

TOWN OF WALLKILL ZONING BOARD OF APPEALS

MEETING

AUGUST 9, 2004

PRESENT:

J. Mattatall
W. Morgan
E. Raffo
O. Smith, Chairperson
P. Thompson

Joseph A. Owen, Esq.

ABSENT/EXCUSED:

R. Schoenberg

MEETING OPENING:

The monthly meeting of the Town of Wallkill Zoning Board of Appeals opened with the pledge to the flag, followed by roll call and presentation of the July 12, 2004 Meeting Minutes.

The Motion was made for a correction to the June minutes on page 48, the very last decision for Michael Ramos. The request for the variance should be 249-22(D) side yard setback from 15' to 12'; front yard setback 35' to 7'7" for 10 Abington Mews and subject to the architectural in keeping with the surrounding neighbors; Seconded; Motion carried.

The Motion was made to accept the minutes as written; Seconded; All in favor; Motion carried.

The following hearings were Continued, Reviews made for September 13, 2004, and the Public Hearings conducted and voted upon as noted.

CONTINUATION OF PUBLIC HEARING

JRJ HOMES

Mr. Smith: This is a continuation of your Public Hearing from July 9, 2004. You submitted the soils and I just got this. Does anyone else have questions? Do you have anything to add?

Mrs. Szeto: No. This is all we were waiting for was the soils. We had dropped them off a couple of times at the office and we noticed that there was an error that they put the Planning Board so we crossed that out of the envelope and asked that it be dropped and I'm sorry that you didn't get it earlier than this. The engineering is almost finalized. I think the last time we met we just waiting for this piece to get the approval.

Mr. Smith: Do you have someone here to convert the soils?

Mrs. Szeto: To convert . . .

Mr. Smith: Your letter describes the soils. We have a different format in our book and without someone being here to convert this.

Mrs. Szeto: I used an engineer from Goshen and he used the book that is supplied by the Town of Wallkill. He basically said that it was suitable for a trench sanitary system. They've done the topography and the survey of the property and basically they're waiting for the okay of the variance for the seventeen feet that we're short of so that they can proceed with the further engineering of the house, design and percolation before going through that additional expense which is about another three thousand dollars. There was an existing mobile home on the property and two old septics on the property as well and those are going to be removed once the house is put on.

Mr. Smith: That trailer is gone.

Mrs. Szeto: It's gone. It's definitely gone but I do know that there were two septic tanks on that property for the mobile home that was there.

Mr. Smith: Do you have someone here who can go over this with us?

Mrs. Szeto: No.

Mr. Smith: I will continue it again for another month.

Mrs. Szeto: What is it exactly that you need then?

Mr. Smith: The soils types according to our code.

Mr. Mattatall: It is noted as A or B or whatever. By that we know exactly what the soils type is.

Mr. Smith: They should look at our code under 249-19.

Mr. Mattatall: It is usually identified by a group number.

Mrs. Szeto: I understand. Group, Type.

DECISION:

Motion made to continue Public Hearing on September 13, 2004; Seconded; Motion carried.

REVIEWS

MGD Development

Mr. Smith: Actually we weren't able to set the Public Hearing.

J. VanTile: I understand.

Mr. Smith: I wanted to notify you we cannot hold the Public Hearing because we schedule the Public Hearing.

J. VanTile: Okay.

Mr. Smith: We will set it again. We will set it for September 13, 2004. We also have two amendments. I don't want to set a precedence in opening this tonight.

J. VanTile: That's fine. So, I guess there's no point in my filing affidavits that I brought with me tonight.

Mr. Smith: No.

J. VanTile: What I would like to do if it would be alright is to submit one more additional document which was given to me this afternoon. Would it be alright if I handed that in?

J. Owen: Yes.

Mr. Smith: On the application of MGD Development for property owned by Fairways, Wallkill, LLC, tax map Section 73, Block 1, Lots 31.2, 33.2 and 33.3 for the following variances: (1) Wood fence. A variance of Section 249-22 (7)(I) and 249-22 (8)(k) to allow wood fence along I-84 property line, approximately 1227 feet long, varying in height from 8 feet to 14 feet; interpretation that the front yard setback in 249-22 (7)(i) and 249-22 (8)(k) does not prohibit retaining wall for interior road; a variance under 249-22 (8) for rear yard setback for decks on detached single family condominiums: 10 units from 50 feet to 40; 1 unit from 50 feet to 46.1; and 1 unit from 50 feet to 41.1; a variance of 249-22 (8)(k) and 249-22 (7)(i) height requirements; 22 buildings from 35 feet to 39; 12 buildings from 35 feet to 41 feet; 16 buildings from 35 feet to 47 feet and 2 buildings from 35 feet to 45 feet; an interpretation that Section 249-22 (7)(g) applies only to facing front elevations and variances authorizing reductions of distance between facing front elevations in 7 townhouse buildings from 94 feet to 79 feet and 4 townhouse buildings from 95 feet to 87 feet; an interpretation of

249-22 (8)(h), (i), and (j) that the Site Plan is a comprehensive development and does not contain “cluster groupings.

J. VanTile: And I would only add that all of those variances remain valid in the alternative.

Mr. Smith: And as an alternative, that all the variances remain valid. I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded; Motion carried. It is necessary to notify everyone within three hundred feet of your property. Yo can obtain the list of names from the Town Assessor’s Office. The notice of the Public Hearing will be in the Times Herald Record’s Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by (1) certified; or (2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can’t be opened without your proof of mailing.

XL Construction - Lot #1

Mr. Lipman: Since the . . .

Mrs. Morris: Which one is he doing, lot #1 or lot #2?

Mr. Lipman: They’re both really the same. I think you can do them both together. It’s up to you.

Mr. Smith: It’s two separate applications, we will do one after the other. At the request of our stenographer, she’s asked us to try to speak up and speak clearly.

Mr. Lipman: Which was is first?

Mr. Smith: We will do lot #1 first.

Mr. Lipman: Lot #1 was originally proposed with a ten foot deck requiring a nine and a half foot variance and following the last meeting, we scaled the dimensions of that deck back to what we think is pretty minimal in terms of having any practical value. We scaled it back to seven and a half feet and now it requires a variance of six feet six inches. We’ve made no

other changes to the plan and hope that when we consider it the next time we will do it in a different fashion.

