

ZONING BOARD OF APPEALS

June 10, 2002

AGENDA:

7:30 P.M. - Roll call - Motion to accept minutes of 4/22/02 & 5/13/02.

PRELIMINARY MEETINGS:

1. **KOCHAN, JOHN** - Request for variances: Lot #1-use variance for multi-family with single family; and Lot #2- 40 ft. lot width at 572 Union Avenue in R-4 zone. (6-5-46.223).
2. **HUDSON VALLEY DRILLING** - Request for 2.4 ft. side yard variance for existing building at 1104 Route 94 in an NC zone. (67-4-16).
3. **WEISSMAN, STEVEN** - Request for 8 ft. side yard and 8 ft. rear yard to construct a shed, plus variation of Sec. 48-14A(1)(b) of the Supp. Yard Regs. to permit a 6 ft. fence between principle building and street at 324 Nina Street in an R-4 zone. (73-5-8).

PUBLIC HEARING:

4. **HOUSE OF APACHE** - Ref. By Planning Board for 13,008 sq. ft. lot area variance or Interpretation as to whether a lot area variance is necessary, to allow an access easement for Hannaford Bros. through the Monro Muffler (Apache) parcel located on Rt. 94 in a C zone. (70-1-2.1).
5. **DONOVAN, RAYMOND** - Request for 9 ft. rear yard and 5 ft. 6 in. side yard and 6 ft. rear yard variance for existing shed and 9 ft. rear yard variance for existing deck at 204 Summit Drive in an R-4 zone. (8-1-18).
6. **WESTAGE CORP.** - Request for 22 sq. ft. sign are variance for freestanding sign for office park on Route 207 in an NC zone. (3-1-26.2).
7. **SMITH, ROBERT** - Request for 7.5 ft. side yard variance for existing shed at 6 Regimental Place in an R-4 zone. (49-2-4).
8. **DENHOFF DEVELOPMENT** - Request for 14 ft. maximum bldg. height and 22 parking space variance for construction of retail complex at 124 Windsor Highway in a C zone. (9-1-15.1)

Formal Decisions: (1) Digeratu (2) Fidanza (3) Dean (4) Caldwell (5) Strategic (6) Summit

Pat - 563-4630 (o) or 562-7107 (h)

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

JUNE 10, 2002

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
MICHAEL KANE
LEN MCDONALD
MICHAEL REIS
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

PATRICIA CORSETTI
ZONING BOARD SECRETARY

REGULAR MEETING

MR. TORLEY: I'd like to call the June 10, 2002 zoning board meeting to order.

APPROVAL OF MINUTES

MR. TORLEY: Motion on the minutes?

MR. KANE: I move we accept the minutes for 5/13 as written.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE

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MR. TORLEY

AYE

PRELIMINARY MEETINGS:

KOCHAN, JOHN

MR. TORLEY: Request for variances: Lot #1 - use variance for multi-family with single family; and Lot #2 - 40 ft. lot width at 572 Union Avenue in R-4 zone.

Mr. William Hildreth appeared before the board for this proposal.

MR. HILDRETH: My name is Bill Hildreth, I'm a land surveyor, I prepared the subdivision plan that you are looking at which has been before the planning board once and was referred here for bulk variance for the lot width. Along with that since there's a pre-existing, multi-family use, the planning board included that in the referral so we could clean that up. This property happens to be right across the street. It consists of about all of just a little under 4 acres and what the applicant wants to do is divide it into two lots, one lot being for the existing dwellings and the remainder or the parcel being a single family lot. That new single family lot is going to be a little over 2.8 acres but as you can see by the geometry there was no way to get the lot width which is required to be measured at the front yard setback on that lot. I would like to show the board what was approved on this property prior to the current owner having purchased it 6 lots and he decided not to do that, I didn't want to do that for this property, this approval came with the property when he bought it.

MR. TORLEY: When was that?

MR. HILDRETH: The last date on this, this is the final plan, it's the only one I have, I wanted you to see the last revision was done in '98, I think it was under the prior zoning if that's what you were wondering, but the point is this guy only wants two lots.

MR. KANE: In the prior zoning, was the existing multi-family house permitted?

MR. HILDRETH: Yes, I checked with the planning board,

there was, obviously, you have never seen this one before, there was no variances, so it was approved with that multi-family existing on there already.

MR. KANE: As a multi-family house?

MR. HILDRETH: Right, one of the things--

MR. TORLEY: The planning board know there was, it known to them as a multi-family house?

MR. HILDRETH: Say that again, please.

MR. TORLEY: Did they know it was a multi-family house?

MR. HILDRETH: I believe they did, it's been that way for a long time. I don't want to say forever because nobody knows that, but one of the things I'd like to show you about the size of this lot that we're showing for the existing homes, it's the same square footage, slightly larger, but not enough to worry about. It's a little different shape because it's got no road but it's the same size, so that was also done deliberately.

MR. BABCOCK: Mr. Chairman, I have a letter in my file here that was done through research of the assessor's office and says that there's two structures on the property, one was built 1860 as a three family and one was built in 1920 as a one family.

MR. TORLEY: Clearly predates.

MR. HILDRETH: That qualifies.

MR. KANE: And the public hearing just going to need to address that and show proof of that.

MR. HILDRETH: I've got the paperwork all ready.

MS. CORSETTI: So you don't need this then.

MR. HILDRETH: No.

MR. TORLEY: Evidence of continuing use as a multi-family.

MR. HILDRETH: Okay, I can do that.

MR. TORLEY: Some indication of that, not every second every day, but show that over time because--

MR. HILDRETH: I'll see what I can do.

MR. BABCOCK: The assessor's office will give you that as being assessed as that.

MR. HILDRETH: I'll talk to you.

MR. KANE: That's going to be your toughest hurdle.

MR. HILDRETH: I have no doubt that it's within the spirit of continued pre-existing use, I understand the board needs something.

MR. KANE: Use variance is State regulated, very strict.

MR. TORLEY: Other question I have you can discuss it at the public hearing is there a reason you don't want to just divide the lot where the existing houses are, cut that up so you've got two lots, one which is an existing residence now just simply be an area variance there and restricted use variance?

MR. HILDRETH: Too many area variances, we would need lot area, we'd need side yards, lot widths, not necessarily lot widths, but too many to me and this is more in keeping with what the owner wants to do, he wants to keep this as it is so it's currently the two residences on one lot. We're just going to leave it and he just wants one lot in the back.

MR. REIS: Bill, the proposed dwelling, is that going to be serviced by municipal water and sewer?

MR. HILDRETH: Correct, water and sewer are available, single laterals out to the street.

MR. TORLEY: Owner will acknowledge that should he be granted those variances that's what it is, he's not to

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come back in six months and say well, I'm going to put the other four houses back there.

MR. HILDRETH: If he does, it's as big a surprise to me as it is to you all.

MR. KANE: He has a right to do that.

MR. HILDRETH: I'm not going to promise you.

MR. TORLEY: Question of the road frontage.

MR. HILDRETH: I won't promise you that 15, 20 years from now something else might happen because it's big enough but it couldn't happen unless it came back here.

MR. BABCOCK: Are we going to decide either for a use variance and/or an interpretation?

MR. KANE: That's where we need to go and/or an interpretation, it was a pre-existing site, therefore, it's pre-existing, you do not need the use variance.

MR. HILDRETH: The planning board just put that in their notes as an afterthought but as long as we're here, why not clean that up, unless it's determined we don't need to.

MR. BABCOCK: Right.

MR. TORLEY: But it's the same money so gentlemen, any other questions at this time?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we set up Mr. John Kochan for his requested variance at 572 Union Avenue.

MR. MCDONALD: Second it.

ROLL CALL

MR. RIVERA AYE

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MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

HUDSON VALLEY DRILLING

Mr. Mike Frey appeared before the board for this proposal.

MR. FREY: The building is constructed too close to the property line by 2.4 feet. We don't know if the problem arose with the original surveyor but the fence installer, but the fence is put on the neighbor's property, the building was constructed 15 feet from the fence and that made it close, made it too close. Survey of the building shows us a plot plan when we did that we arose with this problem. Mr. Hildreth is my surveyor and original surveyor is not here, Mr. Washburn.

MR. BABCOCK: Mr. Chairman, I can verify that we have a site plan dated stamped approved May 20, 1998, it shows the property line on the opposite side of the fence is, shows the chain link fence which he submitted to the planning board as actually his representatives did, maybe I can just show you and it's on the other side. Today, when they did the as-built, the fence is on the other side of the line.

MR. TORLEY: I'm looking at a survey dated 10 May, 2002.

MR. BABCOCK: That's right, so when they measured, they measured from the fence and from the fence 15 foot put the building up.

MR. KANE: Obviously, he can't move the building.

MR. BABCOCK: No, it's an honest mistake, you can see it and he only went by the information that was supplied to him by his, the people that he had hired.

