

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
JANUARY 12, 2004

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
MICHAEL REIS
STEPHEN RIVERA
JOSEPH MINUTA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: LEN MCDONALD

MR. KANE: I'd like to call the January 12, 2004 meeting of the Zoning Board of Appeals of the Town of New Windsor to order.

APPROVAL OF MINUTES

MR. KANE: It's not on the agenda but you gentlemen have received the minutes, I'd like to have an approval of the minutes of 12/8/03 and 12/22/03.

MR. RIVERA: So moved.

MR. REIS: Second it.

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ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

PRELIMINARY MEETINGS:

MIKE CASSISI (FOR VINCENT LAWRENCE) (03-63)

Mr. Michael Cassisi, Mr. Mickey Cassisi and Mr. Vincent Lawrence appeared before the board for this proposal.

MR. KANE: Request for 7,353 ft. minimum lot area (R-4 C7) and 10 ft. rear yard setback (R-4 G7) for proposed house on Vascello Road in an R-4 zone. I would ask that you just speak loud enough so the young lady over there can hear you.

MR. MICHAEL CASSISI: I'm the applicant for the permit and along with me is the builder and also the owner of the lot.

MR. MICKEY CASSISI: You should state that the square footage may be wrong on that, I think it was added up improperly.

MR. MICHAEL CASSISI: On this sheet, which is the application for the variance, it adds up here, smaller number here, we're going for 6,000.

MR. KANE: You want to check the numbers there?

MR. BABCOCK: What numbers are you saying you have? Who wrote these numbers?

MR. MICHAEL CASSISI: They were written up by the person that sent me that.

MS. MASON: They're off the denial.

MR. BABCOCK: They're exactly the same numbers I have here.

MR. MICHAEL CASSISI: It comes up to this number which is 6,000.

for that setback and the square footage. As far as I understand it, this property was subdivided by my father, again, in the late '70s. My understanding from him was that what that property was close to at that time an acceptable building lot.

MR. KANE: Was the easement there at that time or has that come in since then?

MR. LAWRENCE: No, the easement I think has come in since that time when the sewers went in in the late '70s.

MR. KANE: And you made a, maybe not you particularly but there was an application for this in 2001?

MR. LAWRENCE: Yes, there was a potential builder that had proposed to purchase the property from me and made the application, that's correct.

MR. KANE: Okay.

MR. LAWRENCE: Do you know why that was?

MR. KANE: I don't have those notes right in front of me but before the public hearing, I will see a copy of it so I understand what went on. I just don't remember that far back, I was here but, you know, getting old.

MR. LAWRENCE: I have that problem myself.

MR. KANE: Do you know the house that you're proposing to build on the lot now, is that similar in size to the house you were trying to build back that?

MR. LAWRENCE: Yes and we measured the house and we have a plan of it here or the footprint of it and it's very similar, it's actually on the back of that document and this was--

MR. KANE: Because of the easement, Mike, no matter where they place a home on this, they would be looking for side and rear?

MR. BABCOCK: Actually, they're just looking for a rear yard lot area and rear yard.

MR. KANE: And the house width is 28 feet that you're proposing to build?

MR. BABCOCK: Yes, 28 x 48.

MR. KANE: So taking the ten would mean an 18 foot wide house which isn't really reasonable.

MR. MICKEY CASSISI: No, not really.

MR. KANE: Gentlemen, questions?

MR. MINUTA: Town water and sewer?

MR. MICKEY CASSISI: Yes.

MR. BABCOCK: Well, it's, actually, I'm not sure about the water, it's town sewer and if there's water, it would be Beaver Dam Lake water or a well.

MR. MINUTA: And the original subdivision of this when this was originally subdivided, was this divided as a flag lot or--

MR. LAWRENCE: I don't know, I was not party to that.

MR. MICKEY CASSISI: There's plenty of road frontage there, right?

MR. KANE: Yeah.

MR. MINUTA: But the square footage of the property is, what was the actual square footage, what did that come

up to be?

MR. LAWRENCE: Of the entire lot the way it is now?

MR. MINUTA: Yes.

MR. BABCOCK: It's 15,318 square foot.

MR. LAWRENCE: Thank you.

MR. MINUTA: Thank you.

MR. KANE: And this was divided back in the '70s so it's approximately 30 odd years it's been at that size?

MR. LAWRENCE: Right.

MR. MINUTA: Mike, what's the minimum required area now?

MR. BABCOCK: 21,790.

MR. MINUTA: Okay.

MR. MICKEY CASSISI: Being that it was done so long ago, would that be a pre-existing condition?

MR. KANE: No.

MR. MICKEY CASSISI: How come?

MR. KANE: The lot area itself but that doesn't mean that you could build something on there, you still have to get those particular variances. If there was a building on there right now that was back then I guess predating 1966?

MR. BABCOCK: Right.

MR. KANE: Then that building would predate to any

zoning and you would be grandfathered in. But if there's no building on that particular property while the property size is as it is, then we would have, you'd have to come get a variance for it, putting some kind of a building on there that doesn't meet the requirements or a use variance if it didn't meet the use in that particular zone.