Mr. Owen: The only difference from the plan is two feet six inches and then in the other direction they added three extra feet. Before it was ten by twelve and now it's eight by fifteen.

Mr. Lipman: Seven and a half by fifteen. I didn't recognize that.

Mr. Owen: I don't see that this is really any change at all to the previous plan.

Mr. Lipman: Well, the variance required last time was . . .

Mr. Owen: The same as now.

Mr. Lipman: No. The variance was nine and a half feet on the last application, now it is six and a half feet.

Mr. Owen: I don't see that as being any different.

Mr. Lipman: The whole issue here is the extent of the variance.

Mr. Owen: Because you're coming back for the same thing that you were after two months ago.

Mr. Lipman: The extent of the variance in terms of the originality is different.

Mr. Owen: By how much?

Mr. Lipman: By two and a half feet out of a required. It's a three foot difference in the variance that's required.

Mr. Owen: I'm not sure the Board should even be hearing this but it's up to you. If you want to hear it but I don't see any difference from the previous application.

Mr. Lipman: I don't see how it cannot be different. It is a less significant application, less substantial.

Mr. Smith: Well, it's a new application. I believe that Mr. Owen is referring that the changes are basically the same as the previous application. It's different by a couple of feet but it's the same application, more or less.

Mr. Lipman: There is no way to eliminate the deck in terms of using the structure as it was built and if you reduce the size of the deck below seven feet six inches in depth it has little practical value. I would be prepared tonight to say that it can be reduced to seven feet but I don't think it can go much smaller than that. That's another six inches. It would then reduce the variance to six feet.

Mrs. Thompson: I don't think it has changed at all. Two inches here or two inches there.

Mr. Smith: You're not making any changes to the front stoop covering?

Mr. Lipman: Honestly I didn't think that was the problem. It was rather in the back. I know there is an issue here of which came first, the chicken or the egg and I think the records that were generated the last time demonstrated that the plan was there and the Building Department issued the permit.

Mrs. Thompson: The plans showed the foundation, not the steps and not the deck.

Mr. Lipman: Mrs. Thompson, I have the absolute utmost respect for you but quite respectfully you're wrong. The Building Inspector's Deputy or whatever his title was, produced the plan which shows the deck and shows the overhang. I have it here.

Mrs. Thompson: I spoke to Mr. Steenrod.

Mr. Lipman: Mr. Steenrod is the one who reviewed the plans and it is here on the plan. There is no other building plan.

Mr. Smith: So, you're modifying your application, I take it.

Mr. Lipman: Yes, the same change.

Mr. Smith: Down to a seven foot deck.

Mr. Lipman: Yes. In fact, the second application requires a very, very modest variance, much smaller than the first one.

Mr. Smith: No change to the front stoop?

Mr. Lipman: I don't know how to change it honestly to make it look better and I think that's the important thing here. I don't think you want us to put something up that is more

conforming, that's ugly.

Mr. Smith: The roof?

Mr. Lipman: I don't think that the consensus last month with due respect was that it would look better without it. I don't think it is, whatever you propose that we do with it. But at the moment if we can get on for a hearing, leaving it on, I would appreciate it.

Mr. Smith: Does anybody else have any comments?

Mr. Lipman: I appreciate it.

Mrs. Thompson: I'm tired of contractors coming in and trying to get variances after the work has been completed.

Mr. Smith: I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of XL Construction; Seconded; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Mr. Lipman: The publication is done by the Town?

Mr. Smith: Yes.

Mr. Lipman: Thank you very much.

XL Construction - Lot #2

Mr. Smith: Now, this is an application for lot #2.

Mr. Lipman: Yes.

Mr. Smith: I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Berlin - 9 Red Maple Lane

Mr. Berlin: Basically we would like to build a house that's like and type of what's existing on the dead end street. The lot width, we needed a variance of five feet and then the lot depth we're looking for four inches. That's basically it.

Mr. Smith: Do you have the area square footage?

Mr. Berlin: Yes, it is 7,487 that's existing and 12,500 is required. Oh, I guess that would be part of it also.

Mr. Smith: So, you're looking for two variances?

Mr. Berlin: Yes, but it's really three variances.

Mr. Mattatall: The house you're proposing, is this the footprint?

Mr. Berlin: Correct. Mr. Steenrod, the only reason we're here is because the lots themselves were not of current code that we had to come here.

Mr. Mattatall: I'm looking at here is exactly to your setbacks. Will there be a deck be proposed on this in the future?

Mr. Berlin: No.

Mr. Smith: Is there sewer and water?

Mr. Berlin: Yes.

Mr. Smith: You still need 12,500 square feet so you need an area variance to 7,487?

Mr. Berlin: Yes.

Mr. Smith: Lot width 80 feet to 75 feet and lot depth 100 feet/99.6 feet, As Mr. Mattatall just pointed out you are just within your building envelope. If you put anything on there, you're going to be in violation.

Mr. Berlin: Not a chance.

Mr. Smith: So, then you're really looking for three variances. Lot width 80 feet to 75 feet, lot area 12,500 to 7, 487, and lot depth 100 feet to 99.66 feet.

Mr. Berlin: Yes.

Mr. Smith: Anything else? I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Hearing Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Berlin - 17 Red Maple Lane

Mr. Smith: It looks like you need a lot depth.

Mr. Berlin: Yes, only a couple of inches actually.

Mr. Smith: And also an area variance. Also lot width. On the application for 17 Maple Lane again, you're looking for three variances; lot width 80 feet to 75 feet; lot depth 100 feet to 99.66 feet; lot area 12,500 to 8,066 feet. I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Second; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain

the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by 1) certified or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Mita

Mrs. Mita: I thought we had done this right. We had hired a contractor. When I checked to see why I didn't get the Building Permit, I was told we had violated.

Mr. Smith: You said it was done?

Mrs. Mita: Yes.

Mr. Smith: Did you put in another kitchen?

Mrs. Mita: Yes, we did. My mother got sick and we needed to move her in.

Mrs. Thompson: Who was the contractor?

Mrs. Mita: KAF.

Mrs. Thompson: Where are they located?

Mrs. Mita: Locally. I have his card I can give you.

Mr. Mattatall: Was this new construction?

Mrs. Mita: It was under the house. We just finished the basement. We didn't go out. My Mom got very sick and I needed to put her downstairs so that should that she wouldn't be alone.

Mr. Smith: It's a change of use.

