

TOWN OF NEW WINDSOR

ZONING BOARD

March 11, 2013

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

ALSO PRESENT: GEOFFREY CHANIN, ESQ.
 ZONING BOARD ATTORNEY

 NICOLE PELESHUCK
 ZONING BOARD SECRETARY

MEETING AGENDA:

1. Classic Home Builders (13-04)
2. Stella Vargas (13-03)
3. Thomas McDonald (13-02)

REGULAR MEETING:

MR. KANE: I'd like to call the Town of New Windsor Zoning Board of Appeals meeting for March 11, 2013 to order.

APPROVAL OF MINUTES DATED 12/10/12 and 1/14/13

MR. KANE: Motion to accept the minutes of December 10, 2012 and January 14, 2013 as written.

MR. BEDETTI: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. SCHEIBLE AYE
MR. BEDETTI AYE

March 11, 2013

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

PRELIMINARY MEETINGS:

CLASSIC HOME BUILDERS - ANTHONY FAYO (13-04)

MR. KANE: Tonight's first preliminary meeting Classic Home Builders, Anthony Fayo. Variance is needed for an existing building lot that doesn't meet the minimum lot width, required side yard and total side yard setbacks located at 244 Bull Road in an R-1 zone. Come on up, Mr. Fayo. What we do in New Windsor and for anybody else here for preliminary we hold two meetings, one is a preliminary meeting so we can get a general idea of what you want to do and make sure that you have the right information to give us so that we can make a good decision. In other towns, you walk in, you walk in cold, you don't have the right stuff, you lose, you can't come back for six months.

MR. FAYO: I appreciate that

MR. KANE: We do a two step thing similar in the second one in that the public will be involved. Speak loud enough for that young lady over there to hear you and tell us exactly what you want to.

MR. FAYO: I'm looking for an area variance to put the house on the lot. I received it once before I believe in '10, I did let it lapse. I want to build a house now, it's really just a side, I believe if I'm correct in saying that side variance, I think the lot is deep enough.

MRS. PELESHUCK: It's the lot width and the sides, both sides need a variance and total side yard.

MR. TORPEY: I remember it, Mike.

MR. KANE: Yeah, I do too.

MR. BEDETTI: Yeah, so this was before the board before?

MRS. PELESHUCK: Yes, approved before.

MR. KANE: Yeah, in 2010, just, yeah, you can always ask for an extension so you don't have to tap dance your way through this again.

MR. TORPEY: That's how we make money.

MR. FAYO: My mistake.

MR. KANE: Cutting down trees, substantial vegetation in the building of the home?

MR. FAYO: No.

MR. KANE: Creating any water hazards or runoffs?

MR. FAYO: No.

MR. KANE: Any easements running through the area where the home is going to go?

MR. FAYO: Not to my knowledge, no.

MR. KANE: You have dimensions for the size of the home that's going in?

MR. FAYO: I don't have exact dimensions yet, I'm looking at 40 by like 32, 45 long by 32 wide.

MR. KANE: Average size home?

MR. FAYO: Yeah.

MR. KANE: Septic?

MR. FAYO: Septic and well, yes, I have designs for that already.

MR. KANE: Again, this was approved back in 2010. Can you get just the notes from the 2010 meeting?

MRS. PELESHUCK: Yes.

MR. KANE: Nicole's going to send us a copy of the notes from the last meeting on this.

MR. SCHEIBLE: Make it easier.

MRS. PELESHUCK: I'll just send the minutes.

MR. KANE: Yeah, send the minutes, we can read them right through.

MR. BEDETTI: Is there any substantial change from the last time you were here?

MR. FAYO: No, just I didn't feel it was the right time

to build because of the market, that's all.

MR. BEDETTI: Nothing else changed?

MR. FAYO: No.

MR. KANE: Under those circumstances, I'll accept a motion to set up for a public hearing.

MR. BEDETTI: I'll make a motion we schedule a public hearing for Classic Home Builders at 244 Bull Road in an R-1 zone for a variance request.

