

STATE OF NEW YORK: COUNTY OF PUTNAM

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TOWN OF SOUTHEAST

ZONING BOARD OF APPEALS

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67 Main Street
Brewster, New York 10509
June 19, 2006

B E F O R E B O A R D M E M B E R S :

EDWARD COLELLO, Chair man

THOMAS COSTELLO, Acti ng Chair man

JOSEPH CASTELLANO

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JOHN GALLAGHER

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PAUL VINK

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MR. COLELLO: My name i s Ed Cole llo.

2 Let me introduce you to our Board members. To my far
3 right is Joseph Castellano. Next is Jack Gallagher.
4 To my right is Tim Froessel. To my left is Vice
5 Chairman Tom Costello. To our far end is Paul Vink.
6 We have Kevin Sheil and our stenographer tonight is
7 Jayne McGinley.

8 We have 10 items on the agenda this
9 evening. I'll read them off to you in order and this
10 is the order we're going to follow: Number one is
11 Prestige Petroleum. Number two is Jeannette
12 Phillips. Number three is Trisha Givaudan; Matt and
13 Sharon Scott; Karl and Jean Lueder; Aman Estates;
14 Beatriz Marin; Vito and Denise Vitulli; 899 Route LLC
15 a/k/a Brewster Honda and last, but not least, Joshua
16 and Allison Geballe.

17 So, if we could move right into it,
18 Prestige Petroleum. How we doing?

19 MR. LIGUORI: Good. Good evening
20 Chairman Colello and members of the Board. My name
21 is Michael Liguori. I'm an attorney at Hogan &
22 Rossi. I'm here with Frank Hessari, the vice
23 president of Prestige Petroleum in connection with
24 the requested area variances for his signage at the
25 Prestige Petroleum Gas Station. It's the Valero Gas

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1 Station on Route 22 here in Brewster.

2 I brought an easel to put my poster
3 board up. Any recommended locations? Over there or
4 over there?

5 MR. COLELLO: I'm trying to think

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6 where people could see it and the Board members.
7 Maybe put it next to Paul.

8 MR. VINK: Over here is fine.

9 MR. COSTELLO: Just a reminder that
10 you're still under oath from our previous meeting.

11 MR. HESSARI: Yes, sir.

12 MR. LIGUORI: If I may, I'll briefly
13 run through the variances that have been requested?

14 MR. COLELLO: Okay.

15 MR. LIGUORI: The first variance is
16 to permit two additional signs at the site. The
17 ordinance -- we're in the NB-1 district and one sign
18 is permitted. You have a choice between a
19 freestanding sign or a wall sign. We've chosen
20 already to have a wall sign placed on the top of the
21 canopy. We're requesting to have the sign above the
22 door remain and to have a freestanding sign.

23 The second variance is for the height
24 of the freestanding sign. Eight feet in height is
25 permitted. We're requesting to have 12 feet. We've

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1 amended our first request which was 18 to bring it
2 down to 12.

3 The area of the sign is for the third
4 variance. 10 square feet is permitted. 48 square
5 feet is requested for a 38 foot variance for sign
6 area.

7 The fourth variance is for the
8 setback of the sign, and I point to this picture over
9 here and to the site plan. It's a little difficult

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10 to see, but Route 22 runs along here and there is an
11 18 and a half feet distance between the edge of Route
12 22 and the property line. And we propose to place
13 the sign on the property line which requires that we
14 vary the entire setback distance. The setback
15 distance is 15 feet. We'd like to put it at zero
16 feet.

17 And we would like the Board to note
18 that at that zero foot property mark, there is 18
19 feet before we actually hit the road. We don't own
20 that property. We believe the state owns it in
21 connection with the route, but it's property that we
22 use every day in connection with the operation of the
23 business. The pumps are located in the middle of a
24 concrete slab and that's part of the entrance and
25 exit onto the property is this additional land that

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1 we don't have the benefit of owning.

2 The fifth variance is to permit the
3 construction of a fascia around the building, but in
4 particular the front corner of the building. The
5 building's setback is 35 feet. A portion of the
6 building is within 33 feet of the road. So, if the
7 building was setback 35 feet we wouldn't need a
8 variance, but because we're in this corner at 33 feet
9 we need a variance of two feet to permit the
10 construction of the fascia around that corner of the
11 building. I think it wouldn't look too good if we
12 built it all the way around and then had to stop
13 there.

14 The last request is for the
15 interpretation regarding the color. If we get that
16 far then it would be great to talk about it, but I
17 understand we have nine people behind us so we'll --
18 we could, I guess, deal with that when we get to it.

19 This is the third appearance before
20 the zoning board in connection with this matter and
21 at the first meeting that we had two months ago some
22 of the Board members were here, the same thing for
23 the last meeting, some other Board members were here.
24 So, tonight is the first time we've had the full
25 Board and, Ed, I don't know if you'd like me to go

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1 through the points of the test or if the Board feels
2 like we are at the point where we could move forward?

3 MR. COLELLO: Well, can you go
4 through it sort of --

5 MR. LIGUORI: Definitely.

6 MR. COLELLO: -- in case there's
7 people in the audience who would like to hear it as
8 well?

9 MR. LIGUORI: Sure.

10 The critical part of our application
11 is the freestanding sign. To us that's the most
12 important thing for the business is to be able to
13 advertise the sign prices albeit we don't like the
14 amount of the prices, but we would like to be able to
15 advertise and that's something that this site doesn't
16 have the benefit of is a freestanding sign.

17 Like I said before, an eight foot

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18 sign is permitted in height and a 10 foot sign in --
19 you could have 10 feet in area for a maximum of eight
20 feet in height. We're asking for 12 feet in height
21 and 48 square feet in area.

22 The reasons why we're asking for that
23 particular size sign is because of the type of
24 business that we're operating here which is we're
25 selling gas and the nature of the business is that

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1 people typically pull into the gas station where they
2 see who's got the lowest price.

3 The benefits here at this site for
4 having this additional freestanding sign or just
5 having additional signage in general, one is again
6 we're dealing with a drive-by business instead of a
7 destination business. So, for instance, we don't
8 have a Kohl's here. People know where Kohl's is.
9 You don't need to advertise Kohl's tremendously. But
10 in this scenario, or the gas station, the
11 advertisement is critical.

12 The second point is that we're in a
13 commercial area and we're located nearly underneath
14 Interstate 84 and, to be blunt, the site is dumpy
15 looking and we're doing the best that we can to make
16 it attractive. And we feel that the addition of
17 signage is going to make it more attractive and,
18 quite frankly, any improvement that we make to the
19 property or that Mr. Hessari makes to the property is
20 going to make it look better than it already does.

21 It gets a significant amount of road

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22 debris from the traffic on 6 and from what's
23 overhanging on 84 and since Frank's come into
24 ownership of the business the canopy has been changed
25 and the attractiveness of the site, I think, has

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1 increased already.

2 Regarding the height, there's a six
3 foot fence located right behind the sign. It's part
4 of the rationale for going up to the 12 feet. We've
5 contacted the state in connection with removing all
6 of the brush in here and over the fence. And also
7 what's important is the location of the sign to be
8 able to garner the view of the sign from coming off
9 of 684. If you're coming 684 -- 22 South and you get
10 off at that 684 -- I'm sorry, at that 22 ramp, we'd
11 like to be able to make a right-hand turn or to have
12 future travelers make a right-hand turn and be able
13 to see the gas price advertisement without having to
14 drive too far of a distance.

15 From the other side, coming from
16 underneath the railroad trestle and up to the Mobil
17 station on the right-hand side, at the point of the
18 Mobil, once you reach the crest before the beginning
19 of the Mobil property, you'll be able to see the sign
20 from the opposite direction.

21 So, the line of sight, the location
22 of the property, the improvements that we've done
23 already and are contemplating here, for those reasons
24 we feel that the benefit to Mr. Hessari by permitting
25 the sign outweigh the detriment to the community by

1 having an additional sign.

2 I've read the intent of the Town
3 Board in connection with revising the sign ordinance
4 and putting the limitations in it that they have.
5 And I have to say, by making gas stations
6 nonconforming uses and by rendering the majority of
7 the signs for commercial businesses in the Town of
8 Southeast nonconforming upon the adoption of the new
9 statute, I believe they contemplated situations just
10 like this where if you wanted to get a sign or
11 something greater than what was permitted that we'd
12 come to the Zoning Board of Appeals and prove to the
13 seven members of the Board that the benefit to the
14 applicant is greater than the detriment to the
15 community then we would be entitled to a variance.
16 And I think by coming here and by being scrutinized,
17 we fulfilled the intent of the Board in connection
18 with their adoption of the ordinance.

19 MR. COLELLO: That's it? Okay.

20 So, let's walk through this one more
21 time. You're asking for a four foot height variance?

22 MR. LIGUORI: That's correct.

23 MR. COLELLO: You're asking for a 38
24 square foot --

25 MR. LIGUORI: Area variance.

1 MR. COLELLO: -- area variance.

2 You're asking for an additional 13.2
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3 whatever square feet of wall sign?

4 MR. LIGUORI: That's correct.

5 MR. COLELLO: You need a --

6 MR. LIGUORI: 15 foot.

7 MR. COLELLO: -- 15 foot -- it would
8 have to be front; wouldn't it?

9 MR. LIGUORI: Front, yes.

10 MR. COLELLO: Front setback variance
11 where now you have zero. Am I missing any?

12 MR. LIGUORI: The corner of the
13 building is located closer than 35 feet away from the
14 property line. We are located 32 feet -- I'm sorry,
15 33 feet which would require a two foot variance to
16 permit the full wrap around of the fascia.

17 MR. COLELLO: I remember what you
18 said, but I don't remember what's going to be on the
19 fascia.

20 MR. LIGUORI: We would like to have a
21 blue and yellow fascia to match the color of the
22 canopy and we've run into an interpretation problem.
23 Essentially Ron Harper, the zoning enforcement
24 officer, has said you can construct a fascia, but if
25 you use blue and yellow then you fall within the

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1 definition of the word sign. And by use of the blue
2 and yellow then that is an additional sign with all
3 of the area included within it.

4 We've requested an interpretation
5 because we disagree with the definition of the word
6 sign. We don't believe that it contemplates the use

7 of colors. It doesn't mention colors and I think
8 personally it produces some unintended results.

9 MR. COLELLO: No writing on the
10 fascia?

11 MR. LIGUORI: No, just the --

12 MR. HESSARI: The sign if you grant
13 the variance.

14 MR. LIGUORI: That's correct. If we
15 were able to get the additional wall sign then the
16 wall sign would be on the fascia and that's just by
17 mere -- because of the location of the wall sign and
18 where the fascia is going to go. The fascia is going
19 to wrap around the top of the building. And then
20 what we'll do is we'll take down all of the signage
21 on the rest of the building, all of the letters.
22 There's almost 200 square feet of signage on that
23 building right now if you add up all of the letters.
24 This sign will come down and all of the Savino gas
25 and deli, the hot coffee, the ice cream, hot and

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1 cold, all that stuff will be removed and the final
2 product will be the Valero -- the convenience store
3 and deli, the blue fascia with the yellow stripe and
4 the freestanding sign.

5 MR. COSTELLO: Did Mr. Harper also
6 indicate that the blue and yellow on the canopy is
7 part of the sign or just the letters?

8 MR. LIGUORI: Just the letters.

9 MR. COSTELLO: So, why would it be
10 different on the canopy than on the fascia?

11 MR. LIGUORI: I asked him the same
12 question and according to Ron -- I asked him the same
13 question. He really didn't have an answer for me. I
14 didn't press it for fear of getting another violation
15 or citation. It was just worth it to come here to
16 ask.

17 MR. COSTELLO: Okay.

18 MR. FROESSEL: Just to refresh my
19 recollection, is the current sign of convenience
20 store and deli, that's slated to come down?

21 MR. LIGUORI: It's slated to come
22 down. We've asked for the variance to have it
23 remaining.

24 MR. HESSARI: It's going to be
25 different wording.

13

1 MR. FROESSEL: They're going to have
2 that one, but you're not going to have two of them?

3 MR. HESSARI: Just one, yes.

4 MR. FROESSEL: Okay.

5 MR. LIGUORI: This is going to come
6 down. Right now that's where we advertise the prices
7 and that's why it's still there. It's the only place
8 to do that.

9 MR. COLELLO: Do we have any
10 questions from anyone in the audience?

11 State your name for Jayne, please.

12 MS. ECKARDT: Lynn Eckardt. It's
13 E-c-k-a-r-d-t. I'll try to really web through it
14 because it's going to be a long night.

15 I guess my question is -- I agree
16 this area looks pretty dumpy, but do you really need
17 to make it look dumpier? A freestanding sign is what
18 you really want -- I mean, are there seven variances
19 or six that you asked for?

20 MR. LIGUORI: Six.

21 MS. ECKARDT: And with one
22 interpretation?

23 MR. LIGUORI: That's correct.

24 MS. ECKARDT: This is starting to
25 rival my favorite Starr Ridge Road gas station.

14

1 I would urge the Board to try to --
2 and -- to try to get rid of the additional signage.
3 And doesn't the signage have to go whether or not
4 anything else was granted or not?

5 MR. HESSARI: No, if they're
6 grand-fathered in.

7 MR. LIGUORI: There's a seven year
8 phase out.

9 MS. ECKARDT: So, it does have to go,
10 it's just we get to look at it seven years?

11 MR. LIGUORI: No. If you get a
12 variance it remains longer than --

13 MS. ECKARDT: No, that goes with the
14 property. But, if you don't get a variance then
15 within seven years that other stuff has to go?

16 MR. LIGUORI: That's correct.

17 MS. ECKARDT: Okay. I understand why
18 you want to illustrate gas prices, but I guess

19 New York State law is that they are shown on the
20 pumps; correct?

21 MR. LIGUORI: They are, and under the
22 code you're permitted to have small price signs above
23 each pump.

24 MS. ECKARDT: Right. That small I
25 can read.

15

1 I guess what I find here is that the
2 whole intent of the Town Board's redoing of the sign
3 ordinance was to make things look better. And it
4 does look dumpy now, but I really think it could look
5 a lot better. I'm not quite sure why we need 48
6 square feet instead of -- I mean, I know 10 is very
7 small, but it seems like a very large variance and a
8 lot of these things are big variances to me.

9 So, I would urge the Board to try to
10 go along with the intent of the Town Board. They've
11 loosened up a lot more on the signage than I would
12 have liked anyhow, but I think it could look a lot
13 nicer here than it does now. Thank you.

14 MR. COLELLO: Anyone else?
15 Questions? Comments?

16 Any other questions of any Board
17 members?

18 Is there a requirement by Valero to
19 have a certain size freestanding sign?

20 MR. HESSARI: No. That's one of the
21 smallest we picked actually. The next size down
22 would be 42 I believe -- 42 square feet.

23 MR. FROESSEL: What's the smallest of
24 their available?

25 MR. HESSARI: 32, but 32 won't be

16

1 able to display four products, only three products of
2 gasoline.

3 MR. COSTELLO: I was actually in
4 Connecticut and I saw a Valero gas station that the
5 only thing on the freestanding sign was the name
6 Valero and it was about a four foot by four foot
7 sign. No prices on that sign.

8 MR. HESSARI: It probably was
9 custom-made. The municipalities are different. I
10 mean, we've got sites that we have 200 square feet
11 signs and, you know, every town is different, that's
12 why we're here.

13 MR. VINK: Do you really need to show
14 four gas prices on your sign? I mean, the Shell gas
15 station up on 22 only has one on it. Everybody knows
16 the jump in prices from the base price. Do we really
17 need to show all the prices?

18 MR. HESSARI: Historically, you know,
19 they're going that trend to only display the lowest
20 grade. The more expensive gasoline becomes -- more
21 people buy just regular. So, I guess, with this
22 crisis it's not a big deal, but -- you know, it's all
23 a matter of what your competition does. We have four
24 other gas stations that they do this way of three
25 products, and diesel is a big part of our business.

1 We have a lot of commercial accounts that we
2 inherited from Vi to.

3 MR. VINK: Commercial accounts aren't
4 going to be drive-by business.

5 MR. HESSARI: No, they're not
6 drive-by business.

7 So, one of the advantages we have at
8 that site is that we have diesel. Mobil does not and
9 neither does Getty so that's why we do a lot of
10 diesel business. I would like to advertise the
11 diesel prices if I can. Do I have to, no. I mean,
12 we're doing business with no sign, but we're at a
13 disadvantage.

14 MR. COLELL0: Let me just say this to
15 you guys so you can have a chance to rebut this,
16 there's a couple of things that bother me about this
17 application, I got to be honest with you. When the
18 Town Board came out with the new sign regulations and
19 the eight feet, they really sent a message that they
20 want to keep it down to eight feet. And I'm not
21 saying that we should never grant a height variance
22 or anything along those lines, but -- you know, the
23 more I think about these sign ordinances you're
24 looking at a 50 percent variance. It's pretty
25 substantial.

1 The second one is the size, you know,
2 the 48 feet. You know, that's a lot bigger,

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3 obviously, than the code permits. Okay. Now, let's
4 couple all of that with the fact that it's going to
5 be right on the property line.

6 MR. LIGUORI: That's not something
7 that we can --

8 MR. COLELLO: I understand that, but
9 it's a factor in my eyes. I don't know how the rest
10 of the Board feels.

11 So, what we've got is a height -- a
12 four feet higher than it's supposed to be. We've got
13 one that's four times larger than it's supposed to
14 be, almost five times, and it's right on the property
15 line.

16 I understand you can't do anything
17 about that. You're never going to move that sign to
18 a place where you don't need a variance for its
19 location. And, again, I'm telling you the way I look
20 at things. If it has to be that close to the
21 property line or right on the property line, then you
22 got to consider that, okay, maybe we got to give in
23 some other ways because it's right there and that's
24 what troubles me.

25 MR. LIGUORI: Even though it is right

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1 on the property line, having that 18 and a half feet
2 between the property line and the road, let's say we
3 own the right to the road, we wouldn't need a
4 variance if the property line extended right to Route
5 22 then we are 18.5 feet back.

6 MR. COLELLO: Well, I agree with you,

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7 Michael, but you don't.

8 MR. VINK: You don't.

9 MR. LIGUORI: It doesn't. But the
10 reality is that there's 18 feet of pavement, so to me
11 I don't think --

12 MR. COLELLO: DOT or somebody could
13 come in and say you know what, we want to widen that
14 corner, we think it's not safe and that's why we're
15 keeping that 18. There's a big strip right down on
16 Route 6, we've dealt with that for years.

17 MR. VINK: And your sign is right on
18 the edge of the road because you have a variance that
19 says you can put your sign there right on the edge of
20 the road on the property line.

21 MR. LIGUORI: I would just temper
22 that with the fact that where the location of this
23 property is and where this road comes to, I think it
24 would be safe to say that it's fairly unlikely that
25 we'd be in an area that's going to be widened

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1 considering the amount of room across the street and
2 where the property is, where the curve comes -- you
3 know where the curve comes through over in this area
4 right here, you have the triangle in the middle.
5 You're going to come in and this curve is almost at
6 the property line.

7 So, unless they're going to widen
8 here which I don't think they would -- I mean, it is
9 a legitimate concern, you know, if they would ever
10 widen the road but, quite frankly, with the history

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11 of road widenings around here -- I mean, it's been 12
12 years they've been talking about 22, I doubt they're
13 going to widen that area.

14 MR. COLELLO: I guess what I'm trying
15 to say is this: I agree with everything you said
16 about the location. My problem is that because
17 it's going to be widened, if it's approved, it's
18 right on the property line. I think it's too big for
19 that spot, that's what concerns me. You don't have a
20 lot of choices on where to put the sign, I agree with
21 you on that. And I'm not really worried about
22 widening, but I am worried about the fact that it's a
23 big sign.

24 Now, five years ago was it a big
25 sign, no. Unfortunately, the rules of the game have

21

1 changed and the problem is you'll probably be the
2 only gas station in this whole town that's up to code
3 with the signage.

4 MR. LIGUORI: But therein lies the
5 intent of the Town Board with this ordinance is
6 coming before this Board and --

7 MR. COLELLO: But let me ask you
8 this, Michael, then why would the town adopt an eight
9 foot sign height restriction if they wanted us to say
10 well you can have 12, and you can have 14 and you can
11 have 18? Why would that be their intent to make it
12 eight if everyone else was getting 12, 14, 11,
13 whatever?

