subdivision requirements were still in effect, we would not need a variance but they are not. So we're here for a side yard and a total side yard. Now, if the variances are denied, Mr. Acierno will have to remove the trailer and build something else. But probably he would still need to come back here for variances because any normal sized house at least what we consider a normal size house nowadays would still need a variance. That's it in a nutshell.

MR. KANE: Cutting down any trees or substantial vegetation?

MR. CLEARWATER: No.

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

MR. CLEARWATER: No, the lot is on public water and has its own septic, we're going to re-build the septic system because what's out there doesn't even begin to

meet current health codes.

MR. KANE: You're not going to be creating any water hazards or runoffs?

MR. CLEARWATER: No.

MR. KANE: Questions from the board?

MR. BEDETTI: So if I understand it correctly, the mobile home is going to stay?

MR. CLEARWATER: That's correct.

MR. BEDETTI: You're going to expand?

MR. CLEARWATER: Push it out the back in the hatched area.

MR. BEDETTI: Essentially what you have here is a pre-existing, non-conforming.

MR. CLEARWATER: Well, we're making it worse because of the addition push, it's a little closer to the side yard.

MR. BEDETTI: Okay, yeah, well, the front end is.

MR. CLEARWATER: The front is fine.

MR. KANE: See where it kicks out on that angle, just that one angle coming out.

MR. BEDETTI: I got it, thank you.

MR. KANE: Further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for Gennaro Acierno for a variance for both side yard and total side yard on proposed addition located at 7 Carpenter Road in an R-1 zone.

MR. SCHEIBLE: Second it.

ROLL CALL
MR. SCHEIBLE AYE
MR. BEDETTI AYE
MR. HAMEL AYE
MR. BIASOTTI AYE

MR. KANE AYE

MR. HAMEL: Could I add maybe next time when he comes he brings some pictures?

MR. CLEARWATER: Sure.

MR. KANE: Thank you.

MR. CLEARWATER: When is the next meeting?

MR. CHANIN: Next meeting is July 25 but you have to complete those before then.

MR. CLEARWATER: I'm not going to be here on the 25th.

MR. CHANIN: When you're completed, you'll let the building department know and you'll be put on the next agenda.

MR. CLEARWATER: Thank you very much.

MR. KANE: You're welcome. Have a good day.

BOHMANN (16-15)

MR. KANE: Tonight's last preliminary meeting Bohmann. A variance is requested to permit a six foot fence located between the principal dwelling and the street. Located at 6 Horse Shoe Bend in an R-4 zone. Good evening, tell us exactly what you want to do on your property, speak loudly enough, give your name and address to that young lady over there.

MR. BOHMANN: Steve Bohmann and Candita (phonetic) Bohmann, 6 Horse Shoe Bend, New Windsor. We're look to put up a fence, we're on a corner lot and we have a patio, screened-in patio as you can see in the photographs and it offers no privacy. So we'd like to put in on one side the six foot palisades fence and fence in the rest of our back yard with vinyl chain link.

MR. KANE: Cutting down substantial, vegetation or trees?

MR. BOHMANN: None.

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

MR. BOHMANN: To the best of my knowledge, no, didn't say anything when I bought the house.

MR. KANE: And will you be creating any water hazards or runoffs?

MR. BOHMANN: No.

MR. KANE: Okay, alright, what I will need from you for the public hearing looking at these pictures here if you can give us some angles from the street since you're on a corner and on your map kind of draw out where you want that fence.

MRS. BOHMANN: Did I not include angles from the street?

MR. KANE: Nothing where I can see the street and the house and the impact that that would have on any drivers from the open side of the street. I want to see how vehicles are going to see that fence either way so it's not a safety hazard.

MRS. BOHMANN: No problem.

MR. BOHMANN: You didn't draw it on the survey?

MR. KANE: This is the fence coming out just behind where the chimney is and going straight back to the other white fence over there.

MR. BOHMANN: Correct.

MR. KANE: Doesn't seem like it would but for the record if you'd get those.

MRS. BOHMANN: Sure, no problem.

MR. KANE: Thank you. And the reason for a six foot fence rather than a four foot fence?

MRS. BOHMANN: Privacy, safety for our dogs and our nieces and nephews when they come over, Spring Rock Road is pretty heavily traveled and it's just the likelihood of a child running into the street is pretty high from our house.

MR. KANE: Open it to the board for any questions?

MR. BEDETTI: I have a question. Do any of your neighbors have a six foot fence that goes between the road and the house itself?

MR. KANE: I would say the white one right behind and that's where they're going to attach to in this picture.

MR. BEDETTI: That white one, does that go between the street and the front?

MR. KANE: No, actually, where they're going to run it looks like from this picture right there that one you have they're coming from the back of this chimney out about 10 feet and down almost to that fence there, really doesn't look like it from this but that's why I want the pictures from the street. It's really not coming all the way out.