MR. TORPEY: I'll second that.

ROLL CALL

MR. SCHEIBLE AYE

MR. BEDETTI AYE

MR. TORPEY AYE

MR. HAMEL AYE

MR. KANE AYE

MRS. PELESHUCK: I'll call you.

MR. FAYO: I appreciate it, thanks for your time.

SARAH RAMOS, ESQ. FOR STELLA VARGAS (13-03)

MR. KANE: Next preliminary meeting Sarah Ramos, Esq. for Stella Vargas. The house is an existing single family dwelling. They're seeking a variance to convert to a two-family dwelling which is not permitted in R-4 zone located at 328 Walnut Avenue. You heard what I mentioned before about the two meetings, yes? Good evening, speak loud enough for the young lady over there to hear you.

MS. RAMOS: I'm speaking, I'm here on behalf of Stella Vargas. She's the property owner of 320 Walnut Avenue. We're seeking a use variance. We know that the house is located in an R-4 zone, structure predates any zoning that there may have been subsequent in 1966. There's no Certificate of Occupancy prior to my clients purchasing it the '91, there was some repairs done which there was no Certificate of Occupancy issued or I guess the permit was not closed out. My clients purchased the property in '97 so they've had it for approximately 15 years.

MR. KANE: Do they have a C.O.?

MS. RAMOS: There is no C.O. now. When they purchased it in '97, it's in the same condition as it is now, I have photos to pass out, the facade has not changed, interior has not changed. So it's always been used as a two-family dwelling as far as my clients are aware.

MR. KANE: Have they, do you know if they've been paying taxes on that building as a two family?

MS. RAMOS: Yes, they have. I have tax bills that show that it's a classification 220 so they have been paying taxes, it's been rented out for the past 15 years as a two-family residence. Up until last year when there was an incident I believe with one of the tenants and they were forced to move and that's when the building inspector came and closed it down and said they could not use the two-family dwelling. Each picture just so you know has a description on the back as to what you're looking at and which unit is which, unit A I believe if you're looking at the picture to your right, I'm sorry, unit A is to the left and unit B is the right-hand side.

MR. KANE: You're aware this is an extremely difficult transaction, it's not similar to regular variances that

we have in here. We have five items that we have to follow that are indicated by the state and one of the main ones is that you show that the building itself cannot be sold for a reasonable return. Now reasonable return doesn't mean profit, it means, you know, so you're going to have to with authoritative information show that to us, that's going to be hard.

MS. RAMOS: Okay, that's my understanding, I think that the house with no C of O it's hard to sell at any rate, especially in this market as well.

MR. KANE: We're going to need all numbers right down the line for that right in there. Do we have a sheet a that has all five?

MRS. PELESHUCK: Not with me.

MR. KANE: We'll make sure you get it, each of the five questions has to be addressed and you're going to definitely want professional people giving you the information on that.

MS. RAMOS: Sure, you need an appraisal or will a CMA do?

MR. CHANIN: Well, it's up to the board but since one of the five factors includes not only making a reasonable beneficial use of the property consistent with economic proportionality but also one of the other factors is the impact on the adjoining land and on the neighborhood. If your comparative market analysis might add to that store of information about that other issue then maybe it's the board's wish that you see the CMA.

MR. KANE: Anything that you can bring would help you, as I said, it's very difficult. Do you know if the current owners have had it since '97 and they have run it as a two-family home since then?

MS. RAMOS: Yes.

MR. KANE: Do you know if it was ran as a two-family home before that?

MS. RAMOS: We don't have that information, we believe that it was. Like I said, they bought it in substantially the same condition the two units.

MR. KANE: And the tax information you're going to go back as far as you can on that property to show us?

MS. RAMOS: Yes.

MR. KANE: What that was going to be?

MS. RAMOS: Yes.

MR. KANE: Do you know in the last 15 years in using it as a two-family home has there been any complaints formally or informally?

