

**ZB# 97-15**

**James Dietz**

**78-6-1**

#97-15- Dietz, James  
area - 78-6-1

Specim.

Mar. 24, 1997.

Photos here 4.

↳ Fee: Paid

↳ Deed - here

↳ Title

↳ Survey

↳ Public Hearing

↳ April 14, 1997

Area balance

Refund: \$203.00

TOWN OF NEW WINDSOR

# General Receipt

\_\_\_\_\_ 19\_\_

\$ \_\_\_\_\_

DOLLARS

By \_\_\_\_\_

TITLE



FUND	CODE	AMOUNT
Chpt 2151		\$150,00

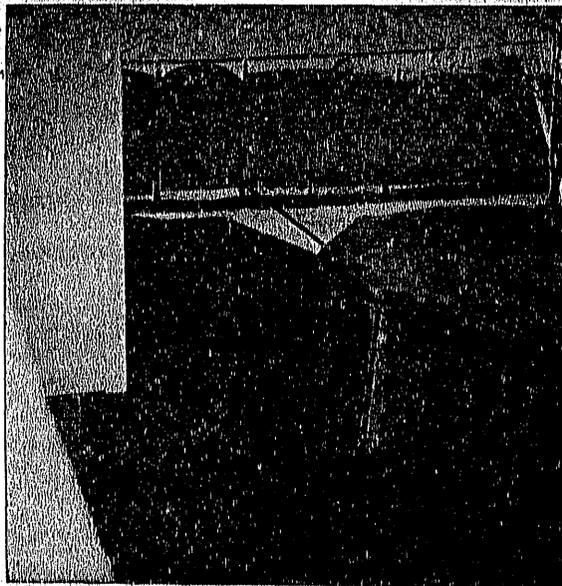
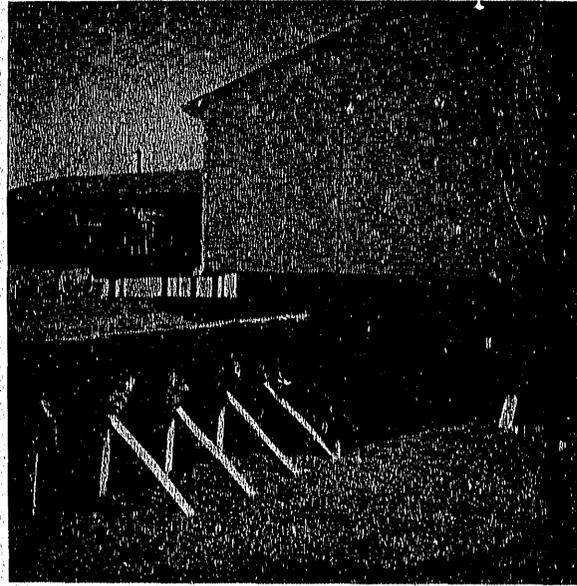
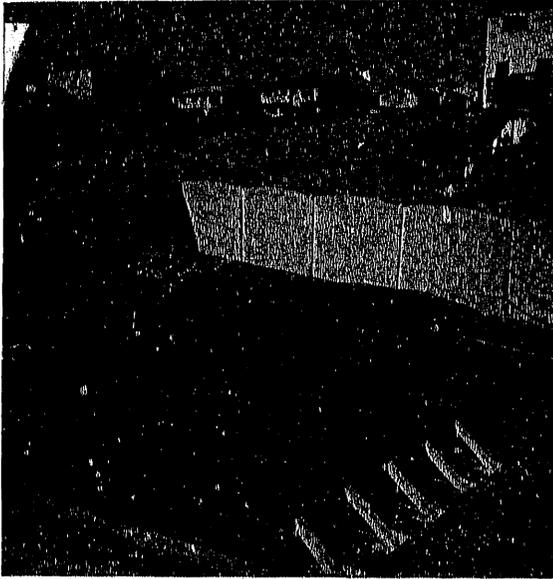
WILLIAMSON LAW BOOK CO., VICTOR, NY 14564

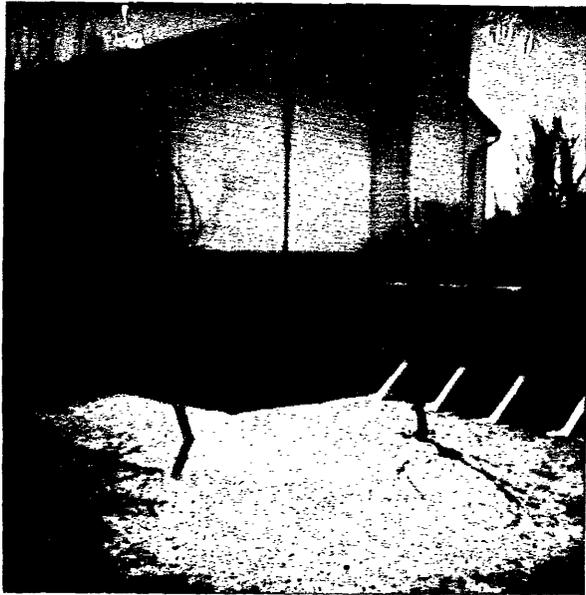
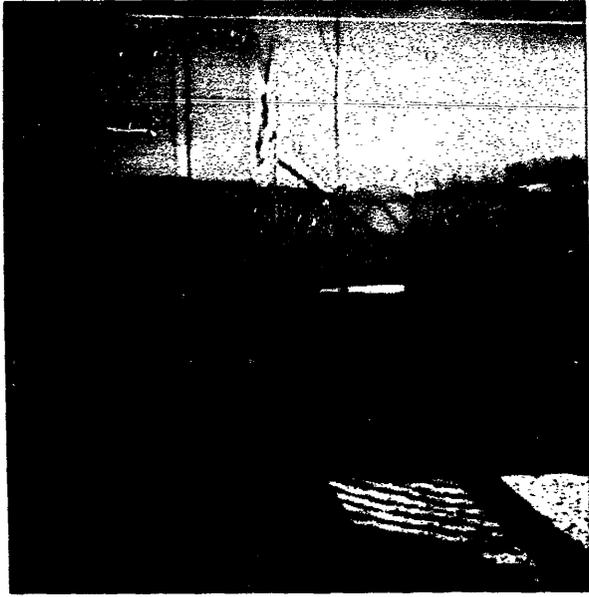
By

*Dorothy Mc Hansen*

*Town Clerk*

TITLE





#97-157 DTETZ, Va.  
area - 78-6-1

APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Dietz, James

FILE # 97-15

RESIDENTIAL: \$ 50.00  
INTERPRETATION: \$150.00

COMMERCIAL: \$150.00

AREA

USE

APPLICATION FOR VARIANCE FEE . . . . . \$ 50.00

*paid*  
*3/27/97*  
*ck. #*

ESCROW DEPOSIT FOR CONSULTANT FEES . . . . . \$ 300.00

*2151*  
*#2152*

DISBURSEMENTS -

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING - PER PAGE	<i>3/24/97 - 3 page</i>	\$	<u>13.50</u>
2ND PRELIM. MEETING - PER PAGE	<i>4/14/97 - 3 "</i>	\$	<u>13.50</u>
3RD PRELIM. MEETING - PER PAGE		\$	
PUBLIC HEARING - PER PAGE		\$	
PUBLIC HEARING (CONT'D) PER PAGE		\$	
TOTAL		\$	

