

TOWN OF CORTLANDT
PLANNING AND ZONING BOARDS

BOARD MEETING

Town Hall
1 Heady Street
Cortlandt Manor, NY 10567
January 18, 2024
7:00 p.m. - 8:31 p.m.

January 18, 2024

MEMBERS PRESENT:

Michael Fleming, Chairman

Wai Man Chin, Vice-Chairman

Chris Beloff, Member

Frank Franco, Member

Michelle Piccolo Hill, Member

Benito Martinez, Member

Thomas Walsh, Member

ALSO PRESENT:

Chris Kehoe, AICP, Director of Planning

Michael Cunningham, Deputy Town Attorney

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2 (The board meeting commenced at 7:00 p.m.)

3 MULTIPLE: I pledge allegiance to the
4 flag of the United States of America and to the
5 Republic for which it stands, one nation under
6 God, indivisible, with liberty and justice for
7 all.

8 MR. MICHAEL FLEMING: All right, Mr.
9 Kehoe, could we do a roll call?

10 MR. CHRIS KEHOE: Ms. Piccolo Hill?

11 MS. MICHELLE PICCOLO HILL: Here.

12 MR. KEHOE: Mr. Martinez?

13 MR. BENITO MARTINEZ: Here.

14 MR. KEHOE: Mr. Franco?

15 MR. FRANK FRANCO: Here.

16 MR. KEHOE: Mr. Fleming?

17 MR. FLEMING: Here.

18 MR. KEHOE: Mr. Chin?

19 MR. WAI MAN CHIN: Here.

20 MR. KEHOE: Mr. Walsh?

21 MR. THOMAS WALSH: Here.

22 MR. KEHOE: Mr. Beloff?

23 MR. CHRIS BELOFF: Here.

24 MR. FLEMING: All right, has everyone

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2 had an opportunity to review the minutes from the
3 December 21, 2023 meeting? And if --

4 MR. CHIN: I make a motion to adopt the
5 minutes of a meeting of December 21, 2023.

6 MR. BELOFF: Second.

7 MR. FRANCO: Second.

8 MR. FLEMING: All in favor?

9 MULTIPLE: Aye.

10 MR. FLEMING: Any opposition? So
11 adopted. All right, move on to the public
12 hearings. Michelle, I think it's your case first.

13 MS. PICCOLO HILL: Okay. I'm tasked with
14 case number 2023-17, which is the application of
15 Park Patel for an interpretation of the zoning
16 ordinance appealing the denial of a building
17 permit for a new one-family residence for the
18 property located at 41 East Hill Road.

19 MR. FLEMING: First we'll hear from the
20 applicant.

21 MR. CLIFFORD DAVIS: Okay. Thank you.
22 Good evening, Mr. Chairman, members of the zoning
23 board. My name is Clifford Davis, 200 Merrimack
24 Avenue, Suite 602 White Plains, New York, 10601.

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2 I represent Parth Patel. Mr. Patel lives at 41
3 East Hill Road, Cortlandt, New York. Mr. Patel
4 owns four lots. His house that he presently
5 resides on is at lot 10 and 11. And the
6 application that is before this board, that we
7 submitted a site plan to the building inspector
8 for, is the proposed residence would be lot 25
9 and 26.

10 Just to put in perspective, and I hope
11 everybody has reviewed my December 11, 2023
12 letter, so I'll try not to go over everything,
13 but there are a couple of points that I want to
14 make. The four lots were created pursuant to the
15 map of Peekskill Terrace, 1907 map, which
16 everybody should have in their package. And what
17 we did is we did a, a blowup of exactly what was
18 there.

19 So this is lots 10 and 11, which is
20 where Mr. Patel's house is. And as you could see,
21 he has frontage over here. And lots 25 and 26,
22 it's very clear that they really have nothing to
23 do with lots 10 and 11. In fact, lots -- lot 11
24 doesn't touch 25 and 26 and lot 10 doesn't touch

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2 26. And as set forth in the proposed site plan,
3 which Cronin Engineering submitted to the
4 building inspector, it's different frontage.

5 Everything is called East Hill Road, so
6 it's a little bit complicated, but the frontage
7 is actually very different. If, if it was a
8 different name on a different street, it might be
9 simpler, but there's, there's different access.
10 So one house is looking this way, the other house
11 is looking that way. And, and those back lots
12 really have nothing to do with each other. And
13 it's set forth on the 1907 map.

14 And just to jump ahead a little, there
15 was an application before this board in Cozzi in
16 which there was a lot in the 40,000 square foot
17 zone, which only had approximately 15,000 square
18 feet. It was one lot. In that case there was not
19 an issue of whether there was a merger or not,
20 but it was legally nonconforming, the issue
21 before this board, dealt with a garage and
22 maximum floor area. But the issue was not, are we
23 allowed to build this house because it's such a
24 small lot when you need a required 40,000 square

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2 foot.

3 And what we're basically saying to this
4 board is that lots 25 and 26 have never merged
5 with lots 10 and 11. So it's our position that
6 lots 25 and 26 are no different than the lot in
7 Cozzi, that they're legally nonconforming once we
8 find out that there is not a merger.

9 Now in the building inspector's
10 determination, he basically relied on a
11 certificate of occupancy, the sewer district. All
12 of those things have nothing to do with whether
13 the lots have merged. The certificate of
14 occupancy merely says that Mr. Patel and his
15 predecessor had the right to move in to the newly
16 built structure, which was on lots 10 and 11.

17 With regarding tax lots, that is just an
18 administrative way to send out a tax bill to my
19 client. And as for the sewer district, it's the
20 same. If we're able to build a house on lots 25
21 and 26, whoever lives in that house is going have
22 to connect to the sewer district and follow all
23 the regulations. Further, we, we're not asking
24 that Mr. Patel be given a free pass. To the

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2 extent that he can build a house, he is going to
3 have to meet all of the regulations
4 administratively with the building inspector,
5 engineering steep slopes, if there's any wetlands
6 you know, no net runoff and, and all of the, the
7 requirements, you know, for that single building.
8 So we're, we're not asking to cut any corners.
9 Now --

10 MR. FLEMING: I have a, I have a
11 question for you --

12 MR. DAVIS: Yeah, sure.

13 MR. FLEMING: -- if you don't mind me
14 interrupting you. I'm just -- you may, you may
15 know this, you may not, but it has to do with the
16 history and timeliness -- a timeline of those
17 purchases of these lots. Do you know if the four
18 lots have been purchased and sold from their --
19 from, from, from, from the 1907 map until today?
20 Or was there a period of time when they were
21 owned by different individuals and then were
22 subsequently joined?

23 MR. DAVIS: I don't know about the past
24 history. I could tell you that when the builder,

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2 LPL, I believe that they, they bought the four
3 lots at that time.

4 MR. FLEMING: Okay. Thank you.

5 MR. DAVIS: And then, and then the house
6 was built and then my client bought it from his
7 predecessor.

8 MR. FLEMING: Okay. Thank you.

9 MR. CHIN: I, I'd like to ask one other
10 question.

11 MR. DAVIS: Yes.

12 MR. CHIN: The taxes, the taxes paid on
13 lot 25 and 26 with the house on it, is that a
14 separate tax than 10 and 11 or is it all combined
15 as one tax?

16 MR. DAVIS: I, I believe there's one tax
17 bill, is that correct? This is Mr. Patel.

18 MR. CHIN: Okay. So there's, there's one
19 tax for all four lots?

20 MR. DAVIS: Right, Right. And I'm, I'm
21 sure you could easily find that out from, you
22 know, the tax department or the assessor.

23 MR. CHIN: Well, I just wanted to put
24 that on record.

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2 MR. DAVIS: Right. So there's one tax
3 bill and it's for 41 East Hill and it goes to Mr.
4 Patel and it, and, and it's for all four lots.
5 But as Mr. Kehoe can advise you, or Mr.
6 Cunningham, tax lots are different than whether a
7 lot has been merged or whether it's a buildable
8 lot. It's a very separate --

9 MR. CHIN: No, I understand that. I'm
10 just saying, is it a separate tax bill for the
11 top or is it one tax bill for all four lots?

12 MR. DAVIS: I think it's one tax bill
13 for all of lots. So I think, as you can tell from
14 the 1907 map, you know, regarding lots 10 and 11
15 and 25 and 26, that there was a clear intention
16 when the maps were laid out in this particular
17 community, that 25 and 26 were separate from 10
18 and 11.

19 MS. PICCOLO HILL: Actually, I have a
20 question.

21 MR. DAVIS: Yes?

22 MS. PICCOLO HILL: So with regards to
23 the tax bill and, and sort of the sewage and all
24 of that other stuff, when your client is billed,

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2 is it called out on the bill for lots 10, 11, 25
3 and 26? Or is it just all listed under one?

4 MR. PARTH PATEL: It's just the tax
5 section block.

6 MR. DAVIS: I, I think it, it, it just
7 goes to the, to the, the section block and lot
8 number and then he gets one bill.

9 MS. PICCOLO HILL: So --

10 MR. DAVIS: For all those four lots.

11 MS. PICCOLO HILL: -- he's being billed
12 for one block number.

13 MR. DAVIS: Right.

14 MS. PICCOLO HILL: Okay.

15 MR. DAVIS: So even though there's no
16 residence or structure on 25 and 26, he's getting
17 the sewer bill, which is going to his address.

18 MS. PICCOLO HILL: As if it was one
19 unit?

20 MR. DAVIS: As if it was one lot.

21 MS. PICCOLO HILL: Okay.

22 MS. DAVIS: But it, it's, it -- but
23 those departments don't address the issue of
24 merger and building lots and its buildability. So

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2 there, there, there's no history of merger here.
3 So like again, the documents that the building
4 inspector has referred to, you know, if it's a C
5 of O, or it's a sewer district, it doesn't mean
6 that there's a merger.

7 So now, now we go to section 307-8,
8 which is the town of Cortlandt's merger
9 provision. And the key section is really
10 paragraph C. And I'll sort of walk you guys
11 through it and hopefully I can convince you that
12 I'm correct. So, it starts out, any lot with an
13 area or width less than that prescribed for the
14 lot in the district. So this is an R40, 40,000
15 square feet. My guy has approximately 29,000
16 square feet for all four lots if you took it
17 together; 25 and 26 is about 15,000 and 10 and 11
18 is also about 15.

19 So it says any lot with an area or width
20 less than that prescribed for a lot in the
21 district which it is situated when the owner
22 owned adjoining land on or effective date of this
23 chapter. So Mr. Patel owned 10 and 11 and that's
24 where the house is. And then he also owned 25 and

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2 26.

3 And what it continues to say is that all
4 of those lots shall be deemed to have merged with
5 such adjoining land to form a single parcel. If
6 the merger provision stopped right there, we
7 wouldn't be before this board because it's clear
8 that the lots would've merged.

9 But that's not how it, that's not how
10 the story ends. The statute says further, and
11 this is at the, at the bottom of C, if the
12 adjoining land has been divided into several
13 substandard lots, merger shall only occur to the
14 extent that the minimum lot width requirements of
15 the chapter are met, but not necessarily the
16 minimum lot area.

17 So what we have here is Mr. Patel owns
18 10 and 11, 25 and 26 is what we made the
19 application for to the building inspector. When
20 it refers to the adjoining land divided into
21 several substandard lots, those several
22 substandard lots are from the 1907 map and they
23 are 25 and 26. So 25 and 26 are both substandard
24 lots, which is the additional adjoining land.

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2 And it says the merger shall only occur
3 to the extent that when you put all of these lots
4 together, that you meet the minimum lot width
5 requirement, which is 150 feet. But we had our --
6 a predecessor engineer, and that's in exhibit,
7 sorry, and that's in exhibit E. And there's a
8 definition of lot width and that's 307-4 and 307-
9 4 provides that the definition of lot width, and
10 it's not the traditional intuitive way you would
11 think, but this is how the statute defines it.
12 The mean width of a lot computed by dividing the
13 lot area by the lot depth.

