

ZONING BOARD OF APPEALS
AGENDA: MARCH 25, 2002

7:30 P.M. - ROLL CALL

MOTION TO ACCEPT MINUTES OF 2/25/02 & 3/11/02 MEETING.

PRELIMINARY MEETINGS:

1. **BLYTHE, MIKE** - Request for use variance for construction of two-family dwelling at corner of Cedar & Walsh in an R-4 zone. (14-7-24).
2. **ROBERTS, DONALD** - Request for 28 ft. rear yard variance for an existing addition with deck at 2177 Little Britain Road in an R-1 zone. (55-1-2).
3. **KELLY, DENNIS** - Request for variation of Sec. 48-14C(1)(c)(1) to allow replacement of an existing 5 & 6 ft. fence between principle building and street on corner lot at 56 Birchwood Drive in an R-4 zone. (25-1-10).
4. **MITTELMAN, ALLEN** - Request for 10 ft. side yard for existing shed and variation of Sec. 48-14C(1)(c) for existing fence between dwelling and street, also fence height of 2 ft. and 1 ft. at 326 Nina Street in an R-4 zone. (73-2-21).

PUBLIC HEARINGS:

5. **DEAN, SAMUEL** - Request for variation of Sec. 48-14A(4) to allow a shed to project closer to road than principle structure on corner lot, 15 Clintonwood Dr. in an R-4 zone. (19-4-20).
6. **CALDWELL, MARK** - Request for 10 ft. side yard and 9.5 ft. rear yard variances to allow existing in-ground pool at 707 Little Britain Road in R-4 zone. (5-1-15).
7. **STRATEGIC REAL ESTATE** - Request for 10.1 ft. side yard variance for an existing single-family residence at 508 Toleman Rd. in an R-1 zone. (52-1-104).
8. **SUMMIT ON HUDSON** - Request for 10 ft. side yard variance for deck at Unit 131 on Hewitt Lane in variation of Sec. 48-1B(2) Site Dev. Plan Review. (81-4-4-10).

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

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Town Clerk

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

MARCH 25, 2002

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

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

ABSENT: MICHAEL KANE

PATRICIA CORSETTI
ZONING BOARD SECRETARY

REGULAR MEETING

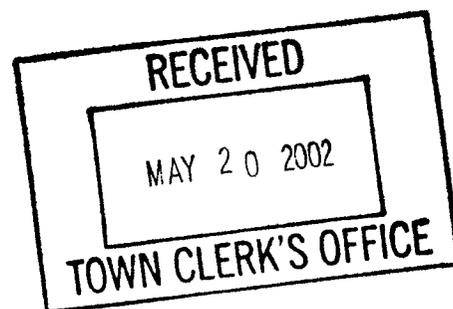
MR. TORLEY: I'd like to call the March 25, 2002 Zoning Board of Appeals meeting to order. Entertain a motion to accept the minutes of 2/25 and 2/11?

MR. MC DONALD: So moved.

MR. REIS: Second it.

ROLL CALL

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



PRELIMINARY MEETINGS:

BLYTHE, MIKE

MR. TORLEY: Request for use variance for construction of two family dwelling at corner of Cedar and Walsh in an R-4 zone.

Mr. and Mrs. Blythe appeared before the board for this proposal.

MR. BLYTHE: Good evening, Mr. Chairman, members, my name is Mike Blythe. The property is owned by my father-in-law, Charlie Rumsey, who is now deceased. The sole executrix of the estate is my wife, Myra Rumsey, who is here this evening. It's been listed with Ashcroft and Associates for six months and my attorney advises us as a single family residence, it's unmarketable because of the mixed use area and he advised us that in order to sell the property at fair market value, we'd be advised to have it rezoned for a two family use. I'd like to turn this over to my wife, Myra, who as I said is the executrix of the estate of Charlie Rumsey. This was started at his request. He passed away February 16, Myra grew up on Walsh Road across the area, we have some pictures and just a preliminary map to give the board an idea of the area, it's a mixed use in that particular part of New Windsor.

MR. TORLEY: You and everybody in the audience right now we're in the preliminary meeting section of our meeting, we do these so that you have an idea of the questions we're going to ask at a public hearing because by state law, everything we do has to be by public hearing. The purpose of these meetings is to get two way communication so you know the kind of things you'll have to present to us for us to make good decisions at a public hearing and vice versa, so no one is surprised at the public hearing and everybody has good information. I will tell you right now that for a use variance, which is what you're asking for we operate under state law. The state has made use variances which says I want to do something in the zone that I am not permitted to, they make obtaining a use

variance very difficult. There's a series of hurdles you have to get over, failing any one over those hurdles will kill the application. By law, we cannot change that. So I use want to warn you that use variances are difficult to obtain. If you have any other relief that you can use that would be an area variance, much higher chances for those. Go ahead.

