

Board of Zoning Appeals – Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.  
Tuesday, November 20, 2012 at 7:30pm

AGENDA:

- #912-6 Thomas & Mary D’Addario at 42 Canfield Drive
- #1112-1 Tice Brothers at 257 Riverview Road
- #1112-2 Tice Brothers at 249 Riverview Road
- #1112-3 Scott Morgero at 95 Meadow Street
- #1112-4 Dennis Tidrick at 19 Adams Drive

**Possible Decision:**

- #1012-1 Kids Zone Realty, LLC at 7 Platt Road

Mr. Glover: Good evening and welcome to the November meeting of Shelton Zoning Board of Appeals. If you can't hear feel free to come closer. We, this auditorium is equipped with a microphone there and a microphone behind us, but this Board has to look at maps and other exhibits and it's impossible to do it from back there so we have to stay down here. So if you can't hear, move closer, because it is a hearing and you should be able to hear what's going on. We meet monthly for variances. We have a relatively small agenda tonight. When you appear in front of the Zoning Board of Appeals this is a hearing so you're giving testimony. The testimony is recorded and later on transcribed and when we make a decision, if you don't like the decision that we make it's that record that goes to the court system. For that reason, I ask your cooperation to refrain from having conversations in the room because it will be picked up and it will make it difficult to have a clear record. If you have a cell phone please turn it off or put it on vibrate. If you feel it necessary to have a conversation, please take it out in the hall. Our regulations require that you present pictures to us of your property and that you have notified your abutting neighbors by registered mail. When you come up for your hearing, I will be looking for the pictures and the receipts from the registered mail. With us tonight are Commissioner Ralph Matto on the end, Commissioner Linda Adanti, Lori Michalak. I'm Gerry Glover, I chair the commission and to my right is Ed Conklin and to his right is Phil Cavallaro. Before we start, the first item on our agenda is Tom and Mary D'Addario. They're going to be represented by Attorney Dominick Thomas who has a meeting in Derby similar to this and he has asked that we move him from the first item on the agenda to later on in the agenda so he has time to attend that meeting and attend this meeting. So that first part of the agenda is going to be moved back. Alright.

**#1112-1 257 Riverview Avenue**, Tice Brothers Building & Development of 1 Chestnut Avenue, Ansonia, CT is seeking to waive Section 24, Schedule B, Standard 7 by varying the setback from the front property line from 25 ft. to 15 ft. for a single family home on a 170 ft. x 207+/- ft. lot.

**#1112-2 249 Riverview Avenue**, Tice Brothers Building & Development of 1 Chestnut Avenue, Ansonia, CT is seeking to waive Section 24, Schedule B, Standard 7 by varying the setback from the front property line from 25 ft. to 15 ft. for a single family home on a 170 ft. x 207+/- ft. lot.

Mr. Glover: Is the applicant here? Hello Mr. Swift

Mr. Swift: good evening Commissioners

Mr. Glover: How are you this evening

Mr. Swift: Excellent.

Mr. Glover: Alright we have two applications here for the Tice Brothers, they're together correct? Both lots are

Mr. Swift: We would like them to be heard

Mr. Glover: so we'll hear them together

Mr. Swift: together because they are adjacent

Mr. Glover: Would you please give your name and address for the record?

Mr. Swift: My name is Jim Swift. I'm a professional engineer representing the applicant, and I'm located at 102 Village Drive in Shelton

Mr. Glover: And do you have some pictures, Jim?

Mr. Swift: I have pictures of the site, here. And I have the certificates of mailing.

Mr. Glover: And these are the abutting neighbors?

Mr. Swift: They are

Mr. Glover: Okay. Can you tell us what you want to do and why you can't conform to the zoning regulations?

Mr. Swift: Yes, we have two existing lots that are on an older street in town. And a couple of things are going on on this older street. There's a, since it's an existing road with a very very steep front to back slope, it's very very difficult to construct the houses in a reasonable fashion that gives the future homeowners appropriate use of their property. And as evidence of that, I would point out that all of the houses that you see adjacent to our parcel, the Oraziatti house on this side of the parcel, the other house on the other side of the parcel, you can see that they were constructed within just a few feet of the street line and that is because of the physical hardship of the slope.

Mr. Glover: So you're citing a topographical hardship?

Mr. Swift: Yes

Mr. Glover: Okay

Mr. Swift: What we're proposing is to reduce the front setback not quite to the extent that our neighbor's are enjoying, but just something that gives us a little bit better shot at a house that will complement the neighborhood, will fit in with the neighborhood, not quite as forward pressed against the street, but just a little bit and it will give these homeowners a decent backyard.

Mr. Glover: These are two pre-existing non-conforming lots?

Mr. Swift: They are. They had been one single parcel some, not that long ago, but they are undivided, they were undivided at the time

Mr. Glover: By deed?

Mr. Swift: by deed

Mr. Glover: Okay

Mr. Swift: And a free split took place to develop two fully compliant building lots

Mr. Glover: I went up to visit the site and it looks like these houses will be probably the furthest from the road

Mr. Swift: That's correct

Mr. Glover: there appears to be a structure that is almost right on the road

Mr. Swift: Yeah, as you can see, the Oraziatti parcel is probably only a few feet

Mr. Tice: There's the street line

Mr. Glover: Yeah

Mr. Tice: Or the town line I should say

Mr. Glover: Yeah, it's not, it's right on the, almost on the street

Mr. Tice: the porch is built on the city's property on this house next door to us, you know

Mr. Swift: and a good deal of the walks and the

Mr. Glover: Mark, you'll have to give your name and address

Mr. Tice: Oh, I'm sorry, I'm Mark Tice. I'm one of the owners of Tice Brothers Building and Development. I live at 35 Cherry Gate Lane in Trumbull.

Mr. Glover: Alright, so your hardship is topographical and when you build the houses they will be further back, the setback will be further than the houses that are adjacent to it.

Mr. Swift: Correct

Mr. Glover: And so it will be in harmony with the neighborhood, but not in harmony with the zoning regulations

Mr. Swift: That's correct. Good two family garages, the architecture will fit in and I think it'll be a good thing for the property values, although that really doesn't have anything to do with hardship

Mr. Tice: I also asked Jimmy to set it up to make sure that cars can park in the driveway and not be in the street

Mr. Swift: Yeah, the Commission may have noticed that there are quite a bit of parking on the

Mr. Glover: on the street

Mr. Swift: street

Mr. Glover: the street actually splits. One goes down and the other way goes up

Mr. Tice: yeah, that's right here

Mr. Matto: Gerr, I took a look at it today myself. It's better than what exists

Mr. Glover: what's there now, yeah. Any other questions from the Board?

Mr. Conklin: the houses are going to be the same sizes as the other houses in the neighborhood?

Mr. Tice: Well, these might be, well, the houses across the street are probably two families, so they're larger. But these I'm proposing like 2100 sq. ft. colonials with attached garages to make it nice for the neighborhood. I think having the garages so the people can stay out of the road and keep their cars in the garage or in the driveways is the right thing to do there.

Mr. Swift: Not only that Ed, but as we said, by moving the houses back further than the existing houses, we can also park in front of the garages too, without

Mr. Matto: You can actually park down the side and drive it in there. I was wondering, you're probably going to have a pretty high ceiling in the basement

Mr. Tice: Yeah, I think it's going to end up to be about 12 feet.

Mr. Matto: Yeah, okay

Mr. Tice: this is, we're proposing a 12 foot foundation when we go for building permits

Mr. Matto: Yeah, and then you'll fill it in with a couple feet

Mr. Tice: Right, yeah we'll have to fill the whole garage in in order to

Mr. Matto: I think it will be an ideal

Mr. Tice: I think the lots warrant it Ralph, you know

Mr. Glover: Any other questions from the Board? (no) Is there anyone in this room who is in favor of this application? (no response) Anyone in favor of it? (no response) Is there anyone in this room who is opposed to this application? (no response) Any opposition? (no response) Any final questions from the Board? (no) Then I'll declare the hearing closed. Thank you very much.

Mr. Swift: Thank you.

Mr. Glover: We have a copy of this, so you can keep that.

During the work session upon motion by Commissioner Conklin and seconded by Commissioner Cavllaro, the Board unanimously voted that:

**#1112-1** “In the application of Tice Brothers Building & Development of 1 Chestnut Street, Ansonia, CT for a certificate of approval for a single family house to be located on the property of the applicant at 257 Riverview Avenue, R-4 zone, and which requires a variance in the minimum setback from the front property line,

The application for a variance is approved.