MR. MICKEY CASSISI: So when it was subdivided originally wouldn't it be subdivided to a certain amount of specifications?

MR. KANE: After any particular changing, correct me if I'm wrong, Andy, any particular change in the zoning you have up to two years?

MR. BABCOCK: Three years.

MR. KANE: Three years after that particular zoning change to build something within there and still say that hey, you were part of the old zoning law grandfathered in for three years.

MR. LAWRENCE: I'd like to note that as other circumstances this particular house on this lot would not interfere with any other buildings in the area. It's sort of on a peninsula and so it's not going to be very close to any other structure in the area. So it would not impact any neighbor.

MR. KANE: That, we, you know, will handle all that in the public hearing, just trying to get a feel for it. Personally, my own feeling I'd like people to use the property they're paying taxes for, we want to make sure you're going within reason of what's going on in that particular neighborhood.

MR. REIS: Mike, excuse me, I feel I should disclose that I am dealing with the Cassisi family, not these two particular fellas, but members of their family,

okay, in no way would involve me to have any kind of reflection on this particular application.

MR. KANE: On a non-serious note, stand in the corner. That's fine, we still have a quorum with three. Are you going to recuse yourself or just want to acknowledge that you have dealings?

MR. REIS: Just acknowledge it. Also, Mike, do we have any other issues that we have to deal with being that we have a corner lot here?

MR. BABCOCK: No, no, it meets the corner lot setback because of the easement, they set it back, that's one of the reasons that they're going so far back, they're 40 feet off Vascello Road.

MR. KANE: Which they have to be so either way they would be five in the front, five in the back or ten.

MR. BABCOCK: Or ten in the back.

MR. KANE: So it's better off at the front of the road, I think the biggest hurdle it's about 1/3 as far as square area. Any other questions in the preliminary, any of you guys need for the public?

MR. MINUTA: Just a question, is this for resale or for your own use?

MR. LAWRENCE: This would be a joint venture with the Cassisi brothers here to build a home.

MR. KANE: To build and sell?

MR. LAWRENCE: Yes.

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: Make a motion that we set up Cassisi for their requested variances at Vascello Road for a public hearing.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. KANE: So we'll repeat this whole process again in depth in the public hearing. Everything we have to do is in the public, so in New Windsor, we do it in a preliminary so we can get an idea. All the information is right on there. Have a good evening.

NICHOLAS RONSINI, JR. (04-01)

MR. KANE: Request for 7 ft. maximum building height 48-14 A(1)(2) for proposed garage at 546 Temple Hill Road in an R-4 zone.

Mr. Nicholas Ronsini appeared before the board for this proposal.

MR. KANE: Tell us what you want to do and speak loud enough for the young lady to hear you.

MR. RONSINI: I want to build a pole barn 30 x 40 with a maximum height of 22 feet whereas I can put my land implements in there, plus my RV, my RV is 34 feet long and approximately 13 feet high and the variance would allow me to get the RV inside the building.

MR. KANE: Everything else this fits in, Mike?

MR. BABCOCK: Yes.

MR. KANE: With the height of the building on Union Avenue and Temple Hill Road, not going to be obstructing any traffic in any way?

MR. RONSINI: Oh, no, the piece of property sets approximately 500 feet off the highway.

MR. BABCOCK: If you don't stop and actually look, you won't even see this building from the road.

MR. KANE: Going to be cutting down any trees or substantial vegetation with the building of this?

MR. RONSINI: Nothing. One tree, one tree.

MR. KANE: Creating any water hazards or runoffs?

MR. RONSINI: No.

MR. RIVERA: Is there an existing barn there now?

MR. RONSINI: No.

MR. REIS: Do you have easements going through the property in that area?

MR. RONSINI: No.

MR. RONSINI: Closest neighbor is my father, if you see the sketch in the front house the building would be on my property, but it would be hidden by his house, from the highway, you couldn't even see the building.

MR. MINUTA: It says here barn to be removed.

MR. RONSINI: That was an old, when we first built up there, 1980's, I used that.

MR. KANE: This is your home right here, sir?

MR. RONSINI: Yes, sir.

MR. KANE: And where is the barn going to be in conjunction with this?

MR. RONSINI: Right over here.

MR. KANE: And your access is?

MR. RONSINI: Off Temple Hill Road.

MR. KANE: Gentlemen, do you have any further questions?

MR. MINUTA: Accept a motion?

MR. KANE: I will.

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MR. MINUTA: Propose that we request Nick Ronisini to attend a public hearing for requested 7 foot maximum building height for proposed dwelling at 546 Temple Hill Road in an R-4 zone.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

CLASSIC HOME BUILDERS (04-02)

Mr. Anthony Fayo appeared before the board for this proposal.

MR. KANE: Request for 23 ft. minimum lot width for proposed single family home (Use: R-1 5-D) at 244 Bull Road in an R-1 zone.

MR. FAYO: Anthony Fayo, Classic Home Builders. I'm looking to get a variance on the lot width so I can put a residential house on it.

MR. KANE: You need a 23 foot?

MR. FAYO: Yes, I'm 102 now.

