1	INCO	RPORATED VILLAGE OF LAWRENCE
2		BOARD OF APPEALS
3	,	Village Hall
4		196 Central Avenue Lawrence, New York
5		March 26, 2018
6		7:35 p.m.
7		
8	APPLICATION:	332 Central Avenue Lawrence, New York
9		
10	PRESENT:	
11		MR. LLOYD KEILSON Chairman
12		MR. EDWARD GOTTLIEB Member
14		MR. DANIEL HILLER Member
15		MR. ELLIOT MOSKOWITZ
16		Member
17		MR. AARON FELDER Member
18		MR. ANDREW K. PRESTON, ESQ.
19		Village Attorney
20		MR. GERALDO CASTRO Building Department
21		MR. DANNY VACCHIO
22		Building Department
23		
24		Mary Benci, RPR
25		Court Reporter

Caats 613 LLC - 3/26/18

CHAIRMAN KEILSON: Good evening, ladies and gentlemen. Welcome to the Lawrence Board of Zoning Appeals. Please turn off your cell phones. And if you have need for conversation, please take it into the hall. Thank you very much. And Mr. Castro, do we have proof of posting? MR. CASTRO: Chairman, I offer proof of posting and publication.

CHAIRMAN KEILSON: Very good. Thank you very much.

Some preliminaries. We have the matter of Caats 613 LLC, 332 Central Avenue. I believe they're asking for an adjournment. Is that correct, sir?

MR. CASTRO: Correct. Currently no future date.

CHAIRMAN KEILSON: No specific date, okay. So anybody on the Board oppose?

MEMBER GOTTLIEB: No.

CHAIRMAN KEILSON: No, very good.

* * * * * * * *

Caats 613 LLC - 3/26/18

(Whereupon, the hearing concluded at 7:36 p.m.) ********* Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case. MARY BENCI, RPR Court Reporter

1	INCOF	RPORATED VILLAGE OF LAWRENCE
2		BOARD OF APPEALS
3		Village Hall
4		196 Central Avenue Lawrence, New York
5		March 26, 2018
6		7:36 p.m.
7	APPLICATION:	Foldman
8		151 Harborview South Lawrence, New York
9		Lawrence, New Tork
10	PRESENT:	
11	H .	MR. LLOYD KEILSON Chairman
12	,	MR. EDWARD GOTTLIEB
13		Member
14		MR. DANIEL HILLER Member
15 16		MR. ELLIOT MOSKOWITZ Member
17		MR. AARON FELDER Member
18	1	MR. ANDREW K. PRESTON, ESQ.
19		Village Attorney
20	[MR. GERALDO CASTRO Building Department
21	1	MR. DANNY VACCHIO
22	l .	Building Department
23		
24		Mary Benci, RPR
25		Court Reporter

Feldman - 3/26/18

CHAIRMAN KEILSON: I think there's a request on an extension. 2 MR. CASTRO: A prior variance on Feldman. 3 CHAIRMAN KEILSON: What address? 4 MR. CASTRO: 151 Harborview North. 5 CHAIRMAN KEILSON: 151 Harborview North or 6 7 South? MR. CASTRO: I believe it's north. 8 CHAIRMAN KEILSON: It is north? 9 MR. CASTRO: Yeah. 10 CHAIRMAN KEILSON: So they're looking for an 11 extension on their variance. 12 MR. CASTRO: Coming due in May of 2018. 13 CHAIRMAN KEILSON: Is there any explanation 14 offered? 15 MR. CASTRO: Yes. 16 CHAIRMAN KEILSON: Please. 17 MR. CASTRO: I have to read it. Let me read 18 the reasons for extension. 19 CHAIRMAN KEILSON: Just the reasons, yes. 20 MR. CASTRO: Did not have an alternative 21 housing during the construction, just gave birth 22 to twins, and financial issues. 23 CHAIRMAN KEILSON: Okay. Twins certainly 24 warrant the extension. 25

Feldman - 3/26/18

1	MEMBER GOTTLIEB: Only one of those would
2	have warranted it.
3	CHAIRMAN KEILSON: Okay.
4	MR. CASTRO: Harborview South, you're
5	correct.
6	CHAIRMAN KEILSON: Harborview South is
7	correct, okay. I didn't want to correct you. I
8	didn't want to embarrass you in front of this big
9	crowd.
10	MR. CASTRO: Then they're asking for a period
11	of an extension of two years.
12	CHAIRMAN KEILSON: Two years. Any objection
13	from the Board?
14	MEMBER HILLER: No.
15	CHAIRMAN KEILSON: So be it.
16	(Whereupon, the hearing concluded at
17	7:38 p.m.)
18	**************
19	Certified that the foregoing is a true and
20	accurate transcript of the original stenographic
21	minutes in this case.
22	
23	- May Benci
24	MARY BENCI, RPR Court Reporter
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1	INCO	RPORATED VILLAGE OF LAWRENCE
2		BOARD OF APPEALS
3		Willers Hell
4		Village Hall 196 Central Avenue Lawrence, New York
5		March 26, 2018
6		7:38 p.m.
7	A DDI TOA HIOM.	Bienstock
8	APPLICATION:	53 Chauncey Lane
9		Lawrence, New York
10	PRESENT:	
11		MR. LLOYD KEILSON Chairman
12		MR. EDWARD GOTTLIEB
13		Member
14		MR. DANIEL HILLER Member
15		MR. ELLIOT MOSKOWITZ
16		Member
17		MR. AARON FELDER Member
18		MR. ANDREW K. PRESTON, ESQ.
19		Village Attorney
20		MR. GERALDO CASTRO Building Department
21		MR. DANNY VACCHIO
22		Building Department
23		
24		Mary Benci, RPR
25		Court Reporter

CHAIRMAN KEILSON: The matter of Bienstock. 1 Let Mary know your name and address. 2 MR. BISCONE: Good evening. 3 Craig G. Biscone, 1399 Franklin Avenue, 4 Garden City, New York, Suite 202, attorney for the 5 applicant. 6 MR. BIENSTOCK: Mark Bienstock, owner of 7 53 Chauncey Lane, the applicant. 8 MR. MERZ: Jason Merz, Metamorphosis 9 Landscape Design, 810 Middle Country Road, 10 St. James, landscape design. 11 MR. VEVANTE: I'm Kevin Vevante, 12 V-E-V-A-N-T-E, Aquacade Pools, pool contractor. 13 MS. BIENSTOCK: Flora Bienstock, 53 Chauncey 14 15 Lane. CHAIRMAN KEILSON: Okay, we've reached the 16 17 top. MEMBER GOTTLIEB: We have a lot of applicants 18 for one hole in the ground. 19 MR. BISCONE: That's the team. 20 You guys could sit down if you want to. 21 You have a full house tonight, so I'll try to 22 make it a concise presentation. 23 CHAIRMAN KEILSON: Very good. 24

MR. BISCONE: The Bienstocks live at

53 Chauncey Lane. They have a triangular lot, a true triangle, and a kidney-shaped pool 20 by 40. The pool is about three feet from the house. Because it's kidney-shaped, there's no self-closing cover; it's not available, not made. They'd like to replace that pool with an 18 by 40 as opposed to the 20 by 40 rectangular pool with a self-closing cover, all of the bells and whistles, safety features that are available on modern pools Why? Safety and convenience. today.

The safety is actually eight reasons, all grandchildren, all under the age of six. The children don't want to come visit with the grandchildren now because the pool is so close to the house. There's no substitute for supervision, but accidents do happen. The pool is way too close. The self-closing cover will solve that problem to an extent, and relocating the pool to the rear of the property will be much more functional; they'll have a usable yard.

We have no detriment to the adjoining owners.

Both the owners at number 100 and 180 Briarwood

Crossing have consented in writing. You should

have eight copies of those support letters.

They've been good neighbors. They understand that

the Bienstocks don't abuse the luxury of having a pool. It will be very well shrubbed, both for sound baffling and sight, and the landscape architect will speak much more accurately than I will, because I don't know a blue spruce from an arborvitae.

Again, they don't consider it a hardship to have eight grandchildren, it's a blessing; they want to have a safe environment for the kids.

The triangular lot is not going to change shape. We have no viable alternative to the pool other than locating it towards the rear of the property line. There's no detriment to the neighbors. It is substantial numerically. Twenty feet is required; we're only providing five. But if you look at it outside the vacuum, where it's located, the size of the property adjacent to it and the distance the 20 feet is providing to one property line, it makes sense. It's really the only spot to put this pool.

CHAIRMAN KEILSON: Thank you.

MR. BIENSTOCK: I just want to show what the current condition is. This is the pool. This is the only way out of the back of the house, and our grandkids are already opening that door. So this

Bienstock - 3/26/18 past summer we did not open the pool at all 1 because our kids would not come to the house and 2 bring their kids as long as this pool was open, so 3 we've kept it closed. 4 CHAIRMAN KEILSON: How many years are you in 5 the house? 6 MR. BIENSTOCK: Eighteen and a half years. 7 MEMBER GOTTLIEB: Full disclosure, I'm a 8 9

neighbor to the Bienstocks, directly across the street.

CHAIRMAN KEILSON: A good neighbor? MEMBER GOTTLIEB: Am I a good neighbor? them.

MR. BISCONE: Just housekeeping, we'd like to submit neighbors' letters.

CHAIRMAN KEILSON: Sure, no problem.

MR. BISCONE: Eight copies.

Before we submit those, as a side note, the pool is also important to Mr. Bienstock for exercise. He suffers from osteoporosis.

MEMBER HILLER: It's endemic to our neighborhood.

MR. BISCONE: It is, okay.

So we'll mark those for the record.

Jason, I'll turn it over to you before the

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applicants speak on their own behalf.

MR. MERZ: In the back area here, that 5-foot buffer that we're proposing between the pool and the property line, we're going to be putting in some arborvitae, Leyland cypress type of structure, type of tree. That's basically going to be initially seven to eight feet tall, so it's going to act as a sound barrier and buffer between the two properties.

There's also a smaller water feature that you see at the top portion of the pool here. It's just more a trickling water effect that's again going to buffer some of that sound as well.

CHAIRMAN KEILSON: Okay. So by pure coincidence all the letters' text are all the same, but okay.

MR. BIENSTOCK: They're copies.

MS. BIENSTOCK: No, they're copies.

MR. BISCONE: What he's indicating is that you prepared the letters for your neighbors' signature after discussing it with them.

MEMBER MOSKOWITZ: Do we have the second letter or is there one letter? They're both in this letter?

MEMBER HILLER: They're the same letter.

MEMBER MOSKOWITZ: It's a joint letter, got it.

MR. BISCONE: No, two separate letters.

CHAIRMAN KEILSON: Two separate letters, two packets of it.

MEMBER GOTTLIEB: Two signatures.

CHAIRMAN KEILSON: Back to the numbers.

The numbers are very egregious. We've never permitted a backyard variance of 5 feet on a pool, so we have to do something about that.

MR. BISCONE: Well, the one thing I would say is that anybody coming to you on a rectangular or square piece of property, a regular-shaped property who's looking for the same relief shouldn't get it. It's because the property is triangular that we're looking for this.

MEMBER HILLER: You're not the first triangular property to come to us. I just want to say, we sympathize, especially when you see the picture, we sympathize with that. However, 5 feet is egregious, as was said.

Even overlooking the required 20 feet, which is -- we almost never do, unless it's something where there's nobody in back of you, and they back on a forest or back on a highway, I would say that

the minimum you need is 10 feet.

therefore, you know, reducing --

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If I may. Mark, if I may. MR. MERZ:

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If we come in -- right now we're sitting at 20 at this point here. So we're within the -call it the left side property line. On the right we're at 5. If we go 10 off -- hear me out on this. If we go off 10 and bring it -- go 10 and 10, so we're going to go in to 10 on both sides, that will allow us to not bring this pool any closer to the house or make the pool any smaller,

MEMBER HILLER: Take away from the deck and move 10 feet away from the property line.

MR. MERZ: Well, if I would take this pool and go 5 more feet and just drag it this way (indicating), because that's the line I have to stay on parallel, that's going to bring this to about right here, which is only a few more feet different from where the pool is now.

But if I can shift the pool forward and back this way as well, because right now we're at 20 -even if I went to 15 on the backside, so 5 down and 5 to the left, so if we were at 10 from the right, 15 from the left, then that would allow us to -- I would be okay design-wise to moving this

pool and yet still be this proper distance off of the property lines at 10 and 15 and also have a comfortable distance away from the house is what Mark is trying to do now.