ATTORNEY'S FEES: \$35.00 PER MEETING

PRELIM. MEETING:	<i>3/24/97</i>	\$	<u>35.00</u>
2ND PRELIM.	<i>4/14/97</i>	\$	<u>35.00</u>
3RD PRELIM.		\$	
PUBLIC HEARING		\$	
PUBLIC HEARING		\$	
TOTAL		\$	<u>70.00</u>

MISC. CHARGES:

TOTAL . . . . . \$ 97.00

LESS ESCROW DEPOSIT . . .	\$	<u>300.00</u>
(ADDL. CHARGES DUE) . . .	\$	
REFUND DUE TO APPLICANT .	\$	<u>203.00</u>

(ZBA DISK#7-012192.FEE)



In the Matter of the Application of

**JAMES DIETZ**

**MEMORANDUM OF  
DECISION GRANTING  
AREA VARIANCE**

#97-15

**WHEREAS, JAMES DIETZ, 220 Butterhill Drive, New Windsor, New York 12553, has made application before the Zoning Board of Appeals for a 10 ft. rear yard variance in order to construct a pool deck at the above residence in a CL-1 zone; and**

**WHEREAS, a public hearing was held on the 14th day of April, 1997 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and**

**WHEREAS, the Applicant appeared before the Board on his own behalf for this Application; and**

**WHEREAS, there were no spectators appearing at the public hearing; and**

**WHEREAS, no one spoke in favor of or in opposition to the Application; and**

**WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and**

**WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:**

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

2. The evidence presented by the Applicant showed that:

(a) The property is a one family home located in a neighborhood of one family homes.

(b) The property is located on a corner lot so that the two-front yard standards in the Zoning Local Law apply to this property.

(c) The location of the proposed pool and surrounding deck are in that portion of the property which appears to be a side yard and which is only considered a front yard by virtue of the requirements of the Zoning Local Law.

(d) There are other similar pools and decks located on neighboring properties.

(e) If the property were legally considered a side yard, no variances would be necessary.

(f) The location of the pool and deck will not interfere with any course of water drainage or cause any ponding or accumulation of water.

(g) The proposed location of the pool and deck are not on any easements.

(h) A deck is necessary for persons exiting the house from the rear portion of the house in order to avoid serious injury.

**WHEREAS**, the Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The requested variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby properties.

2. There is no other feasible method available to the Applicant which can produce the benefits sought.

3. The variance requested is substantial in relation to the Town regulations but nevertheless is warranted.

4. The requested variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or zoning district.

5. The difficulty the Applicant faces in conforming to the bulk regulations is self-created but nevertheless should be allowed.

6. The benefit to the Applicant, if the requested variance is granted, outweigh the detriment to the health, safety and welfare of the neighborhood or community.

7. The requested variance is appropriate and is the minimum variance necessary and adequate to allow the Applicant relief from the requirements of the Zoning Local Law and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

8. The interests of justice will be served by allowing the granting of the requested area variance.

**NOW, THEREFORE, BE IT**

**RESOLVED**, that the Zoning Board of Appeals of the Town of New Windsor GRANT a

request for a 10 ft. rear yard variance for construction of a pool and deck located at the above-referenced property in a CL-1 zone as sought by the Applicants in accordance with plans filed with the Building Inspector and presented at the public hearing.

**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.

Dated: June 23, 1997.

*By James Nugent*  
\_\_\_\_\_  
Chairman

Date 4/14/97, 19.....

**TOWN OF NEW WINDSOR**  
TOWN HALL, 555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553

TO Frances Roth 168 N. Drury Lane DR.  
Newburgh, NY 12550

TR		CLAIMED	ALLOWED
477	Zoning Board Meeting	75 00	
	Misc - 3		
	Santillo - 3		
	Tarsio - 3		
	Petro Metals - 4		
	Lo Martere - 3		
	Marfe - 2		
	Lanthier - 2		
	Dietz - 3      \$ 13.50		
	<del>23 pgs</del>	<u>103 50</u>	
	<i>James Nugent</i>	178 50	

DIETZ, JAMES

MR. NUGENT: Request for 10 ft. rear yard variance for proposed deck at 220 Butterhill Drive in CL-1 zone. Let the record show that there is no one in the audience. You're on.

Mr. James Dietz appeared before the board for this proposal.

MR. DIETZ: Basically, that is it.

MS. BARNHART: Your deck is proposed?

MR. DIETZ: Yes.

MR. NUGENT: You have got a corner lot?

MR. BABCOCK: Yes.

MR. DIETZ: It's a corner lot and my pool is on what I consider my side lot but I guess what the town considers the rear lot.

MR. BABCOCK: Yes.

MR. DIETZ: We're just looking to put a pool a deck on the side of the pool and connect it to the existing deck.

MR. KRIEGER: Mike, if it were in fact a side lot, if he didn't have two front yards or if it were a side lot what would his situation be with respect to variances?

MR. BABCOCK: He would not need one, the side yard requirements is 12 feet and the rear yard is 40 feet.

MR. KRIEGER: There are other decks similar to the one you're proposing to put on?

MR. DEITZ: I believe almost everyone in the neighborhood has a similar type deck.

MS. BARNHART: If they don't yet they will.

MR. DIETZ: Yes.

MR. KRIEGER: It doesn't interfere with any, will not interfere with any course of water drainage cause any water ponding?

MR. DIETZ: No.

MR. KRIEGER: Isn't over the top of any sewer easements?

MR. DIETZ: No.

MR. TORLEY: What you're going to do is run a deck out from the house to the pool?

MR. DIETZ: Actually, I have a building permit request in to replace my existing deck and at the same time, add this second deck connecting to the first and going to the pool.

MR. TORLEY: Encroachments, are we talking encroachments from the pool or from the deck, correct me if I am wrong, but if he brings the deck out to the pool then the far point of the pool then becomes the encroachment point?

MR. BABCOCK: No, the deck, the pool and in the rear yard can be up to ten foot to the property line but the deck has to be 40 feet.

MR. DIETZ: And the pool is placed ten and a half feet.

MR. TORLEY: If we have a structure that spans from the house to the pool then the pool still stays as a separate structure?

MR. BABCOCK: Yeah, it's separate.

MR. TORLEY: Even though it's attached to the house?

MR. BABCOCK: Right, it's not attached, the pool isn't.

MR. TORLEY: The deck is.

MR. BABCOCK: Right.

MR. TORLEY: Deck's attached to the house, deck's attached to the pool.

MR. KRIEGER: Situation that you have if there was no deck next to the house somebody exiting from the back door would fall a considerable distance, is that correct?

MR. DIETZ: I'm not sure.

MR. KRIEGER: There is no deck?

MR. DIETZ: Yes.

MR. KRIEGER: Probably hurt themselves?

MR. DIETZ: Yes.

MR. NUGENT: Any further questions? Accept a motion.

MS. OWEN: I make a motion that we approve the ten foot rear yard variance for Mr. Dietz.

MR. REIS: Second it.

ROLL CALL

MS. OWEN	AYE
MR. REIS	AYE
MR. TORLEY	AYE
MR. NUGENT	AYE

*Prelim.*  
*Mar. 24, 1997.*  
*# 97-15*

OFFICE OF THE BUILDING INSPECTOR - TOWN OF NEW WINDSOR  
ORANGE COUNTY, NEW YORK

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

DATE: MARCH 17, 1997

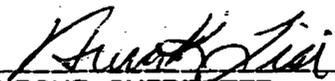
APPLICANT: JAMES DIETZ  
220 BUTTERHILL DRIVE  
NEW WINDSOR, N.Y. 12553

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATED:  
FOR (BUILDING PERMIT): TO CONSTRUCT A POOL DECK.  
LOCATED AT: 220 BUTTERHILL DRIVE

ZONE: CLI

DESCRIPTION OF EXISTING SITE: SECTION: 78, BLOCK: 6, LOT: 1  
IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1. PROPOSED REAR ATTACHED DECK WILL EXCEED MINIMUM 40 FT. REAR YARD SET-BACK.

