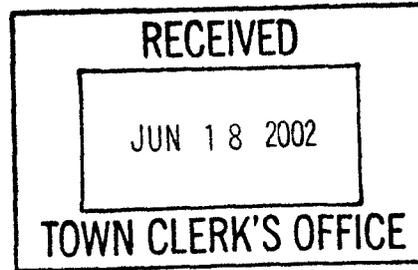


ZONING BOARD OF APPEALS
June 24, 2002



*Town
Clerk*

AGENDA:

7:30 P.M. - Roll call - Motion to accept minutes of 06/10/02.

PRELIMINARY MEETINGS:

1. **ERDEN, JONATHAN** - Request for use variance for existing second apartment at 1068 River Road in a PI zone. (20-5-4).
2. **BILLIK, MARY** - Request for 3 ft. rear yard variance (Sec. 48-21G[1]) for proposed in-ground pool at 2307 Pioneer Trail in the Mt. Airy Subdivision. (77-9-4).
3. **RILEY, THOMAS** - Request for 14 ft. front yard variance for proposed porch at 9 Broad Street in an R-4 zone. (20-1-8).
4. **YONKERS CONTRACTING** - Ref. by Planning Bd. for use variance to permit vehicle maintenance garage on Lot #1 on Ruscitti Road in a PI zone. (9-1-49.2 & 48).
5. **KNAGGS, MICHAEL** - Request for 11 ft. side yard variance for proposed walkway at 253 Garden Street in an R-4 zone. (24-5-39).

PUBLIC HEARING:

6. **KOCHAN, JOHN** - Ref. by Planning Bd. 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).
7. **COLANDREA, BARBARA** - Request for variances of 10 ft. side and rear yards for construction of 8 ft. fence at 23 Ellison Drive in R-4 zone. (23-1-33).
8. **CORBETT, JOSEPH** - Request for variances of 10 ft. side and rear yards for construction of 8 ft. fence at 21 Ellison Drive in an R-4 zone. (23-1-34).
9. **TRAVER/NORTH PLANK DEVELOPMENT** - Request for use variance and possible area variances for proposed single-family dwelling on Walsh Road in NC zone. (14-7-19 & 20).

Formal Decisions: (1) Brown (2) Mt. Airy Estates (3) Potter (4) Mittelman (5) Meyer (6) App (7) Dreyer

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

June 24, 2002

Town Clerk
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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

JUNE 24, 2002

MEMBERS PRESENT: LAWRENCE TORLEY, CHAIRMAN
LEN MCDONALD
MICHAEL REIS

ALSO PRESENT: MICHELE BABCOCK

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

ABSENT: PATRICIA CORSETTI, ZONING BOARD SECRETARY
MICHAEL KANE
MICHAEL BABCOCK, BUILDING INSPECTOR
STEPHEN RIVERA

REGULAR MEETING

MR. TORLEY: I'd like to call to order the June 24,
2002 meeting of the New Windsor Zoning Board.

PRELIMINARY MEETINGS

ERDEN, JOHATHAN

MR. TORLEY: Request for use variance for existing second apartment at 1068 River road in a PI zone.

Mr. Jonathan Erden appeared before the board for this proposal.

MR. ERDEN: I have a house I bought 15 years ago and I put my life to fix that house. I had a heart attack over there, I have an operation over there, I never give up and this year almost I fix it and I want to apply to the two-family house. My house is a perfect two-family house, the upstairs separate entrance, bathroom and downstairs, separate entrance bathroom, small kitchen and I am 65 years old, I retire, my income is \$1,060 a month. This is my dream house now. I gonna rent it upstairs and I want to survive there till I die.

MR. TORLEY: The problem is really you're zoned PI and in a PI zone, you're not allowed to have two-family houses, not supposed to have residential property of any kind, really. That means you fall under what's called a use variance, there are two kinds of variances, area variances, that means you don't have quite enough room for your deck, a use variance means you want to do something in an area of the town where the zoning code says you can't do it. By state law, use variances are very difficult to obtain. The state has written the code that we have to follow whether we think it's a good idea or not, we have to follow the code. Among those things there are several hurdles you have to get over to get a use variance, each one of them can be very difficult. You have to show that you can't get a reasonable return on your property for anything you're allowed to do in a PI zone. You have to show that what you want to do won't change the character of the neighborhood. And it can't be self-created hardship. Now, this was not a two-family house before you just want to make it a two family house?

MR. ERDEN: When I bought it, it was a one-family house and I put addition on the back of the house, I put a bathroom, porch, right now, I put front section is a kitchen.

MR. TORLEY: Our attorney will I hope correct me if I make an error here. One of the other categories is that it can't be, has to be a unique situation, unfortunately, Walsh Road is such a mish-mash that nothing is really unique there. Whether or not we think this is a good idea or nice thing to do, we're stuck with the state law. For you to get a use variance, you have to pass all those hurdles and you have the absolute right to try, but I have to tell you I would recommend under these circumstances to get a use variance you're going to need a, from some kind of a certified appraiser can tell you and show you that you can't get a return for anything you're allowed to do on that land, has to be dollars and cents, you can't wave your hands and say I can't get the money, it has to be dollars and cents value. It can get kind of complicated in the other steps too and this might be an occasion where you might want to consider obtaining counsel, if you want to pursue this. And even under those circumstances, use variances are at best difficult to obtain, not impossible, but they can get close. Your other alternative is to appeal really to the Town Board for changing the zoning in the area cause, that area of Walsh Road is very conflicted in many respects, but we can't do that, so you can apply for a use variance bearing in mind the hurdle you have to go through or you can speak with the Town Board to change the zoning in that area completely, they can't change your property, they have to redo the zoning in the area and it will take a long time. You're in a tough situation.

MR. ERDEN: There's potential there.

MR. TORLEY: No, it's planned industrial zone there, that's what the zoning is for that area.

MR. ERDEN: Across from my house there's other houses, it's residential.

MR. TORLEY: It's a very conflicted area, but we can't change what the Town Board has said is the zoning in the area. I'm warning you that a use variance can be very difficult and one of the big hurdles if the board finds after hearing your evidence that it is a self-created hardship that by itself is an absolute bond, if it's self-created, you can't do it, that's what the courts have ruled above us.

MR. ERDEN: Can you give me advice? What can I do with this house?

MR. REIS: Mr. Erden, we would like to try to help you but we're very limited to what we can do. You have to make a case on your behalf. You should get an attorney. How do you happen to arrive here? Did someone suggest you come here? How did you wind up here?

MR. ERDEN: No, I applied, my permit I applied about the permit and building inspector told me you finish it, the basement, I didn't finish anything in the basement. This is, I'm a contractor also, I retire from the contracting business. I didn't do any structure change in my basement. When I bought that house, that was a kitchen there, there was a gas line there in the downstairs, I helped to the upstairs addition on the master bedroom, another bedroom and I helped to the kitchen, everything I follow the legal way then the building inspector told me you can't rent that house, if you do that, we'll take you to court.

MR. TORLEY: As we said, that area of the town does not permit two-family houses. You had a one-family house trying to make it into a two-family house, that's why the building inspector had no choice but to turn you down. He's also bound by the law.

MR. ERDEN: I know but what I'm going to do with that house? This is my life I put there almost I spent \$40,000 put the addition in everything right now, I'm retired, maybe I'm gonna live five more years, maybe ten years. This is my future. I want to rent this out. This is my house. I should rent it. Nobody should stop me. I am living alone in this house. What

I'm going to do to the whole upstairs? You tell me what I have to do. I'm paying the taxes right now, I'm paying to the downstairs and first floor, they raise it up, my taxes, I'm paying those taxes and I can't use the upstairs, I'm living alone in the house. I don't have anybody.

MR. REIS: Do you know an attorney.

MR. ERDEN: I would like to find somebody. I don't have an attorney.

MR. REIS: Again, we repeat, we'd like to try to help you but we're very limited as to what we can do. You have to make a case for yourself. We sympathize with your position, we would like to say okay, no problem, we understand that there are several homes in that area, residential homes, we also know and understand that there are other multi-family homes in that area but you have a unique situation. You have a special situation that you have to go through a process for us to give you an okay to do it, you have to do the process so you should get an attorney, that's your first step, we'll give you the opportunity to do what you have to do.

MR. TORLEY: I'd entertain a motion on this matter. We're going to, if the board agrees, give you, you have the right to a public hearing, you don't have to go ahead if you change your mind, that's fine, we're going to, with the board's consent, we'll be passing the thing that says you have the right to come back and make your case at a public hearing. So, gentlemen, unless you have any questions, entertain a motion.

MR. MC DONALD: I vote we set Mr. Jonathan Erden up for a public hearing on his request for the existing second apartment.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. MC DONALD	AYE

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MR. TORLEY

AYE

BILLIK, MARY

Mr. Billik appeared before the board for this proposal.

MR. TORLEY: Request for 3 ft. rear yard variance for proposed in-ground pool at 2307 Pioneer Trail in the Mt. Airy subdivision.

MR. BILLIK: I have some pictures to present from the different positions. I know we submitted the application and gave the lot survey along with the application that was initially denied by the zoning board because of the variance issue.