Mrs. Mita: If it ends up I have to take out the kitchen, I will. We paid for it. It just makes me angry but there's nothing.

Mr. Smith: I think you have to go for a change in use to permit a two-family in an R-2 zone. We can go ahead with this but I want to tell you up front that a change of use is very difficult to do. There are some very strict requirements and then it is very difficult. Do you want to proceed with your application for a change of use?

Mrs. Mita: Are you saying removing the kitchen?

Mr. Smith: I've never seen the inside of your house. Do you want to withdraw and think about it or do you want to proceed?

Mrs. Mita: I don't even know who to contact or how to go about contacting anyone.

Mr. Smith: You will need someone who deals with zoning problems. You can just remove the kitchen, that's what I'm asking you. Do you want to withdraw your application or do you want to proceed?

Mrs. Mita: It sounds like it would be better to withdraw.

Mr. Smith: Well, I don't know. It's your decision. If you want to proceed with this we can go ahead and schedule the Public Hearing or you can remove the kitchen.

Mrs. Mita: I'm really between a rock and a hard place.

Mr. Smith: Yes you are but I can't answer your questions for you. Would you rather just hold off and talk to a lawyer first?

Mrs. Mita: Yes. I'm not sure what I need to do.

Mr. Smith: You tell him what you told us. You want to look for someone that says they specialize in land uses.

Mrs. Thompson: Can your Mother manage without a kitchen?

Mrs. Mita: We will have a problem but she can cook upstairs.

Mr. Smith: We're going to consider your application postponed at this time. You can be in contact with the Building Department or myself.

Barberio

Mr. Duggan: Actually I think we're going to need a couple of things. Initially we requested a parking variance from twenty three spaces required to fourteen proposed on the property. We understand how the formula is with the different types of businesses and such. Janet has been there for seventeen years. She gets three or four cars in her lot. The other guy gets one or two cars in his lot and there's really not enough space to put the twenty three required currently under the zoning. One of the other issues after reviewing everything, the way the storage building is going to go between the two buildings and also the new greenhouse that's being proposed, they're in line with the existing building but the existing building is only fourteen feet. The question I would have is because we're kind of adding to that existing non-conformance, is that going to be an additional variance or does it stay in line?

Mr. Smith: You're adding to the front though this new greenhouse

Mr. Duggan: Right now, that's part of the existing building, it's the porch overhang so it's actually part of the building so it's in line with that overhang. We're basically enclosing the porch for the greenhouse so it's not adding to the setback variance but the addition is parallel to the road. I wasn't sure if that additional non-conforming would have to need a variance or it is the same non-conforming. It's still fourteen feet no matter what. If you think that it might be necessary then we will ask to add that in for the Public Hearing and we will also put it on our documents. We want to make sure we're asking for everything we need.

Mr. Smith: Is there public sewer and water there?

Mr. Duggan: No. She has a holding tank in the rear exit of building one and a small leech field in the rear of the existing building two.

Mr. Smith: Did the Planning Board send you here?

Mr. Duggan: For the parking. They asked us to come for the parking.

Mr. Smith: Personally I don't think it will hold you up if you want us to add it, that way you will have it.

Mr. Duggan: Let's add it in so we make sure.

Mr. Smith: 35 feet to 14 feet. Does anybody else have anything? And you're combining the

lots into one lot?

Mr. Duggan: Correct. Right now you see on the right hand side the dotted line is the existing lot line between them actually causes a problem with building one in that it cuts through the building so she owns both parcels and said down the road it would just make sense. She wouldn't be able to sell it the way it is anyway if she tried to split the parcels.

Mr. Smith: Well, by combining them you would meet the other requirements.

Mr. Duggan: Yes. As I mentioned in my letter, we're in front of the Planning Board for Site Plan approval and they said I need to resolve this first.

Mr. Smith: I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded; Motion carried. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by 1) certified or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Joseph

Mrs. Pryce: He's not here but I'm the purchaser.

Mr. Smith: We understand, who is Karan Garewal?

Mrs. Pryce: That's the owner.

Mr. Smith: The owner and Joseph.

Mrs. Pryce: I'm the one who lived there.

Mr. Smith: And now you want to purchase the property?

Mrs. Pryce: Yes. I've lived there for the past seven months.

Mr. Smith: You're looking for side yard setbacks for pool and deck. From 20 feet to 12.6

feet for the deck and from 20 feet to 9 feet for the pool. How long has the deck been on?

Mrs. Pryce: I have no idea. It was before the previous owner. The owner before me, the deck was already there and the owner after I took over put the pool down.

Mr. Smith: How long have you been on this property?

Mrs. Pryce: About seven months.

Mrs. Raffo: You're buying from the previous owner?

Mrs. Pryce: Yes. The previous own put the pool down and the deck was there before the previous owner as I found out from the neighbors.

Mr. Smith: I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

Middletown Honda

Unidentified Person: I put my application in June 30th. I spoke to Delores, eleven copies. They told me to be here tonight. I delivered it the day you picked up the July applications. I asked if I could get on the July schedule and she said no.

Mrs. Thompson: Do we have your application?

Unidentified Person: You have my application with eleven copies. It was the end of June.

Mr. Smith: We don't have the application.

Unidentified Person: I don't know what to tell you. It was submitted.

Mrs. Thompson: I will go back and look.

Mr. Owen: Why don't we do this? She's here for a sign variance obviously. Have her submit another set by tomorrow. That's the only way they're going to hear it next month.

Unidentified Person: I will do it one way or another.

Mr. Smith: I Move to hold a Public Hearing on September 13, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard; Seconded. It is necessary to notify everyone within three hundred feet of your property. You can obtain the list of names from the Town Assessor's Office. The notice of the Public Hearing will be in the Times Herald Record's Public Notice Section within the next week. Take that notice, copy it and mail it to everyone on the list at least ten (10) days prior to your scheduled Public Hearing date. Mailings must be sent either by: 1) certified, or 2) registered mail. Bring proof of mailings with you to your Public Hearing. The Public Hearing can't be opened without your proof of mailing.

PUBLIC HEARINGS

BRUCE & BRENDA MILLER: Request for a variance of 249-19D (side and rear yard setback) for removal of existing trailer and build new home; Property located at 209 Wisner Avenue (Section 59, Block 4, Lot 5); Designated RA.