MR. TORLEY: You realize that we, the fence being on someone else's property, we can give you no relief from--

MR. FREY: I understand that, I offered to buy the property from the other homeowner, she said no, why don't you go for the variance route.

MR. TORLEY: You're aware that we can't let you.

MR. KANE: Accept a motion?

MR. TORLEY: If there are no other questions at this time, yes.

MR. KANE: I move we set up Hudson Valley Drilling for their requested variance at 1104 Route 94.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

WEISSMAN, STEVEN

MR. TORLEY: Request for 8 ft. side yard and 8 ft. rear yard to construct a shed, plus variation of Section 48-14A(1)(b) of the Supplemental Yard Regulations to permit a 6 ft. fence between principle building and street at 324 Nina Street in an R-4 zone.

Mr. Steven Weissman appeared before the board for this proposal.

MR. WEISSMAN: My house is a corner house, I have the two front yards on the side street, Frost Street. I would like to put a fence a little over 13 feet from the curb, it's 6 feet high now, it's passed the building proper to the street, I'd like to construct--

MR. KANE: With the fence, would there be any blocking of the vision for traffic?

MR. WEISSMAN: No, from that fence to Nina Street is about 70 feet.

MR. KANE: Would you please bring a couple of pictures so we can see?

MR. WEISSMAN: I have a drawing.

MR. KANE: Photographs would be good for the record.

MR. WEISSMAN: There's an existing 4 foot fence up there.

MR. TORLEY: That shows us some idea of the traffic vision.

MR. MCDONALD: What type fence, stockade?

MR. WEISSMAN: Yeah, stockade.

MR. TORLEY: And this is an existing shed?

MR. WEISSMAN: No, it's a shed I want to put in there.

MR. TORLEY: You're very nearly a first, somebody

coming in looking for a variance before the shed goes up.

MR. WEISSMAN: We had a 6 foot fence there until I refinanced and for the C.O. I had to go around so I learned so that's why before I put the--

MR. KANE: With putting in the fence in that zone, it's 10 or 12 foot of the property line?

MR. BABCOCK: Ten foot.

MR. KANE: Explain to us why you can't do if you haven't built the shed yet, why can't you do that?

MR. WEISSMAN: Because I want to put it in the unused corner of the property.

MR. KANE: But you're coming out two feet each way you're looking.

MR. WEISSMAN: Correct, at the back right corner, it's going to be two feet from the right property edge and it will actually be about four or a foot from the back property edge.

MR. TORLEY: Again, photographs are a real help to show the neighbors and yours.

MR. MCDONALD: Is this going to be a pre-built shed?

MR. WEISSMAN: It will be a pre-built.

MR. MCDONALD: On a concrete slab?

MR. WEISSMAN: Is that what the town requires?

MR. MCDONALD: Not really.

MR. WEISSMAN: I thought of putting down pads or just something like that, pads at the corners.

MR. MCDONALD: Not to go over any septic or any water?

MR. WEISSMAN: We have no septic.

MR. KANE: Just please be ready to address why it couldn't be the ten, ten and you need to go 22, okay, and like Larry said, pictures of your back yard would be helpful.

MR. WEISSMAN: Sure.

MR. TORLEY: And you have to say why you want the 6 foot high fence, what reason do you have for the 6 foot high rather than 4 foot high.

MR. WEISSMAN: The back yard slopes down.

MR. TORLEY: Just saying I want to doesn't really cut it.

MR. WEISSMAN: Understood.

MR. TORLEY: Also, you're to be aware there's no regulations, you can put plantings and shrubberies 12 feet and there'd be no variance required.

MR. WEISSMAN: I know that.

MR. MCDONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MC DONALD: I move we set up Mr. Weissman for his requested variance.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

PUBLIC HEARINGS

HOUSE OF APACHE

Larry Wolinsky, Esq. and Mr. Tim Miller appeared before the board for this proposal.

MR. TORLEY: Referred by Planning Board for 13,008 sq. ft. lot area variance or easement for Hannaford through the Monro Muffler (Apache) parcel located on Route 94 in a C zone. Besides the applicant, is there anyone in the audience who wishes to speak on this matter? For those of you who wish to speak, our policy is the applicant will speak, he will discuss it with the word members. At that point, we will open it up to the public for your comments and then when that's done, we'll close the public hearing and go back to discussion amongst us and the applicant.

MR. WOLINSKY: For the record, my name is Larry Wolinsky, I'm a member of the law firm of Jacobowitz & Gubits, with me on my right to the board's left is Tim Miller from Tim Miller Associates, who is the project planner. Reason we're before you this evening as you know is that at the conclusion of the SEQRA process after the planning board finished its environmental review of the project and just prior to granting site plan approval of the project, the planning board determined that the access easement that's proposed to exit out onto Route 94 had to be deducted and which goes through the Monro Muffler parcel had to be deducted from lot area and therefore, the lot area variance would be required. We're here tonight having made such an application, actually, our application is in the alternative. We believe that the correct reading of the code does not require subtraction of the accessway from the lot area because the accessway is not precluded from development and I will get into that in a second. However, our other position is that even if the board chooses not to interpret the code in that manner, we would still be entitled to the granting of an area variance. So, without further ado, I would like to first start off with the issue of interpretation. If you just follow along with me here, I think this sets it out fairly specifically. This is

the definition of lot area in the Town of New Windsor zoning code. It says the total horizontal area included within the property lines of the lot but specifically excluding areas of the lot covered by right-of-ways, encumbrances, easements or otherwise precluded from development. Now, I have precluded from development because it is extremely clear from the definition certainly when you read it in conjunction with the next definition that what this means is that you only deduct lot area where you have easements, right-of-ways or encumbrances that are precluded from development. If you read it any other way, there would be no purpose for this language and it makes sense because why because if you can build on something you should be able to take advantage of the lot area and the density calculation, but if you can't build on it, such as possibly a wetland or a utility easement, you shouldn't be able to it effectively reduces the lot, but this doesn't effectively reduce the lot because it can be developed and used. So question is what's the definition of development in the code? And if you look under the definition of development coverage in your code it says percentage of the area of a lot covered by buildings, parking areas, accessory structures and any impervious materials. So the development under the Town of New Windsor zoning code clearly includes quote unquote any impervious materials. So when you read these two definitions again and apply it to what were doing which is creating an accessway which will be paved with impervious materials which we're entitled to do, you'll see that it's not, it should not be precluded and under this definition of lot area, must not be precluded from the calculation of lot area. And we're asking you to hopefully agree with that consideration. The second part of the presentation deals with the area variance, okay, the variance requested is 12,892 square feet, which is essentially the size of the accessway. As you are aware, the variance was recommended for approval by the Town of New Windsor Planning Board. As far as the legal criteria that need to be met in order to meet the issuance of an application for an area variance, I will just go through those quickly and give you in summary what's contained in detail in our application. Number 1, there will be no undesirable change in the character

of the neighborhood. This driveway here is in a commercial area, it's fairly removed from the, it's a part of the project that's, you know, well removed from any residential areas. It's a commercial driveway, there are numerous commercial driveways in this corridor and I think it will be a long stretch to say that this commercial driveway somehow changes the character of the neighbor, this immediate neighborhood. In terms of alternatives to the area variance, there really is no alternatives, this project requires a second means of access. It's required to provide safe and suitable operation. The configuration of the entire site and lack of available additional lands really tender it that this particular location which by the way is an existing access location, in any event. There's an existing access easement on this property and we're just going over that existing access easement for the most part. In terms of the substantiality of the variance, there's no question that in terms of mere quantity, this is a substantial variance, however, I would submit to you that in substance, it's not a substantial variance. The Monro Muffler site in and of itself is not impacted, there's no loss of any parking spaces and it, actually, the planning board had determined it actually provided a better circulation pattern since it now allowed further access around the building which does not presently exist. Effect on physical or environmental conditions in the neighborhood, there's a full EIS that's been prepared, the planning board took better part of a year to go through all of that, analyze it, have technical consultants analyze it. The planning board has issued a Statement of Findings under the State Environmental Quality Review Act, that Statement of Findings I attached to your applications so you've all had the opportunity to look at that, it attaches numerous mitigation measures and conditions on the project. There is, as you have seen from the Findings Statement and as you have read probably there's a lot of traffic mitigation that's being implemented here that was a condition proposed by the planning board that has been conceptually approved by the Department of Transportation. In terms of the area of the adjacent residences, that was at the planning board, again, was the subject of a lot of careful scrutiny. There's

screening, fencing, landscape, buffers and a lot of noise controls built into the plan. Someone in the audience before the meeting asked me whether we would be cutting off the pathway from Truex Circle that presently exists into this property because what happens is a lot of commercial use because of that gets dumped into that neighborhood with, you know, just garbage and stuff and we have in fact eliminated that so we're hoping that will improve those conditions. That particular neighborhood is here this evening that had mentioned that. In terms of self-created hardship, not self-created by the applicant, created by the property owner in a sense that placing of the easement is on there, but it's existing and as you know as a matter of law and in cases of an area variance, it doesn't bar the issuance of an area variance. So we believe with respect to the variance that the benefit of safe and adequate access at this location outways any possible detriment associated with this and what we're asking tonight if the board moves forward with a variance to essentially issue a negative declaration, adopt the Planning Board's Statement of Findings and then to grant that variance. And that concludes our presentation. I'd be happy to take any questions at the appropriate time.