14 MR. LIGUORI: Well, because you have

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15 to come to the Board and prove that you're -- you can
16 show that the benefit to the -- that there's less
17 benefit to the applicant than detriment to the
18 community. I think they know when they're adopting
19 an ordinance -- I mean, eight feet, it's arbitrary.
20 They pick a number and they say, all right, eight
21 feet, that's what we want in the district.

22 MR. COLELLO: I don't know if it's
23 arbitrary. I'd give them a little credit by doing a
24 little more thinking than just picking a number like
25 eight sounds good, you know.

22

1 MR. HESSARI: Can I make a comment?

2 MR. COLELLO: Please.

3 MR. HESSARI: My second question
4 would be how would you recommend it? But before I
5 ask that, I'd just like to make a comment that being
6 in at least 15 or 10 different towns, you know, we
7 have different locations. We are not here to correct
8 the laws, in my opinion, and I'm just one individual.
9 10 square feet is not realistic. Every single
10 business in this town would be in violation.

11 MR. COLELLO: And they will be.

12 MR. HESSARI: And they are, and in
13 seven years either they have to change the law or
14 they have to grant the variance to everybody which
15 you guys have to spend 24 hours, seven days here
16 which is not realistic. So, we are not here to fix
17 the laws or whatever it is. We respect it.

18 Now, coming to my second point is

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19 what would you recommend? How much more in? Five
20 feet? Seven feet? That's why we're here.

21 MR. COLELLO: But you're not
22 listening to me. I'm just telling you how I feel.
23 I'm one member. I don't really have as much as a
24 problem of where it is. I understand you have a
25 problem of where the sign is going. Okay. So,

23

1 having it on the property line -- of the first three
2 variances you're requesting, to me, and again it's
3 me, the least important -- the least one that
4 troubles me is the zero foot variance. I know
5 because I got my coffee there a half hour ago. I
6 know that you don't have any room to work there.

7 My problem is is that, okay, if we
8 grant relief from the location, we're still going to
9 have a sign that's 50 percent bigger than it's
10 supposed to be -- higher than it's supposed to be and
11 almost five times bigger than it's supposed to be and
12 I'm saying is that I think we just got to shrink it
13 down and make it lower.

14 MR. HESSARI: We could shrink it down
15 and we could go more in as long as we don't --

16 MR. COLELLO: Again, I shouldn't be
17 doing this --

18 MR. HESSARI: We could come every
19 night. I mean, you have more important things to do.
20 I don't think anybody wants to spend two hours every
21 month on this with you guys. He likes it, but that's
22 why we're here.

23 The reality is every single business
24 in the town is going to be in violation, but the
25 advantage they have, they don't have to do nothing in

24

1 seven years.

2 MR. COLELLO: Right.

3 MR. HESSARI: So, if everybody else
4 had a sign one square feet, that's fine, I'll put a
5 sign one square feet.

6 MR. COLELLO: Okay. But the
7 objective of the Town Board is to some day everybody
8 will have the right size sign, that's the objective.

9 MR. HESSARI: Right.

10 MR. COLELLO: Or, everybody gets a
11 variance and we go back to the rules, but I got to
12 tell you I wouldn't be a betting man. If I were a
13 betting man, I wouldn't bet on that either.

14 MR. FROESSEL: I don't think they
15 changed the ordinance so that in seven years we could
16 sit around here and just rubber stamp variances for
17 people.

18 MR. COLELLO: Everyone is going to be
19 -- all the rules aren't going to be given away like
20 the Wild West.

21 MR. LIGUORI: We'd just like to go
22 back to the considerations for this site. Is it
23 large; yes, it's large. I state in my papers that it
24 could be considered substantial, but given the
25 location of the site, where we're trying to get

1 access points from or view points from, when you come
2 off the distances that we're trying to get from 684
3 from that ramp and then from by the Mobil station,
4 the 48 square feet is an adequate size sign to do
5 that, that's why we're looking for that.

6 The height, we understand it's 50
7 percent larger than the eight feet, but the eight
8 feet isn't much, and that's why we're asking for 50
9 percent. If 10 feet was permitted, we'd be here for
10 two feet.

11 I mean, to a degree, if you looked at
12 all of the signs down that road, if you go to the
13 Q-Tipp sign, it's high. The Subaru sign, they have
14 four signs. They're tremendously high. The Cadillac
15 has a number of signs. I can't tell you how many
16 signs Mobil has. As a matter of fact, I could show
17 you a picture if you want to see it. We've taken
18 pictures of everything.

19 When you look at everything, when you
20 drive down that road and you see all those signs that
21 are there, when this is done, if it's done as the way
22 we asked, this isn't that substantial.

23 MR. COLELLO: I'll just cut my
24 comments with this: Under the old rules you're
25 absolutely right. Under the new rules, I disagree

1 with you. And, unfortunately, you're coming at a
2 time where you're basically the test case because the
3 last one we had just wanted to keep the sign he had

4 at the same height.

5 MR. LIGUORI: The last one -- and I
6 agree, we are the test case, but we're very different
7 from the last sign. I understand he just wanted to
8 keep what he had, but that property was surrounded by
9 residential property. He was the literal gateway
10 property between getting down North Brewster Road.

11 MR. COLELLO: No, he wasn't.

12 MR. LIGUORI: What did he have? He
13 had the dentist office across the street. He's the
14 last property on the left-hand side.

15 MR. COLELLO: There's a business to
16 his left and a business to his right.

17 MR. LIGUORI: Right, but the garage
18 doesn't have a large sign like that.

19 MR. COLELLO: It doesn't matter. I'm
20 just saying there are businesses on either side of
21 him and all he wanted to do is keep the sign which he
22 had a variance for which was issued by this Board two
23 years ago. The problem is he got caught up in the --
24 I don't want to bring back old memories -- he got
25 caught up in the moratorium that's why he couldn't

27

1 put the new sign up, what he had variances for. Then
2 the height requirements came in and they said you got
3 a variance for the size of the sign, but now it's too
4 high, so all he said is can I keep the height.

5 MR. HESSARI: Well, we have an option
6 to go to 32.4 square feet. That's the smallest they
7 got, if you will just look at it and pass it around.

8 That's one option. We could go to a smaller size.
9 It will be less variance in the square footage. We
10 have a setback -- we could come more in toward the
11 building as long as we don't block that air machine
12 right there.

13 MR. COLELLO: Well, first of all, I
14 think we should handle every one of these separately;
15 do agree with that?

16 MR. FROESSEL: That makes sense.

17 MR. GALLAGHER: Yeah.

18 MR. COLELLO: I think if I were going
19 to set the order, I would start with the location,
20 okay, the property line where the sign would go.
21 Then I think I'd go with the height and then I think
22 I'd go with the square footage. Does that make sense
23 or do you disagree?

24 MR. COSTELLO: That's good.

25 MR. COLELLO: You guys agree with

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1 that?

2 MR. FROESSEL: Yes.

3 MR. COLELLO: All right. We can take
4 each one of those individually.

5 Which one is the one that you're
6 talking here?

7 MR. HESSARI: Any of those signs,
8 they just have different products on them. They're
9 32.4.

10 MR. COLELLO: The top two.

11 Okay. Do we have any other questions

12 for the applicant before I close the public hearing?

13 MS. ECKARDT: I have one.

14 MR. COLELLO: Yes.

15 MS. ECKARDT: This is for the Board,
16 Lynn Eckardt again.

17 If you grant these variances now and
18 then flash forward to 2013 and everyone else comes
19 back, is there any legal precedent that would allow
20 the other gas stations to re-up the signage that they
21 have?

22 MR. COLELLO: I don't think so.
23 You're asking the wrong guy.

24 MS. ECKARDT: My concern is that the
25 Town Board put these into place for a reason and so

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1 if you grant a variance now because he has to play
2 catch up, having bought the gas station I assume
3 since the variances, what does that -- does that mean
4 everyone just -- I mean, does that make the sign
5 ordinances kind of a joke?

6 MR. LIGUORI: We still need to meet
7 the test and, obviously, everyone can see how hard it
8 is to meet the test.

9 MS. ECKARDT: My concern is in 2013
10 because I think it's already been a year going ahead
11 that because this precedent has been set -- I mean,
12 we're back to square one. We have the same dumpy gas
13 stations because everyone gets to re-up their status
14 and I think it really is a concern.

15 MR. COLELLO: I think, correct me if
Page 25

16 I'm wrong, but every variance stands on its own
17 merits. Just because hypothetically this gas station
18 got a variance that doesn't mean Mobil in seven years
19 is going to get the same thing.

20 MS. ECKARDT: But is it more likely
21 -- I mean, is it easier to argue for them that, look,
22 you did this in 2006?

23 MR. COLELLO: I would probably think
24 so.

25 MR. FROESSEL: It probably is. You

30

1 know, the character of the neighborhood, if we've
2 already granted a variance for a certain size, I
3 think if somebody else were to basically make a
4 decent argument.

5 MS. ECKARDT: I know as a business
6 person that it's hard to play catch up probably, but
7 on the other hand I would hate to see a precedent
8 set.

9 MR. COLELLO: Well, somebody has to
10 be a first.

11 MS. ECKARDT: That's right. You can
12 do it now or you can do it in six years.

13 MR. LIGUORI: You know what, if we
14 were located next to the Citco up the street right
15 past the 684 interchange, you know, by Lisi's, then I
16 would say, yeah, you guys are setting a precedent, I
17 would agree. There would be no way to argue around
18 it, but here -- this is the only gas station in town,
19 it's the only property -- no, that's not true, it's

20 not the only property. There's the properties across
21 the street, but we're at a substantial disadvantage
22 for being located under the highway. It's ugly. It
23 doesn't look good. And we think anything that we do
24 is going to be benefit, whether it's the fascia
25 around the building or a sign, it's going to make

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1 this property look better and that's something that
2 the other land owners or the other property owners
3 that aren't located here are not going to be able to
4 get around.

5 MR. COLELLO: I agree with you except
6 I don't know how a sign makes a property look more
7 beautiful.

8 MR. LIGUORI: Any improvement that
9 you do at this place is going to be better.

10 MR. COLELLO: First of all, I don't
11 think it's that dumpy and now you're telling me I get
12 my coffee at a dump.

13 MR. LIGUORI: If you look at the Hess
14 station, the new Hess station --

15 MR. COLELLO: The Hess station is
16 brand new, come on. Let me tell you, I don't look as
17 good as my 20 year old son either. Over time you
18 don't look that good.

19 MR. LIGUORI: -- it looks good.

20 MR. COLELLO: You're doing quite a
21 job knocking your client's business here.

22 MR. HESSARI: He's commenting about
23 all of those Savi no signs on the window which this

24 lady would prefer to see for the next seven years.

25 MR. COLELLO: Okay. Any other

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1 questions of the Board?

2 MR. CASTELLANO: You can't get a sign
3 without the Valero sign? I mean, half of that sign
4 is a Valero symbol which you have on your awning
5 already. I mean, is that necessary?

6 MR. VINK: It could be two more gas
7 prices.

8 MR. HESSARI: You know, I -- just
9 part of the American corporate franchises or
10 whatever, you can't be a Subway and not have the name
11 Subway.

12 MR. CASTELLANO: The only thing
13 people are looking for is the gas price. You could
14 cut the Valero sign right in half by taking out the
15 Valero symbol. You have it on the awning. Everybody
16 sees it as they drive by. I think everybody knows
17 where the Valero station is because of that awning.
18 It's a nice awning. I have no issues with that, it's
19 fine.

20 Why do you need another sign? You
21 could cut the sign in half, just read the gas prices
22 and go.

23 MR. VINK: And I noticed those signs
24 only had two gas prices on them, regular and diesel.

25 MR. HESSARI: Yes, they do have those

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1 options. They have all kinds of signs.

2 MR. VINK: So, that's part of the
3 regular corporate sales --

4 MR. HESSARI: They have -- yes.

5 MR. VINK: -- two gas prices, not all
6 four.

7 MR. HESSARI: It's really all the oil
8 companies, they like to have their name associated
9 with the products.

10 MR. VINK: I understand that.

11 MR. CASTELLANO: You have the name on
12 the awning.

13 MR. HESSARI: I mean, if I have to
14 take that down and put one here, I'd prefer to go
15 that route.

16 MR. CASTELLANO: You'd rather take it
17 off the awning and put it on the sign?

18 MR. HESSARI: If I have to, yes.

19 MR. CASTELLANO: Why?

20 MR. HESSARI: Well, because this is
21 the unbranded gas because of Savino and he's in
22 California right now. I guess he did good. You
23 know, we are part of a branded franchise, not an
24 unbranded.

25 MR. COLELLO: Do we have any other

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1 questions?

2 MR. VINK: No.

3 MR. COLELLO: Closing comments?

4

MR. LIGUORI: None.

5

6

MR. COLELLO: Do you think you've had a fair and adequate opportunity to state your arguments?

7

8

MR. LIGUORI: Yes.

9

10

MR. COLELLO: I will close the public hearing. Please have a seat.

11

12

I'll open it up to any discussions, comments.

13

14

15

16

MR. VINK: Do we have the authority to make a variance subject to the phase out that's in the law over the seven years? Could we grant a variance subject to?

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MR. COLELLO: I don't think so.

18

MR. FROESSEL: I don't think we can.

19

20

MR. COLELLO: I don't think we can either.

21

22

MR. FROESSEL: I don't see what the point would be anyway.

23

24

25

MR. VINK: Well, it would not set a legal precedent that way that other people could come back. They'd be subject to the same phase out in

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3

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seven years that the other gas stations are going to come back and say well you set a precedent by allowing them to have a bigger sign so you should let us keep ours too, that would be the point.

5

6

MR. COSTELLO: I think that would become an administrative nightmare then.

7

MR. FROESSEL: Also, I don't see what

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8 the point would be in granting somebody a variance
9 that's going to phase out in five or six years and
10 then the sign is up and it's there and then you take
11 it down.

12 MR. GALLAGHER: And that also becomes
13 a nightmare, too.

14 MR. COLELLO: Yes.

15 MR. GALLAGHER: My personal feeling
16 is I think we should stick to the guidelines because
17 we already know what's going to happen in seven
18 years. Issuing a variance we're going in the
19 opposite direction.

20 MR. FROESSEL: I'll tell you my
21 thoughts. My biggest problem also is with the area
22 of the sign, the 48 square feet, that's just 500
23 percent almost of what's permitted under the code and
24 it's just excessive, I think, and there's no way that
25 I could ever vote for that.

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1 As far as the zero foot setback
2 requirement, they're in a little bit of a pickle
3 because he's got all of that space, that doesn't
4 bother me all that much. And to be honest with you,
5 the 12 foot height doesn't bother me as much,
6 although it might still be a little bit too high
7 because he's got that six foot fence next to him
8 blocking up the state's property. So, an eight foot
9 fence, he's barely above the fence. The traffic that
10 would be heading east on Route 6 wouldn't see. So, I
11 could see giving him somewhat of a height variance.

12 I don't know if it would be 12 feet because it's a
13 smaller sign. He might not need 12 feet, maybe 10.

14 MR. COLELLO: Let me ask you this
15 question, if he went with the 32 foot --

16 MR. FROESSEL: No. I'll answer your
17 question no.

18 MR. COLELLO: That still wouldn't
19 show it.

20 MR. FROESSEL: And he's also got 84
21 towering above him 75 feet in the air and a couple of
22 extra feet doesn't bother me so much on the height,
23 but again the size of the sign is a big issue.

24 MR. COLELLO: All right. Any other
25 comments?

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1 MR. COSTELLO: I think he made a good
2 point in stating that an important element in
3 positioning of a business like a gas station is the
4 branding, but I think he's accomplished that by
5 putting the brand on the canopy. If he adds the
6 fascia on the front of the building in a similar
7 color, again you get more branding with the colors
8 tying to the canopy.

9 So, I agree that there isn't as a big
10 need to have the name of the brand on the sign. And
11 I would have liked to have seen some testimony that
12 described, you know, what was the right size
13 lettering needed for the prices. From a distance,
14 you know, I don't know 200 feet away, whatever
15 normally people look at gas station prices, how high

16 do they have to be for them to reasonably see them?

17 I drive by gas stations all the time
18 and I can read the price signs on top of the pumps.
19 Now, certainly if there's a car or a truck parked
20 there you can't see it, but if there's a sign and how
21 big do the letters have to be? In the proposal
22 they're a foot tall. It seems excessive to me.

23 MR. COLELLO: Why don't we do this,
24 why don't we go -- unless someone has an issue with
25 this please speak up -- why don't we take these in

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1 the order we mentioned before? Let's take the
2 location of the sign first.

3 The applicant is asking for a -- they
4 have a zero setback, they need 15 feet, so they're
5 asking for 100 percent of a 15 foot setback to put
6 the location of the sign. Any discussion about that?

7 As I said earlier, personally, again
8 it's my opinion, that's the least troublesome to me
9 on this application because I don't think the guy has
10 any other options.

11 MR. VINK: I don't know. I'm
12 skeptical that he doesn't have any other options. It
13 seems to me that there has to be a better place to
14 put a sign on that property, even if it's not
15 freestanding and we're dealing with the size, it
16 could go somewhere else. It could go on the side of
17 the building. It could go on the fascia that's going
18 on. There are probably any number of other places
19 that it could go and not be right there on the

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20 property line. Maybe even be able to get it higher
21 up that way.

22 MR. COLELLO: Could be. I'm not --
23 yeah.

24 MR. VINK: Which would accomplish
25 giving him better visibility from coming both ways on

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1 22.

2 MR. COLELLO: I don't know if that
3 would help him if he put it on the fascia.

4 MR. FROESSEL: Going east it would
5 still be pretty hard to see.

6 MR. COLELLO: Yes. I think that
7 would be difficult. You know, I got to tell you, I
8 looked at a gas station -- we all expect to see a gas
9 station sign, right, some sort of a sign. What I
10 think has gone a little out of hand in some gas
11 stations, which are way out of whack right now, is
12 all the signage on the buildings, okay, that
13 everything from the price of coffee to Budweiser to
14 cigarettes to everything else, to gas stations
15 selling firewood and rock salt and everything else
16 with these big signs.

17 And I think that's what part of the
18 whole signage thoughts in the Town Board are trying
19 to get away from this. We try to take back a little
20 bit or come back a little bit in our signage, so we
21 have less and less signs on these buildings. Again,
22 that's only my interpretation. I'm not saying that's
23 fact, that's only how I read it.

24 Well, in regards to the location of
25 the sign, again, the applicant is asking for a 15

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1 foot variance. They want to put it right on the
2 property line. I'll entertain any motions either in
3 favor of or opposing the application.

4 I'd like to make a motion to grant
5 the variance giving the applicant relief from the 15
6 foot front setback requirement so that the property
7 will go on the property line to a zero foot setback.
8 Do I have a second?

9 MR. FROESSEL: I'll second.

10 MR. COLELLO: Tim's second.

11 I'll address the criteria: Whether
12 an undesirable change will be produced in the
13 character of the neighborhood; again, I don't think
14 the location of the sign going there is going to
15 change the character of that neighborhood. It's
16 virtually all a business and commercial neighborhood.
17 There is one house a couple of houses down, but it's
18 really a business and commercial neighborhood so I
19 don't think the character of the neighborhood comes
20 into play.

21 Whether the benefit sought by the
22 applicant can be achieved by some feasible method
23 other than a variance; well, I don't think there's
24 any way the applicant's going to get enough room
25 anywhere on that property to have a sign and not need

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1 a variance. Now, do they have to have 15 feet, I
2 don't know about that, but even if they're going to
3 shave one or two feet off, I don't think it's going
4 to have any real impact.

5 Whether the requested variance is
6 substantial; it's absolutely substantial. It's 100
7 percent variance because it's right on the property
8 line. But, again, I think we have to look at the
9 nature of the property and what they have there.

10 Whether the proposed variance will
11 have an adverse effect or impact on the environmental
12 conditions; I don't think they will have any.

13 And whether the alleged difficulty
14 was self-created; well, we can call it self-created
15 because the applicant wants to put up a sign. But,
16 again, to be quite blunt, you can't hate a business
17 owner because he or she wants to have a sign. Okay.
18 The nature of the property, the way it is, it's a
19 tough situation.

