

TOWN OF MOUNT PLEASANT

MINUTES OF THE MEETING OF THE ZONING BOARD OF APPEALS TOWN OF MOUNT PLEASANT WESTCHESTER COUNTY, N.Y. HELD APRIL 10, 2025

CONTINUING APPLICATIONS:

NEW APPLICATIONS:

Aldo Vitagliano (Applicant) for Saldi Lane Associates, LLC. (Owner) of premises located at 434 SHERMAN AVE, HAWTHORNE, NY 10532.

Designated on the Tax Assessment Maps of the Town of Mount Pleasant as 112.6-4-28.

Declaration that the vacant lot is a building lot, per Town Code §218.3 “Lot; a parcel of land not divided by streets... and having its principal frontage on a street or on such other means of access...”

Aldo Vitagliano: There were materials that were uploaded for this, but I think I'm trying to create a record that will help explain this, for it. So, the first thing that I'd like to do is to give the board a history of the property as it relates to, the specific deeds and how ownership came to pass. Very simply, the house, I believe, was built in or around 1932. There was an application for a permit for a garage in 1932. It was acquired in 1946 by Mr. & Mrs. Litchauer.

In 1948, they purchased one of the lots up on Warren from the town of Mount Pleasant. In 1951, they purchased another lot from the Town of Mount Pleasant. Mount Pleasant had acquired them by way of an in-rent foreclosure. As the Board is well aware, this is part of what we call the Smadbach, properties, subdivisions going back to 1892 where the town was divided up. This portion of the town was divided up into 25 by a hundred lots. People would come up on the railroad, buy a lot, for it eventually build on some of them. All these lots got transferred into one deed in 1962. Okay? Jelinek, it gets conveyed from the child to Jelinek. This is all that I've provided for it. The properties have always been maintained two separate tax bills for as long as I'm aware of.

Sherman Avenue side and another one for the Warren Avenue side. So for town purposes, the two on Warren Avenue were merged into one tax bill, for it, and, Sherman Avenue always maintained a separate tax bill. So these lots were eventually conveyed by a series of other deeds. Soliano, to Bone, Then Bone gave her interest to Soliano, and Soliano to Zuczynski, and then Zuczynski to a

trust. Then the trust, conveyed in 2024 by separate deed to you know, my client, 434 Sherman, but also the Solar Lane Associates. So we're filing this application on behalf of Saldi Lane Associates on the Warren Avenue side. For the record, I only have one copy of this, but I do have copies of all the deeds, that can in case there was need to look at what I just referred to. This is one. This is one set. So this is just probably should go to Cathy if you want to look at all the deeds that are referred to that as one set.

So the next thing that I have is a, survey of the property, currently, as well as a survey from, 1962. The 1962 survey was part of the record, that the town had maintained, but I'm just we have separate two pages, six sets, I believe. I'm sure that the bird has visited the property, but I'm including some one set of photographs just for the record. Then we have six sets of the municipal, records, for, this property, on Sherman Avenue just to show that, there was a garage permit in 1932. There was a permit for a replacement of the garage, later on, in 1955 and then there's reference to the Zuczynski, application before the Zoning Board.

We had looked at the possibility as to whether, this fell under the category in the Town Code for undersized lots. There's a provision that was put into the code, I think, in 1969, to address, the fact that some people had accumulated lots that were less than, current zoning, for it. This isn't an R-10 zone, for it, and so something was added to the code. We are not coming before you on that provision because the, property was in common ownership even though it was separate, deeds, you know, for a long time, for it in separate tax lots, but we just pointed out just to avoid any confusion. It's kind of a confusing statute, but we're here on the basis of, that we believe that the Warren Avenue lot is what we call a back-to-back split. The concept of back-to-back split is something that came about in the late 80s, where the courts recognized that where you had these types of properties, where people had, lots that were, street to street. That it there was a need for, some relief to be granted because otherwise, there are parcels that didn't necessarily comply with the, area requirements of the zoning ordinance and so therefore, people would be left with property that didn't fit into the neighborhood.

Typically, you have houses backyard to backyard, that front yard is on a street, such as what the entire area was designed to be. The entire subdivision going back to the 1890's was streets running by with lots back-to-back, so to speak. So the concept of back-to-back split is something that emerged in, courts, from cases and there are certain, requirements for them, okay, which basically is you have to have frontage on separate streets, meet the depth characteristics of the area as it has developed, and the purpose of showing the surveys is to show that the Warren Avenue lot has a hundred-foot depth, which is what's required by the code, for it. Then they're never used in conjunction with each other, and we maintain that the use that may have occurred over the years is very casual, for it, in terms of that. There was no, interaction there between, the two lots.

I understand and I've read something that was put in by an adjoining neighbor relative to the fact that there was a fire pit, I don't know if there was a shed at one

point in time, for it, but we believe that to be casual, it wasn't required. We think the intent of the property owner is important. For 1955, even though they had the ownership of the other two parcels, they took out a permit to replace the existing garage on the 430 For Sherman lot. They could have pushed it back if they wanted to onto the other property they had required, so obviously there was an intent to maintain the, separate nature of what's there. If you look at the configuration on the survey, it's going to be very difficult to do anything other than what we're proposing that the Warren Avenue side be allowed to be developed as a lot. While you have area and you could build a bigger home, you theoretically probably wouldn't even meet the, side yard setback requirement because the property on Sherman Avenue is a narrow lot in conformance with other properties there. The rear portion is much wider, for it. So you'd have to almost have, like, a breezeway to get to any further development, and that would look totally odd if it was to be developed in that fashion with some larger residents on it. So we're here to answer some questions. There is some case law that we can, you know, kick up, for it. There's also a precedent of this board in terms of recognizing back-to-back splits. But with back-to-back splits, we don't that's one of each. Back-to-back splits, we don't really need anything, from it. We're here to basically ask for a declaration just to avoid any confusion, for it. I'm handing up a record in the case of, Cervillo, which was 345 Linda Avenue, where basically with a back-to-back split, was indicated.

That's pretty much our presentation. I'm sure there will be some questions, which we're here to, answer or you can hear from, any of the neighbors first. I understand that at least one neighbor, on Sherman Avenue wrote a letter, I believe, to the, Zoning Board indicating they have no opposition.

