

ZONING BOARD OF APPEALS

MINUTES

August 22, 2019

TOWN HALL

WURTSBORO, NEW YORK

ZONING BOARD MEMBERS :

MATTHEW MORDAS, Chairman

CATHY DAWKINS, Board Member

GEORGIA RAMPE, Board Member

KENT FINDLEY, Board Member

MATTHEW MORREALE, Board Member

JON FOURNIER, Alternate Board Member

STEVEN MOGEL, ESQ., Attorney

KYRA PLATT, Building Department

JERIC CORPORATION
Court Reporting Services
P.O. Box 385
Narrowsburg, New York 12764
(845) 252-3515

Reported by: Rosemary A. Meyer

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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

----- X

Tracy Longacre/Kent Findley
Appeal of Building Inspector Decision/
Use Variance
Tax Map Section 68; Block 1; Lot 80.1
Winterton Residential Agricultural Zone

----- X

Town Hall
Town of Mamakating
August 22, 2019
7:00 P.M.

ZONING BOARD MEMBERS :

- CATHY DAWKINS, Acting Chairman
- GEORGIA RAMPE, Board Member
- MATTHEW MORREALE, Board Member
- JON FOURNIER, Alternate Board Member
- KYRA PLATT, Building Department
- STEVEN MOGEL, ESQ., Attorney

Also Present: Kent Findley
On Behalf of Applicant

JERIC CORPORATION
Court Reporting Services
P.O. Box 385
Narrowsburg, New York 12764
(845) 252-3515

Reported by: Rosemary A. Meyer

1 - RE: T. LONGACRE/ K. FINDLEY -

2 BOARD MEMBER DAWKINS: Good evening. My name is Cathy
3 Dawkins. I'm going to call the meeting to order.

4 Our chairman, Matthew Mordas, is in route. We hope to
5 see him later this evening. As a result of that, we will
6 alter the agenda order tonight.

7 What I would like to do first is have Kent Findley
8 representing himself and Tracy Longacre first. Kent is a
9 member of this board so he will recuse himself, obviously,
10 and present.

11 Would you stand for the Pledge of Allegiance.

12 (The Pledge of Allegiance was recited.)

13 BOARD MEMBER DAWKINS: Roll call. We're expecting
14 Matt Mordas shortly. I'm Cathy Dawkins. I'm obviously
15 present. Georgia Rampe is present. Kent Findley is
16 present but recused for the first agenda item. Matt
17 Morreale and Jon Fournier.

18 BOARD MEMBER MORREALE: You're going to have to
19 appoint him.

20 BOARD MEMBER DAWKINS: Do I have to appoint him or do
21 I need a motion?

22 MR. MOGEL: You can just appoint him.

23 BOARD MEMBER DAWKINS: I'll appoint Jon Fournier to be
24 a full voting member for this applicant.

25 MR. FINDLEY: Okay. So we're here to appeal a

1 - RE: T. LONGACRE/ K. FINDLEY -

2 violation at 689 Winterton Road, Bloomingburg, New York.

3 The alleged violation is Section 199-7(C),
4 restrictions and controls. Any land use not specifically
5 listed for a zoning district shall be deemed to be
6 prohibited use for that zoning district.

7 Your property is located in the Winterton WRA Zone.
8 Camping is not permitted.

9 So, just on face value, the primary use of the
10 property is agricultural. We grow vegetables in varying
11 amounts, we grow lavender, produce maple products, forage
12 various naturally growing plants and trees on the property.
13 We even sell firewood. We've been to three farmers'
14 markets, Rock Hill, Mamakating and Goshen.

15 The principal use of agriculture is well established
16 in the violation the Town is attempting to issue. Simply
17 on face value, the violation should be dismissed, but I
18 will address the false assertion.

19 MR. MOGEL: I'm sorry. Can you just explain it to me
20 again? What's the basis, the first basis for dismissal,
21 you believe?

22 MR. FINDLEY: Because the primary use is not camping.
23 The primary use is agriculture.

24 MR. MOGEL: Okay.

25 MR. FINDLEY: I will get to that in a minute. I'll

1 - RE: T. LONGACRE/ K. FINDLEY -

2 address the false assertion that camping is not allowed as
3 an accessory use on the property.

4 The code enforcement officer failed to consider
5 accessory uses which are customary and incidental to the
6 principal use.

7 Also, there is ambiguity in the code because 199-7(C)
8 says any land use not specifically listed for a zoning
9 district shall be deemed to be prohibited use for that
10 zoning district, yet the bulk tables say that other
11 accessory uses customarily incidental to the principal use.
12 I guess a lawyer could most likely explain this either way,
13 but to a layperson, "other" clearly means it is not
14 strictly specifically listed and any land use would surely
15 imply accessory or principal use. That's just simply
16 the ...

17 The letter of violation -- my request. These are my
18 requests. I'm asking that the ZBA interpret the bulk table
19 for WRA zoning districts, specifically the meaning of
20 "other accessory uses customarily incidental to the
21 principal use".

22 I'm requesting the ZBA to determine that camping is
23 allowed as an accessory use to the principal use of
24 agricultural use in this zoning district, and if there is
25 ambiguity between 199-7(C) and the bulk tables.

1 - RE: T. LONGACRE/ K. FINDLEY -

2 And just it is an allowed use, agricultural
3 operations. And over here in accessory uses, other
4 accessory uses customarily incidental to the principal use.

5 Do you have a question? I'll answer the questions.

6 MS. PLATT: So agricultural operations are allowed in
7 the WR Zone. Special use would be Planning Board.

8 MR. FINDLEY: No, no. Agriculture is a permitted use
9 on ten acres. Permitted.

10 MS. PLATT: Never mind.

11 MR. FINDLEY: Accessory definition. New York State
12 defines accessory as any use of a structure lot or portion
13 thereof, customary, incidental, subordinate to. It does
14 not change the character of the principal land or
15 development. It goes on.

16 Mamakating, accessory use or structure. A use or
17 structure subordinate to the principal use on the same lot
18 and serving a purpose customarily incidental to the
19 principal use of the lot. This is right out of 199-6, word
20 usage.

21 According to Pace University, Pace University does a
22 lot of training and should be an accepted source for a
23 resource.

24 Again, accessory use are those of land found on the
25 same lot as the principal use that are subordinate,

1 - RE: T. LONGACRE/ K. FINDLEY -
2 incidental and customary and found in connection with the
3 principal use.

4 In order to qualify as an accessory use the use must
5 be incidental and subordinate to the principal use.

6 Accessory use must also be customarily found in
7 conjunction with its principal use. A use is customary if
8 it is commonly, habitually and by long practice has been
9 reasonably be associated with the principal use.

10 This is out of The Beginner's Guide to Land Use, Pace
11 University.

12 Additionally, another document by Pace University Land
13 Use Law Center. It goes on to say basically the same
14 thing; subordinate, incidental, customarily found in
15 connection, minor use of the land. This is from a guidance
16 paper and it's got all the articles.

17 I'm going to talk a little bit about related case law
18 that I came across. This is a case, it's actually in
19 Ulster County. It was a bed and breakfast. The special
20 use was approved in 1998. It started hosting weddings
21 almost two decades later. They were violated for holding
22 weddings. The ZBA approved hosting weddings as an
23 accessory use. There were some caveats with the approval.
24 They needed to get some planning board approval; they went
25 and got it. But local residents filed an Article 78 to

1 - RE: T. LONGACRE/ K. FINDLEY -

2 attempt to rescind the accessory use. The accessory use
3 was upheld as an accessory use because it fit into the
4 character of the community because other bed and breakfasts
5 in the area also hosted weddings. That's very close,
6 Ulster County.

7 Now, I have some other related case law that, as I was
8 going through it and read a bunch of things, this accessory
9 use, although the accessory use is specific to the town,
10 the concept and the laws are kind of common through the
11 country. Many of these cases, or all of them that I'm
12 going to talk about from here on are from out of state, but
13 the concept is the same.

14 The rule of accessory use is in response to
15 impossibility of providing expressly by zoning ordinance
16 every possible lawful use. Even though prohibited use of
17 land does not explicitly allow it, it's nonetheless
18 permissible if it can be said to be accessory. That's out
19 of New Hampshire.

20 This is what was stipulated. In a valid landowner
21 claim, that the use is accessory must demonstrate that the
22 use is subordinate to an identified primary use. The term
23 "subordinate" is defined in Webster's Dictionary. Placed
24 in or occupying a lower class or rank, inferior. Again,
25 out of New Hampshire.

1 - RE: T. LONGACRE/ K. FINDLEY -

2 This is another one from Utah landowner claiming that
3 a use is accessory must next demonstrate that the use is
4 customarily incidental to the primary use.

5 This is kind of what I was talking about. This is
6 from a document from Virginia. Virginia courts have not
7 examined the meaning of commonly use terms. The courts
8 from most states have considered it on numerous occasions.
9 A general use is customarily incidental to a primary use,
10 implies that the use flows from, naturally derives or
11 follows a logical consequence or normally expected as an
12 offshoot to the primary use.

13 This one is kind of semi-related. Boarding houses,
14 lodging houses and hotels are not accessory to permitted
15 primary use in the agricultural residential zoning
16 district.

17 The term incidental incorporates the concept of a
18 reasonable relationship with the primary use. It is not
19 enough that the use be subordinate, it must also be
20 attendant or concomitant. To ignore this latter aspect of
21 incidental would be to permit any use which is not primary,
22 no matter how unrelated it is to the primary use.

23 Customary, incidental is one that has commonly and
24 habitually and by long practice been established as
25 reasonably associated with the primary use, holding that a

1 - RE: T. LONGACRE/ K. FINDLEY -
2 barn constructed to house heavy equipment on a
3 residentially zoned land is not accessory to the primary
4 residential use.

5 Although a rare association of uses cannot qualify as
6 customary, the use need not be shown in the majority of
7 instances of the primary use. I think that's very
8 important. It goes on to talk about a church that wanted
9 to build a huge steel storage shed; wasn't allowed.

10 And this is also very important. A locality may
11 exclude specific accessory uses from a district violating
12 issue. Had it been the purpose of the ordinance to prohibit
13 the raising, sheltering or harboring of pigeons or other
14 fowl in a residential district, as the county claims, this
15 could easily have been accomplished by simple and direct
16 provisions to that effect. Camping, beekeeping are not
17 exclusively excluded in our zone.

18 (Chairman Mordas entered the meeting room.)

19 MR. FINDLEY: Historical context, which is also
20 important. In Long Point, Vermont, this is in Vermont,
21 was, at the time, owned by a local family, the Ball family,
22 that allowed campers on the property, allocated spaces by
23 leasing arrangement and they offered services for sale such
24 as transportation to and from the railroad depot, providing
25 meals, providing ice, renting boats. This is in 1880. I

1 - RE: T. LONGACRE/ K. FINDLEY -

2 think at one point it eventually became a town.

3 My property, before it was subdivided I had boy scouts
4 camping, hunters camping and amenities for them.

5 The Bronner Farm on Winterton Road, had a cabin by the
6 Shawungunk Kill that authors would stay at, family events
7 and camping.

8 I personally camped at a farm in Pennsylvania as a
9 child.

10 My brothers, which are much older than myself, camped
11 at the property, the current that's violated, as boy scouts
12 of Troop 154. They typically camped during the fall and
13 winter.

14 I am not claiming any grandfather clause or anything.
15 It's just the context.

16 Relationship to the primary use farming. Some
17 visitors purchase maple products produced on the farm.
18 Some visitors take a tour of the maple production. Almost
19 all visitors purchase wood products which is considered an
20 agricultural product by New York State. Some visitors
21 purchase lavender products. Some visitors just enjoy the
22 farm. All visitors spend money in Mamakating. All
23 visitors are eco-tourists and all visitors are
24 agri-tourists.

25 Camping is incidental and subordinate to my farm. The

1 - RE: T. LONGACRE/ K. FINDLEY -

2 campsite is less than a hundred by a hundred which is
3 10,000 square feet. It's probably more like 50 by 50, but
4 I want to be generous. The farm is 32 acres which is
5 almost 1.4 million square feet. The camping area is
6 something like .7 percent of the farm's area.

7 Income from of camping is less than that of farming.

8 Camping is even allowed in the newly adopted
9 Comprehensive Plan. This is 4.1 on page 11 under Economic
10 Development Goal and Steering Committee. To protect
11 significant environmental and agricultural features in the
12 town as a means of promoting eco-tourism and agri-tourism
13 activities and become a regional trendsetter in
14 eco-tourism, agri-tourism development and to accommodate
15 land uses adjacent to these resources that would benefit
16 economically.

