

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
July 17, 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

TIMOTHY FROESSEL

PAUL VINK

A L S O P R E S E N T :

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2 Welcome to the July 2006 meeting of the Town of
3 Southeast Zoning Board of Appeals. My name is Ed
4 Colello. Let me introduce you to our Board members
5 that are present. To my far right is Joseph
6 Castellano. To my right is Tim Froessel. To my left
7 is Vice Chairman Tom Costello. To my far left is
8 Paul Vink and our stenographer is Jayne McGinley.

9 We have 13 items on the agenda.
10 Number seven is scratched, Aman Estates. So, let's
11 get right into it. I passed out some copies. I hope
12 you will be able to share. We have a couple of extra
13 copies of the agenda.

14 Number one, Prestige Petroleum.

15 MR. LIGUORI: Good evening members of
16 the Board. My name is Michael Liguori. I'm an
17 attorney at Hogan & Rossi. I'm here with Frank
18 Hessari who is the principal of Prestige Petroleum to
19 continue our application for additional signage at
20 the Valero Gas Station.

21 We're here tonight for the request
22 for the additional wall sign, which is the sign above
23 the entranceway and to request an interpretation of
24 the definition of the word sign.

25 We've made a building permit

3

1 application to construct a fascia around the upper
2 portion of the outside of the building and to
3 maintain the colors that are on the overhanging --
4 the overhanging above the pumps and our building
5 permit was denied because the definition of the word

6 sign was interpreted to include the use of the
7 corporate colors.

8 So, if we have the teal stripe with a
9 yellow stripe underneath it, Mr. Harper, our building
10 inspector, has determined that that is a sign and it
11 would exceed the area requirements set forth in the
12 code.

13 Ed, do you want me to just get into
14 it with the definition of sign?

15 MR. COLELLO: Please.

16 MR. LIGUORI: Or, do you want me to
17 wait for you guys?

18 MR. COLELLO: Go ahead.

19 MR. LIGUORI: There's the May 5th,
20 2006 letter which I submitted to the Board, if you
21 have that in front of you it would be useful.

22 The definition of the word sign is
23 any material, structure or device or a part thereof
24 composed of lettered or pictorial matter which is
25 located out of doors or on the exterior of any

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1 building or indoors as a window sign displaying an
2 advertisement, announcement, notice or a name and
3 shall include any decoration, demonstration, display,
4 representation, illustration or insignia used to
5 promote or advertise the interest of any person or
6 business or a cause when such is placed in view of
7 the general public.

8 When you break down the definition
9 there's really three requirements. One is that the
Page 3

10 sign be constructed of any material or structure or
11 device or a part thereof, but which is -- those words
12 that are emphasized by the next set of words which
13 are by composed of lettered or pictorial matter.
14 Now, obviously, the fascia is any material or
15 structure or device that's going to be an artificial
16 material, but it's not composed of lettered or
17 pictorial matter.

18 And if you look at the overhang for
19 the pumps, obviously, the word Valero are composed of
20 lettered or pictorial matter. We have the letters of
21 the word Valero. But, by using just the blue and the
22 yellow, we don't feel we triggered the definition of
23 the word sign. There's no reference to the use of
24 any colors in connection with the definition of the
25 word sign. It's very important to consider when

5

1 considering the interpretation.

2 Back to the definition, the lettered
3 or -- I'm sorry, the material, structure or device or
4 a part thereof needs to display an advertisement, an
5 announcement, a notice or a name and here we don't
6 have an advertisement or an announcement or a notice
7 or a name. We do have colors, the teal and the
8 yellow, but they don't -- they're alone on the fascia
9 and, in our opinion, don't constitute an
10 advertisement or an announcement or a notice or a
11 name.

12 And based on that, we feel that the
13 use of the fascia for those -- for the teal and

14 yellow is not a sign. And if it were a sign, I think
15 Ron would have to interpret that the remaining three
16 sides of the overhang for the pumps would also be
17 sign area, but that wasn't -- it really wasn't made
18 an issue. So, based upon the enforcement and again
19 our interpretation of the word, we don't believe that
20 the fascia using those two colors is a sign.

21 MR. COLELLO: Let me see your
22 pictures again, please, Michael.

23 So, what you're looking for is around
24 the top of the building, right, it's just the fascia
25 with absolutely no writing on it?

6

1 MR. LIGUORI: No. The only thing
2 it's going to do is tie into the colors for the
3 overhang to the pumps, the canopy.

4 MR. COLELLO: And it's just going to
5 go over the windows?

6 MR. LIGUORI: It will wrap around the
7 entire building. So, yes, a portion of it will cover
8 the windows.

9 MR. COLELLO: But here -- you're
10 stopping here. Is it going over these poles, these
11 pieces?

12 MR. HESSARI: These pieces, no, we
13 are not, but it's going to extend -- I lost my
14 picture for this.

15 MR. COLELLO: That's all right.

16 MR. HESSARI: It's going to continue
17 wrapped around the building. It's going to --

18 MR. COLELLO: It will cover down this
19 right here?

20 MR. HESSARI: It will cover here.

21 MR. COLELLO: This height; correct?

22 MR. HESSARI: That's correct, yes.

23 MR. LIGUORI: Now, based on what the
24 Board does with the additional wall sign, that
25 additional wall sign would be -- we would take it

7

1 down and put it back up over the fascia if we were
2 permitted to have the additional wall sign. So,
3 those would be the only letters on top of the fascia
4 and it would just be by virtue of bolting that to the
5 wall.

6 MR. VINK: And they would be on a
7 discreet sign?

8 MR. LIGUORI: Yes, they would be on a
9 board.

10 MR. VINK: Right. Something that we
11 can identify as a sign, not just put on the fascia so
12 that you can interpret the sign as being as big as
13 you want, it would actually be a discreet piece.

14 MR. LIGUORI: Right, something that
15 we could take down.

16 MR. COLELLO: So that deli sign,
17 correct, convenience store and deli?

18 MR. LIGUORI: Yes.

19 MR. COLELLO: You want that -- is
20 that going to stay over the fascia?

21 MR. LIGUORI: We're going to have to
Page 6

22 take it down, install the fascia and then put it back
23 up so it will be on top of the fascia.

24 MR. COLELLO: Okay. Now, you're not
25 going to like what I'm going to tell you. See, I

8

1 have to tell you, I'm leaning towards the fascia
2 absolutely not being a sign, but now if you put a
3 sign on top of the fascia, I'm thinking the fascia is
4 a sign.

5 MR. LIGUORI: But then that same
6 argument applies to the canopy, it would make the
7 entire portion of the canopy all sign area which is
8 not really the case. The only part of the canopy
9 that's a sign or a sign on the canopy is the word
10 Valero.

11 MR. COLELLO: Okay. But, the canopy
12 has to have a sign, correct, the building already has
13 signs?

14 MR. LIGUORI: Yes.

15 MR. COLELLO: Water is not coming in
16 your building.

17 MR. LIGUORI: No.

18 MR. COLELLO: So, that the fascia is
19 something that's going to extend out the building, we
20 said about six inches approximately?

21 MR. HESSARI: That's correct.

22 MR. COLELLO: So, that's an add-to to
23 the wall of your building. The size of your canopy
24 is not an add-to, that's the size of the canopy. You
25 can't have a canopy without sides; could you?

1 MR. LIGUORI: I don't just understand
2 where you're --

3 MR. COLELLO: Well, what I'm saying
4 if -- am I missing this somewhere? If you want to
5 put a fascia all around the building, your argument
6 to us is that it's not going to have words on it, it
7 shouldn't be considered a sign.

8 MR. LIGUORI: That's right.

9 MR. COLELLO: I agree with you. But,
10 my opinion, if you put a sign over it now it becomes
11 a sign.

12 MR. LIGUORI: But then the same
13 argument that I just made to you before is that that
14 would then make the entire canopy a sign which has
15 already been interpreted not to be the case.

16 MR. COLELLO: But the canopy -- you
17 didn't add the outside walls to the canopy.

18 MR. LIGUORI: Okay.

19 MR. COLELLO: The canopy had to have
20 outside walls. You have a building that is done.

21 MR. LIGUORI: That's right.

22 MR. COLELLO: Now, you're adding six
23 inches to it, right, the wall stops here. You're
24 coming out six inches on the fascia all around the
25 building, no two colors, no words, I wouldn't call

1 that a sign. Now, you put a sign on it, how can we

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2 not call it a sign?

3 MR. HESSARI: Where would you
4 recommend that sign go?

5 MR. COLELLO: I'm not going to tell
6 you where to put the sign. I think if you put it on
7 top of the fascia -- I mean, what do you guys think?

8 MR. VINK: I think with your
9 interpretation, though, Ed, pretty much every
10 business in town, whenever they have to grandfather
11 in, is going to have to paint their building.

12 Every business down that strip, the
13 Honda dealer has their blue on the outside -- on the
14 entire outside of that building. I don't think we
15 would call that a sign even if they put the word
16 Honda on it. The same thing if you go around the
17 corner all of the gas stations have the same thing
18 so --

19 MR. COLELLO: But, the reality of it
20 is, not to interrupt you, when we're done, this
21 Valero will probably be the only gas station or the
22 only business in that whole area that's applying to
23 the new rules.

24 MR. VINK: Yes.

25 MR. COLELLO: Those other ones are

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1 all grandfathered; right?

2 MR. VINK: Yeah, for the time being,
3 but in eight years or whenever it is they have to
4 comply with the new sign requirements, are they going
5 to have to repaint their buildings? Is that where

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6 we're going with that?

7 MR. HESSARI: Could they change the
8 laws in seven years?

9 MR. LIGUORI: I have to disagree with
10 the -- by adding the words then the entire fascia
11 becomes a sign because it would -- it would apply to
12 my canopy as well. It would make the entire
13 canopy --

14 MR. VINK: At least one side of it.

15 MR. LIGUORI: Yeah, at least one side
16 of the canopy a sign.

17 MR. COLELLO: Well, maybe it should
18 have been classified as a sign. He didn't count that
19 into a sign? Of course, he did.

20 MR. LIGUORI: We had a stripe and Ron
21 Harper said if we put the stripe well, then now the
22 length of the stripe would be a sign. But he said if
23 you keep your words Valero to the minimum permitted
24 requirement, which is 18 square feet, if you keep it
25 to the 18 square feet then we are only going to

12

1 interpret the 18 square feet with the letters to be a
2 sign. I didn't make the interpretation, that's just
3 how it was applied to us.

4 MR. COLELLO: Okay.

5 MR. COSTELLO: Actually, my
6 recollection is that a previous version of the
7 section actually defined the sign that way, that
8 there was a box superimposed right over the letters
9 and the symbols and that was the size of the sign and

07-17-06 zoning board of appeals.txt
10 the rest of the sign, if it was just painted, it
11 didn't count.

12 MR. FROESSEL: Right.

13 MR. LIGUORI: I would just stress
14 that the lack of the use of the colors in the
15 definition, it's the one glaring thing in the
16 definition that's not included is the use of the
17 colors of all of the descriptive words to describe
18 signage.

19 MR. COLELLO: That's true.

20 MR. LIGUORI: Also, the dimensions of
21 the sign, obviously, we're over the 18 square feet
22 because we have the words Valero upon the canopy.
23 This sign, as it exists, is 13.2 square feet and
24 that's the additional area that we'd be looking for
25 the sign, no bigger than what's already existing. It

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1 will be the exact same size. It's to illustrate or
2 to signify that there's both a convenience store/deli
3 on the premises and not just a gas station.

4 MR. COLELLO: What about that small
5 sign to the right of the door?

6 MR. LIGUORI: This, like I said in
7 the prior meetings, the intent is to take all of the
8 signage off the rest of the building after we're done
9 with what we've requested which is to have the one
10 freestanding sign, the sign above the door and then
11 the canopy.

12 After that there is -- there's
13 nothing that we were intending on leaving up, but I

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14 would just note that the code does allow a window
15 advertisement for prices so if you drove by and you
16 saw a price sign up there, for instance, you know, if
17 there was cold cuts on sale, I think we are allowed
18 to have a foot or two square feet in the window, but
19 that's it.

20 MR. COLELLO: Not the whole door.

21 MR. LIGUORI: No, not the whole door.
22 We would exceed the area on the door. It's pretty --
23 that's clear in the code.

24 MR. COLELLO: What do you guys think?

25 MR. VINK: I'm inclined to think it's

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1 not a sign.

2 MR. FROESSEL: The fascia itself or
3 the fascia with the --

4 MR. COLELLO: The fascia with the
5 deli sign. Do we all agree that the fascia alone is
6 not a sign?

7 MR. FROESSEL: I don't think it is.

8 MR. COLELLO: Do you think it's a
9 sign?

10 MR. COSTELLO: No. I think the
11 definition talks about letter or pictorial, color
12 alone does not make it a sign.

13 MR. COLELLO: The first step is we
14 agree with you there.

15 MR. FROESSEL: The analogy I would
16 make is if McDonald's put a red and yellow fascia,
17 that would not be a sign, but if they put the golden

07-17-06 zoning board of appeals.txt
18 arch on it then it's a sign.

19 MR. COLELLO: That's good.

20 MR. FROESSEL: That's kind of how I
21 look at it. So, I don't think that alone is a sign
22 and putting the convenience store and deli sign over
23 it, I mean --

24 MR. COLELLO: First of all, we can
25 look at this as two separate issues. First, you want

15

1 an interpretation; correct?

2 MR. LIGUORI: Correct.

3 MR. COLELLO: You want an
4 interpretation is the fascia, without words on it,
5 because of the two colors, does that constitute a
6 sign?

7 MR. LIGUORI: Correct.

8 MR. COLELLO: All right. So, let's
9 handle that one first.

10 MR. LIGUORI: Great.

11 MR. COLELLO: First of all, before we
12 close the hearing on this issue, is there any
13 questions or comments from anyone in the audience?

14 MR. COSTELLO: Someone in the back on
15 this side.

16 MS. ECKARDT: Lynn Eckardt. I would
17 agree I don't think the fascia is a sign, but once
18 you put deli on it I don't see why that's not a sign.
19 And I think the problem here is, I think this company
20 is definitely going to be at a disadvantage for about
21 six years with the other companies, but if you

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22 approve this now and everyone comes back before this
23 Board, even if you're not here six years hence, and I
24 think it's six, it might be a more or less, I don't
25 see how this can avoid granting them variances.

16

1 And I think the spirit of the law was
2 put in to start eliminating this kind of stuff. So,
3 I would agree that they're in a disadvantage, but I
4 also think, in the long run and for the town, it
5 would be much better to turn this down. Thanks.

6 MR. COLELLO: Well, Lynn, understand
7 too, though, so we're all on the same page, we've
8 already turned them down for the size of their
9 freestanding sign; correct?

10 MS. ECKARDT: Right.

11 MR. COLELLO: We've already turned
12 them down for the height of their sign.

13 MS. ECKARDT: Yes.

14 MR. COLELLO: So, all they have right
15 now is the name on the canopy.

16 This first issue we're going to close
17 the public hearing is not the deli sign, just the
18 fascia itself.

19 MS. ECKARDT: Right.

20 MR. COLELLO: We're going to try and
21 make an interpretative issue on whether or not we
22 believe does that constitute a sign. Then you're
23 going to need a separate vote on your deli sign,
24 Michael; correct?

25 MR. LIGUORI: Yes, I understand.

1 MR. COLELLO: Okay.

2 MS. ECKARDT: If I wasn't clear, I
3 would agree, I don't think the fascia is a problem
4 and wouldn't be in the future if you had to grant it
5 to other enterprises six years hence, but I do think,
6 for the record, that the deli sign is a sign.

7 MR. COLELLO: Okay. Any other
8 questions, comments? I can't see everyone so speak
9 up if you want to say anything.

10 Okay. Let's close the public hearing
11 on this issue.

12 Do you want to have any discussion or
13 do you just want to take it to a vote? I think we've
14 discussed it a little bit:

15 MR. FROESSEL: I will make a motion
16 that the colored fascia without any lettered or
17 pictorial matter that's been proposed by the
18 applicant is not a sign as defined in Section 138-74
19 of the town code.

20 MR. VINK: Second.

21 MR. COLELLO: Okay. Thank you.
22 Joseph?

23 MR. CASTELLANO: In favor.

24 MR. FROESSEL: In favor.

25 MR. COSTELLO: In favor.

1 MR. VINK: In favor.

2 MR. COLELLO: And I'm in favor as
Page 15

3 well. So, that issue is put to rest, the fascia is
4 not a sign.

5 Now, your deli sign, that's the exact
6 sign you want to put back up; correct?

7 MR. LIGUORI: Unless you want to
8 change -- I think we might just change the words to
9 say food mart.

10 MR. HESSARI: Food mart. We need to
11 change the wording.

12 MR. VINK: I remember you saying you
13 didn't like the wording on that sign.

14 MR. LIGUORI: Yes. We need to get
15 the approval of the ARB for the language on that
16 sign.

17 MR. COLELLO: Let me ask you a
18 question: Are you coming back for your freestanding
19 sign?

20 MR. LIGUORI: We would like to. We
21 would like to come back for the freestanding sign.

22 MR. COLELLO: The reason I'm saying
23 that is this, I'd like to see what your sign is going
24 to say, the deli sign.

25 MR. LIGUORI: Okay.

19

1 MR. COLELLO: Personally, I don't know
2 the rest of the Board feels, but I would like to know
3 exactly the size of it, the wording of it, the colors
4 of it. And if you're in a rush, we can work on that
5 tonight, if you're not, we can keep that public
6 hearing open for the size of the sign, this way you

7 can do your homework as far as what you want to say,
8 how big you want it, so we can really see it and in
9 the meantime you can put up your fascia.

10 MR. HESSARI: Can we get some
11 feedback about the freestanding sign, we got the
12 variance, the pole now?

13 MR. COLELLO: You have a place for
14 it. We don't know how high it's going to be or big
15 it's going to be.

16 MR. HESSARI: Height is eight foot,
17 it's the law, so 12 was rejected so, obviously, we're
18 going to come back for 10.

19 MR. LIGUORI: The read that we got
20 from the Board is that, obviously, the 48 square feet
21 -- I mean, that's very obvious that wasn't going to
22 fly. One of the things that Joe had brought up was
23 that if we had just taken off the Valero insignia on
24 the left-hand side of the sign to just be able to
25 advertise the gas prices, I don't know if the Board

20

1 would be inclined to discuss --

2 MR. COLELLO: We can't because, first
3 of all, it's not on the agenda. I'm not trying to
4 put pressure.

5 MR. LIGUORI: I understand. I know.

6 MR. COLELLO: But, if you want us to
7 work on the deli sign tonight we can. To be honest
8 with you, I would rather do it right and have you
9 know exactly how big you want it, what you want it to
10 say and the colors, this way we all know what we're

11 voting on.

12 MR. VINK: And one may impact the
13 other, too. If they're coming back with both with
14 the second sign and if we've already granted the
15 variance on the first one, we may be less inclined on
16 the second one. So, you may be better off bringing
17 them at the same time so that we have a little more
18 room to play, if there's any play to be done, if you
19 plan on bringing back an application on that anyway.

20 MR. COLELLO: It's your call.

21 MR. LIGUORI: Okay. We have the
22 dimensions. The only hang up that I have is we know
23 we're not going to go -- the whole intent was to just
24 stick with what we had. The only thing we wanted to
25 do is just change the wording a little bit because we

21

1 didn't like how deli and convenience store were laid
2 out on the board. But, we're not going to propose
3 anything that's larger than 13.2 square feet, that's
4 currently what is existing. We know what that looks
5 like. You guys can all drive by and see it. So,
6 that was the rationale for just asking for that.

7 I don't know if that's going to have
8 an affect on the freestanding sign. Frank and I have
9 been hashing out an area that we think would be
10 palatable to the Board and in keeping with the intent
11 of the ordinance so...

12 MR. HESSARI: We could deal with this
13 next time. We have to come back anyways.

14 MR. COLELLO: It's your call.

15 MR. LIGUORI: We'll come back then.
16 MR. COLELLO: We'll keep the public
17 hearing open on the deli sign, though, but in the
18 meantime, if you want, you can put up your fascia.
19 Now, do you have to go to the ARB on
20 that?
21 MR. LIGUORI: The fascia is under
22 \$15,000.
23 MR. HESSARI: No.
24 MR. LIGUORI: So, we would be -- we
25 wouldn't have to go to the ARB, but if we wanted to

22

1 change the letters on that sign, if we wanted to
2 rearrange the convenience store, then we would
3 trigger the ARB. So, the fascia alone we don't have
4 to go to the ARB, but for the addition of the letters
5 or that other sign we would have to, but just limited
6 to that other sign.
7 MR. COLELLO: Great. All right.
8 MR. LIGUORI: Thank you. Thank you
9 for your time.
10 MR. COLELLO: The public hearing is
11 going to be kept open.
12 MR. COSTELLO: Why not have them
13 reapply for both?
14 Can you withdraw your application for
15 the deli sign and this way reapply with both?
16 MR. LIGUORI: Well, it would just be
17 a little more paperwork and then I would have to pay
18 two applications fees. We've already paid for the

19 fees so I'll just stick with one.

20 MR. COSTELLO: Okay.

21 MR. LIGUORI: Thank you very much,

22 MR. HESSARI: Thank you very much.

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5 MR. COLELLO: Okay. Number two is a
6 carry over item, Matt and Sharon Scott.

7 How you doing?

8 MR. SCOTT: Good.

9 MRS. SCOTT: Good.

10 You wanted us to bring back --

11 MR. COSTELLO: Did we swear you in
12 last month?

13 MRS. SCOTT: Yes.

14 MR. SCOTT: Yes.

15 MR. COSTELLO: So, you're still under
16 oath.

17 MRS. SCOTT: Yes.

18 MR. SCOTT: Yes.

19 MR. COLELLO: Were the mailings
20 checked?

21 MR. COSTELLO: Last month we checked
22 the mailings. I'll check over it.

23

MR. COLELLO: Go ahead.