MR. KANE: Quick question, Mike, there's an existing easement on that property as it exists right now on the, according to this right here and what you stated is that an existing easement that runs through at this point?

MR. WOLINSKY: Yes, there is, we have a survey.

MR. MILLER: Well, there's a smaller set of plans submitted with the application that shows the location of the existing easement.

MR. KANE: My question is, Mike, is there any way to determine whether this building here if that easement was used as part of the total property for when Midas Muffler went up or was it subtracted out at that point when they did the building?

MR. WOLINSKY: I can answer that for you. What

happened was when Midas Muffler received an approval, that easement did not exist but it still required a small area variance, a lot area variance at that time about 68 square feet or something like that and then subsequently the property owner placed the easement on the property. However, if you look back at the records of the planning board proceedings, and look at the original subdivision map, the planning board knew that an easement was going to be placed there and there's a note to the effect on that old subdivision plan that states that.

MR. KANE: So the building was built before that easement went in?

MR. WOLINSKY: Correct.

MR. KANE: Thank you.

MR. TORLEY: Do you recall the, when you had the, I remember we, there were variances required for the Monroe lot.

MR. MILLER: Original lot required a very small variance.

MR. KANE: My point was if the easement was there and went with the building that would answer some questions but since it went in afterwards, it's a different story.

MR. BABCOCK: They were required to have 40,000 square feet, they had 39,844.

MR. WOLINSKY: Correct.

MR. TORLEY: Small but putting in after that, they put the easement in.

MR. WOLINSKY: The property owner.

MR. TORLEY: Property owner allowed the easement to go through. At no time did the zoning board rule on whether or not that easement then should be counted as a loss.

MR. WOLINSKY: Absolutely.

MR. TORLEY: So you're saying we should interpret the fact that this easement that was put in after the zoning board considered the areas involved shouldn't be considered at all now, any sort of, just go ahead and do it?

MR. WOLINSKY: No, I'm saying that's not what I'm saying.

MR. KANE: No, that was me bringing up to see whether the easement was considered.

MR. WOLINSKY: You're asking about the interpretation.

MR. TORLEY: You're saying the new easement because the easement, the structures you wish to put up and the easement you wish to take basically follows the old easement that was allowed to you by the present owner?

MR. WOLINSKY: Right, but what I'm saying under your code, my interpretation argument that under your code it doesn't matter when an easement goes in, as long as it can be developed, you don't subtract it from lot area, that's the argument.

MR. MILLER: If the property owner were reviewed at the time, they were reviewed having the easement and interpreted the way we have suggested it should be in fact he would have applied that easement totally in an illegal fashion.

MR. WOLINSKY: So I don't know what was in the mind of the property owner at the time, that's the circumstances we found ourselves in when we moved forward.

MR. REIS: Is this proposed easement is this ingress egress on one or the other?

MR. MILLER: It's both.

MR. WOLINSKY: But it's a restricted access.

MR. MILLER: So the egress is only right turn out only.

MR. KANE: Right turn out, right turn in.

MR. MILLER: Left turns in are permitted.

MR. WOLINSKY: Initially.

MR. KRIEGER: For the information of the board, at the planning board, the Department of Transportation said for the time being, they'd permit left turns in, in other words, off Route 94, but they were going to review that after it was in place and that may be changed to not allow those.

MR. WOLINSKY: That's correct.

MR. BABCOCK: We're also going to suggest that at the time of the approval of the original Monro Muffler, the definition of lot area was not the same as it is today.

MR. TORLEY: Did not cover the easements?

MR. BABCOCK: That's correct.

MR. TORLEY: I don't remember when that came in.

MR. BABCOCK: I don't know the date of that but I just talked to Greg Shaw, the gentleman that prepared the paper before and he also agreed that that wasn't.

MR. TORLEY: In a C zone, there's no limitation on developmental coverage, am I correct on that?

MR. KRIEGER: I believe you're right.

MR. BABCOCK: It appears that there is, I don't have a bulk table, there appears to not be any requirement for developmental coverage, Mr. Chairman, if there was, there would definitely have been a variance.

MR. WOLINSKY: If the town wishes to correct that, in other words, if the town ultimately wants any easement, no matter whether it can be developed or not, it should

remove that language from the definition and that takes away the ambiguity.

MR. TORLEY: I would as a personal matter at this point I want to hear the rest of your presentation and public comment but I'd be more inclined to consider this as an area variance without trying to worry about setting a potential precedence for interpretation of easements. Gentlemen, do you have any other questions before I open it up to the public? I'm now opening it up to the public at this time.

MS. CORSETTI: For the record, there were 44 notices that went out to adjacent property owners on May 17, 2002.

MR. TORLEY: So, anyone have any question? Yes? Would you please identify yourself?

MRS. DENTON: Dierdra Denton (phonetic), I just want to let you know this was my first notice so I don't know the story about Hannaford. Was this approved already, the erection?

MR. KANE: They are in the process right now.

MRS. DENTON: Okay, the accessway that you plan to build that will lead directly to Route 94?

MR. WOLINSKY: Yes.

MRS. DENTON: As of now, they're only allowed to turn one way?

MR. KANE: Coming out they'll only be allowed to make a right-hand turn, okay, coming in, they can make a right and they can temporarily they can make a left according to the New York State Transportation Department and they'll review that left into it in the future.

MRS. DENTON: Okay.

MR. KRIEGER: As of right now, they can come any way that they want to come in, but they can only make right going out.

MRS. DENTON: Will that be brought back up after some time?

MR. TORLEY: DOT will continue to monitor this and if in their opinion it becomes a traffic problem, they'll say no left turns into the lot from 94 will be permitted.

MRS. DENTON: Right.

MR. KRIEGER: The answer to your question whether it will be brought up there, yes, here, no.

MRS. DENTON: Another question about the buffer going up along side the Truex line where the fence is where you are going to enclose the fence on the cul-de-sac, will a buffer go up?

MR. MILLER: Landscaping buffer and retaining wall that was handled through the planning board process, I don't have a landscaping plan to show you tonight.

MRS. DENTON: Where would I have access to like the plans?

MR. MILLER: Town Hall, Building Department should have it.

MR. BABCOCK: Planning board department, Myra has that in her file and that will show exactly what's going to happen there.

MRS. DENTON: Okay.

MR. TORLEY: There's a plan with some green drawn on it, it's not a formal landscaping plan.

MR. BABCOCK: Mr. Chairman, they really probably should go to the planning board office to see the final plan, the plans have changed over the year of process.

MR. KANE: So you know this, excuse me, Mike, this review here does not give the approval for the whole project, it's just a question on an easement coming out

to 94.

MRS. DENTON: Okay.

MR. DENTON: Those parking spaces wouldn't affect any of our property right behind, would it, because as it is now, it's a trailer yard, then the Monro, it's right in back of us, it wouldn't be coming anywhere into the circle, would it?

MR. TORLEY: Would you identify yourself?

MR. DENTON: John Denton, Truex Circle.

MR. BABCOCK: Attached to Truex.

MR. DENTON: The retaining wall is going to go off so we won't have anything coming in on the circle?

MR. BABCOCK: No, nobody will go from this project onto Truex Drive.

MR. DENTON: And the lights should be facing that way?

MR. BABCOCK: Yes.

MR. TORLEY: The only changes from the town zoning and building codes we're addressing now are this little access, not little but this access.

MR. DENTON: Right because they sent us a letter.

MR. TORLEY: Lighting and everything else are either not yet determined or will fight the planning and zoning codes.

MR. BABCOCK: That's been all determined, if they go to the planning board office, they can see one of the, it's the latest plan, it's basically waiting for this procedure to get stamped.

MR. CROUGHAN: My name is Richard Croughan from Jim Sweeney's office. Mr. Sweeney, just for the record, had called earlier this morning and was told that there wasn't a public hearing tonight on this matter, he

wanted to be here present to vigorously oppose this. He called the clerk, Arlene had called.

MS. CORSETTI: Didn't call me.

MR. CROUGHAN: So we'd request that we be allowed to put our argument in writing for the board to consider.

MR. REIS: Can you expand on your negative reasoning?

MR. CROUGHAN: Yes, at the planning board, we had argued vigorously against this as well because of the access onto 94 and the congestion that it currently creates or that's currently there. And the DOT has apparently giving the road an F Rating. So that we would argue that allowing this variance would further congest the area.

MR. TORLEY: Have you read the environmental impact report? Have you seen it?

MR. CROUGHAN: Yes, I have.

MR. TORLEY: In that, again, this is not our purview, traffic, in that traffic issues were addressed by the experts both locally and state.

