

TOWN OF NEW WINDSOR

ZONING BOARD

August 27, 2012

MEMBERS PRESENT: HENRY SCHEIBLE, ACTING CHAIRMAN  
RICHARD HAMEL  
FRANCIS BEDETTI

ALSO PRESENT: GEOFFREY CHANIN, ESQ.  
ZONING BOARD ATTORNEY

NICOLE PELESHUCK  
ZONING BOARD SECRETARY

ABSENT: PATRICK TORPEY  
MICHAEL KANE

MEETING AGENDA:

1. Stacklum
2. Riley
3. Docuware
4. Trade Automotive
5. Xcel Development
6. Damon Ruta
7. Doretta Lupinacci

**REGULAR MEETING:**

MR. SCHEIBLE: I would like to open up the Zoning Board of Appeals meeting for August 27, 2012.

PRELIMINARY MEETINGS:

THOMAS & ZILLAH STACKLUM (12-30)

MR. SCHEIBLE: First on our agenda this evening is Thomas and Zillah Stacklum. Sir, please state your name and address for this young lady over here loud and clear.

MR. STACKLUM: Thomas Stacklum, 21 Birchwood Drive, New Windsor, New York 12553

MR. SCHEIBLE: Mr. Stacklum, if you'd like to tell us what you're here for this evening.

MR. CHANIN: Speak so the people in the audience can hear you as well, be nice and loud.

MR. STACKLUM: We're taking our old deck off and we're going to put a new one on and it will be screened in with a roof. And I'm a little short on the property line distance of four feet and I'd like to get a variance of five feet to proceed. That's it.

MR. SCHEIBLE: We'll just want to read a couple of stipulations that go with this application. Have you removed any trees or substantial vegetation?

MR. STACKLUM: No.

MR. SCHEIBLE: To do this project?

MR. STACKLUM: No.

MR. SCHEIBLE: Would you not build on top or nor will it interfere with any easements or right-of-ways including but not limited to water, sewer or electric easements?

MR. STACKLUM: No.

MR. SCHEIBLE: The applicant yourself will not create the ponding of or collection of water or divert the flow of water drainage?

MR. STACKLUM: No.

MR. SCHEIBLE: With this porch the house itself will be similar in size and nature to other houses in your neighborhood?

MR. STACKLUM: Yes.

MR. SCHEIBLE: The project with the porch, the house will not appear to project substantially closer to the adjacent roadway than the house, that is houses contiguous to it or our houses in the neighborhood?

MR. STACKLUM: No.

MR. SCHEIBLE: There have been no complaints either formal or informal about the porch? In other words, anyone around your neighborhood make any problems?

MR. STACKLUM: No.

MR. SCHEIBLE: Okay, sir. I'd like to open up questions from our board?

MR. BEDETTI: This is a new construction, you have an old deck?

MR. STACKLUM: There's an old deck on there.

MR. BEDETTI: Currently?

MR. STACKLUM: Yes.

MR. BEDETTI: This one's going to have a roof, will the roof project higher than the house?

MR. STACKLUM: No, it will be tied into the existing roof.

MR. BEDETTI: Okay, I'm good.

MR. SCHEIBLE: Any other questions?

MR. HAMEL: No.

MR. CHANIN: How close does the existing deck extend to the rear property line? Is it within the 50 feet?

MR. STACKLUM: I believe so, yes.

MR. CHANIN: So the new deck, the new enclosed porch would be closer to the property line than the existing deck?

MR. STACKLUM: Yes.

MR. CHANIN: And your variance is five feet because it's 45 feet away?

MR. STACKLUM: Yes.

MR. CHANIN: Does the old deck connect to the house?

MR. STACKLUM: Yes.

MR. CHANIN: And the new one, that will be accessed through sliding doors or something similar to that?

MR. STACKLUM: Yes, french doors.

MR. CHANIN: Does the old deck presently give people who are exiting the house through the sliding doors a safe place to stand?

MR. STACKLUM: There's no sliding doors, just an existing single door.

MR. CHANIN: Regular door?

MR. STACKLUM: Yes.

MR. CHANIN: If you remove the old deck, will it be necessary to replace it with the new screened-in porch so the people exiting will have someplace safe to stand?

MR. STACKLUM: Yes.

MR. CHANIN: How far off the ground is the level of door sill at the bottom?

MR. STACKLUM: Three feet.

MR. CHANIN: So this is going to be three feet off the ground so somebody exiting the house doesn't go down three feet, is that correct?

MR. STACKLUM: Correct.

MR. CHANIN: Do any other board members have any questions based on my questions?

MR. SCHEIBLE: Just a followup on that. When you built this deck that's presently there, was there a permit issued to build this deck?

MR. STACKLUM: Yes.

MR. SCHEIBLE: That's on record?

MR. STACKLUM: I believe so, yes.

MRS. PELESHUCK: Yes, it is.

MR. SCHEIBLE: Very good. Are there any other questions? If there are no more questions, we'll continue this with a public hearing on what date would that be?

MR. CHANIN: You need a motion.

MR. SCHEIBLE: Motion.

MR. BEDETTI: I'll make a motion we schedule a public hearing for Thomas and Zillah Stacklum for a proposed rear yard porch and a variance of five feet at 21 Birchwood Drive in an R-4 zone.

MR. HAMEL: I'll second it.

ROLL CALL

MR. BEDETTI        AYE

MR. HAMEL         AYE

MR. SCHEIBLE      AYE

MRS. PELESHUCK: You're scheduled for a public hearing, you have to come in and follow those instructions for me and you'll be placed on the next meeting, okay?

MR. STACKLUM: Okay, thank you.

THOMAS & DENA BETH RILEY (12-33)

MR. SCHEIBLE: Next on this evening's agenda is Thomas and Dena Riley. Anyone present? No one present, we'll continue on to the next.

DOCUWARE (12-34)

MR. SCHEIBLE: Next on this evening's agenda is Docuware, if I said that right?

MR. SCHLOEMER: You did.

MR. SCHEIBLE: It's a variance required for an additional facade sign 1.5' by 8' located at 4 London Avenue in an API zone. Sir, could you state your name and address?

MR. SCHLOEMER: Certainly, my name is Gregory Schloemer and I work with the company Docuware. We're a software company, we distribute product throughout the world. This is the U.S. operation, we're headquartered now officially 4 Crotty Lane, they have since renamed London Avenue to Crotty Lane. However, our request very simply is for an additional sign to be located on the west side of the building facing down towards the airport. It would be a similar sign as the one that exists on the now west side of the building and the intent very simply is we'd like to just in the evening have a lit sign that our visitors would be able to see coming up the hill from the airport. We sell our software through re-sellers and we bring to the area over a thousand nights of visitors. It's very interesting because all of our re-sellers go through training for the software so they spend initially a week with us and then they come back every year for an additional two nights. So we're very good customers with Homewood Suites and with the Stewart Airport organization. And we very simply are asking to have an additional sign put on the building for visibility purposes. It's a fairly rural area, there are no other, you know, buildings, there's an office building in front of us and we're located on top of the Orange County Accelerator if you're familiar with that facility.

MR. SCHEIBLE: I'm looking at the other side, I mean, is this superimposed on this?

MR. SCHLOEMER: Correct, I actually have a physical sign, you can see the actual, if you're interested that one's on the, again, the west side and we're proposing an identical sign on the east side.

MR. SCHEIBLE: And I assume that this sign that you're asking for is identical?

MR. SCHLOEMER: Yes, identical.

MR. SCHEIBLE: It's going to be the same exact size as the one that you have on the opposing side there?

MR. SCHLOEMER: Yes.

MR. HAMEL: So both signs would be lit?

MR. SCHLOEMER: In the evening, yes.

MR. SCHEIBLE: Non-flashing?

MR. SCHLOEMER: Yes, single stroke neon.

MR. SCHEIBLE: Internally?

MR. SCHLOEMER: Yes, enclosed, yes.

MR. SCHEIBLE: The sign does or will not interfere with the safe operation of motor vehicles on the adjacent roadway?

MR. SCHLOEMER: It will not interfere.

MR. SCHEIBLE: That's all I need to know. Are there any questions? I'd like to open it up to the board.

MR. BEDETTI: Yes. Your offices are on the second floor, is that correct?

MR. SCHLOEMER: Correct.

MR. SCHEIBLE: What's in the lower floor?

MR. SCHLOEMER: The Orange County Accelerator.

MR. SCHEIBLE: Okay. Are there any signs stating the Accelerator?