20 So with that, we'll have a roll call
21 vote. Joseph.

22 MR. CASTELLANO: In favor.

23 MR. COLELLO: Jack.

24 MR. GALLAGHER: I'm in favor.

25 MR. COLELLO: Tim.

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1 MR. FROESSEL: I'm in favor.

2 MR. COLELLO: Tom.

3 MR. COSTELLO: In favor.

4 MR. COLELLO: Kevin.

5 MR. SHEIL: In favor.

6 MR. COLELLO: Paul.

7 MR. VINK: Oppose.

8 MR. COLELLO: And I'm in favor. So,
9 the variance for the front yard setback requirement
10 is approved by a six to one vote.

11 What do you want to do next, the
12 height or the size? The height?

13 MR. GALLAGHER: Pick one. It doesn't
14 make a difference.

15 MR. COLELLO: Let's do the height.

16 Again, the applicant is requesting a
17 12 foot sign, four feet over the maximum height of
18 eight feet. I'll entertain any motions either in
19 favor of or opposed to this application.

20 MR. FROESSEL: If I make a motion, I
21 don't have to vote for it; do I?

22 MR. COSTELLO: I'll make a motion to
23 deny the variance.

24 MR. COLELLO: A motion made to deny,
25 do we have a second?

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1 MR. VINK: Second.

2 MR. COLELLO: Seconded by Paul.

3 Will you address the criteria,
4 please?

5 MR. COSTELLO: Whether an undesirable
6 change will be produced in the character of the
7 neighborhood or a detriment to nearby properties will
8 be created by the granting of the variance; I think a

9 12 foot high sign at that location is not a desirable
10 change and there is no current sign in that location
11 and, therefore, I think the best thing for the
12 neighborhood is for a sign that's conforming to the
13 eight foot height requirement.

14 Whether the benefit sought by the
15 applicant can be achieved by some feasible method
16 other than a variance; yes, he can comply with the
17 eight foot height variance -- height requirement.

18 Whether the requested variance is
19 substantial; I think it is substantial. It's 50
20 percent above the allowable height.

21 Whether the proposed variance will
22 have an adverse effect or impact on the environmental
23 conditions in the neighborhood; I don't think the
24 environmental conditions will be impacted if the
25 variance was granted.

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1 And whether the alleged difficulty
2 was self-created; it was created by the applicant
3 requesting to install a sign at that height, so it
4 was self-created.

5 MR. COLELLO: Thank you.

6 Before I call a roll call vote, let's
7 all remember this, the motion is made to deny. Okay.
8 Paul.

9 MR. VINK: In favor.

10 MR. COLELLO: Kevin.

11 MR. SHEIL: In favor.

12 MR. COLELLO: Tom.

13 MR. COSTELLO: In favor.
14 MR. COLELLO: Tim.
15 MR. FROESSEL: In favor.
16 MR. COLELLO: Jack.
17 MR. GALLAGHER: In favor.
18 MR. COLELLO: Joe.
19 MR. CASTELLANO: In favor.
20 MR. COLELLO: And I'm in favor as
21 well, so the motion is seven to zero in favor of
22 denying the height variance.

23 Number three, the size of the sign.
24 The applicant is requesting 48 square feet of sign
25 when 10 square feet is allowed. I'll entertain any

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1 motions either in favor of or opposed to that
2 application.

3 MR. COSTELLO: I'll make a motion to
4 deny the variance requested.

5 MR. COLELLO: Do I have a second?

6 MR. FROESSEL: Second.

7 MR. COLELLO: Seconded by Tim.

8 Address the criteria, please.

9 MR. COSTELLO: Whether an undesirable
10 change will be produced in the character of the
11 neighborhood or a detriment to nearby properties will
12 be created by the granting of the variance; I think
13 there will be an undesirable change to put a sign of
14 that size, 48 square feet, is a very large sign in a
15 neighborhood type business district.

16 Whether the benefit sought by the
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17 applicant can be achieved by some feasible method
18 other than a variance; during the testimony we heard
19 of lots of other opportunities to put in smaller
20 signs that would be less -- have less impact visually
21 and still achieve the purpose of a sign of providing
22 the branding and also the pricing that he's seeking.

23 Whether the requested variance is
24 substantial; yes, it is substantial. He's permitted
25 to put in a 10 square foot sign and he's requesting

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1 to put in a 48 square foot sign, so it's five times
2 the size permitted.

3 Whether the proposed variance will
4 have an adverse effect or impact on the environmental
5 conditions in the neighborhood; only if the variance
6 were to be granted it would have a very large visual
7 impact.

8 And whether the alleged difficulty
9 was self-created; I believe it was and that the
10 applicant requested this size sign when others of
11 much smaller impact were discussed.

12 MR. COLELLO: Thank you.

13 Once again, I'll call for a roll call
14 vote. The motion on the floor is to deny the square
15 foot variance. Joseph.

16 MR. CASTELLANO: In favor.

17 MR. GALLAGHER: In favor.

18 MR. FROESSEL: In favor.

19 MR. COSTELLO: In favor.

20 MR. COLELLO: Kevin.

21 MR. SHEIL: In favor.

22 MR. VINK: In favor.

23 MR. COLELLO: And I'm in favor as
24 well, so the motion on the size of the sign is
25 denied.

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1 Michael, I'm coming back to you and
2 I'm going to ask you a question. I'm going to throw
3 something at you here.

4 You're looking for additional signage
5 on the building, right, and you're asking us to make
6 an interpretation on the fascia; correct?

7 MR. LIGUORI: At the corner of the --
8 the area of the corner of the building.

9 MR. COLELLO: Right. Here's what I'm
10 suggesting we do on this, and I'm just going to throw
11 this out at you, I'll play this the way you guys want
12 to play this. Obviously, we can vote on this
13 tonight. Personally, it's tough to vote on little
14 bits and pieces unless we see what the whole picture
15 is going to look like.

16 If you would like, I'd be more than
17 happy to carry those over until you guys have a
18 chance to talk and figure out a game plan, or
19 whatever, because, see what I'm saying, I don't know
20 how the Board feels, but I'd like to know what the
21 whole signage is going to look like before we do it
22 bits and pieces. Does that make sense to you?

23 MR. FROESSEL: Particularly if
24 they're still going to pursue the freestanding sign.

25 And if they're not going to pursue the freestanding

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1 sign, if they decide not to pursue that at all, that
2 would have an impact on my voting on the other wall
3 signs.

4 MR. COLELLO: Exactly. Do you see
5 what I'm saying? And you can't ask them to make that
6 decision now, I don't think it's fair to the
7 applicant. I'll do what you want to do. If you want
8 us to move ahead on this, we're on the docket, we'll
9 vote. If you'd like us to carry it over to next
10 month on these other two issues until you've had
11 enough time to figure out which way you want to go,
12 I'll play that route. Whatever way you want to do.

13 MR. LIGUORI: The only question I
14 have is if it's -- if the fascia, the two feet for
15 the fascia and the interpretation, I don't know if
16 you guys have studied that definition, but if the
17 granting of the interpretation would be granted, I
18 don't know if those are tied to the freestanding
19 sign. Let's say we came back with a smaller
20 freestanding sign and continue with the fascia, if
21 those two were going to be linked together in
22 connection with the granting of a variance then,
23 obviously, we would wait because it wouldn't make any
24 sense. If they're not so related to Board members
25 then it would permit us to at least go forward to

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1 make the improvements to the fascia which is
2 something that we would like to do.

3 And at the very minimal to at least
4 vote on the two foot variance because we can build in
5 other colors without interpretation. For instance,
6 we could put a white fascia without triggering the
7 ordinance. I guess the best thing to do probably
8 would be if you guys would take a vote on the two
9 foot and then we'll come back to you for the
10 remainder.

11 MR. VINK: Would you like us to
12 discuss the interpretation also at this time since
13 that may affect how you're approaching the other
14 signage?

15 MR. LIGUORI: You know, I don't know
16 what the Board's position is, but --

17 MR. VINK: I don't know either.

18 MR. LIGUORI: I mean, I would like to
19 be able to -- I don't know if you guys can take some
20 preliminary poll or express some ideas as to the
21 interpretation if --

22 MR. COLELLO: Technically, I'm not
23 even supposed to be talking to you right now because
24 we closed the public hearing. I'm breaking the rules
25 already.

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1 MR. LIGUORI: As the applicant's
2 representative --

3 MR. COLELLO: I understand. I've
4 broken the rules before, Michael.

5 MR. LIGUORI: I don't think you're
6 breaking the rules. I think this is critical to
7 continuing the variance. I'm not giving you
8 testimony.

9 MR. COLELLO: I understand. I can't
10 take a straw poll.

11 MR. LIGUORI: Okay. I would love to
12 be able to at least get an answer on the
13 interpretation, but Frank is going to have to -- I
14 guess, just ask Frank first and see.

15 MR. COLELLO: Well, let me ask you a
16 question, I mean, if hypothetically you were granted
17 the variance on the two foot corner, is that going to
18 immediately start construction tomorrow because I
19 don't know if you're going to know what colors you're
20 going to go with or whatever. I got to tell you
21 something, we may refer you to the Architectural
22 Review Board after all of this.

23 MR. LIGUORI: Well, we know where we
24 stand with the ARB. We know what the procedures are
25 with that. So, we're under the \$15,000 mark on the

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1 fascia, we're well underneath it. It's not expensive
2 to install the fascia so we don't trigger the ARB
3 process with just the fascia.

4 If we added the fascia and the sign
5 and everything else then we would exceed that figure,
6 but the fascia alone we would be okay. We would be
7 able to just construct. But, if we have the two foot
8 variance we could put a white fascia up tomorrow, the

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9 issue is the color.

10 MR. FROESSEL: As I read your
11 application, if we interpret the fascia as not being
12 a sign you don't need the two foot variance; right?

13 MR. LIGUORI: No. No. The building
14 -- the setback is 35 feet. The building is located
15 -- you need to be at least 35 feet. The corner of
16 that building is 33 feet. So, for us to -- for me to
17 put a nail on the wall and hang an additional
18 anything, I need a variance for that corner.

19 MR. VINK: Preexisting nonconforming.

20 MR. LIGUORI: Right, preexisting
21 nonconforming.

22 MR. COLELLO: Well, if the Board --
23 personally, I have no problem with voting on the
24 fascia. I think we should do a little homework on
25 the colors and whether it constitutes a sign, to be

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1 honest with you.

2 MR. LIGUORI: Okay. So, then let's
3 narrow it down to the corner and then we'll come
4 back.

5 MR. COLELLO: My question is, and
6 I'll ask you this now and it might save you some
7 time, how thick is the fascia?

8 MR. HESSARI: 18 panels -- you know,
9 it just needs a bracket. Probably a couple of
10 inches. Maybe three inches with brackets. It has to
11 go on blocks and then 18 panels, gets a screw from
12 the top and the bottom, aluminum.

13 MR. GALLAGHER: What's the standoff
14 on the building?
15 MR. COLELLO: How far off the
16 building?
17 MR. HESSARI: Three feet -- three
18 inches, sorry.
19 MR. COLELLO: The closer point,
20 Michael, you're sure is 33 feet from the property
21 line?
22 MR. LIGUORI: According to the
23 survey, the furthest corner is --
24 MR. COLELLO: The closest.
25 MR. LIGUORI: I'm sorry, the closest

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1 corner.
2 MR. COLELLO: That corner you need.
3 MR. VINK: 33.6.
4 MR. COLELLO: We'll call it 33. And
5 you're asking for another six inches, let's say;
6 right?
7 MR. LIGUORI: Maximum, yes.
8 MR. COLELLO: To extend the building
9 with a fascia of -- I'm sorry, it's 33.6 he's got?
10 MR. VINK: Yes.
11 MR. COLELLO: So down to 33.
12 Last question, how high is the
13 fascia?
14 MR. HESSARI: Four foot.
15 MR. COLELLO: Do we feel comfortable
16 voting on this tonight?

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MR. COSTELLO: Yes.

MR. COLELLO: Okay. So, we're voting on this tonight, just the fascia, that side, the one corner.

MR. FROESSEL: Of the two feet?

MR. COLELLO: Yes. He has 33.6 feet. Let's say he only wants to break it down to have the fascia -- a four foot high fascia to extend no more than -- so he cuts it down to 33 feet.

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MR. VINK: So, he needs a two foot variance. He needs 35 feet?

MR. COLELLO: Well, yeah, but I think it's very important -- I was going to make the motion to explain what the variance is so it's just not a two foot variance to put an addition on.

MR. VINK: Right.

MR. COLELLO: I will entertain any motions either in favor of or opposing the application.

MR. VINK: I will make a motion to grant the applicant a two foot variance for the purpose of constructing a four foot fascia that will extend to no more than an additional three inches -- six inches from the existing building.

MR. COLELLO: Do I have a second?

MR. GALLAGHER: I'll second.

MR. COLELLO: Seconded by Jack.

Will you address the criteria, Paul, please?

21 MR. VINK: Whether an undesirable
22 change will be produced in the character of the
23 neighborhood; I don't think there will be any change
24 whatsoever in the character of the neighborhood. I
25 think it will likely be an improvement in the

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1 character of the neighborhood.

2 Whether the benefit sought by the
3 applicant can be achieved by some feasible method
4 other than variance; no, as indicated he's -- it's a
5 preexisting nonconforming use so any nail put in the
6 wall there would require a variance.

7 Whether the requested variance is
8 substantial; no, I don't believe that two feet in the
9 scope of 35 is substantial. It's rather miniscule.

10 Whether the proposed variance will
11 have an adverse effect or impact on the environmental
12 conditions in the neighborhood or district; I don't
13 believe it will have any such impact.

14 Whether the alleged difficulty was
15 self-created; no, it wasn't. The building was
16 nonconforming when he purchased it.

17 MR. COLELLO: Thank you.

18 Roll call vote. Paul.

19 MR. VINK: In favor.

20 MR. COLELLO: Kevin.

21 MR. SHEIL: In favor.

22 MR. COLELLO: Tom.

23 MR. COSTELLO: In favor.

24 MR. COLELLO: Tim.

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1 MR. COLELLO: Jack.
2 MR. GALLAGHER: In favor.
3 MR. COLELLO: Joe.
4 MR. CASTELLANO: In favor.
5 MR. COLELLO: And I'm in favor as
6 well.
7 Okay. Michael, let's recap where we
8 are; all right?
9 MR. LIGUORI: Yes.
10 MR. COLELLO: You have the approval
11 to put the sign where you want to put it, right,
12 where you want to put it, the location.
13 MR. LIGUORI: The front setback?
14 MR. COLELLO: The front setback.
15 You're denied on the height and
16 you're denied on the square footage of the sign, but
17 you're approved to put a fascia no more than six
18 inches protruding from the building around especially
19 in that corner where it's probably the closest.
20 The only thing we haven't voted on
21 tonight is the extra 13.24 square feet of signage.
22 MR. FROESSEL: And the
23 interpretation.
24 MR. COLELLO: And the interpretation.
25 And I got to tell you, I feel I would like to see

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1 what you're going to do with the other sign.
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MR. LIGUORI: Okay.

MR. COLELLO: You know what I'm saying? Now, here's the part you're not going to like. We're going to keep the public hearing open on the interpretation and we'll keep the public hearing open obviously on the 13.245 square feet sign.

MR. LIGUORI: Right.

MR. COLELLO: Because you were denied on the height and on the square footage, if you come before us you have to renotice, file all new applications.

MR. LIGUORI: All right.

MR. COLELLO: All right.

MR. LIGUORI: Thanks for your time.

MR. COLELLO: Thank you.

MR. HESSARI: Thank you very much.

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MR. COLELLO: Okay. Number two on

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our agenda, Jeannette Phillips, Sodom Road.

MR. SHILLING: Good evening. My name is William Shilling. I'm an attorney in Carmel, 20 Church Street. With me this evening is Jeannette Phillips who is the owner.

6 We were here two months ago. We
7 weren't here last month, my client was ill. Last
8 month my client's daughter who is the tenant in the
9 property was here. She was unable to attend this
10 evening. This is a continuation then of the public
11 hearing of two months ago. Some of you were here,
12 some of you weren't, but I'll be quicker than I was
13 last month.

14 The property is located on 112 Sodom
15 Road. We submit that the property has a very strong
16 multi-family flavor. The site is the old school house
17 which is 112 Sodom Road. I have a tiny little
18 picture here which was taken in 1905. It consists of
19 a one story frame. The lot is 23,000 square feet.
20 The apartment or the total square footage of the
21 house is about 2,400 square feet. The main part of
22 the house is 1,644 square feet. The apartment is 618
23 square feet.

24 The ratio apartment to house or
25 rather house to apartment is 37 percent. The code

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1 allows 25 percent. It is for that reason that we
2 need a variance. The code provides that you need
3 40,000 square feet to have an accessory apartment.
4 We have 23,000 square feet. For that reason, we need
5 a variance.

6 The apartment is and has been rented
7 to my client's daughter for six years now. She pays
8 a monthly rent of \$600. The house was built before
9 code. This is a current picture of the house in the

10 lower right-hand corner and outlined in yellow is the
11 location of the property.

12 As this Board knows, this matter was
13 before you in some capacity six years ago. It was an
14 application that sought amnesty. There was a new
15 accessory apartment law that was passed and the Board
16 allowed people who had been using the property as
17 accessory apartments to come in. So, my client
18 petitioned this Board in 2000 for amnesty to permit
19 the continuation of this accessory apartment. The
20 Board denied it. It was a lot of bickering between
21 neighbors who came to oppose. The Board found that
22 continuing it would result in an undesirable change
23 in the neighborhood. My client appeared without
24 counsel in 2000.

25 So, what we're requesting this

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1 evening are two variances. One is 138-22 of your
2 code and that provides that for an accessory
3 apartment you have to have 40,000 square feet. We
4 have 23,000. And then the other one is the apartment
5 to the main house can't exceed 25 percent, we
6 proposed 37 percent. So, in order to comply with
7 your code, we would have to provide for an apartment
8 of 570 feet and we propose an apartment of 618 feet,
9 so that's a 48 feet difference.

10 This application is entirely
11 different than it was six years ago. Before the
12 application was premised in amnesty, now we're
13 seeking variances. Before my client was proposing

14 rental to any third parties, now we are perfectly
15 willing and able for this Board to condition a
16 variance that it remain blood related or limited
17 specifically to my client's daughter.

18 By the way, I should have mentioned
19 my client's daughter is 32 years old. She's not a
20 child and, as I said, she's lived there since 2000.

21 Before, that is in 2000, there was no
22 discussion of the neighborhood virtually. It was,
23 again, a couple of neighbors who were opposing.
24 Before my client appeared without an attorney and
25 this evening she has one.

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1 And in 2000 there was a discrepancy
2 on the interpretation of the code. At the time she
3 submitted saying that her apartment was or the main
4 house was 2,000 and your zoning code enforcement
5 officer said that if the total house is more than
6 2,000 you comply with code, but we don't comply with
7 the 25 percent and it's for that reason that we need
8 a variance. The Ron Harper letter is part of your
9 record which I submitted last time.

10 Briefly, the history of the property,
11 as I said, it was an old school house and in the 30's
12 we believe it was converted to residential. My
13 client purchased in '76 and she raised two children
14 there, unfortunately her husband died shortly
15 thereafter.

16 I've stated for the record my client
17 is on a fixed disability income. She earns \$1,300 a

18 month and that is her sole income. She did create an
19 apartment on the side. You can see it's to this side
20 and she in the 80's and the 90's rented to third
21 parties. She rented to transients and she did rent
22 out the garage to a carpenter where he stored his
23 tools and what have you.

24 So, in 2000 she sought amnesty based
25 on the criteria then which was to show what your rent

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1 roll was and things like that which my client was ill
2 prepared to do, so she was denied.

3 And at that time Mr. Snyder appeared,
4 admitted that he had a kitchen as well for his
5 parents that were disabled and in need of an
6 apartment and he promised that he would remove the
7 kitchen when the need was no longer there and he did
8 in 2003.

9 Since my client was denied in 2000
10 there's been no third-party rentals. No one can say
11 that my client rented to anybody other than her
12 daughter. She tried to restore good relations with
13 the family -- with the families in the area. She
14 rents only to her daughter at \$600 a month. She did
15 obtain Board of Health approval for the second
16 apartment and she did, as the code envisioned, went
17 to the Planning Board which then referred it over
18 here.