MR. REIS: I feel it's necessary that I recuse myself from this applicant.

MR. KANE: So noted. Cutting down any trees?

MR. FAYO: Yes, probably a small handful, maybe four or five to make room for the residence.

MR. KANE: Any other substantial vegetation?

MR. FAYO: No.

MR. KANE: The important question in this area is water hazards, runoff?

MR. FAYO: There's a stream behind the property but does not go onto the property. Where is the tax map, I'll show you quick, there's the lot, it's not even on the property, it's probably like 100 foot behind the property.

MR. KANE: You're not going to direct any water towards the stream?

MR. FAYO: No, it's all pitched down that way, all pitched away from the road down so the water will naturally run that way, that's the way it's running right now.

MR. KANE: So that's going to give you 102 which is about standard on that road?

MR. FAYO: Yeah, they're all pretty much standard.

MR. KANE: Property behind you is that accessed?

MR. FAYO: It's all accessed from this guy, this guy owns it all with the road going down here, he owns this, this is what I'm told.

MR. KANE: So that lot behind you has access on a different property not through your own?

MR. FAYO: Yes, through another piece of property that he owns.

MR. KANE: Gentlemen, do you have any questions?

MR. MINUTA: Where is the house to be located?

MR. FAYO: The house is going to be located pretty much right behind the shed about 100 foot roughly off the road, not designated yet.

MR. KANE: With the building of that, you're not going to need any other variances?

MR. FAYO: I should not.

MR. KANE: Should, big word.

MR. FAYO: I would hope not.

MR. KANE: That's something that you may want to check into so that you don't have to go through this again.

MR. FAYO: I already did it with one lot.

MR. BABCOCK: It's like a 25 foot side yard setback so that's 50 feet so that gives him a house 75 feet long, I'm sure he's not doing that.

MR. FAYO: Yeah, it's 58, the house, actually.

MR. BABCOCK: So he's got plenty.

MR. KANE: Joe? Steve?

MR. MINUTA: Accept a motion?

MR. KANE: I will.

MR. MINUTA: I recommend that we request Classic Home Builders attend a public hearing for 23 foot minimum lot width for a proposed single family home at 244 Bull Road.

MR. RIVERA: Second it

ROLL CALL

MR. RIVERA	AYE
MR. REIS	ABSTAIN
MR. MINUTA	AYE
MR. KANE	AYE

MR. KANE: Now just so you know in case cause Len has been sick when you come here for this, if Michael's recusing himself, you need all three votes, okay, no room for error.

MR. FAYO: I don't think there will be any.

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MR. KANE: We'll let you know.

MR. FAYO: Thank you.

GOLDSTAR REAL ESTATE (04-03)

Mr. Joe Fontana appeared before the board for this proposal.

MR. KANE: Request for 2.7 ft. side yard setback for proposed single family home (48-12: R-1 Column F-5) at 2 Pieter's Court in an R-1 zone.

MR. FONTANA: Slight mistake, it's like a 6 acre piece of property and we're 40 feet from the setback and the excavator must of dug the hole a few feet and he went over two feet over, just one corner of it, he slipped by mistake over on the corner.

MR. KANE: Mike, to err on the side of caution here, don't you think we should make it 3 feet instead of 2.7?

MR. BABCOCK: We could do that, we have a survey showing that exact number, so that's why we wrote it exactly that way. Three foot is fine.

MR. KANE: I think I'd be a little comfortable with that knowing how banks are today if you're off an inch.

MR. BABCOCK: It's already in, this the foundation is in and when they got a foundation survey, they realized it was pushed over a little too far and they wanted to come and get the variance before they went any further.

MR. KANE: I still want to move it up to three. Putting in there was an error?

MR. FONTANA: On the excavator's part.

MR. KANE: Obviously, it would be a financial hardship?

MR. FONTANA: It would be a big financial problem for me.

MR. KANE: Creating any water hazards or runoffs with the building of this?

MR. FONTANA: No.

MR. KANE: Cutting down any trees or substantial vegetation?

MR. FONTANA: No.

MR. KANE: If the variance was granted, would it change the nature of the neighborhood with it being 2.7 feet off?

MR. FONTANA: No, I don't believe so.

MR. KANE: Gentlemen, do you have any questions?

MR. RIVERA: Accept a motion?

MR. KANE: Yes, I will.

MR. RIVERA: I move we set up Goldstar Real Estate for the public hearing for the requested three foot side yard setback for proposed single family home at 2 Pieter's Court.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

PUBLIC HEARINGS:

STEVE LONGO (03-60)

MR. KANE: Request for 19' rear yard setback for existing attached pool deck (Use G-5 Bulk Tables) at 34 Melissa Lane in an R-1 zone.

Mr. Steve Longo appeared before the board for this proposal.

MR. LONGO: Good evening.

MR. KANE: So speak your name and tell us what you want to do.

MR. LONGO: Basically, what I'm trying to do is legalize an existing deck that was put onto an above-ground pool behind my house.

MR. KANE: Create any water hazards or runoffs with the building of the deck?

MR. LONGO: No.

MR. KANE: Have there been any complaints formally or informally about the deck?

