

TOWN OF MOUNT PLEASANT

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

Present	Chairman	Ron Prezner
	Board Member	Nick DeCicco
	Board Member	George Hlapatsos
	Board Member	Herb Doerr
	Board Member	Adrienne Novak
	Building Inspector	Joe Bregante
	Zoning Secretary	Cathy Naclerio

CONTINUING APPLICATIONS:

NEW APPLICATIONS:

Ben Rossman (Applicant) for Spavia Day Spa (Owner) of premises located at 988 Broadway, Thornwood, NY. The parcel is designated on the Tax Assessment Maps of the Town of Mount Pleasant as 106.15-1-22. The application is for a Special Use Permit per Town Code §218-63.1, MASSAGE ESTABLISHMENT, on a legal parcel (12 Acres) in the M -1 Zone.

Z-25-29 Ben Rossman (owner) of Spavia Day Spa / 988 Broadway, Thornwood, NY

Chairman Prezner: Have you done anything different than you've done since you first received your permit?

Mr. Rossman replied; the last six years of operating and everything is exactly the same.

Chairman Doerr: I just want to ask the Building Department id there have been any issues or violations? Mr. Bregante replied; no, none.

No remaining questions or comments from the Board Members.

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

The appeal and application of Paul Rubeo challenging a May 8, 2025, determination made by the Building Inspector, which held that the property, located at 434 Sherman Avenue, Hawthorne (S/B/L: 112.6-4-28) satisfies the

doctrine of back-to-back splits as used previously in the Town of Mount Pleasant.

Z-25-23 Paul Rubeo Appeal / 434 Sherman Avenue, Hawthorne NY.

Chairman Prezner: the appeal and application of Paul Rubeo challenging a May 8th determination by the Building Inspector, which held that the property located at 434 Sherman Avenue in Hawthorne satisfies the doctrine of back-to-back split as used previously in the Town of Mount Pleasant.

Paul Rubeo: Thank you for the opportunity to speak this evening on this appeal. As I mentioned, my name is Paul Rubeo, and I'm here with my brother, Chris, on behalf of my family to appeal the building inspector's May 8 determination that Lot 28 is a buildable lot as of right. Mr. Bregante bases his determination on the assertion that the subject lot, quote, the subject lot is a back-to-back split. Tonight the question before you are not just about the one lot, but about how zoning law is applied in the Town of Mount Pleasant. This so called back-to-back split doctrine is not law. It's not found anywhere in Mount Pleasant zoning code and has no statutory authority. It's an idea that emerged in zoning cases from the 1980's. Even then, the courts made clear that it doesn't confer any automatic rights. It's a tool that Boards may consider, not a rule they must follow. In fact, New York courts have consistently reinforced the zoning determinations must be made on a case-by-case basis and always under the framework of the local zoning code. New York courts, including the court of appeals, have rejected the proposition that a property owner may bypass current zoning requirements by invoking a back-to-back split doctrine. In converse's zoning board of appeals of Irvington 1996, the court of appeals ruled that landowner cannot rely on historic lot configurations or informal doctrines to bypass current zoning restrictions. There must be clear legislative entitlement in the zoning code itself. Harn Food versus LLC versus Dechants in Suffolk in 02/2016, Suffolk County, the court went further stating that the viability of the back-to-back split concept is dubious at best and that municipal discretion remains paramount. In his ruling, justice Whelan expressly noted, and I quote, despite occasional mention of that common law doctrine of appellate division determinations, pronouncements from the court of appeals have cast serious doubt on the continued viability of such a doctrine, end quote. The owner of lot 28 is not entitled to build as of right. The appropriate and legally required path is to seek a variance as mandated under Khan and Horn Fuent. As municipal officials, you're empowered to administer the zoning law in full accordance with the code and governing precedent. And as of right, this designation for Lot 28 is unsupportable and contrary to both established law and the clear intent of the town zoning code. As I've stated before, this board in the past, it's my contention that Lots 28 And 34 were in fact merged in 1958, when the zoning code was adopted.

Building inspector's determination ignores the plain language of section two eighteen dash 79 a, which states where the owner of a lot of a parcel smaller than is required by this chapter also owned or had under contract to purchase other lots or parcels contiguous thereto, such other lots or parcels shall be combined with the original lot, whereupon a zoning permit may be issued but only for such combined lots or parcels. That's exactly what happened here in 1958. Lots twenty-

eight and thirty-four were under common ownership and were contiguous. The code does not limit merger to side-by-side rear adjacency qualifies under the statutory language. Thus, the lots were merged by operation of law and have remained merged.

