

Board of Zoning Appeals – Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.
Tuesday, April 21, 2009 at 7:30pm

AGENDA:

- #309-1 John Guedes, Broadbridge Hill Development, LLC at 159 Long Hill Avenue
- #409-1 Henryk Bogucki at 22 Falmouth Drive
- #409-2 JNT LLC at 15 Birch Street, Proposed Lot 1
- #409-3 JNT LLC at 15 Birch Street, Proposed Lot 2
- #409-4 Henry Kaminski at 54 Armstrong Road

Position Decisions on:

- #109-4 60-64 Huntington Street, LLC at 60-64 Huntington Street

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, Linda Adanti, Phil Cavallaro, Ed Conklin, Jack Fitzgerald, Bob Harbinson and Jamie Jones.

Mr. Glover: Good evening ladies and gentlemen. Welcome to the April meeting of the Shelton Zoning Board of Appeals. The Zoning Board of Appeals meets monthly to listen to hearings, to have hearings to decide variances and appeals. When you give, when you speak to the, in front of this Board you are actually giving testimony, it is a hearing. Our minutes are, records are recorded on two tape recorders and later in the month they're transcribed. The tape recorders will pick up cell phones and conversations in the room so I would ask your cooperation that you turn your cell phones off and if you're going to have conversations that you take them out into the hall so that we have a clear hearing. Commissioners that are here tonight, all the way on the end is Commissioner Jack Fitzgerald. Next to Jack is Commissioner Bob Harbinson. Next to Bob Harbinson is Commissioner Linda Adanti. Our Clerk, Lori Michalak. I'm Gerry Glover, to my right is Commissioner Jamie Jones and Commissioner Ed Conklin and next to Ed, Commissioner Phil Cavallaro. Everybody will have a chance to speak if they want to speak. I will direct the meeting and let you know when it's time for you to speak. When you are called the applicant will come up to the front. Our regulations require that you furnish us with four pictures of the property, one of them showing that it was posted with the yellow placard, and that you've notified your abutting neighbors of tonight's hearing. When you come forward I will ask for the pictures and I will ask for the evidence that you have notified your neighbors and if you have them we will continue and if you don't the hearing will continue until next month.

#309-1 159 Long Hill Avenue, John Guedes of 1425 Noble Avenue, Bridgeport, CT is seeking to waiver Section 24, Schedule B, Standard 10 by varying the minimum setback from a residence district boundary line from 40 ft. to 30 ft. for construction of a retail building.

Mr. Glover: Is there a chair there sir? Is there a seat there? Could you please give your name and address for the record?

Mr. Guedes: Members of the Board, my name is John Guedes, I am manager of Broadbridge Hill Development, which is the applicant in tonight's application. With me for I think the fifth time, I'm providing you with the notices that were sent out and a copy of the letters. I'm also providing you with four photos.

Mr. Glover: Thank you, sir, before we start, before you start, the members of the Board that were here last month, we had one, I think we had one hearing last month and that was supposed to be Mr. Guedes. And Mr. Guedes was not here because he received a notice of the meeting that said the meeting was going to be Thursday, the 19th. The meeting was Tuesday, the 19th and so Mr. Guedes was ready to come on Thursday and we were here on Tuesday. So I apologize for the mix-up and probably the delay, but for you and the Board that's we were here last month and we were alone.

Mr. Guedes: And I apologize for the confusion as well. It's one of those things that I think was an error on both sides. Myself, I should have made a call, but anyway

Mr. Glover: Anyway, let me put some history on the record so that, before we start tonight's hearing. In January 2008 the applicant came in for a variance to build a building on a parcel of land between, located between Bridgeport Avenue and Long Hill Avenue. That parcel was split by the zone line, and it contained two zones, one was a commercial zone and one was a residential zone. The Long Hill Avenue Road, Long

Hill Avenue side was zoned residential and topographically was higher in elevation than the Bridgeport Avenue side which is the commercial side of the lot. The problem for the applicant was that you cannot build a residential use in a commercial zone and you can't build a commercial use in the residential zone, and his lot was in both. So it was necessary for him to get a use variance to use the lot to its fullest. The applicant designed a building which had a commercial space at the lower level and had a second floor consisting of a pitched roof with a dormer type gables which would be used for residential housing. The commercial use faced the commercial street and the residential faced the residential street. The variance was granted because the applicant could build a building compatible with both zones and it would be in harmony with both neighborhoods. Conditions were placed on the decision so that the residential side could never be used for offices or any other commercial use and no commercial parking or delivery would be permitted from the Long Hill Avenue side. This Board thought that it was an excellent solution to the zoning issue and were pleased with the aesthetic design that was presented to us. I think it was a good variance. Soon after the passage, the Planning and Zoning Commission decided to appeal the decision of the, to the Superior Court. The applicant and project were put on hold. The Planning and Zoning had to hire an outside attorney, the Zoning Board of Appeals had to hire an outside attorney, and the applicant had to hire an attorney. Legal briefs and bills were created for the applicant and twice as many for the tax payers. The P&Z had the legal right to make the appeal. In the fall of 2008, after consultation with the Planning and Zoning representatives, the applicant reapplied for a new variance to allow a commercial building to be placed with an insufficient buffer separation from the residential zone. This application was denied by this Board on the grounds that the applicant already had a variance granted to it and until it was resolved in the, in the court appeal, he already had a variance which eliminated a hardship for the new variance. The Planning and Zoning designed a site plan pushing the building back into the residential area distance such that the original building could not be built, even if the ZBA decision prevailed in court. This left the applicant in a position that the ZBA decision, left the applicant in the position that the ZBA decision allowing the building to be built, could not be built, could not be used because the site plan would not permit it. The applicant never recorded the original variance on the land records and without the recording technically the process of the original variance was not completed. The applicant was in an impossible position. The ZBA and P&Z were creating legal bills for the taxpayers which would only serve to render an opinion of which the Board, which would decide what Board was right but would not resolve the original problem. It was suggested that a compromise would take place which would require the P&Z to withdraw their appeal, would require the applicant to agree not to record the original decision and the Zoning Board of Appeals would reconsider the second plan after the applicant reapplied. The compromise was presented to the Zoning Board of Appeals at which time they unanimously agreed to enter into the agreement. The P&Z has agreed to withdraw their appeal. The applicant has agreed not to record the variance. The applicant has tonight reapplied. The re-hearing of a variance which is not substantially changed has not been the practice of this Board. It's happening tonight because the original was never recorded and the Board did not know or understand or the new site plan was not created at the last hearing which is a significant factor in this re-hearing. If the application is granted tonight, the applicant can begin to utilize the parcel as long as no one else appeals tonight's decision. It is important that the record of this hearing and the reasons for its re-hearing are totally transparent to any interested parties now or any time in the future. And if there's anybody on the Board or anyone in this room, Commissioners, applicants, lawyers or the public that feels that there needs to be a correction to anything I presented, would you please correct it now before we continue. Does that sound like the right story?

Mr. Guedes: Mr. Chairman, that pretty much covers everything, and you're right on with the record

Mr. Glover: I think it's important for the record to be set straight as to where we've been and why we're here.

Mr. Guedes: And I appreciate you setting the record.

Mr. Glover: Alright, can you tell us what you want to do and

Mr. Guedes: Uh, for the most part I think you summed it up pretty well with the history of it. And basically as stated, the, the meeting that I did have with staff of the zoning commission which included the chairman of the commission, Mr. Pagoda, the, during our meeting their recommendation was that the building be pushed back approximately 10 feet for the purpose of providing a larger walkway in front of the building, a larger landscape strip along Bridgeport Avenue, a larger driveway width in front of the building. In doing so it basically pushed the building about 10 feet into the residential buffer line. I want to emphasize that the building setback lines are still being met. Because of the fact that the site does have the split zone, it does create the hardship and the hardship is that the, the residential zone line is not the property line, it's in the portion that covers one third

of the lot. So the, again the waiver that's being sought is to allow the building to be built 10 feet into the residential buffer line.

Mr. Glover: That encroachment is onto your own property though

Mr. Guedes: that's correct

Mr. Glover: because the buffer line, the zone line is on your property

Mr. Guedes: that's correct

Mr. Glover: and then you have, from the zone line, the commercial zone line, your residential area goes back more before you get to the commercial

Mr. Guedes: it goes all the way out to Long Hill

Mr. Glover: When you do this is the building going to have a flat roof or is it going to have a pitched roof?