MR. LONGO: No.

MR. KANE: Is the deck similar in nature to size to other decks that may be in your neighborhood?

MR. LONGO: Actually, a little smaller than most of them.

MR. KANE: Cut down any trees or remove substantial shrubbery in the building of it?

MR. LONGO: Nothing.

MR. KANE: Obviously, the deck is there for safety reasons for the pool?

MR. LONGO: Correct, if you notice the back of the pool goes in a slope and it would have made it within the law, so somebody could have climbed in and injured themselves, drowned, so that gave us an automatic fence around the back of the pool so there's no access off ground level.

MR. RIVERA: How long has the deck been in existence?

MR. LONGO: A year, a little over a year long.

MR. KANE: Any other questions at this time?

MR. MINUTA: This have a permit?

MR. LONGO: The pool, yes, the pool, yes.

MR. KANE: At this point, I will open it up to the public. Is there anybody in the audience for this particular meeting that would like to speak? Sir, please step up, state your name and address clearly please and you can just sign right there so we have your name.

MR. WARD: John Ward, 23 Melissa Lane.

MR. KANE: Your comments on it, sir?

MR. WARD: I have no objection.

MR. KANE: No objection whatsoever?

MR. WARD: No.

MR. KANE: How long have you lived in the neighborhood, sir?

MR. LONGO: We're actually the second house in five years.

MR. KANE: And you, sir?

MR. WARD: I was the first.

MR. KANE: And you've heard of no complaints informally about the deck?

MR. WARD: No.

MR. KANE: So your comment is you have absolutely, you're a neighbor and you have no problem?

MR. WARD: No problems.

MR. KANE: Anybody else? Seeing as there's nobody else, we'll close that portion to the public and ask Myra how many mailings we had.

MS. MASON: On the 29th of December, I mailed out 19 envelopes containing the notice of public hearing and I had no responses.

MR. KANE: Gentlemen?

MR. RIVERA: Accept a motion?

MR. KANE: No further questions?

MR. MINUTA: No.

MR. KANE: Yes, I will.

MR. RIVERA: I move we grant Steve Longo the requested 19 foot rear yard setback for the existing pool deck at 34 Melissa Lane.

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MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

SARNA ENTERPRISES (03-62)

MR. KANE: Request for 9 feet 1 inch rear yard setback for existing one-family house at 2805 Cherry Tree Way (The Reserve) in an R-3 zone.

Mr. Marvin Rosenzweig appeared before the board for this proposal.

MR. KANE: We added the one inch, I thought it was 9 feet.

MR. ROSENZWEIG: 9 foot 1.

MR. BABCOCK: 9.1.

MR. BABCOCK: That's off the survey, Mr. Chairman.

MR. KANE: Let's make that .1 cause in our agenda, it has 9 foot 1 inch. Tell us what you want to do, sir.

MR. ROSENZWEIG: I'd like to request a variance. We put the house up, it came to light after the fact that we were 9 foot 1 off in the wrong direction and it's a little too late to take it down. And I'm requesting, it has no effect to the neighborhood at all, on the contrary, the customer has less of a back yard, it's to his detriment, but I'm requesting a variance for that.

MR. KANE: So the trend tonight is watch when they're pouring all foundations.

MR. ROSENZWEIG: Actually, when it's being staked out.

MR. REIS: There's no deck on this house?

MR. ROSENZWEIG: No.

MR. REIS: Might inform the potential buyer that he's up against the variance for a deck.

MR. ROSENZWEIG: He's, I think he's aware of that situation.

MR. MINUTA: Was this staked out by a licensed professional before it was dug?

MR. ROSENZWEIG: The mistake was at the time that they were laying it out for the excavation, they're pulling off the stakes, they must of made a mistake pulling in the wrong direction and that's what happened.

MR. KANE: Nine foot too much in the front and nine foot less in the back. Creating any water hazards or runoff with the building of that home?

MR. ROSENZWEIG: No.

MR. KANE: Cut down any trees or substantial vegetation?

MR. ROSENZWEIG: No.

MR. KANE: Home itself does not protrude closer to the road than the other homes in your neighborhood?

MR. ROSENZWEIG: Closer to the road, no.

MR. KANE: Further back?

MR. ROSENZWEIG: Right.

MR. KANE: Get it on the record. Questions, guys? Okay, at this point, I will open it up to the public and ask if there's anybody in the audience for this particular hearing and nobody's home so we'll close the public portion and ask Myra how many mailings we had?

MS. MASON: On the 29th of December, I mailed 22 envelopes containing the notice of public hearing with

no responses.

MR. KANE: Gentlemen?

MR. REIS: Accept a motion?

MR. KANE: Yes, I will.

MR. REIS: I recommend that we grant Sarna Enterprises' request for 9.1 feet rear yard setback at 2805 Cherry Tree Lane.

MR. MINUTA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. ROSENZWEIG: Thank you.

NORTH PLANK DEVELOPMENT CO., LLC (03-61)

Daniel Bloom, Esq. and Mr. John Lease appeared before the board for this proposal.