MEMBER HILLER: What are you presently away? You're 20 feet?

MR. MERZ: Right now I'm 20. I tried to adhere to that one, just in terms of trying to make it work. But if we can go 10, either 10 and 10 if you'll allow that, or 10 and 15.

MEMBER HILLER: 10 and 5 more over, so you'll be 15 on the side.

MR. MERZ: Yeah, so if I was 15 from this side and 10 from this one, then I could shift the pool this way and down. So instead of just encroaching upon one, we'll kind of split the difference and encroach on both, but we'll be 15 from the left.

MR. BISCONE: Wouldn't 10 and 10 achieve the purpose of that minimum of 10 and also not bring that corner of the pool too close to the house?

MR. MERZ: If we can go 10 and 10 that would be ideal.

MEMBER HILLER: That's excessive.

MR. MERZ: So it sounds like 10 and 15. If

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we go 15 that will give me 5 back.

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heard. I think the Board is leaning towards the

MR. BISCONE: I don't think that's what I

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10-foot minimum.

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MEMBER HILLER: The 10-foot minimum is for the back.

MR. MERZ: For the back side.

MEMBER HILLER: The back side.

CHAIRMAN KEILSON: Off the record now.

(Whereupon, a discussion was held off the record.)

CHAIRMAN KEILSON: Back on the record.

MR. BIENSTOCK: This is the house that we're talking about in terms of that other direction. So if we're talking about shifting the pool -right now we have 20 feet in terms of this property. If we could shift it to 10, this house is nowhere near the property. We're talking about from here to here (indicating). Five more feet would give me some room. It would give me some distance from the house. And it has no bearing on this house whether I'm 10 or 15 feet this way. It's just so far away.

MR. MERZ: That's the side that already has about 20- to 25-foot existing plant material

already in place, which is this side here (indicating).

MR. BIENSTOCK: All along there.

MR. BISCONE: And if I may, Tax Lot 11 is essentially unimproved. That would be this parcel right here which is part of this house (indicating). It's basically like a park, it's next to it (indicating). But this is Tax Lot 11.

MEMBER HILLER: I understand what you're saying. I understand what you're saying.

However, the plan offered by -- I'm sorry.

MR. MERZ: Jason.

MEMBER HILLER: The plan offered by Jason, I think to me, at least meets more of the requirements. And we're being kind at this point, because it's unheard of to give 10 feet, to give 10 feet for a pool from the back wall. That's unheard of, unheard of.

MR. BISCONE: I thank the Board for being forthright in explaining your position to us.

CHAIRMAN KEILSON: Where is the pool equipment going?

MR. MERZ: The pool equipment right now again is right back in here, this back left corner. It currently sits within the same 20 feet as well,

just down on this side here (indicating). 1 MR. BISCONE: And fully shrubbed. 2 MR. MERZ: Correct, so it will be fully 3 shrubbed. 4 5 with the pool equipment as well. 6 7 8 well. 9 10 11 over here by the shed. 12 13 is about seven feet from the back. 14 15 equipment over there where it is? 16 17 18 19 to where the pool is going to. 20 21 22 23 filter as close to the pool as possible. 24

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CHAIRMAN KEILSON: So we'll have a problem MR. CASTRO: Just note that the Board would have to grant a variance for the pool equipment as MR. MERZ: It already is within that same setback. Currently, the pool equipment is back MR. BIENSTOCK: The pool equipment right now MEMBER HILLER: Why can't you leave the pool MR. MERZ: It might be a little bit too far of a run in terms of the existing pool equipment MR. VEVANTE: With the filter equipment that far away from the pool, we would have to put bigger pumps in, bigger piping, and there would be more noise. So I would recommend keeping the MEMBER MOSKOWITZ: If you were to proceed as

you're proposing with moving the pool 10 feet closer and, you know, not having the 20-foot setback on that side over there, then does the pool equipment remain where it is on the sketch or does it go elsewhere?

MR. MERZ: The pool equipment will probably be shifted to possibly here or just down (indicating). We have to be 10 feet away from the water's edge with the pool equipment.

MEMBER HILLER: Basically, you're shifting the pool equipment. Right now the pool equipment is already up against the property line. So you're just moving it down.

MR. MERZ: Moving it down and I'm going to stay parallel to the line. I'm not going to go any closer to the line than where we have it. I'm just going to shift it down.

CHAIRMAN KEILSON: Okay. So what's the proposal at this point, Counsel?

MR. BISCONE: We're going to amend the application to increase --

MR. MERZ: Ten-foot setback.

MR. BISCONE: -- the setback from 5 feet to 10 feet and reduce it from 20 to 10.

MR. MERZ: From 20 to 15.

MR. BISCONE: 20 to 15. 1 2 3 propose is --4 5 6 7 was at 20, we're asking for 15. 8 9 10 11 well. 12 13 14 15 16 17 18 19 20 I can certainly give it to you now. 21 22 23 24

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MR. MERZ: So 20 to 10, 20 to 10 on the right side, 20 to 15 on the left. So in essence what we MEMBER HILLER: You mean from 5 to 10. MR. MERZ: Correct. I was going backwards. So from 5 to 10 here (indicating); and then this MR. BISCONE: And the pool equipment. CHAIRMAN KEILSON: And the pool equipment as MR. MERZ: The pool equipment is going to stay parallel to this fence line. We'll just find a place to shift it down, whether it be here or over here, fully shrubbed (indicating). MR. BISCONE: They need a distance though. They need a specific distance from the property line. Maintaining what's proposed now? MR. MERZ: Yeah, we're going to maintain what's proposed now. If you want the exact number CHAIRMAN KEILSON: That would be helpful. Mr. Gottlieb, you have a question? MEMBER GOTTLIEB: I need Jason back and I'll wait.

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MR. MERZ: Currently, we have the pool equipment at eight feet, eight feet from the

MEMBER GOTTLIEB: Jason, when you shift the pool 5 feet one way, 5 feet the other way, there's a line here between the pool and the house. is the new distance? What was the old distance?

MR. MERZ: This line right here, this closest

MEMBER GOTTLIEB: Yeah, the closest point.

MR. MERZ: The closest distance was about three feet six inches from house to pool. And if

MEMBER GOTTLIEB: That's three feet six

MR. BISCONE: Currently.

MEMBER GOTTLIEB: The corner as proposed.

MR. MERZ: Right now from the pool I am about

MEMBER GOTTLIEB: The whole reason to do it is to keep the pool away from the house.

MR. MERZ: We're about fourteen-six, 15 feet; we're the same distance.

MEMBER MOSKOWITZ: Let me just ask that question in a slightly different way. What are

those measurements if you're asking not just about the house generally, but about the doorway to the house, right? Because I think that's where the safety issue comes into play.

MR. MERZ: This is actually moving the pool closer to the doorway itself as opposed to further away, but the distance -- it's moving it closer to the doorway by about three feet straight shot.

MEMBER HILLER: So what is the distance from the doorway to the new pool?

MR. MERZ: The new pool should be about 18 feet, 20 feet.

MR. BISCONE: Which is a far cry better than the three feet we have now.

CHAIRMAN KEILSON: Absolutely.

MEMBER MOSKOWITZ: Is there going to be only one doorway?

MR. MERZ: This is only one doorway out to the back.

CHAIRMAN KEILSON: Okay.

MEMBER GOTTLIEB: I'd like to ask the applicants if they're okay. I don't see anyone smiling.

MR. BIENSTOCK: You know, it's a lot to absorb and to understand.

MEMBER GOTTLIEB: That's why we're not rushing through it.

MR. BIENSTOCK: Well, I appreciate that. I just want to make sure that when we walk out of here it's something that is safer and we didn't just wind up no better off.

MR. BISCONE: It would be your preference to have 10 and 10 if palatable to the Board?

MR. BIENSTOCK: I think that gives us more leeway in terms of keeping it away from that door.

MEMBER HILLER: There's 20 feet versus three feet. And this allows you to have your pool at a safe distance and still not encroach on your neighbors. You know, those neighbors may not always be there. There may be other neighbors at some time who don't want to have a pool up against their property.

MEMBER GOTTLIEB: I think that even if it was 10 instead of 15 it wouldn't bring the pool any further away. It would still be at the same distance from the house.

MR. BIENSTOCK: The thing is the pool is an angle; that's the problem. Because of the triangle we have no options but to put it in that corner, and to pull it down just takes all of the

-- takes another 5 feet.

MEMBER HILLER: Mark, the Board is bending over backwards to give you something palatable.

CHAIRMAN KEILSON: I mean, you can cut the size or the length of the pool and solve the problem that way if you want us to do that.

There's another way to solve the problem.

MS. BIENSTOCK: Would you mind doing 10 and 10? Because what bothers me specifically also is that, yes, it's very close to the door, but this point also, when you have this thing here it also comes very close to the house (indicating).

MEMBER HILLER: He said it was 20 feet to the --

MEMBER GOTTLIEB: Fourteen-six.

MS. BIENSTOCK: When you have the pool this way --

MR. BIENSTOCK: That's not 20 feet.

CHAIRMAN KEILSON: Hold it. There is a stenographer here who can't follow the conversation. We're not set up to have this type of discourse.

Direct your questions here. And short of that, we're going to be ready to vote momentarily. Is there anyone in the audience who wants to speak

to the matter that's not standing already?

MR. BISCONE: That's half the room.

(No response.)

MR. BIENSTOCK: One last statement.

CHAIRMAN KEILSON: Please.

MR. BIENSTOCK: It's obviously up to you guys. The 5 feet in terms of moving up this way, in other words, 10 versus 15, right now we're talking 15, that difference of 5 feet is huge for us. It's huge. And for this house here, moving 5 feet this way is completely immaterial. I can't imagine that they're going to stand up against my gate and think -- we've barely laid eyes on each other for almost 20 years, other than if a tree falls down or whatever.

I'm just making this pitch because for us it's huge; for them it's got to be immaterial. This house is so far away from this corner.

I understand you're bending over backwards.

I understand you're making a concession. I'm just saying we have a very unusual situation in terms of the triangle. I know there are other triangles. But for us, it may not be a park, it may not be a public park, but it's a huge piece of property, and I just don't think it's material to

them where it's 15 feet or 10 feet.

MEMBER MOSKOWITZ: Let me make sure it's material from a safety perspective, because the whole premise of the application is that this is being done exclusively for safety and not for any other reason. So what's the difference between -- what's the difference in distance from the door between a 10-foot setback on the side and a 15-foot setback?

MR. BISCONE: While he's making that calculation, I just wanted to point out that Lot 11, the unimproved lot that I was speaking of, we're talking about moving it closer to this tree line and this unimproved part of this property, just to put it in perspective.

CHAIRMAN KEILSON: Thank you.

MEMBER GOTTLIEB: It's a very nice picture.

MR. MERZ: We're going to be closer to around 24 feet if we can go 10 and 10, so it's going to push it further away.

MEMBER HILLER: Instead of?

MR. MERZ: Instead of 19 or 20. So it's another four foot back.

CHAIRMAN KEILSON: It doesn't make sense.

MEMBER MOSKOWITZ: I don't understand that.

I understand about if we move the pool closer to the house, then obviously it's going to be closer to the house.

MR. MERZ: It's just shifting back the line.

MEMBER MOSKOWITZ: But if you're just moving
the pool laterally I don't see why it's going to
be closer to the door.

MR. MERZ: I have it sitting right here at 23 feet.

MEMBER HILLER: It's not materially different.

MR. MERZ: There's not much difference between that 5 and that 10.

MEMBER HILLER: There's a limit to which the Board can bend rules, and you may not realize it, but we are bending rules for you.

MR. BISCONE: We fully appreciate that.

MEMBER MOSKOWITZ: I'm not saying I'm against it. I'm just saying we should be straight about what we're asking for. The difference between the 5 and 10 feet is not going to be a safety difference. It's going to be a difference for -- it may be something that's desirable for other reasons, but the reason is not a safety reason.

MR. MERZ: If there is a 10-foot difference

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to move it back 5 feet for safety reasons, then

Mark would be able to have more of a leg to stand

on in terms of that argument. But if it is going

to be within one or two feet, that does make sense

if safety is the main concern, correct.