MR. CROUGHAN: I understand that as well so again, I would like to reserve our right to put it in writing and to present it to the board.

MR. TORLEY: I suppose we--

MR. REIS: You may be a minute too late.

MR. CROUGHAN: We did call.

MR. KANE: It was posted in the paper and there was a preliminary hearing and you didn't get the zoning secretary, Pat, is the one who handles the phone calls.

MR. TORLEY: And public notice and by state law, all of them must be by public hearing, it's the planning board that need not be by state law required, we do.

MR. CROUGHAN: I understand.

MR. TORLEY: And the board may or may not vote on this tonight.

MR. CROUGHAN: I understand that as well then we'd ask the board to refer back to the minutes if at all possible from the planning board, the record that was created at that time.

MR. TORLEY: I don't know which is the last, the minutes I have are April 24.

MR. CROUGHAN: I don't have the file with me, sorry, Mr. Chairman.

MR. BABCOCK: They were at the planning board on several occasions, I'm not sure we'd have to find out exactly which one. You do have a copy of every set of minutes from the planning board.

MS. CORSETTI: We don't know, Michael.

MR. BABCOCK: You wouldn't know.

MS. CORSETTI: We don't have the dates, how many meetings they went to.

MR. TORLEY: We'll try to take, your opposition is noted.

MR. CROUGHAN: Thank you.

MR. TORLEY: Anyone else who wishes to speak from the public?

MR. BRAUN: Real, real quickly, this so-called easement that they're trying to define, can you please define it to me in a simple way?

MR. KANE: They want to make a driveway coming out of Midas Muffler to 94.

MR. TORLEY: From Hannaford through Midas' yard to 94.

MR. BRAUN: Right next to the old volunteer?

MR. BABCOCK: Yes, right now, what they want to do when you pull into Monro Muffler right now they want to continue, you can either go to Monro Muffler or continue passed Monro Muffler into Hanaford's. That's what they want to do. They want to use the same entrance, they're going to modify it, of course, but basically, the same entrance.

MR. BRAUN: The other thing is between the property of the old building and Monro, I don't think a three lane road can go through there.

MR. BABCOCK: Actually, that building is going to be demolished.

MR. BRAUN: That helps, thank you.

MR. TORLEY: Is there anyone else who wishes to speak on this matter? Hearing no one, I'll close the public hearing and open it back to the members of the board and the applicant. Gentlemen, any other questions you have?

MR. WOLINSKY: I just wanted to first I don't recall Mr. Croughan saying who his client was. I've heard him say he was here for Mr. Sweeney, but I think it ought to be on the record who his client is cause he's an attorney representing somebody and the notice didn't go to them, it went to the client. So I think we ought to have on the record who his client is if that's okay.

MR. TORLEY: I have no objection to that. Sir?

MR. CROUGHAN: I don't think I have to disclose that.

MR. TORLEY: He declines.

MR. WOLINSKY: Well, I would just tell you that as a matter of law without the attorney disclosing who his client is that any objections that might be put on the record are for a client that's not disclosed and as far as I think the law is concerned does not exist for purposes of this hearing this evening. Everything else

I think was adequately addressed so unless there are any additional questions that the board has for us--

MR. TORLEY: I wish to read a letter that we received into the record, you can have an opportunity to respond to this as well. This is a letter from VGR Associates dated June 3. "Dear Mr. Chairman: As the owner of the Price Chopper Supermarket Shopping Center, we are acutely aware of the existing traffic congestion at the Five Corners intersection. We hope the application for a variance we were noticed for by Martin's Food of South Burlington, Inc. which would appear to be a surrogate for Hannaford Supermarkets will be addressed in the overall context of the Hannaford application. I am confident that we can rely upon the board to take due notice of the devastating affect of the traffic generated on the Five Corners on the residents of New Windsor and the businesses located in the vicinity." Signed VGR Associates. And I cannot read the actual signature. Again, the traffic is part of the planning process. Our duties here and our jurisdiction is restricted to that of the zoning code regarding interpretations and areas variances. Again, my preference is to deal with this accessway as an area variance. I would entertain a motion.

MR. KRIEGER: I think you have to do three things, first of all, there's some question as to whether or not an environmental process is necessary, which I think is easy for the planning board to resolve by simply voting on it rather as was indicated a rather extensive environmental review is involving many stages was had by the planning board and all that is legally necessary, if you care to do so, you may adopt their findings without making findings or inquiry of your own, simply adopt their findings and based on those findings, issue a negative declaration. That will dispose of the environmental question.

MR. TORLEY: I've had a chance to glance over what I consider the relevant parts of the application and I would so agree with our attorney. If any members of the board fell feel they wish to have more time on this before we take a vote on that. Then do I hear a motion accepting the Planning Board's SEQRA documentation?

MR. KANE: So moved.

MR. KRIEGER: And declaring a negative declaration.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	NO
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: Now what's the next point?

MR. KRIEGER: Once you have disposed which you now have of the SEQRA process, first you must consider the interpretation argument and only if you deny that the interpretation that's sought consider the area variance requirement I remind you that if you should elect to table any question, your motion should be phrased to table it to a specific date, otherwise, you would run into difficulties. I would suggest this is not the kind of application you want to take up without notice.

MR. TORLEY: On that point, any motion by a member of the board has always been in the affirmative, whether or not that does not require you to vote for that motion, just any motion must be in the affirmative. At this point, would anyone like to discuss any further the interpretation aspects of the applicant's desires?

MR. REIS: I've got a question, I'm sure, but I just haven't had an opportunity to go through the whole thing, ingress egress from the project, Larry, what is it off 32, is it two openings, is it one?

MR. WOLINSKY: It's one opening on 32, it's a one opening at a lighted intersection, which is aligned with the Fish and Chips driveway so it's a full lighted intersection at that location, ingress egress, full movements, no restricted, but only after the modifications are made to the Five Corners so that--

MR. REIS: Also including a traffic signal?

MR. WOLINSKY: At Five Corners, not a new traffic signal, but a realignment of lanes and modification of the signal timing so that there's a more definite lane

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wanted to be here present to vigorously oppose this. He called the clerk, Arlene had called.

MS. CORSETTI: Didn't call me.

MR. CROUGHAN: So we'd request that we be allowed to put our argument in writing for the board to consider.

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MR. TORLEY: I suppose we--

MR. REIS: You may be a minute too late.

MR. CROUGHAN: We did call.

MR. KANE: It was posted in the paper and there was a preliminary hearing and you didn't get the zoning secretary, Pat, is the one who handles the phone calls.

MR. KANE: What we have to decide number one in the public hearing is we have got to decide whether we're going to do an interpretation on it, that's the vote that we're going to pull up, we're going to decide yeah or nay whether we're going to do an interpretation or push it to an area variance.

MR. TORLEY: Applicant is saying that the code should be interpreted in such a manner that their desired construction has no affect on the zoning code or is not affected by the zoning code and therefore, no variances are required.

MR. KRIEGER: If I might and let me have a try at this, basically, Mr. McDonald, basically the question as I understand it is very simple. The area of Monro Muffler, the town has argued that if you subtract the area necessary for the access road to Hannaford's, they don't have enough area left. And the applicant has argued no because of the way the code is written, because of the wording selected by the Town Board in writing the code, that's not true. They, if you don't, if they have the right-of-way as it's proposed it should not be subtracted from the area of Monro Muffler and therefore, Monro Muffler is unaffected, yes or no, do you subtract it is the question.

MR. REIS: May I make a comment?

MR. KRIEGER: Yes.

MR. REIS: I find the code as being ambiguous at least, I don't think the effect of it is, I don't believe that the effect of what is written in the code is being applied accurately, okay. I don't think that, I believe that an easement is reducing the area.

MR. KRIEGER: So that I understand what you're saying is when the law was originally written, it was meant in your view to subtract that but you're not sure the way that they wrote it accomplishes that end.

MR. KANE: So what our vote is to decide whether we're going to make the interpretation or say no we're not

going interpret it, we're going to subtract it and go on to an area variance.

MR. TORLEY: Question on the legal matter for our attorney, should we, if there's a second to the motion and it's rejected, is that legally the same as simply tabling that motion and moving, not voting on it at all and moving to the area variance and if that area variance was granted, it would moot the interpretation, would it not?

MR. REIS: That's right.

MR. WOLINSKY: Mr. Chairman?

MR. KRIEGER: It would make an interpretation moot, I'm not sure that's how the applicant--

MR. TORLEY: That's not what I'm asking right now.

MR. KRIEGER: In other words, can you in essence by tabling the interpretation motion, do them the other way around, do the variance vote before the interpretation vote.

MR. WOLINSKY: Let me give you a solution.

MR. TORLEY: One second, sir, if we tabled if the interpretation, motion was simply tabled and hypothetically speaking, the variance was granted, at that point, we have not gone on the record as stating that given a hard surfaced area any easement across there doesn't count if it's already impervious and developable, you can go ahead and put an easement in if you want and I'm afraid that if we approve that interpretation that's what we're saying and I could be incorrect, legally, but that's what has me worried.