MR. SCHEIBLE: Is the fence intended to be a metal fence or a white, you know, vinyl fence--

MR. BOHMANN: It was going to be--

MR. SCHEIBLE: -- so far as appearances?

MR. BOHMANN: I was going for some nice cedar palisades is my preference.

MR. KANE: Further questions? If not, I'll accept a motion.

MR. BEDETTI: I'll make a motion that we schedule a public hearing for a variance permitting a six foot front fence located between the principal dwelling and the street. Located at 6 Horse Shoe Bend in an R-4 zone.

MR. HAMEL: Second it.

ROLL CALL

MR. SCHEIBLE	AYE
MR. BEDETTI	AYE
MR. HAMEL	AYE
MR. BIASOTTI	AYE
MR. KANE	AYE

MR. KANE: Your next steps. Have a good evening.

PUBLIC HEARINGS:

THOMAS PALMER (16-12)

MR. KANE: Tonight's first public hearing Thomas Palmer. An area variance of 20,000 square feet is requested for a proposed single-family dwelling without minimum lot area or minimum lot width of 50 feet. Located at Sycamore Drive in an R-4 zone. If anybody wishes to speak on this, just put your name and address on this for the stenographer so she has the spelling and the information. Thank you. Okay, and you're on, sir.

MR. DICKOVER: Good evening, Mr. Chairman, gentlemen, ladies, counsel, my name is Robert Dickover. I'm with the law firm of Dickover, Donnelly and Donovan in Goshen, New York. And I appear here this evening on behalf of my client, Thomas Palmer, who is the applicant before you for two area variances for premises located at no number assigned on Sycamore Drive in the Town of New Windsor. Mr. Palmer lives on Sycamore Drive himself down at number 199. The property is shown on your tax maps as section, block and lot 63-4-92. The parcel is currently vacant, unimproved except by a test well which was installed last year. The property's 100 feet across the front and 200 feet deep making it a 20,000 square foot parcel in the R-4 zoning district which requires 150 feet in width and 40,000 square feet in area to accommodate a single-family residential dwelling which is one of the 11 permitted uses in the zoning district. Mr. Palmer sought a building permit for a single-family home back in 2015, building inspector by his letter dated November 4, 2015 denied that request reciting the need for area variances, including the lot size variance where the zoning ordinance requires 40,000 square feet, this parcel has 20, the zoning ordinance requires 150 feet of lot width. This parcel has 100 feet and that application sought two side yard area variances to accommodate a proposed home. That application by Mr. Palmer was rejected by this board by its decision back in January of 2016. In response to some concerns expressed by the neighbors at that time, the proposed home has been modified to eliminate the need for the side yard variances that were previously requested. The parcel in question is shown on a photograph which has been made a part of your records. This is a print of it, I will set it here if anyone cares to look at it. It's also depicted on this large board that is a

picture of the lot which by the foliage you can tell was probably taken in the spring of this year. The parcel is unimproved but for a test well which was installed on it and I'll talk about that momentarily. I believe the red home on the right-hand side of the photograph is the home of Miss Dryer. So that is the parcel and a description of it. Just with respect to the side yard variances that were previously requested as I've said they're now not part of this application. The objection expressed by Miss Dryer I believe at the time was with respect to the side yard from her home to the boundary line. The Dryer home actually enjoys the benefit of a violation of the current side yard requirements. Her home is 5.6 feet off the boundary line to its porch and 11.7 feet off of our boundary line to her house property. Our proposed home will be within the allowable building envelope under your zoning ordinance, it will be 30 feet off of the property line so now the distance to the Dryer house will be our 30 feet plus the 11.7 that he has off the boundary line so in excess of 41 feet will be the separation between the homes. You have as part of your application this map, it depicts the new proposed home and the building envelope within it, it shows the requested or shows the front yards, the rear yards and the side yards. I will put this here if you care to look at it. That same survey is on this board and if I might just point out to you that the proposed home has now a front yard of 68 feet where your zoning code requires only 40, the side yards on both sides will be 30 feet which is the requirement of your zoning ordinance, the total of 60 feet which is the requirement of your zoning ordinance. The rear yard requirement by your zoning ordinance is 70 feet, this house will be 100 feet in the rear yard, the maximum building height will not be exceeded which is 35 feet and the livable floor area required by your zoning ordinance is at least 1,500 square feet and this house will exceed that as well and the maximum development coverage is 25 percent and our coverage will be under the 25 percent. So the proposed home meets your zoning requirement in all respects, except for the existing condition of the lot which is its size and which is its width. There's nothing that can be done with respect to those two requests. So the requested variances are in fact the minimum variances that can be requested that would allow use of this lot. The proposed home is a two story cottage style home, it's depicted on a photograph that has been made a part of your records. Attached to that is the floor plan for the first and