Chairman Prezner: They were in favor, I believe, of the application. One of the concerns, I know it's outside the jurisdiction of the ZBA, but when we did our inspection of the property we took a look at the property, both properties. One of the things I noticed that probably from the street, this is the one on, Warren Avenue, it comes in about maybe 20 maximum 30 feet, and then there's a sheer drop from there. Okay. So that's I know it doesn't fall within our purview, but that's a steep slope. You have to go have some sort of verification on the steep slopes. That's a tough piece of property to build on. You know? It's a tough piece of property, but it's in keeping with, you know, the neighborhood. I'm not disagreeing, neighborhood is up on a hill. If you go to Linda Avenue, another spot there, you got houses with no backyard, and they got a mountain behind them, on the other side, it's like Pasadena, California.

Board Member Mr. DeCicco: Just one question. Mr. Vitagliano, when I was looking at the, at the application, and I was looking at the case that you cited, the Morin versus, Irvington ZBA. Yes. I noticed, the Irvington matter was an area variance that was, improvidently denied by the, by the Board. This application is designated as a declaration? Aldo replied; Correct. Is that one of the specific, permissible functions of a zoning board? I thought it might be more of an interpretation, which is specifically permitted. I wasn't really sure. I think it's a

question of semantics, for it. There's no ruling of the Building Inspector, for it. We had asked the building inspector for a ruling. It was kicked to Town Attorney, and, it was kind of like, you know, it just got the Zoning Board, so we didn't necessarily have our ticket punched. Okay? Okay.

That's how I characterize it, to me, its semantics, for it. Would it fit within the authority of the board, pursuant to an interpretation, or would that not be consistent with what you're representing? It fits within the authority of the board, but the board may not even have jurisdiction to hear it if it's a straight back-to-back split. So somebody has to rule that it's a back-to-back split.

Aldo V.: Either your board has to say, it's not a back-to-back split, so come before us and build inspector, give it denial and or whatever. So we're trying to get to where we have to be, which is for determination. Is it a lot? Is it not a lot?

Board Member Mr. Hlapatsos: Well, I understand what you're saying. We're work trying to work through it, but it would seem to me that the more regular process would have been to get a decision from the building department saying that this is not a back-to-back split, and then you would come to us to challenge that interpretation. That would have been the more normal course of business, perhaps? Theoretically.

Paul Rubio (438 Sherman): I reside in Ulster County. My mother, Helen Rubio, is here, who owns, 438 Sherman Avenue, and I'm a trustee to that property. I'm not an attorney, and I'm just preparing what I what I could here. Here are some attachments if you would like to take some, I would like you to take a minute to look at those attachments. They start as, figure a, and I'm you know, they can certainly be provided to the attorney. It's not I'm not disputing anything. You know, you're welcome to do that. I wanted you to look at them first before I read so that you have some information as a point of reference. Those are just some aerial photographs and some local photographs of the property. Also, there's a square footage of the lot of both the lots, Lot 28 And 434 Sherman.

I do appreciate the opportunity to come and, respond to the application. So I'm going to read what I have through here. My name is Paul Rubio, I am here as to formally respond to the arguments raised in the letter from the attorney representing Saldi Lane Associates. As the son of Helen Rubio, who resides at 438 Sherman Avenue, directly adjacent to Lot 28, I'm the trustee of that property, and I strongly oppose the assertion that this parcel is buildable by as of as of right. I'd like to respond to the claims in his attorney's letter dated 03/17/2025. First, the attorney, for the applicant asserts that Lot 28, quote, retained its attributes of a separate building lot, ownership by way of separate deeds at 1958, retention of separate parcels over the years, end quote. He also asserts that Lot 28 has maintained its character as a single-family building lot. These claims are both legally and factually incorrect.

Again, this is my perspective. Lot 28 has never functioned as a separate building lot. For decades, it's been a, for decades, it has been and continues to be held in

common ownership with 434 Sherman Avenue, Lot 34, and used as a spacious backyard. There's no fencing, no history of independent use, no indication it was ever treated as anything other than an extension of 434 Sherman. In fact, the rear third of Lot 28, approximately 2,300 square feet, shares the same elevation as 434 Sherman.

Until the sale of both properties to the applicant in 2024, it included a tool shed, fire pit, picnic tables, seasonal storage. These are all signs of long standing active residential use confirming it as an integral part of the property at 434. While it may have retained a separate deed or tax parcel, these administrative distinctions don't override what I believe to be the zoning code. The attorney asserts, in essence, it's half of a back-to-back split whereby each lot retains the status of a separate building lot. Despite its general historical understanding, the term back-to-back split doesn't appear to be anywhere in the Mount Pleasant zoning code.

The concept is not codified as its owning right. It's an informal term with no legal force, thereby always open to interpretation. Even if one is to accept the general understanding of back-to-back split, that designation depends upon the practical and functional separation of the two lots even when they be are held in common. There's no evidence that Lot 28 was ever treated separately from 434 Sherman. In fact, quite the opposite. There's no fence between the properties, no driveway access from Warren, no history of separate use, lease, or address. Lot 28 abuts 434 Sherman at the exact same topographical level as and has been used continuously as a continuous functional backyard for over sixty years. The attorney for the applicant asserts that Lot 28 was held as a separate parcel since 1958, entitling it to treatment under section two eighteen seventy-nine. We believe the attorney is correct in that, in this circumstance, Lot 28 is subject to consideration under 28-17, but only in so far as 28, 2879.

In fact, by operation of law since 1958, lot 28 and Lot 434 have been merged. To summarize that provision, lots that are undersized and under common ownership at the time the zoning ordinance was enacted in 1958 are automatically merged and must be treated as a single conforming parcel. This language means that merger occurs by operation of law. No filing of deed or merger is necessary. The fact of common ownership in 1958 combines with non-conforming undersized status creates the merger, and thus, the Lot 28 ceased to exist as a separate building lot at the time. Any argument, that it retained independent status misrepresents the law and ignores both the statute's language and its intent to prevent workarounds, to prevent workarounds that exploit its intent to prevent workarounds that exploit historical lot lines for new development on substandard parcels. The applicant's attorney also refers to a series of legal cases, Guazzo versus Chave, but these cases are not relevant in my mind in this case. When 02/1879 a was adopted in 1958. Again, §218-79 a mandates that contiguous commonly owned substandard lots must be combined.