14 So that calculation is set forth in our
15 presentation at Exhibit E. So the lot width is
16 29,962.2 divided by the depth, which is 303.3,
17 and that comes out to 98.78 feet, which is less
18 than a hundred and it's certainly less than 150
19 feet. So therefore when you take lots 25 and 26
20 and you add it to lots 10 and 11, and then you go
21 back to the merger statute, which is 307-8, it
22 says the merger shall occur only to the extent
23 that the minimum lot width requirements are met.

24 When you put lots 10 and 11 together

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2 with 25 and 26, those minimum lot width
3 requirements of the chapter are not met. And when
4 they're not met, there's no merger. And if
5 there's no merger, my client has the right to
6 make an application to the building inspector.

7 We have to meet all of the regulations
8 other than lot area and that minimum lot width.
9 And the reason for that is because it's on the
10 1907 map. It's no different than Cozzi. So Cozzi
11 didn't have to prove to you, he didn't have to
12 come in, he or she, I'm not sure -- that person
13 did not have to come in and make a variance for
14 that -- that it had less than the required lot
15 width or less than the required lot area because
16 it was on the 1907 map.

17 So, you know that, that's our argument
18 from a legal standpoint, you know, I set forth
19 all the cases here. You could only have a merger
20 in New York State pursuant to a merger statute.
21 And the merger statute says here, at 307-8 that
22 if you were going merge all of the lots, the
23 minimum lot width had to be complied with if
24 there was going to be a merger and there would be

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2 no merger if the minimum lot was not complied
3 with. So you have to follow that merger statute.
4 I hope I've laid it out clearly.

5 If not, hopefully Mr. Cunningham can
6 advise the board. But I think that the board
7 should go back to the 1907 map and say to
8 themselves, what was the intention when that map
9 was created. And again, when you look at, you
10 know, lots 10 and 11, lot 11 has nothing to do
11 with 25 and 26 and lot 10 has nothing to do with
12 26, although lot 10 goes back to 25, lots 10 and
13 11 as set forth in our site plan access East Hill
14 Road going this way, and lots 25 and 26 as set
15 forth on our site plan, which I believe is
16 Exhibit C, is going the opposite. And it would be
17 much clearer, but everything is called East Hill
18 Road. So even though the fact that it's on East
19 Hill Road it's, it's going in opposite
20 directions. So that, that, that's really all I
21 have. It's set forth in my letter.

22 And I'm here to answer any questions
23 that you might have. So what we're looking for,
24 just to sum up, is a determination that the

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2 building inspector improperly analyzed it, that
3 there was no merger and that my client's
4 application to the building department should
5 proceed as set forth in Exhibit C, which is the
6 site plan.

7 MR. FLEMING: Thank you for your
8 presentation. I know the board's going have some
9 questions, so if you can just hang out for a
10 little bit.

11 MR. DAVIS: Oh, okay.

12 MS. PICCOLO HILL: Yeah, I was, I have a
13 couple of questions.

14 MR. DAVIS: Yeah, sure.

15 MS. PICCOLO HILL: How long has your
16 client owned the property?

17 MR. DAVIS: When did you buy it? '21?
18 2021.

19 MS. PICCOLO HILL: 2021. Is there any
20 history that shows the property as being treated
21 as four separate lots?

22 MR. DAVIS: Only the 1907 map.

23 MS. PICCOLO HILL: Just the 1907.

24 MR. DAVIS: Right.

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2 MS. PICCOLO HILL: So --

3 MR. DAVIS: The -- when the builder
4 bought it, the builder purchased the four lots.

5 MS. PICCOLO HILL: And then, and ever
6 since it's been billed as one sewage -- is billed
7 as there's one, taxes billed as one?

8 MR. DAVIS: Correct.

9 MS. PICCOLO HILL: So the last time it
10 was treated as four lots was essentially in 1907
11 or when the builder bought it?

12 MR. DAVIS: I think the builder bought
13 it in or about '96.

14 MS. PICCOLO HILL: Okay. Those are my
15 questions.

16 MR. FLEMING: Yeah. That, that goes back
17 to my question for you, and I know you don't know
18 the answer, but I really would like to know this.
19 Is really have these four lots always transferred
20 uniformly and together from -- I know your client
21 bought the property only a couple of years ago,
22 but the transactions prior to that?

23 MR. DAVIS: I think prior to '96, I, I
24 think it might have been owned just by the

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2 original loaner. It was just vacant land.

3 MR. FLEMING: Okay.

4 MR. DAVIS: So, there was no structure
5 on it, there was no anything.

6 MR. FLEMING: Okay.

7 MR. CHIN: So, so basically when the
8 builder bought the property back in '96 or
9 whenever it was, he bought those four lots, the
10 two over here and the two over there.

11 MR. DAVIS: Yes.

12 MR. CHIN: 10 and 11 and 25, 26.

13 MR. DAVIS: And then he built a house --

14 MR. CHIN: And then he built the house
15 on 20 --

16 MR. DAVIS: On 10 and 11.

17 MR. CHIN: -- on 10 and 11. But I'm, I
18 guess we're all trying to figure out. did he
19 combine the lots or did he -- or are those two
20 lots separate from, you know, we don't -- that's
21 a, that's a big question for everybody right now.

22 MR. DAVIS: Well, when you look at the
23 site plan --

24 MR. CHIN: Yeah.

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2 MR. DAVIS: -- which is Exhibit C --

3 MR. CHIN: Yes.

4 MR. DAVIS: -- which was submitted by
5 Cronin Engineering --

6 MR. CHIN: Yeah.

7 MR. DAVIS: -- it basically, you could
8 tell that when the house was built, I mean, I
9 don't have anything big, but, but it's in the
10 package, you could see that the present house,
11 you know, it, it meets all like the setbacks. It,
12 it, it meets all of the requirements other than
13 lot area and lot width --

14 MR. CHIN: Right.

15 MR. DAVIS: -- of 10 and 11.

16 MR. CHIN: Right. I understand what
17 you're saying.

18 MR. DAVIS: So, you know, the, the way
19 it was built, it, it was built as if 25 and 26
20 was very separate.

21 MR. WALSH: My question that I've raised
22 is when the house was, you know, the permit,
23 initial permit was applied for in '96, did they
24 consider this one zoning lot, all four lots and

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2 base their floor area calculation on all four
3 lots? I've asked, you know, Martin to try to find
4 the original plans to see if we can --

5 MR. DAVIS: I don't think we have that.

6 MR. WALSH: The building, the city, the
7 town is looking --

8 MR. DAVIS: Well the building department
9 might have it, right.

10 MR. WALSH: Yeah, the town is looking.
11 Yeah, that's what they're, they're -- I've asked
12 for that just where we can see --

13 MR. DAVIS: I don't have that.

14 MR. WALSH: -- what was submitted back
15 in '96 where they, they considered this when they
16 built the house to get their floor area ratio,
17 were all four lots considered one lot as a zoning
18 lot, not a tax lot, and that's how they were able
19 to build the house to that size. And if that's
20 the case, then I would consider it as one zoning
21 lot now.

22 MR. DAVIS: Well, although that's not
23 what the code says. The code says you determine
24 whether there was a merger pursuant to 307-8.

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2 MR. WALSH: But I'm saying is if they
3 have, if they've combined -- if they use that
4 calculation of all four lots to get the size
5 house that was built in '96, have they
6 essentially then combined the lots?

7 MR. CUNNINGHAM: I think what, what some
8 members of the board might've been saying in the
9 work session now too, is have they relinquished
10 their right to develop on all the lots and if
11 they've relinquished their claim that it has been
12 merged. If they apply -- if the original builder
13 applied using the total area and, and all the
14 bulk for those four original lots from the 1907
15 map combined.

16 MS. PICCOLO HILL: When it was
17 purchased, was it purchased as one unit or was it
18 purchased as a separate buildable lot?

19 MR. DAVIS: Well, it was purchased as
20 four lots.

21 MS. PICCOLO HILL: It was -- your client
22 --

23 MR. DAVIS: The four lots -- no, no. My
24 client purchased the house.

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2 MS. PICCOLO HILL: Did -- but when he
3 bought it --

4 MR. DAVIS: With the deed, it came as
5 all four lots.

6 MS. PICCOLO HILL: As one unit? Listed
7 as one?

8 MR. DAVIS: Well, I don't know what you
9 mean, listed as one.

10 MS. PICCOLO HILL: So --

11 MR. FLEMING: It was a single
12 transaction.

13 MS. PICCOLO HILL: Yes, so --

14 MR. FLEMING: It wasn't a transaction
15 for a developable lot and a transaction for a lot
16 with the house built on it.

17 MR. DAVIS: Yes.

18 MR. FLEMING: And that, that was partly
19 what I was asking was, was this always transacted
20 as, as four lots but had a single house on it
21 since the house was built?

22 MR. DAVIS: When, when my client
23 purchased it, it was listed as the, the four lots
24 and the house.

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2 MR. FLEMING: Thank you. I, I think
3 that's the, that that's the -- we're both kind of
4 getting to the same --

5 MS. PICCOLO HILL: Right.

6 MR. FLEMING: -- the same result, you
7 know that's, But, but, but there, there's no
8 provision -- it still goes back to in order for
9 there to be a merger, it's under 307-8.

10 MR. FLEMING: Understandable. I
11 understand and, and I, and I think Tom Walsh's
12 question was more of if you got the benefit of
13 all four lot sizes for the purpose of building
14 your house and getting a larger house approved,
15 do you then get to subsequently say, yeah, but I,
16 I know I got my nice house built on this, this
17 land area, but now I want to take some of the
18 land area away. And I, I don't know the answer to
19 that question.

20 MR. DAVIS: But if you, if you look at
21 the site plan at Exhibit C, what Cronin
22 engineering has presented, the house that my
23 client presently lives on meets all of the
24 required setbacks and everything other than lot

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2 area and lot width. So he -- so if, if you take a
3 look at Exhibit C to our submission --

4 MR. FLEMING: I, I see that. I'm not
5 sure that's, that's addressing the, the size of
6 the house compared to the lot acreage. Is it? I
7 don't, I don't think it is.

8 MR. CHIN: Right now, we don't know what
9 the calculation was when the house was built by
10 the developer for Mr. Patel. Was it including the
11 house the size of his house, was it including all
12 four lots or not? We don't know that.

13 MR. DAVIS: I don't have that
14 information.

15 MR. FLEMING: Yes.

16 MR. CHIN: Unless we get that from --

17 MR. WALSH: We've asked that from Martin
18 then.

19 MR. CHIN: -- the --

20 MR. DAVIS: It's in the building
21 department.

22 MR. FLEMING: We're asking for that
23 information presently, so we --

24 MR. CHIN: Yeah, we need that

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2 information.

3 MR. DAVIS: Yeah, I would love to have
4 that information. I don't have that, yeah.

5 MR. FLEMING: We're looking into it as
6 art as well, because it does -- again, we think
7 it's a relevant --

8 MR. CHIN: It makes a big difference.

9 MR. FLEMING: -- it's a relevant factor
10 for our, for our analysis.

11 MR. DAVIS: However, all of the floor
12 area and everything like that, we comply with
13 the, the way it's laid out, for both the proposed
14 new residence on 25 and 26 and lots 10 and 11. So
15 lots 10 and 11 would not become -- would, would
16 not become noncompliant, other than with
17 regarding area and lot width.

18 MR. WALSH: So that's what -- I want to
19 see what, what they listed, what the architect,
20 the original architect, listed as their, their
21 zoning calculations back in '96. Just a side note
22 question is, for Mr. Cunningham, I see from
23 Cronin Engineering the plan, you know, the site
24 plan from, is it 2023, showing the two house, or

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2 a house being built in the lower two lots. Would
3 that then -- you can't subdivide or merge lots,
4 correct? Is that --

5 MR. CUNNINGHAM: This --

6 MR. WALSH: They're showing one house in
7 the two --

8 MR. CUNNINGHAM: So if it, if it is --
9 if the board determines it is one lot, based on
10 my reading of the code, this could not be
11 subdivided. And I think if it's one --

12 MR. DAVIS: No, no, if, if it was one
13 lot, it certainly could be subdivided, but we
14 would have to come back for a variance. I, but I,
15 I think what we're saying is too, because there's
16 provision in the code 265-19-A, it says all lots
17 shown shall conform -- and that's the subdivision
18 section. It says all lots shown shall conform the
19 zoning requirements and be of a size and shape
20 rendering them usable for the use contemplated.
21 All lots shall frontage on the street or other
22 public highway.