second floor, they've also been made a part of the board's record. Again, that house in all respects meets the zoning, the house itself and his construction meets all of your zoning code requirements but the lot itself is substandard. The parcel that's owned by Mr. Palmer and which is before you actually consists of four subdivision lots under the original Beaver Dam subdivision that was done in 1931. At that time, there was no zoning ordinance in the town but there were deed covenants that were attached to the Beaver Dam subdivision lots which required that to build a house required 50 feet of frontage and two lots ostensibly so when this subdivision was created, Mr. Palmer if he had then been the owner or any owner at the time actually could have put two homes on the parcel that now is before you as one. And the reason I mention that is because we've done a study of the neighborhood, there is no real definition that I'm aware of in the law for what the neighborhood is but we've taken a copy of the tax map and drawn 1,000 foot radius around the parcel which is depicted on this board in yellow. This is the parcel that's in front of you. So we drew 100 foot, I'm sorry, 1,000 foot radius around this home and took, we studied the homes and lots within that 1,000 foot radius, excuse me for a second, this is what I'm talking about, so the Palmer parcel is this yellow, the thousand foot radius goes around it. And what was found by looking at this is that within that 1,000 foot radius there are 60 parcels with single-family residential homes within the thousand foot radius. Sixty-seven percent of the homes are built on non-conforming lots which are under the 40,000 square feet.

MR. KANE: But they were built to code at that time.

MR. DICKOVER: They may have been and they may enjoy the benefit of variances no doubt. Those homes are depicted on the chart in the color red. Now you'll see that all along Sycamore Drive on the Palmer side those homes are built on lots less than 40,000 square feet as are some across the street from it as are houses over on Chestnut Avenue. Thirty-three percent of the homes within the 1,000 foot radius are built on otherwise non-conforming lots, perhaps they lack the required width, perhaps they lack the required side yards. A full 100 percent of the homes built within that 1,000 foot radius are non-conforming in one respect or another. So that's what that chart depicts. Now you have a copy of that I think in that we've made part of

your record as well. We then just took that concept of a thousand square feet and narrowed it down to the street that this parcel's on, Sycamore Drive, both on the side where the parcel's located and across the street and then we went around the corner coming back to Chestnut Avenue and we looked at the homes that are built there now. I've given to you in a supplemental application, I hope that you got it, looks something like this, and underneath that is a table that we've called neighborhood non-conformities. And the way to follow this just to try and simplify it for you is that I started with the Palmer house and went clockwise down Sycamore, across the street, came back up Sycamore, made a left-hand turn, came down Chestnut, jumped across the street, came back up Chestnut, jumped across the street, came back down to the parcel, so in a circular motion this chart talks about the, addresses the owners, the section, block and lots for those parcels, the usage and the year built, the lot size and the lot widths and so on. And of those 26 lots not including Mr. Palmer's lot, 18 of them are under 40,000 square feet. So what we did is we simply drilled down the definition of neighborhoods, instead of saying it's a thousand, we dialed it down to the street that the parcel's on and around the corner and took a look at them to see if those houses in fact were on also non-conforming lots and this study reveals that it did. Now, this was based on the real property records maintained by the Orange County Department of Taxation and the backup materials are stapled to it so if you care to look where the information came from they came from that backup material. So what Mr. Palmer is now, now is seeking quite simply is relief from your zoning ordinance so that he like all of his neighbors can build on this substandard lot. The home is consistent with other single-family homes on Sycamore and Chestnut Drive. We've made a part of our application photographs of various homes on Sycamore and Chestnut, they're here for you to look at. We would submit that the proposed home is in keeping with the single-family homes perhaps because it's modern or newer it may in fact improve the neighborhood so we've made that a part of the record. As I have mentioned to you, the request, the prior request for side yard variances has been withdrawn as an accommodation to the concerns of the neighbors, there's other homes that are built in the neighborhood that don't meet the current zoning requirements. We have a letter that we submitted with that table of nonconformities from Mr. and Mrs. Hendricks who live across the street from this

parcel speaking in favor of the application because they could not be here this evening. And interestingly enough, the Hendricks' parcel if someone was to object is right across the street and their parcel actually meets the bulk area requirement, they're in excess of 40,000 square feet but their home is non-conforming I think with respect to a side yard requirement. But they have submitted a letter in favor of the application. We would ask the board to respectfully take that into consideration. In summary of this application, I respectfully submit that Mr. Palmer's application meets all of the five factors that you're required to consider for area variances. The first of those being whether or not an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties created by granting of the area variance. The neighborhood character is that of a developed single-family homes. The single family character of the neighborhood will not be changed by the addition of one more and there will be no detriment to nearby properties. Second factor for you is whether the benefits sought by the applicant can be achieved by some method which would be feasible for the, for Mr. Palmer to pursue but would not require a variance. The benefits sought by Mr. Palmer cannot be achieved by any other feasible method. The lot as it's proposed now is the lot, that's the way it exists, it's 100 by 200, the proposed home is within the building envelope provided by your zoning ordinance. There's no more that he can do to satisfy your requirements in this and so there's no other feasible method to obtain the benefit which he seeks. The other permitted uses within the zoning district include such things as growing crops and vineyards on a five-acre parcel, this one is not obviously that size, you could have indoor and outdoor recreational facilities if they were on three acres, this is not, that there could be places worship on three acres, again, we would need a variance for that kind of use, and town uses on undesignated size lots are permitted but I don't know if the Town of New Windsor really wants to put a garage or any kind of town facility in this single-family residential neighborhood. So none of the other permitted uses are practical and certainly not feasible, I don't think the neighbors would like us to put a miniature golf course there, I don't think they'd want a batting cage there or any other kind of recreational facility. So the use that is most feasible and most practical is a single-family residential home just like all of the other properties that are being used in this

