

ZB# 91-3

**Keith Williams
(Small Town Land)**

8-1-21

Prelim.

Dec. 10, 1990
Tabled

And Prelim.

Jan. 28, 1991

Tabled for
Research by
Dan Lucia

Aug. 12, 1991

And Prelim. - Tabled to

Aug. 26, 1991.

Motion to Suspend P.H.:
Need:

- ② Copy of Deed
- ③ Title Policy
- ① Need Notice of
- ④ Photos. Denial

from Mike
Before S. Schid. P.H.

Notice to Suspend
on 8/29/91 ✓

Public Hearing:
Sept. 20, 1991

Variance
for Lucia
Denied 9/23/91

General Receipt

12380

TOWN OF NEW WINDSOR

555 Union Avenue
New Windsor, N. Y. 12550

Dec. 10 1991

Received of Small Town Land, Inc. \$ 25.00

Twenty-five and 00 DOLLARS

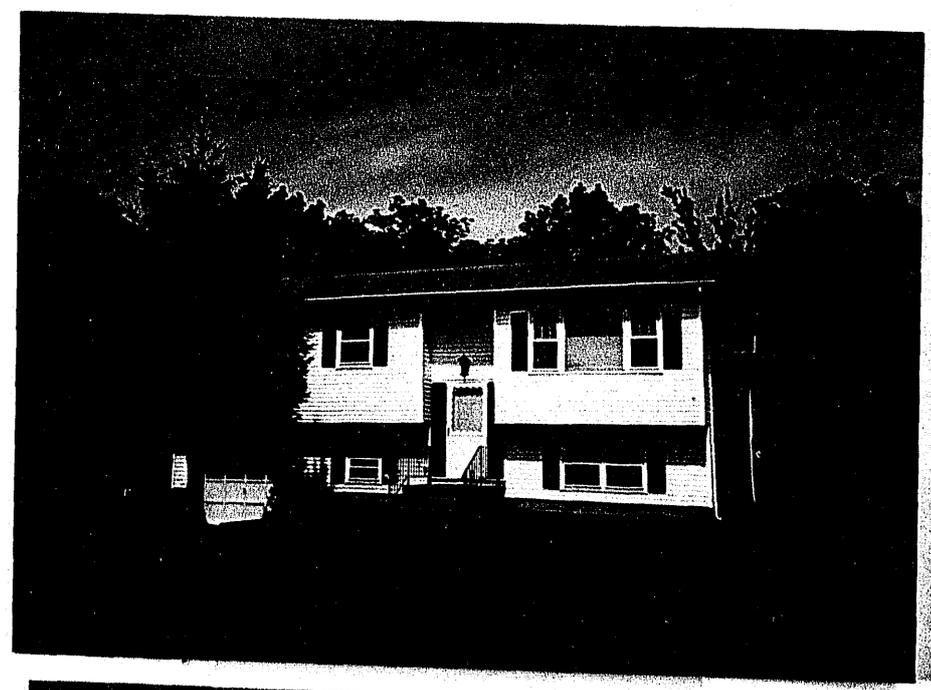
For ZBA 91-3 100

DISTRIBUTION:

FUND	CODE	AMOUNT
<u>CP# 205</u>		<u>25.00</u>

By Pauline M. Townsend
Town Clerk
Title

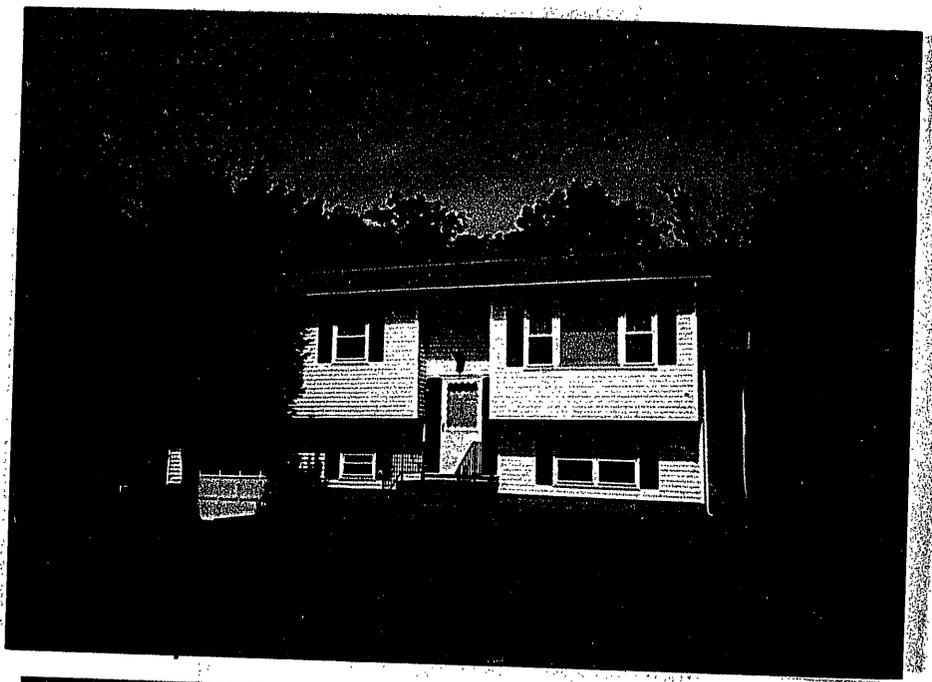
Williamson Law Book Co., Rochester, N. Y. 14609



UP# 205	25.04

Williamson Law Book Co., Rochester, N. Y. 14609

[Signature]
Town Clerk
Title



ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

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In the Matter of the Application

of

DECISION DENYING
AREA VARIANCES

KEITH WILLIAMS

#91-3.

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WHEREAS, KEITH WILLIAMS, residing at Balmoral Circle, New Windsor, New York, has made application before the Zoning Board of Appeals of the Town of New Windsor for the following area variances: (1) 7,324 s.f. lot area, (2) 50 ft. lot width, (3) 2 ft. 4 inches/4 ft. 8 inches, one/both side yards, and (4) 8.24 ft. street frontage, in connection with the applicant's proposal to construct a single-family house upon a parcel of real property designated only as "not paved" upon a certain filed subdivision plan of Park Hill Subdivision, filed in the Orange County Clerk's Office as Map #2761, along the northeast side of Summit Drive, and located between Lot #3 and Lot #4, in the Town of New Windsor, County of Orange, State of New York, in an R-4 zone; and

WHEREAS, a public hearing was held on the 23rd day of September, 1991 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, the applicant appeared personally at said hearing on behalf of himself, and the lot owner of record, Small Town Land, Inc., of which the applicant, Keith Williams, is the President and sole stockholder, and the applicant was represented at said public hearing by Donald S. Tracy, Esq. of Tracy, Bertolino & Edwards, Esqs., and by Gerry Stite, a licensed real estate broker, all of whom spoke in support of the application; and

WHEREAS, the public hearing was attended by a number of spectators, all of whom spoke in opposition to the application, to wit, John A. Petro, the original developer of the Park Hill Subdivision and a former supervisor of the Town of New Windsor, as well as a resident of nearby property, who objected to the proposal upon the grounds that the applicant was seeking to construct a house upon land which clearly was intended to be a future street; that the public welfare would be adversely effected if the variances were granted in that access to Park Hill would be more limited than was intended when the subdivision map was filed, that the parcel in question was always intended to be a stub street and that showing the same in that fashion on the filed subdivision map was notice to the world, that the applicant's situation constitutes a self-created hardship and that the early purchasers of lots in the Park Hill Subdivision were granted rights-of-way over the proposed streets prior to their dedication to the Town of New Windsor; and

Gerardo Figueroa, an owner of the immediately adjacent parcel of real property who objected to the proposal on the grounds that he still possessed a right-of-way over the applicant's lands, that the right-of-way was necessary for public safety to provide access for fire and ambulance vehicles. That if an additional house were permitted to be constructed on the property, it would cause undue congestion of the area, and that he would have purchased the property which is the subject of this application if he had known it was for sale, and that, in his opinion, the property was worth some thing in that it had some dollar value; and Mr. Figueroa presented to the Board a written petition, signed by a large number of neighbors, objecting to the granting of the area variances sought by the applicant; Daniel Morales, an owner of a nearby parcel of real property, who objected to the proposal on the grounds that it would cause increased congestion on Summit Drive as well as would adversely impact the neighbors' investment in their homes; Joseph Skopin, who objected to the proposal on the grounds that the applicant's hardship was self-inflicted and that the proposed lot was much too narrow for building a house compared to all the neighboring properties, all of which have a minimum of 100 ft. of frontage, except for one lot which has 70 ft. of frontage; Douglas Ward, another owner of a nearby parcel of real property who objected to the proposal on the grounds of its adverse impact upon public health, safety and welfare in that the area now has a dense population, with narrow streets, houses constructed close to the street and no curbing, as well as many residents and guests frequently parking on the street and in addition the lot which is the subject of this proposal is located on an "s" curve in the road, all of which he felt would adversely affect public safety as well as the safety of children in the neighborhood, and that the applicant's proposal for variances was too extreme; Charles Rein, an owner of property diagonally across the street from the applicant's property, opposed the application upon the grounds of its impact on property values, which he felt that the applicant had understated, as well as its impact on the neighboring properties, none of which has a road frontage of less than 100 ft. (compared to the applicant's proposal of a lot with street frontage of a little more than 50 ft.); and Cathy Kranston, an owner of a parcel of real property immediately adjacent to the parcel which is the subject of this application, who objected to the proposal upon the grounds that it violated a 15 ft. wide side yard requirement which appears on the filed subdivision map in that the house proposed to be constructed by the applicant provides for side yards of less than 15 ft. in width; and

WHEREAS, the public hearing was also attended by Michael Babcock, the Building Inspector of the Town of New Windsor, who, when questioned, indicated that the public health, safety and welfare, lot size, and the congestion in the area were all issues relevant to the minimum bulk requirements of the Zoning Local Law from which the applicant is seeking relief upon this application, and that if the variances were granted, in accordance with the request of the applicant, there would be an adverse impact upon the public health, safety and welfare; and

WHEREAS, the applicant's memorandum of fact and law,

prepared by the applicant's attorneys, Tracy, Bertolino & Edwards, Esqs., together with the attachments thereto, was received and filed in support of the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor makes the following findings in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and published in The Sentinel, also as required by law.

2. The evidence shows that the applicant is seeking permission to vary the provisions of the bulk regulations pertaining to lot area, lot width, side yards, and street frontage in connection with his proposal to build a single-family house upon a parcel of real property shown upon the subdivision plan of Park Hill Subdivision (filed in the Orange County Clerk's Office as Map #2761) only as "not paved" and intended by the subdivider to constitute a stub street, in an R-4 zone.

3. The evidence presented by the applicant substantiated the fact that variances for less than the allowable lot area, lot width, side yards and street frontage would be required in order to allow the proposed construction of a single-family house, which otherwise would conform to the bulk regulations in the R-4 zone.

4. The evidence presented by the applicant indicated that the street stub which is the subject of this application apparently was never formally dedicated to the Town of New Windsor, taxes thereon apparently were unpaid and the property ultimately was acquired by the County of Orange. The County of Orange sold the property to one, Henry S. Cummings and Mr. Cummings in turn sold the land to Small Town Land, Inc., the applicant's corporation, in 1987, for \$2,100.

5. The evidence presented by Gerry Stite, the applicant's real estate broker, indicated that the value of the vacant land, if the requested variances were not granted, was "probably almost nothing". Mr. Stite further stated that this value of "probably almost nothing" would be the value of the property at the time that Small Town Land, Inc. purchased the said lot.

6. The evidence presented by Mr. Stite further indicated that in his opinion the value of the said lot if the requested variances were granted, and solely by virtue of the granting of those variances, would increase to \$22,000 to \$22,500. Mr. Stite attributed this increase in value to the fact that the said lot would become a buildable lot.

7. The evidence presented by the applicant, Keith Williams, indicated that he thought the value of the parcel of real property without the requested variances, was much more than \$2,100. He indicated that he paid that sum only because that was the asking price for the lot when he purchased it.

8. The evidence further presented by Mr. Williams indicated

that he felt his real estate broker, Mr. Stite, had undervalued the property without a variance.

"Because I don't believe that Mr. Stite was aware that it met the non-conforming criteria and I thoroughly investigated that criteria before I purchased the property, knowing that it fully met all the criteria as a non-conforming lot, in my opinion."

9. The applicant, Keith Williams, believed that the lot which he proposed to purchase fell within the parameters of a provision relating to non-conforming residential lots as set forth in Section 48-26E of the Zoning Local Law of the Town of New Windsor.

10. It is the finding of this Board that the parcel of real property which is the subject of this application is not entitled to be treated as a non-conforming residential lot under the provisions of Section 48-26E. Thus, the applicant, Keith Williams, erred in valuing the subject parcel of real property at the time he purchased it, by assuming that it met the non-conforming residential lot requirements of Section 48-26E.

11. In this connection, the finding of this Board is in complete agreement with, and this Board probably is precluded from making any other finding by, the July 18, 1990 Decision and Order of Acting Supreme Court Justice Kenneth H. Lange in an Article 78 proceeding entitled, "Keith Williams against Frank Lisi, Building Inspector for the Town of New Windsor", pending in Supreme Court, Orange County, Index No. 89-5874, Judge Lange concluded, and this Board certainly agrees, that the applicant's property is not a "non-conforming residential lot" pursuant to the provisions of Section 48-26E. The subject property was not designated on the filed subdivision plan as a residential building lot, but rather as "not paved", and was considered a proposed street.

12. It is the further finding of this Board that the aforesaid Decision and Order of Justice Lange was not modified in any respect by a subsequent Judgment dated November 27, 1990 of Honorable Peter C. Patsalos, J.S.C., in an action entitled, "Small Town Land, Inc. against George A. Green, Supervisor, et al", pending in Supreme Court, Orange County, Index No. 89-~~5874~~ 6616 which barred any claim the Town of New Windsor might have to the subject premises as a public street and revoked any offer of dedication thereof as a future road. The said judgment also declared that Small Town Land, Inc. was the owner of said parcel in fee simple "subject to any grants, easements and right-of-ways of record, if any". The bar claim contained in said judgment against the defendant, Town of New Windsor, provides that "Rights of implied private easements, if any, be unaffected by this judgment".

13. It is the finding of this Board that the real property which is the subject of this application is subject to rights-of-way in favor of other owners of property in the Park Hill Subdivision which were granted rights-of-way over all the

proposed streets, including the subject parcel, shown on Map #2761 until such time as the said streets were dedicated or accepted by the Town of New Windsor; although the parcel of real property which is the subject of this application cannot now be dedicated to the Town of New Windsor, it is the finding of this Board that the holders of rights-of-way over said parcel cannot have their claims barred until such time as the applicant takes, and prevails, in an Article 15 bar claim action which joins all owners of the Park Hill Subdivision.

14. It is also the finding of this Board that the 15 ft. side yard requirement contained on filed Map #2761, is still applicable to the lot which is the subject of this proposal. If this Board were to grant the side yard variances requested by the applicant, the other owners of property in the Park Hill Subdivision still would hold a valid right to object to the applicant's proposed construction upon the grounds that it violated this 15 ft. side yard requirement on the filed map.

15. It is also the finding of this Board that the parcel of real property which is the subject of this application is subject to public utility easements in favor of Central Hudson Gas and Electric Corporation and New York Telephone Co. At the time these easements were granted, the said parcel was considered a stub street and the easements in question could and did effect the entire width thereof. Thus, any construction within the bounds of said parcel could well constitute construction within an easement area held by one or both of these public utilities.

16. It is the finding of this Board that the parcel of real property which is the subject of this application is still a "street" within the meaning of the definition thereof contained in Section 38-2 of a Local Law Regulating the Construction of Streets, etc. of the Zoning Local Law of the Town of New Windsor, which contains the following definition:

"STREETS - The public right-of-way of existing "streets," whether or not accepted by the town, and areas designated by any developer to be used as a public right-of-way upon any map, survey or plans which have been or which are hereafter submitted for approval to the Planning Board or to the Town Board or which have been or are hereafter recorded with the County Clerk".

which is consistent with and should be read together with the definition of "street" contained in Section 48-37 of the Zoning Local Law as follows:

STREET - A street, improved to the satisfaction of the Planning Board, which is one of the following: an existing town, county or state highway or street; a street shown on an approved subdivision final plat; a street shown on a map filed with the County Clerk (in accordance with Section 280-a of the Town Law) prior to Planning Board authorization to review subdivisions; or a street shown on the Official Map of the town.

17. Considering the above definition of "streets" together with the decision and order of Justice Lang and the judgment of Justice Patsalos, it is finding of this Board that the parcel of real property which is the subject of this application is subject to the rights of the public, and especially the rights of owners of other lots in the Park Hill Subdivision, to use the same as a right-of-way as well as to the rights of public utilities to use the same for providing public utility service to the residents of the Town of New Windsor.

18. In the light of the foregoing, it is the finding of this Board that the evidence presented by the applicant's real estate broker, Mr. Stite, that the value of the parcel of real property which is the subject of this application at the time the same was purchased by Small Town Land, Inc. was "probably almost nothing" is much more credible than the evidence presented by Mr. Williams that "the lot was much more valuable than \$2,100". An examination of the title report obtained by the applicant at or about the time of his purchase of the lot in 1987, indicates that the assessed value of the parcel was \$100. This assessed valuation seems to confirm Mr. Stite's opinion. The property had very little value.

19. The reasonable uses to which the property could be devoted certainly effected the value thereof at the time the applicant purchased it. The property had a certain value as a right-of-way, as a public utility easement, as a possible future means of access to the neighboring property of the Newburgh Enlarged City School District, as green space, and possibly to neighbors (one of whom attended the public hearing and indicated that he would have purchased the same if he had known it was for sale in that it did have some dollars and cents value). However, this value is far less than the value as a non-conforming residential lot, which this Board and Justice Lange conclude is inapplicable.

20. In the light of the foregoing analysis it is the finding of this Board that the applicant is unable to show significant economic injury from the application of the bulk requirements of the Zoning Local Law to his land. Whether this Board uses Mr. Stite's value of the property without a variance of "probably almost nothing" or the purchase price of \$2,100. paid by Small Town Land, Inc., the value appears consistent with the value of said property as it is presently zoned, and subject to the applicable rights-of-way and easements.

21. The Zoning Board of Appeals has no obligation to relieve the applicant from, (1) his own unwise financial decision in purchasing the property and/or in overpaying for the property he purchased and (2) his mistake of law in concluding that the property met the non-conforming residential lot requirements. This Board does not find that its action will constitute a taking of the applicant's property since this Board's decision has not deprived the applicant of all viable use of his land. There are viable economic uses of the property and the value thereof appears consistent with Mr. Stite's valuation without the variance of "probably almost nothing" or the assessed valuation

of \$100.00. The applicant is not deprived of any use to which the property is reasonably adapted; he is deprived of the residential use to which he hoped it would be adapted.

22. Given the evidence presented at the public hearing from the neighbors and from the Building Inspector, it is the finding of this Board that the existing congestion of the area would be worsened if the applicant were permitted to build a house on this grossly undersized lot. In addition, this would have the effect of barring future access by anyone over the rights-of-way and public utility easements. It is the finding of this Board that given the congestion in the area, and the proximity of a public school immediately behind the subject parcel, that public health, safety and welfare would be adversely effected if the requested variances were granted.

23. It is the finding of this Board that the applicant constituted a very knowledgeable purchaser. He researched the non-conforming residential lot provisions of the Zoning Local Law of the Town of New Windsor. He unfortunately reached an erroneous conclusion thereon. He certainly had a good grasp of real estate values and hoped to profit substantially by purchasing this property at a seemingly low price, building on it, and selling the house and lot at a substantial profit. Based upon his knowledge, he made a speculative investment. That speculative investment proved to be unwise. This Board has no obligation to relieve a speculative investor from the consequences of his unwise investment. This Board need not provide an investor with a return on his investment at the expense of the public health, safety and welfare.

24. It is the finding of this Board that the hardship which the applicant now finds himself facing is self-created. Although this factor is not determinative on the applicant's request for area variances, it is a factor this Board has considered.

25. The requested variances are all substantial in relation to the bulk regulations.

26. The requested variances will result in substantial detriment to adjoining properties and will change the character of the neighborhood.

27. The requested variances will produce an effect on population density and governmental facilities.

28. There is no other feasible method available to applicant which can produce the necessary results other than the variance procedure, except for an application to the Town Board to amend the applicable zoning.

29. The interests of justice are served by denying the requested variances.

30. The applicant has failed to make a showing a practical difficulty entitling him to the granting of the requested area variances.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor deny (1) 7,324 s.f. lot area, (2) 50 ft. lot width, (3) 2 ft. 4 in./4 ft. 8 in. side yards, and (4) 8.24 ft. street frontage variances for the proposed construction of a single-family house upon a parcel of real property, designated as "not paved" upon a certain filed subdivision plan of Park Hill Subdivision, filed in the Orange County Clerk's Office as Map #2761, along the northeast side of Summit Drive, and located between Lot #3 and Lot #4, in the Town of New Windsor, County of Orange, State of New York, in an R-4 zone, in accordance with plans filed with the Building Inspector and presented at the public hearing.

AND, BE IT FURTHER,

RESOLVED that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and applicant.


Chairman

Dated: December 9, 1991.

(ZBA DISK#7-112591.FD)

SMALL TOWN LAND

Donald S. Tracy Esq. Came before the Board representing this proposal.

MR. FENWICK: This is a request for interpretation and/or variances to permit building lot in an R-4 zone.

MR. TRACY: This matter is basically before the Zoning Board of Appeals for a dual application. One is for an interpretation as to whether or not this particular lot fits under a section of the zoning ordinance and in the alternative, if this Board finds it does not, it's here for a variance of lot bulk and lot width, complying with all other requirements of the R-4 zone. What happened by way of history in this particular case, back in 1974, when the Town Board accepted the streets in that subdivision for dedication, they did not accept this piece of land. The land then became a lot of record because it was picked up and put on the tax map by the Town of Orange. The county of course then levied taxes which were not paid by anyone because the developer had gone and some guy who I guess we would refer to in municipal terminology as a tax shark came in and bought it. He subsequently sold it to the present owner, who has continued to pay taxes on it. We applied to the Building Inspector for a building permit. The Building Inspector said he didn't think he could give a permit because the property is a street.

We contend that no, the property is not a street because case law hold that even a change in ownership revokes an offer of dedication. However, further case law holds that where you commence an action under Article 15, Real Property Tax Law, to revoke dedication, it suffices and there are Court of Appeals cases on this. So, we initially filed an Article 78 proceeding with the Building Inspector. The court in that case and simultaneously therewith since there was no authority for holding that you could successfully revoke claims by an Article 78 proceeding, we subsequently almost simultaneously filed an action of the Article 15 of the Real Property Law to borrow the claim of the municipality that it was a street or that the municipality had any claim to it. The first case, the judge said that he wasn't going to order the Building Inspector to issue a permit because it hadn't been determined that it wasn't a street and he held that matter was not before him. I re-argued that case and said the matter certainly is before you just because it's not called an

Article 15 action, it's still before you and you can make a determination on it. That judge said no, I adhere to my original decision. In the meantime, the other judge after we filed and after the town filed an answer I brought a motion for summary judgment. A motion for summary judgment means there's no question of fact, it's just a question of law. That can be determined on motion papers. That judge granted a decision, that was Judge Patsalos where he said the municipality no longer has any right or claim to the street, is barred from saying that it does have and the offer of dedication is successfully revoked. An order on that was entered and served upon the attorney for the town on January 4th. Therefore, the time to appeal that has expired so that's the law of the case.

My client I said told them well now go ahead and file for a building permit. Again, which he did and he got a decision from the Building Inspector which says building permit is denied because this lot did not receive a subdivision approval by the town. I said well, let's exhaust administrative remedies and let's go before the Zoning Board of Appeals thus you scheduled a meeting at which I was fishing and here I am tonight.

Our contention is this. First let's analyze what is this plot of land. It's a parcel of land, it's a lot of record, it's a lot shown on the tax map of the County of Orange. And my client pays taxes on it twice a year, I guess if you pay the same way up here as we do down there and has been paying taxes on it. It's in a residential zone, therefore is it a residential plot? Well, if it isn't a residential plot, what else is it since it's been determined it's not a street. Your Section 4826 of your ordinance says a residential plot separated by other land is not in the same ownership. That's what we have here and nonconforming as to bulk on the date of enactment or the effective date of subsequent zoning local law amendments.

Now, back in 1986, there was a subsequent amendment. That subsequent amendment which is codified as E under 4826 says a nonconforming residential lot, lot not plot now is this a lot most certainly a tax lot it is being taxed as a tax lot, as described in 4826A which says a residential plot which does not comply with the bulk area and yard regulations as specified in the highest residential district having the same or less plot wise may nevertheless be developed with a one family residence only provided that and then it goes through 1 thru 8. Now, the plot plan that I see circulating here complies in all respects with 1 thru 8.

I see somebody shaking their head.

MR. TORLEY: Well continue.

MR. TRACY: Let's go through it then and we'll see.

MR. FENWICK: Mike, excuse me, the only denial we have is the letter from Frank Lisi.

MR. M. BABCOCK: Yes, we didn't write it up for area variance, we wrote it up that it was not an approved subdivision lot by the Planning Board, exactly what the gentleman stated.

MR. TRACY: Okay, such lot shall contain not less than 5,000 square feet. That lot contains 8,000 some odd square feet. Such lot is served by both central sewer and central water. That lot is served by central sewer and central water. Proposed house shall contain not less than 1,000 square feet of livable floor area and have a building height of not exceeding 30 feet. The house shown on that plot complies with that. The rear yard shall be a least 40 feet. The house shown there complies with that. The lot shall have at least 50 feet of street frontage. The lot complies with that. Lot widths of 50 feet and less than 80 feet may be developed with side yards and each side of at least 12 feet. The lot complies with that. It's the finding of the town and this Board that the development of the nonconforming lots not meeting the above criteria will blight the proper and orderly development and general welfare of the community.

Well, that lot therefore since it does comply comes without the penumbra of that sanction that that is contained in the zoning ordinance. Therefore, it was my opinion that this was a pre-existing nonconforming lot under the subsequent amendment to the ordinance.

Now, if this Board says well, no we don't think it is, we think that it was a street now maybe we think it should still be a street instead of what the Supreme Court says. Well, then we have a situation where we have a client who's being proscribed from his rights under Article 78. The constitution of the State of New York Article 5 and 14 of the United States Constitution and he's being deprived of all use of his property. What right does he have? Well, he has a right to come before the Zoning Board of Appeals and ask for a variance because that's what Section 267 Subdivision 2 of the State Town Law says. It says the Zoning Board of Appeals shall, not may, shall hear and

determine appeals from any administrative decision of any administrative officer or etc. The Building Inspector is a statutory administrative officer. However, should the Zoning Board of Appeals wish to render an interpretation that this lot complies with the nonconforming lot section, then there is no need to go for a variance hearing. I should like to point out that with regard to the variance hearing. The Town Board has already made a legislative determination in that Subsection of 4827 where they said if it meets these certain criteria which that plot plan meets, then it's not detrimental to the public health, safety and welfare and it's not a blight on the community.

If this Board determines that we are not going to grant a variance and we are not going to make a determination that this is a pre-existing nonconforming lot, then this Board is saying to this man your property is forever sterilized and we are depriving you of any beneficial use of it.

Therefore, I have come before this Board tonight on this preliminary hearing to request them to either render an interpretation based upon this presentation that I have given that the lot is within the prenumber of this grandfathering ordinance or this savings clause in this ordinance that it meets the criteria for a nonconforming lot. Or in the alternative to schedule a public hearing to grant a variance of overall bulk and lot width. The interpretation of the Building Inspector who has denied the variance on the basis that this lot did not receive subdivision approval is patently defective for the simple reason that there are many lots in this town that have not received subdivision approval and by the very definition of subdivision in your ordinance could not receive subdivision approval where the definition is division of lots into three or more parcels, neither or which are capable of further subdivision.

Therefore, you can't obtain subdivision approval of this lot anymore than you could a single lot surrounded by other properties which had either already been subdivided or had already been built.

One thing that I didn't emphasize was that what is a lot of record, what is a lot of record. There seems to be some confusion when somebody says well, it wasn't subdivided so it's not a lot of record. That's not so. Certainly a tax lot on the Orange County tax map is a lot of record. If you haven't got a lot of record, how do you pay taxes on it? Is a tax lot and block number

good and sufficient for insurable title without even giving a metes and bounds description? Yes. As is a subdivision map lot and block number on a filed map. So, I stand ready to answer any questions the Board members may have being overly familiar with the subject over a long period of time.

MR. FENWICK: Just out of curiosity, if this happened to fall into that category that Mr. Tracy was discussing, it appears that it meets everything of those eight items, there wouldn't need any variance, is that correct?

MR. M. BABCOCK: Yes, that's correct if in fact it was nonconforming lot, it would meet the nonconforming lot criteria and would be a buildable lot.

MR. NUGENT: Then next question that I have to ask is our attorney is he comfortable with the decision given down by Justice Pastalos?

MR. LUCIA: I am not sure that reached all the issues that are facing this Board as Mr. Tracy handled some of them but the basic question and when Mr. Williams was here, we raised some of them in the minutes. The decision by the Building Inspector as I understand that it is not a lot is based on the subdivision regulations. This Board has no power to interpret or vary subdivision regulations so if that's the limited issue on which you're proceeding, I suppose your remedy is in Article 78 against the Building Inspector. You can't bring that appeal here. That's the first issue.

The second issue I'm not sure from your analysis of Section 4826A that you read far enough into that paragraph. You read about the first four lines of that section. If you continue on to the fifth line of that section after everything you read it says of this residential plot separated by other lands etc. and approved by the Planning Board of the Town of New Windsor. I think that probably is the crux of the issue. I don't think this lot ever was approved as residential plot by the Planning Board. It was approved on a map that approved residential plots and it showed this lot as a street stub for future street use. I forget the exact terminology that we used. But, I don't think you're going to come within the purview of this nonconforming lot of record section if you can't establish if it was a lot approved by the Planning Board. If you skip down to Section 4826E, you're still tangling with the same definitional problem because the beginning of subdivision E says a nonconforming

residential lot as described in Section 48-26A so we're back to the same definitional issue. I think if you come before the Board on the interpretation question that really is going to have to be the issue you're going to have to carry here.