MR. SCHLOEMER: Yes, there's a large, yeah, we didn't photograph that but there's a large orange over the front of the building, I don't know how large it is.

MR. SCHEIBLE: Says Orange County IDA?

MR. SCHLOEMER: Says Orange County Business Accelerator, quite honestly. So, I mean, in that sense we're relatively very small footprint with our Docuware

sign.

MR. SCHEIBLE: Are there anymore questions from the board?

MR. BEDETTI: How many entrances do you have to your--

MRS. PELESHUCK: It doesn't matter, it's a shared building with more than one sign on it so it doesn't matter.

MR. BEDETTI: And he's on the second floor anyway so yeah, okay.

MRS. PELESHUCK: Sorry, I had to, we went over that.

MR. BEDETTI: Yeah, once we determined that he's on the second floor, okay. No, I'm good.

MR. HAMEL: I'm good.

MR. CHANIN: Is it the correct pronunciation of your name?

MR. SCHLOEMER: Schloemer, yes.

MR. CHANIN: Can you please tell us what your official title in connection with Docuware is?

MR. SCHLOEMER: I'm the president of the U.S. operation of Docuware Corporation. And again, Docuware is worldwide, there are six different Docuware companies throughout the world and we sell document management software.

MR. CHANIN: I want you to understand the purpose for my question and the purpose for my putting this on the record for the benefit of the board is that Docuware is a company?

MR. SCHLOEMER: Correct.

MR. CHANIN: And you're happily a human being and so you're speaking on behalf of a company?

MR. SCHLOEMER: Correct.

MR. CHANIN: I want to know that you have the corporate authority to present this application and if your title is president then by law you do have that authority. I

just want you to know why I asked you that question.

MR. SCHLOEMER: Okay, thank you.

MR. CHANIN: And you said that the sign that you're proposing is going to be identical in size and shape and in the nature of its lighting to the sign that exists?

MR. SCHLOEMER: Correct.

MR. CHANIN: And the reason the variance is needed is because under the code only one such facade sign is allowed and you're asking for a second one so the variance specifically is to grant permission for a second sign?

MR. SCHLOEMER: Correct.

MR. SCHEIBLE: Any other questions? At this point in time I'd like to say that we'll set you up for a public hearing for--

MR. CHANIN: Ask for a motion.

MR. BEDETTI: I'll make a motion we schedule a public hearing for Docuware for an additional facade sign to be located at 4 London Avenue in an API zone.

MR. HAMEL: I'll second it.

ROLL CALL

MR. BEDETTI        AYE  
MR. HAMEL           AYE  
MR. SCHEIBLE       AYE

MR. SCHLOEMER: Thank you very much.

## PUBLIC HEARINGS

## TRADE AUTOMOTIVE - ART GLYNN (12-28)

MR. SCHEIBLE: Next on our agenda we have a series of public hearings. But I would just like to make a note of it since there are three members here this evening so in order to have a public hearing go through a vote and if you don't have the entire board which is three this evening voting for you you will not be passed. So what I'm trying to tell you is if you want to pass it on to the next public hearing, it's up to you. At this point in time I'd just like to pass that message along, am I right or wrong?

MR. CHANIN: You're absolutely correct. And the way that the procedure for a public hearing is conducted is that the applicant's invited to come up to the front of the room, very similar to the preliminary meeting and describe the application, answer any questions that the board members may have. And after that, if when the public hearing is actually opened, if anybody is present in the audience and wishes to make a comment about the application either in favor or opposed or neutral then that's the purpose of having the public hearing. That's why the town pays taxpayer dollars to publish notices in the newspaper and post them on the bulletin board because this is very much a public participatory kind of process. So the risk you're taking if after you make your presentation is that you must get a unanimous vote of all three people present. If you want to wait a couple weeks until the next board meeting when there might be more board members present then obviously you would only need three out of however many board members are present, what according to Los Vegas gives you better odds. But if you want to go forward tonight and you have confidence that you can anticipate three favorable votes tonight then you can choose to do that. It's up to you. So as each applicant is called up, you can make your presentation, we can open the public hearing and then you can tell us if you want to go forward tonight or adjourn to another week.

MR. SCHEIBLE: Understood? Fine. First on our agenda under public hearings would be the Trade Automotive represented by Art Glynn. The maximum size for a fence to project closer to the road than the existing building is four feet. A variance is needed for an existing six foot chain link fence. The variance will

be two foot difference in height located at 221 Walsh Avenue in a P zone.

MR. GLYNN: The only thing I couldn't bring you you asked for an extra picture, I could not get it to print. I know it's in a folder in my office nice and neat by my secretary, I don't have that.

MR. SCHEIBLE: Shame on you.

MR. CHANIN: Do you want to tell us very briefly again why you're here for a variance?

MRS. PELESHUCK: So the public could hear it.

MR. GLYNN: I'm here because this is a fence that was put up 43 years ago required by the town so the building can be built but they wanted the fence put up first. When I went to refinance there's no C.O. on the fence which is existing 43 years because it's a six foot high fence and a four foot allowable so I'm requesting a variance for my existing six foot fence.

MR. CHANIN: And 43 years ago did somebody else own the property?

MR. GLYNN: Yes.

MR. CHANIN: So you bought it this way?

MR. GLYNN: From the guy who put the fence up.

MR. CHANIN: So it is him and how long ago did you buy the property?

MR. GLYNN: Almost 25 years.

MR. CHANIN: So you know for a fact that it's been there for the last 25 years and as best as you can believe it was there 18 years before that?

MR. GLYNN: Yes, I have pictures.

MR. CHANIN: And the variance is required, my understanding, you guys correct me if I'm wrong, but my understanding is that the variance you're seeking is required not because the fence is too high but because it projects closer to the road than the building? No?

MRS. PELESHUCK: Four foot is only allowed in the

front, if you want to go higher than that you need a variance.

MR. CHANIN: So you need a two foot variance for the height of the fence?

MRS. PELESHUCK: Right, and because it's passed the building.

MR. CHANIN: So you need two variances then?

MRS. PELESHUCK: No, just the one, you're only allowed four feet in the front.

MR. CHANIN: For the height, correct?

MRS. PELESHUCK: Correct.

MR. CHANIN: Has nothing to do with the way it's, how close it is to the road?

MRS. PELESHUCK: That's the way it's written in the code.

MR. CHANIN: So we're talking about the height?

MR. GLYNN: Correct.

MR. SCHEIBLE: The side section is six feet?

MR. GLYNN: Yes, it was six foot perimeter fence that they put up.

MR. SCHEIBLE: Totally around?

MR. GLYNN: Yes.

MR. CHANIN: In the rear also?

MR. GLYNN: Yes, the rear's, most of it's down, just on the sides and the front.

MR. SCHEIBLE: And you're in an area where there aren't homes that would be affected by this?

MR. GLYNN: No, it's a real mixed use, Clegg Brothers is down there, it's just a real mixed use, Federal Block.

MR. CHANIN: So to the best of your knowledge,

particularly within the last 25 years you have not taken down any vegetation or done any work to trees or anything, any natural growth in connection with this fence?

MR. GLYNN: Absolutely not.

MR. CHANIN: Is it also true that in the past 25 years at a minimum the fence hasn't caused any ponding or erosion or other trouble with the soil or with the landscape?

MR. GLYNN: No, definitely not.

MR. CHANIN: To the best of your knowledge over the last 25 years, the fence has not intruded upon some other land right of some other person, such as an easement or a right-of-way?

MR. GLYNN: No.

MR. CHANIN: Of course if it did, it would be yours by adverse possession by now anyway. But to the best of your knowledge, that has not happened?

MR. GLYNN: No.

MR. CHANIN: And the fence for the last 25 years has not presented a hazard to pedestrians or vehicles or obstructed anybody's line of sight?

MR. GLYNN: No.

MR. CHANIN: Have you received any complaints from people who are angry or upset at you because of the nature of this fence over the last 25 years?

MR. GLYNN: No.

MR. SCHEIBLE: We're talking about a fence height here, I have one question, is it directly on the line?

MRS. PELESHUCK: On his property.

MR. GLYNN: On my property.

MR. SCHEIBLE: Directly on the property line?

MR. GLYNN: Yes.

MR. SCHEIBLE: So say maintenance such as weed whacking or anything like that, are you taking care of both sides of the line?

MR. GLYNN: Well, in the front it's paved on both sides.

MR. SCHEIBLE: It's paved on both sides?

MR. GLYNN: Yeah, in the front.

MR. SCHEIBLE: Completely around?