The retroactive application of a post 1980's legal theory cannot override statutory law in effect since 1958. The merger happened automatically by operation of law. There's no provision in the code allowing those lots to be unmerged and certainly no provision that allows an informal doctrine like back-to-back split to override the binding local statute. In fact, to treat 28 Lot 28 as a buildable lot today would require this board to ignore both the letter and the zoning code and the intent behind it. One would think that in when they adopted R-10, they were looking to deal with density and chart a path forward and included a fair remedy for those people at the time, who owned properties and were seeking to use their properties. So I do believe that that was the case. In fact, for these reasons, I respectfully urge that the board apply the correct legal standard and require any proposed development at Lot 28 to proceed through a variance process subject to full review and public input. I have I'd like to ask my brother to address the question, from the letter from the building inspector's letter regarding back-to-back split, particularly the third provision, which, mister Vitagliano raised in his original letter in March, when he came before this board.

Board Member Hlapatsos: Just to make sure that I understand, when you had, discussed the ownership of the property by, the original, owner prior to the code in 1958, the two lots that are issued here were separate building lots. Is that right? They were owned by the same person. It's not really my question, though. They were separate building lots at that time? I'm actually separate tax lots? Tax parcels. separate tax parcels. You say building lots, but that would be, by definition of the zoning code and the enactment of the 1958 zoning code, and what was supposed to happen at that point.

Chris Rubeo: Just as a little refresher, this is Lot 28, and this is the orientation of Lot 28 and Lot 34 right in front of it. This is my mother's property, and her Lot 27 behind it. In September, the gentleman who currently owns Lot 28 is a contractor who purchased the front property, which he did a beautiful job of remodeling and has resold, and has sought this determination for Lot 28. Just to give you the orientation of the two lots. I have some other show and tell items that I'll get to in a minute. I'm going to make this as quick as possible. This photograph is taken from exactly this spot, looking from the yard, backyard of Lot 34 onto this rear portion of Lot 28. That is a photo taken, recently. Okay, so, in fact, just two days ago, the new owners of the property had their grass cut, and they went on to the back, which is actually somebody else's property now, and cut that lawn. I believe it was mister Vitagliano in his first statement who said that there was no, utility or value added by this lot, behind Lot 34. Due to the topography, he said, there was no added value, of utility or value to Lot 34. And I think it's pretty clear that the only usable backyard to the property, about 2,300 square feet of Lot 28, which is flat, I would like to argue that it does add to the value and utility of the lot. This is, of course, the overhead photo, which is showing the picnic tables, the fire pit, the

shed, and other items in the backyard.

I explained that I lived at 438 Sherman Avenue since 1978, for 25 years. My mother lives there now. I can obviously personally attest to the constant usage of that backyard as a well, backyard to the, the property. A lot has been said about this concept of back-to-back split. I didn't know anything about it, until a few months ago.

Thankfully, Mr. Vitagliano, at the previous meeting, discussed the so-called doctrine, which to be honest, to me, seems more like an exception. Okay, let's call it a doctrine, he said that in his in in the meeting, quote, and I quote him, the concept of back-to-back split is something that emerged in the courts from the cases in the in the late nineteen eighties.

Going on, quoting him, the frontage would be on separate streets, which obviously they are in this case. Two, they must meet the depth characteristics, which they do. And the third, and most importantly, they must never have been used in conjunction with each other. Never have been used in conjunction with each other. I want to just point out these photos, this one was taken in, 2024 when this back property along with the front was purchased. The fire pit, the shed, the two picnic tables, and there's some firewood stacked around. I know because I helped the guy move it and put it out front. This is a shot of the rear lot from the Zillow ad, taken at the same time. No value or utility.

It was always their backyard, they always used it as their backyard. In fact, this this this piece of property, Lot 28 well, this is actually a third of the flat third of Lot 28. This was for sale on Zillow for a \$199,000 Didn't sell, for a \$199,000 According to Zillow, it sold for a \$121,000, and I believe that is because it wasn't a buildable lot. The contractor who purchased the front and the rear was taking a chance that he might be able to build on the lot. He said he actually said to my mother at the time, I want to build a house back there. I actually called him to find out when he was going to start building a house because I was concerned for my mother and wanted to know. He said probably not for, not for some time or something like that. Actually, this process has been great because I didn't even realize that we would have some kind of recourse or anything to say about the building of the house. Apparently, there are, there are laws. Again, I'll make I'll go through this quickly. The third stipulation is that they must never have been used in in conjunction with each other. I want to point out why I believe there is stipulation there. It's because it protects the town, and the people of the town, from after the fact efforts to separate what has long been treated as a unified residential lot. In fact, it's been owned in common ownership since about 1952. I looked at all the deeds, it's been owned in common, up until September 2024. Separate what has been treated as a unified residential lot, simply because it's become financially advantageous to do so.