MEMBER MOSKOWITZ: So if I could just ask
then, what is the reason then? It's not a safety
reason. So then what is the reason to go within
10 feet of the property line versus 15 feet on the
side?

MR. MERZ: On the left side?

MEMBER MOSKOWITZ: Yeah. What's the basis for the request?

MR. MERZ: Right now we're at 15, correct?
We're okay with asking for 15 going into that 20 on the left-hand side to 15?

CHAIRMAN KEILSON: You can ask for anything you want.

MR. MERZ: An additional to get to that 10 and 10 will allow for a better flow and more usable space. In terms of the overall coverage of the property and the impervious material, right now it's been grandfathered in as been over, and by redesigning this patio we're actually down about 2,200 square feet worth of impervious

material for the entire property. So he's come down quite a bit to conform to that. So he could have certainly stayed where he was, but he did come to conform to everything and also changed some raw materials as well to allow for that.

We're not adding any more patio. We're actually taking away over 2,200 square feet worth of material on the property.

MEMBER HILLER: Let's go with the 10 and 15 instead of presenting more.

MS. BIENSTOCK: Can the Board really just think about 10 and 10? I mean --

CHAIRMAN KEILSON: Do you want to come back next month?

MS. BIENSTOCK: What is that?

CHAIRMAN KEILSON: You can adjourn it and come back next month.

So the proposal at the present time, Counsel, please.

MR. BISCONE: Amending the application to --

MR. MERZ: 15-foot and 10-foot setbacks.

MR. BISCONE: The proposed 5-foot setback will be increased to 10. The proposed 20-foot setback will be reduced to 15 feet.

CHAIRMAN KEILSON: And the equipment?

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1	MR. CASTRO: The pool equipment is going to
2	be shifted and remain at eight feet.
3	MR. MERZ: It will be shifted no closer than
4	eight feet to the property line running on that
5	parallel.
6	CHAIRMAN KEILSON: The Board will take into
7	consideration the safety concerns which are quite
8	apparent, they're self-apparent, self-evident, and
9	we will weigh the benefit to the applicant as
10	opposed to any detriment to the community at
11	large, and on that basis we will vote.
12	We'll start with Mr. Felder.
13	MEMBER FELDER: I'm for.
14	CHAIRMAN KEILSON: Mr. Hiller.
15	MEMBER HILLER: For.
16	CHAIRMAN KEILSON: Mr. Gottlieb.
17	MEMBER GOTTLIEB: For.
18	CHAIRMAN KEILSON: Mr. Moskowitz.
19	MEMBER MOSKOWITZ: For.
20	CHAIRMAN KEILSON: And I vote for as well.
21	And a year's time, is that sufficient?
22	MR. BISCONE: That's a question for the pool
23	builder.

CHAIRMAN KEILSON: A year's time? Can you get it done in a year?

1	MR. VEVANTE: The pool is the easy part.
2	MEMBER HILLER: This was the hard part.
3	MR. MERZ: That's a yes.
4	MR. VEVANTE: Approximately 30 days.
5	CHAIRMAN KEILSON: I think you want us to
6	give you more than 30 days.
7	MR. BISCONE: We'll take the year.
8	MR. VEVANTE: One year is fine.
9	MR. BIENSTOCK: Thank you.
10	(Whereupon, the hearing concluded at
11	8:02 p.m.)
12	***************
13	Certified that the foregoing is a true and
14	accurate transcript of the original stenographic
15	minutes in this case.
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17	- Mary Berier
18	MARY BENCI, RPR Court Reporter
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1	INCORPORATED VILLAGE OF LAWRENCE	
2		BOARD OF APPEALS
3		Village Hall
4		196 Central Avenue Lawrence, New York
5		March 26, 2018
6		8:02 p.m.
7	APPLICATION: 2	Addona
8		348 Mulry Lane Lawrence, New York
9		
10	PRESENT:	
11	1	MR. LLOYD KEILSON Chairman
12	II .	MR. EDWARD GOTTLIEB
13	I	Member
14		MR. DANIEL HILLER Member
15 16		MR. ELLIOT MOSKOWITZ Member
17		MR. AARON FELDER
18]	Member
19	II .	MR. ANDREW K. PRESTON, ESQ. Village Attorney
20	II .	MR. GERALDO CASTRO Building Department
21		
22		MR. DANNY VACCHIO Building Department
23		
24		Mary Benci, RPR
25		Court Reporter

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CHAIRMAN KEILSON: The matter of Addona on 1 Mulry Lane. Will they or their representative. 2 MR. BISCONE: Assembling the next team. 3 I'm still Craig G. Biscone, 1399 Franklin 4 Avenue, Garden City, New York, attorney for the 5 applicant, John Addona, Sr. 6 This is John Addona, Jr. 7 MR. ADDONA: Yes, sir. 8 Norman Wax, architect, 158 Irving MR. WAX: 9 Place, Woodmere. 10 CHAIRMAN KEILSON: Very good. 11 Mr. Novello, are you appearing? 12 MR. NOVELLO: Not unless they need me. 13 CHAIRMAN KEILSON: Okay. So who is 14 presenting? 15 MR. ADDONA: John Addona, Jr., 23 Tanwood 16 Drive, in Massapequa, New York. 17 MR. BISCONE: So what's proposed is a 18 subdivision of a 93-foot wide lot into two 19 20

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separate lots. The existing dwelling would have to be scaled back. The one-story portion of the home would have to be removed to comply with the side-yard setbacks. The result would be the existing house on a 51.99 frontage, the new lot on a 41.02 frontage, and lot size 4,719 square feet.

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First, we have to look at the character of the neighborhood because that's a bold request admittedly. If we look at the radius map and start adjacent to the property to the west, the frontage is 50 feet, 34.6 feet, 36.47 feet, 34.03 feet, 37.12 feet, 74.03, and 45.02. So six out of the seven are nonconforming on frontage.

Adjacent to the east, 40 feet, 61.84 feet, 80 feet, 40 feet, 60 feet and 40 feet. I believe that's three out of the five nonconforming.

Across the street we've got a 60, a 66, 100, a 60, a 54, a 60, a 40, 40 and 50.

What's interesting is the tax records show that 14 homes on the radius map are two-family homes being taxed as two-family homes, and four more two-family homes just off of that.

CHAIRMAN KEILSON: Are any of them recently built?

MR. BISCONE: Pardon?

CHAIRMAN KEILSON: Are any of them recently built?

MR. BISCONE: They don't look recently built to me. They look like they've been there a long time.

CHAIRMAN KEILSON: Like grandfathered in sort

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of?

MR. BISCONE: Absolutely, prior nonconforming.

The point is there is no standard lot, and many of these nonconforming lots are substantially lower than what's proposed. Again, 34 feet being the most extreme.

If granted, both lots must conform in all respects to current zoning. It's got to comply with the Village Code.

Parking is always a concern, especially when you have nonconforming two-family homes. I would invite this Board to put a condition, impose a condition on the grant for no less than two off-street parking spots for each of the lots.

Why are they doing this? Mr. Addona, Sr., is in his eighties. He would like this additional lot so that he could sell the house and either build a ranch or buy a ranch elsewhere.

Obviously, there's greater value to two lots than there is one. It will allow him to buy additional property, put some money in the bank to live on.

He's a retired landscaper; no pension. This would be a very good thing for him financially. Good benefit to the applicant.

Really no detriment to the neighbors because, again, anything built would have to be in compliance with zoning on the setbacks. The new lot would pay its fair share of town, school and village taxes, so no drain on municipal services.

It's not really a self-created hardship.

Getting old is tough, but the alternative is even worse. And this is a good opportunity for him to become more financially sound.

The character of this neighborhood is nonconforming lots. Numerically substantial, of course; I couldn't tell you it's not. But given the neighborhood, it's not substantial; it fits right in.

The only thing missing tonight is -- I was hired last week. Mr. Addona called me in the day after I had some eye surgery, and I would have suggested had I been on this project three or six months ago to hire Barry Nelson to give you forensic evidence: The house is worth this, currently it's worth slightly less, with removing the one story-portion the lot will be X dollars.

I think you can take judicial notice that two lots are worth more than one. You've had these presentations before. If that's something you

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feel you need to make your decision, you could always reserve decision. He can spend the money for an appraiser's opinion on it and we can give you real values.

CHAIRMAN KEILSON: Mr. Nelson has appeared before us previously, and we're more than happy if he doesn't have to appear again.

MR. BISCONE: I hope you don't say the same about me.

CHAIRMAN KEILSON: No. I just wanted to relieve you of that burden.

MR. BISCONE: And again, it was a cost factor. It would add substantially to the cost.

CHAIRMAN KEILSON: So the need that you're suggesting is financial?

MR. BISCONE: The need is absolutely financial. The need for a ranch, a one-level home is physical because of the advanced age. But the economic benefit to the applicant will allow him to (A) move into something on one level, and (B) have money in the bank to sustain himself. He has a fixed income, retired business owner.

CHAIRMAN KEILSON: Are you suggesting he's moving into the new house or moving elsewhere?

MR. BISCONE: The plan is not set for that

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yet whether it would be a ranch house for him, whether he would buy another house in the area or outside the area, going into an assisted-living facility. It's a whole total blank slate. They don't know if they would sell the lot to a builder or build the house on spec partnering with the builder. That's --

CHAIRMAN KEILSON: What are these plans of?

MR. BISCONE: We have plans for the -- I'm

sorry. The new house plans, I didn't see those.

CHAIRMAN KEILSON: Are they a ranch?

MR. ADDONA: No.

MR. WAX: It's a new five-bedroom house.

MR. BISCONE: So he would not be living there. Withdrawn on the building for himself. He's going to move elsewhere and sell.

CHAIRMAN KEILSON: He's selling both houses?

MR. BISCONE: Or sell the house and the lot.

The house as reduced and the lot, yeah. But to answer your question, yes, economically driven for sure.

CHAIRMAN KEILSON: In all my years on the Board I've never had somebody approach us with a financial reason as the need for a variance, truthfully.

 $\ensuremath{\mathsf{MR}}.$ BISCONE: A first time for everything and honesty is key.

CHAIRMAN KEILSON: No, no, I appreciate the honesty.

MEMBER MOSKOWITZ: I think it goes beyond that. He's not going to reside at this location anymore?

MR. BISCONE: The plan would be to move him to a ranch.

Why don't you speak.

MR. ADDONA: Yes. So I was born and raised there. We've been there for almost 40 years. The house itself the way it's set up, all the bedrooms are upstairs. There's no space downstairs to accommodate another bedroom. My parents are getting very old. My mom, you know, she's retired as well, but she's working one or two nights at the hospital as a phlebotomist, you know, to pay some bills.

So the main reason is, you know, financially. Both of my parents are immigrants in this country. So my father had a small little landscape business which was here in the Five Towns, and you know, his entire life, outside, you know, in probably a five, ten-mile radius of the area.

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They just had a different perspective. They didn't really save much growing up. You know, they put the money into the house, sent us to college. So what we want to do is try to recoup some of that money so they could live comfortably in the future.

MEMBER MOSKOWITZ: Just, first of all, I appreciate that information, but let me just ask. So he's not going to live at this residence anymore. And so the question is how can you monetize it and realize the greatest value. choice (A) is to sell it as it exists right now, and I think the proposition is that it would garner a certain amount of money. Or choice (B) is to proceed with the plans as contemplated by this application and subdivide the properties and then sell it at that point and get hopefully more money and realize more profit from the asset. either way he's not going to be living there anymore.

MR. ADDONA: Well, we haven't really sat down. You know, they're going to be there for a little while until we decide where, you know, they want to relocate or what's beneficial to them. You know, I'm pretty far from the neighborhood.

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My brother as well is pretty far from the neighborhood. So we don't get a chance to see our parents that often. So they might relocate closer to where I reside and where my brother resides, somewhere in the middle, so, you know, we could spend, you know, some time with them, you know, more often than we do now.

MR. BISCONE: So it's fair to say that there's no immediate plans to move, but it would be in the foreseeable future moving to a one-level home?

MR. ADDONA: Correct.

MEMBER MOSKOWITZ: I will share the Chairman's view. I think it's more unusual than the Chairman stated because -- I've only been on the Board for a much shorter period than the Chairman, but it's unusual to hear of an application for a variance where the benefit to the applicant is such that the applicant's not going to be there anymore to reside at the property. I think that's unusual.