MR. GLYNN: On the side, both sides I weed whack where it's against Clegg but in the front it's paved on both sides.

MR. SCHEIBLE: Okay, gentlemen, any other questions?

MR. BEDETTI: I just have a question. The fact that you have autos there I assume those autos belong to someone else?

MR. GLYNN: Both, they're mine for sale and for customers, yes.

MR. BEDETTI: That fence provides some security?

MR. GLYNN: Absolutely, we lock it at night, it has a rolling gate so--

MR. BEDETTI: I assume that this 40 year old fence is in reasonably good condition?

MR. GLYNN: Forty-three, yeah.

MR. BEDETTI: I'm good.

MR. SCHEIBLE: Any other questions?

MR. CHANIN: Does the fence have any separate individual lighting or is it lit by virtue of the lighting?

MR. GLYNN: No, just what's on the building.

MR. SCHEIBLE: No other questions from the board at this time, I'd like to open it up to the public, if there's anyone here who has anything to say, please step forward. No one?

MR. CHANIN: Close the public hearing and ask Nicole about the mailings.

MR. SCHEIBLE: Close the public hearing and Nicole how many mailings?

MRS. PELESHUCK: On the 14th day of August, 2012, we mailed out 51 addressed envelopes and I received no written responses back.

MR. CHANIN: Now, Mr. Glynn, at this point, you're facing the horns of the dilemma I described at the outset, which is that it's completely up to you, you can ask this board to vote tonight. If you do then in order to be granted the variance, you need all three to say yes. You don't have to take that risk if you don't want to, you can ask that this hearing be conducted at some other meeting of the board.

MR. GLYNN: I'm a risk taker.

MR. CHANIN: Then we need a motion.

MR. BEDETTI: I'll make a motion that we grant the variance to Trade Automotive for a two foot height variance for an existing fence located at 221 Walsh Avenue in a P zone.

MRS. PELESHUCK: It's PI.

MR. BEDETTI: PI zone.

MR. HAMEL: Second it.

ROLL CALL

MR. BEDETTI        AYE

MR. HAMEL         AYE

MR. SCHEIBLE      AYE

MRS. PELESHUCK: I'll call you with your permit.

MR. GLYNN: Thanks a lot. Have a good night.

EXCEL DEVELOPMENT - CHRIS KIRWAN (12-29)

MR. SCHEIBLE: Next on this evening's agenda for a public hearing is the Excel Development/Chris Kirwan. An existing house will need a variance for the front yard depth. The subdivision approval has a front yard depth of 35 feet. The existing depth is 25.9, a variance of 9.1 is required located at 43 Briarwood Lane in an R-3 zone.

MR. CHANIN: Mr. Kirwan, good evening, as you did at the preliminary meeting and for the benefit of the public, you may wish to have a comment during the public hearing portion of tonight's meeting, please again quickly describe your application.

MR. KIRWAN: Basically, it's a new construction house at Briarwood subdivision. And I need a front setback variance of 9.1 feet.

MR. CHANIN: It's an existing house?

MR. KIRWAN: Yes.

MR. CHANIN: When was it built?

MR. KIRWAN: This year, started last year completed a month ago.

MR. CHANIN: And with respect to the building of the house in connection with the dimensions of the front yard, did you have to undertake any additional removal of trees or other vegetation other than as has been approved for the construction of the house?

MR. KIRWAN: I had to remove some trees to construct the house but I tried to preserve as many trees as I could. I tried to maintain a buffer zone with the existing property in the rear yard and I, the neighbor to the left is all the way over on their right side yard so I had to move the house all the way over to the right of my property in an attempt to maintain a buffer between the neighbor and this home.

MR. CHANIN: Let me ask you a question that may or may not as the saying goes put a fine point on it. Your application is for a variance concerning the front yard depth because the front yard depth is 9.1 feet short of what the code requires?

MR. KIRWAN: Correct.

MR. CHANIN: With respect to the front yard depth, specifically with respect to that, did you remove trees or other vegetation, not including what you may have had to remove in connection with the construction of the house?

MR. KIRWAN: No, that lot was very rocky and it got substantially rockier as you went up. So there wasn't a significant amount of trees removed in the beginning because it's on rock. But the back I tried to preserve, you can see through the pictures there's 25 year old trees in there and I tried to keep them.

MR. CHANIN: But that's in the back?

MR. KIRWAN: And the side as well.

MR. CHANIN: I'm specifically asking you about the front?

MR. KIRWAN: The front, you know, we took a few out but it was a little sparse, it wasn't heavily vegetated.

MR. CHANIN: And did you to take out a few in the front specifically because the front yard depth did not meet code or because it was necessary to take them out in the building of the house?

MR. KIRWAN: Correct, in the building of the house.

MR. CHANIN: You didn't remove vegetation in connection with the application of this variance?

MR. KIRWAN: Not at all. I'm sorry, I misunderstood.

MR. CHANIN: That's okay, I'm going to ask you the same question specifically in connection with the front yard depth with respect to whether or not you did any work that would create ponding, erosion or other damage to the soil or the landscape?

MR. KIRWAN: Not at all.

MR. CHANIN: And in the construction of the house specifically with respect to the front yard depth, did you transgress or encroach upon anybody's easements, right-of-ways or other rights in the lane?

MR. KIRWAN: No, sir.

MR. SCHEIBLE: You did receive a permit to build the house?

MR. KIRWAN: Yes.

MR. SCHEIBLE: That was at what--

MR. KIRWAN: Probably September last year but the banks being what they are I got the permit and it probably took until December to get the mortgages finally approved. Everything is just dragging on that you can't believe with the current market.

MR. SCHEIBLE: When had you had this house under construction?

MR. KIRWAN: It was wintertime.

MR. SCHEIBLE: At what point in time did you realize that you were out of your--

MR. KIRWAN: Not until I went for the final survey which was in July I believe.

MRS. PELESHUCK: A month.

MR. KIRWAN: Then it showed up.

MR. CHANIN: And you went for that final survey because it was required in order for you to get a Certificate of Occupancy?

MR. KIRWAN: Yes.

MR. CHANIN: For the Certificate of Occupancy and what else?

MR. KIRWAN: The lender requires a final survey.

MR. CHANIN: And your bank.

MR. KIRWAN: Yeah, exactly.

MR. CHANIN: That's why you're here?

MR. KIRWAN: Yes, that's why I'm here.

MR. SCHEIBLE: Any other questions from the board?

MR. BEDETTI: Yeah, I have one question relative to the closeness to the road. Is your house the only one that's as close to the road or essentially that doesn't meet the code, the other ones are all within the code?

MR. KIRWAN: Yes, sir.

MR. BEDETTI: You know, the fact that the house is built now, that's, just wondering how, apparently when you built the house, it deviated somewhat from your original plan?

MR. KIRWAN: Well, we encountered severe site conditions so the house is pretty much where it has to be without removing a significant amount of trees in the back or bringing in substantial, I guess you can't blast, I'd have to bring in hammers and whatnot.

MR. BEDETTI: I guess what I'm really alluding to is the fact somewhere along the lines these plans were presented either to the building, planning board or building department and I would assume that those plans met code when you submitted them?

MR. KIRWAN: Yes, sir.

MR. BEDETTI: But due to circumstances that you ran into while you built the house you had to deviate somewhat from the--

MR. KIRWAN: Precisely.

MR. CHANIN: Mr. Kirwan, you were in the room when Mr. Schloemer came up here earlier?

MR. KIRWAN: Yes.

MR. CHANIN: And you remember I asked him what his corporate title was?

MR. KIRWAN: Yes, yes.

MR. CHANIN: Who is the owner of this house, Chris Kirwan or Excel Development?

MR. KIRWAN: Excel Development.

MR. CHANIN: Excel Development is a commercial or business entity?

MR. KIRWAN: Yes, my corporation.

MR. CHANIN: And you are an officer of that corporation?

MR. KIRWAN: I'm president of that corporation.

MR. CHANIN: That's what I wanted to know.

MR. KIRWAN: Okay.

MR. SCHEIBLE: Which is your, you also built all the neighboring houses also, correct, Chris?

MR. KIRWAN: Yes, I'm doing, I guess we have about 15 or 17 done, another 20 to go so--

MR. CHANIN: Is the difference of 9.1 feet front yard depth which is the difference for which you're requesting this variance, does that difference, that shortfall in your opinion make your property different in nature, character or appearance from the other properties in the neighborhood?

MR. KIRWAN: Not at all, sir, no.

MR. CHANIN: What's the basis, since you built the other houses I assume you're familiar with them?

