

Board of Zoning Appeals – Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.  
Tuesday, October 16, 2007 at 7:30pm

AGENDA:

- #1007-1 Scott Wasilewski at Long Hill Avenue, Map 105, Lot 169
- #1007-2 Daniel Pelloth at 274 Soundview Aenue
- #1007-3 M. Montanaro – NSHE Leechburg, LLC at 60-64 Huntington Street
- #1007-4 Claudia & Andrew Shriver at 159 Isinglass Road
- #1007-5 Deborah Sousa at 15 Beverly Hill Drive
- #1007-6 Charles H. Sullivan at Lot 60 Birchbank Road
- #1007-7 Charles H. Sullivan at Lot 61 Birchbank Road

The regular meeting and public hearing of the Shelton Board of Zoning Appeals was held at the above time and place with the following members in attendance: Gerald Glover, Chairman; Ralph Matto, Linda Adanti, Phil Cavallaro, Ed Conklin and Jack Fitzgerald.

Mr. Glover: Alright good evening ladies and gentlemen and welcome to the October meeting of the Shelton Zoning Board of Appeals. We have a pretty short agenda except there are some attorneys here so it'll be lengthened. The last two items on our agenda, 36 Birchbank Road, Charles H. Sullivan has two, two applications. Both of those applications have been withdrawn. He sent us a letter today. So if you're here for 36 Birchbank Road, those applications are no longer in existence. They've been withdrawn. The Zoning Board of Appeals meets monthly to listen to, take testimony and possibly grant variances to appeals. We require that you have notified your neighbors. We require that you have 4 pictures of your property with one of the pictures showing that the property was placarded. Those are our regulations and if you have them we can hear you tonight. If you don't have them then we'll continue your hearing until next month when you can comply with the regulations. There's not very many people in the hall tonight, and some of you have been here before, for those who haven't, we record on two recorders. That's how we keep our record and later on during the month we will transcribe, I won't, our clerk will, transcribe the record. If you have conversations within the hall it's picked up on the tape recorder and we do not get a clear record. So if you're going to have discussions, you're going to talk on your cell phone, please go out in the hall and do it so that we can assure everyone that there's a clear record. With us tonight, all the way to my left is Commissioner Ralph Matto, Commissioner Jack Fitzgerald, Commissioner Linda Adanti, Lori Michalak is our clerk. I'm Gerry Glover, I chair the commission. To my right is Ed Conklin and to his right is Phil Cavallaro.

**#1007-1 Long Hill Avenue, Map 105, Lot 169**, Scott Wasilewski of 2 Wabuda Place, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 2 by varying the minimum lot area per dwelling unit from 7,500 sq. ft. to 7,146.5 sq. ft. for a two family house.

Mr. Glover: Mr. Wasilewski, do you want to come up and have a seat please? Hi Scott

Mr. Wasilewski: How are you?

Mr. Glover: Good. Would you give your name and address for the record please?

Mr. Wasilewski: Scott Wasilewski, 2 Wabuda Place, Shelton

Mr. Glover: Alright, Scott, before we, before we start, you were in here in 2006, April of 2006 and you wanted to divide this into two lots, correct?

Mr. Wasilewski: Yes

Mr. Glover: And that, that application was denied and so now you're in here tonight on the same lot

Mr. Wasilewski: Yes

Mr. Glover: And what you want to do is put a two family house on it

Mr. Wasilewski: Yes

Mr. GLover: And it's an R-4 zone and you don't comply by the

Mr. Wasilewski: a little shy

Mr. Glover: You're a little shy on the required square foot what, per dwelling unit?

Mr. Wasilewski: Yes

Mr. Glover: Alright, tell us, tell us what you're doing, tell us your story

Mr. Wasilewski: Well, here's the house that I want to propose to put up

Mr. Glover: It's a duplex

Mr. Wasilewski: Yeah

Mr. Glover: Okay

Mr. Wasilewski: And then here's the piece of land and then I'm showing there how there's other two families in the area

Mr. Glover: Alright, let's get to that, first of all give the, I know you were in here, but when you were in here last time all of that testimony is on record someplace it doesn't pertain to this hearing. So tell us about this piece of property. It's a triangular piece of property

Mr. Wasilewski: Yeah, yep

Mr. Glover: give us some, give us some history for the record because you have to assume that the record, there is no record

Mr. Wasilewski: Well there's, what do you want to know? What do you want to know?

Mr. Glover: Well it's, it's an unusual parcel

Mr. Wasilewski: Yeah, it's a funky piece, pie shaped

Mr. Glover: How did it become

Mr. Wasilewski: I acquired that from the CT, Department of Transportation

Mr. Glover: Okay, the whole lot?

Mr. Wasilewski: Yes, yep

Mr. Glover: And you

Mr. Wasilewski: And I own the two, the two houses next to it

Mr. Glover: Right

Mr. Wasilewski: 227 and 229

Mr. Glover: you acquired this lot

Mr. Wasilewski: I bought that from the State of Connecticut, yes

Mr. Glover: as one parcel

Mr. Wasilewski: Yes

Mr. Glover: Is that correct?

Mr. Wasilewski: Yes

Mr. Glover: Okay, and this lot was, was taken when they put in Route 8

Mr. Wasilewski: Yes

Mr. Glover: Is that correct?

Mr. Wasilewski: Yes, yeah there used to be houses on there, yes

Mr. Glover: And so after, after the State put in Route 8 and they had no more need for it, they offered it up for sale and you bought it

Mr. Wasilewski: yes

Mr. Matto: That's the piece Gerry that was two lots and then they bought it and stole some off and then sold it back, is that what you're

Mr. Wasilewski: yeah, there used to be two houses there at one time

Mr. Glover: Yes

Mr. Matto: Yeah, that's the

Mr. Glover: Scott was in here, I think Attorney Thomas represented you?

Mr. Wasilewski: Yes

Mr. Glover: Last year?

Mr. Wasilewski: yep, June of last year

Mr. Matto: Alright, I remember that

Mr. Glover: Okay, so, so we have a parcel of land that at one time was two lots, had two houses on it and then when the State came in and put in Route 8 they took that, they condemned, they took that piece of property. Took some off of that, off of those lots and what's left over, the remainder here is the balance and it's one parcel of .33 acres

Mr. Wasilewski: Yes

Mr. Glover: So that's how it became such a, as you said a funky looking lot

Mr. Wasilewski: Yeah

Mr. Glover: It's an odd shaped lot

Mr. Matto: So the only reason you're coming for one building or a two family is because of setbacks and so forth

Mr. Wasilewski: No I meet all the setbacks, I'm just short on square footage

Mr. Matto: I mean for the one house you meet it, but if you had two houses you wouldn't be meeting it

Mr. Wasilewski: Yeah, yes

Mr. Matto: that's your reason?

Mr. Wasilewski: Yes

Mr. Matto: Okay

Mr. Glover: He wants to put up a two family house, Ralph, and the variance he's asking for is the lot area per dwelling unit

Mr. Matto: Period

Mr. Glover: Period

Mr. Matto: No side yards or front yards, nothing

Mr. Wasilewski: I meet all that, yeah

Mr. Matto: You got all that

Mr. Glover: And the variance he's looking for is from 70, the required 7500 sq. ft. to 7146.5 sq. ft. Did you, did you have this surveyed?

Mr. Wasilewski: Yes

Mr. Glover: How did you get the .5 sq. ft.

Mr. Wasilewski: I had it uh, it was surveyed

Mr. Glover: Okay. So you're going to be able to build this two family house within the setbacks

Mr. Wasilewski: Yes

Mr. Glover: and the, you have adequate parking off the street?

Mr. Wasilewski: Yeah, I had him write something up here that shows it

Mr. Glover: And so your only variance is one of lot size, square foot per dwelling unit

Mr. Wasilewski: Yes

Mr. Glover: Alright. Alright, does the Board have any other questions?

Mr. Cavallaro: It's going to be a true two family or is it going to be sold as a duplex?

Mr. Wasilewski: I'm not selling it. It's a two family

Mr. Cavallaro: Separate utilities?

Mr. Wasilewski: Yes

Mr. Glover: So you're, are you going to rent it?

Mr. Wasilewski: Yes

Mr. Glover: Okay, alright so when, it's not going to be owned by two people, it's just going to be owned by you

Mr. Wasilewski: Yes

Mr. Glover: alright, any other questions from the Board?

Mr. Conklin: Yes, all city services right?

Mr. Wasilewski: City water, city sewer, gas, yeah everything's there, yes

Mr. Matto: Driveway a decent grade?

Mr. Wasilewski: Yep, I have all that

Mr. Matto: Can I take a peek at it?

Mr. Glover: Yeah, Scott, do you want to give us your pictures?

Mr. Matto: yeah, 5%

Mr. Wasilewski: And here's a letter I sent to the State and I called, they never responded. And I own the house next door, the two next door, so

Mr. Glover: Alright, so the only abutting neighbor you have is the State of CT

Mr. Wasilewski: Is the State, yeah

Mr. Glover: And did you send it by certified mail?

Mr. Wasilewski: Uh, I think my wife did yeah

Mr. Glover: Do you have the receipt?

Mr. Wasilewski: No

Mr. Glover: Does she have the receipt?

Mr. Matto: Would you have to notify them Gerr, if you're not encroaching?

Mr. Glover: Well, our regulations say you have to notify all abutting property owners

Mr. Matto: Including the State of CT

Mr. Glover: They're an abutting property owner, yeah

Mr. Matto: and the City of Shelton too, what's the difference

Mr. Glover: Yeah, but I don't think he abuts, he doesn't abut the City of Shelton

Mr. Matto: it's the same, yeah, it's the same situation

Mr. Glover: Do you think you can find that, the receipt?

Mr. Wasilewski: Yeah, I can ask my wife yeah.

Mr. Glover: Why don't we, why don't you, well, let's go on with the hearing first. Any other questions from the Board? (no) Is there anyone in this hall who is in favor of this application? (no response) Is there anyone in this hall who is opposed to this application? (no response) Any opposition? (no response) Alright Scott, why don't you get a hold of your wife and see if you can find a receipt that you sent this to the State. Okay?

Mr. Wasilewski: Okay

Mr. Glover: We're going to be here for a little while and because I really need to know that the State knows what you're doing and

Mr. Wasilewski: Cause, I wasn't even going to do that, but I was told to cause on the other one it didn't matter, the last application I filled out? You guys said it didn't, they never respond anyway. But I did it, so I'll find out if she sent it certified, yeah

Mr. Glover: Yeah, find out if she sent it certified

Mr. Wasilewski: Okay, not a problem, I'll call her now

Mr. Glover: before, before I, before I close the hearing I want to make sure that the State has been notified so if they have an objection to it

Mr. Wasilewski: Well, when I called they didn't

Mr. Glover: I understand that, but our regulations say you have to send it to them by certified mail

Mr. Matto: Gerr, if, if he didn't send it and if we decide to approve it could that be contingent on that and still have the vote?

Mr. Glover: Yeah, as long as

Mr. Matto: Contingent on showing that you know, to you

Mr. Glover: Well no, because we have to, I won't close the hearing because if the State wants to come and object to it they have to have to be able to come and object to it

Mr. Matto: alright, got you

Mr. Glover: So if you can, if you can prove to the Board that you did mail this to them, and I'm not saying that you didn't

Mr. Wasilewski: Well I didn't, my wife did

Mr. Glover: I'm saying all we have is a letter here that's typed and anybody could've typed it and never sent it. And our regulations say that you have to notify all your abutting neighbors. So if you can find us a receipt showing that you sent it to the State, then come back with it tonight and we'll see if we can take care of this

Mr. Wasilewski: Okay

Mr. Matto: I hope this don't cause a divorce

Mr. Wasilewski: probably, I know she's doing homework with the kids

Mr. Glover: Alright? We'll be here

**#1007-2 274 Soundview Avenue**, Daniel Pelloth of 274 Soundview Avenue, Shelton, CT is seeking to waiver Section 24.12.11 by varying the maximum size of a detached garage from 750 sq. ft. to 1,440 sq. ft. for an addition to garage.