  
BUILDING INSPECTOR

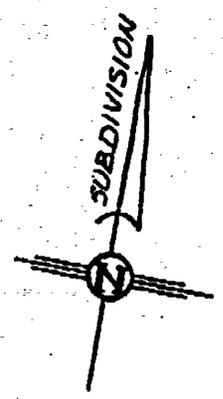
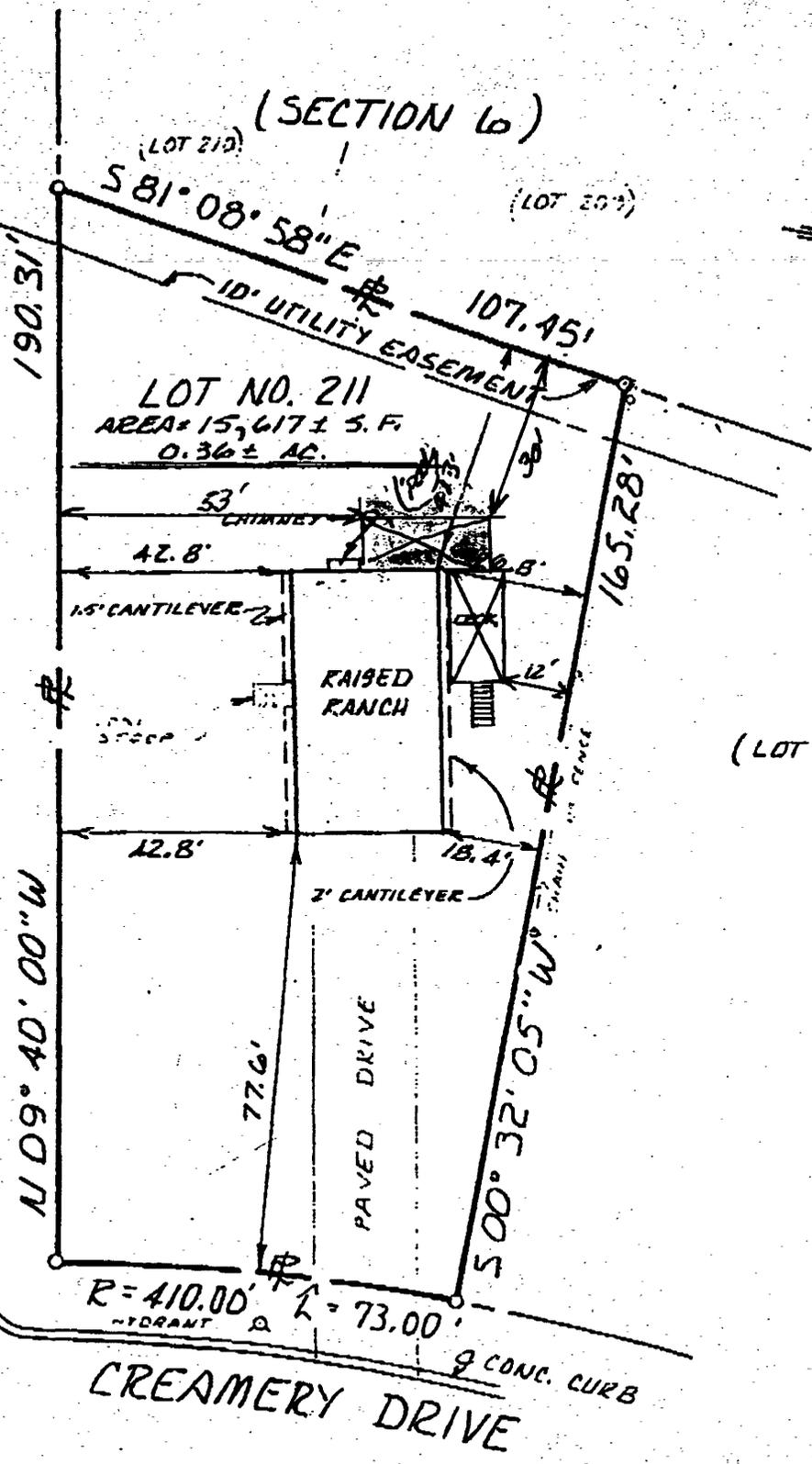
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REQUIREMENTS	PROPOSED OR AVAILABLE	VARIANCE REQUEST
ZONE: CLI      USE G		
REQ'D REAR YD. 40FT.	30FT.	10FT.

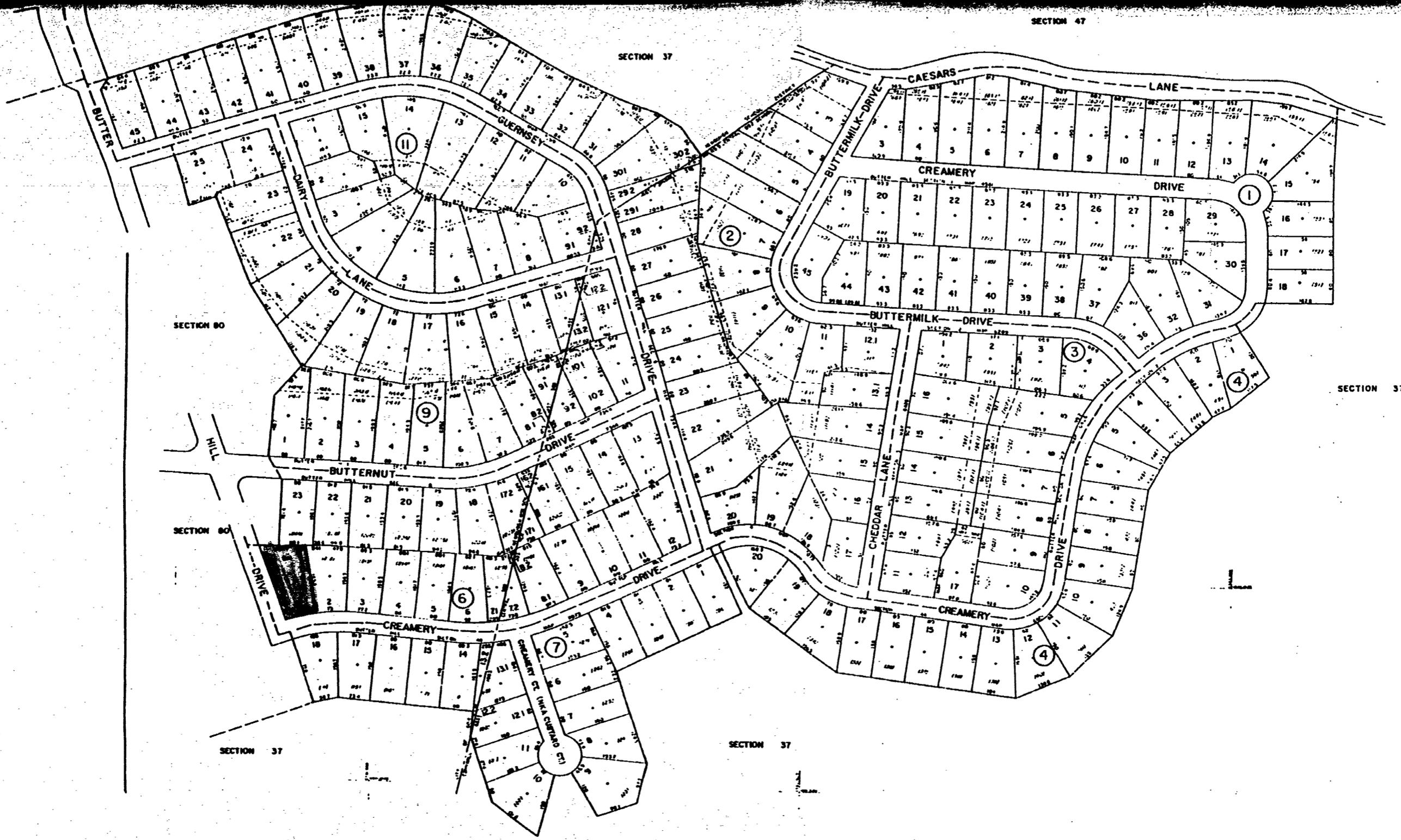
APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT  
914-563-4630 TO MAKE AN APPOINTMENT WITH THE ZONING BOARD