MR. TORLEY: Building department, he must deny it because of the law.

MR. TORLEY: Now, area variances are somewhat different than use variances here, it's a balance, you have to convince us that on the balance of granting you this use variance is more benefit to you than it is a detriment to the surrounding neighborhoods, if any, so it's a balancing act. So, is there, you have to show us why you couldn't put the pool someplace where you don't need the variance.

MR. BILLIK: Based on the limited access of the property, this would be the only place where it's situated.

MR. TORLEY: And the slope.

MR. BILLIK: Yes and the rock wall in the back.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we set up Mary Billik for the requested variance at 2307 Pioneer Trail.

MR. MC DONALD: Second it.

ROLL CALL

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

RILEY, THOMAS

MR. TORLEY: Request for 14 ft. front yard variance for proposed porch at 9 Broad Street in an R-4 zone.

Mr. Thomas Riley appeared before the board for this proposal.

MR. RILEY: Those are houses that are next to mine and all the houses next to me go above so he wouldn't be blocking anybody's view and I believe that says I'm only coming out 6 feet so that would be 15 feet here because it says proposed available.

MR. TORLEY: You need 35 foot front yard and you're proposing 21 foot so that's 14 foot.

MR. RILEY: It says it's 30.

MR. TORLEY: I don't remember if we granted a variance at some point for this property that this house is on. The design of this looks familiar for one, I had, my memory could be faulty, I'm just trying to remember. I will ask Pat if there's a history on this.

MR. RILEY: I don't think because there's nothing added on to the house, that house is the way it was when we bought it.

MR. TORLEY: You're just going to be adding on here?

MR. RILEY: No, I'm going up and out, but I only need the variance for the front porch, everything else fits.

MR. REIS: You won't be going over any easements, water or sewer lines?

MR. RILEY: No.

MR. TORLEY: Not going to be changing the drainage of water?

MR. RILEY: No, I'm just, no.

MR. TORLEY: And this addition to your house, will this

put the front of your house markedly closer to the road than the other houses in the neighborhood?

MR. RILEY: There's pictures of the house, well, I'm a little bit, but not really, if you go on my road, the road behind me Silver Springs, they're five feet away.

MR. TORLEY: Those are the kinds of things we need in the public record.

MR. RILEY: Like I said, the houses above me are passed my house.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we set up Thomas Riley for his requested variance at 9 Broad Street.

MR. MC DONALD: Second it.

ROLL CALL

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

YONKERS CONTRACTING

MR. TORLEY: Referred by Planning Board for use variance to permit vehicle maintenance garage on lot #1 on Ruscitti Road in a PI zone.

Mr. Richard Carter appeared before the board for this proposal.

MR. CARTER: We have a parcel here on Ruscitti Road that currently has, there's an asphalt plant here and we have a maintenance facility here and we're looking to divide the property, we're going to sell the asphalt plant off but we need to keep something at our location to maintain our fleet of trucks. The usage is not, does not permit truck maintenance facilities in an industrial zone which is kind of surprising considering it's an industrial zone.

MR. TORLEY: Does that also mean, Andy, if you had an industrial site you couldn't on that, in that PI zone, you couldn't fix your own industrial trucks you were using in your factory? You couldn't fix them on that site? My question is are we getting, should the applicant also request an interpretation?

MR. KRIEGER: Yes, he should, because that appears to me to be a normal part of it.

MR. CARTER: I understand what you're saying.

MR. KRIEGER: It would be different, you're not holding this maintenance out to the public, strictly your own vehicle.

MR. CARTER: Private vehicles.

MR. TORLEY: So, as you may have heard earlier, use variances are difficult, they're a great idea, obviously, but just difficult to get them.

MR. CARTER: Usually the difficulty leads towards a residential development or planned industrial.

MR. TORLEY: The law is what it says, so my suggestion

to you would be that you ask for an interpretation and/or a use variance, an interpretation of the code, see whether or not your desired activity is permitted in fact.

MR. CARTER: Currently, the desired activity--

MR. TORLEY: Don't say anything yet because the board does have the power to interpret the code and we could, it's theoretically possible, given your case, that we might interpret your desired activity to in fact fit within the code and not require a variance. So, I would suggest that you might apply for an interpretation and then failing the interpretation then you could apply for a use variance all in the same package one shot.

MR. CARTER: First thing we want to do is have an interpretation?

MR. TORLEY: Request an interpretation and use variance, how does that sound to you guys?

MR. REIS: Appropriate.

MR. KRIEGER: And you certainly want an outline at the presentation what the use is going to be and the fact that you're not going to be holding it out to the public, not going to be open to the public, no signs, no advertising, it's a separate use and wouldn't be a separate, have a separate identification.

MR. TORLEY: Truck maintenance for industrial purposes.

MR. CARTER: Private usage.

MR. KRIEGER: As a part of your commercial operation.

MR. MC DONALD: Your own maintenance.

MR. CARTER: What it is is there are people that we want to maintain their jobs over here.

MR. TORLEY: That's an interpretation.

MR. KRIEGER: So we just want to outline that on the record.

MR. TORLEY: When you come back, make sure you have an idea why you should be permitted to do this.

MR. CARTER: Okay.

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MC DONALD: I move we set up Yonkers Contracting for their interpretation and use variance.

MR. REIS: Second it.

ROLL CALL

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

KNAGGS, MICHAEL

Mr. and Mrs. Michael Knaggs appeared before the board for this proposal.

MR. TORLEY: Request for 11 ft. side yard variance for proposed walkway at 253 Garden Street in an R-4 zone. So you're, I'm a little confused, it's a walkway?

MR. KNAGGS: No, like a wooden deck.

MR. TORLEY: On the ground?

MR. KNAGGS: Well, it's going to be, I'm going to have to sink 4 by 4's.

MR. MC DONALD: How high off the ground?

MR. KNAGGS: I'm not going to go more than 18 inches.

MR. TORLEY: I don't recall whether what the limit is for when landscaping becomes a deck. Now, this is just a walkway on or near ground surface?

MR. KNAGGS: What we're doing as you can see there's a slope to the yard so instead of going with terraced timbers just a continuous grade down.

MRS. KNAGGS: Just like a boardwalk or beach walk.

MR. TORLEY: Won't be more than, what's the maximum height off the ground it's going to be?

MR. KNAGGS: No more than 18.

MR. TORLEY: Maybe that's above the level where it becomes a deck.

MR. REIS: Building inspector's office recommended you come here?

MR. KNAGGS: Yes, most definitely.

MR. TORLEY: Maybe that's the difference.

MR. KNAGGS: No, they sent us here because of the, within the boundary line, they didn't say nothing about the structure.

MR. TORLEY: I'm trying to recall whether now you can put a stone walkway right up to your border, right?

MR. KRIEGER: Yes, has to do with how high off the ground it is before it becomes a structure.

MRS. KNAGGS: It wouldn't even be that high.

MR. TORLEY: We don't know whether, I'm sorry I don't recall the code well enough to know whether at what point it becomes a walkway or when it becomes a deck. If it's just a walkway, it wouldn't count, but maybe we should--

MR. KRIEGER: There's a limit to how close it can be to the ground before it's considered a structure in the eyes of the law. If it's too far above the ground, it's considered a structure and then they look and see if it's within the required rear yard, front yard, side yard, within the, there are legally required if you will buffer zones. Now, if it's high enough to be considered a structure and then they look at how far if it does encroach in this required buffer zone apparently the building inspector's determined that it does, so you have him being the chief enforcement officer of the town with regard to these zoning matters, and then it gets just a process that you're engaged in appeals to the ZBA which are these gentlemen and they act as an appeals board to decide whether the building inspector's determination is going to be held or whether you're entitled to an exception or what's referred to in the law is a variance in your particular case. But that has to do with if you don't measure the encroachment till it reaches high enough above the ground to be considered in the eyes of the law a structure.

MR. MC DONALD: No more than 18, right, what are, what are you going to have underneath, 4 X 4s or 6 by 6s?

MR. TORLEY: Going to be a solid structure, dirt fill

or something under the wood?

MR. KNAGGS: Because of the slope of the lawn, if you're going fro the level of the driveway, it's going to--

MR. TORLEY: It's going to follow the grade down.

MR. KNAGGS: One inch per foot and because of the slope of the yard, it has to be supported, so there's going to be grass and dirt, grass and dirt underneath it.

MR. TORLEY: My suggestion is, gentlemen, set them up for a public hearing then maybe they can go back and discuss it with Mike and see where the break point is, maybe you can change your plans so you don't have to come back.

MR. KNAGGS: So that would be at the public hearing?

MR. TORLEY: No, no, say we set you up, that means we give you the right, not the obligation, then you can go back and see Mike or his people and describe in more detail what you want and maybe you can say if you make the six inches off the ground, you don't have to do this. So my suggestion is that we, if you agree that we set him up for a public hearing, start with Mike, if he changes and says he's okay with it, then you can forget about this.

MR. KNAGGS: And the question is whether this is a structure or not?

MR. TORLEY: Or just merely landscaping, so before you go, gentlemen, I'll entertain a motion.

MR. MC DONALD: Make a motion that we set Michael Knaggs up for a public hearing on his request for his 11 foot side yard variance.