MR. KIRWAN: Yeah, all the houses are generally in the same price range of the same quality and this particular house sits on a radius, it sits directly on the turn so there are no corners to this lot.

MR. CHANIN: And has anybody that you know of told you that they would have an objection or some sort of a harm suffered or in their opinion or in their value if this variance were granted?

MR. KIRWAN: No, sir, no.

MR. BEDETTI: Is it the garage that projects closer to the road?

MR. KIRWAN: Exactly, not the house, just the garage.

MR. BEDETTI: Was the garage, I assume that was part of your original plan?

MR. KIRWAN: Yes, it was.

MR. BEDETTI: It wasn't something that you added after the fact?

MR. KIRWAN: No, it was what was submitted.

MR. BEDETTI: I'm good then, thank you.

MR. KIRWAN: Okay.

MR. HAMEL: I see on the engineering drawing that it says that there's all solid rock in the back here?

MR. KIRWAN: Yes, I mean, one foot behind where the existing foundation is is solid rock pretty much, the house is where it has to go on that lot, blame God on that one.

MR. SCHEIBLE: Any other questions from the board?

MR. BEDETTI: No.

MR. SCHEIBLE: At this time, I'd like to open it to the public hearing. Anyone that's here who has anything, any questions to be answered, please step forward, state your name and address.

MR. HIPPLE: James Hipple, currently 55 Mt. Airy Road in Windsor, New York, hopefully 43 Briarwood Lane and my wife, Blanca.

MR. SCHEIBLE: Okay.

MR. CHANIN: I take it from your introduction that you are the potential purchasers of this house?

MR. HIPPLE: Yes.

MR. CHANIN: You'd like to make a public comment loud enough for everybody in the audience and our stenographer to hear?

MR. HIPPLE: My wife and I have moved to New Windsor approximately two years ago, we have fallen in love with the town. We'd like to continue to set our roots in this community. If you grant the variance, we'll move in as quickly as possible. We love the house, Chris has done fantastic work and we'll make great neighbors in your community.

MR. CHANIN: So you're recommending that the board grant the variance?

MR. HIPPLE: I'd like to, yes, sir.

MR. CHANIN: Thank you.

MR. SCHEIBLE: Would you like to, again, I'd like to state since this is a public hearing that there must be, there are three voting members here this evening and if all three members do not vote to pass this then it will be refused at this point in time. So I'm leaving it to Mr. Kirwan.

MR. KIRWAN: Officer Hipple and his bride are desperate to move in so I have to take a chance here, leave it up to you good people.

MR. CHANIN: Is the public hearing closed? Are there no other public comments? Okay, then the public hearing is closed and unless there are other board questions, we need a motion.

MRS. PELESHUCK: Hold on. On the 14th day of August, 2012, I mailed out 19 addressed envelopes and received no written response back.

MR. CHANIN: Then now we need a motion.

MR. SCHEIBLE: Now we need a motion.

MR. HAMEL: I'll make a motion that we grant Excel Development the variance as requested.

MR. BEDETTI: I'll second that.

ROLL CALL

MR. BEDETTI        AYE  
MR. HAMEL         AYE  
MR. SCHEIBLE      AYE

MR. CHANIN: Our best wishes to Mr. and Mrs. Hipple.

MR. SCHEIBLE: Welcome to New Windsor.

MR. HIPPLE: Thank you very much.

MR. KIRWAN: Thank you very much.

DAMON RUTA (12-31)

MR. SCHEIBLE: Next on this evening's agenda is Damon Ruta. Such accessory building shall be set back 10 feet for any property line. The existing eight foot by eight foot shed is 7.5 feet from the side property line. A variance of 2.5 feet is required located at 108 Glendale Drive in an R-4 zone. Mr. Ruta, state your name and address.

MR. RUTA: Damon Ruta, 108 Glendale Drive, New Windsor, New York 12553. Good evening, ladies and gentlemen.

MR. CHANIN: Good evening, speak loud enough for the public to hear you.

MR. SCHEIBLE: I'd like to hear your proposal.

MR. RUTA: I'm seeking a variance to the code of 10 foot clearance as my property line, you have to be 10 feet off the property line so basically, I have to put the shed in the middle of the yard, it's out of the way where it is. It replaced a shed that was there originally that was delapidated, that was I guess original with the house and I just seek to get the clearance for the 2 1/2 feet that's required off the property line.

MR. CHANIN: Now, Mr. Ruta, you said that there's a shed there when you acquired the property?

MR. RUTA: Yes, there was.

MR. CHANIN: When did you acquire the property?

MR. RUTA: In 1991, I believe.

MR. CHANIN: And did you replace that shed?

MR. RUTA: Yes, I did.

MR. CHANIN: When did you replace the shed?

MR. RUTA: That was approximately five years ago in the fall.

MR. CHANIN: That would be in approximately 2007?

MR. RUTA: Yes.

MR. CHANIN: And when you put up the new shed, did you get the approval of the town for that?

MR. RUTA: No, I didn't. I was under the assumption that I bought the house with the shed that was there that was just replacing the one that was there.

MR. CHANIN: That's why you're here?

MR. RUTA: That's why I'm here.

MR. CHANIN: What do you use the shed for?

MR. RUTA: Stores garden and lawn equipment, tools.

MR. CHANIN: Is that what you used the previous shed for?

MR. RUTA: Correct, and also previous shed had wood in it too.

MR. CHANIN: And you put the new shed where the old shed was?

MR. RUTA: Yes, I did.

MR. CHANIN: Is the new shed approximately the same size?

MR. RUTA: It's actually smaller.

MR. CHANIN: Have you in erecting the new shed did you substantially cut down any trees or other vegetation?

MR. RUTA: No foliage was harmed.

MR. CHANIN: When you put up the new shed, did that create ponding or erosion or harm to the soil or landscaping?

MR. RUTA: No.

MR. CHANIN: When you put up the new shed, did you encroach on right-of-ways, easements or other property rights?

MR. RUTA: No, I did not.

MR. CHANIN: Have you gotten complaints from the neighbors about the shed?

MR. RUTA: Not at all.

MR. CHANIN: Does the new shed in conjunction with your property and home, did the new shed change the nature of your home or your property compared to other surrounding properties?

MR. RUTA: No, it did not, no.

MR. CHANIN: Are there other sheds in the neighborhood?

MR. RUTA: Yes.

MR. CHANIN: Similar in size and function and size?

MR. RUTA: Similar in function, some are larger or the same size.

MR. CHANIN: As neighborhood sheds go, this is among the smaller?

MR. RUTA: Standard size, yeah, compared to the guy next door, yeah.

MR. CHANIN: You're on.

MR. SCHEIBLE: Gentlemen, any questions?

MR. BEDETTI: So this shed is really an improvement over what was there?

MR. RUTA: Yes, the original shed was dilapidated and falling down.

MR. BEDETTI: You didn't have any complaints?

MR. RUTA: I did not.

MR. CHANIN: How far away from the house is this?

MR. RUTA: Probably 2 1/2 feet away from the house as well.

MR. BEDETTI: I'm good.

MR. SCHEIBLE: In case of any emergencies, there's still room to, I see there's a fence so that's also your fence right behind the shed?

MR. RUTA: Correct.

MR. SCHEIBLE: Alright, so in case there was a fire emergency that fence can be knocked down?

MR. RUTA: Oh, absolutely.

MR. SCHEIBLE: Because the way it looks right here I don't know about the other side of the house that you don't have access to the rear of the house for emergency purposes.

MR. RUTA: On the other side of the house the driveway comes down to the back of the house, yes.

MR. SCHEIBLE: Alright, any other questions from the board?

MR. HAMEL: No.

MR. SCHEIBLE: At this point in time I'd like to open it to the public. Is there anyone here who'd like to step forward and give me your ideas? No one? Okay.

MRS. PELESHUCK: On the 14th day of August, 2012, we mailed out 66 addressed envelopes with no written response.

MR. SCHEIBLE: I'd like to close the public hearing. Is there a motion from the floor?

MR. CHANIN: Before we make the motion, we're going to ask Mr. Ruta and extend to him the same courtesy that we did to the others. You've heard the speech twice already, there's only three board members present so if you think you're going to get a unanimous vote you can go forward tonight. But it's your choice if you want to postpone that to another meeting when more board members are present.

MR. RUTA: Let's roll the dice, it's beautiful out.

MR. BEDETTI: Make a motion we grant a 2 1/2 foot variance for the side property line to Damon Ruta for an existing eight foot shed located at 108 Glendale Avenue in an R-4 zone.