CC: Z.B.A., APPLICANT, B.P. FILES.

BUTTER HILL DRIVE  
9 CONC CURB



1" = 30'



MAP DEPT.  
S. Y. 50000  
1911

LEGEND			
LOT BOUNDARIES	STREET CENTER LINE	STREET RIGHT OF WAY	STREET RIGHT OF WAY
LOT BOUNDARIES	STREET CENTER LINE	STREET RIGHT OF WAY	STREET RIGHT OF WAY
LOT BOUNDARIES	STREET CENTER LINE	STREET RIGHT OF WAY	STREET RIGHT OF WAY
LOT BOUNDARIES	STREET CENTER LINE	STREET RIGHT OF WAY	STREET RIGHT OF WAY

**ORANGE COUNTY-NEW YORK**  
 Photo No. 11-20-70  
 Date of Photo 1-1-52  
 Date of Map 11-20-70  
 Date of Revision 5-1-50  
 Scale 1"=100'

**TOWN OF NEW WINDSOR**  
 Section No. 78

**GENERAL NOTES**  
 ~~~~~

1. Unauthorized alteration or addition to a survey map bearing a licensed land surveyor's seal is a violation of Section 7209 (2) of the New York State Education Law.
2. Only copies from the original of this survey, marked with an original of land surveyor's inked seal, shall be considered to be valid true copies.
3. Certification shall run only to the person for whom the survey is prepared, and on his behalf to the title company, governmental agency and lending institution listed hereon and is not transferable to additional institutions or subsequent owners.

**SPECIAL NOTES**  
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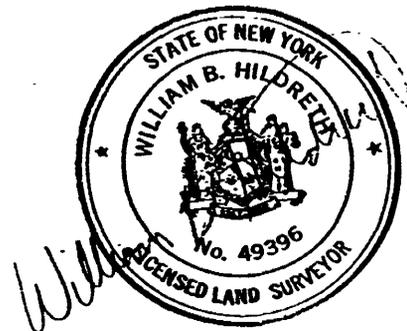
1. Being Lot No. 211, as shown on a map entitled "Butter Hill -Section 4B", said map having been filed in the Orange County Clerk's Office on 23 May 1985 as Map No. 7075.
2. Offsets shown are at right angles to the property lines, unless otherwise noted.
3. No certification is made for items not visible at ground surface at time of survey.
4. This survey was prepared prior to receipt of Title Report or Abstract of Title and is therefore subject to easements and other grants not visible, if any.

**CERTIFICATION**

I hereby certify that this plan resulted from an actual field survey of the indicated premises completed on 28 December 1994 performed in accordance with the code of practice adopted by the N.Y.S. Association of Professional Land Surveyors, Inc., and as, to the best of my knowledge and belief, correct.

CERTIFIED TO: James Dietz

The Prudential Home Mortgage Company, Inc.  
 Commonwealth Land Title Insurance Company



<b>&amp; Grevas</b> LAND SURVEYORS <b>Hildreth P.C.</b> <small>33 QUASSACK AVENUE, NEW WINDSOR, NEW YORK 12553          TEL: (914) 542-8867</small>		SURVEY FOR: <div style="text-align: center; font-size: 1.5em; font-weight: bold;">JAMES DIETZ</div>	
REVISIONS :                      ACAD:		TOWN OF NEW WINDSOR                      ORANGE COUNTY                      NEW YORK	
DATE	DESCRIPTION	Drawn: MEH Checked: Scale: 1"=30' Date: 28 Dec. 1994 Job No: 94-100	<div style="font-size: 1.5em; font-weight: bold;">BOUNDARY/LOCATION SURVEY</div>



Pls. publish immediately. Send bill to Applicant at below address. 3/27/97

PUBLIC NOTICE OF HEARING BEFORE  
ZONING BOARD OF APPEALS  
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 15.

Request of JAMES DIETZ

for a VARIANCE of the Zoning Local Law to permit:

THE CONSTRUCTION OF A POOL DECK WHICH WILL EXCEED THE MINIMUM 40FT REAR YARD SET BACK BY 10FT.

being a VARIANCE of Section 48-12-Table of Use/Bulk  
Regs. - Cd. G

for property situated as follows:

220 Butterhill Drive, New Windsor, N.Y. 12553

known as tax lot Section 78 Block 6 Lot 1

SAID HEARING will take place on the 14th day of April, 1997, at New Windsor Town Hall, 555 Union Avenue, New Windsor, New York, beginning at 7:30 o'clock P. M.

James Nugent  
Chairman

By: Patricia A. Barnhart, Secy.



1763

# TOWN OF NEW WINDSOR

555 UNION AVENUE  
NEW WINDSOR, NEW YORK 12553  
Telephone: (914) 563-4633  
Fax: (914) 563-4693

OFFICE OF THE ASSESSOR FOR TOWN

March 26, 1997

60

Mr. James Dietz  
220 Butterhill Drive  
New Windsor, N. Y. 12553

Re: Tax Map Parcel 78 - 6 - 1

Dear Mr. Dietz:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

The charge for this service is \$75.00, minus your deposit of \$25.00.

Please remit the balance of \$50.00 to the Town Clerk's Office.

Sincerely,

LESLIE COOK  
Sole Assessor

LC/pab

cc: Pat Barnhart, ZBA  
Re:

Donna K' Allacco  
78 Creamery Drive  
New Windsor, N. Y. 12553

Carlos Medina & Ramon Gonzales  
76 Creamery Drive  
New Windsor, N. Y. 12553

Michael & Marcella Trotman  
74 Creamery Drive  
New Windsor, N. Y. 12553

Joseph A. & Frances I. Roca  
72 Creamery Drive  
New Windsor, N. Y. 12553

Ierace, Robert & Carol  
70 Creamery Drive  
New Windsor, N. Y. 12553

Thomas J. & Lisa Y. Marshall  
68 Creamery Drive  
New Windsor, N. Y. 12553

Lynden D. & Patricia A. Crosbie  
65 Creamery Drive  
New Windsor, N. Y. 12553

Prakash V. & Harini Shukla  
311 Butternut Drive  
New Windsor, N. Y. 12553

Hoffmann, Brian J. & Lisa R.  
313 Butternut Drive  
New Windsor, N. Y. 12553

Donna M. Mulder  
315 Butternut Drive  
New Windsor, N. Y. 12553

Alexis Andrews  
317 Butternut Drive  
New Windsor, N. Y. 12553

Michael & Barbara Trotta Burge  
319 Butternut Drive  
New Windsor, N. Y. 12553

David & Cathy Ann Principato  
321 Butternut Drive  
New Windsor, N. Y. 12553

James & Jeannette Peterson  
3 Custard Court  
New Windsor, N. Y. 12553

Anita C. White  
1 Custard Court  
New Windsor, N. Y. 12553

Emilio & Anna Megaro  
85 Creamery Drive  
New Windsor, N. Y. 12553

Edith Soll  
87 Creamery Drive  
New Windsor, N. Y. 12553

Peter H. & Joanne Samplaski  
89 Creamery Drive  
New Windsor, N. Y. 12553

Thomas E. & Amalia I. Smith  
91 Creamery Drive  
New Windsor, N. Y. 12553

Kenneth G. & Georgia F. Gould  
93 Creamery Drive  
New Windsor, N. Y. 12553

Joseph & Milagros Arce  
322 Butternut Drive  
New Windsor, N. Y. 12553

Jan & Angelina Rosteck  
320 Butternut Drive  
New Windsor, N. Y. 12553

Joanne Tormey  
Vincent J. Costa, Jr.  
318 Butternut Drive  
New Windsor, N. Y. 12553

James K. & Dolores Davitt  
316 Butternut Drive  
New Windsor, N. Y. 12553

Robert Dubee  
312 Butternut Drive  
New Windsor, N. Y. 12553

Martin & Jean Cossavella  
310 Butternut Drive  
New Windsor, N. Y. 12553

Christopher S. & Georgette D. Roth  
211 Dairy Lane  
New Windsor, N. Y. 12553

John P. & Lisa A. Walsh  
213 Dairy Lane  
New Windsor, N. Y. 12553

Gerard J. & Cheryl Walker  
215 Dairy Lane  
New Windsor, N. Y. 12553

Bernadette Vinci  
Cindy Moore  
217 Dairy Lane  
New Windsor, N. Y. 12553

John T. Weber X  
211 Butterhill Drive  
New Windsor, N. Y. 12553

Maureen Mullin X  
Alan D. Scheck X  
213 Butterhill Road  
New Windsor, N. Y. 12553

Kenneth L. Jeune ✓  
