

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
Regular Session Date: SEPTEMBER 10, 2007
AGENDA

7:30 p.m. – Roll Call

PRELIMINARY MEETINGS:

1. **JEFFREY DUNKO (07-48)** Request for 4 ft. Side Yard Setback and; 5 ft. Rear Yard Setback for proposed pool at 2518 Constitution Way (The Reserve) in an R-3 Zone **(77-7-18)**
2. **MC QUISTON/FROELICH (07-46)** As referred by Planning Board (see below) located 224 Pine Street in an R-4 Zone **(24-4-5 & 6)**

	REQUIRED	PROPOSED Lot 5 /Lot 6	VARIANCE REQUESTED Lot 5/ Lot 6
MIN. LOT AREA (Gross)	43560 sf	9000 / 17679**	34560 / 25881**
MIN. LOT WIDTH	125 ft	150 / 120**	- / 5 **
REQUIRED FRONT YARD	45 ft	11&36 / 25	34&9*** / 20***

PUBLIC HEARINGS:

3. **ELTON STANFORD (07-41)** Request for 9ft rear yard setback for existing shed at 20 Hudson Drive in an R-4 zone **(43-1-22)**
4. **INEZ COOPER (07-40)** Request for variance to permit a 6ft fence located between the principal building and the street at 2420 Settlers Ridge in an R-3 zone **(77-8-20)**
5. **STEVEN LARMON (07-42)** Request for variance to permit a 6ft fence located between the principal building and the street at 1 Doral Drive in an NC zone **(19-4-49)**
6. **MATTHEW ZALOGA (for Mazza)** Request for variance to permit 8 ft. fence for proposed tennis court at 1016 Forest Glen in an R-3 Zone **(89-6-10)**
7. **PETER MC LOUGHLIN (07-38)** Request for Interpretation and/or Use variance for Existing Single Family Dwelling with proposed addition and three kitchens at 502 Union Avenue in an R-4 Zone **(7-1-29)**
8. **MICHAEL PISACRETA (07-36)** Request for variance of:

EXISTING SHED: 5 ft. Side Yard Setback (300-11-A-1-B)
1 ft. 6 in. Rear Yard Setback (300-11-A-1-B)

EXISTING DECK: 30 ft. Rear Yard Setback (G-6)

All at 44 Keats Drive in an R-4 Zone **(75-1-21)**

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
SEPTEMBER 10, 2007

MEMBERS PRESENT: KIMBERLY GANN
ERIC LUNDSTROM
PAT TORPEY

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN
KATHLEEN LOCEY

REGULAR_MEETING

MS. GANN: I'd like to call to order the September 10, 2007 meeting of the New Windsor Zoning Board of Appeals. We have a few public hearings as well as prelims. You'll be asked to come on up, state your name and address loud enough for the stenographer to hear you. I will ask also that all cell phones be turned off. usually with the preliminary hearings, we ask that you tell us why you're here, you come on up, we might ask you a series of questions and what you need to do is then come back for a public hearing.

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Those folks that are here for a public meeting, this would be the last time hopefully that you will be here.

JEFFREY_DUNKO_(07-48)

MS. GANN: Okay, we're going to ask you to restate the reason why you're here this evening. This request is for 4 foot side yard setback and 5 foot rear yard setback for proposed pool at 2518 Constitution Way (The Reserve).

MR. DUNKO: Jeffrey Dunko, 2518 Constitution Way.

MS. GANN: Tell us why you're here, Jeff.

MR. DUNKO: I'm here to look into putting an above-ground pool on my property. The town requires 10 foot minimum property guidelines and I only have about 6, we're just looking for a variance for the pool to go forward with that. The one side I can probably meet the 10 foot, the other side I definitely can't, it's about 6 feet.

MS. GANN: Is this for an in-ground pool or above-ground?

MR. DUNKO: Above-ground.

MS. GANN: Can you step forward, please? Is it going in this area right here?

MR. DUNKO: Exactly, remove that playground and mulch and that's exactly where it's going to go.

MS. GANN: Is this attached to the home?

MS. GANN: No, no, I have the 10 foot between the home and the pool that's required.

MS. GANN: So Mike, why is he here?

MR. BABCOCK: He needs, the pool is going to be 6 foot from the side yard required to be 10 and 5 foot from

the rear yard required to be 10.

MR. DUNKO: The one picture--

MR. TORPEY: Last picture shows it better.

MR. DUNKO: Yeah, this is the one, well, this is going to come right to here, this is only 6 feet so I need 4 foot here on the other side.

MS. GANN: So I'm going to ask you some questions and according to the pictures looks as though it may not be an issue. Will you be taking down any substantial vegetation?

MR. DUNKO: No.

MS. GANN: Will you be going over any easements in the building of the pool?

MR. DUNKO: No.

MS. GANN: Will this create any water hazards?

MR. DUNKO: No.

MS. GANN: Is the pool similar in size to other pools that are in your neighborhood?

MR. DUNKO: Yes.

MS. GANN: Any other questions from the board?

MR. LUNDSTROM: I have one, Jeff, you mentioned that the pool will be 10 feet away from the house as required. Mike, is that correct?

MR. BABCOCK: That's correct.

MR. LUNDSTROM: Cause one of the other questions I

would have instead of 10 foot if it were 8 or would that reduce the need for a side or rear yard variance or does one take precedence over the other?

MR. DUNKO: It would probably help with the side but as far as the back yard variance it probably wouldn't, it would probably impede on the house variance.

MR. LUNDSTROM: Are you saying the house variance being what?

MR. DUNKO: Ten feet, if I moved it up 4 feet then probably would not meet the 10 foot.

MR. LUNDSTROM: That was my question to the building inspector, might that be a consideration for the variance that might limit some of the impact to the others? Again, food for thought.

MR. BABCOCK: I don't have an accurate, I have a survey here but I don't have the measurements of how far it actually is from the house, would it actually do to move it up, I guess we could calculate that.

MR. LUNDSTROM: Might be a consideration for the public hearing portion of it.

MR. DUNKO: Okay.

MS. GANN: Any other questions from the board? I'll accept a motion.

MR. LUNDSTROM: Madam Chairman, I will offer a motion for a public hearing for the application of Mr. Jeff Dunko regarding the variance as set forth in the agenda of the Zoning Board of Appeals, Town of New Windsor agenda date is September 10, 2007.

MR. TORPEY: I'll second that.

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ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

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MC_QUISTON/FROELICH_(07-46)

MS. GANN: As referred by the planning board, located at 224 Pine Street.

MR. MC QUISTON: John McQuiston, 224 Pine Street.

MS. GANN: Tell us what you want to do.

MR. MC QUISTON: This is for a lot line change, my neighbor gave me a piece of property 30 x 150 that I just want to incorporate into my property, there's going to be no building or anything, just cleared the brush and made my yard bigger.

MS. GANN: Just using it for your own purposes?

MR. MC QUISTON: Right, for the yard.

MS. GANN: You just want a lot line change?

MR. MC QUISTON: Yes.

MS. GANN: Can you come on up here and show me?

MR. MC QUISTON: This is the property here. Basically, this 30 x 150 feet, I just want to add it into my property.

MR. LUNDSTROM: Which is your property, the top or bottom?

MR. MC QUISTON: This right here off of Pine Street right here and then this is the piece of property 30 feet by 150 feet.

MR. LUNDSTROM: That you will be taking?

MR. MC QUISTON: Right, exactly.

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MR. BABCOCK: His property is the one with the pool and the deck. The property with the detached garage is the big L-shaped right now. You see that, Eric?

MR. LUNDSTROM: Yes, this will square that off.

MR. BABCOCK: It squares his property off, squares the neighbor's property off, it makes sense.