MR. KANE: Request for Interpretation and/or Use Variance for non-conforming use discontinued for a period of two years or more (Use: 48-24B) in a PI zone.

MR. BLOOM: Good evening, Mr. Chairman, my name is Dan Bloom, I'm representing North Plank Development Company, LLC this evening on this application.

MR. KRIEGER: Out of fairness to this applicant and members of the board, I should disclose that Mr. Bloom first has elected to go after me personally in a vicious and vigorous fashion. While he's not the applicant here, I don't want to cause my situation to, and I ask members of the board to take it into account so that it does not reflect adversely on this particular applicant.

MR. KANE: So noted.

MR. BLOOM: For the record, Mr. Chairman, I would like to just indicate that I appreciate Mr. Krieger's honesty and fairness in his characterization of what has occurred, so that at least everybody approaches this particular hearing with the ability to place things in perspective, so to speak.

MR. KANE: So noted.

MR. BLOOM: With that, I was retained by Mr. Lease after the application had been submitted. I reviewed it and determined that it seems to have been prepared in the alternative, that is seeking an interpretation and/or a use variance. I reviewed it and I respectfully submit to the board that I feel that the appropriate application is on the first, which is

seeking permission to proceed for issuance of a building permit for its continued use as a tavern and a one family residence above the tavern, based upon the continuation of the non-conforming use. Now, why do I say that? The use was discontinued concededly in excess of two years ago, so, therefore, unless we can establish and I respectfully submit that we can what we call a tolling then of course my client has to proceed on the use variance basis. I believe that based upon the evidence that I will submit to the board this evening and the case law that relates to it that I believe it is appropriate for my client to seek the continuation of the non-conforming use for this reason. It was originally operated for many, many years as we all know being local residents as Pete and Dolly's Tavern by Pete and dolly. Well, we found out that Pete really meant Pat and last name was Benish (phonetic) and he was married to Mildred Benish and they operated for many, many years. And finally, Mr. Benish died and Mrs. Benish took over the operation and then Mrs. Benish died in 2000 and her will was probated and they tried to probate the will but I guess there was substantial contest over it and it went on and on to the point where letters of testamentary on the will had not issued for in excess of nine or ten months and no sooner issued than they issued to her son, Russell, who died shortly thereafter. And I have the two death certificates here, and not only did that occur but then apparently, there was a contest on his will. And the bottom line is that letters of testamentary were issued on his will in October 28 of 2003. Meanwhile, the County of Orange took the property back for nonpayment of taxes on April 25 of 2003 and my client purchased the property on or about October 28 of 2003. Based upon that scenario, and I will submit case law to the Chair with the Chair's permission for review by counsel which I respectfully submit would permit this board to consider the fact that we had two intervening debts, a taking by the County for nonpayment of taxes and an immediate purchase by John lease and an application to

immediately restore it to its original use without changing the footprint, no changes, just upgrade, refurbish it. That would be the basis for a legitimate issuance of a determination by this board and an interpretation that the non-conforming use continues. And with that having been said, Mr. Chairman, I'd like to approach and submit the deed supporting that, including the death certificates, giving you a copy of the case law and a copy of the survey.

MR. KANE: Thank you.

MR. REIS: While they're reviewing that, what's the bottom line as far as all the dates from the time that it ceased--

MR. BLOOM: The original date of death was January 20, 2000, they tried to probate the will, contest ensued, letters testamentary finally issued on the second will on October 28, 2003, last October, but before that happened, the County took it for nonpayment of taxes.

MR. KANE: So between 2002 and 2003, the first will was contested, that was settled, the gentleman that had received that then had passed away.

MR. BLOOM: He passed away then his will had to be probated and he became embroiled in it and I guess during that period of time, they forgot or didn't pay taxes, the County took it on April 25 of 2003.

MR. KANE: Up to 2000, was it being used as a tavern at that point?

MR. BLOOM: As far as we know, it was. My own personal recollection I believe it was, that's your recollection, too, and you investigated, right, John?

MR. LEASE: Close to that time.

MR. REIS: Mike, do you have any records to support that?

MR. BABCOCK: No.

MR. BLOOM: I'm just going by just general knowledge of passing it every day, so to speak.

MR. BABCOCK: One thing we did with this piece of property, Mr. Chairman, just so the board knows, I don't know if you have a copy of the tax map or a survey, we tried to find out what would be, this property could be used for in a PI Zone, it doesn't meet any requirements, there's nothing whatsoever that would work.

MR. KANE: That particular property is strange as it is. So if granted this interpretation and/or use, the footprint of the building is going to remain the same?

MR. LEASE: Yes.

MR. KANE: You're just going to bring it up to all standards?

MR. LEASE: Yes.

MR. KRIEGER: I can't, without reviewing it in detail, I can't tell you whether that's compelling or not. I can't do that tonight. I have to make sure that they're jeopardizing, I see the first case law doesn't even have an official site.

MR. BLOOM: It's a law journal site.

MR. KRIEGER: Does it have, I see there was a decision rendered in beginning of 2002, has it acquired an official site since then.

MR. BLOOM: Not that we could determine.