MR. BABCOCK: I can tell you after tonight we're going to modify that definition so this will never happen again.

MR. TORLEY: On the other hand, I do know how long it took us to get the bulk tables updated.

MR. BABCOCK: We're working on them every month we're doing it.

MR. KANE: I'd like to hear the gentleman.

MR. WOLINSKY: Well, I was going to suggest but now I don't know after what I just heard Mike say, I was going to suggest that I would withdraw the request for an interpretation without prejudice and then what that means is be able to re-assert it should the area variance be denied.

MR. TORLEY: Do you concur with that?

MR. KANE: Thank you.

MR. TORLEY: We're now no longer considering the interpretation, we're now only considering area variance. Gentlemen, do you have any questions regarding the area variance?

MR. KRIEGER: By the way, you didn't ask but what the applicant proposes to do is legally permissible.

MR. TORLEY: Thank you, I figured if it wasn't, you'd kick me.

MR. KRIEGER: I wouldn't do that.

MR. REIS: Can I ask another question? Without this being approved, this easement being approved, however it's approved, is Hannaford's stopped?

MR. WOLINSKY: Yes.

MR. REIS: Is that accurate?

MR. WOLINSKY: Pretty much so, yes, the project doesn't work without a second access, no project out there will work without, you'll face this issue at some point in time, whether it's Hannaford or someone else, cause there's vacant commercial property back there.

MR. KRIEGER: Let me answer that question, cause I have considered that yes, it means it certainly would have a

serious negative impact on the application as it exists now, it would cause them to have to redo a lot of work, most of the work in front of the planning board would be rendered moot, it would delay the project, whether it would ultimately defeat the project, they'd have to consider alternatives, you may not safely assume that a, if their application here were denied that that would be the end of Hannaford's application altogether. Would it have a serious impact on them, yes. Would it end it, quite frankly, I doubt it.

MR. TORLEY: Okay, now, gentlemen, do you have any other questions from the applicant regarding the looking at his desires as an area variance? If you wish to delay your decision until another meeting, as a date certain, I would entertain a motion to table this matter, if you wish to do that. Does anyone wish to delay the decision to another meeting?

MR. KANE: One quick question, sir, can you show me how wide that easement's going to be going through on this?

MR. WOLINSKY: I'll defer to Jeff Schiller who's our engineer surveyor.

(Discussion was held off the record)

MR. TORLEY: As part of this development, this sort of unofficial short cut into the Truex Circle will be eliminated so commercial traffic will be taken off that residential street.

MR. KANE: Where that exists right now.

MR. REIS: Can I ask a question, are we open here, Larry, who owns the ambulance building at this point, do you know?

MR. WOLINSKY: You know who the current owner is?

MR. SCHILLER: It's Hughes, I believe, Terry Scott

Hughes, that's correct.

MR. WOLINSKY: That's correct, Terry Scott Hughes.

MR. TORLEY: Gentlemen, do we have any other questions you wish to ask at this time? I'll entertain a motion on this matter.

MR. KANE: I move that we approve the area variance for 13,008 square feet as requested by House of Apache.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	NO
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: So the next step will be going back to the planning board for further discussions, some of which I assume will be open for public.

MR. WOLINSKY: It's up, we've had a public hearing, but planning board normally let's the public speak.

MR. TORLEY: Thank you.

DONOVAN, RAYMOND

Mr. Raymond Donovan appeared before the board for this proposal.

MR. TORLEY: Request for 9 ft. rear yard and 5 ft. 6 in. side yard and 6 ft. rear yard variance for existing shed and 9 ft. rear yard variance for existing deck at 204 Summit Drive in an R-4 zone.

MR. DONOVAN: I think the first 9 foot should have been for the deck, I think I got the 9 foot.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter? Seeing no one, so note, please. Yes, sir?

MR. DONOVAN: Well, I'm still looking for my variance. Like I wrote on my application, my original deck was 31 feet from the rear property line and it was a 12 x 20 deck, I put a new deck up which is 31 feet from the property line but now it's 12 x 45, so I never got closer to my property line than my original deck when I purchased my home which was built brand new at the time.

MR. TORLEY: When was that, sir?

MR. DONOVAN: '72, I believe '72 or '73. Last time, when I came to the preliminary, I brought a paper that showed the lot and my home with the deck originally and all I did was make the deck the length of the back of the house, you know.

MR. KANE: Squared back yard or do we have a cut corner?

MR. KRIEGER: No, back yard is square, the front yard is curved.

MR. TORLEY: I assume the deck was, did not meet the code at the time, simply was not caught?

MR. BABCOCK: As you remember, Mr. Chairman, at some point in time, the town changed the way that they

looked at setbacks for rear decks and whether a deck was attached to the house or not attached to a house, basically, at some point in time, I don't know what that was, I didn't work here at that time, basically if there was no setback for a deck that was attached you could build a deck all the way to your property line and your neighbor would build a deck to his property line. I'm not sure if his deck was legal or not legal, it was there and there forever, we know that and he's basically replacing it. But today, the way that we look at the code, if he wants to replace the deck, he has to replace under the zoning.

MR. DONOVAN: It has been replaced, it's the existing deck.

MR. BABCOCK: Yeah.

MR. DONOVAN: I'm in the process of selling my home and the only reason my real estate agent told me I needed to get a C.O. for the deck being I changed it and I put an application for the building permit with the existing deck, I was denied because I didn't have 40 feet.

MR. KANE: Any complaints formally or informally about the deck?

MR. DONOVAN: No.

MR. MCDONALD: It looks like other decks in the area?

MR. DONOVAN: Yes, I put an A-frame, same siding as my home, blends right in.

MR. TORLEY: Other houses in your neighborhood have similar, not identical, but similar decks?

MR. DONOVAN: Yes, lot of people have changed their decks, made them bigger, the length of the house just like I did.

MR. KANE: Create any water hazards or runoff?

MR. DONOVAN: No.

MR. KANE: Cut down any trees?

MR. DONOVAN: No.

MR. KANE: The shed, that's an existing shed?

MR. DONOVAN: Yes.

MR. KANE: How long has it been in existence?

MR. DONOVAN: Ten years.

MR. KANE: Any complaints formally or informally on the shed?

MR. DONOVAN: No.

MR. KANE: Any creation of water hazards or cutting down of trees?

MR. DONOVAN: No.

MR. TORLEY: Are you over any water or sewer easements?

MR. DONOVAN: No.

MR. KANE: Shed similar to other sheds in your neighborhood?

MR. DONOVAN: Yes, almost looks like my house, two windows just like the house, same roof as my house.

MR. TORLEY: Would you read in the mailing list, please?

MS. CORSETTI: Right, on May 22, we sent out notices to 60 adjacent property owners.

MR. KANE: And the taking down the deck at this point or not having the deck off the back of the house would be a safety issue?

MR. DONOVAN: Taking it down definitely would be a safety issue and I would most likely not be able to

sell my home if I didn't have the deck.

MR. KANE: Moving the shed after ten years would be virtually impossible?

MR. DONOVAN: Yes.

MR. KANE: Even though it's self-created.

MR. TORLEY: It becomes a balancing act, we must be balancing the detriment if any to the community against the applicant's gains.

MR. KANE: Accept a motion?

MR. TORLEY: Yes, sir, if there are no other questions at this time.

MR. KANE: I move we grant the requested variances by Raymond Donovan for his home at 204 Summit Drive.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

WESTAGE CORP.

MR. TORLEY: Request for 22 sq. ft. sign area variance for freestanding sign for office park on Route 207 in an NC zone.

Mr. Ed Kellogg appeared before the board for this proposal.

MS. CORSETTI: For the record, we sent out 33 notices to adjacent property owners on May 24.

MR. REIS: Any responses?

MS. CORSETTI: No.

MR. TORLEY: Before we begin, is there anyone in the audience besides the applicants who wishes to speak on this matter? Let record show there is none.

MR. KANE: You're on.

MR. KELLOGG: We're asking for a variance basically to add a peak to an existing sign that we installed a short time ago in front of our office building at 207. The existing sign is 70 inches tall, 8 feet wide and I think you all have a color copy of that and it's what's in green it says Westage Office Park, Taconic Engineering, which is the tenant that occupies all of the existing building and what we're requesting permission to do is to add the peak with the Westage on it, the design of the peak will match the gables on the front of the existing office building and the peak is 33 inches high and about 8 feet wide.

MR. KANE: Will it impede any vision on the traffic on 207?

MR. KELLOGG: No.

MR. KANE: Is it illuminated in any way?

MR. KELLOGG: We have bollard ground lights that are being installed right now.

MR. KRIEGER: Exterior illumination?

MR. KELLOGG: Yes.

MR. KANE: No flashing neon?

MR. KELLOGG: No.