Mr. Glover: Good evening

Mr. Pelloth: Good evening

Mr. Glover: Could you state your name and address for the record please?

Mr. Pelloth: sure, I'm Dan Pelloth, 274 Soundview Avenue

Mr. Glover: And Mr. Pelloth, do you have some pictures and some receipts for me?

Mr. Pelloth: I have everything there for you

Mr. Glover: So you started the garage huh?

Mr. Pelloth: We did the top part

Mr. Glover: and these are all your neighbors?

Mr. Pelloth: Uh huh

Mr. Glover: Is there one?

Mr. Pelloth: Three

Mr. Glover: Oh, I'm sorry. Alright do you want to tell us what you want to do and why you can't comply to the regulations?

Mr. Pelloth: Yeah, I want to expand a 1 ½ car garage to a three and because the law says that you have to have more than, I guess more than 750 sq. ft. a free standing building, you have to have a variance. And I'm going to just about double that.

Mr. Glover: What are you going to use the building for?

Mr. Pelloth: Just storage and my equipment and so on

Mr. Glover: What equipment do you have?

Mr. Pelloth: A truck

Mr. Glover: I mean is it commercial equipment or is it private equipment?

Mr. Pelloth: Private, yes

Mr. Glover: personal equipment. How big of a door is in this?

Mr. Pelloth: One is what 8x7, the other one's going to be 9x10

Mr. Glover: I think our regulations say no bigger than 10, so 9x10 is fine. So you're going to, you're going to enlarge this garage and you've already started it. Did somebody stop you?

Mr. Pelloth: Actually I did start it, but I have the permit for that particular step on it

Mr. Glover: For what you did, you got a permit

Mr. Pelloth: Right

Mr. Glover: and when you build this you're going to stay within the setbacks, it's going to be far enough from the

Mr. Pelloth: Right, it's already within the setbacks and I'm going to toward the house which is not going to change any of that

Mr. Glover: And is this a two story garage?

Mr. Pelloth: It's got storage on the second floor

Mr. Glover: Are there any, is there any utilities, any plumbing or heating in the garage?

Mr. Pelloth: Just what was existing when I bought the house?

Mr. Glover: Was there plumbing in there before?

Mr. Pelloth: Yes, there's water in

Mr. Glover: Okay, there's no bathroom in it?

Mr. Pelloth: No

Mr. Glover: okay, do you plan on putting one in there?

Mr. Pelloth: Not right away

Mr. Glover: So, there's going to be no living space in this?

Mr. Pelloth: Correct

Mr. Glover: Just a garage

Mr. Pelloth: Exactly

Mr. Glover: How much land do you have?

Mr. Pelloth: An acre

Mr. Glover: Another uniquely shaped piece of property isn't it?

Mr. Pelloth: Uh huh

Mr. Glover: Is this your property back here? Or just this piece up here?

Mr. Pelloth: Just the piece up there

Mr. Glover: Okay. Okay, you have sanitary sewers and they're not being, they're not on that right of way or the easement

Mr. Pelloth: correct

Mr. Glover: Okay. Does the Board have any other questions?

Mr. Matto: Is there a footprint on that, Gerr?

Mr. Glover: Yeah hang on, let me go this way then we'll go that way.

Mr. Matto: Alright

Mr. Glover: Ralph, any questions?

Mr. Matto: No, I can see what he's doing, it's just a little out of scale here but

Mr. Glover: Yeah, he's coming closer

Mr. Matto: he's making it twice the size

Mr. Glover: closer to his house and away from the property line

Mr. Matto: Right, it's twice the size of the original one that's

Mr. Glover: And there are pictures in that file if you want to look at them

Mr. Matto: Yeah, I don't see any

Mr. Conklin: Is there a hookup in this building right now for sanitary?

Mr. Pelloth: No

Mr. Glover: Alright, is there anyone else in this room who is in favor of this application? (no response) Is there anyone in this room who is opposed to this application? (no response) Any opposition? (no response) Does the Board have any final questions for the applicant? (no) Then I'll declare the hearing closed. Thank you.

Mr. Pelloth: Thank you.

Later that evening during the work session the Board, upon motion by Mr. Conklin and seconded by Mr. Matto, unanimously voted that:

**#1007-2** "In the application of Daniel Pelloth of 274 Soundview Avenue, Shelton, CT for a certificate of approval for an addition to a detached garage from 20x36 to 40x36 to be located on the property of the applicant at 274 Soundview Avenue, R-1 zone, and which requires a variance in maximum size of a detached garage,

The application for variance is approved.

Inasmuch as it improves an existing dilapidated structure, and

Inasmuch as this variance considers an existing structure with an addition both together totaling 1440 sq. ft.,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in maximum size of a detached garage from 750 sq. ft. to 1,440 sq. ft. at the above is granted (Section 24.12.11) in this instance.

This certificate of approval is contingent on: 1. There shall be no living space in this structure; 2. The garage doors shall be no larger than 9x10; and 3. No commercial business will be conducted out of this garage.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

**#1007-3 60-64 Huntington Street**, Michael M. Montanaro – NSHE Leechburg, LLC of 5294 Park Avenue, Bridgeport, CT is seeking to waiver Section 24, Schedule B, Standards 7, 8 and 9 by varying the setbacks from the street line from 40 ft. to 10 ft., from the rear property line from 40 ft. to 29 ft. and from the right side yard from 12 ft. to 10 ft. for construction of three level commercial building.

Mr. Glover: Good evening Attorney Thomas

Atty. Thomas: Good evening. Attorney Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT representing the applicant, NSHE Leechburg. And I'm here with Joseph Mingoello the architect from Mingoello and Hayes. Uh,

Mr. Glover: We have the pictures, we have the receipts. You have two, two adjoining neighbors?

Atty. Thomas: Yes, one is

Mr. Glover: One is the applicant?

Atty. Thomas: that's correct, well it's the applicant's

Mr. Glover: The applicant is on one side

Atty. Thomas: well, the applicant's spouse actually, that's notice there, and the other two are the same owners of the three sides. This Commission, not all the Commissioners, but this Commission had this before it several times and the main issue when it had it before it was to reconstruct, there's two existing buildings on the site, one of which has, is in the process of reconstruction. And there have been several proposals to put a newer building on the site, all of which were involved in the issue of the, whether or not there was or was not a right of way to the rear of the property for parking issues. And also the relationship of that to previously granted variances for parking issues. In the last issue, in which the building was proposed and it's, it's size shrunk down to around the size or slightly smaller than the existing buildings specifically this Board rejected it on the grounds that there was a pending lawsuit, which frankly is being argued today, the issues are being argued today on that issue in the appellate court. This proposal does not address that because there is no entrance to the property from the Beard property. The, what in fact you have before you, is a proposal that in all but one instance reduces the exiting non-conformities, which is why you should have, or will have soon, a zoning sheet which is on the board here, which shows that with the two buildings that are on the property right now, the existing building, using Zoning Board of Appeals left and right, it would be the existing left building because you do it as you face the street, depending on the survey that you want to use, actually either encroaches on Wendy Montanaro's property or is right on the property line. The building on the right is 9.4 feet off the Beard property and depending on the survey you want to use, either 10 feet or 7 feet from the presumed right of way line on Huntington Street. And based on a variance granted by this Commission in the 1980's I believe for a greenhouse for what was then I think Ronny's Florist was the business at that point, that is 31 feet from the rear property line, 30 some-odd feet which is a building that exists which you can see on the dotted line is 31 feet from the rear property line. This proposal removes the left building. Generally, within the footprint but of expanding it of the right building now creates the new building. A retaining wall is along the rear Beard property and there is a shared parking arrangement, and of course again parking, this would be an issue for Planning and Zoning, because we are proposing sufficient parking with the shared parking arrangement.

Mr. Glover: Shared with Wendy

Atty. Thomas: shared with Wendy Montanaro. The entrance then would be coming off of

Mr. Glover: Huntington Street

Atty. Thomas: this, Huntington Street. What it would do again, from a Planning and Zoning perspective, which you should note is then create a situation where there would be only one curb cut. Obviously, one, you know the possibility would exist to put a retaining wall, you know to push the building back and have a curb cut off of here. But this creates more parking and Joe Mingoello will address that issue. But what you have occurring is a reduction of non-conformities. In other words, existing for instance, the building and Joe will

explain the square footage of the buildings, but basically they're comparable, what you have is a situation that the existing street setback is required to be 40 and by the way this red hatch here is if you complied with every setback. That's the only space you'd have to build, nothing else. And that, of course is, the size of this piece of property that's pre-existed zoning and the requirements of the zone is what makes it unique and the ability to be able to construct something within the permitted uses of the CA-2 zone. The front street back again, is going from 10 to 10, but I will tell you that a prior survey, because that line along the front is a fluctuating line, was actually shown as, had shown it as 7 feet, and, so but using the more recent survey it's at 10, it's staying at 10

Mr. Glover: Who, who did the most, the recent survey?

Atty. Thomas: Clark and Pearson did the more recent one. The early one was by Landmark Engineering which showed 7 feet from the proposed, or the presumed, I think it's called the presumed, street line. Okay? The right side of the existing building is 9.4 feet and the new building is going to be a level 10 feet from the property line. So that's reducing the non-conformity slightly. The rear is the only one where there will be a slight increase. This building, the left building is 31 feet, the proposed new building will be 29 feet, so it's a difference of only 2 feet. And of course the largest reduction of non-conformity is that you go from 6" plus or minus on this side, again using the more recent one, the prior survey actually had him over the line, but 6 inches to 69.5 feet from this line. And then the parking is all at this level. This level, this area remains at grade level. With that I will turn it over to Joe Mingoello to explain to you the engineering aspects.

Mr. Mingoello: Yeah, those we can just pass out

Atty. Thomas: These are the, this is the zoning chart of proposed, of required, existing and provided

Mr. Mingoello: Here are photographs of both 60 Huntington Street and there's 4 photographs of 60, Huntington Street, rear of the property and both left and right sides; and also 64 Huntington Street and there's 4 photographs of all the different elevations.

Mr. Glover: 60 is the building that is

Mr. Mingoello: at grade

Mr. Glover: It's becoming, it's, you're taking it down?

Mr. Mingoello: Yes

Atty. Thomas: I haven't been taking it down at all, but it's been

Mr. Glover: How long has it been being taken down?

Atty. Thomas: about I think a year, a year and half or so. And its been before Planning and Zoning and Planning and Zoning actually, you know, there's been discussions with respect to that building and the reconstruction of that building.

Mr. Mingoello: Actually today they removed all the walls down to, right to grade and they started to clean that up, so, from a visual standpoint. I'd like to just tell you, start with the standards for, of Schedule B for a CA-2 zone. For a CA-2 zone the minimum lot area is 15,000 sq. ft. and the existing is 10,535 sq. ft., so that's an existing non-conforming lot is our hardship. The minimum lot frontage is 80 feet and that's along Huntington Street, we have 119 feet. The building, maximum stories for a building in terms of the height is three stories and we're proposing it's going to be 2 stories. The minimum setback from the street line, now that's from Huntington Street is 10 feet, and again, the graded or the shaded area here, that's the new proposed building. The dotted line that you see here is the existing building and you can see we're going to line up and maintain that 10 foot setback from Huntington Street

Mr. Glover: Is the shaded building, the shaded area is the building?

Mr. Mingoello: That's the new proposed

Mr. Glover: it's triangularly shaped?

Mr. Mingoello: That's correct, yes. The minimum setback from a rear property line again is 40 feet, the existing building there which would be 64 Huntington Street, from the rear property line is 31 feet and that's where we would like a reduction, or an increase in the waiver from 31, we want to bring it down to 29. Setback from the right side is 10 feet, and again that 12 feet is the requirement and that's this shaded area here and then the gray area is where our building will be, so we're looking for a waiver of 2 feet there. And then the setback from the left side of the property again is 12 feet and then we're going to be 69 feet there.

Mr. Glover: So this building is sliding all the way over toward the Beard property, is that correct?