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York, will be held at the Town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Bruce and Brenda Miller, 209 Wisner Avenue, Middletown, New York for a variance of the Zoning Ordinance Section 249-22-D (lot area, front and rear yard setbacks in order to build an addition for elderly family member), Section 59, Block 4, Lot 5, for their property located at 209 Wisner Avenue and designated R-1. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 8:27 P.M. You want to put two additions on the house?

Mr. Miller: That's correct.

Mr. Smith: One on the side by the garage and another, I believe you consider this your front yard?

Mr. Miller: We're on the corner.

Mr. Smith: Corner lots have two front yards.

Mrs. Miller: Yes. So, it would be an addition next to the deck.

Mrs. Thompson: Do you have to cut down that tree?

Mrs. Miller: We're not going to do that. I don't want to loose that tree. It's a beautiful tree.

Mr. Smith: There won't be a kitchen.

Mr. Miller: No. We do have some blueprints with us if you would like to see them.

Mr. Smith: Anyone here from the Board?

Mr. Mattatall: It won't encroach on the neighborhood and you have a big dog.

Mr. Miller: Yes, but he's a very friendly dog.

Mr. Smith: Is there anyone here from the Public for the Miller application?

Mrs. Thompson: I talked to your neighbor and he had no problems.

Mrs. Miller: We got telephone calls from people saying that it was great we were doing it and they wished us luck.

Mr. Smith: I don't see this having any adverse effects with this. Anyone else at this time? I Move to close the Public Hearing at 8:31 P.M. I Move we accept the application of Bruce and Brenda Miller, 209 Wisner Avenue, Middletown, New York, tax map Section 59, Block 4, Lot 5 for variances on 249-22-D. Lot area 12,500 feet to 8,000 square feet; front yard 35 feet to 18 feet 8 inches; rear yard 30 feet to 24 feet 4 inches to build an addition on an existing residence to provide living quarters for a family member. There will be no kitchen. Seconded.

VOTE:

In favor (Aye): 5

Opposed (Nay): 0

DECISION: The variances are granted; please see the Building Department.

ALFRED SCHWAB/ECS AUTO: Request for a variance of 249-12A (lot size) and 249-12F (parking), Section 36, Block 1, Lot 39, for his property located at Route 17M and designated M-1

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Alfred Schwab, ECS Auto, Route 17M, Middletown, New York for a variance of the Zoning Ordinance Section 249-27-12A (lot size) and 249-12F (parking) Section 36, Block 1, Lot 39 for his property located at Route 17M and designated M-I. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 8:35 P.M.

Mr. Fusco: Again, what we're here for is to add on a 2,400 square foot addition to the rear of the property to be used as a garage for installing parts that would be sold at the store. The store has been here existing and owned by the current owner since 1972 and at this point what we're trying to do is to just get enough room in the back for the garage. Based on the current Planning Board and building codes the existing site is insufficient in size. It's required to be forty thousand square feet. We have a little over twenty eight thousand square feet so we're requesting a variance of 11,890 square feet on the lot area. In the front lot we do have only fourteen feet frontage and fifty feet is required however, we are setback in excess of sixty feet from the highway. This is due to the fact that the highway right-of-way because of the bridge abutment. In addition we're looking for a rear yard variance of ten feet from fifty feet to forty feet. We're also looking for a parking variance from twenty eight spaces to twenty spaces. The reason for the large number of spaces is only because of the requirements due to the overhead door. We really don't believe we need that much parking. There's more than an adequate number of parking spaces for his existing business but yet for the overhead door you're required to have five spaces. We would never anticipate needing those but again, that's what the ordinance requires. We did add twenty spaces. We added fourteen new spaces and we counted the existing six which is accurate for the existing business. So, we're requesting a variance from those four items so that we can then go back to the Planning Board for final Site Plan.

Mr. Smith: There's a shed back there, that's coming out?

Mr. Fusco: That will be removed, yes.

Mr. Smith: I see you have some piles of dirt on the right hand side.

Mr. Fusco: Correct.

Mr. Smith: You're not putting up a wall?

Mr. Fusco: No, that's a head wall for the drainage so if we did need to be a little yard drain in there since we're going to be putting in the parking and a blacktopped area that would be a drain coming down there and a little bit of riprap so it doesn't wash out.

Mr. Smith: I see you have some planting's on the side?

Mr. Fusco: Yes. Again, we need to go back to the Planning Board if we're able to receive a variance. I have a scheduled meeting with the Planning Board Engineer Mr. McGoey.

Mr. Smith: For the record, this is not for engine work. This is for add on accessories.

Mr. Fusco: That's correct.

Mr. Smith: More like improvement type things. No heavy mechanical work.

Mr. Fusco: That's correct.

Mr. Smith: I take it that in the back that it's generally going to be cleaned up as part of your approval.

Mr. Fusco: Absolutely.

Mr. Smith: You have a trailer or something back there.

Mr. Schwab: That has storage in it for temporary storage.

Mr. Smith: Are you going to get rid of that?

Mr. Schwab: Yes.

Mr. Smith: I think it's good for the community. I don't see it as being undesirable at all. Is there anyone here from the Public on Mr. Schwab or ECS Auto? I Move to close the Public Hearing at 8:40 P.M.. I Move to accept the application of Alfred Schwab/ECS Auto for variances on property on Route 17M, tax map Section 36, Block 1, Lot 39 for the following

variances: 249-2712A (lot size) 40,000 square feet to 28, 110 square feet; front yard 50 feet to 14 feet; rear yard 50 feet to 40 feet; parking under 249-12A 28 spaces to 20 spaces, correct. Seconded.

Mr. Fusco: That's correct.

VOTE:

| | |
|-----------------|---|
| In favor (Aye): | 5 |
| Opposed (Nay): | 0 |

DECISION:

Mr. Smith: The variances are granted; please see the Building Department.

RIVENBURGH: Request for a variance of 249-9-B2 (accessory buildings in front yard) for property of Valerie Rivenburgh, 70 Orchard Hill Road, Middletown, New York. Property located on Shaw Road, Section 24, Block 1, Lot 55.1, Middletown, New York and designated R-2.

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Brian Rivenburgh, 40 Golf Links Road, Middletown, New York for a variance of the Zoning Ordinance Section 249-9-B2 (accessory buildings in front yard) for property of Valerie Rivenburgh, 70 Orchard Hill Road, Middletown, New York. Property located on Shaw Road, Section 24, Block 1, Lot 55.1, Middletown, New York and designated R-2. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 8:42 P.M.