MR. KANE: At this point, I think what I'm going to do is open it up for the public and see if there's anybody here that would like to speak on this particular matter.

MR. BLOOM: Mr. Chairman, before you do that, may I be heard on one additional thing?

MR. KANE: Sure.

MR. BLOOM: I presented the information based upon a request for an interpretation. I would like to respectfully request a decision on that or a decision from the board, should I proceed to the next level of seeking a use variance with the evidence on that issue?

MR. KANE: Okay, I think what I need to do though is hear anybody in the public first for the interpretation.

MR. KRIEGER: If you're going to--

MR. KANE: And I can leave that open, I think.

MR. KRIEGER: Bearing in mind that if the board decides not to grant the interpretation and to have the applicant proceed to a use variance, you'll have to then have SEQRA review which means that you will have to again open it up to the public. Whereas, if you decided now to acquire that evidence as well, you could have one public hearing, you can kill, you can take care of both requirements at the same time.

MR. KANE: This is the fun part. Let's take care of the SEQRA. We need a negative declaration.

MR. KRIEGER: First you need a vote to determine that you're going to have a limited review, limited to this proceeding only which means that even if a use variance

is granted, it will have to, when he seeks site plan review, they'll have their own SEQRA review and this won't bind them in any way.

MR. KANE: We need to vote on a negative dec.

MR. KRIEGER: You need to vote on whether negative dec or positive dec.

MR. MINUTA: I make a motion that we make a limited review for the interpretation on this property.

MR. KRIEGER: Limited SEQRA review for the purpose of this proceeding only, correct.

MR. MINUTA: Yes, thank you.

MR. REIS: Thanks for the words. Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. KANE: Then we have, need a motion declaring a negative declaration on this.

MR. MINUTA: Do we have the information for a negative declaration?

MR. KANE: Well, basically there's--

MR. KRIEGER: They should be on file, a short form EAF review, that's basically one of the things that you have to determine whether if you don't have enough review, enough information, there are three possible outcomes, you can declare a negative dec if you do have enough, declare a positive dec if you find something

definitely that requires further review or if you're not sure whether you're not prepared to go negative and you're not sure whether it might be positive, but you don't have any concrete evidence, then that's under SEQRA a positive declaration, so a positive declaration covers definitely and maybe the only time that you have a negative declaration is when it's definitely not.

MR. MINUTA: This is for environmental only?

MR. KRIEGER: For environmental only, that's correct.

MR. MINUTA: I have enough information here, this place has existed long before myself so--

MR. KRIEGER: You have not only the short form EAF but of course the personal knowledge of each of the members this particular property having existed in New Windsor for time out of mind, I'm sure that the members of the board are each personally familiar with it.

MR. KANE: So you have a motion to find a negative declaration.

MR. MINUTA: Yes, propose a motion for negative declaration on this property.

MR. REIS: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. KANE: That's complicated stuff. So we'll open it up to the public now. Is there anybody here that would like to speak on this particular hearing? So we'll close the public portion of the hearing and ask Myra

how many mailings we had.

MS. MASON: On the 29th of December, I mailed out 39 addressed envelopes and had no responses.

MR. KANE: So at this point, we'll close the public portion of the hearing and do you guys have any other questions or need more information?

MR. KRIEGER: Now you can have a vote for a negative dec any time.

MR. MINUTA: I just have a few questions and one is is this the best use for this property? It doesn't meet any of the variances but is it the best use for the property? And I think we took care of the second one.

MR. KANE: Well, I would think with the way, my own personal opinion on this is the way the property is set up and the building that's on there, it's about the only use is the existing use right now. To tear the building down now you're going to need either a use variance or some kind of major variances to put anything else on that particular property.

MR. BABCOCK: Tonight we're only really talking about the use of the building, the building is non-conforming, we know that it doesn't lose its non-conforming, it lost its non-conforming use, so they'd be entitled even if they tear the building down to build another one in the exact same footprint but anything in a PI Zone which would be a truck transfer terminal, there isn't enough room to put a tractor trailer on the site. So that's what we looked at, we looked at all the different uses that could be there and it existed as Pete and Dolly's for God only knows how long.

MR. KANE: With that piece of property, it's probably the worst one in New Windsor, I mean, there's nothing

else you can do with it.

MR. REIS: Just for the record, comment mostly to Michael, again, the highest and best use for the property without negatively affecting the neighborhood in the community, even if it was a single family dwelling, they would need a variance.

MR. BABCOCK: That's correct.

MR. MINUTA: Thank you, just wanted to clear that up.

MR. RIVERA: Parking, how many spaces, it's going to be a tavern, so obviously, it's going to require so many parking spaces?

MR. BLOOM: He took the garage down which actually increased the amount of parking that was there. How many would you estimate?

MR. LEASE: There's probably, they're on an antiquated basis, probably about maybe eight and they probably wouldn't be laid out the way you do it today. And I took the garage down so that maybe picked up a couple, maybe eight total, eight, nine maybe, some of them were along the side of the building, you know.

MR. MINUTA: And are you going to need, are you going to be requesting for additional parking or limited spaces at that point?