MR. TORLEY: The external lights meet the lighting codes?

MR. KELLOGG: Yes, we checked into that because we discussed it when we were here last time.

MR. KRIEGER: The applicant should know that even if the requested variance were granted, they would still not be relieved from the obligation that he otherwise complied with.

MR. KELLOGG: Right, we understand.

MR. REIS: The only use for the expanded sign area is for the Westage logo?

MR. KELLOGG: Yes, that's really it.

MR. BABCOCK: It's a little roof, it's a little wider than the sign, it's like a little roof over top of the sign right where your thumb is, Mike, see it, see the one, the edge thing by your thumb? See how it's a little wider, it's basically a little roof for the sign.

MR. KELLOGG: It shows the section through the sign on the left-hand side.

MR. BABCOCK: It's a little wider than the sign to keep the water from running down the face of the sign.

MR. KRIEGER: Would it be higher than other signs in the area? I know that there's, that it's a commercial area.

MR. BABCOCK: It meets the height requirement, there's no request for a variance on height, it's just strictly

the area.

MR. TORLEY: This is for an architectural beautification of the sign?

MR. KELLOGG: That's correct.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. RIVERA: I move we grant Westage Corporation the 22 square foot sign variance freestanding sign for the office park located on Route 207.

MR. MCDONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. KRIEGER: The applicant should understand the variance that was just granted is for the application and the details that were presented.

MR. KELLOGG: Yes.

MR. KRIEGER: You can't take this and now change the sign and make it look different.

MR. KELLOGG: Right.

SMITH, ROBERT

Mr. and Mrs. Robert Smith appeared before the board for this proposal.

MR. TORLEY: Request for 7.5 ft. side yard variance for existing shed at 6 Regimental Place in an R-4 zone. Before I begin, is there anyone in the audience who wishes to speak on this matter? Let the record show none. Yes, sir?

MR. SMITH: There's an existing shed that's been there 14 years, it's too close to the property line and it would be virtually impossible to move it without cutting down trees, that area is the only level area to put a shed on and virtually nothing else.

MR. KANE: No complaints formal or informal?

MR. SMITH: Not at all.

MR. KANE: Shed similar to other sheds?

MR. SMITH: Yes.

MR. KANE: Creation of any water hazards or runoffs?

MR. SMITH: No.

MR. KRIEGER: Built on the top of any water or sewer easement?

MR. SMITH: No, it isn't.

MR. TORLEY: And moving the shed in a position that would be approved that that would fit within the zoning code would require you to cut down some of the larger trees which would be an economic loss for you?

MR. SMITH: Right and also affect the beauty of the area too taking those trees down.

MS. CORSETTI: For the record, may I get in that there were 77 notices sent out on May 24.

MR. KRIEGER: How long has the shed been up?

MR. SMITH: Fourteen years.

MR. REIS: Did you have put it up?

MR. SMITH: I had it put up, I didn't personally put it up, it's the first time we've owned a house, I didn't know anything about where sheds should be.

MR. KANE: Don't worry, they change the rules on you.

MR. MCDONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MCDONALD: Motion we grant a variance to Mr. Robert Smith for his request for a 7.5 foot side yard variance for the existing shed.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

DENHOFF DEVELOPMENT

Mr. Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. TORLEY: Request for 14 ft. maximum building height and 22 parking space variance for construction of retail complex at 124 Windsor Highway in a C zone.

MS. CORSETTI: For the record, we sent out 11 notices on May 23.

MR. TORLEY: Is there anyone in the audience besides the applicant who wishes to speak on this matter? Let the record show there is none.

MR. SHAW: This variance pales in comparison to the request that you had earlier tonight.

MR. TORLEY: Fourteen foot building height variance is still the spiral?

MR. SHAW: Yes, I have the architectural drawings, I thought I'd pass around so you can get a flavor for the architecture of the building.

MR. TORLEY: Gentlemen, in the past I think before several of you were on the board this matter was before us with the same spiral and it was the variance was granted for this architectural feature.

MR. KANE: You guys pick that up?

MR. MCDONALD: Yes.

MR. TORLEY: The difference is that that variance expired and we're now dealing with a change in the parking.

MR. SHAW: Correct.

MR. KANE: Basically, the project's staying the same except for the parking?

MR. SHAW: Yes. Mr. Chairman, maybe it would be

appropriate if I just read into the record that which I prepared for the application, I think it will touch on all the salient features and give your board the information that it needs to make the decision tonight. The subject parcel is 1.8 acres in size and is located in the west side of Windsor Highway within the designed shopping zoning district. Windsor Highway is a New York State highway and the the main commercial corridor for the Town of New Windsor. The applicant proposes to construct building for retail use totaling 12,960 square feet along with associated site improvements, including a parking area totaling 65 spaces. This use is permitted within the design shopping zoning district. This project was originally proposed in 1990 and received two building height variances from the Zoning Board of Appeals and conditional site plan approval from the Planning Board. Due to the economic downturn into the 1990's, the retail building was never constructed and the variances and approval lapsed after extensions. The applicant proposes to construct the same building in the same location on the site. Where building height variances were previously granted in 1990 for the building structure and clock tower, only a building height variance is being requested at this time for the clock tower. This elimination of one variance is due to revisions to the zoning ordinance since 1990 allowing more liberal building height for the same setback. The clock tower will be 50 feet at its highest point, 14 feet in excess of that allowed by the zoning ordinance. In the preparation of the architectural drawings, the project architect felt that the scale of the clock tower would work well with the topography of the site and Snake Hill immediately behind the site. The 25 square foot clocktower's colonial style would be consistent with the historic nature of the Town of New Windsor. Just as important, it became imperative for the applicant to create an attractive building for retailers, their customers and the public in general. In the zoning changes of the 1990's, The New Windsor Zoning Ordinance was amended to substantially increase the number of off-street parking spaces required for retail use. For the total building area of 12,960 square feet, the zoning ordinance requires 87 parking spaces. As the site can only support 65 spaces, the applicant is seeking an area

variance for 22 spaces. An argument could be made that the shortfall of the parking spaces is the result of a self-created hardship on the part of the applicant and that if the building was made smaller, the parking variance would not be required. This might be true if economics was not a major factor in the development of commercial property. As presented above, Windsor Highway is the main commercial corridor in New Windsor with the cost of vacant land at a premium. Also, monies have to be invested in the construction of the building to make it attractive to prospective tenants. The result is a substantial investment in the project. A simple answer would be increase rents to cover the cost of the building and site improvements, but unfortunately, rental income is dictated by the local rental market. The key to balancing the cost of an attractive project in a commercial corridor and renting this space at market value is spreading the cost of the project over a greater rental area. Should an area variance for the 22 spaces be granted by the board, it would not be out of character with the retail neighborhood along Windsor Highway. The requirement to provide one parking space for every 150 square feet of total building area was only mandated in the 1990's. There was then and are now hundreds of functioning businesses with less than the number of spaces required by current zoning. Because the Town Board enacted a law to increase the number of required parking spaces does not necessarily mean that retail sites that provide a reduced number of spaces based on the previous zoning laws are inadequate to service its employees and customers. The granting of the two subject variances are not substantial when considering the size and configuration of the parcel. The granting of the variance is not detrimental to the health, safety or welfare of the neighborhood since the property is located in the design shopping zone and is a permitted use. The granting of the variance will not have an adverse impact on the physical or environmental conditions in the neighborhood or zoning district. The granting of the variances will not produce an undesirable change in the neighborhood or be a detriment to adjoining properties. There is no other method that the applicant can pursue other than a variance sought in this application. In view of all

the facts and circumstances presented to the board, the applicant respectfully requests that the variance sought be granted.

MR. TORLEY: Two questions I have, actually, more than two, if the applicant wished to do more extensive earth moving, he could fit many more spaces on at least the front side of this property, can he not?

MR. SHAW: On the front side of this property you're going to have to--

MR. TORLEY: On this area here, this could be by dirt moving multi-layer parking, a parking garage, he could meet the requirements, could he not?

MR. SHAW: If he were to put a parking garage in, sure, I don't think a parking garage could fit, that would be a structure and we'd be back before the board for variances on that, also.

MR. TORLEY: Secondly, how much of a reduction percentage wise or raw number would be required in the building area so that the proposed number of parking spaces would meet the code?

MR. SHAW: There would have to be a 25 percent reduction in the plan that was approved by the planning board, I believe 25 percent of the building was designated as storage, therefore, we provided parking for 75 percent of the building. Nothing has changed. Therefore, the building would have to be 75 percent of what it presently is.

MR. KRIEGER: If the board granted a variance at this point, would you be willing to condition that variance on the using 25 percent of the building for storage, in other words, you no longer have to designate a storage portion of the building because the parking you don't get any advantage, parking doesn't require it, would you be willing to have as a condition of the same commitment that you made previously by designating 25 percent of the building for storage?

MR. SHAW: Can I ask your building inspector whether

that 25 percent figure is reasonable in retail operations? Is 25 percent an appropriate number?