17 To protect the scenic and rural quality of Winterton
18 Road, including the preservation of agricultural uses and
19 promotion of agri-tourism as a means of preserving open
20 space.

21 A distinguish the factor between this 2016 plan update
22 and the Town's prior 2001 Comprehensive Plan is a shift
23 towards an economic emphasis in developing eco-tourism,
24 hospitality and related services.

25 Objectives 4.2 and 4.5 seek to revitalize the hamlets

1 - RE: T. LONGACRE/ K. FINDLEY -

2 to promote tourism, reestablish local commercial and retail
3 trade both for resident needs and as a draw for tourists.

4 And again, camping is allowed in the Comprehensive
5 Plan. Agri-tourism has become a more common element of
6 smaller scale niche farming common among, but not limited
7 to orchards and vineyards in the region.

8 Eco-tourism is an economic development strategy that
9 emphasizes the natural undisturbed landscape and
10 preservation of natural resources in order to attract
11 visitors, investment and spending in the town.

12 Last weekend we had two campers. They were from the
13 Binghamton area. On Saturday -- they started camping
14 Friday night. Saturday they visited the Basha Kill Wetland
15 in the morning and hiking from the boat trail across the
16 Basha Kill Vineyards. They went to the vineyards. They
17 ate dinner Saturday night Giovanni's. They went to the
18 Canal Towne Emporium on Sunday and the crystal shop. They
19 went to a concert Sunday night at Bethel. They most likely
20 spent somewhere between 750 and 1,000 dollars in our town.
21 Assuming 750 spent 12 times a year times a multiplier of
22 six for local money distribution, that's a well known
23 economic principal, times 20 campsites if Mamakating would
24 allow it, would be over one million dollars of economic
25 activity generated from camping. The Economic impact of

1 - RE: T. LONGACRE/ K. FINDLEY -

2 three sites that have already been violated is something
3 like 162,000.

4 All right. To discuss a little bit about health and
5 safety concerns, I'm just going to put out there, New York
6 State DEC camping rules. There's roughly, like, 3300 acres
7 of state forest land in the Town of Mamakating which is the
8 Wurtsboro Ridge State Forest, Roosa Gap State Forest and
9 Shawangunk Ridge State Forest. There is essentially no
10 vehicular access to these acres. There's no 911 address.
11 There are no fire extinguishes of any kind required. And
12 you are allowed to camp on all 3,230 acres.

13 These are the rules. Camping is prohibited within 150
14 feet of any road, trail, spring, stream, pond.

15 You don't have to register unless you're a group of
16 ten or more.

17 There are no lean-tos in those forests so that doesn't
18 even apply.

19 You're not allowed to store personal property.

20 For fires, fires should be built in existing fire pits
21 or fireplaces, if provided. If not, you may have a fire
22 unless there's a no fire disk.

23 You're not allowed to cut standing trees.

24 You have to extinguish all fires with water and stir
25 the ashes, but you do not need a fire extinguisher.

1 - RE: T. LONGACRE/ K. FINDLEY -

2 Tips to leave no trace. You're not allowed to remove
3 anything from the forest. It's illegal.

4 In order to go to the bathroom, you simply dig a hole
5 six to eight inches deep and cover it.

6 You're not allowed to use soap with 150 feet of water.
7 Drinking and cooking water should be boiled.

8 Carry out and carry in.

9 Keep your dogs leashed.

10 Observe and enjoy the wildlife, leave them
11 undisturbed.

12 So this is the farm. This is Winterton Road, right
13 here. There is the barrier on the map. It's a flag lot.
14 It comes in, it comes down from the Shawangunk Kill, comes
15 over, comes back, comes up.

16 The only building on the property is the sugar shack,
17 about here, which we make the maple in. There used to be a
18 camp, a cabin that was destroyed. This whole thing used to
19 be part of the Fusco Farm, from here to here. This is a
20 destroyed Quonset hut that people used to camp at. There's
21 a playground, the remains of a playground here. This is
22 the campsite.

23 Across the stream is Korn's Campground, 98 campsites,
24 right over here. That's the campsite. These are houses.
25 This house is well over a thousand feet away. This house

1 - RE: T. LONGACRE/ K. FINDLEY -

2 is also over a thousand feet away. These houses are almost
3 a quarter mile away.

4 So I have shown that camping is clearly an accessory
5 use to the principal use, agriculture, and camping is
6 customary and incidental. I've shown camping is
7 subordinate. I've shown that camping activities are
8 related and beneficial to the principal use of farming. I
9 have shown that camping is an accessory use and beneficial
10 to the town's economic and in furtherance of the newly
11 adopted Comprehensive Plan. There's no health or safety
12 concerns and it's entirely different than camping in the
13 state of forests of New York provided within the Town of
14 Mamakating.

15 That is it for now.

16 MR. MOGEL: Kent, that was incredibly detailed, and
17 clearly, you worked a really long time on that and it's
18 certainly appreciated. You laid it all out for the Board.
19 But if I were to boil it down to its legal bones I would
20 say that the issue you've shown, and I think I would agree
21 with you that camping would be incidental to an
22 agricultural use and that camping would certainly be
23 subordinate to an agricultural use. But I believe the
24 issue would be whether it's customary. So accessory uses,
25 and that is often the key with an accessory use, is that

1 - RE: T. LONGACRE/ K. FINDLEY -

2 something that's customary. You would ask what's customary
3 on a farm. Selling agricultural products at a farmstand,
4 selling maple products, having a tour of the maple house,
5 those are undoubtedly accessory uses of agricultural
6 property.

7 Camping, I think that's a factual question that the
8 Board would have to determine, whether it is customary,
9 usual, ordinary for farms to also offer camping. I think
10 that's something that the Board would need to consider.

11 BOARD MEMBER FINDLEY: Agreed. And I think if you did
12 a simple search of the Internet you will find that many
13 farms offer camping. I can show, historically, that this
14 farm, and I can offer public testimony for that, did allow
15 camping, the boy scouts, which they did pay in certain
16 regards. It offered camping for hunters. Camping is
17 clearly -- the town in Vermont was established from the
18 customary use of farming and camping. They provided
19 services to the campers. They came by train. Farms have
20 customarily offered camping.

21 There is one legal case that say it doesn't have to be
22 that every farm offers camping, it doesn't have to be the
23 majority, it just has to be something that is customarily
24 done, there's evidence of it. I do believe that farming is
25 clearly shown to be customary.

1 - RE: T. LONGACRE/ K. FINDLEY -

2 MR. MOGEL: Okay. I certainly agree with you. That's
3 just my opinion. But I certainly agree with you that it
4 doesn't need to be something that's conducted on every
5 farm, it doesn't need to be something that's conducted on a
6 majority of farms. But there is a recognition in the law
7 of what would be customary for individual uses and that's
8 something that the Board would need to make a determination
9 on.

10 MR. FINDLEY: I would also like to ask for the
11 consideration of the ambiguity between 199-7(C) and
12 applying the bulk tables of other uses customary and
13 incidental.

14 MR. MOGEL: I don't agree that that is ambiguous.
15 What that indicates, it says if the use is not permitted
16 and the use is not specifically listed, then it is
17 prohibited. Then it lists, it says other accessory uses.
18 The reason it does that is for the reason that you
19 indicated, which is there are many potential accessory
20 uses. By leaving it there, they're leaving it to the
21 discretion of the interpreting body which would be the ZBA
22 or the courts to determine whether that individual use is
23 accessory or not. I disagree that it is ambiguous. I
24 don't see any ambiguity.

25 MR. FINDLEY: I respect your opinion, but I would

1 - RE: T. LONGACRE/ K. FINDLEY -
2 still like the Board to issue a determination on that.

3 MR. MOGEL: Okay.

4 CHAIRMAN MORDAS: We need to set up a public hearing.

5 BOARD MEMBER DAWKINS: Yes.

6 CHAIRMAN MORDAS: Motion to set up a public hearing?

7 BOARD MEMBER DAWKINS: So moved.

8 BOARD MEMBER MORREALE: I'll second it.

9 CHAIRMAN MORDAS: All in favor?

10 BOARD MEMBER DAWKINS: Aye.

11 BOARD MEMBER RAMPE: Aye.

12 BOARD MEMBER MORREALE: Aye.

13 ALTERNATE BOARD MEMBER FOURNIER: Aye.

14 CHAIRMAN MORDAS: Aye.

15 (The motion was approved and carried.)

16 CHAIRMAN MORDAS: Thanks, Kent.

17 MR. FINDLEY: I'm going to resume my seat.

18 (Time noted: 7:29 p.m.)

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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Tracy Longacre/Kent Findley, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: October 8, 2019

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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

----- X
Carol Jenny Silverman
Area Variance
Tax Map Section 30; Block 1; Lot 18
Neighborhood Residential Zone
----- X

Town Hall
Town of Mamakating
August 22, 2019
7:29 P.M.

ZONING BOARD MEMBERS :

- MATTHEW MORDAS, Chairman
- CATHY DAWKINS, Board Member
- GEORGIA RAMPE, Board Member
- KENT FINDLEY, Board Member
- MATTHEW MORREALE, Board Member
- JON FOURNIER, Alternate Board Member
- STEVEN MOGEL, ESQ., Attorney
- KYRA PLATT, Building Department

Also Present: Martin Miller, Esq.,
On Behalf of Applicant

JERIC CORPORATION
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(845) 252-3515

Reported by: Rosemary A. Meyer

1 - RE: CAROL JENNY SILVERMAN -

2

3 BOARD MEMBER DAWKINS: So Kent will return as a voting
4 member and Jon will return as an alternate.

5 So next on the agenda is Carol Jenny Silverman.

6 MR. MOGEL: I think the record should acknowledge that
7 the chairman is present.

8 BOARD MEMBER DAWKINS: Correct.

9 CHAIRMAN MORDAS: I forgot something important, an
10 item my truck. If I could have a few minutes.

11 MR. MILLER: Two seconds.

12 (A recess was taken from 7:31 p.m. to
13 7:32 p.m.)

14 CHAIRMAN MORDAS: Thanks a lot.

15 MR. MILLER: Good evening. We're back on the request
16 by the Silvermans for some area variances. I want the
17 Board to know that since our last meeting the plan has been
18 reviewed and revised every so slightly. You should have a
19 memorandum from Tim which addresses those requested
20 variances and how we've addressed them and perhaps
21 eliminated them.

22 One request was that we perhaps shift the structure
23 slightly to try and address or minimize area variances, and
24 that has been done. The front yard setback variances are
25 all as required. The requirement is 25 feet. We've now

1 - RE: CAROL JENNY SILVERMAN -

2 provided, on the plan, for 26 feet.

3 We've also reduced the lot coverage. By reducing the
4 width of the proposed deck we're eliminating the need for
5 the lot coverage variance.

6 We're discussing variances for the side yards because
7 the structure is where it is, or has to be unless we're
8 going to build a bowling alley. The lots are, in fact,
9 extraordinarily narrow.

10 We provided information with regard to the septic
11 system which the Board had requested. And we provided
12 additional provisions for drainage and footing drains.

13 I'm basically reciting the engineering work that I had
14 nothing to do with but Tim did. So if you have read
15 questions, he's the guy who can to respond to your
16 questions.

17 But I think the point that I'm trying to make is the
18 concerns that had been raised by the Board have been
19 addressed and we would ask, if you're satisfied with our
20 responses, to proceed with the requested variances.

21 BOARD MEMBER FINDLEY: I would like to ask. Is this a
22 completely new foundation?

23 MR. MILLER: You're going to have to speak up.

24 BOARD MEMBER FINDLEY: Is this a completely new
25 foundation?

1 - RE: CAROL JENNY SILVERMAN -

2 MR. GOTTLIEB: Yes. The existing building is going to
3 be torn down and a new one put in.

4 BOARD MEMBER DAWKINS: And the original home didn't
5 have a foundation.

6 MR. MILLER: You just have to speak up because Tim is
7 a little hard of hearing.

8 BOARD MEMBER DAWKINS: The original home, did it have
9 a real foundation like what we think of today? Probably
10 not.

11 MR. GOTTLIEB: It had some sort of foundation.

12 BOARD MEMBER DAWKINS: Right.

13 MR. GOTTLIEB: It's not a full basement.

14 BOARD MEMBER FINDLEY: I'll go on to say that I think
15 his side yard setback on the one side is a huge issue for
16 me. These communities have enough issues with neighbors
17 that -- I think 3.2 is unreasonable. I think 3.2 foot side
18 yard setback is unreasonable considering it's basically a
19 new building.