19 This then, in my opinion, is a brand
20 new application different from the one that was
21 before you in 2000, new standards, new testimony, new

22 information about the neighborhood, a whole different
23 category from amnesty to variance.

24 I would like to just start -- remind
25 this Board that we're proceeding pursuant to 138-22.

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1 If I could read it, the underlying purpose for this
2 legislation was to permit the creation of accessory
3 apartments to maintain a supply of small rental or
4 owner-occupied housing units designed to meet the
5 needs of persons, young and old, of moderate income
6 and to provide economic support for owners. They do
7 provide in their code -- you do provide in your code
8 that the owner has to live there which we comply
9 with.

10 To go over the standards of area
11 variances here, the first one -- well, first, I want
12 you to know it is an area variance so it is a lesser
13 standard. I'm not going to insult your intelligence
14 by saying 40 to 23 isn't large, but I am going to
15 suggest when I talk about the neighborhood that very
16 few of the properties comply with the one acre zone
17 and yet there are a lot of multi-families in the
18 area.

19 I don't believe that the 25 percent
20 to the 37 percent is necessarily substantial, in
21 fact, it's an apartment that's 48 feet too large and
22 it's just the layout of the apartment that makes it
23 such. So, I don't think there's a lot of compliance.
24 I think substantial is determined, in large part, by
25 the neighborhood which I will discuss in just a

1 minute.

2 We talked about obviating the need --
3 we could pull the kitchen. If this Board tells us we
4 have to we will. But, we're just trying to provide
5 the dignity and the independence for an adult woman
6 to have her own kitchen. The kitchen, by the way,
7 doesn't a boiler. It just has a stove top.

8 And if this Board will step back and
9 see that what we propose in the end which can be
10 substantiated by your zoning code enforcement officer
11 is two adult women living in a house of 2,400 square
12 feet which by no means, by any standards, is
13 excessive. So, I don't think there is any way to
14 beat our goals to obviate the need.

15 I'd like to talk to you about the
16 neighborhood. I did this with you last time. This
17 is the subject property here. This is a picture of
18 the house. The people who live in this house right
19 here, Hunt, the assessment card says there are two
20 kitchens. This is Mr. Snyder's house right here.
21 There were two kitchens. There are no longer two
22 kitchens, there's only one.

23 Number eight is Duran, a small piece,
24 multi-family, two kitchens, two different families.
25 Tuohy is a single family, a rather large majestic

1 colonial, single family. The other Tuohy house which

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2 is nearby provides for a single family house and a
3 cottage which apparently was destroyed or fallen into
4 disrepair and they're rebuilding as another dwelling.
5 Mr. Tuohy was here last time to oppose and I wonder
6 how someone who's so vehement to wanting single
7 family nature would be at the same time putting a
8 second dwelling on a small lot. And then the last
9 property I have is number three named Useted and
10 there are two dwellings on the property.

11 And then if you go a little bit
12 further down Sodom Road the argument is even stronger
13 in my opinion. There are nothing but multi-families
14 and commercial buildings on this strip of Sodom Road
15 which is very, very close to my client's house. So,
16 I think that the neighborhood is well defined and I
17 don't think there's any proposed change in the
18 neighborhood by letting Ms. Phillips' daughter live
19 in a 2,400 square foot house with the remnants or the
20 part kitchen that she enjoys now.

21 With regard to the environmental
22 conditions, I'd like to remind you that the Board of
23 Health has approved this application. There are no
24 environmental conditions. This is an application
25 that keeps a family together, I think consistent with

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1 your statute. This is not self-created. These are
2 problems caused initially by Mr. Phillips' death and
3 then by economics caused by her income.

4 So, we're looking for the relief
5 granted. I'd like to conclude by saying that this is

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6 a single mother. She's lived in the property for 30
7 years. She would like to stay in the community she
8 loves, but she needs the economic help and she would
9 like her daughter to stay within the property.

10 I think the law clearly encourages
11 that type of setup to help economically people who
12 are having a tough time making their mortgage
13 payment. Her mortgage payment, by the way, is \$1,400
14 a month and her taxes are \$3,500 a year.

15 267-B of the town law says you can
16 attach conditions to variances. In this case, we
17 would have no objection to you attaching a condition
18 that says from now it's just her daughter. If her
19 daughter moves out it reverts to a single family.
20 And 267-B says that the Board has the authority to
21 impose reasonable conditions consistent with the
22 spirit and intent of the statute so as to minimize
23 the adverse impact the variance may have in the
24 neighborhood. So, if the neighborhood thinks a third
25 party moving into Mrs. Phillip's house would somehow

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1 hinder the character of the neighborhood, you can
2 condition the variance to provide for just her
3 daughter.

4 I think that if you take the
5 balancing test, which is another criteria that this
6 Board is duty bound to follow, the benefit to my
7 client far, far exceeds any detrimental effect to the
8 neighborhood. And I think this is the means by which
9 this Board could see that this is just a single woman

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10 trying to make ends meet, not tax the land, not
11 jeopardize the land and grant this variance.

12 On May 11th, after our first meeting,
13 I sent a letter to you trying to recap those things
14 that I thought this Board was interested in hearing.
15 I emphasized again in my letter that this was a
16 strong, strong multi-family neighborhood. That this
17 Board, Mr. Harper, your zoning enforcement officer,
18 can enforce the condition we seek without any
19 problem. We would submit an affidavit on an annual,
20 bi-annual basis saying that she's still residing
21 there, open up our house to an inspection by your
22 zoning enforcement officer.

23 I stress the difference in the
24 applications between then and now. That it was for
25 amnesty, that it was for third parties to be able to

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1 rent there as opposed to now. And I also would like
2 to talk to you briefly about the previous conduct
3 that was discussed by Mr. Tuohy last time. We're
4 going to tell you honestly that my client did rent
5 out to people in the 80's and 90's without authority
6 from the Board. She did rent to a carpenter to rent
7 her garage for supplies. Desperate people do
8 desperate things to make mortgage payments and that's
9 our excuse or if it is an excuse to this Board. So,
10 with the balancing test that I'd ask this Board to
11 conduct, I would ask you to conclude that under the
12 circumstances a variance could and should be granted
13 to my client. Thank you.

14 MR. COLELLO: When was the date your
15 client came before this Board for the amnesty? Do
16 you remember the date?

17 MR. SHILLING: Yes. I know it was
18 2000. I have the minutes.

19 MR. VINK: July 17th of 2000.

20 MR. COLELLO: 2000?

21 MR. SHILLING: July 17th, 2000.

22 MR. COLELLO: Do you have any
23 questions of the applicant? Do we have any questions
24 or comments from anyone in the audience? I can't see
25 everybody, that's why I'm moving around.

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1 I have a question and I'm not going
2 to sound nice, I'm sorry, but it's not going to be
3 nice. Here's my problem with this. I understand
4 your argument. Here's where, personally, I don't
5 have a problem with the fact that I agree with you, a
6 lot of the properties in that area are multi-family.
7 So, I'm not concerned with the character of the
8 neighborhood rules personally. I'm concerned with a
9 situation where -- again, we've all made mistakes and
10 desperate people do desperate things, I understand
11 that. But, in the 80's and 90's there were people
12 moving in and out of the place. I don't know about
13 the rent, but what troubles me is that in 2000 the
14 applicant came before this Board looking for amnesty.
15 It was denied and what changed? Nothing. It was
16 like okay.

17 MR. SHILLING: You mean what's

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happened subsequent to then?

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MR. COLELLO: Yes. Well, let me give my impression and then you can tell me how you feel. It's like, okay, you said no but, you know, I don't care, I'm going to do whatever I want to do and that's what's going on.

And now you tell us that well, okay, grant her a variance only subject to her daughter

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living there which in theory might sound good, but in reality that's an enforceable nightmare that's never ever going to be enforced, never in two lifetimes, okay.

Here's what's going to happen and I don't have a crystal ball, but what's going to happen is she's going to sell her house. The realtor is going to see the other pseudo kitchen. Next thing you know it's going to be marketed as a multi-family house. Next thing you know everyone is going to forget about the rules, the variance is subject to only her daughter living there, and some guy from Yonkers is going to come up here, buy this house and he's going to have seven people living in the other apartment, okay, and that's unfortunately a horror story that's happened too many times.

And here's my other opinion and then I'll shut up. I'm totally convinced if we deny this, you think her daughter is moving out?

MR. SHILLING: She's not moving out. She'll remove the kitchen, though.

22 MR. COLELLO: You know what, okay,
23 but she's not going to be homeless. Her daughter is
24 still going to live with her. She's still going to
25 live with her daughter. Is the stove going to go

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1 out? Call me when it's on the front steps, but I
2 don't believe it will ever be there.

3 MS. PHILLIPS: It has to because he's
4 going to come see it.

5 MR. COLELLO: Okay. It has to, but I
6 have to tell you in 2000 you weren't suppose to rent
7 it anymore. This Board denied your amnesty, but that
8 didn't happen.

9 MS. PHILLIPS: You said I was going
10 to get it.

11 MR. SHILLING: That's all right.

12 MR. COLELLO: Who said you were going
13 to get it?

14 MS. PHILLIPS: You told me.

15 MR. FROESSEL: Although the town law
16 permits us to grant conditions, the Court of Appeals
17 case, St. Onge 1988, any conditions we impose have to
18 be related to the land, not to the occupants of the
19 land. The Court of Appeals said although a local
20 zoning board may impose appropriate conditions and
21 safeguards in conjunction with a change of a zone or
22 grant a variance for a special permit, those
23 conditions must be reasonable and relate only to the
24 real estate involved without regard to the person who
25 owns or occupies it. We can't grant that condition.

1 MR. SHILLING: Well, may I address?

2 MR. COLELLO: Please.

3 MR. SHILLING: First of all, shortly
4 after her denial, I don't know the time frame, she
5 consulted us and retained us to proceed on a
6 variance. And we went in and we actually submitted
7 before you what we thought was a re-hearing and then
8 we pulled back and we said wait a minute now, if they
9 went in for amnesty and now it's a variance, it's a
10 different application, we withdrew. We then
11 resubmitted. We went before -- and, by the way, it
12 wasn't a day after submission, but the delay was more
13 attributable to me than anything.

14 We went before the planning board.
15 The planning board ultimately returned it. So, I'm
16 not going to tell you that we got the decision and
17 did what the Board instructed us to do, but I am
18 going to say that there was movement all throughout
19 this time period of getting to this point.

20 Now, you say it's a supervisory
21 nightmare and I say your local law then is a
22 supervisory nightmare because your law says
23 specifically that it's got to be owner occupied. So,
24 that each and every time Mr. Harper gives permission
25 for an accessory apartment or effectively looks to

1 see whether they're in compliance, the law envisions
2 him looking into who's there and who's not there,

3 whether it's owner occupied or whether it's not. In
4 fact, Mr. Harper has sent Ms. Phillips letters
5 throughout. So, I think he's been on top of it and I
6 think it's easily supervised.

7 With regard to the conditions, I
8 firmly disagree with Mr. Froessel. You can attach
9 conditions that are attached to the property. You're
10 nodding your head. I didn't nod my head at you. I
11 believe you can attach conditions as long as they're
12 related to the applicant and the applicant's land.
13 This is clearly a smaller piece. It's not an acre.
14 The condition that you impose, you could limit it to
15 one and you can limit it to the blood relationship of
16 the applicant, in my opinion.

17 MR. FROESSEL: In my opinion, the
18 Court of Appeals said no.

19 MR. SHILLING: I understand, but
20 there's been distinctions and difference of that case
21 since 1988. This is 2006.

22 MR. FROESSEL: Cite some of them to
23 me. I'd be happy to consider it. Bring me some of
24 those cases. I'd be happy to read them.

25 MR. SHILLING: Mr. Froessel, be fair

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1 with me. You're bringing it up for the first time
2 today. I didn't know it was an issue for you. I
3 don't expect -- I wouldn't show you a case and expect
4 a refutation of it immediately. Please be fair with
5 me. I'm being fair with you.

6 MR. FROESSEL: That's fine. You want
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7 an adjournment?
8 MR. SHILLING: I do now.
9 MR. FROESSEL: Okay.
10 MR. COLELLO: Do we have any other
11 questions?
12 MR. COSTELLO: No.
13 MR. COLELLO: Any other final
14 comments you would like to make?
15 MR. SHILLING: No thank you.
16 MR. COLELLO: Okay. Do you feel
17 you've had an adequate opportunity to state your
18 case?
19 MR. SHILLING: Yes, I do.
20 MR. COLELLO: We will close the
21 public hearing. Please have a seat.
22 MR. SHILLING: Thank you.
23 MR. COLELLO: I'll open it up to any
24 discussions.
25 MR. COSTELLO: Although Mr. Shilling

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1 said it several times that there's a clearly
2 different request, to me it's substantially the same
3 request that was made in 2000. And the net result
4 will be if we grant the variance that there will be
5 an accessory apartment which is what the original
6 request was. It's a different argument, but it's the
7 same request, in my view.
8 MR. COLELLO: I think it's -- I think
9 it's a different application in the fact that it's
10 procedure, one was for amnesty, one was for variance

11 so, yes, but I think you're absolutely right. The
12 net result is, no matter how we look at, it's the
13 same application.

14 No other comments? Any questions?

15 I'll entertain any motions either in
16 favor of or opposed to the application.

17 I would like to make a motion to deny
18 the application. Do I have a second?

19 MR. COSTELLO: Second.

20 MR. COLELLO: I'll address the
21 criteria.

22 Whether an undesirable change will be
23 produced in the character of the neighborhood; I
24 don't think it will. I think obviously it's an
25 apartment inside of a home. I don't think it will

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1 have a drastic change. It's not a huge apartment.
2 It's not an apartment you'd put 10 people in or
3 anything like, so I don't think it will have an
4 undesirable change to the character of the
5 neighborhood.

6 Whether the benefit sought by the
7 applicant can be achieved by some feasible method
8 other than a variance; well, I think it can. I think
9 what happens is that we have a clear request from the
10 applicant to allow her daughter to live with her and
11 to pay rent. Well, the rent is something between
12 mother and daughter. It has nothing to do with this
13 Board in regard to that. We're certainly not taking
14 the daughter and asking her to leave the apartment or

15 the house and not live with her mother. What we're
16 saying is that we really don't want to create another
17 accessory apartment or a situation that is
18 unmanageable at best by our building department.

19 Whether the requested variance is
20 substantial; I think it's somewhat substantial in
21 regard to we don't have the square footage of the
22 land in regard to the apartment, so I think that
23 could be somewhat substantial.

24 Whether the proposed variance will
25 have an adverse effect or impact on the environmental

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1 conditions; I think the Board of Health would have
2 taken care of that so I'm not worried about that.

3 And whether the alleged difficulty
4 was self-created; well, absolutely it's self-created.
5 It can't be anything else but self-created. Again,
6 this apartment has been rented for a number of years.
7 The applicant was asked -- you know, was told that
8 you couldn't do it; came in approximately six years
9 ago, asked for amnesty, was denied amnesty by this
10 Board. It's still rented. I understand it's her
11 daughter. I don't want to impose any more hardship
12 on her but, again, I think we're not asking the
13 daughter to move out of the house. We're just saying
14 we can't make this a legal apartment on this basis,
15 in my opinion.

16 So, with that said, roll call vote.

17 We'll start with you, Joseph.

18 MR. CASTELLANO: In favor.

19 MR. COLELLO: Jack.
20 MR. GALLAGHER: In favor.
21 MR. COLELLO: Tim.
22 MR. FROESSEL: In favor.
23 MR. COLELLO: Tom.
24 MR. COSTELLO: In favor.
25 MR. COLELLO: Kevin.

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1 MR. SHEIL: In favor.
2 MR. COLELLO: Paul.
3 MR. VINK: In favor.
4 MR. COLELLO: So, the motion has been
5 made and passed denying the application.

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7 * * * * *
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11 * * * * *

12
13 MR. COLELLO: Okay. Moving on.
14 Number three, Tricia Gi vaudan.
15 MR. FERGUSON: I'm Barry Ferguson and
16 I'm representing her and we're looking for a
17 variance.

18 MR. COLELLO: You were sworn in last
19 month; right?

20 MR. FERGUSON: Yes. It's a
21 preexisting nonconforming lot. We've had been --
22 these are the pictures of where --

23 MR. COSTELLO: Mr. Ferguson, could I
24 interrupt you for a moment? For anyone else who has
25 an application, if you could put the mailings in

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1 order of the -- in the order that they're listed on
2 the listing that you have of the names and addresses,
3 it will facilitate checking them once you come up
4 here and submit your application. Thank you.

5 MR. COLELLO: Go ahead.

6 MR. FERGUSON: We had gone to the
7 building department. They had told us that we had
8 come in originally just for a preexisting
9 nonconforming use. They had told me that the
10 setbacks were on the side line here. We could have
11 20 feet and the additional difference of 50 or
12 whatever could be over here.

13 Then Mr. Harper had seen it and said
14 that this is now the front setback because this is
15 the closest point to Route 22. And, originally, I
16 think the building department was saying that this
17 was, like, our front setback because of the driveways
18 and Ron says it has to be the other. So, now we're
19 looking for a side variance too.

20 And, basically, on that lot that is
21 the best place to lose minimal windows and the best
22 space to put that addition. It doesn't interfere
23 with driveways, septic or anything where it is. And,
24 again, it's in a tight corner of the property. We
25 have a big piece of property of two acres but, of

1 course, that's where the house has been built.

2 MR. COLELLO: Do you have any
3 pictures?

4 MR. FERGUSON: Yes. Basically, this
5 is the house that's there. We want to put the
6 addition right here, just stop before it comes out
7 past the porch and wraps around. This porch will be
8 torn down so that it isn't there, only part of it
9 will stay.

10 MR. COSTELLO: Can I have a copy of
11 the map? If I can, for the members of the Board who
12 may have not been here last month, this is a piece of
13 property, a parcel that has two structures on it and
14 it's physically located to the rear of the Virginia
15 Woods Condominium up on 22. If you've never driven
16 into Virginia Woods and gone back there you probably
17 wouldn't even know it's back there. And the building
18 that is requesting the variance on is the one closest
19 to Virginia Woods.

20 MR. FERGUSON: And Virginia Woods --
21 the closest building is approximately 200 feet or so
22 -- 250 feet away. Their actual garbage dumpsters are
23 right here which is probably 50, 75 feet away which
24 we don't have a problem with that anyways. No
25 windows or anything face from the condos to us.

1 Basically, the existing house is
2 about 1,000 square feet. So, they want to add on a

3 family room entryway to come in and an office which
4 is actually for his ham radios and stuff basically.
5 That's pretty much it. That's what we want to do.
6 There's really no other place on the lot to put it
7 because it's just everything is jammed tight to the
8 corner.

9 Originally, we just thought we needed
10 a variance to come in just because it was preexisting
11 nonconforming with the two houses and now, I guess,
12 he's saying it's the residential or the zone for
13 commercial condominium thing.

14 MR. GALLAGHER: Tom, could I see that
15 drawing, please? Thank you.

16 MR. FERGUSON: I have more of those
17 if you need more.

18 MR. COSTELLO: Can you tell us why
19 the addition couldn't go at least as far away from
20 the property line as the existing structure?

21 MR. FERGUSON: Well, basically the
22 septic and stuff is over here. The driveway and
23 everything is right here. And right now in order to
24 get a decent size room we had -- like I said, we had
25 come and they had told us we could have 20 feet on

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1 the sides so we set it back six inches from that.

2 We only found out after we had plans
3 drawn and stuff and came and applied that we got the
4 letter from Ron saying that it wasn't that way, that
5 this was going to be like that. So, the whole thing
6 was predicated and designed on what we were told we

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7 could do we thought and then we found out it's the
8 wrong thing. So, now to move it -- the windows on
9 the other side of the house here -- where is it --
10 over here you'd lose, like, these windows here and
11 then there's windows on the side. You would lose,
12 like, this window and this is where all the light is
13 and actually you'd cut yourself off for having an
14 entryway right here.

15 Right now it comes in and you have
16 this nice entryway. This is the opening to the
17 house. This is the entry now. You come in, this
18 would be the new entryway and this would be the new
19 family room and then the office. So, it's centrally
20 located and you have a very small kitchen and living
21 room here and then there's a spiral stair and a stair
22 on the outside that goes up to a loft bedroom and a
23 bath upstairs.