It's binding law, even if you accept Guazzo as a persuasive, authority. It applies only where merger conditions are not met. In this case, conditions are met. The applicant's attorney, cites case 07-53, in which the board allowed development on a parcel described as a back-to-back split to support the claim that Lot 28 qualifies

similarly as a buildable of a lot. However, this case is not applicable to the, to the case before the board for the following reasons.

There's ample evidence that Lot 28 was under no understanding there is ample evidence that Lot 28 was under no understanding back-to-back split. In fact, it was legally and functionally merged with 434 Sherman since 1958. As stated above, the rear third of the lot has, for decades, been long been the use of a continuous backyard at the same elevation. The same elevation. My mother can who has lived there for the past forty-seven years can attest to that. Moreover, case, 07-53 didn't involve lots that were merged by operation under law, under a law such as §218-79A. The attorney states, due to the topography of the lots, it's impractical for the subject parcel to contribute to the value of the or the utility of Parcel 434. The facts overwhelmingly refute this claim. As stated before, the rear third of lot, hundred square feet of which rises no more than 3-feet above the easterly contiguous border with 434 Sherman. Up until the sale of both properties, it included a tool shed, fire pit, picnic tables, and seasonal storage.

Its utility is self-evident as it has served as a backyard for April under common ownership for at least sixty years. Since Lot 28 And 434 Sherman were merged by operation of law in 1958 under §218-79A., This large 2,300 square foot backyard has quite obviously contributed to the significant value of the combined lots. Finally, the attorney states the adjoining neighbor to the north, has a lot similarly situated and upon information, we believe has been in separate deeds since 1958. The attorney is referring to Lot 27. This lot is contiguous with my mother, Helen Rubio's, four thirty-eight Sherman Avenue, lot 35.

That lot has frontage along Warren Avenue, has the same topographical layout, and just like with Lot 28, the rear of Lot 27 abuts my mother's parcel, and one third of it serves as my mother's backyard. However, unlike Lot 28, Lot 20m, and 434 Sherman have existed under one deed, and were subject to the merger as mandated under §218.79A. The town has already applied this principle to Lot 27 And 438. Lot 20 is no different and must be treated consistently. Granted, different treatment of Lot 28 would not only undermine the intent of the code, it would invite claims of arbitrary and unequal enforcement. In conclusion, Lot 28 is not and cannot be a building lot as of right. This determination is not a matter of interpretation, it's a matter of law. §218-79A. clearly and unequivocally merged those two lots, in 1958 by operation of law. The merger wasn't discretionary and subject to change of a sale or tax map, number. No subsequent sale or tax map number can undo it. I respectfully urge the Zoning Board to reject this this application and uphold the integrity of Mount Pleasant zoning law. Thank you for being patient enough to let me read the letter.

Chairman Prezner: Thank you. I have I have one question. On Lot 28, portions of Lot 28 were used for let's let me rephrase it. 434 Sherman used part of Lot 28 over the years as a part of their property. Their everyday property. Let's put it that way. Mr. Rubeo replied; Yes. Alright.

So if, they had a tool shed over there or they have barbecue grills or anything else, it's been in used that way since the beginning.

Board Member Hlapatsos: Just with regard to the factual, claims that you made regarding the, use of the property for various purposes, the shed, fire pit, picnic table, and the like. Right. I know in a general sense, you've, asserted that.

Do you have any, additional information, such as the frequency of its use, how long those additions to the property indicated there was a shed at one time. Do you know when the shed was there? When it was removed? I mean, just some things to give us some color other than claims that there were four things on the property at some point over the last sixty years. Mr. Rubeo replied; Not to say that that's not accurate. I understand that, I was hoping it no. I understand that given the fact that you're sitting here looking at the documents trying to make a judgment about this. I can I can defer to my mother who has lived there for 47 years? I don't want to impose on anyone to be in an uncomfortable position. I was just asking if you had some additional information that you could offer. If you're not able, that's you know, I didn't I didn't have time to look through all of our family photos to of all the parties and things we had at my mother's house, where we could clearly see what was going on next door and what was happening next door, nor did I have time to document my own experience being there and witnessing people using the backyard there. So I'm sorry that I couldn't do that. I understand you don't want to have to swear your mother.

Mr. Rubeo (438 Sherman): are you asking for proof that the other than the aerial photograph, which was taken in 02/2014, I believe, that usage, you know, is proof that was happening for the past sixty years? That, that was a backyard and it was in use for the past sixty years? I'm asking how long was it used in each one of the ways to the best of your recollection? Was it used did it have a shed on it for sixty years? Maybe it did or maybe it didn't. I don't want to assume. I cannot tell you precisely how long those things have been on that property for that long? The reason I responded to it in the is because the letter states that it's clearly, it was no utility, that that property, Lot 28, had no utility till 434. That's an obvious misconception in my part, a misrepresentation. So that's why I said, you know, that's not true. It's been used as a as a backyard. It's had utility and value, depends on how you rate value, actually define value. So simply stated, I was responding to the what the attorney put in his letter about the utility.

Board Member Hlapatsos: I was just trying to get as much detail as I could. That one really hit me. I understand, everything you've said. Thank you.

Mr. Rubeo (438 Sherman): If you walk to the back, if you walk to the back of that house, it looks like it's the backyard. In fact, anyone seeking to purchase the property which is for sale right now would assume, unless they read the documentation, that it was the backyard yard, or that it is the back yard currently. I believe that, I took an oath.

Tammy Stefan (412 Warren): I live directly across Warren Avenue from the property under consideration today. I'm here to express my strong opposition to Saldi Lane Associates application to build on Lot 28. As a long-time resident who has observed this property for years, I can confirm that Lot 28 has always functioned as the backyard of 434 Sherman Avenue. I've seen the tool shed, fire

pit, and picnic tables that were there until recently. There was never any suggestion that this was a separate buildable lot until the current developer purchased both properties. I'm not a legal expert, but I understand that our town's zoning code is extremely clear on this matter.

§218.79A. states that when undersized lots were under common ownership in 1958, they shall be combined into a single parcel. This isn't optional or subject to interpretation, it's mandatory. This provision exists for good reason, to prevent exactly this type of attempt to exploit old lot lines to build on substandard parcels. Allowing this development would undermine the minimum lot size requirements that protect the character of our neighborhood. I'm particularly concerned about the precedent this would set. The developer's reliance on the undefined concept of a back-to-back split, a term that doesn't appear anywhere in our zoning code. Seems like an attempt to circumvent clear rules that have protected our community for decades. What's especially telling is that the lot to the north, Lot 27, which is in an identical situation has been treated as merged with 438 Sherman Avenue. Consistency in apply applying our zoning laws is essential for maintaining public trust. Our zoning code was carefully crafted to preserve the character and quality of Mount Pleasant's neighborhoods. I respectfully urge you to uphold those these standards by denying this application, which clearly conflicts with both the letter and spirit of section §218.79A. Thank you for your consideration.