Mr. Guedes: Well it's, I think if I may, you have the plans in front of you. The design is similar to the original application with a difference that the elimination of the second story. There was, had been introduced during the residential proposal. For the most part what we're looking at is four retail shops on the lower level and storage being utilized for the attic space. As you indicated in your summation, the, the Long Hill side now with this proposal is not being utilized for any purpose. The, with the building being pushed back it eliminates the ability for any utilization. So all activity will be on the Bridgeport Avenue side. The driveway that exists on the Long Hill side may be left strictly for emergency purposes in case of, there was ever an emergency. But for the most part there will be no other access. And that pretty much sums it up.

Mr. Glover: Does the Board have any other questions of the applicant? (no) Any questions? (no) 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? You're opposed? Come forward. There's a chair you can sit or if you want to stand, that's up to you. Can you give your name and address for the record please?

Mr. Dikovsky: Sure, Mr. Chairman and Board members, my name is Dwight Dikovsky, I live at 157 Long Hill. And I think it's more of a matter of clarifying some facts and figures and what is actually going to be the encroachment. I understand the buffer zone is on your property, but the property itself,

Mr. Glover: we probably have a map here,

Mr. Dikovsky: Bridgeport Ave., the property, the driveway and then our property. So our concern is with two small children in the house what exactly is going to be up against our property line? If the building itself is moving into the buffer zone for the residential, as soon as we saw that we had concern about well, what does that do not only to the property or the value of our property, but what does it do to our quality of life? You did mention the driveway possibly only being emergency

Mr. Glover: I think it does nothing to the quality of your life. You're going to see the back of a roof. In the original approval that we gave him you would have seen people driving in there and parking lot and people living there.

Mr. Dikovsky: right, residential vs. commercial though, so that's a concern, what commercial, will there be a McDonald's going in there

Mr. Glover: There will be no commercial in the back, no commercial on your side at all, it will all face, it will all face Bridgeport Avenue

Mr. Dikovsky: right, everything's going to face, but what is the back being used for, is that where dumpsters are? I mean, that's a big concern

Mr. Guedes: All activity, as I stated, all activity will be on Bridgeport Avenue, for the most part there is no

utilization in the back. Right now it's just set up for landscaping area.

Mr. Dikovsky: Okay, I mean, that was our major concern because I hadn't seen plans, I didn't know what specifically was going to be behind there.

Mr. Glover: The purpose of the buffer is, is to keep the commercial away from, a certain distance away from residential properties

Mr. Dikovsky: right

Mr. Glover: but that usually is because something is totally commercial and they don't want the commercial building to go right back to the rear property line to, to affect the buffer, the residential zone. This gentleman's property, he encroaches on the buffer to the line, but the property continues on

Mr. Dikovsky: right

Mr. Glover: he's actually buffered more than he would be if it were all commercial

Mr. Dikovsky: Okay, and I did understand that from your presentation and from what I heard from your reading as well. My concern was that receptacles, the trash receptacles weren't up against our fence and

Mr. Glover: Nothing, I don't anything's going to be in the back

Mr. Guedes: Actually, just to clarify, I believe this is your property here? For the most part the, the building sits about 50 feet away, you know, from the property line

Mr. Dikovsky: Okay

Mr. Guedes: and if you, as you can see from the site plan the driveway access is on Bridgeport Avenue, and keep in mind the topography as you know is different

Mr. Dikovsky: oh yeah

Mr. Guedes: so the dumpster is on, you know, because again, access not only from the patrons, I mean from the tenants to the container, but also for pickup and so forth has to be on the lower level.

Mr. Dikovsky: okay

Mr. Guedes: so, yeah, there is no activity

Mr. Dikovsky: Yeah, I was worried about waste management rolling down the driveway and the kids

Mr. Glover: It will all be from the Bridgeport Avenue side

Mr. Guedes: It's, the plan is as I had said, I mean it was pushed back, it still sits within the setback requirements, it's just that, as you can see here, the zone line cuts right through here instead of normally it follows the back property line

Mr. Dikovsky: yes

Mr. Guedes: but it, for some reason in this particular case when they drew the line they didn't draw it correctly and therefore there's an issue with it.

Mr. Dikovsky: okay, the back corner of that building's not square

Mr. Guedes: Well, we had to cut it to make sure we stay within the setback

Mr. Dikovsky: other than that

Mr. Glover: I would assume you're not in opposition?

Mr. Dikovsky: Yeah, I would withdrawn the opposition. That was my major concern.

Mr. Guedes: Thank you.

Mr. Glover: Is there anyone else in this room in opposition to this application? (no response) Any final questions from the Board? (no) Thank you sir, I'll declare the hearing closed, thank you very much.

Mr. Guedes: Thank you.

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

#309-1 “In the application of John Guedes of 1425 Noble Avenue, Bridgeport, CT for a certificate of approval for construction of a retail building to be located on the property of Broadbridge Hill Development, LLC at 159 Long Hill Avenue, CB-2 and R-5 zone, and which requires a variance in the minimum setback from a residence district boundary,

The application for a variance is approved.

Inasmuch as the property has a hardship being located in a split zone, and

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in minimum setback from the residence district boundary from the required 40 ft. to 30 ft. at the above is granted (Section 24, Schedule B, Standard 10) 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.”

#409-1 22 Falmouth Drive, Henryk Bogucki of 22 Falmouth Drive, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 9 by varying the setback from the left side yard from 30 ft. to 20 ft. for a 24x38 two story garage and in-law addition.

Mr. DaSilver: Good evening, my name is Manuel DaSilva. I'm the architectural designer that prepared the plans that I believe you should have. For the record here is the mailings and the sample letter that I sent the neighbors, the pictures and the two abutting neighbors and the front neighbor that are affected by this application I had them sign a letter that they're okay with our proposed design. So the project at hand, what we're attempting to do is to add an addition 24x38 foot, and on the first floor, the lower level we're, it's going to be a two car garage and above an in-law apartment for Mr. Bogucki's failing in-laws. They're at an age where they need elderly care and his wife and him are planning to move them in closer to where they can better care for them. So consequently we're encroaching on the setback. The setback is 30 feet and we want to build this addition as close as 20 feet. But if we can look at the existing pictures and then forward onto the proposed plan, I think the design we've come up with is a design that's not very intrusive. It's in keeping with the neighborhood. It's aesthetically pleasing. It doesn't detract from the house itself. It doesn't look like an addition. It looks like it always belonged. And in our case we have a, a clear case for hardship because the property is on a slopey hill. It's got lots of outcropping ledge and really the only place we can add is on the driveway side. The other side we'd be actually requiring more, more of a waiver and on the back it's just physically impossible with the hill line so close.

Mr. Glover: so you have a topographical problem in the rear

Mr. DaSilva: Yes, and you can see

Mr. Glover: is this sewerer?

Mr. DaSilva: it's sewerred

Mr. Glover: and city water?

Mr. DaSilva: city water

Mr. Glover: The, an in-law apartment,

Mr. DaSilva: We know we have to go to another meeting if we get this approved.

Mr. Glover: Does it conform to the sizes?

Mr. DaSilva: Oh, yes, it's less than the square footage required, yes, which is

Mr. Glover: 900 sq. ft.,

Mr. DaSilva: 900 or 950, I should

Mr. Glover: I think it's 900 or a percentage of

Mr. DaSilva: I do conform. If we look at the plans, I even have a

Mr. Glover: That's alright, because you'd have to come back here if they tell you you're not

Mr. DaSilva: right, I abided by all the regulations for that. And here we are because of the 20 foot that we're requiring

Mr. Glover: And who's, who do you encroach on?