MR. REIS: Second it.

ROLL CALL

MR. REIS

AYE

June 24, 2002

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MR. MC DONALD
MR. TORLEY

AYE
AYE

PUBLIC HEARING:

KOCHAN, JOHN

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

MR. TORLEY: Referred by the Planning Board for variances: Lot #1 use variance for multi-family with single family and Lot #2 40 foot lot width at 572 Union Avenue in an R-4 zone. Before I begin, I'd like to, this is a note that on the 12th day of June, she mailed 93 addressed envelopes regarding this matter for public hearing.

MR. HILDRETH: Of which two have been returned to my office as undeliverable. Do you want those in your file?

MR. TORLEY: No.

MR. HILDRETH: This plan that you see is a subdivision plan that I prepared. My name is William Hildreth, I'm a land surveyor that prepared the plan. It was referred here by the planning board because of the need for a width, lot width variance and the new lot we're creating at the same time the issue of the existing structures came up these structures pre-exist zoning, there's a three family residence and a single family residence on the property. And after the planning board made the referral citing the request for the use variance, I got a copy of a letter from the building department that was written in April of '99 which is a month prior to when the current owner closed and it states that the three family structure was built in 1860 as a three-family structure and the single family residence was built in 1910, therefore, it predates zoning and no C.O. is required. I think that--

MR. TORLEY: May I keep it?

MR. HILDRETH: You may.

MR. TORLEY: We'll receive and file this letter signed by Michael Babcock dated April 22, 1999.

MR. HILDRETH: Which makes me wonder even though we have gone through the application process here is that a variance that you want to render an interpretation on and/or would you rather proceed with the public hearing anyway?

MR. TORLEY: Well, you're in the lot divisions, so there was a, as I recall--

MR. HILDRETH: The project is a subdivision, yes, but the use variance doesn't really have a bearing on the lot width variance that we're asking for.

MR. TORLEY: So there's two items, one is the lot width and with one is the use variance. I think, gentlemen, we'll hold on to this, we'll go through the public hearing part and take these up separately. So you want to proceed now?

MR. HILDRETH: Okay, having delivered that letter that's our case for the use variance, it's pre-existing, it was marketed that way, the current owner bought it that way, it's got three boilers, three electrical meters in the three family. Of course, the single family stands by itself. The proposal for the subdivision is going to create a lot which will contain those two structures and the intention is to keep them as they are. The subdivision itself will make no real visible changes in that, the lot is large enough to include some woods in the back, it will have a buffer from the new lot, the lot in the back that we're creating is 2.83 acres which far exceeds the zoning requirements in that zone for lot area. All of the other bulk requirements for that lot are obviously going to be met. It's served by public water and sewer and the need for the lot width variance is that if the lot that we're creating, that is this 2.8 acres for the single family proposed residence, if it were to be made a hundred feet wide, it would, if you look at the map, it would crash into the existing house which is an untenable situation. So the lot width variance is in a amount of 40 feet, we're asking for a 60 foot lot width as a supposed to 100 foot lot width in order to create a single family lot that's far and away above the

minimum requirement for all other bulks.

MR. TORLEY: The reason that you require the lot width variance is because the code that's been changed so that lot width is measured now not where the house is on the lot but where the setback from the road is.

MR. HILDRETH: It's a function of the definition of lot width, the lot width must be measured at the front yard setback, which is only 40 or 50 feet from Union Avenue which didn't work, whereas, the house itself is going to be far back into the property and the width at that point far exceeds the hundred foot requirement.

MR. TORLEY: Gentlemen, do you have any questions before we open it up?

MR. REIS: The proposed house, that's a single family dwelling?

MR. HILDRETH: Correct.

MR. REIS: Served by municipal water and sewer?

MR. HILDRETH: Correct.

MR. REIS: Are you changing the topo of the new proposed driveway to the house?

MR. HILDRETH: Slightly, I've gotten some feedback from Orange County Highway Department which is the agency that has to review and okay the new entrance and let me stop there for a minute. One of things that we're doing here is we're relocating one of the driveways that's on that existing lot so that when we're all said and done, there will be no more or less driveway penetrations out to Union Avenue. Right now, there's a looped driveway servicing the existing residence, that loop is going to become two directional, we're going to widen the one that, we're going to keep, eliminate the other loop 35 feet down the road is going to be the new driveway for the lot in the back so we're hardly moving it at all.

MR. MC DONALD: Still going to be able to service the

existing one family in the back?

MR. HILDRETH: Correct, the new driveway, and to answer the question about the topo, it's going to have to change in order to provide the negative grade for 25 foot of off Union, that's it.

MR. REIS: Not going to create any water or drainage problems?

MR. HILDRETH: No, all the drainage is going to be taken care of right where the county requires the negative grade proposed culvert for the new driveway in an existing ditch in the County right-of-way, that's it.

MR. TORLEY: Yes, ma'am?

MRS. ALESSI: Sally Ann Alessi.

MR. TORLEY: You live at?

MRS. ALESSI: 564 Union Avenue right next to this property.

MR. HILDRETH: Okay.

MRS. ALESSI: I have my maps and I don't quite understand where exactly this is according to my property, could I see this?

MR. HILDRETH: I'm sorry we don't have a board. You're over here, the new driveway's going to be on the other side of the Kochan property from your lot.

MRS. ALESSI: On the other side of that house, you mean?

MR. KOCHAN: The driveway where you're pulling in, we're widening that.

MR. HILDRETH: The idea is to, because of the topo and tucking it into here, the nicest spot is going to be pretty much in a direct line behind the division line between your property and Kochan's and that's where

this box is.

MRS. ALESSI: So behind our house will be the new house?

MR. TORLEY: But he must keep it within the side yards, front yards all have to be with the code.

MRS. ALESSI: Where will the front of the house face?

MR. HILDRETH: Well, I suspect that the driveway's going to come in and once you reach the house site, whether it's right behind your lot or down here, you then have to decide whether you're going to have a side or front entry garage that will determine which way the house is going to face because you don't have any road view from here, the front of the house doesn't necessarily have to face Union Avenue.

MRS. ALESSI: Cause I know the sides of the property are a lot less than front or back, so I don't know whether the side of the property might be just only a few feet from the back of my yard.

MR. HILDRETH: Given the nature of the size of the area and the setbacks would be possibly very close, it doesn't make any sense to more or less center the house.

MRS. ALESSI: I understand, I just wasn't sure how many.

MR. HILDRETH: So after hearing this presentation, do you have an objection to this variance?

MRS. ALESSI: I don't think so.

MR. ALESSI: Joe Alessi. The only objection is we weren't sure when they were talking about the two issues the multi-family and the stuff that didn't pertain to us, we were guessing that it was the original house that they were talking about, but the way it was in the paper, we thought that there might be a proposal for a multi-family behind us which would have been objected to.

MR. TORLEY: Anyone else have anything to inquire about on this matter? Then I'll close the public hearing and open it back up to the members of the board.

MR. ROSS: Eldred Ross. I understand what's here in relation to what I received in the mail, how many houses are going to be built?

MR. HILDRETH: One.

MR. ROSS: This is a multi-family house?

MR. HILDRETH: No, house being built is a single-family house, the multi-family use variance is for houses that are there that have been there for almost a hundred years.

MR. ROSS: More than a hundred.

MR. HILDRETH: As multi-family.

MR. ROSS: My aunt and uncle bought that farm back in 1896 and I'm familiar with the farm for my entire life.

MR. HILDRETH: Yes, the multi-family refers to these two structures.

MR. ROSS: This is in back?

MR. HILDRETH: This is Union Avenue here, this is the main house, the oldest house, and this is the one that was built in 1910, the new house is going to go in the woods in the back, that's it, and we're proposing a driveway to come in the left side of the existing house in order to reach it.

MR. TORLEY: Sir, do you have any objection to this variance?

MR. ROSS: My hearing aid doesn't pick up in this room.

MR. TORLEY: Do you have an objection to them receiving this variance?

MR. ROSS: I don't have an objection, I don't see how a 40 foot lot is big enough for a house.

MR. TORLEY: That's the driveway. The lot at the road is 60 feet wide, that's why he's putting the house in the back where it's much wider, several acres in the back.

MR. ROSS: Okay.

MR. TORLEY: Just a long driveway back to the open area.

MR. ROSS: And I was concerned about it being a multi-family house.

MR. KRIEGER: No, only multi-family we're referring to is what's already here.

MR. ROSS: I feel much better.

MR. KRIEGER: Then you have no objection?

MR. ROSS: I hate to see postage size stamp lots.

MR. TORLEY: So do we.

MR. ROSS: So we're in agreement.

MR. TORLEY: You'll stipulate that this will be, this lot area variance that you're requesting will be to construct one single-family house on the whole piece?

MR. HILDRETH: I cannot say that it won't be subdivided beyond that, that's what this proposal is, that's what the owner wants. Mr. Kochan and his wife are sitting here they plan on building the house and I can't determine what's going to happen.

MR. TORLEY: If they want to subdivide it again, they have to be back because at that point, it will become a private road.

MRS. KOCHAN: We have intentions of living there.

MR. TORLEY: Gentlemen, do you have any other questions?