Mr. Phau: I'm representing the applicant. Mr. Brian Rivenburgh is with us this evening. This is a subdivision which is currently in front of the Planning Board, a four-lot subdivision on 12.3 acres. It is on the north side of Shaw Road. We were sent here by the Planning Board to seek a variance for three existing barns which are on the property. Right now they're shown on proposed lot #3 of the subdivision and the variance requested is for the location of these three barns being within the front yard of the property in front of these existing houses and the requirement is for one accessory structure and there are three existing structures. Those are the two variances that we're requesting. It is an existing condition and that's pretty much the application that's in front of you. I believe the Planning Board has given a favorable recommendation for this. It's maintained and the existing corridor of the barns themselves are in fairly good shape. I believe they are approximately one hundred years old and we have the houses set way back away from Shaw Road.

Mrs. Thompson: How many homes?

Mr. Phau: There's one existing house and three proposed. It's a four lot subdivision.

Mrs. Thompson: Are you going to keep the old barn?

Mr. Phau: Correct. That will be on proposed lot #2.

Mrs. Thompson: And the other barns?

Mr. Phau: That will be lot #3.

Mrs. Thompson: Are you going to put greenhouses there?

Mr. Phau: One house. Our variances is to maintain the existing barns.

Mrs. Thompson: Are you working it out so you don't get stuck in the wetlands?

Mr. Phau: Absolutely. We have two proposed wetland crossings for the driveways and the Planning Board had us lay this project out with that in mind.

Mr. Mattatall: I went to check the property. The barns are in very good condition. It is exactly as you said.

Mrs. Thompson: What are you going to do with these barns?

Mr. Rivenburgh: I've owned the property for about fifteen years. I have three kids. I'm not selling the property. I have a tenant who has moved on the farm as long as I have owned it. He's going to stay there and those three lots will be deeded for my three kids.

Mrs. Thompson: You're what?

Mr. Rivenburgh: I'm deeding the lots, a lot for each kid, each child that I have. Once they become of age they can afford to live in Orange County.

Mr. Smith: Which one gets the barns?

Mr. Rivenburgh: I don't know yet.

Mrs. Thompson: What are the barns used for right now?

Mr. Rivenburgh: The barns right now are used for storage for my tenant. He keeps tools in there. He doesn't keep any cars in there. The barns are actually a hundred and eight years old. There are actually hewn trees inside. They are very old and in good condition. They are nice to look at and that's why I want to keep them.

Mrs. Thompson: I don't want them to turn into having junk.

Mr. Rivenburgh: Neither do I. I've owned them for this long and they haven't been used for that at this point.

Mr. Smith: Is there anyone here from the Public on the Rivenburgh application? This is an existing condition. I think the barns are a nice asset to the neighborhood. It's certainly not an undesirable change. The variance is not a substantial variance. I don't see that it's going to have any visible impact. I Move to close the Public Hearing at 8:48 P.M.; Seconded; Motion carried. I Move we accept the application of Brian Rivenburgh for the property at Shaw Road, tax map Section 24, Block 1, Lot 55.1 for a variance under 249-9-B2 existing accessory buildings, three barns, in front of the proposed residences; Seconded.

VOTE:

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|-----------------|---|
| In favor (Aye): | 5 |
| Opposed (Nay): | 0 |

DECISION:

Mr. Smith: The variance is granted; please see the Building Department.

PADAYA: Request for a Use Variance (take-out pizzeria) for his property located at corner of Silver Lake Scotchtown Road and Freezer Road, Section 24, Block 1, Lot 36.21, and designated R-2.

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York, will be held at the Town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard on the application of Jasu Padaya, 606 Florence Avenue, Union Beach, New Jersey for a Use Variance (take-out pizzeria) for his property, Section 24, Block 1, Lot 36.21, located at the corner of Silver Lake Scotchtown Road and Freezer Road and designated R-2. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary.

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 8:50 P.M.

Mr. Yanosh: I am the surveyor for the project. Mr. Padaya owns the building and the family owned business. The reason we're here is because the Planning Board sent us here. We were in for a Site Plan a couple of months ago. I apologize for not being here last month because of another commitment. Again, we're in the R-2 zone. Neighborhood grocery stores are a Special permitted use. It's been a store for many years. What they want to do now is take the front little corner over here that faces Freezer Road and make it a take-out pizzeria. Not to be eating inside, no tables and chairs. When you look at a deli, every deli has sandwiches, hot food, cold food, hot dogs and everything inside. It will be the same thing as what they have right now. The code says if we go down the neighborhood grocery store, no such use can be located within one mile. This is a take-out. This is not a sit-down type restaurant or things that are closer but we are just a plain take-out. No outside of food or consumption of food and beverages shall be permitted and it's just going to be a take-out. The question is it's not really a Use Variance. It's an interpretation of that code, what this use of a pizzeria or take-out is allowed in a neighborhood grocery store. There's no definition in the book that says what a neighborhood grocery store is. Again, you can sit down at Hannaford and take out hot food as well. A lot of places have that stuff now. This is in the aspect of that.

Mrs. Thompson: Are you going to run it?

Mrs. Padaya: No, it's going to be a different tenant.

Mrs. Thompson: Pardon?

Mrs. Padaya: It will be run by a different tenant.

Mr. Yanosh: She wants to keep it separate.

Mrs. Thompson: Who owns the property?

Mrs. Padaya: I own the property.

Mr. Mattatall: Nobody will be standing there to eat.

Mr. Yanosh: To just get a slice and leave.

Mr. Mattatall: There won't be inside seating for people?

Mrs. Padaya: No.

Mr. Yanosh: It won't be approved for something like that.

Mr. Mattatall: All they're doing is getting pizza and leaving.

Mr. Yanosh: The use could be inside or do you want to keep the tenant separately?

Mr. Owen: It's going to be two separate stores.

Mr. Yanosh: Yes. There's no access from one to the other. It will have a separate entrance. We have to go back to the Planning Board for Site Plan approval. We also want to put an additional on to the building. We will be dressing up the parking lot, putting in curbs and doing landscaping.

Mr. Smith: The minimum lot size shall be forty thousand square feet. You would need a separate variance.