Mr. Mingoello: that's correct. Actually, we're, you know we're still, actually 8 inches moving it away from the Beard property line, because right now the existing, this dotted line here is 9 feet 4 inches from the Beard property line. We're moving it to 10

Mr. Glover: And that's the building that you've taken more down on today

Mr. Mingoello: That's correct, that's correct. In order to develop this property as, let me back up a little bit. Let me go over a couple of other issues that are important here. The maximum, maximum lot coverage as a percentage of the lot area, in developing you can't go over 25% okay? We're at 15%, so there's still room for growth there. Total impervious area of lot coverage as a percentage, 85%. So between pavement and buildings we can go up to 85% of the 10,000, we're at 67% with this proposal. And then the maximum floor area as a percentage of the lot area, you can go up to 50%. When you add up all the floors you can take 50% of the lot area, we're at 42%. And in this case we're developing three floors. The first floor and the ground floor will be 1600 sq. ft. each and then the upper floor which is the second floor, that's going to be 1200 sq. ft. So we're looking for a development of 4400 sq. ft. Now the two houses that are there right now, okay, we've been before this Commission, those, both those houses between their basements which were retail, a garden center, they were 4800 sq. ft. So we're taking actually, from the existing houses we're reducing the development by 400 sq. ft. So there's a reduction in the floor area overall. What we like so much probably about this development is that you've got an existing curb cut. The traffic light is right here. It would be difficult to develop this property, enter and exit off of Huntington Street with another curb cut so close to the light. So I think from a safety standpoint this a much better development and you come in here you return left, you can park here. We've got a total of 19 spaces, 4 of them are shared with Mr. Montanaro's property next door. And then we have some employee parking, so we have a total of 26 parking spaces for this development. Now, we looked at the existing building as it is, the parking that's required for the existing, and if you add up the square footages with the restaurant on the lower level, first and second floor office space, 32 parking spaces is required for the existing development next door. They have 36 spaces left over. So after we take some of the shared parking, 26 for the new development, we still have 36, we're still over by 4. We could actually take 4 more spaces and add it to here. You could add another story or increase the footprint. But we're leaving 36 for this existing development, 26, reducing the development on the square footage, you know for the floor area, by 400 sq. ft. Okay, besides the entrance and the exit off of Huntington Street, I think the nice part is that all the parking is elevated, it's at Huntington Street. We're going to have to create a retaining wall. There's a difference in grade between Huntington Street and the back of this parking lot of about 10 feet. So there's going to be a retaining wall along here, it'll return to the face of the building. There'll be a lower level here where you can access through the lower level, there are stairs internally within the building or externally. We're going to end up getting a lot more landscaping in this 10 feet, along the right side, along the rear, this is all landscaped area, so I think from an architectural aesthetic standpoint, this is a pretty good development. We're going to soften the building a lot. We've talked about in some planning in terms of the architecture and I can just give you a quick idea of what that would look

Mr. Glover: Before you, before you turn that page

Mr. Mingoello: Yeah?

Mr. Glover: Your, your curb cut, that exists

Mr. Mingoello: That's an existing curb cut

Mr. Glover: It exists at the same spot

Mr. Mingoello: That's correct

Mr. Glover: so there's no new, no new driveway coming in and out on Huntington Street

Mr. Mingoello: That's correct. That's what we like about it

Mr. Glover: You, you said that there were 36 parking spaces for the existing

Mr. Mingoello: That's correct, that's this building here, Mr. Montanaro's building

Mr. Glover: don't tell me it's a Planning and Zoning issue

Atty. Thomas: So the regulation, so the record is correct, when he refers to existing there, he's referring to the existing building at 66, not one of the two existing buildings here

Mr. Glover: Okay,

Atty. Thomas: I just wanted to clarify that in terms

Mr. Glover: The existing restaurant building and dental office has 36

Mr. Mingoello: has 36 spaces

Mr. Glover: And in that 36, you did not count those 4 that are up in front, or you did?

Mr. Mingoello: Oh no that's, it includes it. This, the four that are up front are part of the 26. There's 36 more that are associated with just this building. We only need 32.

Mr. Glover: Okay, so the building that exists now, not the building, not the parcels that we're talking about

Mr. Mingoello: Correct

Mr. Glover: That building has 36 parking spaces independent of, exclusive of what you're counting for the new building.

Mr. Mingoello: Correct

Atty. Thomas: And while we're on that point, let me just clarify two things, number one, obviously Planning and Zoning can treat shared parking, what we're trying to do is actually give them dedicated parking on another site, but they can treat it as shared parking. And we've chosen the spaces, 20 through 26 are within the 300 feet, so they could qualify as customer, but we would obviously be better designated as employee parking. And finally, I did obtain for an applicant, and on behalf of Wendy Montanaro, a special exception to expand the existing building at 66, that special exception will be, will be, I don't know how Planning and Zoning wants to call it, will basically be waived, relinquished, the approval will be relinquished because there's no intention to expand the building at this point. The individuals who were going to do the expansion have since sold the restaurant and they're not going to be involved in that. So that would have to be a requirement of any Planning and Zoning act, you're welcome to make it a requirement of your action, action here, you know, too, it's the same, but it's a Planning and Zoning thing and, because it then creates a situation where the remaining spaces are in, are excess of the requirement for the building.

Mr. Fitzgerald: How does the shared parking come into affect here on this location, how can you do that?

Atty. Thomas: Well, you have to have permission of the landowner, so we have a letter from

Mr. Fitzgerald: That's got to be written down

Atty. Thomas: Yeah, well normally Planning and Zoning would require a document from us that, and we already have a letter from Wendy Montanaro that she's

Mr. Conklin: Yeah, is that going to be a deed restricted

Mr. Cavallaro: Well, what if there's a change in ownership

Mr. Conklin: change of ownership they don't lose the parking

Atty. Thomas: Well, it's going to be a requirement of the Planning and Zoning that it's going to be part of the approval and it's going to have to be, there's going to have to be some protection, whatever, I'm not going to say what, I don't know how Planning and Zoning or your Corporation Counsel is going to treat it. It's whatever they tell us to do, that's what we'll do.

Mr. Conklin: Well I 'm not going to approve it unless I know for a fact that's going to be a permanent parking, not to be able to be removed

Mr. Cavallaro: Right

Mr. Conklin: So somehow you've got to guarantee me that that's going to be permanent parking for, (unclear) meet the criteria to

Atty. Thomas: You're not approving the square footage of the building. That we have to get approved by Planning and Zoning. So your variance is for setbacks. We theoretically could go to Planning and Zoning and Planning and Zoning could, once within this footprint could decided to shrink the size of this building or do whatever it wishes. It could determine that the shared parking could be purely shared parking. It could restrict the uses on there to make these, this parking on the site sufficient where this is pure excess parking. Planning and Zoning has various options, but they're the ones that are going to tell us how much square footage we can go here. You're not approving that. You could put in here that we could build 4400 sq. ft., 4440 sq. ft. and it would have absolutely, it would be what we lawyers call dicta. In other words, Planning and Zoning would not have to listen to you at all because they're going to determine the size of that. All you're doing is determining the fact that we are, of the three of the four things that we're asking for are reductions. One is a slight increase. So we are complying with your zoning regulations by asking for reductions of existing non-conformities. The issue of the parking, which we were before you with in other matters, we're not before you with on now, because it is our position that we're not going to ask for a variance. If Planning and Zoning were to do this, were to cut these off, we'd have to come, we potentially would have to come back before you for a parking variance. Yeah, we would not be able to segue onto anything because we've chosen not to come before you today for a parking variance.

Mr. Conklin: but then that's an arguable for you in court saying you've approved that size

Atty. Thomas: No, you didn't approve this size, you're not approving size. You have no ability to approve size. You have no ability to approve it. You could, you could tell us how big we can build it, but Planning and Zoning gets the say. They're the ones who are going to tell us, they could, they could say to Joe at either the site plan hearing or special exception hearing, whatever it's determined to be based on the use, you know what, you're going to have to shrink this or shrink that or cut a floor or do that. That's what they'll tell us. If we wanted a guarantee of the size of the building we would be before you with a parking variance. We're not, because frankly that issue doesn't really become an issue until we determine the uses and that's going to be before Planning and Zoning

Mr. Fitzgerald: Wouldn't that have to go on the deed, parking?

Atty. Thomas: If we wish to guarantee those spaces in order to be able to get a certain use in there, I, I don't know what Attorney Welch or the Planning and Zoning Commission would require, certainly if I were Corporation Counsel I would require a deed restriction at the Planning and Zoning level and say well fine, if you're going to have this use then I want a deed restriction. If you're going to have this other use, if the whole building is office and for instance, let me give you an example here, what we have done, what Joe Mingolello

did in doing this is he chose to choose, because there's a ground floor, first floor, second floor, he chose to use the map, on this bottom one down here, he chose to maximize the number of spaces and he chose to put in retail, retail, office. Theoretically speaking, if you had office, office, office, treated the ground floor as first floor and the other two floors as appropriate, which I think is the appropriate way to do it, they create a fiction sometimes, and that could be a matter for some battle down the road with some applicant, you could literally reduce the number of spaces probably enough to be on site

Mr. Mingoello: by about 3 or 4

Atty. Thomas: Just 3 or 4, but I mean if you

Mr. Mingoello: Well you take the 12, I think there's a 12 on one and you would just cut it in half

Atty. Thomas: but I'm saying if you had office, office, office, you would have 300, 300 and the first floor would still be

Mr. Mingoello: Ground floor still won't fit

Atty. Thomas: Ground floor would still be 150, so you would reduce the number of spaces. That's an argument for

Mr. Glover: May I interrupt you?

Atty. Thomas: Yes

Mr. Glover: the applicant has not asked for a variance in the number of parking spaces. If he doesn't have enough parking spaces he will have to come back and ask for one in the future. So the number of parking spaces is not really of a concern to us at this point. My questioning of the, of Mr. Mingoello about the number of parking spaces, is because I wouldn't be clear on the record what he was saying with this is shared, this is where the people, so I was just, just clearing the record in my mind. But in terms of parking, I don't care how many parking spaces there are right now because we assume that there's enough parking because you haven't asked for it.

Atty. Thomas: Right, correct

Mr. Glover: So the parking is not an issue, whether it's shared, whether there's, whether there's 36 places, whether there's 32 places, whether there's 25 places. You haven't asked for parking so we don't have to concern ourselves with parking. If you go to Planning and Zoning and they decide that you don't comply with parking, then you'll either have to shrink the building or come back here and ask for less parking spaces.

Atty. Thomas: Or if they chose as an option

Mr. Glover: But the issue of parking is, is not on the table tonight because you didn't ask for it

Mr. Mingoello: That's correct

Mr. Conklin: but Gerr, that's sort of why I have a problem, if they have to shrink the building down, we've already given a variance to encroach 10 feet you know upon a neighbor's property or, you know, we've lost our, any chance that we have to readjust it according to the size of the building. So we're already predispositioning in giving away sides

Atty. Thomas: No you haven't. As long as we go, if we were to shrink the building and make it 10 feet 5, 10 feet 5 and 29, 5, we're still in compliance with your order. If we did, I don't know how you would shrink it

Mr. Conklin: Well that's what I'm saying, in compliance with the order that we've given you

Atty. Thomas: Right, that's what I'm saying, when you're talking about shrinking the building, the one thing we have trouble

Mr. Conklin: You're asking for this variance because of the size of the building, that you need to push it over to, to gain as much as possible

Atty. Thomas: No, no, no, we're asking for a reduction, reduction, same, reduction, we're asking for a 2 foot variance here and we're reducing this. You have to keep in mind, even though you have a new building here, we're asking for reductions of what is existing. So in one case we're asking for an increase of 2 feet, at 29 feet here. If we were to change the size of this building and make it 28.5, we'd have to come back before you. If we were to change it, we can, after you grant your variances we can change the size of this building all we want. As long as we're within 10 here, you know, we're greater than 10 here

Mr. Conklin: within the setbacks that we granted

Atty. Thomas: Yeah, as long as we're greater than your setbacks we would have to move it. But in here, of the 4 issues, of the 4 issues that we have, one is asking for a slight increase in the existing variance. Three are asking for reductions of what is existing right now. We're not asking for more

Mr. Glover: it's more conforming than exists now

Atty. Thomas: Yeah, three, one becomes totally conforming and two become more conforming.