MRS. BLYTHE: We're open, I mean, right now, it's of no use to us and according to our realtor, you know, we can't sell it, you know, so we're open to any type of guidance that you can give us. This is the area, okay, just so you have some idea of where the piece of property is. Everybody is familiar with where the property is. And what I have here on this side is just various, just uses of that area. Oh, this is the property in question, single family here, five family here, Gus' Tavern, this is what we always refer to as the hole because it does look like exactly like that. Across the street, you have the firehouse, single family, single family, Rhodes Funeral Home and you come down into the commercial area here down into Federal Block so just going on the advice, I mean, I can go down here, Walsh Road, but you're all shaking your head so I'm assuming that you're familiar with the area to know what's actually in that area. On the advice of my real estate agent, he said, you know, we're not even getting any calls on it so I'm looking to you to give us some guidance. I've got to close out an estate.

MR. TORLEY: One of the criteria for a use variance is that the property cannot return a reasonable, generate a reasonable return for any of the permitted uses in the zone that has to be by state law and court decision, a dollars and cents quote, can't just say I can't sell it, you need the real estate agent or appraiser to give you dollars and cents for this all. It doesn't mean you can make a profit, it means you can make more than that dollar. So that's one of the criteria. The other criteria and I would urge you to consider seeking legal help on this, these use variances can be complicated and our attorney here will I hope correct me rapidly if I make a mistake.

MR. KRIEGER: Yeah, I will.

MR. TORLEY: Can't be a self-created hardship, so when the structure's built, what was it?

MR. BABCOCK: It's a vacant lot.

MR. TORLEY: Ever been anything on it?

MRS. BLYTHE: No, it literally is a hole, I have a picture on this side.

MR. TORLEY: I know it's empty but I'm trying to remember what--

MR. BLYTHE: As you go down Cedar Avenue, it's below grade of Walsh Avenue.

MRS. BLYTHE: Let me see if I have a picture. This is the beginning of Walsh Road right here, as if you were going down towards Gus', this here, that deep embankment is the lot. Then this is just the surrounding area of what you have, if you were going down Cedar Avenue towards Gus' here, this is of course this is the firehouse going down the hill, this is if you were at this corner where they put the guardrail up, there's some trees along there that the town has trimmed recently, this is just as you look down the embankment, that's what this is.

MR. TORLEY: Not self-created hardship if it's a vacant lot, I think I urge you to contact, consult with an attorney as to how you should proceed, maybe real estate agent has told you, is there any other permitted uses in R-4 zone that you can't, single-family houses next to it, are you saying that you'd have to have the real estate agent say that this piece of property, even though there are single-family houses there could not be sold as a single family residence properly for any reasonable return. That's going to be your first hurdle. Think long and hard about that. Gentlemen, do you have any other things you want to bring up?

MR. REIS: It's been on the market for six months?

MRS. BLYTHE: Yes.

MR. REIS: May I ask what you're asking for the property?

MRS. BLYTHE: He priced it, I have no idea, 50,000 for a lot in New Windsor, I have no clue, he did an analysis, he said that's the figure they put on it that was an asking price that's not where I wouldn't take anything less, I'm looking to close the estate. That's the point. I want to make, I'm looking to end something with my father passing.

MR. TORLEY: About a quarter of an acre?

MR. BLYTHE: A hundred by 98.

MR. REIS: We'd like to be sympathetic to your needs but as the chairman indicated, there's very stringent guidelines as to where we can go with it and you may have a very, very difficult opportunity to prove a case to allow us to grant you a variance, not to say it's impossible, but it will be very difficult.

MRS. BLYTHE: Well, I'm looking to you as the fathers of the community here, what do I do? You know, I'm looking to close an estate.

MR. REIS: It is salable, everything is salable at a price and that's up to you. I will disclose to you I'm a broker so I am familiar with the area and familiar with pricing, okay, so I don't want to tell you that it is too high or too low, that's not my position here on the ZBA, but everything has a price and what you have is an existing lot, that's what it is, to change it may be possible, but it may not be. There's cost involved and time and energy to create as your broker's saying is a two family lot, all right, which I agree and I think the board all agree probably would be more salable, but to accomplish that, it's a very, very difficult hurdle to climb.

MR. TORLEY: You would have to, as I said before by competent authority, establish you couldn't get a reasonable return on the property. It means maybe you could sell it for 15 or \$20,000, I'm picking numbers

out of the air, please, don't take those as anything other than just guesses that might be considered a reasonable return.

MR. TORLEY: That's one of the things we have to judge is whether or not it's a reasonable return, what was the, you have to show when your father bought the lot how much did he pay for it, what are the houses going around the area for, there are single-family houses on the market, what do they sell for.