Mr. Yanosh: We already have thirteen acres. It's almost like a small mini-mall.

Mr. Owen: If there's a neighborhood grocery store, no such use may be located than one mile to a similar use. There's two on top of each other.

Mr. Yanosh: Of a similar use.

Mr. Owen: But if you're claiming they're both neighborhood grocery stores, the code specifically says no such use can be closer than one mile from a similar use. This would be adding a second neighborhood grocery store.

Mr. Yanosh: But it's a different use. It's not a grocery store. It's a pizzeria. If you were selling canned goods and grocery in the store I can see that. It's just pizza. It's a different use than what's inside the building around the corner. The main use is a deli, sandwiches, beer, soda, wine, a grocery store.

Mr. Owen: If it's not a neighborhood grocery store, where does it fit into the code?

Mr. Yanosh: There's no interpretation for a neighborhood grocery store.

Mr. Owen: Then what you're saying is you're applying for a use variance since there's only one within a mile.

Mr. Yanosh: There's no other pizza store that just has a walk in service. The other one down the street is a regular restaurant. It's different.

Mr. Owen: I don't think it's the same zone over there.

Mr. Yanosh: But it's within a mile.

Mr. Owen: But this within in the R-2 zone. If it's a neighborhood grocery store, what is it?

Mr. Yanosh: Stewart's came in without this variance.

Mr. Owen: That's no in the R-2 zone.

Mr. Yanosh: But still, I don't think it really matter.

Mr. Owen: Then we weren't be looking at the R-2 zone of the code.

Mr. Smith: We're looking at the R-2 zone and not another situation.

Mr. Yanosh: I don't think the zone matters.

Mr. Smith: The zone does matter. They need a use variance. I had explained this to the applicant.

Mr. Yanosh: My application is for an interpretation of the law which says what is a grocery store. Why would it say a similar use if a grocery store is a grocery store?

Mr. Smith: We're talking about another use on the property. It's a separate business.

Mrs. Thompson: So, he needs a use variance.

Mr. Smith: And once we get into the use variance, use have strict requirements.

Mr. Yanosh: Again, we weren't looking for a use variance. We were look more for an interpretation that a take-out pizza is allowed in a neighborhood grocery store.

Mr. Mattatall: If you decided it's a grocery store they are still next to each other.

Mr. Yanosh: It's his own business. A variance is something where you're going to ask if somebody down the road is going to complain about the fact that there's two uses within. If someone could open up something closer than a mile, I would be complaining about it to this Board right now. This is the same applicant doing the same thing to his own building.

Mr. Mattatall: If you could take out pizza in the deli. It would be just another service.

Mr. Owen: That's because it's the separate business is why you can't have it. They could be at some point competing against one another.

Mr. Smith: With take-out pizza they may be selling beer and soda or something.

Mr. Padaya: No.

Mr. Yanosh: The lease would be written to say that.

Mrs. Thompson: There are requirements for a use variance.

Mr. Yanosh: Again, I wasn't looking at it that way for a use variance. There together in the same business. It's two different uses out of the grocery store. We're selling pizza versus the other side selling hamburgers, or hot dogs on the other side.

Mr. Smith: You're going to have to meet the use requirements and that costs dollars and cents. Is there anyone here from the Public on Jasu Padaya?

DECISION:

Motion made to continue Public Hearing on September 13, 2004; Seconded; Motion carried.

WOLF: Request for a variance/interpretation of 249-19-D (front yard setback), Section 2, Block 1, Lot 5.11 for his property located at 16 Ora Park Circle and designated RA.

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Mark Wolf, 16 Ora Park Circle, Section 2, Block 1, Lot 5.11, Bloomingburg, New York for a variance/interpretation of the Zoning Ordinance Section 249-19-D (front yard setback) for his property located at 26 Ora Park Circle and designated RA. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 9:05 P.M.

Mr. Wolf: I'm looking for a front yard setback variance of about I believe seven feet three inches. The proposed addition that I want to put on the house falls a little bit short of the sixty feet that is required. I'm looking to line it up with the existing house which is fifty two feet back.

Mr. Smith: It's nice back in there.

Mr. Wolf: It's quiet.

Mr. Smith: You're pretty confident there. I see you have the whole almost dug.

Mrs. Thompson: And you have the lumber.

Mr. Wolf: That was ordered months ago. I had to take delivery on it.

Mr. Smith: On the map it looks to me like a breeze way. Is this your existing home?

Mr. Wolf: Yes.

Mr. Smith: Then you have this fourteen by fourteen proposed addition. Is that something like a breeze way?

Mr. Wolf: Yes. That's going to be where the front entrance comes in.

Mrs. Thompson: Is this going to be like a family room?

Mr. Wolf: Yes, that's it.

Mrs. Thompson: I have another question about all that stuff in the back. There is a lot of junk back there.

Mr. Wolf: What junk?

Mrs. Thompson: A couple of cars.

Mr. Wolf: Yes, I had a garage where the concrete slab is. I had a garage that burned down February. I'm still trying to re-build that. I will get rid of the cars. I do have two cars sitting back there.

Mr. Smith: Myself, it's certainly not an undesirable change to the neighborhood. You have a nice house there. It will actually be an enhancement to your home. It's certainly not a substantial request. Is there anyone else that wants to comment?

Mr. Morgan: I think it will be nice for the neighborhood.

Mr. Smith: Is there anyone here from the Public on Wolf?

Mr. Lloyd: I am from Bloomingburg. I'm the adjacent property owner and there seems to be a question on the property line as it stands now. I feel that my property has been encroached on seriously jeopardized. All I'm asking for is the opportunity to have the time to survey my property before this project goes any further.

Mr. Smith: Did you see this map?

Mr. Lloyd: No I have not.

Mr. Smith: Could you review that map?

Mrs. Thompson: Where is your property?

Mr. Lloyd: On the right hand side of the property.

Mr. Smith: Are you talking about on the side?

Mr. Lloyd: Yes, on the side and behind. I have maps with me where my property has been filled many feet.

Mr. Wolf: I had a gentleman who moved a high wall and he dumped it a little too far and I have no problem with cleaning that up. There's a couple of railroad ties. I have no problem cleaning it up.

Mr. Lloyd: That does not satisfy me.

Mr. Smith: What would you want?

Mr. Lloyd: I would like to be able to survey the line and see exactly where the property line is.

Mr. Wolf: This addition is on this side of that concrete slab.