Mr. Glover: You were about to flip the page

Mr. Mingoello: Yeah, sometime ago we had started looking at an elevation and what this building would look like. This building does not match this footprint, but concept-wise, architectural-wise okay, we just thought we would share this information with you, because we think it's going to be a very attractive building for Huntington Center. I mean it's a small scale building, you know this is two stories. This may get a little taller, it may have some dormers in it because of this new development, we have 1200 sq. ft. and it will get a little longer, but architecturally this is what we're looking at, you know, shingle style, cupola, something that would be very attractive for Huntington Center. And it needs it. I mean this has been an eyesore there for a number of years. Both those buildings are very old. They're not worth restoring or trying to. You're better off taking them down and starting from scratch.

Mr. Glover: So the upper left hand corner is what you see from Huntington Street

Mr. Mingoello: That's correct, that's the Huntington Street elevation. And uh, let me see, I have an existing survey here for orientation. Huntington Street and these are the two buildings. This is one building, this is the other building and when you add them both up there's about 4800 sq. ft.

Mr. Glover: Is that the Clark/Pearson survey?

Mr. Mingoello: Yes it is, that's correct

Mr. Montanaro: I just wanted to address the Commission

Mr. Glover: You have to give your name and address

Mr. Montanaro: Yeah, Michael Montanaro, and the only thing I wanted to add to the comments that were made here is that being a neighbor of Mrs. Beard who's been here opposed, I've been here for a number of the applications before me when Mrs. Zabaneth owned it. Of course she's always going to come and be opposed to it I presume for whatever reason. Yet, one of the reasons when I talked to Joe about designing the building, we wanted to make it, we could make it perpendicular to the road or parallel to the road. By keeping it perpendicular to the road and keeping that footprint up front we're going to screen a large, where's, yeah this blowup here basically shows you, this is the existing house that was in part ripped down, but by building in this direction you take away the view of the side of the Beechwood and you create what I think Joe's done in an architectural nice, if I may use the word Fairfieldish type of center. It's got a cupola, it's all shaker shingles. I wanted to put shaker shingles on the roof. I'd like to make it a show piece as opposed to what is presently there. Even though she's going to complain she puts her garbage cans, even though I'm

the owner, she has them like 2 feet off my property line, there's 7 of them, you know, she's, she wants to tell me there's something wrong with my development, I want to try and improve the center and I think Joe's done a wonderful job with the architectural and I think the number of square feet is less than the existing two houses that are there, that I could go ahead and just, you know repair. But for the sake of improving the parking situation, Joe suggested taking that one down which he suggested to me awhile ago but I came before this Board with a different presentation a while ago and I think your biggest concern Mr. Glover was well how are you going to get in and out of the back with a fence there. We've eliminated that issue. That was the issue with my application, it was the issue with the applications that were here before me. We've totally eliminated it so we think we've done, Joe said he doesn't have any other solutions for me. This is the solution he proposed to me earlier on that I really didn't want to do, but I told him, I said okay let's go ahead and raise the wall in the back, keep off the Beard property and present this to you. So that's all I wanted to add. I think it would be much better seeing that building, show them that architectural Joe, that architectural drawing there with the cupola, instead of this. It would cover this. So that to me, in and of itself would make the center of Huntington an asset. And I know the Mayor's been on me, they wanted me to rip the building down and there were some issues. They sent me letters they said okay, we'll, we approve the other building to build there, please take it down. We're going to allow you build at these you know, footprint off the side because

\*\*Tape had to be changed\*\*

Mr. Glover: Go ahead

Mr. Montanaro: So, so with those caveats in mind, I think that is a superb, is going to be a superb design by Joe, a superb screening of the Beard building, which I don't think is the most attractive think that you'd like to see as you drive into the Center. And I think, I've got a piece of property that is unique because it's in the center. It's unique because of it's size, it's shape, it's topography. It's unique because there's 5,000 sq. ft. on a 10,000 sq. ft. lot and it's unique because I have the opportunity to make your center look good by building that design and screening Mrs. Beard out.

Mr. Mingoello: I think one other thing is, if you left, if you try to restore these buildings and you left them in their present location and you don't have access from the rear, as we've had for years the pavement and the access via the Beard property, there's no access, you'd have no parking. You can't get to this property anymore without taking these buildings down and doing what we're doing where we're taking the building and putting it on the north side of the property line, okay, and then developing between the two buildings. I think it's a very, you know, something that we wanted to do and we thought this building definitely had to come down in order to make any kind of development sense on this site. That's it.

Mr. Glover: Anything else, Attorney Thomas?

Atty. Thomas: No

Mr. Glover: Are there any other questions, or any questions from the Board members of this application?

Mr. Cavallaro: So just clarify for me, the access to the parking for this building is going to be through the other property?

Mr. Mingoello: That's correct

Atty. Thomas: Through the Wendy Montanaro property, not as has been existing for quite awhile through the Beard property

Mr. Cavallaro: Right. So if there was no arrangement whatsoever, if the Wendy building was sold, then there is no access

Atty. Thomas: Oh there's, no there's, with respect to the access there's going to have to be an easement of access recorded. That's, that's clear, that's an obvious thing. Planning and Zoning would require us to do an easement of access. I mean we don't, you know what I mean, without an easement of access you can't use the building, the property under this development. This development eliminates the curb cut, which is

something that, and to remind you that I know I presented it to this Commission but it was also presented when we discussed this matter with Planning and Zoning that the police, you know, the police chief at that point, the traffic department they refer to it, at that point did not want a curb cut off of Huntington in between those, that curb cut and the curb cut at the light, which I don't know what that little side street, what's that 108 comes down through there and

Mr. Mingoello: Yeah, 108

Atty. Thomas: and the exit from the supermarket. They didn't, they would prefer not to have one in there.

Mr. Glover: Alright, the, the map from Clark and Pearson that's in front of us, just to clarify for the record, the, it's got Huntington Street, the one that's very close to the property line is 64

Atty. Thomas: That's correct

Mr. Glover: And the property abutting that is Wendy Montanaro

Atty. Thomas: Correct

Mr. Mingoello: No, the other building is 64

Mr. Glover: That's 64?

Mr. Mingoello: That's 64

Mr. Glover: Okay, so 64 is close to the property line and almost on Wendy Montanaro's property

Atty. Thomas: In a prior survey done by Landmark Engineering it actually showed it 1.2 feet. I think it was 1.2 feet over the property line. This one shows it (unclear)

Mr. Glover: The other structure is 60

Atty. Thomas: 60

Mr. Glover: 60 is almost gone now

Mr. Mingoello: That's correct

Mr. Glover: It's been an eyesore for a year there, but according to the architect, they've taken it down, most of it down today. And the corner, the rear corner of that, that is 9.4 feet?

Atty. Thomas: 9.4 feet from the property line

Mr. Glover: and that's 9.4 feet from the Beard property line

Atty. Thomas: from the Beard property line

Mr. Glover: And the variance that you're looking for which is 10 feet?

Atty. Thomas: 10 feet, it's a reduction of the non-conformity

Mr. Glover: is parallel to the common property line between the Beard property and Dr. Montanaro's property?

Mr. Mingoello: That's correct

Atty. Thomas: to the northerly, that would be the northerly property with Beard, because there are two property lines with Beard

Mr. Glover: I understand that, but the 10 foot variance that you're looking for is, is the one that's between the Beechwood and this

Atty. Thomas: That's correct

Mr. Glover: and the setback now from number 60 to the street is what?

Atty. Thomas: I'm not sure what it is for 60. The closest point of a building on this property to the rear property

Mr. Glover: no, no, to the street, Huntington Street

Atty. Thomas: Oh, I'm sorry the street is

Mr. Mingoello: it's 10 feet

Atty. Thomas: again, it's 10 feet listed on here

Mr. Glover: I understand, yeah I understand there's a discrepancy between surveyors

Atty. Thomas: surveyors, and I think that's because of the street line issue

Mr. Glover: But if it were 74, if it was 7.4 on the Landmark, you're now 10, so you're back another

Atty. Thomas: Exactly, we're back

Mr. Glover: Alright, any other questions from the Board? (no) Is there anyone in this room who is in favor of this application? (no response) Is there anyone who is opposed to this application? (yes) Attorney White?

Atty. White: Mr. Chairman

Mr. Glover: How are you sir?

Atty. White: Good evening

Mr. Glover: Would you please give your name and address for the record

Atty. White: I'm Attorney James White with the law firm of Pullman and Comley, I'm a resident of Shelton. I'm here tonight representing Dan Beard Associates, LLC, and with me are Bev Tate, Jeff Rhodes and Jill Bishop from Dean Beard. We're objecting to this application and I'll give you as short as I can the reasons why. First of all, and I'm going to go through my presentation and then I'll try to address the presentation given separately, because I've got notes on that, that's separate from my notes. As, first of all, this is, this is by my count approximately the 12<sup>th</sup> time I've been here opposing an application on this property since 19, since 2003. And all the applications, most of them anyway are basically the same. They come in for a waiver of the side lines, rear and front side lines and the, and the side lines, and the side lines, rear, front, rear and side lines. And they've requested to put in a building that does not fit within the envelope of the property and I haven't plotted the envelope so I don't know exactly how big it is. Most of their applications don't even come close. Now they're, this particular application has been made before and I'm going to give the Commission a copy of application 1005-8 which was filed on September 22, 2005. I've got a copy of this application, well you can take notice of it, but I'm going to give you a copy of the application and the site plan as it appears in the town clerk's records. I went and got a copy of it this morning. Now at that particular time, the, this is just one, this was just one proposal of the, what I'll say is the 12 over the years. But in this application, this site plan was submitted by Dr. Montanaro. Over on the lower right hand side, the existing site plan is cited, which has the building that's been ordered to be taken down on the corner of the Beard and Huntington Street property. I think you were referring to it as the right hand building. That still isn't down, even though there have been orders by the town. And he's complaining about our garbage cans. That building as you can see from the proposed site plan, is much more than 10 feet from the Beard driveway. This isn't, on the, on the, on