MR. REIS: Accept a motion?

MR. TORLEY: If you're ready.

MR. REIS: Make a motion that we pass Mr. Kochan's requested variance. By the way, are we going to take care of the use as well?

MR. TORLEY: Interpret that this is a pre-existing non-conforming use and does not require a variance.

MR. REIS: Move that we pass his requested variance for lot 2.

MR. MC DONALD: Second it.

MR. TORLEY: Make it as one combined motion or two?

MR. REIS: One motion.

MR. MC DONALD: Second it.

MR. REIS: Interpretation is acceptable.

MR. MC DONALD: Second it.

ROLL CALL

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

COLANDREA, BARBARA

MR. TORLEY: Request for variances of 10 ft. side and rear yards for construction of 8 ft. fence at 23 Ellison Drive in R-4 zone.

Ms. Barbara Colandrea and Mr. Ray Angueira appeared before the board for this proposal.

MS. COLANDREA: My fiance knows a lot more about this, is it okay if he speaks?

MR. TORLEY: Just for the record, Patricia Corsetti, receiving a note from her, that she has on the 31st of May, 2002 mailed 45 addressed envelopes regarding this matter. Is there anyone in the audience who wishes to speak on this? Would you please note for the record that no one wishes to speak.

MR. ANGUEIRA: We're proposing building an eight foot fence on the rear section of our property. It borders Squire Village, there's like a wooded area there, we have a 6 foot fence now but being that our property slopes down, you can actually see all the cars and the dumpsters and a two foot height variance would help a little bit.

MR. KRIEGER: If the property didn't slope, the 6 foot would be enough but because it slopes.

MR. ANGUEIRA: You can see the headlights.

MR. KRIEGER: Six foot doesn't give you six foot.

MR. ANGUEIRA: Exactly, you can see the headlights from the cars parked up against the fence.

MR. TORLEY: And the presence of the headlights and dumpsters reduces the value of the home?

MR. ANGUEIRA: Yes.

MR. TORLEY: And the presence of the fence would increase the value?

MS. COLANDREA: Plus, we can't grow any shrubs because of all the trees overhanging, we were thinking of putting some trees.

MR. ANGUEIRA: Nothing will grow because their trees overlap the property over 20 feet, they're huge, so we've tried and nothing will grow.

MR. TORLEY: So the landscaping alternative is not feasible?

MR. ANGUEIRA: Not feasible.

MR. TORLEY: The slope of the land diminishes the usefulness of the permit, the fence, so to shield yourself from the noise and traffic, you require an eight foot fence?

MR. ANGUEIRA: Yes.

MR. TORLEY: Move the required ten foot, you'd be losing half the yard, you're not going to be causing any changes to drainage?

MR. ANGUEIRA: Not at all.

MR. TORLEY: This fence will not interfere with the vision of drivers moving in and out?

MR. ANGUEIRA: No.

MR. MC DONALD: There's no easements?

MR. ANGUEIRA: None at all, there's a 6 foot fence there now so.

MR. REIS: You're taking down the existing fence totally removing that and replacing it with the eight foot fence?

MR. ANGUEIRA: Yes.

MR. MC DONALD: Accept a motion?

MR. TORLEY: If you have no other questions.

MR. MC DONALD: Make a motion we grant Barbara Colandrea's request for variance for ten foot side and rear yard of construction of eight foot fence.

MR. REIS: Second it.

ROLL CALL

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

CORBETT, JOSEPH

MR. TORLEY: Request for variances of 10 ft. side and rear yards for construction of 8 ft. fence at 21 Ellison Drive in an R-4 zone.

Mr. Joseph Corbett appeared before the board for this proposal.

MR. TORLEY: You're the next door neighbors of the previous application?

MR. CORBETT: Yes.

MR. MC DONALD: Same problem.

MR. TORLEY: Is there anyone in the audience who wishes to speak in this matter? Let the record show there's none. Again, this is an affidavit from Pat Corsetti, on the 31st of May, 2002, she prepared 53 addressed envelopes to be mailed for this matter. Sir, again, you have the same situation as the previous applicant, that a 6 foot fence would not give you sufficient shielding to protect you against headlights, et cetera, absence of such a fence reduces the value of your home?

MR. CORBETT: Yes.

MR. TORLEY: And it would be, it's the slope of the land that makes the additional fence height necessary and you couldn't move it back in the ten feet would be loss of your property?

MR. CORBETT: Yes.

MR. KRIEGER: You're nodding, I assume it's yes, the answers to all those questions is yes?

MR. TORLEY: And again, the alternative landscaping I see by the photograph you'd be in the same situation where the landscaping growth probably would not be successful?

MR. CORBETT: Yes.

MR. TORLEY: This fence also is not going to be built over any easements, water or sewer lines, et cetera?

MR. CORBETT: No.

MR. TORLEY: And again, a fence of this height would not obstruct vision of any driver on their ingress or egress through the main road?

MR. CORBETT: No.

MR. TORLEY: Strictly a parking lot?

MR. CORBETT: Yes.

MR. REIS: Motion?

MR. TORLEY: If no other questions.

MR. REIS: Just a point of reference, there's no fence there now, you're putting up a fence?

MR. CORBETT: Yes.

MR. REIS: Make a motion that we grant Mr. Corbett his requested variance for 21 Ellison Drive.

MR. MC DONALD: Second it.

ROLL CALL

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

TRAVER/NORTH PLAN DEVELOPMENT

Daniel Bloom, Esq. and Gregory Shaw of Shaw Engineering appeared before the board for this proposal.

MR. TORLEY: Is there anyone in the audience who wishes to speak on this matter?

MR. BLOOM: Good evening, Mr. Chairman, members of the board, my name is Daniel Bloom and I represent the applicant this evening, North Plank Development Corporation LLC and the applicant has been retained for the purpose of bringing this application on behalf of the homeowner, the landowner, which is Ms. Bertha Traver. I might say in that regard, I also have and I will submit after the presentation an affidavit from Miss Traver which traces her ownership of the property and verifies her ownership of the property and I also have an affidavit from the next door neighbor, Ms. Margaret Bulson that I will submit to the board as well at that time. In terms of generalities as the application indicates we're here for a use variance, we're seeking permission to construct a one family residence in a zone which is NC at the present time. Realizing the burden that's upon the applicant in terms of demonstrating dollars and cents in terms of the hardship which the applicant believes exists, I brought this evening with me to testify before this board Mr. Eldred Carhart, who's a licensed real estate appraiser in New York State for over 30 years with particular experience in the area of commercial and residential development in the Orange County area. I also have, will also be discussing with the board this evening the plans which were prepared for this evening's presentation by Gregory Shaw, professional engineer, who's representing the applicant as well. At this point with the board's permission, I'd like to turn over the presentation to Mr. Shaw for the purpose of presenting particular designs that he would like to present this evening in connection with the application.

MR. SHAW: Thank you. When we were before this board for our initial meeting, I prepared the sketch before you which is now labeled as plot plan number one. And

basically, what that does it lays in a 30 by 30 foot single family dwelling on the parcel with what I felt was appropriate setbacks that being a ten foot side yard each side and a 31 front yard setback with a 15 foot rear. Again, with this being a residence in an NC zone, there are really no setbacks for residents, so I laid in what I thought was appropriate. We discussed this plot plan as I said at the first meeting and what the board directed me to do was to come up with another sketch and that's labeled plot plan number 2 permitted use in an NC zone without any area variances. Again, what I laid in was a building that would fit within the setbacks permitted in an NC zone. And I called the structures a service garage because that's probably about all you can possibly fit on that and again providing three parking spaces with the necessary setbacks. We ended up with a, with a building size of 460 square feet, not very viable. Finally, again, at the board's direction, if we were going to be asking for area variances for the residents, well, the question came what type of a permitted structure could be installed on the site with the same setbacks as that required for or that which was provided for the residence. And that's plot plan number 3, which is a permitted use in an NC zone with area variance. So, again, if you look at this sketch, the setbacks for this sketch equal or exceed the setbacks for the residence. And with that, again, I labeled the structure service garage, but the maximum size structure that we could place on that site is 30 feet by 27 feet for a total of 810 square feet. Again, not very large for a service garage. Now, I think if you take a look through the permitted uses in an NC zone, you'll find that a service garage is probably a use that would require the smallest size building. Any other use in that bulk table I think as you read through you quickly come to a conclusion that it just cannot fit on that lot. So, again, we use the label of the garage cause it's probably the closest to what it could be used for. The million dollar question is is it viable. Is a 460 square foot structure 20 feet by 25 foot viable that's meeting the setbacks required in this C zone or even if the board felt generous enough to get area variances consistent with what we'd be asking for with a residence is an 810 square foot

structure a viable building? Again, you'll notice that with the 810 foot, I'm providing two parking spaces, two parking spaces for the residence and also two parking spaces for the smaller service garage. I would like to point out that in our initial discussion at the workshop session with the planning board when we were talking about a possible commercial structure on this lot, I was informed by the fire inspector that it's imperative that the cars pull out head first onto Walsh Road and he also advised us that Walsh Road is a no parking area. So, again, with parking being critical, the viability of a commercial structure on the lot comes into question once again. So that's a brief overview of the three plot plans. I think that covers the entire scheme that we discussed and hopefully, I will provide the board with some good information to evaluate this use variance tonight. So, with that.