Mr. Smith: Do you feel it is so much of an overlap for example twenty to thirty feet?

Mr. Lloyd: Well, it's especially important right at this time because I have my property for sale and I don't dare let anything jeopardize the sale of my property. Also, there is a monument that was a corner benchmark that appears to have been moved and I want my property surveyed.

Mr. Smith: Do you have anything tonight showing an overlap?

Mr. Lloyd: Just photographs.

Mr. Smith: No. They won't be any good.

Mr. Lloyd: I know that.

Mr. Smith: Do you have any other comments?

Mr. Lloyd: No, but if an approval is given then the die is cast and if things are on the wrong side of the property line then where do I stand?

Mr. Smith: Where do you feel the property line is affected? Can you show me on this map?

Mr. Lloyd: No. Not without facts and figures.

Mr. Smith: Is there anyone else here from the Public? Back to the Board.

Mrs. Raffo: As far as I can see the variance would not change the character of the neighborhood. I have no problem.

Mr. Smith: Anyone else? Mrs. Thompson said she agrees with Mrs. Raffo. I Move to close the Public Hearing at 9:15 P.M.; Seconded. I Move we accept the application of Mark Wolf for property at 16 Ora Park Circle, Section 2, Block 1, Lot 5.11 for variances under 249-3 front yard is the on the gravel drive where we come in?

Mr. Wolf: Yes.

Mr. Smith: For a variance from 60 feet to 52 feet to permit an enclosed addition to the house and you will clean up the back.

Mr. Wolf: Yes I will.

VOTE:

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|-----------------|---|
| In favor (Aye): | 5 |
| Opposed (Nay): | 0 |

DECISION:

Mr. Smith: The variance is granted; please see the Building Department.

SKY RIDGE: Request for a variance fo 249-D (lot area and width and side yard reductions) for Section 64, Block 1, Lot 47.2 property of Pietrzak & Phau, 262 Greenwich Avenue, Goshen, New York. Property located at 145 Highland Lake Road and designated RA.

Mrs. Thompson: NOTICE IS HEREBY GIVEN that a PUBLIC HEARING of the Zoning Board of Appeals of the Town of Wallkill, Orange County, New York will be held at the Town Hall at 600 Route 211 East, Middletown, New York on the 9th day of August, 2004 at 7:30 P.M. or as soon thereafter as the matter can be heard that day on the application of Sky Ridge Developers, Inc., 136 Route 206, Monsey, New York for a variance of the Zoning Ordinance Section 249-D (lot area and width and side yard reduction) Section 64, Block 1, Lot 47.2 for property of Pietrzak & Phau, 262 Greenwich Avenue, Goshen, New York. Property located at 145 Highland Lake Road and designated RA. All parties of interest will be heard at said time and place. S/Mrs. Thompson, Secretary

Mr. Smith: I Move to open the Public Hearing for August 9, 2004 at 9:16 P.M.

Mr. Barone: I am representing the applicant and are requesting a variance from Section 249-D (lot area and width and side yard reductions) for property located at 145 Highland Lake Road and designated RA.

Mrs. Thompson: Have you tried to purchase more land?

Mr. Barone: No we didn't and I don't think we have to go out and try to buy more land. I'm not familiar with the footprint of the improvements of the adjoiner to the north of us but we're really not constrained to go out and buy more land.

Mr. Smith: Who designed the septic?

Mr. Barone: It was designed by Pietrzak & Phau. Like I said the septic design itself has to also have an onsite investigation by the Town Engineer as is required with all Building Permits in the Town where there is an onsite septic system.

Mr. Smith: Is there anyone here from the Public?

Mr. Benedict: I live on the lot adjoining.

Mrs. Thompson: Are you 155?

Mr. Benedict: No, 135. Basically the two acres, it's only got the 1.2. It's way below. We moved out there to have some space. This house, the one side is twenty three feet from our property. The lot is angled and not straight out so it ends up in our backyard. Also, I know a builder came in about six years ago and he was denied from building on that lot. The soil out there is terrible. It's a clay soil and would definitely have to be tested. Right now, I'm having septic problems.

Mr. Smith: What kind of septic problems? Have you had anyone in there to fix it?

Mr. Benedict: Right now I have a guy in there. The soil is clay so the water sits on top. It's a pretty wet soil. On the other side of that they subdivided into three acre lots and I know he can't percolate yet. I wondering too if they had contacted him to possibly buy land to increase this site. They are so far off on everything.

Mr. Walters: I agree with everything he said. I've lived there forty five years. I live just before Mr. Benedict. I'm at 127.

Mr. Smith: And you just want to repeat what he said?

Mr. Walters: Yes. They tried before to build there and they were turned down because the lot was not big enough.

Mr. Smith: Anyone else?

Mr. Barone: As to the septic design and the suitability of the soils I note that our percolation results are noted on the map and are well inside of the required sixty minutes. Both holes were roughly in twenty minutes. The next thing is in determining whether or not an area variance should be granted, the courts judge these cases by a balance and I think if you look at this balance you're going to see that granting the application not only benefits the application but the community as well. That is because this property backed as an un-build-able lot without a variance went through a tax sale just two years ago. That's where my clients picked it up. It went off the tax rolls because it was un-build-able so by granting this variance not only does my applicant benefit because he now has a build-able lot but as well this property now stays on the tax rolls but it's value is enhanced by the fact that a home is built on it. Secondly, if you look at the tax map which is shown in our location plan that if you drive that road which I've done and I'm sure some of you have you will see that seven or eight or the lots showed on this tax map are presently non-conforming. All those lots are within very close proximity of this lot. One of the gentlemen who spoke indicated the proximity of our proposed building to his property line being twenty three feet away. We do

show his house on the plan and there is a stone wall which runs between our house and his dwelling. The characteristic of that neighborhood is not entirely two acre lots. There's a substantial number in fact more than half are approximately one acre, plus or minus in size. There's a high degree of non-conformity in this area. If you really look at the characteristics of the neighborhood and giving us a variance is not going to change the characteristics of this neighborhood. Whether or not there are alternatives available to us, we're not coming in and asking to put up a duplex or a quad. We're coming in for the bare minimum which is a single family build-able dwelling. The third requirement is whether or not the variance is substantial. The gentleman who came up commented that we have approximately one acre where as the code requires two acres. As I indicated there's approximately seven or eight lots in the immediate vicinity, two of which are across the street which are substantially non-conforming and that is the predominant character of that neighborhood as well as the fact that you can't judge just on percentages alone. The fourth requirement is whether or not there is an adverse impact on the neighborhood. This is one of several non-conforming lots in that area and would not adversely impact the area and whether or not the difficulty itself was created. I go back again to the fact that when this lot was created in 1968 it did at that time conform to the Town's bulk requirements. It was a subsequent amendment to the Town bulk requirements which rendered the lot non-conforming. Had, of course, the home been built in 1968 the owners would be entitled to enlarge the home within the provisions of the code. If the home was destroyed they would be entitled to re-build the home within the provisions of the code. What we're asking to do is something that could have been done lawfully up until the mid-1970's when the bulk tables changed a second time and then it was changed again as recently as a couple of years ago.