neighborhood. On account of that, the benefit, yes, the benefit being sought by Mr. Palmer is only feasible by the granting of a variance. And notably, this parcel if this variance is not granted your zoning ordinance will effectively have condemned this property to a non-use, again, we're within the building envelope so nothing more can be done there, this parcel can't be made bigger and can't get anymore width out of it. So ostensibly your zoning ordinance condemns the property to non-use. But interesting and notably the function of you and Mr. Chanin I'm sure has told you on several occasions if not more that the function of the zoning board is to act as a buffer between a zoning ordinance that may be draconian in its effects as it applies to certain properties within zoning districts, that's exactly what this is, we're asking you to serve as that buffer so the property can be used for a feasible and permitted use, single-family home. That third criteria for the factors is the requested area variance substantial. And on this I would submit to you that it could be certainly considered as a substantial variance in a percentage of a proportional manner. But you must look at that in the context of the neighborhood so that is why I brought you in the chart, not because as you, Mr. Chairman, you mentioned that they may be there with variances or they were built prior to enactment of the zoning ordinance but simply to show to you that in the context of the neighborhood this application is perhaps no different than any of the others or the 100 percent homes that are in that 1,000 foot area. And so yes, it may be a substantial variance in a percentage context but in the context of this neighborhood we respectfully submit to you that it is not. And in fact of the 26 homes, every home on Sycamore and Chestnut, seven of them, I'm sorry, yes, seven of those homes are on lots smaller than Mr. Palmer's 20,000 square feet. The fourth factor for you to consider is whether or not the variance will have an adverse affect or impact on the physical or environmental conditions in the neighborhood or the district. Again, Mr. Chanin may advise you that the legislature, the town board for New Windsor by decreeing within your statute, within your ordinance that permitted uses in the R-4 zone are single-family residential homes that is tantamount to a legislative determination that a single-family home will not have an adverse affect on the neighborhood or the physical environment. Finally, the factor of whether not the alleged difficulty is self-created. Perhaps you would make that determination because Mr. Palmer is charged with knowing what the zoning

ordinance is at the time that he acquired the property, that's certainly true. However, self-created hardship is not fatal to a request for area variances as it is with use variances. But we'd also say to you that the difficulty associated with this parcel was created by the zoning ordinance when it was changed to require 40,000 square feet. And so as Mr. Chairman has noted the other homes in the neighborhood may well have been built under a prior zoning ordinance and allowing them to be built on parcels less than 40,000 square feet and so the change in the ordinance itself is what has created the hardship for this particular parcel. So on that basis, we would submit to you the hardship is not self-created and but rather created by the adoption of the zoning ordinance itself. So in balancing the benefits to Mr. Palmer resulting from the grant of these two minimum variances against the detriment to the neighborhood, the benefits clearly and insurmountably outweigh the detriments to the neighborhood, in fact, succinctly stated by Mr. and Mrs. Hendricks in their letter to the board the original of which I have here and would like to hand up to you because you only have a copy of it, Mr. Chairman.

MR. KANE: I will put that into the file.

MR. DICKOVER: They've stated that the proposed home would only improve the character and the appearance of our community. In closing, in the absence of the lot area variances requested, the parcel cannot be used for any of the permitted uses under your zoning ordinance, it will in fact condemn this property to non-use. And we would submit that the use of the property as a residential, single-family residential home is in keeping with the neighborhood. It's no different than other parcels that are being used in the neighborhood and we respectfully ask you to grant two area variances that have been applied for.

MR. KANE: Okay, couple of quick questions. Any easements, get these out of the way, any easements running through that particular property?

MR. DICKOVER: There are no easements affected by the construction. You will see there's a two foot easement reserved by property owners back in the '40s for a utility easement, if you look at the survey, you'll see that the utility line is out in the street now, it's off the property and that two foot utility easement

will not affect the buildability of this parcel.

MR. KANE: Cutting down of substantial amount of trees and vegetation?

MR. DICKOVER: As noted, the property was cleared by Mr. Palmer prior to his application before this board back in December of 2015. You can see some of the stumping in the photograph of the property that's been made a part of this record.

MR. KANE: Creating any water hazards or runoff?

MR. DICKOVER: No, sir.

MR. KANE: Open it up to the board for further questions?