Madeline Monroig  
215 Butterhill Drive  
New Windsor, N. Y. 12553

Michael A. & Nancy R. Bell X  
330 Butternut Drive  
New Windsor, N. Y. 12553

Anthony & Venus Sanchez X  
328 Butternut Drive  
New Windsor, N. Y. 12553

Maria S. Defazio X  
Gail E. Steinheimer X  
326 Butternut Drive  
New Windsor, N. Y. 12553

Peter & Sharon Hillringhouse X  
217 Butterhill Drive  
New Windsor, N. Y. 12553

Peter A. & Ellen J. Chiavaro X  
219 Butterhill Drive  
New Windsor, N. Y. 12553

Robert W. & Angela Donaldson X  
221 Butterhill Drive  
New Windsor, N. Y. 12553

Philip & Irene Hernandez X  
84 Creamery Drive  
New Windsor, N. Y. 12553

Gerald M. & Rose Marie Bohr X  
86 Creamery Drive  
New Windsor, N. Y. 12553

Jonathan & Hanna E. Dong X  
88 Creamery Drive  
New Windsor, N. Y. 12553

Andres J. & Deirdre D. Washington X  
90 Creamery Drive  
New Windsor, N. Y. 12553

Frank & Gayann Puleo X  
92 Creamery Drive  
New Windsor, N. Y. 12553

Richard H. & Carol Keber X  
331 Butternut Drive  
New Windsor, N. Y. 12553

Craig & Patricia Wood X  
329 Butternut Drive  
New Windsor, N. Y. 12553

John A. & Margaret J. Scott X  
327 Butternut Drive  
New Windsor, N. Y. 12553

Joseph M. & Audrey L. Addo ✓  
325 Butternut Drive  
New Windsor, N. Y. 12553

Paul C. Decker X  
Luann Serrano X  
323 Butternut Drive  
New Windsor, N. Y. 12553

Joseph R. & Martha H. Gallo X  
210 Butterhill Drive  
New Windsor, N. Y. 12553

John P. Fox X  
212 Butterhill Drive  
New Windsor, N. Y. 12553

John F. Guido  
Leslie C. Hynes  
2 Park Place-Apt. #1B  
Newburgh, N. Y. 12550

Donald & Donna J. Bigi X  
216 Butterhill Drive  
New Windsor, N. Y. 12553

Kieran D. Ryan X  
105 Creamery Drive  
New Windsor, N. Y. 12553

Fred A. Jones X  
Monica E. Saavedra X  
103 Creamery Drive  
New Windsor, N. Y. 12553

Thomas P. & Donna C. Brouard X  
101 Creamery Drive  
New Windsor, N. Y. 12553

Roberto A. & Angelita Cuadra X  
99 Creamery Drive  
New Windsor, N. Y. 12553

William J. & Donna C. Perk X  
97 Creamery Drive  
New Windsor, N. Y. 12553

Miguel & Frances Rodriguez X  
95 Creamery Drive  
New Windsor, N. Y. 12553

Lafayette Paper L. P. X  
754 Forge Hill Road  
New Windsor, N. Y. 12553



DIETZ, JAMES

MR. NUGENT: Request for 10 ft. rear yard variance for proposed attached pool deck at 220 Butterhill Drive in a CL-1 zone.

Mr. James Dietz appeared before the board for this proposal.

MR. DIETZ: Yes, what I'd like to do is I contacted a contractor to replace my present pool, I mean, pool, my present deck and I would like to have a connecting deck built from my existing deck which will be placed to the pool that I put in last year. It goes from the side of my property side of my house and I do have a little sketch with some pictures.

MR. NUGENT: I think we all have that sketch.

MR. DIETZ: I put another one with a little drawing on it and here's some pictures.

MR. TORLEY: Where is the pool?

MR. DIETZ: The pool was put in last year and it goes from the side of my house this way, it comes out this way and the pool goes this way. The blue pen area is the area that I want to add.

MR. KANE: Can I see the map please?

MR. REIS: Do you have a C.O. for the pool?

MR. DIETZ: Yes, I had a building permit last year to put that and the year before to put the fence in.

MR. BABCOCK: Mr. Chairman, I will say his file is rather thick with permits so he does get the proper permits whenever he needs them.

MR. TORLEY: And the variance is required because the deck attaches to the house?

MR. BABCOCK: That is correct.

MR. TORLEY: If the deck did not attach to the house would he not need a variance?

MR. BABCOCK: That is right.

MR. DIETZ: I wasn't under that understanding, is that an option?

MR. TORLEY: If you don't have the deck attached to the house then it does not count for the rear yard.

MR. KANE: Which means it won't be attached to the other deck either, you'd have to go down a set of stairs and up a set of stairs.

MR. DIETZ: So I'm applying for the variance because I would like to have a set of steps from one deck to the other.

MR. BABCOCK: He wants to go out of his house on the back deck, there's no door on the end of the house for him to go out on to the new deck, he needs to go out on the original deck first then onto this deck and into his pool.

MR. DIETZ: And the new deck would be about 2 1/2 foot below the other deck.

MR. TORLEY: Lower than 18 inches off the ground?

MR. BABCOCK: Right.

MR. TORLEY: I'm trying to see if there's a way you don't have to go through this.

MR. KANE: Especially the corner property he's on.

MR. BABCOCK: Yeah, his real, his full yard, rear yard behind his house is considered a side yard so this is considered a rear yard instead of the side yard.

MR. TORLEY: You don't have trouble with the protruding closer to the road than the main building?

MR. BABCOCK: No.

MR. TORLEY: I see what you mean about having no other convenient access to the pool except coming out down the back. I move we set Mr. Dietz up for his requested ten foot rear yard variance.

MR. REIS: Second it.

ROLL CALL

MR. REIS	AYE
MR. KANE	AYE
MR. TORLEY	AYE
MS. OWEN	AYE
MR. NUGENT	AYE

MR. TORLEY: I want to thank you for trying to do things the right way.

MR. KRIEGER: When you come back if you'd address yourself to the criteria set forth on this memo, I'd appreciate it, those are the criteria that the zoning board must decide upon also, I'd like to look at a copy of your deed and title policy, I don't need to keep it, just bring it with you so I can see it.

MR. DIETZ: Okay.

ZONING BOARD OF APPEALS : TOWN OF NEW WINDSOR  
COUNTY OF ORANGE : STATE OF NEW YORK

-----x  
In the Matter of Application for Variance of

\_\_\_\_\_  
Applicant.

AFFIDAVIT OF  
SERVICE  
BY MAIL

-----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 \_\_\_\_\_, I compared the \_\_\_\_\_ 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

Sworn to before me this  
day of \_\_\_\_\_, 19 \_\_\_\_\_

\_\_\_\_\_  
Notary Public

(TA DOCDISK#7-030586.AOS)



JAMES DIETZ

1-8 180  
210  
15864995

2152

*March 27, 1997*

Pay to the order of

*The Town of New Windsor*

\$ 300<sup>00</sup>/<sub>100</sub>

*Three Hundred and 00/100*

**CITIBANK**

CITIBANK, N.A. BR. #180  
244 MAIN STREET  
WHITE PLAINS, NY 10601

*ZBA #97-15*

*James Dietz*

⑆021000089⑆ 15864995⑆ 2152

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NY702E



JAMES DIETZ

1-8 180  
210  
15864995

2151

*March 27, 1997*

Pay to the order of

*The Town of New Windsor*

\$ 50<sup>00</sup>/<sub>100</sub>