Inasmuch as this property has a topographical hardship which causes the house to be placed closer to the front property line, and

Inasmuch as the proposed construction will be further away from the street than the existing homes in the immediate neighborhood,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance to the minimum required setback from the front property line from 25 ft. to 15 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton.”

**#1112-2** “In the application of Tice Brothers Building & Development of 1 Chestnut Street, Ansonia, CT for a certificate of approval for a single family house to be located on the property of the applicant at 249 Riverview Avenue, R-4 zone, and which requires a variance in the minimum setback from the front property line,

The application for a variance is approved.

Inasmuch as this property has a topographical hardship which causes the house to be placed closer to the front property line, and

Inasmuch as the proposed construction will be further away from the street than the existing homes in the immediate neighborhood,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance to the minimum required setback from the front property line from 25 ft. to 15 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton.”

**#1112-3 95 Meadow Street**, Scott F. Morgero of 95 Meadow Street, Shelton, CT is seeking to waive Section 24, Schedule B, Standard 7 by varying the setback from the left side yard, which is also a street line, from 30 ft. to 12 ft. for a 26'x22'x28'H addition to house and from 30 ft. to 18 ft. for a 23'x14' expansion to garage.

Mr. Magero: How're you doing, I'm Scott Magero, 95 Meadow Street

Mr. Glover: Good evening

Mr. Magero: Good evening

Mr. Glover: Scott, do you have some pictures?

Mr. Magero: Yeah, here's, I don't know if this is what you're all looking for, but, do you need this?

Mr. Glover: Yep. Is this your only neighbor?

Mr. Magero: Yes

Mr. Glover: Alright, this is a very small lot

Mr. Magero: Yeah, the problem yeah, because no matter what I do with this lot I'm going to have to get a variance. It just, it's long, but it's very narrow.

Mr. Glover: And this is a, obviously a pre-existing non-conforming lot

Mr. Magero: Yes

Mr. Glover: Okay. Can you tell us what you want to do here?

Mr. Magero: Well, my parents, they're in their 90's and they live in Florida and I'd like to bring them back. So I just want to get an addition on so I have some room for them because the house, basically, the downstairs is like a little over 800 sq. ft., so, but my wife and I think it'll be a little tight with my parents. And then the garage, just to add, because I do have, if you see the pictures, I do have like a canopy set up for one of my trucks. And instead of having the canopy, I just want to make it look nicer with a full garage you know?

Mr. Matto: The next property has also a garage with, what do you call that garage

Mr. Magero: Yeah, the canopy or whatever?

Mr. Glover: The hoop type of building? The tent?

Mr. Matto: Yeah, okay

Mr. Glover: So you're adding to the house, the second story?

Mr. Magero: Oh no, it's just going to be one story

Mr. Glover: Just one story?

Mr. Magero: Yes

Mr. Glover: You're adding onto the, to the back of the house

Mr. Magero: Back of the house, yes

Mr. Glover: Toward the William Street side

Mr. Magero: Yes, on the William Street side

Mr. Glover: Okay, and the other structure is a garage and you're adding onto that

Mr. Magero: yes

Mr. Glover: So it's probably a single car garage now

Mr. Magero: right, now it's like a bay and a half, single car, it's a single car yes

Mr. Glover: and you're going to go

Mr. Magero: Just add another bay on it, yes

Mr. Matto: And aesthetically it will help the whole look to the

Mr. Magero: Yeah, because right now we got, you know, the way the tents are, I want to eliminate that to just make it look nicer, yes.

Mr. Glover: Are you city water?

Mr. Magero: Yes

Mr. Glover: and city sewers?

Mr. Magero: city water and city sewers, yes

Mr. Glover: Okay. Alright, so we have a lot that's got a 59 foot frontage

Mr. Magero: I know

Mr. Glover: and 252 feet deep

Mr. Magero: deep, yes

Mr. Glover: and if you do anything on it you need a variance

Mr. Magero: Yes

Mr. Glover: Okay, so your hardship is the size and shape of the lot

Mr. Magero: right

Mr. Conklin: Now, the addition is going toward the garage and the garage is going further

Mr. Magero: yes

Mr. Conklin: in other words, you're not building toward the Meadow Street side

Mr. Magero: no

Mr. Conklin: you're building toward the back half of the property

Mr. Magero: Yeah, I think Gerry has one, see that's

Mr. Glover: sorry. The yellow highlighting is where the additions are. Alright, are there any other questions from the Board?

Mr. Conklin: What's the right of way behind here?

Mr. Magero: That's the right, that's Teddy Markut, he owns part of the right of way it goes straight back to uh

Mr. Conklin: the back half of his property?

Mr. Magero: yeah, that's um, the Rogers live at the end and that's just, there's two families, three, actually three families, Mrs. Rogucki's across the driveway from me too.

Mr. Conklin: It's not an actual street, it's just

Mr. Magero: No, it's just a right of way, yes

Mr. Glover: The garage addition is one story?

Mr. Magero: Yes

Mr. Glover: Okay, any other questions? (no) Anyone in the room in favor of this application? (no response) Anyone opposed?

Mr. Markut: I do have questions or concerns.

Mr. Glover: Come on up.

Mr. Markut: My name is Ted Markut, I own the property at 89 Meadow Street, where Scott has property and so on. I just had some, I just want to see if I can get some clarification as to his plans. These are pictures I took of the property, and so on. My thing is, as you can see from some of the pictures, is where he has parking already. I have no, in a way I have no opposition if he brings his parents home and you know, expanding his house for that, something like that, but I'm questioning as to, it's starting to get a bottlenecking affect on this uh, on my right of way. Which is fine for most of the year, but you know, in the winter time, the winter months if there's snow clearance and something like that, it presents a problem you know, especially like a couple of years ago when we had large snow and it just kept on piling up. So um, my thing is, is to see whether, I was wondering whether Scott has figured out what his access to this uh, is it going to be the same access to your house and garage

Mr. Magero: Basically, yeah, if it's, you know I own part of the driveway and you own part of the driveway and I do all of the plowing on the driveway. And I actually take all of the snow that's on the driveway and push it in my backyard.

Mr. Markut: Well, really basically, you do take a lot of the snow and push it into my barns and my garage, so um, cutting off access to some of my buildings

Mr. Magero: No, actually I've been, your tenants like what I do. I've been pushing the snow so it doesn't get, well, it doesn't matter, it's just that

Mr. Glover: Alright, let's, let's uh, let's stop this discussion, let's bring it back to the Board. Scott, you have to be quiet.

Mr. Magero: Okay

Mr. Glover: And if Mr. Markut has a question I'll ask you. Otherwise, we can't get a dialog on the tape. So, Ted, your concern is what, I'm sorry?

Mr. Markut: It is with the increased, if he has increased parking after he puts up the garage and continues onto the property of putting up parking areas and something like that, where, you know, the snow removal is, if he's investigated all, setting up some kind of parking right off of William Street, which actually is just about as close to his house and the garage as anything else, um, and just as flat. He wouldn't have to be filling in and spending hundreds of dollars to make any future parking areas.

Mr. Magero: I'm not going to make any future parking areas, basically, I'm just adding

Mr. Glover: Scott, Scott, stop

Mr. Magero: I'm sorry, I'm looking at the

Mr. Glover: Anything else? You're concerned with where he's going to park and if he's going to increase the parking, is that correct?

Mr. Markut: Yeah, I mean, as it stands now if it just goes to that, that amount that he has now with the trailers and something like that, then I don't really oppose any of his application for the variance. I understand that in the rest of the field if he wants to you know, put up his gardens and something like that because he's moved some of his parking the garage, and something like that, I understand that. I just, you know, had questions, and you know, wanted to see, you know, what, have some clarification on it.

Mr. Glover: Alright, so behind his house, you provided us with a picture that has a small trailer

Mr. Markut: Right

Mr. Glover: and a tent and it looks like there's a tractor or something in front of it with a snow, with a plow on it

Mr. Markut: yes

Mr. Glover: That's the, that's the, the tent is the area where he's going to build his garage

Mr. Markut: yes

Mr. Glover: And as I understand your concern, you don't want him to push out any more for parking

Mr. Markut: Yes, I mean, I think it would, I think it would just go and, you know increase the problem for other people because there's over 5 properties that use this one right of way.