Again, this is not a long-standing person who had a lot back there and never used, and said, Hey. You know, I know it's not enough space, but I'd like to build on there. Could I please build here? This is a contractor who purchased the front, did a beautiful job, and now wants to build on the back, and I might add, as according to mister Vitagliano, went for a determination from the building inspector, who then

punted to the town attorney, who then gave it to you folks, who quite rightly said, well, we're not here as to we're the Zoning Board of Appeals. So it went back to the building inspector, who then made a determination. So it wasn't a cut and dry, apparently, right away. So speaking of Mr. Bregante, the Inspector, he concluded that the historic use of Lot 28 was de minimis. In other words, too small to be even considered, and I would like to reiterate my evidence, having lived there since 1978, what that backyard was used for. The lower 3rd, level lot 28, was, at various times, contained a 10x10 shed, which I which I showed you, a fire pit, picnic tables, a trellis, stacked firewood, seasonal seating, a screened in enclosure, and even an inflatable children's pool. There was never a fence, there is still not a fence there. Never a boundary or any indication that the land was in any way separate. It flowed directly from 434. It goes up 2FT. towards those rocks in the back, you walk right on the land to the back. Again, I didn't make up the determination that it might these two pieces of land must never have been used in common with each other. That's the that's the words of the attorney who knows the law. There's also a set of steps to the left of the garage that go from the garage up to the backyard.

Paul Rubeo: In fact, I think the attorney Mr. Vitagliano mentioned something about the garage that once got a permit to move the garage or, I'm sorry, to rebuild the garage. He said, well, he tried to make the argument that they didn't put it to the back of the property because they wanted to maintain that as a separate building lot. In reality, that to put the to put the garage from here back here would put it right in the middle of the only yard that they used. This would be a 100-foot driveway instead of a 75-foot driveway now. I would argue that the reason they didn't move this was not because they wanted to maintain it as a separate building lot, but because it was a backyard. Continuing, you have the letter from my mother, sent it to the town. I know we hit you with a lot of documents. Feel pretty passionate about that. She's lived at Sherman Avenue for 47 years. She gave you a letter, where she said, quote, the rear portion of Lot 28, specifically the flat lower one third, has always been used as the backyard of 430 Sherman Avenue. Continuing on the 04/10/2025 ZBA meeting, you also heard objections from Mrs. Tammy Steven, who is here tonight, and also from Kevin Hopkins, who is not here tonight, but lives at 405 Warren Avenue, directly behind and beside Lot 28. He said, and I quote, Lot 28 was used as a yard. I live next door to it and I am actually looking down on it. They are they always were out in the yard, entertaining, hanging out, so that's true. End quote. That's the person who lived next to it, and despite all of that, the, esteemed, building inspector found the use to be de minimis. If that's de minimis, I'd like to know what de maximis is. As I said before, Mr. Vitagliano said, due to the topography of the lots, it is impractical for the subject parcel, Lot 28, to contribute to the valley value or utility of 434 Sherman Avenue. End quote. He also said, quote, we maintain that there was no interaction between the two lots, and that really gets to the crux of why I'm so passionate about this. It's not because we want to do the same thing and sell our property and make money. It's because it this is fundamentally untrue. We don't care, to be very honest with all of you, that, oh, that if we if he gets his, then

we could sell ours. We like ours the way it is. We don't want to sell ours. We know it's worth a lot of money, but so is the value to our mother who's lived there for 47 years. Yes.

Board Member Mr. Hlapatsos: So your argument is essentially that they are still remain two separate and distinct tax parcels. And in theory, even though you don't want to, you feel that in the future, if you choose to do so, Lot 27 could be sold as a separate and distinct buildable lot because at no time have you used it Mr. Rubeo replied; No.

Your argument is that my argument is that these lots are merged. Haven't you right, and yours are not because you haven't used it in the manner that you claim that for 34 has used Lot 28. I don't Is that is that true? Mr. Rubeo replied; That is not what I'm arguing at all.

Mr. Vitagliano:

Good evening again. I am here, with my client, Steven Surace, who's the owner of the property on, Warren Avenue. I'm here to urge you to support the decision of your building inspector, Joseph Bregante, we've handed up a copy. That was, for the record, rendered after hearing testimony and evidence provided in, zoning board application Z-24-7. I've asked that the minutes of that meeting, which I have only one copy, be added as a part of this record, as well as the record from Z-24-7, since they kind of relate to the same sort of thing. For the purpose of this application, I've submitted the minutes, for it. Only one copy, for it. As a start, while a decision of a building inspector is not infallible, it is entitled to great deference. I would point out, that he states that the subject lot would not have merged. I point out that the town of Mount Pleasant code has never had a merger provision. The building inspector goes on to repine that the parcel is a legal non-conforming lot based upon the doctrine of a back-to-back split. I want to make clear some facts. And for that purpose, we've handed up, surveys of the two parcels, the subject parcel and the parcel at 30, 434 Sherman Avenue.

Like it or not, the rear property line is angled, if not L shaped. That is a factor that relates to a determination in, Blue Ridge Gardens versus Oswald. Copy the decision we set up. The rear property line abuts at 434 Sherman for 42.22 feet, but in fact has a total rear property line of 117.12. It's quite obvious that the original intent of the subdivider was that these were to be separate lots.