Kevin Hopkins (405 Warren): I'm right next to the to the lot. Actually I was going to have a few questions, but also just a couple of the comments. One is that it was used as a yard. I live next door to it; I actually am looking down on it. They always were out in the yard, you know, entertaining, hanging out. So that's true. The other thing is from one of the earlier comments is that, you know, the attorney said they probably kept it for the purpose of selling it at some point. The reality is if you live behind it, next to it, the other side, my other neighbors are here, it's a tree filled lot, so people like that.

You have a lot of privacy in the summer. So, I would imagine the people that live below it were looking up in a nice lot full of trees as opposed to a house was beneficial, and that's probably why it was never built on for years. I just had, like, question two is, what is the size of the lot versus the standard size? Like, when you say a small lot. It's an R-10 zone, which means 10,000 square foot lot.

Chairman Ron Prezner: This lot is 5,000 square feet. So we call it a substandard lot. It has nothing to it has everything to do with size, nothing to do with quality. Okay. Just that it's for that 10,000 square foot area, it's a substandard line. It's below if you had 9,999.9 feet, it still would be substandard because it's not 10,000 square feet.

Kevin Hopkins (405 Warren): Alright. Thank you for that. I haven't seen the design. Like, where did like, how far is it from the other houses? Is it everything else within standard or any other variations? Mr. Prezner replied; What we're concerned about with the zone we follow state law §267.B is it self-created 99% of the time, it's self-created. Does it have an effect on a community? The neighbors in the community? It may.

Board Member Mr. Doerr: That something the Planning Board would ask to

review, or it comes under you, you are also on a hill. So water goes in one direction, and that's down. What I would say to you, sir, is that the issues that you're bringing up are certainly important and relevant, and I would be concerned about those too. The board's role tonight is just to decide whether or not really anything could even be built there in the first place. Then if depending on what we decide, then once there's an actual plan as to what actually wants to get built there, that would be determined.

Chairman Ron Prezner: My opinion is, at this time, I'd like to adjourn this meeting at the next meeting. Mr. DeCicco replied; Mister chairman, can I make a suggestion of this? Yes. Can we hear from the attorney again?

Aldo Vitagliano: I just wanted to correct the, the record on the show that we provided. There is a notation that Ward Carpenter calculated the area of the lot on Warren Avenue to be 8,131 SF. not 5,000. There's a little notation down here so just to correct the record. If there are any questions, I'm sensing you want to adjourn it. If there's anything you need from us, please indicate. I'm just curious if you have any not that you have to at this time, but if you have any specific responses to the gentleman, Mr. Rubio? Mr. Vitagliano replied; regarding use or merger by operation of law, if you're prepared to respond to any that tonight. I mean, the section in the code is there. We're not refuting that. If I mischaracterized anything in my initial letter, closer detail, I've provided the detail tonight. I think the concept of back-to-back split well not in the zoning code, has been recognized by this Board.

That's, precedent, that's important, but it basically comes out of state courts saying that when you have this type of development, it makes sense for there to be back-to-back development and back-to-back splits to be permitted. And if we're not disagreeing with the casual use, but that's what we're kind of calling it. You know, a fire pit, there is no indication that the shed was legal. There's no permit that's filed. I've given you the municipal record in terms of that.

So if it was a shed and it was an illegal structure, okay, for it. That's another factor for this Board to consider, but a picnic table can and quite honestly moved. The neighbor next door may be in the same situation where they can have a back-to-back split. I get the sense that they may have been denied at one point in time. I don't know if that's accurate or not, for it, but I believe they're in the same situation where they have, the potential to develop their property with a back-to-back split if they chose to.

Board Member Mr. DeCicco: Mister chairman, I would move that we, close the public hearing and adjourn for decision only unless there is a, another application to just continue the public hearing on the on the next date. Mr. Prezner replied; I'm comfortable closing the public comment. I'm not mister chairman, I'm not prepared to make a decision tonight. I would like to re review and then again, if we close for decision only, we could, come back and state on the record, more thoroughly why or why not we are making the decision we're doing. Well, my personal feeling is that there's a lot here that are presented both by Mr. Vitagliano and also by, Mr. Rubio, two other people here, before us. For the Board to make a decision at this time, I don't think it justifies. We should sit and, discuss this, and

absorb what we have here. There's a lot to absorb, and then take it up at the next month's meeting. It certainly can be put over.

Mr. Rubeo: Relative to what you're saying, if, you vote to close the public hearing, if you provide the opportunity for, and you don't consider right now, can you provide the opportunity for us to respond to the material that we provide by the attorney to see if they so that we have an opportunity in writing. We don't have to have another public hearing, but we can keep open the possibility that we could at least respond to his consent. There's real information that I did not have from that letter that was presented this evening.

Chairman Ron Prezner: Well, you have a month because if we adjourn this. A specific date by which submission is made to be submitted to Mrs. Naclerio. May 1st would be the deadline for any submissions.

Motion to close the public hearing for decision only with, further submissions to be allowed by May 1 by, any party that wishes to do so made by Nick DeCicco, seconded by Adrienne Novak. All remaining Board Members voted in favor.

Joseph & Veronica Costanza (Owners) of premises located at 8 FOSTER PL, PLEASANTVILLE, NY. Designated on the Tax Assessment Maps of the Town of Mount Pleasant as 106.8-2-6. The application is for a proposed 6-foot-high fence in the side yard only, on a legal standard parcel (16,874 SF.) in the R-10 Zone. **The following variance(s) are requested:**

Joseph Costanza: We're looking for a two-foot variance. I'm looking to put up a five-foot vinyl fence with a one-foot lattice. It's an off white like a grayish color. It's going to be cedar, 4-feet fence, one-foot lattice.

Chairman Ron Prezner: That will be the full joint property line, on the on the right side of your property? Mr. Costanza replied; yes, approximately 70-feet.

Board Member Mr. Doerr: It was pretty straightforward. Just replacing any of the same fence. I have nothing, mister chairman.