MR. BLYTHE: The question would be whether someone would buy the lot and build on the lot, that's the problem. And you have, and I, you guys have been very wonderful so far, but the fact of the matter is it's a mixed use area, you've got a 4 family on one corner, cemetery and firehouse on one corner, you're suggesting that a two family on the corner would be an unreasonable use of the property, doesn't make a lot of sense to me.

MR. KRIEGER: What zoning an area has is determined by the Town Board, not by this board. The Town Board in its wisdom has determined that that zoning of that area is going to be single family. Now, this board has no choice but legally but to accept the zoning the way the Town Board gives it to you, whether they look it or not. The law empowers them to grant variances under certain limited circumstances, where a particular piece of property is, meets the legal yardstick necessary for what amounts to an exception to the zoning. What the board members have been trying to tell you is that that legal yardstick for this particular type of change is a very high one, a very, it requires a lot of difficulty, to me, and again like they take the zoning from the Town Board and they have no control over it, they have no control over that, what the criteria is for varying the use that's given to them by the state. Now, so that you understand by way of background, there are two different kinds of variances that can be granted from the zoning requirements by this board be, one, is what's called an area variance, that has to do with the location of the, a building on a piece of property or an accessory building, whether it's too close to one boundary or another, the size of the lot and so forth,

there are some other criteria for an area variance. A use variance, which is the one they have been talking about which is very difficult is when somebody comes in and says I seek to use the property for a use that's not permitted in the zone, for a use that has nothing to do with the dimensions of the property, has to do with the use of the property. That criteria, while the board is empowered to grant a variance under certain circumstances for a use is a very difficult one to meet. What the, a more difficult one to meet quite frankly than a lot of people realize. The advice to simply go to the zoning board of appeals, while it may or may not have been well taken is often given and I have no idea about the person who advised you, I don't know who that person is. I don't seek to know who that person is. But that criteria going to the Zoning Board seeking a use variance is a good deal more difficult than is envisioned by a lot of people who give that advice. It's not impossible, it's simply difficult, what the board members are trying to indicate to you is in order for you successfully to meet those criteria and obtain a use variance is a difficult undertaking and you may need the advice of an attorney or someone similar to coordinate to quarterback, if you will, this entire application. It is a little more complicated than the routine. Again, it's not a complication that the zoning board of appeals, the members here have created, it's a complication that the law requires that they acknowledge and operate under.

MRS. BLYTHE: Can I interrupt? I'm just a little unclear as I listen to what an attorney is going to do for me, if you are telling me that this is such a difficult process some questions just come up with the answer of no, so before I invest that kind of money, you know, what would an attorney do for me?

MR. KRIEGER: It's not a question of the questions being a simple no or simple question. They are the questions of interpretation, question of argument that require argument and an applicant coming in front of the board says I want you, these are the questions we have because the law dictates that, the law outlines what the questions are, this is how we think and that you the board should see the questions. The board is,

as they call it in the law, quasi judicial, it's similar to being in court. The board members don't make arguments, they simply listen to the arguments that are made and then decide. Now, what I am telling you is the argument has to be a rather considerable one, it's a rather complicated one, it's difficult in many cases to succeed at, you need somebody who is experienced in making that type of argument and who understands the legal requirements that exist.

MR. TORLEY: You're only going to do this once in your life, hopefully, some attorney may do this professionally, but I'd suggest that what we do is that we entertain a motion to grant you a public hearing on your use variance request, this doesn't mean you have to go any further, it gives you a right to a public hearing, then you can consider your options, but this will give you the opportunity to move forward, if you so choose.

MRS. BLYTHE: Yes, as I said before, gentlemen, my desire is to close out an estate, okay and move on as you're saying with my life raising a 9 year old and an 11 year old, not to be sitting here.

MR. REIS: I make a motion that we set up Mrs. Blythe for the requested variance for a public hearing on the variance.

MR. MC DONALD: Second it.

ROLL CALL

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

ROBERTS, DONALD

MR. TORLEY: Request for 28 ft. rear yard variance for an existing addition with deck at 2177 Little Britain Road in an R-1 zone.

Mr. Donald Roberts appeared before the board for this proposal.

MR. ROBERTS: They told me I had to bring a picture, I don't know what else I need. The thing shows at 22 feet but the original one that my engineer, Pat Brady, drew that up and it's like two feet short of the original one that I have with me.

MR. TORLEY: This is replacement for original deck?

MR. ROBERTS: Yeah.

MR. TORLEY: If the original deck didn't have a C.O.--how old is the original deck, long time ago?

MR. ROBERTS: '87.

MR. TORLEY: This map?

MR. ROBERTS: That's when I bought the place.

MR. TORLEY: This doesn't show the deck.

MR. ROBERTS: No, that one there was but what happened if you measure from there to there and then measure this one, it's like, it's a shorter distance between the two.