We've handed up the old maps. These were, again, in the old, in the in the last hearing, exhibits A and B on the submission letter dated April 30. Clearly, Warren, the Warren Avenue lab was intended to be a separate lab. The farmhouse, which was created on Sherman, was constructed in or around 1920, well before Mount Pleasant zoning code. Back-to-back splits have been recognized by the courts. See the matter of Morin versus, CBA Irvington, and more importantly, by your Zoning Board. We've given, decisions. Okay. We point out the case of Heller, which concluded that a back-to-back split is a matter of right. In that case, one Board member didn't believe that the Board had to decide on the application. We also point out the case of McVeigh. Again, a back-to-back split as a matter of right. There's also the Cervelo case, where the Board did not need to reach the determination of whether a back-to-back split applied. For the record, in that

instance, de minimis encroachments of sheds or other structures did not prevent the grant of that approval. Mr.

Chairman, you were a member of that board, Cervello. Courts have long held that a review of an administrative or board decision if covered is covered by a guiding principle that if the decision was reasonable, it should be given deference, and not overruled. Courts in Article 78 cases adhere to this standard of review. It's only when a Zoning Board determination is arbitrary and capricious, or against the weight of the evidence that they'll overrule a Zoning Board. We believe that your Board should give similar deference to the building inspector's decision in interpreting the zoning code, which clearly is a reasonable one, made after review of facts presented to your board in a prior application. This wasn't something he woke up and thought about. It was he had the opportunity to hear all the evidence, most of which is the same evidence that you're hearing tonight. So we believe, okay, that his decision is not arbitrary and capricious, nor is it against the weight of the evidence, and we urge your board to support your building inspector and sustain his determination. I have a question to ask you. Front yards, if they were to build a house on that lot, you'd have to have a 30-foot point yard setback.

Board Member Mr. Doerr: I have no questions, but I do want to bring up for the record that we did receive a letter from Hazel that resides at 420 Sherman Avenue. She does not want to see the house built on that back lot, and she agrees with the appeal and disagrees with the letter.

Board Member Mr. Hlapatsos: I'm just trying to get a sense of the history of the property in terms of its original existence prior to 1958, and I know I had characterized the property, earlier in a question I asked of the, appellants whether or not the property was two separate building lots. Mr. Rubeo replied; I should have broken the question up into two, so I'm going to break it up into two for you, so I don't want to the same problem. Prior to 1958, when the two parcels were owned, they were two separate building lots. There are two separate tax lots. Is that right? So in the, prior application, we submitted the copies of the deeds, and the Warren Avenue side was acquired by the homeowner on, April, by way of two separate tax lien sales from the town of Mount Pleasant, for it. And that's why it maintained, two separate tax lots, even to this day.

Okay. So at that time that they were, purchased, prior to 1958 by one common owner, that owner could have conceivably sought to build on both of those lots. Is that right? Not that they would have necessarily applied a '58. Yes. They could have sought to do so because they were two separate lots. They were never one lot. Is that right? Correct. Okay. So the way I understood the appellant's argument, they're suggesting that automatically, by operation of law, those two lots that were always separate lots became one lot for legal purposes as of the enactment of the building code of 1958. Is that your understanding? That's not my understanding. There is a provision in the code. There is no merger provision in the code. There something relative to undersized lots that gives an opportunity for development of some undersized lots. That's the code that that they're referring to, but that also talks in terms of, contiguity. Okay? One of the cases we pointed out is that where you have an I shaped lot, where you have certain other factors The purpose of

law, they're not even contiguous or adjoining, for the purpose of zoning purposes. They may touch, but for the purpose that I they're here to address their argument. That's the way I understand their argument.

Break it down so that they can understand their argument. Okay. So if we accept that argument, your argument in contradistinction is that whether or not those properties could have been deemed to have been legally merged by operation of law, because of the application of the back-to-back split doctrine, that operation of law did not, in fact, merge those two properties. Is that your position? Mr. Rubeo replied; That's partially my position. I also think the fact that there was an existing residence, at 434 is a key factor in terms of how that section of law should apply. You want to elaborate on that? I think the expectation was that if somebody was trying to get a permit on, a lot, okay, you'd have to look around and see what was going on, for it.

To the extent that the House preexisted the zoning code built in 1920, okay, in essence, it's not to be merged, for it. We also think that the intention of the code, we can't prove it, was that it was side by side lots and not back-to-back. Okay. So based upon common law, case law that you've referred to, application of the back-to-back doctrine would have prevented the property from being merged by operation of law based upon the enactment of the code in 1958. Is that your argument?

I'm not going to word prevent it, but I understand what you're trying to say. Yes. So as a part of your argument, you're suggesting that whatever use was made of the rear lot by the property owner, who again owned both, that that, use did not transform the separate building lot, Lot 28, into a part of 434. That is correct, ok.