Motion was made by Herb Doerr to approve application as plans submitted, seconded by Nick DeCicco. All remaining members voted in favor, 5-0 AYE.

Timothy Shadi owner of premises located at 201 MADISON AVE, VALHALLA, NY. Designated on the Tax Assessment Maps of the Town of Mount Pleasant as 117.15-3-53. The application is for the proposed construction of a new pergola attached to an existing single-family dwelling on a legal substandard parcel (7,500 SF.) in the R-10 Zone. **The following variance(s) are requested:**

Chairman Mr. Prezner: the reason that these variances are there is because you have, a patio? Mr. Shadi replied; Yes., there's a pool, a pre-existing one. You're

not extending beyond the side of the, what do you call it, the deck, nor are you encroaching further into the backyard, correct? Mr. Shadi replied; we are not going beyond footprint of the deck. We just want to bring the columns to the edge of the deck so we can put the railing to handle there, to make it safe.

Board Member Mr. Doerr: When we were out there on the scenes, I know you came and you pointed out where it is. This is going to be integral in with the banister that goes all the way around because there was a little bit of a drop off on that patio? Mr. Shadi replied' Yes. That's correct.

Motion was made by Adrienne Novak, to approve the application as plans submitted, seconded by Herb Doerr. All remaining members voted in favor, 5-0 AYE.

SAL PEPAJ (Owner) of premises located at 174 ELWOOD AVE, HAWTHORNE, NY. Designated on the Tax Assessment Maps of the Town of Mount Pleasant as 89/112.17-1-58. The application is for the proposed legalization of an existing one-story addition to an existing single-family dwelling on a legal substandard parcel (5,000 Square Feet) in the R-10 Zone. **The following variance(s) are requested:**

Chairman Ron Prezner: the application is for a proposed legalization of an existing one-story addition to an existing single-family dwelling.

Jonathon Villani: my client, Sal Pepaj, is located at 174 Elwood Avenue. I'm sure you guys have went to the site and saw that it's already there. So in after the fact, I was called in to analyze the, addition that was built and, because they were worried about a side yard setback, but in in in actuality, they're actually in compliance on the one side.

Since he increased the nonconformity on the front, we're having to get that front yard setback and the coverage calculation actually goes over. So we're here to rectify the situation. In my eyes, it wasn't an egregious addition to this. It's only about the total of, I think, a 72 SF on the addition. He's just bumping out a bathroom on the side of the house. It's what I'm trying to remedy. It's definitely it's definitely a one family residence. They intend to use it as part of their one family residence on the First Floor. They have an increasingly growing family, another baby. He has no powder room on the First Floor and no laundry room.

Board Member Adrienne Novak: It's a tough one. No permits, and I'm assuming, you know, I can't assume that he knew, but I would expect a reasonable person to know before they bump out. I like the reference of bump out, but it's a significant build out. Mr. Villani replied; There's not much shoulder length room between where we stood on the side of that and my left shoulder looking back out from the tree line.

Jonathon Villani: I told him what to change and not to change. So it was actually done by a construction company. I told him what he's going to have to change, what he's going to have to secure, and hardware, and fastening, and I'm not structurally worried about it, as far as I know. I'm worried. I thought that we had a

contractor put up an addition without a permit. I believe he's going to have another child. I know it was an honest attempt just to improve his house. That he might have been his first house or I'd have to find out what the circumstances are. You know, so I have to try to figure out, you know, when I go to a job site, I make sure it's not an egregious ask, but also that it's safe, you know, and stable. I'm sure he could have gone out in the back, but also, he has this detached garage that's close to the house, so to infringe upon his yard. The addition that was already there,

Board Member Mr. Doerr: I mean, based on the questions that we've had at this point, I mean, we're not looking at a lot of options I can see here of rectifying this like we did with the earlier previous. Yeah. Yeah. Yeah. I mean Which has been done by the so I follow-up to hear. I think that to George's point, I'd like to see more information, not just hearsay driving down the street on how does it change?

Chairman Ron Prezner: The fact that this was done without somebody saying or saying something about it in the development stages when they're building without a permit in a window. Yeah. I agree. You know, to that standpoint. So, I mean, the extreme option that that, in my head is that it's got to be taken down, and I don't think that the owner wants that. So I think the more we have for the record I mean, we don't have I don't think any other options. I mean, George, Nick has already asked if you can go back in the back of the house and slip it back there, and it doesn't sound like the person wants to close that price. I mean, if you No. I understand. New or not new, I mean, that's not for us to tell.

Jonathon Villani: If we look at the floor plan, the option is pretty limited because of the he has a kitchen on one side. So he has a kitchen on one side, and he has a dining room. His only access to the yard would be the other room. So if you put the powder room on that side, it would block the access to the back. But I mean, I it's a reasonable ask to, to what extent, you know, to document the other properties in the area to show you the noncompliance. I'm totally in agreeance. I can develop that for the next meeting. I can develop a, I'll be just pursuing to the, you know, the factors on the §267.B to make sure that, again, the impact upon the neighborhood, consistency with the other homes in the community.

Board Member Mr. Hlapatsos: I know you made the, again, the assertion, but if we develop the record a bit more, it might make other members of the board more comfortable Yeah. As I know would make me more comfortable. Also, if somebody presents this, next time you can ask you can say why on Elwood Avenue Noncompliance. I know I've the backup information is very reasonable to ask. You're going to get a German for that purpose if you like and perhaps come back in in no more than a month. Mr. Villani replied; Yeah. Question is, to what extent? Meaning that, you know, this is going to easily establish. Are you guys okay with GIS mapping and measurements off of that? Because I it's going to be very hard to document surveys off of every property unless you get surveys of If you take measurements and you go under oath Yeah.

Vladimir Golden (176 Elwood): I've been living at my property for close to 40 years. I've had about four owners of adjacent property. This family is, is very maintains the property very well. They are making, many site improvements, and, I

don't have objections to the proposed changes.

Motion to Adjourn the application to the May meeting made by Nick DeCicco, seconded by Herb Doerr, all remaining members voted in favor, Carried 5-0 AYE.