MR. MC QUISTON: Originally, it was two parcels way back when.

MR. BABCOCK: The reason he's here tonight is that for lot area since the code has changed and the definition of lot area is your square footage, not his lot, the other lot is getting smaller in size, therefore, requires a variance from the new regulations which this lot wouldn't have met with the other lot but it's making it more non-conforming. So he's here tonight for that.

MR. TORPEY: Which lot did it come off of?

MR. BABCOCK: I can't say their name but it's the lands of Froelich.

MR. TORPEY: Top corner lot that weird piece?

MR. BABCOCK: Yeah, the corner lot was an L, now it's all uniform.

MR. LUNDSTROM: Mr. McQuiston's property there will be no variance needed, it's on the other property?

MR. BABCOCK: That's correct.

MS. MASON: Isn't it both?

MR. BABCOCK: Actually, that's what we're saying, we're just going to do it to clean it up, it's both lots, Ms.

Chairman, what we're saying even his lot once he adds the square footage he's only at 9,000 square feet so we're going to straighten it all up because today's code it's 43,560.

MS. GANN: Does he need to bring anything back with him to the public hearing that we can sort of talk about right now?

MR. BABCOCK: No, I don't think there's anything other than this plan which we'll have in the file.

MS. MASON: It has to go back to the planning board.

MR. BABCOCK: What I would suggest that you do is take like a yellow highlighter and highlight what's existing and then highlight with blue what's proposed just so that because it's a little bit for the public so the public can understand it a little bit better, just better for you that's all more questions you can answer right up front when you explain it the less questions you'll have.

MR. MC QUISTON: Right, okay.

MR. BABCOCK: But it makes sense to square up all the lots the way it is.

MS. MASON: I need you to come in and fill out some paperwork so I'll show you when you come in.

MS. GANN: This piece of property that's going to be added on for you, is for your own personal use?

MR. MC QUISTON: Just to enlarge my back yard that's all.

MS. GANN: I don't have--

MR. KRIEGER: It's going to remain a one family lot,

single lot?

MR. MC QUISTON: Yes, exactly.

MS. GANN: Any further questions from the board? I'll accept a motion.

MR. LUNDSTROM: Madam Chair, I will offer a motion that the application for a variance by Mr. McQuiston/Froelich as presented on the agenda for the Zoning Board of Appeals dated September 10, 2007 item number 2 be scheduled for a public hearing.

MR. TORPEY: I'll second that.

ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

PUBLIC_HEARINGS:

ELTON_STANFORD_(07-41)

MS. GANN: Request for 9 foot rear yard setback for existing shed at 20 Hudson Drive.

Mr. Elton Stanford appeared before the board for this proposal.

MS. GANN: Please state your name and address so the stenographer can get it.

MR. STANFORD: Elton Stanford, 20 Hudson Drive, New Windsor, New York.

MS. GANN: Tell us why you're here, please.

MR. STANFORD: I'm here for a variance for the back of my shed 9 foot rear setback, 20 Hudson Drive.

MS. GANN: This is the shed?

MR. STANFORD: Yes.

MS. GANN: Do you have electric in the shed?

MR. STANFORD: Just extension cord that I run, that's about it.

MS. GANN: But do you have electric within the shed?

MR. STANFORD: Yes, extension cord.

MS. GANN: So Mike, how close is he?

MR. BABCOCK: He's one foot off the property line.

MS. GANN: Have you received any complaints informally or formally regarding the shed?

MR. STANFORD: No, I've been there 46 years.

MS. GANN: So it's been there 46 years?

MR. STANFORD: Yes.

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

MR. STANFORD: Forty-six years.

MR. LUNDSTROM: Did you build the shed?

MR. STANFORD: Well, it's part of a shed that had been brought down and given to me and he remodeled it and put it back up.

MR. LUNDSTROM: There was a shed there when you bought the property?

MR. STANFORD: No, there was not, it's a Schoonmaker house, didn't have much of anything, just landscaped it and had the shed given to me and I put it right there where it was.

MR. LUNDSTROM: Madam Chairwoman, when the shed was put up, did you secure a building permit for the shed?

MR. STANFORD: No.

MS. GANN: Mike, does that predate zoning then?

MR. TORPEY: Did you need a building permit 46 years ago?

MR. BABCOCK: No, I would say not but apparently our records don't indicate that. We don't know when the shed was there to start with.

MR. STANFORD: It wasn't there to start with, I put it

there in '62.

MR. BABCOCK: Forty-six years ago we didn't know you had a shed, when we discovered the shed was within zoning that's the problem, so sometime after 1966 and here's a letter June 18 of '07 that was sent to you about the stuff, so I don't know if we just recently picked up the shed or when we picked it up but we picked it up after zoning.

MR. STANFORD: You picked it up June 13 I think it was you come by.

MR. BABCOCK: Yeah, because we sent you a letter on June 18 about the rear deck and the shed.

MR. STANFORD: Took you 46 years to find out the shed was there.

MR. BABCOCK: Possibly.

MR. KRIEGER: If the shed had caused a problem, it would have been sooner than 46 years. There's testimony to the fact that it didn't.

MS. GANN: I'd like to open this up to the public, ask anyone if you're here for this public hearing please raise your hand. Seeing that there's no one, I'll close the public portion, ask Myra how many mailings we had.

MS. MASON: On August 28, we mailed out 67 addressed envelopes and had no response.

MR. KRIEGER: Is it similar in size and appearance to other sheds in the neighborhood?

MR. STANFORD: Just what I got there.

MR. KRIEGER: Is it, are there other sheds like it in

the neighborhood?

MR. STANFORD: I don't know.

MR. KRIEGER: Just generally.

MS. GANN: It's probably similar in size to others in your neighborhood?

MR. KRIEGER: As far as you know it's similar?

MR. STANFORD: Well, I guess.

MR. KRIEGER: What is it, foundation?

MR. STANFORD: It's on little blocks about that high.

MR. KRIEGER: And you landscaped around it?

MR. STANFORD: Yes, just grass, that's about it, neighbor's lawn.

MS. GANN: Any other questions from the board? I'll accept a motion.

MR. TORPEY: I'll make a motion that we grant Elton Stanford the variance as requested.

MR. LUNDSTROM: I'll second that motion.

ROLL CALL

MR. LUNDSTROM AYE

MR. TORPEY AYE

MS. GANN AYE

INEZ_COOPER_(07-40)

MS. GANN: Request for variance to permit a 6 foot fence located between the principal building and the street at 2420 Settlers Ridge.

MS. COOPER: Inez Cooper, I live at 2420 Settlers Ridge. I'm requesting a 6 foot fence, I'm a corner lot.

MS. GANN: Mike, she's here because she's on a side yard?

MR. BABCOCK: Well, Settlers Ridge has got a bend in it, goes around the edge of her property, I don't know if you've seen the map that she drew so on the front of her house it actually the fence goes out if you're looking at her house out the side which actually projects closer to Settlers Ridge than her house does, therefore, she requires a variance.

MS. GANN: What's the purpose of the fence?

MS. COOPER: Just to protect family and keep wildlife off.

MS. GANN: What kind of fence are you putting up?

MS. COOPER: Aluminum.

MS. GANN: Going around the entire house?

MS. COOPER: Just coming off the sides onto the back.

MS. GANN: Will you be taking any substantial vegetation down to put up the fence?

MS. COOPER: No.

MS. GANN: Creating water hazards if you put the fence

up?

MS. COOPER: No.

MR. BABCOCK: Would you like to see a survey maybe from here you can see the angle of her house and the way the road rotates around her house so the rear of her house when she puts the side, the side she's closer to the street.

MR. TORPEY: Yeah, there's one, a good one here.