It's unique. CHAIRMAN KEILSON:

MEMBER MOSKOWITZ: It's unique.

MR. BISCONE: Well, an economic benefit is a benefit nonetheless. And the detriment to the

neighborhood again being weighed in, as I mentioned it's going to be compliant with all other restrictions regarding setbacks, all other zoning restrictions other than the frontage, street frontage, and as to the new lot, the lot area.

MEMBER MOSKOWITZ: An economic benefit to someone who is not going to be in the neighborhood anymore. That's what's perplexing about it.

MR. BISCONE: A benefit nonetheless though.

MEMBER HILLER: It seems to be more of a commercial enterprise than a request for a variance. That house is a beautiful home. And I saw there's a house on Mulry on the market for 1,200,000. That house certainly is superior to the house on the market. So it's not an insubstantial sum that that house could carry in the market. And now you're asking to be able to benefit -- you're asking for a variance to get over and above that amount. It's like a commercial enterprise.

MR. BISCONE: Actually, we look at it more as a retirement fund than a commercial enterprise, and it would still be a beautiful house, albeit with that one-story portion removed.

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MEMBER MOSKOWITZ: Do you have any information about the perspectives of the neighbors on the block?

MR. BISCONE: Well, I don't think anybody showed up to object. And as I mentioned -- let me just go back to my numbers here.

MEMBER MOSKOWITZ: No, I know about the other houses on the block being of a similar character based on what you recited. But I'm just asking.

MR. ADDONA: We haven't had any objections.

MR. BISCONE: No positive or negative feedback.

MR. ADDONA: It's a very diverse block, so everybody kind of keeps to themselves.

MEMBER GOTTLIEB: If I'm looking at this right, the proposed house is about 3,600 square feet plus a full basement?

MR. WAX: Yes.

MEMBER GOTTLIEB: That's a pretty big house for a 30-foot frontage.

MR. BISCONE: No, 41, but compliant with zoning in all other respects.

CHAIRMAN KEILSON: Any other questions from the Board at this point? Is there anyone in the audience that wants to speak to the matter?

(No response.)

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MEMBER GOTTLIEB: We can't ask for any

CHAIRMAN KEILSON: Seeing not, okay.

changes, because sometimes we ask for -- there's nothing I can ask for.

MR. BISCONE: If there's any request for changes, please do.

MEMBER GOTTLIEB:

CHAIRMAN KEILSON: Withdraw the application, but that's severe.

In terms of the criteria that we are bidden to use, and I'm going to go through them so that we treat each one. Will an undesirable change be produced in the character of the neighborhood and the nearby properties? I think we have to say yes. I think adding another narrow property in a congested area with all the uncertainty around what's going to happen with this property I think is a problem.

Can the benefit sought by the applicant be achieved by some method other than a variance? I'm not familiar with a request for a financial economic benefit as being something that warrants a variance.

Is the requested area variance substantial?

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I think by your own admission it's very substantial.

Will the proposed variance have an adverse effect on the physical or environmental conditions of the neighborhood? Basically, you've spoken to that. It's well below what the minimum should be for the frontage.

And is the alleged difficulty for the applicant self-created? I think it speaks for itself. Obviously, it's self-created for the specific need that's perceived by the applicant.

So using the balancing test that we normally use, in terms of the benefit to the applicant as opposed to the health, safety and welfare of the neighborhood, I'll put it to the Board in terms of a vote at this time.

Okay, Mr. Moskowitz.

MEMBER MOSKOWITZ: I am a no.

CHAIRMAN KEILSON: Mr. Gottlieb.

MEMBER GOTTLIEB: I have to vote no.

CHAIRMAN KEILSON: Mr. Hiller.

MEMBER HILLER: I too have to vote no.

CHAIRMAN KEILSON: Mr. Felder.

MEMBER FELDER: I would also have to vote no. Although I would say that if your father was

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staying and this lot that you were proposing to build on would have been the home that he wanted to build for himself, as a ranch or something and he was maintaining his residency in the area, I would be thinking differently about it.

Unfortunately, it's strictly an economical or financial question. This is a bit above what we normally would consider, or I would normally.

CHAIRMAN KEILSON: I will vote no as well.

MR. BISCONE: Mr. Chairman, one question for the Board and for the record.

CHAIRMAN KEILSON: Please.

MR. BISCONE: Is it the position of the Board that an economic benefit does not qualify as a benefit under the terms of the area variance? I'm just trying to understand the reasoning.

CHAIRMAN KEILSON: I would say there's a host of issues here. One of them is a question of will there be an economic benefit to someone moving out, okay. So there's no direct benefit for the variance other than economic of a person abandoning the property, okay.

Plus, all of the other issues that have been raised in terms of not meeting the criteria to approve an application of this nature.

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MR. BISCONE: Thank you.

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MR. ADDONA: I'm sorry. You know, we haven't really sat down to discuss my parents if they were going to move or not. If this variance was approved, you know, with that money we could use that money to alter the house and possibly have them stay in the neighborhood, because I'm sure that's probably their goal. They've been there 40-plus years. It's just a matter of financially and trying to, you know, secure their future. You know, we try to do as best as we can, you know, to take care of our parents, but with a little bit of that revenue we could try to generate from the subdivision we could alter the house and, you know, create a more comfortable living environment for them if they wanted to stay in the neighborhood.

MR. BISCONE: That would be for the next application because the Board has already ruled.

MR. ADDONA: Okay.

CHAIRMAN KEILSON: We're not unsympathetic, but it's not going to work as it's currently presented.

MR. BISCONE: Thank you.

(Whereupon, the hearing concluded at

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8:20 p.m.) ******* Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case. MARY BENCI, RPR Court Reporter

1	INCC	RPORATED VILL	AGE OF LAWRENCE
2		BOARD OF	APPEALS
3		DOMIND OF	
4 5		1	Village Hall 96 Central Avenue awrence, New York
6			March 26, 2018 8:20 p.m.
8	APPLICATION:	210 Beach 2nd	
9		Lawrence, New	York
10	PRESENT:		
11		MR. LLOYD KEI	LSON
12		Chairman	
13		MR. EDWARD GO Member	TTLIEB
14 15		MR. DANIEL HI Member	LLER
16		MR. ELLIOT MO Member	SKOWITZ
17 18		MR. AARON FEL Member	DER
19			PRESTON, ESQ.
20		Village Attor	
21		MR. GERALDO C Building Depa	
22		MR. DANNY VAC Building Depa	
23		Durraing Depa	1 Chiche
24			
25			Mary Benci, RPR Court Reporter

CHAIRMAN KEILSON: The next matter is 210 Beach 2nd Street.

MR. BROWNE: Good evening, Chairman.

Christian Browne, Sahn Ward Coschignano, PLLC, 333 Earle Ovington Boulevard, Suite 601, Uniondale, appearing for the applicant this evening.

I'm joined here tonight by Norman Wax, who is the architect on the project, and Robert Hoffelder, who is our real estate appraisal expert, and we'd like to offer some testimony from Mr. Hoffelder in a moment, and he also has a report he will be handing up, and we'll deal with his qualifications in a moment.

This is the application, as you know, of
Moret Properties LLC. It concerns an application
to develop what I think by anybody's estimation is
a dilapidated rundown parcel of land located on
Beach 2nd Street, sort of on the outskirts of the
Village, just adjacent to the Atlantic Beach
Bridge. And on the other side to the west of the
subject property is the Queens line. So our rear
yard is basically the border between Nassau County
and Queens County. The property obviously sits
within the jurisdiction of this Village.

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And our proposal here tonight is to improve it with a multifamily residence, one building that would consist of six separate dwelling units that would be the single-family dwelling units. So you would have six single-family dwelling units as part of one multifamily building. And you would also have, as you can see on your site plan, to the north, to the northern edge of the site you would have a parking area, and each of those units along with its -- would be deeded one of the spots in that parking area. There's also parking underneath the units so that we're able to accommodate -- so each unit would have one parking spot, a garage where you could pull the car in, as well as a driveway pad where you could park another car. So a unit could accommodate on its own power up to three cars. And we are not seeking, we do not need a parking variance in connection with this application.

I'm going to hand up some photographs that I took a couple of weeks ago just to give the Board a sense of the site. The first two photographs are of the site itself (handing). And the following three just give you a view up and down Beach 2nd Street going down -- the final one going

to the south where there's some kind of a mixed use type building. I guess at one point it was being used for some kind of automotive use. I think that commercial use is now gone and there

are some apartments above (handing).

So the property is located within the Business K zoning district, which essentially allows your typical retail and office type businesses. It also allows multifamily developments. There is a bit of a quirk, I would call it, in the code, and that's at Section 212-23.I(1), where multifamily structures, dwellings are allowed, but they must have a minimum of 50 units. It's a bit of an usual provision. Usually people are seeking variances to increase density. We're essentially seeking a variance to decrease density. So the code contemplates the multifamily use, but it contemplates that the multifamily use will have a minimum of 50 dwelling units.

Now, while I'm on that particular variance, we'll note that that is where there was some discussion last time we were here about whether or not that variance triggered an area variance or a use variance. It is the position of the Building

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Department, I understand, that that variance is a use variance. In our amended petition seeking relief tonight, which I filed with Mr. Castro a week or two ago, I note that the Building Department has made that determination, and I note our exception to that determination.

I don't believe that it is in fact a use variance. I think what we are seeking here is an area variance. If you take a look at the code, you will see that the number of units is part of a list of basic area requirements, such as height, setbacks, lot coverage, all of the standard things you would find associated with dimensional area requirements. The fact that we only have six units as opposed to 50 units I think is clearly an It's area type of variance. The use is the same. a multifamily dwelling. It's one building. subject to New York State Building Code multifamily regulations, which Mr. Wax can verify and explain further. It's just the density is not 50, it's only 6. So I don't agree that it's a use. We're not proposing something other than a multifamily dwelling.

If the objection is that these are or could be -- they could be rented or they could be

individually sold units, I would just relate the matter to a condominium development. You could have a 100-unit condominium building, those, as the Board probably knows, the condominium units are real property. You own your condominium just like you would own a single-family house. But no one would say that a condominium building is not a multifamily dwelling. Obviously, it is, in the traditional apartment-style building.

smaller scale version of that. It's not really -it's not a condominium because we don't have
common areas, except for the parking lot, but the
parking lot, each stall would be deeded to each
particular dwelling unit. So you don't have what
you traditionally have with a condominium, which
is apartment units and then common areas that are
administered by a Condominium Board of Managers.
Here, you just have your dwelling unit and your
parking spot.

So but otherwise it's of a similar nature.

And again, I don't think anyone would say that an apartment building with condo ownership, even though they're owned as you would own real property, is the equivalent of a single-family

house. Because, I should explain, a single-family house would not be allowed in the Business K District; it doesn't contemplate single-family or two-family residences. It does contemplate multifamily buildings, which again is what we're constructing here. It's just that the density, instead of being set at a ceiling, is -- well, am I saying this correctly?

Usually, again, a developer would say we're only allowed X units per acre; we want more than X. Here, the code says you must have X units per acre, and we're saying we want some fewer than X. So that again would be consistent with the traditional area variance. You're allowed, for example, in the Town of Hempstead if you're building a multifamily dwelling, you need one acre of land, and you're allowed 20 units per acre. If you want 25 units per acre, you have to seek an area variance for that, not a use variance; it's just more of the same use. Here you have less of the same use.

So without belaboring it, that is why -- CHAIRMAN KEILSON: It's a little too late to say you're not belaboring it.

MR. BROWNE: That's why I believe it's an

area variance.

However, Mr. Hoffelder will submit testimony in the nature of proving a use variance, with dollars-and-cents testimony regarding the different types of returns possible on permitted uses versus nonpermitted uses. So if the Board were to consider it a use variance, there's still, I hope you agree, would be a sufficient record to grant it as such.

Would normally turn to the Building Department to determine if it is a use variance or an area variance, and as you have indicated the Building Department has so indicated. And we also turned to counsel, and I think -- I don't want to speak for counsel, but I believe he's also advised that it's a use variance as far as that one area about the 50-unit minimum. And the criteria is not that dramatically different, so I think from the Board's perspective we'll probably treat the question of the 50 -- the 6 units instead of the 50 units as a use variance and then move to the area variance for the other request. But by all means, we have your testimony.