MS. RAMOS: I believe there's only the incident that occurred last year which prompted the building inspector to come.

MR. KANE: To your knowledge, nothing from neighbors?

MS. RAMOS: Not to my knowledge.

MR. KANE: It will come out of the woodwork.

MR. SCHEIBLE: You just mentioned the incident that happened previously, can you clue us in on what that situation was?

MS. RAMOS: My understanding was based upon information and belief that it was the tenants that lived in unit B were selling drugs, that's the allegation, and so I don't know if there was a raid but somebody called the police and they came in and forcibly removed the people. I don't have exactly that information but that's what I understand.

MRS. PELESHUCK: I can also get it if you want, I could get the complaint.

MR. SCHEIBLE: I don't think it's necessary personally.

MR. KANE: Not necessary.

MR. CHANIN: It's not.

MR. BEDETTI: When they purchased the home, was it, you said that they had no C.O. on it?

MS. RAMOS: Right.

MR. BEDETTI: Did this predate any of the codes, is

this a pre-existing, non-conforming situation here?

MR. KANE: It seems like that until we get all the evidence, there's no C.O. on the home at all, so we're not even sure if there's been a building permit on file.

MR. BEDETTI: That's what I'm getting to is did they own the home prior to the law excluding two-family homes in that zone?

MR. KANE: No.

MR. BEDETTI: That's a key issue in my mind.

MR. KANE: I don't believe that that zone has been changed.

MRS. PELESHUCK: No.

MR. KANE: We can check into that but I don't think so.

MR. BEDETTI: Certainly hasn't recently been changed now whether back in '97--

MR. KANE: We can check on that to see if the zone has been changed since '97 or previously. Are you the owner?

MS. VARGAS: Yes.

MR. KANE: Come on up.

MS. RAMOS: Stella Vargas is the owner, that's her husband.

MR. VARGAS: My wife is Stella Vargas, I'm Mr. Vargas, Jamie Vargas.

MR. VARGAS: I just wanted to state something that when we did purchase the house, it was as a two family, okay, it was, mail was at that location which was 328 A and 328 B, this is why when we purchased it we rented it as a two family.

MR. KANE: Sold to you as a two-family house?

MR. VARGAS: Yes.

MR. KANE: So what you're going to probably want to do

write something down that you can present here that you purchased it with the understanding that you were told and advertised as a two-family house, we want to get that in the record.

MR. VARGAS: There was two meters.

MR. KANE: There's two meters?

MS. RAMOS: And yes and there's two oil tanks.

MR. KANE: You can probably go back and find out when those meters were put into the house by Central Hudson, that will help give us some kind of idea of dating as far as the electric and that going in there.

MR. VARGAS: There's two burners, there's two of everything.

MR. KANE: It's really a two-family home.

MR. TORPEY: Where did those two meters come from?

MS. RAMOS: It has two oil tanks, everything.

MR. VARGAS: Two mailboxes at the front.

MR. KANE: See these guys, just so you know that it's--

MR. BEDETTI: I saw the meters.

MR. KANE: And then the oil tanks.

MR. VARGAS: And the taxes, when we purchased it way before it shows on there as a two family.

MR. KANE: Right, that we can get, you'll bring from the town.

MRS. PELESHUCK: I do have to say something, even though you're being taxed as a two family doesn't make it a legal two family because what the assessor sees they mark down and you're going to be taxed for it regardless if it's legal or illegal.

MR. KANE: What that's going to do is give us a general idea of how long this has been going on.

MR. VARGAS: It was way before we purchased it also and--

MR. KANE: We have to get all that information.

MR. VARGAS: In the event that did happen there it was, just so happens that we were out in Florida for and that's when this thing happened, we were not actually aware.