Mr. Glover: Okay. So you're concerned that the right of way stay opened up

Mr. Markut: yes

Mr. Glover: Okay. Anything else?

Mr. Markut: No

Mr. Glover: Scott, do you plan on um, doing anything that will impact the right of way?

Mr. Magero: No, not at all.

Mr. Glover: And, do I understand that your garage is going to be where that tent is?

Mr. Magero: Yes

Mr. Glover: and basically that's the extent of your construction?

Mr. Magero: Yes

Mr. Glover: so then I don't think you have a problem

Mr. Conklin: stipulation that all tents be removed off the property?

Mr. Glover: Yeah. We would, you would agree to a stipulation the tents are gone?

Mr. Magero: Oh yeah, the reason is to eliminate this look

Mr. Matto: and is the addition of the garage the total thing?

Mr. Magero: The addition yes, the addition and the garage yes.

Mr. Matto: oh, the addition and a garage, two things

Mr. Magero: there's two things, yes. One's for the addition on the house and the other one is just to make the garage bigger, yes

Mr. Glover: And the issue appears to be the garage, not the, not the house, is that correct Ted?

Mr. Markut: Um, yes, more, it is just in other parking area if he transfers them down passed the pole you know with, if he sets up areas for those, you know behind the garage or somewhere where it's off, so, I'm just trying to look at it for the convenience of

Mr. Glover: We both can see that there's a pole on this drawing

Mr. Magero: Yes

Mr. Glover: And you don't plan to go anymore beyond that pole?

Mr. Magero: No

Mr. Glover: Okay, that's fine with you?

Mr. Markut: Yes

Mr. Glover: Any other questions from the Board? (no) Is there anyone else in opposition? (no response) Any final questions?

Mr. Conklin: By the looks of this, he's really not going any further than what the non-conformity is existing

Mr. Glover: right, correct

Mr. Conklin: I mean, but just, as long as your house lines are going to be straight

Mr. Magero: Yes

Mr. Conklin: continuation of the house line

Mr. Magero: Yes

Mr. Glover: Any other questions from the Board? (no) Then I'll declare the hearing closed. Thank you.

Mr. Magero: Thank you very much.

Later that evening during the work session the Board, upon motion of Commissioner Cavallaro and seconded by Commissioner Matto, unanimously voted that:

**#1112-3** "In the application of Scott F. Morgero of 95 Meadow Street, Shelton, CT for a certificate of approval for an addition to the rear of the house and to expand the existing garage located on the property of

the applicant at 95 Meadow Street, R-3 zone, and which requires a variance in the minimum setback from the left property line which is also a street line,

The application for a variance is approved.

Inasmuch as the size and shape of this pre-existing non-conforming lot make it impossible to add an addition on property without the need for a variance,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance to the minimum required setback from the left side yard, which is also a street line, from the required 30 ft. to 12 ft. for a 26'x22'x28'H addition to the house, and from 30 ft. to 18 ft. for a 23'x14' one floor expansion to the garage, at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

**This certificate of approval is contingent on the applicant removing the temporary storage tents currently located on the property.**

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

**#1112-4 19 Adams Drive**, Dennis R. Tidrick of 19 Adams Drive, Shelton, CT is seeking to waive Section 24, Schedule B, Standard 9 by varying the setback from the left side yard from 30 ft. to 19 ft. for a 28'x24' addition.

Mr. Glover: Is the applicant here? Good evening sir.

Mr. Tidrick: Good evening. My name is Dennis Tidrick. I live at 19 Adams Drive, Shelton, CT

Mr. Glover: and sir, do you have some pictures for me?

Mr. Tidrick: I do. Pictures of both sides of the house. This is for the certify of owners

Mr. Glover: these are all your abutting neighbors?

Mr. Tidrick: Yes, they are

Mr. Glover: Can you tell us what you want to do and why you can't conform to the zoning regulations?

Mr. Tidrick: We would like to add a master bedroom addition to the house. My wife and I are both getting older and we find that, our existing bedrooms are on the second floor, and so we're trying to get the master bedroom down on the first floor so that we don't have to climb the stairs so much. The only place on the lot that we're able to put this is, is on this left side of the house because the septic system is in the back. Obviously we don't, we can't build on the front of the house. And the, the garages are on the other end of the house, so we're not able to build down there.

Mr. Glover: Along that property line that you're encroaching on, there's a series of trees, evergreen trees

Mr. Tidrick: right

Mr. Glover: Are they going to stay as a buffer or are you taking them down?

Mr. Tidrick: We've, we've taken them down already because I was concerned about the storm

Mr. Glover: Okay

Mr. Tidrick: so we had taken them down and our intention then is that once the, once we get the construction done we're going to put in additional shrubbery along there to give us a buffer between the, see you can see that the trees are down

Mr. Glover: Yeah, okay

Mr. Tidrick: And actually we intend to take, there are three more trees up near the road which we didn't take initially, but having seen what it looks like after we took them down, we're going to take those down too, to give it a much better look. And then our intention is to put some smaller pine trees, evergreens in there, not the white pines again.

Mr. Glover: There's a, a plot plan here that indicates as number 45 for your house

Mr. Tidrick: right, it's lot 45

Mr. Glover: I understand. Next to it is 46. How far away is the house on 46? About?

Mr. Tidrick: It's a fair, well actually here's a picture if that's a help. That's the house on the other lot

Mr. Glover: Okay, that's fine. So it's quite a distance away?

Mr. Tidrick: Yes, it is

Mr. Glover: and those trees where the stumps are on here, that was your property line?

Mr. Tidrick: that was. The trees were on our property

Mr. Glover: okay

Mr. Tidrick: so the property line is actually on the other side of the trees

Mr. Matto: So you're not going to infringe on the property line, is that what you're saying

Mr. Glover: Here, that's the plot plan

Mr. Tidrick: We're, we're moving closer to the property line with the addition

Mr. Matto: Right, but, is it still (unclear)

Mr. Glover: The variance is for 19 feet from their property line, Ralph

Mr. Matto: And that's just the one side

Mr. Glover: That's the one side, yes

Mr. Tidrick: That's correct

Mr. Glover: There's a picture there that shows the stumps where he's cut the trees down and the stumps are his property line and there's a dark colored house that's some distance away. That's the property that he's encroaching on

Mr. Tidrick: that's correct

Mr. Matto: and this second floor is going on top of an existing floor?

Mr. Tidrick: No, no, we're, this is going to be a one story addition that's just going to come out from the existing house. The

Mr. Matto: on the first floor

Mr. Tidrick: on the first floor, that's correct.

Mr. Conklin: It's just going to be an extension of the house as it's shown right there with the roof line

Mr. Tidrick: exact same roof line. We're actually going to step the roof line just a little bit just to um

Mr. Glover: and you say in the back there's a septic system?

Mr. Tidrick: right

Mr. Glover: and then on the left side, or the other side is the driveway

Mr. Tidrick: is the driveway and garage

Mr. Glover: so this is the only appropriate place to put this

Mr. Tidrick: That's correct

Mr. Glover: Alright,

Mr. Conklin: How many bedrooms is the house now?

Mr. Tidrick: The house is currently three bedrooms

Mr. Glover: Do you have to add onto your septic system?

Mr. Tidrick: We do not. I've already been to the Valley Health and gotten all the approval for that already, so

Mr. Matto: And now you're going to have four bedrooms

Mr. Tidrick: That's correct

Mr. Matto: Are you going to have a couple more kids?

Mr. Tidrick: Aw, give me a break

Mr. Glover: alright, anymore questions from the Board? (no) Is there anyone in this room in favor of this application? (yes) Would you come forward please?

Mr. Tidrick: I do have a letter from one of the neighbors, indicating they're

Mr. Glover: Good evening sir.

Mr. Correau: Good evening, my name is Robert Correau, I live at 15 Adams Drive. The boundary line in question divides our two properties

Mr. Glover: Okay, so you're the one in the darker color house that's there

Mr. Correau: I am, yes sir.

Mr. Glover: And are you opposed to this, or are you in favor of it?

Mr. Correau: I'm in favor of it. I had some concerns initially, but I met with Mr. Tidrick and his contractor. We discussed the project and its appearance and the size of it and the fact that there was going to be some new (unclear) evergreens planted to replace, in place of the others and that appears to me to be reasonable and it seems to me that this will have no detrimental effect on either property values or the aesthetic appearance of the neighborhood.