20 MR. MILLER: I just wanted to verify something. The
21 Board has a letter from the neighbor who is the 3.2 setback
22 suggesting that she approves and consents. Actually
23 stating she approves and consents.

24 BOARD MEMBER FINDLEY: I do understand that, but it's
25 not just that neighbor that's we're going to deal with.

1 - RE: CAROL JENNY SILVERMAN -

2 MR. MILLER: I appreciate that. But this is a narrow
3 preexisting lot in a lake community and if you're going to
4 put another structure on there --

5 BOARD MEMBER FINDLEY: You're building a new structure
6 on it, essentially.

7 MR. MILLER: That is correct.

8 BOARD MEMBER MORREALE: The current structure is 2.9
9 and you're actually going to be moving it further away, to
10 3.2; correct?

11 MR. MILLER: Correct. We're decreasing the amount of
12 nonconformity. It's still nonconforming.

13 BOARD MEMBER MORREALE: Right. But the point is is
14 that you're making it less nonconforming.

15 BOARD MEMBER DAWKINS: Yes.

16 BOARD MEMBER MORREALE: My concern is the LP tank on
17 that side of the house. I mean I don't think you can walk
18 past it without trespassing.

19 MR. GOTTLIEB: That's existing. That will be moved.

20 BOARD MEMBER MORREALE: Good.

21 MR. GOTTLIEB: That has to be moved.

22 BOARD MEMBER MORREALE: Right.

23 MR. GOTTLIEB: The code is, I believe ten feet. That
24 will be moved.

25 BOARD MEMBER MORREALE: It just shows up on the newer

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2 and on the proposed also.

3 MR. GOTTLIEB: Not proposed, it's existing.

4 MR. MILLER: It's kind of an overlay of the two maps.

5 BOARD MEMBER MORREALE: Got you.

6 (Zoning Board members examining documents.)

7 BOARD MEMBER DAWKINS: So the distance between the
8 septic tank and the closest point of the proposed structure
9 and then the distance between the septic absorption, the
10 dry well, and the closest point of the house, could you
11 clarify that for me?

12 MR. GOTTLIEB: The septic tank looks seven or eight
13 feet from the foundation. The dry well is probably ten
14 feet, twelve feet.

15 CHAIRMAN MORDAS: How far is the lake side of the
16 leach field from the corner of the house?

17 MR. MILLER: Tim.

18 (Mr. Gottlieb examining plan.)

19 MR. MILLER: I don't know if Tim heard you, but ...

20 CHAIRMAN MORDAS: I'll wait until Tim gets back.

21 MR. MILLER: A man with a ruler is a powerful
22 individual.

23 BOARD MEMBER FINDLEY: What was the question?

24 BOARD MEMBER DAWKINS: Repeat the question, Matt.

25 CHAIRMAN MORDAS: The lake side of the leach field,

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2 how far is that from the corner of the house with this
3 newly proposed location of the house?

4 MR. MILLER: The lake side of the leach field, how
5 close is it to the corner of the house.

6 MR. GOTTLIEB: Fifteen feet.

7 BOARD MEMBER DAWKINS: Fifteen feet.

8 MR. GOTTLIEB: It's about 15.

9 CHAIRMAN MORDAS: I don't know. I measure much less
10 than that. I mean this is a newly proposed dwelling;
11 right?

12 MR. GOTTLIEB: Right.

13 CHAIRMAN MORDAS: One inch is 20 feet?

14 MR. GOTTLIEB: If you're looking at the septic tank or
15 to the dry well?

16 CHAIRMAN MORDAS: The leach field.

17 MR. GOTTLIEB: The dry well.

18 CHAIRMAN MORDAS: The absorption field.

19 MR. GOTTLIEB: Fifteen feet, yes.

20 CHAIRMAN MORDAS: This says one inch is 20 feet.

21 MR. GOTTLIEB: This is the septic tank and that's the
22 dry well.

23 CHAIRMAN MORDAS: Okay, all right.

24 MR. GOTTLIEB: Fifteen feet.

25 BOARD MEMBER DAWKINS: Are they pumping up?

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2 MR. GOTTLIEB: No. It's a dry well.

3 BOARD MEMBER DAWKINS: It's flat.

4 MR. GOTTLIEB: It's flat.

5 CHAIRMAN MORDAS: Thank you.

6 MR. MOGEL: So just to confirm, they're a preexisting
7 nonconforming use. There's a reduction in the
8 nonconformity on a couple of items. That's it; right?
9 You're only seeking variances on the one side yard and both
10 side yards?

11 BOARD MEMBER DAWKINS: And the total lot coverage.
12 The total lot coverage --

13 MR. MILLER: No, no.

14 MR. MOGEL: No, not lot coverage.

15 BOARD MEMBER DAWKINS: Oh, that's right. That's
16 right. I'm sorry. That's right. Yes.

17 MR. MOGEL: So it's just those two?

18 MR. GOTTLIEB: Just those two.

19 MR. MILLER: Those two.

20 MR. MOGEL: And both of those, you're decreasing the
21 nonconformity.

22 MR. MILLER: Correct.

23 MR. MOGEL: Slightly, but ...

24 MR. MILLER: Marginally so, but we are decreasing.

25 BOARD MEMBER FINDLEY: I think there's a distinction

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2 here, though. They're entirely removing the existing
3 structure and building a brand new structure. I think we
4 should be looking at a larger setback. We have the
5 opportunity to increase the setback closer to ...

6 BOARD MEMBER RAMPE: What's required?

7 BOARD MEMBER FINDLEY: What's required, yes. It's not
8 like they're building on the same foundation. I would
9 understand that.

10 CHAIRMAN MORDAS: What's your concern?

11 BOARD MEMBER FINDLEY: That it's basically a new
12 structure. They're not using any of the existing building.
13 It's a new structure.

14 CHAIRMAN MORDAS: Yes, I think it's a new structure,
15 too.

16 BOARD MEMBER FINDLEY: So with all the time, there are
17 other issues that occur in these lake communities, I think
18 we should be looking at making it closer to the zoning.

19 BOARD MEMBER DAWKINS: But they are making it closer
20 to the zoning.

21 BOARD MEMBER FINDLEY: By how much, .3 feet?

22 BOARD MEMBER DAWKINS: They've increased the rear
23 yard. They've changed the --

24 BOARD MEMBER FINDLEY: Yes, I'm talking the side yard.

25 BOARD MEMBER DAWKINS: But they have made changes.

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2 BOARD MEMBER FINDLEY: Okay, that's --

3 BOARD MEMBER DAWKINS: The alternative is to leave the
4 existing house the way it is with greater nonconformity and
5 less desirability.

6 BOARD MEMBER FINDLEY: There are other alternatives.

7 CHAIRMAN MORDAS: What are the alternatives?

8 BOARD MEMBER FINDLEY: You're building a brand new
9 house. Make it narrower.

10 CHAIRMAN MORDAS: Narrower?

11 BOARD MEMBER FINDLEY: Or longer or taller, within the
12 code.

13 BOARD MEMBER DAWKINS: They're already going up.

14 BOARD MEMBER FINDLEY: That's fine.

15 BOARD MEMBER DAWKINS: But you're right, there are
16 alternatives.

17 BOARD MEMBER FINDLEY: The side yard increase or
18 reduction is .3 feet which is four inches.

19 CHAIRMAN MORDAS: This is Neighborhood Residential?

20 BOARD MEMBER DAWKINS: Neighborhood Residential.

21 BOARD MEMBER FINDLEY: It's a nonconforming lot,
22 though.

23 BOARD MEMBER DAWKINS BOARD: It's Neighborhood
24 Residential.

25 BOARD MEMBER FINDLEY: It's a nonconforming lot,

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2 though.

3 BOARD MEMBER DAWKINS: Yes.

4 BOARD MEMBER RAMPE: Do we have proposed drawings of
5 what it will like look?

6 BOARD MEMBER DAWKINS: Yes.

7 (Zoning board members examining drawing.)

8 MR. MOGEL: So the Board doesn't regard this, or I
9 should ask does the Board regard this as falling under
10 199-51(C), Subsection 1, nonconforming buildings?
11 Noncomplying buildings may be continued to be repaired,
12 structurally altered, reconstructed or enlarged provided
13 that the action doesn't increase the degree of creating any
14 nonconformity to district bulk regulations.

15 This is a reconstruction?

16 MR. MILLER: It would be.

17 BOARD MEMBER DAWKINS: It will be.

18 MR. MILLER: And I would tell you that in terms of the
19 neighborhood, it is substantially similar to other
20 properties in the neighborhood in terms of its setbacks and
21 construction design.

22 BOARD MEMBER MORREALE: When you look at the map
23 provided, you can see most of the lots are 50 feet wide.
24 One of the smallest is 45 feet wide. We're certainly not
25 going to change the character of the neighborhood.

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2 CHAIRMAN MORDAS: What did you say, Matthew?

3 BOARD MEMBER MORREALE: I said we're certainly not
4 going to change the character of the neighborhood. The lot
5 size widths are anywhere from 45 feet to 50 feet. There
6 are a few larger ones. Most of them are 50 feet wide.

7 CHAIRMAN MORDAS: Now, counsel brought up
8 199-51(C)(1).

9 BOARD MEMBER FINDLEY: I'll look it up.

10 CHAIRMAN MORDAS: What's the definition of
11 "reconstruction"? This house is coming down. It's not
12 really being reconstructed; right?

13 BOARD MEMBER FINDLEY: That's kind of my view. That's
14 what I'm trying --

15 MR. MOGEL: That's for the Board to interpret.

16 BOARD MEMBER FINDLEY: I'm telling you my view.
17 That's what I'm saying. But this is --

18 MR. MILLER: I'm -- excuse me.

19 BOARD MEMBER FINDLEY: No, go ahead.

20 MR. MILLER: I was going to say I would advance that
21 argument in the sense that we have a house that this is in
22 desperate need of attention and at some point it's going to
23 require a substantial amount of work just to remain viable.
24 We could do that on a piecemeal basis and we could probably
25 put up this house that we're looking at on a piecemeal

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2 basis and accomplish what we look to accomplish without
3 coming to the Board and without decreasing the variances
4 we're requesting. We think this is a better solution and
5 we come to you and ask for your approval on the better
6 solution. If we took down one wall at a time and started
7 to strengthen and improve the foundation and did what we
8 need to be done, I think we could do that. I don't think
9 it's a practical solution, but it could be done.

10 BOARD MEMBER FINDLEY: What is the height, allowable
11 height in this district on a nonconforming lot?

12 CHAIRMAN MORDAS: I don't think height applies to a
13 nonconforming lot.

14 BOARD MEMBER FINDLEY: Is it found on the bulk table?

15 CHAIRMAN MORDAS: It's Neighborhood Residential.

16 BOARD MEMBER FINDLEY: What's the height there?

17 MS. PLATT: Thirty feet.

18 CHAIRMAN MORDAS: And remind me. What is the height
19 of this proposal?

20 MR. MILLER: The height of the building.

21 MR. GOTTLIEB: Twenty-nine six, I believe.

22 BOARD MEMBER FINDLEY: What is the definition of
23 "height"?

24 MR. MILLER: We're not requesting a variance on that
25 issue.

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2 BOARD MEMBER DAWKINS: Right.

3 MR. MILLER: So we're in compliance.

4 BOARD MEMBER FINDLEY: Well, let me confirm that.

5 MS. PLATT: They had originally applied for a building
6 permit and we had denied it based on including the height.
7 They amended those plans and got a new denial because their
8 height met what was required. It was originally an issue,
9 but in the plans before you it's not.

10 CHAIRMAN MORDAS: Also density? Lot coverage, I mean.

11 MS. PLATT: I think that was --

12 BOARD MEMBER DAWKINS: They were originally planning a
13 36 percent coverage and they brought it down to 33.9.

14 MR. MILLER: Correct.

15 MS. PLATT: Yes.

16 BOARD MEMBER RAMPE: What's the square footage of the
17 first floor? The square footage of the first floor.

18 MR. MILLER: We'll have to calculate it.

19 BOARD MEMBER RAMPE: Okay.

20 MR. MILLER: The reduction was accomplished by
21 reducing the width of the deck and exterior portion, not
22 any interior living space. The interior living space has
23 remained --

24 BOARD MEMBER DAWKINS: You mean for the lot coverage.

25 MR. MILLER: Yes, the lot coverage.

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2 The square footage of the structure has remained, the
3 redesigned structure. The new structure has remained
4 constant.