MR. TORLEY: Well, this survey is showing 22 foot from the existing deck.

MR. ROBERTS: When you measure from the original part of the house, it's 42 feet. If you measure that one there, it's 40 feet and it's like when he drew it, it's the only thing I can see.

MR. TORLEY: This board operates by the measurements that you give us, so looking at the survey, this deck

now or this enclosed area goes further back?

MR. ROBERTS: No, it's, this is the original house, this is the deck, this is the house and this is the deck.

MR. TORLEY: So the variance actually comes from the corner of the wooden deck, is that right?

MR. BABCOCK: Yes, off to an angle back to the lake, yes.

MR. MC DONALD: Mike, looking at this, the angle here is a lot shorter, doesn't that one line look closer at the lake?

MR. BABCOCK: The, you mean the side line, yeah, that's the, that would be the side yard so we give him the benefit in an R-1 zone it's only 20 feet.

MR. REIS: What brings you to the board?

MR. ROBERTS: Well, I'd like to get the building permit because it was built, I had just gotten divorced and I said to my nephew I said I need a room and the room was built without a permit, okay, so then I came down to get the permit so it could be legalized and then they told me that I needed a variance because of the 28 feet.

MR. TORLEY: What this deck again we'll be repeating a lot of these questions at a public hearing, so this deck doesn't cover any water or sewer lines?

MR. ROBERTS: No.

MR. TORLEY: Not changing the water flows?

MR. ROBERTS: No, it's, everything works just like it did when I moved there.

MR. TORLEY: And have your neighbors complained about the deck?

MR. ROBERTS: No.

MR. TORLEY: And do other houses in your neighborhood have not identical but similar kinds of decks?

MR. ROBERTS: My neighbor copied what I had and theirs is, we sit and talk from deck to deck.

MR. TORLEY: Any other questions?

MR. MC DONALD: Accept a motion?

MR. TORLEY: Yes.

MR. MC DONALD: Make a motion that we set Mr. Roberts for a public hearing on his request for the variance.

MR. REIS: Second it.

ROLL CALL

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

KELLY, DENNIS

Mr. Dennis Kelly appeared before the board for this proposal.

MR. TORLEY: Request for variation of Section 48-14C(1)(c)(1) to allow replacement of an existing 5 & 6 ft. fence between principle building and street on corner lot at 56 Birchwood Drive i an R-4 zone.

MR. KELLY: Hi, Dennis Kelly here, I bought the house with my wife in August and there's an existing fence there, we'd like to replace it, it's a picket fence that's the front of the house there, the existing fence is in the back and that runs along the street over here 6 foot one now.

MR. TORLEY: Code permits you to have a 4 foot high fence in your front yard, the town has decided that it doesn't want to have people putting up monster fences all over the place. So one of the things you have to tell us at a public hearing is why you want to have a fence higher than 4 feet, you know, do you have a safety problem, if there's a pool, State Code is five feet for pools. Right?

MR. BABCOCK: No, it's all 4 foot now.

MR. TORLEY: So the fencing around the pool, so the other item would be make sure that it doesn't interfere with the sight line of motorists going by and one of the big reasons is why do you need a big fence?

MR. KELLY: What I'd like to do is put a 6 foot along here and the rest would be 5 and then 4 foot across the front. The reason I'd like the 6 foot along the side is which differs from the 4 and 5 is really for privacy along here. I've got a large dog and I've got a one year old and a two year old and another one on the way so I have, I do want to fence, it doesn't have to be 6 foot, there's an existing one there and it's close to the sidewalk. So particularly with the dog who's a Chesapeake Bay Retriever, not aggressive, but I'd like to give a little extra comfort on that side but the rest would be either 5 foot along the back or 4 foot on

the front of picket, spaced picket.

MR. BABCOCK: This is a corner lot, typically, what he feels is his rear yard is where he wants to put the fence but by law because he's on a corner lot it becomes a front yard.

MR. TORLEY: So you face Oxford Road?

MR. BABCOCK: No, he's facing Birchwood, so the back of the house would be on the back of the building permit application, did they give you, do have a copy of that, Mr. Chairman, do you have a copy of the--

MR. TORLEY: Yes. Gentlemen, do you see these pictures? What kind of fence are you talking about, stockade?

MR. KELLY: Probably cedar stockade along here 6 foot but spaced picket all of the rest 5 foot and 4 here, I put up fences for a living so I want it to look nice. The fence that was there--

MR. TORLEY: Tell you one thing, you're allowed to put up a 4 foot fence anywhere you want, there's no restriction on plantings, so you can stick up a bunch of hedges or something along there, that's fine, that gives you privacy without the, unless one thing you can say is you want to keep your dog restrained, you're afraid he'll go over a 4 foot fence, I don't know whether a Chesapeak can go over a 4 foot fence.