MR. TRACY: I read it a little differently than you do councilor, and I read it to say effective date of subsequent Local Law amendments, whether or not located in and part of a subdivision and approved by the Planning Board of the Town of New Windsor and filed in the office of the Orange County Clerk.

MR. LUCIA: Same language that's why we have the Board here to interpret it.

MR. KONKOL: How about the rest of the property owners who purchased property and built homes in there and in their deeds it shows as a street, what happens there?

MR. TRACY: That's an issue which I successfully feel that they have barred any claim to. They have no claim to the street and I don't think that that issue comes before this Board. I think that that would be an issue that if it was valid, they would have a cause of action. However, I am not concerned about it because the only case law which refer to that particular type of situation as giving a resident of a subdivision a vested right in the street, there is a case in which it was the only way they could get to their property.

MR. LUCIA: I don't think that entirely, I think it mentions Mr. Williams was here individually, I assume what happened here the typical way in which streets are dedicated the subdivider will sell off typically a few lots before the streets are accepted for dedication and will give the purchasers of those lots rights-of-way over all streets shown on the map. I am assuming that's what happened here.

MR. TRACY: That's not what happened here. All these, that's what happened in the case that your firm argued against me in the Supreme Court.

MR. LUCIA: Different firm.

MR. TRACY: The developer dedicated the streets all at once.

MR. LUCIA: No lots sold off before the streets were dedicated?

MR. TRACY: I doubt very much, I don't know for a fact but however the streets were accepted for dedication some two years after the map was filed.

MR. LUCIA: Which is why you sell off lots before the streets are accepted for dedication.

MR. TRACY: I think you always do, you sell houses before the streets are dedicated.

MR. LUCIA: That's right and those owners have rights-of-way over the streets to be dedicated including this lot, presumably.

MR. TRACY: No because this was never dedicated.

MR. LUCIA: I understand it was never dedicated but they still have rights-of-way of record.

MR. TRACY: No sir, no sir.

MR. LUCIA: I think that's an issue you probably have to establish by a fairly extensive title search.

MR. TRACY: I have established that there are no adjacent rights to use this right-of-way. My God can you imagine adjacent property owners if you say okay, we are going to build a street through here.

MR. LUCIA: I'm saying anybody with a lot in that subdivision shown on that filed map.

MR. TRACY: How about anybody in the town?

MR. LUCIA: If they can show a deeded right, this would be a deeded right-of-way.

MR. TRACY: There are no deeded rights and if this Board would so desire, we would furnish title insurance policy when title insurance company will tell us that they will insure against any such claim. I mean that's, you see you guys have a hang-up, if I might okay and please don't accept that in a derogatory sense. I understand your position, you're saying hey, here's a guy, he's going to put a smaller house in amongst all these nicer houses, that's terrible, right. Well, not so good.

MR. TANNER: I don't think anybody is saying that.

MR. KONKOL: No, no I think you're trying to put words in my mouth. When did your client buy the property?

MR. TRACY: In 1984.

MR. KONKOL: Did he buy it at a tax sale?

MR. TRACY: He bought it from an individual who had bought it at a tax sale.

MR. KONKOL: The original builder let this thing go for taxes. He got tired of carrying it.

MR. TRACY: You could say that or you could say the municipality neglected to accept it for dedication.

MR. KONKOL: Whatever and in this case, I say it's more or less a self-created hardship. He knew what he was buying at least his attorney should have informed him of this.

MR. TRACY: If that may very well be a self-created hardship is no bar to an area variance.

MR. TORLEY: But it's no absolute right to it either.

MR. TRACY: How can it be a self-made hardship?

MR. TORLEY: If it was a lot and not a road stub that he thought he could convert to a lot.

MR. TRACY: It's a self-created hardship variance denied not nonconforming situation with that lot for eternity and pay taxes on it? Do you think the constitution was enacted to protect things like that from a sovereign, from a municipality, you're the sovereign.

MR. TORLEY: Yes, because it does not guarantee everybody a right to a profit. If he made a mistake in purchasing a piece of land not suitable for building.

MR. TRACY: We are not here to discuss profit. I don't think that's a proper facet for this Board to discuss profit. He may not have a profit, he may have a severe economic hardship.

MR. TORLEY: He'd have to demonstrate that.

MR. TRACY: Why, this is not a use variance, why should he have to show, Otto versus Steinfel (phonetic)--

MR. TORLEY: This lot does not meet the requirement granting--

MR. KONKOL: I think it has to go back to the Planning Board.

MR. FENWICK: If it goes what I am thinking is in other words you're saying that when they changed, when they changed ownership of this lot, plot whatever you want to call it, then at that time, the town has lost its rights to it as a road and at that time, it became a lot. Is that correct?

MR. TRACY: It became a lot when it was a lot of record, when it was placed on the tax map with the County of Orange back in 1975 or '76.

MR. TORLEY: Dan does 26B apply there?

MR. TRACY: '77. This or was written in, amended in 1986.

MR. TORLEY: His client is maintaining it was a lot from the time he bought it and not that he's buying a piece of road.

MR. TRACY: Absolutely.

MR. TORLEY: When did he buy it?

MR. TRACY: In 1984, was it '84?

MR. WILLIAMS: '86.

MR. TRACY: Did you buy it after you checked out the law?

MR. WILLIAMS: I checked out the nonconforming code and it complied.

MR. TRACY: He bought it after checking out this code. Gentlemen, I am somewhat confused over the allegation to it was denied because it doesn't conform to the subdivision regulations. What have the subdivision regulations got to do with this particular lot? I can understand the bulk regulations but what have subdivision regulations got to do with a single lot?

MR. LUCIA: Section 4A provides when any subdivision is proposed, the subdivider shall apply for approval of a, the proposed subdivision. This was not proposed as a lot within that subdivision, it's something else. And the issue is whether that something else now constitutes a lot. Which is why you're here.

MR. TRACY: Well, I disagree with you because this is a single plot.

MR. TORLEY: Same piece of land.

MR. TRACY: You like piece, it's a piece of land so therefore we have a piece of land, a single piece of land which I respectfully submit the Planning Board has no jurisdiction over whatsoever, under your subdivision regulations, under Article 276, under Article 274A of the town law or etc. Now, I'm asking this Board to give me an interpretation that it's a, comes within the prenumber of the nonconforming lot section or in the alternative to schedule me for a public hearing for a variance and I remind me the Board of the proscription contained in Section 267 Subdivision B of the Town Law of the State of New York which says the Zoning Board of Appeals shall do what I'm asking you to do.

MR. NUGENT: I have no problem with the interpretation part, the variance part as far as I'm concerned isn't relevant because the variance is so great.

MR. KONKOL: Technically, he doesn't need a variance.

MR. NUGENT: He needs an interpretation if the Board feels that this is a lot of a substandard lot then that is what we should say it is but the variance part I don't think we can really deal with because it's so far out of the range of a standard building lot.

MR. KONKOL: Dan, I think the Board at this point needs guidance from you. I think at this point, it would be in order for you to take some time to examine it and get back to Mr. Tracy and then you can say hey, look if you want to go for a public hearing, fine but maybe it can be settled without that.

MR. NUGENT: If it is an interpretation, he doesn't need a public hearing.

MR. M. BABCOCK: Sure, he does.

MR. KONKOL: So I think maybe I'd like to make a motion that you be directed to research this further and get back to Mr. Tracy and make a decision from there.

MR. LUCIA: Sure, as long as the applicant is agreeable to that procedure instead of a motion tonight.

MR. TRACY: Absolutely.

MR. NUGENT: I'll second it.

MR. FENWICK: Motion is to have the attorney to investigate this and get back to Mr. Tracy and ourselves.

ROLL CALL:

Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye
Mr. Torley	Aye
Mr. Finnegan	Aye

MR. TRACY: Thank you very much. I'd just like the Board to know that I turned down a trip to Tampa to be here tonight. Thank you.

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KEITH WILLIAMS:

BY MR. FENWICK: This is a request for interpretation/area variances for construction of one family residential dwelling on parcel which was formerly designated as a town street.

Donald Tracy, Esq., of Tracy, Bertolino and Edwards, came before the Board representing this proposal.

BY MR. TRACY: I have had the pleasure of appearing before you on a previous occasion some time ago when Mr. Lucia was asked to give you an interpretation as to whether or not we came under the conundra of local law #3 of 1986, which set forth certain exceptions to the bulk regulations for nonconforming lots. I have had conversations with Mr. Lucia on several occasions and had sent him some backup material by way of case law and his conclusion was that the Board felt that we required a variance.

Therefore, under your procedures in connection with the variance application, I understand that this is a preliminary to apparently determine whether or not you will hear the variance. Now, the best thing that I can do therefore, is explain to you why we need the variance and what variance it is exactly that we'll need. Since the lot is only 8,427 square feet and since it's in a zone that requires a minimum of 25,000 square feet, we need an overall bulk variance. Since the proposed house sitting on the lot has side yards of 12.9 feet and 12.9 feet, we need a variance because the zoning ordinance and bulk regulations require 15 foot side yards. We have sufficient front yards. We have sufficient side yard. On the question --

BY MR. FINNEGAN: Is that back yard or side, rear yard?

BY MR. TRACY: We have sufficient front and rear yard. The side yard variances are somewhat minimal due to the fact that basically it's only two feet three inches on each side. The overall bulk variance is somewhat less than minimal due to the fact that that's all the property that's there and that creates of course what we allege to be practical difficulty. By way of the history of this matter, for Board members who might not recall, this matter was

litigated in the courts. The courts took the position that this property was shown as a street on a subdivision map which was approved back in 1972 and on which all of the other streets in the subdivision were accepted for dedication. Judge Patsalos ruled pursuant to our motion under Article 15 of the Legal Property Actions and Proceedings Law that there was no longer an offer of dedication and this was no longer a street. However, long before that your county had also made the same determination when they assigned a tax lot number to this parcel, plat or plot of land. By virtue of that assignment and by virtue of nonpayment of real estate taxes, a gentleman came into the tax sale that's annually held and bought the parcel. In 1986, my client bought the parcel from that gentleman and my client has been paying real estate taxes on the parcel ever since. What is the parcel? And what can we say that's good about this variance? There's nothing good about the variance, it's not something that anybody should like. It's a variance that probably, as evidenced by some of the remarks made at the last hearing, you know, you dislike and who wants to build a house on this lot. Nevertheless, we respectfully submit that my client has the legal right to petition this Board for those variances and this Board under the mandate of Section 267 of the Town Law, shall hear the variance as stated in that law from a denial of a building permit issued by the building inspector.

In this case, the building inspector did deny the permit. I don't think that the function of this Board, and I'm sure that this Board knows, is not to like or dislike a variance. As a matter of Kohorn versus Morell said back in 1982 in Court of Appeals case that the Zoning Board of Appeals are representative citizens doing their best to balance conflicting community pressures. When you stop and think about it, that's a great definition that was given back in 1982. You folks sit here and someone comes before you and says I have a problem, practical difficulty, I want to, as in this case, before us, build a bigger sign and this is my problem. You analyze it from the point of view of the impact on the individual and his practical difficulty and the impact on the community, what will it do to the community and you make a reasonable decision and quite frankly, I can tell you that in my experience dealing quite extensively with Planning and Zoning,

throughout the Rockland County area, sometimes Westchester County area and on occasions privileged to come up to Orange County, I have found that Zoning Boards of Appeals are very judicious in their determinations. They make their determinations based upon what they think is fair. They make their determinations based on what their attorneys feel they can do and they can't do. What's fair in this case? Well, if this Zoning Board of Appeals should determine that it's fair that Mr. Williams should not be permitted to build on this property, then the Zoning Board of Appeals has said Mr. Williams stop paying your taxes and let somebody else buy it at a tax sale or Mr. Williams continue to pay taxes on this property until such time as you leave our earthly domain but you cannot do anything with your property. We would allege, of course, and you would be advised by case law that that would be a violation of the 14th Amendment. That would be a deprivation of property without due process of law. You may say well, Mr. Williams, you have a self created hardship. Self created hardship, you bought this property and you should have known that this was a small piece of property. But you also find under case law Bronxville versus Francis, self created hardship is a bar to a use variance but it's not a bar to an area variance and the distinction of course is that this is an area variance.

Now, we'll discuss why you look and how you determine whether or not this variance fits in or is anti any legislative scheme. And you'll note from the plat that I handed out and I apologize for only giving you one, you'll note that the legislature in this particular case back in 1975 amended Chapter 48 which was the Zoning Ordinance and they said they talked about nonconforming residential lot which I first took the position, if this is not a nonconforming residential lot, what is it? For the simple reason that it's a lot on a filed tax map, and it's in a residential zone, so I didn't know what else to call it. A former under dedicated street and abandoned street, I called it a nonconforming residential lot. And they say as described in Section 4826A which if we look at Section 4826A, they talk about lots which are filed on a map in the Orange County Clerk's office. Well, that tax map is a lot, it's a map that's filed in the Orange County Clerk's office. And they talk and they Town Board said you can build

on these types of lots. Now, let's assume for argument's sake that I'm wrong. This is not a residential lot and then please accept what I'm saying to you as being relevant only to the size and the survey that you have seen. They say that you can build on one of these lots if it's not less than 5,000 square feet. We're not. We're 8000 and change, is served by both central sewer and central water. The proposed house shall contain not less than 1,000 square feet of livable floor area and have a building height not exceeding 30 feet. The footprint of the house shown on that survey so complies. The front yard shall be at least 35 feet and if I recall, ours is 37 and change. The rear yard shall be at least 40 feet and ours does have more than 40 feet and the lot shall have at least 50 feet of street frontage. Ours does. Then it talks about lots of widths of 50 feet and less than 80 feet, may be developed with a side yard of at least 12 feet. We have 12.9 feet and we come within that particular parameter. Lots of widths of 80 feet and less and 100 feet need 15 feet. Nevertheless, we comply with this legislative intent. That house on that lot complies totally and wholly with local law number 3 of 1975. And so, we say to this honorable Board, well, that did not suffice in the eyes of Mr. Lucia or whoever reviews this matter and certainly that's his prerogative. And we don't argue with it. We say okay, now we must come before this Board and do what the courts call exhaust our administrative remedies. We must come before this Board and say we require a variance in order that my client's property not be confiscated or he be deprived of any use of it. And that's preliminarily why we are here tonight. I stand ready to answer any questions anyone may have on that or on anything that I said or anything else that might come into your minds.

BY MR. FENWICK: Do you know if investigation into the deed of the property that this property does not have any right of ways for properties on it?

BY MR. TRACY: Well, we'll obtain affirmative title insurance that there are no rights of way to the properties, for the properties, on this property.

BY MR. FENWICK: That was a question that our attorney had. The easement that's shown across the rear of the property, has that been subtracted in the

application from the total square footage of the property? Do you know?

BY MR. NUGENT: That was one of the questions I had also.

BY MR. WILLIAMS: I don't think it has been subtracted.

BY MR. TRACY: I don't know the answer to that.

BY MR. FINNEGAN: You're short two feet three inches on each side, you're short, you need 15,000 square feet, you've got 8,407.

BY MR. FENWICK: Has he been written a denial on this property?

BY MR. BABCOCK: This has been going on for a while.

BY MR. FINNEGAN: He's only two feet three inches short, so it's got to translate into 7,000 square feet.

BY MR. TRACY: One is an overall bulk and the other is a side yard measurement. So that you couldn't by any mathematical formula, you know, get 15 feet, 7,000 feet out of shrinking the house up.

BY MR. KONKOL: What bothers me, the last time this gentleman was in here we said to Dan we'd table this thing. We said get with our attorney, get with Mr. Lucia and answer some of these questions. I'm not taking away from your smoke right now at this point. Dan Lucia has never come back to this Board with any representations. He has not given us any answers, so at this point, you're a little premature right now because we haven't had all the answers from our attorney.

BY MR. TORLEY: And we couldn't get them until the next meeting.

BY MR. KONKOL: We had questions Rich brought up about do you know whether or not this easement or this street services other properties. How do the other people that are in this development in Park Hill as a subdivision, number of people, most of them the lots are really big lots.

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BY MR. WILLIAMS: It's not a street. They don't have rights on the --

BY MR. FENWICK: Not as a street, but one of the things that could be there, it could be written in as having right of ways that are deeded to the people in the areas. That's what we want to find out. There was a question that our attorney had.

BY MR. KONKOL: These were the questions that we wanted you to and Dan to get straightened out and then come back with the answers.

BY MR. TRACY: Want to give us, you want him to come back with the answers, I can give you the answers. When was I here before?

BY MR. KONKOL: About three months back.

BY MR. TRACY: I know it was the sail fishing season.

BY MR. KONKOL: Like I say, the ball is in the attorney's hands and your hands, so --

BY MR. TRACY: No, it's not in my hands, sir. I have given the attorney case law, letters.

BY MR. KONKOL: I would suggest that you call him.

BY MR. TRACY: Probably five phone calls including the last phone call that I gave to him he suggested to me that I should come back to this Board and that I should put myself on an agenda and he even told me who to call, so I find it somewhat frustrating because --

BY MR. FENWICK: Right now, what happened, you're here under worst case and whatever Dan says, he's here under worst case. Worst case is he needs an area variance. That's worst case. That's what he's here for. That's the reason why Dan had sent him here for, he's got to come back to us. Worst case is an area variance on this parcel of property. When he comes back, if he comes before us with the public hearing, he's got to have a deed, he's got to have the title policy. Can't deny him a public hearing. The question was that was raised with Mr. Lucia before, was the couple of things about the substandard lot and nonconforming use and everything

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else like that. You're not pursuing that. You're pursuing --

BY MR. TRACY: I'm reserving my rights at the appropriate time to --

BY MR. FENWICK: The appropriate time is now. If we're going to go for an area variance, this is what we're going to look at.

BY MR. NUGENT: What are we interpreting?

BY MR. FENWICK: Interpretation is this a nonconforming lot, does this fall under the nonconforming lot?

BY MR. NUGENT: Looks like it to me.

BY MR. TORLEY: When this was laid out by the Planning Board, it was not laid out as a residential lot. It was laid out as a street. Since then, it has come back and is now being claimed as a residential lot. I'd like to hear arguments.

BY MR. NUGENT: That's why I asked for the denial. I'd like to see the denial.

BY MR. WILLIAMS: It was only denied, Mike didn't know if it met, if it was a nonconforming lot. If it was a nonconforming lot, I needed no variance.

BY MS. BARNHART: Mike, do you have a copy of the denial?

BY MR. BABCOCK: What we did, the last time, my assistant Frank Lisi, wrote Mr. Williams a letter May 12th of '89 is the last one I have.

BY MR. TRACY: That's correct.

BY MR. BABCOCK: And I can give it to the Chairman. He can read it.

BY MR. FENWICK: I'll read this for the record. This is to Mr. Keith Williams. Dear Sir. Please be advised that a building permit to erect a single family home on Section 8, Block 1, Lot 21 on Summit Drive has been denied by the Building Department of the Town of New Windsor as this lot did not receive a

subdivision approval by the Town of New Windsor. If there's any questions, please call me. This is signed by Frank Lisi.

BY MR. TORLEY: Planning Board has not approved this lot.

BY MR. TRACY: Planning Board did not approve this lot but the Planning Board does not approve single lots. If you look at the definition of subdivision, it says division of lots into further parcels that are not able to be further subdivided.

BY MR. FENWICK: Why would you buy a lot that's too small, you can go around, there's postage stamp lots all over New Windsor.

BY MR. NUGENT: They do it at Beaver Dam Lake all the time. It's like three, 25 foot lots.

BY MR. TRACY: We ask a question and the answer is because Mr. Williams, when he bought the lot, was familiar with Local Law number 3 of 1975.

BY MR. FENWICK: The nonconforming lot law.

BY MR. TRACY: And had laid out a house on the lot which would comply with all respects. Now, it's the last thing in the world I want to do with the Board is get adversarial because number one, it's not my way and number two, this is not the place to get adversarial. Let's look at what the Town of New Windsor can do here and let's hope that an answer to this gentleman's concern that they don't keep doing it. They set aside a piece of land in 1972, went nowhere, was put on the tax map which the County will do and every piece of property other than certain tax exempt corporations, all of this property goes on the tax rolls. And this is a big problem in every municipality so much so that many municipalities have adopted the procedure of taking the deed for recording at the time of approval rather than going through the dedication process later on. So, what happens is 1972 I was a young fellow in 1972, things carry on and carry on and carry on and it's at a tax sale. Some tax shark comes up. There's guys who specialize in that. They come up and they say I'll buy that for \$200, I'll buy that for \$100 bucks. I'll find a sucker like Keith Williams to buy it off

me for 15 grand. Then Keith Williams comes along and they say here's a lot for you, look, you can build on this under the law of the town and Keith says you're right. I can. He goes in and he does his due diligence which may not have been quite diligent enough and then when the building inspector says you can't do it, well, that's how I make my living, so --

BY MR. FENWICK: Are you familiar with the question that I just gave you that about whether the other property owners in the development have cause to have a right of way across the property?

BY MR. TRACY: Completely and totally familiar with it. I know the answer to it and I tell you the answer to it here on the record. The answer is no.

BY MR. TORLEY: On what basis do you say that?

BY MR. TRACY: The basis that three years after the tax sale, anyone seeking to avert a claim other than the municipality was barred from asserting such claim. If it happened within three years of the tax sale, one would have had to bring what's known as a bar claim action and cited everybody and their brother in the area to assert in court that they had no right or no claim to the property. Under those circumstances, the courts would have stated that. However, after three years, there's no necessity for it or I would have brought a bar claim action.

BY MR. KONKOL: When you purchased this property in 1986, is that correct, and then when was the first time you applied for a building permit?

BY MR. WILLIAMS: I sat on it for a few years.

BY MR. KONKOL: After three years?

BY MR. WILLIAMS: Yes. Oh, I waited --

BY MR. KONKOL: He bought the property --

BY MR. WILLIAMS: Yes, I waited for three years because at that point, that's when you cleared title to it.

BY MR. KONKOL: Also in this town law, you think Mike, correct me if I'm wrong, that you have so many

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years to get the, if the law changes --

BY MR. FENWICK: That's if the law changes.

BY MR. TORLEY: The section that you're referring to, it's not 1975.

BY MR. TRACY: I read it as Local Law number 3, 1986.

BY MR. WILLIAMS: I was advised not to get the building permit immediately. To wait for a period to go by so that everything would be --

BY MR. KONKOL: In this case the law doesn't apply.

BY MR. WILLIAMS: But I did wait that period.

BY MR. KONKOL: I think really --

BY MR. TORLEY: Actually, what date did you purchase it?

BY MR. FENWICK: If this is not going for a variance, I'm going to recommend that the Board wait for Dan to come back.

BY MR. KONKOL: I think it's on your benefit, Mr. Williams behalf, Mr. Tracy, to get this information, sit down with Dan. I know you say you have been waiting but you're going to have to get with him. The other thing is, this development is so loaded with people all around there and if you, I wouldn't even entertain a public hearing until we have all these facts because people are going to be here in droves.

BY MR. TORLEY: I would ask --

BY MR. FENWICK: Do we have a tax map of this area?

BY MR. TRACY: You're trying to tell me, let me answer that this way. Let's suppose we say tell you what town, let's make that into a road, we're going to give it to you, what do you think the people would say in that subdivision?

BY MR. KONKOL: I don't know what those people are going to say, this guy or this guy in back of you is going to say, but I think, as Mr. Fenwick says, if

you want to go for a variance on this map, just as you're, give it right now a variance at worst possible scenario that you're trying to create here, then we can go for that, but I think you're going to be in trouble.

BY MR. TRACY: I kind of expected that.

BY MR. TORLEY: Are you asking for a variance --

BY MR. TRACY: I asked originally --

BY MR. WILLIAMS: My contention was it met the requirements --

BY MR. TRACY: There's a question on the floor. I asked originally in the alternative I said I would like an interpretation as to whether this lot comes under the conundra of this law or in the alternative if it is determined that I do not, then I would like a bulk variance. Well I have not seen anything from Mr. Lucia that I have talked to him and incidentally, he's very cooperative on the phone and he asked me for some case law which I sent up to him.

BY MS. BARNHART: Did you give him citations that you gave us tonight? Does he have those copies?

BY MR. TRACY: I gave him more citations. I gave him a brief that I had done in the Appellate Division in a similar case.

BY MR. TORLEY: If you do come before us, I would like to see those citations.

BY MR. TRACY: Well, when I come in, I'll come in with a, I'll come in with a Memorandum of Law that I will give a copy to everybody.

BY MR. TORLEY: I'd like to see at least a week or so before we have the public hearing which will be in September, something that we have at least personally, I would assume the rest of the Board would like to see that ahead of time, not at the night of the public hearing.

BY MR. KONKOL: I don't think we can set him up from a public hearing because I'm not satisfied myself if the rest of you guys are satisfied, it's up to you

without getting the information Dan has to give us.

BY MR. TORLEY: I was not going for being set up for a public hearing. I'm saying before that happens, I'd like to see this a week or so before the public hearing.

BY MR. TRACY: All I can say is thank God the Giants aren't playing Buffalo tonight. I got stuck at a Zoning Board of Appeals hearing last month.

BY MR. KONKOL: Believe it or not, we're trying to help you but at this point I, Mr. Keith will be frustrated with his first attorney. I hope you weren't the attorney who represented him on the purchase because you could have explained to him when you buy a tax deed, you buy a lot of headaches.

BY MR. WILLIAMS: I didn't buy a tax deed. I bought it off an individual.

BY MR. KONKOL: If you trace it back -- until you get with Dan Lucia, and we can get some of these questions answered, I know myself, I'm not going to go for a public hearing. There's too many ifs and ands.

BY MR. TRACY: If I knew what the question was, I would submit them in the interest of productivity which America is lacking today, I would ask --

BY MR. KONKOL: Too many lawyers in America.

BY MR. TRACY: You're absolutely right. I would ask Mr. Lucia if he could just review my answers to the questions and advise you whether they are correct or whether he differs with me on them. I don't think he's answered whether or not he comes under that.

BY MR. FENWICK: He didn't answer that because the problems seems to be in looking for a subdivision right now. I don't know that I think that probably is I don't know whether Dan has addressed that or not as to whether this was part of an original subdivision, whether it has to be or doesn't have to be or whatever it seems to be the argument as I go back in the minutes, and I look at the minutes, we had one evening, addressed the fact that this was not part of the original subdivision plan that was an

original subdivision area. This was subdivided as a road, I realize it's not a road any more or whatever, but it was never recognized as a residential lot on the original subdivision.

BY MR. TRACY: That's absolutely correct. It was not recognized.

BY MR. NUGENT: That's what we're supposed to be interpreting, isn't it?

BY MR. TRACY: It was not recognized as a residential lot on a subdivision. However, by the time that 1986 rolled around, it was, in my opinion, clearly a residential lot.

BY MR. TORLEY: It was a piece of property that had never been defined as a residential lot. If it was a rare road right of way that happened to run through a residential lot, that's five feet wide and it got remanded by the railroad --

BY MR. TRACY: 4826A talks about a plot of land.

BY MR. TORLEY: Nonconforming residential lots.

BY MR. TRACY: Doesn't, if you read it carefully, it uses the word plot.

BY MR. TORLEY: Nonconforming residential lots.

BY MR. FINNEGAN: Nonconforming starts off with nonconforming residential lots.

BY MR. TRACY: Then it refers to a plot. Now if this is not a plot of land, does this thing exist?

BY MR. FINNEGAN: It's a plot of land for sure but --

BY MR. FENWICK: Dan might have been ready for him but Dan is not here tonight.

BY MR. NUGENT: I think we should postpone this until next month until we hear from our attorney.

BY MR. TORLEY: Are you asking me to table this until the next meeting?

BY MR. TANNER: If Mr. Lucia had been here tonight,

we could have gone right through with it.

BY MR. WILLIAMS: I spoke with him before this and he said he didn't need to be here for a preliminary.

BY MR. TORLEY: Would you like a motion to table this until the next meeting?

BY MR. FENWICK: It's up to you?

BY MR. TORLEY: I make a motion we table this matter to be rescheduled for additional preliminary hearing.

BY MR. KONKOL: I second that.

BY MR. NUGENT: We do what Larry suggested which I'm in favor of and the information is given to us by our attorney, would we have to have these people back for another preliminary?

BY MR. TORLEY: I'm suggesting we table this.

BY MR. FENWICK: We aren't going into a public hearing.

BY MR. NUGENT: I understand that, but after that information.

BY MR. FENWICK: For their own protection, they might want to be here for another preliminary.

BY MR. NUGENT: To hear what we say.

BY MR. TRACY: How do you, how would you like, are you looking for the interpretation? Are you looking for the variance? Well, I'd like both because if you give me the right interpretation, I don't need a variance. If you agreed with my interpretation, I don't need the variance. However, you know, I suspect as I started off by saying, there's nothing to like about this, you know, I suspect nobody likes it and I suspect that if I don't, I won't get the interpretation and I also suspect that I won't get the variance.

BY MR. KONKOL: I think you're reading it wrong. We're trying to tell you if we take this as the worst scenario, you want to present this tonight, you want to go for an area variance, we can act on that

tonight. If you want to go for a variance and you'll have a public hearing and you'll have all those people in here and you better have your answers, you better be really sharp that night. But what we're trying to tell you, we're trying to give you and your client the benefit of the doubt if our attorney can get back with you, get the facts straightened out, then we're prepared to give you an interpretation and go for a variance. We're trying to give it to you in a nice way, but right now I think you're becoming an adversary.

BY MR. TRACY: I apologize for that, if you feel that way. It's just that I have been waiting now pretty near a year.

BY MR. KONKOL: Fine, but this Board has to have the facts. We can't go ahead. I mean, I thought you had the facts before now. If Dan's at fault, he's at fault.