*Fifty and 00/100*

**CITIBANK**

CITIBANK, N.A. BR. #180  
244 MAIN STREET  
WHITE PLAINS, NY 10601

*ZBA #97-15*

*James Dietz*

⑆021000089⑆ 15864995⑆ 2151

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NY702E

PUBLIC NOTICE OF HEARING BEFORE  
ZONING BOARD OF APPEALS  
TOWN OF NEW WINDSOR

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 15.

Request of

JAMES DIETZ

for a VARIANCE of the Zoning Local Law to permit:

THE CONSTRUCTION OF A POOL DECK WHICH WILL EXCEED THE MINIMUM 40FT ROAR YARD SET BACK BY 10FT.

being a VARIANCE of Section 48-12-Table of Use/Bulk  
Regs. Cd. G

for property situated as follows:

220 Butterhill Drive, New Windsor, N.Y. 12553

known as tax lot Section 78 Block G Lot 1.

SAID HEARING will take place on the 14th day of April, 1997, at New Windsor Town Hall, 555 Union Avenue, New Windsor, New York, beginning at 7:30 o'clock P. M.

James Nugent  
Chairman

TOWN OF NEW WINDSOR  
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

# 97-16  
Date: MARCH 27, 1997

I.  Applicant Information:

- (a) JAMES DUZZ 220 BUTTER HILL DRIVE NEW WINDSOR NY 12553 914 565 2152  
(Name, address and phone of Applicant) (Owner)
- (b) \_\_\_\_\_  
(Name, address and phone of purchaser or lessee)
- (c) \_\_\_\_\_  
(Name, address and phone of attorney)
- (d) THE CEDAR SHOP 56 ROUTE 17M HARRIMAN NY 12526 914 762 6533  
(Name, address and phone of contractor/engineer/architect)

II. Application type:

- Use Variance  Sign Variance  
 Area Variance  Interpretation

III.  Property Information:

- (a) CLT 220 BUTTER HILL DRIVE NEW WINDSOR NY 76-6-1 16000 SQ FT  
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? C zone
- (c) Is a pending sale or lease subject to ZBA approval of this application? NO
- (d) When was property purchased by present owner? JAN 26 1995
- (e) Has property been subdivided previously? NO
- (f) Has property been subject of variance previously? NO  
If so, when? \_\_\_\_\_
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? NO
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: NO
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. Use Variance. N/A

- (a) Use Variance requested from New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_, to allow:  
(Describe proposal) \_\_\_\_\_
- \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

<sup>N/A</sup>  
 (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.

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(c) Applicant must fill out and file a Short Environmental Assessment Form (SEQR) with this application.

(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes \_\_\_ No \_\_\_.

If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may request this list from the Assessor's Office.

✓ V. Area variance:  
 (a) Area variance requested from New Windsor Zoning Local Law, Section 48-12, Table of Use/Bulk Regs., Col. G.

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area _____	_____	_____
Min. Lot Width _____	_____	_____
Reqd. Front Yd. _____	_____	_____
Reqd. Side Yd. _____	_____	_____
Reqd. Rear Yd. <u>40</u>	<u>30</u>	<u>10</u>
Reqd. Street Frontage* _____	_____	_____
Max. Bldg. Hgt. _____	_____	_____
Min. Floor Area* _____	_____	_____
Dev. Coverage* _____ %	_____ %	_____ %
Floor Area Ratio** _____	_____	_____
Parking Area _____	_____	_____

\* Residential Districts only  
 \*\* No-residential districts only

✓ (b) In making its determination, the ZBA shall take into consideration, among other aspects, the benefit to the applicant if the variance is granted as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Also, whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method feasible for the applicant to pursue other than an area variance; (3)

whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created.

Describe why you believe the ZBA should grant your application for an area variance:

THE ISSUANCE OF THIS VARIANCE WILL ALLOW FOR MY FAMILY AND ME TO USE AND ENJOY OUR BACK/SIDE YARD AND POOL IN A MORE PLEASURABLE MANNER. IT WILL ALSO INCREASE SAFETY BY PROVIDING BETTER SUPERVISION OF CHILDREN'S POOL ACTIVITIES AND QUICKER RESPONSE IF A PROBLEM OCCURS.

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: MA.

(a) Variance requested from New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign 2	_____	_____	_____
Sign 3	_____	_____	_____
Sign 4	_____	_____	_____

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size 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. N/A

(a) Interpretation requested of New Windsor Zoning Local Law, Section \_\_\_\_\_, Table of \_\_\_\_\_ Regs., Col. \_\_\_\_\_.

(b) Describe in detail the proposal before the Board:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

✓ 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



(b) Variance: Granted (\_\_\_) Denied (\_\_\_)

(c) Restrictions or conditions: \_\_\_\_\_

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**NOTE: A FORMAL DECISION WILL FOLLOW UPON RECEIPT OF THE PUBLIC HEARING MINUTES WHICH WILL BE ADOPTED BY RESOLUTION OF ZONING BOARD OF APPEALS AT A LATER DATE.**

**(ZBA DISK#7-080991.AP)**

American Land Title Association  
Owner's Policy  
(10-17-92)

KAR-VIN ABSTRACT CORP.  
273 Quassaick Avenue  
New Windsor, N.Y. 12553  
(914) 562-2622 FAX (914) 565-8737

**POLICY  
OF  
TITLE  
INSURANCE**



*Issued by*

**Commonwealth.**  
Land Title Insurance Company

*Title Insurance Since 1876*

**HOME OFFICE  
EIGHT PENN CENTER  
PHILADELPHIA, PA 19103-2198**

B 1190-3

## 7. DETERMINATION, EXTENT OF LIABILITY AND CONSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,  
(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

## 8. APPORTIONMENT.

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

## 9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

## 10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

## 11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

## 12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(Continued)

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

## 13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

## 14. ARBITRATION

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

## 15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

## 16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

## 17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to Commonwealth Land Title Insurance Company, Eight Penn Center, Philadelphia, Pennsylvania 19103-2198.

ISSUED BY



**Commonwealth.**  
Land Title Insurance Company