Mr. DaSilva: On Mr., number 26, Paul and Jane Viebranz

Mr. Glover: Okay, and we have a letter from

Mr. DaSilva: you have a letter from him and then we have a letter from number 17 and number 18, 17's across the street I believe right

Mr. Glover: So, 17 and 18, and 26, but you encroach on 26

Mr. DaSilva: and he's okay with that

Mr. Glover: and there are letters here

Mr. DaSilva: that they signed, yes

Mr. Glover: that say they have, that say they've seen the proposed addition and have no problems

Mr. DaSilva: it was actually, they've seen the larger drawing but I included it in the letter as well, the little sketch so they were able to see exactly what

Mr. Glover: So none of your neighbors care and you are served by city sewers

Mr. DaSilva: yes

Mr. Glover: or they are, and city water. It's the only place to put it

Mr. DaSilva: it's the only place to put it because the back is going to be a nightmare

Mr. Glover: and your hardship is topographical. Alright, does the Board have any other questions?

Ms. Adanti: May we see the plan, I just want to see what it looks like.

Mr. DaSilva: I even have additional existing drawings that I can, if anybody wants to see, the back is very hilly

Mr. Glover: It's a very nice sample letter. It shows the structure on the letter

Mr. DaSilva: right, I tried to make it clear for them so if they're going to come to the meeting

Mr. Glover: it's a pretty fair way to demonstrate to the neighbors what you're doing. Does the Board have any questions?

Mr. Harbinson: What is the square footage of the addition compared to the existing house?

Mr. DaSilva: The existing house is 1200 sq. ft., the addition is a little over the 950 because we're giving part of the space to the existing house. If you look at the floor plans, it's just deceiving that it looks bigger, but it is not, you know, this is, that's the existing footprint

Mr. Glover: so you're building an addition and your, some of the addition is going to be attributed to the house

Mr. DaSilva: Correct, if you look at the first floor, we're adding a big walk-in closet to the existing bedroom. Because we needed a certain square footage for the garages which made the upstairs bigger than what we needed so then we said let's take advantage of it to give the existing house more square feet and abide by the regulations for the in-law.

Mr. Glover: Be careful of that regulation because I think that regulation is a maximum of 900 sq. ft. or maybe a third of the house. Just, I'm not sure, but

Mr. DaSilva: I'm designing one in Trumbull and that's the case there, it's a 1/3 and here

Mr. Glover: Just check it

Mr. DaSilva: I'll check again

Mr. Glover: It's not on our agenda for that (unclear)

Mr. DaSilva: Right, but I can easily dedicate more space to the existing house and we'd be able to

Mr. Glover: You just want to check that. Any questions from the Board? (no) Bob, you alright?

Mr. Harbinson: Yeah

Mr. Glover: Any questions? (no)

Mr. DaSilva: That's the folding attic stair location

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

Mr. DaSilva: Thank you.

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

#409-1 "In the application of Henryk Bogucki of 22 Falmouth Drive, Shelton, CT for a certificate of approval for a 24x38 two story garage and in-law addition to be located on the property of the applicant at 22 Falmouth Drive, R-1 zone, and which requires a variance in the minimum setback from the left side yard,

The application for a variance is approved.

Inasmuch as it is the only place the addition can be built due to the steep topography of the property, and

Inasmuch as the property is served by city water and city sewers,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in minimum setback from the left side yard from the required 30 ft. to 20 ft. at the above is granted (Section 24, Schedule B, Standard 9) 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.”

#409-2 15 Birch Street, proposed Lot 1, JNT, LLC, c/o Dominick J. Thomas, Jr., Esq., of 315 Main Street, Derby, CT is seeking to waiver Section 24, Schedule B, Standards 2, 3, 4, and 9 by varying the minimum lot size per dwelling unit from 7500 sq. ft. to 5740 sq. ft., lot square from 60 ft. to 55 ft., lot frontage from 60 ft. to 55 ft. and setback from the left side yard from 8 ft. to 7.4 ft. for a two family (existing) residential lot.

#409-3 15 Birch Street, proposed Lot 2, JNT, LLC, c/o Dominick J. Thomas, Jr., Esq., of 315 Main Street, Derby, CT is seeking to waiver Section 24, Schedule B, Standard 4 by varying the minimum lot frontage from 75 ft. to 20 ft., and Section 24.11.1 by varying the width of access way for interior lot from 30 ft. to 20 ft. for a residential lot.

Mr. Glover: Attorney Thomas?

Atty. Thomas: Attorney Dominick Thomas

Mr. Glover: good evening

Atty. Thomas: good evening, 315 Main Street, Derby, CT representing the applicant, who is here, John Todice, a member of JNT, LLC is present. I want to clarify one thing. The second variance is in the alternative. It's not two variances, it's actually in the alternative, either/or, either lot frontage or width of access-way. And really our focus is and I will define it later, is on the width of the access-way would be the more appropriate variance to ask for. The reason

Mr. Glover: Alright, you're

Atty. Thomas: the reason I asked for both, the reason I put both and I put or, it's said ok in the application, I found that out later it was typed and submitted with a typo, it meant or

Mr. Glover: Okay, so this is 409-3

Atty. Thomas: 409-3, yes

Mr. Glover: And that's either a 75 to 20 or a 30 to 20?

Atty. Thomas: Right, whether you consider it an interior frontage lot. This was done at the, after consultation with the Planning and Zoning staff, as to the alternative.

Mr. Glover: Good people

Atty. Thomas: I need to present to you the notices that were given, one was not returned. A small copy of the plan that was submitted was attached to every notice. Here are the photographs. Because these were two notices, I did put two signs up to address it. And for ease of reference, in addition to the map, I have a, for the

commission members, an aerial that you can (I don't know if I have enough for everybody, somebody may have to share). The, a little history is in order for this piece of property. In the early 90's, the property that was adjacent to this property, in the rear, was developed by I think Chris Bargas, I forget the name of the subdivision. At that time he had purchased all of the property surrounding it, developed an R-3 subdivision and deeded the ends of certain roads, Forest Road, Middle Avenue and I think East Avenue to the City of Shelton. And he developed and you can see in the photograph you will see the end of Ridge Lane, he developed a newer subdivision in the 90's, that was an R-3 subdivision, that basically surrounded this established subdivision. In the, the zone line and for those of you that don't have the, if you're looking, I think if you look at the letters, Commissioner Conklin you can see in the attachment to the letter I believe contains also reflects the zone line running through the middle of this property, the R-3 and R-4 zone line runs through the center of this property. Okay, there's a little gray line that runs through there, okay? So in 2001, prior to my client's purchase of it, the city took action to discontinue, the technical term is discontinue, they refer to it in their motion as abandoning Middle Avenue. And at that point the normal procedure would be that once a town abandons a right of way, half of the right of way goes to the people on either side. And the people then derive a right of way over that portion. However, in this case the town owned the fee, because they had gotten it from Mr. Bargas back in '93, so the property doesn't split. The town actually owns this property. And we have made a request, basically saying to the town, to the city, what are you going to do with it. However, that area, if you've been out to the site, is, as it borders my client's property is topographically challenged. Now, what is the hardship here? Well, the hardship here is that if Middle Avenue existed we wouldn't be here. Not that we don't want to be here, but we wouldn't be here if Middle Avenue existed and if it was developed as a road. If it was a road, you would have an R-3 lot that, that front property would become a corner lot and you would have an R-4 lot in the rear. But because

Mr. Glover: The R-3 being the existing house?

Atty. Thomas: I flipped it. The R-4 lot would be in the front, I'm sorry. The R-3 lot would be in the rear. Now the R-3 lot, R-3 allows only one family homes and that's what the client's intention is to build in the back. So, rather than, especially with the topographical and the wetlands area there, after looking at it with an engineer, the solution was to come up with the least intrusive way to get to the back of the property. And when you see it laid out in the plan to do it, it requires, this is without having the necessity of the city conveying any portion of the property to my client. If the city were actually to convey Middle Avenue, an abandoned roadway, it would allow, it would still require a variance because they would normally convey just 25 feet of the 50 foot right of way, and again, it would be a relatively topographically challenged area, that if he was going to use it would have to be leveled. So the best approach was to create the interior lot, which is, has more than enough size by creating it as a regular interior lot. And that's why in the second application, in application 409-3, it was in the alternative. When we went to talk to Planning and Zoning staff, they said well you can apply for a frontage lot with only 20 feet, which would be reducing the, because of the unique nature, because we're building an R-4 lot, we had to look at the R-4 frontage. However, an interior lot, I keep saying R-4, I'm sorry, R-3, the interior lot in any, in any zone requires a 30 foot access-way. So we can create a, a 20 foot access-way asking for only a 10 foot variance to get to the back. Need no variances for the lot. It would require us to shrink down the size of the front lot