24

25

MRS. SCOTT: We are here to request a variance so that we can put a four season room on our

24

1

deck and when we were here last time -- we got a copy

2

-- we only had one copy. This is the architectural

3

rendering from Classico Conservatory showing all the

4

dimensions. This is for the paperwork. I think we

5

kind of left a sample picture.

6

MR. COLELLO: Right.

7

MRS. SCOTT: We're in Vails Grove.

8

MR. COLELLO: Yes. Do you have a map

9

of your lot?

10

MRS. SCOTT: A survey?

11

MR. COLELLO: Survey.

12

MRS. SCOTT: Yes.

13

MR. COSTELLO: The mailings were in

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order.

15

MR. COLELLO: Thank you.

16

Mr. Harper notes that the actual

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setback would be less. The application does not

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include a dimension from the nearest point of the

19

deck to the sideline.

20

MRS. SCOTT: Right, and that's nine

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-- well, we put that in the -- because this was the

22

one where we had the actual original survey and then

23

they put a ruler on it so that they knew exactly --

24

we know where our property line is and we came up

25

with nine feet.

1 MR. COLELLO: Nine feet from where to
2 where?

3 MRS. SCOTT: It will be nine feet
4 from the property line to the corner of the --

5 MR. COLELLO: He mentioned --

6 MR. COSTELLO: Can you just point to
7 it?

8 MR. COLELLO: I'm sorry, where did
9 you point? I missed it. Where is that nine foot?

10 MRS. SCOTT: The property line is
11 here.

12 MR. COLELLO: Right.

13 MRS. SCOTT: And when the
14 conservatory is put up, it will be -- we need three
15 more feet.

16 MR. SCOTT: From this corner.

17 MRS. SCOTT: Yes. This survey is not
18 -- this is a survey of our property, but it's -- you
19 know, this house had had a renovation back in 2000.
20 So, this is the old house. I mean, this is our
21 survey of our property, but this is the house before
22 the renovation.

23 MR. SCOTT: The footprint didn't
24 change.

25 MRS. SCOTT: Right.

1 MR. SCOTT: So, it's from this corner
2 right here.

3 MRS. SCOTT: Right now the deck goes
4 out here and over, and here. This is our existing
5 deck.

6 MR. COLELLO: So, the problem is on
7 the right side of your home, if you're facing the
8 home; correct?

9 MRS. SCOTT: Yes.

10 MR. SCOTT: Right.

11 MR. COLELLO: It shows here that you
12 have 12.0 feet with no change, but that's really not
13 correct.

14 MRS. SCOTT: This is the current
15 variance that the people before us who did a
16 renovation got. They had to actually -- they
17 purchased --

18 MR. COLELLO: I understand that, but
19 what you're proposing is no change and that's not
20 true, you're getting three feet closer; correct?

21 MRS. SCOTT: Ron Harper wrote that.
22 I don't know why he wrote proposed no change. I
23 think it's because, as she said, he put the asterisk.
24 I guess he probably should have left this blank, but
25 this is where he said they didn't say what they

27

1 wanted and that's when we got the ruler with the --

2 MR. FROESSEL: I'm not picking
3 something up here. Does that survey not depict your
4 current deck?

5 MRS. SCOTT: Correct.

6 MR. SCOTT: Correct.

7

MR. FROESSEL: Okay.

8

MRS. SCOTT: This is a survey of our property and this is the house pre the renovation back in 2000. This area here is deck.

11

12

13

14

MR. FROESSEL: Okay. So, they did this basically on the assumption that they only needed it for what they were building and didn't have to take into account something else there?

15

16

17

MR. COLELLO: Right. The closest point to your property line is here to here?

18

19

MRS. SCOTT: Yes, and that's the nine feet.

20

21

MR. COLELLO: And how do you know that's nine feet? You measured that?

22

23

24

25

MRS. SCOTT: Right. The Classico Conservatory people took my original large blueprint of this and put the ruler on it and we kind of did our measuring too knowing where the property line

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1

was, you know, just to double-check.

2

3

MR. COLELLO: Do you have your copy of the approval from the Vails Board?

4

5

6

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9

MRS. SCOTT: Yes. That should be in there, but I have it. It's interesting because -- this was just the old variance, but I'm trying to gather every piece of paperwork that I could as I was going through this process. I know I have it. Here it is.

10

MR. COLELLO: Do you want to see

11 that?

12 MR. FROESSEL: I saw it.

13 MR. COSTELLO: Are there any
14 variances that exist on the property today?

15 MRS. SCOTT: Yeah. That was actually
16 the piece of paper that I just happened to gather
17 through the course of this.

18 MR. SCOTT: It's right there.

19 MRS. SCOTT: It just happened to be
20 in the file so I grabbed it. This was what was
21 approved back when these people did the renovation.

22 MR. COLELLO: We must have given them
23 this, the 13 feet to do that.

24 MR. FROESSEL: Okay. Yeah.

25 MR. COLELLO: Right? That's that.

29

1 MR. FROESSEL: Yeah, 10 to 12. Is
2 that 25 foot or 20?

3 MR. COLELLO: So, what you really --
4 so if they already have this, they only need a
5 variance for this corner.

6 MRS. SCOTT: Yes.

7 MR. SCOTT: Yes.

8 MRS. SCOTT: See, if you look at this
9 property line it's because the property line comes
10 in.

11 MR. COLELLO: Yes, I know.

12 MRS. SCOTT: I think it's that very
13 point.

14 MR. COSTELLO: How are you able to

07-17-06 zoning board of appeals.txt
15 build a deck without a variance?

16 MRS. SCOTT: The deck was with the
17 house. It came --

18 MR. COSTELLO: The deck is -- the
19 closest point is nine feet?

20 MR. COLELLO: What's this deck?

21 MR. SCOTT: That was before the
22 renovation.

23 MRS. SCOTT: That was the old
24 structure.

25 MR. SCOTT: We bought it after the

30

1 renovation.

2 MRS. SCOTT: Right.

3 MR. COLELLO: This big deck here was
4 already there?

5 MRS. SCOTT: That's correct.

6 MR. SCOTT: Yeah.

7 MR. COLELLO: I don't know how they
8 figured we gave them permission to put that on
9 because this doesn't say that we gave them permission
10 to do that.

11 MRS. SCOTT: That should have come up
12 with the title search or something.

13 MR. COLELLO: You don't have anything
14 else like this?

15 MRS. SCOTT: No. This I got from the
16 file -- I don't know -- trying to go through this
17 process, I saw this so I grabbed this. I tried to
18 grab whatever I could, you know.

19 MR. COLELLO: How in the world would
20 you put that deck up?
21 MR. FROESSEL: I don't know. I'm
22 looking north.
23 MR. COLELLO: Yes. Right.
24 Northwest, this corner.
25 MR. FROESSEL: 13 foot variance means

31

1 that could be seven feet.
2 MR. COLELLO: Unless what you said is
3 this could be not nine, but seven feet.
4 MR. FROESSEL: Well, just going by a
5 13 foot variance, which it's not entirely clear to
6 me, if it's a 13 foot variance and the side yard
7 requirement is 20, so 20 minus 13 is seven.
8 MR. COLELLO: Right. So, that must
9 not be nine feet, it must be seven feet.
10 MR. FROESSEL: That's what she asked
11 for.
12 MR. COLELLO: And if that's seven --
13 MR. VINK: Wouldn't that mean that
14 they don't need a variance now?
15 MRS. SCOTT: That was actually my
16 question at the very beginning, but I don't know.
17 MR. COSTELLO: If they got permission
18 to build the deck where it is and they just want to
19 now build on the deck, it's just an enlargement;
20 right?
21 MR. SCOTT: He said something about
22 it being living space.

23 MR. COSTELLO: That's the enlargement
24 issue. In this case, it is transforming a deck into
25 a --

32

1 MR. COLELLO: But, as far as the side
2 yard, if they've got seven foot there -- I don't
3 understand where is the 49 from the overall 70?

4 MRS. SCOTT: I don't know.

5 MR. FROESSEL: I don't know.

6 MR. COLELLO: If that's the closest
7 point then that would have to be the closest point;
8 correct? Maybe this, maybe not. It can't be that
9 far off. If that's roughly 10 feet and that's seven
10 feet, we're estimating, this is 17 feet. 17 and 49.
11 We're off by about four feet somewhere.

12 MR. FROESSEL: It doesn't add up.

13 MR. COLELLO: No. Well, personally,
14 I think we just have to vote on 138-11.

15 MR. COSTELLO: What is the side
16 setback on the south side? What is that measurement?

17 MR. COLELLO: We don't have this one.
18 We have this one at 9.8.

19 MR. FROESSEL: That's probably the
20 closest point. If that's 9.8 and that's 10 and it
21 keeps going parallel then you're getting farther away
22 from the lot line, so you're not getting any closer
23 to that 9.84.

24 MR. COLELLO: Right. See, this is
25 the closest where I can come up with. We need 70

1 feet; correct? We gave a 49 foot variance, but look
2 at this.

3 MR. FROESSEL: There's only 50 foot
4 total.

5 MR. COLELLO: But if you look at
6 this --

7 MR. VINK: It's our 20 and it's 50.

8 MR. COLELLO: If you take the 12 and
9 the 10, there's 22. We always don't worry about
10 inches, we're a foot off. See what I mean? Because,
11 in essence, we gave them 21 feet, correct, to play
12 with here?

13 MR. COSTELLO: Did you show
14 Mr. Harper this variance?

15 MRS. SCOTT: No. I found that in the
16 file after I got denied and I had to start doing
17 research. Doesn't he write that in his letter? He
18 cited those, or no?

19 MR. COLELLO: No. He decided that
20 you're not getting any closer.

21 MR. COSTELLO: He's saying no change,
22 no change, no change. It's purely, in my view, just
23 an enlargement issue. This is one where we really do
24 have an enlargement.

25 MR. COLELLO: You're right, it's 50

1 feet.

2 MR. FROESSEL: Right.

3 MR. COLELLO: Okay. So, are we in
Page 29

4 agreement that we just look at this as 138-11?

5 MR. FROESSEL: Yes.

6 MR. COSTELLO: Yes.

7 MR. VINK: And Ron is saying in the
8 letter they don't have the required setbacks. He
9 does say that in his letter, but he hadn't seen the
10 variance that was granted in the past.

11 MR. COLELLO: Right.

12 MR. COSTELLO: He's saying the
13 existing and the proposed do not meet.

14 MR. VINK: Right.

15 MR. COSTELLO: So, he's not saying
16 it's being any closer, in fact, he says no change in
17 all of the dimensions. It's purely an enlargement
18 issue in my view.

19 MR. FROESSEL: I agree with Tom.

20 MR. COLELLO: I agree with you guys.

21 Do you agree?

22 MR. CASTELLANO: Yes.

23 MRS. SCOTT: What's the difference
24 between an enlargement --

25 MR. COLELLO: Don't ask.

35

1 MRS. SCOTT: Believe me, I got you.

2 MR. COLELLO: Okay. Any questions
3 from anyone in the audience on this?

4 Before we close the public hearing,
5 do you have any final comments you would like to
6 make?

7 MR. SCOTT: Nothing.

8 MRS. SCOTT: No comments, but if it's
9 not a variance, you'll give me --

10 MR. COLELLO: It will be a variance.
11 It has to be a variance.

12 MRS. SCOTT: Okay. Got you. I don't
13 have any more questions.

14 MR. COLELLO: Before we close the
15 public hearing, do you think you've had a fair and
16 adequate opportunity to state your case?

17 MR. SCOTT: Yes.

18 MR. COLELLO: Great. Have a seat.
19 Make yourself comfortable.

20 MR. SCOTT: Do you want that?

21 MR. COLELLO: Just leave that there.
22 You can take that too.

23 MRS. SCOTT: This is yours.

24 MR. COLELLO: Thank you. All right.
25 So, what the applicant needs is relief from 138-11;

36

1 correct?

2 MR. VINK: Correct.

3 MR. COLELLO: A lot with an existing
4 nonconforming structure.

5 I would like to make a motion to
6 grant the applicant relief under Code Section 138-11,
7 we're enlarging an existing nonconforming structure
8 that's going from a deck to a living space. Do I
9 have a second?

10 MR. COSTELLO: Second.

11 MR. COLELLO: Seconded by Tom.
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12 Whether an undesirable change will be
13 produced in the character of the neighborhood; I
14 don't think it will change the character of the
15 neighborhood in Vails. We've got small lots where
16 houses are very close. It will, obviously, change
17 the shape of the house or the look of the house
18 because it's going from a deck to a three or four
19 season type room, but I don't think it's going to
20 change the character of the neighborhood.

21 Whether the benefit sought by the
22 applicant can be achieved by some feasible method
23 other than a variance; well, the applicant really is
24 not getting any closer to their neighbors than the
25 original deck is. And with the situation they have

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1 in Vails, which we're all very accustomed to, there
2 is nothing that can be done without a variance.

3 Whether the requested variance is
4 substantial; well, in my opinion, the variance is not
5 substantial at all because, again, they're not
6 getting any closer to the neighbors. All they're
7 doing is putting on a -- changing a deck to a three
8 or four season room so it really has very little
9 impact.

10 Whether the proposed variance will
11 have an adverse effect on the environmental
12 conditions; I think it will have none.

13 Whether the difficulty was
14 self-created; well, anytime a person wants to
15 increase their living space, you could call it

16 self-created, but I can't really look at this as
17 being very self-created because they don't have any
18 options.

19 So, with that said, roll call vote.
20 We'll start with Paul.

21 MR. VINK: In favor.

22 MR. COLELLO: Tom.

23 MR. COSTELLO: In favor.

24 MR. COLELLO: Tim.

25 MR. FROESSEL: In favor.

38

1 MR. COLELLO: Joseph.

2 MR. CASTELLANO: In favor.

3 MR. COLELLO: And I'm in favor, so
4 you're all set.

5 MRS. SCOTT: I guess we'll get
6 something in the mail?

7 MR. COLELLO: Yes, you should.

8 Are you sure this is ours?

9 MRS. SCOTT: Yes. I have a copy.
10 That's all yours.

11 MR. COLELLO: Great.

12 MR. COSTELLO: You realize you can't
13 go any closer to the property line than the deck.

14 MRS. SCOTT: Correct. It's going to
15 sit right on top.

16 MR. COSTELLO: Good luck.

17 MRS. SCOTT: Thanks.

18

19 * * * * *

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21 * * * * *

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23 * * * * *

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25 MR. COLELLO: Okay. Karl and Jean

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1 Lueder.

2 MR. COSTELLO: Lueder on Hillside
3 Park.

4 MR. COLELLO: Okay. We'll move on.
5 Vito and Denise Vitulli.

6 MR. COSTELLO: Before we go to the
7 next one, can I make an announcement about the
8 mailings?

9 MR. COLELLO: Sure.

10 MR. COSTELLO: For those that are
11 here for applicants that are later in the hearing, if
12 you have the mailings, these documents, these green
13 slips, if you could put them in the order that they
14 are on the list of names. I have to check those
15 later and it will make it much quicker if you put
16 them in the same order that they're on this piece of
17 paper, that would be helpful.

18 MR. COLELLO: How you doing?

19 MR. VITULLI: Good. How you doing?

20 MRS. VITULLI: Hello.

21 MR. COSTELLO: Just a reminder, that
22 you're still sworn in from last time.

23 MR. VITULLI: Yes.

24 MR. COLELLO: Again, Mr. Vitulli, can
25 you just give us an abridged version to bring us up

40

1 to speed again?

2 MR. VITULLI: Sure. I'm trying for a
3 variance for an existing fence. When I purchased the
4 house there was some various fences installed. I've
5 done some repairs to help keep them looking nice and
6 so forth, but they have been there for quite a while.

7 There was some questions asked of me
8 that I couldn't answer the first time, how far the
9 fence was from the forward property line or setback.
10 I got those measurements there. One was nine feet
11 and 27 feet. 27 by the garage and nine by the patio
12 area, and that's pretty much it.

13 I'd like to get a variance so these
14 fences can stay at the existing six foot height. I
15 had gotten good feedback from the neighbors. No one
16 else really has had any problems with it. If anyone
17 has noticed or has driven by -- I did take some
18 pictures, somewhat primitive pictures, but they're
19 somewhat covered. They're somewhat hidden, the
20 fences, to kind of give me some privacy in the area,
21 but that's pretty much it.

22 MR. COLELLO: You didn't build these
23 fences?

24 MR. VITULLI: No.

25 MR. COLELLO: You didn't put these

41

1 up?

2 MR. VITULLI: No. This fence was
3 here for a long time. I did do a repair. I had a
4 gentleman take a tree down and a couple of panels in
5 the fence, the front over here and back in here, and
6 I had to replace the panels, not knowing they were
7 out of compliance at the time. But, I do have -- I
8 have my family and my pet runs around in here. This
9 fence was installed -- I don't know why this fence
10 was here by the garage, but it seems to be kind of a
11 benefit. I would like to try and keep it, if I can.

12 MR. COLELLO: What's that benefit
13 for?

14 MR. VITULLI: I believe, and I've
15 noticed, as the plow trucks come by on North Brewster
16 Road -- I'm sorry, Brewster Hill Road, it tends to
17 keep the slush and slime from getting blown up in
18 that area.

19 MR. COLELLO: But it's not that long
20 of a fence; correct?

21 MR. VITULLI: No. Actually, when you
22 park your car it's 12 feet, two six foot panels. So,
23 the car sits right behind that fence there. Again,
24 that is basically all brush covered as well. It's
25 not an eyesore or anything like that.

42

1 MR. COLELLO: What's the distance
2 between the road and right there?

3 MR. VITULLI: Eight feet. As a

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4 matter of fact, here's my garage. It's eight feet.

5 I do get some splatters, snow, dust and other things
6 from that area.

7 MR. COLELLO: Do you have -- I didn't
8 look at that. Do you have a better picture of that
9 fence?

10 MR. VITULLI: Sure. Let me see what
11 we have here.

12 MR. COLELLO: Is that it?

13 MR. VITULLI: I took some -- I have
14 to apologize because my color printer wasn't working
15 at the time, but here's the picture of the fence by
16 the garage. Oh, yeah, you have a very similar shot.
17 And this is a picture of the existing fence looking
18 from my neighbor's yard.

19 MR. COLELLO: You don't have any
20 letters, Mr. Vitulli, from any of neighbors saying
21 they're in favor of or anything like that?

22 MRS. VITULLI: Nothing returned. No
23 negative remarks.

24 MR. VITULLI: No. We didn't get
25 anything negative.

43

1 MR. COLELLO: Any positive letters?

2 MR. VITULLI: No. I didn't even
3 request any letters. I did get some inquiries from
4 my neighbors, how did you make out, how is
5 everything, you know, but I didn't realize it would
6 be that much of an impact.

7 And basically this all stemmed

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8 because I wanted to have an existing -- actually, I
9 wanted to add a fence because I have pets that I
10 would like to be able to contain and family and stuff
11 like.

12 MRS. VITULLI: You're saying family
13 like I'm running around the backyard.

14 MR. VITULLI: I run around the
15 backyard. No, but it's just a benefit and a safety.

16 This actually all stemmed from an
17 existing -- I shouldn't say existing. I applied for
18 a permit for a fence for the backyard. I have
19 Mr. Harper's letter here and being very upfront with
20 Mr. Harper, I let him know that my fence was six foot
21 high. You know, I didn't want to get into any
22 trouble or anything.

23 MR. COLELLO: I think you answered
24 this last time, how old do you think this fence is?

25 MR. VITULLI: Looking at the cedar

44

1 posts that were in there, I don't know. There's
2 actually posts that run down along here that have
3 been rotted and not replaced.

4 MR. VINK: How long have you owned
5 the property?

6 MR. VITULLI: Since 1998, I believe.

7 MR. COLELLO: And it was there?

8 MR. VITULLI: Yeah. And I didn't
9 think anything of it as far as variance and stuff
10 like that. I replaced a few of the cedar posts, but
11 there are still quite a few in there.

12 MR. COLELLO: So, if he didn't want
13 to do anything he wouldn't have a problem?
14 MR. FROESSEL: Well, he might with a
15 new fence because he has the two front yard issue.
16 MR COLELLO: Right
17 MR. VINK: But if he didn't want to
18 put up a fence he wouldn't be here.
19 MR. COLELLO: If he didn't want to
20 put up any more fence he's fine?
21 MR. COSTELLO: He's still in
22 violation.
23 MR. FROESSEL: Yeah, I think he's
24 still in violation.
25 MR. COLELLO: But those fences were

45

1 put up before we had those front yard setback
2 requirements. I don't know.
3 MR. COSTELLO: It might be.
4 MR. COLELLO: It might be, I'm
5 saying.
6 MR. VITULLI: I would like to have a
7 variance just because it's the right thing to do. I
8 mean, I've acquired -- you know, time and effort and
9 money put into this, I would like to get this taken
10 care of regardless of the age of the fence.
11 MR. COSTELLO: How far is the fence
12 from the front property line?
13 MR. VITULLI: This fence right here
14 is nine feet from the property line.
15 MR. VINK: And it runs along the

07-17-06 zoning board of appeals.txt
front property line?

16

17

MR. VITULLI: Actually, if you take a look here, it's just this contained area here which is -- actually, a big pine tree here. There's a bush over here.

21

MR. COLELLO: This application is for the whole property you want to put a fence?

22

23

MR. VITULLI: Right. But I want to get a variance for the existing fence before I go any farther.

24

25

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MR. COSTELLO: Do you plan to put a six foot stockade around the whole --

2

3

MRS. VITULLI: No, a chain link fence.