MR. KANE: No because they're pre-existing, so they don't have to go through any of that, this just determines whether if it was discontinued or in our opinion that for extraordinary reasons we should allow it to continue.

MR. KRIEGER: Let me get this straight because the Town does not have to go for site plan.

MR. BABCOCK: That's correct. If the interpretation is that this can continue, then we're going to work with the applicant in getting the building fixed up and repaired and possibly help him with a layout on the parking lot and get as many parking spaces as we can on the property, he wants as many as he can get also whatever fits, that's the end, that's what it's been forever.

MR. MINUTA: So the planning board then would need to determine that?

MR. KANE: It ends here.

MR. BABCOCK: Well, it ends here, actually, it could end here, John has demonstrated to me that he's going to fix the place up so he's going to come in and get a building permit to do so, basically wouldn't have to do that.

MR. KANE: If you decide against it, then they would take it to the next step. There's not, like Michael says, there's not much else they can do with the piece of property that fits in a PI zone that wouldn't bring him back here.

MR. BABCOCK: Even if we went to the extreme to say a use variance and you guys said let's go back to the planning board, we can go back to planning board, they can look at it all but what fits fits, they can't add any property, there's no property to be added.

MR. KANE: Nothing to change, to add more parking spaces, that's the tough part.

MR. KRIEGER: Let me clear it because there are two questions now in front of the board, if the board grants an interpretation, he does not have to go for site plan?

MR. BABCOCK: That's correct.

MR. KRIEGER: If the board doesn't grant an interpretation but grants a use variance, what's the position of the Town?

MR. KANE: Would he need to go in front of the planning board?

MR. BABCOCK: Well, this board, if this board wants him to do that, he could do that.

MR. KRIEGER: Certainly they can make it a condition of the variance if they chose to do so.

MR. BABCOCK: I don't believe, I personally don't believe he needs site plan approval whatsoever either way, it's existing.

MR. KRIEGER: So unless this board should make a condition of approval specifically he wouldn't need to do that?

MR. BABCOCK: That's right and if he did, if this board makes it a condition and he went to site plan, the planning board would be sending it back to this board that it doesn't meet the parking, doesn't meet the lot area, doesn't meet the setbacks for a number of variances which doesn't do anything.

MR. REIS: Does Andy need a lot of time to review the paperwork that was submitted?

MR. KRIEGER: Well, I do need some time to review the cases if that, I'm not, I wouldn't be prepared at this point to render an opinion about it.

MR. KANE: My particular opinion on this is that you had some extraordinary circumstances with the deaths upon deaths and the fighting in court and delaying this

from anybody making a reasonable decision on the property whether to keep going forward or not. So I, my own feeling is I don't really need to see the site for that, I just feel it's extraordinary, that's what we're here for.

MR. MINUTA: It is an extraordinary case but would the, setting aside the building and the use, the parking is really the issue here that I'm taking issue with on this because of what it's going to be used as. And I'm wondering if would another use allow us the amount of parking that he has as a use as a higher end business use, I don't know at this point.

MR. KANE: Not even close, there's nothing that will, if it, I mean, the area doesn't meet anything.

MR. KRIEGER: Let me clarify that as far as the decisions are concerned, requires some time to look at them and review them. If the board is going to act on an interpretation, the applicant has asked, the board has been asked to act on an interpretation beforehand, if it's not an interpretation and it's a use variance, then I would agree with the Chairman and whether or not you know these cases are binding or on point or anything else is irrelevant to a certain extent, if this board has decided, is inclined to grant a use variance, doesn't matter what they did in some other town.

MR. BABCOCK: Mr. Chairman, I may have a suggestion. If in fact there's eight and I know the applicant would have to agree to this, the law requires that you have one parking space for every three seats in an establishment like this, if there was eight parking spaces which I believe there can be more parking spaces there than eight, we could limit him to 24 chairs, if the applicant would go along with that. That would solve the parking issue, I mean, if he has 25 chairs in there, I mean, we do an inspection every year, we have

other restaurants in the area that we do the same thing for the, that may solve the parking problems, if that's the real issue with the members.

MR. MINUTA: Wouldn't that be a health and building code violation if it exceeded that?

MR. BABCOCK: Well, no, I think if he could have, could own another property and have a bus, a shuttle bus bringing people in and out, if that's what he wanted to do. We have restaurants, we have catering places that do that, I mean, if he wanted to do that, but I'm just thinking that if we came up with a number of parking spaces that could fit on this property and said that would solve the parking, that's the amount of chairs that he's allowed to have.

MR. MINUTA: This has water and sewer?

MR. BABCOCK: Yes and I don't know if the applicant's willing to agree to that or not.

MR. KANE: Would you guys, do you feel that you need Andy to go over what was submitted to us and we can table the vote to the next meeting or do you feel comfortable making a decision today?

MR. MINUTA: Well, if Andy has questions on it, I'd like to see it resolved.

MR. KRIEGER: With respect to the interpretation aspect as I said.

MR. KANE: Well, the interpretation is what we're going to take care of first, so if you feel more comfortable having him review that information, then I would suggest we table the vote on the interpretation till the next meeting and give Andy a chance to read and report back to us.