MR. KELLY: She's pretty big, but she's not, I mean, if it were a problem, I'd go with a 4 foot fence there.

MR. TORLEY: Another thing you put a 4 foot fence you don't have to see us anymore and you don't have to pay anymore money.

MR. KELLY: What about 5?

MR. TORLEY: Anything over 4 foot in the front yard and you're stuck because it's a corner lot.

MR. REIS: You might suggest to the applicant that what

has been marked here on the tax map is incorrect.

MR. TORLEY: Yeah, I see it's the wrong lot.

MR. MC DONALD: They've got the tax map outlined, long lot.

MR. TORLEY: Anymore questions?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: Make a motion that we set you up for a public hearing on his requested variance.

ROLL CALL

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

MITTELMAN, ALLEN

Mr. and Mrs. Mittelman appeared before the board for this proposal.

MR. TORLEY: Request for 10 ft. side yard for existing shed and variation of SECTION 48-14C(1)(c) for existing fence between dwelling and street, also fence height of 2 ft. and 1 ft. at 326 Nina Street in an R-4 zone.

MR. MITTELMAN: It's an existing fence, here's some pictures of it.

MR. TORLEY: So you have an existing fence that's too high and you're trying to legalize it?

MR. MITTELMAN: Right, correct, it's set back, it's not on the road.

MR. TORLEY: Again, the same thing, you're on a corner lot.

MR. MITTELMAN: I'm a corner lot, yes, sir.

MR. TORLEY: Be happy, some people have three front yards. As you may have heard in talking with the previous applicant, one of the prime considerations in this board is public health and safety, it's always been that way. So we want to make sure any fence that you have regardless of what you want it doesn't interfere with the motorist being able to see around the corner. When you come to the public hearing, everything has to be done at a public hearing, those are the kinds of things you want to be able to talk about that show that you are not interfering with sight lines, it's not changing water runoff, it's not blocking water and sewer lines, that sort of thing. Gentlemen, do you have any questions?

MR. REIS: No.

MR. BABCOCK: I have one question. On my paperwork, it appeared to be that the shed at one point was 6 foot from the property line, now it's 0 feet, the survey also shows 6 feet, I'm not sure what changed there.

MR. MITTELMAN: What changed it was when I measured the fence for the shed, I had 6.4, but it's like 98.6, so when Lou came over, I said what should I do, so to be safe, I wanted to just go for the ten foot variance, I have about 2.4 feet.

MR. BABCOCK: Okay.

MR. TORLEY: Really we go by whatever measurements you give us, you say you need a five foot variance, turns out you needed a five foot six, you start all over again. But the shed itself doesn't sit on the corner of the property line?

MR. MITTELMAN: It's on our side.

MR. KRIEGER: By how many feet?

MR. MITTELMAN: By 2.6.

MR. TORLEY: So you're requesting a ten foot variance which you will not need, right?

MR. MITTELMAN: Right, I wanted to be safe.

MR. TORLEY: In regard to the shed, you'll be asked questions like is it similar to other sheds that other people have in the neighborhood, why can't you move the shed, why the shed can't be easily moved, is it a big financial hardship, on a concrete pad, things like that.

MR. RIVERA: Is it going to cover any water lines or sewage?

MR. MITTELMAN: No.

MR. TORLEY: Causing any ponding of water?

MR. MITTELMAN: No.

MR. MC DONALD: No complaints?

MR. MITTELMAN: No. Matter of fact, my neighbor just

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moved in, so it didn't affect his survey, that's why I know it's on mine.

MR. MC DONALD: Motion that we grant Mr. Mittelman a public hearing for his requested variance for shed and fence heights.

MR. REIS: Second it.

ROLL CALL

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

PUBLIC HEARINGS:

DEAN, SAMUEL

Ms. Jeanne Dean appeared before the board for this proposal.

MR. TORLEY: Request for variation of SECTION 48-14A(4) to allow a shed to project closer to road than principle structure on corner lot, 15 Clintonwood Drive, in an R-4 zone.

MR. TORLEY: Is there anyone in the audience wishing to speak on this matter? Let the record show there's no one.

MS. DEAN: I don't know whether--I'm Jeanne Dean, I was supposed to be here on the 11th and I want you to know I did not have a family emergency, I had a senior moment and I simply forgot. I appreciate that. We sent out 57 letters and I understand no one has come forth to object.

MR. TORLEY: A letter from Pat Corsetti, our secretary, saying that on the 25th day of February, 2002, mailed out 57 addressed envelopes for this above action.

MS. DEAN: We had one returned addressee unknown.

MR. TORLEY: What's the problem that you want to solve?