24 MR. COLELLO: So, the net result is
25 we need one variance; correct?

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1 MR. FERGUSON: That's it.

2 MR. COLELLO: Of approximately 15
3 feet.

4 MR. FERGUSON: Everything else was
5 kept in. We had thought we kept that in too, but
6 unfortunately we hadn't.

7 MR. COLELLO: Any questions or
8 comments from anyone in the audience? Any questions
9 from the Board members?

10 Again, the obvious stated because, I

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11 guess, the address is Route 22; right?

12 MR. FERGUSON: That's it. That's
13 what they say, you know, so ...

14 MR. COLELLO: Even though you're
15 probably -- can you even see 22?

16 MR. FERGUSON: No, you can't. And
17 everything else around this is all state land. So,
18 we're bordered by the state and then the condos, so
19 that's all that's ever going to be there.

20 MR. COLELLO: Do we have any other
21 questions of the applicant? Anybody?

22 MR. FERGUSON: Actually, those
23 pictures too were taken back when the trees were just
24 coming out. Now you probably couldn't see the condos
25 standing there.

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1 MR. COLELLO: You're request is on
2 what side of the property? That would be the --

3 MR. FERGUSON: Right hand.

4 MR. COLELLO: -- west side?

5 MR. FERGUSON: West side, yes.

6 MR. COLELLO: Okay. Do you think
7 you've had a fair and adequate opportunity to state
8 your case?

9 MR. FERGUSON: Yes, I do.

10 MR. COLELLO: Great. Take that back.

11 Again, the applicant is requesting a
12 15 foot variance from the front -- relief from the
13 front yard setback requirement or the west side of
14 the property. I'll entertain any motions either in

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15 favor of or opposed to the application.

16 MR. FROESSEL: I'll make a motion to
17 grant the applicant a 15 foot variance from the front
18 yard setback requirement for construction of the
19 proposed addition.

20 MR. COLELLO: Do I have a second?

21 MR. VINK: Second.

22 MR. COLELLO: Seconded by Paul.

23 Address the criteria, please.

24 MR. FROESSEL: Whether an undesirable
25 change will be produced in the character of the

85

1 neighborhood or a detriment to nearby properties will
2 be created by the grant of the variance; no, I don't
3 think so. I went up and took a look at the property.
4 It's pretty well set back in the woods even though
5 the property line is close. Looking at the survey if
6 you look at the tree line and where Virginia Woods is
7 located, I really don't think this is going to make
8 really any change, at all, for anybody.

9 Whether the benefit sought by the
10 applicant can be achieved by some feasible method
11 other than a variance; arguably as Tom said, you
12 could possibly move the addition over although the
13 applicant demonstrated practical reasons why that
14 doesn't really work. And also having viewed the
15 property, I can tell you that it slopes down pretty
16 steep heading east down from the house which might
17 make that a bit more difficult.

18 Whether the requested variance is

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19 substantial; it's 15 feet. Arguably, it is. I think
20 it's mitigated by the fact that it borders the
21 condominium development which is some distance away
22 and by the dense tree line between the properties.

23 Whether the proposed variance will
24 have an adverse effect or impact on the environmental
25 conditions in the neighborhood or district; we

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1 haven't heard any evidence of that.

2 Whether the alleged difficulty was
3 self-created; arguably it is to the extent that they
4 want to put the addition on the house. But, again,
5 as I mentioned before, I think that the other factors
6 that I mentioned mitigate that.

7 MR. COLELLO: Thank you.

8 Okay. Roll call vote. Paul.

9 MR. VINK: In favor.

10 MR. COLELLO: Kevin.

11 MR. SHEIL: In favor.

12 MR. COLELLO: Tom.

13 MR. COSTELLO: In favor.

14 MR. COLELLO: Tim.

15 MR. FROESSEL: In favor.

16 MR. COLELLO: Jack.

17 MR. GALLAGHER: In favor.

18 MR. COLELLO: Joe.

19 MR. CASTELLANO: In favor.

20 MR. COLELLO: And I'm in favor as
21 well. Your variance is approved by a seven to zero
22 vote.

23 We don't have any forms; do we?
24 MR. COSTELLO: No.
25 If you go down to the building

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1 inspector tomorrow and have them call Mr. Colello and
2 he will validate that it was received.

3 MR. FERGUSON: Okay.

4 MR. COLELLO: That's in case you want
5 to get your permits tomorrow or something like that
6 because it's going to be a little bit of time before
7 the minutes and everything to get down there.

8 MR. FERGUSON: Okay.

9 MR. COLELLO: If you're going to wait
10 a week, you don't have a problem, but if you want to
11 get your permits tomorrow --

12 MR. FERGUSON: Not necessarily. I
13 can wait a week, that's not a problem. I may just
14 stop in there and let them know anyways.

15 MR. COLELLO: Thank you. Good luck.

16 We would like to take a 10 minute
17 break. We'll resume in 10 minutes.

18 (Whereupon, a short recess was taken
19 by all parties.)

20 MR. COLELLO: Okay. Could I have
21 your attention, please? We have six more items on
22 the agenda. Let me explain our procedures. We very,
23 very, very, very rarely vote on an application that
24 evening and the reason being is we like to open up
25 the application, hear a little bit about it and then

1 try to go see it for the next month, and that's
2 always been our procedure here.

3 Our rules dictate that we can't open
4 up an application after midnight. Now, what we want
5 to make sure is is that we open up every application
6 tonight because if we don't open the application then
7 you have to go through that tedious and expensive
8 procedure of re-mailing and things like that which we
9 don't want anyone to have to do.

10 So, what we're going to do is we're
11 going to move along pretty quickly now and what we'd
12 like to do is to call you up, have your mailings in
13 order in conjunction with your affidavit listing all
14 the people so it's easy for us to make sure that the
15 mailings are in order. We'll hear a little bit about
16 the application, sort of the treetop version, ask you
17 a few questions and then we'll move on to the next
18 one so we can open them all up and we'll carry them
19 over to next month because we want to make sure we
20 open the public hearing on every application. Any
21 questions on that?

22 Moving on, Matt and Sharon Scott.

23 MR. COSTELLO: Do you have the
24 mailings?

25 MRS. SCOTT: Yes, we do and they are

1 in order.

2 MR. COSTELLO: Okay. That's good.
3 I'm going to have to take that.

4 MRS. SCOTT: Yes, that's all yours.

5 MR. COSTELLO: Would you raise your
6 right hands? Do you swear the testimony that you're
7 about to give is the truth, to the best of your
8 knowledge?

9 MR. SCOTT: I do.

10 MRS. SCOTT: Yes.

11 MR. COSTELLO: Would you state your
12 names for the record?

13 MR. SCOTT: Matthew Scott.

14 MRS. SCOTT: Sharon Scott.

15 MR. COSTELLO: Thank you.

16 MR. COLELLO: If you could walk us
17 through your application?

18 MR. SCOTT: Sure.

19 MRS. SCOTT: Sure. Well, we don't
20 have an attorney.

21 MR. SCOTT: I'll let the boss do it.

22 MRS. SCOTT: Okay. Let's see, we
23 would like to put a four season room conservatory on
24 our existing deck. So, let's see, we got -- we need
25 a nine foot variance. We have existing surveys that

90

1 were done. The house was renovated many years ago.
2 It started off very, very small and they did a major
3 renovation before we bought it and they got all of
4 these existing variances.

5 Okay. So, what we are looking for is
6 on this right side setback. The required is 20 feet.
7 We currently have 12.04 and we need nine.

8 MR. COLELLO: Could I see that?

9 MRS. SCOTT: Yes.

10 MR. COLELLO: Okay. So, you're not
11 getting any closer to your property line; correct?

12 MR. SCOTT: Correct, from the deck.

13 MR. FROESSEL: Well, the actual
14 setback will be less, application does not include a
15 dimension from the nearest point of the deck to the
16 sideline.

17 MRS. SCOTT: Right, we will be
18 getting closer and we got that dimension since then.
19 It's nine feet. See, when this -- it appears as
20 though the prior owner, in order to do this whole
21 renovation, had to purchase -- we live in Vails Grove
22 and it's been approved by them. But, they bought
23 this extra -- these extra shares because when they
24 did the renovation they were coming over like this
25 far.

91

1 MR. COLELLO: Okay.

2 MRS. SCOTT: Now, when you square off
3 the deck it's -- we need like nine feet instead of 12
4 to the property line.

5 MR. COLELLO: Okay. Can you just
6 show us what it's going to look like?

7 MRS. SCOTT: Yep. This is --
8 actually it's -- this is the architectural rendering.
9 Let's see what the view might look like from the
10 deck. This is the ceiling. This is the roof. You
11 know, it's funny, I have something off the internet,

12 it's not our exact house but it actually looks
13 exactly like --

14 MR. COLELLO: This is what it's going
15 to look like exactly; right?

16 MRS. SCOTT: That's the architectural
17 rendering.

18 MR. COLELLO: And it's made of --

19 MR. SCOTT: Glass.

20 MR. COLELLO: All glass?

21 MR. SCOTT: Yes.

22 MRS. SCOTT: Yes.

23 MR. COLELLO: Glass roof?

24 MRS. SCOTT: Yep. This is not our
25 house. That's exactly what's it going to look like.

92

1 It's almost identical to that. So, it's just going
2 to sit on the existing deck.

3 MR. COLELLO: All right.

4 MR. COSTELLO: Mr. Chairman, the
5 mailings are in order.

6 MR. COLELLO: Thank you.

7 MR. SHEIL: Could I see that, please?

8 MRS. SCOTT: Yes.

9 MR. COLELLO: There's a few of these
10 in town.

11 MRS. SCOTT: Other conservatories?

12 MR. COLELLO: Yes, very similar to
13 this on -- is it Old Route 6, the one that goes
14 behind the Jehovah's Witnesses between --

15 MR. SCOTT: Old Mill Town.

16

MR. VINK: Old Mill Town.

17

MR. COLELLO: Old Mill Town. I'm

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trying to remember the name. I know the people that

19

own the house too. I'm just having a senior moment

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here, but they have one. Drive by it someday. It

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looks very nice and she's a music teacher so that's

22

probably what they're using it for. It's beautiful.

23

MRS. SCOTT: That's what we're hoping

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because obviously it's going to be facing the lake.

25

Do you want to keep this in the file?

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It's not our house, but that's really --

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MR. COSTELLO: Sure.

3

MR. COLELLO: Do you have any other

4

copies of this or is this your only copy?

5

MRS. SCOTT: You can keep that.

6

MR. SCOTT: It's our only copy.

7

MR. COLELLO: How about next month

8

bring it back with you and give us a copy because I

9

don't want to lose this?

10

MRS. SCOTT: Okay.

11

MR. COSTELLO: Do you need the

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photos?

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MRS. SCOTT: No. That I just got off

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the internet. No, I think they're all probably for

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you guys. No, that's fine.

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MR. COLELLO: And you do have the

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approval from the Vails Association?

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MR. SCOTT: Yes.

19

MRS. SCOTT: Yes. That letter should

20 be in the packet, if not I have one.

21 MR. COLELLO: Let me see if it's
22 here.

23 MRS. SCOTT: Yeah, it was, I believe.

24 MR. COLELLO: It's not in here, but
25 let me see that for a second.

94

1 MRS. SCOTT: Is the survey -- do you
2 have a copy? You might as well keep a copy of the
3 survey because it's a fire road that it's on.

4 MR. COLELLO: Okay. Do you have any
5 questions for us?

6 MR. SCOTT: No.

7 MRS. SCOTT: I don't think so.

8 MR. COLELLO: Do we have any other
9 questions?

10 MR. FROESSEL: My only question is
11 you're sure about that nine foot distance?

12 MRS. SCOTT: Yes, because I have an
13 original survey and they say if you put a special
14 ruler on it and, you know, the dimensions -- if you
15 have the real survey and a special ruler it tells you
16 and that's what Classic Conservatory did.

17 MR. FROESSEL: Okay. I just want to
18 make sure because I don't want to have a situation
19 where you ask for nine, we give you nine and it turns
20 out when you build it it's eight and you have a
21 problem with the deck part.

22 MRS. SCOTT: Right.

23 MR. COLELLO: Do we have any

24 questions from anyone in the audience?

25 Okay. So, our next meeting is -- I

95

1 don't have the date. The third Monday in July. I
2 don't have the date, though. Anyone have a calendar
3 with them?

4 MR. FROESSEL: The 17th.

5 MR. COLELLO: Thank you. And we
6 start at 8:00 o'clock right here. You'll probably be
7 either number one or two on the agenda.

8 MRS. SCOTT: Okay.

9 MR. COLELLO: The mailings are in
10 order. We'll see you next month.

11 MR. SCOTT: Thank you very much.

12 MRS. SCOTT: Thank you.

13

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20 MR. COLELLO: Okay. Moving on, Karl
21 and Jean Leuder.

22 MR. COSTELLO: Do you have the
23 mailings?

24 MR. LEUDER: Yes. I think I
25 submitted -- I think I should have been on the agenda

96

1 last month. They told me that I did not have to
2 attend the work session. I think they told me by
3 mistake, but anyway --

4 MR. COSTELLO: I need to have the
5 originals. Do you have the affidavit that you --

6 MR. LEUDER: I had packets for
7 everybody already submitted.

8 MR. COSTELLO: You're supposed to
9 have an affidavit notarized that you've done the
10 mailings. It was in your package.

11 MR. COLELLO: Let me see that for a
12 minute. It might be in there. Yes, this is it.

13 MR. LEUDER: I had packets for
14 everybody with the mailings and everything else
15 that's why I was kind of surprised when they said
16 that.

17 MR. COLELLO: Do you have a copy of
18 the application?

19 MR. FROESSEL: I have it from last
20 month, yeah.

21 MR. COLELLO: Is there a copy of the
22 affidavit in yours?

23 MR. COSTELLO: You weren't here last
24 month; were you?

25 MR. LEUDER: They told me that I

97

1 didn't have to be.

2 MR. FROESSEL: No. If he wants to
3 sign it, swear that he did it and show me photo I.D.,

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4 I'll notarize it.

5 MR. COLELLO: The procedure is that
6 you must give us a sworn notarized affidavit stating
7 that you've done the mailings. Now, we have the
8 mailing, but we also need this. Tim is a notary, he
9 can do this for you.

10 MR. LEUDER: Okay. Actually, we did
11 it, but I don't know where it is. I don't have no
12 idea where it is unless there's something else --
13 could this be it?

14 MR. FROESSEL: That's it.

15 MR. COLELLO: That's it.

16 MR. LEUDER: I'm not the
17 administrative in the house. I got an accountant to
18 do that.

19 MR. COLELLO: Okay. So you have an
20 original. Could you walk us through your
21 application, please?

22 MR. LEUDER: Okay. I'm looking for
23 -- the existing garage -- we have two buildings on
24 our property, the main residence and another garage
25 about 50 feet below the existing residence. The

98

1 existing garage was built prior to the enactment of
2 the zoning laws back in 1955 and it's only eight and
3 five inches feet from the existing road now, the
4 front corner, which prohibits the enlargement of the
5 nonconforming structure. I don't want to change the
6 structure. I want to add a deck to the back of the
7 structure which can't even be seen by the road or

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8 anybody passing by it to give me access to storage
9 space over the garage. It's not -- it's not anything
10 for residence or anything like that. It's just
11 storage space.

12 MR. COLELLO: So, does the garage
13 have an attic type thing?

14 MR. LEUDER: It's not an attic.
15 Well, yeah, it would be storage space. It's like
16 attic space, I guess.

17 MR. COLELLO: And how do you get up
18 there now?

19 MR. LEUDER: Right now there's just a
20 door -- a door in the back. It's about six feet
21 above ground level. It doesn't have -- that's why I
22 want to get it done.

23 MR. COLELLO: And it goes nowhere?

24 MR. LEUDER: It goes nowhere.

25 MR. COLELLO: It's bad for a step?

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1 MR. LEUDER: Bad for a step. Right
2 now I have a plank going in there so it's kind of a
3 hazard, first of all. But, as I say, there's no
4 water in the existing structure. There's minimal
5 electricity. It's just for storage space.

6 MR. COLELLO: So, do you have a
7 picture of what it's going to look like?

8 MR. LEUDER: I thought it was all
9 submitted. I did have and it was all designed --

10 MR. COLELLO: Well, in your defense,
11 our administrative assistant has gone away to Florida

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12 -- retiring in Florida -- so we're in sort of a state
13 of flux right now this month. So, I'm not saying
14 that you didn't. I'm saying we don't have it, that's
15 one of the issues.

16 MR. FROESSEL: When you submit stuff
17 to the building department, we don't talk, so
18 whatever you submitted to them we don't have.

19 MR. LEUDER: Ron Harper?

20 MR. FROESSEL: Yes.

21 MR. LEUDER: That's who I started
22 with and then he directed me through the process to
23 doing this.

24 MR. COLELLO: Do you have copies of
25 what it's going to look like?

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1 MR. LEUDER: Well, I can get them
2 from my contractor, he designed it. I'm assuming
3 that I can get that from him. It's nice.

4 MR. COLELLO: Okay.

5 MR. VINK: How big is it going to be?

6 MR. LEUDER: I'm going to say 10 --
7 about 10 feet wide and about 10 feet deep.

8 MR. VINK: The width of the garage?

9 MR. LEUDER: Not even quite the width
10 of the garage. It's about two-thirds of the width of
11 the garage and maybe equal going into a -- into a
12 hill.

13 MR. COLELLO: And it will be six feet
14 off the ground?

15 MR. LEUDER: At the door level. It

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16 goes -- I have a gradual climb so it goes right into
17 the hillside.

18 MR. COLELLO: So, to get there you'll
19 go around the back?

20 MR. LEUDER: I have steps going up
21 and it goes right into the garage.

22 MR. COLELLO: But the deck -- there
23 won't be any steps from the deck to the door?

24 MR. LEUDER: No.

25 MR. COLELLO: Right there.

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1 MR. LEUDER: No.

2 MR. COLELLO: So, you can carry stuff
3 in and store it?

4 MR. LEUDER: Absolutely.

5 MR. COLELLO: Okay.

6 MR. LEUDER: It's going to have -- it
7 will have railings around it so there's no -- no
8 reason for people jumping off.

9 MR. COLELLO: Do you have exact
10 measurements of where it's going in regard to the
11 property lines, et cetera?

12 MR. LEUDER: I had a survey and
13 everything was submitted to Mr. Harper.

14 MR. COLELLO: Okay.

15 MR. FROESSEL: Get us copies of
16 everything you submitted to him, that will be
17 helpful.

18 MR. COLELLO: We're going to need all
19 of that.

20 MR. LEUDER: And then I'm going to
21 have to wait another month to get the application
22 approved?

23 MR. COLELLO: Hopefully, we'll be
24 able to approve it next month, but here's what we're
25 going to need. We're going to need drawings or

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1 pictures, whatever you have of what it's going to
2 look like. Even though we'll go see it this month, I
3 would like to see what it's going to look like as a
4 finished product. We're going to need the exact
5 measurements of where it's going to go in regard to
6 the property lines.

7 MR. LEUDER: That's all been done.

8 MR. COLELLO: Okay. Bring it all in.

9 MR. LEUDER: Okay.

10 MR. COLELLO: And then we'll be able
11 to take it from there.

12 Any questions from anyone in the
13 audience?

14 MR. LEUDER: From the road, the way
15 we've got it designed, you won't even see that it's
16 there.

17 MR. COLELLO: Thank you. See you on
18 the 17th.

19 MR. LEUDER: Thank you.

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1 MR. COLELLO: Vi to and Denise
2 Vitulli. Did I say that right?

3 MRS. VITULLI: Yes.

4 MR. COLELLO: How you doing?

5 MR. VITULLI: Good. We have our
6 mailing receipts here.

7 MR. COSTELLO: Great. Could you
8 raise your right hands? Do you swear the testimony
9 you're about to give is the truth, to the best of
10 your knowledge?

11 MR. VITULLI: Yes.

12 MRS. VITULLI: Yes.

13 UNIDENTIFIED WOMAN: Excuse me, I'm
14 just wondering, you're not going in sequence.

15 MR. COLELLO: I think we are. We're
16 not?

17 UNIDENTIFIED WOMAN: No. Number
18 seven is Aman Estates.

19 MR. COLELLO: We have two different
20 agendas here. The one I'm working off of has Aman
21 Estates as number nine.

22 MR. COSTELLO: Who's representing
23 Aman Estates?

24 MR. HOLLIS: I am.

25 MR. COSTELLO: Any reason that you

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1 were put at the end of the agenda?