23 So I don't, I don't think the planning
24 board's ever granted a sub -- I guess you'd have

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2 to come here, but I don't know that's --

3 MR. DAVIS: Well, we would have -- if we
4 made the application for the subdivision, the
5 planning board would say you don't meet the, the,
6 you know, the area. And we'd have to come back
7 here.

8 MR. FLEMING: I understand.

9 MR. DAVIS: But we, we don't want to --
10 we're here right now --

11 MR. FLEMING: I understand.

12 MR. DAVIS: -- and we believe that my
13 client has the right to pursue administratively
14 his application before the building department.
15 And, and we have to meet all of the town's
16 regulations.

17 MR. CHIN: Well again we -- there's a
18 lot of questions that --

19 MR. DAVIS: I understand.

20 MR. CHIN: -- have to be answered and I
21 don't think we're going make a decision today on
22 anything.

23 MR. DAVIS: I understand.

24 MR. CHIN: But I think we all in

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2 agreement that we've got to know what the '96
3 building permit indicated, how it was indicated
4 by the architect. What, what square footage was
5 based on. Was it on the two lots or was it on the
6 four lots, so forth and so on, which we don't
7 have right now. We don't have that in any of our
8 records right now, that we're looking at
9 presently.

10 MR. DAVIS: Okay.

11 MR. FLEMING: I, we, we've requested
12 information from the town, which, which we need
13 to get. And, and we very much appreciate the
14 information you've given us.

15 MR. DAVIS: I, I would just ask as a
16 courtesy that if you have any information, if you
17 could let us see it before the meeting.

18 MR. FLEMING: Oh, of course, without
19 question. If, if, if we get an answer from the
20 town we'll absolutely, we, we can share that
21 information with the applicant prior to the
22 meeting.

23 MR. KEHOE: Yeah.

24 MR. FLEMING: Hopefully we'll get it

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2 sooner, but, but yes. And to the extent we, we
3 get it without enough time for you, if you asked
4 for an extension, we would absolutely adjourn it
5 to allow you to, to look at any information that
6 we --

7 MR. KEHOE: Just, just Martin was out
8 this past week. I -- 1996, not that long ago, so
9 I think we'll be able to track that document
10 down. It's just that we couldn't get it to the
11 board in advance of this meeting.

12 MS. PICCOLO HILL: And I'm also curious,
13 the reason I'm asking about when your client
14 purchased the property and was it purchased as
15 here's a house with this adjacent land as part of
16 the property, or here's a house with adjacent
17 land that can be built upon. So --

18 MR. DAVIS: It was just a deed transfer.
19 So it it's just a, a real estate transaction
20 without any --

21 MS. PICCOLO HILL: Well, I'm just
22 curious, is --

23 MR. DAVIS: -- without any notes or, you
24 know, some, somebody saying, is it buildable, is

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2 it not buildable? I mean that, that's why this
3 board exists and that's why --

4 MS. PICCOLO HILL: Right.

5 MR. DAVIS: -- we're coming before this
6 board for an interpretation.

7 MS. PICCOLO HILL: Well, the only reason
8 why I'm curious is because if he's getting
9 everything listed as one bill, one tax bill, one
10 sewer and he purchased it in 2021, what prompted
11 the decision to build on the other land? Was
12 there anything that told him that it was
13 buildable? That he thought it was four separate
14 lots?

15 MR. DAVIS: Well, to be perfectly honest
16 with you, I think what triggered it was the Cozzi
17 determination when he realized --

18 MR. FLEMING: That's my guess.

19 MR. DAVIS: -- that his neighbor because
20 he, he was concerned about that being built. And
21 then when we spoke to Mr. Kehoe and he explained
22 that Mr. Cozzi was able to build on it because it
23 went back to the 1907 map. In the 19 -- and once
24 it was on that 1907 map, regardless of lot area

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2 and lot width, that person was able to build --

3 MR. CHIN: Yeah, because he had a
4 buildable lot.

5 MR. DAVIS: -- a 7,500 square foot
6 House.

7 MR. FLEMING: Yeah. He had a buildable
8 lot that he owned and it was, it was basically
9 build as of right. You know, the question was he
10 was looking to build larger than his rights, so
11 it was before us --

12 MR. DAVIS: Right.

13 MR. FLEMING: -- for that purpose.

14 MS. PICCOLO HILL: Yeah. So it's --

15 MR. FLEMING: A separate question as to
16 whether or not you, your, your client's lots have
17 merged into one, you know --

18 MR. DAVIS: Correct.

19 MR. FLEMING: -- separate issues, you
20 know, completely. But I certainly understand why
21 that precipitated this. I, I understand the
22 reasoning. Okay.

23 MR. KEHOE: Don't forget it's a public
24 hearing.

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2 MR. FLEMING: Yeah. Okay.

3 MR. DAVIS: Anybody else?

4 MR. FLEMING: So what we're going do is
5 we're going invite members of the public now --

6 MR. DAVIS: Sure.

7 MR. FLEMING: -- if they have any
8 comments to make on the application you've
9 submitted. I will tell you our plan is to adjourn
10 this because as we said, there's some additional
11 information we'd like. So we probably will kick
12 this over to the next meeting, which I don't even
13 have the date of. What is the next meeting?

14 MR. WALSH: February something.

15 MR. CHIN: February 15th.

16 MR. FLEMING: February 15th. so we'll,
17 we'll, we'll take care of that after we listen to
18 members of the public.

19 MR. DAVIS: Okay. Thank you.

20 MS. PICCOLO HILL: February 15th.

21 MR. FLEMING: Anybody else have anything
22 before I --

23 MR. FRANCO: No.

24 MR. FLEMING: All right. So, next we'll

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2 invite members of the public to come forward.

3 Please come forward, state your name, your
4 address, and then if you have any comments on the
5 application, we're, we're more than happy to hear
6 them.

7 MR. ROBERT GROSS: Sure. Good evening.

8 My name is Robert Gross. I'm also here on behalf
9 of my wife, Cindy Nichtberger. And we own 25 East
10 Hill Road. That is the, the tax lot, I think
11 where the lot is 27, which is right adjacent to
12 this lot 26, I think it's tax map 42. Just a
13 couple of things. Obviously the board, I think
14 even made a site visit to 25 East Hill Road. It's
15 an interesting road because it actually loops
16 around. The, the original property listing for
17 the Patel property actually listed room for a
18 pool which is in the back part of the lot. It is
19 kind of weird how it, how it kind of zigzags,
20 that particular lot. But the bottom line is, and
21 I do agree with the board, is that you have to
22 look at the 1996 building permit and the, what
23 the architect list the property at. But it's just
24 basically a longer lot. It's all part of one

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2 parcel there.

3 It has been acknowledged that there is -
4 - the lot does not meet area or lot width
5 requirements. It would maybe, even if it has a
6 setback from the road proper, it will not be --
7 you can't build on that lot in terms of the
8 actual width. So that would be our position.

9 I think, and, and if you look at the
10 type of area there, East Hill Road is a loop, so
11 it loops around. And so it's actually 25 and 26
12 are basically the back part of 11, 10 and 11. So.

13 MR. FLEMING: Thank you.

14 MR. GROSS: Thank You.

15 MR. FRANCO: Anybody else?

16 MR. FLEMING: Any other members of the
17 public have any comments they want to make? Is,
18 Is there anyone online who has any comments that
19 they want to make?

20 MR. FRANCO: No.

21 MR. FLEMING: No, okay. All right. So I
22 think what we're going do is we're going to close
23 the public hearing.

24 MR. KEHOE: No, I'd keep that --

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2 MR. CUNNINGHAM: I recommend keeping it
3 open in case we get the plans --

4 MR. CHIN: Keep it open and --

5 MR. CUNNINGHAM: -- just the public may
6 want to comment.

7 MR. FLEMING: Oh, that's right. We are
8 getting some more information. Okay. So what
9 we'll do is we're going move, I'm going need a
10 motion to adjourn this for the next meeting.
11 Michelle. Michelle?

12 MS. PICCOLO HILL: Yeah. I move to
13 adjourn to the next meeting.

14 MR. FLEMING: I need a second.

15 MR. FRANCO: Second.

16 MR. FLEMING: All in favor?

17 MULTIPLE: Aye.

18 MR. FLEMING: Any opposition? No. Okay,
19 so this is adjourned until the February 15, 2023
20 hearing. If we --

21 MR. FRANCO: '24.

22 MR. FLEMING: Yeah, thank you. It's a
23 new year, the February 15, 2024 hearing. If we
24 get any information, we will absolutely share it

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2 with you. And if, if you have anything you wish
3 to share with us with respect to the questions
4 you've gotten today, we welcome any further
5 submissions from you prior to that hearing as
6 well.

7 MR. DAVIS: Thank you very much.

8 MR. FLEMING: Okay. Thank you. All
9 right, our next case is 2023-18. Whose case is
10 that?

11 MR. CHIN: That's mine.

12 MR. FLEMING: All right. Please, please
13 proceed.

14 MR. CHIN: This is case 2023-18, Martin
15 Stejskal on behalf of John and Laura Lea Kennedy.
16 This is for 86 Trolley Road. Okay.

17 MR. MARTIN STEJSKAL: Good evening. I'm
18 Martin Stejskal from Architectural Visions, and
19 this is Joel Greenberg from Architectural
20 Visions. We're here representing John and Laura
21 Lea Kennedy.

22 MR. FLEMING: Thank You.

23 MR. CHIN: Okay. So, you're basically
24 here for a variance on the size of an addition

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2 that you want --

3 MR. STEJSKAL: Floor area ratio.

4 MR. CHIN: Floor area ratio, okay. Floor
5 area ratio. Okay. And I went through what you
6 had, okay, and so forth and so on, not knowing
7 myself. I, I saw the 14,719, I never knew that it
8 was always down to the lowest thousand, not up to
9 the next thousand, so that made me -- okay, it
10 was a 250 square foot difference by doing that.
11 Okay. So, right now you are asking for a 1,010
12 square foot addition to the floor area ratio
13 compared to what you, what you're permitted of
14 3,150 from the requested 4,160. Okay, which is
15 about 32 percent, is that right?

16 MR. STEJSKAL: Correct.

17 MR. CHIN: And it's, like I said, I was
18 talking in front of our board and everything else
19 and we went through a lot of things and I myself,
20 I was saying, okay, the new code for this thing
21 for houses built for prior to 2007, you know, to
22 me, I, to me, I thought it was being penalized
23 for, for unhabitable space that used to be taken
24 off on houses that were built prior to 2007. And

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2 I would say probably maybe 80 percent or more of
3 the houses in the, in the town of Cortlandt. I
4 don't know for sure what the percentage is, but I
5 know there's a lot of houses that were built way
6 before 2007. Okay. So that by saying that, you
7 know, there's a lot of unhabitable space that you
8 could not take off when you used to be able to
9 take off. So it kind of present additional
10 percentage to you that was taken off before.
11 Okay.

12 And looking at it, I went over there, I
13 looked at the property, I looked at the plans and
14 everything else. And based on the, I guess the
15 factors I saw, is a detriment of the
16 neighborhood, number one. I, I didn't see that.
17 Okay. I, I personally didn't see it myself. Okay.
18 I'm trying to find it. I can't, I can't get out.
19 All right. I have to go the back, go to the other
20 one. Hold on for one second.

21 MR. FLEMING: The factors.

22 MR. CHIN: Yeah, there. Okay. You know
23 what, you know, number one is, was there an
24 undesirable change in the neighborhood. Okay. I

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2 didn't see that based on looking at the houses in
3 the neighborhood. I mean, some people have maybe
4 a bigger lot than you, have a bigger house than
5 you. Some don't, you know. It varies, you know
6 what I mean? So I didn't see a big change in the
7 neighborhood that would make it a big difference.