MR. BROWNE: So I just wanted to make that

record. And if the Board chooses to follow the lead of the Building Department and counsel, we will provide testimony that goes to the proof of a use variance.

That is the main issue before you. There are two other minor -- what I would say are minor variances. They concern relief from the side yard and the rear yard. The side yard on the southern side, which would abut the next residence to the south, and that gentleman, I don't know if he's here tonight, but he was here at the last meeting, the family lives to the south, and they expressed full and enthusiastic support for development. And for reasons you can imagine they're trying to improve their residence currently.

CHAIRMAN KEILSON: Correct. We granted them variances previously.

MR. BROWNE: Yes. And they're looking forward hopefully to having this lot cleaned up.

That side yard is 10 feet and that complies. The only side yard that does not comply, which is

6.2 feet, is on the northern corner of the rear of the building. You can see it's called out there, it backs up to Mott Creek. That was deemed a side yard, so we would need 10 feet there. We only

have 6.2, but as you can see it backs up to the water, and it's just in that one small corner. So that's a very minimal request for relief. It doesn't affect anybody, and it keeps the building line even for along the rear yard which is where we need our other variance. Where we're required to maintain a 15-foot rear yard, we're proposing a 10-foot rear yard, 10 foot to the building line and 6 feet to the balcony that will come off the back of each unit.

So that, again, is not a terribly substantial variance, and as you can see for at least the two units to the north they back up to this landlocked vacant piece of property. It's an irregular-shaped piece right on the creek. I believe that's Mr. Rosenstock's client's property. There's nothing there and it's landlocked. It has no street frontage whatsoever. There's no, you know, impediment to those units, I would say, backing up less than the 15; and the others would — the others going to the south do back up along the rear yards of homes that are in Queens.

Obviously, again, the property is a tremendous mess right now. This would all be cleaned up. This would be lawn area. All of the

drainage will be fixed so that the runoff that now and some flooding that now occurs as a result of this property, that will all be stopped. All the water will be contained on-site. It will be fenced. It will look very, very nice. And I can't say for certain, but I don't believe that the 10 foot is substantially different than what had existed prior when this was a factory. I think it was last used as a matzoh factory, actually.

CHAIRMAN KEILSON: Yes, it was.

MR. BROWNE: So I think the building line was roughly similar to what we're proposing, and now these residents will not back up to a factory but really a yard area with a balcony.

feet and change. We think this is an excellent use of this sort of irregular-shaped piece. As Mr. Hoffelder will explain in a minute, but I just want to mention as a matter of logic, if we're getting into a use variance area, I know the Board is familiar with this location, and it's not exactly an optimal place to put an office or a retail store, and I'm not sure that those are the kinds of uses that the Village would want or

that the neighboring residents would want.

In theory, I suppose you could try to put a convenience store or something, or maybe a two-story office building or retail below and office above, but given the nature of the area and the out-of-the-way location where you have to essentially get off of 878, drive around through Queens, come back in, it's not exactly a prime location for a commercial use and I think that's why it's lain vacant as it has for some time is simply because of market forces.

And by the way, on a parcel like this, obviously, if we're held to the standard of building 50 units, you can see why that would be rather impossible. You would have a very tall building and you would have parking problems. Certainly, I don't think anyone would want a development of that intensity on a parcel of this kind, if it was even theoretically possible to do.

So that's why we think this is a superior proposal to redevelop this dilapidated site, put it to good use. There's plenty of demand for residential uses. You are near the water, and it would be I think a substantial improvement to the

neighborhood with really minor variances, at least from an area perspective, to make it work.

CHAIRMAN KEILSON: Can you share with us who

MR. BROWNE: Moret Properties LLC.

CHAIRMAN KEILSON: I know who that is.

MR. BROWNE: The principals of it?

CHAIRMAN KEILSON: Yeah.

the applicant is?

MR. BROWNE: I believe the -- I'm not sure exactly. I can tell you the people associated with it; I don't know their exact official roles. But one is Harvey Weissman, who I think the Board knows, and the other is James Velardi, who I also think the Board knows.

SPEAKER: I'm here.

CHAIRMAN KEILSON: There he is.

MR. BROWNE: And Mr. Velardi will be building the project if it's approved.

SPEAKER: Yes.

MR. BROWNE: So with that, I'd like to have Mr. Hoffelder come up and give his brief presentation. And if you could just swear the witness.

MR. HOFFELDER: My name is Robert Hoffelder.

I live at 43 Seawane Road, East Rockaway,

New York. I'm a New York State certified general real estate appraiser. I've been practicing for 15 years. My qualifications can be found on the photographic addendum that I have there (handing). There's also some pertinent site data.

MR. BROWNE: There are reports in there with dollars-and-cents numbers that are relevant to the use variance issue. But having said that, thank you for --

CHAIRMAN KEILSON: I think it would be helpful, we have not really come up against use variances previously. So for the Board's purpose regarding the perimeters, to obtain the use variance the applicant must demonstrate that the owner cannot realize a reasonable return on the property as zoned. Once again, the owner cannot realize a reasonable return on the property as zoned. The hardship must be unique to the owner's property and not applicable to a substantial portion of the zoning district. Of course, granting the variance will not alter the essential character of the neighborhood. And the hardship is not self-created. So hopefully, he will shed some light on the value aspect.

MR. BROWNE: Yes. I think -- and I'll touch

on it a little more. I've probably covered a lot of those criteria.

CHAIRMAN KEILSON: Right.

MR. BROWNE: Except for the value aspect.

So maybe, Mr. Hoffelder, can you go directly to the dollars-and-cents testimony as regards a permitted use versus what's proposed here tonight.

MR. HOFFELDER: Sure. In the rear of that handout we had developed a benefit to the applicant study and a commercial feasibility analysis, all the way in the back.

MR. BROWNE: So that would be page 20 is really where you want to go. So could you just take the Board through the analysis that you did on -- well, you're going to start at page 19.

MR. HOFFELDER: We'll start at 19.

This is the benefit to the applicant. The land was purchased a year or two ago for \$225,000. We did a cost analysis and identified that the land could probably be sold for \$31.50 for a sale price of \$450,000. That's on page 19 on the upper left side.

MR. BROWNE: That would be the sale of the unimproved land, correct?

MR. HOFFELDER: Unimproved land.

Improvements would cost approximately 1 \$61,500. So after a sale price of \$450,000, with 2 expenses of \$286,000 and change, there would be a 3 benefit of \$162,500. 4 MR. BROWNE: Again, that's just to clean up 5 the property and sell it as vacant land, correct? 6 MR. HOFFELDER: Correct. 7 MEMBER GOTTLIEB: Excuse me, before you go 8 any further. Can you tell me the date of 9 purchase. 10 MR. HOFFELDER: The date of purchase, I have 11 it here, it was -- I have it here. 12 MEMBER GOTTLIEB: And was all of it sold as 13 one lot or were there multiple? 14 MR. HOFFELDER: No, it was sold collectively. 15 It was recorded on July 14th, 2016, dated May 27, 16 2016. 17 MEMBER GOTTLIEB: I got the same date but I 18 19 all. 20

had a different price on public records, that's

MR. HOFFELDER: The public records indicates -- what was your --

MEMBER GOTTLIEB: 31,022.

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MR. HOFFELDER: Right. I was advised by the applicant that that was a -- it was a tax lien

sale. 1 MEMBER GOTTLIEB: Yes. 2 MR. HOFFELDER: And there were other costs 3 that were applicable. And I was --4 MEMBER GOTTLIEB: So to get clean title they 5 had to pay the taxes --6 MR. BROWNE: The taxes and so forth. 7 MR. HOFFELDER: The taxes, the carrying 8 9 costs. MEMBER GOTTLIEB: Public records only showed 10 11 the --MR. BROWNE: The land. 12 MEMBER GOTTLIEB: Thank you for clarifying 13 14 that. MR. HOFFELDER: Okay. So if the project was 15 approved, there would be 6 units. We're 16 estimating approximately \$645,000 per unit. The 17 total proceeds of sales would be \$3.87 million. 18 There would be carrying costs. There would be 19 development costs in the amount of \$2.278 million, 20 which would give a gross benefit to the applicant 21 of \$1,591,500, less the benefit if the application 22 was denied of 162,500, with the net benefit to the 23 applicant, if approved, would be \$1,430,000. 24

CHAIRMAN KEILSON: Is he looking for

investors? 1 MR. BROWNE: Not from this Board. 2 CHAIRMAN KEILSON: Okay. 3 MR. HOFFELDER: We had a commercial 4 development feasibility study done as well which 5 is on the next page, page 20. 6 MR. BROWNE: So this is the analysis of the 7 possible return if a permitted use were to be 8 constructed there. 9 CHAIRMAN KEILSON: The matzoh factory. 10 MR. BROWNE: Correct. Actually, that would 11 not be permitted today. 12 MR. HOFFELDER: Nassau County records 13 indicate that the lot size is 14,200 square feet. 14 MR. BROWNE: That counts some land under 15 16 water. MR. HOFFELDER: Which is attributable to some 17 bay bottom land underneath Mott Creek. 18 MR. BROWNE: The actual buildable parcel is 19 about 10,000 square feet. 20 MR. HOFFELDER: Typically though that's 21 credited towards bulk and density calculations. 22 We've calculated the permitted lot coverage in 23 order to accommodate parking within 30 percent. 24

So we calculated that a permitted footprint would

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be approximately 4,260 square feet. We developed two levels, which would give a total of gross rentable area of 8,520 square feet. We estimated hard construction costs at \$150 a square foot, the land costs at \$225,000, as we previously discussed, soft costs at ten percent, would ultimately establish a total cost to construct of \$1,630,800.

MR. BROWNE: And this would be on a proposal to say retail on the first floor with offices on the second floor.

MR. HOFFELDER: Correct.

Upon completion of that structure, we would have a gross building area, gross rentable area of 8,520 square feet. We'd have two levels. We'd have a ground-level retail and a second-level office, estimated. We estimate that the retail rent on the first level would be about \$25 a foot, and the office rent on the second level would be \$20 a foot. There would be 4,260 square foot per level. And we'd have a total potential gross income of \$191,700. There would be vacancy and collection losses at various percentages which would ultimately provide an effective gross income of \$177,855.

Expenses, which are illustrated, we estimate real estate taxes at \$5 a foot, insurance at \$60 a foot, water and sewer at \$50 a foot, maintenance and repairs at \$1.75 a foot, and management at three percent of the effective gross income, total expenses of \$72,218, which would give us a net operating income of \$105,637, capitalized at a six and a half percent capitalization rate, we would come to an indicated capitalized value of \$1,625,190, which is just about what it would cost to construct the building. So therefore, there would be an ultimate -- it would be a wash.

CHAIRMAN KEILSON: Thank you.

MR. BROWNE: So in your opinion, based on those numbers, the applicant could not realize a reasonable return on a permitted use investment?

MR. HOFFELDER: Correct.

CHAIRMAN KEILSON: Thank you.

MR. BROWNE: If there's any other remarks just very briefly you want to make on area character and the uniqueness of this parcel, since it is a unique-shaped parcel that was formerly used for industrial purposes, which would be not permitted as the Chairman was indicating under the present Business K zoning.

MR. HOFFELDER: Well, public records indicate that it was previously a 3,000-square-foot building that for decades supported a marine storage facility and boat repair facility, and a little more recently a light industrial bakery.

MR. BROWNE: Neither of which would be permitted today.

MR. HOFFELDER: The layout and the design of the proposed improvements are consistent with that of current FEMA requirements, which are typical and mandatory to new construction in the area.

The proposed development would certainly provide a form of gentrification and relief of the area to a prior light industrial use, and the development would certainly coexist and provide reinforcement to the existing residential nature surrounding the area.