the site plan that they were proposing at the time it's not scaled out, but further back you've got existing building and at that time they were going to keep the building on the right hand corner and they were going to add something to it. I forgot, I think they were going to take the other house and put it down here behind here. And you'll notice there's a dimension here of 12 feet at the, near the back of the existing building which is on that corner. That was 12 feet from the Beard property. Up here, it's got to be 20 feet. There's a, there's a little pathway there. So when they say they're reducing the side line setback they're not. They're putting, as Mr. Chairman just pointed out, they're going to put a building right down that side line 10 feet from the Beard property. Now, and it doesn't take much to reduce the size of the building and get it over to the 12 foot and comply you're your regulations. I mean it's not, why not do that? I mean, you want us to talk about reducing, that would reduce the non-conformity by doing away with it on that side, which is what the regulations say. You're not suppose to have non-conformities. As a matter of fact, you're suppose to eliminate non-conformities. That would eliminate the non-conformity on the, what I'll call the north side, which is, which is the side that faces the Beard property. Now, also at that time, they proposed the same parking scenario, building on the north side of the property, parking on the south side, middle and south side of the parking, property, with parking also over on the next door property which is owned by Wendy Montanaro. And at the time they were going to use four parking spaces over here and they, and this got turned down. Now I want to, Zoning Board of Appeals turned this down, and I want to, what's included in the record is your decision. On January 5, 2006 during its, this is a letter to M. Montanaro, "Dear Mr. Montanaro, During its work session on Tuesday, December 20, 2005, the Board voted to deny the above referenced application in as much as no hardship within the purpose and intent of the zoning regulations was demonstrated as testimony indicated the applicant had other options and had the ability to position the structure a greater distance from the property line." So no hardship and the, this, the building that they proposed could have been done in a different way. In other words, in a more non, a more conforming way, not a non-conforming way. They have not improved that. When they talk about, well, let me stick to my knitting before I, before I go back to that. But let me just say this, the, the reductions that they talk about, since they're fresh in my mind, on the Beard side they haven't reduced, they've actually increased the, the actual non-conformity. In the front of the building they haven't reduced because the new building is wider than the old building that was there. They're keeping it the same, 10 feet is 10 feet. I mean what if, the town's talking about putting sidewalks on Huntington Street. Where are you going to put a sidewalk? There's a 40 foot setback there. They're not even, that's not a small reduction. That's 40 down to 10. It's not 40 down to 30 where there's some room out in front for the sidewalk. It's not even 40 down to 20 where there's some room out in front. It's 10 to 10 at best, but the 10 is a wider 10 because the left building is set back pretty far. It's not, I don't have a dimension on that, but you can see from the map that I gave you, and you might be able to see from the map that they have submitted that the left building, the one that's closer to Wendy Montanaro's property is set back farther. It's farther from the street and it's not 10 feet, it's probably 20 feet back. So they have not reduced that setback. They've already admitted that they're not reducing the setback in the rear, they're actually increasing it from 31 to 29. So this isn't, this isn't an application about reducing the setbacks, it's an application about putting in a 4400 sq. ft. building which is larger than the regulations, if complied with, would allow. And it's significantly larger because you've got a 40 foot in the front, 40 foot in the back and you've got a 12 on the sides. And it's, it, it takes more than that, it more than fills that. At one time in these proceedings several, probably several years ago, in the early, earlier proceedings when there were several applications where they, where they proposed a building the opposite way, in other words across the front of the property, we had figured out that, you know, to conform they probably could get maybe 3500 sq. ft. in and that would be a reasonable size building and conform and have the parking complied with and live within the side lines and the setbacks. But what they're trying to do is they're trying to get up to the 4900, 4800 feet that were in the two little houses up there. The usable space in those two houses was, was not 4800 sq. ft. That included every piece of air in that house. Those houses were not efficient, they were old fashioned houses. There was a lot of wasted space. This building is efficient. They can use most of the floor space for profitable ventures, rented out, or use it. So that there's no comparison between the 4800 sq. foot two houses, which were old fashioned, had corridors that were not usable, hey had stairways that were not usable and they had wasted space and basements and attics, and this which is a modern office building. The simple answer on the basis of hardship is they can comply if they want to. All they have to do is build a smaller building on this property. They're, what they're, they're talking about the fact that this, that parking is not, parking waiver is not being requested. Well that's fine, but if, if you follow Attorney Thomas' rationale, they're going to, they're showing you a plan and then they're saying we don't have to live by that plan. He said that they don't, that if, that Planning and Zoning will decide how big a building they can put up there. Well, that means they can walk in with these waivers and they can propose a 6500 sq. ft. building if they want to. They can propose anything they want. They walk out of here with the waiver and they've, they've made a representation that

this is what they want to do, but they're not committed to do that. So where are you? You're left holding the bag. You, and as a matter of fact someone pointed out if, suppose they get turned down and they have to build a smaller building, well, the smaller building I suppose would have, where a smaller building could be compressed, maybe even conform under normal circumstances they will be allowed to build that smaller building within all of your setbacks. Maybe, maybe, maybe they'll only allow him to build a one story building and not use the basement for retail use or for office use. And maybe that's, instead of being able to go up they're, they're going to go into your setbacks. Now the 10 foot setback, aside from the fact that I mentioned sidewalks, but there are sight line issues there too. I mean there are reasons for setbacks. Other buildings on that street, nothing, Dr., Mrs. Montanaro's building is set back. The Real Estate, the center next to Real Estate II is set back. I, the Rocket building's been there since the 50's, before, maybe even longer than that, before zoning, but you can see how that hangs right out on that street. That's a potential hazard. I'm sure somebody's driven a truck into that building from time to time and caused damaged and could even cause someone to be seriously injured. Same with the Real Estate II house, that's a non-conformity, but if that was thing was removed you'd make them move it back because the, Planning and Zoning would make them move it back because that's, the line that the law establishes is back from the street. It's not right on top of the street. So this, this applicant has no right and has not proven any justification by hardship to be allowed these, these waivers. It's not one waiver, it's three waivers. I mean some people come in and you can have some sympathy when they say they want one waiver, they want to put a, they want to put a garage on their house and they got to go two feet into the side line. Well that's a little different from, from really filling up this lot a lot more than it's supposed to fill up. So there's precedent for denying this application. As a matter of fact, you'd be going against your prior finding if you, if you approve this one. And there's a principal in the law that I'm going to cite, if a prior similar variance application has been denied, for the same property applied for, the Zoning Board of Appeals cannot grant a second variance application for the same thing. The test to be applied is whether new or additional facts appear showing a change of conditions or other considerations materially affecting the merits intervening since the first decision. I've got a decision in, now that, I'm citing on this, I'll give you the case because it's, because I've got it, Lennon v. Zoning Board of Appeals of Willimantic, 16 Conn. Sup. 324 1948. And I'm also citing Fuller, which is the Connecticut textbook on zoning law. Connecticut, Fuller, Robert Fuller, Connecticut Practice Series Land Use Law and Practice, Volume 9, Section 9.6 which was written in 2006. The Board only can reverse a prior decision, which this would be doing in my opinion because it's the same thing if you look at that plot plan, when a material, when there's been a change in circumstances. This property is the same as it was in 2005, nothing's changed except the house is ready to fall down. And number two, other intervening circumstances have come in affecting the merits of the case. Nothing's changed, it's the same thing. You denied it then, there was no hardship, and you've denied all these other applications that have come before you for different configurations of this property because there was no hardship. And why was there no hardship, because they built, they want too big a building on too small a parcel. Now, another thing that I want to point out to just kind of support this, in the prior applications, in 2003 the prior owner of this property was Zabaneth, and the Zabaneth's made several applications to develop this property. In 2003, they applied for a 4,000 sq. ft. building. In 2004, February 6, 2004 they applied for a 3,874 sq. ft. building and those were denied. And one of them is, is one of the ones that's on, is in court now. Dr. Montanaro bought the property and took over the, the lawsuit. On August 16, 2005, this application that I've given you was for a 3,874 sq. ft. building, that proves the point that he could put up a smaller building on this property. He doesn't choose to. He wants to put a 4400 sq. ft. building up. The 2005 application is for less. I mean he could theoretically duplicate those, whatever he was doing then and put up a smaller building. I contend that he can put up a building that complies much more readily with your zoning regulations. So this is not the best that this applicant can do on this property. And as I pointed out before, one of the primary purposes of zoning is to eliminate non-conformities, not to create them. And in doing this application, you're creating, you're increasing the non-conformities. The hardship is self created and I'm just stating this for the record because this is the way the law goes, because it can be eliminated by reducing the size of the building which will reduce the requirement for the parking and it brings everything into a smaller scale. This lot needs a smaller scale. The parking on the adjacent property, I mean, that's a proposal. That whole, this whole thing about the parking on the adjacent property, there's no evidence of it which I think was pointed out by one of the commission members. It's speculation. And I, and I guess it goes back to what Attorney Thomas said that they're not bound by this, what they're showing you tonight is strictly fantasy. I mean I'm exaggerating, it's not strictly fantasy you know, Mr. Mingoello spent a lot of time putting this plan together and I don't have any particular, except for the size, I don't have anything to say about the architecture or anything like that because I haven't, we haven't really concentrated on that. But they're not committed to anything. All they're committed to doing is getting, is expanding the envelope within this lot so they can do whatever they darn well please and get as much as they, as they can from the

Planning and Zoning Commission. But more importantly, this application and the justification for the size of this building is based upon 11 off site parking spaces. The record is devoid of any proof that the applicant has any kind of an easement, restriction or any, any agreement with Wendy Montanaro or any right to use the parking spaces on her property adjacent to the south of the subject property on Huntington Street. The subject property does not allow a 4440 sq. ft. three story building. It is too big for the property and the parking does not support it. The parking calculations before the commission, certainly before the Commission acts affirmatively if it, if it even considers doing so on this application, should test that out. We did not. We don't have, we don't have the, we don't have any engineering or surveying to indicate how much extra parking there is on the Montanaro, on the Wendy Montanaro property. We do know that there is a special exception permit in place allowing her to expand that property. It hasn't been withdrawn. There are parking requirements. So again, when this, when the 2005 application came up that I'm submitting, we brought that subject up. They double counted some parking spaces there. Shared parking. I'd like to point out that your zoning regulations are silent on any off site parking. So, shared parking, off site parking is not something that is

\*\*Tape had to be changed\*\*

Atty. White: It's not something that is in the regulations. So somebody can't point to these regulations and say we're entitled to get 11 off site parking on the neighboring property. The old uses on this property were low density uses, small businesses, one or two people working in small offices. The building that they're proposing, retail, I think they said retail, retail, office, or potentially because of the size of the spaces, 1200 sq. ft. are more appropriate for higher density use because they're more open spaces. You can put more people in and you can put a bigger store in there as opposed to a little flower shop or a single practitioner doctor's office. So again, it's there's going to be a more intensive use of this property, whatever they do because you know they're not going to build a, they're not going to try to, they're not going to try to build a smaller building, they're going to try to build a larger building. Let me see and I want to just go quickly through Mr. Thomas' presentation. There's no reduction here, I think I've gone through that I won't repeat it. Even if there is a reduction, they still have to prove hardship. They have to prove they can't comply and they haven't proved they can't comply or comply better. They certainly can comply better. Reduction is not the test, hardship is the test, okay? Reduction has nothing to do with it. It's nice to talk about it and it's a good thing in some cases, but it's not the test. Hardship is the test. They can do better here and that's what they have to do. They're required to do that. Let's see here, if this plan falls through for any reason in P&Z or they just decide to change it, they will still have these variances. The town is stuck with them and there is no commitment on the part of these applicants to follow through on the plan that they've presented with you tonight. Now at the least, if you're considering this application, there certainly should be conditions attached to the application, tied to a specific plan because that's what you're, that's what you're buying into if you, if you consider the application. You're buying into this plan. And that might not hold up in whole or in part before Planning and Zoning or otherwise, but certainly you have the right to condition waivers on whatever you want. Thank you.

Mr. Glover: Alright is there anyone else who is in opposition?

Atty. Scanlon: Good evening, Attorney John Scanlon. I live in Bethany, CT. And I'm here for the proprietors of Beechwood Supermarket. My brothers Robert and Kevin Scanlon are here tonight. I'd like to just point out a couple of issues. Number one is that I reiterate what Attorney White had said, this application is in essence the same application that has been put in in the past and rejected. And I point out that this, this situation is in essence the applicant's, is of the applicant's creation. The applicant is attempting to put in the largest possible building and to obtain the largest amount of rental possible. This is not a situation where you have hardship because of the shape or slope or size of the project. This is a self created hardship and this applicant continues again, and again, and again to put in and hoping for the largest possible building in the smallest possible space. Now, there's a concept in the law that is to, when you go before someone you would want to show your strengths and hide your weaknesses. And I think that's really where the issue of parking comes in. They've come forward and argued how much they're attempting to reduce the, the non-conformities. But I point out that by approval of this application, you're in essence giving them the green light to put in a tremendously large building which by its very nature is going to have a parking situation. I point out that in essence, and I reiterate what Jim White had said, and that is that the prior buildings were of dominous use. They were small, the prior buildings were used in a smaller capacity, small offices, small doctor's offices. This new building is a completely new structure and it's, it is a structure that requires 25.6 parking spaces. There's no, there's no application before you to reduce the spaces of this particular lot down to, from

26 down to the 15 spaces that they've shown. So in essence, they're hiding their problems by presenting their reductions, but the parking they're not bringing before you. But it still nevertheless sits behind all of this, because if you give them the variances they in essence get to this issue. Now the, there is no easement, there's no permanency here relative to the parking lot. There's no lease hold agreement. There's nothing before you relative to any agreement regarding this parking. And I, as I pointed out, actually as Attorney White had pointed out, there's nothing in the zoning regulations which even permit the shared use. And I'm just going to provide you with a copy of your own regulations. This is not mentioned anywhere in the regulations that there is a permitted shared use. So I point out that, again, it's a, it's a nice argument to try and hide the parking in the back lot, in essence hide it and not mention it by bringing forth the fact that you're trying to make the building less non-conforming, but you still are creating a parking situation by giving them the green light. They will be able to in essence create this parking situation and I think you should be able to take that into account because by, in essence, by providing the variance you're giving them the green light to build this. Now, I think this application should be rejected. It's more building than this particular small parcel can handle. That's been mentioned several times before, you've already rejected buildings that were actually smaller than this in the past. And it wasn't rejected only because of the issue of access, which I'm certain that argument's going to be raised, it wholly had to do with access. But your own decisions read that it related to the fact that there were no hardships here for the size, slope and shape of the building. And I also just wanted to indicate that you were to grant this, I would ask that again, that you, as I had asked the last time, that you, that you enforce a restriction that there be a fence between the Beard properties, that the applicant is required to put up their own fence and block off this shopping center from the shopping center next door, because again we're concerned about the hidden parking argument that really underlies all of this. That's it.