MS. GANN: In your opinion, would you think that in building of the fence it would block any of the vision of the folks trying to drive around that area?

MS. COOPER: No, I don't.

MS. GANN: Will this be going over any easements that you know of?

MS. COOPER: No.

MR. LUNDSTROM: Madam Chairwoman, one question, Inez, why a 6 foot as opposed to a 4 foot fence?

MS. COOPER: I just feel like it's more secure than a 4 foot, I think it will look nicer as well.

MR. TORPEY: Privacy?

MS. COOPER: Well, it's aluminum but yeah.

MR. LUNDSTROM: Now you're saying aluminum chain link fence?

MS. COOPER: No, it's more like a picket type fence, it's aluminum but picket type.

MS. GANN: At this point, I'd like to open it up to the

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public, ask if anyone's here for this particular meeting? Seeing that there's not, I'll close the public portion, ask Myra how many mailings we had.

MS. MASON: On August 28, I mailed out 43 addressed envelopes, had no response.

MS. GANN: I will accept a motion.

MR. TORPEY: I'll make a motion that we grant Inez Cooper the variance as requested.

MR. LUNDSTROM: I'll second that motion.

ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

STEVEN_LARMON_(07-42)

MS. GANN: Request for variance to permit a 6 foot fence located between the principal building and the street at 1 Doral Drive.

MR. LARMON: Steve Larmon, 1 Doral Drive here to permit a fence to go between the back of the building, the side of the building and Route 94 would be in the back yard and other front yard.

MS. GANN: What's the purpose of the fence?

MR. LARMON: Privacy and security.

MS. GANN: In building of the fence will you be going over any easements?

MR. LARMON: There's a utility easement in the back part of the property, I think it's Central Hudson.

MS. GANN: Is that where your fence is going, it's going to go right over the easement?

MR. LARMON: Probably yes.

MR. LUNDSTROM: The easement is above ground?

MR. LARMON: Yes.

MR. BABCOCK: Yes.

MS. GANN: Will you be creating any water hazards in the building and construction of the fence?

MR. LARMON: No.

MS. GANN: Are there any fences in your area that are similar, might be similar in size to yours?

MR. LARMON: There are some on Clintonwood, there are some, yes.

MS. GANN: Will you be cutting any substantial vegetation down in the building of the fence?

MR. LARMON: No.

MS. GANN: Steven, can you come on up here and just point out some things for me, show me where you're putting the fence in this picture?

MR. LARMON: This would be the back of the property on this driveway and back along the wall.

MR. LUNDSTROM: On the plot plan that was shown here in the bottom portion it says one pipe found, what type of pipe is that?

MR. LARMON: I think it's I pipe, I think that's for the sewer.

MR. LUNDSTROM: It's not a utility pipe?

MR. LARMON: No, it's the I pipe to mark the survey.

MS. GANN: Do these pictures depict where you plan on putting the fence?

MR. LARMON: Yes, no, this one's from the doctor's office, that's Route 94, that's the back of the property, this one would with the driveway, it would go right from here, that's 94 so this is the part that's in question.

MS. GANN: At this point, I'm going to open this up to the public and ask who's here for this meeting and if you are, please raise your hand one at a time. Okay, can I have one at a time? Come on up and please state your name and address and give us your opinion on this

particular hearing.

MR. WILDENBURG: John Wildenburg (phonetic), 5 Doral Drive, next door neighbor. The fence proposed is adjacent to our property line. There's a couple issues that I think the other residents, for one thing, this is the old park area, the restrictions are deeded on the property, says no fences are to be built, that was one thing. My concern is what I saw from the property line that the fence would be adjacent to my property line, there should be an offset of the property line so you can maintain the property line. The other thing is access, the utility line comes through the back line, it's not our houses but the doctor's office, the counseling center and the roads behind us, the poles come through that back yard, we have routinely had Central Hudson through that area, we need access to the back area. Recently my yard's been accessed several times, holes, new poles and lines, if the fence is there and they don't have access to the lines and there have been a lot of problems with the lines cause they're old, how are we going to have access to the utility lines if there's a fence there? I mean, I think that I understand why you need the fence for the dog control in the back yard, it needs to be offset from the property line, not on the property line.

MS. GANN: For the record, sir, are you for or against this?

MR. WILDENBURG: As it is right now, I'm against it.

MS. GANN: Okay, thank you. Anyone else here that would like to speak?

MS. SEGALI: Hi, my name is Elaine Segali, I live at number 11 Doral Drive. And I'm opposed to the fence because apparently our deed restriction calls for the aesthetics of the neighborhood to not have fences so that we have a clear pastoral view of the other

properties. We also have a private road and our neighborhood group recently paved the road and it's very narrow and so we need snow removal and it's, you know, nothing against you coming into the neighborhood wanting to put up a fence but we really think it would take away from the integrity of the neighborhood. Thank you.

MR. LUNDSTROM: Is Doral Drive the private road you were speaking of?

MS. SEGALI: Yes.

MS. NUGENT: I'm Cathy Plumstead Nugent, I live at 23 Doral Drive. I own the property there. I agree and in our deed I was trying to look for my deed, I apologize for not having it, I know it's an old code, but it's been maintained to this point. I really would not like to see a fence in that area. The other problem is we're really having trouble with that line with the electricity, any time they try to keep our trees from it, but they really do need access. So that's another problem, thank you.

MS. EDWARDS: Hi, my name is Marie Edwards, 14 Doral Drive. I'm three doors up from him on the opposite side but I also oppose the fence cause when we bought it we bought it for the beauty and aesthetics of everything of the, they called it the garden and is restricted. I also have a child care service and when I applied for a fence when I first moved in this is what they told me and we put up shrubs, private shrubs, it works. With the dogs, no, the neighbors next door to me they put an electric fence for their dogs so I'm definitely opposed to the fence.

MR. KRIEGER: Electrical fence you mean invisible fence?

MS. EDWARDS: Yes.

MS. GANN: Thank you. Anyone else here this evening? No one else, okay, I'm going to close the public portion then and ask Myra how many mailings we had.

MS. MASON: On August 28, we mailed out 34 addressed envelopes, had no response.

MS. GANN: Steven?

MR. LARMON: As for utility access, they could get through the physician's office too which you can see in the pictures, there's one there. As far as the fencing goes on the deed restriction do you have a copy of our deed? I didn't bring it with me. I read the deed and I didn't see a restriction, fence restriction on there, I can bring it in if that helps.

MR. BABCOCK: Mr. Chairman, I think that the utility easement, I would assume that's to the Central Hudson, we probably should get something from Central Hudson and if they don't have a problem with the fence being there that would be one issue that could be solved. The deed restrictions I think Andy can speak to a little bit, I think it would be better.

MR. KRIEGER: If I may, let me speak. Regardless of this, this board does, it hasn't done anything yet, it does not have the legal power to effect the deed restrictions in any way, shape or form. So, in other words, if the board should grant you permission to put your fence up, for instance, I'm not saying they will or won't, if it should grant you permission it does not relieve you from any obligations that the restriction that any deed restriction may place on you, nor if you're brought to court by anybody else who has a similar deed restriction and that is an option open then the granting of the variance by this board if it should happen is not a defense and is largely irrelevant just that this board has no jurisdiction to

decide that question nor does it have any affect on any subsequent court action. So you have been placed on notice certainly that the deed restriction exists and so that you have to govern yourself accordingly.

MR. LARMON: Where would I find that, some kind of document that has a deed restriction? Cause I read my deed over and I didn't see anything, nothing came back in the title search, I'm just wondering where.

MR. TORPEY: Is there such a thing?