Due to the site limitations of the site, any development would require some sort of relief in the zoning code. We went through the commercial feasibility analysis and the benefit to the application study, which indicates that the commercial development would not be profitable to the applicant. So therefore, as an appraiser, I would not find the applicant's proposal to in any

way cause detriment to or adversely impact the 1 value or enjoyment of the surrounding properties, 2 nor to any village resident or to the Village as a 3 whole. 4 CHAIRMAN KEILSON: Thank you. 5 MR. BROWNE: And I think you have our basic 6 case. If you have any questions, obviously, we'll 7 attempt to answer that. And Mr. Rosenstock wants 8 to be heard on behalf of his client. 9 CHAIRMAN KEILSON: Thank you very much. 10 MR. BROWNE: You're welcome. 11 CHAIRMAN KEILSON: Mr. Rosenstock. 12 MR. ROSENSTOCK: Thank you, Mr. Chairman. 13 My name is Michael Rosenstock. My office is 14 at 55 Maple Avenue, Rockville Centre, New York. 15 And I represent Beach Bums V, Roman numeral V, 16 They own block 15601 and lots 0006 and 0050. 17 Mr. Browne accurately described where my 18 client's property is located. 19 CHAIRMAN KEILSON: Could you do so again. 20 MR. ROSENSTOCK: It's block 15601, lots 0006 21 and 0050. It is in Queens. 22 CHAIRMAN KEILSON: I'm sorry, read it again. 23

MR. ROSENSTOCK: Okay. Block 15601.

Okay.

25 CHAIRMAN KEILSON:

MR. ROSENSTOCK: Lots 0006, and 0050. F0050. 1 MEMBER GOTTLIEB: Do you have a survey 2 showing that so we can find it? 3 MR. ROSENSTOCK: I don't. I don't have a 4 survey. It's on the plot plan. 5 MEMBER GOTTLIEB: We see lot 6. 6 MR. ROSENSTOCK: The only lot that borders 7 this property is, as Mr. Browne described, a small 8 vacant triangle that's on the -- would that be the 9 northwesterly side? Gerry? 10 MR. CASTRO: It would be the northwest. 11 Yeah, it's on the other side of the creek. 12 MR. ROSENSTOCK: No, that's on the same side. 13 Then the property also extends, a much larger 14 portion of it extends on the other side of the 15 creek. 16 MR. CASTRO: Lot 6 is directly behind. 17 MEMBER MOSKOWITZ: We see lot 6. Where is 18 lot 50? 19 MR. CASTRO: If you look at the radius map, 20 because it's not shown on the plot plan. 21 So proceed. CHAIRMAN KEILSON: 22 MR. ROSENSTOCK: Thank you, Mr. Chairman. 23 Our primary opposition is based upon the 24 applicant's requirement to proving the criteria 25

for a use variance, which in essence is based upon Village Law Section 7-712-b, and which states as you stated, Mr. Chairman, that: No use variance shall be granted by a Board of Appeals without a showing by the applicant that the applicable zoning regulations and restrictions have caused unnecessary, unnecessary hardship.

The four criteria that you stated, the applicant cannot realize a reasonable return provided that lack of return is substantial as demonstrated by competent financial evidence, I've listened to Mr. Hoffelder's report. I have not had an opportunity to carefully review his study, but I'm willing to accept it for the moment for the purposes of this argument.

I think that the key -- well, I'll get to that. The alleged hardship, the second criteria, the alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the neighborhood. For the purpose of this hearing we'll concede that that's probably also met.

The third is that the restricted use variance, requested use variance, if granted, will not alter the essential character of the

neighborhood. Considering where this property is, that's very hard to even determine at this point in time.

The fourth, that the alleged hardship has not been self-created, they clearly have not shown that. This is a developer who bought the property at a tax sale, as you've pointed out. He made whatever investment he made. And it would have been quite clear, especially to a professional, to be able to research this and figure this out that there were certain limitations in the Business K zone as to what he could build on this property.

Now, that brings us to this is really a use variance, which I submit it is a use variance application. Mr. Browne has argued in essence that this is a -- I forget exactly -- a multiple family project, and it is. There will be six single-family homes that happen to be attached, each of which has a separate entrance which will house one family.

But the law, the section of the code that applies to Business K District states that it permits a multiple dwelling. A multiple dwelling, as defined by the New York State Multiple Dwelling Law, as a dwelling which is either rented, leased,

let or hired out, to be occupied or is occupied as the residence or home of three or more families living independently of each other. It is not meant to apply -- multiple dwelling is not attached single-family homes.

And the analogy to a condominium, I think, is somewhat unintentionally misleading in the sense that this is not like a condominium development. There is in fact separate ownership and they are — and a condominium is a single-family residence which is bound together by a very special type of agreement and offering plan that's filed and accepted for filing by the Attorney General.

There is no avoiding the fact that the use that is sought here by the applicant is not permitted by the Business K zoning law of the Village, and as such it should be denied. The builder, again, the applicant is a professional.

I'm sure he could figure out another way to develop this property should he choose, which, you know, might make him a little bit more money. But the test is not how much profit he can make. The test is whether or not there's an economic hardship; and if it's a self-created hardship, it just does not meet the standards of the Village

1	law. Thank you very much for your time.	
2	CHAIRMAN KEILSON: Let's ask some questions.	
3	MR. ROSENSTOCK: Oh, certainly.	
4	CHAIRMAN KEILSON: I'm sorry. Who do you	
5	represent? I know Beach Bums whatever.	
6	MR. ROSENSTOCK: It's an LLC. The principal?	
7	CHAIRMAN KEILSON: Please.	
8	MR. ROSENSTOCK: My client is Ronald	
9	Edelstein. But I'm not sure that he's the only	
10	principal of that LLC, to be honest with you.	
11	CHAIRMAN KEILSON: Does he live in the area?	
12	MR. ROSENSTOCK: He lived in Lawrence for	
13	many years. His ex-wife and some of his children	
14	still do.	
15	CHAIRMAN KEILSON: Okay.	
16	MR. ROSENSTOCK: He does not.	
17	CHAIRMAN KEILSON: Okay.	
18	MEMBER GOTTLIEB: Does he plan to develop his	
19	parcels that you know of?	
20	MR. ROSENSTOCK: I don't think he can develop	
21	his parcels. If you're interested in what his	
22	motivation is	
23	MEMBER GOTTLIEB: I'm trying to understand	
24	the opposition. He clearly does not live there.	
25	He may not be able to build there.	

MR. ROSENSTOCK: No, not at all. I don't think he could build on the part that's adjacent to this property. He's expressed to me his concern is more about the environmental impact that any development will have on Mott Creek. And I know that that's not within the purview of the Board of Appeals; however, he's asked me to represent and oppose this application at this level and for the reasons that I could come up with, and when I reviewed the case I believe this is the basis that the application should be denied.

MEMBER MOSKOWITZ: Just so I'm clear, the reason why he's opposing this application is because of his concerns about the environment, and there's no commercial basis for it; is that what you're representing to the Board?

MR. ROSENSTOCK: None whatsoever, none that I'm aware of.

MEMBER MOSKOWITZ: So it's just about the environment?

MR. ROSENSTOCK: That's all I've been told, yes, sir. Honestly, I have no -- he owns a little triangle of property. He's entitled to notice and that's as much as I --

MEMBER FELDER: How would the environment be altered if they chose to develop this in a different manner other than residential and commercial?

MR. ROSENSTOCK: I don't know.

MEMBER FELDER: Your client would still have the same issue.

MR. ROSENSTOCK: I don't know the answer to that question. I noticed that there's only a short form SEQRA that was submitted in connection with this application, which tells you nothing about the environmental impact. I believe it's something that will probably be addressed, not by this Board, but at some later stage when the building plans would be approved.

MEMBER HILLER: I somewhat know your client.

Did he --

MR. ROSENSTOCK: Is that a good thing or a bad thing?

MEMBER GOTTLIEB: You're going to find out.

MR. ROSENSTOCK: I'm joking, of course.

MEMBER HILLER: Did he at any time attempt to buy that parcel?

MR. ROSENSTOCK: I don't know. He never told me he did. I don't know.

CHAIRMAN KEILSON: I see. For those of us who have lived in the area more than 50 years, as I have, recognize what kind of a blight is over there. We remember Eddie's Marina and there were many decades when it was kept up very nicely, and now it's in total disrepair, and also the creek was in much better condition. This young man had a boat on the creek many, many years ago. And today the whole area is declined so desperately, that one would have to wonder why somebody would not want this area to be improved.

MR. ROSENSTOCK: You know, I can only tell you what I know, sir.

CHAIRMAN KEILSON: I understand.

MR. ROSENSTOCK: And I can only make the argument I can make.

CHAIRMAN KEILSON: And he has no objection to --

MR. ROSENSTOCK: I have nothing else really to add to that.

CHAIRMAN KEILSON: So you've spoken to the use variance. How about in terms of the area variance? No objection to the encroachment?

MR. ROSENSTOCK: No. I think if the project were to be permitted as a use, then I think that

the setbacks are not something that are so 1 material that it would make a difference.

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CHAIRMAN KEILSON: That's shocking.

MR. ROSENSTOCK: Well, why is that shocking? CHAIRMAN KEILSON: Because it's fairly egregious.

MR. ROSENSTOCK: I haven't even looked at these. I'll be very honest with you, I haven't looked at them. I shouldn't have said that. I withdraw that.

CHAIRMAN KEILSON: Mary, strike it from the record.

MR. ROSENSTOCK: On the advice of the Chairman. No, honestly, I didn't really, you know, spend much time on that mostly because, to me, this was fairly black and white in terms of the use variance requirements, and under the circumstances the property having been purchased at a tax lien sale, and a professional developer that you take your shot, and if you can't get your use -- if you can't make out a case for financial hardship, you're just as a matter of law not entitled to this variance. In other words, there was no reason for me in my opinion to go further.

CHAIRMAN KEILSON: That's up to the

determination of the Board, obviously. 1 MR. ROSENSTOCK: Absolutely, sir, absolutely. 2 I'm just making my record. 3 CHAIRMAN KEILSON: Thank you very, very much. 4 MR. ROSENSTOCK: Thank you, sir. Have a good 5 evening. 6 CHAIRMAN KEILSON: Does anyone else want to 7 speak to the matter? Please. 8 MR. KORN: Mr. Chairman. 9 CHAIRMAN KEILSON: Good evening. 10 MR. KORN: Good evening. 11 My name is Sol Korn. I have a congregation 12 just around the corner from this property, on 13 Seagirt Avenue. We had a meeting -- I'm sorry. 14 We had a meeting and I represent about 17 15 families living along Seagirt Avenue, that's 16 between Beach 2nd Street up to Beach 5th Street, 17 and each street. They're concerned because 18 they're not sure what the actual plan entails. 19 Now, by that I mean they got letters. There 20 were letters that were sent out, and the letters 21 state that there would be not six, but seven homes 22

built over there. Am I right?

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CHAIRMAN KEILSON: There's a typo in the -- MR. KORN: Is that what it is?

MR. KORN: On the plan, on the blueprint it

CHAIRMAN KEILSON: -- notice, yeah.

shows six, but it said seven, they received that seven. And when they found out that there were six, they said, well, is there some kind of -- is there some impropriety here, are there plans to do other things than just exactly what's being presented now? I mean, once the zoning -- or once the variance is granted, are there assurances that that's exactly how it's going to stay? Because we're concerned also about -- it's not just even if you have parking for each individual in those homes, but inevitably you have a lot of people coming by for the homes to visit and so on, and then there's a lot of parking, it becomes blocked up, and this is a concern also that they have.

CHAIRMAN KEILSON: How does it affect them?

I mean, they're going out Seagirt Avenue --

MR. KORN: Well, because there's only -- CHAIRMAN KEILSON: Let me finish.

They're going out Seagirt Avenue towards
Beach 9th Street, number one.

Number two, how many homes are being built on 4th and 5th right now?

MR. KORN: Yes, on 5th.

CHAIRMAN KEILSON: On 5th, 6th, whatever.

MR. KORN: There are 70 some units, I think, 60 or 70 units.

CHAIRMAN KEILSON: And how many families in each unit?

MR. KORN: Isn't that the same zoning over there?

CHAIRMAN KEILSON: No, I'm asking you a question. Are they concerned about the congestion of six dwellings? I'm just trying to understand.

MR. KORN: Nobody asked for that. We didn't ask for that, but it's done and it's there. And I don't know whether the laws are different over there than they are down by Beach 2nd Street. That's what, Far Rockaway, that's Queens, and this is Lawrence, so it's different.

What I'm just suggesting is that they want to be assured that there will not be -- I know that it sounds strange to me and that it's zoned for 50 units, but as the attorney just --

CHAIRMAN KEILSON: Mr. Rosenstock.