Board Member Mr. Hlapatsos: Okay. Just to go back now, I am going to ask you the same questions that I asked the attorney for the party who benefited from the decision. Yes. The challenges. With respect to the property at issue prior to 1958 Yes. When it was purchased by the common owner, it was two separate tax lots. Is that right? (Mr. Rubeo) Yes. Okay. (Mr. Hlapatsos) In addition, at that time, if that owner wanted to build on both of those lots, subject to any variance they might have required, they could have done so. It's just that I don't I don't I think they I'm just trying to get a sense of what your position is with respect to several fundamental questions. So I'm just asking the same questions again Yeah. Yeah. That I asked prior to see if there's a disconnect or if there's some kind of, And I would add to that that §218.79 in the 1958 code, which I happen to know because I've been over this a little bit, requires where you have two substandard lots that are that are touching each other, they're merged by operation of law. I didn't get to that part yet, but I'm going to ask that next. That was again, the third question I asked would be, in fact, in the in the April 10th meeting, Mr. Vitagliano did say, well, that code is there we're not we're not disputing that. However, back-to-back split back-to-back split. That person owned them. Yes. That person didn't build on both of them. It only built on one of them. The person who owned the two lots prior to 1958 only built upon 434 Sherman didn't build upon Lot 20 Yeah. The deeds I've only looked back as far as 1950 when they were owned in common, but the house was built in 1920. So I don't when a house was Lot 28 was never built

upon. Do we all agree on that at least? Yes. Okay.

Now, we have these two lots, commonly owned, only one was built upon. Time goes forward, 1958 occurs, and now your argument is, by operation of law, the two lots now become one lot. They merge by operation of law. Is that your argument? (Mr. Rubeo) That's one of our arguments. Yes. Is that an argument that we make? (Mr. Hlapatsos) Yes. Then the argument that the party who benefited from the decision that you're appealing here today, their position is that that did not in fact occur, that there was no merger because they're relying upon a doctrine in common law, not in statutory law, not in our town code, but a common law, a legal creation by the courts that applies a doctrine called the back-to-back split doctrine, which would have made the merger by operation of law that you're relying upon not applicable. Is that right? Which has been challenged and questioned since then.

So with respect now to the lot that was not built upon, Lot 28, you're arguing that Lot 28 was utilized by the owner of 434. In some ways, that made the use of that lot sufficient in terms of its, materiality, fire pit, picnic table, I think you made reference to a gazebo. You're suggesting that that usage was so, significant that it enabled the owner of 434 to have used that lot as a part of its own property, that that lot was no longer a separate property that it had become, by its use, a part of 434. Is that right? Yes. Okay. So if we accept those arguments, that the use of the property, because of these picnic table, shed, gazebo, and fire pit. Those four things Not that. Yes. The problem that I have is that, and I remember this from the last time we had a meeting, is that there was a real lack of significant detail with regard to the amount of time that those, features were utilized, when they were put on the property, how long they were utilized for. None of that came out in the first hearing that we had on this application, and none of it came out again today. So I want to give you the opportunity now to make the argument better than what we have on the record presently. I can say I would respond to that by saying that it was maintained as a loan as far back as my mother can remember, mowed and maintained. There's a small rock, boundary that separates her property from that property. If maintaining the property by mowing the lawn is an indication to me that there is usage and intent for usage.

I mean, it's impossible to have a specific evidential record of every single year, of the use of that property. I don't know what's possible or impossible, but I'm asking you to do the best you can. That's all. I see it up to create something that isn't there, but I am asking you again. This isn't about adverse possession where a property owner can claim right to other property because they've asserted their own understanding. Mr. Rubeo replied; Can I ask you a question about that? (Mr. Hlapatsos) That would kind of be improper, but go ahead. How long would it have to be used for you to be satisfied that it has utility? It has can you give me a number?

I don't know that that's No. I couldn't give you a number. I'm not asking you for a number. I'm asking you to do the best that you can. Value.

I'm not angry at all. I'm just frustrated because I'm trying to help Okay. All of us have a record that's going to be reliable for the purposes of today's proceeding

and any future proceedings on this application depending on how the decision of this board comes out. What I just want to make a determination on is, again, whether or not we have all of the evidence in the record that could have been put forth to establish the significance of the use of property, Lot 28, by the owner of 434 because that was the argument that you were making earlier. And I pointed out that I thought there might have been some additional information that you might have been able to provide, and I'm offering you the opportunity now to do the best that you can Right.