Mr. Glover: Thank you very much. Anyone else in favor? (no response) Is there anyone opposed to this application? (no response) Alright, um, the gentleman said that you were going to, that you had agreed that you will put some trees down the property line when it's done?

Mr. Tidrick: That's correct

Mr. Glover: Would you have a problem if we stipulated that in the approval?

Mr. Tidrick: I would not, no

Mr. Glover: Any other questions from the Board? (no) Alright, then I'll declare the hearing closed. Thank you.

Later that evening during the work session the Board, upon motion by Commissioner Conklin and seconded by Commissioner Cavallaro, unanimously voted that:

**#1112-4** "In the application of Dennis R. Tidrick of 19 Adams Drive, Shelton, CT for a certificate of approval for a 28'x24' addition to be located on the property of Linda S. Tidrick at 19 Adams Drive, R-1 zone, and which requires a variance in the minimum setback from the left property line,

The application for a variance is approved.

Inasmuch as it the only place on the property the addition can be placed due to the existence and location of the septic system and garage,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance to the minimum required setback from the left side yard from 30 ft. to 19 ft., at the above is granted (Section 24, Schedule B, Standard 9) in this instance.

**This certificate of approval is contingent on the applicant planting evergreens between his property line and the property line of the neighbor he is encroaching on in order to create a buffer.**

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

**#1012-1 7 Platt Road**, Kids Zone Realty, LLC of 7 Platt Road, Shelton, CT is seeking to waive Section 23, Schedule A, Use Line 6.C to allow a daycare center and Section 33.16.2b to allow a play area within the setback.

During the work session the Board, upon motion by Commissioner Jones and seconded by Commissioner Conklin, unanimously voted to deny the application for a use variance for a daycare center at 7 Platt Road, since no hardship within the purpose and intent of the zoning regulations was demonstrated.

**#912-6 42 Canfield Drive**, Thomas and Mary D'Addario, c/o Atty. Dominick Thomas, of 315 Main Street, Derby, CT are seeking an appeal of decision by the Zoning Enforcement Officer with regard to §24.4.9 by declaring such section illegal and/or that conditions imposed by the Commission with an approval of a certificate of zoning compliance are illegal and not authorized by the Zoning Regulations and/or State statute.

Mr. Glover: Would you give your name and address for the record please?

Mr. D'Addario: Thomas D'Addario, 42 Canfield Drive, Shelton, CT

Mr. Glover: Alright, Mr. D'Addario, this is an appeal so you don't need any pictures, you don't need any placard. What I just handed you is part of the application which is I think Attorney Thomas' argument, that you may want to review for a few minutes. He's supposed to be here and in his absence you've decided to go on, but you may want to read what he, what his thinking is. His thinking may be the same as yours or it may be different.

Mr. D'Addario: I'm aware, I'm aware of his thinking

Mr. Glover: Okay

Mr. D'Addario: And if I can just give you a little bit of background

Mr. Glover: Yes, please

Mr. D'Addario: I put a, a masonry wall in my backyard, 6 feet tall, which apparently was 2 feet taller than zoning regulations and I was unaware of that. I was made aware of it from a complaint from my neighbor about the wall, saying that it, it was a concrete wall and it was very unsightly for them. And at that point, I said I was going to plant some trees and I planted 9 trees along this 60 foot area, and it's not all 60 feet, it kind of grades into the property. So I planted 9 trees. They complained to zoning and I went back and I planted another 9 trees. I went to a zoning hearing and offered to plant some ivy over the top of the, the wall. Keep in mind that this wall is 60 feet from my neighbor's property line and my neighbor has absolutely no trees in their backyard. At the second zoning meeting they had stated that they wanted me to expend \$15,000 in costs to put a, some type of stone veneer on the wall. The wall can hardly be seen the way the trees are now. There's a total of 18 trees that have started to fill in and it's, it's hardly visible. I also asked zoning if they would allow me to put in a solid fence, the plastic, the vinyl fences that you see all over town. I'd put that in front so that it was totally invisible from my neighbor's property and that was turned down. And I think Attorney Thomas' and my opinion is that, from the way the law's written, the City may have the right to look at height and safety issues, but I think from Attorney Thomas' standpoint that the State does not allow the cities to, to dictate the type of veneer that can be used on a wall. I've tried to do everything to appease the neighbors, short of spending \$15,000 to put a brick veneer on it, when I feel that a solid fence is going to accomplish the same purpose, if they don't want to see it. First of all, they can't see it through the trees I planted which have cost me about \$6,000. I was willing to plant the ivy over the top and zoning refused that. They said they didn't want that. And um, I offered to put in a colored chain link fence, pretty much a number of different options. So based on the fact that there was nothing there that would satisfy the zoning board, even though I felt that I was doing everything I could do in good faith, I think the feeling right now from both Dominick's position of the law and mine is that the City really can't dictate the type of finish that we use on a wall. That's it. I was hoping that there would be some kind of resolution to avoid just a lot of wasted time for everybody. And I have a hard time understanding why a solid fence in front of a wall that my neighbor doesn't want to see is unacceptable. I understand that I didn't get proper zoning permit prior to doing it, I wasn't aware of it, but I did get engineering reports stating that the wall is solid and is sound and it's acceptable to, as a structure.

Mr. Glover: Did you give the engineering reports to the Planning and Zoning?

Mr. D'Addario: Yes, I did

Mr. Glover: Okay, so they're aware that it's, that it's structurally sound

Mr. D'Addario: Yes, they are

Mr. Glover: The, you say that it's, approximately 60 feet from the property line?

Mr. D'Addario: Yes

Mr. Glover: so the trees and the, the fence would all be on your property, not on their property

Mr. D'Addario: No, all on my property

Mr. Glover: And because the fence would probably be higher than 6 feet, taller than 6 feet

Mr. D'Addario: The fence?

Mr. Glover: The fence that you would put up, you put the trees up

Mr. D'Addario: The trees are there

Mr. Glover: and then you were talking about, you were also going to put a solid fence up

Mr. D'Addario: right

Mr. Glover: that would be in excess of 6 feet probably?

Mr. D'Addario: yes

Mr. Glover: Alright, so that becomes a structure once it's over 6 feet. As a structure it's required to be 30 feet from the property line, and you're 60 feet from the property line

Mr. D'Addario: right

Mr. Glover: So if the fence went up, you have plenty of room to put a fence, in other words, you can't put a 6 foot fence on your property line. Once it becomes 6 feet tall it becomes, considered a structure and it has to conform to the zoning regulations which say it has to be 30 feet from the property line.

Mr. D'Addario: okay

Mr. Glover: You have the room, according to your testimony, to do that

Mr. D'Addario: the wall tapers in, so there's some area there where the wall is only 18 inches, there's only 18 inches above ground and there's areas where it's 4 feet above ground and then there's areas where it's 6 feet above ground. And I think that the entire wall could be covered with 6 feet or less

**\*\*Attorney Thomas arrived\*\***

Mr. Glover: So if it's only 6 feet above the ground at one point and 18, the average is less than 6 feet

Mr. D'Addario: yes

Atty. Thomas: Attorney Dominick Thomas, finally arriving.

Mr. Glover: We were all done at 8:00.

Atty. Thomas: I was waiting for a rare, unfortunately when you can't control when people want to repeat at the public hearing what they said

Mr. Glover: We have that with attorneys from time to time

Atty. Thomas: Actually, I'm sure Mr. D'Addario, my client, has been explaining to you what he offered, frankly, that's not an issue before this Board. I mean, we attempted to resolve the issue. The issue before this Board, and just so you know, two appeals were filed simultaneously. This is an interpretation of a provision in the zoning regulations. The issue is whether or not it is enforceable, whether or not it's enforceable under the enabling act. With that proviso made before Planning and Zoning by himself before he hired me, and then after he hired me, Mr. D'Addario engaged in discussions to indicate that he was willing to address some of the concerns. Even before he appeared before them he had planted trees. However, the purpose of this appeal relates to the fact, as it says in the appeal, that the regulation that is quoted in the appeal, just so I can quote, get the appropriate regulation, the regulation which is 24.4.9 free standing walls and retaining walls, which at one point, prior to an incident about 3 or 4 years ago, used to just deal with what it was supposed to deal with. Which is the engineering aspects, the safety and public safety aspects of walls. In other words, the Planning and Zoning Commission clearly has the right if you're going to construct a wall, in

this case greater than 4 feet, they want to make sure, as it says in here, that the city engineer and the building official approve it. They don't want you going around building a retaining wall that's going to collapse at some point. We submitted, Mr. D'Addario submitted a report from a structural engineer addressing that issue. However, the aesthetic issue is what caused the problem. And the Commission was presented, and my position is very simple, in this case the way they drafted it, aesthetics are not an issue. They cannot consider aesthetics. Can aesthetics be considered? Yes, in three normal situations, with certain zone change situations, most prominently in Shelton where they have the PDD regulations which they are allowed to do it. Or a special permit, or in a historical village district, which we don't have in Shelton. We don't have historical village districts. So, what was presented to the Board is, this is from Fuller on zoning,

Mr. Conklin: Quick question, while we're at that point

Atty. Thomas: Yes?