MR. KORN: As Mr. Rosenstock just pointed out, that that would be in one -- in one building, so to speak, as opposed to individual units. When you have individual units, then you have a story

with each unit. In other words, you may have a 1 lot of -- a lot more in and out of cars and 2 people, and this is going to be different for the 3 neighborhood. 4 Right now it's not such a blight as perhaps I 5 think the Chairman suggested. If you look at it 6 now, it's an empty clean lot, okay. Now, what's 7

done with it -- yeah, I don't know, when were those pictures taken?

CHAIRMAN KEILSON: What's the difference?

MR. KORN: I didn't see the picture.

CHAIRMAN KEILSON: I was there last week.

MR. KORN: Last week?

CHAIRMAN KEILSON: When I was there last week it's a blight.

MR. KORN: There's nothing there.

CHAIRMAN KEILSON: Do you remember what it was like years ago?

MR. KORN: Yeah, I remember with the marina, and I had a boat there as a matter of fact.

CHAIRMAN KEILSON: Okay.

MR. KORN: Until Hurricane Sandy, anyway.

CHAIRMAN KEILSON: How is that an acceptable situation?

MR. KORN: No, I think something should be

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there. Maybe they should build a shul there, I don't know. As a matter of fact, maybe you should consider that. I'll convince everybody to tone down on the --

CHAIRMAN KEILSON: Rabbi Korn, address the Board please, Rabbi Korn.

MR. KORN: Well, I mean, just a little one, and then you can build the houses around it.

CHAIRMAN KEILSON: I think to assuage your concerns, the plans are very clear with the Building Department as to what's going to be built there, and they are homes, they're residences.

Number two, they've allowed for more than adequate parking, more than meets the needs of the residents who are living there. Three spots per unit I believe is what they had said between the --

MEMBER FELDER: Plus you have the whole side at the other side of the street where everyone parks when they want to go walking on the boardwalk. That whole block is straight open.

It's a very wide street.

MR. KORN: Well, I just -- I mean, I have no say in the matter. But if there was a park there or something that would, you know, beautify the

neighborhood, that would be great. And I have no objection personally to units being put there.

But again --

CHAIRMAN KEILSON: I think the idea of a park is an excellent idea. You should speak to the Mayor, because he wants to put residents in the area where the pollution plant is as opposed to a park. We could have a beautiful park. I don't want to stray and get politicized here. Let's deal with it.

There are six homes. It's very defined what they're building there, and I think there may be more members for your congregation that may be moving in there. Those are the people that will be interested in those homes.

MR. KORN: Well, they're the ones that I'm speaking on their behalf. They're the ones objecting.

CHAIRMAN KEILSON: Before you leave speak to Mr. Velardi; see if you can get some arrangement. But I think for the time being I understand their concerns. But they live -- many of them live in the Sand Castle, right?

MR. KORN: No. There used to be a lot in the Sand Castle. Now most of them are all between

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MR. KORN: Okay.

Beach 2nd and Beach 5th.

CHAIRMAN KEILSON: Also building one of those units there, there's going to be a lot of congestion there, which has nothing to do with the six houses, truthfully.

MR. KORN: The only way to get in is by passing that area by crossing that bridge, coming in from Seagirt Boulevard.

CHAIRMAN KEILSON: They go down Seagirt
Boulevard or you can go to Beach 9th Street to
Seagirt Avenue.

MR. KORN: Right. There's those two and it's a narrow path. It's not a big -- and if you have more and more it's going to be clogged. It's inevitable, it seems like it to me anyway. I don't know about construction and that.

In any case, I'm here just to tell you that that's how they feel, and if they can be assured about what you're saying.

CHAIRMAN KEILSON: I think they should come down and meet with Mr. Castro; he will be happy to show them the plans. It's all public record, and I think that will assuage any concerns. I don't think their concerns are warranted.

CHAIRMAN KEILSON: Okay?

MR. KORN: All right.

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CHAIRMAN KEILSON: Thank you very much.

Anyone else in the audience who wants to speak?

MR. BROWNE: Can I make very brief closing comments?

CHAIRMAN KEILSON: Please.

MR. BROWNE: Just very quickly.

MEMBER MOSKOWITZ: Counsel, if you could speak just to I think maybe the sole point or the primary point that was made by opposing counsel about the inability to satisfy one of the criteria, the self-created hardship criteria, if you could speak to that.

MR. BROWNE: Certainly. So first of all, in that context I would just like to say that, you know, generally to even have standing to oppose any kind of a variance you have to show some impact to your property. Proximity to a site that's under an application, of course, gives rise to the presumption that you're going to be impacted. But this isn't an exercise in theory where you just say, well, you know, I'm just standing up for the law. You're supposed to show

how does it impact detrimentally your property.

And I think Mr. Rosenstock essentially conceded it doesn't detrimentally impact his client's property which is not developable anyway. It's a landlocked parcel with no street frontage.

So even assuming, arguendo, that he's right, I still don't think he actually has standing because he hasn't articulated any grounds for why his property would be harmed if there were multifamily residences here or whatever you want to deem this development to be. And you know, I'm not sure why in this neighborhood you would want to have a conforming use like a retail store or a 7/Eleven or a 50-unit apartment building when you could have this. So I would say that first as a matter of just sort of basic standing.

In terms of self-created hardship, I mean, you know, that's one of these old-fashioned criteria that stick around in the law. It used to be that, you know, if a Board found any variance to be self-created it was fatal. That's no longer the case. It's a factor to be considered, and you know, every variance is self-created. I think the law has moved away from that because everyone can say, well, it's a self-created

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hardship. Yeah, I need zoning relief because I have an irregular-shaped parcel.

If we put a retail store here or an office we'd have the same area variance. It would be the same, you know, impact back towards

Mr. Rosenstock's client's property. I don't see any difference whatsoever.

So again, you know, we do not agree with the use variance analysis. But I think we've also shown that even if this is technically deemed not to be a multifamily dwelling, it's certainly in the spirit, let's say, of a multifamily dwelling. And we've shown, I think, and I think

Mr. Rosenstock conceded, we've shown that you can't make a reasonable return putting a permitted use there. And I don't think that the permitted use in that particular area would be more desirable for the neighborhood, for the congregation in Queens, than six units. Why would you want, you know, as I said, a 7/Eleven, as opposed to these nice retail -- excuse me -- nice residential units.

So those are my comments. And I just want to mention again, as the Chairman noted, we do not need a parking variance. We have three spaces per

unit.

We have a non-jurisdiction letter from the DEC. There will be no impacts to the environment. We're subject to the drainage requirements of the County and the Village, all of those will be met. So the drainage will improve. All of the water will be contained on-site. So that will help everybody.

And I really have to say, I think, you know, it is clearly a blighted parcel. It's an odd-shaped parcel. And I think, you know, we'd be hard-pressed to come up with a better, more beneficial use than what's before you.

CHAIRMAN KEILSON: One of our concerns which has not been addressed, and I would have expected a neighbor to be concerned about it, is the area variance being requested with the six-foot -- with the porch that's jutting out.

MR. BROWNE: Right.

CHAIRMAN KEILSON: We generally don't approve such encroachments. I think that's -- again, I'd like to hear from the Board on it, but I'm a little shocked that Mr. Rosenstock in representing his client was focused solely on the use question and not the area question, which I think is, you

know, more of an egregious concern.

MR. BROWNE: Well, I would just say obviously that's an amenity for the unit. You're right, Mr. Chairman, it does encroach, but it is a narrow lot, or it's not a deep lot, I should say. So in trying to make it work and be as nice and maximize the value, we have, you know, a small rear yard. Again, I can't say because I -- we don't have an old survey, but I don't think that the rear yard is all that different from what it was when there was a factory there. There will be grass there. It will be fenced; we can do screening.

And Mr. Wax actually can speak to that point.

MR. WAX: I just wanted to point out that the main reason for the balconies is that, in compliance with the FEMA regulations, the main portion, living portion of the house is a story above the grade. So we felt that by having a small balcony out in the back, which is called for in this particular case, which is why variances are granted, so that they could go out and sit on a chair or something and enjoy the outside environment. Had they been in a -- had there not be the FEMA rules, they would have been closer to the ground. They could have gone out into the

backyard.

MR. BROWNE: You could walk out onto a patio, but here you can't because of the FEMA regulations, correct. So that's the reason. And we can do screening in the back to, you know, obscure that and protect the privacy of those couple of homes on the south side.

On the north side you have the vacant lot and then the water. So no one is really affected by the units up towards the north.

MEMBER MOSKOWITZ: I just have a question for counsel, our counsel, which is, is it correct what Mr. Browne just stated that the factor is in fact

CHAIRMAN KEILSON: Any further questions?

MR. PRESTON: The Board is weighed with the decision-making ability, yes. Those are the factors and you get to decide how much each one weighs.

MR. ROSENSTOCK: May I speak?

a factor but not by itself dispositive?

CHAIRMAN KEILSON: Mr. Rosenstock.

MR. ROSENSTOCK: It's specifically not. It's a discretionary factor only on an area variance. It is not a discretionary factor on a use variance, the self-created hardship.

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additional environmental analysis here. I mean, we're not -- it's not, you know, an industrial site. It's not carting away materials. It's not doing any kind of industrial use. It's just residential development. The legal question is what form the residential development takes in this particular context, but I'm not sure why we would need a longer form SEQRA.

But the Board has to make a determination obviously on what type of an action it is. To me, it's no different than your typical -- your typical negative declaration situation, because we're not -- we're not mining anything. We're building to FEMA standards and Nassau County drain standards.

And I think Mr. Wax wants to comment.

MR. WAX: I filled out the form. We have a document from them freeing us from -- the property is bulkheaded. It's fully usable. We comply with everything that's required. We're taking care of the drainage. We're taking care of -- the bulkhead is intact and it's perfect. We're not -- it's in compliance with everything and every agency.

MR. BROWNE: And the DEC has issued you a

non-jurisdiction letter. 1 MR. WAX: Correct. So that's it. 2 CHAIRMAN KEILSON: Thank you very much. 3 MEMBER MOSKOWITZ: One question. How long --4 you may have said this before, so forgive me, but 5 how long has the property been vacant, to your 6 knowledge, approximately? 7 MR. BROWNE: Jim, do you know how long 8 approximately it's been in that condition? 9 SPEAKER: Three years I guess. 10 MR. BROWNE: It's at least three years, 11 approximately three years. 12 MEMBER MOSKOWITZ: What was there immediately 13 prior? 14 MR. BROWNE: I believe that was the bakery. 15 CHAIRMAN KEILSON: The bakery. 16 MEMBER MOSKOWITZ: Thank you. 17 CHAIRMAN KEILSON: Thank you very much. 18 MR. BROWNE: You're welcome. 19 CHAIRMAN KEILSON: The Board will be 20 reserving decision. 21 Thank you, gentlemen. 22 MR. BROWNE: Thank you. 23 MR. ROSENSTOCK: Thank you, sir. 24 (Whereupon, the hearing concluded at 25

Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case.

MARY BENCI, RPR Court Reporter

1	INCORPORATED VILLAGE OF LAWRENCE		
2		BOARD OF APPEALS	
3		Village Hall	
4		196 Central Avenue Lawrence, New York	
5			
6		March 26, 2018 9:18 p.m.	
7			
8	APPLICATION:	Rosenfeld 156 Harborview South Lawrence, New York	
9			
10	PRESENT:		
11		MR. LLOYD KEILSON Chairman	
12		MR. EDWARD GOTTLIEB	
13		Member	
14		MR. DANIEL HILLER Member	
15		MR. ELLIOT MOSKOWITZ	
16		Member	
17		MR. AARON FELDER Member	
18		MR. ANDREW K. PRESTON, ESQ.	
19		Village Attorney	
20		MR. GERALDO CASTRO Building Department	
21		MR. DANNY VACCHIO	
22		Building Department	
23			
24		Mary Benci, RPR	
25		Court Reporter	

New York.

CHAIRMAN KEILSON: The matter of Rosenfeld.

MR. SAVALDI: Good evening, Mr. Chairman.

Amiel Savaldi, One Meadow Drive, Woodsburgh,

We're well familiar with this project. Just a brief history. The Rosenfelds could not be here today. They're out of town, and they are -- I

hope that I can give them good results today.

They have obtained a building permit in the summer of 2016. They wanted to accomplish phase one. They started to do it and then they realized it's not enough. They engaged me towards the end of later on in 2016, and we went to a variance in December of 2016 which the Board granted.

They have been working all of most of 2017 on the house, and eventually the contractor was informing them that in order to do what they want to do they have to have a permit for phase one and phase two, which is required to go -- to get all of the variances up front.