MR. KANE: As I said to your lawyer, this is an extremely difficult transaction, state requires us to meet these five considerations and there's no leeway on this for us. You have to present all the numbers and facts and then we'll use our best judgment to decide what the course of action is. But it's a tough way to go and like I say, the toughest one to be sitting down and showing us that you can't possibly sell that house to be used as one-family house at a reasonable return which doesn't mean getting, making a profit per New York State, it's a reasonable return. So if you lose X dollars on the sale or somebody would buy it for that then you don't meet that requirement. That's a difficult thing. But all of the professional help with the numbers helps us decide. Has it happened in this town before? Yeah, I can think of one instance where it went through, very unusual down in Ducktown.

MS. RAMOS: It's converted, you're talking about economic loss to convert it back to get it up to code.

MR. KANE: Give us all those numbers, it's going to be difficult.

MS. RAMOS: Okay.

MR. SCHEIBLE: I just want to ask my attorney one question. If there was a title search at the time when they purchased it, would this have shown up in the title search that it was being operated as a two-family home at that time?

MR. CHANIN: Under those circumstances, yes, most likely, most likely, I can't tell whether it was or not but most likely it was.

MR. SCHEIBLE: That would have shown it whether it was illegal or legal at that time?

MR. CHANIN: The title search among other things checks the code, checks the location of the property in what zone it's in, what's allowed and disallowed in the zone

and then determines whether it has a C.O., whether it has outstanding code violations or liens against the property, all these things are public records and if it was in the records then the title search would have found it.

MS. RAMOS: I can tell you there was a title search conducted, there's a letter from the building department prior to my client purchasing it that states the violations, that's how we found out when we went back the letter was issued to the title company at the time. My client indicated they were still not aware, there may be an issue with the attorney, I don't know if it's language, sometimes the attorneys don't look at the municipal reports, sometimes there's things we don't catch.

MR. KANE: Very unusual not to have any kind of C.O.

MR. TORPEY: I bought a house, same exact thing, I had three apartments in my house and when I bought the house, they gave the C.O. back and forth and they says I did it all.

MR. KANE: That's how they did it.

MR. TORPEY: They came back after I bought it and said you did all this, they tried taxing me. I showed them the pictures, this is the way it came back then they weren't on top of everything, that's what it is.

MR. KANE: Just bring all the information that you have so we have as much information as we can to make a fair decision.

MS. RAMOS: Do we get a date for the next appearance?

MRS. PELESHUCK: It depends if you guys come in tomorrow or not.

MR. KANE: Next one would be the 25th of March, the mailings have to be in 10 days previous.

MRS. PELESHUCK: We'll have time if you come in tomorrow if you can get all your stuff together within those two weeks then absolutely could be on. But if you don't think you can, don't rush it because this is--

MS. RAMOS: I want to make sure I get everything.

MR. KANE: Then it will be the second one in April or we have a holiday.

MRS. PELESHUCK: I just want to get the date down.

MR. KANE: I'll accept a motion to set up a public hearing.

MR. BEDETTI: I'll make a motion we schedule a public hearing for Sarah Ramos for property located at 328 Walnut Avenue in an R-4 zone regarding a two-family dwelling which is not permitted in the R-4 zone.

MR. HAMEL: I'll second it.

ROLL CALL

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

PUBLIC HEARINGS:

DANIEL CLARINO FOR THOMAS MCDONALD (13-02)

MR. KANE: Public hearings, Daniel Clarino for Thomas McDonald. Interpretation is requested for an existing second kitchen. The second kitchen either creates a two-family house or single-family house with two kitchens. Located at see Stonecrest Drive in an R-4 zone. There are people here for this particular hearing and we'll get a piece of paper and a pen out there just so you can put down your name and address for the stenographer when it comes to the point where we're open to the public, then it will be your time to say what you gotta say, ask whatever questions you have to say and we'll see if we can get you an answer. Okay? You're on, Dan.