BY MR. TRACY: I think you're saying you have to have the law, you've got the facts.

BY MR. KONKOL: The law and the facts, we want to know is this a right of way to something else? You're saying yes but our attorney hasn't given us an answer. Follow what I'm saying?

BY MR. NUGENT: I know exactly what you're saying.

BY MR. KONKOL: So I think really to harmonize this thing, go for a preliminary hearing with the information we requested.

BY MR. FENWICK: I have no problem with him going for the public hearing right now. I have no problem on the basis of interpretation. I have no problem with doing both of them in the same night. The interpretation and if in fact we are interpreting that it does not qualify as nonconforming lot, then it would fall under then going for the variances, the variance, area variances. He's going to have to have with him that night and just like we ask anybody to have with them that night, the deed and the title policy. We very rarely ask anybody to give us the deed and title policy ahead of time. If he shows up with the deed and/or title policy that night, that takes it away. There's no argument. There's

**RETAKE
OF
PREVIOUS
DOCUMENT**

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nothing. It's over.

BY MR. KONKOL: But the title policy will only guarantee what he purchased.

BY MR. TORLEY: I disagree.

BY MR. FENWICK: Dan is not going to tell you anything else.

BY MR. TORLEY: If he's coming in strictly for an area variance, if you're going to abandon your claims under 4826E and come in strictly for an area variance, then a lot of our questions vanished because we're looking at a nonconforming lot that's too small and you're asking for an area variance from 8,000 to 15,000 or 25,000 or 15,000 and from frontage, if that's what you're attempting to do and you're willing to say that if you're still maintaining a claim under nonconforming lots of record 4826E then I'd like to see more detail on this and responses from our attorney.

BY MR. FENWICK: Let me ask you this. Do we have an application? Has an application been filed requesting this house on this property which addresses the side yards and addresses this, the overall square footage?

BY MR. BABCOCK: Yes, we do. We have a set of building plans. We have a building permit application and to be honest with you, it's been a long time and I don't remember all the circumstances neither and that's why I left it up to the attorneys. We went to court and there was a judgement in Goshen. Now what he's saying is true that now I had denied it and I don't even know why I denied it the first time. I don't remember at this point in time. But it was based that the Town had the right to go ahead and make that a road. They should have made it a road since they didn't, it's a lot and the Town does not have any more rights to have it as a road. That's the end of the case. That's what the judge said. And we came back to Tad Seaman and that's who represented the Town in this matter and he was the one that suggested that it be sent over to the Zoning Board for an area variance. And that's when Dan Lucia picked up on it and this gentleman and the last thing that I remember was that the only thing I

needed to do is I needed some way, some avenue for this gentleman to get back here and that's why that letter was written and really the only reason that the letter was written. So the gentleman can get back in front of the Zoning Board.

BY MR. WILLIAMS: I have met all the requirements.

BY MR. NUGENT: But we don't have a formal denial.

BY MS. BARNHART: It's not in the file and probably the reason because I'm sure we do.

BY MR. NUGENT: If we have to vote on a use variance or an area variance we have to have a formal denial that the numbers that are in that formal denial are what we are going to vote on.

BY MS. BARNHART: I have to look back in the files.

BY MR. KONKOL: I think it's outdated, if it's so far back.

BY MR. BABCOCK: I think this would have been much easier if Dan was here. I think even the applicants knew that Dan wasn't going to be here tonight. I'm not saying that that's right or wrong. I think Keith, Mr. Williams, knew that. I really don't know what they need. If I did, and I don't think any of us here don't.

BY MR. FENWICK: Do you know why the nonconforming lot has not come into being? Is it because it's not a recognized residential lot per se, is that the reason why that has not been addressed?

BY MR. BABCOCK: Well, right now, to my knowledge, the attorney, Dan, this attorney and also Tad Seaman, felt that if the Zoning Board does an interpretation that it's a nonconforming lot, it's over tomorrow morning or once the formal decision is done. He gets a building permit under nonconformity. If the Zoning Board action says that it's not a nonconforming lot for some reason, then the gentleman can go ahead and apply for the necessary area variances. If he gets them, when he gets his formal decision, then he goes and gets a building permit.

BY MR. TRACY: Mr. Chairman, I have absolutely no

objection coming back before this Board. I like you, it's home, it's nice and you know, I can empathize with you looking at this short lot and figuring the hounds of hell are going to be loose by this hearing.

BY MS. BARNHART: You have no idea.

BY MR. TRACY: I have been through that before. I did the Pyramid Companies job down in Rockland County so I know what they are going to say and I have a few answers, stock answers that I give, but I never try antagonizing the public any more than I try to antagonize the Board, so therefore, if it be the wish of this Board if it would give this Board some comfort, hopefully before the snows fly for me to come back up safely, you have talked to Mr. Lucia, I'd be very happy.

BY MR. FENWICK: I can make a point it will be on the agenda next meeting. The next meeting is in August, two weeks from tonight.

BY MR. TRACY: Do you know the date?

BY MR. TORLEY: That would be another preliminary hearing.

BY MR. NUGENT: Continuation.

BY MR. FENWICK: Right now we have a motion to table and we also have a second, correct?

BY MR. KONKOL: If you can get ahold of Mr. Lucia and iron this thing out, it will be to your benefit.

BY MR. FENWICK: Dan should be back next week.

BY MR. TRACY: Does a Zoning Board of Appeals have to hold a public hearing for interpretation?

BY MR. FENWICK: Yes.

BY MR. BABCOCK: I think what we need to do and as talking to Dan Lucia if I remember correctly, is that this was a denial, this letter was a denial, so that they could ask for an interpretation and/or a variance. If the Board decides that the interpretation is that it's not a nonconforming lot, we'd have to do a new written denial with the numbers

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based on the square footage of what the requirements are 15,000 and they are 8,000.

BY MR. FENWICK: Let's get that squared away because I think that's --

BY MR. WILLIAMS: I was never issued the numbers.

BY MR. BABCOCK: We are not there yet. If they were to act and say that in an interpretation that it met the nonconformity, we wouldn't need numbers.

BY MR. FENWICK: But I have a feeling that we are going to, I can tell you right now it's pointless because to beat that thing around why not go for both of them at the same time, the same kind of situation we had with Wind in the Willows, let's have our numbers in front of us at the next meeting. It's just ridiculous to drag them any further down. I we go for the interpretation the same night, they'll be going for the area variance. If one fails you're going to the other one. One may not fail. I don't know.

BY MR. TRACY: Then I don't need to come back until we have the public hearing?

BY MR. FENWICK: Well, we're going to have a preliminary with Dan next time. You don't have to be here but I'd think that it would be in your best interest to be here. I would think it would be Mr. Williams' best interest.

BY MR. TRACY: I'm on an hourly rate, I'll be here.

BY MR. FENWICK: I would say you know what the situation is. I don't see why you would have to have Mr. Tracy here the next time.

BY MR. BABCOCK: It's actually going to be cleared up as a point of information for this Board, we already know where you stand.

BY MR. TRACY: Mr. Chairman, one of the duties the Court of Appeals never assigned you was to minimize attorney's fees.

BY MR. FENWICK: But we're here to help out the applicant. We have a motion to table with a second.

ROLL CALL:

Mr. Torley; Aye.

Mr. Finnegan: Aye.

Mr. Konkol: Aye.

Mr. Tanner: Aye.

Mr. Nugent: Aye.

Mr. Fenwick: Aye.

BY MR. TORLEY: If you do decide to proceed with the section then I would appreciate the brief ahead of time whenever the public hearing is scheduled for. I'm letting you know that since I won't be here.

BY MR. BABCOCK: The only thing I'd like to add is that the only number for me to write up a disapproval as far as the area variance would be concerned, I have all the numbers as far as the setbacks and so on and so forth. The only thing I do not have is the net area, square foot area, so maybe the applicant can supply me with that. The definition of a lot area is subtract all easements.

BY MR. WILLIAMS: So I have to take off those easements?

BY MR. BABCOCK: Right, so you have 8427 square foot now. We base that on 15,000 square foot, subtracted that plus the easements, so if you can supply me with that I can give them the numbers as far as side yards and whatever.

BY MR. WILLIAMS: Okay.

BY MR. TRACY: I'm still of course enjoined to get together with Mr. Lucia.

BY MR. FENWICK: Yes.

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SMALL TOWN LAND

MR. FENWICK: This is tabled from 8-12-91. Request for interpretation and/or area variances to construct one-family residential dwelling on proposed road located on Summit Drive.

Donald Tracy, Esq. came before the Board representing this proposal.

MR. TRACY: I would hope that Mr. Lucia would cooperate, he and I did have a conversation and asked me to put myself on the next agenda.

MR. LUCIA: I did do that. One thing I noticed in reviewing the file and correct me if I am wrong, Mike, we had discussed this in regards to an interpretation and in the alternative for an area variance. I am not sure that we have jurisdiction of interpretation, reason is going through the file, the only denial was Frank Lisi's May 12th of '89 letter which denies a building permit on the grounds that the lot did not receive subdivision approval.

MR. BABCOCK: Right.

MR. LUCIA: If that's the only denial, I'm not sure that's sufficient to give this Board jurisdiction to handle an interpretation, either under town law or under our local zoning law because we are restricted to interpreting the zoning law. We have got denials under the subdivision regulations.

Probably, the only thing is an Article 78 against the Building Inspector. If the denial were under the nonconforming lot of record statute that would be something we can interpret but this is not a predicate for the denial.

MR. TRACY: I think --

MR. LUCIA: If you have any thoughts, I'd be happy to hear them.

MR. TRACY: During our extensive and truthful conversation or dialogue last week, the Building

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Inspector seemed to indicate that he put that on there as a reason for denial because it wasn't in his opinion a lot of record. I pointed out that the reason it couldn't be a valid reason because a single lot would not come under the authority of the Planning Board. So, I thought that we had sort of passed that hurdle and we had gotten back onto the provision in your Zoning Board of Appeals rules and regulations as to whether or not we were going to apply finally and formally for a variance for an interpretation. Whichever one, whichever one the Board chooses to hear or in the alternative, a hearing in the alternative for an interpretation or a variance.

We have been asked, the Board interpreted the ordinance of course that's a prerequisite of the Zoning Board of Appeals under town law and found that they did not feel that this lot came within the exception provision of the ordinance, why then we would proceed on and ask for an overall bulk and side yard variances.

MR. LUCIA: The reason I raised the issue, I don't think based on the paper work we have now, we'd have jurisdiction to interpret whether it's a nonconforming lot of record because you weren't denied on those grounds.

MR. TRACY: The grounds that we were denied on, how can I control why the Building Inspector denies it.

MR. LUCIA: You can't.

MR. BABCOCK: Maybe I can clear one thing up. I know at the last meeting according to my notes, it was tabled and it was tabled for a new disapproval and the applicant was supposed to supply me with new information. So, that we can get, I never received that information as of today. No, I don't know whether and Dan wasn't here at the last meeting, that would be the information as far as lot --

MR. FENWICK: That's what I thought we were supposed to go in and get the information for a new denial so we can act on that.

MR. BABCOCK: Then it would be an interpretation or that denial used as a variance.

MR. LUCIA: If it's in fact denied under Section 4826E,

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as nonconforming residential lot of record, I mean, that obviously would give you jurisdiction to bring that interpretation.

MR. TRACY: Is the Building Inspector in a position to make that interpretation tonight? I mean, I'd like to not to come back for a future preliminary hearing.

MR. LUCIA: I appreciate your --

MR. TRACY: Much as I said before, as much as I like coming up here but because it was early tonight, I missed supper and that makes me cantankerous. I would assume the Building Inspector has sufficient information to either make a determination that it's a nonconforming lot in which case there's no need for us to be here. Mr. Williams can get his building permit or that he can feel that it requires interpretation by the Zoning Board of Appeals or that he can readily see that it requires variances with as I understand it 750 square feet then by virtue of the easement which is 15 feet by, well, basically, 50.9 feet so it's a little over 750 feet and I'd like this Board's permission to move ahead for the armageddon or apocalypse, whichever.

MR. LUCIA: One possible middle ground and I don't mean to put the Building Inspector on the spot, to force a denial under a section, he may not have full figures and the Building Inspector could request an interpretation under 4833A, that would avoid the, him having to make the determination whether or not it's in fact nonconforming lot of record, if he's not prepared or did you not have figures to do that at this point in time?

MR. BABCOCK: I'm not prepared at this point in time, that's for sure.

MR. TRACY: To do what?

MR. BABCOCK: Well, to make any decision at all. First of all I don't have the numbers as far as, I mean, the numbers are being thrown out but --

MR. LUCIA: You have no formal application with those numbers on it?

MR. BABCOCK: No.

MR. FENWICK: You'd have an easement on the property, we had asked that this would all be figured in and it's here in the minutes that it would be corrected and get back to the Building Inspector. I have that here so we would have a, something to act on.

Let me just ask Dan, what would be the criteria for this smaller substandard lot or whatever?

MR. LUCIA: Well, essentially, if either he's denied on those grounds or the Building Inspector requests and interpretation whether or not this lot meets those grounds, he's essentially he would initially have to show that he does in fact have a nonconforming residential lot, although we cannot interpret the subdivision regulations. That decision, that's ultimately tied up in the subdivision regulations, Mr. Tracy I'm sure is going to make an admirable case for the prior case law on this particular lot determining that it's in fact on the tax rolls and it's a lot because it apparently can't be anything else, and attempt to argue. He's within the purview of Section 4826E, if an interpretation we find that he's on his way, I think he meets all those standards and can go ahead and get a building permit. If we interpret that he's not within the purview of that section, he then comes before us seeking area variances, somewhat greater variances than it would be the case indicates that section cause it's a little bit further in the lot area than would be allowed under the nonconforming residential lot section and he attempts to make a showing as in any area variance case for practical difficulties and attempts to show it.

One of the things I have discussed with this Board previously is Mr. Tracy previously has made the argument in other cases that if we do not grant him an area variance, it may well be a taking of Mr. Williams property, Small Town Land's property. The dilemma that this Board as a Zoning Board is going to find itself in is there's no real way that I or anybody else can get you out from under it. You have to decide this case based on zoning law. If Mr. Tracy's client is unhappy with your decision and takes it up on appeal, it's possible your decision based on good zoning law principles could be reversed on constitutional grounds. You really can't decide the case on constitutional grounds, that's not within your jurisdiction as a Zoning Board of Appeals. And you really can't kind of

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anticipate that result and attempt to do it because you may well get an appeal by a neighbor saying they decided based on constitutional principle what about all the zoning law principles that you should have found in deciding an area variance. So, it's a tough case and I can't make it any easier for you to be honest with you.

Mr. Tracy is going to I'm sure make a very good showing for his client and has seemingly very good constitutional basis for that, if it ultimately is denied but you're bound by the zoning law and that's what you have to make your decision. It may well be he can come in and establish good grounds for an area variance, if so then you can decide strictly on traditional area variance standards and design as well but we need to have it properly before us to do that.

MR. FENWICK: Just out of curiosity, Mike, what would you look for in other words if we had that substandard lot law or whatever it is, what would you look for in this case that would, that you would consider to say to Mr. Tracy or Mr. Williams yes, you have this lot.

MR. BABCOCK: Well, the date that it was created, to my understanding this lot was created in 1972, which was after the enactment of that code and the nonconforming lots would be any lot that is created before the enactment of that code. That's how I understand it to read.

MR. TRACY: '72 is before the enactment of the code.

MR. BABCOCK: Well, they made that code in 1986, okay for nonconforming lots.

MR. FENWICK: Right.

MR. BABCOCK: But if you read that law, it's not if a lot was created in '85, it's a lot that was created before the zoning book was created.

MR. KONKOL: Relative to the law, if we go to the Planning Board map that they gave approval to in that map, it was designated as a street, this particular lot. Now, in 382 of the zoning law, the definition of a street, public right-of-way of an existing street whether or not accepted by the town in areas designated by any developer to be used as a public right-of-way.

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Now, regardless of whether the town accepted it or did accept it, it was a street, that's according to law and that's the way the Planning Board acted on the -- let's go back over to 46 or 4826B, get any nonconforming plot in a subdivision finally approved by the Planning Board more than three years prior to the effective date of this law shall not be eligible to receive a building permit and said subdivision part or plot thereof shall be resubmitted to the Planning Board in accordance with the applicable provisions of this zoning law.

I don't think it's the provision of this Zoning Board to determine what this is. Mr. Tracy said in his statement at the last meeting, a former dedicated street, abandoned street, I called it a nonconforming residential lot because he didn't know what to call it. So, that's his opinion. So, I think at this point, I think this Board is powerless to do anything. I think it should go back to the Planning Board.

MR. NUGENT: I thought that it was made mention that a Planning Board wouldn't act on a one lot subdivision.

MR. KONKOL: At this point, it's spelled out in the law.

MR. NUGENT: I understand exactly what you said, I'm just going by what somebody spoke about earlier, they wouldn't act on a one lot subdivision.

MR. KONKOL: I don't think it's the purview of this Board to determine what this is.

MR. FENWICK: It was part of it.

MR. KONKOL: Everything that pertains to nonconforming lots is talking about a residential plot, this is a street.

MR. TRACY: Plot, this is a plot of land.

MR. KONKOL: Designated by the Planning Board as a street.

MR. TRACY: Court has ruled it's not a street.

MR. LUCIA: I think Mr. Tracy is going to argue once it appeared on the tax maps by county action it had to be something and I'm sure he's going to argue it's a lot.

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I don't mean to steal your argument but I presume --

MR. TRACY: No, I appreciate the concern of the member and, you know, his diligent research on it. However, what will the Planning Board find?

MR. KONKOL: They are the ones that had the jurisdiction over it. This Board does not have this jurisdiction.

MR. TRACY: I disagree. I think this Board has the jurisdiction because it requires either a variance or interpretation that we seek.

MR. KONKOL: That's your provision, that's your case but --

MR. TRACY: Now, after that determination is made, it may very well be that it may have to go to the Planning Board to amend the subdivision law.

MR. KONKOL: I don't interpret it that way, sir.

MR. FENWICK: At this time, the way I read it and to agree with Mr. Lucia we do not have a denial is reference to looking for an interpretation by the Building Inspector. These things were requested at the last meeting that either Mr. Williams or Mr. Tracy were to supposed to contact Mr. Babcock with reference to numbers so that he could write a denial and according to Mr. Babcock, no one has approached you in reference to this at all.

MR. BABCOCK: No.

MR. FENWICK: Since the last meeting, doesn't seem to me that a denial was a big thing for Mike to write. We need a denial to act on.

MR. WILLIAMS: I'm Keith Williams. When I first applied for the permit, Mike had told me that he did not know how to deny this, that he understood what I was looking for, was an interpretation which is what he told me I needed and that he, this is the way he was going to write the denial, just so that I could get in front of the Board. I did not request for him to use the terminology he chose. I wanted to get an interpretation from the Board on the nonconforming lot code that was my original and only intention and Mike

may or may not have known at the time ~~how~~ to write that up. He told me this was all new for him and that he knew I wanted to get an interpretation and whatever he wrote at the time, was what I believe he felt was necessary for me to appear before this Board.

MR. FENWICK: You're talking quite a while in the past, not since this past meeting.

MR. WILLIAMS: The original denial.

MR. FENWICK: We're talking about the, since the past meeting, when it was asked that either you or Mr. Tracy come in to see Mike so he can write the denial. We have it here in the minutes. We asked for numbers at that time cause there was a question as to the easement through your property.

MR. TRACY: I have good recollection of that, Mr. Chairman. Only I didn't recall that I was supposed to do that.

MR. FENWICK: In other words, we're just --

MR. TRACY: Let me make a suggestion that would perhaps get us off the horns of this dilemma cause when I was a young naval officer, my first fitness report says this officer becomes confused when carrying out conflictive directives. Therefore, suppose that we say that Mr. Williams will go to the Building Inspector, present him with a survey showing the correct area after deducting for 15 feet of that easement and the Building Inspector will then issue some sort of a denial based on something whatever that is then could we then impose upon on this Board after that denial is issued to come before you for a hearing without having our, I don't recall our third or fourth preliminary and that would be my request, Mr. Chairman, if that's feasible within the rules.

MR. BABCOCK: Mr. Chairman, there's only one question I have, a denial for interpretation is going to be a different denial than an area variance denial. So, I don't know what you're requesting, whatever you request, that's fine with me. I'm going to ask you to request what you want from me and then I'll write it.

MR. TRACY: Why don't we request you to deny them both.

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MR. BABCOCK: Okay, all right.

MR. FENWICK: Which is what we asked for the last time.

MR. TRACY: Why don't we request both and you can deny them both.

MR. NUGENT: If they get the denial on an interpretation, and they receive an interpretation, they don't need a variance.

MR. FENWICK: If they get the interpretation that rules in their favor, that says this is a nonconforming lot, they do not need it which is, I think, we're getting over to almost like the Wind in the Willows situation. They came for interpretation and had an area variance the same way. Well, I keep thinking we're beating the old dead horse. I'm going to ask you, Dan, if you think this is, can we proceed on this. We know what the argument is on the nonconforming lot. We know that there has to be an argument to say yes, this is in fact a nonconforming lot and falls under the standards.

Also, at that time, we know that right now it's a substantially small for a building lot and it will get smaller from the original information that we have. We know what the side yards are.

MR. TRACY: It will come within the framework of the exception even with the 750 some odd feet. It will meet the requirement of the nonconforming building lot, if that be the interpretation. If that not be the interpretation, then with the overall bulk and side yard variances --

MR. FENWICK: Do you think we are within our scope to proceed with that and set him up for a public hearing?

MR. LUCIA: Assuming that by the time of the public hearing we have in the file a denial from the Building Inspector, either that it's not a nonconforming lot of record or a request from the Building Inspector that we interpret the nonconforming lot of record section to determine whether or not the applicant's lot falls within the purview of that section, either of those would be sufficient.

MR. FENWICK: Cause I'm at the point now and not to ease your burden to ease my burden, I don't want you

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back here two more times, one more is enough. We have head enough already and I think if we can get going on this, I think that if you come up with some surprises, the night of the public hearing, the Board is not going to look favorably on the whole situation so we kind of know where you are at right now. I'll entertain a motion we set him up for a public hearing.

MR. FINNEGAN: I'll make a motion that we set him up for a public hearing.

MR. TANNER: I'll second it.

MRS. BARNHART: Restriction on that to set him up for a public hearing?

MR. LUCIA: It really is going to have to be subject to our receiving from the Building Inspector a denial of the applicant's application or a request from the Building Inspector that we interpret the nonconforming lot of record section to determine whether or not the applicant's lot falls within the purview of that section.

MR. BABCOCK: I'll send the Board both.

MR. FENWICK: I ask that you get it to Dan, if it comes in or of it's acted on or whatever.

MR. BABCOCK: We'll do the interpretation first and like Mr. Nugent said, if the interpretation of the Board is that it is a nonconforming lot, it's over with, it's done. If the interpretation is not that, then they can proceed with along with the variances.

MR. TRACY: First interpretation requires a public hearing?

MR. FENWICK: Yes.

MR. TRACY: So we'll need two public hearings.

MR. LUCIA: Single notice and we take them in sequence, assuming you want to proceed with the interpretation first.

MR. FENWICK: Just for you, we don't normally do that.

MR. TRACY: I'm flattered, Mr. Chairman.

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MR. LUCIA: It's the applicant's decision, if he wants to go to the interpretation of the variance first but I presume that the applicant would seek to choose the interpretation first.

MR. TRACY: We'll be prepared for both at that time. Do we know when that will be, Mr. Chairman?

MR. FENWICK: You have to have your paper work in to the Secretary, all requirements.

ROLL CALL:

Mr. Finnegan	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

MR. LUCIA: I think one or more of the Board members asked if you were going to submit a memo that they have it say a week in advance of the public hearing so they have a chance to look over it.

MR. TRACY: We'll submit a title report and a complete Memorandum of Law on the variance on the practical difficulty.

MR. LUCIA: You need that submitted in advance. We normally ask any applicant for an interpretation/ area variance to be submitted at the hearing, copy of your deed, title policy and I think they mentioned you were going to get a affirmative insurance if that's separate from the policy, I'd like to see that. We'd like to see some photographs of the property, the site itself and impact on neighboring properties.

MR. TRACY: Absolutely.

MR. LUCIA: That comes back to Pat, that will get you set up on the agenda for the public hearing and she'll notify you as to the date.

MR. TRACY: Thank you very much.

PUBLIC HEARING: WILLIAMS, KEITH

MR. FENWICK: This is a request for 7,324 lot area, 50 foot lot width, 2 foot 4 inch side yard, 8.24 feet street frontage in order to construct single-family residence on Summit Drive in an R-4 zone.

Donald Tracy, Esq. came before the Board representing this proposal.

MR. TRACY: Chairman, Members and Honorable Town Attorney, my name is Donald Tracy from the law firm Tracy, Bertolino & Edwards, I'm the attorney for the applicant. I have submitted to this Board, Honorable Board, a Memorandum of Law and Facts as I called it and attached thereto title report and deed as requested by the Board.

The facts in this case are basically already known to the Board that back in 1972 Park Hill Subdivision came into effect and it contained on it certain parcels of land which would be used for street purposes and certain parcels of land which were reserved for future street purposes. At one time or another, about the year 1974, I think it was, the town accepted the streets in the subdivision for dedication. They did not accept a parcel or plot, gore of lane which was the subject of this application. The owner of the Park Hill Subdivision, of course, did not pay taxes on the property and the County of Orange assigned a tax map designation to it and subsequently acquired it and sold it at a tax sale. My client subsequently bought that property from the purchaser at a tax sale after having verified that it complied in all respects with the nonconforming lot criteria set forth in Subdivision E of Local Law Number 3, 1986 of the Town of New Windsor. He subsequently applied for the Building Inspector for a permit and was denied on the grounds that it was a street shown on a subdivision map.

Litigation then ensued in the Supreme Court Orange County and Judge Patsalos issued a determination that any offer of dedication had been revoked and that the municipality had not right, claim and interest in the property. The title abstract and updated letter contained in the Memorandum of Law and Facts also shows that the title company will insure good and marketable

title to the property of my client.

The case as pointed out under the law presented is a case of practical difficulties since the variances requested by my client are area variances. Case cited Cowan vs. Kern (phonetic) and a case called Roxbury vs. Micallis (phonetic). These two cases define the differentiation between use variance and area variance and they also spell out the definition of practical difficulty.

Most briefly put, practical difficulty exists when the building of the lot comes at the, in conflict with the strict application of the ordinance. Also in your brief is a landmark case which was decided back in 1967 by the New York State Court of Appeals, a case called Fulling vs. Palumbo. Judge Keating who had been gerrymanded out of his senate seat and appointed to the Court of Appeals made an interesting decision. In this case, he held that dealing with substandard lots that it was incumbent upon the applicant to show that he could not meet the criteria of the ordinance and thereafter, he would have an absolute right to a variance unless the municipality could show that the granting of the variance was somehow adverse to the public health, safety and welfare. And then, he gave the applicant a second. He said once the municipality showed that the granting of the variance would be detrimental to the public health, safety and welfare, the applicant could nevertheless succeed if he would show that the failure to grant the variance would deprive him of all use of the property.

I have tonight, Mr. Chairman, an expert witness, a real estate expert who I would like to testify. I don't know if your Board swears witnesses in but with your permission and the, with the brief introduction that I have just given, I would like to call my first witness.

MR. FENWICK: Okay, one thing that we asked for, Mr. Tracy, is that we have this ahead of time. And in fact, on page 12 of the minutes, I went back and checked it, you in fact agreed that we would have it ahead of time and when I walked in here tonight, you handed this to me after you asked me how many members were here. I am going to let you continue with the public hearing but this is the first time and we don't have the time here tonight to sit here and read through

this thing.

MR. TRACY: You don't have to, Mr. Chairman, because I've just briefly synopsized everything that was in it and I respectfully submit that I doubt that many practitioners give you such a presentation and that I did give it to you ahead of time, since I'm now at this time testifying and you have had it since I came in here at roughly 7:15, 7:20 tonight.

MR. TORLEY: Sir, as I recall, I was not at the previous meeting but the one before that I asked if we can have this at least a week ahead and the previous major case we had on this the applicant's attorney was very kind enough to give us ten days or so, full documentation ahead of time. This, you know, our Chairman said I saw this when I walked in which is not what I call ahead of time.

MR. TRACY: Sir, what is it that you would like to do in relation to that? Is it your contention that you would deny the variance on the basis of the time?

MR. LUCIA: No, middle ground is if the Board feels they want time to review it, we can adjourn the public hearing to the next meeting which is the 28th of October. The Board will have an opportunity to review it. We can take additional testimony at this time. If the Board feels after reviewing your memorandum is warranted or they have additional questions.

MR. TRACY: Might I suggest as is done in many municipalities, the Board has a perfect right to reserve decision until they read not only anything that the applicant might prepare but also minutes of the meeting to see the testimony that was illlisted there at.

MR. FENWICK: If the Members of the Board see fit to take a vote this evening for this, that's fine. I'm just going on record for saying in effect if I go back here in Mr. Lucia's words, we asked for this a week ahead of time not previous to the meeting so that's all I'm saying is I was very surprised when I walked in and you gave us this, okay, we haven't had a chance to read it and we are not going to read it now. We are going to go by what you said.

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MR. TRACY: Would you like to adjourn this matter now, Mr. Chairman?

MR. FENWICK: No.

MR. TORLEY: We don't want to inconvenience the clients or the public.

MR. FENWICK: Go ahead, Mr. Tracy.

MR. TRACY: May I call my next witness?

MR. FENWICK: Yes.

MR. TRACY: I'd like to call Mr. Gerry Stite (phonetic). Mr. Stite, what is your occupation?

MR. STITE: I'm a real estate broker in New Windsor.

MR. TRACY: Are you licensed by the State of New York as a real estate broker?

MR. STITE: Yes, I am.

MR. TRACY: And how long have you been a licensed real estate broker in the Town of New Windsor?

MR. STITE: Nine years.