MS. DEAN: We would like to put the shed where we originally were told we could. Instead of 27 feet and I think I explained when I was first here for the preliminary that if we put it in the 21 feet that you had suggested, that it would be over a pipe from a neighbor's well from a very old well which comes down and it could cause tremendous problems.

MR. TORLEY: Now, I'm looking at your photographs which I appreciate I see you have a red area and then a black X which is?

MS. DEAN: What we want to do is bring it in between these two trees and put it on that.

MR. TORLEY: Put it on the black X?

MS. DEAN: I don't know if I did that correctly, but it would come in this way and I believe these are all pretty much the same, there's this area for it, if you go beyond that in front of this wood pile that's where that pipe comes down from the Resnick's property up above us and we know that it exists because when we excavated to do our the addition to our house, they hit that pipe and the Resnicks immediately lost pressure and if it ever has to be repaired getting that shed off it could be very difficult.

MR. TORLEY: So on this survey would indicate where you roughly--

MS. DEAN: Yes, yes, in back here.

MR. TORLEY: Again because this is a lot with two front yards, she has difficulty of where to put the shed?

MR. BABCOCK: That's correct.

MR. TORLEY: From your documentation you state that this is the only feasible place to put it so it does not interfere with any piping from neighbors, et cetera. It's a level spot?

MS. DEAN: Yes. If we brought it on the other side, there's quite a drop.

MR. TORLEY: It would be impractical to set the shed there?

MS. DEAN: Yes.

MR. KRIEGER: It would appear visually to be in your back yard?

MS. DEAN: Yes.

MR. TORLEY: This is a shed that's not necessarily identical but similar to sheds in the neighborhood?

MS. DEAN: Yes, it's identical to our next door neighbor's shed, as a matter of fact.

MS. DEAN: We're going to landscape behind it so from the street you won't see it.

MR. TORLEY: None of the neighbors have been motivated to appear here.

MS. DEAN: No.

MR. TORLEY: Where you site this shed will not cause any ponding of water or alter drainage?

MS. DEAN: No.

MR. TORLEY: Not interfere with sight lines from motorists?

MS. DEAN: No because we're on a cul-de-sac and there really is no, I can't imagine how it would obstruct anything.

MR. TORLEY: It's not over my well or septic easements?

MS. DEAN: No, that's the point that we didn't want it over any of those things.

MR. KRIEGER: You're serviced by municipal water and sewer.

MR. TORLEY: It's not over the lines?

MS. DEAN: No, it's far forward.

MR. REIS: Make a motion that we approve the Dean's request for their variance at 15 Clintonwood Drive.

MR. MC DONALD: Second it.

ROLL CALL

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

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MR. TORLEY

AYE

CALDWELL, MARK

Daniel Bloom, Esq. and Mrs. Caldwell appeared before the board for this proposal.

MR. TORLEY: Request for 10 ft. side yard and 9.5 ft. rear yard variances to allow existing in-ground pool at 707 Little Britain Road in R-4 zone. Is there anyone in the audience who wishes to speak on this matter? Let the record show there is none.

MR. BLOOM: Good evening, Mr. Chairman, gentlemen, my name is Dan Bloom and I represent the applicants, Mr. and Mrs. Caldwell. If I can give you a little bit of background surrounding the fact that I represent represent Mr. and Mrs. Caldwell on the application whereas when they purchased the property, I actually represented the people who the estate from whom they purchased the property that goes back to last summer, it was July of 19, July of 2001 and at that time, the Caldwells were represented Mr. Gilmartin, I represented the estate and about two days before the closing, and I might say the Caldwells, I was under the impression their mortgage was about to expire, the interest rate was about to expire, so they we're under pressure to close and it was at that time that they received notice that there was a violation on the property, specifically there was a pre-existing, there was a swimming pool inground on the property, it's been there as far as we can determine from sometime in the '60's, early '70's. Just before the closing, it became clear that there was not a C.O. for it and it appeared it would be necessary to obtain one. The bank gave it clearance to close on the condition that an escrow was established and on the further condition that my client the Estate of Hartsel, would undertake to come before this board and seek this variance and for that reason we're here by way of a, by a little bit of additional background the original application sought only a side yard variance of approximately .05 feet. However, the Notice of Violation was amended in February of this year and so I thus asked respectfully for permission to amend the application accordingly to reflect the violation notice which specifically is now drafted in form of a request for a side yard variance of ten feet

and a rear yard variance of 9.5 feet. As I say, the pool based upon my conversations with the executrix of the estate was actually installed in the premises sometime in the '60's or the '70's, it's never been relocated. The only change, the only option that the Caldwells have should they not be granted a variance by this board would be to fill it in which would be a tremendous expense for them and they have young children and that was one of the motivating factors that they considered when they purchased the property. I'm advised by Mrs. Caldwell first of all there's no one here to oppose the application by Miss Caldwell tells me she spoke with all three neighbors whose property are contiguous to hers and none had any objection to the granting of the variance. I might also say that obviously, if this condition has existed since the '60's or '70's, certainly granting a variance to my client at this time would not do anything which would change the character of the neighborhood or severely impact any of the particular neighbors and thus I respectfully request that this board consider granting a variance for the Caldwells.