MR. BLOOM: Yes, thank you, Greg. At this point, I'd like to again introduce Mr. Eldred Carhart who will comment upon the economic viability or non viability of a commercial structure on the premises and in that regard, I beg the board's indulgence. Mr. Carhart just underwent some neurosurgery, his mind is certainly intact, but his words might come a little slow, so just bear with us.

MR. CARHART: My name is Eldred Carhart, I'm a certified general appraiser, I specialize in doing this kind of work before boards and also appraise commercial properties. I was asked to review the three plans and I have tried to make an economic study of each one of those. Now, if we had a house, it would have a rental value of about \$1,250 a month that could be an 1,800 square foot house or it could be a 900 square foot house and basically, it's going to be about the same. And it would have a vacancy allowance of one month's rent every two years and the expenses for this house would be real estate taxes, which I have estimated at \$3,500, insurance, \$500, maintenance repair, approximately 2 percent, professional management 5 percent and a reserve for replacement of one percent comes to \$5,165. And subtracted from the affective gross income that comes to \$9,210. Now, if that's capitalized at 5 percent and I have supplied for you a

capitalization schedule, at 5 percent, it would be \$184,200, it would have a value of \$184,200. Now, using a cost approach, 1,800 square feet at \$75.00 a square foot, it's 135,000 and it has miscellaneous site improvements would cost about \$15,000 which is \$150,000 plus the cost of the land. Now, there would be no functional or locational obsolescence because for a house, there's two parking places which are ample for a house and for one thing and for another thing, the appreciation rate over a ten year program would be about 5 percent. Now, this is about double what it would be on a commercial building. Now, a smaller garage would be 20 by 23 square feet or, excuse me, 20 by 23, 460 square feet and have a rental value of \$12.50 a month, vacancy of 5 percent would bring, so it's \$5,450, tenant insurance \$200.00, professional management 5 percent at 275, miscellaneous \$250 reserve for replacement reduces the gross income by \$780 and if that's capitalized at 9 percent schedule for capitalization is following it, that would be have a value, total value of \$51,900. Now, to build that building at \$55 a square foot would be \$25,300 entrepreneurial profit 5,060 for a total cost of \$30,360. Now, on top of this, there'd be approximate closing costs of \$7,500 plus the cost of the land. Now, here we have a locational obsolescence of about 25 percent, which is caused by the fact that there's no parking or very, very limited parking and 2 1/2 percent appreciation per year, it would just mean at this building nobody would build this building, nobody would, nobody would make the effort to take this on. Now, a larger garage 30 by 27 was 810 square feet, it would have about the same rental value of \$12.50 a square foot, that's \$9,615 and it would have an expense of insurance, professional management, miscellaneous and reserves replacement which would reduce the effective gross income to 3,000, excuse me, \$8,535. Again, if that were capitalized at 9 percent, that's a value of \$94,800. Now, the cost to build this at \$55 a square foot is 44,550 entrepreneurial profit of \$8,900, closing costs are 7,500, 950 plus the cost of the land which also is again subject to a 25 percent locational obsolescence and 2 1/2 appreciation rate per year and I have given the capitalization rate here for your use. In my opinion, nobody would even build this building,

it's just too small, it's only 810 square feet and nobody would really have a need for it. Now, I'd like to just state what my opinions would be on I guess the last page there would be no detrimental detriment to health, safety and welfare of the neighborhood or the community if the variance is granted, so it would, there are houses on both sides of the street, I'm sorry.

MR. KRIEGER: I was going to ask you why.

MR. CARHART: There are houses on either side of the property, there's a cemetery across the street and it would not be, there would not be any--

MR. KRIEGER: Consistent with the neighborhood as it exists now.

MR. CARHART: It would be. There would be no undesirable change which would be produced in the character of the neighborhood because again, it's residential or detriment to nearby properties by granting the variance. There would be no loss of value to the neighboring properties that would be produced. These are residential properties, I'm sure that this would enhance the value of the residences on either side if this new house were built. The difficulty to the owner is not self-created since this is improved, it's a vacant land subject to improvement.

MR. TORLEY: Stop, question we had, if you're going to discuss this later, fine, we asked you to.

MR. BLOOM: I'm going to address that.

MR. TORLEY: The status when the owner purchased it.

MR. BLOOM: Correct.

MR. CARHART: Lastly, according to the fire chief which I mistakenly meant fire inspector, there's no parking allowed on either side of Walsh Road, so this creates a hardship to the property. And this concludes my presentation. If you have any questions, I'd like to try to answer them.

MR. REIS: Just a general comment, Mr. Chairman, ready for questions?

MR. TORLEY: Sure.

MR. REIS: The status of the property now it's being sold subject to these variances being in place, is that accurate?

MR. CARHART: I do not know.

MR. BLOOM: The property in question, that's correct, the property is subject to the issuance of this variance in order for the contract to proceed, that's correct.

MR. REIS: And based on your analysis of the property, Eldred, the existing use which would be the garages or the small garage as Greg laid out makes economically no sense at all?

MR. CARHART: That's right.

MR. REIS: Or extending it to a larger garage where you'd still need a variance?

MR. CARHART: It would still need a variance and has no real economic value, it's highest and best use truly is a residential.

MR. REIS: Thank you. I just wanted to kind of analyze it, put it together.

MR. CARHART: Thank you.

MR. BLOOM: Gentlemen, if I, Mr. Torley, if I may address the issue of the potential for the self-creation of the hardship. The history of the property as confirmed by the affidavit of the owner, Mrs. Bertha Traver, which I will present to the board is as follows, in a nutshell, the property was in the family since the 1930's. Mrs., I want to be sure, Mrs. Traver or her husband, yes, her aunt was, her Aunt Anna Jones owned the property back in the '30's and the

property remained in her ownership up until about 1981 when she lost it for taxes to Orange County Commissioner of Finance. Mrs. Traver and her husband, George, who's now deceased, came forward and re-purchased it from the County so they would keep it in the family, their goal at that time up until the time of the death of Mr. Traver was to build a house on the property. But unfortunately, Mr. Traver passed, their plans changed and now in her older years, Mrs. Traver would like to sell the property and use the money obviously for retirement purposes or planning retirement. The configuration of it never changed during that period of time, and the taxes were paid by her and the, for all those years, 30, 40 years and then the taxes on this vacant lot continued to be paid by the present owner up to the present time.

MR. TORLEY: They purchased it from a tax sale in 1981?

MR. BLOOM: Correct.

MR. TORLEY: So at that time, it was, title rested with Orange County and they purchased it from them and in 1981, can you tell us whether or not this lot what you want to do now with this lot would have been a permitted use in 1981?

MR. BLOOM: I can't tell you that.

MR. TORLEY: My recollection is this has been NC forever, so to my knowledge and please correct me if I'm wrong, that in 1981, this was a zoned PI where a, I'm sorry, zoned--

MR. REIS: NC.

MR. TORLEY: To where a single family house would not be a permitted use.

MR. BLOOM: If that's what the record indicates.

MR. TORLEY: Please correct me if I'm wrong, that's my assumption absent information from the owner so that raises to my question then since they did purchase it back from the County, why does not that constitute a

self-created hardship cause it was not the use, their desired use of putting a house on it, it was not a permitted use in 1981, why does that not constitute a self-created hardship?

MR. BLOOM: I would respectfully suggest that the purchase was not for the purpose of building a house at the time, but to preserve the lot for the purpose of her and the, during her lifetime and after the aunt passed, and she had no longer any use for the pleasure of having a family homestead, it was then the desire of the Travers to build their own house on the property at that time.

MR. TORLEY: After the purchase though?

MR. BLOOM: Yes.

MR. KRIEGER: But the fact of the matter, the reason it's not a self-created hardship, it doesn't matter what their intention was in re-purchasing the property, it's cause a, you would never be able to prove intention anyway and it's not binding. In fact, it remained a vacant, it was a vacant piece of property and remained that way when they bought it, whatever they intended to do with it, it didn't change their intention, may have been misinformed or whatever.

MR. TORLEY: When they purchased the lot, it was then an NC zone for which a single family residence was not a permitted use of not pre-existing, it was a pre-existing house on it, empty land bought in an NC zone.

MR. KRIEGER: Yes.

MR. TORLEY: So why now say 20 years later you wish to put a house on it, why is it not a self-created hardship when you purchased the land knowing or should of known that such development was not permitted?

MR. BLOOM: Well, the only answer I have Mr. Torley, as I indicated before, it wasn't the intention at the time of the purchase to build anything on it, it was only to preserve it for her aunt who had paid taxes on it for

40 years, wished to live there with it around her house until she died.

MR. TORLEY: Has any attempt been made to sell this lot to the neighbors as additional space for their house?

MR. BLOOM: To my knowledge, there has not, but the reason there would not be of course would be because there obviously would be no economic return on that type of sale.

MR. KRIEGER: Well, when they advertised for sale, it was advertised to the general public.