MR. TRACY: Are you familiar with the area in which the Park Hill Subdivision is situated?

MR. STITE: Yes, I am.

MR. TRACY: And have you ever visited that area?

MR. STITE: Yes.

MR. TRACY: Have you looked at the subdivision map?

MR. STITE: Yes.

MR. TRACY: Can you tell us with regard to street frontage, what the minimum street frontage is on the smallest lot in that subdivision?

MR. STITE: Seventy feet.

MR. TRACY: Can you tell us what kind of homes exist at the present time in that subdivision?

MR. STITE: Mostly bi-levels.

MR. TRACY: And can you tell us what you feel that the average value of those homes is?

MR. STITE: \$125,000.

MR. TRACY: And can you tell us these photographs which I'm showing you represent the average home in the subdivision?

MR. STITE: Yes, they do.

MR. TRACY: Those are bi-levels and would you say they are 40 to 42 foot bi-levels?

MR. STITE: Yes.

MR. TRACY: May I submit this to the Board?

MR. LUCIA: Could we have the witness specifically identify the property if he knows where they are located?

MR. TRACY: He does not. They are submitted for the purposes of showing representative homes.

MR. LUCIA: Is that in the Park Hill Subdivision, same section of this lot?

MR. TRACY: Yes, in the vicinity of this lot.

Now, have you seen a rendering of the home that Mr. Keith Williams would plan to build on that site?

MR. STITE: Yes, I have.

MR. TRACY: And this is the rendering of that?

MR. STITE: Yes, it is.

MR. TRACY: I show it to the Board first, Mr. Chairman, and then for the benefit of the public who might like to see it. Do you have in your expertise, may I submit this?

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MR. FENWICK: That's up to you. We don't really need that.

MR. TRACY: I'd like to have it as part of the record.

MR. LUCIA: Sure.

MR. TRACY: Or we can mark it and note it and I'll take it with me.

MR. FENWICK: Has everyone signed this with their name and address? Okay, thank you.

MR. TRACY: Do you have any opinion as to what the value of this, the sales price on that house would be?

MR. STITE: Probably around \$120,000.

MR. TRACY: So, it's your testimony then that it would be roughly \$5,000 less than the existing houses?

MR. STITE: Yes.

MR. TRACY: Now, do you have any opinion as to what the value of the vacant land would be in the event that this variance is granted?

MR. STITE: About 22, 22.5.

MR. TRACY: And do you have any opinion as to what the value of the vacant land would be if this variance were not granted?

MR. STITE: Probably almost nothing.

MR. TRACY: Now, in your expert opinion, do you feel that the granting of this variance will in any way be detrimental to the public health, safety and welfare in the area?

MR. STITE: No, I don't.

MR. TRACY: Do you feel it will have any adverse effect on the property values in the area?

MR. STITE: No.

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MR. TRACY: Have you seen the survey on which the application for building permit was based?

MR. STITE: Yes, I have.

MR. TRACY: And can you tell us if it's a narrow and irregular lot?

MR. STITE: Yes, it is.

MR. TRACY: Can you tell us in your opinion if there would be any other reasonable use that could be put to this property, other than that which the applicant has herein requested?

MR. STITE: No.

MR. TRACY: I have no further questions, Mr. Chairman.

MR. FENWICK: Thank you.

MR. TORLEY: I have just one. I would not, of course, challenge your expertise at evaluating land prices and values of the house but I would suggest that you might not wish to ask the expert witness for the health, safety and welfare of the town because he's a licensed real estate broker.

MR. FINNEGAN: I have been in that development on emergency calls with the ambulance and I have gotten lost because there's only one way in and one way out and --

MR. TRACY: Is it your contention that the addition of one more house will create a hazard in that respect?

MR. FINNEGAN: It certainly helps when there's another way out.

MR. LUCIA: Mr. Stite, are you aware of the purchase price that Small Town Land or Keith Williams paid for the lot in question?

MR. STITE: Not exactly, no.

MR. LUCIA: Was it your testimony that the value of the vacant land, if this variance is denied, is almost nothing?

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MR. STITE: Yes.

MR. LUCIA: And would that value be applied at the time Small Town Land or Mr. Williams purchased that lot?

MR. STITE: Yes.

MR. LUCIA: So, the land at the time he purchased it would have been worth almost nothing?

MR. STITE: Yes.

MR. LUCIA: And solely by virtue of granting the variances Mr. Williams is requesting or Small Town Lane is requesting, is it your testimony that the value of that land suddenly would increase to 22 to \$25,000?

MR. STITE: Yes, because it becomes a buildable lot.

MR. LUCIA: Solely by granting the variances as requested by applicant?

MR. STITE: Right.

MR. LUCIA: Thank you.

MR. FENWICK: Thank you.

MR. TRACY: I call Mr. Williams, please.

MR. FENWICK: Before you go any further, just to be assured, can you please identify on this tax map exactly where the property is?

MR. TRACY: It's right there.

Mr. Williams, you're the president and sole shareholder of Small Town Land Incorporated, the applicant here?

MR. WILLIAMS: Yes, I am.

MR. TRACY: And, Mr. Williams, can you tell us how much money you have invested in this lot to date?

MR. WILLIAMS: Just over \$10,000.

MR. TRACY: And Mr. Williams, you purchased this lot in

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what year?

MR. WILLIAMS: In 1987.

MR. TRACY: And prior to purchasing this lot, did you cause an investigation to be made to determine whether or not you could use that lot?

MR. WILLIAMS: Yes, I did.

MR. TRACY: And in conducting that investigation, can you tell us what procedure you employed and what steps you took?

MR. WILLIAMS: I was aware of the nonconforming lot code in the Town of New Windsor at the time and I checked with that code and the lot that I was hoping to purchase met all the criteria to be a nonconforming lot, according to that code in my opinion.

MR. TRACY: Does the application that you submitted to the Building Inspector meet every criteria as set forth by the legislature of this town in Local Law Number 3, 1986?

MR. WILLIAMS: Yes, it does.

MR. TRACY: Mr. Williams, you have offered up a rendering of a house that you intend to build on that lot, is that correct?

MR. WILLIAMS: Yes.

MR. TRACY: And what would that house sell for?

MR. WILLIAMS: Around \$120,000.

MR. TRACY: And do you pay taxes on this lot at the present time?

MR. WILLIAMS: Yes, I do.

MR. TRACY: How much are the yearly taxes?

MR. WILLIAMS: \$300.

MR. TRACY: And if your in effect were denied this variance tonight, what use could you make of that

property?

MR. WILLIAMS: None that I know of.

MR. TRACY: I have no further questions of Mr. Williams.

MR. FENWICK: Thank you.

MR. LUCIA: I have a few questions, Mr. Williams. Do you recall the purchase price that you paid for this lot?

MR. WILLIAMS: Yes, I do.

MR. LUCIA: And how much was that?

MR. WILLIAMS: \$2100.

MR. LUCIA: And you heard Mr. Stites testify that he thought the value of the vacant lane at the time of purchase and now without a variance was almost nothing?

MR. WILLIAMS: Yes, I heard that.

MR. LUCIA: But yet you paid \$2100 for it?

MR. WILLIAMS: Yes, I did.

MR. LUCIA: What, in your opinion, increased the value of that lot from almost nothing to \$2100?

MR. WILLIAMS: Because I don't believe that Mr. Stite was aware that it met the nonconforming lot criteria and I thoroughly investigated that criteria before I purchased the property, knowing that it fully met all the criteria as a nonconforming lot in my opinion.

MR. LUCIA: If it met those criteria, why was the lot not worth \$22,500 Mr. Stite said it would be worth if the variance were granted?

MR. TRACY: Can i just object to the question on the grounds are you talking about then or now?

MR. LUCIA: Either.

MR. WILLIAMS: Well, could you please restate that?

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MR. LUCIA: Okay, you said that you thought the property was worth \$2100 because in your opinion it met all the nonconforming lot criteria.

MR. WILLIAMS: No, no, that's not what I meant. I thought the lot was much more valuable than \$2100. The individual I purchased it from was asking \$2100, because he is an out-of-town resident and was not familiar with the nonconforming lot code of New Windsor.

MR. LUCIA: Who did you purchase the lot from?

MR. WILLIAMS: Henry, Henry Cummings.

MR. LUCIA: Okay. Is he the gentleman that, I think, Mr. Tracy at the public hearing referred to as a tax shark?

MR. WILLIAMS: I believe so.

MR. LUCIA: Okay, do you know what he paid for the property when he bought it from the county?

MR. WILLIAMS: No, I don't.

MR. LUCIA: Do you know if you paid any real estate taxes on the property?

MR. WILLIAMS: Yes, he did. He told me he did.

MR. LUCIA: Do you know what he paid in taxes?

MR. WILLIAMS: No, I don't.

MR. LUCIA: Have you paid taxes on the property since the time you purchased it?

MR. WILLIAMS: Yes.

MR. LUCIA: And how much have you paid in taxes?

MR. WILLIAMS: I haven't totaled it up. I guess about \$1,000.

MR. LUCIA: Total?

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MR. WILLIAMS: Total, yes.

MR. LUCIA: And that would be since when?

MR. WILLIAMS: Since 1987.

MR. LUCIA: Taxes are current?

MR. WILLIAMS: Yes.

MR. LUCIA: Have you offered the property for sale since you purchased it?

MR. WILLIAMS: No, I have had no intention of that. My intentions were to build on it.

MR. LUCIA: Have you received any offers to purchase the property?

MR. WILLIAMS: No, I haven't.

MR. LUCIA: You stated that you thought because the lot met the nonconforming lot criteria, it had a value in excess of \$2100 you paid. Is that correct?

MR. WILLIAMS: That is correct.

MR. LUCIA: What value did the lot have in your opinion?

MR. WILLIAMS: At the time I don't know. I didn't have an expert appraisal done in 1987 but I was well aware back in that period that a lot with water and sewer was well worth over \$10,000 at least.

MR. LUCIA: Would it have been worth the full \$22,000 to 22,500 that Mr. Stite indicated it would be worth if the variances were granted?

MR. WILLIAMS: Yes, it will.

MR. LUCIA: Without the variance, though, just meeting the, as you say, meeting the nonconforming lot criteria?

MR. WILLIAMS: I don't believe so but I'm not an expert in that area.

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MR. LUCIA: As the land sits today, what do you think its present market value is?

MR. WILLIAMS: If the variance is granted?

MR. LUCIA: No, right now.

MR. WILLIAMS: I don't believe it's worth anything.

MR. LUCIA: Other than taxes, do you have any annual expenses on this property?

MR. WILLIAMS: No.

MR. LUCIA: What besides the \$2100 purchase price, the approximately \$1,000 you paid in real estate taxes goes to make up the balance of your \$10,000 investment in this property?

MR. WILLIAMS: Well, considerable title search, deed searches, attorney fees, litigation in courts, engineering fees, architect fees, survey or had it survey, had to go back and resurvey it to take off the easement that you asked me to. There is a considerable number of people that were involved in the project.

MR. LUCIA: And grand total is \$10,000?

MR. WILLIAMS: Over \$10,000.

MR. LUCIA: Very much over?

MR. WILLIAMS: No, maybe \$10,300.

MR. LUCIA: All right, thank you. Do you have the property mortgaged or any liens on the property?

MR. WILLIAMS: None.

MR. LUCIA: Do you receive any annual income from the property?

MR. WILLIAMS: No, I don't.

MR. LUCIA: Do you have a contract to sell the property?

MR. WILLIAMS: No, I don't.

MR. LUCIA: Is a contract to sell the property contingent upon the outcome of this variance application?

MR. TRACY: Answer was he didn't.

MR. LUCIA: No, no. I said is there a contract contingent upon the outcome of this variance application? Have you had negotiations with someone willing to enter into a contract, should you succeed in being granted a variance?

MR. WILLIAMS: No, I haven't.

MR. LUCIA: All right, I have a couple questions on the specifics of your application. You did deduct, I believe, the easement area from the easement that runs along the back line of the property?

MR. WILLIAMS: Yes, I did.

MR. LUCIA: So, the 7,676 square foot lot area is after deducting that variance?

MR. WILLIAMS: Yes. I gave the Building Inspector an updated survey showing the deduction on the survey.

MR. LUCIA: Okay. I also have a question on the way you presented the variance request for side yard. Take a look at the application. Mr. William or Mr. Tracy, also I direct your attention to the area of the application for area variance, which is Roman Numeral Number VA and in the column for required side yard, the entry appears to be 15/ and there's no entry. I think what was intended there is 15 feet for one side yard and 30 feet for both side yards.

MR. TRACY: That is correct.

MR. LUCIA: I think the variance application you're looking for I believe and correct me if I am wrong, your proposal for one side yard is 12 feet 8 inches and the proposal for two side yards is 25 feet 4 inches so your variance request respectively would be 2 feet 4 inches for one side yard and 4 feet 8 inches for 2 side yards.

MR. TRACY: That is correct.

MR. LUCIA: If you don't mind, could I have you just change the application to that affect and initial it to that affect, please.

MR. WILLIAMS: Sure.

MR. LUCIA: First figures should be 12 feet 8 inches and 25 feet 4 inches. Thank you very much.

MR. WILLIAMS: You're welcome.

MR. BABCOCK: What was the total, Mr. Chairman, the total.

MR. LUCIA: I believe the total is proposed 25 feet 4 inches and total variance request would be 4 feet 8 inches.

Mr. Williams, I have no further questions.

MR. WILLIAMS: Thank you.

MR. FENWICK: Questions from the Members of the Board?

MR. TORLEY: On your own page two of it, you're saying that you're just coming in here, variance only, are you therefore abandoning claims under the Local Law 3, 1986?

MR. TRACY: No, sir. As I understood my last meeting at the Board, the Building Inspector had refused to request an interpretation.

MR. FENWICK: That is through --

MR. TRACY: And this matter therefore as states in my Memorandum comes before you for area variances only. The Building Inspector has nodded his ascent by shaking his head up and down.

MR. LUCIA: For the record --

MR. TORLEY: And you stated that you investigated the background of it so that you thought this lot, this piece of land rather would meet the requirements of the Local Law Number 3?

MR. WILLIAMS: Yes.

MR. TORLEY: How did you do that?

MR. WILLIAMS: Nonconforming lot code was out before I bought the property.

MR. TORLEY: So this was -- you're reading off the code personally?

MR. WILLIAMS: Well, I also asked questions to the Building Inspector about the code to get information from the local people here also. That was my opinion as an answer that it did meet what was specified there that I had to meet.

MR. LUCIA: If I could just address a couple questions to Mr. Tracy on this issue. I have a copy of the July 18th, 1990 Decision and Order of Acting Supreme Court Justice Kenneth H. Lang in an action Article 78, Keith Williams against Frank Lisi, Building Inspector for the Town of New Windsor. And it would appear or let me read you the text of the part of that Decision and Order. Judge Lang says, "As stated in my Decision and Order of January 24th, 1990, petitioner's property is not open "a nonconforming residential, the word residential underlined, lot (see New Windsor code Section 48-26[E])." Is this Board not bound by that finding by Judge Lang that this is not a nonconforming lot under that section?

MR. TRACY: No, sir, because at the particular time, the bar claim under Article 15 of the Real Property Action and Proceedings Law was pending before Judge Patsolos.

MR. LUCIA: My understanding of the bar claim action is that Judge Patsolos completely barred the Town of New Windsor from any rights within the subject property. Is that correct?

MR. TRACY: That is correct. And the title company of course would bar anyone else.

MR. LUCIA: I'm not quite sure that is necessarily the result.

MR. TRACY: That is a matter of law, Mr. Lucia, that if I may submit to you that under the tax law, a tax sale property now at the end of two years is released from any claim and is title insurable as evidence by the letter that I furnished from the abstract company based on its update of Hardenburg Abstract which said that they would not insure Keith's rights until a period of two years had elapsed so I would respectfully submit that my statement is true by operation of law.

MR. LUCIA: Let me explore that with you for a moment, if I can. Turning over to Judge Patsolos dated November 1990, in the action Small Town Lands Incorporated against George A. Green, Supervisor, et al, the description of the property from which the Town of New Windsor is barred ends with the phrase, "subject to any grants, easements and right-of-ways of record, if any". So, the land Mr. Williams wound up with presumably still is subject to those items, is it not?

MR. TRACY: It is subject to the easements and right-of-ways which are shown on Hardenburg Abstract's report, sir.

MR. LUCIA: All right, let's just take a moment to look at Hardenburg's report. You had a copy of that in the Memorandum.

MR. TRACY: Yes, I do.

MR. LUCIA: All right. Among the exceptions in that report are 1, 2, 3 grants so those are all utility grants.

MR. TRACY: That is correct.

MR. LUCIA: And one of those grants, the one specifically is rather important but I think it's New York Telephone recorded at Liber 1914 Page 683 refers to the facilities being placed within the 50 foot side of street of Park Hill Estates. Would that grant cross the subject lot?

MR. TRACY: The grant would not cross the subject lot, it's what that is is an overall subdivision utility grant which is given to the utility company to run lines in the streets.

MR. LUCIA: And this would have been a proposed street.

MR. TRACY: If that was a proposed street, the utility company would have had the right to run a line along the side of that property. It would seem to me that it would be certainly and probably would still have the right but it would be certainly futile for them to do so.

MR. LUCIA: But they still have the right to run the utility line anywhere within the 50 foot.

MR. TRACY: Not anywhere. Their easement would be restricted to the side of the lot.

MR. LUCIA: It goes on to say development along the front, side and/or rear of the lot lines of the grantee so I think in addition to that would they not have a right anywhere over this lot?

MR. TRACY: Lot lines along the lot.

MR. LUCIA: So, you think at some point the right to lay it within the 50 foot width is terminated?

MR. TRACY: Mr. Lucia, yes, I think they would and I don't think, you know, that the cross examination is necessarily germane to the issue before the Board.

MR. LUCIA: I think the Board is entitled to find out the status of the title on this property in making their decision because it certainly goes to the issue of significant economic injury.

MR. TRACY: I have submitted again, I'll reiterate a letter indicating that my client has fee simple to the property and it would be rather futile for us to take up the time of this Board and to cause the annoyance that the neighbors must feel at having to come out tonight, if we were in a position where our property was encumbered and that our building would be prevented by easements. I would think, Mr. Lucia, that you would have given us credit enough for having ascertained that not to be the case and if it were the case, then this Board saw fit to grant the variance then what harm.

MR. LUCIA: My concern is --

MR. TRACY: Only harm to us.

MR. LUCIA: The title policy obviously is for Mr. Williams \$2100 purchase price. You know that sort of policy is somewhat different than the policy of insuring \$120,000 house.

MR. TRACY: I respectfully submit that Mr. Williams would need to obtain a significant construction loan and that that title policy would be brought up to date by the same company and it would be issued and I'm sure that it would contain some of the exceptions of that policy and others would be omitted by virtue of Judge Patsolos' decision.

MR. LUCIA: Also, looking at the exception for setbacks established on a building map in items Schedule B, item 4 of the title policy. It shows 25 foot setback which I assume is not a problem here and a 15 foot sideline on the filed map. Correct me if I'm wrong, the variances that you are applying for tonight are in violation of that filed map restriction.

MR. TRACY: They are not. The filed map restriction existing at the time merged into the dedication that was taken by the municipality.

MR. LUCIA: I'm not sure I understand that there's any relationship there. The dedication would have been of certain streets but not including this proposed street.

MR. TRACY: That is correct.

MR. LUCIA: Why does that have anything to do with the 15 foot sideline for each lot shown on that filed map?

MR. TRACY: It has nothing to do with it. We are asking for a variance from those setbacks.

MR. LUCIA: I understand that but this is a recorded map restriction. We cannot vary that. In other words, the thrust of my question is; if this Board grants you a variance, for as you're requesting tonight for specific sidelines, any property owner on Park Hill Subdivision then which builds it in conformance with that variance can bring an action against you for violation of the recorded map restrictions.

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MR. TRACY: We have investigated that. We are prepared to defend that, Mr. Lucia.

MR. LUCIA: But there is no affirmative insurance as part of this policy on the issue.

MR. TRACY: I have not expended the funds for a policy. I have had the abstract updated and I have obtained a letter from the title company indicating that they would insure fee simple absolute to the property subject to the restrictions.

MR. LUCIA: Just so I unfortunately I haven't had a chance to read through the Memorandum so just for the record the copy of the Hardenburg Abstract preliminary certificate here has never actually resulted in a title insurance policy, is that correct?

MR. TRACY: That is correct.

MR. LUCIA: And you also have a letter from Rockwell Abstract.

MR. TRACY: Rockwest Abstract.

MR. LUCIA: Rockwest Abstract, I'm sorry, saying that they have reviewed the abstract of title. Are they referring to Hardenburg's abstract?

MR. TRACY: They are, sir.

MR. LUCIA: And Rockwest is ready and willing to issue its policy insuring the property?

MR. TRACY: That is what he said, sir. If you'd like me to read the letter into the record, I'd be happy to.

MR. LUCIA: You're welcome to but the memo will be in the record anyway.

MR. FENWICK: We're going to make this part of the record.

MR. LUCIA: The policy ultimately will be issued by Rockwest, not by Hardenburg?

MR. TRACY: That is correct.

MR. LUCIA: Thank you.

MR. TORLEY: May I ask a question? I appreciate some input from both of the attorneys here present. The decision of Judge Patsolos barred any claims by the town on the piece of property in question.

MR. TRACY: That is correct.

MR. TORLEY: But the decision by Acting Justice Lang does not seem to bar what Judge Patsolos. Lang is saying that this is not, does not meet the Local Law Number 3, 1986 requirements. It's not a nonconforming lot under those conditions. Is that my correct reading of that?

MR. LUCIA: That is correct.

MR. TORLEY: And Judge Patsolos does not address that in his decision. So, as of the moment, Judge Lang's decision is still binding.

MR. TRACY: Judge Lang's decision was predicated on the fact that the property was still shown on the map as a proposed street. And that is basically what he says. Until such time as Judge Patsolos issued his decision, indicating that the offer of dedication has been revoked, Judge Lang was saying that you cannot compel the Building Inspector to issue a permit, understanding that as long as these actions are brought up, what the nature of the action was. The nature of the action against Mr. Lisi was an Article 78 proceeding to compel him to issue a building permit. Under the law, the Building Inspector's issuance of a permit is a ministerial act and he must issue that permit when there is no clear reason for him not to. Judge Lang in his decision denying the motion to compel the Building Inspector to issue the permit indicated that in his opinion was not a building lot but was a street shown on a subdivision map. And that is true. That is exactly what the factual was until such time as the bar claim action was heard or the Article 15 Real Property Action and Proceedings decision was heard and Judge Patsolos confirmed that the offer of dedication had been revoked and that that was no longer to be considered offered for dedication. So, that it was a considerable factual change.

MR. TORLEY: Well, sir, as I read Judge Patsolos' decision, he's saying that it's not to be considered a street, no where does he say that yes, it is a residential.

MR. TRACY: That is correct.

MR. TORLEY: Judge Patsolos does not say it's a residential lot. He just says that Judge Lang was incorrect in saying that it was a street. No where does Judge Patsolos say it's a residential lot.

MR. TRACY: Well, sir, what is the zoning designation on the property?

MR. TORLEY: It's in a section of the town designated R-4.

MR. TRACY: And is R-4 residential?

MR. TORLEY: R-4 is residential but does not mean that every piece of property in that section of the town is a residential lot.

MR. TRACY: I beg to differ with you, sir. What it means is that every parcel of land within that particular district has a residential zoning designation.

MR. LUCIA: Just returning to Judge Lang's decision for a minute. He also states, "The amendments to the Town of New Windsor zoning ordinance in 1986 did not convert the subject property to a nonconforming residential, word residential underlined, lot". The lot had --

MR. TRACY: That is not before us, is it?

MR. LUCIA: The concern is I'm not sure that the issue hasn't already been decided and that Judge Patsolos' decision really does not change that fundamental issue. The lot certainly had a tax lot designation when Judge Lang made this decision in 1990, did it not?

MR. TRACY: Correct.

MR. LUCIA: Okay, I think your answer to Mr. Torley's question was that the, after Judge Patsolos' decision

that it somehow became nonconforming residential lot, I am not sure that issue ever was reached in either action.

MR. TRACY: That is correct.

MR. LUCIA: And given Judge Lang's language here, I'm not sure this Board has any latitude to grant you any relief.

MR. TRACY: You can make that decision if you so decide.

MR. LUCIA: If you have additional input, I'd be happy to hear it but I'm now from what I see in this decision, I'm not sure we have the latitude to give you the relief you're seeking.

MR. TRACY: I suspected that that would be your opinion.

MR. LUCIA: I'd be happy to hear anything that you want to offer in addition that might cause the Board to view it differently.

MR. TRACY: I'd be very happy to when you're finished your questioning.

MR. LUCIA: Go right ahead, please.

MR. TRACY: Gentlemen, let the question that Mr. Lucia has raised is probably best fixed on the category of an election of remedies. In other words, we previously discussed on a preliminary whether or not we were going to come in for an interpretation or whether we were going to come in for a variance. In the area of litigation, we determined to bring two actions, one for a determination as to whether this property under those facts which then existed which was that they had no, not previously been a declaration that it was that there was a revocation of the offer of dedication under that fact pattern resulted in a decision by Judge Lang which was no doubt based, if you read the Memorandum of Law that both parties submitted on that determination. As Judge Patsolos rendered his decision, he created a completely new decision. He cleared up the area which bothered Judge Lang. It was no longer a dedicated street or a parcel of land that was offered for

dedication. Now, we come before this Board with a parcel of land in a residential zone which meets the criteria for nonconforming lots. We do not say anyplace that this is a nonconforming lot because that is not what is before this Board.

What we do say is that this Board is guided by its legislative body and its legislative body has set forth certain criteria for small lots and that criteria is that it have certain bulk, it have certain side yard, it have certain frontage and we are saying that that is an expression of legislative intent that small lots or nonconforming lots are not inimical to the public health, safety and welfare, if they met that criteria that the Board knows that there's many of them all over town. So, we come before this Board and we say to the Board we have a parcel of land without getting into the technical difficulties of the plot, the lot, we have a parcel of land in a residential zone on which this municipality extracts taxes. We want to build a house on it. We bring in some expert testimony to testify as to the value of the land, if it's not varied and the value of the land if the variance is granted. We also point out that it meets the criteria for small lots. And we go to the powers and duties set forth in Section 4833 of your zoning ordinance. And the zoning ordinance first uses the words and I'm just using key words out of it rather than parrot the ordinance that owing to exceptional and extra-ordinary circumstances, if this is not one of the most exceptional and extra-ordinary circumstances that this Board has yet heard, I would be surprised.

I also then discussed in the area of variances where there's an exceptionally irregular or narrow, shallow or steep lot. In the case before you, it's a narrow lot. Indeed it's 20 feet narrower than the only other lot in the subdivision that has a street frontage of 70 feet. There's a necessity for finding by you that the applicant would be denied any reasonable use of the land, if you did not grant him a variance. There has been testimony and it would be common sense for this Board to know that he has no reasonable use of the land if this variance is not granted. In the event that a variance is not granted, if nothing else under the authority of Fulling vs. Palumbo, what would he do with the property? Would he then continue to pay taxes on it for the rest of his life expectancy hoping against

hope that somewhere down the line someone would write a new ordinance that would cover his lot or would he simply abandon it and let it be sold for taxes, again to someone less with an attorney less resourceful than myself. In that case, his property is confiscated.

When I first came before this Board, I said there's nothing to like about this variance. I said you're not going to like it. I don't like it and the neighbors are going to like it even less. I think Mr. Lucia missed those remarks. But, I respectfully submit that under your zoning ordinance, this Board has jurisdiction over the variance that we have requested. This is not an Article 78 proceeding to make a determination as to whether there is a pre-existing nonconforming lot under Local Law Number 3. This is an application for a variance on the ground of practical difficulty and if Judge Lang had been a zoning judge, he would have sent the first one back to the Board of Appeals and said exhaust your administrative remedies before I make a determination and Mr. Lucia knows that.

It was determined not to appeal Judge Lang's decision because we were confident that Judge Patsolos would remove the bar that we had to come before this Board. We could not approach this Board unless there was a determination made that the offer of dedication could be revoked, had been revoked and there was only one way that the offer of dedication could be revoked which was by an Article 15 Real Property Action and Proceedings Law.

So you have before you a parcel of land on which taxes are paid. It's a lot. It's a tax lot, may not be a building lot and we are here to ask that you make it a building lot because if you don't make it a building lot, then you sterilize the property and in effect confiscate it.

Now, that is our position and if Mr. Lucia would like to ask me any questions, you see under the doctrine of Fulling vs. Palumbo an applicant gets two bites at the apple. The first bite he gets at the apple is that unless you show that the granting of the variance would be harmful to the public health, safety and welfare in some respect and those are words of a real estate broker who is entitled to say from his prospectus as a real estate broker whether it would be adverse to

public health, safety and welfare, just as you gentlemen did make that same decision. But, once you show that it's, you say this is adverse to the public health, safety and welfare for the simple reason that contrary to the experts advise, you feel that it will cause a lowering of property values in the area. Then, the burden shifts again under Fulling to the applicant and the applicant must then show that if you deny this variance, you'll deprive him of his reasonable use of the property.

Now, that's the course that we have taken. I don't ask you to be happy about it. I apologize to the Board for bringing in my Memorandum this late. However, there's nothing in my Memorandum that I haven't said in oral testimony. I sort of question the authority of the Town Attorney to cross examine under existing case law cross examine an applicant and to be extraneous facts into the hearing.

MR. FENWICK: I have no problem with that considering Mr. Lucia is much more familiar with the law than what we are more in depth.

MR. TRACY: I didn't say I had a problem with it. I said I questioned it under existing case law and particular case called People vs. Taylor but besides that, it's up to this Board to decide what they are going to do with this property.

MR. FENWICK: That's correct. Before we go any further and I think you have just about summed up what you're going to say, I'd like to open it up to the public.

MR. TRACY: I haven't finished. Am I going to be allowed rebuttal?