2 MR. HOLLIS: Pardon me?

3 MR. COSTELLO: Is there any reason
4 that you know that you were put at the end?

5 MR. HOLLIS: No. Other than there
6 was confusion as to whether or not we were on the
7 agenda or not and we had been taken off and I had
8 indicated to Mary Rhuda that I didn't want to be
9 taken off.

10 MR. COLELLO: Okay. Well, let's
11 follow this order that we have, okay, and we'll put
12 you on number nine.

13 MR. HOLLIS: Thank you.

14 MR. COSTELLO: I need the rest of the
15 information that goes with this.

16 MR. VITULLI: There should be a copy
17 in our packet that we submitted.

18 MR. COSTELLO: I need the affidavit
19 that you have notarized.

20 MR. VITULLI: I have that right here.
21 Here you go.

22 MR. COSTELLO: Great. Thank you.

23 MR. COLELLO: Okay. Walk us through.

24 MR. VITULLI: Sure. I would like to
25 get a variance for an existing fence. The fence was

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1 there when we purchased the house. The reason this
2 was brought to my attention is because we actually
3 applied for a permit to have a fence done on the
4 property line. We've actually adopted a rescue dog

5 from the Humane Society. We're trying to give it a
6 nice home. There's a lot of nice dogs in the
7 neighborhood.

8 So, we'd like to get a variance and I
9 have a copy of the site plan here if you would like
10 to take a look. It's for a little fenced in patio
11 area that's along side the home. A small stockade
12 fence there to shield -- I guess from the previous
13 owner had problems with plow trucks splattering snow
14 and so forth.

15 I have some photos that accompanied
16 the packet as well. I have to apologize for the
17 black and white, but that's all I had. This is the
18 view from the road of the stockade fence. This is
19 actually another view which it's basically covered
20 with brush. The fence is not really visible to the
21 eye. There's another shot there.

22 MR. COLELLO: Help us. Where are
23 those pictures taken from?

24 MR. VITULLI: Actually, if you look
25 right here, I'll show you the road in reference to

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1 Brewster -- actually Hickory Drive. There is my
2 neighbor's house here. So, basically I'm standing
3 probably right over here when I took the photo for
4 the stockade fence. There's brush that comes along
5 here, brush along here as well, and this is the view
6 from Lanning's house.

7 MR. COLELLO: Who?

8 MR. VITULLI: Lanning, Mr. Lanning.
Page 92

9 So, these are some of the shots. This is the actual
10 view right from the front yard from Hickory. So,
11 it's well shielded and pretty much not an eyesore.
12 This is the one little fence over here if you look
13 from this spot right there, that's the fence along
14 side that. That's from the Brewster Hill area there.
15 That's right along side the garage and there's a
16 group shot there.

17 MR. GALLAGHER: Let me see.

18 MR. COLELLO: So, help me out here.

19 MR. VITULLI: Yes.

20 MR. COLELLO: What you're

21 requesting --

22 MR. VITULLI: Is to keep the existing
23 fence that's there.

24 MR. COLELLO: This right here?

25 MR. VITULLI: Yeah, that right there

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1 and this little piece right there.

2 MR. COLELLO: You have no pictures of
3 this. You have pictures of this; right?

4 MR. VITULLI: Actually, I have
5 pictures of -- this is the brush covered fence. I
6 know --

7 MRS. VITULLI: It's there.

8 MR. VITULLI: It's there. This is a
9 piece.

10 MR. COLELLO: I understand.

11 MR. VITULLI: It's like behind the
12 bushes and all.

13 MR. COLELLO: But isn't that fence
14 this?
15 MR. VITULLI: No, that fence you see
16 right there --
17 MR. COLELLO: Is where?
18 MR. VITULLI: -- is looking at it
19 right here.
20 MR. COLELLO: Let me see that.
21 MR. VITULLI: This is my neighbor's
22 house, Marty's.
23 MR. COLELLO: Marty Lanning?
24 MR. VITULLI: Yes.
25 MR. COLELLO: His siding is up,

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1 that's good.
2 MR. VITULLI: Yeah, that was one of
3 the reasons for the fence.
4 MR. COLELLO: You should have put a
5 higher fence.
6 MR. VITULLI: I'm trying to keep the
7 fence.
8 MR. COLELLO: Okay. So, there's your
9 fence there.
10 MR. VITULLI: The little one that we
11 were discussing by the garage is that one right
12 there, that little fence that's covered by the --
13 MR. COLELLO: How long have you owned
14 the house?
15 MR. VITULLI: Since '98. I believe
16 if you look at the surveyor's map --

17 MR. COLELLO: That's good enough for
18 me. And this fence was there when you bought the
19 house?

20 MR. VITULLI: Yes.

21 MR. COLELLO: And obviously no
22 problems?

23 MR. VITULLI: I have repaired pieces
24 of it just to keep the integrity and keep it looking
25 nice but, yeah, the fence has been there since we

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1 purchased the house.

2 MR. COLELLO: So, you're going to
3 need two variances; correct?

4 MR. VITULLI: Okay. I wasn't sure on
5 the exact --

6 MR. COLELLO: Do you have your letter
7 of denial?

8 MR. VITULLI: Yes, it's in the
9 packet.

10 MR. COLELLO: I know, but I don't
11 have a packet.

12 MR. VITULLI: I'm sorry. Okay.
13 Here's your letter of denial.

14 MR. COLELLO: Thank you. You could
15 only go a maximum of three feet of height --

16 MR. VITULLI: Right.

17 MR. COLELLO: -- located in the front
18 yard, okay, and it extends 35 feet in. So,
19 technically, for example, this is -- that's 26.9.

20 MR. VITULLI: Yeah, that's right to
Page 95

21 the corner of the house. Even the house is --

22 MR. COLELLO: I understand. What I'm
23 getting at is technically all this fence here to
24 about here is too high. It can only be three feet
25 high.

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1 MR. VITULLI: Yeah, I know.

2 MR. COLELLO: And that rule is
3 designed to stop people from putting up these monster
4 fences in front of their houses to make it look
5 almost like a prison, so that's why the three foot
6 rule is there. And you also need a variance probably
7 from the side yard setback. Yeah. This should be
8 the east side, that's right -- no, that's the west
9 side.

10 I think there's three problems here.
11 Number one, this is supposed to be 35 feet off the
12 property line. What do you have here?

13 MR. VITULLI: Probably about five --
14 what's that, eight?

15 MR. COLELLO: That's eight. Well,
16 probably about eight, but I'm going to need real
17 measurements here.

18 MR. VITULLI: Okay.

19 MR. COLELLO: So, I'm going to need
20 exact measurements for this. I'm also going to need
21 exact measurements for this right here.

22 MR. VITULLI: Okay. That is 12
23 inches. That's one foot.

24 MR. COLELLO: Yes. I'm going to need
Page 96

25 the exact measurement of what the distance is between

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1 that fence and the property line. And then we don't
2 really need this because we have to go back 35 feet,
3 right, so we don't have to worry about the front
4 because it's just the first 35 feet of the property,
5 so that encompasses all of this. Okay.

6 MR. COSTELLO: The mailings are in
7 order.

8 MR. COLELLO: Thank you.
9 So, in essence, you need three
10 variances.

11 MR. VITULLI: Okay.

12 MR. COLELLO: You need a variance
13 from the front yard setback. You need a variance
14 from the east side of the property that's supposed to
15 be 35 feet and you need a variance from the west side
16 of the property because that's supposed to be 35
17 feet.

18 MR. VITULLI: From -- really
19 because --

20 MR. COLELLO: Because of the height.
21 Wait a minute. Hold on a second.

22 MR. VITULLI: That's not what
23 Mr. Harper --

24 MR. COLELLO: Well, here's what he's
25 saying, your fence application must be modified to

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1 show this reduced height and to show that the new six
2 foot high fence on the east side of the property will
3 be at least 35 feet from the property line.

4 MR. FROESSEL: From the front
5 property line.

6 MR. COLELLO: He said from the front
7 property line, I'm sorry. I apologize.

8 MR. VITULLI: Yeah, I was getting a
9 little confused.

10 MR. COLELLO: From the front property
11 line, so we need it here and we need it here. It's
12 getting late. I'm tired.

13 MR. VITULLI: Okay. So, I know that
14 this is one foot from the property line. I actually
15 roped the property line off.

16 MR. COLELLO: I also need to know
17 what is the distance between here, here and here and
18 here, see what I'm saying?

19 MR. VITULLI: Okay. Yeah.

20 MR. COLELLO: Meaning how much of
21 this fence is within the 35 foot front yard setback.

22 MR. VITULLI: Okay. That's no
23 problem.

24 MR. COLELLO: Because I got to tell
25 you, if that's -- because if I draw a straight line

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1 across if that's approximately 27 feet, your fence is
2 probably like 28, 29 feet.

3 MR. VITULLI: Right, because from
4 this corner, from here to here, which I have waiting

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5 for approval, there's 35 feet between here and here
6 measured out for the new fence being installed. So,
7 yeah, we're definitely within that range.

8 MR. COLELLO: Okay. And your new
9 fence is not going to get close to the 35 feet?

10 MR. VITULLI: No. No. No.

11 MR. COLELLO: But you still want to
12 leave this?

13 MR. VITULLI: I would like to, if I
14 could.

15 MR. COLELLO: What does this serve?

16 MR. VITULLI: That, I guess, from the
17 snow plowing from Brewster Hill when the trucks come
18 by, the splash and the over spray and so forth was --

19 MR. COLELLO: Hitting the cars?

20 MR. VITULLI: Yes. I believe the
21 previous owner put up that fence. It's more of just
22 a shield.

23 MR. COLELLO: Interesting. Okay.

24 MR. VITULLI: I don't know. I don't
25 know. I would like to try and keep the integrity.

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1 MR. COLELLO: Okay. Do we have any
2 other questions, anybody on the Board?

3 MR. FROESSEL: No.

4 MR. COLELLO: So, it's the front yard
5 setbacks we're looking at.

6 MR. VITULLI: Okay. So, I need to
7 take the measurements. Very good.

8 MR. COLELLO: The mailings are in

06-19-06 zoning board of appeals.txt
order.

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MR. COSTELLO: During the next month some of us may come by and take a look at your property. So, if you see people driving by slowly don't get worried.

MR. VINK: Don't sic the dog on us.

MR. VITULLI: Thank you very much.

MRS. VITULLI: Thanks.

MR. COLELLO: See you next month.

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MR. COLELLO: Okay. Brewster Honda.

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MR. COSTELLO: If I could swear you in? Do you swear the testimony you're about to give is the truth, to the best of your knowledge?

MR. BEANLAND: Yes.

MR. COSTELLO: State your name for the record.

MR. BEANLAND: Brian Beanland,

MR. COSTELLO: Thank you. Could you spell your last name?

MR. BEANLAND: B-e-a-n-l-a-n-d.

MR. COSTELLO: Thank you.

MR. COLELLO: Are you going to be

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13 speaking as well? You might be so we might as well
14 swear you in. Could you state your name for the
15 record?

16 MR. ROBERTSON: Charles Robertson,
17 R-o-b-e-r-t-s-o-n.

18 MR. COSTELLO: Do you swear that the
19 testimony that you're about to give is the truth, to
20 best of your knowledge?

21 MR. ROBERTSON: I do.

22 MR. COSTELLO: Thank you.

23 MR. COLELLO: Go for it.

24 MR. LIGUORI: Good evening. Michael
25 Li guori for Chip Robertson and Brian Beanland. 899

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1 Route 22 LLC is the owner of the property.

2 We're here on referral from the
3 planning board. We left here last year with a use
4 variance to permit the outside storage of new
5 unregistered automobiles in connection with the
6 Brewster Honda dealership that's located over here to
7 the left in the Village of Brewster. This piece is
8 in the Town of Southeast. It's a land-locked parcel
9 in the town. Access is through the northern most
10 Brewster Honda entrance and you enter there and you
11 drive around the back of the building, you make a
12 right, you go underneath the railroad trestle and you
13 come into the property.

14 I've drawn a blue line around the
15 property and that shows the area of current existing
16 disturbance that's historically been used in

06-19-06 zoning board of appeals.txt
17 connection with the use on the Brewster Honda piece.
18 And the area in the yellow here is the area that we
19 would like to continue to use which is -- this side
20 of the property is the front setback. This side is
21 being considered by the planning board to be the side
22 of the property. And this piece over here is within
23 the setback and is an area for proposed use
24 disturbance.

25 And essentially what's happened is

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1 we've gone to the planning board for site plan
2 approval to park the cars there and we've offered and
3 the planning board has allowed us to or not just
4 allowed us, but what we wanted to do is come out of
5 the wetlands setback. This green line here is the
6 100 foot line from the east branch of the Croton
7 Reservoir. So, what we've done is we've come out of
8 the 100 foot setback. We're proposing to continue to
9 use a portion of the previously disturbed setback and
10 we're proposing use of a portion of a new area of the
11 setback and that's to store cars in three rows.
12 There's going to be a row here, a row here and a row
13 here.

14 Now, we're in the MV-1 District. The
15 setbacks in the MV-1 district are 35 feet. The front
16 setback, we're requesting to use the entire front
17 setback. It's almost entirely previously disturbed.
18 We don't need to do any additional disturbance.

19 MR. COLELLLO: Michael, can I ask you
20 a question? I'm sorry to interrupt you.

21

MR. LIGUORI: Sure.

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MR. COLELLO: Define previously
disturbed. Does that mean you used to park cars
there before?

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MR. LIGUORI: We used to. Demarco

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1 Pontiac used to.

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MR. COLELLO: Okay. You make it
sound like God disturbed this property. He came
around and just raked it out and made it flat. Let's
just be very frank and say that's where we used to
park, now we want to go back and park where we used
to park before we had permission.

MR. LIGUORI: Fine. All right.
Well, we came out of the 100 foot setback. We want
to continue to park in here. We want to continue to
park in there and we want to park cars over there.

MR. COLELLO: Okay. Walk me through
that one more time. Show me -- there's the river.

MR. LIGUORI: Here's the river. The
river is on the property.

MR. COLELLO: I understand.

MR. LIGUORI: Okay.

MR. COLELLO: The highest -- the
northern most blue line, put your finger on it, what
is that line?

MR. LIGUORI: That is the line of the
area that we used to park cars in which is in the 100
foot setback.

MR. COLELLO: Okay. So, now the next

25 06-19-06 zoning board of appeals.txt
blue line is the 100 foot setback? That one.

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1 MR. LIGUORI: That's a green line.

2 That is the actual --

3 MR. COLELLO: That's green?

4 MR. LIGUORI: That is green. That is
5 the setback. That's the 100 feet.

6 We're proposing to no longer use
7 anything north of that green line. We're going to
8 install curb stops along that line; as a matter of
9 fact, along the entire perimeter of the area where
10 we're going to currently park cars. And that was
11 part of the planning board process was that we needed
12 to do something to delineate this area without
13 triggering some additional permits. We've come up
14 with the idea of taking curb stops and an iron stake
15 and staking them into the ground after we've had the
16 lines surveyed.

17 MR. COLELLO: Okay. The yellow is
18 where you're not supposed to park cars.

19 MR. LIGUORI: The yellow is within
20 the setback area. The setback comes down here,
21 that's the front setback, 35 feet. It follows over
22 here for the side setback which is 35 feet.

23 MR. COLELLO: So, what you're saying
24 is -- I'm not trying to be a wise guy. I'm just
25 going to put this in a way I understand it, I'm

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1 sorry, Michael. If we look at that map as being

2 perfect and, let's say, the north -- we'll call it
3 north, it's not, but let's call it north. What
4 you're saying is where we used to park cars in the
5 north, we're not going to park there?

6 MR. LIGUORI: That's right.

7 MR. COLELLO: We're not going to be
8 bad boys and park there anymore, but we want to have
9 permission to be bad boys and park on the south part?

10 MR. LIGUORI: That's correct. We
11 want to park in the setback. And the mitigating
12 factor -- the mitigating factor is the fact that for
13 the last, let's say, 20 years for purposes of parking
14 cars because the further we go back in history --
15 I've gone back. I've been through this with the
16 planning board. I've traced the historical use of
17 the property on the land records back to 19 -- back
18 to the 1800's, but 1932 I have solid evidence from
19 the use of the property by the Brewster Danbury
20 Lumberyard. So, we've established this historical
21 use of the property. And we would have come to the
22 zoning board to legitimize that use, but we decided
23 the use variance was better. It was beneficial to go
24 with the use variance than to establish the
25 preexisting use.

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1 MR. COLELLO: But understand that
2 Don, who I might say did a very good job when he came
3 before this Board, not that you don't, but he did a
4 very good job and he convinced this Board to give to
5 the applicant a use variance; right?

6 MR. LIGUORI: Yes.

7 MR. COLELLO: And the arguments,
8 correct me if I'm wrong, that you're using were the
9 same arguments that Don used which, rightfully so, to
10 get the use variance, if I remember correctly?

11 MR. LIGUORI: Well, parts of the
12 tests are the same.

13 MR. COLELLO: I understand that.

14 So, correct me if I'm wrong now, so
15 now you're getting a use variance which in 15 years
16 -- how many years variances do you think -- two or
17 three, under five, right, is that a fair statement?
18 In 15 years the Board had granted under five use
19 variances. Your client gets one, which I'm not
20 saying that he didn't deserve it, but they got one,
21 now what we want to do is move it, you know what I
22 mean, expand on that and get a variance on top of a
23 use variance.

24 MR. FROESSEL: And now you're looking
25 for an area variance; correct?

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1 MR. LIGUORI: Right. I know the
2 point. I mean, the point is -- maybe I'm wrong, but
3 you're saying hey, look, you already got a use
4 variance, I think you're asking for a lot.

5 MR. COLELLO: Yes.

6 MR. LIGUORI: But the law doesn't say
7 that.

8 MR. COLELLO: You have a right to
9 ask.

10 MR. LIGUORI: Of course we have a
11 right to ask, that's what we're supposed to do. But
12 we've gone to the planning board and they said, you
13 know what, we like what you're doing, we're happy you
14 came out of the setback, the half of the --
15 three-quarters of the --

16 MR. COLELLO: They said they're happy
17 you came out of the setback so they said it's good
18 that you go into another setback?

19 MR. LIGUORI: Well, we've come out of
20 the 100 foot wetlands setback which is, in this
21 scenario, way more important than this front and side
22 setback. This front setback is against the railroad
23 right-of-away. It impacts nobody. The only people
24 next to it are them on the other side of the railroad
25 right-of-away.

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1 Up here, the topography goes up
2 considerably to the back of the Scout Realty parcel.
3 There's no view of the property. They can see down.
4 There's no question about there's an area over here
5 they can see down on the property if there are no
6 leaves on the trees in the dead of winter. You can't
7 see it from Peaceable Hill Road. There is some
8 residences up here which could probably see the
9 property.

10 But, based on the fact that this area
11 has been used for, let's say, at least 20 years for
12 parking cars, we're really not asking for too much.

13 MR. COLELLO: Okay. I'll stop
Page 107

14 talking, but let me just say this: Just because it's
15 been used to park cars -- and I hate this word --
16 illegally because it never had the right to park cars
17 there, all right, that's not a -- in my eyes, that's
18 not a reason to say well, you've been doing it for 20
19 years, keep doing it.

20 MR. LIGUORI: Well, the point of
21 mentioning the 20 years is the fact that there's no
22 new disturbance in this area. It's previously
23 disturbed.

24 MR. COLELLO: Because you've been
25 parking cars on it. It's already flattened out

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1 because you've been parking cars on it, you know.
2 Okay. I'm not going to debate with you, but I'm just
3 telling you my gut feeling on this.

4 MR. LIGUORI: I know, but we need to
5 at least -- I just ask for the benefit of going
6 through the points of the test to prove --

7 MR. COLELLO: Go ahead. Next month
8 you will.

9 MR. LIGUORI: Okay.

10 MR. COSTELLO: Are you still parking
11 cars on the railroad right-of-way?

12 MR. LIGUORI: We don't have -- I
13 don't know. We've come off this property and onto
14 the Brewster Honda property. So, I know we've come
15 out of the area right after we got the use variance
16 and we park cars in the front of the property. I
17 don't know if we still have cars in the railroad

18 right-of-way.