MR. BLOOM: In addition, sure, that's correct, it was advertised to the general public, but in addition to that, we have the next door neighbor, Ms. Bulson who signed an affidavit saying that she's here and she's here this evening imploring this board to give consideration to this application because she's so close.

MR. TORLEY: We'll wait until she speaks.

MR. BLOOM: But I have her affidavit, but if I may proceed to another aspect of the application, I believe that this application is unique in this sense. We're not here this evening just seeking a use variance based upon the fact that we anticipate a much better economic return if it's residential as opposed to commercial. I believe that point's been, well established by Mr. Carhart and I would be the first one to say that if that were the case in my opinion under the case law of the State of New York, the application should be denied. But that isn't the case here. This is not a case where a, case where we're coming before this board seeking permission to put a commercial development in a residential zone because it would be economically better for the applicant. At the same time, it would have a deleterious, deprecatory affect on the neighbors, we're here seeking at considerable expense to my client permission to build a residence in an NC zone, why, because it makes sense, it's common sense, it's best for the neighborhood. Every single structure on this portion of the block is residential and I might

say I walked it this afternoon, they're beautiful, old houses, they're a tribute to the Town of New Windsor. And I think that if we permit this type of application not to receive appropriate consideration and we deny an applicant who's willing to go the extra mile so as to permit the construction of this type of residence for the benefit not just of the Town of New Windsor but for the benefit of the, all the neighbors rather than put up some commercial structure with a million area variances, I think that this board is losing an opportunity to stand up and do what's right respectfully and based upon that, I would respectfully request that this board consider favorably my client's application for a use variance.

MR. TORLEY: Any questions now or bring it up to the public? Ladies and gentlemen, if you would please identify yourself?

MR. CRONE: I'm Mr. Kenneth Crone, I live at 289 Walsh Avenue.

MS. BULSON: Margaret Bulson, 289 Walsh.

MR. CRONE: I feel if you put a commercial structure next to my house, my property value, number 1, is going to go down, number 2, New Windsor is going to lose taxes, number 3, when it comes time for me to sell and retire, I won't get the full value of my property or my house and basically, I feel that putting a house there, a residential than commercial, would be more valuable to New Windsor and my area.

MR. KRIEGER: If I interpret what you're saying, residential use would be more consistent with the character of the neighborhood the way it exists now?

MR. CRONE: Yes.

MS. BULSON: If you put commercial, we're inviting more traffic to a much busy road, too much in and out.

MR. CRONE: If you put a garage there, I'm going to have gas fumes constantly going in and out of my house, which is going to be harmful to my health and

Margaret's health.

MR. TORLEY: The example they gave was a garage but would not like a self storage facility also be permitted in that zone?

MR. KRIEGER: But you have the gas fumes from everybody coming and going.

MR. TORLEY: Garage use is not the only possible use.

MR. CRONE: Even if you put a commercial building there, you're still going to have traffic constantly coming in and out of there and you're still going to have the fumes coming in my house constantly.

MR. TORLEY: So you're against the requested variances?

MR. CRONE: Yes.

MS. BULSON: Yes, strongly.

MR. TORLEY: Anyone else? If no one else wishes to speak, we'll close the public hearing. Just a note for the record that Pat Corsetti signed an affidavit on the 10th day of June, she prepared the 48 addressed envelopes regarding this to be mailed regarding this matter. I've got a question, appreciate your input on should this be granted, hypothetically, we grant you the use variance for this being a residential property, how do you address Section 4826-E which is from 1986 the Town Board added regarding non-conforming residential lots? Essentially, small lots, I won't take the time to read it, but they desire the relevant point is that it's such lot shall not contain less than 5,000 square feet and this lot is 4,163 and subsection F of this, that it is the finding of the Town Board that the development of non-conforming lots not meeting the above criteria will blight the proper and orderly development and general welfare of the community. So, the Town Board has decided that it's made this law saying that non-conforming residential lots may be built on but they have to be at least 5,000 square feet.

MR. KRIEGER: But the addition is he doesn't have a non-conforming residential lot, that's the reason he's asking for the variance is precisely for that reason.

MR. TORLEY: But if he, it's not a residential lot, he's asking for us to grant him a use variance to make it a residential lot, yet it still even granting that it fails to meet the criteria that the Town Board set down for residential lots.

MR. BLOOM: If I may be heard, Mr. Torley, yes, I respectfully suggest that that declaration by the Town Board is an establishment of policy, understandable and sensible and at the same time, the Town Board created this board, this Zoning Board of Appeals so as to allow individual judicious common sense variations on the general rule in specific instances where, for example, in a case such as this, the granting of this variance is more consistent with the general zoning of this township than it would be for this board to take a black and white approach and say NC put a beauty parlor in there and meanwhile what have we done, what has the town done, it's depreciated the value of every single one of the people in this room. I think that that's the reason this board exists, that's the reason why this board was created by the State of New York and empowered by the Town Board to give meaning to, it's like the United States Constitution, it's a beautiful piece of poetry, but unless you've got nine justices giving it an interpretation in individual cases, it's a meaningless document.

MR. TORLEY: It reads pretty clearly to me, but my question to our attorney is given Subsection F is that one that's under our power to vary?

MR. KRIEGER: Yes, that's merely the reason for F is merely a legal justification for which is the \$5,000 limit but F is variable.

MR. REIS: We give area variances.

MR. TORLEY: There's certainly areas we're not permitted to vary, private roads we can't vary.

MR. KRIEGER: That's true but this isn't one of them.

MR. TORLEY: This is our legal opinion that we in fact have the power to vary this, give relief under this matter.

MR. REIS: My interpretation is another area variance.

MR. MC DONALD: I feel the same way as Mike, that's the purpose of the board and I agree with Dan, basically, they set up this plan, if we're going to go strictly by the book, then you don't need us. This is the way I feel.

MR. KRIEGER: There are certain provisions not by law variable the ZBA doesn't have jurisdiction over, but this isn't one of them.

MR. TORLEY: Okay.

MR. REIS: Greg, in relation relation to your, I'm not sure who's stipulation it was, but the turnaround that cars must come back down to Walsh Road head first, there's enough turning room?

MR. SHAW: For a residence, yes. For commercial vehicles, no, absolutely not. If you take a look at the dimensions of the parking area, I really don't even know what the size of a vehicle that you can have that would be delivering machine parts or whatever, supplies, maybe a UPS truck, maybe but that's it and then you'd have to back out.

MR. REIS: I recognize that. Just for the record.

MR. SHAW: Absolutely.

MR. REIS: In regard to the topography, again, Greg, there's no dramatic change to the lay of the land, there's no cause for runoffs or even danger of any kind.

MR. SHAW: No, with respect to the residents of the subject lot, we have a small parking area, 900 foot house, it's not a large house and the rest is going to

be either lawn or just virgin ground.

MR. KRIEGER: Wouldn't redirect cause the ponding or collection of water or redirect the flow of drainage?

MR. SHAW: If anything, it would redirect some of the storm water which flows to the rear of the lot and direct it towards Walsh Road where there's a storm drainage system in place to convey it so it will improve the drainage.

MR. TORLEY: You're talking about, again, talking of putting a 900 square foot house?

MR. SHAW: Correct.

MR. TORLEY: Again, we have the power to vary this but we're also under an obligation to make minimum variances and follow the spirit of what we believe the Town Board set up and you're talking about proposed house, they're talking about proposed house that the proposed house shall contain not less than a thousand square feet.

MR. SHAW: That's a very good point. I may have misspoke, you have a footprint of 900 square feet, it's more than likely going to be a two story structure, so you're realistically like at 1,800 square feet. Thank you. It's a good point, though.

MR. TORLEY: Another item I noticed on the map you have assumed is your easement coming off the northwest corner?

MR. SHAW: Correct, that's from the files of the sewer department and it was not possible to get an as-built location on the manhole because there's a shed on it but that shed will have to be moved and allow us a connection and we do have a right to it, if that's the point you're trying to make.

MR. TORLEY: Is there a sewer easement tracking across this property?

MR. SHAW: Yes.

MR. CRONE: Yes, there is, when I bought the property, it was a shed, there was a shed in the back of my house and the corner of the shed on the northeast corner there's a sewer line with a cap on it and I didn't know it was there until after I bought the property and it goes west to east, southeast.

MR. TORLEY: Formally, we should not have been able to let that speak, but we'll let that go because I'm in favor of getting information than procedures. However, again, please address this then if in fact there's a sewer easement across the property, how does that affect its lot area?

MR. SHAW: No, correction, that sewer easement is on the lands of Rober, if I'm pronouncing it correctly.

MR. TORLEY: I thought you said it crosses this.

MR. SHAW: No, that's the terminal manhole, the last one.

MR. TORLEY: Okay. I would like an opinion from our attorney regarding one of the absolute bars of the four prongs for use variances is self-created hardship, I'm still uncomfortable with that whether the applicant has met that barrier and I would appreciate an input from our attorney regarding the, whatever appropriate statements or case law regarding self-created hardship over time and I would appreciate the opportunity to think on that and get some input from Andy more than off the top of his head, skilled as he is, thinking is always better than off the top of the head. Whether you gentlemen will permit that information to be provided and take our vote at the next meeting on this matter. Do you have a problem with that?