MR. FENWICK: Yes, but not during the public, not during -- I'm not going to have you arguing with the public or whatever and that's, they make their statements then you'll be able to answer that to this Board.

MR. TRACY: I would not presume to do that.

MR. LUCIA: I just have one question that I'd like to address to Mr. Tracy, just to further flush out the title issue. I understand very well you're two pronged

attack with the Article 78 and the bar claim action against the town. Is there not a required third prong in an Article 15 action joining all the owners of property in Park Hill who presumably had deed rights and as when before these roads were dedicated as rights-of-way overall, then undedicated and proposed streets shown on that subdivision map?

MR. TRACY: No, sir.

MR. LUCIA: Do not all those lot owners still have a right-of-way over Small Town Land lot?

MR. TRACY: No, sir.

MR. LUCIA: And the only way that can be barred is by an Article 15 joining all of them?

MR. TRACY: No, that was extinguished by operation of law at the end of two years.

MR. LUCIA: Without any notice to those property owners?

MR. TRACY: Without any notice.

MR. LUCIA: What about Menanite (phonetic) and the rights that a municipality gets on a tax sale.

MR. TRACY: The Menanite case was a case in which the property owners at the end of the, of a subdivision required access over streets proposed to be dedicated. It was not a case that at all factually akin to the case before you.

MR. LUCIA: I'm not saying it is factually akin. I'm wondering if the principle where the Supreme Court suddenly decided you cannot cut off third party rights by virtue of a tax sale without notice, doesn't that apply to this incidence?

MR. TRACY: It does not. It's my opinion that it's cutoff by operation of law and I would be prepared to defend that eventually should this Board see fit to grant the variance.

MR. FENWICK: Before I'd like to open it up to the public, unless the members have any questions before we

do that. When I open this up to the public, please stand and give your name and your address. The people that start off won't have to abide by this but everyone else please listen to what the person before you said. We don't want to be repetitious and just kind of pay attention if you're going to say the same thing that then alls you're going to be doing is occupying time. We want to get on with this. That's about it. Remember, we're addressing the fact that we're looking for an area variance here. It's not a use variance, it's an area variance. It has to do with the size of the lot and the side yards.

JOHN PETRO: I live at 8 Park Hill Drive, New Windsor, New York. Put me on a little bit of a spot making reference to the side yard. Being the developer of Park Hill, when I got the notice you know I've been in government a long time and I know that the purpose of a public hearing is to gather pertinent information and I feel that I have pertinent information relative to this site.

Go way back to the early 60's, we decided to develop Park Hill and while we were developing Park Hill, the City of Newburgh bought the property to build the school and to the adjacent property we had stub streets and if you look at any good planning manual, one of the things that will be pointed out if you're going to be a member of a Planning Board, is to make sure you don't build a lot of camps in a community and that you have enough stub streets so that you have got automobile circulation. One of the problems was when the school district took it over, they are not subject to town zoning ordinance or any of the ordinances. School districts just go do whatever they want and after much bleeding and meetings with the School Board, they refused to let us use the future stub streets. So, when I came to the Planning Board for approval of this particular section, one of the criteria was that there was going to be a stub street to that property in the event that somebody subdivided that property, they would be required to build a street.

Now, I don't know how many people are here from Park Hill, go back as far as I know Mrs. Lastowski, hers does, we had a problem with the one entrance and we had meetings and we had Planning Board meetings and I think about 40 families at the time came to the Town Board

and if you go in the Town Hall, you'll find this as part of the record. What I'm trying to do is establish that this is really was a street and the street was not supposed to be done until the property adjacent to it was developed and they in turn would develop that street if they wanted the approval for the rest of it.

We talked public health, safety and welfare. Well, this is a clear cut case of the public welfare. We definitely need another entrance out to Park Hill. We have been trying to acquire it for a couple of years and this was the only spot left, plus the one that goes through the historical site and we have a problem there with the New York State Historic Department.

We talked about hardship. Every time we come to anything we talk about hardship. There are people sometimes who make their own hardships. You know, there is a lot of property in the Town of New Windsor we have property sometimes that for some reason it doesn't get transferred, the title is not picked up and somehow we become aware of them, some of them we have when I was in Town Hall, we picked up a couple and we pay the taxes on them. There were some that were picked up by citizens that used them and went through a lot of problems but they finally built on them. That was a different case. The park was not public health and safety, this could create one bad situation of public health, safety and welfare and every map that I drew and every map that I made the engineers to draw always had that stub street on it and if I go pull it out of the Town Clerk's office, it will show the stub street, I think you have a copy of it there.

Now, I was always under the impression when you filed that map, when you filed the subdivision map with the county and it went into the county that was for the purpose of everybody knowing that that is what I'm going to do in this community and in effect, I think it was somewhat of a quasi dedication.

MR. TORLEY: John, I want to take advantage of your expertise since you were on the Board at the time. For a little legislative background on the section of the law we're talking about, the nonconforming lots, my recollection is that was to primarily for the lots that have been previously cited as residential lots before zoning.

MR. PETRO: That was only to get rid of them. We had a lot of hardships. There were about how many 10 or 15 left in the whole town and we wanted and that law was for the purpose of getting those out of the way. And that would solve the great big problem because it wasn't easy to do what we passed, a law that allowed people to build on the lots and some were not easy to build on because they were only 50 feet wide but we did it for that push to get it out of the way because it proved to be quite a problem because some of you Members of the Board know because he had people --

MR. TORLEY: Those are for long pre-existing lots that happen to be to small.

MR. PETRO: That is right.

MR. LUCIA: If you recall, when you first started subdividing lots in Park Hill, typically you would sell off a lot before the street is actually been accepted for dedication by the town?

MR. PETRO: With the ingress and egress.

MR. LUCIA: That's my question, you did put in those first rights-of-way for ingress and egress over all the proposed lots?

MR. PETRO: I did that in my deed but I sold back a section to another fellow. I don't know what he did. I was a little bit puzzled about that item that came up that there was a piece on the back in the lane that was eliminated from this lot. I don't know how anybody, how they acquired title to that piece because that belonged to Paola's, the lane belonged to the Paola's and there's some of us there that bought land when I bought to the whole farm had got a right-of-way over that land. So, I'll still have the right-of-way over the land because when I sold the property, the property line went along with the stonewall, did not go to the middle of the lane, unless somebody put it on there after I sold it.

MR. LUCIA: So you would still have a right-of-way over that lane?

MR. PETRO: I still have a right-of-way over the lane

because I bought the whole piece at the one time.

MR. LUCIA: Thank you.

MR. FIGUEROA: I live at 208 Summit Drive. I will be a neighbor to lot 21. When I bought my property 18 years ago, the developer told me that that was going to be a right-of-way. And I agree with Mr. Petro that that should remain as a right-of-way because this area is growing, New Windsor is going to have a major airport in the area and one of these days we're going to have an accident, a plane is going to fall or something and how do you know the ambulance and the fire departments are going to get to that section. And we're going to be enclosed there and I don't see nobody thinking about that. If you're going to allow somebody to build in there, now it's going to jam the area. And as a neighbor of that property, if I had known that that property was for sale, I would have purchased the property. For the last 18 years, Mrs. Cranston that is here and myself have been cleaning the property and nobody had showed up, you know, some of the neighbors that are here they are in the neighborhood day and night and they never had seen nobody do any survey of the area. I think everybody will agree with me. Nobody had come to us. All we are neighbors and we trust in everybody and I don't understand why nobody came to say I'm going to, you know, buy this property. And I don't think that's right.

MR. FENWICK: Please come up here and identify your piece of property.

MR. FIGUEROA: It's number 20.

MR. FENWICK: Which one is yours?

MR. FIGUEROA: Right here.

MR. FENWICK: Are you an adjoining property owner?

MR. FIGUEROA: I am. I have the largest piece of the property in that area and this one here, you know, -- and also I had the signature of most of the neighbors that they do not agree with this proposal.

MR. FENWICK: We have a petition here of several signatures, I'm not going to count right now, of

people, let it be known that the undersigned do strongly object to the granting of a variance for construction of one family dwellings for purposes on the north side of Summit Drive in the Town of New Windsor, County of Orange Section 8 Block 1 Lot 21. Anything else?

MR. FIGUEROA: No, I don't know if you want me to go back to the time I bought the property that the day of the closing, they were going to postpone my closing because the building was going to build another house there and the town didn't allow them because the town said that is a right-of-way and then I was able to close my house on the right day they gave me that's 18 years ago and I've been living there since then. And again, you know, I don't think it's fair for us cleaning the property to make the neighborhood look good now somebody comes in and puts a house there that is another thing. The picture of that house doesn't show the size, the house is not going to have windows on the sides? How about the back yard, I think we as neighbors, we would like to see how the house is going to look, how many windows it is going to have and what kind of, you know, back yard it's going to have.

MR. FENWICK: Thank you.

MR. LUCIA: Did you say you would offer to buy the property?

MR. FIGUEROA: No, sir.

MR. LUCIA: You said, you were interested in buying it.

MR. FIGUEROA: If I had known that it wasn't going to be a street, I would have talked to my neighbor to make an agreement because either Mrs. Cranston and myself, we have been cleaning this property for the last 18 years. She has been paying and I think she would have to charge the person, you know, for all this year that she has been cleaning, paying somebody.

MR. LUCIA: So, the property is worth something in your mind, it's worth some amount of money?

MR. FIGUEROA: It's worth to us, yes, because we are cleaning and we are making the property look good. If we hadn't cleaned this property imagine all the weeds

that had grown up this year.

MR. LUCIA: The property has some dollar value to you and your neighbor, you might have been interested in purchasing it?

MR. FIGUEROA: I would say so.

MR. FENWICK: Not sticking up for the applicant, but the problem is not to, like I said, not to be in favor of the applicant, the town let it go, that doesn't make it a building lot in my mind or anything else but as far as a right-of-way and the road, the town let it go so the argument that it's a road for you, I'm not sure, you know, the town let it go and it got into the county and they said it's no longer a right-of-way for the town.

MR. FIGUEROA: Can I ask you a question?

MR. FENWICK: Can we get to somebody else, please.

DANNY MORALES: I live at 216 Summit Drive. I believe I was either the second or third home purchased in the Park Hill Estates and I remember Mr. Silverburg, all right, we looked at several pieces of property and there were two that had right-of-ways, one all the way down at the end which children would use to access the school and the piece of property that's in question here. We stayed away from both of them and right now hearing what is going on here, I thank God I stayed away from both of them. I just would like to say the esteemed attorney here said it best, the neighbors hate this more than anybody else who's discussing it right here and now I hate to see this gentleman make an investment, I fault that on whoever did the work for him but as far as we're concerned, it's already congested enough on Summit Drive. We certainly don't want any more congestion with this house being built. Also, the impact on the two homes of the Cranston's as well as the gentleman who just spoke, I mean, I don't see where you would have any privacy. That home would basically be right on top of both of them, as I understand it. And gentlemen, we don't invest and we haven't lived in the Town of New Windsor for approximately 20 years to now begin to lose the value of our homes so I ask you to give this some very serious consideration as far as the impact on the

people who have bought into those homes. Thank you.

MR. LUCIA: Do you recall if this lot was the one that provided access to the school property?

MR. MORALES: That is correct.

MR. PETRO: No, this is not the lot. No, we have --

MR. MORALES: No, the one at the end.

JOE SKOPIN: I live at 30 Ona Lane. I have a couple of problems here. This man took advantage of the town. The town made a mistake and he took advantage of the town. He goes to court and for a very little price, he buys this 50 foot, now he arrives here with a selfinflicted hardship. He tells us that he has this piece of property which happens to be very little compared to what he would have to pay normally and now he says hey, give me this, I really deserve this because I invested all this money. That's wrong. Zoning Board really and truly has the obligation to take into consideration the fact that he made his hardships. We didn't and the town didn't. Now, he says that there's a piece of property in that area that's 50 foot wide. I have lived there for 20 odd years. I know of one piece of property that might be 70 foot. Everything else is a minimum of 100 feet. There are all places all over town where 50 foot is not allowed. He has area variance he wants, he has side yards, he has front yard, he has got enough in the back. This should not be accepted.

DOUGLAS WARD: I am at 213 Summit Drive. I'd like to address the issue as was brought up because it appears to be one of the legal issues in regard to public health, safety and welfare. I have a number of points to make in that regard. The houses in this development are already on relatively small lots. The acreage, I believe, would run probably from a fifth of an acre to perhaps a third of an acre in that range, it's already fairly densely populated. The street is narrow. The houses are close to the street. The street does not have a curb. Most of the garages are one car garages which necessitate frequently parking on the street when guests are over, things like that. So, and also this particular location is on an S-curve in the road, children, the safety issue is immense here and the lack

of it if this would be approved. Also, the lot is just undersized in one parameter, I mean this is the ridiculous part about it. It's not the total size is adequate, you know, we can let one thing slide. It's the side, it's the frontage, it's the total area. You know this is obviously pushing things to the extreme. So, obviously based on the petition, virtually every neighbor signed it, everyone's against it and I would present to you that it's detrimental to the public health, safety and welfare.

CHARLES REINER: I live at 207 Summit Drive, diagonally across from the piece of property in question. I take one major exception to the gentleman that spoke before about the value of the homes. I am sure that everyone sighed when the gentleman spoke of the value of the home worth no more than 120 to \$125,000. Even in this depressed market, I recently had my home appraised and it was appraised at \$140,000. That's significantly more than 120 to \$125,000. That's the first issue. If we grant this variance to this gentleman, the impact that it will have on the homes on either side as well as on the other side of the street to concur with Mr. Skopin not to be repetitive, but none of the homes and I repeat none of the homes on the opposite side of the street as well as either Mr. Figueroa's or Mrs. Cranston's are less than 100 foot frontage. To impact all of the neighbors with a frontage of no more than 50 feet is outrageous and needs to be addressed in that manner.

MR. FENWICK: Has anything to say at this time? I'm going to close the public hearing. If I close the public hearing, you'll not be allowed to speak again. It will be open back to this Board again and back to the applicant. If you have anything to say, say it now and we'll get it over with. We are not going to open it when the applicant has his rebuttal.

KATHY CRANSTON: I live at 210 Summit Drive. He just asked before on a filed map it shows a 15 foot side yard and he was asked whether or not it violated. Did they ever even answer the question as far as 15 feet on both sides of the house?

MR. FENWICK: I believe they did and as part of the record, but I'm sure that the applicant will address it again. Anything else? Anyone else? At this time I'll

close the meeting to the public and open it back up to the Members of the Board.

MR. TRACY: Mr. Chairman, Zoning Board of Appeals Members and Members of the Public, I have very little to rebutt from the remarks of the public. I think that I have heard those remarks many times at many meetings. I respectfully submit that the inclusion of a single family house in a subdivision this size is not going to create a safety issue. However, I can understand the natives, the people, the local people, local people's objections to a small house in this area. I said that at the very outset, I said there's nothing to like about this and you're not going to like it. I don't like it and the neighbors aren't going to like it but there's a fundamental principle that is far bigger than that. And that fundamental principle is whether or not a person should buy a parcel of land that cannot be utilized when that parcel of land conforms in all respects to an express legislative intent concerning a small lot.

I will dwell upon the issue of a selfcreated hardship as this Board knows selfcreated hardship is a bar to a use variance. But, it's not a bar to an area variance as was set forth by the Appellate Division in a case called Bronxville vs. Frances.

In conclusion, I appreciate the fact that the neighbors have come out tonight and deeply appreciative if they are a Jet fans and had to miss it at least half of the Jet game tonight and I leave this Board with an expression that the Court of Appeals made in a 1928, in a case called Matter of VanCohorn vs. Morell (phonetic), the Court of Appeals said in relation to Zoning Board of Appeals, Zoning Board of Appeals Members are representative citizens doing their best to balance conflicting community pressures. I urge the Board not to be swayed by the number of objections that are against this but I ask the Board to consider and, if they wish to reserve decision, I have no objections and I have time to read the papers thoroughly. I'd ask the Board to consider every aspect of it for certainly to deny this variance will be to deny the applicant any reasonable use with the property in contravention of the Article 1 Section 7 of the Constitution of the State of New York and Article 14 of the Constitution of the United States.

MR. LUCIA: Mr. Tracy, just a couple things, I want to explore with you. Selfcreated hardship, well it may not be a bar to an area variance there's certainly some evidence that the Board can consider, would you agree with that?

MR. TRACY: Bronxville vs. Frances (phonetic) says the Board may consider it because it is not a bar. However, I call your attention to the fact is there a selfcreated hardship when an individual relies on a statute that he thinks the, he thinks the property follows?

MR. LUCIA: That brings us to the first threshold issue and Fulling against Palumbo argument that you're going to have to make on behalf of the applicant is that the significant economic injury is a result solely of the application of the ordinance to this land. I'm not sure where obviously you have a very knowledgeable purchaser who tells us that he researched the nonconforming lots statute before getting into this that he didn't factor that in when he paid \$2100 for this piece of land. It would seem that he very much took that into consideration given the purchase price that he paid for it.

MR. TRACY: I think that you and I are getting into a dialogue that we may subsequently get into in another forum.

MR. LUCIA: We may well but I'd like to lay it out for this Board because they have to vote on it first before we have to get to the next forum.

MR. FENWICK: Anything else?

MR. LUCIA: Yes, couple of other things. If I could address a couple questions to Mike Babcock, the Building Inspector, please. Mike, you heard the public here talk about public health, safety and welfare and the lot size, the congestion in the area, is it your opinion that these issues are relevant to the minimum bulk requirements in the zoning ordinance that this applicant is seeking relief from?

MR. BABCOCK: Yes.

MR. LUCIA: And do you think that --

MR. TRACY: Objection to the general question.

MR. LUCIA: You're welcome to question him also, if you'd like.

MR. TRACY: If you want to ask him is it his opinion that the construction of a house in this area would be applicable to the public health, safety and welfare, what you're asking him to say are bulk regulations for the common good, the answer of course is yes, so is motherhood.

MR. LUCIA: And we're getting there. This applicant has asked for some, several variances, specifically a 7,324 square foot lot area variance, a 50 foot lot width variance, a 2 foot 4 inch side yard on one side and 4 foot 8 inch on the other. Is it your feeling if the Board were to grant these variances, that it would have an impact on public health, safety and welfare?

MR. BABCOCK: Yes.

MR. LUCIA: Would it be an adverse impact?

MR. BABCOCK: Yes.

MR. LUCIA: Do you wish to question Mr. Babcock?

MR. TRACY: I'd like to ask Mr. Babcock if at one time he had informed my client that this lot came within the provisions of the nonconforming lot ordinance maybe two years ago?

MR. BABCOCK: Well, I think the question to me was is a 50 foot lot in a 5,000 square foot lot meet the criteria. I don't think there was any discussion on what the application of this lot was at the time. And I did give Mr. Williams the requirements for nonconforming lot at that time.

MR. LUCIA: I just have one further thing for Mr. Tracy. This probably is rudiment, it's your position that if the variance is denied, Mr. Williams has no use whatsoever for this lot?

MR. TRACY: We have so testified.

MR. LUCIA: Thank you.

MR. FENWICK: Any questions?

MR. TORLEY: Yes, I have a couple. I have stated that this would be, I gather by implication if these variances, you have stated it's correct that you have stated these variances were not granted to your client would this be a taking of his property?

MR. TRACY: Yes.

MR. TORLEY: Is it, therefore, your statement that if a person buys a piece of property regardless of the nature of the property, if he's not permitted to build on it, it's a taking of the property?

MR. TRACY: It depends on the factual situation. Under this factual situation, yes. Obviously, to answer your question yes, in such a general, it would be a ridiculous answer.

MR. TORLEY: Correct. Therefore, if this piece of property was not considered a building lot and your client purchased it, for something for which it was not fit, he would have no claims for loss of rights.

MR. TRACY: Wrong.

MR. TORLEY: If he bought something that was bought a piece of property for which it was not fit to build on which was not fit to build on and he was not permitted to build on, it would be an improper taking of his property?

MR. TRACY: No, he, it would be an improper taking of his property if under all the facts and circumstances he had regressed to the Board that was capable of giving him due process and that Board arbitrarily and capriciously denied it.

MR. TORLEY: So, if the Zoning Board feels that this piece of property does not merit the variances and therefore is not a suitable building lot, without being capricious or arbitrary, I believe we have listened to everything then you cannot object to it.

MR. TRACY: I think you have asked me a double negative question which I find it hard to answer.

MR. TORLEY: I'll try again. You said that as long as we are not being capricious or arbitrary saying whether or not a piece of property is suitable for building by the nature of the variance requested then it does not constitute improper taking of your client's rights?

MR. TRACY: No. What you're doing is you're attempting to litigate with me in a dialogue that I refuse to become engaged in. What you have done is you have shown me your precise position towards your decision which I am glad to have on the record.

As far as what we are here for, is we are here for bulk variances, area variances because we allege that we own a residentially zoned piece of land which has a practical difficulty. The practical difficulty is that it comes into conflict with the provisions of the bulk ordinance. We have introduced expert testimony on certain aspects. You have heard the comments of all the residents, you certainly, those comments are well taken, whether or not what probative value they have as to their dislike which is readily understood is another question. And you have to make that decision. You have to balance the two pressures, the pressure as to whether or not this man has a proper right which needs to be protected and in the final analysis who is the culprit here. The culprit is not Mr. Williams. The culprit is a procedure extant in this town that was extant in this town that would take a parcel of land and allow it to be sold and marketed when it was admittedly designated for a right-of-way at one time. And the procedure is extant in many towns because they do not accept deeds for dedication at the appropriate time but rather they let property lay, they get into the hands of the county, get tax map designation put on them and subsequently end up in the hands of someone who buys them at the tax sale.

Let us hope, let us hope that the inconvenience that the granting of this variance could cause might be more than made up for by the establishment of a procedure to see that it won't happen again.

MR. LUCIA: I don't think it's fair to say that any member of this Board has prejudged your application.

They are entitled to testify and certainly have a right to question.

MR. TRACY: You heard the question and you are a lawyer and you have answered those questions?

MR. LUCIA: I think he has the right to ask those questions. The fact that he might not have asked them in a way that's not permitted in a court of law is not relevant.

MR. TRACY: He did have the right to ask them and I had a right to reply the way I did, fine, no questions. This is our fifth meeting.

MR. KONKOL: I'm directing this information to the Board members. I don't intend to get into legal hassles here and case histories and everything else. Number one, it was a designated street on an approved planning map in 1972 under the Code of the Town of New Windsor. The definition of a street for everybody here under 38-2 says a street, the public right-of-way existing streets whether or not accepted by the town in areas designated by any developer to be used as a public right-of-way upon map, survey, plans remains to be a street. A street is a street whether the town accepts it or not. That is a fact in town law. We go over two lots and there's many lots and there's many descriptions in the code here but all of them start with a lot, any parcel of land not necessarily coincident with a lot or lot shown on map of record which is occupied or which to be occupied by a building and accessory buildings. In other words, the two facts to start off that this was a street, it was never designated as a lot. This is a town law.

Now, Judge Patsolos was very good to go after the other judge's rendition here and his final statement says that the petitioner is the owner in fee of a simple and possessed of real property, he bought a piece of property. So, if you bought a road or a railroad track or something that's what you bought and whether Judge Patsolos changes or not, I don't care. The town law says that it's a street.

Going back over here into the powers and duties of this Board under Paragraph 4833B, we come down to Paragraph C and Part 2 under neath that it says the needs and

desires of a particular owner or tenant of a particular prospective owner or tenant shall not either alone or in conjunction with other factors afford any basis for the granting of a variance. In other words, what your needs are calling for the fact that you are saying that you are being denied, I can't buy that. You bought a piece of property. It was a tax sale. The so called company here is saying yes, you bought a piece of property and well, we'll guarantee it for the price that you paid, \$2100. That's all they are guaranteeing. And it's subject, it says in Paragraph 4 of Hardenburg Abstract restrictive covenants, easements and agreements, it goes on back into grants, different ones which you have put in here, telephone company, you did a nice job of presenting this but it's a street and I don't think, I also think it would be injurious to the neighbors, I think it's unfair. It seems to be a monetary thing there also. You said you paid \$10,000 for construction costs and the permit asks for \$55,000. All of a sudden we are getting to \$120,000 sale. So, there's some discrepancy, the fact that you want to make some money on it, that's your business but in fairness to the other people, I don't even know why you're in here because I tried to express my opinions on it before.

MR. TRACY: May I reply?

MR. KONKOL: Sure, you can reply.

MR. TRACY: The section that you read on a need of a particular person really doesn't apply to this but the need of a particular person applies to when it's written in the Zoning Board of Appeals ordinance I come before you and I say hey, you know I can't stay in the same sized house, I got to expand because I've got twelve kids, I have a need.

MR. KONKOL: That is your opinion but you're asking for a need that you want to build a residence here and you need variances so you have a need.

MR. TRACY: No, I'm asking that a variance be granted because I have a practical difficulty and I'm asking you to tell me what this property is. If it's not a residentially zoned plot of land, what is it?

MR. KONKOL: It's a street.

MR. TRACY: You're trying to say it's a street but the court has said that it's not a street.

MR. KONKOL: The law says it's a street, our code. Mr. Patsolos says that it's a street.

MR. TRACY: The court I respectfully submit takes precedent over your code, if not then why have a court, let's just rule by your code and --

MR. KONKOL: Judges make a lot of wrong decisions too.

MR. TRACY: I certainly agree with that and I certainly admire the mental acumen you have shown in delving into reason out the basis for your decision. And I would hope that when you make the decision you put that reason forth very clearly.

MR. FENWICK: At this time, I read into the record the Affidavit signed by Pat Barnhart that there were 49 addressed envelopes sent out and notice of the public hearing. Before we go any further, do you have a check for \$25 for me?

MR. WILLIAMS: I have got cash.

MR. LUCIA: I think for years the town has only taken checks but if you drop one off --

MR. WILLIAMS: I didn't state that.

MR. LUCIA: You can drop it off at Pat's office.

MR. WILLIAMS: I can have a check for you tomorrow morning.

MR. FENWICK: Okay, fine.

MR. TANNER: No other questions, enough already.

MR. FENWICK: Entertain a motion?

MR. TORLEY: I'd like to apologize for taking the time. I'm trying to get it straight in my mind exactly what the basis of the request are since I am not trained as a lawyer, I'm trained as a scientist, I follow by that means so -- thank you for your consideration.

September 23, 1991

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MR. TRACY: I thank you.

MR. FENWICK: At this time, I'll entertain a motion to grant the variance.

MR. KONKOL: I'll make a motion.

MR. LUCIA: Individually or all together?

MR. TORLEY: All together.

MR. KONKOL: Well, we're going for an area variance, I'd like to take them all together.

MR. TORLEY: I'll second it.

MR. FENWICK: Roll call, please?

ROLL CALL:

Mr. Torley	No
Mr. Finnegan	No
Mr. Tanner	No
Mr. Konkol	No
Mr. Fenwick	No

MR. FENWICK: Your application is denied.

MR. TRACY: Thank you, Mr. Chairman, for all the time you spent on this and for what I'm sure was a trying evening for a lot of people. My thanks to the neighbors who came out too.

9/23/91 Public Hearing - Small Town Land # 91-3
Keith Williams

Name:	Address:
JOHN A PETRO	8 PARK HILL DR
Diana + Daniel P Morales	216 SUMMIT DR
CHARLES + MARSHA REIN	207 SUMMIT DRIVE
Gerardo + Elba Figueroa	208 Summit Dr.
Douglas B. Ward	213 Summit Dr.
SEAN BISHOP	213 SUMMIT DR.
Josya Stopan	30 ONA Lane
John Buckley	211 Summit DR
Wili Cooper	209 SUMMIT DR
BENNIE MISERENDINO	49 VALLEY VIEW DR.
Mike Hallinan	5-R.D.1. RIDGEVIEW R.D. SALISBURY MILLS 12571A.
Andrew Maoney	8 Ona Lane New Windsor, NY
Andrew McPadden	205 Summit Dr New Windsor, NY
Evelyn Kawula	218 Summit Dr New Windsor, N.Y.
Patricia Cranston	210 Summit Dr New Windsor, N.Y.
Landra Cranston	210 Summit Dr. New Windsor, N.Y.
Dominick Passantino	203 Summit Dr. New Windsor, N.Y.
Tina Lastowski	23 Park Hill Dr, New Windsor, N.Y.
Linda Donoras	204 Summit Dr. New Windsor N.Y.
Raymond Van	204 Summit Dr NEW WINDSOR, N.Y.

ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR

-----X

In the Matter of the Application of

SMALL TOWN LAND INC.

for a Variance under the Zoning
Ordinance of the Town of New Windsor

-----X

APPLICANTS' MEMORANDUM OF FACT AND LAW

Respectfully submitted,

TRACY, BERTOLINO & EDWARDS
317 Little Tor Road South
New City, New York 10956
(914) 634-6404

STATEMENT OF FACTS

The Petitioner is the owner of a plot of land shown on the tax map of the Town of New Windsor as Section 8, Block 1, Lot 21. On or about the 16th of March, 1972, a subdivision plan of "Park Hill Subdivision" was filed in the Office of the Orange County Clerk. This plot was shown on the subdivision map, which map had been approved by the Town of New Windsor Planning Board. The parcel was not shown as a lot, but was apparently a parcel or plot of land which was to be reserved for ingress or egress as a street to be adjacent vacant parcel of land. The parcel, however, was given a tax designation and was subsequently sold by the County at a tax sale to a predecessor in title from whom the present applicant acquired it.

The municipality had accepted all of the streets shown on the subdivision map for dedication, but had not taken dedication to this parcel. When the applicant first applied for a building permit, he was denied by the Building Inspector on the ground that the property was a public street. Thereafter, litigation ensued in the Supreme Court of Orange County, and Judge Patsalos rendered a Decision which resulted in a judgment that the Petitioner is the owner in fee simple and possessed of the real property. The judgment further provided

"Any claim which the defendants
(Town of New Windsor) have or
might claim to have to the

aforesaid premises as a public street or otherwise is without validity and of no force and effect. Any offer of dedication as a future road is revoked."