19 MR. VINK: Didn't you have to remove
20 the cars?

21 MR. LIGUORI: Yeah, that was the
22 first thing we did after getting the use variance is
23 we had to pull every car out of there so it hasn't
24 been used.

25 MR. COSTELLO: I was there two weeks

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1 ago and the railroad right-of-way still has cars
2 parked on it.

3 MR. BEANLAND: That's not the area
4 that was -- all the cars were asked to be removed.
5 They were removed and they've been gone since. The
6 railroad right-of-way is on the village property. We
7 still use that to store cars -- temporarily store
8 them there.

9 MR. COSTELLO: Do you have permission
10 to park on that railroad right-of-way?

11 MR. BEANLAND: We've communicated
12 with the railroad throughout the last 10 years, it's
13 never been an issue.

14 MR. COSTELLO: So you don't have
15 permission.

16 MR. BEANLAND: In fact, when they
17 come to work they asked if it was okay for to us move
18 our cars so they can work on the railroad.

19 MR. COLELLO: Okay. I don't expect
20 you to have this number now, but for next month give
21 me a number of how many cars do you think you could

22 safely, the way you want to move them around, put on
23 it without the variance.

24 MR. LIGUORI: Okay.

25 MR. COLELLO: And how many cars --

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1 and I don't expect you to have that number now.

2 MR. LIGUORI: No. We have some
3 figures here.

4 MR. COLELLO: How many cars would you
5 put on that lot with the variance?

6 MR. LIGUORI: Okay. With the -- as
7 proposed from the planning board process, we'd be
8 able to fit roughly 120 cars. Without the variance,
9 we would lose a row which would be about 40 cars and
10 some over here, so we'd probably get about I'd say 75
11 to 80.

12 MR. COLELLO: Do we have any other
13 questions? Are there any questions of anyone in the
14 audience?

15 MR. FROESSEL: Let me just ask you a
16 question. I think I can read it off the easel, but
17 on the front setback you're talking about from going
18 from 35 to zero at that one point, right, and then on
19 the side it was 35 down to what?

20 MR. LIGUORI: 35 down to 15.

21 MR. FROESSEL: Okay.

22 MR. LIGUORI: And the only thing I
23 would like to note is that if there were a building
24 on the property and we were parking, you know --
25 let's say this was - this had some frontage and

1 there was parking associated with the building, the
2 front setback for parking would be 15 feet. We would
3 need a 15 foot variance obviously for this area over
4 here, but the side yard would be 10 feet which we
5 satisfy. So, if it's characterized differently we'd
6 be in a -- sort of a different situation, but
7 essentially the use is --

8 MR. VINK: It's not.

9 MR. LIGUORI: But it's not, but the
10 use would be the same, and that's it.

11 MR. COLELLO: Any questions from
12 anyone in the audience? Lynn.

13 MS. ECKARDT: This one still drives
14 me nuts after that use variance, but anyhow --

15 MR. COLELLO: You never forgave us.

16 MS. ECKARDT: I never forgave you for
17 that, I really didn't. But, I think the car question
18 I'm glad was answered tonight because it never has
19 been before.

20 Are you within the wetland buffer or
21 were you talking just the 100 feet because a lot of
22 times it's more than that?

23 MR. LIGUORI: Well, we're within the
24 100 foot -- we've confirmed that the -- based on the
25 soil and slope calculation that's in the code that

1 the buffer is limited at the 100 foot mark. It

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2 doesn't extend further past that.

3 MS. ECKARDT: I don't know. This one
4 -- I just feel like this has been never-ending. It's
5 like more and more, more, more, more. You know, I
6 think the village is trying to cleanup their act too.
7 Part of this they overlooked, part is the village's
8 fault, maybe not this portion, but I just really have
9 a problem with this one for a long time. That's all
10 I really wanted to say about that.

11 MR. COLELLO: I'll say I appreciate
12 the fact that you guys are trying to -- you know, I
13 don't know whose idea it was to put in the curbs or,
14 you know what I mean, and so on, so this isn't a
15 growing piece of parking. I do appreciate that, I
16 can tell you right now because it's got to be either
17 it's a fence and I don't think you want to put up a
18 fence, but something.

19 MR. LIGUORI: We didn't want to put
20 anything in the ground just so we don't have to go
21 get a building permit.

22 MR. COLELLO: I understand.

23 MR. LIGUORI: We don't want to have
24 to go through any more processes. We've been at this
25 for two years. We've been jumping through all the

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1 hoops and we're back here.

2 MR. COLELLO: But the process has
3 worked.

4 MR. LIGUORI: It has worked.

5 MR. COLELLO: It has worked in your

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6 favor.

7 MR. LIGUORI: Yes. The only thing we
8 could have done different is try to go for the
9 preexisting use, but I couldn't gather enough
10 historical information. I got a lot of good
11 information, but not enough to go for the preexisting
12 use or else we could have avoided the whole
13 situation.

14 MR. ROBERTSON: We thought the stone
15 curbs were a good idea for that area.

16 MR. LIGUORI: That was Chip.

17 MR. COSTELLO: The mailings are in
18 order.

19 MR. COLELLO: Great.

20 Okay. Any questions? Any questions
21 from the Board? See you next month.

22 MR. LIGUORI: Great.

23 MR. COLELLO: Thank you.

24
25

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5 MR. COLELLO: Okay. Joshua and
6 Allison Geballe.

7 MR. COSTELLO: Raise your right hand,
8 please. Do you swear the testimony you're about to
9 give is the truth, to the best of your knowledge?

10

MR. GEBALLE: Yes, sir.

11

MR. COSTELLO: And your name is?

12

MR. GEBALLE: Joshua Geballe.

13

MR. COSTELLO: Thank you.

14

MR. GEBALLE: Thank you.

15

My wife and I are applying for a

16

setback variance for a storage shed. We purchased

17

this home about two months ago and, as you can see,

18

the shed is currently not in its kind of permanent

19

location.

20

Up until about two months ago --

21

about a month before we were to close on the home,

22

the previous owner had not yet gotten a C of O for a

23

basement renovation. He applied for the C of O.

24

Mr. Harper came out. He said everything was fine

25

with the basement, but on the way out he said I think

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1

your shed is too close to the property line. So, he

2

held up the C of O until the shed was moved.

3

So, the previous owner moved the shed

4

up on the wooden blocks halfway on the driveway up --

5

I'll show you the pictures -- in order to get the C

6

of O for the basement so we could close and wouldn't

7

be homeless because we sold our previous home

8

already.

9

So, what we'd like to do is move it

10

back to the place it had been for the previous eight

11

years. So, I can pass around -- I believe I have the

12

survey here. Essentially the driveway -- this is

13

Ruby Lane. The driveway comes up like this. This

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14 all slopes down pretty severely. And the shed is
15 currently over in this corner of the driveway and
16 we're proposing to move it back to where it was which
17 is within six feet of this property line here.

18 These neighbors were -- we've become
19 friends with. They don't mind it. As you can see in
20 the pictures, there's actually a ridge between them.
21 You can't even see the shed from where it was.

22 MR. COLELLO: Can I see it?

23 MR. GEBALLE: Yes, of course. This
24 is where the shed is today.

25 MR. COLELLO: Half on the driveway?

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1 MR. GEBALLE: Yeah, half on the
2 driveway with wooden blocks. I'm told they put it on
3 rollers and they kind of rolled it.

4 MR. COSTELLO: That's a first.

5 MR. COLELLO: There's not birds in
6 this thing; is there? Remember the bird house? I'm
7 sorry.

8 MR. GEBALLE: This is the view from a
9 similar vantage point, but that's -- you can barely
10 make out the edge of the house on the next lot over
11 the side of the ridge. This is another view of kind
12 of a similar direction. You can see the house over
13 the side of the ridge. This is the gravel pad that
14 their shed had been on right in back of it.

15 MR. COLELLO: They just moved it
16 straight ahead?

17 MR. GEBALLE: Correct.

18 MR. COLELLO: How far did they move
19 it?
20 MR. GEBALLE: 21 feet away from the
21 line so that we could close.
22 MR. COLELLO: So you want to move it
23 14 feet back?
24 MR. GEBALLE: Correct.
25 MR. COLELLO: Back where it was?

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1 MR. GEBALLE: Correct.
2 MR. COLELLO: I'm sorry, go ahead.
3 MR. GEBALLE: At the time he, of
4 course, asked Mr. Harper how best to proceed. One
5 scenario is to get rid of the shed entirely and
6 credit us at the closing, that kind of thing.
7 Mr. Harper indicated this would be an acceptable work
8 around albeit that it required the buyer of the home
9 to appear before this body perhaps multiple times
10 which I'm happy to do.
11 This is the corner of the shed to the
12 property line. That's the six feet that was staked
13 out. There's metal stakes, but this is the wooden
14 one in between. There's some pictures I took
15 actually just before I came here tonight. One of the
16 things -- I came for the workshop last month that you
17 suggested I do is demonstrate that there's really no
18 other acceptable location for the shed. So, I kind
19 of did a panoramic kind of standing right in the
20 front door of the shed there and going around the
21 house and it may not do justice. It sounds like you

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22 may go walk the property and you'll be able to see
23 for yourselves that the property is actually pretty
24 severely graded and there's really nowhere else to
25 put it. I'll show you these.

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1 MR. COSTELLO: Can I look at the
2 survey?

3 MR. GEBALLE: Of course.

4 MR. COLELLO: Pass those around.

5 MR. GEBALLE: This is kind of a
6 panoramic and then the last one is at the bottom of
7 the driveway looking up. You can't even actually see
8 the shed from the street. I apologize if they're too
9 dark. I can take other pictures.

10 MR. COSTELLO: Where's Ruby Lane?

11 MR. GEBALLE: It's down near the
12 Croton Falls train station. It's actually a Carmel
13 mailing address so it's that little -- I think
14 there's a little carve out down there just off of
15 Stonel ei gh, off of Dai sy Lane.

16 MR. COLELLO: We've been down there
17 before.

18 MR. COSTELLO: Yes, we have.

19 MR. COLELLO: The guy with the fence
20 on the town property; right?

21 MR. COSTELLO: Yes. There used to be
22 a girl scout camp back there.

23 MR. GEBALLE: There's a sign down
24 there that says some sort of camp.

25 MR. COLELLO: How big is your

1 property?

2 MR. GEBALLE: 1.7 acres -- 1.723.

3 There's a large ridge that kind of runs across like
4 this and this all slopes down and kind of comes
5 around the edge of the ridge and this slopes back and
6 there's a little grass clearing back here.

7 MR. COLELLO: I know you say your
8 neighbors don't care and they're not here tonight, I
9 don't think, complaining. But, if you are friends
10 with them, it wouldn't hurt this Board if they would
11 be willing to write a letter saying they understand
12 where the shed is going and they have no problem with
13 it.

14 MR. GEBALLE: Okay. I'll ask them.

15 MR. COLELLO: That also helps when
16 you get people writing letters.

17 MR. GEBALLE: Okay.

18 MR. COLELLO: Are the mailings in
19 order?

20 MR. COSTELLO: The mailings are in
21 order.

22 MR. COLELLO: Great.

23 Any other questions? All right.

24 We'll see you next month.

25 MR. GEBALLE: Okay. Thank you very

1 much.

2 Is there anything I need to do in the
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3 interim in terms of the paperwork?

4 MR. COLELLO: No, I don't think so.

5 Bring everything back.

6 MR. GEBALLE: And you keep the

7 mailing stuff?

8 MR. COLELLO: Yes.

9 MR. COSTELLO: Yes.

10 MR. GEBALLE: Thank you very much.

11

12 * * * * *

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16 * * * * *

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18 MR. COSTELLO: Ed, I just want to
19 remind you on the Brewster Honda one, it has to be a
20 referral to the county since it's on 22.

21 MR. COLELLO: You're right.

22 MR. FROESSEL: That's right.

23

24 * * * * *

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5 MR. COSTELLO: Do you have the

6 mailings?

7 MR. HOLLIS: Yes. I was waiting for
8 the chairman to call it.

9 MR. COLELLO: Hi, how are you doing?

10 MR. HOLLIS: Fine, thanks,
11 Mr. Chairman. How are you?

12 MR. COLELLO: Good.

13 MR. HOLLIS: My name is P. Daniel
14 Hollis, III; Shamberg, Marwell, Davis & Hollis,
15 attorneys for Aman Properties, LLC, the applicant
16 here. With me is Mr. Ved Parkash, the managing
17 member of that LLC.

18 I have the mailings as are required
19 by your rulings. I also have another copy of both
20 our applications, my submission and eight copies of
21 the survey because they ask you to bring -- excuse
22 me, I gave you the wrong application. I should have
23 given you this one which they ask you to bring.

24 Since tonight we're going just with
25 overview, I think what I'll do is just talk with you

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1 briefly about procedural issues and we'll get to the
2 substance of it after we have a further opportunity
3 to discuss the procedural issues with Mr. Stephens.

4 What prompted us to be here is a
5 letter from Ron Harper --

6 MR. COSTELLO: Before we start, could
7 we swear in the other gentleman?

8 MR. HOLLIS: Sure.

9 MR. COSTELLO: Do you swear the
10 testimony that you're about to give is the truth, to

11 the best of your knowledge?

12 MR. PARKASH: Yes, I do.

13 MR. COSTELLO: Could you state and
14 spell your name, please?

15 MR. PARKASH: Ved Parkash, V-e-d,
16 P-a-r-k-a-s-h.

17 MR. HOLLIS: With me this evening as
18 well is Carrie Hilpert, C-a-r-r-i-e, middle initial
19 E., Hilpert, H-i-l-p-e-r-t, one of our associate
20 attorneys.

21 What prompted us to be before the
22 Board tonight was we received a notice of violation
23 from Ron Harper back in January, a letter saying you
24 have -- you don't have a preexisting nonconforming
25 use on this property any longer, come into compliance

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1 or we will issue a violation.

2 I contacted Mr. Harper, attempted to
3 convince him that our prior nonconforming use was
4 still in existence and valid. There was a little bit
5 of back and forth between us. I agreed that if he
6 were going to issue a notice of violation that I
7 would accept service of it. He did, in fact, issue a
8 notice of violation to appear before the justice
9 court here.

10 At that time I filed this application
11 pursuant to Section 267-A of the town law which
12 indicates that in the event of a notice of violation
13 for a zoning case, if you file for an interpretation
14 with a zoning board of appeals that stays any and all

15 prosecution of the violation in the justice court.
16 So, that's where we are procedurally.

17 MR. COLELLO: Okay. We had this
18 discussion before, not with you.

19 MR. HOLLIS: No.

20 MR. COLELLO: But, it comes to the
21 point -- I'm not going to pass opinions, but didn't
22 we have this issue before where it almost seems like
23 what comes first, the chicken or the egg discussion?

24 MR. VINK: Wasn't that with Brewster
25 Honda?

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1 MR. COLELLO: I don't think it was
2 Brewster Honda. The biggest one I think of was the
3 people that clean the tanks, remember the oil tank
4 cleaning.

5 MR. HOLLIS: EnviroStar, that was my
6 case.

7 MR. COLELLO: You got all the good
8 ones.

9 MR. HOLLIS: Well, if they were easy,
10 I'd be home watching the ball game.

11 MR. COLELLO: Just remember, my rear
12 end still doesn't fit on that terrace.

13 MR. HOLLIS: I actually --

14 MR. COLELLO: I know you had fun in
15 court at my expense, but that's okay. That's all
16 right.

17 MR. HOLLIS: I thought it was a very
18 humorous remark, Mr. Chairman.

19 But, procedurally, though, with all
20 due respect to your opinion, you know, what comes
21 first or not, 267-A says that we do this.

22 MR. COLELLO: Okay.

23 MR. HOLLIS: However, you know,
24 having said that, because of the fact that this
25 complaint is really Mr. Harper's, procedurally it's

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1 up to Mr. Harper to demonstrate to this Board that we
2 are not entitled to the continuation of the prior
3 nonconforming use because what Mr. Harper had said is
4 you are in violation of the zoning ordinance. And
5 once you say that, those violations and the charges
6 and the prosecution thereof are quasi criminal in
7 nature. And, in fact, depending on the severity of
8 the charge, they can even be misdemeanors.

9 So, with that having been said, the
10 burden of proof has two parts to it. People use that
11 phrase all the time and sometimes even lawyers don't
12 understand what the burden of proof is. It has two
13 parts to it. The first part is the burden of
14 persuasion and that never changes. Once that -- you
15 have the burden of persuasion, you have that all the
16 way through the proceeding. The burden of going
17 forward, that's what changes.

18 And I haven't briefed that and I will
19 brief that in the intervening month so that your
20 counsel will have the opportunity to look at it.
21 But, it's our belief that it's Mr. Harper's position
22 and obligation to present to your Board the reasoning

23 why it is that our prior nonconforming use should be
24 deemed to have been terminated.

25 Mr. Harper relies on two singular

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1 visits to the property, one in 2003 in November and
2 one in January of 2006; one day on each of those two
3 occasions in two memos that I make reference to in my
4 submission. The submission -- the exhibit to my
5 submission is Exhibit D which is the affidavit of
6 Mr. Ceasrine which is dated April 6th, 2004 and
7 attached to that Exhibit D is an Exhibit D that
8 Mr. Ceasrine had attached which were notes that we
9 obtained from the building department's files which
10 appear to be from Mr. Harper. He refers to a visit
11 that he and Mr. Jasko had made to the property, so
12 that would have been a third visit.

13 But, when you take the totality of
14 the documents in support of our position and you look
15 at them, our exhibit, the October 18th, 2004 letter
16 to me that he wrote when I was looking at this
17 property on behalf of a client different than
18 Mr. Parkash and those notes that are in the record of
19 Exhibit D to Exhibit D, if you will, that those
20 statements made by Mr. Harper are in direct
21 contradiction of the statement that he made in
22 January of this year when he issued these violations.

23 So, given the fact that there are
24 evidentiary issues and procedural issues as to who
25 carries that burden of proof, I believe that this

1 would be a good time to adjourn this matter until
2 next month, allow me to make a further submission to
3 Mr. Stephens on this point. I'll have him advise
4 you. You don't have to take my word for it, as I
5 know -- but I think that's only fair.

6 MR. COLELLO: Sure.

7 MR. HOLLIS: I know that there's been
8 a submission by neighbors in opposition to our
9 client's application. I would like to have a copy of
10 that if I might get that.

11 MR. COLELLO: I can even -- well, I
12 have a letter. I'll read it into the minutes, in a
13 few minutes, that's not a problem.

14 MR. COSTELLO: We have two letters.

15 MR. HOLLIS: Could I get copies?

16 MR. COLELLO: Sure, you'll get them.

17 What I'd like you to do, though, for
18 tonight is for the people here and for the Board,
19 that you could very simply, and I'm not asking you to
20 prove your innocence or whatever, prove your case --

21 MR. HOLLIS: Right.

22 MR. COLELLO: -- but just explain the
23 issue, okay, on what Ron believes -- you know what
24 I'm saying?

25 MR. HOLLIS: Yes.

1 MR. COLELLO: What is the issue and
2 that's what the issue that this Board is going to

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3 deal with depending on your conversations with Ron.

4 MR. HOLLIS: Well, there is only one
5 issue set forth in Mr. Harper's letters. The issue
6 is a singular issue. He feels that there has been a
7 cessation of the prior nonconforming use.

8 According to your zoning ordinance, I
9 forget the section by number precisely, but if you
10 have a prior nonconforming use -- if I had a tannery
11 on this property and a tannery had been there from
12 1900 until January 1st of -- no, let's make it June
13 19th of last year the tannery had operated. It was
14 skinning animals, turning them into leather, selling
15 them, that was a prior nonconforming use. It would
16 be permitted to continue.

17 What your ordinance says is if that
18 use ceases completely, and that's important, for a
19 six month period then that use has been lost and it
20 no longer is nonconforming. And what our position is
21 and what Mr. Harper has the burden of persuasion on
22 and at a given point, once you're satisfied that he
23 has reached a certain point, then the burden of going
24 forward could switch to me at which point I would
25 have to submit proof of the fact that there has been

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1 no complete cessation, because that's what your
2 ordinance says, for more than six months. That is
3 the issue in a nutshell.