MR. TORLEY: That's what you gave us before.

MR. BABCOCK: That's because typically, I would say yes. The problem with what I see with that is the enforcement of it and somebody that's going to rent as tenants, move in and move out and move walls and keep on going and years to come who has 25 percent, who doesn't, I don't think that's ever going to happen.

MR. KRIEGER: Well, I understand enforcement might be difficult, quite frankly, if there's no complaint, it will never be necessary.

MR. BABCOCK: That's correct.

MR. KRIEGER: So you only want to have it in the record in case there's a complaint that such a complaint could be resolved at that point which you may never have to do that.

MR. TORLEY: Besides as the landlord, you can specify what you want, maybe.

MR. BABCOCK: Maybe if you said 25 percent being non retail, I think would have no problem. Now, if you have bathrooms and so on and--

MR. KANE: Office space is in back.

MR. SHAW: Non retail or office.

MR. BABCOCK: Right.

MR. SHAW: If we have a display area, all right, we wouldn't be at one per 150 square feet for display area.

MR. TORLEY: I don't remember the code on that.

MR. REIS: We're here as a matter of theory as certain laws designated for certain amount of space but in all practicality, each of these stores are probably going

to have a john, probably going to have a storage area and to not to make it more ambiguous knowing this, why not vote on it the way it is.

MR. TORLEY: Because the Town Board whose code we're charged with interpreting not ignoring decided that.

MR. KANE: But we're not enforcement for the Town Law, we're judiciary.

MR. TORLEY: We're required to make the smallest possible variance as possible.

MR. REIS: Based on these assumptions which are accurate.

MR. TORLEY: We can put in reasonable restrictions on any variances that we have and a variance and restriction on the hypothetical at this point variance that says you had originally described 25 percent of the area of the building as non retail space.

MR. SHAW: Correct.

MR. TORLEY: And the attorney's suggesting that should you be willing to stipulate that that's your, still your intention and will remain so, it might make it easier on, make your justification for your variances more palatable.

MR. BABCOCK: If they were to get one tenant that wanted this entire building as a retail store, that would be a problem for him. If they get several tenants, divide this building up every 20 feet like a little strip mall absolutely no problem. So I see the problem is that for marketing, they would have to submit to that if that's what the board is looking for.

MR. KRIEGER: Even if it were a single tenant some portion of the use would be non-retail, maybe it wouldn't be 25 percent, maybe it would be, you tell the board what it would be, but I can't imagine that you'd get a tenant who would use a hundred percent of the space as retail space, all retail requires they have to have bathrooms.

MR. BABCOCK: As the size gets bigger, 25 percent of the size for storage increases also so--

MR. TORLEY: But remember the Town Board looked at the situations they had of parking and retail areas and decided this is what it should be. The applicant is asking for relief from the law passed by the elected officials of the town and I think a reasonable stipulation or change in restriction on the variance that you originally proposed 25 percent as non-retail space just say that's what you're going to do and again enforcement depends upon complaints but enforcement does exist and Mike is very good at enforcing the code when there's a complaint.

MR. BABCOCK: I can tell you we're definitely going to enforce it if that's what it is.

MR. TORLEY: Never any question.

MR. SHAW: When it comes time for a building permit and they're submitted for an applicant and he shows storage space at 20 percent, does Mike issue the building permit or at that point Mike has to say I'm sorry, but I can't issue the building permit to rehab the inside of the building because you're less than 25 percent.

MR. TORLEY: Yeah, if you stipulate to 25 percent that's what you're stipulating to.

MR. SHAW: I'd prefer not to stipulate to 25 percent. I would ask that the board based upon the information I presented, not handcuff my client to all future tenants making sure that they provide 25 percent. I understand your point but that's what we're here for tonight is for a variance, a deviation from the zoning ordinance.

MR. TORLEY: Again, you originally said we're going to say 25 percent non-retail space.

MR. BABCOCK: What happens is that actually they never said or stipulated that they would have 25 percent, the law allowed you to deduct 25 percent of the area and not create parking for it.

MR. TORLEY: On the assumption that would be.

MR. BABCOCK: That's correct, but if somebody didn't have, one guy had 30 percent and the next guy had three percent and next guy had none, it didn't matter.

MR. SHAW: I can see where it becomes an accounting nightmare because if we're talking 25 percent of the entire building of each and every tenant, if someone's in at 15 percent, does that mean that someone can go 20 to 30 percent with the next tenant or is it 25 percent for each and every store across the board, even though one may have 50% storage, the guy next to him, makes no difference, you have to have 25, so who keeps track of the building? I may not be around.

MR. TORLEY: The owner, if the owner stipulated to that restriction on the variance, he's responsible for it. Now, the Town Board has said we want to have this many parking spaces, you have a simple way of meeting the code which reduces the size of the building, there's nothing there.

MR. KANE: I've got to disagree with this. I know that's your personal opinion but we're a judiciary committee, I don't agree with forcing it to admit to 25 percent when you haven't even polled the board members. That's the way it's coming across.

MR. TORLEY: If it seems that way, I apologize, I'm saying that I've got one vote out of the five here and that's it, I can't, I'm not going to brow beat anybody. My point is that was my opinion.

MR. KANE: But you're stating like it's a forced issue.

MR. TORLEY: I apologize if it seemed that way. I did not intend it to be that way.

MR. KRIEGER: To a certain extent the fault was mine, I asked it merely as a question to, which then triggered discussion by the applicant.

MR. KANE: And I agree with that, it was coming across

that it wasn't a discussion.

MR. TORLEY: Is there any other matters that you wish to discuss on this application?

MR. KANE: And Greg, there's nowhere on here that you can squeeze in a couple more parking spaces and knock that down a little?

MR. SHAW: No, we have maxed that out, we have a retaining wall in the front that's going to be about 9 feet in height, okay. In order to get those parking spaces which are closest to the lands of Strack (phonetic) along 32 and in the back, we have another 12 foot high retaining wall so we have effectively 24 feet of vertical changing grade that we're going to have to support with retaining walls. Again, just to get every possible parking space in there, we could, and it gets even more complicated because there's a retaining wall on United Rentals' property formally Calvet that sits right on the property line, so we really can't get too close to that and play with that and start stacking retaining walls. So I think we've done everything we could to maximize each and every parking space. It's just that the code changed.

MR. TORLEY: Gentlemen, do you want to take the variances singly or together? Entertain a motion either way.

MR. REIS: Separate would be appropriate.

MR. TORLEY: Okay, do I hear a motion regarding the clock tower?

MR. REIS: Make a motion that we approve the Denhoff Development's request for a 14 foot maximum building height tower at 124 Windsor Highway.

MR. MCDONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE

MR. KANE AYE
MR. REIS AYE
MR. TORLEY AYE

MR. TORLEY: Do I hear a motion regarding--

MR. KANE: I move we approve the requested variance of 22 parking spaces by Denhoff Development for 124 Windsor Highway.

MR. REIS: Second it.

MR. TORLEY: That's your entire motion?

MR. KANE: That's my motion, yes.

MR. TORLEY: Thank you. Roll call.

ROLL CALL

MR. RIVERA AYE
MR. MC DONALD AYE
MR. KANE AYE
MR. REIS AYE
MR. TORLEY NO

MS. CORSETTI: Motion is passed five ayes and four nays.

MR. SHAW: Thank you very much.

FORMAL DECISIONS

1. DIGERATU
2. FIDANZA
3. DEAN
4. CALDWELL
5. STRATEGIC
6. SUMMIT

MR. TORLEY: Motion to approve the formal decisions?

MR. MCDONALD: I move we accept them all.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: Motion to approve the minutes for 4/22/02.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. KANE	AYE
MR. REIS	AYE
MR. TORLEY	AYE

MR. TORLEY: Motion to adjourn.

MR. MC DONALD: So moved.

MR. KANE: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE

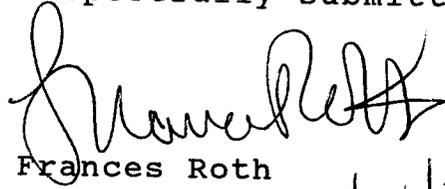
June 10, 2002

54

MR. KANE
MR. REIS
MR. TORLEY

AYE
AYE
AYE

Respectfully Submitted By:



Frances Roth
Stenographer

6/26/02

-----X
In the Matter of the Application of

MIRCEA DIGERATU

MEMORANDUM OF
DECISION GRANTING
AREA VARIANCES

#02-06.
-----X

WHEREAS, MIRCEA DIGERATU, residing at 537 Beattie Road, Rock Tavern, N. Y. 12575, has made application before the Zoning Board of Appeals for a 73.5 ft. lot width, 18.5 ft. street frontage variance, plus variation of Section 48-14A to allow an existing structure to project closer to the road than principle structure. for construction of a single-family residence at the above location in an R-1 zone; and

WHEREAS, a public hearing was held on the 11th day of March, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared on behalf of himself for this Application; and

WHEREAS. there were four spectators appearing at the public hearing; and

WHEREAS. one spectator spoke in opposition and the other spectator spoke neither in favor or in opposition to the Application, but expressed some concerns about future drainage; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.
2. The evidence presented by the Applicant showed that:
 - (a) The property is a residential property consisting of a garage built on a vacant parcel located in an R-1 zone.
 - (b) The lot is irregularly shaped.