5 MR. GOTTLIEB: The first floor square footage without
6 the garage is 890 square feet.

7 BOARD MEMBER RAMPE: I'm sorry, can you repeat that?

8 MR. GOTTLIEB: It's 890 square feet without the
9 garage. The second floor is 1416. It's a square building
10 or a rectangular building, whatever. So the second floor
11 is 1416. That's probably the square footage of the first
12 floor, also.

13 BOARD MEMBER RAMPE: Okay. But 890 square feet on the
14 first floor is living space.

15 MR. GOTTLIEB: Yes.

16 BOARD MEMBER DAWKINS: And it's probably another 500
17 or so for the garage.

18 MR. MILLER: Correct, and that's what's shown on the
19 plan, five and a quarter.

20 BOARD MEMBER RAMPE: Okay.

21 MR. MILLER: Five twenty-five.

22 BOARD MEMBER RAMPE: So that's ...

23 MS. PLATT: 2,350.

24 BOARD MEMBER DAWKINS: Two thousand what?

25 MS. PLATT: Three hundred fifty.

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2 BOARD MEMBER DAWKINS: And that's living space.

3 MS. PLATT: Not including the garage.

4 BOARD MEMBER DAWKINS: Not including the garage.

5 CHAIRMAN MORDAS: And the first floor is?

6 BOARD MEMBER DAWKINS: If you include the garage, it's
7 1416.

8 MR. MILLER: Here, the information is calculated. The
9 first floor is 890. The second floor is 1416 and the
10 garage, which is on the first floor, is 525. The garage is
11 not living space.

12 BOARD MEMBER DAWKINS: So the total square footage is
13 2306 living space or a total square footage of 2832 total
14 space.

15 MR. MILLER: I'm not adding it up, whatever it adds up
16 to. It's tough enough reading the numbers upside down.

17 MS. PLATT: 2, 306. I thought you said 60, not 16.
18 Sorry.

19 These are our building permits. You're welcome look
20 at them.

21 BOARD MEMBER DAWKINS: 2,306. Thank you.

22 CHAIRMAN MORDAS: All right. So just looking at it,
23 what the Applicant is requesting --

24 BOARD MEMBER DAWKINS: Do we want to close the public
25 hearing?

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2 MS. PLATT: We did.

3 BOARD MEMBER DAWKINS: Oh, we already did.

4 MS. PLATT: It was closed the last time.

5 CHAIRMAN MORDAS: So he needs on one side yard a
6 variance of 6.8 feet.

7 BOARD MEMBER RAMPE: Wait a minute.

8 CHAIRMAN MORDAS: Both side yards, which he needs to
9 provide 25. He needs 13 feet.

10 BOARD MEMBER DAWKINS: What was your question,
11 Georgia?

12 BOARD MEMBER RAMPE: I'm just wondering how much of an
13 increase is the square footage. Yes, it doesn't really say
14 what the existing house square footage is.

15 CHAIRMAN MORDAS: The existing house is, what, 800
16 square feet?

17 MR. MILLER: How big is the existing?

18 CHAIRMAN MORDAS: 780?

19 MR. GOTTLIEB: About 780, 786, something like that.

20 BOARD MEMBER RAMPE: That's a lot of area.

21 So I'm sorry, what was that number?

22 CHAIRMAN MORDAS: Well, the Applicant has addressed
23 one of my big concerns, was the space of the house which
24 will now have curtain or foot drains around the basement.
25 They moved it further away from the, I call it the leach

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2 field. What's the term Mary uses?

3 board member morreale: Dry well.

4 CHAIRMAN MORDAS: A dry well.

5 MR. GOTTLIEB: Dry well.

6 CHAIRMAN MORDAS: So that, I'm pleased with.

7 What he's proposing here as far as variances needed
8 isn't really greater than what's there already. If
9 anything, it's slightly less.

10 BOARD MEMBER MORREALE: My feeling is if the Board
11 were to deny, they then renovate, we get none of our
12 concerns addressed --

13 BOARD MEMBER DAWKINS: Exactly.

14 BOARD MEMBER MORREALE: -- the major one being the
15 septic and however marginal, the side yards. If we grant
16 it, we get our major concerns addressed and the setback for
17 the side yards will be addressed, as well, however
18 marginal.

19 BOARD MEMBER DAWKINS: I agree. And I agree with
20 Matt. Last month I was extremely concerned about the
21 proximity to the septic and I was loath to disregard the
22 lot coverage requirement. I'm pleased that they've come
23 back and addressed our major concerns.

24 CHAIRMAN MORDAS: And also, the neighbor expressed
25 frustrations with the parking situation in that part of the

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2 neighborhood. I feel that a garage and also increase --

3 BOARD MEMBER RAMPE: Rear yard?

4 CHAIRMAN MORDAS: -- a bigger rear yard a front yard,
5 it is lake front, it would help potentially alleviate that.
6 We can't police behavior, but on paper this looks better
7 than what's there already.

8 BOARD MEMBER RAMPE: Well, are you considering the
9 lakefront to be front?

10 MR. GOTTLIEB: I'm not sure what the code --

11 CHAIRMAN MORDAS: If the Town considers the road side
12 to be the front yard ...

13 MR. MILLER: I would presume so.

14 BOARD MEMBER FINDLEY: Has this neighbor that issued
15 this letter been shown the renderings? Has the neighbor
16 that produced this letter seen the renderings?

17 MR. MILLER: I don't know which letter. We submitted
18 a score of letters in support so I don't know. If you're
19 talking about the person who voiced the objection --

20 BOARD MEMBER FINDLEY: The 3.2 side yard, did that
21 neighbor see the rendering? Did any of the neighbors?

22 MR. MILLER: I don't know if they saw the renderings,
23 but -- okay, the answer is yes. She's indicated in support
24 of the application. I don't know what she had an
25 opportunity to review as part of that.

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2 BOARD MEMBER FINDLEY: How close is that house to the
3 property line, the adjacent house?

4 MR. MILLER: The adjacent house on the 3.2.

5 MR. SILVERMAN: It matches our existing house.

6 MR. MILLER: No, no, no. How far is it from the
7 property line. Your neighbor's house, how close is it to
8 the property line on the other side of that?

9 MR. SILVERMAN: On the other side?

10 MR. MILLER: Yes.

11 MR. SILVERMAN: Ten feet, nine feet, something like
12 that. I haven't measured it so I'm not sure, but ...

13 BOARD MEMBER RAMPE: How come this doesn't call for an
14 aerobic system?

15 MR. GOTTLIEB: Because it's a replacement system.
16 It's not a replacement, it's existing and we don't have to
17 address it. If they were putting a new system in, you may
18 have to, but this, it's preexisting.

19 BOARD MEMBER DAWKINS: It was put in in the '90s.

20 MR. MILLER: It's is preexisting, it's functioning,
21 it's working.

22 BOARD MEMBER DAWKINS: Number of bedrooms in this
23 proposed house?

24 MR. MILLER: Three

25 MS. SILVERMAN: No.

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2 MR. MILLER: Two?

3 MR. GOTTLIEB: Two

4 MR. MILLER: Two bedrooms.

5 BOARD MEMBER DAWKINS: And that was the same as the
6 prior house.

7 MR. SILVERMAN: Two bedrooms now, it will have two
8 bedrooms.

9 BOARD MEMBER RAMPE: But they adding 1500 more square
10 feet.

11 CHAIRMAN MORDAS: I was just discussing with Matt
12 Morreale who has some expertise in the real estate
13 business. I was talking to him about the efficacy of
14 conducting a dye test because this is an older system.

15 What it's, about 26 years old?

16 MS. SILVERMAN: Are you talking about the water
17 system?

18 CHAIRMAN MORDAS: The septic system.

19 MR. SILVERMAN: The septic is 25

20 MR. GOTTLIEB: Septic system, 20 some years old, yes.

21 CHAIRMAN MORDAS: Matt basically told me that the dye
22 testing is fraught with potential for many variables. I
23 had a concern in regards, like I said, to the age of the
24 septic tank, is there a way to test this. Not the septic
25 tank, the septic system. Is there a way to test this to

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2 make sure that the septic system is operating efficiently.
3 I was going to make that a condition of this, but Matt
4 basically said that ...

5 BOARD MEMBER MORREALE: Well, as far as a dye test, my
6 personal opinion is that there are so many variables that
7 could go into it that it makes it almost -- I would not put
8 my faith in a dye test.

9 CHAIRMAN MORDAS: You would have to?

10 BOARD MEMBER MORREALE: I would not.

11 board member rampe: He would not.

12 BOARD MEMBER MORREALE: But then again, I mean I hope
13 that the septic system is working. We, as the board, what
14 can we do? I mean are we going to this bring this up as a
15 possible condition? Is that where you're thinking about?

16 CHAIRMAN MORDAS: Yes. I've done some research on it.
17 There's no state guidelines on how to really conduct it.

18 BOARD MEMBER MORREALE: Assess the --

19 CHAIRMAN MORDAS: I don't want to exercise somebody,
20 just make them go through the motions on something that
21 really --

22 BOARD MEMBER MORREALE: Well, I can tell you --

23 CHAIRMAN MORDAS: -- might not prove anything.

24 MR. MILLER: I would say, Mr. Chairman, that the
25 system is functioning. If there comes a point in the

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2 future where the system is not functioning properly and is
3 not resolvable through servicing then it'll need to be
4 replaced in accordance with the requirements of the
5 regulations. I don't see that as an obstacle, I see that
6 as what happens if there's an issue. But right now we
7 don't have an issue and there's nothing which indicates
8 that there would be an issue. We don't have any reports of
9 any failure. We have a functioning system. I'm assuming
10 that a system that is as old as this one, and I haven't
11 asked, has been serviced from time to time.

12 BOARD MEMBER DAWKINS: Well, that's my question. Do
13 you recall the last time this system was pumped, serviced?

14 MR. SILVERMAN: I had it checked about three years
15 ago, four years ago, I don't remember exactly, because it's
16 only used in the summertime. The company that came in and
17 looked at it said the tank was as clean as could be. I'm
18 very careful about putting Rid-X in it the first of the
19 month. We normally open the house in the middle of the
20 month. I put the Rid-X in the day we get here and open the
21 water up. I put it in the first of the month. Even if
22 it's one day later, it doesn't matter. I always do it on
23 the first of the month so I don't forget. And he said that
24 there was no reason to clean the tank. He didn't look in
25 the dry well, obviously. He can only look in the solid

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2 tank. He said it was in good shape, so ...

3 BOARD MEMBER DAWKINS: Thank you.

4 BOARD MEMBER FINDLEY: How many bedrooms in the
5 existing house?

6 MS. SILVERMAN: Two.

7 BOARD MEMBER FINDLEY: How many bedrooms in the new
8 house?

9 MR. SILVERMAN: Two. And the new has just two even
10 though the grandkids are yelling at us. They want three.
11 We've got three grandkids.

12 CHAIRMAN MORDAS: All right. Does the Board have any
13 more questions for Mr. Miller, Mr. Gottlieb?

14 BOARD MEMBER FINDLEY: Is the house used as a short
15 term rental, ever?

16 MR. MILLER: No, not in all the years that I'm
17 familiar with it and I can only go back about 50, maybe 60.
18 Is that a fair observation?

19 MS. SILVERMAN: What was that?

20 MR. MILLER: Has it ever been used for rental.

21 MR. SILVERMAN: No.

22 MR. MILLER: I recollect since I was about seven years
23 old. That would make it 63 years.

24 BOARD MEMBER DAWKINS: So do we need a motion?

25 CHAIRMAN MORDAS: Is everybody ready to proceed to a

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2 vote?

3 BOARD MEMBER DAWKINS: Yes.

4 BOARD MEMBER MORREALE: I'm ready.

5 CHAIRMAN MORDAS: Before we vote, I need to read the
6 criteria. In granting area variances we must go through
7 this criteria.

8 In making its determination the Zoning Board shall
9 take consideration the benefit to the Applicant if the
10 variance is warranted as weighed against the detriment to
11 the health, safety and welfare of the neighborhood or
12 community by such grant.

13 In making such determination the Zoning Board also
14 consider --

15 BOARD MEMBER DAWKINS: Do we need to talk about the
16 actual variances?

17 CHAIRMAN MORDAS: Let me go through the criteria
18 first.

19 BOARD MEMBER DAWKINS: Okay.

20 CHAIRMAN MORDAS: Let's go through the criteria.

21 MR. MOGEL: Is the Board going to be giving their
22 answers on both variances or do you want to do them
23 separately?