Mr. Glover: the existing house

Atty. Thomas: the existing house, and it requires us, actually the existing house when you look at the older neighborhood would become, it's size would be comparable to the other houses within the existing neighborhood going, going north from, from that area. And, and the, for lot size the problem is not the size of the lot, the problem is that it's a two family and a two family as it says in the variance application, when you have two dwelling units, it's 7,500 per dwelling unit. We've be knocking it down by reducing it to 5,740, lot frontage and lot square would, of the frontage now would be 55 feet, and the side yard would go from, because we're creating the rear lot on that side, would go from 8 feet to 7.4. And this would be accomplished, the benefits that we're accomplishing are a couple. Number one, and we would accept this as a condition of the variances, the client has no intention of putting the driveway in the access-way. The town is, obviously would prefer that there be no further curb cuts, so there is, if you look at the photographs, may I Mr. Chairman? No, no, the photographs that I gave you. If you look at the photographs and you look at this photograph where the posting is, where the second posting that I did is, that's the area where my client took down the, the pool and the deck. And that's where the access-way would be, but there's no benefit, there's no need to put, assuming Planning and Zoning agrees with this, and I assume they would hopefully, there's no need to disturb that area and put a driveway there, when in fact you have an existing driveway that my

client's intention is to take down the garage and simply access the rear property by utilizing the existing driveway right to the rear with a permanent easement. That would only then require one, one curb cut. So the basic hardship is that as a result of the, the town's being deeded Middle Avenue and then deciding to abandon Middle Avenue, it prevented my client from having two, you know as a result of the action of the town, from having two frontage lots. The same thing he would have. There would be the existing house which would have been a corner lot fully complying with the R-4 zone, and a second lot, to be honest with you he would have been a couple of feet short of having two single family homes. It had, had, in other words, if Middle Avenue had come down here, he could have actually, he would have been a couple feet short of having two single family homes. That's been lost. And, and so he, this way he achieves really only what he would have had, had the town chose not to abandon it and by going this route, you in no way, I want to say force him that's not a bad word, but he really doesn't have to disturb the area that was the abandoned Middle Avenue. He doesn't have to touch it, he doesn't have to do anything with it now with the town. Because the town has, to be honest with you, the town, the city Assistant Corporation Counsel is still trying to figure out this situation of what you do when the town actually owns the fee underneath a public highway, and it's becoming an issue in several matters, not just in this one. And I'm available here and so it the applicant here to answer any questions. And I did not, I will leave this with the Commission. This is a survey which illustrates the lot better and illustrates the line going through it, the zone line going through it.

Mr. Jones: Attorney Thomas, does this abandoned Middle Avenue just end right there? The part that the city owns?

Atty. Thomas: I'm, you can look, I'm not 100%, this is not to scale, I drew this so don't rely on

Mr. Jones: So it's just that portion that

Atty. Thomas: Yeah, yeah, what happened was in, when he purchased it, when I think it was Christopher Bargas who, Chris Bargas who purchased that, all that property and he purchased it from, I think that the roads actually went farther down. In other words, East and, if you're, if you're facing this way looking down Middle Avenue, Forest Road went down this way and I think East Avenue went down this way and they looped around and Middle Avenue came down and connected with them in the layout. When he purchased it, he purchased that top end, deeded the three strips to the town. Now, Forest became, if you look at the photograph, Forest disappeared and became, the end of it became, this is Ridge Road, and then another road actually, if you go around the other side, became the end of East Avenue. I'm not sure if that's Ridge Road or

Mr. Todice: that's a continuation

Atty. Thomas: It's a continuation of it and Middle Avenue just extended down to the end. The town retained it for 7 years and then decided to abandon it.

Mr. Todice: that was Emerald Ridge I believe

Atty. Thomas: I mean it could have, the town could have taken it down to the end and put a, either a temporary or permanent cul de sac.

Mr. Jones: But it doesn't link to open space or anything like that

Atty. Thomas: Oh no, no, no, the open space is, the open space is over there, yeah, that's where the open space is

Mr. Glover: So the house that now is on Birch Street is your house

Mr. Todice: Correct

Mr. Glover: you live in the house

Mr. Todice: No, I rent it

Mr. Glover: Okay, that's alright, but you own the house

Mr. Todice: Oh yes

Mr. Glover: Okay and the pool and deck that were once there have been taken away

Mr. Todice: correct

Mr. Glover: And there's a retaining wall across the front of that

Mr. Todice: still in place

Mr. Glover: and with grass where the pool was

Mr. Todice: correct, yes

Mr. Glover: And your, your intent then is to use the driveway adjacent to the house, between the house and the abandoned Middle Avenue

Mr. Todice: correct

Mr. Glover: As an access-way to get to the rear lot

Mr. Todice: correct

Mr. Glover: Okay. And you're also going to use that driveway as an access-way to the front lot? To the house as it exists now?

Mr. Todice: Correct, as a space. I'm trying not to make too much impact on the area and the neighborhood if I don't have to

Mr. Glover: You're going to take the garage down

Mr. Todice: correct

Mr. Glover: The, obviously it's city water and city sewers?

Mr. Todice: correct

Mr. Glover: And so, is the one that's on Birch now is that a single or a

Mr. Todice: It's a two family

Mr. Glover: That's a two family. And you're going to put a two family behind it?

Mr. Todice: No, I can only put a one family

Mr. Glover: You're going to put a one family

Mr. Todice; Yeah, because I'm in an R-3 zone

Mr. Glover: So it's not an issue of one family vs. two family, that's a one family, the one it the front is a two family.

Mr. Todice: correct

Mr. Glover: so it's really just, just an issue of frontage

Mr. Todice: correct

Mr. Glover: and lot area per dwelling unit

Atty. Thomas: Right, and when we shrink down the R-4 one, we run into the lot area per dwelling unit and because we cannot assume that the city would give us that portion of Middle Avenue, okay, we then have to take that five feet off of the front lot which makes it, goes from 60 to 55, makes the square go from 60 to 55, and because we chose to put the strip over there, on the right hand side, that reduces the, the side yard from 8 to 7.4. I will state to you that my client made a request of the adjacent property owner, whether or not any, any of their property could be purchased and they, I mean it was a polite request and they preferred not to. Obviously if we, if there were 2 feet, or whatever we could have, it would have alleviated that one side yard issue. But it was really relatively, you know, a request was made to determine if that variance could be removed

Mr. Glover: The existing two family house, how many bedrooms in each unit?

Mr. Todice: Two bedrooms on the second floor and three bedrooms on the first floor

Mr. Glover: How is it presently occupied, if it is

Mr. Todice: Two separate families

Mr. Glover: Any children?

Mr. Todice: Yeah, one child on the second floor and two children or three on the first floor, that are infants

Mr. Glover: But the second floor is only two bedrooms

Mr. Todice: Correct

Mr. Glover: So you can either have twins or single

Mr. Todice: right, up there now it's one child

Mr. Glover: And downstairs you can have a couple of kids

Mr. Todice: correct

Mr. Glover: How's the topography as it's going back?

Atty. Thomas: I took extensive, no, no, the other photographs, I'm sorry, I think I tried to capture as best as I could

Mr. Glover: This is coming up into a flat area, looks like you've already got the equipment there

Mr. Todice: It's already to go

Mr. Cavallaro: Where is the parking going to be for the existing two family house?

Mr. Todice: right on one side where it is now, I don't know if Dominick shows it in the picture, can I take this? This has been changed. What it is, there's parking right in here, if you can see this whole corner

Mr. Glover: Behind it?

Mr. Todice: Yeah, right on the side of it, this is all parking on this side right here, from the garage corner all the way 30 feet out, so they park this way here.

Mr. Conklin: Is that where the deck used to be?