Attached hereto, and made a part of this Memorandum is a copy of the applicant's deed and a title insurance report indicating that a title company will insure good and marketable title to the premises in the name of the applicant. Those documents are labeled Exhibits "A" and "B" respectively.

The applicant purchased the property in reliance upon Local Law # 3-1986, whereby the Town of New Windsor amended its Zoning Code to permit building to take place on certain "nonconforming lots of record." That section referred to a residential plot separated by other land not in the same ownership. Paragraph (e) thereof sets forth certain bulk criteria as a minimum requirement to permit a building permit to issue. The plot as set forth to this Board meets that minimum criteria. The Petitioner applied for a building permit but was denied a building permit by the Building Inspector on the ground that the lot did not meet the required side yards or overall bulk in the zone. The Building Inspector did not make a denial or request an interpretation as to whether or not the plan as submitted was entitled to nonconforming status under Local Law # 3-1986. Therefore, this matter is before your Honorable Board for bulk variance only.

CASE LAW

New York Courts have consistently held that the "unnecessary hardship" rule established in Otto v. Steinhilber¹, is intended to apply only to a variance in the use of premises, and not to a variance such as the one presented here, in the area upon which a building may be constructed. Since an area variance involves no change in the character of the zoned district, in the absence of a statutory provision to the contrary, a change of area may be granted upon the ground of "practical difficulties" alone, without considering whether or not there is an unnecessary hardship. See Cowan v. Kern, 41 NY2d 591, 394 NYS 579; Hoffman v. Harris, 17 NY2d 138, 269 NYS2d 119; Envoy Towers v. Klein, 51 AD2d 925, 381 NYS2d 92; Willits v. Schoepflin, 23 AD2d 868, 259 NYS2d 297.

Thus, the standard which the applicants herein must meet is the "practical difficulties" standard, and not the more stringent "unnecessary hardship" test. While no precise definition of the term "practical difficulties" has been formulated, in general, proof of practical difficulties entails a showing that as a practical matter the applicant cannot use the subject property without coming into conflict with certain of the zoning ordinance's restrictions. Fuhst v. Foley, 45 NY2d 441, 410 NYS2d 56; Galín v. Board of Estimate of the City of New York, 72 AD2d 114, 423 NYS2d 932, affd 52 NY2d 869, 437 NYS2d 1 282 NY 71, 24 NE2d 851

80.

In Wachsberger v. Michaelis², the Court enumerated the criteria by which the existence of "practical difficulties" could be determined in a case in which no proof of financial hardship was tendered to the board. The Court stated that the board should consider the following: (1) How substantial the variance is in relation to the requirements; (2) The effect, if the variance is allowed, of the increased population density thus produced on available governmental facilities (fire, water, garbage and the like); (3) Whether a substantial change will be produced in the character of the neighborhood or a substantial detriment to adjoining properties created; (4) Whether the difficulty can be obviated by some method, feasible for the applicant to pursue, other than a variance; and (5) Whether, in view of the manner in which the difficulty arose, and considering all of the above factors, the interests of justice will be served by allowing the variance.

² 19 Misc.2d 909, 191 NYS2d 621, affd 18 AD2d 921, 238 NYS2d 309

THE DOCTRINE OF FULLING V. PALUMBO

In 1967, the Court of Appeals of the State of New York decided a case entitled Fulling v. Palumbo, 21 N.Y.2d 30, 286 N.Y.S.2d 249. In that case, the highest Court of the State of New York held that where an area variance was sought for the construction of a dwelling on a lot of 9,500 square feet located in a district where the minimum zoning requirement was, at the time of application, 12,000 square feet, it should not have been denied in the absence of showing that the character of the immediate area would be affected by the variance, there would be difficulty in supplying water, sewage, and other municipal facilities, or public health, safety and welfare would be served by a denial of the variance.

The Court in this decision by Judge Keating made some observations which have a far reaching effect. The Court referred to the general rule prevailing in New York and in other jurisdictions, is that zoning ordinances creating minimum area standards for the construction of homes are not per se unconstitutional. The Court enunciated the basic rule that where the property owner will suffer significant economic injury by the application of an area standard ordinance, that standard can be justified only by a showing that the public health, safety and welfare will be served by upholding the application

of the standard and denying the variance. That Court further stated

"To state the matter more precisely: until it is demonstrated that some legitimate purpose would be served by restricting the use of the petitioner's property, he has sufficient standing to challenge the ordinance. Once it is demonstrated that some legitimate public interest will be served by the restriction, then, before the property owner can succeed in an attack upon the ordinance as applied, he must demonstrate that the hardship caused is such as to deprive him of any use in the property to which it is reasonably adapted, and that, as a result the ordinance amounts to a taking of his property."

It is respectfully submitted that in the application before this Honorable Board, the denial of the variance would deprive the applicant of any use of the property to which it is reasonably adapted and that, as a result, the denial would amount to a taking of his property. It should also be noted that the applicant herein can comply in all respects to the criteria set forth in Paragraph (e) of Local Law # 3-1986 of the Town of New Windsor. It is respectfully submitted that that Local Law is an expression of legislative intent which indicates that the granting of this variance would not be inimical to the public health, safety and welfare.

POWERS AND DUTIES OF THE BOARD AS APPLIED
TO THE LAW AND FACTS OF THE CASE

The Zoning Board of Appeals of the Town of New Windsor under Section 48-33 of the New Windsor Code is granted power to approve variances and special permits. In connection with variances, the wording used is "owing to exceptional and extraordinary circumstances, there are practical difficulties ...". There is a discussion of physical conditions such as "in the case of an exceptionally irregular, narrow, shallow or steep lot." There is a necessity for finding that the application of the Zoning Ordinance would deprive the applicant of the reasonable use of such land and that the granting of the variance is necessary for the reasonable use of the land and that the grant of the variance is the minimum variance that will accomplish this purpose. In addition, the Board must find that the granting of the variance will be in harmony with the general purpose and intent of the Local Law, will not represent a radical departure therefrom, will not be injurious to the neighborhood, or will not change the character thereof, and will not be otherwise detrimental to the public welfare. It is respectfully submitted that at the hearing, the economic loss to the applicant will be testified to by a real estate expert, the Honorable Board will be made aware of the extraordinary conditions under which this situation arose, the Board will

note, from a certified survey, the irregular and narrow conditions of the lot, and the Board will take notice of the fact that the applicant would be deprived of all reasonable use of the property if the variance is denied. In addition, and as has already been stated, the legislative body by Local Law # 3-1986 concerning "nonconforming lots of record" has already legislatively set forth the criteria for small lots. The applicant's plan is in harmony with each and every criteria set forth in that Local Law.

There will be no change whatsoever in the character of a residential neighborhood and the applicant's difficulty, cannot be alleviated by some other method in view of the fact that he owns no other land in the area.

CONCLUSION

On the basis of the case law cited herein and the testimony before the Honorable Board, the applicant has satisfied the criteria upon which the Zoning Board of Appeals should grant an area and side yard variance. To deny the variance would amount to a taking of the applicant's property.

Dated: New City, New York
September 23, 1991

Respectfully submitted,

TRACY, BERTOLINO & EDWARDS
317 Little Tor Road South
New City, New York 10956
(914) 634-6404

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE
 (This Page is Part of the Instrument)

6-044
~~23381~~

PRINT OR TYPE: BLACK INK ONLY

SECTION 8 BLOCK 1 LOT 21

Henry S. Cummings
TO
Small Town Land, Inc.
SMALL

RECORD AND RETURN TO:
(Name and Address)

David Mannigan Esq.
P.O. Box 637
Florida, N.Y. 10921

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH RECORDED INSTRUMENT ONLY.

DO NOT WRITE BELOW THIS LINE

CONTROL NO. 050133 DATE 10-14-87 AFFIDAVIT FILED _____ 19 _____

INSTRUMENT TYPE: DEED MORTGAGE _____ SATISFACTION _____ ASSIGNMENT _____ OTHER _____

- BG20 Blooming Grove _____
- CH22 Chester _____
- CO24 Cornwall _____
- CR26 Crawford _____
- DP28 Deerpark _____
- GO30 Goshen _____
- GR32 Greenville _____
- HA34 Hamptonburgh _____
- HI36 Highland _____
- MK38 Minisink _____
- ME40 Monroe _____
- MY42 Montgomery _____
- MH44 Mount Hope _____
- NT46 Newburgh (T) _____
- NW48 New Windsor
- TU50 Tuxedo _____
- WL52 Walkill _____
- WK54 Warwick _____
- WA56 Wawayanda _____
- WO58 Woodbury _____
- MN09 Middletown _____
- NC11 Newburgh _____
- PJ13 Port Jervis _____
- 9999 Hold _____

SERIAL NO. _____
 Mortgage Amount \$ _____
 Exempt Yes _____ No _____
 3-6 Cooking Units Yes _____ No _____
 Received Tax on above Mortgage
 Basic \$ _____
 MTA \$ _____
 Spec. Add. \$ _____
 TOTAL \$ _____

CHECK CASH _____ CHARGE _____
 MORTGAGE TAX \$ _____
 TRANSFER TAX \$ 10 -
 RECORD. FEE \$ 11 -
 REPORT FORMS \$ 5 -
 CERT. COPIES \$ _____

MARION S. MURPHY
Orange County Clerk

by: _____
 ORANGE COUNTY CLERK'S OFFICE S.S.
 Recorded on the 5th day of
Jan 1988 at 2:23
 O'Clock P M. in Liber/Film 2865
Deeds at page 311 and examined.

Marion S. Murphy
County Clerk

D. Mannigan
 RECEIVED
 \$ 10 -
 REAL ESTATE
 JAN 5 1988
 TRANSFER TAX
 ORANGE COUNTY
ml

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

This Indenture, made the 14th day of October, nineteen hundred and 87

Between
Henry S. Cummings
149 East Tracy Place
Hackensack, New Jersey 07601

party of the first part, and
Small Town Land Inc.
518 Balmoral Circle
New Windsor, New York 12550

party of the second part,

Witnesseth, that the party of the first part, in consideration of Ten Dollars paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of New Windsor, County of Orange, State of New York designated on the Orange County Tax Map as Section 8, Block 1, Lot 21.

8
1
21

Being the same premises conveyed to the County of Orange by Deed dated September 10, 1986 and being recorded in the Orange County Clerk's Office on September 12, 1986 in Liber 2575 of Deeds at Page 30, said property being formerly owned by Parkdale Estates.

Being the same premises conveyed to grantor herein by Deed from the County of Orange, a municipal corporation with office at 255-275 Main Street, Goshen, New York dated December 23rd, 1986 and recorded in the Orange County Clerk's Office on February 6th, 1987 in Liber 2657 page 78.

Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises; To Have And To Hold the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

And the party of the first part, in compliance with Section 13 of the Lien Law, hereby covenants that the party of the first part will hold the consideration for this conveyance and will hold the right to receive such consideration as a

party of the first part, and

Small Town Land Inc.
518 Balmoral Circle
New Windsor, New York 12550

party of the second part,

Witnesseth, that the party of the first part, in consideration of Ten Dollars paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of New Windsor, County of Orange, State of New York designated on the Orange County Tax Map as Section 8, Block 1, Lot 21.

8
1
21

Being the same premises conveyed to the County of Orange by Deed dated September 10, 1986 and being recorded in the Orange County Clerk's Office on September 12, 1986 in Liber 2575 of Deeds at Page 30, said property being formerly owned by Parkdale Estates.

Being the same premises conveyed to grantor herein by Deed from the County of Orange, a municipal corporation with office at 255-275 Main Street, Goshen, New York dated December 23rd, 1986 and recorded in the Orange County Clerk's Office on February 6th, 1987 in Liber 2657 page 78.

Together with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; Together with the appurtenances and all the estate and rights of the party of the first part in and to said premises; To Have And To Hold the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

And the party of the first part, in compliance with Section 13 of the Lien Law, hereby covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

In Witness Whereof, the party of the first part has duly executed this deed the day and year first above written.

In Presence Of:

Jane M. Munroe
JANE M. MUNROE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 2, 1988

Henry S. Cummings
Henry S. Cummings

New Jersey
STATE OF NEW YORK, COUNTY OF Bergen ss:

On the 14 day of October 19 87, before me personally came

Henry S. Cummings

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

Joseph M. Munnice
NOTARY PUBLIC
Commission Expires Mar. 7, 1988

New Jersey
STATE OF NEW YORK, COUNTY OF Bergen ss:

On the 14 day of October 1987, before me personally came

to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of

, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

Quitclaim Deed

Title No.

Cummings

TO

Small Town Land, Inc.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came

the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

SECTION 8
BLOCK 1
LOT 21

COUNTY OR TOWN Orange County,
New Windsor

Recorded at Request of

USLIFE TITLE INSURANCE
Company of New York

RETURN BY MAIL TO

Standard Form of New York
Board of Title Underwriters

Distributed by
USLIFE TITLE INSURANCE
Company of New York

Zip No.

ING OFFICE

he executed the same.

James M. Murray
NOTARY PUBLIC
Commission Expires Dec. 7, 1988

New Jersey

STATE OF NEW YORK, COUNTY OF Bergen ss:

On the 14 day of October 1987, before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No. ;

that he is the of ; the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

executed the same.

STATE OF NEW YORK, COUNTY OF ss:

On the day of 19 , before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No. ;

that he knows to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

Quitclaim Deed

Title No. _____

Cummings

TO

Small Town Land, Inc.

SECTION 8
BLOCK 1
LOT 21

COUNTY OR TOWN Orange County,
New Windsor

Recorded at Request of

USLIFE TITLE INSURANCE
Company of New York
RETURN BY MAIL TO

Standard Form of New York
Board of Title Underwriters

Distributed by

USLIFE TITLE INSURANCE
Company of New York

Zip No.

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

LIEB 286- PG 313

Rockwest Abstract, Ltd.

254 South Main Street, New City, NY 10956
Telephone (914) 638-1671

President
Raymond Castel

September 23rd, 1991

Zoning Board of Appeals
555 Union Avenue
New Windsor, New York 12553

RE: Small Town Land, Inc.
Town of New Windsor
Orange County, New York
Section 8, Block 1, Lot 21

Gentlemen:

We have reviewed the abstract of title and have this date, caused a search to be made in the Orange County Clerk's Office with regard to the above captioned premises and find that Small Town Land, Inc. owns the premises in fee simple absolute and that Rockwest Abstract, Ltd. is ready and willing to issue its policy insuring same.

If you have any further questions, please do not hesitate to call or notify us.

Very truly yours,
ROCKWEST ABSTRACT, LTD.



C.R. "Beef" Castel
Vice President

CRC/kak
cc: Donald Tracy, Esq.

T-218

HARDENBURGH ABSTRACT COMPANY OF ORANGE COUNTY
12 Scotchtown Avenue, Goshen, NY 10924, (914) 294-6909

Policy Writing Agent for
American Title Insurance Company

NWD-887

PRELIMINARY CERTIFICATE

NO. RD-33-17276

	owner's	\$2,100.00
Application of	for lessee's	
Attn: Keith Williams		
policy insuring	mortgagee's	
Keith Williams		

AMERICAN TITLE INSURANCE COMPANY certifies that the title to the premises described in Schedule A, to the encumbrances and defects noted in Schedule B, is insurable at this date on a valid conveyance, lease or mortgage by Henry S. Cummings

who acquired title by deed from County of Orange
dated 12/23/1986 and recorded 02/06/1987 in Liber 2657
at page 78

SCHEDULE A

All that certain tract, lot and parcel of land lying and being in the Town of New Windsor County of Orange, State of New York, being more particularly described as follows:

See Schedule "A" Attached.

SCHEDULE B

1. Taxes, Water Rents, Assessments and other Municipal Charges

See Tax Search Attached.

Proof must be furnished that premises do not lie in an incorporated village or that all village taxes have been paid. Otherwise the policy will except "any and all village taxes, assessments and water rates and sales thereof."

2. Mortgages and Assignments thereof - None.

Mortgagor:

Mortgagee:

Amount:

Dated:

Recorded:

Liber:

Page:

3. Zoning Restrictions or Ordinances Imposed by any Government Body.

4. Restrictive Covenants, Easements, Agreements, and Consents, Including Set-Back Established by Filed or Recorded Map. Grant in Liber 1914 Cp. 683, Liber 1341 Cp. 251, Liber 703 Cp. 417. 25 foot set back and 15 foot side line on filed map.

5. Survey: None - Subject to any state of facts an accurate survey or inspection would disclose.

6. Judgments, Bankruptcies, Corporate Franchise Taxes and other State or Federal Liens. (set forth under section 7, if any.)

SCHEDULE B (continued)

7. Other Encumbrances or Defects:

How Disposed of

A. The Company does not insure that the buildings or other erections upon the premises herein, or their use, comply with Federal, State and Municipal Laws, regulations and ordinances.

B. No title to personal property will be insured nor has any search for chattel mortgages been made.

C. No title is insured to any land lying in any street, road or avenue crossing or abutting the herein described premises; but, unless hereinafter excepted, the rights of access to and egress from said premises is insured.

D. Deeds and mortgages must contain the covenant required by the Lien Law as amended by laws of 1942 and such covenant must be absolute and not conditional. The covenant is not required in deeds from referees or other persons appointed by a court for the sole purpose of selling property.

E. The identity of parties at the closing of this title should be established to the satisfaction of the closing attorney acting for this Company.

F. When the transaction is an assignment of a mortgage or other lien, an estoppel certificate executed by the owner of the fee and by the holders of all subsequent encumbrances must be obtained. When the transaction is a mortgage, the amount actually advanced should be reported to the Company.

G. Rights of present tenants, lessees or parties in possession.

H. Rights, if any, in favor of any electric light or telephone company to maintain guy wires extending from said premises to poles located on the roads on which said premises abut, but policy will insure, however, that there are no such agreements of record in connection therewith, except as may be shown herein.

I. Underground encroachments and easements, if any, including pipes and drains, and such rights as may exist for entry upon said premises to maintain, and repair the same, but policy will insure, however, that there are no such agreements of record, in connection therewith, except as may be shown herein.

J. The exact acreage of the premises herein are not insured.

K. Riparian rights, if any, in favor of the premises herein are not insured.

L. Rights of others to drain through creeks or streams, if any, which cross premises and the natural flow thereof will be excepted.

M. No personal inspection of the premises has been made. Policy will except "Any state of facts which a personal inspection of the premises herein described would disclose.

N. Loss or damage by reason of non-compliance with the Federal "Truth in Lending Act."

O. Company excepts any loss or action due to title to premises arising out of a tax sale for a period of two years from recording of deed (02/06/1987) from County of Orange.

NOTE: New York State Real Property Transfer Report for the State Board of Equalization and Assessment must accompany each deed for recording.

The undersigned certifies to AMERICAN TITLE INSURANCE COMPANY that in his (its) opinion this Preliminary Certificate correctly reflects the status of the title to the property described in Schedule A, of all public records affecting title to said real estate; that so far as to him (it) there is no dispute among attorneys of the local bar as to the validity of said title, nor has any question been raised or adverse claim asserted with respect thereto; and that the title is not dependent upon a sale for delinquent taxes or assessments.

This title is certified down to the 15th day of August, 1987.


James V. Rinaldi Agent

NAME OF PARTY TO BE INSURED:

Keith Williams

AMERICAN TITLE INSURANCE COMPANY insures, subject to the matters shown in Schedule B, against loss or damage in the amounts set forth which its insured may sustain by the failure of this Preliminary Certificate to reflect correctly the record title to the property described as of the above date and hour; such insurance to be null and void unless its title policy is issued within nine (9) months from date and the premium thereon paid. Upon the issuance of said policy, this Certificate shall be of no further force and effect and no liability for loss or damage will be assumed by the Company other than that arising under said policy.

Executed this day of

AMERICAN TITLE INSURANCE COMPANY

By: _____

SCHEDULE "A"

All that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of New Windsor, designated on the Orange County Tax Map as Section 8, Block 1, Lot 21.

Being the same premises conveyed to the County of Orange by deed dated September 10, 1986 and being recorded in the Orange County Clerk's Office on September 12, 1986 in Liber 2575 of Deeds at Page 30, said property being formerly owned by Parkdale Estates.

HENRY BRUNE

-and-

CENTRAL HUDSON GAS
& ELECTRIC CORPORATION

EASEMENT

Dated: 10/14/29
Ack'd: 10/14/29
Rec'd: 12/25/29
Cons.: \$1.00
Liber 705 Op. 417

GRANTS: An easement and right of way 6 feet in width throughout its extent, in, upon, over and across the lands of the undersigned, including roads thereon and adjacent thereto situated in the Town of New Windsor, County of Orange, State of New York, the exact location thereof to be selected by said corporation after its final surveys have been made.

Right to build pole line along undersigned property fronting highways.

Together with the right at all times to enter thereon and to have access thereto and to construct, operate, and maintain thereon and to repair, replace, protect and remove lines of poles, towers, cables, cross arms, guys, braces and all other appurtenances or fixtures adapted to the present and future needs, uses and purposes of said corporation, its successors, assigns and lessees.

Together with the right also to trim, cut and remove at any time such trees and other objects thereon and on adjacent property of the undersigned, as in the judgment of said corporation, its successors, assigns and lessees may interfere with, obstruct or endanger the construction, operation or maintenance of said rights, lines and fixtures or any thereof.

HENRY BAUME

-to-

CENTRAL HUDSON GAS
& ELECTRIC CORPORATION

-and-

NEW YORK TELEPHONE CO.

EASEMENT

Dated: 2/14/55
Ack'd: 2/16/55
Rec'd: 4/5/55
Cons.: \$1.00
Liber 1341 Co. 251

GRANTS: An easement and right of way --- feet in width throughout its extent, in, upon, over, under and across the lands of the undersigned, including roads and highways thereon and adjacent thereto, situated in the Town of New Windsor, County of Orange, State of New York.

Said easement and line shall extend from the property line of Donovan on the east in a westerly direction to the property line of Paolo on the west. Poles to set outside of wall, clearance of 20 feet either side of poles and stub and anchor as shown on sketch.

Together with the right at all times to enter thereon and to have access thereto and to construct, relocate, operate and maintain thereon and to repair, replace, protect and remove lines of poles, cables, crossarms, wires, guys, braces, underground conduits and all other appurtenances and fixtures adapted to the present and future needs, uses and purposes of said corporations, their respective successors, assigns and lessees.

Together with the right also to trim, cut and remove at any time such trees and other objects thereon and on adjacent property of the undersigned, as in the judgment of said corporations, their respective successors, assigns and lessees, may interfere with, obstruct or endanger the construction, operation or maintenance of said rights, lines and fixtures or any thereof.

The exact location of said easement and lines is to be as determined by said corporations having regard to the origin, general direction and destination of said lines and the requirements of said corporations.

U Rec 8/13/72

The New York Telephone with principal offices at 140 West Street, New York, New York 10037

(hereinafter referred to as the Grantee) and the undersigned Park Dale Estates, Inc. (hereinafter referred to as the Grantor)

NOW, therefore, for and in consideration of the sum of one (\$1.00) dollar, each to the other in hand paid, receipt of which is hereby acknowledged, the Grantor hereby grants and conveys unto the Grantee, its' respective successors, lessees and assigns a permanent easement for the right, privilege, and authority to construct, reconstruct, enlarge, relocate, replace, remove, operate, protect, inspect and maintain from time to time without notice to include

SECTION A: All necessary facilities including, but not limited to poles, wires, aerial cables, guys, anchors, crossarms, braces and associated plant adaptable to present and future needs required for electric, gas and telephone and/or communication industry.

SECTION B: All necessary facilities, including, but not limited to underground cables, pipes, mains, conduit, ducts, racks, appurtenances and associated service wires adaptable to present and future needs required for electric, gas and telephone and/or communication industry.

SECTION C: _____

SECTION D: The facilities will be placed within the 50 foot width of the streets of Park Dale Estates Inc. development and along the front, side and/or rear lot lines as the grantee deems necessary to meet the service needs as provided and determined by Grantee for said development now and in the future.

SECTION E: The property affected by the within Grant is a _____ foot strip of land having as its center line the location of facilities installed by Grantee herein the location of these facilities to be determined and approved by the Grantee and Grantor.

SECTION F: Rider attached hereto and made a part hereof.

SECTION (S) "B and D" will be the only section(s) applicable here.

The undersigned hereby further grants permanent ingress and egress over, under and across the land with a permanent right to trim, cut, and remove all trees, brush, vines and other objects as the Grantee deems necessary.

NOW, therefore, for and in consideration of the sum of one (\$1.00) dollar, each to the other in hand paid, receipt of which is hereby acknowledged, the Grantor hereby grants and conveys unto the Grantee, its respective successors, lessees and assigns a permanent easement for the right, privilege, and authority to construct, reconstruct, enlarge, relocate, replace, remove, repair, inspect and maintain from time to time without notice to include

SECTION A: All necessary facilities including, but not limited to poles, wires, aerial cables, guys, anchors, crossarms, braces and associated plant adaptable to present and future needs required for electric, gas and telephone and/or communication industry.

SECTION B: All necessary facilities, including, but not limited to underground cables, pipes, mains, conduit, ducts, markers, appurtenances and associated service wires adaptable to present and future needs required for electric, gas and telephone and/or communication industry.

SECTION C: _____

SECTION D: The facilities will be placed within the 50 foot width of the streets of _____
Park Dale Estates Inc.
development and along the front, side and/or rear lot lines as the grantee deems necessary to meet the service needs as provided and determined by Grantee for said development now and in the future.

SECTION E: The property affected by the within Grant is a _____ foot strip of land having as its center line the location of facilities installed by Grantee herein the location of these facilities to be determined and approved by the Grantee and Grantor.

SECTION F: Rider attached hereto and made a part hereof.

SECTION(S) " B and D " will be the only section(s) applicable here.

The undersigned hereby further grants permanent ingress and egress over, under and across the land with a permanent right to trim, cut, and remove all trees, brush, vines and other objects as the Grantee deems necessary on said land.

RECEIVED BY US

The property in and the improvements on the lot in which the grantor has an interest is located in the City of New York, County of New York, and on the south side of Union Ave., and on the West side of 1st Lane, ...

In the City of New Windsor, County of Orange, State of New York.

The terms hereof shall be binding upon and inure to the benefit of the heirs, legal representatives, successors, assigns and lessees of and as may apply to the undersigned and said corporations respectively.

In witness whereof, this instrument has been duly executed by the Grantor under seal this 26 day of July, 1972.

WITNESS:

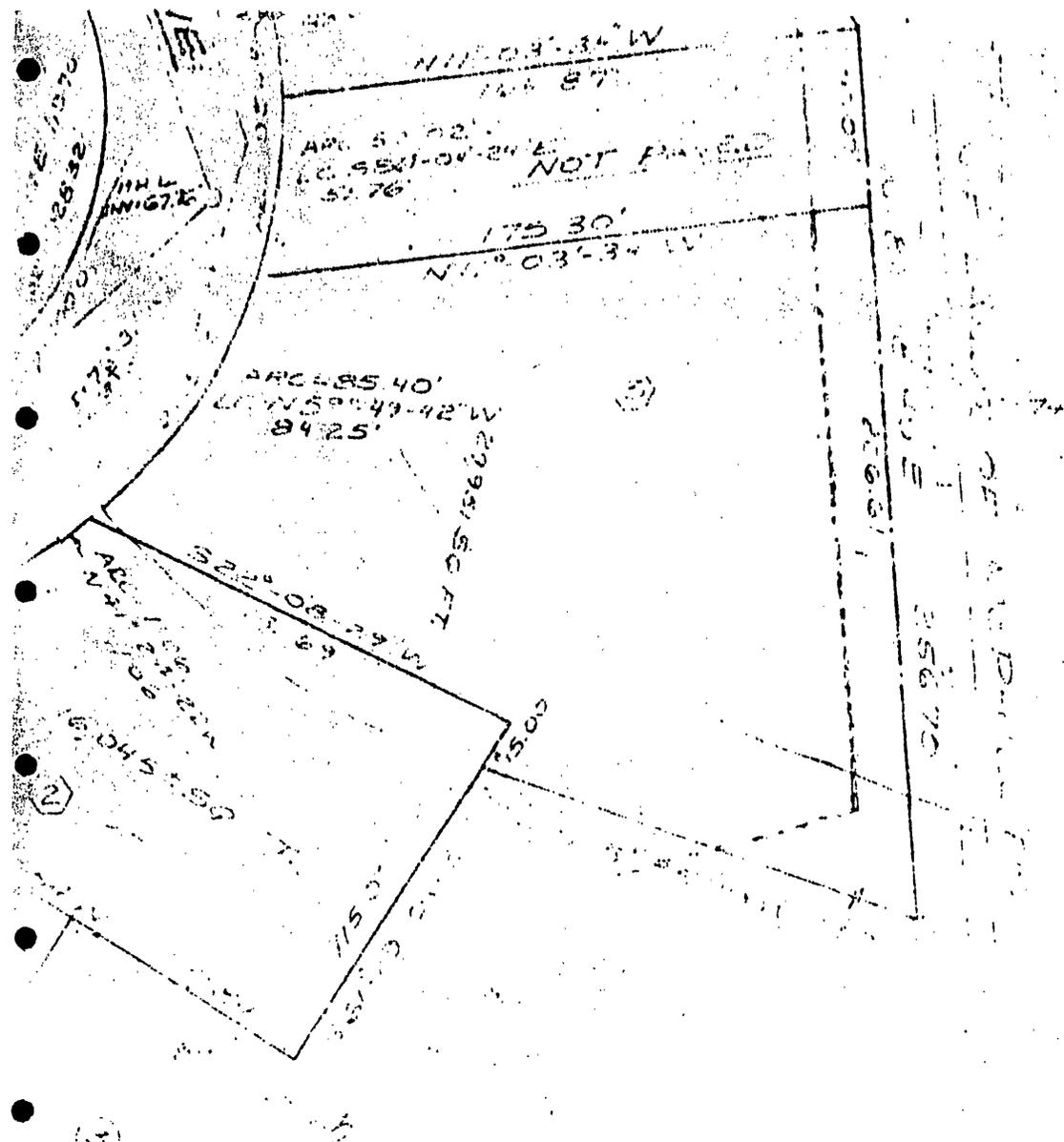
Mortimer Silberberg

GRANTOR:

[Signature] (L. S.)