MR. KRIEGER: Whether it exists and to what extent it binds you is firstly a question that has to be resolved by title search back in your chain of deeds, just cause it doesn't exist in your deed doesn't mean that it didn't exist at some point, whether it should have been carried forward or not is a question for competent legal counsel and it is not the business of this board to decide one way or the other. It has no legal power to do that. I just didn't want to leave you with the impression that since that question has been raised that it gets resolved here cause it does not regardless of what happens.

MR. TORPEY: Could it be on somebody else's deed and not his and still carry cause it's a group kind of thing?

MR. BABCOCK: As deeds change from people to people just names sometimes these things are left off so he could very well go back and search and find an old deed that has it on there.

MR. KRIEGER: And they are not necessarily left off as a result of anybody having a legal right to do so.

MR. BABCOCK: It just happens.

MR. KRIEGER: Just may not be included.

MR. BABCOCK: There's too many people in the audience saying that there's deed restrictions that they know about for one house not to have it, I'm sure it's there.

MR. KRIEGER: Usually what happens when a deed restriction such as that is created is when you have a subdivision or when you have a piece of property which is subdivided as this was long time ago when it is under, before it's sold off when it's under common ownership, the person affecting the subdivision will place a restriction in there.

MR. TORPEY: Is that his responsibility?

MR. KRIEGER: Well, whether that restriction is enforceable or not is far too complicated question to go into at this point. Merely because it does not appear in his deed doesn't necessarily mean that it doesn't exist, it may have been dropped from the description this time or some prior time. And as I say that may have been legally permissible and it may not have been.

MR. TORPEY: Is that his responsibility?

MR. KRIEGER: He may be bound by it, that's why he has title insurance. Merely because it doesn't appear in the description of his deed doesn't mean that it doesn't exist and he isn't bound by it. There's far too little evidence at this point to enter an opinion as to whether or not such a thing exists and whether it's binding nor would it be appropriate since this board whatever opinion this board may have is irrelevant, basically legally irrelevant.

MR. TORPEY: We can't table on anything, vote on anything until we find out.

MR. KRIEGER: Since it's outside the zoning board's jurisdiction to decide matters involving the deed restriction no, you can't table it to find out about that because it doesn't matter. However, the applicant should be aware that this question is not, now that he's been made aware of it, it's not resolved by whatever happens here tonight. If it was valid it existed before you came in, its valid and exists when you go out, if it isn't, it isn't.

MR. LUNDSTROM: Madam Chairwoman, if I may at this point I think there are two items that are very unclear for this board to make a positive decision, one of them is written evidence from Central Hudson that if in fact this fence were ever to go up that they would not have a problem with accessing that proper. The other thing is is there credible evidence at this point in time that there is or is not a deed restriction. I think again like we have done in the past Madam Chairwoman it would be unfair for this board to keep the public in limbo until that questions or those things got resolved, I think we have to make a decision tonight.

MR. KRIEGER: There is, if I may, there is another question that's been raised by at least one of the persons who spoke here and that's the question of whether or not the fence will adversely impact snow removal and it's been addressed. The applicant has also addressed it so I merely point it out, it's a question that's all I think the applicant should be aware in all fairness also that there are three members of the zoning board present. By law, the zoning board can only grant a variance with three positive votes. So if one of the three members here should vote against your application, it would be denied. In the past, it has been the practice of this board to table an application for at least a fourth member to be present if an applicant so requests. Now, whether this board cares to do that or not I don't know but certainly you should be aware that you are required, that you require

an affirmative vote of all three.

MR. LUNDSTROM: Madam Chairwoman, is that okay with yourself?

MR. LARMON: To?

MR. LUNDSTROM: To have this board tonight vote yes or no on your variance?

MR. LARMON: I guess it's okay.

MS. GANN: Now in the event it's either positive or negative in his favor, if in fact it's negative in his favor, would he be able to come back and reapply for this again?

MR. KRIEGER: Isn't that a contradiction in his favor again?

MS. GANN: I'm saying if we give him the votes to say yes or no, whatever way it goes, does he have the opportunity to then if he fails at getting his variance tonight will he be able to reapply?

MR. KRIEGER: What the Town Law says is every applicant has a right to reapply after the expiration of six months. If there's a change in circumstances, if it's a different application they are not bound by the six month restriction, they can apply at any time but there has to be a change in circumstances so in essence it's a different application. If it were exactly the same application, yes, he can do it but he'd have to wait six months.

MR. LARMON: What issues are outstanding, snow removal wouldn't be a problem, it's in the back of the house, there no fence in the front of the house so removal of snow from Doral Drive isn't going to come within 50 feet of the fence.

MR. BABCOCK: The notice that goes out, one of the requirements is that he's, actually, the law says he's putting the fence in the front yard and I think a lot of people are misunderstood that it was actually in his front yard, it's in the front yard because he's got a corner lot off 94 and Doral Drive so it's actually on the side of his house. But by law it's called a front yard so it's not in the front yard, it's nowhere near where snow removal would be so honestly that really isn't an issue. The two issues are Central Hudson and the deed, so if he wasn't successful in getting an application or an approval tonight and he wanted to come back I would suggest to him that he gets something from Central Hudson and that would be a different application that he would be coming back here for and that would give him some time to check out or if you want to table it to find out whether it's in his deed or not so he could make a decision whether he wants to put the fence up or not.

MR. LARMON: I don't mind tabling it to get a letter from Central Hudson and do some investigation, I'll call my title company because as far as I know there wasn't a deed restriction.

MR. LUNDSTROM: I think one of the things if we did table it we'd insist on a written letter from Central Hudson and they'd have to have a copy of these plans saying that would not pose a problem for any maintenance. The other one is competent legal advice, legal interpretation that there is no deed restriction on your property that would prevent you from putting a fence up. Now, how long do you think that would take?

MR. LARMON: When is your next meeting? I don't know how long Central Hudson will take.

MR. BABCOCK: Yeah, I wouldn't say, I would give him at least a month, I think in all fairness with Central

Hudson they're going to have to send somebody out there to look at it and they're pretty busy right now so I think you should give him, I don't think it would happen in two weeks.

MR. LARMON: What's the offset from the property line that the fence should be?

MR. BABCOCK: It can by law if you're successful with the variance it could go right up to the property line, the property line is paper thin, if you dig a six inch hole on the property line you're going to be three inches on your neighbor's so you should stay back somewhat.

MS. GANN: How would you like to proceed?

MR. LARMON: I'd like to table it, get a letter from Central Hudson and do some research, just make sure so it doesn't cause anymore issues.

MR. LUNDSTROM: One of the other things I would insist on is before this board reconvenes on this application that the minutes be in the hands of all the members so they can read the comments from the public so they are aware of that so the public does not have to come back.

MS. GANN: Anything else? I'll accept a motion.

MR. LUNDSTROM: I will move that the application for Mr. Steven Larmon be tabled for a time specific in the future.

MR. TORPEY: I'll second that.

ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

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MR. LUNDSTROM: Steven, you realize you need some very concrete evidence in your favor for this to be approved?

MR. LARMON: Absolutely, I'll get it, thank you.

MS. GANN: Can you come up here, I'd like to have someone explain to you where this fence is going. Off the record.

(Discussion was held off the record)

MR. LUNDSTROM: I move we go back on the record.

MATTHEW_ZALOGA_(FOR_MAZZA)

MS. GANN: Request for variance to permit 8 foot fence for proposed tennis court at 1016 Forest Glen.

MR. MAZZA: I'm Stanley Mazza, I'm the owner. Matthew Zaloga is my landscape architect. I'm here to apply for a variance on the property line adjoining my house next to my neighbor's house. What we'd like to do is put in an eight foot chain link cyclone fence black perforated to prevent balls from my tennis court going into my neighbor's yard. Currently, I'm a corner lot so my rear portion of my lot is actually the front yard so there's a 6 foot requirement up to the building line and there's a 4 foot drop beyond the building line and that's what we're requesting the 8 foot variance just on that area running the property line.