POLICY NUMBER

207-274043

### OWNER'S POLICY OF TITLE INSURANCE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, COMMONWEALTH LAND TITLE INSURANCE COMPANY, a Pennsylvania corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, the Policy to become valid when countersigned by an authorized officer or agent of the Company.

COMMONWEALTH LAND TITLE INSURANCE COMPANY

Attest:

*James J. Lynch Jr.*  
Secretary



By:

*[Signature]*  
President

### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

# CONDITIONS AND STIPULATIONS

## 1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a) (iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

## 2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants or warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

## 3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

## 4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

## 5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgement of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

## 6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

**Commonwealth  
Land Title Insurance Company**

**STANDARD NEW YORK ENDORSEMENT  
(OWNER'S POLICY)**

1. The following is added to the insuring provisions on the face page of this policy:

"5. Any statutory lien for services, labor or materials furnished prior to the date hereof, and which has now gained or which may hereafter gain priority over the estate or interest of the insured as shown in Schedule A of this policy."

2. The following is added to Paragraph 7 of the Conditions and Stipulations of this policy:

"(d) If the recording date of the instruments creating the insured interest is later than the policy date, such policy shall also cover intervening liens or incumbrances, except real estate taxes, assessments, water charges and sewer rents."

Nothing herein contained shall be construed as extending or changing the effective date of said policy, unless otherwise expressly stated.

This endorsement, when signed below by a validating signatory, is made a part of said policy and is subject to the Exclusions from Coverage, Schedules, Conditions and Stipulations therein, except as modified by the provisions hereof.

IN WITNESS WHEREOF, COMMONWEALTH LAND TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers.

**COMMONWEALTH LAND TITLE INSURANCE COMPANY**

Dated: 1/26/95

Signed:

**Kar-Vin Abstract Corp.**

By:

**Robert Hauser**

President

By

*Kary S. Yarguedi*  
Authorized Signatory

Attest:

**James J.D. Lynch, Jr.**

Secretary

**Commonwealth  
Land Title Insurance Company  
SCHEDULE A**

Amount of Insurance: \$153,000.00

Policy No.: 207-274043

Date of Policy: 1/26/95

File No.: F700808

1. Name of Insured:

James Dietz

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

James Dietz by deed made by Margaret Bradshaw, f/k/a Margaret Zavagli, dated 1/26/95 and duly recorded in the office of the County Clerk, County of ORANGE.

4. The land referred to in this policy is described in said instrument, is situated in the County of ORANGE, State of New York, and is identified as follows:

ALL that certain piece, or parcel of land lying, situate and being in the Town of New Windsor, Orange County, New York, known and designated as Lot No. 211, as shown on a map entitled "Butter Hill-Section 48", said map having been filed in the Orange County Clerk's Office on 23 May 1985 as Map No. 7075, being more particularly described as follows:

Countersigned:

*Kary S. Jangedi*

Authorized Officer or Agent

**SCHEDULE A - CONTINUED**

**BEGINNING** at a point in the northerly line of Creamery Drive, where said line is intersected by the easterly line of Butter Hill Drive, running thence, the following courses:

1. Along the easterly line of Butter Hill Drive, N 9° 40' 00" W, 190.31' to a point;
2. Along the division line between the lot herein described and Section 6, S 81° 08' 58" E, 107.45' to a point;
3. Along the division line between Lot No. 211 and Lot No. 212 S 00° 32' 05" W 165.28' to a point in the northerly line of Creamery Drive;
4. On a curve, to the left having a radius of 410.00' a distance of 73.00' to the point or place of **BEGINNING**.

## SCHEDULE B EXCEPTIONS FROM COVERAGE

Policy No.: 207-274043

File No.: F700808

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Mortgage made by James Dietz to The Prudential Home Mortgage Company, Inc. dated 1/26/95 recorded 1/27/95 in Liber 5333 Mp. 254 in the office of the County Clerk, County of Orange.
2. Survey dated 12/28/94, made by James Dietz, L.L.S., shows no encroachments or variations of lot lines, except the following: 1) paved drive extends outside southerly boundary line, leading to Creamery Drive, 2) 10' utility easement inside length of northerly boundary line.
3. Grants in Liber 1240 Cp. 371, Liber 1784 Cp. 717, Liber 2081 Cp. 272. Easement and right of way in Liber 2396 Cp. 1. Easement in Liber 2093 Cp. 221.
4. Rights of tenants or persons in possession.
5. 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.
6. The amount of acreage is not insured.
7. Policy does not insure title to any land lying within the lines of any street, road, avenue, lane, turnpike or highway in front of or adjoining the premises described in Schedule "A" or which may cross over the same.
8. Subject to rights and easements if any acquired by any public utilities company to maintain its poles and operate its wires, lines etc., in, to and over the premises herein and in, to and over the streets adjacent thereto.
9. Notes and setbacks on filed map #7075.
10. 20' utility easement as shown on filed map #7075.

**ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE**  
**THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE**



**TYPE NAME(S) OF PARTY(S) TO DOCUMENT: BLACK INK**

MARGARET BRADSHAW, f/k/a  
 MARGARET ZAVAGLI  
  
 TO  
  
 JAMES DIETZ

SECTION 78 BLOCK 6 LOT 1

**RECORD AND RETURN TO:**  
 (Name and Address)

K941595

**THERE IS NO FEE FOR THE RECORDING OF THIS PAGE**  
**ATTACH THIS SHEET TO THE FIRST PAGE OF EACH**  
**RECORDED INSTRUMENT ONLY**

JO ANN FRIIA, ESQ.  
 175 MAIN STREET  
 WHITE PLAINS, NEW YORK 10601

**DO NOT WRITE BELOW THIS LINE**

INSTRUMENT TYPE: DEED  MORTGAGE \_\_\_\_\_ SATISFACTION \_\_\_\_\_ ASSIGNMENT \_\_\_\_\_ OTHER \_\_\_\_\_

**PROPERTY LOCATION**

- |   |   |
|---|---|
| <input type="checkbox"/> 2089 BLOOMING GROVE (TN)   | <input type="checkbox"/> 4289 MONTGOMERY (TN)             |
| <input type="checkbox"/> 2001 WASHINGTONVILLE (VLG) | <input type="checkbox"/> 4201 MAYBROOK (VLG)              |