Mr. Todice: Yeah, the deck is gone

Atty. Thomas: Yeah, you can see it better maybe on the, on the

Several talking at once

Atty. Thomas: It's

Mr. Todice: There'd be parking in the rear

Mr. Conklin: So you're saying that this is just a driveway for purposes of showing lot frontage

Atty. Thomas: The access-way would be, would be showing the access that's required. Well, we're asking for 30 down to 20, the access-way wouldn't be, in the interior lot definition it states that you have to have an access-way to a public street. And that's what we're showing. We would not use it. Now again, you know, Planning and Zoning could come in and say, you know, well we want you to use

Tape had to be changed

Atty. Thomas: One of the reasons we went this route is that I was given the indication from staff is that they would prefer a single driveway entrance rather than having an extra curb cut, especially in this neighborhood. So they would prefer it be designed and since you have a paved driveway, which is an older driveway that has, that is a little bit slopey, but once it gets up to the top it's relatively flat to access the second lot.

Mr. Glover: The a, to the side of this house again, between the existing house and the abandoned Middle Avenue, then you're really going to have two driveways or two pieces of property, one that goes with this house

Mr. Todice: correct

Mr. Glover: and another one that goes

Mr. Todice: right

Mr. Glover: access-way to the other house

Mr. Todice: It'll probably be the same driveway, it would be a common drive I would believe

Mr. Glover: right

Mr. Todice: just split off

Mr. Glover: there'll be a property line between the two of them

Mr. Todice: Probably so, yes, I guess there would have to be

Atty. Thomas: Uh, over the existing driveway? Would be

Mr. Glover: You're going to have, this piece in the back is going to have it's own, it's own property that comes down to the front

Atty. Thomas: No, it's going to have an easement. The only, the proposal again, this is the, you can see better on that, what would happen is that the, the rear lot, the rear lot would have this strip here, okay, even though the way Jim Swift drew it up, he drew it up with what looks like a driveway there, you know. It would have, this would be what they own. They would have an easement, a deeded easement since my client owns both parcels

Mr. Glover: right

Atty. Thomas: when he separated them, which would be a free split, the recorded map would show a deeded easement of access to the rear lot

Mr. Glover: Let me turn this around here.

Atty. Thomas: That's the only way you could use the common driveway.

Mr. Glover: alright, your, so it's going to be there but your not going to use it

Atty. Thomas: it'll be there but we're not going to use it

Mr. Glover: Alright, okay, I understand

Atty. Thomas: Unless Planning and Zoning puts a gun to our head and says we have to

Mr. Glover: So on the left hand side of the house there's going to be one driveway, on the right hand side of the house there's going to be an access-way that, the land comes to the street but there's no driveway there

Mr. Todice: no, no driveway, hopefully it'll be grass

Mr. Glover: And he's just going to give you, you're going to give yourself an easement

Mr. Todice: Correct, to the rear

Mr. Glover: Okay.

Mr. Todice: Yeah, I don't want to change the neighborhood if I don't have to

Mr. Glover: And your, your situation here, your hardship here is if that road was not abandoned, you would be able to use that paper street to get back there

Atty. Thomas: to get to, from what, in checking the paper street would give us the ability to claim we had two frontage lots

Mr. Glover: Yep

Atty. Thomas: and, but what they did is they abandoned the right of way as a public right of way, so it's no longer a paper street and in this unusual circumstance the City still owns it.

Mr. Todice: So the Board

Mr. Conklin: When did the Board of Alderman do that?

Atty. Thomas: 2001. It was, it was very, in fact it was relative, the whole process it's elaborate in the file was relatively confusing when they went and did it. And they did it and there were certain recommendations and there in fact is a property owner on the other side of Middle Avenue that they totally cut off when they did it. And there were documents in the file about asking permission of the prior owner, you know, and, which is normally something you wouldn't do. But, it was relatively convoluted. So it's back before the Board of Aldermen at this point. And they are attempting to now address the issue of what they do with paper roads or actual roads in which they own the fee. In the future this is going to become more and more common because obviously in the last 15 to 20 years developers have had to deed the property, the road. You don't just dedicate it, you deed it to them. And the two big issues that they're dealing with are this one and Access Road.

Mr. Glover: So your hardship is created by the Board of Alderman

Atty. Thomas: By the Board of Alderman

Mr. Glover: An action by the Board of Alderman

Atty. Thomas: An action by the Board of Alderman

Mr. Glover: Okay

Mr. Jones: If they give you ½ of it you still the need the variance?

Atty. Thomas: If they gave us ½ of it we would still the need the variance for the, either the frontage variance or the similar variance. We might be able to, the, what we might be able to do is throw that strip which we don't want to use onto the town land, but we would then, you know, we would own the town land and then try to still use the common driveway. We would still need the variance because if we kept a strip on this side, we'd still need that 7 ½ and we may be able to buy the extra 5 feet for this, which would make, you know, the front lot more conforming. But

Mr. Conklin: Once you did that, you'd abandon this strip here, make this lot conforming and then split this closer (unclear) back, you wouldn't need any variance

Atty. Thomas: And the, well actually we wouldn't get 30 feet. We did measure it. We wouldn't be able to get 30 feet, we'd get 25,

Mr. Todice: so instead of a 10 foot variance we'd have to come back for a 5 foot variance. If they

Mr. Conklin: Even if you took 5 feet off of this property?

Atty. Thomas: If we took, if they give us 25 feet. If they gave us 25 feet here then we

Mr. Conklin: (unclear) take 5 feet off of this property and then as you gain the 20 feet back over here, you'd have it would be in conforming

Atty. Thomas: Well the, as far as the frontage goes and we still, the way Planning and Zoning described it we'd still have to ask for a variance, is the way they were doing it. It would be less of a variance if the town chose to do it. They, one of the, I think the reasons the town is looking at it and trying to decide it is of the two 25 feets, so to speak, in the 50 foot, this one is the topographically challenged one. And there was some people indicating well they'd rather retain of control of it so it isn't in any way disturbed. Once they give it to us, whether it's Mr. Todice or a subsequent owner, could choose to disturb it. The other side is actually relatively, when it gets down below it's actually relatively flat

Mr. Glover: flat

Atty. Thomas: But it drops somewhat radically there

Mr. Glover: Let me just make sure I've got it straight here

Atty. Thomas: okay

Mr. Glover: Mr. Todice's existing two family house is the R, is in the R-4 zone

Mr. Todice: Correct

Mr. Glover: Okay? And that house will suffer when the split is made, you'll need a lot square from 60 to 55

Atty. Thomas: right

Mr. Todice: correct

Mr. Glover: And because it's a two family you need a reduction in dwelling, lot size per dwelling unit, square footage per dwelling unit from the required 7500 to 5740. And the side yard, the side yard is the side with the driveway?

Atty. Thomas: No

Mr. Todice: the other side

Mr. Glover: The other side. Okay, because you're going to give

Atty. Thomas: that little strip

Mr. Glover: the driveway that's not a driveway

Atty. Thomas: right, exactly

Mr. Todice: (unclear)

Mr. Glover: So the driveway that, the area that's allocated for the driveway, but that you're not going to use as the driveway the property line is going to be 8, 7 foot 4 from the house where 8 foot is required

Mr. Todice: Correct

Mr. Glover: Okay. Now the other one

Atty. Thomas: Well you missed one, you missed the frontage. You said lot square and lot frontage, once we go, it's lot frontage and lot square

Mr. Glover: Oh, okay

Atty. Thomas: because the lot frontage

Mr. Glover: because of the 60

Atty. Thomas: 60 right

Mr. Glover: Now, when we go to the other one, that's an R-3 zone

Mr. Todice: Correct

Mr. Glover: An R-3 zone only allows single family house, you're going to put a single family house

Mr. Todice: Correct

Mr. Glover: Alrighth. Now, you're giving us a choice

Atty. Thomas: I believe that the least intrusive variance is the one for an interior lot since we have the full size for an interior lot. Even though we realize that the regulations state that Planning and Zoning gets, so to speak, a second shot at us, we hope that they will realize that 4 times the courts have shot them down

Mr. Glover: I think the legal word is discretion, they have the discretion

Atty. Thomas: Well they don't, the four courts have told them they don't have discretion, so we, hopefully that will be understood by them that they don't have the discretion, so the least intrusive variance is going simply from 30 to 20 for the access-way

Mr. Glover: Alright, so let me, let me put this in people language now. The R-3 lot, if it were considered a front lot it would need 75 feet, and if we're going to consider it a front lot we have to give it 75 to 20.

Atty. Thomas: Correct

Mr. Glover: If the R-3 lot is going to become a rear lot, then you're required to have a 30 foot frontage and you need a reduction from 30 to 20 because you're only going to have to 20 feet

Atty. Thomas: correct

Mr. Glover: Okay. Simple huh?