NYCDEP (Owner) of premises located at 0 WEST LAKE DR, Valhalla, NY. Designated on the Tax Assessment Maps of the Town of Mount Pleasant as 117.11-3-1. The application is for the proposed construction of a 10-foot wall for the relocation of Westlake Drive, in support of the KEC Project with the construction of a new water conveyance tunnel between the KEC Eastview Site and the Kensico Campus and supporting facilities at both locations on a legal parcel (85 Acres) in the R-40 Zone. **The following variance(s) are requested:**

Kevin Ellenwood: I'm a deputy portfolio manager with the DEP. The application is for a proposed construction of a 10-foot-high wall for the relocation of Westlake Drive in support of the KEC, whatever KEC means, with the construction of a new water conveyance tunnel between the KEC, again The Kensico Eastview Connection. That's what it's called, Kensico Eastview.

So I have a brief presentation I'd like to go through for you to allow. I'm here to talk about the Kensico ECU connection, which is essentially the construction of a new water tunnel from the Kensico Reservoir to our Cattell UV facility in Eastview. Tonight, I'm here to talk about a variance that we're applying for a wall height that we're constructing under the first contract, which is site preparation down the street at Kensington. This is for a retaining wall along the new, railway that we're in the process of constructing.

Okay. So what you see on the screen is, the portion of the site that we're talking about tonight, and this is the final condition, after work, we've completed all contracts. So ten years in the future. I direct you to direct your attention to it's called out as relocated Westlake Drive. That's this roadway here. Presently, Westlake Drive is a public roadway that goes through our property, bisects our site. So the idea is that we construct this new roadway of a northern edge of the site. North is to the left. Then that way, we can, separate public traffic from our operations. We can create a secured perimeter around the entire site, which is one of our most critical facilities in the entire water system. So previously, we presented an application last August for two retaining walls. So there's a two Con Edison towers that I'll talk about. At that time, the board asked us to sharpen our pencils on a couple of points that we'll address tonight. Since that time, because of site conditions, we, no longer need a variance for a retaining wall height for one of the two towers. Indeed, it's possible we don't need a retaining wall at all.

So tonight, we're here to focus on the highlighted one there, right where my laser pointer is. Okay. So this roadway is constrained by a number of factors. There's, some features of the town code that we need to comply with. There's the two con ed towers that, have their own set of constraints. So for the town code, we're looking for the minimum roadway width of 30 feet. And then also we're looking to

comply with the minimum k value. So that's essentially, the vertical curves. So making sure that, the curves the, you know, the steepness in that area, is safe for passage for roadway of that type and that speed limit, which I believe is 30 miles an hour. So those two con ed towers here and here constrain our path through the site. So our horizontal alignment, our path there is set. Then the, in order to, maintain the maximum steepness or not, you know, avoid making it too steep, that dictates how much we have to cut into the hillside. Then also, as we'll talk about, you we need to offset from the towers a certain distance in, in order to not undermine their foundations. So all of that combined means that, in the area of the westerly of the two con ed towers, we require retaining wall that exceeds the town allowable six feet.

So this is a plan view of what we just looked at. Now north is up, to be nice and confusing. Here's Columbus. We're up here tonight. Here's the new roadway that you can see in we're constructing now. This is where we had the road closed, and we're actually paving it today. Here's the Con Edison tower that we're talking about and then the retaining wall around it. So we've applied for a retaining wall total length about 250 feet. We're looking to reduce that. We think that the wing walls, so the two edges, we can reduce it with we will end up being more like 200 feet in total, we hope. The retaining wall tapers on the edges, so it ranges in height from two to 10 feet. Again, we're we want to make sure that we are conservative, so I'm hoping the peak height will be a smidge over nine feet. Nine feet, two inches, something like that. 29 feet from, center line. One of the points you asked us to take a look at is just the aesthetics of the face in general. So we've looked at that. You know, it'll still be poured in place concrete retaining wall, but we'll face it with a stone veneer. I have a rendering on that that we'll look at the end of the presentation.

I just you know, we talked about this a little bit on Saturday, and I kind of pantomimed the high points, but this just kind of gets into the numbers. So you can see the colored area, that's the entire retaining wall. Then on the edges, the orange is color, that's within variance. So that's, two to six or zero to six feet. The green areas, about 15 feet. That's 15 feet total on either side. That's six to eight, so a little bit out of variance. Then, you know, the greatest magnitude, eight to 10 or eight to nine at a bit. That's that blue area where it's, you know, right dead center of the retaining wall, and that's about a hundred feet. So the certainly not the existing conditions today, but this had been the existing conditions less than a year ago. So the picture on the left is top of the hill. The high school is to the left. The reservoir would be in the background. So this is top of the hill looking at the, Con Ed Tower. The picture on the right, that is on Columbus Avenue. The reservoir would be to the left. Our upper effluent chamber, that building that's kind of in the water. It would be just off frame. That's a picture looking, southwesterly at, the tower in question. And right where I have the pointer, that's about where the new road is cutting in. The question is, you know, instead of a nine to 10 foot retaining wall, can we stagger it with five-to-six-foot walls that are within, within town variance? So this demonstrates what that would look like if we did do two

retaining walls that were within variance. So just to orient everyone, we've got the roadway here oh, sorry. We've got the roadway here, drainage well, a lower retaining wall, and then a second upper retaining wall with invariance, Guide rail for fall protection. Then here is the connect tower, and this is, the foundation. So here, we're dealing with two sets of criteria, two requirements from Con Edison. The first one is a 40-foot buffer around their towers, all around their towers, and that's for maintenance. So they can bring in their trucks, their cranes. That's what they require. So if we take into account, you know, the structural requirements of these retaining walls on this guide rail here, There's, 25 feet of clearance in between the guide rail and, the tower, so clearly not meeting the 40 feet. You know, this is something that we've discussed with them, how flexible it is. This is admittedly the softer of the two requirements. You know, they can negotiate on a few. You know, there's, elsewhere with our design, we have 37.5 feet of clearance, and they will live with that. But this is a great departure from their needs there. So that that's one issue. The second, the more important of the two is the foundation of the tower itself, and they require a 25-foot buffer from their foundation. So that pile, and our, loading. So here, again, it's the same requirements for the retaining wall. And here, we have 21 feet of clearance, so we're not meeting the minimum.

Chairman Ron Prezner: We just don't know. It's too big of a risk. When we were out there on Saturday, we were talking about a graduated wall, single wall graduated going from about two feet up to 10 feet, maybe less, and then coming back down again. Correct? Kevin replied; Correct.