Mr. Rubeo; Can I respond? Please. Okay. You have the statement from my mother that she sent a letter into the town, signed in her name. You have my statement. You have the statement of Kevin Hopkins who lived up above there, and you have, the statement of Tammy Steven, if I remember correctly. You have a photo from 2016, that's all we've got. I mean, at that 2016, I could probably go back to, to an aerial photo from 02/2005. Short of family video from the nineties, which I don't have, you know, like Yeah. Personal recollection would have been fine. Like I said, anecdotal evidence from your own observations and experience going back a certain number of years, the shed was there for ten years. The fire pit was there for twenty years. They always used it. Probably, to my best of my recollection, about twenty years ago is when that shed went up. There was also a snowmobile next to it and wood stack next to it because it was, you know, the big shed that they put in back there. The, two snowmobiles. Thank you. There the picnic tables that are there have been moved around and used at different times. There was a there was a there was a rack of wood that was right there on the property line right here, and I said, well, you know, it's rotting. Could we could we get rid of that rack of wood? Because it had been there for many years and was rotting. So the best of my recollection, that's, you know, having lived right there next to them since 1978, to think that that they had wasn't used because, again, the third stipulation because there's a lot was said about back-to-back split. This case, this case, this case, this case.

Helen Rubeo: I beg your pardon. I don't want to be a problem, but I've lived there for 47 years. I'm Helen Rubio. I live at 438 Sherman Avenue. That's right next to 434, our properties abut each other. They go from Sherman to Warren, both properties. I've lived there since 1978. And in the very beginning, there was a family there, the Zaczynski. They used the backyard. There were three boys who were still living there. I always thought that was their backyard. And it was only not too long ago that I found out that it wasn't really supposed to be used as a backyard if it was another piece, another partial land. So that's all I wanted to say. Things that were back there were all the things that you would expect families could do. The, shed, the snowmobile, the fire pit, the stacks of wood, the little gazebo that their mother put up so that she could go out and have tea. To me, that was their backyard. And I'm assuming that that was correct.

I'm only here to verify what my sons have already said. Okay. And I might add, and this is all I'll say, we have no intention of trying to do the same thing, of selling a piece to have a house built or whatever, or to have a house built out, on the back of my property. I like it the way it is. I want it to go to my children, my grandchildren

if possible, and it's just a source of my protecting my peace and an investment.

Mr. Vitagliano: Just one more thing. I have an old survey from 1962 for the property. It shows some retaining walls that shows no fences on it. Fencing your property would be another example of using them in common, for it. So I'd like to at least put that in the record.

Business Session

- So you're actually putting the house right in that area. It's a problem. The other problem I have is that the other the people that now own this property may, in their own mind, think, even though there's little flags there, that since nobody can build, that it they'll mow the lawn, they'll do the maintenance on it. The other problem is that the property has been used, we've had dialogue on this, that the property has been used as a continuous piece since the 1950s or even before that. Now the differences, you have to correct me on this, The Rubio property has two tax cuts two tax bills and one lot. One deed. I don't think that was actually that significant. The fact that the one property was purchased one collection of two properties was purchased with a single deed, and one collection of properties was purchased with two separate deeds. I don't think that that has a significance to decisions that that we made or that the building inspector made in his challenged, decision.
- Two issues to discuss; One is whether or not the discussion, the argument about whether or not a back-to-back split doctrine is still applicable in 02/2025. There was some argument. It clearly exists in the common law, and it's existed into, I think, as late as we had cases, I think, that were in I think there were 02/1942 cases for the precedent. Yes.
- The courts would no longer endorse that doctrine. It may be something that's, to some extent, disfavored, but it clearly has not overruled, the common law that established the doctrine. So I don't think that the back-to-back doctrine is no longer applicable to the property. If we make the finding that the use of the property conforms with the standard that was set forth by the courts. That's where we come to the issue of whether or not the use by the 434 owners of the rear of its lot, Lot 28, was so significant that it prevented the application of the back-to-back doctrine. If we determine that the building inspector was correct in his determination, where does that leave the current owner of both lots as far as what they now own or not? Well, there isn't a common owner anymore. No. Not a common no. The current owners of both lots are the people who bought 434 is caveat emptor.
- If the survey was done by proper surveyor, you say the building inspector is correct, have they now just acquired an additional No. We're not talking about adverse possession. We're not talking about adverse possession. We're literally talking about whether or not the back-to-back split doctrine applies. That's it.