Mr. Todice: No

Mr. Glover: Does the Board have any questions of the applicant?

Mr. Jones: Do you have any idea when the Board of Alderman will make a decision on the

Atty. Thomas: Obviously this was stirred up by our applications, by our request and they're beginning to look at it but we really have no idea on it

Mr. Conklin: What do you plan on doing with the property if you do acquire it? If they give it to you

Mr. Todice: build on it

several talking at once

Mr. Todice: Oh, the abandoned road? Nothing, there's

Atty. Thomas: With respect to his side it would just be extra square footage. It would be relatively, I mean, the end result would be the same which would mean to have a house, a single family house in the back using a common driveway so you don't have an extra curb cut and to do it, so it would look, everything would look exactly the same. I think the town's wrestling I'm sure with the idea given the nature of that side of the property whether or not it just would want to keep it as a strip. If we went this route and we did get it, most likely, since there's really no need to use it and my client would probably put in plantings along the top, we could even put a conservation easement. But I mean it's not our intention to want to disturb that. Our preference would be just to do it the way it is, rather than you know, touch it or

Mr. Todice: cut the trees down

Mr. Glover: If we okayed it the 75 to 20, it, we recognize it as a front lot. And then if nobody appeals it you've got a lot.

Atty. Thomas: If nobody appeals it, yeah

Mr. Glover: If nobody appeals it you have a lot

Atty. Thomas: right

Mr. Glover: If we do the 30 to 20, we're recognizing it as a rear lot, and the Planning and Zoning still has the opportunity to say no we don't want that

Atty. Thomas: Uh, they do because it's, they think they do because it says it in their regulations

Mr. Glover: but they do because it's in the regulations

Atty. Thomas: They have been told by their counsel dating back 15 years now that, beginning with it was a Bridgeport Hydraulic case now Aquarion, in which the courts told them you don't have the discretion. If the interior lot complies with the requirements, in other words, size in the back and everything and in this case it would be with the variance and the property. The other thing I should point out to you, since these are the maximum variances that were needed, certainly if the town chose to say we want to devoid ourselves of the property, my client could easily simply, when he does his split, make the front lot conforming. You know what I mean? In other words, he has the variance, he doesn't have to use the variance at that point because lots without variances, you know, are better than lots with variances. You know, you don't want to have to deal with that. So that would be the case. This is what would be required. Unfortunately, my client's in a position where the city, to be very honest with you, we have been dealing with them for 6 months?

Mr. Todice: Yeah, for a long time now, and I still haven't gotten nowhere

Atty. Thomas: Nowhere. It's been very frustrating

Mr. Glover: It's been a busy year, it's been a busy year. Alright, any other questions from the Board?

Mr. Harbinson: Water and sewers?

Mr. Todice: Yes, water and sewers, yes, sewer and water

Mr. Harbinson: Is the existing house tapped into sewers?

Mr. Todice: Yes it is and city gas also.

Mr. Glover: Any other questions from the Board? (no) Is there anyone in the room who is in favor of this application? (yes) Would you come forward and do your thing then.

Mr. Salemme: Mike Salemme, 40 Golden Hill Lane. I own property in the area and I would just like to say that I'm not opposed to a single family home being built here.

Mr. Glover: Thank you Mr. Salemme.

Mr. Salemme: You're welcome

Mr. Glover: Anyone else in favor? (no response) Is there anyone opposed to this application?

Ms. McDougal: Can I ask a question?

Mr. Glover: You can, come up, come to the front please.

Ms. McDougal: about the driveway issue

Mr. Glover: Alright, first of all, you have to give your name and address

Mrs. McDugal: Sure, Kim McDugal, 37 Birch Street. Right here, if for some reason they don't grant this driveway here, okay, if there's a problem, then part of this road is going to have to be taken, it's an abandoned road

Mr. Glover: No

Ms. McDougal: It's not?

Mr. Glover: No

Ms. McDougal: Okay, I mean, that's what you said but it sounded confusing before so I just wanted to clarify it.

Mr. Glover: They don't have any right to anything on Middle Avenue

Ms. McDougal: Okay

Mr. Glover: Okay? If, their driveway would be here

Ms. McDougal: Okay, I just, that's what I knew you said but I just wanted to make sure

Mr. Todice: The driveway would have to be over here.

Mr. Glover: Your property I think is over here?

Mr. Todice: No, she's

Ms. McDougal: I'm over here

Mr. Todice: she's over here somewhere

Ms. McDougal: Okay, so nothing over here is going to get touched?

Mr. Todice: Nothing

Ms. McDougal: Okay, just wanted to make sure. Okay, thank you.

Mr. Todice: Sound good?

Ms. McDougal: Sounds good

Mr. Glover: Could you be quiet?

Mr. Todice: Sorry

Mr. Glover: It's supposed to be monolog not a dialog. Anyone else in opposition? (no response) Final questions from the Board? (no) Then I'll declare the hearing closed. Thank you.

Mr. Todice: Thank you.

Later that evening the Board tabled the decision for #409-2 and #409-3 until the May regular meeting.

#409-4 54 Armstrong Road, Henry Kaminski of 54 Armstrong Road, Shelton, CT is seeking to waiver Section 24.12.4 by varying the setback from the left side yard from 10 ft. to 2 ft. for an accessory building (shed).

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

Mr. Kaminsky: My name is Henry Kaminsky, 54 Armstrong Road in Shelton

Mr. Glover: Hang on Mr. Kaminsky, we have to throw out some riff raff here. Bye now. Again, you're Henry Kaminsky

Mr. Kaminsky: Yeah, 54 Armstrong Road, Shelton

Mr. Glover: And do you have some pictures?

Mr. Kaminsky: Yeah, I do, I apologize because these are the only ones I was able to get. And I'm not sure exactly what you need here as far as the two letters that I sent out.

Mr. Glover: Tell me that's the sign on the pole

Mr. Kaminsky: That is

Mr. Glover: Good

Mr. Kaminsky: Then we're good then.

Mr. Glover; then you have great pictures

Mr. Kaminsky: I don't know what you need there

Mr. Glover: Uh, we just need to know that you've notified all your abutting neighbors?

Mr. Kaminsky: Yeah, I have two.

Mr. Glover: Okay, that's all I need

Mr. Kaminsky: Oh okay

Mr. Glover: We need it

Mr. Kaminsky: Oh, just give me the receipt on the back.

Mr. Glover: Alright, can you tell us what you want to do?

Mr. Kaminsky: Oh, sure.

Mr. Glover: It looks like a shed park

Mr. Kaminsky: Right, actually what I did was I had two sheds built awhile ago. I believe I had them built October of '02. This is my property

Mr. Glover: Go ahead

Mr. Kaminsky: Can I have those pictures back so I can show you? When I bought the property, I bought the property in '99 and you know, when they sold me the property he told me that, you know, I had wooded area all around me so this shows little wooded area on this side. This shows, this picture is from going up, because it's a big

Mr. Glover: incline?

Mr. Kaminsky: a very big incline there. And that's the shed that we're talking about right there

Mr. Glover: So it's up already?

Mr. Kaminsky: Oh, it's been up since, right here, I had it built October 20, 2002.

Mr. Glover: It's been there since '02?

Mr. Kaminsky: yes. Now, just so I can show you how the incline is and the wooded area. This is the area back here. Now this is the wooded area in back of the shed. I thought, I thought I owned this property all this time, about 20, 30 acres, I mean 20 or 30 feet. I didn't realize until I was served and I got a survey and this shed here I have it at 2 feet away. The reason why I built it there was because in order to, the picture there showing this, all the, over here is all ledge. There's so much ledge that you can't even see the shed from the road. Down here it's all, all of this, all of this property here goes on a slant. Okay? This is about the only level spot here and I can't do it here, I got a

Mr. Glover: Is this, is this the road here?

Mr. Kaminsky: Yeah, that's Armstrong Road

Mr. Glover: And that's a driveway?

Mr. Kaminsky: That, yes, that's a driveway to a house over here.

Mr. Glover: Alright

Mr. Kaminsky: I um, and uh

Mr. Glover: When were the other sheds put in there? There's one, there's what one, two, three, four, five, six, seven, eight sheds here.