4

5

MR. COLELLO: How high will it be?

6

MR. VITULLI: Six feet.

7

MR. COSTELLO: You're going to put a six foot fence around the whole yard?

8

9

MR. VITULLI: Uh-huh.

10

MRS. VITULLI: He said he would give us a permit, but we have to take care of this first.

11

12

MR. COSTELLO: Is that for security?

13

MR. VITULLI: Yes. I have dogs that I --

14

15

MR. COLELLO: Could I see that one more time?

16

17

MR. VITULLI: Sure.

18

MR. COSTELLO: The section of the fence that runs parallel to the front property line,

19

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20 could that be relocated to be 35 feet from the front
21 property line?

22 MR. VITULLI: That would eliminate
23 any sort of patio area. That's kind of like a
24 recreation area. We have little barbecues and my
25 nephews --

47

1 MR. COSTELLO: You wouldn't have to
2 eliminate it. You just wouldn't have it behind the
3 fence.

4 MR. VITULLI: Yeah. It's kind of
5 nice to have the privacy and safety, though. That's
6 the only thing that was -- that's the whole reason
7 why we went through this.

8 MR. COSTELLO: What is the safety? I
9 don't understand the safety. There's a lot of
10 properties in this town that have patios and decks
11 that are close to the property line, close to the
12 road.

13 MR. VITULLI: Well, it's just the
14 cars and stuff like that and --

15 MR. COSTELLO: You have some
16 screening with some trees and stuff there too; right?

17 MR. VITULLI: Yeah, during the
18 summer, but during the winter and the fall it's very
19 sparse. It's kind of like the integrity of the
20 house. It's been there for a while.

21 MR. COLELLO: Okay. But, here's my
22 question, though: It appears to me that you're
23 asking to allow the fences that are there to stay?

24

MR. VITULLI: Yes.

25

MR. COLELLO: But then you're under

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1 the impression that Ron Harper is going to give you a
2 permit, if we allow these to stay, to put six feet
3 all the way around?

4 MR. VITULLI: That's what he
5 explained to me.

6 MR. COLELLO: No. No. That's not
7 going to happen.

8 MR. VITULLI: Okay.

9 MR. COLELLO: Here's the problem, if
10 we give you the variance to keep this existing fence,
11 you have to apply to put a variance because you have
12 two front roads here, all right, you have two front
13 road setbacks because you're on Brewster Hill and
14 your house drive -- your address is Hickory Drive,
15 you're a corner lot.

16 MR. VITULLI: Okay.

17 MR. COLELLO: So, that you've got two
18 front yard setbacks so that means that you can't put
19 a six foot high fence on this property line unless
20 you stop at about here.

21 MR. COSTELLO: 35 feet.

22 MR. COLELLO: 35 feet, wherever that
23 is.

24 MR. VITULLI: Okay.

25 MR. COLELLO: So, that means that you

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1 could put a six foot in here as long as it's not 35
2 feet in here. You could put a six footer here, but
3 it's going to have to stop right about this line,
4 somewhere around here.

5 MR. VITULLI: That's interesting
6 because that's not what was explained -- he didn't
7 explain that to me.

8 MR. COSTELLO: You can't put a six
9 foot high fence in the front setback and the front
10 setback is 35 feet from the property line on any
11 road.

12 MR. VITULLI: Right. So, even though
13 this is not the front of the house, it's still
14 considered setback?

15 MR. COSTELLO: It's considered the
16 front setback.

17 MR. FROESSEL: Under the code you
18 have essentially two front yards.

19 MR. COLELLO: And that's why you have
20 a problem here because this is within 35 feet of this
21 road; right?

22 MR. VITULLI: Okay.

23 MR. COSTELLO: Probably both.

24 MR. COLELLO: Probably both. And
25 this one is 35 feet in front of this road, but us

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1 approving hypothetically this and this, does not
2 approve this.

3 MR. VITULLI: Interesting. Okay.

4 MR. COLELLO: And that's why I wanted
Page 43

5 to read your application again because your
6 application says existing stockade fence exceeds
7 permitted height, I would seek a variance for
8 existing stockade fence to remedy the code violation.

9 MR. VITULLI: Exactly.

10 MR. COLELLO: Which is correct, and
11 that's fine, but that doesn't allow you to do this
12 and this.

13 MR. VITULLI: Okay.

14 MR. COSTELLO: Where were you
15 thinking of putting the fence from the -- is that a
16 garage over to the house where you were --

17 MR. VITULLI: Actually, it was just
18 going to go across here, okay, and then run along the
19 eight foot -- eight foot in -- at the time I didn't
20 know the variance -- and then across and then down
21 and eventually this would be eliminated and that
22 would be a big area where I could run my dogs and
23 recreation and what have you.

24 MR. COSTELLO: A property line that
25 adjoins another property owner is not considered a

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1 front setback.

2 MR. VITULLI: Okay.

3 MR. COSTELLO: So, you can put it
4 within six feet as long as it's not 35 feet from a
5 front setback which you have two of them.

6 MR. VITULLI: This is considered a
7 front setback?

8 MR. COSTELLO: Yes. If you go 35
Page 44

9 feet and 35 feet, you have an area in here that you
10 can put a six foot high fence.

11 MR. VINK: Without needing a
12 variance.

13 MR. VITULLI: Otherwise I have to
14 come back for another variance.

15 MR. COLELLO: Over here
16 approximately.

17 MR. VITULLI: Okay. Which isn't bad,
18 I mean, that's not a problem, but I have a feeling I
19 might have to come back for another variance because
20 that's kind of nice.

21 MR. COLELLO: Okay. We have our
22 setbacks here. Let me make sure. Where's my pen?
23 The fence to the east -- I'm sorry, the distance here
24 is eight feet you said?

25 MR. VITULLI: Yes.

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1 MR. COLELLO: And this is
2 approximately how many feet, the fence, 16 or --

3 MR. VITULLI: That would be 16. It's
4 16. That's right, 16.

5 MR. COSTELLO: Two panels?

6 MR. VITULLI: Uh-huh.

7 MR. COLELLO: And the other fence --
8 I'm sorry, is that nine?

9 MR. VITULLI: Yes, nine feet from the
10 property line.

11 MR. VINK: Could I see your pictures
12 again?

13 MR. VITULLI: Sure. Let's see,
14 there's the fence. Here's the one with the --

15 MR. COLELLO: Do we have any
16 questions from anyone in the audience about this
17 application?

18 We're going to do this as two
19 separate votes --

20 MR. VITULLI: Okay.

21 MR. COLELLO: -- because it's really
22 two separate issues with the fence.

23 MR. VITULLI: Okay. Sure.

24 MR. COLELLO: Do you have any
25 questions before we move ahead -- before I close the

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1 public hearing?

2 MR. VITULLI: Not off the top of my
3 head.

4 MRS. VITULLI: No.

5 MR. COLELLO: Any final comments you
6 would like to make?

7 MRS. VITULLI: Please.

8 MR. VITULLI: I'm sure you've heard
9 that before.

10 MR. COLELLO: And do you feel you've
11 had a fair and accurate opportunity?

12 MR. VITULLI: Yes.

13 MRS. VITULLI: Yes.

14 MR. VITULLI: Thank you.

15 MR. COLELLO: We'll close the public
16 hearing.

17 MR. VITULLI: Okay.
18 MR. COLELLO: Please make yourself
19 comfortable.
20 MR. VITULLI: Do you need any more
21 paperwork?
22 MR. COLELLO: I think that's enough
23 for now.
24 I think we should do this as two
25 separate, I really think we should.

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1 MR. FROESSEL: Okay.
2 MR. COLELLO: Just to let you know on
3 the short fence -- let me rephrase that, not the
4 short, the smaller fence, the 16 foot long fence,
5 they really need relief in two ways; eight feet from
6 Brewster Hill Road and to go 27 feet from Hickory
7 Drive and on the other fence in the southwest corner
8 of the property they need relief from Hickory Drive
9 of nine feet.
10 MR. COSTELLO: You need more than
11 that.
12 MR. COLELLO: I'm sorry, that's
13 right, they are nine feet. And they need 35 feet;
14 right?
15 MR. VINK: Right.
16 MR. COSTELLO: 26 feet.
17 MR. COLELLO: 26 foot variance.
18 MR. COSTELLO: Yes.
19 MR. COLELLO: I'm sorry, that's
20 right. Eight feet here, so we need a 27 foot

21 variance there and from Hickory we need an eight foot
22 variance.

23 Well, I'll make a motion to grant
24 the shorter of two fences on the southeast corner of
25 the property, the 16 foot long six foot high fence.

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1 The variance requested is 27 feet from Brewster Hill
2 Road and --

3 MR. FROESSEL: No, from Hickory
4 Drive.

5 MR. COLELLO: No. They have 27 feet
6 from Hickory Drive. They need an eight foot
7 variance; right?

8 MR. FROESSEL: I'm sorry, you're
9 right. I'm sorry.

10 MR. COLELLO: That's okay.

11 So, they need a 27 foot variance from
12 Brewster Hill Road as depicted on the map and an
13 eight foot variance from Hickory Drive as depicted on
14 the map. Do I have a second?

15 MR. CASTELLANO: I'll second.

16 MR. COLELLO: Seconded by Joseph.

17 I'll address the criteria. Whether
18 an undesirable change will be produced in the
19 character of the neighborhood; I don't think so. The
20 applicant has stated that when they bought this
21 property these fences were up -- this first fence was
22 up. So, it's been up a number of years. We don't
23 know exactly how long so it's certainly not going to
24 change the character of the neighborhood.

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Whether the benefit sought by the

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1 applicant can be achieved by some feasible method
2 other than a variance; the only thing they could do
3 is cut the fence down from the six foot high height
4 down to three feet because they're too close to both
5 Hickory and to Brewster Hill. And, again, it's
6 covered with brush and it's only 16 foot, it's been
7 there for many years. I don't think it's bothering
8 too many people.

9 Whether the requested variance is
10 substantial; I don't think it's substantial because
11 it's only a 16 foot long fence.

12 Whether the proposed variance will
13 have an adverse effect on the environmental
14 conditions; I think it will have none. As a matter
15 of fact, the applicant stated that it's better
16 because of the splashes of rock salt and things like
17 that from plowing, et cetera, don't hit their cars
18 and go on to their property as much.

19 Whether the alleged difficulty was
20 self-created; I certainly don't think it was
21 self-created because this fence was there when the
22 applicant purchased the home.

23 Okay. Roll call vote on this first
24 fence. Joseph.

25 MR. CASTELLANO: In favor.

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MR. COLELLO: Tim.

MR. FROESSEL: In favor.

MR. COLELLO: Tom.

MR. COSTELLO: In favor.

MR. COLELLO: Paul.

MR. VINK: Opposed.

MR. COLELLO: And I'm in favor. So, the request for the small shorter -- not shorter -- shorter in length fence has been approved.

Now, we'll move to the larger three-sided or approximately three-sided fence in the southeast corner. Once again, the applicant needs relief from Hickory. They only have nine feet of distance so they need a 26 foot variance from Hickory Drive to keep that fence.

I'll entertain any motions either in favor of or opposed.

MR. COSTELLO: I will make a motion to deny the requested variance.

MR. COLELLO: Do I have a second?

MR. VINK: Second.

MR. COLELLO: Seconded by Paul.

Will you address the criteria please?

MR. COSTELLO: Whether an undesirable change will be produced in the character of the

neighborhood or a detriment to nearby properties will be created by the grant of the variance; there obviously will be no change in the neighborhood because the fence has already been standing for many

5 years, but I could see where it could be a detriment
6 to nearby properties whereas the neighbor that's
7 affected could move and the next neighbor moving in
8 would have a fence right up to the property line
9 that's six foot, that could be a detriment to them.

10 Whether the benefit sought by the
11 applicant can be achieved by some feasible method
12 other than a variance; I think the applicant could
13 relocate the fence to a place that wouldn't require a
14 front setback variance and the property is large
15 enough to enable him to put in a fence that would
16 give him a large area in the rear of the house to
17 provide a running area for his pets and the security
18 for his pets could be provided that way.

19 And as far as the shielding that the
20 current fence provides to the patio that's there, it
21 could be done with more natural screening, trees and
22 bushes.

23 Whether the requested variance is
24 substantial; I'd say it is substantial. The fence is
25 currently nine feet from the property line where a 35

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1 feet is required.

2 Whether the proposed variance will
3 have an adverse effect or impact on the environmental
4 conditions in the neighborhood; I believe it will
5 have no impact on those environmental conditions.

6 Whether the alleged difficulty was
7 self-created; I think in this case the applicant
8 purchased a home with the fence already standing and

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so it was not created by this applicant.

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MR. COLELLO: Thank you.

Okay. We have a motion on the floor to deny, to make sure we're on the same page.

Paul, we'll start with you.

MR. VINK: In favor.

MR. COLELLO: Thomas.

MR. COSTELLO: In favor.

MR. COLELLO: Joseph.

MR. CASTELLANO: In favor.

MR. FROESSEL: In favor.

MR. COLELLO: And I'm opposed so the application has been approved -- the motion I should say has been approved to deny four to zero -- four to one, I'm sorry.

So, with that, what you have is you have approval for this one, but not for this one.

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MR. VITULLI: Okay. So, what's the next course of -- how do I appeal this? Is it part of the house? Is it part of the character of the house? It's been there longer than all of us.

MR. COLELLO: Unfortunately, there's no appeal process.

MR. VITULLI: There is no appeal process?

MR. FROESSEL: There is. You can file an Article 78 in Supreme Court.

MR. VITULLI: Right.

MR. COLELLO: Without going to court,

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13 there's no local appeal process because that's what
14 this Board is, the appeal process. So, you'd have to
15 file an Article 78 which is, in essence -- I guess
16 you could probably describe it better than I would --
17 is that your civil rights have been violated, et
18 cetera.

19 MR. FROESSEL: No. It's not
20 necessarily civil rights. It's just that we acted
21 arbitrarily and capricious.

22 MR. VINK: It's something that if you
23 wanted to pursue, you'd probably want to speak to an
24 attorney.

25 MR. VITULLI: I think I might have to

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1 because I just feel this was very, very important for
2 me to put all of this time and effort in but,
3 gentlemen, thank you very much.

4 MRS. VITULLI: Thank you.

5 MR. COLELLO: Let's take a 10 minute
6 maximum break, okay, and Brewster Honda is next.

7 (Whereupon, a short recess was taken
8 by all parties.)

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16 MR. COLELLO: Brewster Honda.

17 MR. ROSSI: Yes. Don Rossi,
18 representing the applicant 899 Route 22 LLC. Brian
19 Beanland is the manager of the Brewster Honda
20 dealership. Chip Robertson is a representative of
21 the owner of the property and since there might be an
22 occasion for the two of you to say something to the
23 Board then you should be sworn in.

24 MR. COSTELLO: If you could raise
25 your right hands. Do you swear that the testimony

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1 you're about to give is the truth, to the best of
2 your knowledge?

3 MR. BEANLAND: Yes.

4 MR. ROBERTSON: Yes.

5 MR. COSTELLO: Thank you.

6 MR. ROSSI: I'm here this month. I
7 know this matter was before you last month. Mike
8 Liguori of our office handled it, but since I really
9 was the one who was before the Board on the use
10 variance, I think it's more appropriate for me to go
11 over the plan and to discuss where we've been since
12 we were before you.

13 One of the things that struck me
14 again, in reviewing the file, is that many of the
15 same considerations that were part of the use
16 variance apply here. Only instead of talking about
17 the actual use, as is appropriate on an area
18 variance, I think we talk more about the particulars
19 of the property.

20 The map that I've put before the

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21 Board is a colored version of what was submitted.
22 It's also a colored version of what was before the
23 planning board and what was the subject of the
24 planning board's negative declaration of SEQRA. So,
25 this is the plan that we have come to you from the

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1 planning board on.

2 Uniqueness of the property, I think,
3 is a major aspect of our application, major
4 consideration of the planning board in making its
5 referral to you. The property is in an NB-1 District
6 where the minimum lot size is 10,000 square feet.
7 The property that's before you is three acres in
8 size, roughly three acres, under the ordinance
9 128,000 square feet, so basically 12 times larger
10 than the minimum lot size which I think is a very
11 important aspect of your consideration of this.

12 When we were before you on the use
13 variance you may recall we showed the existing gravel
14 parking area on the property. That is shown on this
15 map by a dashed line and in its most important part
16 extends into the 100 foot setback from the Croton
17 River. The 100 foot setback is shown on this map in
18 the green dashed lines and it's shown as extending
19 around the corner of the property at the north end
20 because in addition to the controlled area related to
21 the river, there is also an unnamed stream that is
22 off the property to the north resulting in another
23 100 foot controlled area in this area.

24 So, those are two very important

25 07-17-06 zoning board of appeals.txt
factors in the overall site design that has evolved

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1 since we were before your Board and since we received
2 the use variance which was subject to our going to
3 the planning board.

4 When we went to the planning board
5 the process involved initially a referral out to all
6 other agencies interested in the application.
7 Responses were received and the planning board
8 considered the proposal. And one of the things they
9 noted was that there would be use, again, a use that
10 had occurred in the past, a use that was existing at
11 the time of the use variance grant in this area that
12 I'm pointing to. I think everybody can see it.

13 And they suggested, and we agreed,
14 that we would pull back the use of that area. We
15 wouldn't tear up the gravel. We wouldn't replace it.
16 We couldn't disturb it in any way, but since what was
17 before the planning board was the approval of the
18 use, they felt it appropriate that we live with the
19 100 foot controlled area which we agreed to.

20 We have three acres overall on the
21 site. We would, and there's no bones about it, we
22 would have to get a wetland permit to use that area
23 under the town's wetlands control law, but it made
24 sense to us. They also asked that we not use another
25 area within the controlled area which is this piece

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1 in green and to the west of the wetland line. So,
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2 this area also is not deemed appropriate by the
3 planning board for use because it was in the
4 controlled area and, again, we agreed to pull back
5 and not use that area and that's certainly something
6 that we would continue if we went back for site plan
7 approval to expect as a condition of that approval.

8 And, again, all of these things that
9 we're talking about can obviously be conditioned of
10 any grant by your Board of the requested variances.
11 So, we're now faced with the planning board's desire
12 to stay out of controlled areas with the use, but
13 wanting to maintain what we feel is a very reasonable
14 use of this site of the overall three acres for the
15 parking of cars.

16 So, again, in consultation with the
17 Board, the yellow area was determined as an area that
18 we could put down new gravel, again, no impervious
19 surface, no blacktop; item 4 gravel, okay, in this
20 area for the parking of, again, a proposed condition,
21 nonregistered vehicles. This is not an active
22 parking lot, only nonregistered vehicles that are
23 sold in connection with Brewster Honda's business
24 with an aim to compensate for the areas that the
25 Board suggested we remove ourselves from within the

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1 controlled areas.

2 We recognized that a variance would
3 be required, recognized that we'd have to come back
4 to your Board. But given the planning
5 considerations, the potential benefits from an

6 environmental standpoint, it made sense even though
7 ultimately we would be ending up losing a number of
8 spaces that we could use for the parking.

9 And it's a little bit difficult to
10 see on this map, but there are three aisles for
11 parking of vehicles. One runs along the 100 foot
12 controlled area which incidentally will be delineated
13 by curb stops that will be placed there on the
14 boundary and we would do that with the appropriate,
15 you know, oversight by the building department and
16 have it surveyed to have it there. So, parking of
17 a row of cars -- 39 cars could fit in this area.

18 Then, because you may recall at the
19 use variance, at that time cars were parked
20 completely on the gravel area. The planning board
21 said we don't like that. We would like you to
22 provide for a lane so that cars can easily go in and
23 out and, in the event there was ever a safety issue,
24 there would be ample room for emergency vehicles to
25 get up -- to get up into the site. We also agreed

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1 with that and we've shown that on the plan and that's
2 this strip 17 feet wide that runs through the entire
3 length of the proposed area.

4 Then two rows of cars, 39 cars in
5 this area, and an additional 37 cars -- it's hard to
6 see with the coloring -- in the lane that, for the
7 most part, resulted from the shifting of the use.
8 Now, again, it's not all new area, but it is part of
9 the -- because most of it and a good part of it is

10 part of existing gravel area so we're not -- the
11 yellow area with the dots in it is not all new
12 graveling of the site.

13 So, I know issues have arisen in the
14 past on this. When the existing gravel areas were
15 being used approximately 160 cars could be fit on
16 that gravel area. This results to 115 cars. So,
17 it's a significant reduction, again, in what was
18 there and at a design that the planning board, while
19 not having put its actual seal of approval on, has
20 certainly encouraged by discussions with them and the
21 adoption of the neg-dec and one that we think has no
22 adverse impact whatsoever on the surrounding
23 properties.

24 The use has been there. This slope
25 going down from R&R Development is one that's

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1 unusable. There's no possibility of development
2 coming to this end. All with the overall result of
3 improving environmental conditions with this while
4 allowing us a reasonable use for the outside storage
5 use. So, those are really the essentials.

6 And I want to again emphasize a
7 couple of things about the area requirements that
8 we're dealing with. 10,000 square foot minimum lot
9 size, we have 128,000. There's a requirement for 50
10 percent -- I'll look at it -- 55 percent open space.
11 There will be 80 percent open space on the site.
12 There's no buildings which is obviously a major
13 consideration. And the coverage is -- the permitted

14 coverage would be 45 percent, we have 20 percent.

15 So, all of those things, I think, go
16 towards your considerations of how significant the
17 variance request is and I think speak very well for
18 our not asking for a significant variance. Again,
19 I'm not putting words in the Board's mouth for sure,
20 but all of those factors reduce overall the scope of
21 the variance that we've requested.