Mr. Glover: Thank you. Anyone else in opposition? (no response)

Atty. Thomas: Uh, sometimes this is referred to as sandbagging, but here's the letter from Wendy Montanaro. The, I want to begin with the comment of, that was made that there's no hardship because there's no, because the size, slope and shape of the project, I think you've probably at nauseum heard me say this to you, but you don't approve any projects and you're not approving a 4400 sq. ft. building with this. That's, your, that's worthless, you don't approve it, you're approving a 1620 foot footprint, square foot footprint. That's what you're, that's what you're approving, nothing more than that within it. Now why, there's a hardship on this property because this property is an undersized lot which pre-existed zoning, in which the zone was laid on it and when the zone was laid on it afterwards, it created an envelope of the striped purple, striped purple lines. Now they have proposed that you can actually do something within the envelope and by the way, there is no law that exists anywhere, Fuller, anywhere, that says that this Board, when you have existing properties on a site, considers the size of the proposed reductions, you know if you're proposing to readjust it. That's not an issue, that's not self created hardships. These are buildings that exist. If we came in here and this were a piece of property without any building on it and we were at that point attempting to propose it, there might be issues. We have existing buildings. Those existing buildings have square footage and those existing buildings, whether they're 1 point, whether it's one point of the building or whether it's 10 feet of a building, the fact is a setback is the closest point of the building. Certainly you wouldn't want anybody arguing before you that well I'm okay because I only have a point of the building going over the line as opposed to you know, 10 feet of the building. The fact is that when you reduce the setback, the line across under the law, is immaterial. Now we

Mr. Conklin: But wouldn't you say that even though that it's only a single point, that it's a total amount of encroachment?

Atty. Thomas: No, it's, I mean it's not, it's not law, it may be visibly, but I'm just telling you what the law is

Mr. Conklin: but that's what people would see as the encroachment

Atty. Thomas: right, but I'm telling you what

Mr. Conklin: Well I understand what the law is, but

Atty. Thomas: That's what the law is

Mr. Conklin: there's two, two ways of looking at it if you're standing at the edge of that property, one is visible and one is law

Atty. Thomas: And but, and also you can, if you're going to go by what is visible, right

Mr. Conklin: (unclear) vs. 20 feet

Atty. Thomas: If you're going to go by what is visible, you have also then to look at the aesthetics of the property and the fact that by doing it this way we are, and I'll get to other issues, we are reducing the most substantial non-conformity

Mr. Conklin: You're reducing the non-conformity upon the owners themselves and then

Atty. Thomas: Excuse me, upon the owners themselves?

Mr. Conklin: Yeah, the Montanaros

Atty. Thomas: No, she's, this is two separate ownerships. Even though it's his wife, it's two separate

Mr. Conklin: (unclear) you are increasing upon the other side, visible, visibility wise

Atty. Thomas: I disagree, but I'm not getting, this plan that was in, in '05 which was cited as precedent, which we all know there is no precedent, had 3.0 feet to the, to the Beard north, the north boundary with Beard and 4.9 feet to the front, so as Attorney White correctly stated the law, there is a substantially material change in the proposal here. These were both increases in the existing variances on the side and the front and they are reductions on our, on our property. The parking issue which they keep bringing up, is not before you. We are before you for variances. We could take this proposal and go before the Planning and Zoning Commission and propose a 7500 sq. ft. building, correct? That's the maximum size that's allowable, 50% of floor area. We could propose a 7500 sq. ft. building if we so desired, or a 5,000 sq. ft. or a 6,000. That, you're not approving a 4400 sq. ft. building. We can go to Planning and Zoning and we have other limitations before them. Not the least of which they would require is to put restrictions on the uses because the uses impact parking. If you put a building, the more you, you slide the building farther away you reduce parking. You put the building here you lose any parking in the rear. There is no requirement. This is existing, 4901 sq. ft. of floor space. What the uses were in the past is immaterial. It's been a CA-2 zone and the CA-2 uses are what's appropriate. The Planning and Zoning Commission will decide what uses can go in that site and what parking can fit it. As far as shared parking, I dare say I've had a little more experience than most before the Shelton Planning and Zoning Commission, shared parking is something that they often look at. Whether the, one of the first questions Planning and Zoning asked, when we, when I first became involved with this site, is can you get a shared parking on the Beard property. That was the first question they asked. And I actually went to them and asked and was rejected and then began the saga of the various applications. So, the main reason that you're dealing with this as a hardship is the size of this lot, that has pre-existing zoning, the buildings that existed on the lot, the topography of the property, topography meaning the shape of it, the fact that, and oh, there's one other important reason for a variance, is that the pre-existing for 30, 40 years entrance to the rear has been blocked off. So now that creates another unique problem that you have to locate the building as to be able to park on the site to try to maximize your ability to park and you have another issue. You have an entrance problem. And if in fact you're going to now have to enter off Huntington Street, you have a safety issue. So as a result of all of that, there is hardships, we have addressed the hardships with this. We are not before you with parking. There was a request, there was a suggestion about putting on the property, putting conditions on the property and there are conditions that can go on the property on this. Certainly you can put a condition on your variance that this is, you're approving this with the understanding of a single entrance between 60, 64, 66. And number two a more, another reasonable one was that, would be to, because you're approving it in this location this way, that there be a required easement of access between 64 and 60, between 66 and 66, 64. Those would be reasonable conditions to put on it for this, for this property because those would be required. As far as the parking issue goes, we're not before you because we feel confident that Planning and Zoning, based on our prior discussions with them, will look at this and will approve it. We do realize that even though Joseph Mingoello has indicated on here, retail, retail, office, we could come out of it with office, office, retail. And I think I've rebutted all the, all the issues and parking is not an issue before you so I don't think there's anything further we need to address.

Mr. Montanaro: I would like to address the Board one time before, before Joe, Michael Montanaro

Mr. Glover: Whoa, whoa, time out

Atty. Thomas: Michael, you don't need to address anything

Mr. Glover: This is, this is a rebuttal

Mr. Montanaro: Yeah, this is part of the rebuttal

Mr. Glover: Well, he'll rebut it for you

Mr. Montanaro: Why does he have to rebut it for me?

Atty. Thomas: Michael, we don't need to address anything else at this point

Mr. Montanaro: They are important facts. Will you allow me to just address them

Mr. Glover: Are they, are they facts that Attorney White

Mr. Montanaro: They are absolutely facts. The very first important fact is that every application before you had rear entryway applied for, as the one that Mr. White showed you that you turned down. If you recall I was here with that application myself and one of the things you kept asking me is how're you going to get onto the property. I said well we've got a, we're in court and we're dealing with this, and you're real issue was how were you going to get onto the property disguised by your answer I'm going to turn you down. Because I was there and I went through that. So Mr. White said you can't, you cannot turn down the same application, right, this is not even close to substantially the same application. The rear entrance is not asked for. And that was one of the issues that you kept harping on with me. The other thing was the fence actually did create part of the hardship here but we're not here to address that, that's a different thing. The hardship of shape, topography and the fact that there's 5,000 sq. ft. on this lot exists. I have the right to renovate those two houses and leave 5,000 sq. ft. I won't have very much parking because she's taken away the fence. I will have to create 6 or 7 cars and then come back to you with a variance for parking request. Because at that point I would have spent a lot of money to renovate the two buildings with the 5,000 sq. ft. and no parking, which is in some ways you'd want to say it's backwards. What we did try to do here is create more parking by knocking the building down. Now reference to this drawing right here, the P&Z already approved this building. This is an approved drawing. Joe told you this is exactly what we're going to do. The P&Z allowed me to rip the building down that was in a half disheveled manner and build this building which is the same size as the three story building we took out and we're going to build this. Or, so they're allowing me to build the same number of square feet in this building as previously in the other building. So all we're doing now is saying hey, because, now, I also came before this Board and it's very important, and I'm sorry Dominick wasn't here for this, but this Board turned me down when I came here to, Planning and Zoning denied me the right to have use of this, of this property for parking issues. I came before this Board and you upheld their decision for whatever it was, I think it was a certificate of zoning compliance. I wanted to use these buildings. One of the things I wanted to do is put a dental office in where the doctor's office was. They turned me down. I came here, you upheld their thing, so I mean, it's a catch 22. Do you want parking and two ugly, and a nice building or do you want two ugly buildings and no parking and I have to come back for a variance. That's the catch 22 for the Board to decide because I can only, I can only go, can't both ways, parking and two buildings.

\*\*Tape had to be changed\*\*

Mr. Montanaro: Okay, um, I think the real issue that's always been on the table here is that my neighbors have always showed up to oppose this application because 4400 sq. ft. is minute. She's got 30 or 40,000 sq. ft. on her property. We're talking about a little tiny, I know dental offices as big as 4000 sq. ft. I don't understand their issue with, what the real issue is conflict of interest for retail dollars. But they won't say it, but obviously that's it. She's got 30 or 40,000 sq. ft. over there. I've got 4,000 sq. ft. and she's coming over here trying to stampede me with two elephants and two lawyers every time this application comes up. It's

ludicrous. We did tell you it's unequivocal a different application because there's no entrance to the back. The same number of square feet or less that's on the property would be used. The parking issue is addressed because you can't have two buildings and parking. Okay? So I either come back for a parking waiver or I have a bigger building and one building. Um, relative to the 10 feet on the side because of shape when you look at, and you need to look at this thing right here where he said, you know how many feet it says 9.4, well I think the other one is 12 feet and the difference is if you look at that other drawing it went parallel to the front. If you go parallel to the front you probably get bigger than 9.4. If you go perpendicular to the side yard line you probably have 9.4, if you look at that discrepancy and that map and you'll see it. The first plan that has been approved by the Planning and Zoning Commission knew that this dimension is 9.4 here and it was certainly bigger in the front here as Mr. White said. However, because of the shape of the lot and there is no parallel, the only way for me to get parallel to the side yard line is for me to parallel my building in the same rhomboid shape as that lot. That's why we're asking for the front side yard 10 feet, follow the parallel as you would in a rectangle, 10 feet all the way down. And the hardship is very simply it's 9.4 feet here, and 30 feet in the front. I can't make it parallel, unless I do follow that shape, relative to the front. The same thing, the building is 30 feet across the front, we wanted to make it a little longer, so we uptake that, again, follow the shape of the, instead of a rectangle house and rectangle lot, I've got a rhomboid lot with a rhomboid building on that side. I think it makes sense. Relative to the rear side yard setback, we're asking for a difference between, the other building is 31 feet back, we're asking for 29. I'm going to let, I just had to, Dominick wasn't with this project from the beginning, although he's been in court with me from the beginning, he didn't come to the other applications here and he might not be, he's a great lawyer, but he might, I'm more familiar with my house than he is to represent me in my house. So, I'll let him finish whatever he wants to say.

Atty. Thomas: I'm done

Mr. Glover: Attorney White, do you have any rebuttal to Mr., Dr. Montanaro's rebuttal.

Atty. White: Just one, if you look at the '05 plan, there's a retaining wall across the back, there's no parking out the back, it's exactly the same as this application.

Mr. Glover: Alright, Attorney Scanlon?

Atty. White: Uh, there's nothing to rebut on that by the way, because I only made one statement

Mr. Glove: Attorney Scanlon?