Mr. Conklin: This is an R-1 zone, it's not a PDD?

Atty. Thomas: it's an R-1 zone. This is a regular subdivision. It's not a planned development district or anything like that. And as a second thing, the case that's cited in there DeMaria, which is the Supreme Court Case in which, and basically what Fuller says is that aesthetics are not permitted, are not allowed under the enabling statute except in certain circumstances and none of the circumstances apply here. They are, and he cites the DeMaria case, which basically says vague and unidentified aesthetic considerations alone are insufficient to support invocation of police power, in other words, you can't base it. There's good reason for that. And frankly, their reasoning, if you were present at the discussion, their reasoning was obvious. The proposal that was had, I mean the condition that was being appealed, was, "you'll have to put rock facing on it not to exceed \$15,000." The reason that came about, so you understand, is in response and in an attempt to show to the Commission what the costs were, Mr. D'Addario went out and got an estimate to do it properly. Properly meaning, if you take the wall that he has up and you rock face, in other words, use the rock facing you adhere to it, there's no guarantee how long it's going to, it's going to stay there

Mr. Glover: it's going to adhere to it

Atty. Thomas: yeah, it's going to adhere

Mr. Glover: What is the wall made of now?

Atty. Thomas: The cement blocks, the large cement blocks

Mr. Glover: Okay

Atty. Thomas: And the a, what Mr. D'Addario did was go out and go to some, a mason I would assume and the mason said okay, you can build a stone wall, you got to build a stone wall in front of the wall, footings and everything like that, and that was the estimate he gave. The people who are, the neighbors who are complaining came in with this estimate that they found someone who can do rock facing. And I think it was Mr. Panico at one point during the course of the discussion, pointed out well, because there was a discussion of stucco vs. that and the issue was, what happens if three years down the road it starts to peel off. You're not going to require, you can't require a perpetual bond, you can't keep coming back in. That discussion points out why Fuller and the cases say you can't have aesthetics, because some aesthetics are a permanent nature, and in fact in the DeMaria case it was somebody who wanted to put an apartment building up and they didn't like the design of the apartment building and they said we're turning it down for aesthetic reasons. And the Supreme Court said you can't do that, for vague aesthetic reasons. There are ways to do aesthetics, there are ways to do it, but you can't just do it here, you have a normal subdivision. So, theoretically, if you had a subdivision, a five lot subdivision, and the developer decided he or she wanted to use a lot of the stone around there and they built the walls with stone and you came in and bought your house and decided I want red brick, and you put red brick up, theoretically they can go in and say it is not consistent with or harmonize with the surrounding neighborhood. And that is why you don't allow aesthetics because you could have that kind of a situation. So my appeal says basically 24.4.9 it isn't void for the whole thing, it obviously has some legitimate things in there which we addressed, which cites there, that while exceeding 4 feet in height would be allowed subject to the approval of an application for certificate of zoning compliance by the Planning Commission. The required application shall be transmitted to the City Engineer and the Building Official for

review and a report, safety reasons, which we did do. That was submitted as part of the record, there was a structural engineer.

Mr. Matto: How tall is the wall?

Atty. Thomas: I think he was explaining it's 6 feet at some portions

Mr. D'Addario: At the highest point it's 6 feet, but it tapers down

Atty. Thomas: and then it tapers down into the thing. And then again, I mean, again, our effort was to try to resolve it. You know what I mean, with the Commission. And in the course of resolving it, I mean it was pointed out that, it's not called Homestead Suites anymore because it was sold, but the Homestead Suite building, which is the one next to now where Avalon is located, next to it, that's a cement a big cement block wall, same as this, and with the, they put the ivy, some form of ivy on it, and also I think some juniper at the top or something and it's covered, eventually it gets covered. And you know, that's an effort on the part of the homeowner to accommodate. There is really no requirement. In subdivisions, and this was asked of me during the course of it, is well, you mean you can't do anything? Well, there are things you can do, not retrospectively, but prospectively if you have subdivisions, when a developer is applying for subdivisions you have the developer in a certain situation, and you certainly can say to him well I would like, and very often they'll say I would like you to put covenants on the land record. I would like you to put some covenants to require you to do this and they have covenants to protect the size of houses, you know, covenants, that way it's enforceable privately, not by planning and zoning, but it's enforceable privately, and can be done. This situation is really untenable, in that if you were to comply with it, which, you know, we've appealed obviously to you and to the court, we do that so you understand that because of the infamous drum school case and the City of Shelton in which they failed to come to you and instead they went to the court and they got thrown out, but in this situation it's basically our position that the enabling statute 8-2 doesn't authorize it. It's in Fuller, it's in the Supreme Court case and there's a basis for it because if Mr. D'Addario had complied and I pointed this out to someone, and this was a year ago, I mean, not a year ago, this past spring, so, in summer, so if he had done all the work in April, I mean in August and one of those trees behind his house came down in "Sandy" and hit the wall and knocked it off, is there an obligation to re-

Mr. Glover: re-veneer it?

Atty. Thomas: re-veneer it, I mean, you know, how can you, you can't you know,

Mr. Glover: But if these are individual blocks it's very difficult to veneer it anyway

Atty. Thomas: Right. And that was one of the things pointed out, actually by Mr. Panico, because the discussion, until you got to the last meeting the issue of veneer blocks wasn't really that much, there was pointed out there was something like go look at some Home Depot and look at some walls. But actually, Mr. Panico was talking about stuccoing.

Mr. Matto: it was a real question about aesthetics, wasn't it?

Atty. Thomas: Yeah

Mr. Matto: that's it was ugly, an ugly wall

Atty. Thomas: yeah, that they didn't like, this all came about, so you know, this regulation came about because of an issue on Soundview Boulevard. And in that case, the wall, it was a wall built to face the road at an angle

Mr. Glover: Where's Soundview Boulevard?

Atty. Thomas: Uh, down to Brownson

Mr. Matto: Soundview Avenue

Mr. Glover: Soundview Avenue, okay, Soundview Avenue

Atty. Thomas: Yeah, sorry, Soundview Avenue

Mr. Glover: Oh, okay, I know the wall you're talking about

Atty. Thomas: Yeah, there was a wall put up and that's where this issue, that's what resulted in the change to this regulation. You know, I was asked by a Commission member you know, you mean we don't have any authority as to aesthetics in this situation and the answer is no you don't, in a subdivision you don't. Special permit you do, PDD you do. I think you can probably stretch it to say maybe in a PRD, you might be able to do it. In a Planned Residential District you might be able to do it, but certainly not in a, this is a pre-existing regular old R-1 subdivision. And you get into the situation, you can look at this case, and you can't, you have to look at every type of situation to know why, like I said, you can have an argument between brick and stone. You can have an argument between stucco, I mean I, that was one of the reasons why stucco was rejected, cause when Mr. D'Addario went out and looked at it, they decided it would be so difficult to maintain or anything like that, so it fell to the natural thing, you know, in his attempt to accommodate the natural thing would be the best, and did a substantial amount of, he had already planted trees. And then the issue was to do the ivy. And not the springs of ivy, the offer was the 18 – 3 foot of ivy

Mr. Matto: How close are the houses to this wall, would you say?

Mr. D'Addario: My neighbor's house?

Mr. Matto: well, whoever is complaining

Atty. Thomas: 40, 50 yards

Mr. D'Addario: it's 60 feet to their stone wall and whatever the setback is after that, maybe another 40 feet to their house, about 100 feet

Mr. Matto: About 100?