MR. TORLEY: This pool meets all the safety requirements, right, fencing?

MR. BABCOCK: I don't think I want to state that yet, Mr. Chairman. Typically, we go through this process then we'll go and inspect before we issue the certificate. If the fences are not proper or the gates, we'll make them fix those before we issue a C.O.

MR. TORLEY: If we grant you a variance for the pool, doesn't relieve you from any other regulations as far as fencing and that sort of stuff, you have little children, I know you want make sure the fencing is safe.

MRS. CALDWELL: Absolutely. If the variance is issued and is there going to be a list of requirements given to me?

MR. TORLEY: The building inspector.

MRS. CALDWELL: Okay.

MR. TORLEY: Before we do that again this is not over any water or sewer easements put in since the pool was there or encroaching anything like that?

MR. BLOOM: We're not aware that it is, no.

MR. TORLEY: Since you have been there, you don't have any complaints from neighbors?

MRS. CALDWELL: No, the neighbors, matter of fact, behind me, it was put in the early '70's because he put his in two years after that, it's been there for as long as that he's been there.

MR. KRIEGER: Town's records do not reflect any complaints?

MR. BABCOCK: No.

MR. KRIEGER: Doesn't affect the course of water drainage or the ponding or collection of water?

MRS. CALDWELL: No.

MR. MC DONALD: Make a motion that we grant the request for Mark Caldwell for his variances on his pool.

MR. REIS: Second it.

ROLL CALL

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

STRATEGIC REAL ESTATE

Mr. Mark Siemer and Mr. Jerry Sabini appeared before the board for this proposal.

MR. TORLEY: Request for 10.1 ft. side yard variance for an existing single-family residence at 508 Toleman Road in an R-1 zone. Is there anyone in the audience who wishes to speak on this matter? Let the record show there is none. Sir?

MR. SIEMER: Good evening, my name is Mark Siemer from Pietrzak and Pfau. Today we're just asking for a side variance, side yard variance of 10.1 feet for a 58,953 square foot lot. The trouble came not to the fault of the owner, we actually have, there's an existing foundation, I'm sure you got the pictures that were taken, the existing foundation to the lot that the trouble side is on the two foundations are 44 feet apart so with 20 foot side yards, we do have the 40 feet between the two foundation so we're just asking for the variance on the side yard tonight.

MR. REIS: Foundation's in, you can't move it?

MR. SIEMER: Yes.

MR. SABINI: What happened was these guys staked it out, we dug the hole, they made the hole too big, that's what happened, when they put the foundation in, I didn't catch it until the house was framed and sided because I didn't call them for a foundation until sometime later, that's when it came, it was a complete accident the way the hole was dug. That's what happened, it was an accident and I guess they thought the mason and the excavator working hand in hand they thought they had enough room, when they came out to locate it, that's when we found the problem.

MR. REIS: Mike, has the building inspector's office been out there?

MR. BABCOCK: Yes, we have been doing all the inspections throughout the whole process.

MR. MC DONALD: No problems?

MR. BABCOCK: No, no problems.

MR. KRIEGER: Meets all the other legal requirements?

MR. BABCOCK: Yes, so far, they're not completed with the house yet but--

MR. KRIEGER: As far as location?

MR. BABCOCK: Yes.

MR. TORLEY: And the actual spacing between the two foundations would meet the code were the lines, the lot line a little different, there's an adequate spacing between the two foundations?

MR. BABCOCK: Yes.

MR. SIEMER: Yes.

MR. TORLEY: And this encroachment on the side yard is not going to be over any water or sewer easements, driveways, et cetera?

MR. SIEMER: No.

MR. TORLEY: Well and septic?

MR. SABINI: Well's in the front, septic's in the rear.

MR. TORLEY: This will not cause any undue water ponding or change in drainage?

MR. SABINI: No, no, not at all.

MR. TOLREY: And you're quite a ways back from the road. How far back is the house from the road?

MR. SABINI: Approximately, 150 feet.

MR. TORLEY: Looks further than that.

MR. SIEMER: Closer to 200.

MR. TORLEY: I see there's a drainage easement in the back or proposed.

MR. SIEMER: That's in--oh, the proposed drainage easement is for, there are curtain drains around the septic systems in the back and they all end up connecting together and running in one pipe along that easement and outlet, go through a stream down in this end of the property.

MR. REIS: I just want to disclose that the original owner of this property I had dealings with, I'm not profiting by this in any way, shape or form, my comments and my vote will be very objective.