24 CHAIRMAN MORDAS: No, I think both variances here.

25 BOARD MEMBER DAWKINS: Both.

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2 MR. MOGEL: Both variances together?

3 BOARD MEMBER FINDLEY: There's only two variances?

4 MR. MOGEL: There's only two variances.

5 BOARD MEMBER FINDLEY: They had indicated -- on this
6 proposed plan they indicate a total of four.

7 BOARD MEMBER DAWKINS: That was last month.

8 MR. MILLER: We revised the plan from last month to
9 this month at the Board's request. So we've reduced the
10 requests for variances.

11 CHAIRMAN MORDAS: Front yard setback is off the table.

12 BOARD MEMBER FINDLEY: Oh. I thought --

13 CHAIRMAN MORDAS: And lot coverage is off the table.

14 BOARD MEMBER FINDLEY: I thought this drawing was
15 changed, that's all.

16 MR. MOGEL: Just the one side yard and both side
17 yards. Is the Board is prepared to go forward with the
18 criteria based both variances simultaneously?

19 BOARD MEMBER FINDLEY: No.

20 MR. MOGEL: No. So I would recommend that you do it
21 separately. Do one side yard first.

22 CHAIRMAN MORDAS: Let me get this straight first
23 because you mentioned 199-15(C)(1).

24 MR. MOGEL: Yes.

25 CHAIRMAN MORDAS: I'm going based on 199-54(C). Is

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2 that the right approach to this?

3 MR. MOGEL: I had mentioned that previously, just
4 based on nonconforming lots.

5 BOARD MEMBER FINDLEY: You can do them both together.
6 I'm okay with that.

7 BOARD MEMBER DAWKINS: We can do them both together.

8 CHAIRMAN MORDAS: Kent says that's okay.

9 MR. MOGEL: You know, my reference was reconstruction.
10 If the Board were to make that interpretation ...

11 CHAIRMAN MORDAS: I think these variances, whether
12 it's reconstruction or new construction ...

13 MR. MOGEL: It's the same.

14 BOARD MEMBER RAMPE: But isn't reconstruction to
15 rebuild what was already there?

16 MR. MOGEL: I mean we might be going down a rabbit
17 hole at that point. The variances that are indicated here
18 are just off of the bulk table.

19 BOARD MEMBER RAMPE: All right.

20 MR. MOGEL: And if anything, the estimation here would
21 be the more conservative estimation. Am I correct? So if
22 that's the case, then coming off the ten foot and the 25
23 foot side yard, if you're looking at 199-54, I believe
24 that's going to be more generous to the Applicant. Am I
25 mistaken? Because that's for undersized lots so that would

1 - RE: CAROL JENNY SILVERMAN -

2 require a smaller, less of a variance required.

3 I would recommend that rather than get into whether
4 these fall under the nonconforming smaller lots, just vote
5 on the variances based on the regular bulk tables.

6 BOARD MEMBER DAWKINS: Right, then they're safe.

7 MR. MOGEL: Then they're safe.

8 BOARD MEMBER DAWKINS: They're safe no matter what.

9 MR. MOGEL: Correct.

10 CHAIRMAN MORDAS: Yes, but their numbers aren't based
11 on the regular bulk table, they're based on 199-54. Is
12 that correct?

13 MR. MOGEL: Is that correct?

14 BOARD MEMBER DAWKINS: Yes, it is.

15 MR. MILLER: Yes. Tim can't hear you.

16 MR. MOGEL: Okay, all right. My apologies.

17 BOARD MEMBER DAWKINS: You should apologize.

18 MR. MOGEL: Yes, I apologize.

19 BOARD MEMBER DAWKINS: We should use that.

20 MR. MOGEL: Okay.

21 CHAIRMAN MORDAS: All right. Everybody in tune with
22 that?

23 BOARD MEMBER FINDLEY: Yes.

24 CHAIRMAN MORDAS: Back to the criteria. First
25 criteria. And we're going to be doing both variances.

1 - RE: CAROL JENNY SILVERMAN -

2 BOARD MEMBER MORREALE: Correct.

3 CHAIRMAN MORDAS: Whether an undesirable change will
4 be produced in the character of the neighborhood or a
5 detriment to nearby properties will be created by the
6 granting of the variance.

7 Matt.

8 BOARD MEMBER MORREALE: I'm sorry.

9 CHAIRMAN MORDAS: Matt.

10 BOARD MEMBER MORREALE: No.

11 CHAIRMAN MORDAS: Kent.

12 BOARD MEMBER FINDLEY: Yes.

13 CHAIRMAN MORDAS: Georgia.

14 BOARD MEMBER RAMPE: Yes.

15 CHAIRMAN MORDAS: Cathy.

16 BOARD MEMBER DAWKINS: No.

17 CHAIRMAN MORDAS: I'll say no.

18 Whether the benefit sought by the Applicant can be
19 achieved by some method feasible for the Applicant to
20 pursue other an area variance.

21 I'll say yes.

22 Cathy.

23 BOARD MEMBER DAWKINS: Yes.

24 CHAIRMAN MORDAS: Georgia.

25 BOARD MEMBER RAMPE: Yes.

1 - RE: CAROL JENNY SILVERMAN -

2 CHAIRMAN MORDAS: Kent.

3 BOARD MEMBER FINDLEY: Yes.

4 CHAIRMAN MORDAS: Matt.

5 BOARD MEMBER MORREALE: Yes.

6 CHAIRMAN MORDAS: Whether the requested area variance
7 is substantial.

8 Matt.

9 BOARD MEMBER MORREALE: Yes.

10 CHAIRMAN MORDAS: Kent.

11 BOARD MEMBER FINDLEY: Yes.

12 CHAIRMAN MORDAS: Georgia.

13 BOARD MEMBER RAMPE: Yes.

14 CHAIRMAN MORDAS: Cathy

15 BOARD MEMBER DAWKINS. Yes.

16 CHAIRMAN MORDAS: I'll say no.

17 Whether the proposed variance will have an adverse
18 effect or impact on the physical or environmental
19 conditions in the neighborhood or district.

20 I'll say no.

21 Cathy.

22 BOARD MEMBER DAWKINS: No.

23 CHAIRMAN MORDAS: Georgia.

24 BOARD MEMBER RAMPE: Yes.

25 CHAIRMAN MORDAS: Kent.

1 - RE: CAROL JENNY SILVERMAN -

2 BOARD MEMBER FINDLEY: Yes.

3 CHAIRMAN MORDAS: Matt.

4 BOARD MEMBER MORREALE: No.

5 CHAIRMAN MORDAS: Whether the alleged difficulty was
6 self-created which consideration shall be relevant to the
7 decision of the Zoning Board, but shall not necessarily
8 preclude the granting of the area variance.

9 Matt.

10 BOARD MEMBER MORREALE: Yes.

11 CHAIRMAN MORDAS: Kent.

12 BOARD MEMBER FINDLEY: Yes.

13 CHAIRMAN MORDAS: Georgia.

14 BOARD MEMBER RAMPE: Yes.

15 CHAIRMAN MORDAS: Cathy.

16 BOARD MEMBER DAWKINS: No.

17 CHAIRMAN MORDAS: I'll say yes.

18 Okay. The Applicant is requesting relief from
19 199-54(C). 199-54, on the whole, pertains to dwellings on
20 nonconforming lots within districts that permit for
21 residential uses. This applicant is requesting for the one
22 side yard requirement needing 10 feet, he is proposing 3.2
23 feet so he needs a variance of 6.8 feet.

24 Matt, how do you vote?

25 BOARD MEMBER MORREALE: I vote in favor of relief.

1 - RE: CAROL JENNY SILVERMAN -

2 CHAIRMAN MORDAS: Kent.

3 BOARD MEMBER FINDLEY: No.

4 CHAIRMAN MORDAS: Georgia.

5 BOARD MEMBER RAMPE: In favor.

6 CHAIRMAN MORDAS: Cathy.

7 BOARD MEMBER DAWKINS: Yes.

8 CHAIRMAN MORDAS: I'll vote yes.

9 (The variance was granted.)

10 CHAIRMAN MORDAS: On the second variance requested,
11 both side yards, he does not meet the regulation of 25 feet
12 for both side yards. He is proposing 12 feet. He will
13 need a 13 foot variance.

14 Cathy, how do you vote on this?

15 BOARD MEMBER DAWKINS: Yes.

16 CHAIRMAN MORDAS: Georgia

17 BOARD MEMBER RAMPE: Yes.

18 CHAIRMAN MORDAS: Kent.

19 BOARD MEMBER FINDLEY: Yes.

20 CHAIRMAN MORDAS: Matt.

21 BOARD MEMBER MORREALE: In favor.

22 CHAIRMAN MORDAS: I'll say yes.

23 Okay, that's it.

24 MR. MILLER: Thank you very much.

25 MR. SILVERMAN: Thank you.

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- RE: CAROL JENNY SILVERMAN -

(The variance was granted.)

CHAIRMAN MORDAS: Good luck with your project.

(Time noted: 8:12 p.m.)

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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Carol Jenny Silverman, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: October 7, 2019

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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

----- X

Miroslav Lukovic
Public Hearing - Area Variance
Tax Map Section 23.B; Block 4; Lot 14
Burlingham Residential Zone

----- X

Town Hall
Town of Mamakating
August 22, 2019
8:12 P.M.

ZONING BOARD MEMBERS :

- MATTHEW MORDAS, Chairman
- CATHY DAWKINS, Board Member
- GEORGIA RAMPE, Board Member
- MATTHEW MORREALE, Board Member
- KENT FINDLEY, Board Member
- JON FOURNIER, Alternate Board Member
- KYRA PLATT, Building Department
- STEVEN MOGEL, ESQ., Attorney

Also Present: Miroslav Lukovic, Applicant

JERIC CORPORATION
Court Reporting Services
P.O. Box 385
Narrowsburg, New York 12764
(845) 252-3515

1 - RE: MIROSLAV LUKOVIC -

2 Reported by: Rosemary A. Meyer

3 CHAIRMAN MORDAS: All right. Next on the agenda is a
4 public hearing for Mr. Miroslav Lukovic.

5 BOARD MEMBER DAWKINS: Do you want a motion to open
6 the public hearing?

7 CHAIRMAN MORDAS: Motion to open the public hearing.

8 BOARD MEMBER DAWKINS: So moved.

9 chairman mordas: Do I have a second?

10 BOARD MEMBER MORREALE: Second.

11 CHAIRMAN MORDAS: All in favor?

12 BOARD MEMBER DAWKINS: Aye.

13 BOARD MEMBER RAMPE: Aye.

14 BOARD MEMBER MORREALE: Aye.

15 BOARD MEMBER KENT: Aye.

16 CHAIRMAN MORDAS: Aye.

17 (The motion was approved and carried.)

18 CHAIRMAN MORDAS: All right. Were the mailings done
19 to your -- do you need some time?

20 MS. PLATT: I just have to count them.

21 (Ms. Platt counted the mailings.)

22 MS. PLATT: Yes.

23 CHAIRMAN MORDAS: Okay, so the mailings were done to
24 your satisfaction.

25 The notices were placed in our local newspapers in a

1 - RE: MIROSLAV LUKOVIC -

2 timely fashion?

3 MS. PLATT: Yes.

4 CHAIRMAN MORDAS: All right, Mr. Lukovic, please
5 refresh us as to what you're looking to do here.

6 MR. LUKOVIC: We're looking basically to extend the
7 existing structure by about ten feet closer to the side
8 property line.

9 The existing structure there, which was there before I
10 purchased the house, apparently was already over the 40
11 foot setback limit. It currently sits at just a little
12 over 20 feet from that side property line. I'm looking to
13 extend it another ten feet towards the side property line.
14 And also, there will be a ten foot extension going to the
15 back. But the back, there's no issue of the back yard
16 setbacks. The property is quite a ways down the hill from
17 there.

18 The area there is pretty much wooded. You would have
19 to stand in my back yard to see what the proposed structure
20 will be. It's pretty ...