MR. BEDETTI: I'm good.

MR. KANE: Then we'll open it up to the public for the public portion of the meeting and ask if anybody has any questions or statements they'd like to make at this time? Sir, just come up, speak your name, address and speak loud enough for this young lady over there to hear you.

MR. JAFFEE: Jay Jaffee, 331 Sycamore Drive. You know as you all know I was on the zoning board also and I've had people come in front of us also like this. You know, when you by this property, it's almost like buyer beware, you should know what you're buying, okay. If you're going to buy something and not know you can build on it then you're going to come in front of the board later on after you've done other things like cut the trees down, put a well on it. And again, we've spoken about this the last time. Are we asking for forgiveness or asking for approval? Some things I'd like to comment on that were made. This lot was never an approved building lot ever. And you did have somebody come in here I think about 10 years ago when it was a half acre and this lot didn't even fit that minimum. So this is a recent thing that we knew that this lot would never be able to be built on. So it was actually a dead piece of property anyways long before it was bought by the person who bought it now that it is already we well know you can't build on it.

MR. KANE: Yes, it was turned down quite a few years ago.

MR. JAFFEE: Going back to another time period the code does not justify what's today's standard and codes to bring that up has no variance with what we do because there's no home, if there is a home, it's understandable that home was built by that standard, time codes and zoning regulations. Well, this is 2016, it's an empty lot that is not even half acre, I don't believe it's even a half acre. I think it falls under a half acre and to bring up what were, houses were built on at the time has no relevance, those houses fit in that zoning and coding, they were what that was, alright, you know, was in the military, do we go back to muskets or do we use what we use today? Well we use what we use today because they don't make, they have no value. So codes that are no longer in use have no value when we use them to today's standards to put a home on it. Other homes that are under those codes, they have value because that was the standard at that time. We have an empty lot with no home on it, to go back and say this lot down the street, that one down the street and another one that's a thousand feet which means it's in the Town of Cornwall not even in the Town of New Windsor has no variance so to bring that up has no variance on getting this approved. You know he still needs two or more variances of 50 percent or more, it's quite a bit, one, two, you know, you know, now we're setting a standard here. And yes, the next person that comes in, this is not part of it, but again, it leads to other issues later on when somebody does come in here and says I got two 50 percent or more because now you have to explain why did I give the persons down the street two 50 percent or more variances. And again, some of the homes mentioned aren't even Town of New Windsor, they're Town of Cornwall so, you know, they have a different standard, that's fine, that's their right, this town has its standards, it's a different right, as long as you fall in what the state requires you can add to it. They may not have the same as what the Town of New Windsor does, I'm not sure, I haven't looked at their codes, other than New Windsor, I don't care what the Town of Cornwall has as their codes because it has no variance on my home. They're different tax rates. We have different tax rates, to bring that up it's just we're comparing apples and oranges here. Again, what's relevant cannot be used because codes and zoning laws have changed since they were built. My house was built in the early '80s, alright, to a code that now with electric I had to upgrade the electric because it

wasn't what you'd put in a house today, it's not relevant. But if I want to have an air conditioner and a microwave and other stuff in my house and use them all at the same time, I have to have more of an electric source to the home, so I have to upgrade, that's on me as the homeowner. But when I bought the home, that's what it was because it was built to that code. Then the Hendricks next door, well, his father has done some work for them, I think I'll leave that there.

MR. KANE: I'd rather you don't go down that road, please.

MR. JAFFEE: But, you know, leave it to your imagination. Again, this lot could never be used, it's not, it's not all of a sudden like opening a book and finding a treasure map that leads us to, you know, a pile of gold here, we knew what we were getting involved in. If you didn't do your homework and you're a business owner, businessman and I think there's some of you that up here that are and all of a sudden you get bit in the butt, you know, you caused that, town did not cause that with the zoning laws or codes. The town has zoning laws and codes to protect the town, not individuals, the town as a whole, the individuals that live in the town you're there to protect that, not one person. Undue harm was caused by not doing your homework, not reading that ten years ago or whatever that was, guess what, you denied it then when they were looking for a smaller variance, now you're looking for 50 percent or more variance. So I don't agree with the attorney on that buyer beware in certain cases are, you know, you're the businessman, you open yourself up if you don't do your homework or if you don't check on something before you buy it, I don't think that's my fault, I don't think it's the neighbor's fault, I don't think it's the town's fault, I think it's the individual that bought that didn't do what they should of done. And now after that instead of going and coming here to begin with before he cut all the trees down and put a well out there probably should of done that first. And I think maybe then you would have had people that were a little bit more happy to come in here now for the second time and say you know let's talk but the discussion was already done because the deed was done. So that's how I feel, that's how I'll leave it.

MR. KANE: Thank you very much. Would anybody else

like to speak? Miss?