MR. LUNDSTROM: On the plot plan it shows that Forest Road the other road are proposed?

MR. BABCOCK: No, they're actually dedicated roads at this time.

MR. LUNDSTROM: So this particular property again is a corner lot with two front yards?

MR. BABCOCK: That's correct.

MS. GANN: Looks as though the construction for the tennis court has begun?

MR. MAZZA: Yes, it's almost completed, they just paved it today, what's left to do is to paint it green, you have to wait almost 30 days.

MS. GANN: Did you take substantial vegetation down in the building of it?

MR. MAZZA: No, just open green lawn.

MS. GANN: Will this be creating any water hazards that you know of?

MR. MAZZA: No, it's drainage and it's all going to stay on my property, the topo there's a valley between my property and the adjoining property and it's basically drained in a watershed.

MS. GANN: And these trees right here will be staying?

MR. MAZZA: Those are on my neighbor's property.

MR. LUNDSTROM: For the benefit of the rest of us would you show us on that?

MR. MAZZA: These are the trees and basically the court is approximately about 12, how many feet away?

MR. ZALOGA: About 20 feet off the road.

MR. LUNDSTROM: Which road is it off of?

MR. MAZZA: Forest Glen, so it's 10 feet for the town easement so it's 10 feet plus so it's 20 feet from the curb and it runs, doesn't run parallel to Forest Glen, has a slight, it's at an angle so it, so as it goes further away from the house it gets further away from the property. I can show you in a picture here. Actually, see how that the street goes this way, the lot goes this way so the area of the fence is actually, can I just mark this?

MS. GANN: Absolutely.

MR. MAZZA: The fence is probably say 20 feet about here to say around here and now we're just going to put the standard approved type fence all the way around the rest of the property.

MS. GANN: Will the fence be going over any easements?

MR. MAZZA: Yes, we're on a 20 foot, there's a 20 foot sewer easement, we already got the town, the attorney for the town approved it, had to make a restricted declaration that states if there ever is a need to remove the fence I will be notified and I will remove the fence and--

MS. GANN: Do we have that on file, Mike? Sorry, you can proceed.

MR. MAZZA: So it's actually at the edge of my property line so the easement goes 20 feet from my property line into my property so it's actually on the edge of the, on my property line which is the beginning of the easement. So it's not really, it's on, and it will cross a 4 foot high street side of the fence, it will be at the zoning permitted height and that will, that won't cross, that will cross there but we got the okay from the attorney if they need to go in and replace I will, I will remove the fence and if they remove it it's at my cost.

MS. GANN: And the tennis courts are going to be used for your own personal use?

MR. MAZZA: Yes.

MS. GANN: Not going to have tournaments?

MR. MAZZA: No, leave that to Flushing Meadows.

MR. LUNDSTROM: Was a building permit required for the tennis court?

MR. MAZZA: We applied for all our permits for the court and everything else that I have been doing on the property.

MS. GANN: Anyone else in the neighborhood have a tennis court?

MR. MAZZA: No.

MR. LUNDSTROM: One question, are there any other fences of that height in the neighborhood?

MR. MAZZA: No, there's fences that are 6 feet high in rear yards separating other homes, actually, you can see one barely far away, it's a white solid PVC.

MR. TORPEY: You're not fencing the house, just fencing the tennis court?

MR. MAZZA: I'm putting a fence around the perimeter of the property but it's all going to meet code standard zoning, the only reason why I requested a higher fence is just to provide containment of the balls.

MR. TORPEY: But it's not a complete fence around the whole entire house?

MR. MAZZA: It will be 8 feet when we're, what we're applying for is an 8 foot right around the court but 6 feet all the way around, I have a whole landscaping plan where I want to plant some vegetable gardens trying to deal with deer containment, they're just out of control and I know that 6 feet or 4 feet isn't going to make a difference but it will hold them back. So the design is aesthetically a good design, I hired a landscape architect to put up a good plan that's very, if you see some of the stone work and the fencing it's very typical to the area so we want to try to continue that, I'm trying to enhance the neighborhood, not bring it down with a fence. The intent is to contain the balls, that's all, if we can go a little bit higher without I don't think that would be fair.

MR. LUNDSTROM: That addresses the question I was going

to raise is most of your professional tennis courts have fences around them that are much higher than 8 feet cause again somebody can lob something up and it just goes over.

MR. MAZZA: Right, the reason why the court is 20 feet plus away from the fence and the area where you typically play is 15 feet so the surface area is the actual, actual end line of the tennis court is 35 feet from the property line where you actually stand and serve if I drew a diagram this would be along the end line but the court itself ends here where you actually play.

MR. BABCOCK: Also the fence along the road is more parallel to the tennis court than at the end of the tennis court so they're hitting the ball back and fourth parallel with the road instead of--

MR. MAZZA: Actually, no, it's away from the road.

MR. BABCOCK: This picture here is accurate, sir?

MR. MAZZA: Yeah, the reason, yeah, that's accurate if you see this here's the road this gives you a better idea.

MR. BABCOCK: But you're not hitting to the road.

MR. MAZZA: No, we're hitting, see, this is road here.

MR. LUNDSTROM: If I may again the chairwoman is being benefited by that but the rest of us are not, if it might just be put on the board itself.

MR. MAZZA: This is the road Forest Glen and the court is actually running at, is offset, I don't know what degree, probably like 25 degrees not parallel, 45 would be almost here.

MS. GANN: So the chances of the ball going over to that side over into the road probably more minimal.

MR. MAZZA: Well, we're going to plant vegetation on that and we're going to put a 4 foot fence that runs parallel to the court on the street side and going to plant vegetation. The dilemma I had was the easement doesn't allow me to plant vegetation because that would have been great just planting vegetation, you know, and that's it but this portion here that's 20 feet I really can't plant anything in so if I plant vegetation over here and the fence here would pretty much do a pretty decent job, you'll have even a 10 foot fence gets a ball that makes it over, again, it's recreational, not professionals.

MR. BABCOCK: You asked me if I had that document in my file, I do not but I can tell you at the last meeting preliminary when this gentleman was there I think it was his fence guy, the town attorney happened to be sitting in the audience at that time and he leaned over and whispered that that document does exist and he will send me a copy of it but that didn't happen, so I do know that it does exist. You have it, Myra?

MS. MASON: No, but I'll get it tomorrow.

MS. GANN: At this point, I'd like to open it up to the public hearing to anyone in the audience. Does anyone here at this public hearing have a comment? Come on up, sir, please.

MR. UREN: My name is Greg Uren, I live at, my wife and I own the property at 1023 Forest Glen and I was an avid tennis player, when I grew up, I actually played six years of varsity tennis in high school and I played tennis at Purdue University. And currently my house which is two houses over and is for sale. I purchased my house for \$585,000. I have several hundred thousand dollars tied up in equity. I have people coming

through my house right now not willing to purchase my house because we have right now an airplane tarmac across the street and we're building recreational tennis courts. Now tennis courts should be at a high school, should be at playgrounds. I have never played tennis in a neighborhood where the houses have the value of 350 to 6 to \$700,000. This is devaluing every house in the neighborhood and I adamantly oppose the building of this fence and this tennis court because I'm going to lose money and if I lose money I'm coming after some people here to sue them for some money. That's what I want to say.

MS. GANN: Thank you. Anyone else here for the public hearing?