4 MR. COSTELLO: And what is that use?

5 MR. HOLLIS: It's a myriad of uses.
6 There are four or five storage offices, motor vehicle

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7 repair. If you look at Exhibit D, Ceasrine's
8 affidavit, it talks about what was there from the
9 50's until 2004 when he gave that affidavit in April.

10 If you look at Exhibit E, I think it
11 is to -- excuse me -- Exhibit C, I'm losing my
12 letters here. I apologize. Exhibit E, rather,
13 Mr. Harper's letter to me of October 18th, 2004, in
14 that letter he says that the uses are prior
15 nonconforming uses.

16 So, if you take all of the Ceasrine
17 letter and you take Harper's own letter of October of
18 2004, there's a -- it's a given then that the period
19 in question is no earlier than October of 2004
20 because Mr. Harper himself said at that time that it
21 was -- all the uses were prior nonconforming and he
22 talks about them in that letter and then -- so it's
23 the period between then and now.

24 And what we have also submitted and
25 are prepared to discuss in detail at further

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1 proceedings, when the burden switches to us, are how
2 those uses have remained the same. The names might
3 change and the operators or the tenants of the
4 properties may have changed, but the uses have not.

5 Before, Mr. Froessel, you talked
6 about the St. Onge case. I'm familiar with that
7 case. We won a use versus users case in the Court of
8 Appeals about a week ago. But, we also lost the case
9 PMS versus Village of Pleasantville which is the
10 controlling case on prior nonconforming uses and we

11 lost it because what the Court of Appeals found in
12 that case what had been a moving and storage
13 warehouse for many years down in the Village of
14 Pleasantville, people would store stuff and there
15 were moving companies. There was Whalen's. There
16 was somebody before Whalen's and there was somebody
17 before that person. When that building was sold to
18 PMS, PMS was using it then for the storage of --
19 retail storage -- excuse me -- wholesale storage of
20 lighting equipment and then transferring the lighting
21 equipment into trucks which would then deliver it to
22 retailers.

23 The Court of Appeals in that case
24 said you know what, that's not the same nonconforming
25 use, that's not a warehouse to warehouse, that's

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1 warehouse storage to warehouse something else. So,
2 they said that didn't work. But, in our case, and
3 the evidence will show that as we walk around the
4 property, that the uses have remained consistently
5 the same.

6 MR. COLELLI: How many different uses
7 do you have on the property right now?

8 MR. HOLLIS: Four, I believe, or five
9 if you count some of them. We have office. We have
10 motor vehicle repair bays. We have -- and these are
11 the same as existed in 2005 when we gave notice to
12 the tenants. We took over this property in July of
13 2005 and sent notice to the then tenants,
14 Medi terranean Concrete, a general contractor, Savino

15
16 And what Mr. Harper's complaint
17 letter talks about -- his major and only complaint is
18 the existence of offices for Dayton Oil or Dayton
19 Fuel. And offices are -- there are office there.
20 There have always been offices there. So, there's
21 office use. There's outdoor storage of construction
22 equipment, forms for concrete, cement forms, building
23 materials, an auto paint supply enterprise, a dollar
24 store has storage there, custom design construction
25 material is there and I don't want to get into --

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1 MR. COLELLO: I'm not asking you.

2 MR. HOLLIS: But that's just the
3 overview.

4 MR. COLELLO: Okay.

5 MR. COSTELLO: And Mr. Harper is
6 saying that the use that's ceased for more than six
7 months was the office use?

8 MR. HOLLIS: No. He did not make
9 that clear.

10 MR. COSTELLO: Okay.

11 MR. HOLLIS: He did not make that
12 clear in his letter. He said that the office use
13 wasn't permitted, but he did not make clear in his
14 letter how the prior nonconforming use was lost, and
15 that's his burden to take care of.

16 MR. COSTELLO: Okay.

17 MR. VINK: I'm not sure I understand
18 what it is that you're looking for from us,

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19 Mr. Hollis.

20 MR. HOLLIS: An interpretation that
21 Mr. Harper is wrong to put it simply, that there has
22 been no termination of the prior nonconformity by
23 virtue of a cessation for a period of six months
24 because that's the allegation.

25 MR. COSTELLO: Isn't that a better

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1 venue to address the violation that he sent your
2 client --

3 MR. HOLLIS: In court?

4 MR. COSTELLO: -- and deal with it in
5 court rather than to come here for an interpretation?

6 MR. HOLLIS: If that's an option.
7 Whether it's a better option or not, I haven't formed
8 an opinion as to that. In some cases, yes. In some
9 cases, no. I've done it both ways because the burden
10 is the same.

11 Once you get to that burden of
12 persuasion, it has to be beyond a reasonable doubt
13 because of the -- it's not just -- it has to be
14 substantial evidence beyond a reasonable doubt
15 because of the quasi criminal nature of the
16 proceeding, so it's the same standard as in a
17 criminal proceeding before you.

18 MR. COSTELLO: I'd have to do a
19 little bit of reading on it, but I thought our role
20 as an interpreter of the ordinance was to interpret
21 the ordinance, not the opinion of one of the town's
22 offices.

23 MR. HOLLIS: If you look at 138-17 it
24 talks about that and if you look at my submission, I
25 think it's on the second page, I'll quote it to you.

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1 The Zoning Board of Appeals and its Section 138-90
2 C1A: The Zoning Board of Appeals shall hear and
3 decide appeals from and review any order,
4 requirement, decision or determination made by an
5 administrative official or agency charged with the
6 enforcement of this chapter.

7 Well, the administrative official is
8 Mr. Harper and he's charged with the enforcement of
9 this chapter which is the zoning ordinance. So, that
10 gives you the -- we talked about your authority to
11 hear this matter and interpret in our submission.

12 MR. COLELL0: Well, that's going to
13 be decided from your conversations with Will;
14 correct?

15 MR. HOLLIS: Right.

16 And then if you go down to -- just to
17 follow-up on Mr. Costello's question -- 138-90 C1B
18 says the Zoning Board of Appeals may reverse or
19 affirm, wholly or partially, or may modify the order,
20 requirement, decision or determination appealed from
21 and shall make such order, requirement, decision or
22 determination as, in its opinion, ought to be made in
23 the premises, and to that end shall have all the
24 powers of the building inspector and/or zoning and
25 town code enforcement officer from whom the appeal is

1 taken.

2 So, in other words, you can
3 superimpose your opinion on that of his as you make
4 that interpretation. They're consecutive sections in
5 your code.

6 So, we'll be in touch with
7 Mr. Stephen's law firm and be back before you next
8 month if all of that works out.

9 MR. COLELLO: Let me read you two
10 letters. This is addressed to the Town of Southeast
11 Zoning Board.

12 MR. HOLLIS: May I sit while you do
13 that?

14 MR. COLELLO: Yes, please.

15 Town of Southeast, Zoning Board of
16 Appeals, regarding 30-38 Old Mind Road violations.

17 Dear Board Members: We are writing
18 to you to express our concerns regarding the above
19 referenced property and the violations outstanding
20 against the property's owner, Ved Parkash. We would
21 urge you to uphold the violations and to prohibit
22 Mr. Parkash from conducting any business, whatsoever,
23 on the subject the property. We own the land
24 directly adjacent to Mr. Parkash's lots at 9 Mine
25 Lane. There are offensive noises as well as

1 offensive views well within earshot and eyesight of
2 our property. There are large trucks, heavy
3 equipment and many cars in and out all day.

4 The preexisting nonconforming use is
5 no longer valid. Mr. Parkash should not be allowed
6 to flagrantly violate the code of the Town of
7 Southeast and get away with it. Taxpayers in
8 residentially zoned areas should be protected. Thank
9 you for your consideration in this matter.
10 Sincerely, Alice and David Quattrocchi.

11 Okay. The second letter I have, Town
12 of Southeast, Zoning Board of Appeals, Dear Board
13 Members: We are writing to request that you enforce
14 the law for violations regarding the property
15 adjoining ours, owned by Ved Parkash, previously
16 owned by Dominic Ceasrine.

17 We are awakened most mornings by
18 crashing metal, slamming and other offensive noises
19 emanating from businesses being conducted on his
20 property. The property in our area has been zoned
21 residential for years now. There has not been a
22 business operating at Mr. Parkash's property for
23 quite a few years prior to his purchase.

24 Last summer two large utility trucks
25 were at the corner of our property installing large

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1 pieces of equipment on the poles there. We spoke to
2 the men and inquired as to what they were installing
3 and they indicated it was for the industrial park on
4 the Parkash property. We immediately notified the
5 building inspector of what had been conveyed to us as
6 well as the fact that there were mailboxes on Old
7 Mine Road bordering the Parkash property with

8 business names on them. The mailboxes were
9 thereafter promptly removed.

10 We have been repeatedly told that
11 Mr. Parkash knows that the property is zoned
12 residential; that he was denying conducting any
13 business enterprises on the property and that he was
14 a car buff and was simply storing, and restoring his
15 own car collection. The noise activity and visible
16 accumulation of trucks, equipment etc. make this
17 assertion totally unbelievable.

18 Since purchasing the property it
19 appears that Mr. Parkash had enclosed what had been
20 open garages. They seem to be offices and enclosed
21 garages. There is heavy equipment, all kinds of
22 supplies, and large oil trucks which are visible from
23 our property, Mine Lane and Old Mine Road.

24 We are simply asking the town to
25 enforce its codes and for us to be allowed to quietly

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1 enjoy our homestead. Thank you for your
2 consideration in this matter. Sincerely, Bernard P.
3 Brandon and Alice V. Brandon.

4 The third letter, Zoning Board of
5 Appeals, Town of Southeast, to whom it may concern:
6 I am a homeowner living close by to Old Mine Lane.
7 The property 30-38 Old Mine Road was used as a
8 commercial property into the 1990's, but was not used
9 commercially for some time. This negates any
10 preexisting nonconforming use allowance.

11 Since the present owner has taken
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12 over the property I have complained several times
13 because of the excessive noise. The current business
14 or businesses are very disruptive to the
15 neighborhood; they produce a lot of noise at early
16 hours of the morning, they have trucks speeding in
17 and out.

18 I appreciate your attention to this
19 matter. Sincerely, Dr. Bernadette P. Brandon.

20 So, we have three. Are there any
21 others that I missed?

22 MR. COSTELLO: No.

23 MR. COLELLO: So, these will serve as
24 part of the minutes.

25 Yes, sir, state your name, please and

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1 your address.

2 MR. RIVERA: The last name is Rivera,
3 R-i-v-e-r-a; first name Carlos. The address is 16
4 Mine Lane, so I'm adjacent to the property.

5 MR. COLELLO: Thank you.

6 MR. RIVERA: For the past 13 years
7 I've been living at 16 Mine Lane. Since he's taken
8 over the property there has been a marked increase in
9 commercial traffic, transient traffic. Trucks speed
10 by there at all times, not cognizant to the residents
11 that live there or they just really don't care.

12 I was run off the road with my
13 daughter in the car by a tractor trailer on Friday
14 morning on the way to taking her to school. So, it's
15 just -- you know, for a residential zone, for a

16 commercial establishment to be put up of any kind, I
17 think it would not be right, you know, especially if
18 -- you know, I'm trying to enlarge my family so, you
19 know, it's makes it very difficult especially with
20 the noise and traffic and also who knows what else
21 there might be -- contaminants of any
22 kind environmentally. We have Simon's junk yard
23 there that we have to contend with, you know, so it
24 makes it very hard.

25 My daughter's bus stop -- scheduled

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1 bus stop from Brewster School District is right there
2 in front of Simon's property which is the
3 intersection of Route 312 and Tilly Foster Road, not
4 a good area of any kind. And if you're going to have
5 this type of commercial traffic coming by and my
6 daughter is going to be there, something is going to
7 happen, not only with my daughter, but also with my
8 wife or my mother-in-law, whoever is taking care of
9 my daughter or any other children that eventually
10 move into the area. So, that's all I wanted to say.

11 MR. COLELLO: I appreciate it.

12 MR. RIVERA: Thank you.

13 MR. COLELLO: Any other comments or
14 questions?

15 Let me just say this: Please
16 understand that, as the applicant's attorney has
17 stated, when we have a business that is a technically
18 preexisting nonconforming business, they're allowed
19 to continue that business until they stop for a

20 period of time.

21 The simplest example I can give you
22 off the top of my head is the Brewster Shell Station
23 on Route 22. It's a nice gas station, well kept
24 business. That property is not zoned automotive, but
25 that has been a gas station for many, many moons and

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1 that will continue to be allowed to be a gas station
2 until he ceases to do business for a period of six
3 months.

4 If he went out of business tomorrow
5 or sold his business to a -- I'll give you an example
6 -- to an office and they were going to convert it to
7 an office where it's zoned appropriately, nobody a
8 year later could go back and say I want to go back
9 and build a gas station, you see what I'm saying.
10 That's the simple version of the applicant's
11 argument, that what they're doing -- those businesses
12 that they're running there have been running there --

13 MRS. QUATTROCCHI: No. No.

14 MR. COLELLO: I'm not saying that's
15 the case. Please, I'm not disagreeing with you and
16 I'm not siding with him. I just want everyone to
17 understand where we're going with this.

18 His bone of contention is that it's
19 preexisting nonconforming, that they've been doing
20 the same thing they've been doing for whatever X
21 amount of years. I'm sure your bone of contention is
22 that that's not true, that there's either been new
23 kinds of businesses, changes, whatever.

24 That's going to be decided -- I'm not
25 sure who's going to decide that at this point, to be

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1 quite frank with you. If you heard the conversation,
2 their attorney is going to speak to our attorney and
3 they're going to figure out how we proceed with this.
4 Who's burden of proof is it on? Is it Ron Harper,
5 our enforcement officer, to prove that he's guilty or
6 -- you know what I'm saying -- is it his
7 responsibility to prove that he's innocent?

8 The best analogy is the IRS. For 100
9 years, you are always guilty in the eyes of the IRS
10 and it was your job to prove you're innocent. That's
11 been changed now. Now you're innocent until the IRS
12 can prove you're guilty. So, here we have semantics
13 going back and forth, but that's -- correct me if I'm
14 wrong, if I'm over simplifying it, but that's the
15 scenario we have here.

16 So, next month, and I'm not saying
17 you can't make more statements now, but next month
18 we'll probably have a much better handle on where
19 we're going with this after our attorney, the town
20 attorney
21 Will Stephens, and their attorney have had a
22 conversation and they can figure out which way we're
23 going to go.

24 MRS. QUATTROCCHI: Could I have a
25 copy of your submission?

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1 MR. HOLLIS: Sure. Give me your
2 address, I'll mail it directly to you.

3 MRS. QUATTROCCHI: It's in the
4 letter.

5 MR. HOLLIS: I don't have your
6 letter.

7 MRS. QUATTROCCHI: Alice Brandon
8 Quattrocchi. I'm one of the letter writers.

9 MR. COLELLO: And your address?

10 MRS. QUATTROCCHI: My address is 148
11 Carriage Hill Road, Brewster, New York.

12 I own property at 9 and 15 Mine Lane
13 in Brewster adjoining the property that we're talking
14 about. I'm an attorney and I'm familiar with what
15 Mr. Hollis was referring to and I have a bone of
16 contention with that because I don't agree.

17 I think he made the decision to come
18 before this Board to stay a criminal proceeding, so
19 his actions brought about the stay and he has a
20 proceeding pending in another court. To say that the
21 burden shifts to Ron Harper here, Ron Harper didn't
22 stay the proceeding, he stayed the proceeding. So, I
23 think there are legal issues that have to be worked
24 out with Will Stephens.

25 And the entire neighborhood, I

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1 venture to say, is against this usage. It's
2 increased tremendously since Dominic Ceasrine passed
3 away and that's when the use stopped, Dominic

4 Ceasrine passed away and for a long period of time it
5 wasn't used. So, it took a while to sell. So,
6 there's a lot of facts that will come out, but we are
7 all -- in my family and the neighbors that are here
8 with the exception of Mr. Simon, I'm sure who's also
9 present tonight, but the bulk of the neighborhood --
10 the majority of those in the neighborhood are against
11 it. There's tremendous amounts of noise, crashing,
12 slamming, huge trucks, huge equipment speeding in and
13 out and it's just an unacceptable use in a
14 residential area and it doesn't deserve to be
15 continued.

16 MR. COLELLO: Thank you.

17 Yes, sir.

18 MR. SIMON: My name is Maurice Simon.

19 MR. COSTELLO: Excuse me, come up
20 first.

21 MR. SIMON: My name is Maurice. The
22 last is name Simon.

23 I don't have any objection to what's
24 going on. I think they're carrying this too far.
25 It's been a commercial enterprise for years and years

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1 and there's nothing wrong with it.

2 Being that I own more property than
3 all of them put together, I think I have a say in it.
4 My opinion is it's quite all right to conduct the
5 business the way he does.

6 MR. COLELLO: Well, I will say this,
7 you certainly have the right to have an opinion.

8

MR. SIMON: Yes.

9

MR. COLELLO: But, I don't think you have eight times the opinion if you have eight times the land, okay, but -- you know, you have the right to have an opinion.

13

MR. SIMON: Okay.

14

MR. COLELLO: And your opinion will be heard by this Board and it will be heard by everyone else. But, I don't believe that a person who owns 80 acres -- I'm just using an example -- has 80 times the say of a person that owns one acre if they're both in the same neighborhood.

20

MR. SIMON: She's wrong when she says all of the neighbors have an opinion that they're against everything that he's doing there. There is another person here, I don't hear her saying anything against it. Mrs. Brady, she doesn't have anything to say against it and she's right there.

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MR. COLELLO: Well, again, these will come out -- I want you to understand we're a long way from this Board making a decision on anything in regard to this. Obviously, this is preliminary in the fact that we have to really get the ground rules on where do we go from here.

7

MR. SIMON: I understand.

8

MR. COLELLO: But your comments are appreciated. They'll be so noted. Thank you.

10

Anyone else?

11

MR. HOLLIS: Thank you.

12 MR. COLELLO: Okay. So, we'll
13 tentatively see you on the 17th.
14 MR. HOLLIS: July?
15 MR. COLELLO: Yes. Again, start
16 talking to Willis quick.
17 MR. HOLLIS: I'll drop him a note and
18 give him our position on it.
19 MR. COSTELLO: Here's two copies of
20 the letters -- copies of two of the letters. The
21 third letter we don't have a copy for you.
22 MR. HOLLIS: Okay. But you'll get it
23 to me somehow?
24 MR. COSTELLO: Yes.
25 MR. HOLLIS: And if

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1 Ms. Quattrocchi --
2 MR. COLELLO: It's right there. It
3 should be right there.
4 MR. HOLLIS: It's on her letter.
5 I'll send her a copy tomorrow.
6 MR. COLELLO: Let me see which
7 letters you have.
8 MR. HOLLIS: I have a letter from
9 Bernard and Alice Brandon and Alice and David
10 Quattrocchi.
11 MR. COLELLO: You want the
12 submission?
13 MR. HOLLIS: You want it sent to this
14 address?
15 MS. QUATTROCCHI: Yes, please.

16 MR. HOLLIS: Okay. No problem.

17 Thank you.

18 MR. VINK: Dan, were you preparing a
19 submission on the issue of the burden of proof?

20 MR. HOLLIS: Yes, I'll do that.

21 That's what I'll be submitting to --

22 MR. VINK: Could you send that
23 directly to me, please?

24 MR. HOLLIS: Sure.

25 MR. VINK: Thanks.

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1 MR. COLELLO: I'd tell you to send it
2 to me, but I won't be able to read it.

3 MR. HOLLIS: I know you read
4 everything I always send, Mr. Chairman.

5 MR. COLELLO: All right. Have a good
6 evening. See you all on the 17th.

7 MR. HOLLIS: Thank you.

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9 * * * * *

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15 MR. COLELLO: Would anyone like to
16 make a motion to approve the minutes?

17 MR. VINK: I move to approve the
18 minutes from last month.

19 MR. SHEIL: Second.

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20 MR. COLELLO: Paul is making the
21 motion to approve the minutes from May, seconded by
22 Kevin. All in favor?
23 (All in favor.)
24 MR. COLELLO: Passed seven to zero.
25 Now we're done.

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C E R T I F I C A T I O N

THIS IS TO CERTIFY THE
FOREGOING TO BE A TRUE AND ACCURATE
TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC
RECORD AS TAKEN IN THIS MATTER.

JAYNE MCGINLEY
Court Reporter

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25

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