8 Whether the benefits sort by the
9 applicant could be achieved another method, I
10 don't think so. I can't see that. Where, how else
11 would they gain their square footage that they
12 want for a little bit larger house because their
13 family grew. Okay, based on your factors.

14 Is it substantial? Based on the new
15 code, yes, it is a little bit substantial. Not a
16 lot, but a little bit. Okay. Is the proposed
17 variance have any adverse effect or impact on the
18 physical or environmental condition of the
19 neighborhood or district? I didn't see that
20 either. Okay.

21 And whether it's self-created, all
22 variance is always self-created. So again, I
23 myself don't see a problem with what you're
24 trying to do, okay, based on the neighborhood.

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2 Okay. And based on what I've been through over
3 the years, when before 2007, when it was always
4 unhabitable space, unhabitable it was always
5 taken out of the equation. You know, that would
6 be laundry rooms, boiler rooms, garages, so forth
7 and so on. Okay.

8 Now, now you're going from outside wall
9 to outside wall to outside wall, period. So
10 that's my opinion how I feel on this job, on this
11 project, okay.

12 MR. KEHOE: Well, one thing that we
13 should do is we should always let the applicant
14 make their initial comments, you know, because
15 they haven't even made their presentation yet.

16 MR. CHIN: Oh, I thought they talked
17 about --

18 MR. KEHOE: No.

19 MR. CHIN: Okay.

20 MR. KEHOE: So, you know, explain and
21 justify your request.

22 MR. STEJSKAL: Okay. Thank you very
23 much. And members of the board and Mr. Chairman.
24 As the, as the --

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2 MR. CHIN: Could you lower that down to
3 you?

4 MR. JOEL GREENBURG: Oh, okay. Can you
5 hear me?

6 MR. FLEMING: Yes, thank you.

7 MR. GREENBURG: Sorry that I'm short.
8 But he's tall. Anyway, seriously as Mr. Chin
9 said, the family has grown and the additional
10 space is needed. Interestingly enough, when you
11 talk about the neighborhood, part of your package
12 has letters from the adjacent neighborhoods --
13 adjacent neighbors, left and right and across the
14 street, all indicating that they had no problem
15 with it.

16 And as Mr. Chin said, if you go through
17 the criteria for the area variances, the addition
18 is in the back of the house and has no effect on
19 it at all. But I think more important than the
20 variance that we're asking for is, there's two
21 other criteria that you have to look at before
22 you build a house. The first one is the lot area.
23 And if you look at the lot area, lot coverage,
24 excuse me, that we are actually below the maximum

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2 that is allowed. So in other words, the footprint
3 of the house is below the percentage that is
4 allowed by the code. So that's, that's a plus.

5 The other plus is that there's another
6 section of the code that requires a certain
7 amount of landscaping on the house in addition to
8 the house, outside of the house. And, and again,
9 we are above the minimum, so that we have more
10 landscaping that is required by the code.

11 And I think even though the FAR, as you,
12 as Mr. Chin said is, is 32 percent, more
13 important as, as far as I'm concerned, is the
14 fact that the lot coverage is actually less than
15 required by the code. That means that the
16 footprint of the house, the overall footprint of
17 the house, not counting upstairs, downstairs, is
18 actually less than the code requires.

19 And the more important thing I think,
20 certainly, in any neighborhood is the fact that
21 the landscaping is way above what is required by
22 the code.

23 So I think we're stuck in a situation
24 where the FAR is really not being very fair to a

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2 piece of property, number one. And number two, as
3 Mr. Chin just said, and I realize now that prior
4 to a certain year, I think it was 2007, that
5 garages, mechanical rooms, boiler rooms were not
6 included.

7 So actually, if we took away that air
8 took away the, the garages and the boiler room
9 and the mechanical rooms, which obviously are not
10 habitable, I think the percentage would come way,
11 way down. I can calculate that and get you what
12 that percentage is.

13 But as I said, to repeat myself, the
14 more important thing is that the neighborhood is
15 not going change. We are below the lot, the lot
16 coverage and we are above the landscape area.

17 Just as an aside, we had done some
18 additions prior to 2007 in this area with
19 additions. And I, just looking at what we had
20 done back in the early 2000s, that also would
21 not, at that particular point, those houses were
22 originally built in the late 90s, just as this
23 was, or the middle 90s, and those houses that we
24 did -- we did additions to two houses directly

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2 opposite -- excuse me -- directly behind Mr. and
3 Mrs. Kennedy. And those additions, again, it was
4 less than below 2007, so the boiler rooms, the
5 garages and everything were not included.

6 So those houses, basically, if, if they
7 were done today and you did add the garages,
8 mechanical rooms, et cetera, they would also be
9 probably at the very similar percentage that we
10 have.

11 And I think more important is, as Mr.
12 Chin said, that the addition is behind the house.
13 Visually, architecturally it's similar to the
14 same materials that the existing house has. Also,
15 the fact that for as you pass by the house and
16 the, the, the look of the house is exactly the
17 same because the addition is in the rear, number
18 one.

19 Number two, the fact that there is no
20 environmental problem with this again, because
21 we, again, we're, we're below the lot coverage
22 and above the landscape coverage, which I think
23 is a more important thing to consider.

24 So actually, as Mr. Chin said, if, if

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2 this house or if this addition was proposed prior
3 to 2007, we would probably not even have to come
4 before this board. But I, as I said, I know I'm
5 repeating myself, but I think it's more important
6 of the lot coverage and the landscaping is, and
7 that is way -- one, one is above and one is --
8 the lot coverage is below and the landscaping is
9 above. And I think that's more important than the
10 fact that the fact that we have now have to
11 include garages and mechanical rooms and boiler
12 rooms, et cetera. So I think that's more
13 important.

14 So, in your consideration, I, I think
15 those are the, I think I would like you to
16 consider all three criteria. And we do meet two
17 out of three. And just very quickly, I know Mr.
18 Chin went through some of the situations with the
19 requirements for, for an area variance. The
20 character of the neighborhood will not be
21 changed. The architecture will remain exactly the
22 same as you drive down the street, you look,
23 you're going see the exact same thing that you
24 see now. And the fact that the neighbors left and

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2 right who actually will be seeing the addition
3 have no problem with it. I think that's another
4 important factor.

5 And the next criteria is whether there's
6 undesirable change in the neighborhood, which
7 again the neighbors left and right have
8 indicated, and across the street, have indicated
9 that they feel there'd be no detriment to the
10 character of the neighborhood. And, and my
11 opinion is that it is, there is no detriment.

12 And of course the second, whether the
13 addition can be achieved by other than the
14 variance. The answer is no because the area that
15 we're putting this house is required because the
16 family is enlarged, larger and they need that,
17 they need the area.

18 And the other, going to the other
19 criteria whether there would be an adverse effect
20 or impact on the physical or environmental
21 conditions of the neighborhood. Again, the answer
22 is no. And as I mentioned before, we have done
23 additions that probably are as large area wise
24 than as this house, and there's been no

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2 environmental effect on the neighborhood. And
3 self-created, of course, obviously is created
4 because the family's larger and they need the
5 additional space. But I think more importantly, I
6 think those other two criteria that, that you
7 have to consider is just as important, if not
8 more important than the fact that uninhabitable
9 areas are now part of the FAR, which is not
10 really a, a very good thing for the for the
11 neighborhood.

12 And if you can drive up and down the
13 street, every house there is very, very well
14 maintained as, as is the Kennedy's. And I, I
15 think that the granting of this variance will be
16 an asset to the community. Thank you very much.
17 Any questions? Please feel free to ask.

18 MR. FLEMING: Just to make sure you
19 guys, you don't have anything further to add?
20 What's that?

21 MR. STEJSKAL: No, I basically what Joel
22 said just as another point, like Mr. Chin said
23 that the FAR is calculated by the town code is
24 not a straight percentage of lot area, as in

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2 other towns. It's a chart and you have a thousand
3 percentage point. So, for every thousand
4 percentage point you have a number associated
5 with it. So in this case, because we are almost
6 14,800 almost, we have to drop down to 14,000 and
7 use the exact number that's in the chart, not a
8 percentage of the actual lot area or an
9 extrapolation being more than 50 percent of the
10 difference between the two.

11 So that in itself brings down the
12 allowable FAR and some other towns actually count
13 FAR as what it really is, floor area ratio, not
14 including the exterior walls, because nobody
15 actually habits, inhabits an exterior wall. So
16 town of Greenwich actually has you do a diagram
17 where you draw a box around the interior face of
18 the walls and do a square foot calculation, and
19 that's your FAR. So, it's interesting how
20 different towns have different codes.

21 MR. FLEMING: It is interesting, we're
22 stuck with the town of Cortlandt's codes, so
23 we're going, we're going apply that. But I do
24 appreciate the --

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2 MR. STEJSKA: I'm not saying it's wrong,
3 but it's just interesting.

4 MR. FLEMING: I do appreciate the
5 comments.

6 MR. CHIN: All right. Again, like you
7 said, the footprint is really not changing, it's
8 really going up rather than spreading out. And
9 again, I don't know, maybe anybody else in the
10 audience who like to speak?

11 MR. FLEMING: Well, no, no, no.

12 MR. CHIN: Oh, the board.

13 MR. FLEMING: So, first we're going go
14 through the town board. Does anyone else in the
15 town board have any questions or comments?

16 MR. WALSH: You're looking at me?

17 MR. FLEMING: I was looking at you.

18 MR. WALSH: You know, I come down a
19 little differently than Mr. Chin on this. You
20 know, R-10 zone, which this, this property falls
21 under, you know, maintains, you know, you can
22 have a 3,150 square foot permitted residence.
23 You're asking for, you know, 4,160, which is a,
24 you know, 1,000 square feet, which is a fairly

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2 considerable addition. Would it be out of
3 character for the neighborhood? You know, I don't
4 know what, you know, the, the front of the house
5 is not changing. Yes, the addition is in the
6 back. But then are we then opening up, you know,
7 allowing this large of a variance, you know,
8 throughout the town and throughout every R-10
9 district? I live in an R-10 district. You know,
10 and our houses are limited on based on the size
11 when they were built. My house was built in '62
12 and I know how far I can, you know, I can build
13 without having to go for a variance. And I don't
14 know if I'd want my neighbor. I know we have
15 letters, you know, of support from the neighbors,
16 but those are the current neighbors. I don't
17 know, you know, if we're allowing, you know,
18 allowing this large of a variance area, again,
19 again would the town board, be looking at
20 changing the, the town code to allow a larger
21 allotted, a larger percentage permitted. But
22 right now we're stuck by what's, what's granted
23 or what's allowable right now.

24 So Ken, you know, as I go through the

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2 five factors I, I do believe it is out of
3 character this large of a house in an R-10 zone.
4 Can the benefit by, you know, sought by the
5 applicant, other method, you can make it smaller.
6 I mean, I'm not, I'm not opposed to granting a
7 variance for an addition above, you know, what's
8 allowed. But 1,000 square feet is, is substantial
9 in my, in my opinion. And that also affects
10 factor number three. And again, an adverse impact
11 on the neighborhood for factor four, you know, it
12 doesn't really adverse the entire neighborhood,
13 but it does, it does set a precedent in my
14 opinion. So my opinion on this is, you know, I'm
15 not in favor of granting it as proposed right
16 now.

17 MR. STEJSKAL: One, one point the, your
18 comment on the FAR for an R-10 zone, it's not
19 specific just to the R-10 zone, it's specific to
20 the actual lot size --

21 MR. WALSH: Lot size, yes.

22 MR. STEJSKAL: -- and the chart that
23 they have. So another house in an R-10 zone --

24 MR. WALSH: Could have a larger

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2 property, yeah.

3 MR. STEJSKAL: -- having a different
4 size lot may have a different FAR and that may be
5 different.

6 MR. WALSH: Absolutely, yeah.

7 MR. STEJSKAL: So it's not a, a complete
8 statement.

9 MR. WALSH: So if you have a, if you
10 have a 20,000 square foot lot in an R-10 zone,
11 which is allowed, just the minimum lot size is
12 what, 10,000 square feet.