MR. TORLEY: Thank you.

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we approve Strategic Real Estate's request for their variance of a 10.1 side yard at 508 Toleman Road.

MR. MC DONALD: Second it.

ROLL CALL

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

SUMMIT ON HUDSON

MR. TORLEY: Request for 10 ft. side yard variance for deck at Unit 131 on Hewitt Lane in variation of Section 48-1B(2) Site Development Plan Review.

Mr. Izzy Iberthal appeared before the board for this proposal.

MR. TORLEY: Is there anyone in the audience wishing to speak on this application? I'll ask you to sign this just so we have your name correct for the record. We have a notice that 48 letters were mailed out on the 12 of March.

MR. IBERTHAL: I'm the developer for Summit on the Hudson and this one rear deck over there, the actual building is 22 foot apart between the next building as on the site map, but only the deck is encroaching and it's only a 12 foot from the next building. There's no safety problem, I don't think there's any State Code violations and the house is up already basically there was no other place to put it.

MR. TORLEY: How did it come to be that that deck was put in improperly?

MR. IBERTHAL: We didn't know that the deck was part of the original approved site map, doesn't show any decks.

MR. TORLEY: How old is the site map?

MR. BABCOCK: It's back in the early '80's and basically has no measurements on it whatsoever, Mr. Chairman, that's a newer version. Well, what happened was, Mr. Chairman, is that over the years, things have changed and it was nice to put everything on paper but it didn't have all if it. So they have been back many times in front of the planning board to rearrange units and layout, the clubhouse is in a different area for the benefit of the property, the planning board has approved their applications each time in this application it shows a measurement of 22 feet. Throughout their process of building, back in the early '80's, the decks were not included in the setbacks and

since then, we have included that, I can't tell you what year that was, so apparently, they didn't know that the deck wasn't part of the setback, they built the deck and when we asked for the as-built, the building's 22 feet, as the building shows, but it doesn't show the deck so it winds up that the building is actually 12 feet instead of 22 feet so he needs a ten foot variance.

MR. MC DONALD: Just on the building or are we going to be doing it--

MR. IBERTHAL: Just on that building.

MR. BABCOCK: Typically, the way the building's laid out it's actually projecting instead of the building projecting straight to the rear, it's actually the deck is coming to the side.

MR. MC DONALD: Okay.

MR. BABCOCK: Mr. Chairman, I understand my office inspected this and it's fine, it's actually waiting for this variance approval to be issued a C.O. for the unit.

MR. IBERTHAL: The client is right here.

MR. TORLEY: This encroachment has not caused any adverse water ponding or drainage?

MR. IBERTHAL: Not at all, no.

MR. TORLEY: It's not over any water or sewer easements, power lines, anything like that?

MR. IBERTHAL: No.

MR. TORLEY: Len, you're an expert in this area, you don't see any problem with the fire fighting difficulty? Has me a little worried about that.

MR. MC DONALD: There's plenty of room, they have been down there before.

MR. TORLEY: We haven't had any complaints from the fire marshal, you worry about fire access.

MR. IBERTHAL: Sure.

MR. TORLEY: I'm going to open this up.

MR. KRIEGER: Same kind of deck that each of the units has?

MR. IBERTHAL: Yes.

MR. TORLEY: Open it up to the public now. Sir?

MR. LATHOURIS: I am the public, I just want to, Emanuel Lathouris, I live on 43 Lafayette Street, I wanted to come here to see what the plans were. Is this part of Plum Point?

MR. BABCOCK: Yes.

MR. IBERTHAL: Its Phase 4.

MR. TORLEY: How far from this unit do you live?

MR. BABCOCK: From the unit itself, it's quite a distance from the property line, he's within the 500 feet, that's why he got notified.

MR. LATHOURIS: This is Phase 6?

MR. IBERTHAL: This is Phase 6.

MR. TORLEY: All we're talking about is this one building?

MR. IBERTHAL: Right.

MR. TORLEY: Sir, do you have an opinion on this particular building and this deck?

MR. SABINI: No.

MR. TORLEY: You're not opposed?

MR. SABINI: Not at all.

MR. TORLEY: If you have no other questions, I'll close the public hearing unless you want to say something?

MR. IBERTHAL: She wants to move in.

MR. TORLEY: Open it back up to the members of the board. Gentlemen, anything else you wanted to ask about?

MR. REIS: Accept a motion?

MR. TORLEY: Yes.

MR. REIS: I make a motion that we approve the requested variance for 131 Hewitt Lane.

MR. MC DONALD: Second it.

ROLL CALL

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

MR. REIS: Motion to adjourn.

MR. MC DONALD: Second it.

ROLL CALL

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

Respectfully Submitted By:


Frances Roth
Stenographer