MS. DRYER: I'm Tammy Dryer, I live at 336 Sycamore Drive. I think you're all pretty, you know me pretty well by now. I was here back in '03, '04 when we went through this prior. I just want to put out there when I bought my home in '03 all variances and permits were permitted to me when I bought the house so that variance the attorney's talking to has nothing to do with me, it was the previous owners. And like Mr. Jaffee said, our homes were built to spec at the time with the zoning laws as they were, our laws change for a reason to protect the town and the current residents that live there. What the attorney didn't address was the real concern why we don't want a house there, it's not because I'm objecting to new neighbors or home, I'm objecting to losing my water. We proved this back in '03 and '04. We had all kinds of testimony from, if that's what you want to call it in this arena, from geologists and well people, we have a water problem in Beaver Dam Lake, period, end of discussion. The aquifer does not recharge like it should. And right now we're in a moderate drought with no runoff from snow. We had no snow this summer, that's our main concern out there. Back in '03 and '04 we proved through our neighbors that are no longer in the area everybody had to dig their wells deeper, some of you are, I'm sorry, I apologize, some of them have moved but we went through, and I'll go through your decisions back then cause I wrote them down, you denied him for certain reasons and most of it had to do with water. I'm scared to death of losing my water, I do not have $15,000 laying around to redo a well. I'm just not that rich. I don't have a good, I have a decent paying job but not a job that allows me to have $15,000 in reserve for a well only. You know, like I said, we, you denied because it would produce an undesirable change in the characteristics of the neighborhood, it would create a detriment to nearby properties, and placing a demand on water supply which appears inadequate, these were your decisions back then. Nothing has changed except we do have more homes that we couldn't do anything about so our water is depleted even more. That is my concern. I will always welcome new neighbors, always, I like people, I don't want to lose my water. So everything that the attorney said had nothing to do with me. And if you want, I can read them all out, I'm hoping they're in your notes from '03, '04 and that the rest of the board who wasn't here at that time is well aware of those decisions and

why they were made. Nothing has changed except they're asking for more of a variance this time.

MR. KANE: Thank you. Anybody else wish to speak?

MS. WALLACE: Patricia Wallace, 344 Chestnut Avenue. I'm also speaking on behalf of my parents, they live at 354 Chestnut and they own the property in between our houses. I'd be interested to see to your point the water supply of all those houses in that thousand square foot radius. I own a house on Hickory that's in Cornwall town zoning, we're hooked up to the community well, so that's not going to be affected so if they're smaller lots they're most likely on the community well, they don't have their own wells, this isn't a concern for them. My house currently at 344 Chestnut Avenue is, has a private well, that well has gone dry twice due to new houses in the area. My parents, same thing, so we're very concerned with the new well, like you said, neighbors are fun, we can get along but on a lot that was never meant to be built on that is inadequate for housing in the area I definitely object and am very concerned about all of our water supplies when the lots that we're on now were zoned, you had to have an acre of property to drill a well. And this doesn't even come close. Obviously, Sycamore, there's a lot smaller lots than an acre but those cause problems to the existing homes. So I would hope that you would strongly consider the neighbors' water supply because that is a very big issue. Also, I'm kind of, something that you pointed to is the clearing of the trees and drilling of a well before any of this was possible kind of concerns me in general. And I don't know the attorney said that you were going to speak to the well, you didn't, I don't know if there's any information on that you could share. But that's really I think all I have to say.

MR. KANE: Okay, thank you very much. Anybody else with? Yes, ma'am?

MS. GIGLIO: My name is Gysel Giglio, I live at 324 Chestnut Avenue. Also just to point out that I also have a concern of water and the well going dry. So I also do not have that kind of money if my well goes dry to dig deeper. The other thing is as Mr. Jaffee pointed out the buyer should of known what he was getting into, it's a lot that doesn't conform and he couldn't build on it because it's too small and the lawyer pointed out and I'm just going to say that he

pointed out it's going to beautify or improve the neighborhood, I actually disagree. My back yard faces Sycamore and I had a beautiful view of woods and now all I see are stumps. And that's one of the reasons why I bought, purchased my house because I had woods surrounding the entire neighborhood and now I have to look at this from my back yard. Actually, I would rather see trees and woods as opposed to a little small cottage house. That's pretty much what I have to say. Thank you very much.

MR. KANE: Anybody else wish to speak? Last chance. Okay, go ahead.

MS. HILERIO: My name is Nina Hilerio, 314 Chestnut. I am also concerned about the water issues. My neighbors behind me lose their water every other week, they're out of water completely as it is. Also, I bought my home in that neighborhood because it was filled with trees, my personal property is wooded and I also can now see that baldness as I look, sit in my yard and it's an eyesore. But mostly I'm concerned about the water, we all need water, we all need to shower, we all need to drink, so that's my concern.

MR. KANE: If you can just sign your name and address please. Anybody else? At this point we'll close the public portion of the meeting and bring it back to the board.

MR. DICKOVER: I'm sorry, I didn't mean to interrupt, may I address some of the concerns?

MR. KANE: Absolutely.