22 So, I just say that the applicant has
23 really, I think, worked with the Board. We came to
24 your Board for the use variance. We complied
25 immediately with the two conditions of your use

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1 variance, one was to remove the cars from the
2 property in the Town of Southeast that was being
3 used, that was done immediately after your variance
4 was granted; go to the planning board, get site plan
5 approval which we did and the site plan approval
6 process has resulted in, I think, a very appropriate
7 design and one that's consistent with the area,
8 unique to the property given its environmental
9 constraints and one that I think the Board, I
10 believe, has all of the authority to look favorably
11 on.

12 So, with that, any questions,
13 obviously, I'll be happy to answer.

14 MR. VINK: Mr. Rossi, the cars that
15 will be parked there will be all new cars? Would
16 there be any used cars parked there?

17 MR. ROSSI: I'll ask that of Brian.
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18 There will be unregistered cars there and there
19 probably would be, during the ebb and flow of the
20 business, used cars parked there also. We haven't
21 discussed -- there's never been any real discussion
22 with the Board as to -- your Board or the planning
23 board, but I think, for the most part, it would be
24 new, but we certainly wouldn't want to preclude the
25 possibility that some used cars would be stored

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1 there.

2 MR. BEANLAND: The primary use is for
3 new car storage. But, like you said, you know, could
4 there be a used car there at one point or another,
5 there probably could be, but the use that we want it
6 for is for our new storage.

7 MR. ROSSI: Right. I think the key
8 thing is all vehicles that are on the property for
9 sale or lease ultimately.

10 MR. VINK: I understand that.

11 MR. ROSSI: Unregistered.

12 MR. VINK: But used cars present
13 different environmental concerns than new cars do, as
14 a general rule, and that's why I raised the issue.

15 MR. ROSSI: I'll leave that to the
16 experts on it, but I think, for the most part, the
17 ones that would be held for sale on the lot are
18 probably the ones that have been serviced and cleaned
19 because if someone walks into the lot and they're
20 looking for a used car then someone could go drive
21 one up and they want it to look presentable. They

22 would n' t want a dilapidated car and, quite frankly,
23 it will be used cars that have been cleaned and
24 inspected, but not registered.

25 MR. BEANLAND: Prior to this its

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1 primary use was new car storage.

2 MR. VINK: What is the actual square
3 footage that is going to be covered now? I
4 understand the percentages are on the map. Do you
5 have an actual number of square feet that are being
6 covered here and I can't do that kind of math. I'm a
7 lawyer.

8 MR. ROSSI: That's what I'm looking
9 at and I certainly can't. 20 percent lot coverage
10 out of 128,000 square feet. 10 percent would be
11 12,800 so I think we're looking at 26 -- 24 plus
12 1600, 25,600.

13 MR. COLELLO: Don, you have to agree
14 with me, though, that your percentages of lot
15 coverage, et cetera are really skewed because of the
16 controlled area; correct? I mean, we can't all pat
17 ourself on the back saying we're only using 20
18 percent of it when --

19 MR. VINK: It's not using only 20
20 percent of it.

21 MR. COLELLO: That's what I'm saying
22 because of the controlled area. Let me finish for a
23 minute.

24 MR. VINK: Sure.

25 MR. COLELLO: We're talking about the
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1 planning board doing a wonderful thing telling you,
2 and you guys compromising, that you shouldn't be in
3 the controlled area. You shouldn't be in the
4 controlled area, that's not an issue.

5 MR. ROSSI: Ed, I definitely do not
6 agree with you on that.

7 MR. COLELLI: Okay. That's what
8 makes the world go around.

9 MR. ROSSI: The controlled area and
10 the wetlands ordinances that apply here, both the
11 town's wetlands ordinance and the DEC provide for
12 obtaining wetlands permits. They do not prohibit use
13 of controlled areas. We're not doing anything in the
14 wetland. We would be in a controlled area and,
15 provided that we meet the various requirements of
16 those statutes, we're entitled to a wetlands permit.

17 So, part of the client's
18 considerations on this is well, we're not going to
19 disturb any area within a controlled area. So, to me
20 that indicates that we start off way ahead of the
21 game when we go for a wetlands permit. We knew once
22 the planning board focused on that use that if we
23 wanted to continue with this we would need wetland
24 permits and it would take six to eight months to get
25 through that local wetland process and hiring

1 wetlands experts and possibly using these areas on

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2 this side of the property for detention basins and
3 sedimentation basins. Ultimately, and why I
4 disagree, ultimately, I think we could have designed
5 things within these setback areas because you don't
6 prohibit, to my knowledge, sedimentation basins in
7 setbacks. We probably could have gotten to a very
8 palatable site plan.

9 MR. COLELLO: But that would have
10 cost you a lot of time and a lot of money.

11 MR. ROSSI: Right, and would have
12 resulted in additional disturbance, continued use
13 within controlled areas as opposed to doing what
14 makes sense for everyone.

15 MR. COLELLO: Well, we can debate
16 that point. I don't think it makes sense for
17 everyone. I think it makes a lot of sense for your
18 client. But, a couple of things, and I got to tell
19 you this, and this has always been something that
20 bothered me, the use has always been there. I've
21 heard that for months on this thing. Well, yes, the
22 use has always been there. People have been parking
23 cars on there illegally for a long time and we
24 keep --

25 MR. ROSSI: And before that people

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1 used it for other things, but we start with a fresh
2 slate.

3 MR. COLELLO: Okay. Forget it. I'm
4 not going to debate with you because we can go back
5 to the dinosaurs took dumps there, too. I don't care

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6 how far you want to go back, but the bottom line is
7 we keep saying how the use has always been there.
8 Well, if the use was illegal five years ago, 10 years
9 ago, it's still illegal. So, we can't pat ourself on
10 the back and say well, we're not going to disturb any
11 more of the areas than we have by parking illegal
12 cars there, we just want to park illegal cars where
13 we were disturbing the property.

14 MR. ROSSI: But, by saying that, you
15 throw this process back three years because that
16 existed when this Board granted the use variance.

17 MR. COLELLO: Absolutely.

18 MR. ROSSI: To say to us now that,
19 for some reason, we shouldn't even be thinking of
20 getting a variance because we had an illegal use and
21 I don't admit or concede --

22 MR. COLELLO: Don, let me interrupt
23 you. I'm not saying that. I'm not saying you can't
24 come before this Board and go for a variance. Did I
25 say that? No. I'm saying that, number one, my

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1 personal opinion is you shouldn't be in the
2 controlled areas. My personal opinion is, I can't
3 use the argument to justify this in my mind that the
4 use has already been there because the use was wrong,
5 Don. And if the use was wrong, I can't always say
6 that's why it's a good thing.

7 MR. ROSSI: First --

8 MR. COLELLO: Now the use is legal.

9 MR. ROSSI: The use is legal and

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despite, again, respectfully, Ed --

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MR. COLELLO: Go ahead.

MR. ROSSI: Despite your opinion that somebody shouldn't be in the controlled area, it's contrary to what the law says and most importantly the town board -- not the quote unquote town board -- but the town department or board; namely, the planning board, which is the board that has the primary review authority over those things has issued a negative declaration under the SEQRA saying we like this. Now, I know that doesn't mean that your Board has to then grant a variance, but your Board does have to take into consideration the fact that the planning board has put this neg-dec on this. That's a very significant thing. That addresses the environmental conditions.

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MR. COLELLO: That's right. Let me ask you this question: But why do they like it, because they drew the line in the sand? They drew the line in the sand where and said stay out of the controlled areas; didn't they say that?

MR. ROSSI: They didn't draw a line in the sand.

MR. COLELLO: You know what I'm saying.

MR. ROSSI: They suggested it and we said, you know we have two options, go back to the Zoning Board of Appeals with something that we believe is definitely -- again, in our opinion,

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14 something that we believe the zoning board could look
15 favorably on.

16 Like we do with any client, what are
17 the issues? Okay. There are practical difficulties
18 with regard to the site. There are environmental
19 considerations that we need to address. The planning
20 board asked for it. We can push the envelope with
21 the planning board for something that, just as you
22 just said, almost everybody would say is not the most
23 desirable alternative, but nonetheless something
24 that, in our opinion, we would have the legal right
25 to after spending tons of more money and additional

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1 delay all for the sake of instead of pushing the
2 envelope and seeking to use that area and that area
3 and creating sedimentation basins and doing all sorts
4 of site disturbance on a three acre piece, okay,
5 instead of that we're going to move this, our usable
6 area, the area that we can use and we're going to
7 compensate for it over here, all of which in this
8 gray area does not require a variance, and we're
9 going to use an additional disturbance with gravel
10 over here.

11 Now, isn't that in everyone's
12 interest? Yes. We spend less money. There's less
13 legal fees to pay. There's less engineering fees.
14 There's less surveying fees, but we end up with an
15 end product which is a much less intensive use than
16 had been -- you keep saying illegally that was there
17 previously. I never, in my introduction, really

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18 didn't even talk about anything other than disturbed
19 areas. Okay. When that use variance was granted, we
20 have a permitted use.

21 We went to the planning board. This
22 is their suggestion to us. We see it as a viable,
23 reasonable alternative. We also see it as something
24 that there is no adverse impacts on the neighborhood
25 and we're faced with saying to our clients, but we

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1 have a standard under the town law that says if the
2 benefits to be weighed by granting the variance
3 outweigh any adverse impacts then a zoning board
4 should grant us a variance, that's our reading of it.

5 And so, why go through such a
6 additional expense, such additional time, such
7 additional site disturbance when we have this very
8 viable alternative. The granting -- and, again, if
9 we took this little line, went out here, we're not
10 talking about disturbing anything in here. This
11 additional disturbance in the setback it seems like
12 such a -- in doing a balancing of all of the
13 considerations, it seems heavily weighted in allowing
14 us to do that instead of having us go through
15 contortions and go through all these different
16 reviews and permit processes when we have something
17 that your own planning board said we like this, we're
18 giving you a neg-dec

19 MR. COLELLO: Well, they should have
20 given you a variance to do it, Don.

21 MR. ROSSI: They can't.

22 MR. COLELLO: Of course they can't.

23 MR. ROSSI: We're asking you guys.

24 MR. COLELLO: I understand that.

25 Please, don't keep bringing up the planning board is

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1 in love with this. Let me finish. The planning
2 board loves it so much they drew the line here, so to
3 speak, and say stay out of the controlled areas.

4 MR. ROSSI: Right.

5 MR. COLELLO: So, they're your big
6 Jehovah's right there, they say stay out of the
7 controlled area. Now, they're saying they want a
8 lane down the middle, okay, that's fine, but that
9 eats up car space, okay. And you're absolutely
10 right, you have a use variance. You have a variance
11 to park cars here within the setbacks of this lot.
12 That's what you have right now; correct? And now
13 you're coming back to the Board saying you know what,
14 it doesn't work. We need more space back here
15 because our friends in the planning board are telling
16 us to put the line here and put the lane here.

17 MR. ROSSI: But isn't that --

18 MR. COLELLO: That's not this Board's
19 problem.

20 MR. ROSSI: But isn't that exactly in
21 effect what your Board --

22 MR. COLELLO: Yes.

23 MR. ROSSI: -- conditioned?

24 MR. COLELLO: Our job is to give
25 minimum relief.

1 MR. ROSSI: That's right.

2 MR. COLELLO: Minimum relief.

3 MR. ROSSI: That's right.

4 MR. COLELLO: Okay. And if you go
5 back to the very beginning of this application, okay,
6 there's been a use variance put on this property.
7 That's a lot -- that's not minimum, that's major
8 relief right there. Now, number two, yes, you're
9 going to lose some cars if the variance isn't
10 granted, but you're not going to put the lot out of
11 business. The lot is still going to be a viable lot
12 for storing cars. And, again, it's my opinion. I'm
13 not speaking for the Board.

14 MR. ROSSI: I understand. I take to
15 heart all of your comments. I don't take any of them
16 lightly. I do not think that use -- first off, as
17 far as what your Board is supposed to grant, I think
18 that you don't -- you're not limited in granting only
19 the minimum relief. I think that you have that as a
20 factor to consider. You have the authority to look
21 at the overall circumstances, what's reasonable,
22 what's a reasonable balancing of all of these
23 interests. That's essentially what you do when the
24 talk about your factors to be considered.

25 I don't believe that you have to find

1 all of those things on every application. You have
2 to consider them. You have to look at them in

3 relationship to the application. We know the
4 planning board didn't give us a variance and we know
5 the planning board said to us well, you know what,
6 your use is now going to come under scrutiny by us,
7 the planning board, and we're going to give our
8 opinions and you have a right, as great as the use
9 variance was, the bottom line of that is we now have
10 a permitted use. This use should be looked at like
11 any other use that comes before you after a referral
12 from the planning board. We should not be, in my
13 opinion, prejudiced by the fact that we got a use
14 variance.

15 MR. COLELLO: And you're not. You're
16 not. Don't say that.

17 MR. ROSSI: It sounded to me --

18 MR. COLELLO: It sounded to you and
19 please let's not set this up --

20 MR. ROSSI: I have the minutes from
21 the last meeting.

22 MR. COLELLO: I understand that. And
23 let's not set this up so some guy in a robe is
24 reading my comments, okay, because that's what I
25 think is happening here, Don. So, let's get that

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1 straight.

2 MR. ROSSI: Always like on your last
3 application, you're always subject to that potential
4 forum. We're not talking litigation. We're trying
5 to balance these things.

6 MR. COLELLO: I understand we're
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7 trying to balance it, but I never said the word
8 prejudice and please get that very clearly in the
9 notes that I don't think this applicant has any
10 prejudice against him. I don't think the fact that
11 they have a use variance has any issue whether an
12 area variance should be granted. Let's make sure
13 that that's in the notes clearly, too.

14 MR. ROSSI: And we greatly appreciate
15 that, but that's certainly our right and I think that
16 that is the case.

17 MR. COLELLO: All right. I'm going
18 to stop talking and let some of the other Board
19 members ask you questions.

20 MR. ROSSI: Well, let me just say one
21 more thing about this, and that is we should be
22 looked at as if we are any other application that
23 went to the planning board and came to you on their
24 referral.

25 MR. COLELLO: And you are.

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1 MR. ROSSI: And what, I guess, the
2 thing to really -- I guess the crux of this thing is,
3 have we presented something to your Board that
4 warrants a determination that this is a reasonable
5 use of this site? We're talking about 115 cars on
6 this three acre site, whatever the configuration --
7 the river is on the site, but whatever it is, it's a
8 three acre lot in this district. We want to use this
9 stretch of land for the parking of vehicles under
10 controls with the planning board's review.

11 So, it's important what the planning
12 board said. They didn't grant a variance to us, but
13 the planning board has safety concerns and design
14 concerns and alike and studied this thing and this is
15 what they came up with, is 115 cars being parked in
16 this area a reasonable use? And the most important
17 thing and, again, I'm not saying this because we're
18 threatening to go to litigation on it, but if someone
19 in a robe is looking at this, what they're looking at
20 is what are the adverse impacts, what are the
21 benefits, okay. And you are here to grant relief,
22 that's why you're here, you grant relief from the
23 strict application of this zoning ordinance.

24 What someone looking at this might
25 very well say is this is relief that's being granted,

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1 it's within the confines of the planning board's
2 consideration, is this an unreasonable, extensive,
3 overburdening use of this strip? And I just say,
4 three lines of cars in that area with an additional
5 amount of disturbance with no adverse impacts on any
6 of the neighbors which is critical because that is
7 essential to your determination, both on the use
8 variance and on this one, how do you weigh that
9 against the benefits? The benefits greatly outweigh
10 any burden that's occurring and I think that's the
11 standard.

12 And I don't come to your Board
13 preaching fire and brimstone and threatening
14 litigation. I come to your Board after saying to the

15 clients, look, you're going to lose this, but it's
16 reasonable for the planning board to want that and 39
17 cars, 39 cars and 37 cars is a very reasonable thing
18 and a very reasonable use of a piece of property that
19 this Board thought appropriate to use for this.

20 So, that's the nuance. That's the
21 difference and that's the kind of relief that's
22 perfect for your Board to grant because this allows
23 us to go forward with minimal adverse environmental
24 impact. That's the crux of it. This isn't about
25 what a court would say, although I believe they would

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1 find that way, but that's the crux here.

2 I don't think we're pushing the
3 envelope. We've toned it down from what was before
4 your Board before. Let's talk about doing math, it's
5 150 to 115. What's the difference in the reduction
6 of the number of cars that are parked there? That's
7 a big improvement.

8 MR. COLELLO: Do we have any
9 questions of anyone in the audience?

10 MS. ECKARDT: Lynn Eckardt. I do
11 have a few. One is Mr. Rossi kept talking about the
12 negative-dec issued by the planning board, but in the
13 five years that I sat through planning board meetings
14 I can think of only two positive decs. So, I don't
15 think it's very persuasive, and it's been for
16 Terravest and Stateline and those are rather major
17 projects.

18 MR. ROSSI: Do you prefer that we
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19 address them one at a time?

20 MR. COLELLO: Yes, address them one
21 at a time.

22 MR. ROSSI: Comparing Terravest to
23 this project is comparing apples to oranges in the
24 most generous sense. This is an area on a three acre
25 lot with that degree of disturbance. So, to imply

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1 possibly that the planning board doesn't do its job
2 properly when it reviews and issues a neg-dec and it
3 did something improper in issuing this neg-dec is, I
4 think, very --

5 MS. ECKARDT: That's not what I'm
6 saying. I'm saying you make it sound like it's a big
7 deal to not have gotten a positive dec. Well, I'm
8 saying that those that were issued a positive
9 declaration were issued on huge projects. Most
10 projects don't approve the negative declaration. I
11 don't consider that persuasive or a big deal, that's
12 all.

13 MR. ROSSI: It is a big deal in that
14 this matter got referred out consistent with the
15 recently adopted amendments to the zoning ordinance.
16 The DEP, DEC, Westchester County Health Department --
17 the list goes on -- take a look at 138-41(c),
18 somewhere in there, the referrals.

19 The first thing that we did was we
20 sat with the same clients and went to the planning
21 board and the planning board said you can't do
22 anything here, well, why can't we, you haven't

23 referred this out. We went out to every interested
24 agency on the list of agencies that the planning
25 board sends things to. So, to imply that getting a

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1 neg-dec is not a big thing is very misleading to the
2 Board. It is a big thing and it only was obtained
3 after months and months of study by the Board.

4 MS. ECKARDT: I've sat through almost
5 every planning board meeting for five years.

6 MR. ROSSI: So you know a neg-dec is
7 a big thing.

8 MS. ECKARDT: I will beg to differ on
9 that.

10 Anyhow, I'd like to move on to -- I
11 think what's difficult about this is there are a lot
12 of environmental issues here. And I understand that
13 it's just not your purview and I think that's what
14 makes it very dicey. I really believe that -- and
15 Riverkeeper as well -- that cars aren't pervious. I
16 never yet seen metal absorb water and I do think that
17 makes a difference, and I understand that's not your
18 purview. It is right on the banks of the Croton
19 River.

20 Don, you keep mentioning buffer --

21 MR. ROSSI: It's not right on the
22 banks of the Croton River.

23 MS. ECKARDT: It's 100 feet away from
24 the Croton River.

25 MR. ROSSI: That's right.

1 MS. ECKARDT: And some of the
2 controlled areas it's 100 feet up to 160 feet.

3 MR. ROSSI: That's specifically not
4 the case because as part of the planning board's
5 review that resulted in this nothing of a neg-dec,
6 they reviewed this and confirmed that it's 100 foot
7 there. There's no slope differences between the edge
8 of the controlled area and that area. That was
9 determined and looked at by the planning board.

10 So, we're not dealing with 160 foot
11 controlled area, 140 foot, it's 100 foot as shown on
12 those plans and that's specifically because of the
13 topography of the site. This plan was reviewed with
14 the new zoning ordinance, with the new wetlands
15 ordinance and the new site plan regulations.

16 MS. ECKARDT: I think some of it can
17 be seen by neighbors. Certainly, the river is
18 absolutely beautiful there. I've seen people fish.
19 I know from the village hall part of it can be seen.

20 Also, I know Mr. Costello asked last
21 time that it was still in the railroad right-of-way;
22 is that no longer?

23 MR. ROSSI: The railroad right-of-way
24 is not the subject of the application. The property
25 we're dealing with is in the Town of Southeast.

1 MR. COSTELLO: The request I made,
2 Don, was the last time I visited the site there was

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3 still cars parked on the right-of-way. I asked if
4 they were still parked there as of the date of the
5 application --

6 MR. ROSSI: I'll tell you exactly --

7 MR. COSTELLO: -- and I did not get
8 an answer.

9 MR. ROSSI: I'll give you exactly the
10 answer as I know it to be which was also part of the
11 record. I don't mean to be using legal terms as we
12 discussed with you at the time of the use variance.

13 There is clearly an easement to use
14 the railroad property to get to our piece. There's
15 no question about that. The use of the railroad
16 property for storage of all sorts has gone on for
17 generations. There's no specific easement that says
18 that.

19 When the railroad came through there
20 were grants of right-of-ways. You might remember
21 that we displayed the right-of-way map for the
22 railroad and it shows various pieces. And what they
23 do is they have a little legend -- and excuse my back
24 on this -- but they show a legend that will show
25 pieces of property along it and they'll say see note

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1 three or something like that and that's where it's
2 read.

3 So, there's no specific grant of an
4 easement from the railroad that says you have the
5 unquestionable right to park vehicles there, but it
6 was -- that grant to the right-of-way was made during

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7 a time that that property was being used for storage
8 in connection with the old Brewster Lumber Company
9 which is one of the previous uses that was made of
10 this.

11 So, the specific answer that I know
12 to your question is there's no specific easement for
13 it. It's been used like this for years and years,
14 for generations. And as a result, if it was ever
15 questioned, and it's never been questioned by the
16 railroad despite the receipt now of about 10
17 certified mailings. So, if there was ever an issue,
18 I believe it would have come up. I believe they
19 acknowledged our right to use it.