Mrs. Thompson: I think it was self-created.

Mrs. Raffo: I have to agree. First of all, the lots's only half the required size.

Mr. Morgan: It could be possible the owners would be willing to purchase more property so it would be more conforming.

Mr. Barone: That's something we may consider after this evening. We're not really obliged to do so when we come in asking for a variance. We looked at the code. We went out and did our engineering. We looked at the legal requirements and that's why we're here this evening.

Mr. Mattatall: You're also looking for a rather large house on that lot and the existing houses there aren't consistently large houses. Mostly other houses on non-conforming lots are small houses.

Mr. Barone: How much smaller are they than what we propose? If we put a three bedroom in, does that change the prospective.

Mr. Mattatall: It would be the width of the house. The footprint of the house.

Mr. Barone: If we change the dimensions of the house, would that change your opinion?

Mr. Mattatall: Something will happen to the property.

Mr. Smith: I think a smaller house.

Mr. Barone: We looked at the character of the neighborhood, the lots in that area of the neighborhood are consisting with more than half of them are within conformity of this lot. Many of them have older homes on them and those homes were built back when this lot was a conforming lot. Now, if you're telling me to reduce the footprint of the house then that's something that we're ears and we're going to listen to that. That's what we're looking for if there's a condition that's reasonable that you're going to impose then. If we want to turn the house because it may be narrower in the width then that's something we can do. If it's the twenty three feet and if we make it thirty feet, then that of course is something we can do.

Mr. Phau: Would it help if it was the forty foot dimension to the south of the lot and the twenty three foot dimension on the northern side of the lot basically flipping the house around.

Mr. Smith: I can only speak for myself.

Mr. Owen: Are you changing your application at this point?

Mr. Barone: If that's a condition that you want to impose as approval that we put our forty feet on the south.

Mr. Smith: Where on here on your percolation results? Are they on this sheet?

Mr. Barone: That it correct, at the top center.

Mr. Phau: Mr. Chairman if you take a look at lots #44, and #45 directly across, those lots both have houses on them. Both of those lots are smaller in size and in lot width than this lot. It's directly across the street.

Mr. Barone: According to the tax map, both of those lots have one hundred feet of frontage and here they have two hundred feet of depth.

Mr. Phau: It's about half the size of this lot, both those lots.

Mrs. Thompson: They were built many years ago.

Mr. Barone: What I saw was that one of those lots appear to have a house that's newly constructed being offered for sale by Prudential. It's a vinyl sided house and is substantially the same that we propose. It's got a for sale sign out in front of it. It looks like to me that the lot was separated from the adjoining lot to create that. That's right across the street from us.

Mr. Benedict: The house across the street was built. There is an easement and a house in the back that is being sold on a four acre lot for \$369,000.

Mr. Mattatall: So, it's the rear lot?

Mr. Benedict: Exactly and if I had known that this land was on sale, I would have bought it in a heartbeat just to have the land. Even when this is all over and if they don't get to build on it, I'm willing to discuss purchasing.

Mr. Smith: In reading the percolation results, are they an acceptable percolation result?

Mr. Phau: Oh, absolutely, anything under sixty. This will be required to be reviewed both the design and the soils and results by the Town Engineer. I believe what we have on here we propose a curtain drain to resolve the water issues.

Mr. Barone: The other thing that I would suggest is to the extent that Mr. Benedict on our south has a concern about the proximity of the proposed dwelling to his the alternative of a nice fence, landscaping, something of that nature to put in along the boundaries as a condition if you are so inclined.

Mr. Smith: What do you want to do?

Mr. Barone: I want to get a vote and if you want to put some conditions in terms of us putting our forty feet side yard to the south and maybe in that forty feet putting in five or ten feet.

Mr. Smith: Are you changing your application or do you want us to vote on it the way it is?

Mr. Barone: We're not changing it. If you want to vote on it with conditions then we will

accept that.

Mr. Smith: For myself, I won't go for a four bedroom and you will have to need the proper amount of offset from the neighbor. I'm speaking just for myself. A four-bedroom will have a lot more septic concerns. I understand that today the septic systems have to be engineered and inspected and that's the only reason why I'm speaking myself.

Mr. Barone: If the Chairman would like to make a motion for a three-bedroom and providing forty feet which is the minimum required side yard, on the south side we will now propose twenty three feet basically flipping the footprint of that house around and putting in five feet of landscaping. That's something that we would accept.

Mrs. Thompson: How about the drainage?

Mr. Barone: Modern building practices, the foundation's today are coated before the backfilling and there's perimeter drains that are run to daylight to drain water away from the building as well as with the use of gutters and leaders and all those mechanisms it substantially promotes the keeping of the dry basements.

Mr. Phau: We have the drainage covered in all directions.

Mr. Smith: I will proceed with this. You will switch the forty feet from the south side to the side yard.

Mr. Barone: Correct.

Mr. Smith: You will re-submit a smaller plan for a three bedroom and you will do some landscaping along the one boundary.

Mr. Barone: Yes, we can do that.

Mr. Smith: I Move to close the Public Hearing at 9:45 P.M.; Seconded. I Move we accept the application of Sky Ridge Developers for property at 145 Highland Lake Road, Section 64, Block 1, Lot 47.2 for area variances under Section 249-D; lot area from two acres to 1.2 acres, lot width 200 feet to 106 feet; both side yards 100 feet to 63 feet with the conditions previously stated.

VOTE:

In favor (Aye): 0
Opposed (Nay): 5

DECISION:

Mr. Smith: The variances are denied.