Mr. Cavallaro: What percentage of that wall is covered by the green wall that you planted already?

Mr. D'Addario: All of it

Mr. Cavallaro: So none of it's visible?

Atty. Thomas: Accept at the very end, I mean you can see between, the trees that he planted right away are staggered. They're not in a row, they're sort of staggered, you know there are some one depth, you know a little depth

Mr. Glover: Right, so they'll grow

Atty. Thomas: theoretically, you can see portions of the wall over it, you know a little bit, and you can see portions in between, you know what I mean? Portions of it. But, you know, the whole, the whole point of the proposal again, with me and you know me, ad-nauseum saying to them the regulation doesn't apply, but you know, here's what we'll do. The whole point was in planting the ivy, it wouldn't mean the ivy would have to, it'd eventually cover the whole wall, but the whole point was just to cover the top because it's really only the top

Mr. Conklin: Yeah, well, eventually those trees would grow to a substantial height to

Atty. Thomas: Right, yeah

Mr. Conklin: to kind of

Mr. D'Addario: Right now where the, where the trees peak, you see maybe about 18 inches at the top of the tree and as they grow and fill in, you're right, that would disappear.

Atty. Thomas: Did you lose any in the storm

Mr. D'Addario: No

Mr. Glover: How did they, how did they determine the height of the wall? If it's 6 feet at one point and 18 inches at the other, do you take the mean?

Atty. Thomas: it's whatever the, no, it's whatever the tall, they go by whatever the tallest point of the wall is. And for that purpose what they're going by, again, that's the legitimate reason that they have, you know what I mean? In other words, if that wall had, actually it exceeds 4 feet, you know what I mean? That's it, any portion of a wall that exceeds 4 feet you gotta go, it could be 2 feet at this end, but if it gets to over 4 feet, you've gotta have somebody say to you, you know you've got to have some verification that that wall is built properly, so it doesn't come tumbling down.

Mr. Glover: Which you have

Atty. Thomas: yeah which we did

Mr. Glover: because you have an engineering report that proves that

Atty. Thomas: Yeah, yeah, there was engineering report in the case, I believe, in the appeal to the, oh he didn't include it because I think it was

Mr. Glover: Is this, is this now active in the Superior Court, or just dormant?

Atty. Thomas: Well, the discussion that Attorney Welch and I had was whether or not we could even agree that it would be futile to hear or you know what I mean? In other words, it would be, and we decided that it really does raise the issue, exhaustion of administrative remedies (unclear) raises issue of subsequent jurisdiction. So he said go, you know, do the ZBA appeal, we'll leave the other one, you know, we're not pushing it. In other words, I'm not, he delivered the record and I'd have to do some motions to correct the record, you know there's a few things that are not in here. And once that's done, it would go to a briefing schedule, but the whole point is to wait and see what happens with this Board.

Mr. Glover: And after this Board, either one of you would go to the Supreme Court, Superior Court if you didn't like the decision

Atty. Thomas: the Planning and Zoning Commission could, I've been encouraging them to sit down, but they haven't sat down.

Mr. Glover: well, they haven't appeared to represent themselves at the Zoning Board of Appeals appeal

Atty. Thomas: And I want you to know, by the way, because I raised that issue with Attorney Welch, and I went to, I had to file a variance for your next meeting and I went to Mr. Schultz and I said is somebody coming tonight? You know, I don't want to go there and then have you say to me we didn't know you were going forward, you know, I'm going forward, so is somebody coming, are you coming? Is somebody from the committee and he said no. I told Rick Schultz, I'm going to be there and in fact I even told him if he decided to come, I'm going to probably be a little late, I was a little later than I thought I was going to be

Mr. Glover: Alright, so your issue is whether they have the authority to make you veneer the wall

Atty. Thomas: Whether that portion of the regulation that's interpreted for aesthetics, specifically, do they have the authority to have him veneer the wall, specifically, does 24.4.9 is that portion of the regulation that deals with

Mr. Glover: If you know, they were here I'd ask them, but if you know, how did they arrive at \$15,000, what if

Atty. Thomas: The complainant, in response to what we had submitted, again not realizing that what we had submitted, there were several things we submitted. Number 1 was to do a stone wall, because again the mason said it's ridiculous to veneer the wall. It's ridiculous to do that with these blocks.

Mr. Glover: right

Atty. Thomas: So he said okay, you'd have to construct a stone wall, you know, a thin one, but a stone wall, you know, and you have to have footings

Mr. Glover: right

Atty. Thomas: and it's 45,000. The 6 to 8, 9 foot length of ivy, the real long ones, they were surprisingly expensive to do the whole thing, it was like \$30,000. Then it fell down to, there was a

Mr. D'Addario: 5 or 6 with the smaller ones

Atty. Thomas: Yeah, 5 or 6 with the smaller ivy and then you did get a stucco in there, somebody gave you an estimate I think on stuccoing, covering it with, covering each block separately with some sort of a stucco and I think that was in the 10's

Mr. D'Addario: Yeah, it was about \$10,000

Atty. Thomas: about \$10,000 range. So we provided to them to show to them that, we were offering to do something, we had already done \$5-6,000 worth of stuff, even though it was not called for. I mean, again, my position being the bad guy, was basically to say to them legally under your regulations, because your regulation isn't legal, he has the right to simply put up this wall and do it. You know, and you could address things in the future, but that's what he had the right to do. However, the effort was made to a, to a, to put the trees up.

Mr. Conklin: The question of the wording of the statute, our statute as it stands now, making aesthetically pleasing, does it say it has to be faced, or just aesthetic

Atty. Thomas: No, the language said, the required setback (unclear) there are two sentences they added, said wall materials designed and construction shall be consistent with and harmonize, well actually I should tell you what they did was they have the first two sentences deal with walls under 4 feet, then they have walls over 4 feet. Okay? So, the walls under 4 feet, there's only two sentences and it contains this sentence, said wall materials and design, said wall materials, design and construction shall be consistent with and harmonize with the surrounding neighborhood. There is nothing in that section that deals with the city engineer or the building official because the wall's under 4 feet. And over 4 feet, you have the sentence about the building official and getting a report, and then it says, in reviewing the design, the Commission may require the exterior materials and design treatment of those portions which are visible from any street or any other lot, to be consistent with and harmonize with the surrounding neighborhood. So, basically, what they're saying is if you have a wall that faces open space, I would assume, you don't have to, you could put whatever you want. If you have a wall that is visible, and in this case it would be visible when the leaves fall off the trees

Mr. Glover: right

Atty. Thomas: because there is a, there is a

Mr. Glover: Unless he planted evergreen trees

Atty. Thomas: Unless he planted evergreen trees

Mr. Glover: Then it wouldn't be visible anymore

Atty. Thomas: That's once it goes

Mr. Glover: Then it wouldn't be visible

Mr. D'Addario: Well, if I put a solid stockade fence around it, it wouldn't be visible

Atty. Thomas: and nobody wanted to go, nobody wanted to

Mr. Cavallaro: The greenery you put in is not green year round?

Atty. Thomas: No, no, no, there is, besides his, his greenery, what I'm saying at the 60 foot, you know, at the property line there's a swale, there is a row of trees

Mr. Cavallaro: But eventually they'll see all green if those leaves fall off the tree and

Atty. Thomas: I would say eventually they would

Mr. Cavallaro: I really think what they're referring to with the aesthetically appealing is that the blocks that I think you're talking about, they're available in a stamped version from the manufacturer that are already aesthetically appealing and they're not going to fall part.

Atty. Thomas: yeah

Mr. Cavallaro: So I think that's what they're referencing to when they say aesthetically appealing

Atty. Thomas: Right, but that's the whole reason and I pointed out to them that when they were having this discussion about it, that is why the law says you can't do aesthetics. Zoning is a statutory enabled action, you're controlling someone's property, okay? And you are restricting the common law which is you can do whatever you want with your property, okay? So you're restricting it and it's best to restrict it with standards, you know specific standards. To say okay fine, this is, these are distances or these are uses that you can have there, but when you get into aesthetics, you get into personal preference

Mr. Glover: right

Atty. Thomas: and while you do have aesthetics and I, you know, certainly in PDD's I've gone through aesthetics numerous times. I've walked into this with carrying a piece of dry bit, you know what I mean, for the clients saying this is what it's going to look like, or this is the stone face. I've gotten myself in trouble with the Board when my client put plastic brick instead of real brick up one time, because he was trying to cut costs. So, I know what it deals with. In a regular subdivision, there's just no ability to do it because you could go crazy with the aesthetic issue

Mr. Glover: The, the um, requirement that the installation of a stone veneer to the concrete wall not to exceed \$15,000

Atty. Thomas: That's from the neighbor's, the neighbors walked in with a, I asked them if

Mr. Glover: I understand, but to play what if, what if to cover the entire wall is \$16,000, do we stop at 15?