Mayor, President,
1180 East 14th St., Brooklyn, N.Y. (L. S.)





SUBDIVISION PLAN

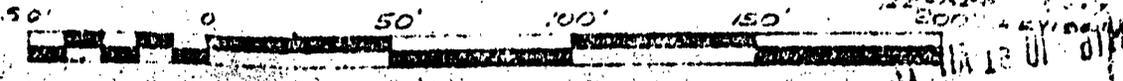
OF

PARK HILL SUBDIVISION

SECTION "4"

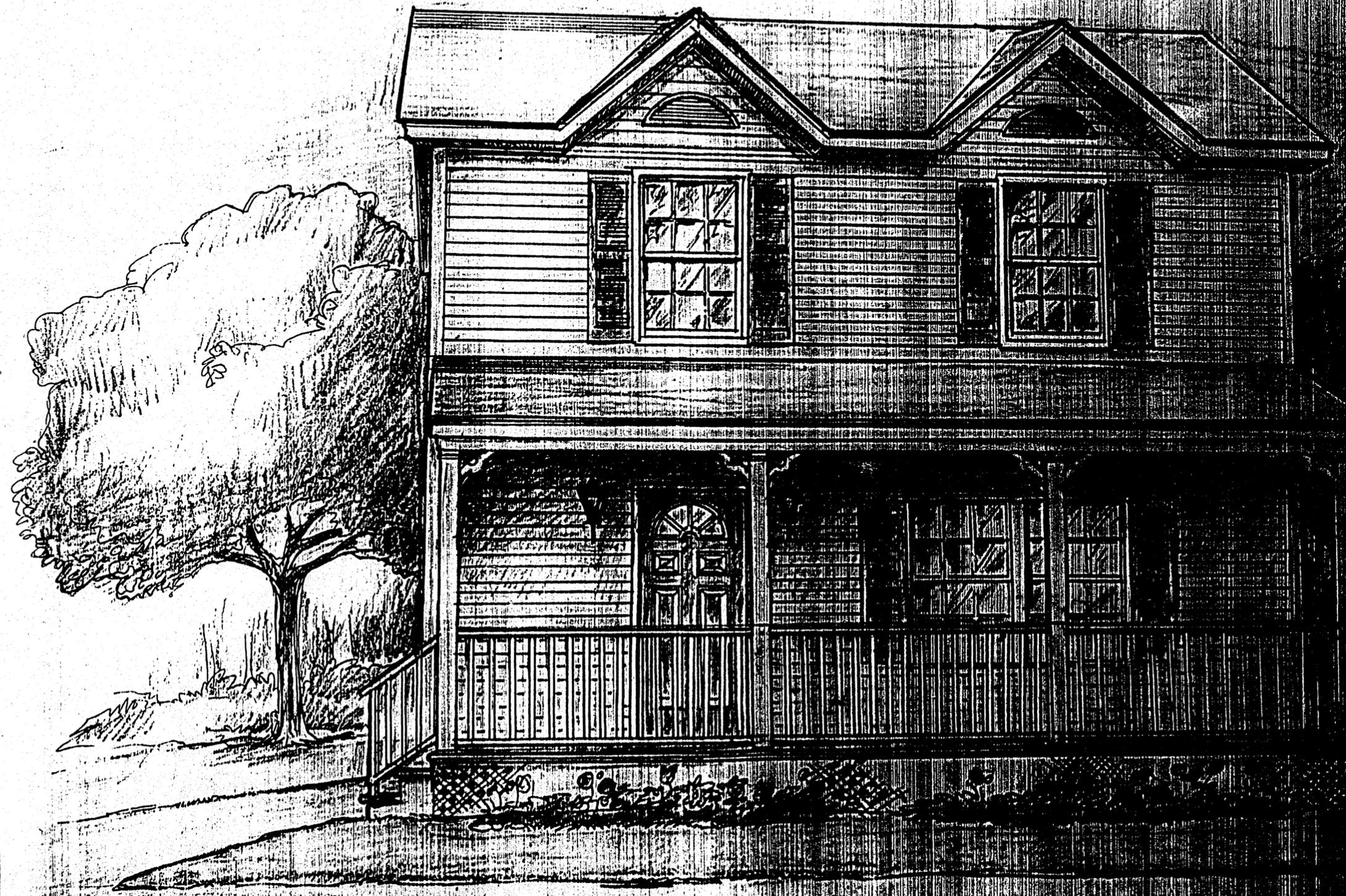
TOWN OF NEW WINDSOR
SCALE 1" = 50'

CO. OF WINDSOR
OCTOBER 1907
RECORDED IN
2500
2007



DISTANCE 1000 FT. [Handwritten signature]

**PREVIOUS
DOCUMENT
IN POOR
ORIGINAL
CONDITION**



cc: 2/1/91

Rec'd.
TR Office
1/9/91

TRACY, BERTOLINO & EDWARDS
ATTORNEYS AT LAW
317 LITTLE TOR ROAD SOUTH
NEW CITY, NEW YORK 10956
(914) 834-6404
TELECOPIER: (914) 834-6538

DONALD S. TRACY
DANIEL E. BERTOLINO
JOHN S. EDWARDS

January 7, 1991

Secretary of the Zoning Board of Appeals
Town of New Windsor
555 Union Avenue
New Windsor, New York 12553

Re: Small Town Land, Inc.

To the Honorable Zoning Board of Appeals:

COPY

My client, Keith Williams, has forwarded to me some minutes of a preliminary meeting on behalf of his corporation, Small Town Land, Inc. He also indicated that your Honorable Board wanted some questions on the attached minutes of the meeting answered and my appearance before your Board. He has further indicated to me that the next meeting of the board is January 14, 1991. However, I am scheduled before the Zoning Board of Appeals of the Town of Clarkstown that night and would request the next available meeting.

By way of narrative summary and to perhaps answer those questions the following is respectfully submitted:

Small Town Land, Inc., the owner of the property in question applied for a building permit and was denied that building permit. He sought a declaration from the Court that he was entitled to the exemption for pre-existing lots as set forth in the Zoning Code. Judge Lange ruled that it was not a pre-existing lot and that the matter of its use as a future road was not before him.

A companion action to bar the claim of the town to its use as a road and revoke any offer of dedication was brought before Judge Patsalos. Judge Patsalos ruled that the offer of dedication was revoked and that the town was barred from any claims to the property for road purposes. Thus my client reached the point where he has a non-conforming plot of land in a residential zone which cannot be used for any purpose without the intervention of the Zoning Board of Appeals. We therefore applied to the Zoning Board of Appeals for either an interpretation that the lot now meets the standards of a non-conforming lot by virtue of Judge Patsalos' decision or that he was entitled to variances to permit building consistent with

TRACY, BERTOLINO & EDWARDS

the exemption provision of the ordinance. We would therefore make an appeal to the Zoning Board of Appeals for either a favorable interpretation or for a variance. To deny the same would be a violation of the 4th and 14th Amendment in that the property would be forever sterilized with no possible use while my client is paying taxes on the same. The variance requested would be an area variance and therefore self-created hardship would not be a bar to the granting of same.

At any rate I should be happy to appear before your board for the purpose of answering all questions and further setting forth case law authority for my request. Thank you for your consideration of the above and I would appreciate receiving from you information as to a scheduled appearance date.

Very truly yours,

TRACY, BERTOLINO & EDWARDS


Donald S. Tracy

DST:st

cc: Tad Seaman, Esq.
Mr. Keith Williams

ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR
COUNTY OF ORANGE : STATE OF NEW YORK

-----X
In the Matter of Application for Variance of

Keith Williams - Small Town Land,

Applicant.

AFFIDAVIT OF
SERVICE
BY MAIL

#91-3.
-----X

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

PATRICIA A. BARNHART, being duly sworn, deposes and says:

That I am not a party to the action, am over 18 years of age and reside at 7 Franklin Avenue, New Windsor, N. Y. 12553.

On Sept. 12, 1991, I compared the 49 addressed envelopes containing the attached Notice of Public Hearing with the certified list provided by the Assessor regarding the above application for variance and I find that the addressees are identical to the list received. I then mailed the envelopes in a U. S. Depository within the Town of New Windsor.

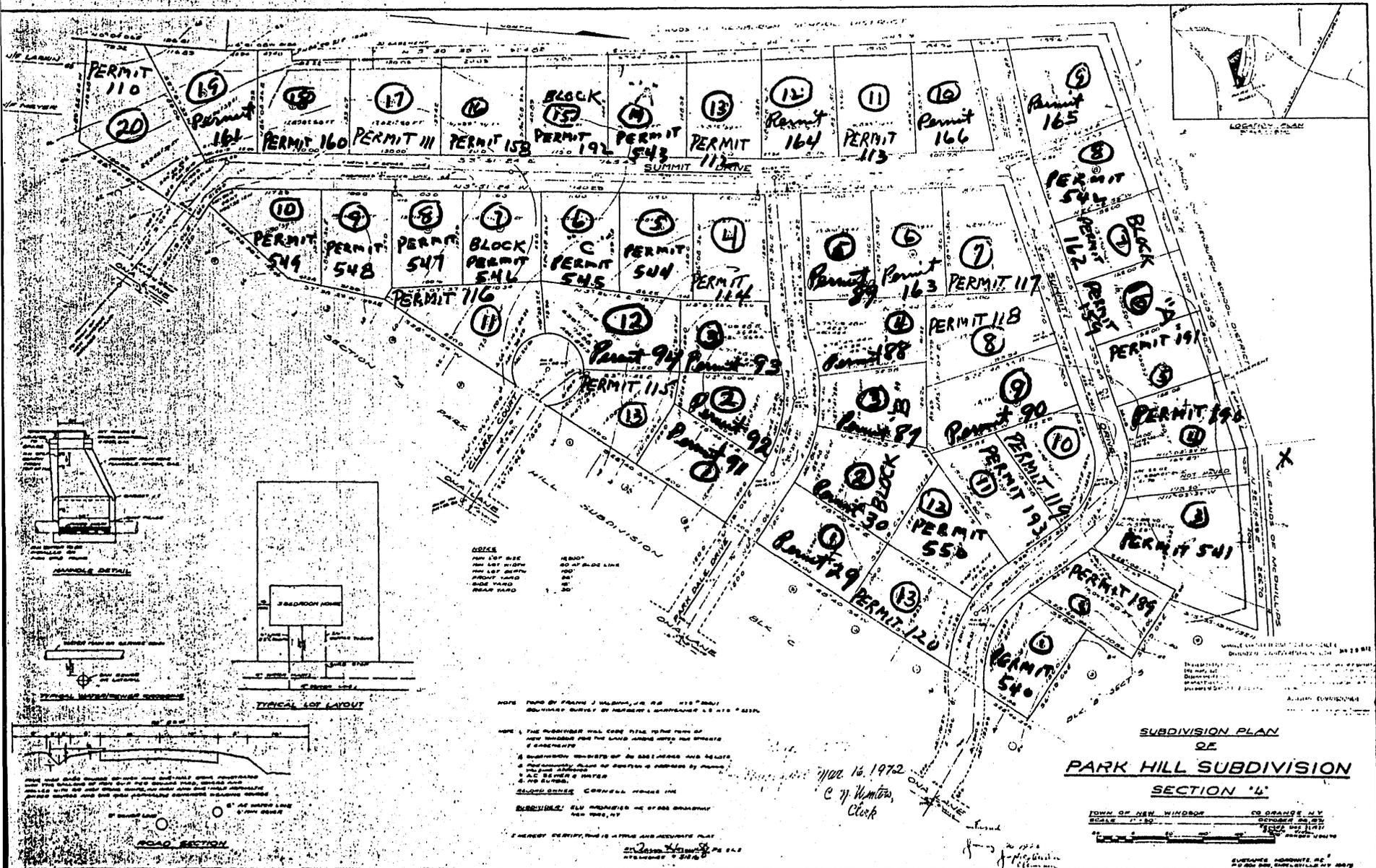
Patricia A. Barnhart
Patricia A. Barnhart

Sworn to before me this
16th day of September, 1991.

Deborah Green
Notary Public

DEBORAH GREEN
Notary Public, State of New York
Qualified in Orange County
4984065
Commission Expires July 15, 1993

(TA DOCDISK#7-030586.AOS)



NOTES:
 1. NEW LOT WIDE
 2. NEW LOT HIGH
 3. NEW LOT AREA
 4. FRONT YARD
 5. REAR YARD

NOTE: THIS SUBDIVISION WILL COMPLY WITH THE TERMS OF
 NEW WINDSOR FOR THE LAND AND THE TERMS OF THE
 SUBDIVISION

- 1. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 2. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 3. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 4. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 5. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 6. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 7. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 8. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 9. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION
- 10. THE SUBDIVISION WILL COMPLY WITH THE TERMS OF NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION

SUBDIVISION: NEW WINDSOR FOR THE LAND AND THE TERMS OF THE SUBDIVISION

I HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE PLAN

SUBDIVISION PLAN
OF
PARK HILL SUBDIVISION
SECTION 'L'

TOWN OF NEW WINDSOR, CO. GRANDE, N.Y.
 SCALE: 1" = 40'

SUBDIVISION PLAN NO. 100

To: ZONING BOARD OF APPEALS
Town Hall, 555 Union Avenue
New Windsor, New York 12553

Re: APPLICATION OF KEITH WILLIAMS

LET IT BE KNOWN that the undersigned do hereby strongly object to the granting of a variance for the construction of a one-family dwelling for premises on the north side of Summit Drive in the Town of New Windsor, County of Orange, State of New York, known as Section 8, Block 1, Lot 21.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE</u>
<i>M. J. Cooper</i>	209 Summit Dr New Windsor, NY 12553	19 SEPT 91
<i>Paula Lewis</i>	214 Summit Dr New Windsor	9/18/91
<i>Gerardo Figueroa</i>	208 Summit Dr New Windsor	9/20/91
<i>Masha Reid</i>	207 Summit Drive New Windsor, NY 12553	9/20/91
<i>Emera Kwyla</i>	218 Summit Dr. New Windsor, NY	9/20/91
<i>Eduardo Fin</i>	212 Summit Dr. New Windsor, NY	9/20/91
<i>Tracy Fin</i>	212 Summit Dr. New Windsor NY	9/20/91
<i>Lynise Fin</i>	212 Summit Dr. New Windsor, NY	9/20/91
<i>Sandra Cranston</i>	210 Summit Dr. New Windsor, NY	9/20/91
<i>Herb Anderson</i>	2094 Lane New Windsor NY	9/21/91
<i>PATRICIA FIGUEROA</i>	208 Summit Dr. New Windsor, NY	9/21/91
<i>Ray Ragan</i>	204 Summit Dr. New Windsor, NY	9/22/91
<i>Linda Horvath</i>	204 Summit Dr. New Windsor, NY	9/22/91
<i>Peter Borunns</i>	215 Summit Dr. New Windsor, N.Y.	9/22/91
<i>Lucy Borunns</i>	215 Summit Dr New Windsor NY	9/22/91
<i>H. Borunns</i>	215 Summit D. New Windsor NY	9/22/91
<i>Paul DeLena</i>	206 Summit Dr New Windsor, NY, 12553	

NAME

ADDRESS

DATE

Judy Passerini	203 Summit Dr.	9/18/91
Andrew Nijadus	205 Summit Dr.	9/18/91
John Ward	213 Summit Dr.	9/18/91
Masha T. Passerini	110 Parkdale Dr.	9/18/91
Robert W. Cyrcman	110 Parkdale Dr.	9/18/91
Catherine McLean		
Bernadette Wood	105 Parkdale Dr.	9/18/91
Barbara A. Marshall	12 Ona Lane	9/18/91
Pat M. E.	10 Ona Lane	9/18/91
Andrew Wood	8 Ona Lane	9/18/91
Roe Caporaso	106 Parkdale Dr.	9/18/91

NEWBURGH SCHOOL DISTRICT

N/F McPHILLIPS

NOTES:

1) Unauthorized alterations or additions to this map is a violation of Section 7209(2) of the N.Y.S. Education Law.

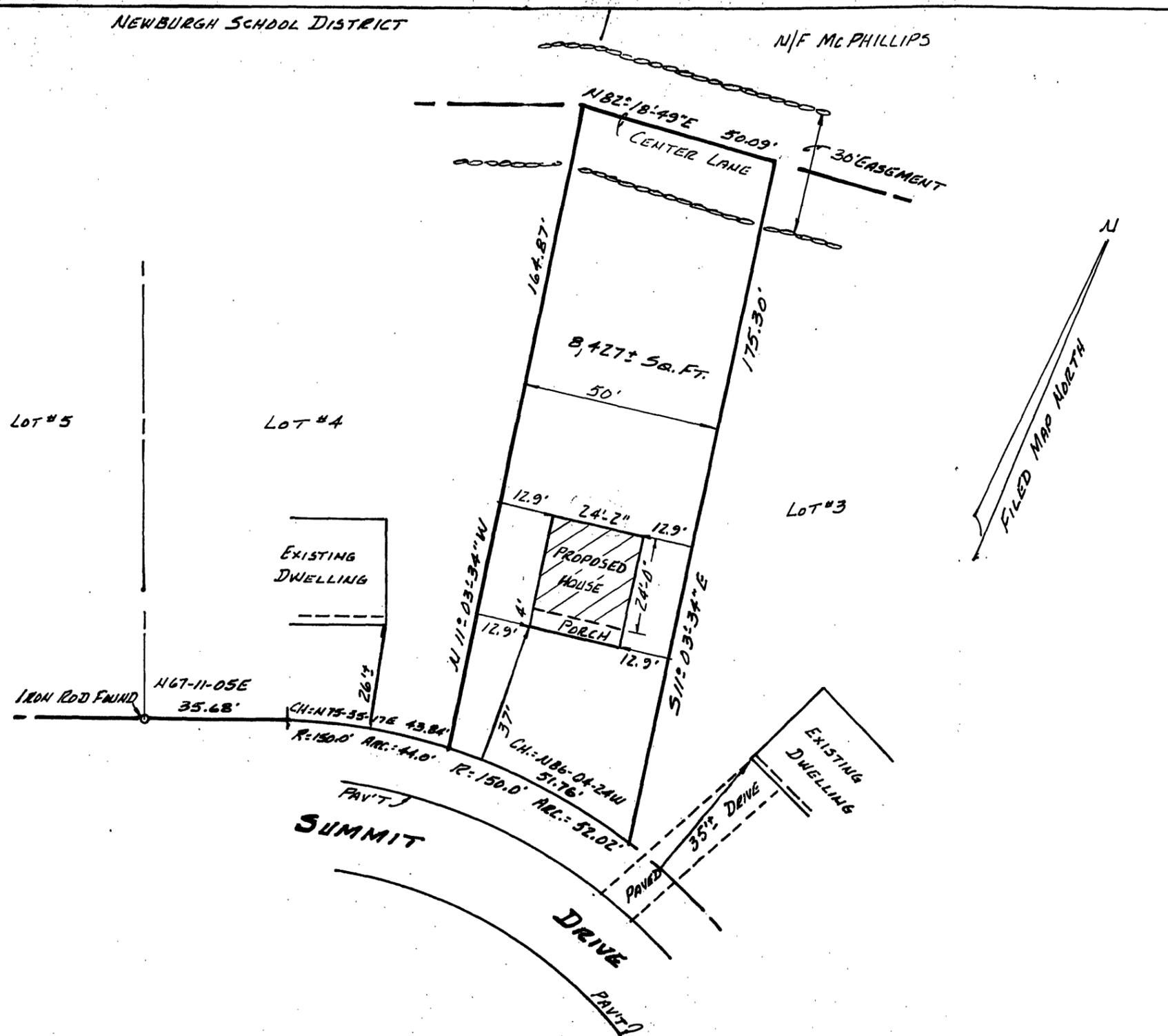
Copies of this map not having the original ink or embossed seal of the Land Surveyor shall not be valid.

Guarantees or Certification are not transferable to additional Institutions or subsequent owners.

Subject to any grants, easements and right-of-ways of record if any.

2) Being a portion of land from a map titled, "Park Hill Subdivision", Section 4, Block "A", dated 25 Oct. 1971, revised 30 Jan. 1972 and filed in the O.C.C.O. on 16 Mar. 1972 as Map # 2761.

3) Tax Map Desig.: Section 8 - Block 1 - Lot 21.



LANDS OF
KEITH WILLIAMS

TOWN OF NEW WINDSOR · DRANGE Co. · NEW YORK

SCALE: 1" = 30'

DATE: 27 FEB. 1989

Certified Correct to Keith Williams and American Title Insurance Company, from a field survey of 23 Jan. 1989.



Job No.: 89-4
ANTHONY D. VALDINA
LAND SURVEYOR
4 PLEASANT VIEW AVE.
NEWBURGH, N.Y. 12550
N.Y.S. Lic. No. - 049120

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE OR SPECIAL PERMIT

91-3.

Date: 8/29/91

I. Applicant Information:

- (a) KEITH WILLIAMS NEW WINDSOR N.Y. 565 5566
(Name, address and phone of Applicant) (Owner)
- (b) _____
(Name, address and phone of purchaser or lessee)
- (c) DONALD TRACY NEW CITY N.Y. 914 634 6404
(Name, address and phone of attorney)
- (d) _____
(Name, address and phone of broker)

II. Application type:

- Use Variance Sign Variance
- Area Variance AND OR Interpretation

III. Property Information:

- (a) R-4 SUMMIT DRIVE 8-1-21 52'x175'
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? SCHOOL
- (c) Is a pending sale or lease subject to ZBA approval of this application? NO
- (d) When was property purchased by present owner? 9/86
- (e) Has property been subdivided previously? NO When? _____
- (f) Has property been subject of variance or special permit previously? NO When? _____
- (g) Has an Order to Remedy Violation been issued against the property by the Zoning Inspector? NO
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: NO

IV. Use Variance:

- (a) Use Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____, to allow:
(Describe proposal) N/A

(b) The legal standard for a "Use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

V. Area variance:

(a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs., Col. C, D, F, H.

Requirements	Proposed or Available	Variance Request
Min. Lot Area <u>15,000'</u>	<u>7,676'</u>	<u>7,324'</u>
Min. Lot Width <u>100'</u>	<u>50'</u>	<u>50'</u>
Reqd. Front Yd. <u>35'</u>	<u>37'</u>	<u>—</u>
Reqd. Side Yd. <u>15' / 30'</u>	<u>12' 8" / 25.4"</u>	<u>12' 8" / 4.8</u>
Reqd. Rear Yd. <u>40'</u>	<u>—</u>	<u>—</u>
Reqd. Street Frontage* <u>60'</u>	<u>51.76'</u>	<u>8.24'</u>
Max. Bldg. Hgt. <u>35'</u>	<u>—</u>	<u>—</u>
Min. Floor Area* <u>1,000'</u>	<u>—</u>	<u>—</u>
Dev. Coverage* <u>30%</u>	<u>— %</u>	<u>— %</u>
Floor Area Ratio**		

* Residential Districts only
 ** Non-residential districts only

(b) The legal standard for an "AREA" variance is practical difficulty. Describe why you feel practical difficulty will result unless the area variance is granted. Also, set forth any efforts you have made to alleviate the difficulty other than this application.

THE PROPERTY WILL BE RENDERED USELESS. THE DENIAL WILL RESULT IN A CONFISCATION OF THE PROPERTY. ADDITIONAL LAND IS NOT AVAILABLE TO AVOID THE PRACTICAL DIFFICULTY.

VI. Sign Variance:

(a) Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

	Requirements	Proposed or Available	Variance Request
Sign 1	_____	_____	_____
Sign 2	_____	_____	_____
Sign 3	_____	_____	_____
Sign 4	_____	_____	_____
Sign 5	_____	_____	_____
Total	_____ sq.ft.	_____ sq.ft.	_____ sq.ft.

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or oversize signs.

(c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Interpretation:

(a) Interpretation requested of New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

(b) Describe in detail the proposal before the Board:

IS THE SUBJECT PLOT ENTITLED TO THE EXEMPTION OF 48-26 AS A LOT OF RECORD ON THE APPLICABLE LOTS. IS THE SUBJECT PLOT A NON CONFORMING LOT?

VIII. Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or upgraded and that the intent and spirit of the New Windsor Zoning Local Law is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

IX. Attachments required:

- _____ Copy of letter of referral from Bldg./Zoning Inspector.
- _____ Copy of tax map showing adjacent properties.
- _____ Copy of contract of sale, lease or franchise agreement.
- _____ Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot.
- _____ Copy(ies) of sign(s) with dimensions.
- _____ Check in the amount of \$ _____ payable to TOWN OF NEW WINDSOR.
- _____ Photos of existing premises which show all present signs and landscaping.

X. AFFIDAVIT

Date Aug. 29, 1991.

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

The undersigned Applicant, being duly sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his knowledge or to the best of his information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance or permit granted if the conditions or situation presented herein are materially changed.

Keith Williams
(Applicant)

Sworn to before me this

29th day of August, 1991.

Patricia A. Barnhart

PATRICIA A. BARNHART
Notary Public, State of New York
No. 01BA4904434
Qualified in Orange County
Commission Expires August 31, 1993.

XI. ZBA Action:

- (a) Public Hearing date _____.
- (b) Variance is _____.
Special Permit is _____.
- (c) Conditions and safeguards: _____

A FORMAL DECISION WILL FOLLOW
WHICH WILL BE ADOPTED BY
RESOLUTION OF ZONING BOARD OF APPEALS.



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

49

August 29, 1991

Keith Williams
518 Balmoral Circle
New Windsor, NY 12553

Re: Tax Map Parcel: 8-1-21
Owner: Small Town Land Co.

Dear Mr. Williams:

According to our records, the attached list of property owners are within five hundred (500) feet of the above mentioned property.

The charge for this service is \$65.00, minus your deposit of \$25.00.

Please remit the balance of \$40.00 to the Town Clerk, Town of New Windsor, NY.

Sincerely,

L. Cook/cad

LESLIE COOK
Sole Assessor

LC/cad
Attachments

cc: Pete Baumgardner

Rabe, Helen B. X
7 Ona Lane
New Windsor, NY 12553

Sgammato, Clara X
5 Ona Lane
New Windsor, NY 12553

Ponessa, Frank & Edith X
3 Ona Lane
New Windsor, NY 12553

Stent, Edward C. Jr. & Patricia X
1 Ona Lane
New Windsor, NY 12553

Andrews, Kirk X
2 Ona Lane
New Windsor, NY 12553

Anderson, Thomas & Laura X
4 Ona Lane
New Windsor, NY 12553

Reggero, Franklin P. & Virginia E. X
6 Ona Lane
New Windsor, NY 12553

Donovan, Raymond & Linda X
204 Summit Dr.
New Windsor, NY 12553

Delson, Robert C. X
206 Summit Dr.
New Windsor, NY 12553

Figueroa, Gerardo A. & Elba Lucia X
208 Summit Dr.
New Windsor, NY 12553

Cranston, John F. & Sandra X
210 Summit Dr.
New Windsor, NY 12553

Finn, Edward J. & Lorraine A. X
212 Summit Dr.
New Windsor, NY 12553

Serrano, Raphael & Maria X
214 Summit Dr.
New Windsor, NY 12553

Morales, Daniel P. & Diana M. X
216 Summit Dr.
New Windsor, NY 12553

Kawula, Lawrence J. & Evelyn X
218 Summit Dr.
New Windsor, NY 12553

Cracolici, Gino & Ella X
220 Summit Dr.
New Windsor, NY 12553

Farhi, Ralph & Marie T. X
222 Summit Dr.
New Windsor, NY 12553

Drost, Louis D. & Bernadette
105 Parkdale Dr. X
New Windsor, NY 12553

Maroney, Andrew J. III & Mary Jo
8 Ona Lane X
New Windsor, NY 12553

McEvoy, George L. & Patricia L.
10 Ona Lane X
New Windsor, NY 12553

Marshall, Peter James & Barbara A.
12 Ona Lane X
New Windsor, NY 12553

Coram, Carol A. X
104 Parkdale Dr.
New Windsor, NY 12553

Coffaro, Frank P. & Rosemarie X
106 Parkdale Dr.
New Windsor, NY 12553

Crecco, Joseph F. & Catherine Macaluso X
108 Parkdale Dr.
New Windsor, NY 12553

Corcoran, Robert W. & Marsha Norma X
110 Parkdale Dr.
New Windsor, NY 12553

Sherman, David M. & Roselyn X
219 Summit Dr.
New Windsor, NY 12553

Biasotti, Charles & Alice X
217 Summit Dr.
New Windsor, NY 12553

Bonnano, Frank & Lucy X
215 Summit Dr.
New Windsor, NY 12553

Ward, Douglas B. X
213 Summit Dr.
New Windsor, NY 12553

Buckley, John & Helen X
211 Summit Dr.
New Windsor, NY 12553

Cooper, W.T. & Lore X
209 Summit Dr.
New Windsor, NY 12553

Rein, Charles & Marsha X
207 Summit Dr.
New Windsor, NY 12553

Niejadlik, Andrew X
205 Summit Dr.
New Windsor, NY 12553

Passantino, Dominick B. & Judy G. X
203 Summit Dr.
New Windsor, NY 12553

Tom Wai, King & Victor X
1 Park Hill Dr.
New Windsor, NY 12553

Dubaldi, Carmen R. & Louise A. & Carmen R. Jr. X
3 Park Hill Dr.
New Windsor, NY 12553

Guadagno, John Anthony & Concetta Mary X
5 Park Hill Dr.
New Windsor, NY 12553

Mesaris, Joan X
7 Park Hill Dr.
New Windsor, NY 12553

Ronsini, Frank X
9 Park Hill Dr.
New Windsor, NY 12553

Muscarella, Lenin & Anne X
6 Herbert Hoover Dr.
New Windsor, NY 12553

Kun, Julius & Susanne X
8 Herbert Hoover Dr.
New Windsor, NY 12553

Lewis, Edward J. Jr. & Janice E. X
7 Herbert Hoover Dr.
New Windsor, NY 12553

Peragine, Joseph Thomas X
2 Park Hill Dr.
New Windsor, NY 12553

Horan, Edward G. & Dina M. X
4 Park Hill Dr.
New Windsor, NY 12553

Tucker, Harold & Frances T. X
6 Park Hill Dr.
New Windsor, NY 12553

Petro, John & Martha X
8 Park Hill Dr.
New Windsor, NY 12553

Sperrey, Llewellyn A. & Mary B. X
505 Union Ave.
New Windsor, NY 12553

Paoloa, Elizabeth X
505 Union Ave.
New Windsor, NY 12553

Mc Phillips, William & Eda X
481 Union Ave.
New Windsor, NY 12553

Small Town Land

DISCUSSION:

BY MR. LUCIA: You may remember either late last year or early this year, I forget which, we had an application from Keith Williams, something I think called Small Town Land and that was the gentleman that bought what appeared on a filed map as a street stub. His attorney promised to get me some information which he has in a memorandum of law. Basically, what he's telling the Board is based on prior court decisions and the matter he's taken up himself down in Clarkstown, that he feels if he applies for a variance and is denied, that essentially would be an undue taking of his client's property. He would then take an Article 78 and if it goes the way his prior case went, the denial of the variance would be reversed on the basis that it was denying his client any use of the property. The dilemma I think the Board finds itself in is he's asking us and I can appreciate his concern, is to avoid that intermediate step, apply for the variance, get denied, have the court toss it back. We apparently would have good grounds to deny the variance on strict zoning law. Where he's coming around with his ultimate success on the issue is on the constitutional issue of that if his client can't use the property as a lot, he really has nothing. What he's asking us to do is let him take that shortcut rather than applying for the variance, get it denied and take the case and have the court toss it back on the basis that it's a taking, he's saying why don't you just give me the variance and we'll take all that.