21 BOARD MEMBER DAWKINS: So when you face the house from
22 road --

23 MR. LUKOVIC: Uh-huh.

24 BOARD MEMBER DAWKINS: -- the new addition is going to
25 be on the right?

1 - RE: MIROSLAV LUKOVIC -

2 MR. LUKOVIC: On the right.

3 BOARD MEMBER DAWKINS: On the right.

4 MR. LUKOVIC: Uh-huh.

5 I provided some pictures there, I think. What's
6 currently there, there's like a stone patio area. That is
7 going to disappear so that the extension will actually just
8 fill in what's already there as a patio area.

9 CHAIRMAN MORDAS: All right. If I'm looking at this
10 picture here --

11 MR. LUKOVIC: Right where that swing is, yes. I've
12 kind of --

13 CHAIRMAN MORDAS: Is the swing the side yard?

14 MR. LUKOVIC: That's the side.

15 CHAIRMAN MORDAS: Okay.

16 MR. LUKOVIC: There's one good picture of looking from
17 the back yard towards the back that shows ...

18 BOARD MEMBER MORREALE: From the back yard looking?

19 MR. LUKOVIC: Looking at the house from the --

20 BOARD MEMBER MORREALE: It's the one with the American
21 flag.

22 MR. LUKOVIC: Yes, yes. You could see the extension.
23 I kind of pencilled in what it would be. That's the --
24 that's the area that we're talking about.

25 BOARD MEMBER MORREALE: With the addition, how close

1 - RE: MIROSLAV LUKOVIC -

2 will you be to the property line?

3 MR. LUKOVIC: It'll end up being just a little over
4 ten feet. It will be, like, I think it's like 10.6 it
5 comes out. Currently, it's 20.6, so a ten foot extension
6 will make it 10.6 to the side.

7 BOARD MEMBER FINDLEY: What's required? What's
8 required side yard?

9 CHAIRMAN MORDAS: Side yard is --

10 MR. LUKOVIC: Forty.

11 CHAIRMAN MORDAS: One side yard is 40 and both is 80.

12 BOARD MEMBER DAWKINS: And he's going to have 65
13 total. The violation says nine feet instead of 40.

14 MS. PLATT: Denial. It's not a violation.

15 BOARD MEMBER DAWKINS: I'm sorry. Denial. Thank you.

16 CHAIRMAN MORDAS: All right.

17 BOARD MEMBER FINDLEY: Is there access for emergency
18 vehicles on at least one side?

19 MR. LUKOVIC: Access to?

20 BOARD MEMBER FINDLEY: The back of the building.

21 MR. LUKOVIC: To the back of the building? Oh,
22 absolutely. Even with that ten foot extension, as you
23 could see in that one picture from the back, I mean I've
24 driven my SUV in the back to unload things. That will not
25 change. You'll still be able to actually -- there's just a

1 - RE: MIROSLAV LUKOVIC -

2 light deer fence there. It's pulled back and you can just
3 drive right around. I don't plan on eliminating that
4 because I do need access to the back. You can access it
5 from the other side. It's a little more difficult because
6 there's trees and things. But that's like a natural --

7 BOARD MEMBER MORREALE: Access.

8 MR. LUKOVIC: -- driveway of kind of area you can go
9 into.

10 (Ms. Platt produced plans.)

11 CHAIRMAN MORDAS: Kent.

12 BOARD MEMBER FINDLEY: Can you come up here -- oh,
13 it's on there. I'm sorry. I did not see it.

14 (Zoning Board members conferring.)

15 BOARD MEMBER FINDLEY: That's nine. Okay, I see it
16 written, nine.

17 CHAIRMAN MORDAS: It's 1.32 acres. You need two in
18 Burlingham.

19 BOARD MEMBER FINDLEY: So actually, we've got to go to
20 the nonconforming lot table.

21 BOARD MEMBER DAWKINS: So if they move the house over
22 here. The house sits here. Then you have a shed and a
23 wood pile. But where the house is is unused woodland, not
24 even visible from the neighbor's house. It's kind of
25 interesting.

1 - RE: MIROSLAV LUKOVIC -

2 MR. LUKOVIC: It is set back further from the
3 neighbors.

4 BOARD MEMBER FINDLEY: So what does nonconforming lot
5 say? This is a nonconforming lot.

6 CHAIRMAN MORDAS: This is kind skewed

7 MS. PLATT: It's based off the road frontage.

8 BOARD MEMBER DAWKINS: The road frontage --

9 CHAIRMAN MORDAS: He has the necessary road frontage
10 for a conforming lot. But the total lot size is ...

11 BOARD MEMBER DAWKINS: So what does it say if he's
12 got --

13 MS. PLATT: If he's has --

14 BOARD MEMBER DAWKINS: -- a lot width of 150? He
15 needs 20 and a total 50. He still needs a variance.

16 BOARD MEMBER FINDLEY: For the one side.

17 CHAIRMAN MORDAS: The one side.

18 BOARD MEMBER DAWKINS: Right.

19 BOARD MEMBER FINDLEY: Do we agree with that?

20 BOARD MEMBER DAWKINS: Yes.

21 MS. PLATT: He has the road frontage for the zone.

22 BOARD MEMBER DAWKINS: 102 feet.

23 MS. PLATT: Is that correct for the zone?

24 CHAIRMAN MORDAS: Yes, but the total lot size required
25 in Burlingham is two acres.

1 - RE: MIROSLAV LUKOVIC -

2 MS. PLATT: But he meets the road frontage for that
3 zone.

4 CHAIRMAN MORDAS: Yes.

5 MS. PLATT: So we would go by that zone.

6 BOARD MEMBER DAWKINS: Okay.

7 BOARD MEMBER FINDLEY: We should do it the way it's
8 supposed to be.

9 MR. MOGEL: 199-54 says that it applies to residential
10 uses whose area or width is less than the specified minimum
11 lot requirement.

12 BOARD MEMBER DAWKINS: So the area is --

13 MS. PLATT: The area is, but the width --

14 BOARD MEMBER DAWKINS: But it says either, or.

15 MS. PLATT: Okay.

16 BOARD MEMBER DAWKINS: Correct, Steve?

17 MR. MOGEL: That's what it says, correct.

18 CHAIRMAN MORDAS: So we go by 199-54, nonconforming
19 lot table?

20 BOARD MEMBER DAWKINS: Yes.

21 MR. MOGEL: Correct.

22 BOARD MEMBER FINDLEY: We agree.

23 CHAIRMAN MORDAS: That's why we call it
24 interpretation. All right.

25 BOARD MEMBER DAWKINS: We're going to give them a

1 - RE: MIROSLAV LUKOVIC -

2 variance for 11, and he needs --

3 CHAIRMAN MORDAS: I think it's 29.6; right? He's
4 going to be 10.6 feet from the side yard?

5 BOARD MEMBER FINDLEY: But he wrote nine on that plan.

6 MR. LUKOVIC: I don't know where the nine came from.
7 It was not -- well, okay.

8 BOARD MEMBER FINDLEY: Well, I would rather give you a
9 little bit extra than a little bit less.

10 BOARD MEMBER DAWKINS: So we'll give you 11 feet of
11 variance.

12 Am I reading that right, Steve? That if the use is
13 nonconforming, he needs 20 feet on the side yard and he
14 needs a total of 50. He's already got 56 from the other
15 side yard so we only need to give him a variance on this;
16 correct?

17 CHAIRMAN MORDAS: Why does this end at 149?

18 BOARD MEMBER DAWKINS: Because of exactly what Kyra
19 said.

20 BOARD MEMBER FINDLEY: It's ambiguity. I picked the
21 word today.

22 BOARD MEMBER DAWKINS: If it were me, I would give him
23 the variance just in case.

24 BOARD MEMBER FINDLEY: We can do that. We can do
25 that.

1 - RE: MIROSLAV LUKOVIC -

2 MR. MOGEL: For lots with widths of 100 to 149.

3 MS. PLATT: Because 150 for the minimum for the zone.
4 That's the minimum that they start at for the width.

5 BOARD MEMBER FINDLEY: But then it says -- what
6 section did you read?

7 MR. MOGEL: Located in the zoning district that allows
8 residential use, area or width is less than the specified
9 minimum lot requirement of the district.

10 BOARD MEMBER DAWKINS: So his area -- his width is not
11 less, but his area is.

12 BOARD MEMBER FINDLEY: Yes.

13 BOARD MEMBER DAWKINS: But the way this is written,
14 it's written as though it were both.

15 But I would, just so he doesn't get in a bind, give
16 him a variance as though it would be complying with the
17 bulk table.

18 BOARD MEMBER FINDLEY: We can't go wrong because the
19 variance is greater.

20 MR. MOGEL: Correct. I mean this is a clear
21 discrepancy and that's going to need to be clarified.

22 BOARD MEMBER DAWKINS: When somebody rewrites the
23 code?

24 MR. MOGEL: Correct.

25 Okay. So yes, I would go off the bulk table because

1 - RE: MIROSLAV LUKOVIC -

2 that would be the safest.

3 BOARD MEMBER DAWKINS: Safest thing.

4 BOARD MEMBER FINDLEY: Yes.

5 CHAIRMAN MORDAS: All right. So he needs 15 feet for
6 the total of both side yards? Is my math correct?

7 BOARD MEMBER DAWKINS: Fifteen feet --

8 CHAIRMAN MORDAS: Because he's got 65 now; right?

9 BOARD MEMBER DAWKINS: Right. He's got 65 and he
10 needs 80 so he needs 15 feet. And he needs --

11 CHAIRMAN MORDAS: He needs 29 and a half. Do you want
12 to give him 30?

13 BOARD MEMBER DAWKINS: Thirty on one side yard.

14 CHAIRMAN MORDAS: Actually, 31. Thirty-one on the one
15 side yard.

16 MR. MOGEL: You're supposed to give the minimum
17 variance.

18 CHAIRMAN MORDAS: All right. So it's nine feet and
19 it's 31.

20 BOARD MEMBER FINDLEY: We're supposed to give the
21 minimum variance?

22 BOARD MEMBER DAWKINS: Yes.

23 MR. MOGEL: The minimum variance.

24 BOARD MEMBER DAWKINS: So we're not doing to give him
25 what he asked for.

1 - RE: MIROSLAV LUKOVIC -

2 CHAIRMAN MORDAS: No.

3 BOARD MEMBER DAWKINS: Okay.

4 CHAIRMAN MORDAS: All right. Anybody else weighing on
5 this? Nobody on the list?

6 MS. PLATT: Nobody on the list.

7 CHAIRMAN MORDAS: Okay. Motion to close the public
8 hearing?

9 BOARD MEMBER RAMPE: I'll make a motion.

10 BOARD MEMBER FINDLEY: Second.

11 CHAIRMAN MORDAS: All in favor?

12 BOARD MEMBER DAWKINS: Aye.

13 BOARD MEMBER RAMPE: Aye.

14 BOARD MEMBER MORREALE: Aye.

15 BOARD MEMBER KENT: Aye.

16 CHAIRMAN MORDAS: Aye.

17 (The motion was approved and carried.)

18 CHAIRMAN MORDAS: All right. Any more questions or
19 are we ready to proceed to a vote here?

20 BOARD MEMBER MORREALE: Ready.

21 CHAIRMAN MORDAS: Okay. I'm going to read the
22 criteria for both variance requests.

23 In making its determination the Zoning Board shall
24 take into consideration the benefit to the Applicant if the
25 variance is warranted as weighed against the detriment to

1 - RE: MIROSLAV LUKOVIC -

2 the health, safety and welfare of the neighborhood or
3 community by such grant.

4 In making such determination the Board shall also
5 consider whether an undesirable change will be produced in
6 the character of the neighborhood or a detriment to nearby
7 properties will be created by the granting of the area
8 variance.

9 I'll say no.

10 Cathy.

11 BOARD MEMBER DAWKINS. No.

12 CHAIRMAN MORDAS: Georgia.

13 BOARD MEMBER RAMPE: No.

14 CHAIRMAN MORDAS: Kent.

15 BOARD MEMBER FINDLEY: No.

16 CHAIRMAN MORDAS: Matt.

17 BOARD MEMBER MORREALE: No.

18 CHAIRMAN MORDAS: Whether the benefit sought by the
19 applicant can be achieved by some method feasible for the
20 applicant to pursue other than an area variance.