13 MR. STEJSKAL: Yes.

14 MR. WALSH: So it's all based on your
15 lot size and --

16 MR. STEJSKAL: Correct.

17 MR. WALSH: -- what's permitted in that
18 lot. So based on your current lot size and what
19 the table we have is, you've got to round down
20 what you're allowed.

21 MR. STEJSKAL: Correct.

22 MR. WALSH: So.

23 MR. GREENBURG: I think just to follow
24 up on what you said regarding the neighbors, the

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2 neighbors are there now. Most of the neighbors
3 are there now, and they have seen the plans,
4 they've walked the property, they see that the
5 landscaping is way above, that the, that the lot
6 coverage is below, which I think is more
7 important than the FAR. Because as, as Marty
8 said, you know, depending on, you may be in an R-
9 10 zone, but you may have a 20,000 square foot
10 lot or you may have a 10,000 square foot lot. So,
11 I think that that's a factor.

12 And plus the fact that obviously if
13 there was neighbors that are, that have no
14 problem with it, let's say five or 10 or 20 years
15 from now, they decide to sell it. Obviously,
16 anyone that's going come and look at it will see
17 what the neighbor is, what the neighborhood is
18 like. But the important thing is that the
19 neighbors that are there now have no problem with
20 it. And I think that's an important, and again,
21 to repeat myself, those other two factors, I
22 think we have two out of three and the, the two
23 that we have are very, very above what the code
24 is and below what the code is, depending on which

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2 one you're talking about. I think that's more
3 important than the fact that the right now it's
4 32 percent.

5 Again, as, as Mr. Chin said, if we went
6 prior to 2007 and took out the, the garage, you
7 can't, you don't have it in the garage, you don't
8 have it in the wall, the six-inch wall space, you
9 don't have it in the boiler room or the
10 mechanical room or things like that, I have the
11 feeling that the percentage would be probably
12 more to your liking.

13 MR. WALSH: Yeah.

14 MR. GREENBURG: And I think that's,
15 that's an important factor. I think we should
16 consider that.

17 MR. FLEMING: Anyone else on the board
18 have any questions? Michelle?

19 MS. PICCOLO HILL: Yeah, I was going
20 say, when I look at the five factors, the ones
21 that resonate the most with me is how does this
22 impact the neighbors? How does it impact the
23 neighborhood? How does it impact, you know,
24 landscape, photography, wetlands, all of that. I

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2 like the fact that it's sort of hidden behind the
3 house. I like the fact that you have the green
4 space. I like the fact that the neighbors are in
5 favor of it.

6 I'm a little concerned that the
7 percentage is kind of high. But I do understand
8 how when there's a house that was built and then
9 the rules changed in the meantime, that can
10 drastically, depending on how much uninhabitable
11 space you had, how it can really drastically
12 impact what you're able to do to the house down
13 the road.

14 And I do think that's a mitigating
15 factor that needs to be considered, not
16 necessarily for precedent I, I think. You know,
17 you would have to look at each case individually.
18 You know, for me personally, if I were to approve
19 this, it doesn't mean that I would approve a
20 neighbor's house who asked for a 32 percent
21 variance. I would have to hear their mitigating
22 factors as well.

23 A question I do have is, I know you said
24 that they need this space for their family. Have

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2 you looked at alternate plans? Have you looked at
3 making the addition slightly smaller so that it
4 impacts the square footage a little bit so that
5 it, it comes down a little, looked at alternate
6 options, you know, deck space, whatever else to
7 try and conform a little bit more?

8 MR. GREENBURG: Actually, the answer to
9 that question is yes. The initial, excuse me, the
10 initial design that we showed the Kennedys
11 actually did have a larger addition than we had,
12 then we, we came -- actually reduced it. And of
13 course the decks, as you mentioned, are not part
14 of the FAR anyway.

15 But yes, we did. And, we also the room
16 below, which is a which is a recreation room for
17 the -- again, you have a large family, a lot of
18 kids, and that also was reduced too. So the
19 design that you see is not what the original
20 design was. It, it was larger and we felt that we
21 had to reduce it.

22 And also we, the other reason that we
23 reduced it is again, to see that, to show that
24 the footprint is below what the code is and the

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2 landscaping is above. So we want wanted to make
3 sure that those two criteria would, would
4 actually conform to the code and they do.

5 MS. PICCOLO HILL: And would they be
6 willing to conform a little more? To, to size it
7 down slightly more so that -- I mean, you know,
8 you hear opposing views right now on the board.
9 Is that something they would want to readdress or
10 reconsider? I'm just wonder -- you know, if it
11 meant whether it would move ahead or not, would
12 they be willing to reconsider and see if they
13 could conform it and bring the size down slightly
14 so that it wasn't as high of a percentage?

15 MR. GREENBURG: As I said, the original
16 design was larger, so the percentage was
17 obviously larger. And we feel that this is
18 really, again, the size of the family and, you
19 know, kids who are getting older as they get into
20 the high, the high, the high single numbers and
21 into the teenage years, they need more room. And
22 their kids are at that particular age, so that we
23 feel that this is the minimum.

24 But again, as you said, and I've said

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2 probably four or five times, the lot coverage is
3 well below that, what is allowed by the code. And
4 the, the most important thing with, from my point
5 of view, when you look at the criteria for a
6 variance, is the fact that we have more
7 landscaping than the code requires. And I think
8 that's, those two mitigate the fact that you have
9 the FAR, which is unfair, but that's what the
10 code is and that's what we have to do.

11 MS. PICCOLO HILL: No, I, I, I do think
12 that, you know, those are important factors to
13 keep in mind.

14 MR. GREENBURG: I think those are more
15 important actually.

16 MR. FRANCO: I, I'll just say I sort of
17 -- I agree with Mr. Walsh's assessment and as far
18 as the precedence aspect of it. And I, I do
19 appreciate that it's behind the house. I think
20 that from an aesthetic standpoint, no one else is
21 going see it necessarily, but it is a substantial
22 expansion in the back of the house. And, you
23 know, I'm still thinking about it. I, I'm not
24 sure how I -- like I said, from a precedence

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2 standpoint, I don't know if this is establishing
3 a precedent we would want to potentially have for
4 other houses in the neighborhood to have a 32
5 percent expansion at the same time. So.

6 MR. GREENBURG: I would just add to
7 that, as I'm sure you know, and of course, I'm
8 sure, the town attorney can attest to the fact,
9 that each case has to be done on its own merits.

10 MR. FRANCO: Mm-hmm.

11 MR. GREENBURG: And I don't think you're
12 creating a precedent. We're looking at this
13 particular one. Now, somebody else in the
14 neighborhood may also want 32 percent, but maybe
15 their lot coverage is way above what it's
16 supposed to be, and their landscaping may be way
17 below, so they need maybe, they need three out
18 of, basically three out of three.

19 We are saying, basically we have two
20 that way conform, conform considerably. And the
21 one, the third, which I think is the way it's
22 written is not fair, but that's what the code is.
23 And so I think two out of three is pretty good.
24 And the addition is what they need and will not

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2 be, have any adverse effect on the neighborhood.
3 And as, as you said, the fact that it's behind
4 there as you're driving down the street, the
5 street will look exactly like it looks today.

6 MR. FRANCO: Right.

7 MR. STEJSKAL: And also in, in reference
8 to the precedence, everything could potentially
9 have a precedence but it doesn't. The number 32
10 percent may seem like a large number, but again,
11 32 percent is the actual calculation. Thirty-two
12 percent can be perceived differently under
13 different circumstances, 32 percent of a side
14 yard setback, or 30, you know, this is floor
15 area. In essence, what floor area really is, is
16 doubling your footprint. Because in this case,
17 they count the garage and the mechanical room and
18 the laundry rooms. So, your first floor footprint
19 is the same as your basement footprint. So, in
20 essence, the FAR is double. And that's, that's
21 the issue here. That's what's -- it's not causing
22 a precedence, it's just the calculation that this
23 is what it is in the situation.

24 MR. WALSH: The house benefited from not

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2 calculating that initially.

3 MR. STEJSKAL: Of course.

4 MR. WALSH: You know, it would've been a
5 small cape, you know, if that's -- you had to
6 count that.

7 MR. CHIN: I don't know if it benefited.
8 That was, that was the code back then.

9 MR. WALSH: The code back then, yes,
10 absolutely.

11 MR. CHIN: You can't say there's benefit
12 from that.

13 MR. WALSH: Right.

14 MR. CHIN: At all.

15 MR. WALSH: It would've been a smaller
16 house if they had to calculate the garage in this
17 case.

18 MR. GREENBURG: Well, not, not in this
19 case. In some case, maybe if the lot was smaller,
20 maybe, but in this case, the house that was there
21 meets the floor area and the lot coverage. It's
22 just the addition, based on that square footage,
23 doesn't.

24 MR. MARTINEZ: Thank you.

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2 MR. GREENBURG: Sure.

3 MR. MARTINEZ: When I look at a case,
4 one of the things that I always take into account
5 is how it going affect the neighborhood. I love
6 the fact that most of the neighbor actually say
7 that they have no problem with it. I totally
8 understand what the concern my colleagues have
9 here about, you know, the precedent that we're
10 going send by approving such substantial amount
11 that it's been asking. But based on the necessity
12 that you have and the fact that no neighbor is
13 opposing this, I kind of agree with what my
14 colleagues here say, if you can consider for them
15 to see if they can reduce it a little bit, but if
16 they don't, they do not, thinking about it, I'm
17 inclined to actually grant the, the approval
18 today, so.

19 MR. GREENBURG: Thank you.

20 MR. FLEMING: All right, I'll, I'll -- I
21 guess -- anybody else have any questions or
22 comments?

23 MR. BELOFF: Yeah, I, I would just
24 agree, actually mimic what Mr. Benito, member

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2 here said. You got two out of the three of, of
3 meeting the requirements. And then I also respect
4 what my colleague, Mr. Walsh says, next to me.
5 Codes are there for a reason, but I mean codes
6 change also.

7 Most important to me actually also is
8 the surrounding neighbors, the people in the
9 neighborhood and not one of them have an issue
10 with it. So I, I'll tend to lean with that.

11 MR. FLEMING: A couple Of things I just
12 want to say, and, and I, I very much appreciate
13 you guys advocating for your clients. The number
14 two out of three have been tossed around here
15 several times. You merely identified three
16 factors and say we meet two of them. There are
17 far, far more things that go into this than just
18 the three things you've identified.

19 So while I appreciate your advocacy you
20 know, comments like well, you met two out of
21 three, they really didn't. They met, they met the
22 two that they're highlighting and presenting to
23 us. And that's great. That's what their job is to
24 do. There are far, far more, it's not just three

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2 things and you met two of them. There are a lot
3 more, you know, zoning issues and the ones that
4 they choose to identify are without question you
5 know, strong factors. The, the, you know, the,
6 the amount of what we'll call green space for
7 this application exceeds what the minimum is. So
8 that's great. It does. But that's not really one
9 of three factors. That's just one of the many
10 things that, that, you know, had been set before
11 us. So I just, just to throw that out there, I
12 appreciate your advocacy, but it really isn't two
13 out of three. It's two things that are really
14 important. And I appreciate that they're really
15 important. But it's not that's the only three
16 boxes we have to check.

17 MR. GREENBURG: Understood, and I agree
18 with you. But those are two very important
19 factors.

20 MR. FLEMING: Without question.

21 MR. GREENBURG: The fact that you said -
22 - the fact that the landscaping, I think that's
23 probably one of the most important things because
24 you don't want a house that's covering the entire

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2 site and a paved driveway and, and no green. But
3 we have more than the requirement. I think that's
4 really important.

5 MR. FLEMING: It's absolutely -- it
6 absolutely is. I was really making -- just, just
7 making the legal point that it truly isn't three
8 things that we have to tick off. It's, it's
9 significantly more than that. But I appreciate
10 what you're saying.