MR. DICKOVER: Thank you. I'll just take them in the order in which folks spoke and perhaps address some of the things that was said. With respect to Mr. Jaffee's comments about buyer beware, on that note other variances have been granted within this neighborhood to other applicants for side yard variances, for lot area variance, for width variances and I would submit that it is unnecessarily unreasonable that a person would buy a lot and plan for some kind of variance relief to be granted by this board. The application as it presently stands is widdled down to its bare minimum, there's no place else to go with this and that's my comment with respect to that. Mr. Jaffee also mentioned that this parcel was before you when the zoning requirement was half an acre, that's what this

parcel is now, it's 20,000 square foot parcel, not quite by definition half an acre because your zoning ordinance doesn't require lot area by acreage, requires it by square feet. And each application stands on its own, it stands on its own, as we presented to you respectfully and it stands before you as in context to the neighborhood as it develops and as it builds up and that's what we have presented to you. A single-family residential home in a neighborhood full of non-conformities seeking nothing more than what's already there with all of the other properties meeting a single-family residential home. Mr. Jaffee also mentioned as I did the percentage variance being required or being requested being in the neighborhood of 50 percent. I'm not very good at math but, and I don't know if that's 50 percent or not, but with respect to that, I would also ask you to consider that as Mr. Chanin may tell you that the substantial nature of variances being requested are taken in the context of the neighborhood, it's not done in a vacuum, it's not just a number on a piece of paper, it's what does it look like in comparison to the other homes in the neighborhood. And again, that is why we've shown you this table of non-conformities, it's why we've shown you the thousand square foot radius of homes in this area. One of the members of the public spoke about the Town of Cornwall and that parcel is within there as a parcel in the Town of Cornwall, it's over on the right-hand side in brown, that parcel was not included in our calculations. So I'm not trying to deceive you, don't mean to mislead you in that respect, it was not included in our calculations. Mr. Palmer, is that an accurate statement?

MR. PALMER: Yes.

MR. DICKOVER: Okay, the other concern that's been expressed I think by all of them is the issue about water. Mr. Palmer did have a test well dug or drilled on this property prior to his previous application. He made an application for a permit to the Town of New Windsor to do that work. The permit was granted, it was done under all of your rules and regulations, there was nothing illegal about it. That water well completion report has been made a part of your record, it's now attached to an affidavit from Mike Fry who was in charge of drilling that well. If I may, I'd like to hand up to you the original of that affidavit because I think you have a scanned or a photocopy of it.

MR. KANE: Thank you.

MR. DICKOVER: Mr. Fry's analysis is set forth in his affidavit. The well was drilled, this test well was drilled to a depth of 520 feet, a yield test was conducted on that well which revealed the depth to the ground water below, the land surface at 230 feet, over a duration of two hours which is the time that the well is being drawn upon it yielded nine gallons per minute and the static level for ground water remained at 230 feet which is where it was when they drilled down to find the static level for ground water. The result of that yield test shows that there's adequate water available from that well to provide all necessary domestic water usage for a four bedroom home with no observable affect on the existing level of ground water.

MR. KANE: Would it be fair to say that that's in good times but what happens in bad times? We've had 15 years about people complaining of running out of water in that particular area.

MR. DICKOVER: I guess my rhetorical answer is we've just gone through a very poor period as Miss Dryer said, this was done in November of last year, I don't think we've had any changes before or after that.

MR. KANE: But we have still had issues since the first water tests, I was on the board back then, I've been on it over 20 years and the water issues have always been in that neighborhood, not just with that particular property.

MR. DICKOVER: Let me talk about some other properties if I might. Mr. Palmer had a well drilled at 195 Sycamore Drive in just, bear with me, I need to find the date on this report, in March of 2015, the well on that parcel this was drilled at 195 Sycamore they hit the water zone at 145 feet, again, at 235, again at 300 feet, this well was drilled only 310 feet and yielded five gallons per minute over the test period. Mr. Chanin may advise you also that the landowner is entitled to use the water under his feet and so drilling that well he has the right to do that. And neighbor concerns notwithstanding the landowner has the right to use the water underneath their feet for their own domestic use purposes, that's what's being requested here. So I think I've addressed the comments in general that were brought up by you, the clearing

perhaps Mrs. Wallace also mentioned the clearing that was done. The town does not have a clearing and grading permit requirement for residential construction. So Mr. Palmer did clear off this property in anticipation of a favorable ruling from this board. It was not forthcoming but he didn't do anything illegal. And in fact, when he was here before you before it was acknowledged that he had done that work though there was some misunderstanding between the board and him and perhaps his representatives but a referral back to the minutes of the meeting clearly show that he did tell you that he did clearing before that application was made.

MR. KANE: Okay, any other statements to the public?

MR. DICKOVER: No, sir.

MR. KANE: Then we'll close the public portion of the meeting and ask how many mailings we had.