Mr. Kaminsky: Yes, I understand that and I talked to Tom Dingle about that, that this hearing is strictly for this shed and I built over here a shed, alongside this barn here, which you know, I don't need no um, (unclear) I'm not asking for no variance or nothing because it's like dead in the middle. What I'm asking for is a variance here. Alright, and, you know, those are the two sheds that, you know, that we're talking about right now. I got these others here and I'm going to be moving those.

Mr. Glover: When were they put there?

Mr. Kaminsky: Okay, those were put, I bought them, '03, in November of '03

Mr. Glover: All of them?

Mr. Kaminsky: Yeah, a company was going out of business in New Jersey

Mr. Glover: So they were put there in '03?

Mr. Kaminsky: Yes

Mr. Glover: Okay, and this other one was put there in '02. The big one?

Mr. Kaminsky: Yeah, I believe so

Mr. Glover: According to this?

Mr. Kaminsky: yes

Mr. Glover: And did they put, these companies put them there or did you put them there.

Mr. Kaminsky: He built them for me, okay? He built this one, this one and I believe another one

Mr. Glover: Okay

Mr. Kaminsky: And these here, I bought them from this company. This company was going out of business, a clearance sale, you know?

Mr. Glover: Yep

Mr. Kaminsky: and I bought it from them, they're out of New Jersey

Mr. Glover: Okay

Mr. Kaminsky: I brought them up here, I just want to put storage

Mr. Glover: What do you use the sheds for? What do you keep in the sheds?

Mr. Kaminsky: Well after this one here right now it's filled with all antiques. What I do is I, you know, it relaxes me, you know, to repair antiques, to refinish them, you know to fix them up. I like them.

Mr. Glover: so the other sheds keep the antiques?

Mr. Kaminsky: Well, these here, these are empty basically right now. What I really wanted to do was a, I wanted to use a few of these antiques and I wanted to use one for all my boat-stuff for the winter time, one for the yard work, you know, and stuff like that. But you know,

Mr. Glover: And how did they, how did, if this has been here since 2002,

Mr. Kaminsky: yes

Mr. Glover: Why is it becoming an issue now?

Mr. Kaminsky: My neighbor's complaining about it

Mr. Glover: Okay,so he complained, made a zoning complaint and they

Mr. Kaminsky: I imagine yeah, Tom Dingle

Mr. Glover: Yeah told you to move it, that you'd have it move it

Mr. Kaminsky: Yeah, right. I mean it's not a, it's not a small, it's not a, you know it's made out of wood and everything you know, it's, well you can see it right there

Mr. Glover: And it's 12x24?

Mr. Kaminsky: Yes

Mr. Glover: Okay.

Mr. Kaminsky: I'm sorry I should have got bigger pictures

Mr. Glover: No, no that's fine. I don't need bigger pictures.

Mr. Kaminsky: I never did this before

Mr. Jones: Can you pick it up and move it?

Mr. Kaminsky: That'd be hard and plus I really don't want to, well, my hardship is I have no other spot to put it on my property. See, over here I can't put it there because that's where I, that's where I had to dig that 6 foot hole, when I put a deck on I had to, excuse me, I had to, I had to dig a hole here so in case my septic, which is over here, went, do you know what I'm saying

Mr. Glover: alright, so you had to a test hole

Mr. Cavallaro: that's a reserve

Mr. Glover: So that's your reserve

Mr. Kaminsky: Right, right, in case this one plops I got another spot over here. I just don't have no other spot to put it

Mr. Glover: Alright, any questions from the Board? (no) Is there anyone who, in this room in favor of this application? (no response) Is there anyone who is opposed? (yes) Would you like to come forward sir?

Mr. Tristine: Mr. Chairman and ladies and gentlemen of the Board, my name is John Tristine, I live at 56 Armstrong Road. I'm going to debate what Henry has just told you. If you look at this letter right here that I have from the Zoning, from Tom Dingle, when they did a survey of his property the sheds were not there in 2005. Now, he built this shed and another shed right here in 2006. He has a giant garage which was a horse barn that he can store things in. He has since put 8 other sheds, 6 of them on my property and this one is on my property, I believe. I measured it out 66 feet from my corner of my house and it's on there. He put these on here when he was putting them up in 2007 I asked him to move them, he threatened me and told me don't start any trouble. Now, here's the picture of the shed on my property line. That's one of them. He does not collect antiques. He owns a bunch of properties

Mr. Glover: The fence is your property line?

Mr. Tristine: Yes. He owns a bunch of properties and he stores toilets, stoves, furnaces and I also have another letter because he has a pending court case with the City of Shelton. And it's in this letter because he has right on here unregistered vehicles, trailers, campers, building supplies, oil tanks, furnaces, stove (unclear) and many other items. He stores what he doesn't use and what he uses at his properties, other

properties he owns around different cities. I've had rats run down my hill from where he stores all this stuff. I've asked him time and time again to move the sheds away from my property. He just doesn't want to agree, I try to be a nice neighbor with him. He will not talk to me. He's not a nice man. Here are some other pictures that I've taken of stuff on his property. This is the view I have from my front door of the shed that he built in 2006. This is from my front stairs. These are the other 8 that he bought in 2007 which I'll have a neighbor come in and testify if you like, that he just put there. These are all on my property. That's, these little green sheds that he put here and it looks lovely from my house, right in my front, my front door. This is pictures from my backyard. So, I'm asking you to deny this variance because he's not telling you the truth and he does have a court case with the City of Shelton.

Mr. Glover: Alright, so your testimony is that the

Mr. Tristine: these sheds are on my property

Mr. Glover: the shed that's in question, because

Mr. Tristine: this is this one here, that's definitely

Mr. Glover: that was

Mr. Tristine: pretty close to it, that was done in 2006 because it says right on the letter that they did a survey of his property and it wasn't there when they did the survey in the letter I just gave you. They looked up on Mapquest

Mr. Glover: You're talking about the City, the City's letter?

Mr. Tristine: yes. And again, he has this giant, he has an acre and a half of land. He's got a giant garage here which was, you know, used to hold horses. And then he has this other shed that he built without a permit and this one without a permit. And now he's putting 8 more here. So he has a total of 10 sheds plus this giant garage. He's a pretty big antique dealer. He's storing his stuff for his houses because you can see I had to call zoning because he stores all the stuff he takes out of the apartments or the houses and stores them in a shed, so he can use them when he needs them. It's a junkyard back there.

Mr. Glover: Alright, so your testimony is that the shed that's in question, that was put in '06

Mr. Tristine: yes

Mr. Glover: Do you know when in '06?

Mr. Tristine: I couldn't tell you. It was, I don't know exactly when. It could've been fall '05 or spring '06, I'm not really sure. I really wasn't paying attention to him at the time. There were a lot of noise and stuff. I know he put a deck up without a permit and one of the neighbors called in on him, and that was in '05 because that's on record too. And then after the deck he put up, I think this one says, if not listed on his data sheet in 2005. Here was my letter which I sent to the zoning board in '06

Mr. Glover: Your letter was '07

Mr. Tristine: '07, I'm sorry

Mr. Glover: Okay your letter says in the, in '05 he built a deck

Mr. Tristine: yeah, that's when he took, he had a permit taken out for the deck, and then after the deck he built

Mr. Glover: following that in the fall he built a shed which I believe is on my property

Mr. Tristine: I believe it was '05, but it could've, I'm not really sure

Mr. Glover: So the you think the fall of '06 is when he put the shed up?

Mr. Tristine: It could be, I'm not 100%, because it was between either '05 in the winter time or '06 in the spring

Mr. Fitzgerald: Did he walk on your property?

Mr. Tristine: I, I really didn't pay attention to him to be honest with you. I know when he put these other little sheds up they're actually on my property or leaning over on my property. There's a fence there I showed you a picture of that. This was, I gave you a picture of it. And I questioned him and asked him to remove them and put them somewhere else on his property so I didn't have to look them.

Mr. Glover: Alright, so in the fall of 2006 he brought in the little sheds

Mr. Tristine: Yes. He may have bought them in '02, but they were not there and I have a neighbor that'll testify

Mr. Glover: that's alright, but in the fall, I'm trying to find out when the shed, when the shed that's in question was put there

Mr. Tristine: I'm going to say it was either the end of 2005 or beginning of 2006. I couldn't tell you, around that time. I put on that letter was the end of, the fall of 2005.