Atty. Scanlon: No, I have nothing

Dr. Montanaro: Can we look at the plan to see if that's correct

Atty. Thomas: Just a second, that is correct, and the fact of the matter is, it is irrelevant to the fact that there is 4 point something feet from the front, 3 point something feet from the sides, substantial increases were proposed in that plan, and that's why the plan is completely, unequivocally and unadulteratedly different than this plan. And that's why I don't read, that's why I took the time out to have the architect read those numbers appropriately. Nothing further.

Mr. Glover: Thank you. Does the Board have any other, any questions at all for the applicant or the attorneys, the opposing attorneys? (no) Jack, anything?

Mr. Fitzgerald: No

Mr. Glover: Ralph?

Mr. Matto: No

Mr. Glover: Linda?

Mrs. Adanti: No

Mr. Glover: Ed, Phil? (no) Alright, then I'll declare the hearing closed.

Decision on this application was tabled until next month.

**#1007-4 159 Isinglass Road**, Claudia & Andrew Shriver of 159 Isinglass Road, Shelton, CT are seeking to waiver Section 24, Schedule B, Standard 7 by varying the setback from the street line from 40 ft. to 21 ft. (existing is 24.50 ft.) for an addition to existing one-family structure.

Atty. Thomas: Attorney Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT, representing the applicant. The photographs are up here. Just very quickly on the board for you this is the property. I think this is the first property that I've ever handled that actually has three front yard setbacks. I've handled ones that have two, but this one has three front yard setbacks. The pink line on the map, which is the map you have, is the setback line on this piece of property. It's at the "X" of Isinglass and, Isinglass and Nichols Avenue, CT 108. Notice was given to the two adjacent property owners. The existing house you can see there in red, farm house like house, and this proposed addition which is not going to be an accessory apartment requiring zoning approval, but is just going to be an addition for a relative, is probably the only location that you can put it in, other than coming out which would be an odd, as you'll see from looking at the pictures, an odd place. And, but it is also the most sheltered as you'll see. This is the, this is, this photograph at the top here, there's a photograph of Nichols Road, standing in Nichols Road out here looking at the back. So you can see even with leaves off, starting to come off the trees and everything, you can see that that, the rear of the property is shielded from the roadway. The addition is going to go in this location. These photographs here, here and here were taken from various points along the driveway and slightly inside the driveway looking at the side of the house. This photograph here was taken looking at this side of the house, which if you put an addition there you would be totally within, you know, you would be totally within the setback, the setback area. And the house obviously as you can see is already built within the setback area. And eventually (unclear) the front. Oh, one other point, even though this is a, you see the front door which does face out to Isinglass, the door that the family uses for ingress and egress is the door on the side, correct Mr. Shriver? Is the door on the side. So I think, I don't really have to go into much about the unique shape of the lot, because you can see that in the map and this is probably the only location that you can put this.

Mr. Glover: Dominick, in 1983 there was a variance on the property for a proposed garage. Which one was that?

Atty. Thomas: Would that be this building?

Mr. Glover: I don't know, the only, the only stipulation was that they couldn't store an ambulance in it.

Atty. Thomas: Okay, I didn't see an ambulance

Mr. Shriver: I'm pretty sure that was the garage built by the previous owner.

Mrs. Shriver: And we have no ambulance in there

Mr. Glover: In the back, okay

Atty. Thomas: which did look like a

Mr. Glover: The other structure over on the left, is that a garage too?

Mr. Shriver: No, that's a carriage house

Atty. Thomas: existing, that's a carriage house

Mr. Glover: okay, so you

Atty. Thomas: There's no ambulance in the carriage house when I was up there

Mr. Glover: Okay, so you have a, you have a carriage house that's too close to Isinglass Road and you have a garage that was built in 1983, or had a variance in 1983 that's built too close to the road also.

Atty. Thomas: Yes

Mr. Glover: The garage that, that was built in '83 is according to the look on your drawing there, is about equidistant from the, from the street line, or that's not the street, from the property line

Atty. Thomas: You mean this one, this line here?

Mr. Glover: Yeah, that's about

Atty. Thomas: It's 26.7

Mr. Glover: And what's the other one, 21?

Atty. Thomas: This is 21 and the existing is 24

Mr. Glover: So it's, it's an odd shape lot, a pre-existing non-conforming lot that has non-conformities on it already. They want to put an addition on it and because of the shape of the lot there's no way they can, they can put an addition on the existing house and be within that setback

Atty. Thomas: Correct, that's it. And the Shrivens are here for any questions.

Mr. Glover: Okay, any questions from the Board? (no) Anyone in the room in favor of this application, other than the Shrivens? (no response) Anyone opposed? (no response) Were you frightened that you thought this was going to go as long as the last one?

Mr. Shriver: Not on your life

Atty. Thomas: Well, we are going to take and reshape the building and make it, no just kidding

Mr. Glover: Final questions? (no) Then I'll declare the hearing closed. Thank you very much.

Mr. Shriver: Thank you ladies and gentlemen, have a good evening.

Later that evening during the work session the Board, upon motion by Mr. Cavallaro and seconded by Mr. Conklin, unanimously voted that:

**#1007-4** "In the application of Claudia and Andrew Shriver of 159 Isinglass Road, Shelton, CT for a certificate of approval for an addition to an existing one-family structure located on the property of the applicants at 159 Isinglass Road, R-1 zone, and which requires a variance setback from a street line,

The application for variance is approved.

Inasmuch as the parcel is a pre-existing non-conforming odd shape lot that is bordered by three city streets, and

Inasmuch as the addition is in harmony with the neighborhood,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in setback from a street line from 40 ft. to 21.0 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton.”

**#1007-5 15 Beverly Hill Drive**, Deborah Sousa of 15 Beverly Hill Drive, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 7 by varying the setback from the street line from 40 ft. to 28 ft. for a 20x40 pool and 9x7 hot tub.

Mr. Glover: Good evening, hold on for a second. Let’s get rid of the suits.

Mr. Moraveck: Deborah Sousa, 15 Beverly Hill Drive and Michael Moraveck, 15 Beverly Hill Drive.

Mr. Glover: Attorney White and all the Beards and Scanlons, you don’t have to stay here because we’re not going to decide anything tonight. There’s too much information to read through to be, to be fair to both applicant and to you. And so I wouldn’t decide it in one night. So you don’t have to sit here.

Mr. Glover: Alright, now, would you please give your names and addresses for the record.

Ms. Sousa: Deborah Sousa, 15 Beverly Hill Drive

Mr. Moraveck: Michael Moraveck, 15 Beverly Hill Drive

Mr. Glover: And may I have your receipts?

Mr. Moraveck: Those are the two receipts

Mr. Glover: And do you have any pictures for me?

Mr. Moraveck: Yes I do. Actually I took about 6 just because I took it of the house and then I took it of all the different angles for the pool.

Mr. Glover: Alright now you, you uh, Deborah Sousa was in here in April of ‘06

Mr. Moraveck: Yep

Ms. Sousa: Correct, we built the house, we needed a variance for the house

Mr. Glover: to build the house and you were going to be from 40 to 38 feet

Mr. Moraveck: Yep

Mr. Glover: Wasn’t there a variance on the front too of 1 foot or something?

Mr. Moraveck: Uh, it might have been I believe, but I mean

Mr. Glover: No, you didn’t ask for a variance but you were only within a foot

Mr. Moraveck: Well, it was going to be within, the corner here the big laugh was within inches

Mr. Glover: Right. Did you make it?

Mr. Moraveck: Yeah, 38.2 inches. But they did actually do the foundation within the 1 inch that they said they would

Mr. Glover: Well, I believe we asked you to do the footings and put the forms up and then stop and do the survey

Mr. Moraveck: Well, I believe that's what they did

Ms. Sousa: right, they did, yeah

Mr. Glover: Okay, so on, you want to put an in-ground pool

Mr. Moraveck: correct

Mr. Glover: You're on, if I remember right, you're on the corner

Mr. Moraveck: yep

Mr. Glover: of Beverly Hill and

Mr. Moraveck: yep and I brought this one to show it in full and I also duplicated this copy

Mr. Glover: We probably don't even need that

Mr. Moraveck: Well, do you want to see it? Does anybody else want to see it? Well, I mean to make it fair. I mean they did have to listen to, I don't know how long. I also have two copies of this just in case anybody.

Mr. Glover: Do you remember that variance?

Mr. Moraveck: Did anybody go out and look at it?

Mr. Glover: No, we don't have too

Mr. Moraveck: Oh, I didn't know if you had to go out and look at it

Mr. Glover: Once it's, once you do an as-built and once you surveyed it, no

Mr. Moraveck: The a

Mr. Glover: But you would have had a problem if after all that you came in and you were 2 inches

Mr. Moraveck: Right, right, oh absolutely

Mr. Fitzgerald: Do those stairs go up or down?

Mr. Moraveck: They go in, yes, down

Mr. Fitzgerald: Down, okay

Mr. Moraveck: The one where it shows the hot tub basically there's a whole wall and it shows it one of the, a couple of the pictures, it's a whole wall of trees. We have pines that go right from the driveway, right from the driveway here all the way back to approximately here. It's a full wall of pines

Mr. Glover: So you're putting in a swimming pool

Mr. Moraveck: correct

Mr. Glover: And you're putting a hot tub with the swimming pool

Ms. Sousa: Yes

Mr. Glover: Is it, is it part of the pool?

Mr. Moraveck: Yes it's all, it's a, it's going to be a Gunnite pool? I know they do fiberglass ones where it's all adjoined, but they said I had to apply for it even though the hot tub isn't going to be in the ground. The hot tub is actually going to be about 24 inches elevated above the pool. So it would basically splash over into the pool. And it's basically going to be foundation there underneath it, but they said I still had to apply for it.

Mr. Glover: Who said that?

Mr. Moraveck: Well, that's what

Mr. Glover: Planning and Zoning?

Mr. Moraveck: Planning and Zoning, yes

Mr. Glover: So the Planning and Zoning recognized the hot tub as a structure

Mr. Moraveck: yes

Ms. Sousa: Yes

Mr. Moraveck: and because they said that it would be adjoined. It's not going to be like a hot tub you would go to the store and just buy a hot tub. It's going to be all combined together

Mr. Matto: It's part of the pool

Ms. Sousa: Correct

Mr. Moraveck: right

Mr. Matto: where the water flows

Mr. Moraveck: right, yes the water, even though it will have a separate pump

Ms. Sousa: And all the piping

Mr. Moraveck: it'll all pump back in and everything

Mr. Glover: Alright, so you're asking for a variance from 40 feet because you're on a corner

Mr. Moraveck: correct

Mr. Glover: to 21 feet

Mr. Moraveck: 28, I believe

Mr. Glover: Oh, I'm sorry, yeah, I'm looking at the wrong application. 40 to 28, 40 to 28 and that 28 feet represents the hot tub, not the pool?

Mr. Moraveck: correct, it's about, the corner of the hot, the corner of the pool is maybe

Mr. Matto: 30 foot

Mr. Moraveck: yeah, it's, it's 4 inches from this corner and it's like 4 feet from that corner

Mr. Glover: Right, but, but the biggest offender here is the

Mr. Moraveck: is the hot tub

Ms. Sousa: right

Mr. Moraveck: and we talked about putting the hot tub at the end of the pool and when we brought it out here, we do have a well, the neighbor's well is approximately here and we have to stay within 75 feet for also for the reserve leeching fields, so there is enough space to bring it in here, the leeching fields, but if you put the hot tub in it wouldn't

Mr. Glover: So what you're saying is you can't put the hot tub at the end of the pool because you would be encroaching on the reserve of the septic system

Ms. Sousa: Correct

Mr. Moraveck: I mean we could, but it would really squeeze in there really hard, I mean I wanted to leave enough

Mr. Glover: So what you're saying is that when you put the hot tub at the end of the pool it will be in the reserve area of the septic system

Mr. Moraveck: pretty much yeah, and my builder came out about a week ago and he saw the layout of the pool, because we have it all staked out just in case

Mr. Glover: and he told you it would be in the reserve area

Mr. Moraveck: and he's like oh my God how could you make the pool that big and

Mr. Glover: and he told you it'd be in the reserve

Mr. Moraveck: he told me it would be in the reserve

Mr. Glover: So you put the hot tub on the side

Mr. Moraveck: correct

Mr. Glover: Okay, now talk to me about the propane tank

Mr. Moraveck: the propane tank

Mr. Glover: Is that above the ground or below the ground?