MR. HAMEL: I'll second it.

ROLL CALL

MR. BEDETTI        AYE

MR. HAMEL         AYE

MR. SCHEIBLE      AYE

MS. PELESHUCK: Here's your next steps, I'll call you when your permit's ready.

MR. RUTA: Thank you very much.

DORETTA LUPINACCI (12-32)

MR. SCHEIBLE: Next on this evening's agenda, if I have a problem with the last name, forgive me, Doretta Lupinacci?

MRS. LUPINACCI: Perfect, thank you.

MR. SCHEIBLE: You have an existing lot that does not meet minimum lot width of 175 foot, a variance of 27.5 feet is required to build a one-family dwelling located at 315 Lake Road in an R-1 zone.

MRS. LUPINACCI: Thank you.

MR. SCHEIBLE: Please state your name and address.

MRS. LUPINACCI: Doretta Lupinacci, 116 Short Road in Airmont, New York 10952.

MR. CHANIN: So you live in Airmont and you own this property at 315 Lake Road in New Windsor and is it correct that it's your intention to build on this vacant lot?

MRS. LUPINACCI: My intention is to sell the piece of property.

MR. CHANIN: Improved or unimproved?

MRS. LUPINACCI: Unimproved.

MR. CHANIN: Just as is you want to sell it but you want to sell it with this variance because then the person to whom you sell it would be able to build on it?

MRS. LUPINACCI: Right, correct.

MR. CHANIN: Ostensibly, the person you'd sell would be intending to build a residence on it?

MRS. LUPINACCI: Correct.

MR. CHANIN: But you need the variance because it doesn't meet the code by 27 1/2 feet?

MRS. LUPINACCI: Yes.

MRS. PELESHUCK: This was previously approved twice and

due to circumstances the variance expired.

MR. CHANIN: When were those prior approvals, do you know, Miss Lupinacci, when you were previously approved?

MRS. LUPINACCI: One was recent as in 2010.

MR. CHANIN: And there was one before that?

MRS. LUPINACCI: Correct.

MR. CHANIN: The reason it expired is because you weren't able to find a buyer?

MRS. LUPINACCI: Actually, my husband passed away in the middle of this, the whole project fell through the cracks, obviously, we're just picking, getting it back, we're getting it back on our feet and we'd like to, you know--

MR. SCHEIBLE: So you're looking for re-approval, come right down to it?

MRS. LUPINACCI: Correct, yes.

MR. SCHEIBLE: You're looking for a re-approval?

MRS. LUPINACCI: It was my husband's intention--

MR. SCHEIBLE: Only because this one overran its--

MRS. PELESHUCK: Without a proper building permit.

MRS. LUPINACCI: Correct, and he was literally in the middle of doing this when he passed away. So I'm picking up the ball and I'm trying to finish this project that he started.

MR. SCHEIBLE: When was, I have a question here, you have 98.1 and 98.2, at one point in time were they one lot?

MRS. LUPINACCI: When we bought it in I think it was 1986, it was one lot and then my husband had it subdivided and one property was subsequently, we actually had the same situation, it was, the property was purchased, the owner, the new owner of the property put a house on it, the house was subsequently purchased and--

MR. CHANIN: When did you subdivide, do you remember?

MRS. PELESHUCK: I'll tell you, August 17, 2006.

MRS. LUPINACCI: Thank you.

MR. CHANIN: And when it was subdivided after August of 2006, that's when you sold 98.2?

MRS. LUPINACCI: Yes, correct.

MR. CHANIN: And the new owners that you sold that new lot to put a house on it?

MRS. LUPINACCI: Right, we did not do the building, we sold the lot and then the new owners put the building on it, the home on it.

MR. CHANIN: Basically, you want to do the same thing now to the remaining lot?

MRS. LUPINACCI: Yes.

MR. CHANIN: Are you actively marketing it?

MRS. LUPINACCI: Yes.

MR. CHANIN: You have listed it?

MRS. LUPINACCI: Yes.

MRS. PELESHUCK: This is actually the house that was built next door.

MR. SCHEIBLE: I was just going to ask that.

MRS. PELESHUCK: We did ask her for pictures and that's what she brought in.

MR. CHANIN: We have, just for the record, the board has a photocopy of a page from the multiple listing service that illustrates the house that was built on 98.2 which is the lot next door that you subdivided in 2006.

MRS. LUPINACCI: Correct.

MR. SCHEIBLE: Is this house occupied at the present time?

MRS. LUPINACCI: Yes.

MR. SCHEIBLE: The one that was built next to it?

MRS. LUPINACCI: Yes.

MR. CHANIN: The address of the property next door is 309 Lake Road, I have it here.

MRS. LUPINACCI: Yes, yes.

MR. SCHEIBLE: Are there any questions from the board?

MR. HAMEL: Yes. The house that's built next to the lot in question, what's the length of that house, do you have any idea?

MR. DI GIOVANI: It's 147.5, I own that house next door, 147.5 feet.

MR. CHANIN: Come on up here.

MRS. PELESHUCK: We need your name.

MR. DI GIOVANI: Sorry?

MR. CHANIN: Your name?

MR. DI GIOVANI: Matt DiGiovani.

MR. CHANIN: Let the record reflect that Matthew DiGiovani he's the owner of 98.2 and you're the owner of 309 Lake Road, which is the house that's now built on the parcel that was subdivided by Miss Lupinacci back in 2006 and you're telling us it's how long?

MR. DI GIOVANI: It's 147.5, I have the documents to show, I believe you have the same thing.

MR. HAMEL: What's the length of the house?

MR. DI GIOVANI: My house is 50 feet long.

MR. CHANIN: Mrs. Lupinacci, you don't object that Mr. DiGiovani is providing the board with this information, do you?

MRS. LUPINACCI: No, not at all.

MR. CHANIN: Do any of the board members have any other questions or comments before the public hearing is opened?

MR. SCHEIBLE: Now this house was built maybe Mr. DiGiovani was built what year?

MR. DI GIOVANI: My house was built, I've been in the house for a year, so about a year and a half ago I want to say.

MR. SCHEIBLE: So all the permits were granted, you know, not just--

MR. DI GIOVANI: I bought it from K. G. Mountain Corporation.

MRS. PELESHUCK: Yes, all the permits, all the C.O.s they're all in place for this house.

MR. CHANIN: Does your lot meet the minimum lot width requirement?

MR. DI GIOVANI: I don't know the answer to that.

MRS. PELESHUCK: No.

MR. CHANIN: Did your lot get a variance?

MR. DI GIOVANI: It had to in order to be built, I want to say I have 147.5 myself and Miss Lupinacci's lot has 147.5 so I can only assume my builder who built my house applied for a variance.

MR. CHANIN: And did Miss Lupinacci apply for the variance that now attaches to Mr. DiGiovani's house?

MRS. LUPINACCI: No.

MR. CHANIN: Who applied for that?

MRS. PELESHUCK: The person that bought it in '06.

MR. CHANIN: You weren't the purchaser in '06? You have only been there for the last year and a half.

MR. DI GIOVANI: Right, we closed on the 28th of July last year.

MR. CHANIN: Any other questions or comments from the

board before the public hearing?

MR. HAMEL: What's the lot in the middle, is this a landlocked piece?

MR. SCHEIBLE: Number 97.

MR. CHANIN: Miss Lupinacci, your lot is bordered on the south by Mr. DiGiovani's lot and on the north there is a big open space in the middle, what's on that space on the opposite side of your lot?

MRS. LUPINACCI: Honestly--

MRS. PELESHUCK: Can I help her? In between a couple of lots up the road from 98.1 there's an access road it's called Vidi Drive and it's a cul-de-sac so provides for all of those homes in there.

MR. CHANIN: Is there anything developed in the middle?

MRS. PELESHUCK: I'm not sure, I don't know if there's a house there.

MR. CHANIN: Mr. DiGiovani, do you know?

MR. DI GIOVANI: I'm sorry, I have it right here.

MR. CHANIN: Let's say you look out your window and you look at Miss Lupinacci's lot and then you look passed Miss Lupinacci's lot because there's nothing there right now and you see the lot next to that, is there anything there?

MR. DI GIOVANI: I see, yes, where 109 is?

MR. CHANIN: Lot 97.

MR. DI GIOVANI: No, I don't see that.

MR. CHANIN: That's an empty lot?

MR. DI GIOVANI: I do not know the answer to that question, sir.

MR. CHANIN: Do you know?

MRS. LUPINACCI: No.

MRS. PELESHUCK: She's not from around here.