20 MR. COSTELLO: But is it a permitted
21 use?

22 MR. ROSSI: Is it a permitted use?
23 The use of the property and -- the village has never
24 -- it's never been questioned by the village.
25 There's absolutely no issue with regard to it.

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1 There's a Certificate of Occupancy, as I recall, for
2 the buildings themselves. This was always used in
3 part of it.

4 MR. COLELLO: Are there cars on it
5 now, though?

6 MR. ROSSI: Excuse me?

7 MR. COLELLO: Are there cars on it
8 now?

9 MR. ROSSI: Yeah, there are cars on
10 it and the two uses of it are the cars and the fire

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11 department uses it because this is where they fill up
12 their tankers when they come cruising in through this
13 driveway and down to this area. It's a major part of
14 their water supply. So, is there a right-of-way for
15 the fire department to fill up there? I don't think
16 so either, but it's also the use that's been there
17 for many years.

18 And this approximate center line of
19 the existing access easement that's shown on this is
20 verbatim from -- there's a center line of an easement
21 that's actually provided for and it's in our
22 documents on the prior submission. There was a
23 specific grant of an easement when the property
24 changed hands.

25 MS. ECKARDT: I guess I still see

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1 this as a little bit of an end run around of a
2 wetlands permit which might protect the property a
3 little more. And if your client is turned down, do
4 you think you would pursue a wetlands permit?

5 MR. ROSSI: There's no commitment one
6 way or another. I don't know what we'd do.
7 Certainly, it's up to the client's decision.

8 I would say one of the things with
9 regard to the comments, people might see it --
10 certainly if I was fly fishing in the Croton River, I
11 would be -- I'd see this site. But, again, within
12 the exception of Mr. Dupis, as you may recall at the
13 use variance hearings, no one, to my recollection,
14 owns any property adjoining this piece has come out

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to question this application.

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MS. ECKARDT: And I guess my last point, I would agree with Mr. Vink, I do think there's a difference -- probably a difference -- it could be a difference between new cars and used cars and I would just -- I think this could be scaled back even further. Thanks.

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MR. ROSSI: One of the things that was mentioned as far as the cars being pervious, again, the environmental decisions have been made on this. Bear in mind that the watershed regulations

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do not define this as impervious surface, nor do they include parked vehicles on it because logic would seem to dictate that when rain hits a car, it runs on the ground and the ground is pervious in accordance with all applicable regulations. That's why it's so important and such an important condition that your Board could place on a variance that it continues to be a pervious surface. Those are very important conditions.

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New versus used cars, I don't know that that's a tremendous issue. Quite frankly, I wouldn't want the zoning enforcement officer to call me up one day and say there's a used car over there on that lot. That's the only reason for it. The primary use has always been for new vehicles, but that use of vehicles for sale as opposed to an active parking lot, impervious surface; compliance in all respects with the planning board's conditions of site

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19 plan approval, abiding by the 100 foot controlled
20 areas, those are all restrictions and conditions that
21 would be very appropriate to include in the variance.
22 MS. ECKARDT: With all due respect, I
23 do think there's a difference between a parking lot
24 and gravel that's completely vacant and a parking lot
25 that's cheek to jowl by cars, that's just my opinion.

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1 MR. ROSSI: That's right. It's not
2 what the regs. say.

3 MR. COLELLO: Do we have any other
4 questions or comments from anyone in the audience?

5 All right. We have to hold this over
6 anyway.

7 MR. FROESSEL: I have a question.

8 MR. COLELLO: I just want to let you
9 know that because we have not received any response
10 from the county.

11 MR. ROSSI: Okay.

12 MR. COLELLO: As you know, we can't
13 move ahead without --

14 MR. ROSSI: Just from a procedural
15 standpoint, was the referral to them more than 30
16 days ago?

17 MR. COLELLO: I don't think it was.
18 That's the problem. Because with Linda not being
19 here -- you got my message, Michael, I don't remember
20 when they sent it out of the town hall.

21 MR. LIGUORI: I brought it down the
22 next day after, but I didn't get a copy of the sent

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23 version, but I do know that we had to send a copy
24 with the site plan application.

25 MR. COLELLO: And I know it was sent

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1 out, I just don't think it was 30 days, that's the
2 problem.

3 MR. ROSSI: If it went with the site
4 plan application it was -- obviously, we do not want
5 to proceed with a procedural defect, but if it did go
6 with the site plan application from the planning
7 board, then that is a referral to the agency. If it
8 hasn't gone for more than 30 days from your office
9 then that's something you have to deal with.

10 MR. COLELLO: Right.

11 MR. FROESSEL: I just have a question
12 about the development of your site plan as to whether
13 or not -- is this the plan you went in with or was
14 this the product of negotiations? We've had people
15 come in before and tell us the planning board blessed
16 this, it's the greatest thing, but it was never even
17 a negotiated process. I'm curious to know what
18 happened.

19 MR. ROSSI: Tim, it's --

20 MR. FROESSEL: And it's not any
21 reflection on you or your client.

22 MR. ROSSI: What happens typically
23 with the planning board -- to use the term
24 negotiation might not be the most appropriate. You
25 get a review letter from the town engineer. The town

1 engineer has comments. The town engineer in this
2 case -- Mike is here. We can certainly pull it from
3 the file, but the town engineer said something like
4 the existing gravel parking area is within the 100
5 foot controlled area. And then a member of the board
6 would say well, is that necessary and then everybody
7 weighs the alternatives and then you may come back
8 with the new things.

9 So, was it negotiated? I think the
10 fair bottom line of it is, again, without any
11 reservation, the applicant, our client, weighed the
12 pluses and the minuses and it seems to make sense.
13 It's a reduced area and so it's negotiated in the
14 sense of let's not prolong the process, let's do what
15 the planning board is asking us to do. The planning
16 board likes it, they're the environmental reviewing
17 agency, that we need a variance.

18 And, as you all know, I don't mean in
19 any way to say that constitutes an approval, but in
20 my experience in town, they don't really refer
21 matters over to the zoning board unless they like the
22 plan. They would bar the door. They wouldn't send
23 us to you unless they felt comfortable with it.
24 That's what went on. Mike was before the planning
25 board.

1 MR. LIGUORI: We did submit
2 originally to use just the area that was used prior.
3 We got the technical memorandum from Tom Fenton or

4 Joe Hardy in particular and Joe raised the issue that
5 we were within the 100 foot controlled area. So,
6 Chip and Brian and I sat down and we did the
7 calculation on the number of cars that we felt that
8 they needed to park there and we were able to say all
9 right, well, look, let's come out of 100 foot and,
10 you know, shift things here and there and that's what
11 we did.

12 MR. FROESSEL: Okay.

13 MR. ROSSI: We went with what is
14 exactly shown on the board with no additional
15 disturbance, at all.

16 MR. COSTELLO: Don, I have a
17 question. The section that's marked with the
18 straight lines --

19 MR. ROSSI: The hatching, yes.

20 MR. COSTELLO: -- why is that marked
21 green?

22 MR. ROSSI: It's marked -- that's the
23 entrance. This is the center line of the easement
24 coming in this way. It's being shown in this fashion
25 because it's additional -- it's area that's in gravel

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1 right now, but the planning board does not want us to
2 use that for parking. They want to limit us to the
3 three lanes or aisles of the cars.

4 So, it's shown here as -- let me --
5 it's shown as an existing -- maybe I'm looking at a
6 different map, but that is an area that's not going
7 to be used for parking of vehicles.

8 MR. COSTELLO: So you're not
9 requesting a variance for that?

10 MR. ROSSI: No. The front yard
11 variance is for the aisles. This is used for access
12 for which I believe --

13 MR. FROESSEL: I thought your front
14 yard you were seeking a zero foot setback for the
15 front yard setback so I assumed that was parking.

16 MR. ROSSI: I'm going to refer it to
17 Michael. We're coming through there with -- the
18 existing driveway comes through here.

19 MR. LIGUORI: I did ask for a zero
20 foot and it was just because use of the -- we don't
21 -- this isn't the typical site plan because of the
22 nature of the piece. There's no building. There's
23 no front driveway.

24 We only intend to park in the aisle,
25 but I did ask for zero feet because when I made the

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1 application, I was unclear as to whether or not this
2 was going to be considered driveway. So, I said
3 well, I don't want to take any chances, let me ask
4 for the zero feet, but the parking is going to be
5 limited to the areas that are delineated.

6 MR. COSTELLO: Where is the 15 foot
7 side setback?

8 MR. ROSSI: 15 foot at this corner
9 and it's roughly 25 at this corner. So, we've asked
10 for what the -- what the most relief that's shown on
11 the plan is required. So, this is roughly 15 feet.

12 It's not 15 feet along its entire length, it goes to
13 25 feet here.

14 MR. COSTELLO: And the last time I
15 was down there looking at it there was some cones
16 parked and it looked like it was nothing beyond the
17 cones. Can you show me where those cones are? No,
18 at this end.

19 MR. LIGUORI: Over here?

20 MR. COSTELLO: Yes.

21 MR. LIGUORI: I'm only familiar with
22 the cones that are placed across the entrance of the
23 site to delineate that -- you know, that we've
24 discontinued to use the site.

25 MR. COSTELLO: Are those cones still

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1 there?

2 MR. BEANLAND: The cones that block
3 the entrance are still there.

4 MR. LIGUORI: I haven't been on the
5 site when there's been cones on the other side.

6 MR. COSTELLO: It seemed to me that
7 there were cones and there was nothing parked beyond
8 the cones. It was like trying to limit parking to
9 the area, not to disturb any further. Where are
10 those cones?

11 MR. LIGUORI: Those are up here in
12 this general area.

13 MR. COSTELLO: Okay. I'll have to
14 take another look.

15 MR. ROSSI: And just a personal
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16 comment. One of the key things in dealing with the
17 zoning enforcement officer was to make sure no one
18 can get to that area. So, again, my recollection of
19 those cones were on that side.

20 So, let there be no misunderstanding
21 about it, this area is not proposed for the parking
22 of vehicles. The variance request, as it relates to
23 the zero frontage, we would just -- maybe in a
24 hypertechnical way, it is the area that's needed for
25 access into this site so if -- and I don't think a

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1 variance is required for a driveway.

2 MR. FROESSEL: That's why I'm looking
3 at the code trying to figure it out here.

4 MR. LIGUORI: There's no requirement
5 for a driveway.

6 MR. FROESSEL: There couldn't be from
7 a front yard.

8 MR. LIGUORI: The problem was we had
9 to pick a front yard because we don't have one. So,
10 by taking the one that -- the right-of-way, I really
11 didn't know what to do at that point. So, I said let
12 me just play it safe and ask for it.

13 MR. FROESSEL: It makes sense to do
14 it that way because that abuts your right-of-way into
15 the property.

16 MR. ROSSI: And that's why it was
17 ultimately decided on. It happens to be the same
18 setback on both sides in the NB-1 District.

19 MR. COSTELLO: Is the 100 foot
Page 88

20 easement marked on the property in any way right now?

21 MR. LIGUORI: No physical delineation
22 of the easement under the railroad. We'd have to do
23 something to the concrete.

24 MR. COSTELLO: No, not under the
25 railroad. I'm talking about the conservation

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1 easement.

2 MR. LIGUORI: The buffer setback,
3 what's going to happen there to delineate that is the
4 same curb stops that we have out here, we're going to
5 shoot a line, we're going to have a surveyor come in,
6 flag the line and then install curb stops.

7 MR. COLELLO: If we wanted to go look
8 at that --

9 MR. COSTELLO: Is there any way to
10 know the 100 foot line from the river?

11 MR. LIGUORI: I think we could get
12 out there with a 100 foot tape measure and mark it
13 for you. I think that's the only way to do it before
14 getting a surveyor out there.

15 MR. COSTELLO: That would be good if
16 you could do that.

17 MR. FROESSEL: Another question, is
18 there any intent to put the curb stops on the side of
19 the property abutting the Scout Realty property
20 assuming you get the variance to delineate that?

21 MR. LIGUORI: Yes, all the way
22 around.

23 MR. ROSSI: Once it goes -- if you

24 take a look at it again, the slope there is such, you
25 can see how it comes down to this point. We would be

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1 fairly -- I mean, the gravel would create it. So,
2 but curb stops around it is not a major issue, but
3 again I just -- it's not shown on this. See, the new
4 parking limits provide curb stops, that was what the
5 planning board asked for. They didn't ask for it, to
6 my knowledge, on this side. I don't think it's
7 necessary. It will be gravel, it will be obvious
8 where that ends.

9 On this side I think it's important
10 because, again, I think an important condition of a
11 variance that this be on the 100 foot setback line so
12 that avoids the use of this previously disturbed
13 area.

14 MR. COLELLO: Any other questions?

15 MR. COSTELLO: No.

16 MR. VINK: No.

17 MR. COLELLO: Okay. We'll keep the
18 public hearing open and we'll see you next month.

19 MR. ROSSI: Ed, if at any time any of
20 the Board members, I think, knows if you want to go
21 out and want us to go along and go with you, Brian is
22 chained to his desk every day so he can certainly
23 escort you out there and go out there with a map, you
24 just let us know. Just call the office or call Brian
25 and we'll check -- who is the acting secretary now

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1 for the Board?

2 MR. COLELLO: We don't have one.

3 MR. FROESSEL: We don't have one.

4 MR. ROSSI: Who do we check with as
5 far as the referral?

6 MR. COLELLO: I'll check on it.

7 MR. ROSSI: You'll check?

8 MR. COLELLO: I know it was
9 requested. I know it was sent out. I just don't
10 know the date.

11 MR. ROSSI: Okay. Sounds good.
12 Thank you very much.

13 MR. COLELLO: Next month it will
14 definitely be 30 days so we won't have an issue.

15 MR. ROSSI: Okay. Thank you.

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23 MR. COLELLO: Already moving on,
24 Joshua and Allison Geballe.

25 MR. COSTELLO: The mailings were in

1 order last month and I just want to remind you that
2 you're still under oath.

3 MR. GEBALLE: Yes, I remember. Thank

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you.

Do you want me to go through this

again?

MR. COLELLO: Yeah, just give us --

MR. GEBALLE: This is a storage shed
that up until about two and a half months ago --

MR. COLELLO: Yes.

MR. GEBALLE: We're applying for
setback variance.

MR. FROESSEL: This is when they
dragged it.

MR. GEBALLE: It's currently sitting
halfway into the driveway.

MR. COLELLO: I was going to go up to
your house and look at it.

MR. GEBALLE: I asked my wife did you
see any people wandering around.

MR. COLELLO: Because I wanted to see
it and I said no. I'll have to increase my
medication if I went to go see this.

That's the best picture. You should
definitely save that. When this is over, frame that,

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put it up somewhere.

MR. VINK: In the shed.

MR. COLELLO: How to make an illegal
shed legal.

MR. FROESSEL: How to sell your
house.

MR. GEBALLE: How do you get a bank

07-17-06 zoning board of appeals.txt
8 to loan you money.

9 MR. COLELLO: Exactly. How did the
10 bank let him get away with this, put it in the middle
11 of your driveway and leave it there. Okay.

12 MR. GEBALLE: It was Mr. Harper's
13 suggestion.

14 MR. COLELLO: I got to tell you,
15 there's no way Ron would have told them to drag it,
16 dump it halfway in your driveway and leave it there.
17 Now, Ron might have said to them, move it so it's not
18 in the setbacks.

19 MR. GEBALLE: Yes.

20 MR. COLELLO: Okay. Which I'm sure
21 -- I can't believe Ron said drag the thing, dump it
22 in the middle of your driveway and leave it for the
23 next guy.

24 MR. GEBALLE: With the assumption
25 that I would then come before this Board to apply for

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1 a variance.

2 MR. COLELLO: Right.

3 Do me a favor, don't ever tell me who
4 you bought this house from because I don't want to
5 know.

6 MR. GEBALLE: Fair enough.

7 MR. COLELLO: I do want to know, but
8 I don't want to know.

9 Moving on, do you have a copy of the
10 application?

11 MR. COSTELLO: I do.

12 MR. COLELLO: I forgot the numbers on
13 this.

14 MR. FROESSEL: It's going to be six
15 feet from the property line.

16 MR. COLELLO: That's where it's going
17 to end up, six feet from the property line, and we
18 need how much?

19 MR. GEBALLE: I believe it's --

20 MR. FROESSEL: Probably 20 if it's
21 side yard.

22 MR. GEBALLE: I believe it's 20,
23 yeah.

24 MR. VINK: Yes.

25 MR. COLELLO: Yes, 20 feet. So you

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1 need a 14 foot setback from -- which side of the
2 property is that?

3 MR. GEBALLE: Here's the direction.
4 It's basically south.

5 MR. COLELLO: Where is the shed;
6 here?

7 MR. GEBALLE: Yes.

8 MR. COLELLO: Due south I'd say;
9 right?

10 MR. GEBALLE: Yes.

11 MR. COLELLO: On the south side of
12 the property. So you need a 14 foot variance.

13 Any questions or thoughts from anyone
14 in the audience? Any questions of the applicant?

15 MR. GEBALLE: You asked me last time

07-17-06 zoning board of appeals.txt
16 to get a letter from the neighbor whose property line
17 this abuts.

18 MR. COLELLO: Okay. Great. I'll
19 read this into the minutes. To the Town of Southeast
20 Zoning Board of Appeals --

21 MR. COSTELLO: I'll read it.

22 We own the property which borders the
23 point at which Josh and Allison Geballe are applying
24 for a zoning variance to move their storage shed to
25 within six feet of the property line. The shed was

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1 in this location for the prior several years and
2 caused no inconvenience to us. It is on the other
3 side of a hill and some trees from our house and is
4 barely noticeable. Since this variance does not
5 impact our property or cause any harm or
6 inconvenience to us, we support Josh and Allison's
7 proposal for a variance. Signed, Atul Mori and Nina
8 Kalola on 14 Ruby Lane.

9 MR. COLELLO: Any other questions of
10 the applicant?

11 Would you like to make any final
12 comments?

13 MR. GEBALLE: No, thank you.

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

16 MR. GEBALLE: I do.

17 MR. COLELLO: Great. I'll close the
18 public hearing. I'll entertain any motions.

19 MR. FROESSEL: I'll make a motion to

07-17-06 zoning board of appeals.txt
20 grant the applicant a variance of 14 feet from the
21 side yard setback requirement on the south side line
22 of their property for the purpose of installing a
23 shed.

24 MR. COLELLO: Do I have a second?

25 MR. CASTELLANO: Second.

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1 MR. COLELLO: Seconded by Joseph.

2 Will you address the criteria,
3 please?

4 MR. FROESSEL: Whether an undesirable
5 change will be produced in the character of the
6 neighborhood or a detriment to nearby properties will
7 be created by the grant of the variance; no, there
8 will be no change of the character of the
9 neighborhood and the abutting neighbor has said that
10 there will be no detriment to the property.

11 Whether the benefit sought by the
12 applicant could be achieved by some feasible method
13 other than a variance; no, not unless you consider
14 having half a shed hanging over half of your driveway
15 being feasible.

16 Whether the requested variance is
17 substantial; you know, arguably it is, but the
18 applicant is in somewhat of a pickle because the
19 layout of his property and the prior owner's misdeed.

20 Whether the proposed variance will
21 have an adverse effect or impact on the environmental
22 conditions in the neighborhood or district; there's
23 no evidence of that.

24 Whether the alleged difficulty was
25 self-created; I don't think it was self-created by

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1 this applicant.

2 MR. COLELLO: Thank you very much.

3 Joseph.

4 MR. CASTELLANO: In favor.

5 MR. COLELLO: Tim.

6 MR. FROESSEL: In favor.

7 MR. COLELLO: Tom.

8 MR. COSTELLO: In favor.

9 MR. COLELLO: Paul.

10 MR. VINK: In favor.

11 MR. COLELLO: And I'm in favor as
12 well. Good luck.

13 MR. GEBALLE: Thank you very much.

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21 MR. COLELLO: Now, ladies and
22 gentlemen let me explain where we are, okay. Next is
23 George and Maryvel Lombardo. Here's where we are,
24 we're on number eight, so we have one, two, three,
25 four, five, six, seven, eight more items on the

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1 agenda. Now, we cannot open an application after
2 midnight, but here's what we are going to do, though,
3 we do this every month because we don't want to hurt
4 you. We're not going to get through every
5 application tonight so what we're going to do is open
6 every application tonight because if we don't open
7 the public hearing, all the mailings you sent out are
8 useless and we don't want to have to make you do that
9 again.

10 So, what we're going to do is we will
11 at least open the public hearing on every
12 application. I'm 99 percent sure we will not vote on
13 any of these tonight because, as you've seen from our
14 process, what we usually do is hear a little about
15 it, go look at it and next month we vote on it. But,
16 we will open up everyone's application, check the
17 mailings so that we can move ahead.

18 MS. ECKARDT: Aman is not on tonight?

19 MR. COLELLO: No. That's been taken
20 off. He's not pursuing it. We received a letter
21 that he's not pursuing it.

22 MS. ECKARDT: I get to go home.

23 Thanks.

24 MR. COSTELLO: Also, if anyone has
25 any comments on any of these applications tonight,

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1 there will be a chance for you to make a comment or
2 ask a question.

3 MR. COLELLO: Lombardo.

4 MR. COSTELLO: Can you raise your
Page 98

5 right hands? Do you swear that the testimony that
6 you're about to give is the truth, to the best of
7 your knowledge?