So this is facing the reservoir. You have the Con Ed Tower on the left, and then that's, basically what the stone veneer face would look like. And then on the right, the final contract, you know, ten years from now, that's where we would install, the permanent, permanent or fencing. It would look something like that. Kevin replied; I don't think it would look staggered like that. I think that's just the way the model renders it. But just briefly to your point, in this first contract, we are planting grasses and a meadow mix and wildflowers and things like that, and that's it. Because the contract is not long enough to meet our own requirements for invasives control and establishing plants and trees and all that. However, we recognize the importance of that. So in the next contract, we're pushing the contractor to do that work now. So this contractor is working on this road, and we're going to have the second contractor, the tunnel and shafts contractor, put in those bushes and plants and trees and shrubs and all of that in this area before we convey it to the town. So, you know, we're not constructing on a public roadway.

Board Member Adrienne Novak: The secondary fence, my it's the point of day where my eyes are not working excellent. Yeah. But that secondary row, that is the second fence in your other rendering, which was more stick built. I'm sorry. Can The fence near the Yeah? The secondary fence, the higher fence. So that is in your other rendering is the second. So the, this is this is the retaining wall here.

Board Member Nick DeCicco: Yes. And it would also be fair to say that if there was some reason, engineering wise or other, that you weren't allowed to build the

road as you're planning, that if the road had to stay where it was, the site could still operate in a sufficient fashion even with the, even with the planned new buildings. Correct? I would disagree with the word sufficient, but, yes, it could operate. It could operate. So this new road is not essential. It is something that is it is a luxury for you guys to bifurcate the site to have to not to have by taking away all of the parking on Westlake Drive Yes. And the overflow parking. Remember this. Right, sir? Yes. You'd have to clarify what the overflow parking is, but, yes, I do remember this discussion. Well, there's parking on Westlake Drive, which is used by the students Correct. And staff and people for events and overflow are every day. And That is no longer going to be available because there's no more street parking on the proposed Westlake Drive. The disruption to the community is not being accounted for by what they're looking to do. They don't need this road. This road does not have any effect on the operation of this facility as now as it operates now or as proposed to site that is not bifurcated by Westlake Drive. That makes sense. But if they're going to do something that's a nice to have, not a need to have, then they should properly account for the adverse impact on the community. We have an ability to impose proper conditions that are directly related to and or incidental to the request. And I don't and I believe strongly that imposing a condition that they provide more parking for the high school to account for the spots that they're taking away from is more than reasonable. You may not agree, and the board may not agree, and that's perfectly fine. But my position is what it is. Okay. I have a few more questions. Okay. Can you explain to us and for my own edification the timeline of events here since you were last here in August because you were on the agenda, and then you were off the agenda, and then you were back on the agenda. So Sure. Did you pull the did you pull the application, or did something else happen?

Kevin replied; Yes. So I went over that very briefly. Okay. I can go into it in more detail. I don't know if I have a slide on that, so just bear with me, please. Not really. Okay. So when we presented to you in August, we were working in this area. As I mentioned, we were applying for a variance for both retaining walls. Here's one. When we began excavating in this area, we encountered rock much shallower than we anticipated, and then we actually have a change order to the contractor to deal with it. That allowed us to reevaluate the design of that retaining wall, and we spent a long time, looking to reduce the height of it. We're working with the town engineer and the town building inspector on options that could work for us. So at that time, we adjourned the application. Since that time, we fully excavated and paved, not completely paved, but started to pave in that area, and we determined that we do not need a retaining wall for that conet tower that exceeds six feet. Indeed, we may not need one at all. So we need to finish the excavation there and have the town engineer come out and confirm that that rock face is competent rock, and then we have no need for retaining wall in that area. We are hoping for something similar, and we're working with both the town building inspector and the town engineer on coming up with designs that would result in retaining wall that's within variance. So the application was never it was never pulled? Well, you can you can correct me on the technical details, but, yes, I

believe I don't know the right terminology, but it was essentially canceled, and this is a new application.

Nicholas Saldi (2 Fountain Drive) & Dino (1 Fountain Drive): My dad I've been I've been here my whole life, sixty-eight years. My dad did that subdivision, Fountain Drive, Ann Place, Allen Place. There's no drainage. It's nineteen o seven. There's no drainage in that place. It was built in 1956. Okay. Now he also did the ant place. It was a beautiful view we had. Growing up, it was aerators, was gorgeous. Okay. Times change, aerators fill in. Like Nick said here, he's a % right because I went to Valhalla High School. He's a % right. The way the way that parking is horrendous. They did a parking lot for the construction workers. I was in the business. I spent nineteen o seven, my grandfather started. My father took over, then I then my brother and myself took over. Now, what they did across the street from my house and Dino's house, they built a stockpile mountain. Okay?

They put, landscape of fabric over it and eroded. Put the landscape of fabric back. Go higher and higher. I know being in the business, when we do an addition on a house, engineers design cold techs, they design, you know, you make a driveway bigger, oh, you got to control your water. Well, how would they control on that water? They built a mountain. They have, don't get me wrong, they have, retention basins on the high end of Westlake Drive and on the low end of Westlake Drive, it's a tiny it's a tiny retention basin. Up by the high school, the old years here, they did a beautiful retention basin, nice and deep. My side and Dino also got flooded, and the flood, you divert the water to come down Columbus Avenue.

They're making a pot, you know. Hopefully, I asked some guys on building department, this has a building department. I said, what are you going to do? I don't want to mention no names. Sal. He goes, that that pile is going to get cut down. I say, oh, really? Did it get cut down? You mean, the original plan that they had, the landscaping plan didn't have no elevations on it, and it looked pretty much level. Now they built up 75 to a hundred feet over Westlake Drive. Are they going to move all that dirt again and cost double the money to move it out? All the neighbors are concerned, and they asked me to come and talk because I've been in the business. Again, 7:00 in the morning, I hear the hammer's running. I worked at Harrison Roy, White Plains. We have laws that you can't start hammering until nine to three, and that time limit.

I hear 7:00 in the morning, I just retired. I feel like I'm back at work 7:00 in the morning, but we had respect for the neighbors that that will not start hammering, and there were laws in Rye, Harrison, Greenwich. Forget about it. You couldn't start a hammer until nine o 9:02, and I had to shut the hammer off, 2:58. I went to Valhalla High School, and you hit the nail on the head, Nick, when you said about parking. It's a joke. I did the parking lot for the construction workers to park their cars. I mean, it's done for the town. I got a question for the building inspector.