MR. FLAGG: I'm Jed Flagg, I live at 1034 Rolling Ridge and again I'm adamantly opposed to this. This tennis court is going to be an eyesore in an otherwise lovely neighborhood. I've just moved into the area three to four years ago, I moved in because I liked the area, there's no fence of this height and there's certainly no other tennis court. We all have pools, whatnot, but they're all tasteful. This just doesn't meet the aesthetics of the neighborhood. I've got some additional concerns, one is there's a large fill pile right on the watershed right now with no siltation fence. I'm very concerned about that. That's our sewer lines that are getting filled up with dirt. There's also a lot of equipment that's been parked there for a long period of time with no siltation fence, hydraulic fluid could be leaking and cause a real mess. Again, I'm just, and the other issue that I've got a concern about is this notice went out several weeks ago but the construction didn't stop so what I don't want the town counsel to feel, you know, a real problem with the fact that the tennis courts been built, there's been a lot of money spent and I feel badly but, you know, I would not go forward and spending that kind of money if there are still issues

pending for permits. That's all.

MS. GANN: Thank you. Anyone else here for the public hearing?

MR. MORRIS: My name is Todd Morris, I live at 1018 Forest Glen. I own the property that's adjacent to the tennis court. I own the actual tree line that he's speaking of in the photos or the map here. My concern is that like the other gentlemen have said there are no tennis courts or fences of this nature in the neighborhood and I'm just, I'm not certain as to the actual appearance of what's going to happen to the neighborhood when it's finished. I don't know when the initial public hearings began or the permits were filed for this but I do know when I was out of town for 2 1/2 weeks, I came home and it was already under construction and it was early June if I'm not mistaken. I had not heard anything or received any notice until the resent notice for this public hearing. My wife and I called the town regarding the requirements of permits for tennis courts in the Town of New Windsor and was told I'll get back to you because the clerk did not know. She called my wife back and said there was no permit or anything required so I'm just a little concerned that there's some issues with the height of fencing and other fencing in general and the lack of any information that the town has for their part, if they spend a lot of money to put this in at this point are there issues with the town not having proper knowledge or codes for permits for these sorts of things? If so, I feel badly for him, I know he spent a lot of money on what's been done so far, it's been most of the work but if he filed for permits, I think someone should of notified them up front for what he was in store for.

MS. GANN: Thank you. Anyone else here for the public hearing? Seeing that there's not, we'll close the public portion and ask Myra how many mailings we had.

MS. MASON: On August 28, we mailed out 48 addressed envelopes and had no response.

MS. GANN: Mike, in regards to permits and things I'm assuming that that happened?

MR. BABCOCK: Yeah, he does not need a permit for the tennis court, he's allowed to have one there. And he's here tonight for the fence because it's higher than 4 foot in the front yard.

MR. TORPEY: It's in the front yard, it's a corner lot?

MR. BABCOCK: Well, we consider it a front yard because it's a corner lot.

MR. LUNDSTROM: Madam Chairwoman, if I might, one other question the first gentleman that spoke in the public hearing referred to the property across the street as airport tarmac, can I get some clarification on that, sir?

MR. UREN: All I'm saying as of today they have already poured the concrete.

MR. LUNDSTROM: Across the street?

MR. UREN: For the tennis courts. I'm trying to sell the house and I have a parking lot across the street and now we're going to have an 8 foot long chain link fence. I understand there's going to be vegetation eventually, I'm talking about selling my house right now and I'm talking about my life savings.

MR. LUNDSTROM: So the, what you refer to as the airport tarmac was actually what the applicant has as a tennis court?

MR. UREN: Yes, sir.

MR. LUNDSTROM: Okay, that was not clear from what your comments were, okay.

MS. GANN: Just curious when you started construction on the property.

MR. MAZZA: When I applied for the permits was it May or June?

MR. ZALOGA: It was June.

MR. MAZZA: It's a phase, we did the front, I put up a picket fence in the front, three foot picket fence and stone walkway and we worked our way around and we started grading the court area and took a while because we ran into rock ledge that if you see a picture we tried to chop out and we couldn't so we had to shift things and just weather and rain just caused delays and the paver.

MS. GANN: Now, the vegetation you're looking to build, I'm sorry, to plant, will that raise above this 8 foot fence?

MR. MAZZA: Yeah, my intention is not to make it look like a playground or anything else, try to make it as none, you know, there's elevation changes in the neighborhood so as you go further down up Forest Glen towards Brown's Pond the elevation changes so yes, you're always going to be able to see over the fence but so I was planning to plant 6 foot, 8 foot blue spruces and, you know, as much as I could up to the easement. And the courts going to be typical green color, even the side areas are going to be green, it's going to be monolithic green color and again my intention wasn't to ruin the neighborhood, it was to enhance what was there which was an open field with no vegetation, just grass really nothing to do there just--

MS. GANN: Any other comments?

MR. LUNDSTROM: One question to the building inspector, Mike, if this were a 6 foot or 4 foot fence would there be a need for a variance?

MR. BABCOCK: A 4 foot, no, a 6 foot, yes, 6 foot in the front yard.

MR. LUNDSTROM: You said you do have a 4 foot fence around other portions of the property?

MR. MAZZA: It's a three foot fence.

MR. BABCOCK: It's more of a decorative fence.

MR. MAZZA: The area of the fence will be here, what I was told is that the front line, the building line which is the corner of my garage entrance to the imaginary line that runs parallel to Forest Glen the front line of the building that's the front yard so basically this is the area here where the, I'm applying for the variance. So it's 4 feet and then when it goes passed the building line it's actually 6 feet and just going another two feet there so it's this area here where the variance is needed.

MR. LUNDSTROM: If by some chance you were to plant the vegetation there would that do any benefit to holding back tennis balls?

MR. MAZZA: Yes but I'm not able to plant anything because of the easement, well, that whole section around the perimeter I can plant all the vegetation, I'd rather plant that, you know.

MR. LUNDSTROM: But the area where you're showing the trees?

MR. MAZZA: This area here on my property line is an easement and I'm not allowed to plant trees.

MR. LUNDSTROM: But the other trees that you're showing are on the neighbor's property?

MR. MAZZA: Yeah, they're on the neighbor's property, they're in the picture there.

MS. GANN: Any other comments?

MR. LUNDSTROM: One comment I think two items in this one comment number one this board did send out letters to 48 neighbors and only 3 neighbors were interested enough to show up. This is not something that surprises us because this happens quite often. The apathy of the general public speaks volumes and many times that's very unfortunate. The second item that comes to my attention and I think deserves some comment is one of the people that spoke at this public hearing was very passionate about it and indicated and implied that if this board did not vote the way he would like us to vote there may be some lawsuits filed. To answer that let me say this that no matter what decision this board makes there's always the possibility that the people that do not like the decision that's being made can file a lawsuit. If we vote against it the applicant has the right to file a lawsuit. If we vote for it any of the three people that were here have the right to file a lawsuit against it, so that particular item is moot, that has really no need to be said, that has no bearing on this particular situation. And unfortunately again what that does is it kind of taints part of the comments that were said. With everything, Madam Chairman, again since there's only three members of the board here, I think we need to offer the same thing to this applicant that we have offered to the other ones that if one of the members here votes no the application will be turned down unless you'd like to request an adjournment to when there's more members of

the board present.

MR. MAZZA: I'd like to request an adjournment.

MR. LUNDSTROM: With that in mind I will move that this board grant an adjournment again for the same period as the previous one. You did get comments from the public that the members of the board would have the minutes with the comments of all the public that spoke prior to that meeting.

MR. KRIEGER: So your motion is to table this application till October 22?

MR. LUNDSTROM: Yes.

MS. GANN: Just so you know this meeting will take place on September 24.

MR. MAZZA: I thought he said October 22.

MS. MASON: No, that was for the other applicant.

MS. GANN: September 24, just make note of that and we'll reconvene then, okay?

MR. TORPEY: I'll second it.

ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

PETER_MC_LOUGHLIN_(07-36)

MS. GANN: Request for interpretation and/or use variance for existing single family dwelling with proposed addition and three kitchens at 502 Union Avenue.

MR. MC LOUGHLIN: Peter McLoughlin, 502 Union Avenue. When I discussed this in the preliminary I discussed it looks a little much like three kitchens, what it is is my main kitchen I'm in and then my second kitchen downstairs is a country kitchen which was the title was transferred to me back in '94 without ever having a permit so when Lou came to finalize my addition which has a sink in it and he says he called this a third kitchen and he, the reason for the sink is for the licensed daycare, my wife can't leave the children on one end and bring them to the other end of the house. So she has to have that sink. I have no intentions of putting in nor is there a dedicated line coming out of the wall right there, there's not a space for a stove, it is certainly, I don't even even want three kitchens, but the second one downstairs is a country kitchen which was existing which he was able to transfer title to me without that C.O. so I have to get that done now and I don't really want to rip it apart, it's a hardship with the tile, I don't want to rip it apart so for me to redo that downstairs and then the upstairs is just like I said a sink and the pictures show that.

MS. GANN: So, Mike, the daycare sink are we characterizing that as a kitchen just has a sink in it, is that it?

MR. BABCOCK: That's what we did, he's here for the second one and then all of a sudden there's the third sink, you know, and you could have a kitchen with a microwave and whatever, he has no intention of doing that, we believe he does not have any intention of doing that, but he's here, we want to make sure it's

clear and gets clear for the record while he's here.
There's no stove, there's no line, there's no gas line.

MR. MC LOUGHLIN: I have an upgraded service, I'd be willing, you mentioned a caveat, I have no problem with that, put that in as far as stove, future stove because that's just not my intention.

MR. KRIEGER: No refrigerator, no microwave?

MR. MC LOUGHLIN: There's a refrigerator, what's going to happen if my wife stops, I'm going to put in my bar that I always wanted in the house and probably going to put a bar downstairs there, I'd like a breakfast bar, I can't even put out beer signs, it's going to have to be like a breakfast nook.

MR. KRIEGER: Refrigerator suitable for that but not household size refrigerator?

MR. MC LOUGHLIN: No, it's going to go underneath the bar if I do it.

MR. KRIEGER: Other than that there would be no stove, no microwave?

MR. MC LOUGHLIN: Absolutely no stove there, all it is is my wife what she did was she served, there's a table right there in the corner she served the kids from that sink and she washed their hands there. So she, you can't leave in Orange County licensing you can't leave the children to go across and wash their hands across the house, so when I put the addition I put a small sink in.

MR. LUNDSTROM: If I may ask a question of the building inspector, Mike, that third kitchen which is now in the addition which is part of the daycare, is it proper to consider that a kitchen or can that be considered utility room since there's no stove there?

MR. BABCOCK: Yeah, that's why he's here tonight.

MR. LUNDSTROM: Could that be an interpretation that that would be a utility room therefore we'd still need an interpretation that two kitchens is acceptable in that house?

MR. BABCOCK: That's correct.

MR. LUNDSTROM: So we're not looking for a variance for three kitchens in that house.

MR. BABCOCK: That's fine.

MR. KRIEGER: Two kitchens and an interpretation and it's a single family house, is purchased as a single family house?

MR. MC LOUGHLIN: Yes, sir.

MR. KRIEGER: Sold as a single family house, always been maintained as a single-family house?

MR. MC LOUGHLIN: Absolutely, everybody here knows the house, everybody, it's right across, it's got the hedges and the stone pillars.

MS. GANN: It's a very nice home.

MR. MC LOUGHLIN: People seem to know it.

MR. KRIEGER: It's a very nice single family home.

MR. MC LOUGHLIN: Yes, I got your drift at the preliminary.

MS. GANN: And your daughter is adorable, she's in this picture. Just a quick question, resale for doctor's office, that seems to be one of the notes here, are you

selling it to a doctor?

MR. MC LOUGHLIN: I took it off, I can't sell it, the price I had it priced 30,000 less and so it's not a good time to sell.

MS. GANN: No longer on the market, you're staying there?

MR. MC LOUGHLIN: Absolutely, we're staying there. Suzanne said you have to market along Union Avenue, we tried to market it for, there's a few things like that, there's an artist's shop, there's--

MR. BABCOCK: Chiropractor.

MR. MC LOUGHLIN: We tried to market it and nothing.

MS. GANN: Any other questions from the board? Is there anyone here for this public hearing?

MS. GENTRY: Yes, my name is Becky Gentry, I own the house at 5 Cimorelli Drive. And three kitchens of course got me alarmed cause I didn't know if it was three new kitchens in addition to one or what was going on. So what I'm understanding is your home has one kitchen for family use?

MR. MC LOUGHLIN: That's right.

MS. GENTRY: Then there's an extra kitchen?

MS. GANN: Ma'am, if you want to come on up we can show you the pictures.

MR. MC LOUGHLIN: Do you remember the Tapalo's (phonetic)?

MS. GENTRY: No.

MR. MC LOUGHLIN: Well, right downstairs here he put in this kitchen and he prided himself on never letting the zoning people in so he was able to transfer title to me and when Lou came to do the daycare it's an L-shaped ranch, this is an addition with the two car garage now I put in a sink and a little small refrigerator and a little T.V., you can see the little chairs here.

MS. GANN: This is not a full kitchen.

MS. GENTRY: This is not a full kitchen, this is almost a standard size refrigerator, it's not an under the counter small refrigerator.

MR. MC LOUGHLIN: No, but when he said that when the daycare goes away if we, what I'm going to do is put a wet bar with a refrigerator underneath for myself but no beer signs.

MS. GENTRY: Given that we put the sink in now and allow that down the road if someone else buys the house what's to preclude them from then since we have already got a sink there making a kitchen?

MR. MC LOUGHLIN: He made a good suggestion which I agreed with at the preliminary caveat that says I can't put in a stove and I'm perfectly agreeable with that because that's not my intention to if I sell it, I'm not going to sell it and show a person look, I have a stove, you can make an in-law apartment here, I'm going to sell it and that person who buys it if they want to be a doctor's office they're going to come before you guys and then they're going to have to ask you to do it.

MR. BABCOCK: The nice part about him being here tonight that this all goes on the record and all goes in his file.

MR. KRIEGER: The way when they talk about a caveat

legally speaking what it is is a condition and it will be written into the decision, it's a condition if the board should decide to grant the variance it would be conditioned on the fact that as he stated there's no stove or other appliance put in and that means that if somebody wants to come in and do that then they would have to go back to square one and there's no way legally that that could prevent somebody in the future nor could they foresee somebody in the future making that application, so somebody can always ask but this is how the condition becomes enforceable. And it's stated right in the decision so that's not only binding on every subsequent owner of the property the variance if it's granted goes with the property, not with the particular individual and it will be set forth as part in the decision as part of it in plain language so that people know when they acquire it that they are bound.

MS. GENTRY: So are you saying that we would call it two kitchens and a utility room?

MR. LUNDSTROM: That I think is what the board is currently talking about.

MR. KRIEGER: It's not so important what you call the third location as a limitation that you put on it, you can call it a kumquat if you want to, doesn't matter as long as the limitations are there that it can't be added to doesn't matter if you call it a kitchen, utility room or anything else, it is what it is and it can't be anymore.

MS. GENTRY: Cause that's really almost a full size refrigerator and sink there, it wouldn't take much to put a small stove in there.

MR. LUNDSTROM: If you put a stove in it becomes a kitchen.

MR. KRIEGER: That will specifically be ruled out you

can't get around that by changing its name to a utility room or to a kitchen or calling it something, I don't care what you call it, the condition will be whatever it is, you can't put a stove in there.