MR. GEARY: Excuse me, can I say something?

MR. CHANIN: Give us your name and speak loud enough for everyone to hear you.

MR. GEARY: Shamus Geary, I live on Lake Road and I think what you're saying is next door to this vacant lot actually another house.

MRS. PELESHUCK: Let me show you where they mean.

MR. GEARY: If I understand your question.

MRS. PELESHUCK: This is this lot we're talking about this one that's in the cul-de-sac.

MR. GEARY: I haven't been in Vidi Drive in here but I know there's a house right next door to this lot that's set on Lake Road.

MRS. PELESHUCK: 109 there's a house.

MR. GEARY: 108 I would imagine there's a house but there's houses in Vidi because I've seen mailboxes on, I'm not sure who actually owns it.

MR. CHANIN: What's the answer to the question?

MRS. PELESHUCK: We don't know yet. There is a house on 97.

MR. CHANIN: Ma'am, what's your name, please? So unfortunately, Mr. Hamel, at the moment I don't think we have an accurate answer.

MRS. PELESHUCK: There is a house on 97.

MR. CHANIN: Alright, and Mr. DiGiovani or Miss Lupinacci, if you know, is the house on, is your house Mr. DiGiovani comparable to other houses in the neighborhood in size and shape?

MR. DI GIOVANI: My house is 2,250 square feet. The house across the street to my left as probably 3,000 or more, the house directly, yes.

MRS. PELESHUCK: Similar in size?

MR. DI GIOVANI: Yes.

MR. SCHEIBLE: And the house on 97?

MR. DI GIOVANI: Well--

MR. SCHEIBLE: That a larger house is what I'm saying because it's a large lot, that's why I'm asking you have almost six acres here.

MR. CHANIN: Ma'am, would you come up here, please? Good evening, could you please tell us your name?

MS. KUENNEKE: Gertrude Kuenneke.

MR. CHANIN: Miss Kuenneke, how large is your house?

MS. KUENNEKE: I'm a widow, I don't know how large.

MS. JONZA: It's a large house, it's not small, it's a three bedroom.

MR. CHANIN: Are you familiar with Mr. DiGiovani's house? Have you ever seen his house?

MS. JONZA: I've seen his, his house is a bi-level.

MR. CHANIN: Is that right?

MR. DI GIOVANI: Yes.

MR. CHANIN: How would you compare in size Miss Kuenneke's house with Mr. DiGiovani's house? Don't have to be exactly the same.

MRS. PELESHUCK: We need your name please.

MS. JONZA: My name is Linda Jonza.

MR. CHANIN: How would you compare Miss Kuenneke's house to Mr. DiGiovani's house?

MS. JONZA: Her house is one level with the basement but it has the same amount of I would say area space as his but his is a bi-level so his is taller.

MR. CHANIN: Mr. Hamel, does that help you?

MR. HAMEL: Yeah, I just wanted to know what was in here because it looked like it was landlocked. I wasn't sure but now I see there's a road here.

MRS. PELESHUCK: The dash is Vidi.

MR. CHANIN: I'd appreciate it if you'd just stay where you are for the moment.

MRS. PELESHUCK: Do you see number 97, they thought that was landlocked.

MR. BEDETTI: No, my colleague over there said he thought the property was landlocked.

MRS. PELESHUCK: Correct, number 97 he thought was landlocked, that has nothing to do with the application.

MR. CHANIN: That's correct. Do any other board members have any other questions of either Miss Lupinacci or any of the other people who gave us this preliminary information before we open the public hearing?

MR. BEDETTI: The public hearing's not open?

MRS. PELESHUCK: No.

MR. BEDETTI: No, I'm good.

MR. SCHEIBLE: There's no more questions from the board at the moment?

MR. CHANIN: Now we can open it up.

MR. SCHEIBLE: Now I'd like to open the Doretta Lupinacci lot variance, open to the public. Is there anyone here who would like to have anything further to say? I'll say it that way.

MR. JONZA: Hi, I'm Paul Jonza, J-O-N-Z-A, I live on Vidi Drive, 38 Vidi Drive. I live directly behind the two new houses that they put up, the one and the other.

MR. CHANIN: Are you related to Linda Jonza?

MR. JONZA: Yes, I am, I'm her husband.

MR. CHANIN: You heard what Linda and what Miss Kuenneke and what Mr. Geary and what Mr. DiGiovani and Miss Lupinacci have said so far?

MR. JONZA: So far, yes.

MR. CHANIN: Do you have any disagreement or quarrel with anything that they have said?

MR. JONZA: Not yet, no.

MR. CHANIN: To reiterate what the chairman has just said, does anybody who's standing here right now, do you have any comments to make positive, negative, neutral or otherwise about this application? Anybody?

MR. JONZA: Since this house was built at the top of the road I live directly behind it.

MR. SCHEIBLE: You're lot 100?

MR. JONZA: I have to look, I don't know offhand right now.

MR. SCHEIBLE: I'll just show the gentleman just so you know here's the one we're talking about and this is--

MR. JONZA: This is my lot right here, 57.1, that's me right here, lot 102, 5.1 acres, yeah, that's me.

MR. CHANIN: What's your comment, sir?

MR. JONZA: My comment is since that house was built and the vegetation was taken down at the top of the hill my basement is starting to get flooded now. Now the water comes down and it starts to flood in my basement and we had said something about water at a previous hearing.

MRS. PELESHUCK: I have a question for you. This is the house that Mr. DiGiovani lives in, since this house is built you're having flooding on your property?

MR. JONZA: Yes, their waste lines come out the back on the hill, we live down the bottom of the hill, his waste line is coming out here, plus with all the vegetation that was taken on the top it proves that the water is not holding up on top of the road and it's starting to come down Vidi Drive in excess.

MRS. PELESHUCK: Just wanted to make sure we were all on the same page.

MR. BEDETTI: I didn't see from his description where does the drainage exit on here?

MRS. PELESHUCK: This is the house that was built, he's saying it drains like this.

MR. BEDETTI: Got it.

MRS. PELESHUCK: Did you ever make any complaints to the Town of New Windsor Building Department about this?

MR. JONZA: Not as of yet, cause I was still ascertaining where the water's coming from. We just had a downpour earlier and I looked out my window and it got flooded. So I told my daughters run downstairs and put you the dehumidifier on, that's my only thing when it comes in it starts coming in hard. I have to go down there with the Shop Vac so I get nervous when it happens.

MR. SCHEIBLE: We've had a considerable amount of rain lately, is this the first time this year?

MR. JONZA: No, it happened twice last year.

MR. SCHEIBLE: I will reiterate what our secretary just said. You never approached the town?

MR. JONZA: I had no faith in the town because I've been to these board meetings before and it's just never transpired that I can get any help because we tried to stop the building in that area because everybody in our road has 5.1 acres, five point acres and everybody is comfortable. There's a lot of vegetation to take on any kind of rain but when you start putting houses on top of us the water's coming down the back of the hills now and it's getting bad.

MRS. PELESHUCK: Your next thing is to go to the building department and fill out a complaint form if it happens again. That's different than these meetings.

MR. SCHEIBLE: And take pictures.

MR. CHANIN: And if you have it inspected or looked at by an engineer or somebody who's--

MRS. PELESHUCK: The town engineer would then come out to determine where it was coming from.

MR. CHANIN: But if you have somebody.

MR. JONZA: I'm here. What am I here for now?

MR. CHANIN: If you have somebody on your own look at it and they prepare a report for you, you should provide a copy of that report to the town so they can compare their findings to your findings. Now the answer to your question is as follows. When somebody wants to do something with their property, they have to comply with the Town Code. If they comply with the Town Code and if the town approves their building plans then they get the necessary permits and approvals but if what they're proposing to do by definition does not comply with the requirements of the Town Code, it doesn't mean they're completely out of the box. It means they can come to the Zoning Board of Appeals. That's what that word appeals means. They can come to the Zoning Board of Appeals and ask for something which is called a variance, which is what it says it is, it's a variance from the requirements of the Town Code. And when a Zoning Board of Appeals in the Town of New Windsor or in every single town in the State of New York every single town all over the state, zoning boards of appeals use the same standards, it's state law, not local law, state law about whether or not they should grant a variance from the local requirements or not. And all those questions you hear us asking when we have an applicant come forward are to test whether or not an application satisfies those requirements in state law. Does it change the nature of the neighborhood? Does it have a negative impact on land or soil or water? Does it and so forth and so on, you've heard all those questions. So those questions are asked in order to give this board enough information to make a decision under state law whether or not somebody should be granted a variance to do something on their property which normally would be prohibited by the Town Code. And the specific reason why you and your neighbors are here tonight is because part of that legal process is to hold what's called a public hearing and give people an opportunity to make public comments so the board can make that decision, that's why you're here tonight and you did.