MR. BLOOM: May I be heard on that?

MR. KANE: You certainly can.

MR. BLOOM: I believe that in fairness to my client and based upon the admirably forthright statement that counsel made for the record, I think I'd be remiss if I didn't ask that counsel recuse himself on this application. I don't see how he can possibly bring to the decision he has to make and submit to this board the appropriate professional independence that's anticipated counsel retained by a board such as this should expect.

MR. KANE: So noted. My own personal feeling is I think that our counselor would be above reproach on that, that's my own feeling. I think he would give us a fair assessment on what those papers say right there. That's my own opinion on that.

MR. REIS: Mike, to respond to your prior question how each of the board members feel about this, I respect Joe's thoughts on it, myself, I'm inclined to go with the use that's intended, okay, based on--

MR. KANE: You feel you can make an interpretation today?

MR. REIS: Personally, yes.

MR. RIVERA: Yes.

MR. KANE: I feel I can make one. Are you comfortable with that?

MR. REIS: I would like to say one thing, if I may, in regard to the parking issue, there's probably several eateries in the town that have more seats per parking per code, not that that's a precedent, but to limit the applicant, I'm getting nothing out of this, I want to

make note of that, to limit the applicant to 24 seats, he's going to have a losing proposition, he can't possibly do business and have a business that's worthy of opening and limit it to eight parking places, I don't think, in due respect to the applicant, I don't think that's fair to do.

MR. KRIEGER: Along the lines of what Mr. Reis just said, I heard the comment here that there's a possibility that it could have more parking spaces so it would be unfair to the applicant at this point to limit him to 24 based on an eight count. Now, if he can come in later and show that it could be 10, then he would have, he would be limited unfairly. So I think a blanket, simply a blanket statement that a variance here does not relieve him of any other legal requirements then he can get what he can get.

MR. KANE: Right, I agree with that. I think we're making it a little bit more complicated than it needs to be on the interpretation, we're just deciding whether he's continued in business or whether, you know, extraordinary circumstances that led that to pass and are we going to let him go ahead with this and not, you know, add a lot more complicated things to it. I think it becomes that simple.

MR. MINUTA: I have no issue with continuing the use on this.

MR. KANE: I don't know how you're going to make a tavern work down there, but that's up to you.

MR. MINUTA: From a zoning perspective, my only question is fine, the use has been there, it's been there for a long time, is there going to be a parking problem from a zoning perspective down there? That's the only question I have at this point.

MR. BABCOCK: Well, the applicant is going to have to

handle a parking problem, if there's a parking problem, we'll be there.

MR. KANE: And I'm sure--

MR. REIS: How many seats are there now, do you know offhand, approximately?

MR. LEASE: Well, probably, because the place is a wreck, but there probably were maybe 10 at the bar and maybe four small tables, so four tables.

MR. BABCOCK: It's not a large place, you know.

MR. REIS: I thought 25, 30.

MR. LEASE: That's packing them in.

MR. KANE: I can honestly say I've never been in there but now is that a multi-floor establishment?

MR. LEASE: Well, no, just the main floor was a bar and second floor was an apartment.

MR. KANE: Are you going to be continuing to use the second floor as an apartment?

MR. LEASE: Yes, I'd like to.

MR. KANE: We don't have a problem with that at this point?

MR. BABCOCK: No.

MR. REIS: Accept a motion?

MR. KANE: Everybody comfortable?

MR. MINUTA: Yes.

MR. RIVERA: Yes.

MR. KANE: Yes, I'll accept a motion.

MR. REIS: I make a motion that we grant North Plank Development Company the requested interpretation for the use of a tavern and apartment.

MR. KANE: For the continued use.

MR. REIS: Continued use, thank you, of the property known as--

MR. BABCOCK: 1101 River Road.

MR. REIS: Thank you.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. KRIEGER: Point of clarification just for the purpose of drafting the decision, because we went back and forth, there are no additional requirements that the board needs to be drafted in under the interest of justice, we can just leave that blank?

MR. KANE: No excess requirements, correct, Michael? There was none in your motion.

MR. REIS: None.

MR. KANE: Have a good evening.

FORMAL DECISIONS

03-35 PALIOTTA
03-37 SMITH
03-41 DE CELESTINO
03-38 MURPHY
03-39 NGUYEN
03-34 MAMAAT
03-46 MAISONET
03-45 SCHLESINGER'S DELI
03-47 ABSTRACT PROPERTIES
03-40 HIGHVIEW ESTATES OF O.C.

MR. REIS: Make a motion that we take the formal decisions in block.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE
MR. KANE	AYE

MR. KANE: Motion to adjourn?

MR. RIVERA: So moved.

MR. MINUTA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. REIS	AYE
MR. MINUTA	AYE

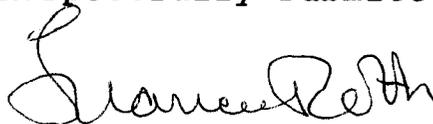
January 12, 2004

45

MR. KANE

AYE

Respectfully Submitted By:



Frances Roth
Stenographer

1/14/04