We were here, I believe it was two months ago, and the Board has requested changes, suggested several changes. We have the plans in front of us.

CHAIRMAN KEILSON: I have to make the record

clear, the Board did not suggest changes.

MR. SAVALDI: It was several issues that were brought up during the hearing we have addressed -- CHAIRMAN KEILSON: Correct.

MR. SAVALDI: -- with the new plans. And in my letter I listed the front-yard setback that was only 29 feet was pushed back to 30 feet. The building area coverage was reduced from 3,232 to 2,968. And the roof height was reduced from 36 feet to 32 -- 33 and a half, 30 inches.

The attic is very important for storage, and possibly in the future would have a place to replace the basement that they're not going to have in this house. And the ceiling at the high point in the attic is 8 feet.

One thing I'd like to point out which is -which I think is important is if you look at the
front elevation, and I highlighted it with color,
we have reduced the height of the 36 to 33 and a
half, and we are forced to have a certain angle
because of the bedroom, the master bedroom that
was already built. The area that we have -- we
are exceeding 50 percent of the flat area allowed.
However, I think the diagram shows that if we were
to go up to the maximum height that is permitted,

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36, and slightly less of an angle, we would comply with -- or not comply, but reduce it to the -- yeah, comply with the 35 percent which is the maximum permitted. Currently we're at 51, 53 percent. And what we can show, I would like to show it to the Board, the diagram that the red line shows where if we would go to the 36, which is permitted, we can go to -- we can comply with the maximum flat roof of 35 percent.

MEMBER HILLER: You would also have to chop off parts of the third floor and the second floor.

MR. SAVALDI: No, it's -- if you can see the red, it's very -- it's almost the same. Yeah, it has to be a little bit --

MEMBER HILLER: Narrower.

MR. SAVALDI: Yeah, right.

MEMBER HILLER: But you don't want to narrow it. You just want to have --

MR. SAVALDI: Right. But the reason is when I lowered it I made the top larger. The more -- the lower I go --

MEMBER HILLER: I understand, but you can't have your cake and eat it too.

MR. SAVALDI: The owner would have loved to go to 36, and we can comply with the 35 which is

permitted.

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MEMBER HILLER: If they make the second and third floor narrower, because I don't think they want to.

MR. SAVALDI: No, I can -- with this roof I can follow the red line and I can go to 36 and I can comply with the 35 percent.

MEMBER HILLER: I'm not talking about the roof height. I'm talking about the --

MR. SAVALDI: The roof area.

MEMBER HILLER: The height ratio.

MR. SAVALDI: The height ratio is -- we have the existing -- the existing side yards that we have not changed. It's 8 foot 5 on the east and 12 foot 8 eight on the west. We are maintaining the same -- we are not increasing it.

CHAIRMAN KEILSON: Yeah, but you're encroaching. It was a nonconforming, okay.

MR. SAVALDI: It was a nonconforming, correct.

CHAIRMAN KEILSON: You've already contemplated going to 36 feet but then you maintain the encroachments. The height/setback ratio is --

MR. SAVALDI: It's the side, correct.

MR. GROSS: I think I can answer that. I'm Pavil Gross. I'm the contractor.

The second floor, that master bedroom with that ceiling has already been built, and so has that angle been brought around most of the house. So they're only asking to follow those lines and that's it. And that was a huge undertaking to increase that space on the master bedroom, and to have to rip that all out and redo that, I mean, as the contractor that just -- I don't know what the right word to say for that.

CHAIRMAN KEILSON: We're not asking you to rip it out. The applicant received variances; they should have stayed with the variances. After they were halfway into their construction they decided to change it. Had they approached us with the ultimate request on the variances, I can't opine exactly what would have happened, but there's very little likelihood it would have been approved. So they're coming back with another bite at the apple. I don't know how many times --

MR. GROSS: None of this was a plan.

CHAIRMAN KEILSON: Don't interrupt.

MR. GROSS: I'm sorry.

CHAIRMAN KEILSON: Let me just finish my

thought.

MR. GROSS: Okay.

CHAIRMAN KEILSON: Had they come to us with the original request in any way mirroring what's now ultimately happened, it never would have happened in my opinion.

They're taking advantage of the fact that the zoning changed in the interim. They want the height associated with the new zoning. Now, in and of itself that doesn't disqualify them. But when one approaches that property, truthfully, I'm aghast at what's occurred there, okay. And the construction has been going on for years to the detriment of the neighbors.

So if we use the criteria that are normally used in judging area variances, I think, and we will discuss it, I think it fails on all levels, all right.

And again, Mr. Rosenfeld particularly likes to come back and try to change and modify. And at least I am only one vote here. I'm very uncomfortable with these requests and, you know, the repeated requests.

And now Mr. Savaldi is coming in and asking again for 36 feet. I mean, the whole thing is

ludicrous. We have an application here asking for 33 and a half feet, and now you want to modify it again. It's unacceptable from my personal vantage point.

MR. SAVALDI: I --

CHAIRMAN KEILSON: And I'm not blaming you, Mr. Savaldi.

MR. SAVALDI: Mr. Chairman, I understand.

I'm not requesting. I was just saying -- I was presenting to the Board that we are asking for the 33 and a half. We're not asking to go to the 36.

I'm just pointing out that the oversize of the flat roof is due in part to us going down. And I was pointing out, to summarize again, the couple went through really a nightmare in the last two years. I'm not saying that anyone but themselves put them in that position. I'm not arguing this.

But the fact is that they are living in it. I was a couple of times when they were still living there. It was really a nightmare. No heat, no --

CHAIRMAN KEILSON: Mr. Savaldi, I think
you've captured it. Self-created. Self-created.
The Board didn't create this situation. I heard
Mrs. Rosenfeld numerous times about how she chose
to live there as some sort of martyr or the like.

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We can't sympathize with that. It's self-created. 1 MR. SAVALDI: I would like the Board to 2 consider that we have reduced it, pushed the house 3 back by a foot, reduced the height and reduced the 4 area and consider the hardship. 5 CHAIRMAN KEILSON: Okay. Do you want to add 6 anything? 7 MR. GROSS: Yes. So I've been with this 8 project from the beginning. For what it started 9 to what it went, it started off as --10 CHAIRMAN KEILSON: Let me just understand. 11 You are the contractor since the beginning? 12 MR. GROSS: Yes. 13 CHAIRMAN KEILSON: Weren't there other people 14 who played some role in the interim? I mean, 15 there have been a number of architects on this 16 project also. 17 MR. GROSS: No. 18 CHAIRMAN KEILSON: No what? 19 MR. GROSS: No, there wasn't. 20 CHAIRMAN KEILSON: There weren't other 21 architects? 22 MR. GROSS: There were people that they 23 employed for --24 MR. SAVALDI: No, there was the engineer that

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got the original permit, and then the --

MR. GROSS: I don't know about that.

Anything prior to that I don't know. I mean, there were other people that were hired as a consultant. There is nobody else that was on record. There was somebody that was on record, Bertan (phonetic). They got Amiel. They consulted with other architects.

CHAIRMAN KEILSON: They retained other architects. They attempted to retain architects.

MR. GROSS: As a consultant.

CHAIRMAN KEILSON: No, sir.

MR. GROSS: Which were promising them dreams.

CHAIRMAN KEILSON: Let's make the record very clear. Mr. Bienenfeld contacted me; he was being retained. He decided to decline the account. But they've tried multiple architects on the project. I had the impression there were multiple contractors. We've gone through very many permutations on this project, okay.

MR. SAVALDI: I've seen Pavil from day one there.

MR. GROSS: Yeah.

MEMBER FELDER: Can I just ask you, I know one of their main concerns last time was the

financial hardship that this would cost them now. Irrespective of how we got there, what would it cost if they had to do over what you're describing?

MR. GROSS: A ton of money. And that's what I was going to say.

MEMBER FELDER: Because it's just the bedroom that was --

MR. GROSS: It's not just the bedroom, because it's the bedroom, it's the roof, it's the plumbing, it's the electric. It's so many different things that get involved in it. That originally when the job started it was basically to extend the kitchen so that they could have a normal kitchen and have the bedroom above it. And then the plan was to expand on the other side.

And I didn't know, you know, their phase one, phase two. I wasn't really aware of all that.

Once I became aware of it, I said, wait a minute, you're working with a budget, and then to go and take this wall out later on and move it over here, and the roof and everything else that's involved in construction -- construction always looks like it's a little box, but there's so many other things that are involved in that box.

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And when they realized the value in that and the value of how much is going to go in the garbage, they were like, oh, my God, what are we doing? They didn't know. And why should they know? They're not the contractor. They're just trying to start the job within their means. And then as they learned that trying to stay within your means and then construction costing you three or four times more, and then by the time they can do the next step it would be even more expensive.

MEMBER HILLER: They had architects. They had you as a builder. They've enclosed a box, a huge box of a home. It's inconceivable to me that somebody would -- you actually have a finished product there that just needs cladding and interior work. It's inconceivable to me that after coming for a variance, building a total box, that you come again for a variance saying we had a bad plan because we were thinking of phase two.

The Chairman mentioned already a variance upon variance, coming to the Board endless times, and having what appears to be a completed structure, totally enclosed. It doesn't make sense.

And if they are working with a budget, it's

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their business to consult their architect, to consult their builder, and know their budget. Not to decide after the building is enclosed that they need a new budget and more variances.

MR. GROSS: I can't honestly answer that.

MEMBER HILLER: And the fact is, as the Chairman pointed out, that if -- and I sympathize with the person living in a construction zone. All of us have done it at one time or another for short periods of time. They should have finished the job. They had ample time to finish the job and live comfortably with their children within the framework of the house they constructed.

MR. GROSS: In a perfect world, absolutely. Typically, I mean, yes, for --

CHAIRMAN KEILSON: We're not engaging in a debate here.

MR. GROSS: No, I know that. They were not. They did not plan properly, they didn't.

MEMBER HILLER: Aren't you the builder?

Isn't that the architect?

MR. GROSS: And they are the homeowner that probably didn't express their end game well to -- which could be.

CHAIRMAN KEILSON: Our Mr. Rosenfeld didn't

express himself well? Ask Mr. Castro after hours and hours and hours of hearing expression.

MR. GROSS: I mean, listen, when they came forward with these changes and stuff and they saw that it interfered with FEMA regulations and stuff, and then everything was cut down to accommodate to that.

MEMBER HILLER: They have not cut down; they've added. They came for variances. They didn't come to comply. They came for variances and they got variances.

CHAIRMAN KEILSON: Okay.

MR. SAVALDI: So I would request that we'll wait for the owners to come back, and we'll set up a meeting with the Building Department.

CHAIRMAN KEILSON: No, we're going to vote tonight I think at this point in time. We're not going back on the calendar at this point. We're going to take a vote on the application as submitted. Okay.

The criteria for approving variances are as follows. One: Will an undesirable change be produced in the character of the neighborhood or the nearby properties? I think this project fails that.

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Can the benefit sought by the applicant be achieved by some method other than a variance?

They've already achieved a result. I think they should continue with that.

Is the requested area variance substantial? The answer is yes. Eight new variances at this pointed is more than substantial.

Number four: Will the proposed variance have an adverse effect on the physical or environmental conditions of the neighborhood? The answer unequivocally is yes. They've subjected their neighbors to years of construction to an unsightly blighted area and it's time to get this over with.

Number five: Is the alleged difficulty for the applicant self-created? I think that is indisputably the case that it's self-created.

All right, having said that, Mr. Moskowitz.

MEMBER MOSKOWITZ: I have sympathy for the applicants, but for the reasons that the Chairman stated I have to vote no.

CHAIRMAN KEILSON: Mr. Gottlieb.

MEMBER GOTTLIEB: No.

CHAIRMAN KEILSON: Mr. Hiller.

MEMBER HILLER: No.

CHAIRMAN KEILSON: Mr. Felder.

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MEMBER FELDER: I feel the same way as Mr. Moskowitz, but unfortunately, without much to deal with in terms of compromising to a better solution I have to say no. CHAIRMAN KEILSON: And the Chair votes no as well. MR. SAVALDI: Thank you. (Whereupon, the hearing concluded at 9:36 p.m.) ******** Certified that the foregoing is a true and accurate transcript of the original stenographic minutes in this case. MARY BENCI, RPR Court Reporter