- That's the reason why we're discussing the level of usage by April. If we say that it does not apply. If we say the doctrine doesn't apply at all, then we have nothing to talk about. Right. If we say if we determine that Joe is correct and that the back-to-back split doctrine applies because there was no essentially, like my question, Mr. Vitagliano, was that the, the amount of use, if we determined it was a lot or a little, Joe said it was de minimis, we agree with that. We're saying that it's two distinct lots because the use was de minimis, and then therefore, it's a separate lot.
- First, we have to decide whether or not the back-to-back split doctrine is still available. If we find that our decision or the court in 2014 and the I think you even go back before that to say in, 02/1879, the law that created the ability to join. If because that language in there does say they shall be joined. So we determine, is that applicable?
- Then if that was applicable and they shall be joined, then there has to be something to say, well, that doesn't apply in this case. What would say doesn't apply in this case was that we bring in the back-to-back split concept, which is that there's frontages on two streets and then the lots are x and the only requirement that's in dispute is whether or not the usage. So, again, the first question we should probably assess is whether or not we believe that the back-to-back split doctrine is still unavailable. Not making determination yet whether it applies to this property, but whether or not it's even legally available. I don't we'd have to research to find out if it's still happening. Based upon the evidence that's been produced before us, deduced into this record, we have no basis to believe that it's not good law. Because that We have to have enough cases here. And what about the fact that the property was continuous use? Let me just clarify one thing.
- There was argument from the appellants. They made references to dicta in a court decision that the back-to-back split doctrine was disfavored. There was argument, not that it's overruled, but they were urging us to go along with that reasoning that we not apply it because it seems as though the courts aren't as eager to apply it in the modern era as they were ten, twenty, thirty, forty years ago. So even though there wasn't evidence in the record that said that it's not good law, there was evidence suggesting to us that we not find that it's applicable. Against that backdrop, I'm still believing that it's applicable here and that it's available for us to apply if we find that it meets the factors set forth by the Let me go back to some my other question for a second. Hypothetically, if we were to agree with the Rubeo's, for lack of a better word, that the lot the use of that flat portion of Lot 28 was continuous and a lot and very much met the standard to break the connection of the back-to-back split. And where does that leave the current owner of Lot 28? If we say because of the nature and type of use, they couldn't build as of right. They couldn't build as of right. They'd have to have a compliant lot, which they don't. So they would have to get a variance to overcome the noncompliance with the code that Lot 28 currently presents. And they could still come and seek that. Whether or not

they get it is a whole different story. Theoretically, right now, the, property on, we call it on Sherman Avenue is not owned.

- They're owned by two different people. Both lots are owned by two different people. Two different people. So the ruling of back-to-back is one thing, but you have two separate lots. It's like, for example, if you live on Greenwood and you've got a house on Halsey, right, what do you do there? They're two separate owners. My I guess what I'm getting also what I'm trying to get to is, like, we're all trying to get to, but the question to mister Vitagliano, what we went through is, what this comes down to is the nature and use of that flat area being 434. Alright? Picnic tables, gazebo, shed, anecdotal evidence that they were using it and everybody assumed it was in the backyard for a long period of time. I personally think that that's I take all of that testimony at its word that that is all accurate and that's what happened back there. That's the second part of it. Are we reaching that part yet? But I I've already decided the back-to-back split doctrine is applicable and available to us. Still does. So we're all So all the requirements are met except for Well, no. The contested issue is whether or not the use of the And I think factually, I don't think I don't think that there's a dispute as to whether or not what going on back there.
- I think to that effect, what I'm struggling with is the word never versus diminished use. I think that's where I'm Well, diminished, you know, by its nature, it's a very vague Yeah. Term. And in the decision, it wasn't, elaborated upon. So we're left, I think, to do that on our own. Yeah, but to find the minimis, you know, it could be what it It's a conclusory statement by the building inspector in his decision, and it wasn't, again, factually or maybe it's sort of Rubio's that it's not de minimis. To any person, the evaluation of whether or not it was de minimis might vary. But because it's not a term of art that applies to the standard, I don't think we should get hung up on whether or not, that wording in the building inspector's decision dictates what we can find based upon the record deduced before us regarding the intensity of the use of the I think I think if we flip it, I think we should I the analysis may maybe the better analysis for us should be; was the use that's on the record established on the record substantial enough to consider it as one entire lot as opposed to the member. But remember, it's not a question of whether I was it's a question of whether or not it undercuts the application of doctrine. Do we have a copy of the case that was provided with that had the standard laid out? It's in the file from like the original year.
- Well, without the case law in front of us, we can't use the exact language that the court used, but again, our recollection is that it pertained to the intensity of use to the point where it, established that the two lots were no longer separable. They were viewed as one single, and we go back to what we've said before. According to the law, it's two separate lines. According to application, it was treated as one line.
- So at one point in time, there had been a wood pile on the property, then

there was reference to a shed. The shed, I guess, did not have a permit, so it wasn't a legal structure. Do we have any testimony regarding the nature of the shed? Was it a plastic shed that could be picked up and moved in a matter of minutes, or was it a shed with the foundation? Did we ever hear anything about that in the record? I don't I don't recall. Anybody recall? Nope. Okay. What was the second, third thing that we had?