MR. MC DONALD: I do, I think we've gone long enough, actually.

MR. TORLEY: I'm just worried about whether or not we have legally met the criteria here.

MR. REIS: May I?

MR. TORLEY: Please.

MR. REIS: I believe that we're empowered to make a decision and interpret and I believe that whether it be today or two weeks from now we're going to make a decision, if I may just make a comment, short of granting a variance, whether it be for a garage or for the dwelling and I believe in my own mind and heart that the dwelling is probably the less encumbered and the best for the neighborhood in due respect to everybody that's concerned that in not giving a variance, the result is a piece of property that will continue to collect garbage to become infested with vermin, to be an eyesore for the neighborhood rather than something that can be developed into something that would be a credit to the neighborhood.

MR. TORLEY: I agree with you but I'm concerned about whether--

MR. REIS: I believe we have the right to vote on this and my suggestion is that we do it expeditiously rather than put it off another couple weeks in due respect to Larry, whatever you want to do.

MR. TORLEY: No, I agree with you, I think that a house on this property is probably a good idea. I'm just concerned that we're constrained by state law, we must agree that all these criteria have been met and I don't know if legally, the self-created hardship has been addressed. I don't, I'm not sure of that.

MR. REIS: I believe it has based on Eldred's input as far as the economics of it.

MR. MC DONALD: I do, too.

MR. TORLEY: The economics has nothing to do with self-created hardship.

MR. REIS: We have to overcome can we sell it for a dollar?

MR. TORLEY: Self-created hardship is another matter,

the self-created hardship is a different thing.

MR. KRIEGER: There's something that needs to be added to the record, perhaps the persons are here from the neighborhood are in a better position than the applicant and that's how long we know that it's a neighborhood that's primarily residential, how long that's been the case.

MR. CRONE: My house has been there since 1925.

MR. KRIEGER: There are commercial establishments in the neighborhood?

MR. CRONE: Only one that's in the neighborhood is Rumsey's insurance, which is on the corner and he's no longer there, that's it.

MR. KRIEGER: If you're telling the board that that's primarily a residential, a neighborhood residential in character, now, my question to you is how long has that been the case?

MR. CRONE: Well, my parents are from New Windsor, Joe Ruscitti, and as far as I can remember, I'm 59 years old and that's going back some and my house is 1925, 75 years, the house next to me is over 100 years and the one up the street from me that's about 100 years, so that's how long it's been there.

MR. KRIEGER: So it's been primarily residential in character since?

MR. CRONE: Up to the corner by the firehouse, you turn right and there's more residential there.

MR. KRIEGER: As far as you know, it's always been residential in character?

MR. CRONE: Yes, as far as I know. Then you have Star Block that started commercial and then went down from there, you've got a few body shops.

MR. KRIEGER: But in your area it's been residential?

MR. CRONE: In my area from the firehouse down, it's always been residential, as far as I know, yes.

MR. KRIEGER: Well, the reason I ask that has to do with a self-created hardship, certainly the applicant didn't do anything to create that situation, it's existed since prior to apparently has existed since prior to the enactment of zoning and they couldn't create the situation or done anything to affect it one way or the other.

MR. TORLEY: I'm agreeing with you, I'm looking for a way to do this legally, if, does the fact that the land was purchased from the County while it was NC zoned therefore not, residences were not allowed in 1981, does that constitute a self-created hardship if he purchased the land when it was zoned not for residential purposes, even though residential purposes is clearly what it should be, but that's not what the town said at the time, is that--

MR. KRIEGER: It's also not what the town said before or since, so the fact that they purchased it from the County in 1981 makes no difference, they might as well, the character of whether or not they created a self-created hardship depends on the character of the neighborhood, not the entity from whom they purchased the property. The neighborhood is what it is.

MR. TORLEY: Yeah, Greg, I'm with you. The point is for whatever reason the town said NC and residential development is not permitted in NC for whatever reason they did that does that, please help me on this, does that, when your applicant owner purchased this from the County since it was no longer in continuous ownership of the family, does this by itself constitute buying a piece of property knowing that it's not even, though it should be is not designed for permitted residential use?

MR. BLOOM: If I may, I would suggest two things, first of all, this was not a typical purchase from tax sale, this wouldn't be like one of us going to a tax sale and buying a piece of property, this was in the nature of a redemption for unpaid taxes for her aunt between

related people, no view to buying it for the purpose of development, buying it for the purpose of giving it back to a woman who lost it out of the family of the 40 years of paying taxes, number 1, number 2, don't forget in 1981, if they had immediately come here and sought a variance to build a house in that NC zone, they wouldn't have been faced with the tremendous burden that this applicant's faced with today in terms of establishing the basis for a use variance.

MR. TORLEY: So your point is that it should not be considered as a true purchase but as a redemption?

MR. BLOOM: Redemption and the tax sale, there was no purpose to develop this property at this time.

MR. KRIEGER: That's the way that then and now that the tax law works and there is built into that a redemption period even after title goes back to the County, the reason that it's built into the law is so it isn't treated as an arm's length sale.

MR. TORLEY: We can use that as saying it's not self-created, not a purchase.

MR. KRIEGER: Yes, if it was purchased within the redemption period and there is a period of time, a considerable period of time that's allowed after the actual technical transfer of title to the County in which somebody can come in and they don't have to buy it at arm's length, they can, the difference is they're not paying the purchase price, the County, the owner can ask any purchase price, they're paying the back taxes that makes it a redemption not a purchase.

MR. MC DONALD: That's what happened?

MR. BLOOM: That's what happened.

MR. REIS: It's not an arm's length sale, we should each vote our conscience.

MR. TORLEY: I'll accept a motion.

MR. KRIEGER: You have to do two things, first thing

you have to do is if you're so minded, declare a negative declaration with respect to the environmental aspects and then you're free to once the negative dec is declared if that is in fact what you do, you're free to proceed.

MR. MC DONALD: I'll make that motion.

MR. REIS: Second it.

MR. KRIEGER: Declare a negative dec.

MR. MC DONALD: What Andy said.

ROLL CALL

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

MR. REIS: So we need a motion on the variances, the area variances. I make a motion that we grant Traver/North Plank Development their requested variance use and possible area variances.

MR. TORLEY: For the course I went to suggested, they suggested when you give a use variance that you define the use variance, say you can put a structure up with these setbacks, so you can say you want, you were looking for, to build a structure with a ten foot side yard setback as per map, plot plan one.

MR. SHAW: Just to be specific, each side yard would be 10 feet, the rear yard would be 15 feet and the front yard setback would be 31 feet.

MR. REIS: Per setbacks and side yard requirements per single family dwellings on plot plan number one as dated by Greg Shaw.

MR. KRIEGER: Depiction, not requirements.

MR. SHAW: There may be two other variances, one is a minimum lot area.

MR. TORLEY: We're granting a use variance to put up a structure on this lot, all the area variances are set aside, we're defining what we're writing for this lot, what your plot plan is taking your plan as defining what the variances are to be.

MR. SHAW: Just didn't want to have to return to this board again.

MR. MC DONALD: Second it.

ROLL CALL

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

FORMAL DECISIONS

1. Brown
2. Mt. Airy Estates
3. Potter
4. Mittelman
5. Meyer
6. App
7. Dreyer

MR. MC DONALD: Motion to accept all the decision as written.

MR. REIS: Second it.

ROLL CALL

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

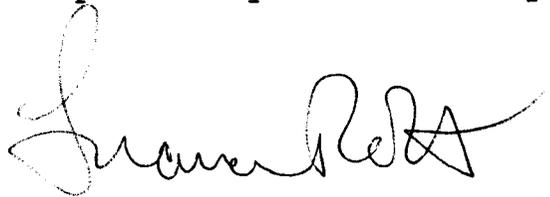
MR. REIS: Motion to adjourn.

MR. MC DONALD: Second it.

ROLL CALL

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

Respectfully Submitted By:



Frances Roth
Stenographer

7/24/02

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

ROGER SMITH

#02-19.
-----X

MEMORANDUM
OF DECISION
GRANTING
VARIANCES

WHEREAS, ROGER SMITH, 17 Shaw Road, Rock Tavern, N. Y. 12575, has made application before the Zoning Board of Appeals for a 25 ft. front yard, 15 ft. side yard, 10 ft. rear yard and 248 sq. ft. minimum livable floor area 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 13th day of May, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

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

WHEREAS, no one spoke 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 Applicant seeks to construct a home on that property which home would be to replace an existing trailer.

(c) The proposed home cannot be located on the property so as to comply with the setback requirements of the Zoning Code because an existing septic and leach field with which it would interfere.

(d) Construction of the house will not change the drainage patterns or cause any flooding, collecting or ponding of drainage.

(e) The house will be similar to other houses in the neighborhood. Construction of the house will actually improve the appearance of the neighborhood over its present condition

(f) The proposed home will actually be larger than what would be required for a condo-type development.

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 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 variances are 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 variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a 25 ft. front yard, 15 ft. side yard, 10 ft. rear yard and 248 sq. ft. minimum livable floor area variance for construction of a single-family residence at the above location in an R-1 zone, 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 24, 2002.