Board Member Mr. Hlapatsos: I'm not defending anything, but what I'm saying is that's all being worked out and permission was given. I mean, there's nothing that

we can do here. I don't want you to waste your time and your concerns because I value them very much.

Dino (1 Fountain Drive): So when my house gets flooded so do, we do what everybody I understand they're building the project. I also got to raise a family in this neighborhood. So what do I do? I would suggest Allow them to do what they No.

Chairman Ron Prezner: I suggest that you speak either to the town engineer or speak to the building inspector. Those two people would have a better understanding of what your dilemma is. Dino replied; Nothing. I agree. I agree. So now the value of my house goes down? What am I looking at? Prison walls that they're building? No. It's not true. The fact of the matter is it's a temporary thing. We're going to put all this dirt. Can't put it in the reservoir. Okay. We can't move the foundation walls that he's building. No. The idea here before us is a retaining wall to make sure that an electrical tower is grounded safely to the land.

Chairman Ron Prezner: I think that's where all of this dialogue has to go. Well, I think it's not our jurisdiction.

Jesus (33 Highclere Lane): One, the vagueness of what it actually is going to look like as far as the decorative stonework. Also, I don't hear anything about like, there's a big water problem. You got a 10-foot wall. Is there going to be some kind of, system to take all that water coming down the hill away. You know, it seems very vague. It's just a retaining wall, but there goes a lot behind the retaining wall. There's going to be water pouring down too. So I would imagine there would be a water problem on that roadway. Am I correct? Nice. Well, anyway, it seems to me that you could have put a little bit more effort into actually showing us and what this stone wall is going to be. And then the iron gates across it are getting pretty scary looking. It is kind of a nasty drive now instead of a beautiful one. If you're going to be putting gates and walls everywhere and no vegetation but some flowers.

Just one thing, and I'll ask you who I should talk to. So trying to get in and out of Highclere, is almost impossible in the morning when the schools and the workers and everybody's coming in out two times and again in late in the afternoon. You can be there for fifteen minutes trying to get out. So at one point, I had asked about getting a light put there, and I was told by the board that they would someone would supervise the traffic and determine whether that would ever happen. And I don't see any lights.

Board Member Mr. DeCicco: That's not an issue before this board. We are here solely today to hear about the retaining wall. Traffic and safety.

Kevin (DEP): We just reallocated it. Mister Chair, was it more hoping to see if we could, get any rebuttal comments by the applicant before we moved on to, business session or whatever we may get? I don't think he has any rebuttal comments. That's okay. We usually give the applicant a chance to comment again after the public has commented in case, he had anything to say in response to

what was said.

Chairman Ron Prezner: It's actually, I think, very nice looking, but that's my own opinion. It's not concrete relief. It is, you know, stonework veneer on it. For what it's worth, it was presented to, the public design commission, and they've approved it for elsewhere, on other phases of work. Okay.

Board Member Mr. DeCicco: So am I. So the board would not like to, make a record. It would just like to move to a vote. Yeah. I'll make my comments when I vote when before I vote.

Chairman Ron Prezner: Okay. What we're basically voting on is a retaining wall. I'll second Mr. DeCicco's application to go into business session. Okay. Alright. You want to go to I will go into business session. You would like Aye for business session. Okay. We'll have a business session now, and it'll be closed to public comment. So presume that I'm the nobody else has anything to say.

Board Member Mr. DeCicco: Hold on. Thank you for, moving into business session to the members of the board. Just like to point out again that the 267.B statute clearly gives us the ability to impose conditions. I've read the entire statute on the record. We have the ability to impose reasonable conditions that are either directly and or incidentally related to the project requested. We have not seen any official documentation or decision or notice from anybody else saying that this condition does not apply to this application in any way, shape, or form. So I submit to you that it does apply. I challenge anybody in this board to tell me how the fact that they are removing numerous parking spots does not create an incidental, let alone a direct relationship to the application. We have to understand that the road that is present now allows for the full and complete operation of this facility. The road that is requested is what we would might call a night a nice to have, not a need to have.

Board Member Mr. Hlapatsos: I am not in any way, shape, or form in opposition to the retaining wall as proposed. I know the applicant has gotten a lot of heat for the design of the retaining wall. I happen to think that it looks quite nice in the new renderings. The issue is the impact that that road is going to have. And as the statute says, we have the ability, and I'd say the duty, to minimize the impact by the imposition of conditions, just like we do on every other type of application.

Board Member Mr. DeCicco: The fact of the matter is the first day that this parking lot opens up to the school, it will be overflowing. It will be obsolete on day one. And I challenge anybody on the board to tell me otherwise. There is no ability for overflow parking. 30 spots are not sufficient at all. We've been given no data to suggest that it is. And in fact, when we've been told it is, it's been told anecdotally and by averages. Averages means some days it's more, some days it's less. And we all know by living here, they often need a lot more. The parking lot will be obsolete on day one.

What will happen is there will be no place for anybody to go because they're not building a road to accommodate on street parking for overflow for the daily students, overflow for the parents, overflow community by building this road that they really don't need? Because we're afraid that if we impose this condition to

have them put more parking and appropriate levels of parking, that they're going to have to go back to the planning board or keep the road where it is. They're not going to want to keep the road is. They're going to say, oh, shucks. I guess we could easily build a 50- or 75-foot, spot parking lot that would actually service the needs of the community and would be appropriate because of the impact they're creating by taking with the street as is.

Board Member Mr. Hlapatsos: So again, I want to be clear, and I've said it before. On face value, the retaining wall, to me, is fine. The design is fine. But the impact they're creating by meeting the retaining wall because they're moving a road that they don't absolutely have to move is something that we're not accounting for by imposing no conditions. Thank you. You asked for it. I wanted to allow Mr. DeCicco to share his thoughts with us. I have received all these thoughts. I have nothing more to add to the conversation during our business session, and, and I'll defer to miss Novak and mister Gore if they want to make additional comp, they have nothing else to contribute on this?

So what we've in this we could end is come out of business session and move to a vote. Yeah. Because what we basically have done in the business session is just repeat what we said. Well, I think Again, the Chico wanted to clarify his position, and I wanted to afford him the opportunity to do so. That's it.

Motion to approve application per plans submitted was made by George Hlapatsos, seconded by Adrienne Novak, not in favor of the application was Nick DeCicco. Application approved by 4-1 AYE.

INSPECTION MEETING WILL BE HELD ON

[MIN_SIGNATURES]