Mr. Moraveck: No, in-ground, it's buried

Mr. Glover: underground

Ms. Sousa: Yes

Mr. Glover: It's buried so you can't see it

Mr. Moraveck: The only thing you can see is the black cap which we plan on putting a

Ms. Sousa: I think there's a picture

Mr. Moraveck: there ought to be a picture

Ms. Sousa: there's a picture you can actually see it

Mr. Moraveck: It's propane

Ms. Sousa: It's a propane tank

Mr. Glover: The propane tank is there?

Mr. Moraveck: it's underground. That's what controls the house. The whole house is run on propane.

Ms. Sousa: Yes

Mr. Moraveck: We wanted it to be the most efficient house that we could build. We have it run on propane

Mr. Glover: Do you like the propane?

Ms. Sousa: Yes

Mr. Moraveck: Actually love the propane. The boiler that we have inside the house is called a munchkin boiler. You can stand right next to it and you can't even hear it running.

Mr. Glover: Alright, so you've given us a picture here that shows the trees

Mr. Moraveck: The whole wall of trees

Mr. Glover: it shows the string and it shows the top of the propane tank. So although you're going to be 28 feet from the proposed property line, the trees are going to hide the entire, the trees are staying

Ms. Sousa: Oh yes

Mr. Moraveck: Right, we're actually going to add, these are five right here and right now these trees are approximately I want to say 7 ½-8 feet tall now and we're planning on putting more down on the end which would almost cover this up, until we put our fence up and this will be like almost a fenced driveway right here, just so we can bring things into the backyard. The biggest hardship I would say is that we are on a corner lot, you know, and we have two front yard basically you know the 40 foot on the side as well as the 40 foot there. And city water, if we had city water and city septic, sewers I'm sorry, this would basically eliminate it and we could just bring the pool right over here and actually put it the way we wanted to which is lengthwise this way

Mr. Cavallaro: Where's the filter equipment going to go?

Mr. Moraveck: The filter equipment, right now we're proposing that it's going to go probably on the line of the trees

Mr. Cavallaro: Close to the road

Mr. Moraveck: probably right, right along the tree line

Mr. Glover: Is there going to be an apron around that pool?

Mr. Moraveck: An apron?

Mr. Glover: a stone patio, or stone something?

Ms. Sousa: There is stone

Mr. Moraveck: I don't believe it's going to be like around this part of it, you know, there's going to be an apron around it yes, you know, a patio probably over in this area. Yeah, there's probably about 3 or 4 feet around the whole existing pool

Mr. Cavallaro: Do you plan on putting a building here to put your

Mr. Moraveck: No,

Mr. Cavallaro: to put the filter

Mr. Moraveck: a building for all the filter equipment? No, we're going to do a slab probably like we were saying along the tree line over here. It's going to be a slab probably to put all the filters and what not on it. That's what the pool guy basically said, the perfect spot would be like right there for all the pool equipment, like the pumps and

Mr. Fitzgerald: You have to be able to back wash that you know?

Mr. Moraveck: I guess the, they were talking about the, the backwash with a certain type of in-ground Gunnite pools, that there's no backwashing. The filtration system filters it all out. That's what I, that's what I was told anyway. I don't know anything about it though.

Mr. Conklin: Well, how close to the road are you putting this? I mean, you have a neighbor's house by this picture over here, you're putting it as far away from you, but closer to your neighbor's

Mr. Moraveck: I did talk to one of my neighbors who lives right, where the pool would go she probably lives here, uh not her, I talked to her right here

**\*\*Several talking at once\*\***

Mr. Moraveck: Yeah, well, the filter I'd say is more going to be more along this, it's, the heating element has to stay within, away from, 15 feet from the propane, the top of the propane they were talking about. So I can basically put it right about here, which, I mean there is a house on the other side of these and she talked to me the other day concerned about the other person's hot tub, not my hot tub. She said that it makes noise

Ms. Sousa: It makes a buzzing sound she said when they turn it on. But I mean, it's a motor so of course it's going to make a buzzing sound.

Mr. Moraveck: Well, it's also on top of a wood deck. And I told her because of a vibrating motor and there's hollow points under the deck, it amplifies it right towards her house because it basically bounces off the under ground of the house and puts it right at her house. But I said that these would be mounted, you know, with the spring and the rubber gaskets on the foundation you know, for a slab for the motors.

Mr. Glover: Why did you ask for a setback from a reduction from 38 to 28?

Mr. Moraveck: Oh that's for here, from 38 to 28

Mr. Glover: Is that the way it was advertised?

Clerk: No, we advertised it 40 because it was a street line

Mr. Moraveck: Well, they said it's a pre-existing variance

Mr. Glover: No it's not

Mr. Moraveck: Well, I know they said, that's what they said when I went up there to Planning and Zoning

Mr. Glover: It's not, but it was advertised correctly so don't worry about it

Mr. Moraveck: Okay

Mr. Glover: It, you had, you must have a variance of 38.2 for the house

Mr. Moraveck: Yeah, 38 feet is for the house

Mr. Glover: Right, but that doesn't mean you have 38 feet for anything else

Mr. Moraveck: Oh, okay

Mr. Glover: that's specific to the house

Mr. Moraveck: well, that's what I asked when I went to them. I said you know, he knew that I had a 38 foot variance already

Mr. Glover: Right, but that

Mr. Moraveck: But that's for the house

Mr. Glover: That's for the house and, it's not a problem because our very efficient clerk advertised it from the required 40 to 28

Mr. Moraveck: thank you

Mr. Glover: Alright, does the Board have any other questions for the applicant? (no) Obviously it's the only place you can put the pool

Ms. Sousa: Pretty much

Mr. Moraveck: yes

Mr. Glover: Yes, it's the only place you can put the pool

Mr. Moraveck: Well, there's you know a well up in front as well as

Ms. Sousa: Yes, it is the only place we can put it

Mr. Moraveck: sorry, I forgot you want to go home

Mr. Glover: No, I don't want to go home, I want to create a record. It's the only place you can put the pool without encroaching on the septic system

Ms. Sousa: Correct

Mr. Glover: It's the only place you can put the pool without encroaching on the neighbor's well

Ms. Sousa: Correct

Mr. Glover: Okay, and it's the only place you can put the pool where you've got a reasonable distance from the house, you can't come any closer to the house (unclear)

Ms. Sousa: Correct, yes

Mr. Glover: So the bottom line is if we're going to have a pool it has to be here

Ms. Sousa: Yes

Mr. Moraveck: Correct

Mr. Glover: Alright, any other questions from the, are there other swimming pools in the neighborhood?

Mr. Moraveck: Yes, there are

Ms. Sousa: right behind

Mr. Moraveck: right behind us

Ms. Sousa: The two houses behind us both have in-ground

Mr. Moraveck: in-ground

Mr. Glover: Yes?

Mr. Moraveck: Yes

Mr. Glover: Thank you. Is there anyone else in this room in favor of this application? (no response) Is there anyone opposed to this application? (no response) Any opposition? (no) Any final questions? (no) Then I'll declare the hearing closed. Thank you.

Mr. Moraveck: Thank you very much.

Ms. Sousa: Thank you.

Later that evening during the work session the Board, upon motion by Mr. Matto and seconded by Mr. Fitzgerald, unanimously voted that:

**#1007-5** "In the application of Deborah Sousa of 15 Beverly Hill Drive, Shelton, CT for a certificate of approval for a 20x40 swimming pool with 9x7 hot tub to be located on the property of the applicant at 15 Beverly Hill Drive, R-1 zone, and which requires a variance in setback from a street line,

The application for variance is approved.

Inasmuch as it is the only place on the lot that the pool can be placed due to the location of the septic system and reserve field, and

Inasmuch as it is in harmony with the rest of the neighborhood,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in setback from a street line from 40 ft. to 28 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

**This certificate of approval is contingent on: 1. The trees along the property line along Beverly Lane shall be maintained; 2. The applicant shall take a building permit prior to erecting the pool and provide any necessary safety features including a fence that may be required by the building department.**

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

**#1007-1** Mr. Glover: Scott, how'd we make out? Alright, sit down Scott. Alright, you gave us a letter but you didn't give us a receipt.

Mr. Wasilewski: Yeah, she said she can't find the receipt, so I'm not going to drive her crazy. She said she could go to the post office tomorrow and see if there's a tracking

Mr. Glover: I don't know if there is, just send them another letter

Mr. Wasilewski: I don't know either. Yeah, Dominick said that there was a letter sent to them last year for the two lot

Mr. Glover: Yeah, but now you've changed

Mr. Wasilewski: And they never, they never responded, they didn't

Mr. Glover: They don't have to respond. We have to, we have to

Mr. Wasilewski: But there was no opposition

Mr. Glover: That's fine

Mr. Wasilewski: Okay, so I don't, I don't see it being another one now

Mr. Glover: That's fine, but you have a new application. Maybe they don't want a two family house there, or maybe they decided to change the road in a year

Mr. Wasilewski: No, they, they just, they sold me the land

Mr. Glover: I know they did

Mr. Wasilewski: Yeah

Mr. Glover: The bottom line is you, you have to notify the abutting neighbors

Mr. Wasilewski: which I did

Mr. Glover: the abutting neighbor is you and you

Mr. Wasilewski: Yeah?

Mr. Glover: and the State of Connecticut

Mr. Wasilewski: which I did yeah, go ahead

Mr. Glover: You have to give us a receipt showing us that you sent a letter to the State of Connecticut

Mr. Wasilewski: Yeah, the only way I can prove that is tomorrow if there's a track, if they have that. Or like you said, I'll mail them another one

Mr. Glover: Mail them another one.

Mr. Wasilewski: Yeah

Mr. Glover: Mail them another one. I'll continue the hearing until next month

Mr. Wasilewski: yeah, that's the problem, now we're into November

Mr. Glover: I can't help you. You have to, you have to show me evidence that you, that you told the State. And I know you gave me a letter that you wrote to the State, but I don't know whether you mailed it to the State

Mr. Wasilewski: She said she did

Mr. Glover: So, you have to give me

Mr. Wasilewski: You can't vote on it tonight and contingent upon the tracking?

Mr. Glover: No, because it, because I have to, the State has to have an opportunity to come back and tell me that they like it or they don't like it. And even though your former attorney told you that last time they didn't, it doesn't mean that this time they won't. Okay?

Mr. Wasilewski: Not really, but

Mr. Glover: I don't have any choice, so you don't have any choice.

Mr. Wasilewski: So you can't vote?

Mr. Glover: I won't vote, until the neighbor's notified to tell us whether he or she likes it. Once you send us the, once you mail this out and bring the receipt, that gives him or her the opportunity to, to know that this is going on and to come in and object or say that, nothing or say I like the idea.

Mr. Fitzgerald: It happens all the time

Mr. Wasilewski: It just goofs me up big time, right into November, the weather. I understand that and if I could get a tracking for that I'd have it tomorrow

Mr. Glover: Right

Mr. Wasilewski: And I'd give it to you, so

Mr. Glover: you'd have to give it to the town clerk

Mr. Wasilewski: So you still can't vote and then contingent upon getting that to you tomorrow

Mr. Glover: No

Mr. Wasilewski: Why? Is that asking too much?

Mr. Glover: Yeah, it is. So, your hearing, we'll continue to next month. Get me

Mr. Wasilewski: All because of that, I don't know, I'm not happy with that

Mr. Glover: I know you're not

Mr. Wasilewski: because it kills me with the weather, the frost and the weather

Mr. Glover: I know it does, but it kills us if we haven't told an adjacent neighbor what you're doing

Mr. Wasilewski: But I have

Mr. Glover: But we don't know that

Mr. Wasilewski: You'll know tomorrow

Mr. Glover: Good night, Scott

Mr. Wasilewski: That's not fair

**Approval of Minutes**

During the work session the Board upon motion by Mr. Cavallaro and seconded by Mr. Conklin, unanimously voted to approve the September 18, 2007 minutes as submitted by the clerk.

Respectfully submitted,

Loreen Michalak, Clerk