MR. JONZA: You see what I'm saying though by taking what is it 27 acres here and that's 50 acres of trees and stuff and there's also red tail hawks that make their nests back there, I've seen a small hawk in there, a yearling hawk back in that area. So if that house gets built, there's another thing that could be pushed out of there.

MR. CHANIN: This gets a little complicated but I will try to not make it complicated. There is a, what's called a hierarchy or chain of command or a ladder or an organization that's set forth in state law. At the top of the ladder is the town board. The town board passes the Town Code. Below the town board is the planning board. So if somebody wants to do something with their property, they have to submit a site plan to the town building inspector and to the planning board to get approval. And only if what that person is proposing is in violation of the Town Code are they sent here to get a variance which I described previously. So it's the three levels, the town board, the planning board and the zoning board. The reason I tell you that is to answer Mr. Jonza's question, when there may be an impact on soil, on water, on rare species and by the way, just for your information, it also applies to impacts that affect human beings, the economy, society, that falls under a set of rules which is a state law which some of you may or may not have heard of and the name of the state law is called SEQRA, S-E-Q-R-A, which stands for State Environmental Quality Review. Now, under SEQRA, those questions about whether or not there's going to be an impact on water or soil or species or the economy or something else like that. Those questions in the Town of New Windsor are answered by either the town board itself in conjunction with the town master plan and town policies or with respect to specific applicants by the planning board. They are the people who make those decisions with respect to environmental impacts, not the zoning board. So it's valid for any of you to bring that up, it's valid for any of you to make mention of those concerns because this is a public hearing and you're entitled to mention them. But just be aware that if there's an issue that arises with respect to species or water or soil or air quality or any of those things that we think about when we think about the environment those questions are not specifically answered by this board. They are answered by the town board and by the planning board.

MRS. PELESHUCK: And I can tell you with this subdivision that went to the planning board those questions and answers have been answered and they are in the file at the building department for review.

MR. CHANIN: When Nicole says they're in the file, that means they are a matter of public record, anybody can

go there and look at them, they're published, they're not in any way safeguarded or kept out of the public.

MR. DI GIOVANI: My question is very simple. My plan that was, in all respect to Mr. Jonza, Mrs. Jonza, my building and drainage, everything was to code and looked at correct and approved, correct?

MR. CHANIN: Mr. DiGiovani, I appreciate your comment and your question and it certainly is of interest to you and your neighbors and to the town. But that's something for you to discuss with the Jonzas and with the town. And I'm not trying to preclude you from bringing it up but the reason why we're here tonight is because Miss Lupinacci has tried to participate in a public hearing which she needs in order to get her variance. So that's a legitimate question and I encourage you to get the answer for it and I always encourage people to try to work cooperatively so Mr. and Mrs. Jonza seem like very nice people.

MR. DI GIOVANI: They're wonderful people.

MR. CHANIN: But let's try to stick tonight to Mrs. Lupinacci's application for a variance.

MR. GEARY: My application--

MR. CHANIN: That's Mr. Geary, for the record.

MR. GEARY: I'm a resident on the street, I got no notice of this town meeting or anything but I heard through the neighbors this was going on. I wasn't aware, I live off Lake Road and when Mr. DiGiovani's house is here, I guess being built, we got no notice then it looked like it was just one lot that was being sold, looked like a 2 1/2 acre lot which is pretty consistent with other lots being on sale currently on Lake Road. So I was surprised when actually it was sold as a split lot. I think if I was at that variance meeting I would have objected to the 27 feet for the width because that's quite a big variance building a house, I would be obviously objecting to this house as well being built because again, a variance of 27 1/2 feet I would have to question the kind of house or the kind of property that you would ultimately would be built in that space. Obviously, I'm also hearing other concerned citizens here regarding drainage, et cetera, as a resident of Lake Road, I would be concerned about the value of my property. If, you know, depending on

the size of the house that is being built across the street from me, there's plans to build at that stage it was half million dollar homes, I doubt they're half million dollar homes now but sitting on 2.1 acres of certain size it just seems out of character for Lake Road that these houses would be built and again no disrespect to Mr. DiGiovani, he bought the house, I'm sure.

MR. DI GIOVANI: None taken.

MR. GEARY: But it would just I feel and speaking for any, to my neighbors, it would ultimately devalue our property. I moved here five years ago under the assumption that there was a certain lot size, a certain standard of house going to be built on Lake Road, again, no disrespect to Mr. DiGiovani, he bought his house, a great neighbor.

MR. DI GIOVANI: This is all news to me.

MR. GEARY: But I feel that this would ultimately devalue my property in an already devaluated property.

MS. KUENNEKE: Me too.

MR. CHANIN: Mrs. Kuenneke, do you have a comment?

MS. KUENNEKE: Yeah, it affects me too and my house and right where my property ends the lady's starts where they're building it all comes down, the septic comes down.

MR. CHANIN: What do you want to tell this board about that?

MS. KUENNEKE: I don't know, I'm not so good.

MR. GEARY: Would it impact your resale value if you were to sell your home, would this impact your resale value?

MS. KUENNEKE: Yeah, I think so.

MR. SCHEIBLE: We don't really get into this, this was already once approved and I'm sure back in those days everybody received a letter that there was going to be a public hearing considering this. Did any one of you show up at that public hearing?

MR. GEARY: I received no letter to the previous.

MR. SCHEIBLE: How far away do you live from this?

MR. GEARY: Couple hundred feet.

MRS. PELESHUCK: You live more than 500 feet, what we're required is within 500 feet of the property.

MR. GEARY: Still I think anything within 1,000 feet would affect my property.

MRS. PELESHUCK: I'm just telling you what the Town Code is.

MR. GEARY: I'm sure there's a standard for that.

MRS. PELESHUCK: It's 500 feet.

MR. GEARY: I'm saying I probably live outside the 500 feet but it's on Lake Road, it impacts the value of my property.

MR. CHANIN: Just be aware that the system is far from perfect and the manner which is required to give people notice is defined in law which is either defined in the Town Code or state law.

MR. GEARY: I don't want to interrupt.

MR. CHANIN: Comment is valid, I'm just giving you and the neighbors some information and the town must, and this board is required to follow the procedures set out by law and they do so, they publish notices in the newspaper and notices on the bulletin board and send out letters. Now if you're going to tell me that there are people who may be impacted by a decision who simply don't get notice either because they miss the tiny little fine print ad in the back of the newspaper or they live a couple feet beyond the radius of people who are supposed to get notice, I'm not going to disagree with you, you're absolutely right.

MR. GEARY: I'm not debating notice.

MR. CHANIN: I'm validating what you're saying, I'm agreeing with you that there may be people who have a concern who fall between the cracks and don't get notice, I'm agreeing with you. But we're glad that the board is, that all of you are here tonight because the

purpose of tonight's meeting is to have a public hearing and your comments are welcome so even if you may have missed it last time we're glad you're here making these comments tonight.

MR. SCHEIBLE: When she one wants to come in and build on this lot they have to go before the engineer of the town, the zoning of the town, the building inspector of the town and they have to have a proper setbacks so far as footage is concerned, you know. Now, maybe the house that he wants to build is a big long house, as long as his house meets all of the requirements there's very little that can be done at that point in time because that has already been a pre-approved lot, am I correct?

MR. CHANIN: You're correct. By necessity, when this original lot was divided in half now there's an old saying in the law which is quite valid and the old saying is is that the law hates waste which means when it comes to property and land use that unless it's unavoidable the law seeks to provide a way for people to make beneficial use of their property, doesn't mean automatically that all applications for variances get approved. They're not always automatically approved. It doesn't matter that it doesn't mean that people who submit site plans and building proposals and blueprints to the town automatically get approved, they don't, very often they're required to change them and sometimes they're disapproved. But the purpose of tonight's hearing is for this board to have the opportunity to hear your comments and then make a decision on Mrs. Lupinacci's application for a variance. Your comments are welcomed. The final decision is going to be up to the board. I just want all of you to have the context of why we're here tonight again.

MR. GEARY: Again, I think a variance probably represents 50 percent deficiency here, 27 1/2 feet, you know, is quite significant. Again, I would voice my disapproval against it and, you know, obviously as a resident and a member of New Windsor town I would be against it and I think I'm hearing other people that live close by you're against it as well.