MS. GENTRY: Okay.

MS. GANN: So are you for or against this ma'am, just for the record?

MR. KRIEGER: Or have no opinion?

MS. GENTRY: I have an opinion, I think it opens the door for future problems and I have no problems with mother-daughter homes, it's just that and on the street where you are that's opened up to there's a chiropractor's office and wouldn't take much to turn this into whatever else and I don't happen to live as close to your house as some other people do who are trying to maintain single family homes and it's difficult.

MR. MC LOUGHLIN: I just tried to market that way and the person who, you can't market, what I tried to do like one house in but right where I am I get to market it that way, it's not different zoning but I get to have Remax write an ad a certain way because of my location whether or not I put a stove in that's up to me or Lou, if Lou comes by and catches me. The point is I'm not going to do that to the person who did that to me and afterwards they're going to have to come here, if I have market it that way, they're not going to see a stove, I'm going to say hey, you could put a stove and you know and you could put a wall up here but guess what, you might have to go before the zoning board and they'll make you pull out the kitchens downstairs because it is zoned residential and that's what would happen in the future and if you'd like to come by and see you can come by and have a cup of tea.

MS. GENTRY: No, I've seen the outside and you keep it very nicely.

MR. LUNDSTROM: One comment, ma'am, this board has granted variances before for single family homes with two kitchens, there have been some religious and ethnic reasons for that and that's something that is acceptable and I think in this case the interpretation would be that it is a house with two kitchens.

MR. KRIEGER: But that's why we went through this on the record that it will remain a single family house.

MR. MC LOUGHLIN: That's alarming but it is alarming to read but I was surprised that Lou classified it that way.

MR. LUNDSTROM: It's good that he did because it forces the issue and this way you're covered.

MS. GENTRY: All right, I don't have any further objection.

MR. MC LOUGHLIN: Thank you.

MS. GANN: So are you for or against it?

MR. KRIEGER: That's enough.

MS. GANN: All right, I'm going to close the public portion, ask Myra how many mailings we had.

MS. MASON: On August 28, I mailed out 48 addressed envelopes, had no response.

MS. GANN: I will bring it back to the board, ask if there's any additional comments or questions?

MR. LUNDSTROM: I have none, Madam Chairman.

MS. GANN: I will accept a motion.

MR. LUNDSTROM: May I ask for the counsel to draft the wording of that motion just to make sure that everything is proper and accurate.

MR. KRIEGER: That the application of Peter Mcloughlin as it appears on the zoning board agenda for September 10, 2007 be granted to the extent that two kitchens are permitted and the third location presently housing only a sink be also allowed provided that as a condition no stove or other cooking, similar cooking device is added to it.

MR. LUNDSTROM: And remain as a utility room basically.

MR. KRIEGER: Yes.

MR. LUNDSTROM: I will make that as a motion.

MR. TORPEY: I'll second it.

ROLL CALL

MR. LUNDSTROM	AYE
MR. TORPEY	AYE
MS. GANN	AYE

MICHAEL_PISACRETA_(07-36)

MS. GANN: Request for variance of existing shed, 5 foot side yard setback, 1 foot 6 inch rear yard setback and existing deck, 30 foot rear yard setback all at 44 Keats Drive.

Mr. Michael Pisacreta appeared before the board for this proposal.

MS. GANN: Please state your name and address, tell us why you're here.

MR. PISACRETA: Michael Pisacreta, address is 44 Keats Drive. I'm asking for a variance for an existing shed and existing deck in my back yard.

MS. GANN: How long has the shed been there, Mike?

MR. PISACRETA: Eight years, I guess.

MS. GANN: Was that when you originally bought the home?

MR. PISACRETA: I bought the house 10 years ago, we bought it seven, eight years ago.

MS. GANN: Received any complaints formally or formally?

MR. PISACRETA: No complaints.

MS. GANN: How close is the shed to the property line?

MR. PISACRETA: The shed is one and a half feet from my rear and five feet from the other person.

MR. BABCOCK: That's the variances that he's requesting, the shed is actually five foot from one side and eight foot six inches from the other side,

requirement of 10.

MS. GANN: What's the shed built on?

MR. PISACRETA: It's on railroad ties, I put it on cause my property is all stone, there's all rocks there, you can't dig down so I have it on railroad ties where they leveled it and I have a ramp that goes up into the shed.

MS. GANN: Is the shed similar in size and nature to other sheds in the neighborhood?

MR. PISACRETA: Yeah, same size, standard size shed.

MS. GANN: Does the shed sit on any easements that you know of?

MR. PISACRETA: No, it's on my property.

MS. GANN: And did you take any substantial vegetation down in putting the shed there?

MR. PISACRETA: No, there's all rock, that's why they put it on railroad ties.

MS. GANN: How about drainage, any issues with drainage?

MR. PISACRETA: No problems, it's elevated, my property slopes down so all the water goes down.

MS. GANN: Any other questions regarding the shed?

MR. LUNDSTROM: No.

MS. GANN: Move on to the deck now. How long has the deck been there?

MR. PISACRETA: Let's see, the deck's been there a

good, it was built after the shed, maybe 6 years I guess it's been a long time ago, I'm there 10 years.

MS. GANN: Did you get a building permit to build it?

MR. PISACRETA: Contractor who came, I forget their names, I said do you have a permit for that, he says no because it's not attached to the house, it's up against the house, I don't need a permit, that's what he told me, I know he's full of crap.

MS. GANN: Did you take any substantial vegetation down in the building of the deck?

MR. PISACRETA: No.

MS. GANN: Create any drainage issues?

MR. PISACRETA: No problems there.

MS. GANN: Is the deck similar in size to other decks in your neighborhood?

MR. PISACRETA: It's like the smallest one, it's about the same, it's only 12 x 14 feet, 12 x 12, it's not just on the ground.

MS. GANN: Does it go over any easements?

MR. PISACRETA: No, no easements, it's in my back yard.

MR. KRIEGER: Appears to be adjacent to a doorway.

MR. PISACRETA: Yeah, that's my house.

MR. KRIEGER: If the deck were not there, a person exiting the doorway would be likely to fall and sustain injury?

MR. PISACRETA: No, it's level.

MR. LUNDSTROM: If the doorway's here, the deck is here, if the deck were not there, someone walking out that door could possibly fall and sustain substantial injury?

MR. PISACRETA: Yes.

MS. GANN: Any other questions?

MR. LUNDSTROM: Since the deck was not built properly with a building permit, is it your intention to get a building permit to follow that procedure now?

MR. PISACRETA: Yes, I guess that's why I'm here, right?

MS. GANN: At this time, I'm going to open it up to the public, see if there's anybody here for the public portion of this meeting? Seeing that there's not, I'll close the public portion, ask Myra how many mailings?

MS. MASON: On August 28, I mailed out 51 addressed envelopes, had no response.

MS. GANN: If there's no further questions, I'll accept a motion.

MR. LUNDSTROM: Madam Chairwoman, I will offer a motion that the two applications by Mr. Michael Pisacreta, one for an existing shed and the other for existing deck as documented on the agenda for the Zoning Board of Appeals dated September 10, 2007 that those both variances be approved.

MR. TORPEY: I'll second it.

ROLL CALL

MR. LUNDSTROM AYE

September 10, 2007

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MR. TORPEY AYE
MS. GANN AYE

MS. MASON: Just read that over, tells you what to do next.

MS. GANN: You're all set, thank you. Motion to adjourn.

MR. LUNDSTROM: So moved.

MR. TORPEY: Second it.

ROLL CALL

MR. LUNDSTROM AYE
MR. TORPEY AYE
MS. GANN AYE

Respectfully Submitted By:

Frances Roth
Stenographer