Atty. Thomas: Yeah, I guess

Mr. Glover: I mean, never mind the aesthetics of it, you're putting an amount that he's got to, he can't spend more, he can spend less. So how do you enforce, you've got a wall that's 60 feet long and it's going to cost more than \$15,000, but well the regulation says you can't spend more than \$15,000

Atty. Thomas: They based it on the fact that this fellow gave, certainly Tom could've gone to this fellow who gave the estimate to them

Mr. Glover: Uh huh, as long as he went right away, it didn't inflate and the weather didn't change, and, but

Mr. Matto: Why did you build the wall to start with?

Mr. D'Addario: To gain an extra 15 feet in my backyard

Mr. Matto: to make the yard bigger

Mr. Glover: So at this, at this point there are 18 trees planted

Mr. D'Addario: Yes, 18 trees

Mr. Glover: And they're staggered, so that they allow, shield the wall

Mr. D'Addario: They are, these trees were 6 feet tall, 6-7 feet tall when I bought them, so they were a small fortune to buy them.

Mr. Glover: Uh huh

Mr. D'Addario: And they were staggered, I would say they're approximately 36 inches apart from the base

Atty. Thomas: This is the record from the, this is my only copy so I can't give this up, but this is part of the zoning record so it's technically part of yours. I think Rick and Tom have got to learn that you can generate color photographs, it makes it a lot easier to see it. But these are just some black and white photographs in here and (unclear) and get it a little bit, Now remember, this is from the spring time.

Mr. Glover: And if it were color you might be able to see those blocks better back there

Mr. Cavallaro: Does the balance of your property, the 60 feet to the neighbor, does that continue to go down?

Atty. Thomas: Yeah

Mr. D'Addario: it goes down

Atty. Thomas: It goes down, and in fact I was surprised when I got there, the area is well worn. It turns out the other neighbor, the kids use it with their dirt bikes and their ATV's

Mr. D'Addario: They put a little track behind my house, yeah

Atty. Thomas: Not the neighbor that complained. The neighbor as you're facing Tom's house to the left, their property sort of ends, you know, there's a portion of Tom's property that he doesn't use, so they started to use it for the dirt bikes

Mr. Glover: So at some point nature's going to cover the wall

Atty. Thomas: At some point

Mr. D'Addario: And we were willing to help it naturally with some ivy or unnaturally with some fence, but

Atty. Thomas: reasonable

Mr. Conklin: your neighbor's property is also at that lower level, they'd be looking , they're looking up at this?

Mr. D'Addario: they're looking up

Atty. Thomas: Yeah, yeah, they're

Mr. Conklin: so in other words, actually, the trees, even though if you were looking straight, they're actually covering more of the wall

Mr. D'Addario: correct

Atty. Thomas: And I don't want to tell you, I don't want to give you the wrong impression, but they're actually down, they go, it slopes down from the wall to where the (unclear)the row of the deciduous trees are and then it slopes gently up to their house.

\*\*A couple conversations going on at once\*\*

Clerk: there are two talking at once, I'm not going to get it all

Mr. Glover: Time out, guys, guys, gentlemen?

Atty. Thomas: Tom, Tom, you've got to, you're not getting picked up on the tape

Clerk: There are two conversations

Mr. Glover: Yeah, let, let Dominick finish what he was saying and then you can ask your question and Tom can answer it

Atty. Thomas: I clarified it, it was just, you know, it goes down pretty good, it goes down to the deciduous row of trees and then probably 40 feet gently sloping back up to the house

Mr. Glover: Are you okay with that?

Clerk: Uh huh

Mr. Glover: Okay, now, what was your question?

Mr. Cavallaro: was where is the wall in the picture and I thought I was talking before Dominick, but that's

Mr. Glover: That's alright, it's just we can't hear everybody talk at once

Mr. D'Addario: This is the wall, and then it steps up here and this is where it gets to the 6 foot level.

Mr. Glover: Because the topography dips

Mr. D'Addario: yes

Atty. Thomas: and I didn't bring my pictures simply because, simply because the issue here is whether or not the regulation even

Mr. Matto: So the wall is there, right? The wall is there

Mr. D'Addario: The wall is there

Mr. Matto: So, what's the problem, it's (unclear) and is somebody trying to force you to knock it down or something?

Atty. Thomas: No, they're trying to force us to put \$15,000 worth of rock veneer

Mr. Conklin: So the wall is completely conforming except for the height and at this point (unclear) you got the engineering

Atty. Thomas: We got the engineering thing. In fact, they issued, you notice we're appealing, they approved the certificate of zoning compliance. We're appeal a condition of the approval. So they, they did approve the certificate of zoning compliance but then they put this condition on it that we had to, you know, to be honest, they were sitting on these same chairs and until the last two minutes everybody thought that what they were going to do is do the, the ivy

Mr. Glover: trees

Atty. Thomas: No, no, the trees were already there

Mr. Glover: okay

Atty. Thomas: The trees were already there. They had a lengthy discussion and this was the best, the natural way to go would be the ivy. And everybody kept referring to the Homestead Suites situation, that

that's what it would eventually look like, and I mean, there was some discussion of what happens if it dies and everything like that. And I pointed out well that that's the problem with the (unclear). You can't say to a homeowner you want to put a wall up, put up a perpetual bond, you know, to make sure it stays that way forever. You can't. I mean, you have to do things before it happens. You know, and you could do it by a caveat. I mean you go to a developer and you say I want you to put a, a, either a caveat on the land records or a restricted covenant requiring that all walls be of such a nature.

Mr. Glover: So, um, specifically, your appeal is, does he have to put veneer on the wall, the aesthetics

Atty. Thomas: No, the appeal would be, is the condition legal, is the, first of all is the language in 24.4.9 relating, that I've quoted in there, related to aesthetics, is that within the enabling acts. And even if it is, you know, I shouldn't say even if it is, if it's not, then how can they put a condition on that requires you do something aesthetic. If you send it, if you do it and send it back to them and they were to put a condition on that he hang the ivy, okay, the 3 foot ivy, I believe that condition is still illegal but we may not appeal it

Mr. Glover: I understand. So, in order to do this, we really have to have a legal definition, or legal advice on that regulation

Atty. Thomas: Yeah, if you wanted to, you'd have to, what I'm saying to you is when you look at Fuller and when you look at the case law, when you look at the areas where you can have aesthetics, special permit, zone change, village district, historic district, when you have that you can have it. In the situation of a regular subdivision, you can't just say when you put up a wall it has to be comparable with the neighborhood.

Mr. Cavallaro: But zoning could've denied the wall in the first place

Atty. Thomas: No

Mr. Cavallaro: No?

Atty. Thomas: No. He has the right to put a wall up. I mean, you have the right to do what you want on your property

Mr. Glover: As long it's, as long as he maintains the setbacks

Atty. Thomas: Yeah, well

Mr. Glover: which it does

Atty. Thomas: maintains the setbacks and is safe. They do have the right to say to you if you're going to put up a wall over 6 feet, you got to come in here with a, a letter from a structural engineer or some engineer to say that that wall is properly constructed.

Mr. Cavallaro: and you've done it

Atty. Thomas: Yeah, we did that, that's not an issue, that's why they approved

Mr. Glover: And you notified the zoning office that we were going forward tonight

Atty. Thomas: I notified them, I notified Tom, Attorney Welch and then I notified Rick Schultz

Mr. Glover: And the only legal authority in this room tonight is you

Atty. Thomas: So to speak

Mr. Glover: But the only opinion we have

Atty. Thomas: is mine

Mr. Glover: there's nobody to refute your opinion

Atty. Thomas: I specifically said to Attorney Welch, are you going to be, you know, because in these situations they often choose another counsel. I mean, far be it for me to guess what Planning and Zoning is doing. Are they dropping back 15 and punting and hoping you guys will bail them out? I really don't know.