- (c) This Applicant received in 1994 variances for front yard and road frontage. Since the granting of that variance the Town Zoning Law has been changed so that in order to build on that lot the Applicant would have to receive a lot width variance.
- (d) It appears that the garage has already been constructed and is in place and the garage will be closer to the road than the proposed dwelling. The Applicant, therefore, needs a variance to allow the garage to project closer to the road than the principle structure.
- (e) Neither the new location of the proposed dwelling nor existing garage interfere with the visibility to motorists on the adjacent road.
- (f) Neither the garage nor proposed dwelling are built on the top of any water or sewer easements, well or septic system.
- (g) The Applicant will begin construction of the dwelling within 18 months.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variances requested are substantial in relation to the Town regulations but nevertheless are warranted for the reasons listed above.
4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variances are appropriate and are the minimum variances necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variances.

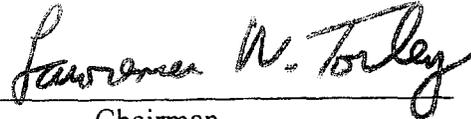
NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for variances requested in the introductory paragraph, at the above address, in an R-1 zone as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: May 13, 2002.



Chairman

-----X
In the Matter of the Application of

SUMMIT ON HUDSON

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-08.
-----X

WHEREAS, SUMMIT ON HUDSON, 404 East Rt. 59, Nanuet, N. Y. 10954, has made application before the Zoning Board of Appeals for a 10 ft. side yard variance for a deck at Unit 131 on Hewitt Lane, in variation of Section 48-1B(2) Site Development Plan Review, in an R-5 zone; and

WHEREAS, a public hearing was held on the 25th day of March, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant Izzy Iberthal appeared for this Application; and

WHEREAS, there were two spectators appearing at the public hearing; and

WHEREAS, the two spectators were not opposed to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a townhouse located in a complex of townhouses in a residential zone.

(b) The unit has been constructed but was located so that when a deck was placed on the back of the unit, it encroached on the allowable side yard.

(c) Although the original approved site map does not show any decks, the units have decks on them. The deck constructed on this unit is similar to the other decks in the complex.

(d) The variance sought will be sought only for this unit as the other units will comply with the side yard and rear yard requirements although decks were not originally shown on the site plan.

(e) The unit complies in all other respects with all requirements of the local code.

(f) The deck will not cause any ponding or collection of water, or alter the course of drainage.

(g) The deck is not erected on top of any water or sewer easements, wells or septic systems.

(h) If the deck were permitted, it will not interfere with fire access.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

2. There is no other feasible method available to the Applicant that can produce the benefits sought.

3. The variance requested is substantial in relation to the Town regulations, but nevertheless is warranted.

4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.

6. The benefit to the Applicant, if the requested variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.

7. The interests of justice will be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a 10 ft. side yard variance for a deck at Unit 131 on Hewitt Lane in variation of Section 48-1B(2) of the Site Development Plan Review, in an R-5 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: June 10, 2002.



Chairman

-----X
In the Matter of the Application of

STRATEGIC REAL ESTATE LLC

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-11.
-----X

WHEREAS, STRATEGIC REAL ESTATE LLC, 580 Toleman Road, Rock Tavern, New York 12575, has made application before the Zoning Board of Appeals for 10.1 ft. side yard variance for an existing single-family residence at 508 Toleman Road, in an R-1 zone; and

WHEREAS, a public hearing was held on the 25th day of March, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared by Mark Siemer from Pietrzak & Pfau Engineering and Surveying, LLC and Gerald Sabini of Design Group for this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in opposition to the Application, however a letter of support was received and filed from an adjacent neighbor; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a residential property located in a neighborhood of residential properties.

(b) The property consists of new construction for which the foundation was installed incorrectly.

(c) The construction complies with all local requirements so far as it has been completed at the time of this application.

(d) The encroachment would not be on the top of any or over any well or septic system, water or sewer easement.

(e) The foundation will not cause ponding or collection of water, or change any water drainage from the property.

(f) The construction is located 150 feet or more from the roadway.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

2. There is no other feasible method available to the Applicant that can produce the benefits sought.

3. The variance requested is substantial in relation to the Town regulations, but nevertheless is warranted.

4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.

6. The benefit to the Applicant, if the requested variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.

7. The interests of justice will be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for 10.1 ft. side yard variance for an existing single-family residence at 508 Toleman Road in an R-1 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: June 10, 2002.



Chairman

-----X
In the Matter of the Application of

MARK CALDWELL

MEMORANDUM
OF DECISION
GRANTING AREA
VARIANCE

#02-07.
-----X

WHEREAS, MARK CALDWELL, 707 Little Britain Road, New Windsor, New York 12553, has made application before the Zoning Board of Appeals for a 10 ft. side yard and 9.5 ft. rear yard variance for an existing in-ground pool at the above residence, in an R-4 zone; and

WHEREAS, a public hearing was held on the 25th day of March, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared by Daniel J. Bloom, Esq. for this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in opposition to the Application, however a letter of support was received and filed from an adjacent neighbor; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.

2. The evidence presented by the Applicant showed that:

(a) The property is a residential property located in a neighborhood of residential properties.

(b) The property was recently purchased and at the time it appeared that the existing in-ground pool on the property did not have a C. O. Upon review by the Building Inspector it appeared that a C.O. could not be granted since the location of the pool encroached on the required side and rear yards.

(c) The pool is not located over any water or sewer easements, well or septic systems.

(d) No complaints, either formal or informal, have been made. appearance to other decks in the neighborhood.

(e) The location of the pool does not affect the course of water drainage or the ponding or collection of water.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The variances will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant that can produce the benefits sought.
3. The variances requested are substantial in relation to the Town regulations, but nevertheless are warranted.
4. The requested variances will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variances are granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.
7. The interests of justice will be served by allowing the granting of the requested area variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a 10 ft. side and 9.5 ft. rear yard variance to allow

an existing in-ground pool, at the above address, in an R-4 zone, as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: June 10, 2002.

A handwritten signature in cursive script that reads "Lawrence W. Tooley".

Chairman

-----X
In the Matter of the Application of

SAMUEL DEAN

MEMORANDUM OF
DECISION GRANTING
AREA VARIANCE

#02-01.
-----X

WHEREAS, SAMUEL DEAN, residing at 15 Clintonwood Drive, New Windsor, New York 12553, has made application before the Zoning Board of Appeals for a variation of Section 48-14A(4) to allow the construction of a shed to project closer to the road than principle structure at the above location in an R-4 zone; and

WHEREAS, a public hearing was held on the 25th day of March, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared with his wife on behalf of this Application; and

WHEREAS, there were no spectators appearing at the public hearing; and

WHEREAS, no one spoke in favor or in opposition to the Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.
2. The evidence presented by the Applicant showed that:
 - (a) The property is a residential property located in a neighborhood of residential properties.
 - (b) The lot is peculiarly shaped and, by virtue of the fact that it is located on two roadways, has two legal front yards although visually it appears only to have one.
 - (c) This site selected is the only feasible place for it to be constructed due to the fact that the ground there is level and locating in a legally permissible place would interfere with an existing well.

- (d) The proposed shed is similar to other sheds in the neighborhood.
- (e) The shed, if located in the place selected by the Applicant, would visually appear to be the back or side yard of the Applicant's dwelling.
- (f) If located in the place sought, the shed would not cause the ponding or collection of water or alter the water drainage for the property.
- (g) If located in the place sought, the shed would not interfere with the visibility in operation of motor vehicles on the adjacent roadway.
- (h) If located in the place sought, the shed would not interfere with the operation of motor vehicles on the adjacent roadways.
- (i) The shed if located in the place sought would not be placed over any well or septic system, or water or sewer easements.
- (j) No trees or significant vegetation will be removed in order to erect the shed.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.
2. There is no other feasible method available to the Applicant which can produce the benefits sought.
3. The variance requested is substantial in relation to the Town regulations but nevertheless is warranted for the reasons listed above.
4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.
5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.
6. The benefit to the Applicant, if the requested variance is granted, outweighs the detriment to the health, safety and welfare of the neighborhood or community.
7. The requested variance is appropriate and is the minimum variance necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local

Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for variation of Section 48-14A(4) of the Supplementary Yard Regulations to allow a shed to project closer to the road than principle structure, on a corner lot, in an R-4 zone as sought by the Applicant in accordance with plans filed with the Building Inspector and presented at the public hearing.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: June 10, 2002.



Chairman