Mr. Glover: Alright, so, you believe that the big shed was either fall of 2005 or

Mr. Tristine: that's when I wrote the letter so I would go, I would stay with that

Mr. Glover: or spring of 2006

Mr. Tristine: yes, if you read the letter from zoning, when they did the survey it was, it was not there in 2005

Mr. Glover: well, it says it wasn't there in 2005, in August of 2005

Mr. Tristine: right, so it had to be either after, it was put up after that obviously because it wasn't there in August of 2005, so it could've been, that's why I'm saying it could've been after that or 2006, I'm not really sure.

Mr. Glover: And when you say spring of 2006, you're talking like this time of the year?

Mr. Tristine: Yeah, spring time, I know it was done in spring or fall. I really don't remember to be honest with you. I really wasn't paying attention when the first one was up and what really sparked me was when he put the other 8 sheds on me, and then I, and then all the garbage that's in his back yard there. Because I was kind of tolerating the noise and everything else because I knew he was building in the back, but when he started putting it all on my property and, then that's when I wrote the letter to zoning.

Mr. Glover: Alright, thank you. Mr. Kaminsky?

Mr. Kaminsky: Can I reply no this?

Mr. Glover: Yeah, you're going to reply in a second. The shed that's in question. I don't want to talk about the little sheds because they're not part of this.

Mr. Kaminsky: Right

Mr. Glover: The shed that's in question you say it was put up in 2002

Mr. Kaminsky: right

Mr. Glover: and this gentleman says it was the fall of 2005 or the spring of 2006, do you, do you remember when it was put up? It was built?

Mr. Kaminsky: It was built then, I mean you can see, the shed that we're talking about is, you know, it's close because it's 2 feet away. It's not on his property. Okay, I had a guy, you know, a (unclear) did this, you know

Mr. Glover: What's the date on that?

Mr. Kaminsky: It's just been done

Mr. Cavallaro: '08

Mr. Kaminsky: I had to do that for the Planning and Zoning

Mr. Glover: Alright, so your testimony is that the shed was built, you had a bill or something, you said that the shed was built by the Mosely Company

Mr. Kaminsky: right

Mr. Glover: of New Haven

Mr. Kaminsky: Right

Mr. Glover: And you're saying that they built it in October of 2002

Mr. Kaminsky: yes

Mr. Glover: and the, okay, and they erected it, they built it on your property?

Mr. Kaminsky: yes

Mr. Glover: Okay, can you, can you get any, a letter or anything from them saying that it was put there in 2002

Mr. Kaminsky: and built?

Mr. Glover: that it was built there in, they built in 2002 on that property

Mr. Kaminsky: right,

Mr. Conklin: (unclear) a cancelled check?

Mr. Glover: No, because he could have bought it but not put it in, you know? I thought about that but, does that say build Ed?

Mr. Cavallaro: to be built on the property of (unclear)

Mr. Glover: Is the Mosely Company still in business?

Mr. Kaminsky: I don't know, I haven't worked with them in a couple years

Mr. Glover: Is there anyone else in this room who is opposed to this application? (no response)

Clerk: Mr. Harbinson would like to see that survey, do you have that paper?

Mr. Glover: The only shed that's in question is the big shed. The only question is the big shed. The number of sheds or the positions of the other sheds is irrelevant to us. It's just that big shed.

several talking at once while looking at survey map

Mr. Harbinson: Am I correct in assuming that we have a disagreement as to where the property line is?

Mr. Glover: No, we have a disagreement of when the shed was put up

Mr. Tristine: 10 feet away from my property

Mr. Glover: Any questions?

Mr. Conklin: Are we going to close this or leave this open?

Mr. Glover: I'm going to leave it open because I have some legal questions about this. Alright, I'm going to leave the hearing open until next month and you should try to find out from the Mosely Company when they put this up. We have something from the Assessor that says in August of '05 it wasn't there

Mr. Kaminsky: Well, I can explain that, because I do remember what happened. It was a college girl walking around doing the survey, you know, checking and everything. And I remember I was out in the front yard planting flowers and she just came and she asked if anything new or anything and I said no. And, because I didn't think of that, but I'm just, can I see them pictures again so I can show you something?

Mr. Glover: Which pictures?

Mr. Kaminsky: The ones I took. I didn't think there, it was there you know, it was there but, you know, when I put it up I didn't think I had to take, I was probably wrong but I was under the assumption that if you put footings in the ground then it's a structural structure. And what I did was I put it on cement blocks and I didn't realize

Mr. Glover: right, I understand, I understand what your thinking was

Mr. Kaminsky: okay

Mr. Glover: but I just don't know, I'm just not, I don't know when it was put there

Mr. Kaminsky: Oh, okay

Mr. Glover: That's

Mr. Kaminsky: I was just trying to clear some things

Mr. Glover: I'm trying to, you know, we have an August letter from the Assessor that says it was not on the Assessor card in August of

Mr. Kaminsky: What I was saying about the girl, she never came onto the property or nothing, you know, and I

Mr. Glover: And the deck was built in '05?

Mr. Kaminsky: I'm not sure, I didn't bring no information on that

Mr. Glover: Okay

Mr. Kaminsky: I'm not sure about that at all

Mr. Glover: I'm going to leave the hearing open.

Mr. Kaminsky: When's

Mr. Glover: Next

Clerk: The third Tuesday

Mr. Glover: I have a copy of the Assessor's card for 54 Armstrong, 2005 list and it says permit #1291 for a deck. Okay? And I don't see anything on here about any accessory buildings. So, you, in the next month you need to go and find the Mosely Company and find out, because you didn't take a permit for it

Mr. Kaminsky: No I didn't

Mr. Glover: so we have no record of when it was put there

Mr. Kaminsky: I mean, like you know, when the inspector did come to look at the deck, he wouldn't even have seen, I mean you know, these sheds are way over on the other side of the property. Know what I'm saying? I mean by just by looking at the deck he wouldn't have seen that shed

Mr. Glover: It's we have a discrepancy. One gentleman says it was fall of '05 or spring of '06. And you say 2002.

Mr. Kaminsky: right

Mr. Glover: It's important to me to know when, when the structure was put there because the, sometime in that period of time the zoning regulations did change from 10 to 30 and although, it shows that its 2 feet from the property line or over the property line

Mr. Kaminsky: (unclear) I'm not disagreeing

Mr. Glover: but it either shows it 2 feet from the property or over the property line

Mr. Kaminsky: right

Mr. Glover: we don't know when it was put there. And that's a, that's a fact that I need to know whether it was fall of 2005, spring of 2006 or whether it was 2002

Mr. Kaminsky: whenever it was

Mr. Glover: because they are significant facts

Mr. Kaminsky: So you want me to come back

Mr. Glover: I want you to come back next month and I want you to try to find out from somebody, if you said the company built it they must have a record or a bill and they can put on their letterhead that they built it for you in such and such a time or if you can find a cancelled check for if, or they can, it would be important to me to know when it was put up.

Mr. Kaminsky: Sure, next month it's

Mr. Glover: third, its' always the third Tuesday.

Mr. Kaminsky: Okay

Mr. Glover: Yeah, we're all set for tonight. Alright, I'm going to continue this hearing until next month.

Mr. Kaminsky: Thank you.

#109-4 60-64 Huntington Street, 60-64 Huntington Street, LLC, c/o Dominick J. Thomas, Jr., Esq., of 315 Main Street, Derby, CT is seeking to waiver Section 24, Schedule B, Standard 7 by varying the minimum setback from the front property line from 40 ft. to 10 ft. for a two story commercial building.

Later that evening during the work session the Board, upon motion by Mr. Cavallaro and seconded by Mr. Conklin, unanimously voted to deny the request for a variance in the minimum setback from the street line, since no hardship within the purpose and intent of the zoning regulations was demonstrated as the Board felt the proposed structure was too intense for the size of the property.

Approval of Minutes

During the work session the Board upon motion by Mr. Conklin and seconded by Mr. Jones, unanimously voted to accept the minutes of the February 17, 2009 hearings as submitted by the Clerk.

Respectfully submitted,
Loreen Michalak, Clerk