21 I would say no.

22 CHAIRMAN MORDAS: Cathy.

23 BOARD MEMBER DAWKINS: I'll say yes.

24 CHAIRMAN MORDAS: Georgia.

25 BOARD MEMBER RAMPE: Yes.

1 - RE: MIROSLAV LUKOVIC -

2 CHAIRMAN MORDAS: Kent.

3 BOARD MEMBER FINDLEY: Yes.

4 CHAIRMAN MORDAS: Matt.

5 BOARD MEMBER MORREALE: Yes.

6 CHAIRMAN MORDAS: Whether the requested area variance
7 is substantial.

8 BOARD MEMBER DAWKINS: Yes.

9 CHAIRMAN MORDAS: Yes.

10 BOARD MEMBER RAMPE: Yes.

11 CHAIRMAN MORDAS: Kent.

12 BOARD MEMBER FINDLEY: Yes.

13 CHAIRMAN MORDAS: Matt.

14 BOARD MEMBER MORREALE: Yes.

15 CHAIRMAN MORDAS: Whether the proposed variance will
16 have an adverse effect or impact on the physical or
17 environmental conditions in the neighborhood or district.

18 Matt.

19 BOARD MEMBER MORREALE: No.

20 CHAIRMAN MORDAS: Kent.

21 BOARD MEMBER FINDLEY: No.

22 CHAIRMAN MORDAS: Georgia.

23 BOARD MEMBER RAMPE: No.

24 CHAIRMAN MORDAS: Cathy.

25 BOARD MEMBER DAWKINS: No.

1 - RE: MIROSLAV LUKOVIC -

2 CHAIRMAN MORDAS: No.

3 Whether the alleged difficulty was self-created which
4 consideration shall be relevant to the decision of the
5 Zoning Board but shall not necessarily preclude the
6 granting of the area variance.

7 No.

8 CHAIRMAN MORDAS: Cathy.

9 BOARD MEMBER DAWKINS: No.

10 CHAIRMAN MORDAS: Georgia.

11 BOARD MEMBER RAMPE: Yes.

12 BOARD MEMBER FINDLEY: Yes.

13 BOARD MEMBER MORREALE: Yes.

14 CHAIRMAN MORDAS: Now, let me change my vote on that.
15 Yes. I'll say yes on that.

16 All right. In regards to Mr. Lukovic's request for a
17 variance from the bulk table requirements for Burlingham
18 Residential Zone for 15 yards --

19 BOARD MEMBER DAWKINS: Feet.

20 CHAIRMAN MORDAS: Fifteen feet. Preseason football is
21 in my brain already.

22 He needs 80 total. He will only have 65. He needs 15
23 feet.

24 Matt, how do you vote?

25 BOARD MEMBER MORREALE: I vote in favor of relief.

1 - RE: MIROSLAV LUKOVIC -

2 CHAIRMAN MORDAS: Kent.

3 BOARD MEMBER FINDLEY: In favor.

4 CHAIRMAN MORDAS: Georgia.

5 BOARD MEMBER RAMPE: Yes.

6 CHAIRMAN MORDAS: Cathy.

7 BOARD MEMBER DAWKINS: Yes.

8 CHAIRMAN MORDAS: I'll vote yes.

9 (The variance was granted.)

10 CHAIRMAN MORDAS: All right. On the second variance
11 requested by Mr. Lukovic, side yard variance, he comes up a
12 little shy. He needs 40. He's only providing nine so he
13 needs a variance of 31 feet.

14 Matt, how do you vote on this?

15 BOARD MEMBER MORREALE: In favor.

16 CHAIRMAN MORDAS: Kent.

17 BOARD MEMBER FINDLEY: I'm in favor.

18 CHAIRMAN MORDAS: Cathy.

19 BOARD MEMBER DAWKINS: In favor.

20 CHAIRMAN MORDAS: Georgia.

21 BOARD MEMBER RAMPE: In favor.

22 CHAIRMAN MORDAS: I'll say yes.

23 (The variance was granted.)

24 CHAIRMAN MORDAS: Good luck with your project.

25 MR. LUKOVIC: Just so it's clear, the 31 feet, that

1 - RE: MIROSLAV LUKOVIC -

2 means I can push out ten feet.

3 BOARD MEMBER FINDLEY: Yes.

4 MR. LUKOVIC: Yeah, I know you're viewing it a
5 different way. But all I'm ...

6 CHAIRMAN MORDAS: When you're done pushing it out to
7 ten feet you're going to be nine foot from the property
8 line; right?

9 MR. LUKOVIC: Right.

10 CHAIRMAN MORDAS: Okay. Good.

11 BOARD MEMBER DAWKINS: Then you're good.

12 MR. LUKOVIC: Thank you. Have a good night.

13 (Time noted: 8:32 p.m.)

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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Miroslav Lukovic, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

Date Transcribed: October 18, 2019

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COUNTY OF SULLIVAN : TOWN OF MAMAKATING
ZONING BOARD OF APPEALS

----- X
Jewel Zheng
Use & Area Variance
Tax Map Section 17; Block 5; Lot 7
Hamlet Center Zone
----- X

Town Hall
Town of Mamakating
August 22, 2019
8:32 P.M.

ZONING BOARD MEMBERS :

- MATTHEW MORDAS, Chairman
- CATHY DAWKINS, Board Member
- GEORGIA RAMPE, Board Member
- MATTHEW MORREALE, Board Member
- KENT FINDLEY, Board Member
- JON FOURNIER, Alternate Board Member
- KYRA PLATT, Building Department
- STEVEN MOGEL, ESQ., Attorney

Also Present: Martin Miller, Esq.
On Behalf of the Applicant

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Reported by: Rosemary A. Meyer

1 - RE: JEWEL ZHENG -

2 CHAIRMAN MORDAS: All right. I've been told that
3 Zheng is on the agenda.

4 MR. MILLER: It has prevented me from mentioning in a
5 timely manner, but the issue that's on this evening is
6 really a limited one, to respond to the questions that had
7 been posed at the last session.

8 I'm going to pass some papers around.

9 (Mr. Miller distributed documents to
10 the Zoning Board members.)

11 MR. MILLER: This was to address and amplify. The
12 purpose this evening is to address and amplify the
13 requested information and expand upon the materials
14 provided by Mr. Grossman which dealt with the economics of
15 the situation. We provided, to the Board, a market
16 analysis of the residence which is a three bedroom
17 residence, I'm going to say on top of the restaurant.
18 We've indicated to you what the market value of that would
19 be. We've given you a broad demonstration of what rentals
20 are in the community. We would advance that the value of
21 this rental is probably \$1500 a month or more. The reason
22 we make that argument is because this property has
23 integrated utilities services so that the apartment
24 upstairs, if it were separately rented, would be provided
25 with all utilities, heat, water, sewer, electric, so that

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2 it would not be an expense that a landlord would be able to
3 pass on to that tenant. Some apartments do provide their
4 own electric, some apartments provide their own heat
5 depending upon how heat is provided. Depending on how
6 water is provided, if it were municipal you might have a
7 separate meter. So we would advance that the value to this
8 property owner, the use of that apartment is substantial.
9 That's over and above the operation of the restaurant which
10 would hopefully be successful and stand on its own. We all
11 know that the restaurant business is a difficult one. But
12 clearly, the Applicant is intending to do that, and the
13 expectation and intention is that this apartment be used in
14 conjunction with that. At the present moment, the
15 apartment is actually occupied by Mrs. Zheng's father, so
16 it's owner occupied, if you will, at the present moment.
17 We're just not using the lower level because we need
18 permission from the Board to do that.

19 I think that addresses the question that hung over
20 from the last portion of the public hearing. If there's
21 anything else, we'd be pleased to address it. But I think
22 that is the issue and concern, and we provided all that
23 documentation to you.

24 BOARD MEMBER MORREALE: If I remember correctly, it
25 was at the end of a very long meeting, and almost in a

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2 silly way I offered to have this put down on a piece of
3 loose leaf paper just to have this form, for good reason,
4 required, but a bureaucratic stepping stone that they just
5 weren't prepared for at the time. We've got that paperwork
6 in front of us. It seems that was the only thing holding
7 us back last month.

8 CHAIRMAN MORDAS: Kent, do you have anything to add?

9 BOARD MEMBER FINDLEY: The apartment above, is it to
10 be used solely for the owners as opposed to workers,
11 employees?

12 MR. MILLER: We're intending to use it in conjunction
13 with the restaurant. At the present moment it's family
14 occupied. In order for this business, unless it's
15 extremely successful, to be economically viable it's going
16 to require family employees, if you will. I'm not going to
17 tell you that ten years from now it won't be employees or
18 it wouldn't be something else. But the expectation is that
19 it's integrated with the structure. That's the business
20 plan. That is the current use. It's a residential area.
21 So long as it's being used for a residence, I think it's in
22 compliance if the Board would give us that permission. I
23 don't want to represent to you something that I can't make
24 binding. I don't have an expectation that it's going to be
25 different, but that's kind of my feeling. I prefer to err

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2 on the side of being conservative in that regard.

3 CHAIRMAN MORDAS: Would you be comfortable with a
4 condition to a mixed use variance that it's --

5 BOARD MEMBER FINDLEY: Well, I have completely
6 another. Based on some of my research in my own issue, I
7 would actually be more inclined to accept it as an
8 accessory use and not mixed use because you can find many
9 restaurants that the owners occupy the restaurant and it's
10 not an unusual condition. But I don't think I'm prepared
11 to vote as a mixed use even based on what I've seen here,
12 but I would entertain it as an interpretation to an
13 accessory use. That's my perspective. I'm not trying to
14 force anybody into that. I will inform you of my vote now.
15 It would be no on mixed use. But I'm just one of them, as
16 we've seen.

17 MR. MILLER: We don't have weighted voting on the
18 board.

19 BOARD MEMBER FINDLEY: Right.

20 BOARD MEMBER DAWKINS: Do you have any thoughts on
21 that, Steve?

22 MR. MOGEL: I think it's an interesting position, and
23 I like it for a variety of reasons.

24 The only issue that I think the Board needs to
25 carefully consider is precedent. So in doing so, you're

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2 going to be saying --

3 CHAIRMAN MORDAS: We're writing code.

4 BOARD MEMBER DAWKINS: Well, but you're saying that --

5 MR. MOGEL: You're making a determination that an
6 owner occupied restaurant, that the residential component
7 is not mixed use, that is an accessory use. That carries
8 with it consequences.

9 BOARD MEMBER FINDLEY: But I say that. If the
10 Applicant is willing, I would like a little more time to do
11 a little research on that. I mean I know it exists in this
12 town already as a preexisting condition. It's not uncommon
13 in general, but there could be -- I wasn't looking for that
14 when I was looking for my issue, but it does appear that it
15 may potentially fall under an accessory use because I know
16 it exists in places. I've seen it in many places. So
17 that's how I feel. Even based on what's presented, I don't
18 think that explores other opportunities because it's not
19 just about this what I want to do so this is how it would
20 have to work. It could be used for anything. I know it's
21 not a gas station, I know that. But I'm just saying there
22 could be other opportunities and it's not presented here,
23 in my opinion --

24 BOARD MEMBER DAWKINS: I wouldn't go so far as to say
25 that I necessarily think, if you're talking about a gas

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2 station, that I think that that's a common accessory use.
3 But if you talk to me about a restaurant, you can convince
4 me because I can name multiple restaurants within the Town
5 of Mamakating today that have owner occupied residences as
6 part of the structure of the restaurant.

7 BOARD MEMBER FINDLEY: Right. I was not trying to say
8 a gas station is an accessory use. I was trying to say
9 that the financial explanation, there are other
10 opportunities to make that property viable that are not
11 presented.

12 BOARD MEMBER DAWKINS: Well, you know --

13 BOARD MEMBER FINDLEY: That's just --

14 MEMBER DAWKINS: This is interesting to me. I think
15 it's a really interesting thing. As far as setting a
16 precedent, I would like to think about it, but right now I
17 don't think of a problem with it as long as we view it as a
18 restaurant. And, oh, by the way, if, in fact the zoning
19 code changes the way we think it will within the next few
20 months, it would even broaden it because I think this zone
21 would become a mixed use zone and then they'd be able to
22 rent the apartment on the open market which they wouldn't
23 be if we --

24 BOARD MEMBER FINDLEY: Right. But bear in mind, what
25 I'm saying, my proposal of accessory use is solely for --

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2 BOARD MEMBER DAWKINS: Owner occupied.

3 BOARD MEMBER FINDLEY: -- owner which would extend to,
4 in my opinion, family.

5 BOARD MEMBER DAWKINS: Right.

6 CHAIRMAN MORDAS: What about employees?

7 BOARD MEMBER FINDLEY: No.

8 MS. PLATT: If I could backtrack a little bit to that,
9 back at the June meeting it was stated that it was not for
10 a rented apartment and that it would just be family members
11 that would rent it out.