8 MR. LOMBARDO: Yes.

9 MRS. LOMBARDO: Yes.

10 MR. COSTELLO: And if you could state
11 your names for the record.

12 MR. LOMBARDO: George Lombardo.

13 MRS. LOMBARDO: Maryvel Lombardo.

14 MR. COLELLO: Okay. Thank you.

15 You should have this in your folder,
16 right, a copy of this application?

17 MR. COSTELLO: Yes.

18 MR. FROESSEL: Yes, I have it.

19 MR. COLELLO: Great. Can you walk us
20 through the application, what you're attempting to
21 do?

22 MR. LOMBARDO: What we want to do is
23 we want to put a rear deck that's basically 12 by 14
24 in this area in the back of the house which doesn't
25 affect any of the side setbacks or the rear setbacks.

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1 You got approximately 67 feet, after the 16 feet that
2 it goes out, to the back property line.

3 The problem is is that it's
4 preexisting, nonconforming in the front of the house.
5 If you could look on the -- in the front here it's
6 29.53 feet to the street and it has nothing to do
7 with the back of the house, at all.

8 And all of the homes that are on the
Page 99

9 street -- this house was built in 1958 -- and they're
10 all basically within the same line and they all have
11 decks on there too, you know. It's just a more of a
12 necessity so that -- you know, it will be a little
13 bit more liveable, the house, to have it in there. I
14 mean, it's obvious with the application. It's a very
15 modest -- if you look at it, this is the part that
16 comes here. You see this part here where it says --
17 that's the part right here. So, it's just going to
18 fit right in here and go right in here where the
19 stairs are going to be because the door comes out the
20 side here.

21 MR. COLELLO: I got you.

22 MR. LOMBARDO: So, what happens is
23 instead of -- my wife likes the room. It's sort of
24 like a sun room and it has windows here. So, we're
25 leaving the door here. There's already a small five

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1 by five porch that's there. The only thing we're
2 doing is we're adding four feet on so we can just
3 walk through to the other side and, you know, have a
4 little bit more space to live there instead of
5 walking down six stairs every time you want to go for
6 hot dogs or something, and stuff like that.

7 So, it really isn't -- we're not
8 asking for anything that's unrealistic or anything
9 that's going to affect the -- you know, this is the
10 part that's right in here. Right here it's going to
11 be -- the door is right here so you have -- it's even
12 less than what the thing is.

13 MR. COLELLO: You're not getting
14 closer to any property line?

15 MR. LOMBARDO: Not at all and it's --

16 MR. COLELLO: Well, just to let you
17 know, in neighborhoods like -- because over the years
18 the town has upzoned, meaning increased the
19 requirements, places like the Heights, places like
20 Vails for 100 years, Tonetta Lake area, all those
21 areas, every time you do anything you need a
22 variance.

23 MRS. LOMBARDO: Right.

24 MR. LOMBARDO: Right, and that's why
25 we're here.

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1 MR. COLELLO: Yes.

2 MR. LOMBARDO: And the thing is it's
3 not like -- because mostly all the septic system is
4 here and, you know, and the way the property lines
5 are, it's -- and it's a very modest thing. It's only
6 12 by 14 so it's just something to -- like we said,
7 to manage the -- watching our son if he's out on the
8 deck and stuff like that.

9 MR. COLELLO: Okay. Got you.

10 Do we have any questions from anyone
11 in the audience or comments regarding this
12 application? You did a lot of mailings.

13 MR. LOMBARDO: Yes, \$156 worth.

14 MR. COSTELLO: You wouldn't want to
15 do that again.

16 MR. COLELLO: They're nicely in
Page 101

17 order; aren't they?

18 MR. COSTELLO: Beautiful.

19 MR. LOMBARDO: That's what you
20 requested.

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

23 MR. COLELLO: Beautiful. Okay. So,
24 we'll put this -- hold the public hearing open.
25 We'll see you next month which is the --

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1 MR. VINK: The 20th I think.

2 MR. CASTELLANO: The 21st.

3 MR. COLELLO: The 21st.

4 MR. FROESSEL: It's the third Monday.

5 MR. COLELLO: The third Monday here
6 at 8:00 o'clock. You will be number, probably, two
7 on the agenda -- no.

8 MR. LOMBARDO: Hopefully Brewster
9 Honda isn't in front of us. The only reason why I'm
10 saying it is because it was -- you know, it wasn't
11 anything that was too much and we definitely would
12 love to get out there during the summertime.

13 MR. COLELLO: I understand. We'll
14 finish it up next month. All right. What is the
15 date?

16 MR. VINK: I believe it's the 21st.

17 MR. COLELLO: The 21st.

18 MR. LOMBARDO: Do you want to hold on
19 to these?

20 MR. COLELLO: No. You bring them

21 back next month and you have the mailings. We'll see
22 you then.

23 MR. LOMBARDO: Thank you very much.

24 MRS. LOMBARDO: Thank you.

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5 MR. COLELLO: Bruce and Marilyn
6 Martin.

7 MR. TAMERON: Robert Tameron,
8 architect. I'm here with Mr. and Mrs. Martin.

9 MR. COSTELLO: Would you raise your
10 right hands? Do you swear that the testimony you're
11 about to give is the truth, to the best of your
12 knowledge?

13 MR. TAMERON: Yes.

14 MR. MARTIN: Yes.

15 MRS. MARTIN: Yes.

16 MR. COSTELLO: Do you have the
17 mailings?

18 MR. TAMERON: Yes. What the post
19 office did is they gave her one receipt for all of
20 the mailings. They just wrote on there how much the
21 amount was, but unfortunately they did not give her
22 back all of the individuals that she sent out to all
23 of the neighbors. Maybe they were to getting tired
24 of stamping that day.

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MR. COSTELLO: This one is not even

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1 stamped.

2 MRS. MARTIN: That's what he gave me,
3 Stuart at the post office.

4 MR. VINK: And it's three pages of
5 neighbors.

6 MR. COSTELLO: We do have the
7 affidavit.

8 MR. TAMERON: Yes, and she spent \$245
9 sending them out so you know that something went out.

10 MR. COLELLO: It says that she spent
11 \$245.52 on June 19th, but that's all they gave her
12 back.

13 MR. MARTIN: And the neighbors wished
14 us luck.

15 MR. COSTELLO: Did you fill out forms
16 for all of the those?

17 MRS. MARTIN: I filled out
18 everything. I was there for over an hour.

19 MR. COSTELLO: And he only gave you
20 back one?

21 MRS. MARTIN: That's all he gave me.

22 MR. COLELLO: In Brewster?

23 MRS. MARTIN: Yeah.

24 MR. COSTELLO: This one doesn't even
25 look like it went because this part is still attached

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1 to it.

2 MRS. MARTIN: That's all he handed me
3 and I was there over an hour doing everything so I
4 don't know what to do.

5 MR. COLELLO: Well, we have the
6 affidavit. You know what, I don't even have access
7 to a photocopy machine right now. Before you come
8 back next month go back to the post office --

9 MRS. MARTIN: Sure.

10 MR. COLELLO: -- and just say hey,
11 look --

12 MR. MARTIN: Where's our receipts?

13 MR. COLELLO: -- where's our
14 receipts? I spent \$245. The problem is you probably
15 may need that. Why don't we give her back that main
16 one? You'll have to bring this back with you next
17 month.

18 MRS. MARTIN: Okay, that's fine.

19 MR. COLELLO: And say you only gave
20 me this, you gave me a receipt that says I spent
21 \$245, but the Zoning Board of Appeals needs all the
22 addresses and you have your list.

23 MRS. MARTIN: Yes.

24 MR. COLELLO: You have your copy of
25 it; right?

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1 MRS. MARTIN: I should have a -- I
2 have a copy on that there.

3 MR. COLELLO: Right, but we need this
4 with the affidavit.

5 MRS. MARTIN: Okay.

6 MR. COLELLO: Is there one in the
7 application?

8 MR. COSTELLO: Yes.

9 MRS. MARTIN: I should have another
10 one.

11 MR. COLELLO: You can take that one
12 then.

13 MR. COSTELLO: That one has your
14 original affidavit, you need to bring that back next
15 month.

16 MRS. MARTIN: You want me to bring
17 that back?

18 MR. COLELLO: Right. But bring that
19 back to the post office and say, guys, this isn't the
20 way it's supposed to work, I paid all of this money.

21 MR. COSTELLO: You see how everyone
22 brings them in?

23 MRS. MARTIN: I almost had a heart
24 attack.

25 MR. FROESSEL: We have to at least

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1 open the hearing.

2 MR. COLELLO: Absolutely. Walk us
3 through.

4 MR. TAMERON: Okay. Their property
5 is located in Brewster Heights. It's on Wilson Road,
6 number seven Wilson --

7 MRS. MARTIN: Six.

8 MR. TAMERON: Excuse me, number six.

9 And I'm sure you're familiar with the Brewster
10 Heights situations that the lots are small. The
11 zoning has changed several times over and the Martins
12 wish to put an addition on to their house.

13 We're putting it -- it's a corner lot
14 and they're proposing to put an additional bedroom on
15 to the side of their house. There is really no other
16 location to put an addition on this house because
17 it's a split-level house. You really can't go up
18 because of how the levels are.

19 So, what we're proposing to do is to
20 put an addition to the west side of house consisting
21 of a bedroom and a bathroom. The rear setback
22 presently is 25 feet. 35 feet is required. We're
23 aligning the proposed addition with the back of the
24 house and that's where we're going to need the
25 variance for the rear setback.

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1 If we were to follow the setbacks, we
2 really probably wouldn't be able to build an
3 addition. We need 35 feet in the back and we need 35
4 feet in the front. I think that leaves us with a
5 bedroom addition of about 10 feet and that really
6 doesn't work so well. So, we're here before the
7 Board to request relief for the addition.

8 MR. COSTELLO: Do you have a survey
9 that shows the addition?

10 MR. TAMERON: Yes. I have enlarged
11 this so we can see it little bit better, but it's a
12 survey -- an early survey prepared by Lloyd Burgess

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13 and it indicates the existing setbacks. He has 25
14 feet in the back. There's 36 feet in the side and
15 we're conforming with the front yard setbacks with
16 the addition. We're staying at 35 feet, but we're
17 not going to meet it when we align the proposed
18 addition -- rear line of the addition with the
19 existing rear line of the house and you really need
20 to do that. I mean, we can't shift this whole thing
21 forward. We would only have a 10 foot wide building
22 if we were to conform to the setbacks.

23 MR. COSTELLO: So, the addition meets
24 all of the front setbacks requirements of 35 feet?

25 MR. TAMERON: Yes.

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1 MR. COSTELLO: And it just does not
2 meet the 25 -- the 35 foot rear setback?

3 MR. CAMERON: Yes.

4 MR. COSTELLO: Okay. And you
5 currently have 25 feet in your existing structure?

6 MR. TAMERON: Yes. We're not
7 changing that. We're aligning the new addition with
8 the existing rear of the house. And it is a corner
9 lot so there's really only one neighbor on this
10 particular parcel.

11 MR. VINK: You currently don't meet
12 the 35 foot setback from Wilson Road; correct?
13 That's what Ron Harper seems to be saying?

14 MR. CAMERON: Right, there's an
15 existing -- yes. There's an existing garage.

16 MR. VINK: So you need a variance for

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17 that in order to do this?

18 MR. TAMERON: If Mr. Harper says that
19 we need a variance for the preexisting garage then --

20 MR. MARTIN: That's part of the
21 original structure, though.

22 MR. TAMERON: That's part of the
23 original structure. But, the proposed addition does
24 meet the setback criteria.

25 MR. COSTELLO: For the front.

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1 MR. VINK: For the front.

2 MR. TAMERON: For the front, right.

3 MR. COLELLO: Any questions, comments
4 or opinions from anyone in the audience?

5 MR. COSTELLO: This is another one of
6 those enlargements.

7 MR. COLELLO: He loves enlargements.

8 MR. COSTELLO: They're not
9 encroaching any further on the setback anywhere.

10 MR. FROESSEL: Right. And for what
11 it's worth, this lot is typical of the corner lots of
12 Brewster Heights. They are wider than the average
13 lot, but they're not as deep.

14 MR. COLELLO: You're right.

15 MR. COSTELLO: Okay.

16 MR. COLELLO: Thank you.

17 MR. COSTELLO: Any questions of the
18 applicant? Any comments from the audience?

19 MRS. MARTIN: Thank you.

20 MR. COLELLO: See you next month.

21 Good luck with the post office. It
22 would make our life easier.

23 MRS. MARTIN: I'm going to do that
24 tomorrow. Thank you.

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5 MR. COLELLO: Number 10, Robert
6 Sechny. Am I pronouncing that right?

7 MRS. SECHNY: Yep.

8 MR. SECHNY: Correct.

9 MR. COSTELLO: I hope you didn't use
10 Stew at the post office also for you mailings.

11 MRS. SECHNY: No. We went to another
12 post office.

13 MR. COSTELLO: Raise your right
14 hands. Do you swear the testimony you're about to
15 give is the truth, to the best of your knowledge?

16 MRS. SECHNY: Yes.

17 MR. SECHNY: Yes.

18 Can I have the mailings, and do you
19 have the affidavit as well?

20 MR. SECHNY: Yes.

21 MRS. SECHNY: In a nutshell, we live
22 in Brewster Heights and we want a deck.

23 MR. COLELLO: Okay.

24 MRS. SECHNY: We have no backyard

1 MR. COLELLO: Do you have this
2 application in your packet?
3 MR. VINK: I don't have the denial
4 letter.
5 MR. SECHNY: I have the denial
6 letter.
7 MR. VINK: I have an application.
8 MR. COLELLO: There it is. That's
9 what the deck is going to look like?
10 MR. SECHNY: Correct.
11 MR. COLELLO: All right. Do you have
12 a survey of the property? Great.
13 MRS. SECHNY: And there's the deck.
14 MR. COLELLO: I'm sorry. There's the
15 proposed deck then; correct?
16 MRS. SECHNY: Yes.
17 MR. COLELLO: Do you have your denial
18 letter?
19 MRS. SECHNY: Yes.
20 MR. SECHNY: Yes.
21 MR. COLELLO: Could I just see that?
22 MRS. SECHNY: Yep.
23 MR. COLELLO: The front yard setback
24 requirement is 35 feet. They have 25 feet, but
25 there's no change. The total side setback

1 requirement is 50 feet, they have 48.42 with no
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2 change.

3 Okay. And this is the same thing, an
4 enlargement of a preexisting, nonconforming
5 structure. So, we don't need any variance, per se,
6 on setbacks.

7 Okay. Make sure you bring that back
8 next month.

9 MRS. SECHNY: So, we're not going to
10 get this deck until the fall; is that what you're
11 saying?

12 MR. COLELLO: Well, it depends on how
13 fast you can build it. I'm sorry, I don't mean to be
14 facetious, but we really have to look at it.

15 MRS. SECHNY: I know. It's just so
16 maddening.

17 MR. COLELLO: I know it's a simple
18 little thing and I know it's a lot simpler than
19 parking cars on wetlands.

20 MRS. SECHNY: And that's it, are we
21 going to get bumped by them again next month?

22 MR. COLELLO: No, you won't get
23 bumped. We will put this to rest next month. That's
24 yours. Make sure you bring that back.

25 Anybody have any questions of the

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1 applicant? All right. We'll see you next month.

2 MR. SECHNY: Thank you.

3 MR. COSTELLO: The mailings are in
4 order.

5 MR. COLELLO: Thank you.

6 MR. COSTELLO: We keep them. See you
7 next month.

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15 MR. COLELLO: Moving on here, William
16 Ratajack.

17 MR. RATAJACK: That's me.

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

21 MR. RATAJACK: Yes.

22 MRS. RATAJACK: Yes.

23 MR. GREENBERG: Yes.

24 MR. COSTELLO: If you all could just
25 state your names.

1 MR. RATAJACK: Bill Ratajack.

2 MR. GREENBERG: Joel Greenberg.

3 MRS. RATAJACK: Kerry Ratajack.

4 MR. GREENBERG: If you, most of the
5 members, recall we came for an informal discussion
6 before this Board last month. Mr. and Mrs. Ratajack
7 live on Shore Drive on Lake Tonetta and they own a
8 house, as you can see from the site plan which we
9 submitted, and they would like to add a garage with

10 an extension of their master bedroom on top.

11 Now, the existing house favors,
12 obviously, the north side of property so that we need
13 a variance on the north side of the property. The
14 requirement of -- we would have approximately 11.74
15 feet in the front area and 12.97 feet in the rear
16 area.

17 I think the unique thing here is that
18 they are right next to the beach area. We have a
19 series of pictures which I'll show you which
20 basically indicates that -- and I'll show you here on
21 the tax map that the nearest house to this area where
22 we want to put the variance is over 225 feet. There
23 is an extremely large amount of -- and, again, you
24 will see in the pictures a large amount of screening
25 between the Ratajack's house and the beach area.

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1 And on the other side of the fence is
2 basically the parking area with the beach area and
3 the clubhouse which is further away, also which is
4 probably a minimum of 125 to 135 feet from the
5 Ratajack's house. So, even though we are getting
6 close to the property line, and we do need an area
7 variance for there, we feel that based on the
8 surroundings that we have, we're far from the road,
9 we are far in excess of the requirement from the
10 road, probably about 100 feet from the road, 100 feet
11 from Lake Tonetta from the rear property line. So,
12 that all in all, I think this will not have any
13 detrimental effect on the neighborhood, not have any

14 detrimental effect on any adjacent properties.

15 Obviously, it's not self-created and
16 it will have no environmental effect, again, on this
17 property or any surrounding neighborhoods.

18 MR. COLELLO: You do that well. You
19 sound like you're a potential candidate for this
20 Board. He has the criteria all memorized. It took
21 me 17 years to memorize the criteria and I still
22 don't have it down right.

23 MR. COSTELLO: The mailings are in
24 order.

25 MR. GREENBERG: I've been doing it

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1 for 30 years so I should remember it by now.

2 MR. COLELLO: Do you have your letter
3 of denial?

4 MR. GREENBERG: No, not with me. I
5 will send it to the clerk. Is it in the packet
6 there?

7 MR. COLELLO: I don't have it.

8 MR. VINK: It's not in mine either.

9 MR. COLELLO: The only problem you
10 have is the side yard setback?

11 MR. GREENBERG: That's it.
12 Everything else conforms. This is the existing
13 house. This is the proposed garage. That's one of
14 the concept elevations that we have and then --

15 MR. COLELLO: Are you going to change
16 the front of the house?

17 MR. GREENBERG: No. The existing
Page 115

18 front will basically remain the same except --

19 MR. RATAJACK: Show him the picture.

20 MR. GREENBERG: You can see in the
21 picture here -- actually, we just took pictures of
22 the house.

23 MR. COLELLO: Flip this up. Okay. I
24 got you.

25 MR. GREENBERG: This is what's

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1 existing up to here which is what you see over here
2 and this will be the addition.

3 MR. COLELLO: Are you changing the
4 windows in the front, not that I care?

5 MR. GREENBERG: We may put a bay
6 window in the living room.

7 MR. COLELLO: It's no big deal.
8 Okay. So, you're going to keep the -- almost the
9 same roof line, you're just going to drop it a
10 little?

11 MR. GREENBERG: Right, and then we'll
12 line up the dormers with the garage doors and there
13 will be a side door also to get into the garage.

14 MR. COLELLO: Okay. Again, that
15 overhang is how far from the property line?

16 MR. GREENBERG: Well --

17 MR. COLELLO: The overhang.

18 MR. GREENBERG: The overhang itself,
19 I'll tell you exactly. It's basically a 36 inch
20 overhang at that point so --

21 MR. COLELLO: Three feet.

22 MR. GREENBERG: -- the overhang would
23 be nine feet from the property line. The building
24 itself is 11.74.

25 MR. COLELLO: So you have to take

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1 three feet off that because of the overhang; right?

2 MR. GREENBERG: I believe -- I'll
3 check the code. I believe the overhang is allowed to
4 go into the setback requirement, but I will check.
5 If it's not then we'll take it off, but I believe it
6 is.

7 MR. COSTELLO: I think so. I'll look
8 it up.

9 MR. GREENBERG: I'll look it up.

10 MR. COSTELLO: Okay. I think they
11 did revise that.

12 MR. GREENBERG: You're allowed -- a
13 certain amount of the overhang can go into the
14 setback.

15 MR. COLELLO: Okay.

16 MR. GREENBERG: And if it's 24
17 inches, we'll cut it back 24 inches.

18 MR. COLELLO: No. I'm not telling
19 you to cut it back. I'm just saying factor it in.
20 If you have to count it, that's all I'm asking you to
21 do. I don't want you to ruin the overhang.

22 MR. GREENBERG: Okay. I'll check it
23 out.

24 MR. COLELLO: Any questions from
25 anyone in the audience?

1 MR. COSTELLO: You realize that you
2 need to explain to us why the garage needs to go in
3 that location?

4 MR. GREENBERG: Let me go into that.

5 MR. COSTELLO: You don't have to do
6 it right now, next month.

7 MR. RATAJACK: We talked about this
8 last time.

9 MR. COLELLO: But I won't remember
10 next month so you'll have to do this again.

11 MR. GREENBERG: Very quickly, the
12 existing driveway comes down on that side of the
13 house. The septic is on the other side of the house.
14 The well is up front and, again, if you look at the
15 floor plan, this is the logical place to come in from
16 a garage where we have the long hallway here, a
17 little mudroom area and that's basically the -- you
18 really cannot -- I mean, you could do anything you
19 want, but you're not going to start moving septic
20 systems, you know, and ruining the front lawn. The
21 septic system covers this whole area here so if you
22 did put it on the other side you would be putting a
23 driveway over the septic system.

24 MR. COSTELLO: Was the septic system
25 built new when you built the house?

1 MR. RATAJACK: No, it was just a

07-17-06 zoning board of appeals.txt
2 repair. It was hard enough to get this grass
3 growing, don't make me do it again. Yeah, that was a
4 repair.