Chairman

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

LAURA POTTER

#02-12.
-----X

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

WHEREAS, LAURA POTTER, 108 Holly Drive, New Windsor, N. Y. 12553, has made application before the Zoning Board of Appeals for an 11 ft. front yard variance to construct a covered porch at the above location, in an R-4 zone; and

WHEREAS, a public hearing was held on the 8th day of April, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

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

WHEREAS, no one spoke 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 proposed porch is similar to other porches in the neighborhood.

(c) The porch will not be constructed on top of any well or septic system, water or sewer easement.

(d) The variance is sought so that the two porches on the property can be connected which, if allowed, would enhance the safety of the dwelling.

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, 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 variance.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for an 11 ft. front yard variance to construct a covered porch 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 24, 2002.

Lawrence W. Torley

Chairman

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

MT. AIRY ESTATES, INC.

#01-27.
-----X

MEMORANDUM
OF DECISION
GRANTING
VARIANCES

WHEREAS, MT. AIRY ESTATES, INC., 2375 Hudson Terrace, Fort Lee, New Jersey 07631, has made application before the Zoning Board of Appeals for a 6 ft. front yard and 1 ft. rear yard variance for front and rear decks at 2103 Patriots Court, in an R-3 zone; and

WHEREAS, a public hearing was held on the 8th day of April, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Larry Wolinsky, Esq. and Marvin Rosenswag, builder, appeared in behalf of this Application; and

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

WHEREAS, no one spoke 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 one-family home located in a neighborhood of one-family homes.

(b) The home located on the property is a one-family home under construction. During the construction, the builder had to raise the house to alleviate a drainage concern. Due to the raising of this house, it was necessary that the builder place steps in front of the house for access.

(c) The deck or platform is required for the rear of the house for safety as a person exiting the rear of the proposed dwelling without the deck or platform would probably sustain serious injury.

(d) Because of the location of this property, the difficulties encountered by the Applicant are not applicable to the neighboring properties and are, therefore, unique.

(e) Neither encroachment were built on top of any water or sewer easement, or any well or septic system.

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

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

JOHN MEYER

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-21.
-----X

WHEREAS, JOHN MEYER, 7 Ashley Court, Salisbury Mills, New York 12577, has made application before the Zoning Board of Appeals for a 10 ft. rear yard variance to allow construction of a pool deck at the above location in an R-4 zone; and

WHEREAS, a public hearing was held on the 22nd day of April, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

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

WHEREAS, no one spoke 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 property is peculiarly shaped and has access to a cul-de-sac.

(c) The property is located on the corner of an actual road and a "paper" road so it, therefore, has two legal front yards although it visually appears to have only one.

(d) The proposed deck, if permitted, would not be constructed over any well or septic system, water or sewer easement.

(e) The proposed deck will not create any ponding or collection of water, or create any water hazards or affect the run off or path of water drainage.

(f) No trees or significant vegetation will be removed in order to construct the deck.

(g) The proposed deck will be adjacent to an existing pool.

(h) The proposed deck is similar to other decks in the neighborhood.

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. rear yard variance to allow construction of a pool deck 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 24, 2002.



Chairman

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

DARRYL DREYER

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-25.
-----X

WHEREAS, DARRYL DREYER, 353 Nina Street, New Windsor, NY 12553, has made application before the Zoning Board of Appeals for a 6 ft. rear yard variance for an existing deck at the above location, in an R-4 zone; and

WHEREAS, a public hearing was held on the 13th day of May, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

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

WHEREAS, no one spoke 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 existing deck was constructed less than a year ago and was a replacement of an earlier, smaller deck.

(d) The deck is consistent in size and appearance to other decks in the neighborhood.

(e) The deck was not constructed on top of any well or septic system, water or sewer easement.

(f) The deck does not create any ponding or collection of water, or create any water hazards or affect the run off or path of water drainage.

(g) No trees or significant vegetation were removed in order to erect the deck.

(h) No complaints either formal or informal were received in connection with the construction of this deck.

(i) Applicant stated that it would be a safety hazard if the deck were not in place at the rear of the residence.

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, 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 variance.

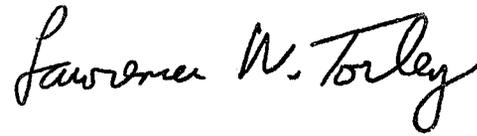
NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a 6 ft. rear yard variance to allow an existing deck 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 24, 2002.



Chairman

- (b) The shed has been in existence for approximately 16 years.
- (c) During the shed's existence, there have been no complaints either formal or informal about the shed.
- (d) The shed is similar to other sheds in the neighborhood.
- (e) The shed was not constructed on top of any well or septic system, water or sewer easement.
- (f) The shed does not create any ponding or collection of water, or create any water hazards or affect the run off or path of water drainage.
- (g) The shed is located on the property next to a large tree. In order to relocate the shed, this tree would be lost.
- (h) The property is located such that it legally has two front yards, although it visually appears only to have one.
- (i) The fence for which the variance is sought has been in existence a number of years.
- (j) No complaints, either formal or informal have been received regarding the fence.
- (k) The fence is connected to another permissible fence.

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 yard variance for an existing shed and a variation of Section 48-14C(1)(c) of the Supplemental Yard Regulation to allow 5 and 6 ft. fences to project closer to road than principle structure, 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 24, 2002.



Chairman

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

DANIEL APP

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-18.
-----X

WHEREAS, DANIEL APP, 350 Nina Street, New Windsor, New York 12553, has made application before the Zoning Board of Appeals for a 4,119 sq. ft. lot area variance for construction of a single-family residence on Riley Road in an R-3 zone; and

WHEREAS, a public hearing was held on the 22nd day of April, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

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

WHEREAS, no one spoke 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 Applicant proposes to construct a small single-family home on the property.

(b) The house if constructed will be similar to other houses in the neighborhood, although it will be smaller.

(b) The house if constructed will be similar to other houses in the neighborhood, although it will be smaller.

(c) The proposed house will be serviced by Town water and sewer.

(d) The proposed house will not be constructed on top of any well or septic system, water or sewer easement.

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 4,119 sq. ft. lot area variance for construction of a single-family residence, on Riley Road, in an R-3 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 24, 2002.

A handwritten signature in black ink, reading "Lawrence W. Torley". The signature is written in a cursive style with a large initial "L".

Chairman

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

DONALD BROWN

MEMORANDUM
OF DECISION
GRANTING
VARIANCE

#02-13.
-----X

WHEREAS, DONALD BROWN, 175 Bruyn Turnpike, Wallkill, N. Y.12589, has made application before the Zoning Board of Appeals for 35 ft. 5 in. street frontage variance to construct a single-family residence on Cedar Lane, in an R-4 zone; and

WHEREAS, a public hearing was held on the 8th day of April, 2002 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the Applicant appeared for this Application; and

WHEREAS, there were 8 spectators appearing at the public hearing; and

WHEREAS, approximately 5 persons spoke; and

WHEREAS, 2 of the persons who spoke had no objection; 3 of the persons who spoke did have objections, which objections are further stated below; 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 proposed to be used by the Applicant for construction of a single-family home. It is located in a neighborhood of single-

family homes. The lot in question is part of a subdivision which was granted many years prior to this Application. This lot is so situated that it has less than the currently required road frontage for access to the adjacent town highway.

(b) The property is a large property consisting of 1.3 acres. The property is much larger than neighboring parcels.

(c) The proposed residence will be situated on the property so that it meets or exceeds all requirements of the New Windsor Zoning Local Law except that of road frontage.

(d) The only feasible access to an adjacent roadway for this property is over a town-owned right-of-way.

(e) If the variance sought by the Applicant is granted, the Applicant will still be required to obtain a highway access permit from the Town of New Windsor Highway Superintendent and will be required to meet all lawful restrictions imposed by the Highway Superintendent.

(f) Two of the objectants who spoke expressed concerns with respect to site distance to and an increase in traffic on the adjacent roadway. The objectants were informed that access to the roadway is subject to permit from the Highway Superintendent and their objections should be taken into consideration at that time.

(g) One of the objectants objected on the basis that she currently has a view over this property and if a house were erected it would disturb this presently unobstructed view. Although the Applicant was informed that she does not have a guaranteed right of view across another's property, she nevertheless maintained her objection.

(h) Although the property is large, the Applicant committed himself not to seek subdivision of this property in the future.

(i) The proposed one-family house to be erected on the property would be similar in size and appearance to other houses in the neighborhood.

(j) The Applicant cannot acquire additional property to secure the required road frontage by purchase from his neighbor.

(k) The proposed house will be located hundreds of feet from the back of the property.

- (l) The proposed home will not be built on the top of any water or sewer easements, well or septic system.

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. The Applicant has committed himself not to subdivide the property in the future. The interests of justice will be served with this condition.

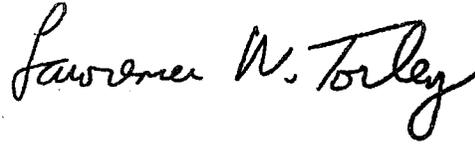
NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor GRANT a request for a 35 ft. 5 in. street frontage variance to construct a single-family residence on Cedar Avenue, 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 24, 2002.

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

Chairman