11 MR. GREENBURG: And the other fact too
12 is that all the setbacks are met. So we, we don't
13 have any problem with setbacks, rear yards and
14 side yards. And that's another important factor.

15 MR. FLEMING: Without question.

16 MR. GREENBURG: No, no setback variances
17 are required.

18 MR. FLEMING: What you're asking for is
19 an FAR variance. And, and, and as a matter of,
20 you know, the legal requirements on this body, we
21 do have to consider the five factors. You, you've
22 addressed them in your letter to us, which I very
23 much appreciate. I, just to give my comments on
24 them, I mean, the, the first factor you

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2 identified, whether an undesirable change will be
3 produced in the character of the neighborhood.

4 While I appreciate the existing neighbors making
5 their comments in support, I don't think that's
6 determinative of that factor. I, I do think we as
7 a board are here to represent the people who
8 didn't speak, the people who couldn't speak. I
9 kind of never thought about the idea of future
10 owners versus present owners, which is an
11 interesting, an interesting proposal.

12 But nonetheless, in my opinion, you
13 know, a 1,000 square foot, you know, increase in,
14 in the FAR is an undesirable change in and of
15 itself. So, I don't find that factor as being met
16 in this case. That's, that's just my thoughts on
17 it. Whether the applicant can achieve the benefit
18 by some other method. I mean, I think in this
19 case, there's no question you can. You, you can
20 make a -- you, you can build this within, within
21 the FAR and, and not seek the variance. You're
22 choosing not to and that's okay. But I do think
23 the answer to that one is, is likewise, you can
24 do this. You just, you want to have a bigger

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2 house and I get that. I certainly understand it.
3 I'm just, just saying that I don't, I don't find
4 that factor falls in your favor.

5 Whether the requested variance is
6 substantial, I, I do think a 1,000 square foot
7 increase amounting to 32 percent of the FAR is
8 substantial. So I also don't find that that
9 factor is in your favor. Whether the proposed
10 variance will have an adverse impact on the
11 physical or environmental conditions in the
12 neighborhood, I, I've kind of flipped back and
13 forth on this throughout the course of this
14 hearing. And I do appreciate a lot of what you
15 said. I probably would say you, you've met that
16 factor. I think it's close, but I think you have.
17 And whether the alleged difficulty was self-
18 created, again, I've, I've yet to see one where
19 it wasn't self-created. But again, it's just one
20 me one factor out of them.

21 Overall, looking at them, I, I would
22 probably lean to the negative on this. But I, I
23 do have to ask you, because two other board
24 members raised it and, and my consideration on

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2 two raised the same thing. And certainly, you
3 don't have to do this, but would you have any
4 interest in adjourning this? And for lack of a
5 better word, taking another stab at it and seeing
6 if there's a way you could do something which
7 would reduce the footprint and come back to us?
8 And if the answer is no, that's fine. But, but
9 two people raised it, two of the board members
10 raised it so I feel like I have to present that
11 to you as an option.

12 MR. GREENBERG: Yeah, I know. Actually,
13 as I mentioned to board member that talked about
14 it, we did start at a much larger one and we
15 reduced it. So basically again, because of the
16 family size and that is really just about the
17 minimum that we can take.

18 MR. FLEMING: Okay, that's fine.

19 MR. GREENBERG: And we understand that.
20 I don't quite agree with that fact, some of the
21 criteria for area variance that you feel were not
22 met. But I, I don't think I agree with that. But
23 there's certainly not going be any undesirable
24 change in the neighborhood. I think that's pretty

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2 clear. Is there another method? No. Obviously the
3 area is what they need for their, for their
4 family.

5 And I think, you know, in these days and
6 times, I, I think they're entitled to have the
7 area that they need. Yes, you're right. The, as
8 far as number three, yes, it is substantial.
9 There's no question about that. And it will have
10 certainly no impact on the environmental or
11 physical conditions of the neighborhood. Again,
12 as you're driving down the street, whatever you
13 see today, you'll see when the addition is put
14 in. And of course, it is self-created.

15 But technically as, and maybe the town
16 attorney can agree or disagree, but I don't
17 believe to grant this variance you have to meet
18 all five criteria. Am I correct?

19 MR. FLEMING: I can, I can answer that
20 question, No, you do not. Those are the factors
21 that we have to consider.

22 MR. GREENBERG: Oh, absolutely.

23 MR. FLEMING: It, it's, it's not a
24 checklist.

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2 MR. GREENBERG: Okay.

3 MR. FLEMING: It's just these are the
4 factors that --

5 MR. GREENBERG: Okay. I just want to
6 make sure that we understood that.

7 MR. FLEMING: These are the factors that
8 each of the board members have to think about
9 when we're deciding to cast our vote. We, as a
10 board, as a practice, try and identify each of
11 the issues and give our comments to you, more for
12 letting you know where we stand and if there are
13 specific comments that you want to address to us.
14 That's, that's the reason I think most of us
15 tend, tend to handle these applications in this
16 manner. So, and, and again, you're always, and,
17 and, and you are always free to disagree. I
18 certainly understand. I disagreed with the person
19 at that podium many times, and I've agreed with
20 them many times. It's, you, it's part of the way,
21 the nature of this of this application process.

22 MR. STEJSKAL: Just as a question, as
23 Mr. Greenberg said, we, we started out with the,
24 the client's wants and needs, and we reduced it

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2 to make it fit under the lot coverage. And in
3 doing so, it's still over the FAR. And, as you
4 mentioned, a couple people have brought up the
5 idea of possibly reducing it. I guess my question
6 to you is, what do you consider reducing it?
7 Because I mean, you know, we could take off, you
8 know, 20 square feet or something easily, but
9 then when you start to start taking off larger
10 amounts --

11 MR. FLEMING: It's a fair question, but
12 I think the question really --

13 MR. STEJSKAL: And then the thing that
14 thing gets kind of not usable.

15 MR. FLEMING: I think the question
16 should be addressed to the two board members who
17 raised it. So I, I'd like to direct --

18 MR. MARTINEZ: Mr. Chairman?

19 MR. FLEMING: If I may --

20 MR. CHIN: Can I say something first?

21 MR. FLEMING: No, I mean he's asking the
22 question of board members. So him --

23 MR. CHIN: Okay.

24 MR. MARTINEZ: I actually misunderstood.

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2 I thought you were considering about reducing it.
3 that's why I actually brought it up. But I'm
4 actually inclined to approve it the way it is.

5 MS. PICCOLO HILL: I was going say the
6 reason I asked was because I felt like there was
7 a divided board, so that you might get more
8 people in favor of approving if you reduced it
9 somewhat and showed that in good faith you were
10 trying to reduce it. I have to say that I, you
11 know, I'm -- for me, the neighbors and the fact
12 that it's a little more subtle because it's
13 behind the house is a more important factor than
14 the fact that you're over. Because I think
15 sometimes when you're over, that's -- I think
16 that's why we exist. We're here to look at the
17 exceptions.

18 MR. STEJSKAL: Exactly. To, to give
19 people an avenue when the code doesn't actually
20 allow for something.

21 MS. PICCOLO HILL: Yes.

22 MR. STEJSKAL: Yeah. I think we're here
23 to, you know, make a judgment call.

24 MR. CHIN: I'd like to ask Chris a quick

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2 question. When you went down from 14,719 to
3 14,000, is there a given in the code saying that
4 you have to go down or what -- how's that work?
5 You know what I mean? Because I never -- usually
6 I go to the nearest thousand.

7 MR. KEHOE: I've been told that by the
8 building inspector.

9 MR. CHIN: By the building --

10 MR. KEHOE: I don't know where he's
11 determined that.

12 MR. WALSH: Yeah, it's in the town code.

13 MR. CHIN: Is there a written thing?

14 MR. KEHOE: Yeah. I don't know if that's
15 --

16 MR. WALSH: I think it's in the town
17 code.

18 MR. KEHOE: I think it, I think it does
19 say rounded down.

20 MR. CHIN: Yeah, because dropping it
21 down from seven, from 14,719 down to 14,000, that
22 rather than going up to 15,000, which is only a
23 hundred, like 213 less than less, a little bit
24 over 200 square feet, or the other way, you're

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2 going down 700 something square feet. You know
3 what I mean? That's, that's a big difference to
4 me, because that's made a big a permitted thing
5 from 3,105 to 3,350. Okay. Or if you went by the
6 actual square footage of 1,479, it probably
7 would've been 150 square foot difference. Okay.
8 That's, that's my only question.

9 MR. WALSH: Yeah, I'm, I'm just look
10 quickly looking at the code to see if there's a
11 note. And on the, on the five factors, number
12 five, was it self-created or not? To me, it was
13 not self-created because the zoning change on the
14 code from, from, from prior, from to 2007. So it
15 was a created, it was created by a new code, not
16 by a self-creating. So that's a big factor to me.

17 MR. FLEMING: I disagree with you
18 entirely on that.

19 MR. CHIN: Okay, fine. You can disagree
20 all you want, I, I -- that's how I feel.

21 MR. FLEMING: And I'm allowed to speak
22 too, because you just --

23 MR. BELOFF: I agree with you, Wai.

24 MR. CHIN: Okay.

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2 MR. BELOFF: I agree with you.

3 MR. CHIN: So that's it.

4 MR. BELOFF: If that means anything.

5 Well, it would be nice to know if it's in the
6 code. I mean, according to Tom, he said it was in
7 a code, but I don't see it.

8 MR. WALSH: We've addressed this before.
9 Yeah, where Martin's reference, I don't know
10 where, where it is that in the -- I think it's in
11 the zoning chart with round out. Yeah. I thought
12 it was going be a note at the bottom of the FAR,
13 but I couldn't find it there.

14 MR. CHIN: Yeah. Okay. Well it's good to
15 know, you know what I mean, you know, really for
16 future, future things.

17 MR. FLEMING: All right. I'd like to
18 open it up for public comment now. If there's any
19 members of the public who'd like to come forward
20 and make any, any comments on the application.
21 All right. And do we have anyone online who would
22 like to make a comment on the application?

23 FEMALE: It Looks like there is.

24 MR. FLEMING: Oh, we do have someone

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2 online that wants to make it up.

3 MR. KEHOE: I believe Doris Braun has
4 her hand raised.

5 MR. FLEMING: All right, Doris.

6 MR. KEHOE: We're going permit you to
7 speak.

8 MS. DORIS BRAUN: Thank you.

9 MR. FLEMING: Oh, Doris, hold on for,
10 hold on for one second.

11 MR. KEHOE: We're trying to get the
12 audio correct.

13 MR. FLEMING: We're just, we're just
14 getting you so you can be heard for the record so
15 we could record your comment on the public
16 record. So just, just hold on for one second.

17 FEMALE: Doris, can you try one more
18 time?

19 MR. FLEMING: Doris, can you hear me?
20 Can you try one more time? Yeah, we can't hear
21 you at all right now, so if you're speaking, just
22 hold on.

23 FEMALE: Doris?

24 MR. FLEMING: We're still not able to

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2 hear you in the courtroom, so just hold on,
3 Doris, we're working on it. It's always the
4 technology that throws things off.

5 FEMALE: Doris, can you hear me?

6 MS. BRAUN: I can hear you, yes.

7 MR. MARTINEZ: Perfect.

8 MR. KEHOE: Yeah, we'll, we'll just have
9 to go with this.

10 MR. FLEMING: Okay. That's fine. Chris,
11 Chris, can you just move your microphone over?
12 Thank you.

13 MS. BRAUN: All right, so you can hear
14 me, is that right?

15 MR. FLEMING: Doris, I'm sorry to
16 interrupt you one more time. My name is Michael
17 Fleming. I'm the chairman of the zoning Board of
18 Appeals. If you don't mind, could you please
19 state your full name and your address for us?