MR. CLARINO: Good evening, I'm Dan Clarino, I'm the broker owner of Remax Benchmark Realty Group in New Windsor. I'm here tonight representing Tom and Mary and McDonald who own the property at 3 Stonecrest Drive in New Windsor. They have owned this, they are away, they moved back from their summer, from their winter premises this week but they're not here tonight. They're looking for the board to take a look at this property and consider it to be a single-family house with a summer kitchen in the lower level. This house to the best of my knowledge was built in the early '60s by a family by the name of Grecco, the current owner is the daughter of the people who built the house back in the '60s. I believe she and her husband and another sister and her husband wound up inheriting the property in 1991 at which time Tom McDonald and Mary McDonald bought the property. The kitchen on the first level is a summer type kitchen, it's been there for as long as the McDonalds owned it. It may have been there as long as the premises had been there since the early 1960s. This is not a two-family house, there's no bedroom downstairs, this is a kitchen that they use for summer use or for downstairs use. The question that was asked of me last time by counsel that I couldn't answer until tonight was I was asked to ask the owners if they had ever had any objection on the part of any of the neighbors and the response to that question from Tom McDonald was no, he's never had any of the neighbors voice any objection to the fact that the kitchen was there.

MR. KANE: It's your intent, it's always been used as a

single-family home and you're going to continue to use it as a single-family home and it's being sold as a single-family home?

MR. CLARINO: Yes.

MR. KANE: The building itself has only one gas and electric meter coming into it?

MR. CLARINO: Correct.

MR. KANE: And the intent is to keep it that way, not going to change that?

MR. CLARINO: Correct.

MR. KANE: With that, there's no other rooms downstairs where this kitchen is, did I hear that correctly?

MR. CLARINO: There is a family area with a fireplace but there's no bedroom down there so wouldn't facilitate a situation where it would be two family.

MR. KANE: And it's a, you have easy access from the main portion of the house down there?

MR. CLARINO: Yes, I took pictures and shows that there's access from that level right into the kitchen and the basement area.

MR. SCHEIBLE: Where is Stonecrest? In the back of my mind I can't place it.

MR. TORPEY: Right off 94 across from the school, New Windsor School, on the top is a big castle.

MR. CLARINO: This house sits off the road, it has a longer driveway 100 feet or so, doesn't sit right on Stonecrest but it's that address.

MR. KANE: Okay, at this time, does the board have any questions? At this point, I'm going to open it up to the public. Do you understand what's going on? They have a second kitchen downstairs and they, you know, are as our building inspectors go around and notice this stuff, we do not want illegal apartments or an illegal two-family house so we get them to come in on record, make sure there's only one gas or electric meter going in the house and this is just like a court of law when they come in, its on record that that's

their use and the intent. If there's an issue that happens later on then the building department has a recourse to go back after them so there's no--

MR. CHANIN: Come up to the front and either make a comment but if you have a question, you're entitled to ask a question as well. Speak loud enough for the people in the room to hear you and for the stenographer to hear you and start with your name.

MR. KIRO: Robert Kiro, I live at 7 Stonecrest Drive. The reason I came in is because it says here on the variance that it was for an interpretation of an existing family kitchen which creates a two-family dwelling which I am against because that's right behind my home or single-family home. And what I did I went around to the neighborhood and I wrote what was written here on the variance, I wrote that down and it states here a request that the Zoning Board of Appeals of the Town of New Windsor interpret the property on 3 Stonecrest Drive as a single-family house with two kitchens and not a two-family dwelling. And I went around and I got like about 12 signatures from the neighbors. So if you want that?

MR. CHANIN: Also for Mr. Kiro and for everybody else who's here present tonight on the possibility that some of you might be here because you want to put on the record your objection for this board approving the use of this building as a two-family home, you need not worry because that's not what the applicant is seeking. And that's not what the board is going to approve because that's not before the board. All the applicant is seeking is a decision by this board and as the chairman properly said in these kinds of situations it almost is as if it's a court of law and this board is going to make a decision as to whether or not because there already exists a second kitchen in this house does that make it an illegal two family or if it's in the board's discretion not to do so the board can vote and declare that despite the fact that there's a second kitchen in the basement we can grant the applicant's request for an interpretation of this board that this is a one-family house, that it will remain a one-family house and the fact that there's a second kitchen in the basement is not going to make it a two-family house. So if you're here to object to a two-family house, you have nothing to worry about because the applicant's not requesting that. And before I finish my comment, I just want to ask Mr. Clarino who represents the

applicant if what I just said is correct?