5 MR. COSTELLO: Where is the septic
6 tank located?

7 MR. RATAJACK: The septic tank is
8 right there.

9 MR. GREENBERG: Right over here to
10 the left, actually.

11 MR. RATAJACK: South side of the
12 house.

13 MR. GREENBERG: Yes, the south side.
14 So, we would really be putting the driveway over the
15 septic.

16 MR. RATAJACK: It would have to come
17 out.

18 MR. GREENBERG: We would have to do a
19 whole new septic system.

20 MR. COSTELLO: Okay. Anybody here
21 have a question or a comment about this application?

22 MR. COLELLO: See you next month.

23 MR. RATAJACK: Thank you.

24 MR. GREENBERG: I'll get you that --

25 MR. COLELLO: You don't have to get

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1 it, just bring it.

2 MR. GREENBERG: Just bring it to the
3 next meeting?

4 MR. COLELLO: Yes, fine.

5 MR. COSTELLO: I said the mailings

07-17-06 zoning board of appeals.txt
are in order; didn't I?

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MR. VINK: Yes.

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MR. COLELLO: Is it Fiona Hollands?

15

MRS. HOLLANDS: Yes.

16

MR. COLELLO: How are you doing?

17

MRS. HOLLANDS: Fine. Thank you.

18

This is my husband Ethan Berman.

19

MR. BERMAN: Hi. How are you?

20

MRS. HOLLANDS: And that's Emerick,
our property manager.

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

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MRS. HOLLANDS: I do.

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MR. BERMAN: Yes.

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MR. COLELLO: Do you have the
mailings?

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MRS. HOLLANDS: Yes.

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MR. COSTELLO: I need the affidavit
that was notarized, a notarized statement, and the
list of names too. Do you have that? Thank you.

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MRS. HOLLANDS: So can I go?

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MR. COLELLO: Go ahead.

MRS. HOLLANDS: So, we are seeking a variance to put up a fence that is higher than the code allows. This is our property. And we're seeking to do a perimeter fence which the code would allow for three feet at the front and six feet around the sides in the back. The reason we're putting up a fence or we would like to put up a fence is in order to keep the deer out. We are -- we've spent the last two or three years taking down invasive trees, dead and dying trees and trying to replant with trees that are more native to the environment here. And, obviously, as I'm sure all the gardeners here know, the deer like to eat all the natives and they leave all the invasive and it gets overgrown with invasives.

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I think that one of the prime considerations is that the town code allows for three feet at the front and six feet around the back and if we're going to stick with six feet, we would have to do something that was opaque in order to keep the deer out because apparently they will jump over a six foot transparent fence. I think our request is to try and do something that would be more attractive in the sense of doing it transparent and avoiding to block out the views for either us or people from the outside.

I would like to show you -- I can show you what the fence might look like. The red

07-17-06 zoning board of appeals.txt
14 part on the map, we were hoping to do something that
15 is an iron fence like this. You can see --
16 MR. COLELLO: That's the front of
17 your house?
18 MRS. HOLLANDS: It's part of the
19 front.
20 MR. COLELLO: This is the road;
21 right?
22 MRS. HOLLANDS: That's correct.
23 MR. COLELLO: But this is your --
24 your house is where?
25 MRS. HOLLANDS: Right here.

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1 MR. COSTELLO: The mailings are in
2 order.
3 MR. COLELLO: Thank you.
4 And your driveway is this right here?
5 MRS. HOLLANDS: Yes, and you can see
6 from -- let me find a different picture. This is the
7 driveway right here. So, we were hoping to put a
8 gate 30 feet back from the road and the fence would
9 be on the inside here so that from the road it will
10 be obscured by the trees and it would be about eight
11 feet back from the road.
12 MR. COLELLO: A black type --
13 MRS. HOLLANDS: Yes.
14 MR. COLELLO: -- metal fence?
15 MRS. HOLLANDS: Yes. Right here.
16 So, the idea is to put it behind the tree line here
17 so that -- well, we would be the ones looking at it

07-17-06 zoning board of appeals.txt
18 more than anybody else.

19 MR. COLELLO: Right.

20 MRS. HOLLANDS: It wouldn't extend
21 the whole road front. There is a preexisting
22 stockade fence here and -- so I think we just want to
23 take a fence to meet that and then continue over here
24 with a deer fencing that would be cedar posts that
25 are about five inches thick with a wire mesh

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1 stretched across them and that should be even more
2 invisible.

3 MR. COLELLO: And that would go all
4 the way around?

5 MRS. HOLLANDS: That would go all the
6 way around here, around here to the end of the blue
7 line here and this red -- I mean, all the red part
8 would be the metal.

9 And I can show you some other parts.
10 This is all the road front from the outside driving
11 up Dingle Ridge Road. This is what it looks like
12 there and here. That's from the inside. And what
13 else is inside? This is also on the inside. That's
14 the existing fence that you can see from the inside
15 and the proposed fence would -- let me make sure
16 everybody gets to see -- would be on the inside of
17 the shrubs and the trees.

18 MR. COSTELLO: May I see that?

19 MRS. HOLLANDS: Sure.

20 MR. COLELLO: I got to be honest with
21 you, I'm not going to lie to you, I don't ever

07-17-06 zoning board of appeals.txt
22 remember us approving an eight foot fence all the way
23 around the property.

24 MRS. HOLLANDS: I understand that.
25 We've read the minutes of previous meetings.

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1 MR. COLELLO: And I appreciate the
2 fact that, you know, everyone of us in this town live
3 with the deer problem, okay. When I first moved here
4 I used to feed them. After about a year I wanted to
5 buy a BB gun, but that's okay. But, you know, it is
6 a problem.

7 And I appreciate especially -- and we
8 all love and I love my gardens and everyone loves to
9 plant, but when the town adopted zoning codes on
10 fencing, we've -- I can only give an example. I'm
11 glad you came before us before you want to do this
12 because we have had two applications within the last
13 year, year and a half --

14 MRS. HOLLANDS: Someone put it up
15 first; right?

16 MR. COLELLO: Yes. Two big money
17 fences, wooden fences all the way around and we asked
18 them to take it down. They were beautiful, beautiful
19 fences, huge money.

20 MRS. HOLLANDS: Well, we are allowed
21 to put up a wooden fence, but it would be three feet
22 at the front and six feet around the back.

23 MR. COLELLO: Yes. Absolutely, you
24 can do that.

25 MRS. HOLLANDS: But wouldn't that

1 look worse than something that is transparent?

2 MR. COLELLO: Well, but beauty is in
3 the eyes of the beholder.

4 MRS. HOLLANDS: Sure.

5 MR. COLELLO: I'm not saying what the
6 town board had in its thought process, but -- and
7 please don't misread what I'm saying to you here.
8 They didn't want houses to look like prisons, if you
9 know what I'm saying, with fences around them. I'm
10 sure you would never put up a fence and no one would
11 ever say look at that prison on Dingle Ridge. Don't
12 get me wrong, but that was the thought behind a lot
13 of it. Six feet all the way except for 35 feet from
14 the property line is fine around.

15 MR. COSTELLO: From the front
16 property line.

17 MR. COLELLO: The front property
18 line.

19 MRS. HOLLANDS: I think it's 67 from
20 the front. Our setback is 100 feet. Ron told me it
21 was -- he showed me -- this is what he drew for me
22 today. 100 feet here, sorry.

23 MR. COLELLO: We have to look it up.

24 MRS. HOLLANDS: I went to him today
25 and asked him to draw this up for me because I wanted

1 to make sure.

2 MR. COLELLO: This is Dingle Ridge?
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MRS. HOLLANDS: Yep.

MR. COLELLO: Right here?

MRS. HOLLANDS: Wait. Sorry. I'm incorrect. That is Dingle Ridge.

MR. COLELLO: So, anything over here would have to be three feet and it would have to go back X amount of feet. Is it 100 feet on Dingle Ridge or 50?

MRS. HOLLANDS: We are 160.

You know, we completely concur with you about the idea of a prison. We don't want to be in a prison or make it look like a prison, but unfortunately if we put a six foot stockade fence, which we're allowed to do, we would be creating a prison for us, I think.

MR. COLELLO: Why don't you put the six foot high same type of fence you were talking about instead of eight feet high? You don't think that would keep most of the deer out?

MRS. HOLLANDS: Well, we had talked to a whole bunch of different people about it, people in the area --

MR. COLELLO: Go ahead.

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MRS. HOLLANDS: -- people in the area and landscapers. An environmental consultant, he came to talk to us about an extreme restoration project that we're trying to do and we've asked many people. We don't even want any fence, to be honest with you. We wish they'd just all go away, but

7 they've all said that six feet doesn't do the trick.

8 MR. BERMAN: If it's opaque the deer
9 won't jump it, but if it's transparent six feet
10 they'll jump it, again, that's the advice we've been
11 given.

12 MRS. HOLLANDS: Otherwise, we would
13 just do the six feet, but we were told that it's a
14 lot of money going into it and we're spending a lot
15 of money on the trees and the shrubs, and then
16 spending a lot of money on a fence that isn't going
17 to work wouldn't really do the trick.

18 I mean, just while you're thinking in
19 your heads, I know one of your considerations is what
20 the neighbors think and we -- I've tried to reach
21 everybody who was on the list who was a person. I
22 didn't talk to the gas company, for instance, or the
23 Town of Southeast or Salem View Farms, whoever they
24 are. But, every other person on the list except one
25 I have spoken to and two people who are on either

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1 side of us are not happy about the fence and then 11
2 others signed a letter of support. In fact, it was
3 12 from 11 of the properties. One other person was
4 -- she said that she had no objection to it, but she
5 didn't want to sign any piece of paper. So, I think
6 of the 20 potential people we could have contacted,
7 11 signed an approval, one said they were okay, two
8 neighbors --

9 MR. COLELLO: That's the ones on
10 either side of you?

11 MRS. HOLLANDS: Yes, those are the
12 ones that are not happy about it, that's correct.
13 And I didn't contact the gas company, Salem View
14 Farms, the Town of Southeast, but I'm assuming that
15 you represent the Town of Southeast.

16 MR. COLELLO: Yes.

17 MRS. HOLLANDS: And 1040 Drewville
18 Road I didn't contact.

19 MR. COLELLO: Can I see this?

20 MRS. HOLLANDS: Sure. I gave you
21 copies of them.

22 MR. COLELLO: We have copies?

23 MRS. HOLLANDS: Yes. This is the
24 original.

25 MR. COLELLO: Take that back.

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1 MRS. HOLLANDS: And I have one of the
2 neighbors here who I spoke to about it, two neighbors
3 here, one who is for and one who is against.

4 MR. COLELLO: Okay. And we'll hear
5 them in a minute.

6 MRS. HOLLANDS: Just before that, I
7 did take some pictures on Dingle Ridge Road because
8 the problem is, are there any other fences on Dingle
9 Ridge Road? And I know Dingle Ridge crosses the
10 border from Putnam to South Salem -- North Salem,
11 sorry. These are two fences that are -- well,
12 actually more than two fences. 113 Dingle Ridge does
13 have a fence that's on top of a stone wall and this
14 is kind of -- we wouldn't have the stone wall there,

15 but this is close in terms of how visible it is to
16 the fence that we would be talking about except that
17 that we'd have cedar posts instead of metal posts.

18 MR. COLELLO: Can I see that for a
19 second?

20 MRS. HOLLANDS: Sure. So, it's these
21 pictures and then on -- which number was that one --
22 27 Dingle Ridge Road they do have a stockade fence
23 with a stockade gate and that's the stockade fence,
24 stockade gate over there. Then at 11 Tulip Road, one
25 of the neighbors who's in favor of us putting up the

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1 fence, they have a chain link fence. It is within
2 the code, however, but it's three feet and then six
3 feet.

4 MR. COLELLO: Could I see that?

5 MRS. HOLLANDS: Sure. I have a
6 bigger picture of that fence also. And although it's
7 not on the road front, our neighbor, one of the
8 opposing neighbors does have a fence around his --
9 there's also actually a fence around the horse farm.
10 I think it's Willow Farms has a horse fence, and our
11 neighbor just recently put up a horse fence within a
12 few feet of the property line. You can see right
13 here. This is where our property line is here.
14 We're 76 and they have this riding rink elevated here
15 with a fence around which is probably within -- I
16 don't know -- five, six feet of the property line.

17 MR. COLELLO: How high is it?

18 MRS. HOLLANDS: I don't know.

19 MR. COLELLO: It's probably a four
20 foot high post and rail.

21 MRS. HOLLANDS: Yeah.

22 MR. COLELLO: And it's not on the
23 front of the property; correct?

24 MRS. HOLLANDS: No, it's not

25 MR. COLELLO: So, it's a legal fence.

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1 MRS. HOLLANDS: Yeah. Actually, they
2 have an agricultural designation.

3 MR. COLELLO: Okay. Anyone have any
4 questions or want to say anything from the audience?

5 MR. EISENBERG: Yes, I would. I'm
6 the adjacent property owner.

7 MR. COSTELLO: Could you state your
8 name for the record?

9 MR. EISENBERG: Yes. I'm Harry
10 Eisenberg.

11 MR. COLELLO: The number, your
12 address?

13 MR. EISENBERG: I'm at 102 Dingle
14 Ridge Road.

15 MR. COLELLO: Thank you.

16 MR. EISENBERG: I have prepared a
17 statement I would like to read and I'll give you
18 copies of it, if that's okay.

19 My wife and I, we are adjacent owners
20 to the Hollands. They have a beautiful country home
21 that fits into the landscape. We are concerned that
22 the granting of a variance for the construction of an

23 eight foot "transparent" perimeter fence in order "to
24 keep out the deer" will destroy the natural area and
25 cause injury to the animals. This will seriously

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1 damage the environment by limiting the biodiversity
2 of other animals.

3 Number one, unfortunately the
4 Hollands have created their own problem. They have
5 cut down hundreds of beautiful old trees to eliminate
6 a place for the deer to hide, according to what
7 they've told us. By doing this they have also
8 eliminated the natural sound barrier which filtered
9 the noise from Interstate 84. They have planted some
10 new trees including fruit trees which the deer view
11 as a delicacy, instead of planting trees such as blue
12 spruce that the deer would not eat. Now they want a
13 variance to keep the deer out altogether.

14 Number two, the eight foot fence is
15 not in keeping with the character of the area of the
16 neighborhood. Their house which is the original main
17 house and barns for Ives Farm has significant
18 historic value having been built in the 1700s. It is
19 important to keep within the historical framework of
20 this property.

21 Number three, the construction of
22 this fence would eliminate the open space and views.
23 A fence of this type would ruin the bucolic views and
24 affect all neighboring property values.

25 Number four, an eight foot fence

1 would mean that the deer would have to run on the
2 neighboring properties in order to survive. They
3 also would be forced or driven towards Interstate 84
4 and this will endanger the lives of motorists.

5 Number five, the erection of a fence
6 along Dingle Ridge Road would prevent the deer from
7 jumping the walls into the Hollands' property. This
8 would create a traffic hazard by forcing them to walk
9 on a narrow curvy road until they found an open area.

10 Number six, it is documented that the
11 deer and other animals can become entangled with the
12 transparent or invisible fence, causing serious/fatal
13 injuries. These include broken legs or being hung.
14 Can't we find a better solution to this problem? The
15 deer and other animals such as foxes, coyotes, coy
16 dogs and wild turkeys are a part of this environment
17 and will be endangered.

18 Number seven, the Hollands have
19 stated that if they are not granted this variance
20 they will put up a six foot wire fence as allowed by
21 the code. I'm prepared to request that the town
22 board place a moratorium on any fence erection over
23 four feet. In addition, limiting the amount of
24 acreage permitted to be fenced needs to be reviewed.
25 And now is the time to recognize what is

1 environmentally wise for the Town of Southeast.

2 Number eight, it is important that

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3 this Board consider public safety in addition to what
4 is environmentally proper for the Town of Southeast.

5 Number nine, I am attaching abstracts
6 of a study that was done on deer fencing for your
7 review and based on all of the above facts we
8 strongly urge this Board to turn down the request for
9 this variance.

10 MR. COLELLO: Just give us one copy
11 of that.

12 MR. EISENBERG: I have various copies
13 if you want.

14 MR. COLELLO: Okay.

15 MR. EISENBERG: I think this is a
16 substantial variance that they are asking for. I
17 just don't think it's proper. And, moreover, looking
18 at the tax map, this is my property of 21 acres.
19 This is the Hollands. This 1,318 feet that borders
20 my property that would be having an eight foot fence
21 and I just don't think that's realistic.

22 MR. COLELLO: Okay.

23 MRS. HOLLAND: Could I just point out
24 what's along that property line?

25 MR. COLELLO: I'm sorry.

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1 MRS. HOLLAND: Could I just point out
2 what's along that property line?

3 MR. COLELLO: Sure.

4 MR. EISENBERG: Incidentally, one
5 other thing. There's a stream that runs across here
6 and I think that you need a permit -- a special

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7 permit of some kind in order to put a fence over a
8 bridge which crosses that stream or anything within
9 100 feet of that stream.

10 MRS. HOLLAND: That's correct. We
11 actually already have been in front of the
12 Conservation Commission about that and that is one of
13 the reasons why we need to put the fence in certain
14 locations.

15 MR. COLELLO: What were you going to
16 say? What's on this property line?

17 MRS. HOLLAND: Okay. Let me get my
18 bearings. So, this is the horse rink up here that's
19 just been put up on an elevated piece of ground with
20 a fence along the side of it. It takes up most of
21 that field. Then there's a small open part here.
22 Then along here there's a large barn that's about 20
23 feet from the property. There was a Caravan parked
24 right up to our property line here. There's another
25 barn here and a parking area that --

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1 MR. COLELLO: Let me ask you a
2 question, how old are these barns?

3 MRS. HOLLAND: Our barns or their
4 barns?

5 MR. COLELLO: Their barns, the ones
6 you're pointing to.

7 MR. EISENBERG: They've been there
8 five years. They all have the C of O. It was all
9 built according to code.

10 MR. COLELLO: I don't think it has

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11 anything to do about a fence, though?

12 MRS. HOLLAND: I'm just pointing out
13 what's along there because he was talking about
14 ruining the bucolic views and I'm not sure what's
15 very bucolic about the parking area or a Caravan.

16 MR. EISENBERG: These are all open
17 fields.

18 MR. COLELLO: All right. We'll come
19 take a look at it. Thank you.

20 Do you want one of those?

21 MRS. HOLLAND: Sure, that would be
22 great.

23 One of the reasons we wanted to do
24 that fence along the front that had the open bars was
25 to allow in other forms of wildlife. We do have a

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1 lot of wildlife on the property and we're certainly
2 trying to encourage that. So, that was one of our
3 considerations in picking out that fence, that a
4 stockade fence would block out much more wildlife.

5 MR. COLELLO: Okay. Do we have any
6 other questions or comments? State your name and
7 address, please.

8 MR. SOCCODATO: Frank Soccodato, 41
9 Tulip Road. I have property also adjacent to the
10 Ives Farms, the Murphy's Farm and the Hollands. I'm
11 in favor of her application. I'm here to attest that
12 there is a heavy deer population in our area. Being
13 that the fence will be mostly translucent, I don't
14 feel it's an issue.

15 I also feel that Mr. Eisenberg's
16 statement is a bit of a stretch in regards to the
17 risks for the deer, that I've seen them scale rock
18 walls and a six foot fence, in my opinion, would not
19 cover it for them. I am a sportsman. I have seen
20 deer in desperation get higher than six feet. Also,
21 they are far enough away from 684 where they would
22 not be any kind of traffic hazard, and that's
23 basically it.

24 MR. COLELLO: You will agree, though,
25 jumping a fence that they can't see that they could

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1 be in a lot of trouble.

2 MR. SOCCODATO: A six foot fence or
3 even an eight foot, they're going to get tangled in a
4 fence, it doesn't matter how high it is.

5 MR. COLELLO: So, it's not a problem?

6 MR. SOCCODATO: I don't see it being
7 a problem, not for the deer. If they have a fence or
8 something in front of them, they see it. If you have
9 shrubs and you put deer netting, they're not coming
10 next to it. So, even if it is somewhat translucent,
11 when the deer gets up to it it knows it's there.

12 MR. COLELLO: I almost had a deer run
13 over me in my backyard once. They've never been
14 known for their great vision. They have great smell
15 and hearing, but they're not exactly visionaries.

16 MR. SOCCODATO: They're not the
17 smartest.

18 MR. COLELLO: I'm telling you, it

19 almost ran over me. But anyway, I agree with what
20 you're saying and I agree with their jumping ability
21 and all of that stuff. You know, I don't know where
22 I'm going with this, but in a fence that they can't
23 really see, sometimes they don't know how high to
24 jump and I'd hate to see some deer tangled up in my
25 neighbor's yard in a fence with a broken leg. What

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1 did that serve?

2 MR. SOCCODATO: I understand, but to
3 be honest with you, how high is really a risk? Just
4 take that into consideration, that's all I'm asking.

5 MR. COLELLO: All right. I
6 understand.

7 MRS. HOLLAND: I think the point
8 really is what's preferable to have a six foot
9 stockade fence or something that's higher, but
10 transparent in terms -- I mean, there are --
11 obviously, with anything that we do there are risks
12 associated with it. So, it's a question of balancing
13 and we're concerned about the impact on the
14 environment -- I mean, the environment visually and
15 the actual wildlife itself. I think that we have
16 tried to think very carefully about what's the most
17 acceptable all around. It's not to say that it's
18 acceptable in every sense of the word because none of
19 these things ever are.

20 MR. BERMAN: The original had a
21 barbed wire fence. We're going back to the 1700s.
22 They built a barbed wire fence that we took out.