20 MS. BRAUN: Yes, Doris Braun, 48 East
21 Hill Road.

22 MR. FLEMING: All right, thank you,
23 Doris, please continue.

24 MR. CHIN: East Hill Road.

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2 MS. BRAUN: Yeah, I have a question.
3 there was so much emphasis placed on the
4 neighbors that agreed to the sides and in the
5 front, so that --

6 MR. CHIN: This is the wrong case.

7 MR. FLEMING: No, it's right.

8 MS. BRAUN: -- would be across the
9 street of Trolley. What about the neighbors
10 behind the house?

11 MR. CHIN: East Hill Road?

12 MR. FLEMING: Shh, stop. She, she's not
13 --

14 MR. KEHOE: So she's asking, you got
15 some letters of support from some neighbors, and
16 I guess the question is, did you get support from
17 the person behind?

18 MR. GREENBURG. Actually, the answer to
19 that question is the person behind had just
20 purchased the house. So they really did not want
21 to make any comments one way or the other. But
22 they --

23 MR. KEHOE: You reached out to that
24 person.

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2 MR. GREENBURG: Yes.

3 MR. STEJSKAL: We notified everybody as
4 per the town requirement. Everyone received a
5 letter.

6 MR. KEHOE: Okay. So and they did not
7 write in?

8 MR. STEJSKAL: And we specifically
9 contacted the neighbor that you're talking about.
10 But they said they just moved in within the last
11 couple of months.

12 MR. KEHOE: Alright. So they didn't
13 write a letter of support, but they didn't
14 object?

15 MR. STEJSKAL: Right. They had no
16 objection. That's correct.

17 MS. BRAUN: Well, you, you can't say
18 they had no objection. They had no comment.

19 MR. STEJSKAL: No comment. Okay.

20 MS. BRAUN: Okay. Thank you.

21 MR. KEHOE: Okay.

22 MR. FLEMING: Thank you, Ms. Braun. And
23 there's no one else online who was who was asking
24 to speak. So with that being said, there's no

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2 other questions or comments from the board and
3 the applicant has nothing further, okay.

4 MR. CHIN: Okay. I'm going -- it's my
5 case, I'm going make a motion on case 2023-18 to
6 close the public hearing.

7 MR. MARTINEZ: I second it.

8 MR. FLEMING: All in favor?

9 MULTIPLE: Aye.

10 MR. FLEMING: All right, public hearing
11 is closed.

12 MR. CHIN: Okay. I'm going make a motion
13 on case 2023-18 to grant the variance requested
14 from permitted 3,150 square foot to requested
15 4,160 square feet, a 1,010 square foot, 32
16 percent expansion. This is an area variance for
17 maximum floor area in a residential district.
18 Type two on the SEQRA, no further compliance is
19 required.

20 MR. FLEMING: Mr. Kehoe, can you poll
21 the board and do the chair last please.

22 MR. KEHOE: All right. Do we need a, you
23 don't need a second on that, correct?

24 MR. FLEMING: Oh, I'm sorry. I do need a

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2 second.

3 MR. BELOFF: I second it.

4 MR. MARTINEZ: Second.

5 MR. FLEMING: Thank you. Okay.

6 MR. KEHOE: And I'll end with the chair

7 --

8 MR. FLEMING: End with chair, please.

9 MR. KEHOE: -- which is the process of
10 how we do it now. Okay. Ms. Piccolo Hill,

11 MS. PICCOLO HILL: I vote in favor of
12 approving.

13 MR. KEHOE: Mr. Martinez?

14 MR. MARTINEZ: Approve.

15 MR. KEHOE: Mr. Franco?

16 MR. FRANCO: No.

17 MR. KEHOE: Mr. Chin?

18 MR. CHIN: Yes.

19 MR. KEHOE: Mr. Walsh?

20 MR. WALSH: No.

21 MR. KEHOE: Mr. Beloff?

22 MR. BELOFF: Yes.

23 MR. KEHOE: Mr. Fleming?

24 MR. FLEMING: No.

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2 MR. KEHOE: Motion carries by a vote of
3 four to three.

4 MR. GREENBURG: Thank you very much.

5 MR. STEJSKAL: Thank you.

6 MR. GREENBURG: Thank you very much.

7 MR. FLEMING: Thank you very much. And
8 Have a nice day.

9 MR. GREENBURG: And stay safe for the
10 next storm, unfortunately.

11 MR. KEHOE: So, just as you probably
12 know, I'll have to do a decision and order. It
13 won't be ready until Monday. The chairman needs
14 to sign it. Then it gets delivered to Martin and
15 he needs it in order to continue to issue the
16 permits that you need.

17 MR. STEJSKAL: Okay, no problem.

18 MR. GREENBURG: Thank you very much.
19 Good night.

20 MR. FLEMING: Thank you. You guys have a
21 good night.

22 MR. STEJSKAL: Stay safe.

23 MR. MARTINEZ: Good luck to you.

24 MR. FLEMING: Safe through the storm

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2 today. All right, we have one more. Yep.

3 MR. WALSH: It's Mr. Beloff.

4 MR. CHIN: Mr. Beloff.

5 MR. BELOFF: You ready?

6 MR. FLEMING: Ready when you are.

7 MR. BELOFF: All right. I have here for
8 case number 2023-19, Heike Schneider on behalf of
9 3120 Lexington, LLC. And we're requesting a
10 variance for front yard setback for a temporary
11 structure, a tent located at the existing
12 hardware store. Is there anyone here representing
13 the applicant who would like to speak?

14 MS. KEIKE SCHNEIDER: Yes. Hello, I'm
15 Heike Schneider. I'm the architect for the Ace
16 Hardware store.

17 MR. CHIN: Okay. You probably just raise
18 that up a little bit.

19 MR. FLEMING: Or get a little closer to
20 it when you speak. It's --

21 MR. CHIN: Raise it up if you want.

22 MS. SCHNEIDER: Okay.

23 MR. CHIN: There you go.

24 MR. FLEMING: Thank you.

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2 MS. SCHNEIDER: So yes, so we are here
3 because we, we need a temporary structure. We
4 need a storage structure. And the issue is -- so
5 basically, let me give you a background, a
6 background story here. We are currently in front
7 of the planning board with the Ace Hardware Store
8 because we are trying to get a storage addition
9 built for the Ace Hardware Store. The, the
10 hardware store is hanging on by a thread, I would
11 say, between Lowe's and Home Depot. They just
12 purchased another small, basically repair shop
13 just to basically have a second leg to stand on.

14 And they really need storage space. They
15 need to have extra storage so they can, you know,
16 meet their client's demands to have, have enough
17 variety and to be able to compete with Home Depot
18 and Lowe's. So the addition is in the buffer, in
19 the wetlands buffer. And we're currently trying
20 to get a wetlands permit for this addition, but
21 we still need storage space.

22 And so now our request is can we set up
23 a temporary tent structure? It's actually a
24 greenhouse structure, in front of the building. I

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2 think you do have the site plan in front of you.
3 So in this case, we were really trying to stay
4 out of the wetlands because we don't want to also
5 ask for a permit for a temporary structure, I
6 mean a wetlands permit for a temporary structure.
7 So this is really the only place we could come up
8 with that does not sit on top of the septic
9 system. It does not sit in the wetlands area. It
10 is 12 feet away from the building, because it is
11 a tent structure and because of fire code it
12 cannot be closer to the existing building.

13 And so now we end up being in the front
14 yard setback. We are only nine feet to the
15 property line, where 30 feet is required. So we
16 are now asking for 21 foot variance for the
17 temporary structure. And that structure has an
18 expiration date, basically it's only for 180
19 days. Although I would like to also, I was
20 wondering if we could maybe have a provision
21 where we could extend it by another 90 days if we
22 needed to, because we really would like to have
23 the addition built and then take the temporary
24 structure down.

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2 So I guess we are asking for two things
3 really, but if we get the variance at the 180
4 days, that's, that's perfect too.

5 MR. FLEMING: Question on that, and
6 it's, it's, I mean the, the, the way your letter
7 to us and I'm, I'm looking at the, the January
8 3rd letter to the Zoning Board of Appeals. So
9 your second, and, and it's troubled by the
10 wording, it, it's erection of a temporary
11 structure as regulated by section 3103 is limited
12 to a period of 180 days. You'd like to maintain
13 the structure beyond 180 days while obtaining the
14 CO for the addition being built. I mean, the way
15 that's worded is you basically ask for a you
16 know, a variance allowing you to keep the
17 temporary structure until the C of O is granted,
18 which, which would, I think for me the answer
19 would be absolutely not. I don't know if the C of
20 O will be granted or not. But I'm not going grant
21 the temporary structure without a, you know,
22 without a condition on it, a, a temporal
23 condition being placed on it.

24 So, the idea that it's tied just to the

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2 granting of the C of O is what was giving me
3 trouble. I'd be more likely to grant, you know,
4 this variance if it was 180 days and if you had
5 to extend that, you'd come back for another
6 application or something along those lines, so
7 that the variance would be conditioned on a, on a
8 temporal element as opposed to you're allowed to
9 keep it until you get approved, because if you
10 never get approved, just keep this thing forever.

11 MS. SCHNEIDER: That's true.

12 MR. FLEMING: So it's, so I'm just
13 troubled by the wording of your letter. I don't
14 know if you have something you could add to that.

15 MS. SCHNEIDER: Yes, I guess we were
16 describing the ideal condition and we are very
17 optimistic that eventually we will get the
18 addition approved, so maybe that's what's
19 reflected in my letter. But I do understand that
20 also the location of it being right in front of
21 the building warrants to really limit it to 180
22 days. And if we should not have the addition up
23 by then and usable, if we can come back to extend
24 it, then, you know, that we could at least try

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2 it, I guess, and see if we can get another 90
3 days or I don't know how that would work.

4 MR. FLEMING: Okay. I, I understand what
5 you're saying. I, I will open it up to questions
6 or comments.

7 MR. CHIN: No, I agree. You know, based
8 on your, your statement that you had, you know,
9 you, you're saying that leave it up until you get
10 a C of O on the, on the, on the addition. But
11 that can't happen -- that could be months and
12 months and months and months away from, from the
13 180 days. So what the chairman is saying is that
14 we wouldn't mind granting you 180 days, but if
15 it's going go beyond that, you have to come back
16 prior to the 180 days to get another variance for
17 additional 90 days or something like that. You
18 know what I mean?

19 MS. SCHNEIDER: Yes.

20 MR. CHIN: If that's okay with you,
21 fine?

22 MS. SCHNEIDER: Yes. Yeah, no, I
23 understand. And I --

24 MR. WALSH: My, my question is what is

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2 the, I mean, we're nine feet from the property
3 line, so really we're asking for the setback
4 variance, is what we're in front of us is not, I
5 guess the temporary use or whatever the, the
6 tent. I mean the variance is just calling for the
7 location of this and whether it could in the
8 front yard.

9 MR. KEHOE: I think that's -- I admit I
10 didn't read Heike Schneider's letter as carefully
11 as I should and I think the request is in there,
12 but I don't think -- I think the 180 days is a
13 code enforcement requirement that he's going to
14 enforce.

15 MR. CHIN: Right.

16 MR. KEHOE: So I don't think --

17 MR. WALSH: We're just doing a variance.

18 MR. KEHOE: -- you can even consider
19 that. You're just doing the area variance.

20 MR. WALSH: The area variance.

21 MR. KEHOE: I think.

22 MR. FLEMING: So we can't grant the
23 condition on it --

24 MR. KEHOE: Well your condition would

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2 be, it can only be up for 180 days, as per the
3 building code.

4 MR. WALSH: Okay.

5 MR. KEHOE: And then she, Heike would
6 have to deal with Martin if you're at 175 days or
7 150 days and then he would maybe say, well,
8 you've got to go back to the zoning board. Or
9 maybe he would tell her, you can't go back. I
10 don't know.

11 MR. FLEMING: Yeah. I just want to make
12 it clear because the applicant, the application
13 does ask for two variances.

14 MR. KEHOE: Right. It really is only
15 one.

16 MR. FLEMING: We're only -- and that's
17 fine. So I mean, to the extent we're only
18 considering the setback variance, I, I'd like our
19 finding to include, you know, the statement that
20 we're not granting an unlimited temporal variance
21 until a C of O is granted. She has to comply with
22 the building code, in which case there's a 180
23 day temporary structure, you know, allowable. And
24 we're, we're not extending that.