- We had a reference to a gazebo. Anybody recall whether or not the record reflected the time that the gazebo was there for, when it was erected, how long it was there for, how often it was utilized? We had a testimony that the picture was in 2016, I believe. That was Okay. So we know it was there in 2016. I know. I know that somebody liked to drink tea there. Alright. Anything else the member remembers about it?
- So where that leads me is to say that while I have a back-to-back split, doctrine may be there for, use. I'm not sure that it would apply in this particular scenario because it would seem that they were used in common based upon the record before us. So that's wrongful. K. And as a result of that, you're saying that the back-to-back split doctrine would not be applicable to keep this property. In, this case, that it is something that's available but not applicable in this case. That's where I'm leaning at this point, which would seem to be that, a notion in against the current determination of the building inspector. Who I respect very much, as I also respect that building inspector, I know, I actually don't think the record was sufficient? I tried to elicit as much as I could to build it up. I thought that we might be able to get more detail, but it was really just a bunch of fleeting uses over an indeterminate period of time. Very nonspecific level of usage, and, the fact that part of the property had a lawn that was mowed, this past week. There was no history of how long the property was even mowed, for that matter, over the years. So it just the record just wasn't there for me, and I would find, that the back-to-back split option would be applicable. That's how I'm leaning right now. All of the information that was presented to me along with hearsay information. So we have to assume to a certain degree that that information is truthful. And if it is truthful, then your theory that the doctrine exists, you know, is applicable, is false.
- It's been consistent testimony on both sides. There was I was uncontroverted, there was no challenge, no challenge to any. Nobody challenged a single piece of the evidence of usage. Well just the quantum of it is the question. Oh, and then and that's everybody's, the question is, what occurs if we say that the back-to-back doesn't exist? I mean, it's still, from what I can tell by the record, there's new owners of one piece. There's a lot, and there's another lot that has an owner. So by us saying that, where does that lead? Yeah. Should we really be looking at that? I mean, I understand that it's a curiosity question, but whether or not the builder can build on it with a variance somewhere down the road if we, you know, overrule the building inspector shouldn't be a part of our calculus here.
- I'm also looking at the initial owner. Prior on our initial testimony it was two

lots owned by one person. Testimony is also saying that it was two lots owned by one person and using both lots to their advantage because they own both lots. So I think we can all agree that that initial owner, pre '24, was utilizing both their lots. They own both lots regardless of where property lines were. We're looking at to use whether it's a small piece, the minimus, whatever the eager language is telling us, they used a fraction of that piece of property. I'm going non-legal. I'm just pulling stuff together here. Whereas, if we say the back of the pack didn't exist, then it was considered as one lie.

- If we overrule the building inspector's determination and we grant the appeal, then the owner of 28 has a property that he cannot build upon as of right. He may choose at some point down the road to try to get necessary approvals to get that nonconforming lot to become a lot that he could build upon. But that Again, it shouldn't be part of our calculus. Right. But that that flat part of Lot 28 still remains part of Lot 28 regardless of what we decide. Correct, that's just a lower piece because there are flat lots above and below. We looked at the property from both sides the property. So, again, I think this boils down to the do you think that the use that was put on the record is substantial enough Yeah. Or not to make to make you comfortable determining that it was used as a, you know, a common use or a co join user between the two or not. You know, you may say it does or doesn't. I think it's, probably let me let me throw this out. We have the lot on, Lot 28 is vacant at this point. Correct? The lot in front of it has been sold to a party. So basically speaking, Lot 28 stands by itself here. Does it not? It does.
- So the question comes up, is Lot 28 a buildable lot? Forget back-to-back. Depending on our decision today, we'll make a determination whether it's buildable as of right or potentially buildable if a nonconformity could be overcome through a variance that somebody may make someday. The fact of the matter is if we take a look at the, and we have to also look at the topography of the property. I'll make sure. To some degree, yeah. To some degree. If you figure a 30-foot frontage on that property and you still you'll have your 100-foot or whatever it was. You'd have enough for the side yard setback, but it's your depth. Theoretically, if we denied this back-to-back, then the builder has the right to apply for a permit, go through the process, permit, zoning, so on, and build on the lot. Correct? Yeah.
- It's a single lot of 5,000 square feet bordering on that one street and that the one on exist the house exists now is a total separate entity. Is it not? He doesn't own it. It was sold. The properties are separate. That's correct. So the property is sold, whether it was, the individual now that owns that property, he may go out and do the lawn in the back at the present time. That's fine.
- One last question. You mentioned that the appellate courts have sort of, not looked favorably on these back-to-back things. So what we're looking at is a change in I'll use the word law. I don't know what the right word would be.

So the court now is saying we don't really want back-to-back applications. How much I think the better way to say it is the courts in the past have recognized the application of this doctrine, which was created by common law. Courts created it. It's not in any of our code. Courts over the years have applied it, and more recently, the courts have said, we've applied this in the past. We're endorsing that it's still legally available as an option, but we don't love it. And the viability of it into the future may be subject to question, but they haven't gone to the point yet of saying it's no longer applicable moving forward. And we don't concern ourselves with what the courts may do someday. What applies right now is the law today. The law today allows application of the back-to-back split doctrine under case law which created it. That's all. Alright. I'll get more adverse with this.

- It's just the question of whether or not the four things that were on the property with the record developed as far as how they were used How much weight do you want to give those things? I think we need to make a decision now where we're in turn for decision only and come back and think about it next month.

Motion to approve the appeal made by Nick DeCicco, seconded by Ron Prezner. All remaining members voted against the appeal. Application denied 3-2.

INSPECTION MEETING WILL BE HELD ON

[MIN_SIGNATURES]