| <input type="checkbox"/> 2289 CHESTER (TN)          | <input type="checkbox"/> 4203 MONTGOMERY (VLG)            |
| <input type="checkbox"/> 2201 CHESTER (VLG)         | <input type="checkbox"/> 4205 WALDEN (VLG)                |
| <input type="checkbox"/> 2489 CORNWALL (TN)         | <input type="checkbox"/> 4489 MOUNT HOPE (TN)             |
| <input type="checkbox"/> 2401 CORNWALL (VLG)        | <input type="checkbox"/> 4401 OTISVILLE (VLG)             |
| <input type="checkbox"/> 2600 CRAWFORD (TN)         | <input type="checkbox"/> 4600 NEWBURGH (TN)               |
| <input type="checkbox"/> 2800 DEERPARK (TN)         | <input checked="" type="checkbox"/> 4800 NEW WINDSOR (TN) |
| <input type="checkbox"/> 3089 GOSHEN (TN)           | <input type="checkbox"/> 5089 TUXEDO (TN)                 |
| <input type="checkbox"/> 3001 GOSHEN (VLG)          | <input type="checkbox"/> 5001 TUXEDO PARK (VLG)           |
| <input type="checkbox"/> 3003 FLORIDA (VLG)         | <input type="checkbox"/> 5200 WALLKILL (TN)               |
| <input type="checkbox"/> 3005 CHESTER (VLG)         | <input type="checkbox"/> 5489 WARWICK (TN)                |
| <input type="checkbox"/> 3200 GREENVILLE (TN)       | <input type="checkbox"/> 5401 FLORIDA (VLG)               |
| <input type="checkbox"/> 3489 HAMPTONBURGH (TN)     | <input type="checkbox"/> 5403 GREENWOOD LAKE (VLG)        |
| <input type="checkbox"/> 3401 MAYBROOK (VLG)        | <input type="checkbox"/> 5405 WARWICK (VLG)               |
| <input type="checkbox"/> 3689 HIGHLANDS (TN)        | <input type="checkbox"/> 5600 WAWAYANDA (TN)              |
| <input type="checkbox"/> 3601 HIGHLAND FALLS (VLG)  | <input type="checkbox"/> 5889 WOODBURY (TN)               |
| <input type="checkbox"/> 3889 MINISINK (TN)         | <input type="checkbox"/> 5801 HARRIMAN (VLG)              |
| <input type="checkbox"/> 3801 UNIONVILLE (VLG)      |   |
| <input type="checkbox"/> 4089 MONROE (TN)           |   |
| <input type="checkbox"/> 4001 MONROE (VLG)          |   |
| <input type="checkbox"/> 4003 HARRIMAN (VLG)        |   |
| <input type="checkbox"/> 4005 KIRYAS JOEL (VLG)     |   |

**CITIES**

- 0900 MIDDLETOWN  
 1100 NEWBURGH  
 1300 PORT JERVIS

NO. PAGES 1 CROSS REF \_\_\_\_\_  
 CERT. COPY \_\_\_\_\_ AFFT. FILED \_\_\_\_\_

PAYMENT TYPE: CHECK \_\_\_\_\_  
 CASH \_\_\_\_\_  
 CHARGE   
 NO FEE \_\_\_\_\_

CONSIDERATION \$ 153000  
 TAX EXEMPT \_\_\_\_\_

MORTGAGE AMT \$ \_\_\_\_\_  
 DATE \_\_\_\_\_

- MORTGAGE TYPE:**
- (A) COMMERCIAL
  - (B) 1 OR 2 FAMILY
  - (C) UNDER \$10,000.
  - (E) EXEMPT
  - (F) 3 TO 6 UNITS
  - (I) NAT.PERSON/CR.UNION
  - (J) NAT.PER-CR.UNI OR 2
  - (K) CONDO

*Joan A Macchi*

JOAN A. MACCHI  
 Orange County Clerk

9999 HOLD

RECEIVED FROM: Kar Vin

ORANGE COUNTY CLERKS OFFICE 4307 MKL  
RECORDED/FILED 01/27/95 12:03:46 PM  
FEES 38.00 EDUCATION FUND 5.00  
SERIAL NUMBER: 004826  
DEED CNIL NO 51243 RE TAX 612.00

19941095

THIS IS A LEGAL INSTRUMENT AND SHOULD BE EXECUTED UNDER SUPERVISION OF AN ATTORNEY.

THIS INDENTURE, made the 26th day of January 1995 .

BETWEEN MARGARET BRADSHAW, f/k/a MARGARET ZAVAGLI,  
220 Butterhill Drive, New Windsor, NY 12553

grantor

JAMES DIETZ, residing at 64 Goshen Avenue,  
Washingtonville, New York 10992

grantee

WITNESSETH, that the grantor, in consideration of \_\_\_\_\_TEN (\$10.00)\_\_\_\_\_ Dollars, paid by the grantee hereby grants and releases unto the grantee, the heirs or successor and assigns of the grantee forever.

ALL that certain piece, or parcel of land lying, situate and being in the Town of New Windsor, Orange County, New York, known and designated as Lot No. 211, as shown on a map entitled "Butter Hill-Section 48", said map having been filed in the Orange County Clerk's Office on May 23, 1985 as Map No. 7075, being more particularly described as follows:

61200

BEGINNING at a point in the northerly line of Creamery Drive, where said line is intersected by the easterly line of Butterhill Drive; running thence the following courses:

1. Along the easterly line of Butterhill Drive, North 9° 40' 00" West, 190.31' to a point;
2. Along the division line between the lot herein described and Section 6, South 81° 08' 58" East, 107.45' to a point;
3. Along the division line between Lot No. 211 and Lot No. 212 South 00° 32' 05" West, 165.28' to a point in the northerly line of Creamery Drive;
4. On a curve to the left having a radius of 410.00', a distance of 73.00' to the point or place of BEGINNING.

BEING the same premises as conveyed by deed dated July 8, 1986 from Hudson Valley Associates of New Windsor to Margaret Zavagli, k/n/a Margaret Bradshaw, and recorded in the Orange County Clerk's Office on July 16, 1986 in Liber 2544 of Deeds at Page 236.

TOGETHER with the appurtenances and all the estate and rights of the grantor in and to said premises. TO HAVE AND TO HOLD the premises herein granted unto the grantee, the heirs or successors and assigns of the grantee forever. AND the said grantor covenants that the grantor has not done or suffered anything whereby the said premises have been encumbered in any way whatever. This deed is subject to the trust provisions of Section 13 of the Lien Law.

The words "grantor" and "grantee" shall be construed to read in the plural whenever the sense of this deed so requires. IN WITNESS WHEREOF, the grantor has executed this deed the day and year first above written.

In presence of:

*Margaret Bradshaw Zavagli*  
MARGARET BRADSHAW, f/k/a MARGARET ZAVAGLI  
L. S.  
L. S.

STATE OF NEW YORK, COUNTY OF

On the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, before me personally came \_\_\_\_\_, who, being by me duly sworn, did depose and say that deponent resides at No. \_\_\_\_\_ deponent is \_\_\_\_\_ of the corporation described in and which executed, the foregoing instrument; deponent 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; deponent signed deponent's name thereto by like order.

STATE OF NEW YORK, COUNTY OF ORANGE  
On the 26th day of January 1995, before me personally came

MARGARET BRADSHAW, f/k/a MARGARET ZAVAGLI

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

KAR-VIN ABSTRACT CORP.  
273 Osmunick Avenue  
New Windsor, N.Y. 12553  
(914) 562-2822 FAX (914) 565-6737

*William C. von Weyhe*  
NOTARY PUBLIC - STATE OF NEW YORK

LIBER 4172 PAGE 204

WILLIAM C. von WEYHE  
Notary Public, State of New York  
Residing in Orange County  
Commission Expires April 23, 1996