BY MR. TANNER: Isn't it a self imposed hardship? You can buy any piece of land and use that argument.

BY MR. LUCIA: His argument is since the town didn't use it as a street, it then reverted back and became a lot. One of the issues that he didn't handle very well and may well be another basis that didn't come up in the previous case, is that if those adjacent property owners have rights of way over proposed streets before they were dedicated, even though the town may not have accepted the dedication of that little street stub, every other owner in that subdivision or at least some of them may have rights of way over it. I'm not sure where they're going to go, but they may have a right to use it and that

might be an additional ground to deny.

BY MR. TORLEY: The lot was substandard in size anyway.

BY MR. LUCIA: Yes, it would have been.

BY MR. FINNEGAN: It might.

BY MR. TORLEY: Piece of property if you start from ground zero, it's too small.

BY MR. FINNEGAN: It may always have been too small.

BY MR. LUCIA: If it exists as a lot which is as he's saying, he can make a good showing for an area variance. If it's not dramatically undersized, it's 50 feet wide but under the ordinance on pre-existing lots and all that, he comes real close to that. My question to the Board is do I go back and say regardless of what you said, apply for the variance and let's see what happens, or do we want to let him take the shortcut so to speak?

BY MR. TORLEY: How do you phrase this diplomatically and yet tell him exactly what you think of him?

BY MR. LUCIA: I can say that I have discussed your materials with the Board and they feel like any other applicant, you should apply for a variance and let's see what happens then.

BY MR. FENWICK: I don't see how we can get around that.

BY MR. TORLEY: They are blackmailing us. They are saying I'm going to beat you in court, so don't try to fight me.

BY MR. LUCIA: Okay, thank you.



TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK

CERTIFIED MAIL

May 12, 1989

1763 Mr. Keith Williams
518 Balmoral Drive
New Windsor, N. Y. 12550

Re: Building Permit
Section 8, Block 1, Lot 21

Dear Sir:

Please be advised that a Building Permit to erect a single family home on Summit Drive, Section 8, Block 1, Lot 21, has been denied by the Building Department of the Town of New Windsor, as this lot did not receive a Sub-Division approval by the Town of New Windsor.

If there are any questions please call me at the above address, telephone (914) 562-8807.

Very truly yours,

A handwritten signature in cursive script that reads "Frank Lisi".

Frank Lisi
Building Inspector

FL/mfb



1763

TOWN OF NEW WINDSOR

555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

(914)565-8550

January 18, 1991
FAX:914-565-1142

Donald S. Tracy, ESQ.
TRACY, BERTOLINO & EDWARDS
317 Little Tor Road South
New City, N.Y. 10926

RE: SMALL TOWN LAND, INC.

Dear Mr. Tracy:

The ZBA acknowledges receipt of your correspondence dated January 7, 1991 regarding the above-entitled matter and this is to advise that this matter has been placed on the January 28, 1991 agenda for a preliminary meeting for discussion purposes.

Kindly advise if you will be available for this meeting which is scheduled for 7:30 p.m. at the Town Hall - 555 Union Avenue, New Windsor, N. Y.

Very truly yours,

PATRICIA A. BARNHART
Secretary

/PAB

cc: Keith Williams

SMALL TOWN LAND, INC. - PRELIMINARY

MR. FENWICK: This is a request for discussion.

Mr. Keith Williams came before the Board representing this proposal.

MR. WILLIAMS: My name is Keith Williams, I own Small Town Land, Inc. I was supposed to be represented by my attorney, Donald Tracy but he couldn't make it so I am going to have to wing it. He asked me to request two things. First an interpretation which I will explain and/or a variance depending upon the interpretation. I applied a couple of years ago for a building permit for a house on Summit Drive, I'll just pass a couple of maps around so you can take a look at it. And although I met all the requirements for a nonconforming lot, I was denied a building permit because the town felt it had some rights to this property that were given to the town when the initial subdivision was made.

What has happened since then, I bought the property from an individual, I didn't buy it from a tax sale but this particular piece of property was left to be dedicated to the town when the subdivision went in for a future road, if necessary. The town never accepted the dedication and consequently, it went up to the tax sale in 1986 and an individual from Bergen County bought the lot and in 1987, I bought the property from him. I spoke at length with my attorney, Donald Tracy, on what rights I have with the property and he thought that I should pursue the building permit for this. Talking with Tad Seaman, he thought that the town still may have had some rights on the property because on the subdivision map initially it said not paved indicating that it could be a future road at some point.

Well, to make a long story short, I went to court twice in Orange County and the first suit was to get a clarification on what the property was and I lost with a Judge Lang (phonetic) on his decision that found that the town may have some rights to the property. Consequently, after that, we went to another court, Donald Tracy did and with Judge Patsalos in Orange County, he gave a final decision revoking all rights to the Town of New Windsor on this property saying in fact they have no right whatsoever with it, that it cannot be a road, never was a road and any offer of dedication has been revoked, indefinitely. So, after that, getting that decision, Donald Tracy asked me to reapply for the building permit. And it's in an R-4

zone, it was purchased by an individual in '86 and it has been paid taxes on it since '86 as a vacant lot and I have been paying taxes on the property since '87. I meet all the requirements for a nonconforming lot code which I have a copy in front of me and as Mike had explained to me too, that didn't come into play to turning down the building permit, it was just an issue on what the property was.

So, I am asking the Board to interpret whether or not now this is a nonconforming lot or not. Because, I am having difficulty getting an answer from Mr. Seaman. And at this stage, my attorney says if the Board can't see it as a nonconforming lot, then I have got to go back to the next court level and decide it there. So, also he's requested that if after your interpretation that I should first seek a variance since it meets all the requirements of a nonconforming lot already and that is where I stand so far. If you have any questions or--

MR. JACK BABCOCK: Yeah, I sure do. I think first and most importantly, is that the Planning Board of the Town of New Windsor had to do a site plan on this piece of property. I think #1 we ought to see the site plan for this and what was, what was given at that time, besides what the judge has to say. As far as the lot and the sizes of the lots and if this in fact was left by the Planning Board in their infinite wisdom for a road one day and how the hell can we turn around so many years later and say it's a pre-existing nonconforming building lot. I have a problem with that.

MR. TORLEY: I have too. I'm sorry your attorney isn't here and I don't know what, whether our attorney has seen Judge Patsalos's decision.

MR. LUCIA: I have seen the decision. My understanding is the time within which that can be appealed is still pending so I am not sure that is a filed decision at this point from the town's standpoint.

MR. WILLIAMS: That Tad may appeal it.

MR. LUCIA: Yes.

MR. WILLIAMS: I spoke with him and he indicated no indication of that.

MR. TORLEY: One thing according to Local Government Technical Series Zoning Board of Appeals Brochure, one of the nonzoning functions of the Zoning Board of

12-10-90

Appeals as an official map and according to their pamphlets, a map is a device to implement a communities plan by development for protecting rights-of-ways for future streams etc., these are shown and remain in private ownership until the community is ready to purchase it. Certain restrictions are imposed on the landowner's use of the lands, the idea to say the community. It goes on to quote the appropriate town and general city laws.

MR. WILLIAMS: Well, what the judge had found in his decision that the owner of the property has every right to take back any dedication if it has not been accepted by the town at that point.

MR. JACK BABCOCK: Okay, I can follow those steps but he also under the town regulations, he'd have to come back and resubmit a new site plan approval to be approved by the Planning Board, I would think you just don't come back later, there's a filed map of that subdivision approved by the town or by the Planning Board Town of New Windsor or filed in the County Clerk's office by Park Hills subdivision in 1972 so that means in fact our zoning regulations were in effect at the time.

MR. TORLEY: According to this town law Section 279 provides if the lands within a map is not yielding a far return to the owner, the Board of Appeals will have the power to grant an exception or a variance and we have the right to then grant a building permit. But, it has to be by the majority vote at a hearing.

MR. LUCIA: I am not sure.

MR. WILLIAMS: Tad told me this was a new ground they'd never come in against before and that this hasn't happened before in this town. He wasn't sure which direction it was going to go and quite frankly, I am not but I am only following my attorney's advice too and I wish he was here tonight.

MR. LUCIA: I wish he was here or you might have him submit to us his basis on which you're coming before the Board. It raises some real question as to whether or not you belong before this Board. The denial by the Building Inspector was on the basis this is not a lot.

MR. MIKE BABCOCK: It's not a nonconforming lot, it's not a lot that was approved by a subdivision.

MR. WILLIAMS: My attorney is asking for an interpretation on why it is not a nonconforming lot and then if Mike is correct and it is not then he wants me to apply for a variance to meet all the metes and bounds that are currently required.

MR. LUCIA: That is the reason I'd like to hear from your attorney, you may be jumping a step. The determination that it is not a lot is under the subdivision regulations. This Board has no power to vary the subdivision regulations. So, in other words, this was, appeared on a filed map as a street or a street stub and you are now contending it's a nonconforming lot.

MR. WILLIAMS: It appeared on the map as a future street, it was never defined.

MR. LUCIA: But what I'm saying is you may be skipping an intermediate step in trying to come here for an interpretation. If the Building Inspector's determination was based on the subdivision regulations, if you disagree with the Building Inspector's determination, you then probably have to take an Article 78 against him. This Board cannot vary requirements of the subdivision regulations. What you would like to do, I understand, is I assume the section you are referring to you're looking for a determination of the nonconforming lot language of Section 4826, is that one you have a copy of there, if you take a look at that, I am not sure you're properly coming before this Board. If you look at this would be on page 4868 and the Section is 48-26A, if you look at the subdivision A of that section, okay, it refers, if you just read the first part there, you read down five lines talking about a residential lot separated from other land and about the fifth line and approved by the Planning Board of the Town of New Windsor. I don't think this ever was approved as a lot by the Planning Board of the Town of New Windsor, okay, now if the section that you are intending to come under is Subparagraph E of 48-26, is that the section you intend to come under?

MR. WILLIAMS: I believe so, yes.

MR. LUCIA: You look at the first two lines of that and it says a nonconforming residential lot as described in Section 48-26A, that means the lot approved by the Planning Board, so I think maybe what you want to do is have your attorney go over that language and see if you really have any grounds for coming before this Board at all.

12-10-90

MR. WILLIAMS: If the lot was owned by an individual since '86 and has been paid taxes on to this day and it's in an R-4 zone, what else can it be?

MR. JACK BABCOCK: It's a road, that's what it can be.

MR. TORLEY: Mr. Williams, what did the previous--

MR. WILLIAMS: Judge Patsalos just issued a statement in his decision saying it's not a road.

MR. KONKOL: When you purchased this lot, what did you think you were buying, who was your attorney at that time?

MR. WILLIAMS: Donald Tracy.

MR. KONKOL: He should have taken the precautions of making you aware what you were buying.

MR. WILLIAMS: I did know there was a problem with the property, yes, I did. I am just following the steps.

MR. JACK BABCOCK: For the record, on the subdivision map here, it says on note 4 that the subdivider will C.D. title to the Town of New Windsor for the land area noted for streets and easements so you see just because a guy bought it may be the owner sold it and he wasn't supposed to sell it.

MR. TORLEY: Without seeing Judge Patsalos's decision, I have no way of knowing what--

MR. WILLIAMS: I have it right here.

MR. JACK BABCOCK: Who ever presents the case--

MR. WILLIAMS: All I can say is if the judge says it is not a street, and you say it is not a lot, I am asking for an interpretation what is it.

MR. KONKOL: It's a street.

MR. JACK BABCOCK: If it's marked on here a street as far as I'm concerned--

MR. KONKOL: The judge is wrong, the map that is filed in 1972 it indicates it was a road and that is what I feel we ought to go by.

MR. FENWICK: If we want to go back to giving him what

12-10-90

he's asking for, he can go for an interpretation.

MR. LUCIA: You can come for an interpretation but I don't mean to be dumping all the legal stuff on you because--

MR. WILLIAMS: I'm lost already.

MR. LUCIA: But I think essentially you are going to want your attorney to handle the issues I have just raised. Now, within the next month or so you'll be able to get minutes of this meeting, take it to him and lay it out for him, let him come back to us maybe at another preliminary meeting with specific answers to those issues because if you don't get by that, there really isn't anything for us to interpret.

MR. KONKOL: I think you ought to take it to the Planning Board since they were the ones that originally approved this and let them give the interpretation because they are the ones--the Planning Board is the one that approved it.

MR. LUCIA: But we are the only ones that can interpret the ordinance.

MR. JACK BABCOCK: What Dan is asking us is a road, the Planning Board can say yeah, in 1972 we approved this thing and that was a future road, that is all he needs, that is what we are saying.

MR. KONKOL: Yes.

MR. JACK BABCOCK: Rather than us sitting here trying to determine what they planned for that area.

MR. LUCIA: I suggest you get the minutes, take them to your attorney and let him make a presentation for you on the legal issues because I think unfortunately, you're individually very much at a disadvantage in doing it.

MR. TORLEY: May I suggest are we, as part of our deliberation on this, are we entitled to get the transcript of this hearing because this is pretty skimpy I'm sorry to say this but if we turn this over to Judge Patsalos as an Article 78, he'd turn it down as insufficient record.

MR. FENWICK: What is the Board's wish on this?

MR. WILLIAMS: How would you like me to proceed? I'm

not sure how to do it.

MR. NUGENT: Take our attorney's recommendation.

MR. TANNER: I agree.

MR. TORLEY: Which was?

MR. LUCIA: I think it's a fairly complex legal issue. I'd suggest that you wait until the minutes of the meeting are available next month, take them to Mr. Tracy, let him lay out either by coming back for a preliminary meeting or writing to me the real basis on which he feels you're coming here for an interpretation. I would really suggest you come back for a second preliminary, let him lay it out for us, we can talk about it. If he does have a legitimate claim to come in for an interpretation, the Board can set you up for a public hearing at that point.

MR. WILLIAMS: If an interpretation is not given by this Board, does this case, is it in the right Board for a variance?

MR. LUCIA: Yes, that is another alternative. You could seek a variance but I think you are still going to have to get by the issue of as to whether or not it is a lot. We can't give you a variance on something that is not legally a lot in the Town of New Windsor. So, we are going to have to deal with that issue at some point.

MR. WILLIAMS: The only way it ever came into play as a street was just as a proposed street. It was never accepted as one, never legally became one and I believe--

MR. FENWICK: Those developments, that is all you see on subdivisions anyway, all you have is proposed street all over the place like Beaver Dam, until such time they are used or not used.

MR. WILLIAMS: Individual property owner has the right to revoke that dedication, if it hasn't been accepted.

MR. JACK BABCOCK: Only if he goes back to the Planning Board.

MR. LUCIA: That is the only issue in most subdivisions, there's a point in time where the subdivider is subdividing off lots before the streets are actually dedicated and accepted for dedication. Because of this,

everyone in the subdivision who buys a lot normally has included in their deed a right-of-way saying you have a right-of-way over the proposed streets until such time as they are dedicated. Assuming one or more or all of the people in this subdivision had that provision in their deeds, those people still have rights-of-way over your lot even though it may not be a dedicated street. If they have, if one or more people have a right-of-way over it, I am not sure this Board is going to entertain a variance request.

MR. WILLIAMS: The judge cleared that.

MR. LUCIA: I don't think a judge cleared it because if you look at your title report, look at what is accepted in there.

MR. TORLEY: It says nothing about the judge specifically excludes private easements to the land in his decision.

MR. LUCIA: But these are all real issues, take them back to Don Tracy and have him make a presentation.

MR. FENWICK: Motion to table?

MR. KONKOL: I will make a motion to table it.

MR. NUGENT: I will second it.

MR. LUCIA: I think at some point, we need input from him.

MR. WILLIAMS: When will I be able to get the minutes?

MR. LUCIA: Next meeting.

ROLL CALL:

Mr. Torley	Aye
Mr. Finnegan	Aye
Mr. J. Babcock	Aye
Mr. Konkol	Aye
Mr. Tanner	Aye
Mr. Nugent	Aye
Mr. Fenwick	Aye

Examined.....19.....
Approved.....19.....
Disapproved a/c.....
Permit No.

Office Of Building Inspector
Michael L. Babcock
Town Hall, 555 Union Avenue
New Windsor, New York 12550
Telephone 565-8807

Refer —

Planning Board.....
Highway.....
Sewer.....
Water.....
Zoning Board of Appeals

APPLICATION FOR BUILDING PERMIT

Pursuant to New York State Building Code and Town Ordinances

Date.....3/1.....19..89..

INSTRUCTIONS

- a. This application must be completely filled in by typewriter or in ink and submitted in duplicate to the Building Inspector.
- b. Plot plan showing location of lot and buildings on premises, relationship to adjoining premises or public streets or areas, and giving a detailed description of layout of property must be drawn on the diagram which is part of this application.
- c. This application must be accompanied by two complete sets of plans showing proposed construction and two complete sets of specifications. Plans and specifications shall describe the nature of the work to be performed, the materials and equipment to be used and installed and details of structural, mechanical and plumbing installations.
- d. The work covered by this application may not be commenced before the issuance of a Building Permit.
- e. Upon approval of this application, the Building Inspector will issue a Building Permit to the applicant together with approved set of plans and specifications. Such permit and approved plans and specifications shall be kept on the premises, available for inspection throughout the progress of the work.
- f. No building shall be occupied or used in whole or in part for any purpose whatever until a Certificate of Occupancy shall have been granted by the Building Inspector.

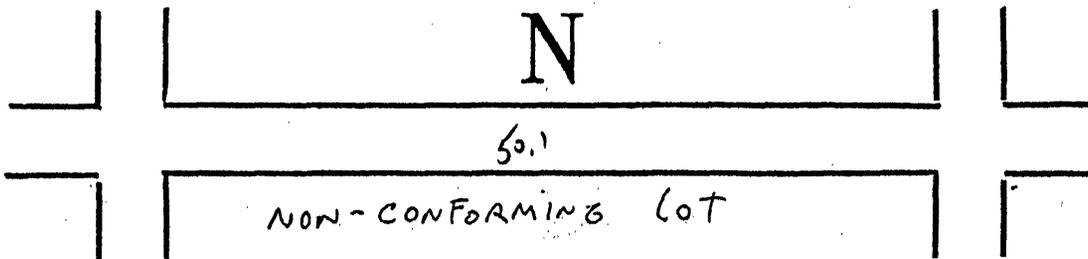
APPLICATION IS HEREBY MADE to the Building Inspector for the issuance of a Building Permit pursuant to the New York Building Construction Code Ordinances of the Town of New Windsor for the construction of buildings, additions or alterations, or for removal or demolition or use of property, as herein described. The applicant agrees to comply with all applicable laws, ordinances, regulations and certifies that he is the owner or agent of all that certain lot, piece or parcel of land and/or building described in this application and if not the owner, that he has been duly and properly authorized to make this application and to assume responsibility for the owner in connection with this application.

.....
Keith Wilbain
(Signature of Applicant)

.....
518 BALMORAL CIR. NEW WINDSOR
(Address of Applicant)

PLOT PLAN

NOTE: Locate all buildings and indicate all set-back dimensions.
Applicant must indicate the building line or lines clearly and distinctly on the drawings.



Refer -
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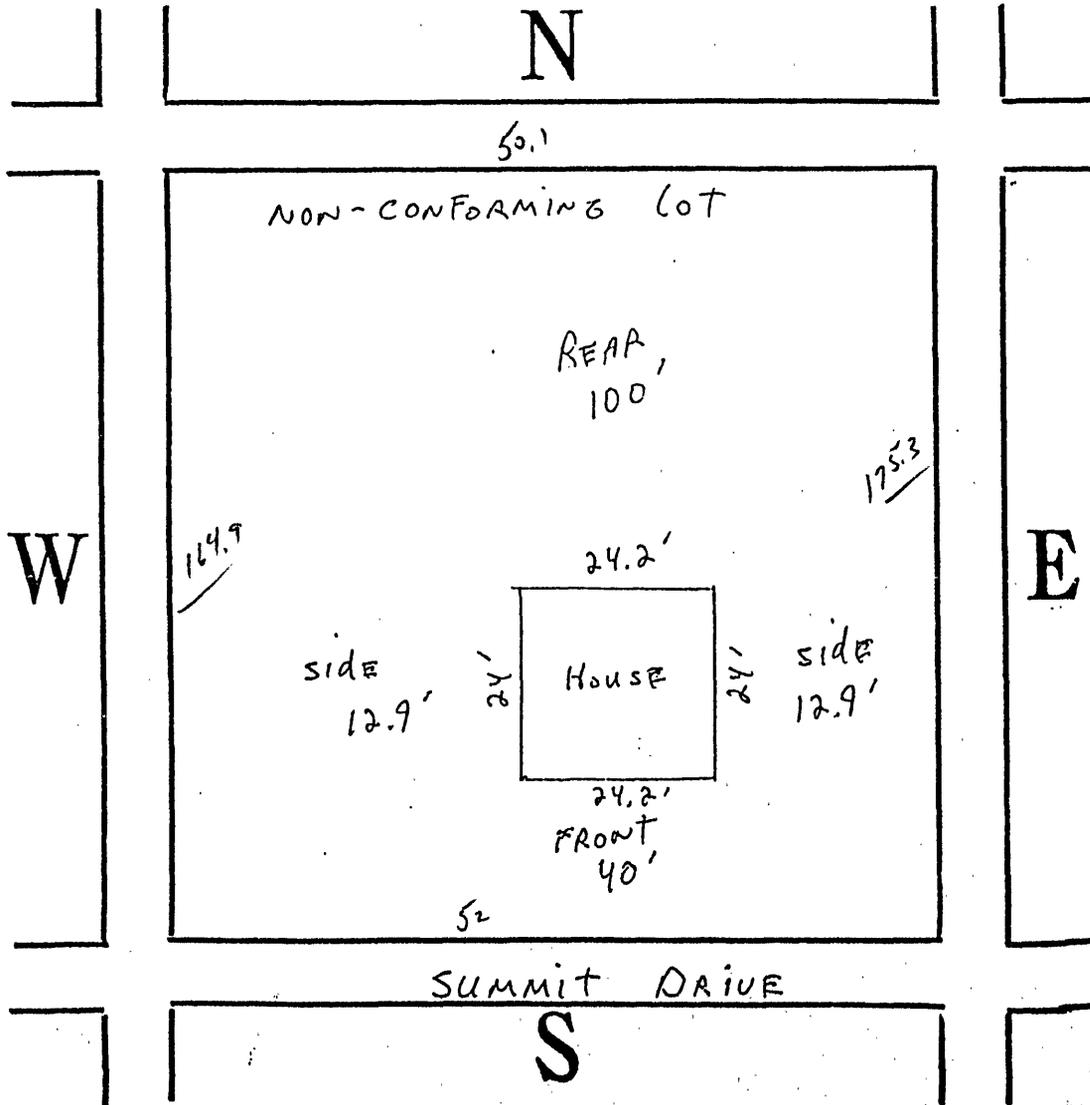
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Keith Wilbourn
(Signature of Applicant)

SIR BALMORAL CIR. NEW WINDSOR
(Address of Applicant)

PLOT PLAN

NOTE: Locate all buildings and indicate all set-back dimensions.
Applicant must indicate the building line or lines clearly and distinctly on the drawings.



REQUIRED INSPECTIONS OF CONSTRUCTION - YOU MUST CALL FOR THESE

OTHER INSPECTIONS WILL BE MADE IN MOST CASES, BUT THOSE LISTED BELOW MUST BE MADE OR CERTIFICATE OF OCCUPANCY MAY BE WITHHELD. DO NOT MISTAKE AN UNSCHEDULED INSPECTION FOR ONE OF THOSE LISTED BELOW. UNLESS AN INSPECTION REPORT IS LEFT ON THE JOB INDICATING APPROVAL OF ONE OF THESE INSPECTIONS, IT HAS NOT BEEN APPROVED, AND IT IS IMPROPER TO CONTINUE BEYOND THAT POINT IN THE WORK. ANY DISAPPROVED WORK MUST BE REINSPECTED AFTER CORRECTION.

CALL ONE DAY AHEAD FOR ALL INSPECTIONS TO AVOID DELAYS - 565-8807

- 1-WHEN EXCAVATING IS COMPLETE AND FOOTING FORMS ARE IN PLACE (BEFORE POURING).
- 2-FOUNDATION INSPECTION - CHECK HERE FOR WATERPROOFING AND FOOTING DRAINS.
- 3-INSPECT GRAVEL BASE UNDER CONCRETE FLOORS, AND UNDERSLAB PLUMBING.
- 4-WHEN FRAMING IS COMPLETED, AND BEFORE IT IS COVERED FROM INSIDE, AND PLUMBING ROUGH-IN.
- 5-INSULATION.
- 6-PLUMBING FINAL & FINAL. HAVE ON HAND ELECTRICAL INSPECTION DATA PER THE BOARD OF FIRE UNDERWRITERS, AND FINAL CERTIFIED PLOT PLAN. BUILDING IS TO BE COMPLETE AT THIS TIME.
- 7-DRIVEWAY INSPECTION MUST MEET APPROVAL OF TOWN HIGHWAY INSPECTOR.
- 8-\$20.00 CHARGE FOR ANY SITE THAT CALLS FOR THE SAME INSPECTION TWICE.
- 9-PERMIT NUMBER MUST BE CALLED IN WITH EACH INSPECTION.
- 10-THERE WILL BE NO INSPECTIONS UNLESS YELLOW PERMIT CARD IS POSTED.
- 11-SEWER PERMITS MUST BE OBTAINED ALONG WITH BUILDING PERMITS FOR NEW HOUSES.
- 12-SPETIC PERMIT MUST BE SUBMITTED WITH ENGINEER'S DRAWING & PERC TEST.
- 13-ROAD OPENING PERMITS MUST BE OBTAINED FROM TOWN CLERK'S OFFICE.

Name of Owner of Premises Keith Williams

Address..... 518 BALMORAL CIR. NEW WINDSOR Phone 565 5566

Name of Architect... HAGAN HOMES INC.

Address..... NEWBURGH N.Y. Phone 561-6625

Name of Contractor ... HAGAN HOMES INC.

Address..... NEWBURGH N.Y. Phone 561-6625

State whether applicant is owner, lessee, agent, architect, engineer or builder..... OWNER

If applicant is a corporation, signature of duly authorized officer.

.....
(Name and title of corporate officer)

1. On what street is property located? On the... NORTH side of... SUMMIT DRIVE

(N. S. E. or W.)

and feet from the intersection of.....

2. Zone or use district in which premises are situated

... CONTROL OF ONE OF THESE INSPECTIONS, IT HAS
NEVER BEEN APPROVED, AND IT IS IMPROPER TO CONTINUE BEYOND THAT POINT IN THE
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1. On what street is property located? On the NORTH side of SUMMIT DRIVE
(N. S. E. or W.)

and feet from the intersection of

2. Zone or use district in which premises are situated

3. Tax Map description of property: Section..... 8 Block..... 1 Lot..... 21

4. State existing use and occupancy of premises and intended use and occupancy of proposed construction:

a. Existing use and occupancy NON-CONFORMING LOT b. Intended use and occupancy SINGLE FAMILY HOME

5. Nature of work (check which applicable): New Building... Addition... Alteration..... Repair..... Removal.....

Demolition..... Other.....

6. Size of lot: Front..... 51.76' Rear..... 50.09' Depth..... 165' Front Yard..... 40' Rear Yard..... 100' Side Yard..... 12.9'

Is this a corner lot?.. NO

7. Dimensions of entire new construction: Front..... 24.2' Rear..... 24.2' Depth..... 24' Height..... 22' Number of stories..... 2

8. If dwelling, number of dwelling units..... 1 Number of dwelling units on each floor..... 1

Number of bedrooms..... 3 Baths..... 1 Toilets..... 2

Heating Plant: Gas..... Oil... Electric...../Hot Air..... Hot Water.....

If Garage, number of cars..... NONE

9. If business, commercial or mixed occupancy, specify nature and extent of each type of use.....

10. Estimated cost 55,000 Fee
(to be paid on filing this application)

Costs for the work described in the Application for Building Permit include the cost of all the construction and other work done in connection therewith, exclusive of the cost of the land. If final cost shall exceed estimated cost, an additional fee may be required before the issuance of Certificate of Occupancy.