MS. RODRIGUEZ: On the 15th day of June 2016, I compared 31 addressed envelopes containing the public hearing notice, sent it out and received no response.

MR. KANE: Thank you, Stephanie. Further questions from the board?

MR. BEDETTI: I'm good.

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

MR. HAMEL: I'll make a motion that we grant the variance to Thomas Palmer for the 20,000 square foot lot.

MR. CHANIN: And minimum lot width.

MR. HAMEL: I'm sorry?

MR. CHANIN: There's two variances requested, the 20,000 square foot and the minimum lot width as well.

MR. HAMEL: And the required--

MR. CHANIN: And minimum lot width.

MR. BEDETTI: The application doesn't have it.

MR. HAMEL: At 199, was it Sycamore Drive?

MR. KANE: There's no number on it.

MR. HAMEL: Just Sycamore Drive.

MR. KANE: Just make your motion what it states, area variance of 20,000 square feet as requested for single-family dwelling and minimum lot width of 50 feet located at Sycamore Drive no number.

MR. CHANIN: Is that your motion?

MR. HAMEL: Yes.

MR. CHANIN: Is there a second?

MR. BEDETTI: I'll second it.

ROLL CALL

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

MR. KANE: Motion passes three to two. Okay, next step paperwork.

DAHLIN/PUSHMAN (16-11)

MR. KANE: Tonight's next public hearing Dahlin/Pushman. Area variances are required for tax lot 23 which is being made more non-conforming as a result of a proposed lot line revision, 14,521 square feet minimum lot area gross and 90.2 feet minimum lot area net. Located at 2615 Route 32 in an HC Zone.

MR. WEEDEN: Good evening everyone, my name is Howard Weeden, I'm the surveyor for Mr. Pushman and Miss Dahlin. This is Mr. Pushman's lot over here, existing lot on Route 32 over by the Five Corners. This is Mrs. Dahlin's lot over here which actually goes through Mr. Pushman's driveway. Mrs. Dahlin is looking to offer Mr. Pushman a 30 foot strip of property to add onto his property which would make his driveway clear. We've been to the planning board on this and Mark Edsall has suggested that we come here for the area variances that are needed for both lots which are pre-existing, non-conforming lots.

MR. KANE: Has the planning board sent down any kind of recommendation on this?

MS. RODRIGUEZ: They haven't.

MR. KANE: See if they have any recommendations, excuse me, okay.

MR. WEEDEN: That's basically it. They had a few comments, a few minor map touches that we've added to the maps showing the zoning and correcting a couple of changes and this is where we're at right now.

MR. KANE: So you moved the lot line 30 feet?

MR. WEEDEN: That's correct. The dashed line is the existing lot line that's there now and the solid line is where we're moving it to.

MR. KANE: That's to take care of the issues with the driveway and tax lot 22?

MR. WEEDEN: That's correct.

MR. KANE: No other variances will be required on the homes in tax lot 23?

MR. WEEDEN: No, not according to Mr. Edsall.

MR. KANE: Okay, fairly straightforward. Any questions from the board?

MR. WEEDEN: That's exactly what the planning board said. These two lots are actually both non-conforming lots so they moved the line and made one less non-conforming and the other one more non-conforming but they're still both non-conforming.

MR. KANE: Right, but it does away with any kind of easement on the driveway and it doesn't affect the homes so I don't see the big deal. Any other questions? If not, I'll accept a motion.

MR. WEEDEN: That's Mr. Pushman on the right-hand side.

MR. CHANIN: Public hearing.

MR. KANE: Did I tell you I just turned 63 and the mind is going?

MR. PUSHMAN: I do believe you.

MR. CHANIN: You did tell us you've been on this board for 20 years.

MR. KANE: At this point, we'll open it up for the public portion of the meeting. Does anybody have anything they want to say?

MR. PUSHMAN: One year and four or five months to get this job done, we're getting it done.

MR. KANE: Do you have anything to say?

MR. PUSHMAN: No, I'm just trying hard.

MR. KANE: Close the public portion of the meeting and I'll ask how many mailings we had.

MS. RODRIGUEZ: On the 23 day of June 2016, I compared 24 addressed envelopes containing the notice, sent it out and got no response.

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

MR. BEDETTI: I'll make a motion that we grant the area variances to Dahlin/Pushman that are required for tax

lot number 23 which is made more non-conforming as a result for proposed lot line change, 14,521 square feet lot area and that's gross and 90.2 feet minimum lot net located at 2615 Route 32 in an HC Zone.

MR. HAMEL: Second it.

ROLL CALL
MR. SCHEIBLE AYE
MR. BEDETTI AYE
MR. HAMEL AYE
MR. BIASOTTI AYE
MR. KANE AYE

MR. KANE: Motion to adjourn?

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

MR. SCHEIBLE AYE
MR. BEDETTI AYE
MR. HAMEL AYE
MR. BIASOTTI AYE
MR. KANE AYE

Respectfully Submitted By:

Frances Roth
Stenographer