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2 MR. KEHOE: Correct.

3 MR. FLEMING: Our, our ruling, it does
4 not in any way --

5 MR. CHIN: Yeah, not automatically
6 extending, yeah.

7 MR. FLEMING: -- impact that.

8 MR. WALSH: My, I have a second
9 question. What is the distance from the property
10 line to Lexington? Because I know, like when I
11 see property line --

12 MS. SCHNEIDER: It's 36 feet, I believe
13 you see it, if we can enlarge it.

14 MR. KEHOE: Sure.

15 MR. WALSH: Is that a DOT right away
16 through there? Is that a separate property owner
17 or is that --

18 MR. KEHOE: This, this right here says
19 edge of asphalt. That doesn't neces- -- so that's
20 the pavement, edge of asphalt.

21 MR. WALSH: Yeah.

22 MR. KEHOE: So whatever this distance is
23 from edge of asphalt to the corner of the
24 building, which if --

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2 MR. CHIN: But the dotted line is the
3 property line actually, is that correct?

4 MR. WALSH: No, the dotted line is only
5 right, the nine feet right off the --

6 MR. BELOFF: Heike, who holds that
7 easement that you're talking about?

8 MS. SCHNEIDER: So there is a slope
9 easement between Lexington Avenue and the
10 property line. And that's why it looks like it's
11 actually much more than it really is.

12 MR. FLEMING: I see. Okay.

13 MS. SCHNEIDER: I mean the property
14 line, it's, it's deceiving. So if you drive up --

15 MR. WALSH: Where is the property line
16 on this? That's what I'm -- we're trying to see.

17 MS. SCHNEIDER: So you see actually the
18 -- Chris, if you, I don't know who does the
19 scrolling.

20 MR. KEHOE: I think, I think this --

21 MS. SCHNEIDER: The, the distance is,
22 you see it to the right, the right corner of the
23 building actually shows the distance on to the
24 property line side.

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2 MR. CHIN: On this side.

3 MR. WALSH: Oh, I see it.

4 MR. FLEMING: Zoom in on the corner.

5 MR. CHIN: Right there.

6 MR. FLEMING: There you go.

7 MS. SCHNEDIER: I think it's 36.9 feet.

8 MR. WALSH: Yeah, so that's the property
9 line right there. Where's --

10 MS. SCHNEIDER: And then you, you also
11 see the property line, right?

12 MR. WALSH: Yeah. Right --

13 MR. CHIN: That's the property line.

14 MR. KEHOE: But then you have quite a
15 distance from the profiting line to the edge of
16 asphalt.

17 MS. SCHNEIDER: Exactly, you do.

18 MR. KEHOE: Right.

19 MR. WALSH: So we're, we're it's still
20 considerably set back from the road.

21 MR. KEHOE: Yes.

22 MR. WALSH: This is not --

23 MS. SCHNEIDER: It is, yes.

24 MR. KEHOE: That's what Mr. Walsh is

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2 getting at.

3 MS. SCHNEIDER: Yes.

4 MR. WALSH: When I first read it, I was
5 like, oh, this is nine feet from Lexington. This
6 is a, this is not --

7 MS. SCHNEIDER: Right.

8 MR. WALSH: That was, that was my --

9 MR. FLEMING: Understood.

10 MS. SCHEIDER: Right.

11 MR. CHIN: I, I mean, I agree. I mean,
12 you know, if we're going grant this thing, we
13 should go only grant for 180 days. And if they,
14 if you feel that you're going need more than
15 that, then you've got to come at least --

16 MR. KEHOE: Well you'd only be granting,
17 you'd only be granting the 21 feet.

18 MR. FLEMING: What we, yeah, what we'd
19 be doing, to the extent we want to put a
20 condition on it, the condition would merely be to
21 comply with the 180 day --

22 MR. KEHOE: Yes.

23 MR. CHIN: Right.

24 MR. FLEMING: -- and, and, and, and to

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2 seek, seek a further extension through the
3 building department.

4 MR. WALSH: Right.

5 MS. SCHNEIDER: Okay.

6 MR. KEHOE: Right. I have no problem
7 with adding that. It's sort of --

8 MR. FLEMING: They have to do it anyway.

9 MR. KEHOE: -- it must be. But I'll,
10 I'll add that in there.

11 MR. FLEMING: Let's add it in.

12 MR. KEHOE: Yeah. We'll put that --

13 MR. FLEMING: The only problem --

14 MR. KEHOE: -- that's fine as a
15 condition.

16 MR. FLEMING: The only problem I have
17 since the application specifically asked for two
18 forms of relief, what we're doing is denying the
19 second, and, and to the extent we're going do it,
20 it's granting the first, and that's what I just
21 want to make clear. Even though, you know,
22 Martin's summary was, was --

23 MR. CHIN: A little off.

24 MR. FLEMING: -- was one thing. The

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2 actual application to us asked for two forms of
3 relief. And the second one, I, I don't think
4 anyone's going approve, which is the unlimited,
5 you know, non-temporal limitation on how long
6 this can stand.

7 MR. CHIN: Beyond the 180 days.

8 MR. FLEMING: Right. And I'd like to say
9 that's, that's what we're denying.

10 MR. WALSH: Okay.

11 MS. SCHNEIDER: Mm-hmm.

12 MR. CUNNINGHAM: So if the applicant
13 does want more than the 180 days, the applicant
14 always apply to the building department. I'm sure
15 it'll be denied just based on the code. And then
16 they can come back here and apply for a variance
17 for a time period.

18 MR. CHIN: I mean, you should do it by
19 150 days so we get, you know. Otherwise you're
20 going to have to take that tent down at 180 days
21 period.

22 MR. FLEMING: I would -- that's, that
23 was from a practical standpoint --

24 MR. CHIN: At least a month --

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2 MR. FLEMING: You want to --

3 MS. SCHNEIDER: Sure, thank you.

4 MR. FLEMING: -- make sure there's time
5 built in for you to apply for it, suspecting that
6 it will be denied for the same basis it currently
7 was being denied, because it doesn't comply. And
8 then you'd come before us and we would have to
9 grant you in an additional period of time. So I
10 suspect that's the way this will work out.

11 MR. CHIN: So basically, the 180 days is
12 like six months, am I correct?

13 MR. FLEMING: It is.

14 MR. KEHOE: Yeah.

15 MR. CHIN: Yeah. So you should come back
16 for an area or another variance, let's say four
17 months.

18 MR. KEHOE: Yeah. Like almost in May or
19 --

20 MR. FLEMING: Yeah, I would say, I would
21 say four, four and a half months, you should make
22 the application because it'll be denied and
23 you'll have time to get to us still.

24 MR. KEHOE: And I'm not sure I a hundred

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2 percent share Ms. Schneider's confidence in
3 what's going happen with the planning board, but
4 she's working with the planning board.

5 MR. FLEMING: Good luck to you.

6 MS. SCHNEIDER: Come On. Somebody has to
7 be optimistic here.

8 MR. FLEMING: Alright. So I think what -
9 - I, I think, and someone should make a motion
10 for this, but I think what we have to do is we
11 have to vote on whether we have to have a motion
12 to approve the variance, the, the setback
13 variance but to deny the request for --

14 MR. CHIN: Beyond the 180 days.

15 MR. FLEMING: -- an extension of time
16 which was the second request in the application.
17 I think that's the way we have to handle this.

18 MR. CUNNINGHAM: That'd be fine. That's
19 fine.

20 MR. FLEMING: Okay.

21 MS. SCHNEIDER: Mm-Hmm.

22 MR. FLEMING: Alright. So I need a
23 motion according to those alliances.

24 MR. FRANCO: Well, Is, is there anybody

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2 else? No?

3 MR. FLEMING: Oh, sure, you're
4 absolutely right. There's nobody here but you are
5 right.

6 MR. KEHOE: We checked the Zoom. No --

7 MR. FLEMING: We should formally ask
8 that. You're right. There's no one present in the
9 courtroom. But nonetheless, we are inviting
10 anyone in the public to speak. There's no one
11 present. And I think we just were told there's no
12 one on Zoom. But to the extent that's wrong, I
13 would invite anyone in the public on the Zoom
14 call to --

15 MR. CHIN: Chris, you want him to make
16 the motion, because he knows what he's talking
17 about.

18 MR. FLEMING: -- to have any comments.
19 And there's no one on Zoom.

20 MR. KEHOE: There's one on the Zoom.

21 MR. CHIN: Can you make the motion?

22 MR. WALSH: Yeah.

23 MR. CHIN: You know what exactly what
24 we're talking about.

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2 MR. FLEMING: You sure? All right, so
3 hang on one second. Let me pull back up my
4 computer because I was just looking at it.

5 MR. KEHOE: So you need to close the
6 public hearing.

7 MR. BELOFF: Oh, I'm sorry. All right, I
8 make a motion to close case 2023-19 to the public
9 hearing.

10 MR. WALSH: Second.

11 MR. FLEMING: All in favor?

12 MULTIPLE: Aye.

13 MR. FLEMING: No opposed. The public
14 hearing is closed. So I think what I'd like is
15 the application requested two variances, one for
16 a setback 30 foot to nine foot, requiring a
17 variance of 21 feet. And then secondly, they
18 asked for the erection of a temporary structure
19 and they'd like to have the structure be
20 maintained beyond the 180 days for a period of
21 while a Certificate of Occupancy is, is, is being
22 sought for a separate application before the
23 planning board. I think what we -- what I'd like
24 to do is have a motion to approve the variance

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2 you know, of 21 feet, but to deny the request for
3 a temporal, you know, extension of, of the
4 temporary structure requirements.

5 MR. CHIN: So yeah, I, agree. I make
6 that motion to grant the 21 foot variance but
7 deny 180 square -- I mean 80 day extension beyond
8 the 180 days for a permit for, you know, for, you
9 know, C of O for the addition if it does go
10 through and so forth and so on. Okay. So I would
11 say that the, if you need a variance again, that
12 you should do the 120 days to come back, go to
13 Martin, say, okay, we'll need more than 180 days.
14 That way it gets back to the zoning board and so
15 forth and so on. Because he has to deny it first
16 before it comes back to us.

17 MS. SCHNEIDER: Right.

18 MR. CHIN: So that's how I would make
19 it.

20 MR. FLEMING: So, so the motion, the
21 motion is to approve the setback variance, but to
22 deny the request for --

23 MR. CHIN: More than a 180 days.

24 MR. FLEMING: -- more than 180 days

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2 under section 3103 of the building code for the
3 erection of a temporary structure.

4 MS. SCHNEIDER: Mm-Hmm.

5 MR. WALSH: Second

6 MR. CHIN: Correct.

7 MR. FLEMING: Do we have a second?

8 MS. PICCOLO HILL: Second.

9 MR. FLEMING: Okay. All in favor?

10 MULTIPLE: Aye.

11 MR. FLEMING: Any opposed?

12 MR. KEHOE: So you'll get a decision and
13 order on Monday.

14 MS. SCHNEIDER: Okay.

15 MR. CHIN: Yeah. You understand that
16 right?

17 MS. SCHNEIDER: Thank you all, yeah,
18 completely.

19 MR. CHIN: Okay. Very good.

20 MS. SCHNEIDER: No, thank you.

21 MR. FLEMING: All right, I think that's
22 it, so move to close this --

23 MR. CHIN: I make a motion to close the
24 hearing.

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MS. SCHNEIDER: Good evening.

MR. MARTINEZ: Good evening.

MR. CHIN: Second until next month.

MS. PICCOLO HILL: I second.

MR. FLEMING: All in favor?

MULTIPLE: Aye.

MR. FLEMING: We are adjourned.

(The public board meeting concluded at 8:31 p.m.)

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of the board meeting of the Town of Cortlandt on January 18, 2024 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in cursive script that reads "Claudia Marques".

Date: January 31, 2024

GENEVAWORLDWIDE, INC

228 Park Ave S - PMB 27669

New York, NY 10003