MR. CLARINO: Categorically, it's a single-family house being sold as such.

MR. KANE: If you heard earlier this was a couple that bought a home and it was sold to them as a two-family home but it wasn't, it's in a one family neighborhood and they've come in to try to get it changed to a two-family home. And it's extremely difficult, it's a whole different world.

MR. KIRO: Our area is zoned single family residential.

MR. KANE: That's correct, for somebody to change their home in that area from a single family to a two family, the bottom line forgetting the other stuff the bottom line they have to prove to the board that they cannot sell the home as a single-family home for a reasonable return, reasonable return does not mean profit.

MR. KIRO: I understand, we're listening.

MR. KANE: It's a very, very extremely difficult thing to do.

MR. KIRO: There's the carriage home that's behind Larry's home there, they rent there, there's people that rent upstairs and downstairs.

MRS. PELESHUCK: Is that the mansion?

MR. KIRO: No, not the mansion.

MR. CHANIN: Is that connected to this property?

MR. KIRO: No, it's not but they're renting on the top and the bottom there so I don't understand why in a single-family home--

MR. KANE: Nothing to do with us.

MR. CHANIN: That's not a subject matter that this application addressed. Anybody, and all of you are more than welcome to contact the building inspector in the Town Hall, town attorney, town supervisor or member of the town board, all of those wonderful people would be very, very glad to help you and answer your questions but that question is not before this board tonight.

MR. KIRO: Alright, thank you for your time.

MR. KANE: Anybody else wish to speak? Would you like to say anything, sir? All your questions have been answered?

MR. KIRO: I'm perfectly fine.

MR. KANE: Very good, we'll close the public portion of the meeting and ask Nicole how many mailings we had?

MRS. PELESHUCK: On the 26th day of February, 2013, I mailed out 44 addressed envelopes and I did not receive a written response back.

MR. KANE: At this point any other questions?

MR. SCHEIBLE: What year was this house built?

MR. CLARINO: I believe it was built in the early '60s but it transferred title to the current owner in '91 or 2.

MRS. PELESHUCK: '92.

MR. SCHEIBLE: This whole piece of property I'm speaking German now, earlier it was called the Camron Estate, I'm very familiar with this whole neighborhood here cause one of my father's uncles was the caretaker of that whole estate which took the big stone house that was a Camron estate.

MRS. PELESHUCK: That's not this house.

MR. SCHEIBLE: No, not this house.

MR. TORPEY: What does that have to do with this meeting?

MR. SCHEIBLE: I had to throw a little punchline in that.

MR. KANE: Accept a motion.

MR. BEDETTI: I'll make a motion that we, that the interpretation of this board is that the property located at 3 Stonecrest Drive in an R-4 zone is a single-family home with a second kitchen that cannot be sold as a two-family home, must be sold as a one-family

home and there could be no rentals to a second family,
so our interpretation again is that this is a
single-family home with two kitchens.

MR. TORPEY: I'll second that.

ROLL CALL

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

REORGANIZATION

MR. KANE: We need to do our reorganization so want to do it by e-mail like we did last time? I intend to run for chair, I've got two more years to go.

MR. SCHEIBLE: It's your choice. I agree with you.

MR. KANE: Want to keep status quo?

MR. BEDETTI: I have no problem.

MR. TORPEY: I think we should have a meeting on that.

MRS. PELESHUCK: Then Mr. Kane for chairman?

MR. SCHEIBLE: So moved.

MR. BEDETTI: Second it.

ROLL CALL

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

MR. KANE: And then obviously Nicole is staying as our secretary. Motion to adjourn?

MR. BEDETTI: So moved.

MR. SCHEIBLE: Second it.

ROLL CALL

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

Respectfully Submitted By:

Frances Roth
Stenographer