MR. JONZA: What's the Town Law on exact property? I want to hear the exact property figure, if I want to build a house, how much property do I need in this town?

MR. CHANIN: Depends on the size of the lot, the size and shape of the house, there are lots of rules and requirements.

MR. JONZA: There's no standard, two acres?

MR. CHANIN: For example, even if you had enough, big enough lot, it's also necessary for certain building applications to be provided to the County Planning Department so the Health Department can determine that the septic system is not too close to the water supply and so forth and so on.

MR. JONZA: That's definitely a concern of ours too because if the water's running out the back of the hill where is it going? That's another element.

MR. CHANIN: Well, in an R-1 zone, what's the lot acreage?

MRS. PELESHUCK: It's 80,000 square feet.

MR. CHANIN: So 80,000 square feet is the answer to your question. In order to build a single family residence on a lot in an R-1 zone in the Town of New Windsor, the minimum lot size is 80,000 square feet unless the applicant is granted a variance.

MRS. PELESHUCK: And lot number one, the one we're talking about is 114,000 square feet, well 114,095 square feet.

MR. CHANIN: So this particular lot in terms of square footage exceeds the minimum requirement square footage for building lot for a residence.

MR. GEARY: But it doesn't meet the width so you would really have to build a long house like this which would really extend the sewer lines further back into the site.

MR. SCHEIBLE: That would all have to be approved by the building department. That's, we can only approve the lot size, we know the lot size is there, it's ample size for a house to be built on, now what kind of house, you can build a chicken coop on there, I don't care, but that's their prerogative, as long as they stay within the guidelines of the town.

MRS. PELESHUCK: And in this proposed, I want you to come and look at this to show you.

MR. GEARY: I know exactly where the lot is near.

MRS. PELESHUCK: They're proposing to build it much closer to the front than to the whole back.

MR. SCHEIBLE: So you wouldn't have that problem with the water.

MR. GEARY: Don't really seem to have the problem with the water and I don't live there.

MRS. PELESHUCK: See how close it is to the road considering all the way back here is their property as well.

MR. JONZA: It's going to be the same size as this house in the same spot.

MRS. PELESHUCK: I do not have his final survey.

MR. JONZA: It looks close.

MR. DI GIOVANI: This person has to be 40 feet, I'm 40 feet from my property line, this person's house has to be 40 feet off their property line.

MRS. PELESHUCK: You're talking about size, you guys come to the building department, we can negotiate this, this is not the place for this. I just wanted to show you that the house will be further up on the road than you're thinking in the back.

MR. DI GIOVANI: So this person would be on line with my house?

MRS. PELESHUCK: It should, depending if there's rock and like we heard earlier.

MR. GEARY: Is there a lot of rock on your side?

MR. DI GIOVANI: There's rock.

MRS. PELESHUCK: You guys can talk about this outside, I'm sorry.

MR. CHANIN: Are there any other comments of anyone present with respect to the public hearing on Miss

Lupinacci's application for a variance of 27.5 feet in minimum lot width, any other public comments on that specific question? Nicole, what about your mailings?

MRS. PELESHUCK: Miss Lupinacci can stay but the others can go and sit.

MR. CHANIN: Yeah, you guys can resume your seats.

MRS. PELESHUCK: On August 14, 2012, we mailed out 16 addressed envelopes with no written response back.

MR. CHANIN: Now, Miss Lupinacci, I want to be fair to you. Do you have anything to say in response to the comments that you heard?

MRS. LUPINACCI: The only thing I could say is that the subdivision or the subdivision, right, of the property it was legally done, there were studies done, you know, I have all the drawings and everything. So it was, they are two approved, well, they were two building lots that, you know, we now, we now have this, the lot and I would think that it would enhance.

MR. CHANIN: Back in 2006 when it was subdivided.

MRS. LUPINACCI: You know, I, you know, I'm not an engineer, my husband was an engineer but I see all the studies, all the money we spent to have this land properly evaluated, subdivided, you know, everything was done, you know.

MR. CHANIN: Based on the comments made at the public hearing, do any other board members have any other questions for Miss Lupinacci?

MR. HAMEL: No.

MR. BEDETTI: Yeah, I have one question for Miss Lupinacci and one question relative to this drawing that we have here. It looks to me like that drawing was presented maybe sometime during the subdivision, I mean, cause it talks about two proposed houses, well one already exists.

MRS. PELESHUCK: That's the subdivision map.

MR. BEDETTI: One already exists, okay, one house is no longer proposed, it in fact exists, and the other house does not exist and we don't know where it's going to

be.

MRS. PELESHUCK: I said that.

MR. BEDETTI: There's a potential that it could be here but I just want to understand.

MR. CHANIN: You're correct.

MR. BEDETTI: We're saying well this house is going to be closer to the front, closer to the back, we don't know that because it's--

MR. CHANIN: You're correct.

MRS. PELESHUCK: But the planning board approves where the proposed location is going to go, they do take that into consideration.

MR. BEDETTI: But this map represents just the proposal and it's not in fact.

MRS. PELESHUCK: I said that.

MR. CHANIN: Mr. DiGiovani's house exists but Miss Lupinacci wants to sell a vacant lot.

MR. BEDETTI: None of this piece of property that we have right now that we're going to be voting on there have been no trees or anything and it hasn't been cleared or anything, right?

MRS. LUPINACCI: No.

MR. BEDETTI: There's been no preliminary construction?

MRS. LUPINACCI: No, no.

MR. BEDETTI: So it's natural. That was the only question I had.

MR. CHANIN: Alright, and now Miss Lupinacci, you were here this evening and you heard the prior applications and the prior public hearings?

MRS. LUPINACCI: Yes.

MR. CHANIN: And you understand that we only have three board members present tonight?

MRS. LUPINACCI: Yes.

MR. CHANIN: And approval requires three so if you want the board to vote tonight you would need three votes in favor.

MRS. LUPINACCI: May I just ask a question before I answer that? What would happen if it was denied, would I start over again?

MR. CHANIN: Let's say hypothetically that the vote was two in favor and one opposed and two are absent, what happens in that circumstance is that since a minimum of three votes is required, your application would be deemed to be denied. Now, at that point, what happens is that state law kicks in and here's how state law affects that situation. Under state law, when a Zoning Board of Appeals denies an application for a variance, the applicant has two choices, one is that you have to wait six months and then you can submit the identical application. The other choice is you do not have to wait six months and you can resubmit an application but it can't be the same application, it has to be modified in some way. What state law seeks to prevent is for someone to submit an application and for whatever reason the board denies the application and then the applicant keeps submitting the same application over and over again. So the way that state law addresses that problem is to resubmit the application and hope that you will get a different vote next time but if it's an identical application, you have to wait six months. You don't have to wait the six months if you resubmit an application but it has to be different in some way, that way it's a new application and not a submittal of the old one.

MRS. LUPINACCI: Okay.

MR. CHANIN: With that information and it's completely up to you, it's entirely up to you, in the knowledge that you need a minimum of three votes out of the five members of this board, you can request that this board vote tonight and if they do, you need all three members present to vote in favor in order to get an approval or you can decline to do that and you can ask to be put on the agenda of a future board meeting which might have more board members present, which mathematically might make it more likely that you got three votes in favor and that's up to you.

MRS. LUPINACCI: Okay, thank you. And I'd like to do it tonight, okay?

MR. CHANIN: Okay, then we need a motion.

MR. SCHEIBLE: We need a motion.

MR. HAMEL: I'll make a motion that we grant Doretta Lupinacci the variance as requested.

MR. BEDETTI: I'll second that motion.

ROLL CALL

MR. BEDETTI        AYE  
MR. HAMEL           AYE  
MR. SCHEIBLE       AYE

MR. CHANIN: Your application is approved.

MRS. LUPINACCI: Thank you.

MRS. PELESHUCK: Here are the next steps.

MR. CHANIN: And now the meeting can be closed.

MRS. PELESHUCK: I'll call you with what you have to do next.

MRS. LUPINACCI: Thank you all.

MR. SCHEIBLE: This evening's meeting is now closed. Thank you for everyone showing up, we appreciate as you heard and some of the other public hearings that we had tonight we sent out so many letters and nobody shows up and thank you for showing up. Motion to adjourn?

MR. BEDETTI: So moved.

MR. HAMEL: Second it.

ROLL CALL

MR. BEDETTI        AYE  
MR. HAMEL           AYE

August 27, 2012

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MR. SCHEIBLE    AYE

Respectfully Submitted By:

Frances Roth  
Stenographer