12 BOARD MEMBER FINDLEY: Yes.

13 CHAIRMAN MORDAS: So we could attach a condition to
14 that with this current zoning.

15 MR. MOGEL: If you're interpreting this to be an
16 accessory use you can't put any conditions on it. It's an
17 interpretation of code.

18 BOARD MEMBER FINDLEY: We're calling --

19 MR. MOGEL: But you're specifying that if it's owner
20 occupied, owner or owner family occupied --

21 BOARD MEMBER FINDLEY: Yes.

22 MR. MOGEL: -- then you believe that that --

23 BOARD MEMBER FINDLEY: I'm not putting a condition on
24 it. That's what's accessory.

25 MR. MOGEL: Well, I will also point out, so in the

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2 same sentence that you would have the potential for
3 precedent if you were to deem this an accessory use, if you
4 were to accept the application that is in front of you,
5 approve what's in front of you, as adequate for the
6 purposes of evidencing a use variance, that would also set
7 a precedent. So either way, you're setting a precedent.

8 There's another advantage, and that is that if the use
9 variance is what would be granted here, that would involve
10 SEQRA determination which we would have to go through. I'm
11 not saying that necessarily is something that would be an
12 enormous stumbling block, but it would be an unlisted
13 action and there would have to be some sort of an
14 environmental analysis.

15 Now, I would tend would to agree with you that --
16 well, I think there's no legal bar to deeming this an
17 accessory use, Kent.

18 BOARD MEMBER FINDLEY: I not personally interpreting
19 what you said, the legal bar. But I would be more
20 comfortable exploring it as an accessory use than a mixed
21 use.

22 BOARD MEMBER DAWKINS: I would, too. I would, too.

23 BOARD MEMBER FINDLEY: I would request another month
24 do to a little bit of computer searching.

25 BOARD MEMBER DAWKINS: How are we doing with time?

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2 MR. MOGEL: Well, the only issue would be whether the
3 applicants are chomping at the bit to get their --

4 MR. MILLER: We would like to, Obviously.

5 CHAIRMAN MORDAS: We have about 30 more, 31.

6 MR. MILLER: Well, we had consented to the extension
7 and appearing tonight so you really have 62 days from
8 today.

9 Not that I want to discourage you from, and not
10 wanting to come back here next month on this issue, but if
11 it is the inclination of the Board to consider this as
12 accessory, I'm not sure that it requires any great further
13 analysis. You know, you may or may not find case law or
14 reported information in other places, but what you're
15 talking about here, if I could, and I want to expand it a
16 little bit just for purposes of the discussion, is you're
17 talking about owner occupied or staff occupied, employee
18 occupied, some situation relative to a business activity
19 taking place on the lower level. That's what you're
20 talking about as distinguished, as Kent said, from a rental
21 apartment. I'm using it to the accessory.

22 BOARD MEMBER DAWKINS: And I would go so far and agree
23 with what you said with the exception that not a business,
24 but a restaurant business.

25 MR. MILLER: I don't have a problem in our situation

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2 doing a restaurant. I'm just wondering whether or not
3 that's a distinction of any difference, and I think I'd
4 defer to --

5 BOARD MEMBER DAWKINS: I think it is.

6 MR. MILLER: -- to Steve on that question.

7 BOARD MEMBER DAWKINS: It is to me.

8 MR. MILLER: If it is to you, then it's certainly
9 something we're going to be doing. I'm not sure that it's
10 a distinction of any difference. BOARD MEMBER DAWKINS: I
11 would say that in line with what Kent talked about earlier,
12 it's quite commonplace to see this occurring with
13 restaurants. I'm not sure it's commonplace to see it in
14 other businesses in the town.

15 BOARD MEMBER FINDLEY: Agreed.

16 BOARD MEMBER DAWKINS: So I'm very comfortable saying
17 with a restaurant because I don't want to set precedent for
18 other businesses.

19 MR. MILLER: Then I certainly would suggest that that
20 would be acceptable to the Applicant.

21 BOARD MEMBER FINDLEY: I'm not trying to make it you
22 have to wait. I would like you to agree to wait. At least
23 me, I would like a month to just do a little research on it
24 because it just occurred to me only a few minutes ago, to
25 be honest with you. I can't make you --

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2 CHAIRMAN MORDAS: Sometimes, Kent, you've got to
3 strike while the iron is hot.

4 BOARD MEMBER FINDLEY: Right.

5 CHAIRMAN MORDAS: How many apartments are there? This
6 is just one apartment?

7 MR. MILLER: One.

8 BOARD MEMBER DAWKINS: How many bedrooms? One?

9 MR. MILLER: Three.

10 BOARD MEMBER DAWKINS: Three bedrooms. How many
11 baths?

12 MR. DeWINTER: One. I believe it's one bath. It's a
13 three bedroom. The septic is on the bedroom count.

14 BOARD MEMBER FINDLEY: To me, as long as it's one
15 apartment, it doesn't cause me any ...

16 CHAIRMAN MORDAS: All right. I just want to do this
17 carefully so we don't open up a Pandora's box.

18 BOARD MEMBER FINDLEY: I don't like the mixed use.
19 I'm sorry.

20 CHAIRMAN MORDAS: No. I feel more comfortable with
21 this. I think this actually answers an age-old question in
22 this town in regards to ...

23 BOARD MEMBER FINDLEY: Precedent.

24 CHAIRMAN MORDAS: Whatever exists already here.

25 BOARD MEMBER FINDLEY: Right.

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2 BOARD MEMBER RAMPE: Right.

3 MR. MILLER: I think the fact that it's really
4 preexisting is a very influencing factor here.

5 BOARD MEMBER DAWKINS: No.

6 MR. MILLER: Well, I think -- we may not agree, but I
7 would suggest if somebody were coming in to build it anew,
8 you might look at it a little differently.

9 BOARD MEMBER FINDLEY: It does. Although it doesn't
10 cover the other case, it does offer historical context
11 which is customary. So it is evidence. It's just ...

12 BOARD MEMBER MORREALE: One thought that I had is
13 everyone is pretty specific on restaurant. I could
14 probably think of every type of business where the owner
15 lived upstairs.

16 BOARD MEMBER DAWKINS: I can tell you at this point,
17 I'm comfortable voting on this a restaurant.

18 BOARD MEMBER FINDLEY: Right. We can say that in our
19 interpretation of accessory use. And there are many
20 businesses that are allowed by accessory use such as a
21 doctor's office, a dentist's office, lawyers. Lawyers are
22 allowed to have practice business in their house. There's
23 plenty of law for it.

24 MR. MILLER: Yes, they are. The code provides for it.

25 BOARD MEMBER FINDLEY: Yes.

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2 Engineer's, engineers are allowed to practice.

3 MR. MOGEL: I do think there is a distinction. I do
4 think there is a distinction between a restaurant. I do
5 think that that is truly a customary. That is not unusual
6 in the slightest.

7 CHAIRMAN MORDAS: I have worked at country clubs where
8 we had 14, 16 hour days and we had rooms upstairs.

9 BOARD MEMBER FINDLEY: That's actually --

10 CHAIRMAN MORDAS: That's a requirement of a
11 restaurant, is to operate many hours a day.

12 BOARD MEMBER FINDLEY: I didn't list it in my thing
13 because I felt it had no bearing on what I was discussing.
14 But one of the ones was a golf course and the groundskeeper
15 has a trailer on the property and it is considered an
16 accessory use of a country club, golf course.

17 CHAIRMAN MORDAS: I think it applies in this
18 situation.

19 BOARD MEMBER FINDLEY: I think we can really apply
20 that as accessory use. We get away from this mixed use
21 thing.

22 And by the way, it may come up in a few months where
23 you can actually use it as mixed use --

24 BOARD MEMBER DAWKINS: Right.

25 MR. MILLER: As a matter of right.

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2 BOARD MEMBER FINDLEY: Right.

3 BOARD MEMBER DAWKINS: And I think that, to my mind,
4 that's crucial. I'm trying to find a way to help them out.
5 But frankly, I'm with you. The mixed use is out.

6 BOARD MEMBER FINDLEY: Right.

7 BOARD MEMBER DAWKINS: But I can, very comfortable,
8 agree to the interpretation that you provided for.

9 BOARD MEMBER FINDLEY: Like I said, I just would like
10 to do a little more research and I need to do that.

11 MR. MOGEL: You would propose an interpretation.

12 BOARD MEMBER DAWKINS: We're going to propose --

13 BOARD MEMBER FINDLEY: Do they have to request that?

14 BOARD MEMBER DAWKINS: No.

15 MR. MILLER: We'll consent to it.

16 MR. MOGEL: Yes.

17 BOARD MEMBER FINDLEY: Okay, you consent to it.

18 CHAIRMAN MORDAS: Go ahead, make a motion.

19 BOARD MEMBER DAWKINS: I'd like to make a motion that
20 we make an interpretation that the upstairs apartment is an
21 accessory use to a restaurant in a downstairs business,
22 provided that the apartment is occupied by owner --

23 BOARD MEMBER FINDLEY: Operator.

24 BOARD MEMBER DAWKINS: -- operator or family of owner
25 operator.

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2 CHAIRMAN MORDAS: Employee of restaurant?

3 BOARD MEMBER FINDLEY: No.

4 CHAIRMAN MORDAS: No.

5 BOARD MEMBER DAWKINS: No.

6 BOARD MEMBER FINDLEY: No employee.

7 CHAIRMAN MORDAS: Okay.

8 BOARD MEMBER DAWKINS: Well, if the employee is
9 family.

10 BOARD MEMBER FINDLEY: Family can work there, yes.
11 But not just an unrelated person.

12 BOARD MEMBER RAMPE: What about a manager?

13 BOARD MEMBER FINDLEY: No.

14 BOARD MEMBER DAWKINS: So the owner could live there.
15 She could be doing something else. The father could live
16 with her in the apartment and run the restaurant and that
17 would be fine.

18 CHAIRMAN MORDAS: All right. Is that ironclad enough,
19 that we're not ...

20 MR. MOGEL: I think that's pretty clear.

21 CHAIRMAN MORDAS: Okay.

22 BOARD MEMBER FINDLEY: Are we voting on that today?

23 CHAIRMAN MORDAS: How do we vote in regards to --

24 BOARD MEMBER RAMPE: I'll second it.

25 MR. MOGEL: All in favor of interpreting ...

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2 BOARD MEMBER MORREALE: Aye.

3 CHAIRMAN MORDAS: With the stipulation that the
4 apartment is going to be used for --

5 MR. MOGEL: As stated.

6 CHAIRMAN MORDAS: -- owner's family.

7 BOARD MEMBER FINDLEY: One apartment.

8 BOARD MEMBER DAWKINS: One apartment.

9 CHAIRMAN MORDAS: All right.

10 MR. MILLER: In this case, it is a singular apartment.

11 CHAIRMAN MORDAS: How do you vote, Cathy?

12 BOARD MEMBER DAWKINS: Yes.

13 CHAIRMAN MORDAS: Georgia.

14 BOARD MEMBER RAMPE: Yes.

15 CHAIRMAN MORDAS: Kent.

16 BOARD MEMBER FINDLEY: Yes.

17 CHAIRMAN MORDAS: Matt.

18 BOARD MEMBER MORREALE: Yes.

19 CHAIRMAN MORDAS: I'll vote yes.

20 (The motion was approved and carried.)

21 MR. DeWINTER: Okay. Thank you.

22 MR. MILLER: Thank you very much.

23 CHAIRMAN MORDAS: Motion to close?

24 BOARD MEMBER DAWKINS: Motion.

25 BOARD MEMBER FINDLEY: Second.

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2 CHAIRMAN MORDAS: All in favor?

3 BOARD MEMBER DAWKINS: Aye.

4 BOARD MEMBER RAMPE: Aye.

5 BOARD MEMBER MORREALE: Aye.

6 BOARD MEMBER KENT: Aye.

7 CHAIRMAN MORDAS: Aye.

8 (The motion was approved and carried.)

9 (Time noted: 8:52 p.m.)

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REPORTER'S CERTIFICATION

I, ROSEMARY A. MEYER, a Shorthand Reporter and Notary Public in and for the State of New York, do hereby certify:

That the foregoing transcript is an accurate record of the proceedings in the matter of Jewel Zheng, to the best of my knowledge and belief, having been stenographically recorded by me and transcribed under my supervision.

I further certify that I am in no way related to any of the parties to this action and that I have no personal interest whatsoever in the outcome thereof.



ROSEMARY A. MEYER

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