23 MR. COLELLO: They also shot them and
24 ate them too.
25 MR. BERMAN: We took out the barbed

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1 wired fence.
2 MR. COLELLO: I don't want you
3 pulling out a shot gun and blowing Bambi away and
4 having him for dinner.
5 MR. BERMAN: Well, I guess we can do
6 that during the hunting season, but other than that
7 we can't do it.
8 MR. COLELLO: Okay. We'll see you
9 next month.
10 MRS. HOLLAND: Do we need to do
11 anything else before that meeting?
12 MR. COLELLO: No.
13 MRS. HOLLAND: Do you keep copies?
14 MR. COLELLO: You keep this, but
15 bring that, though.
16 MR. COSTELLO: Bring all the photos
17 as well.
18 MR. BERMAN: You'll go to the
19 property?
20 MR. COLELLO: We may drive by. We
21 may stop and ask for permission to walk on the
22 property.
23 MRS. HOLLAND: You have permission.
24 MR. COLELLO: Do you have any dogs?
25 MRS. HOLLAND: No, we don't actually,

1 but we do have Nancy.

2 MR. COLELLO: Well, how come you
3 don't scare them away then?

4 MR. BERMAN: Thank you very much.

5 MRS. HOLLAND: Thank you.

6 MR. COSTELLO: The applicant
7 submitted a letter signed by a number of neighbors
8 that seem to be in favor of the application.

9 MR. COLELLO: With the exception of
10 the two abutting neighbors who admitted they were
11 opposed the application.

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19 MR. COLELLO: Michael and Elisa
20 Anfuso.

21 MR. BOWLES: I'm not Michael, but
22 it's my daughter.

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

25 MRS. ANFUSO: Yes, I do.

1 MR. COLELLO: We need to swear you in
2 first.

3 MR. COSTELLO: Raise your right
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4 hands. Do you swear that the testimony you're about
5 to give is the truth, to the best of your knowledge?

6 MRS. ANFUSO: Yes.

7 MR. BOWLES: Yes.

8 MR. COSTELLO: State your names for
9 the record.

10 MR. BOWLES: Ed Bowles.

11 MRS. ANFUSO: Elisa Anfuso.

12 MR. COSTELLO: Do you have the
13 affidavit --

14 MRS. ANFUSO: I do.

15 MR. COSTELLO: -- and the listings of
16 the mailings?

17 MR. COLELLO: Okay. Could you walk
18 us through?

19 MRS. ANFUSO: Absolutely.

20 MR. COLELLO: Are those packets for
21 everybody?

22 MRS. ANFUSO: Yes. Basically, in a
23 nutshell, I'd like to put a very small --

24 MR. BOWLES: Nine by four.

25 MRS. ANFUSO: -- nine by four rear

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1 deck on the back of my sliding glass door. I believe
2 that my setbacks are in line. I'm just enlarging the
3 nonconforming structure because I'm in Brewster
4 Heights.

5 MR. COLELLO: Tim used to live in
6 your neighborhood.

7 MR. FROESSEL: For nine years. I

8 haven't lived there for a year and three days now,
9 though.

10 MR. COLELLO: I'm sorry, I didn't
11 mean to interrupt you.

12 MRS. ANFUSO: That's all right.
13 That's basically it. This would be it.

14 MR. COLELLO: This is -- that's
15 there?

16 MRS. ANFUSO: Yes, this is existing.

17 MR. COLELLO: And what is this?

18 MRS. ANFUSO: This is just -- it's a
19 landing. It's not --

20 MR. BOWLES: Sliding door right here,
21 above grade about three feet.

22 MR. COLELLO: What's there now?

23 MR. BOWLES: Nothing.

24 MRS. ANFUSO: Nothing.

25 MR. COLELLO: So you have a three

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1 foot step up?

2 MRS. ANFUSO: No. I have nothing.

3 MR. BOWLES: You can't open the door,
4 the kids will fly right out of it.

5 MR. COLELLO: And how long have you
6 lived there?

7 MRS. ANFUSO: That's new. We
8 converted the garage.

9 MR. BOWLES: This part was redone.

10 MRS. ANFUSO: And we changed our mind
11 a million times what we want to do so...

12 MR. COLELLO: Okay. You have a CO
13 for that?
14 MRS. ANFUSO: No, I haven't -- not
15 until I get this.
16 MR. COLELLO: Right.
17 MR. BOWLES: Or we have to screw the
18 door shut or something.
19 MRS. ANFUSO: Yeah, the door is
20 locked.
21 MR. COLELLO: Do you have the letter
22 from Mr. Harper?
23 MRS. ANFUSO: From Mr. Harper, yes.
24 Here it is.
25 MR. COLELLO: So you're not getting

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1 any closer?
2 MRS. ANFUSO: Uh-uh.
3 MR. COLELLO: So, you're not getting
4 any closer here and not any closer there.
5 MRS. ANFUSO: The Friedlanders are
6 there.
7 MR. FROESSEL: They once showed up to
8 oppose an application.
9 MR. COLELLO: Jimmy?
10 MRS. ANFUSO: Jimmy Friedlander,
11 yeah.
12 MR. COLELLO: Who's on this side?
13 MRS. ANFUSO: Sadler and Duo.
14 MR. COLELLO: Okay. Do we have any
15 questions from anyone in the audience?

16 Do we have any questions?
17 So, now help me out here, you had a
18 garage, but you converted it?
19 MRS. ANFUSO: Yes.
20 MR. COLELLO: To a --
21 MRS. ANFUSO: To a family room.
22 MR. COLELLO: You got permits to do
23 that?
24 MRS. ANFUSO: Yes, I did.
25 MR. COLELLO: You got a permit and

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1 you put a sliding glass door in the back?
2 MRS. ANFUSO: Yes.
3 MR. BOWLES: Yes. It's on the print,
4 everything is on the print.
5 MR. COLELLO: But on the print it
6 didn't say that you couldn't have a three foot drop?
7 MRS. ANFUSO: It was approved without
8 them looking at the back of the building or, for some
9 reason, they didn't pick it up.
10 MR. BOWLES: We were going to do it,
11 but the building inspector caught it.
12 MRS. ANFUSO: You know how you have
13 to go through each approval stage?
14 MR. COLELLO: I know.
15 MRS. ANFUSO: Well, he came one time
16 and said well, what's going to be here. I said well,
17 we're going to put a landing with the stairs, well,
18 you have to show me a revised thing. So, I sent in a
19 couple revised so I can try to avoid all of this, but
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20 nothing worked so we're going with this.

21 MR. COLELLO: Okay. As long as we
22 know what you're doing. Hold on to that. Bring that
23 in next month.

24 MRS. ANFUSO: Okay.

25 MR. COLELLO: Are they in order?

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1 MR. COSTELLO: The mailings are in
2 order.

3 MR. COLELLO: All right. See you
4 next month.

5 MRS. ANFUSO: Thank you.

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13 MR. COLELLO: Mr. Di Pietro.

14 MR. BUMGARNER: Good evening. My
15 name is Craig Bumgarner. I'm an attorney in Carmel,
16 New York. I'm actually here for Mr. Di Pietro
17 tonight.

18 I have my mailings. We happen to be
19 right near Holly Stream. We kind of have a similar
20 mailing and I just wanted to let you know that we
21 went -- when I put them in order we put them across
22 like this instead of -- I just wanted to let you
23 know. It's \$300 worth of postage there.

24 Mr. DiPietro owns property located at
25 40 Guinea Road in the Town of Southeast. This is in

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1 the town's R 160 zoning district so it requires
2 160,000 square feet of lot area.

3 MR. COSTELLO: Do you have your
4 affidavit?

5 MR. BUMGARNER: Yes, I do. Do you
6 want the whole application?

7 MR. COSTELLO: Just the affidavit.

8 MR. BUMGARNER: Just the affidavit.
9 It requires 160,000 square feet of lot area.

10 MR. COSTELLO: It needs to be
11 notarized.

12 MR. BUMGARNER: As an attorney it
13 needs to be notarized?

14 MR. VINK: Under New York statute he
15 can sign it as an attorney without it being
16 notarized. It has the same force and effect as it's
17 been notarized.

18 MR. BUMGARNER: What he's proposing
19 to do is to subdivide a 7.2 acre property into two
20 lots. We have been before the planning board. They
21 actually issued us a positive recommendation for the
22 action.

23 MR. COLELLO: Were you here earlier
24 when we talked about that?

25 MR. BUMGARNER: No, sorry, I missed

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1 that, but I'm sure I could guess how the conversation
2 went.

3 What's going to happen, if he is
4 permitted to subdivide the parcels, is that he'll
5 have one lot that's conforming and he'll have 160,000
6 square feet. The other one would be short, it would
7 only contain 154,140.

8 There's an existing house on the
9 property now. That house would remain and what we're
10 looking to do is peel off a building lot. If you
11 take a look at the property and the surrounding area,
12 I have a tax map if anybody would like to view it,
13 there's some large vacant tracks up there.

14 For the most part, it's single family
15 residences, very few having as much acreage as these
16 will have even when they're subdivided, an acre and a
17 half and two acre type stuff up there and then we are
18 close by to the condominiums as you can see from our
19 mailing list there.

20 MR. COLELLO: Does he live in the one
21 house?

22 MR. BUMGARNER: He does. He lives
23 there right now.

24 MR. COLELLO: And how long has he
25 owned the property?

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1 MR. BUMGARNER: You know what, I
2 don't know if I have that information with me. I'm
3 assuming it's on his -- I'll check and see if it's

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on --

MR. COLELLO: That's okay. Find that out for next month.

MR. BUMGARNER: I'll check in with him and let you know.

Basically, you know, what he wants to do is create this two lot subdivision. When he applied for the original subdivision if he would have gotten the application through he was okay, but subsequently the zoning has changed so it requires the variance.

Looking at the character of the neighborhood, obviously because the lots up there are smaller than the two that will be created, there shouldn't be any adverse impact on the surrounding neighborhood. You know, one of the things that I know the Board takes a look at is whether this is self-created and, in fact, in this case there is a measure of it being self-created here, although as I'm sure the Board is aware, that's not a determinant factor, it's just one to be considered.

He has looked at other alternatives

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for adding on to the property to see if he could possibly expand it and get the square footage he needs and he has not been successful in doing that. There's only one property that borders this to even have any property to give and, you know, the ones surrounding it will all be too small. In terms of the scope of the variance, it's relatively small in

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8 nature.

9 MR. COLELLO: He's gone to both
10 sides, to the neighbors, and asked to buy the
11 property?

12 MR. BUMGARNER: If you looked at both
13 sides of the neighbors, they don't have any property
14 that they could give. They're already below what
15 your current code is so it you'd be creating a
16 further nonconforming use to the current zoning.

17 MR. COLELLO: Okay. Got you. What's
18 in the back?

19 MR. BUMGARNER: There's a large
20 parcel in the back. Let me pull out the tax map.

21 This is the parcel right here. We've
22 got -- this reflects it as 7.09 acres, but our survey
23 actually indicates that it's 7.212 acres. The
24 property --

25 MR. COLELLO: Here's my problem, and

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1 I just want to share this with you so you can think
2 about this next month. I understand, you know, if
3 you subdivide one lot is fine and one lot he's 6,000
4 off. Where does the Board draw the line? You see,
5 that's always been a tough issue for me. Where do
6 you draw the line? I mean, is 3,000 enough to be
7 short or is 6,000? I mean, and I'm not knocking your
8 client, but the bottom line is they're doing this
9 purely for profit and I don't begrudge anybody for
10 making a profit. Please, I'm a capitalist from day
11 one, but I just think that it's -- you know, the

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12 zoning code is designed to keep four acre lots and
13 when we start cutting them up for profit, and this
14 Board has been kind of leery on doing that, to be
15 quite frank with you.

16 MR. BUMGARNER: But consider this, if
17 you will, you're talking about basically less than
18 four percent of a variance.

19 MR. COLELLO: Well, that's the
20 question.

21 MR. VINK: And then the next guy
22 comes in and it's less than five.

23 MR. BUMGARNER: Understood, but
24 that's why your Board is empowered to look at the
25 character of the neighborhood. I mean, that's the

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1 most important factor that you're going to consider.

2 MR. COLELLO: But the character of
3 the neighborhood is somewhat fictitious. And correct
4 me if I'm wrong, because of upzoning, okay, and some
5 of those lots were created before we were 160;
6 correct?

7 MR. BUMGARNER: Yes. But also think
8 of it this way, that's why you're told to look at the
9 character of the neighborhood to see -- I mean, if I
10 was looking to put, you know, a commercial business
11 in here, no way, it doesn't meet the character of the
12 neighborhood, at all.

13 I'm saying when you upzone they tell
14 you to look at the character of the neighborhood to
15 see if you're going to create something out here

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16 that's just a train wreck that doesn't match any of
17 the surrounding area. And in this situation we've
18 got -- you know, most of the lots around here, if you
19 take a look, they're all lots that are, you know,
20 going to be -- they're already smaller than, you
21 know, both of these lots that we're creating. So,
22 it's not really going to be making something that's
23 completely, you know, eye catching when you go by
24 or anything of that nature.

25 MR. COLELLO: I agree with you. He's

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1 dam close. First of all, by the eye, no one would
2 even know, no one would even pick it up, oh, look at
3 that lot, it's little small, he's 6,000 square feet
4 small, absolutely not. No one would ever know, but
5 that's my issue all the time with these. Where do we
6 draw the line? He's close but, you know, I don't
7 know.

8 MR. BUMGARNER: You know what, if
9 they wanted you to compare it to the current zoning,
10 they wouldn't tell you to look at the character of
11 the neighborhood when you're doing your analysis.

12 MR. COLELLO: Well, that's the State
13 of New York telling us that. But look at the flip
14 side, if the town board wanted us to do that they
15 wouldn't have upzoned to 160.

16 MR. BUMGARNER: Well, if the town
17 board didn't want you to grant variances then they
18 would tell you --

19 MR. COLELLO: You're assuming they

20 do.

21 MR. BUMGARNER: They have the
22 legislative power to effect that too.

23 MR. COLELLO: Actually, they could
24 fire us.

25 MR. BUMGARNER: They could just say

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1 that this is going to be the upzone and they can --
2 town law 267-B sets forth the variance factors, your
3 town code adopts them. They can vary those to the
4 town code however they'd like to.

5 MR. COLELLO: You're absolutely
6 right. I'm just voicing with you opinions that we
7 have 30 days to think about, that's all.

8 MR. BUMGARNER: Okay.

9 MR COLELLO: No questions from the
10 audience?

11 MS. BALLA: Yes, I have one.

12 MR. COLELLO: Go ahead.

13 MR. COSTELLO: Could you just state
14 your name for the record?

15 MS. BALLA: Angelina Balla,
16 B-a-l-l-a, and I happen to be a homeowner at Holly
17 Stream Condominiums as well as a board member of the
18 board of managers at Holly Stream Condominiums.

19 I'm just really curious to know,
20 first of all, if we're able to -- and we meaning
21 Peggy Mimno, we want to know if we're able to look at
22 the map and see exactly the area because we have no
23 clue. We just want to know where exactly this is and

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24 how it would affect the condominium complex.

25 MR. COLELLO: Sure. Come up.

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1 MR. BUMGARNER: Let me show you.
2 This is the tax map.

3 MS. BALLA: Okay.

4 MR. BUMGARNER: This is the parcel in
5 question right here and I believe you guys are right
6 here. So, it's pretty close to -- is this your
7 entrance down here?

8 MR. CASTELLANO: You would make a
9 right and the first left is Pine View and the
10 property is right on the corner.

11 MS. BALLA: Where would that be?

12 MR. CASTELLANO: You come out of your
13 condo complex, you're going to make a right on Guinea
14 and on the left is Pine View, but he's right before
15 Pine View on the left.

16 MS. MIMNO: He's on the bend.

17 MS. BALLA: The left?

18 MR. COSTELLO: He's on the left-hand
19 side as you're going up to the right.

20 MS. BALLA: So, we're down the road.
21 So, he's coming up?

22 MR. COLELLO: Yes.

23 MR. CASTELLANO: As you exit your
24 complex, you're making a right and he's on the left.

25 MS. BALLA: That's not going to --

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1 that's not on our back door. We thought it was
2 falling into our back door.

3 MR. COLELLO: Basically, what he
4 wants to do here, he has almost eight acres. He
5 needs eight acres to put two houses, but he's a
6 little short.

7 MS. BALLA: Correct.

8 MR. COLELLO: So, he wants to put one
9 lot at four acres and one at 3.9, that's what he's
10 asking. So instead of one house on eight acres
11 approximately he wants to try to put two.

12 MS. BALLA: All right. I don't see a
13 problem; do you?

14 MS. MIMNO: No.

15 MS. BALLA: Thank you very much.

16 MR. COLELLO: Okay. So, we'll see
17 you next month. Are the mailings in order?

18 MR. COSTELLO: Yes, the mailings are
19 in order.

20 MR. BUMGARNER: What is the date for
21 the next meeting?

22 MR. VINK: 21st, August 21st.

23 MR. BUMGARNER: Okay. Great. Do you
24 guys want to take a look at it? I'll make him
25 available.

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1 MR. COLELLO: No, because we can
2 drive by. It's just a wooden lot. We know it's on
3 the bend. We know the character. I've been on that
4 road a million times. We know the character of the

5 neighborhood. It's a wooden area.

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13 MR. COLELLO: Okay. Mrs. Gomez.

14 MRS. GOMEZ: Yes.

15 MR. COLELLO: Come on up.

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

19 MRS. GOMEZ: Yes.

20 MR. COLELLO: State your name.

21 MRS. GOMEZ: Inez Gomez.

22 I don't know if you need that.

23 That's the list.

24 MR. COSTELLO: And I need the
25 affidavit.

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1 MRS. GOMEZ: Here's the affidavit and
2 the denial.

3 MR. COSTELLO: You learned an awful
4 lot.

5 MRS. GOMEZ: I sat here long enough.

6 Okay. What my husband and I would
7 like to do is to install an above ground pool, but we
8 don't meet the setback requirements from the house or

9 from the neighbor's property. We're requesting a 35
10 foot variance, 15 feet to attach it -- to abut to the
11 existing deck that's there. I'm five feet
12 approximately short from the 20 feet from my
13 neighbor.

14 MR. COLELLO: And the setback would
15 be only 15 feet and that's the side setback; correct?

16 MRS. GOMEZ: Well --

17 MR. COLELLO: I'm sorry, where is
18 your front -- you're on what street, Shore?

19 MRS. GOMEZ: I'm on Shore Drive.

20 MR. COLELLO: Shore is the front, but
21 you also have two fronts because you're a corner.

22 MRS. GOMEZ: I'm in the corner.

23 Lakeview Manor is over here.

24 MR. COLELLO: Right.

25 MRS. GOMEZ: And this property slopes

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1 a lot.

2 MR. COLELLO: Yes.

3 MRS. GOMEZ: My septic system is in
4 the front.

5 MR. COLELLO: Right.

6 MRS. GOMEZ: And then I have frontage
7 on my other side. The only spot that we have is
8 attaching it to that existing deck and that deck is
9 12 feet wide, so I need a variance from 15 feet and
10 then another five feet from the edge of the deck to
11 the property -- my neighbor's property.

12 MR. COLELLO: Okay.

13 MR. VINK: That's a nice slope that
14 you're trying to deal with there.

15 MR. COLELLO: He's talking about a
16 rear setback of 35 feet.

17 MRS. GOMEZ: Right.

18 MR. COLELLO: That would be that?

19 MRS. GOMEZ: Right, 15 and then 20
20 from the neighbor.

21 MR. COLELLO: Could I see that for a
22 second?

23 MRS. GOMEZ: Sure.

24 MR. COLELLO: So you need a 20 foot
25 variance here on the rear setback; right?

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1 MRS. GOMEZ: Uh-huh. And since the
2 deck is there, I found out later that's not part of
3 the building.

4 MR. FROESSEL: Because it's attached
5 to the house, it's not an accessory structure that's
6 detached from the house. It's the rear setback, not
7 the rear yard setback.

8 MR. COSTELLO: The mailings are in
9 order.

10 MR. COLELLO: So, basically, though,
11 forget the fact that it's increasing a nonconforming
12 structure, her problem is really only here; correct?

13 MR. FROESSEL: That's what it looks
14 like to me.

15 MR. COLELLO: There's nothing in the
16 front and he's saying she needs 35 feet and she has

17 15, so she still needs a 20 foot variance; right?

18 MRS. GOMEZ: Uh-huh.

19 MR. COLELLO: And because it's
20 connected, therefore, it's an existing deck, the
21 proposed pool would be an enlargement of an existing,
22 nonconforming structure which is not permitted under
23 Code Section 138-11.

24 MR. COSTELLO: Enlargement of a
25 nonconforming structure.

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1 MR. COLELLO: Are the mailings in
2 order?

3 MR. COSTELLO: Yes, they are.

4 MR. COLELLO: Fantastic. We've got a
5 good handle on this. Can you bring this back next
6 month?

7 MRS. GOMEZ: Sure.

8 MR. COLELLO: You should probably
9 bring this back next month so I don't lose it.

10 MRS. GOMEZ: Okay. And you have my
11 affidavit?

12 MR. COLELLO: We have your affidavit.
13 We have your mailings. You're in great shape. See
14 you next month.

15 MRS. GOMEZ: Thank you

16 MR. COSTELLO: Just for the record,
17 there's no other members in the audience to ask
18 question of.

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MR. COLELLO: Did anyone else read
the minutes?
MR. COSTELLO: No one received the
minutes.
MR. COLELLO: So we can't approve the
minutes. So, we'll talk about that next month as to
approving the minutes.
MR. COSTELLO: Motion to close the
hearing.
MR. COLELLO: Second?
MR. CASTELLANO: Second.
MR. COLELLO: Seconded by Joseph.
All in favor?
(All in favor.)
CONTINUED ON NEXT PAGE

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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