Mr. Glover: Yeah, well, the point is that they're not being sandbagged, they knew that this was going forward

Atty. Thomas: Oh, they knew

Mr. Glover: they knew this was going forward, and

Atty. Thomas: I certainly can't communicate directly with the Commission on this, because, so I have to go through Attorney Welch and I did speak with Rick Schultz

Mr. Glover: I understand

Mr. Cavallaro: And they certainly have set a precedent in the past of not showing up

Mr. Glover: for appeals

Mr. Cavallaro: Yeah

Mr. Glover: So

Mr. D'Addario: I don't know where this is at this point, I'm a little new at this, but if this is just hearing back, if there's a matter of me putting a wall up to hide it,

Atty. Thomas: No, no, no

Mr. D'Addario: Okay

Atty. Thomas: they can't, this Board, if you were here for a variance, this Board could put conditions on the variance. You're not here for a variance, you're here for an appeal, so this Board could say, you know the condition, we find the condition to be illegal. We find the regulation to be improper, it's aesthetics, and therefore if the regulation is improper, we find the condition to be illegal. And of course I have to say, there is two conditions that are, in the appeal. The facing of the wall and the one year guarantee

Mr. Glover: On the trees

Atty. Thomas: on the trees. I did appeal them both because they're both aesthetic issues. Again, the issue becomes, if you get into aesthetics, how far out is your reach. Again, can they do that? Can they do the one year requirement? Yes, under special permit, you know, PDD and all that, they all can do that.

Mr. Glover: But it's not an unreasonable request to warranty the trees for a year

Atty. Thomas: right

Mr. Glover: I mean, the purpose of the trees is to cover the wall. And if that's what we're going to use to cover the wall, then it's not unreasonable to say alright, if they die within a year you've got to replant a tree

Atty. Thomas: And the problem that they have with the regulation, it really has no basis

Mr. Glover: I understand

Atty. Thomas: so when you're doing that, okay, and you don't want to roll the dice with your Board or a court as to whether or not the whole regulation's got to go down, and you're going to be stuck with mafia block walls and (unclear) can imagine, I mean all over town, I mean I'm sure if Mr. D'Addario was doing this in the front of his house, it would be a, you know, a stone, you know, a stone wall, you know a whatever you call it, a cultured stone wall or

Mr. Glover: Don't go there

Atty. Thomas: but, no, that's, that's the realistic way it happened. People have a right to work with their own property and there's no restrictions on it. If this were to go back, if you were to act and you were to turn it down, then the Commission has to decide, and actually it renders my other appeal moot.

Mr. Glover: I would think that if this were in Mr. D'Addario's front yard, he would probably put the same blocks and he would cover it with ivy or something to make it look nice from his yard, so that it would be equally looking nice from his neighbor's yard. I would think that he would be considering his view as much as he's considering his neighbor's view, so I doubt that he'd build a stone wall in front of his house differently

Atty. Thomas: When this was constructed at the time it was, there were still leaves on the trees, you couldn't see the neighbor's house.

Mr. Glover: right

Atty. Thomas: But anyway,

Mr. Glover: to get back to the bottom, you didn't realize you had to have permission, you just thought you were putting up a wall

Mr. D'Addario: yes

Atty. Thomas: If you were to turn it down, and you can't impose conditions, the Planning and Zoning Commission would then have to consider what it wanted to do. May be at that point it would sit down and resolve the issue

Mr. Matto: Planning and Zoning Commission listened to a lady

Mr. Glover: Don't go there Ralph, you're getting dangerous now, Ralph

Mr. Matto: listened to a lady that said they built the, a wall was built, they didn't say anything to anybody and it's an ugly wall. The land was sloped nice and now his lot became level and there's this ugly wall. And the wife, the lady, the wife wasn't my wife,

Atty. Thomas: I was there

Mr. Matto: and I'm just telling you that's what, I overheard that

Atty. Thomas: But anyway at some point, the Commission would have to decide, if you decided to do that, the Commission would have to decide whether to sit down and discuss it, or whether to appeal it, but our appeal would be rendered moot.

Mr. Glover: Alright, does the Board have any other questions for either one of these gentlemen?

Mr. Conklin: It's the 8-2 general statutes that are the enabling regulations from the, to the zoning, Planning and Zoning agency

Atty. Thomas: that's the statute that enables them to pass regulations and like I said, you will find cases, a substantial number of cases in 8-2 it's what authorizes the Planning and Zoning Commission to permit uses by what they call special permit or special exceptions. When you have that they have the power to engage in aesthetics because they have the power to consider property values and other things. When you're doing, in a subdivision it's a matter of right. A subdivision is a planning act, it's a matter of right. So in a normal subdivision, you couldn't put aesthetics, you couldn't even put aesthetic conditions on the approval. You couldn't do it, however, so what they do in a lot of areas if you want, if you want to protect an area, let's say for instance, areas around Huntington center and I know they've considered this, is turn that into an, either a historic district or village district. Once you put a village district zone on it, which has been permitted in a

different section other than 8-2, then you can start, you know, then you can start saying okay fine, everything's going to be like this, this is the design tenant we're going to use, and everything like that.

Mr. Conklin: I'm not sure if this applies, but have any of your neighbor's put pools in and have to do a similar things to their backyard?

Mr. D'Addario: No

Atty. Thomas: Well, you wouldn't know in the backyard if they did it

Mr. D'Addario: Well, my next door neighbor

Atty. Thomas: Yeah, your next door neighbor, but I mean there are other, as you drive up on the other side of the street, there are properties that slope the other way and you have to fill them (unclear)

Mr. Cavallaro: (unclear)

Mr. Conklin: So there's no way to determine what is in harmony with the neighborhood or aesthetically pleasing, or aesthetic with the rest of the neighborhood then, except for concrete foundations, but

Atty. Thomas: And if you had those houses that face open space, you know what I mean, or face water company land for instance, they can do whatever they want

Mr. Glover: Dominick, the , I'm sorry, go ahead

Mr. Cavallaro: That's the point, if you

\*\*\*Tape had to be changed\*\*\*

Mr. Matto: You can do it without asking anybody, provided you're no higher than 6 feet high

Mr. Glover: the fence

Atty. Thomas: the fence

Mr. Glover: that's a wall, it's a retaining wall

Atty. Thomas: but you have to, you are required to put it with the good side out

Mr. Glover: right, but this is a retaining wall, it's not a fence

Mr. Conklin: And you don't need a permit or nothing?

Atty. Thomas: No because chances are

Mr. Glover: That's the fence viewers responsibility

Atty. Thomas: Yeah, but it's also not an engineered

\*\*Several talking at once\*\*

Mr. Glover: Right, it's not a retaining wall

Mr. Matto: Now that his masonry is there, is that right up to the end of your property?

Atty. Thomas: No

Mr. Matto: In other words, (unclear) beyond it?

Atty. Thomas: Yeah

Mr. Matto: What if he puts a 6 foot fence there

Atty. Thomas: That was discussed, but Planning and Zoning did not like that. You understand that Planning and Zoning was not happy with the suggestion. So what was your question?

Ms. Adanti: Do they have the right to not be happy with that? If he decides he wants to put a fence in his yard?

Atty. Thomas: No, but it wouldn't cure the problem. You know what I mean? It wouldn't cure the problem. They wanted something natural we thought, until the last basically 30 seconds, (unclear) we were offering what they wanted

Mr. Matto: You're the fellow that owns all the cars, maybe they're looking to get a cheap car

Mr. Glover: Stop, let's not go there

\*\* several talking at once \*\*

Mr. Glover: Phil, what was your question?

Mr. Cavallaro: I forgot now. If you were to build a house let's say, like is there a slope going on in the back there, and you built your foundation, in theory that foundation could be 7, 8, 9 feet high of concrete wall and that would be perfectly acceptable

Atty. Thomas: Well, but the foundation wouldn't be, that would be, wouldn't be part of, it wouldn't be considered a wall for the purposes of that section

Mr. Cavallaro: No, but the neighbor would be looking at it

Atty. Thomas: your neighbor would be looking at it, you're absolutely right

Mr. Glover: But you have a permit approval at that point too, alright

\*\*several talking at once\*\*

Mr. Glover: Dominick, from here, once this hearing is closed, we have 60 days to render a decision, 65 days to render a decision. In that time period, I'm assuming it can't go forward in the Superior court because you're here

Atty. Thomas: We're not, basically Tom has filed a record, so the next time it comes up there would be a, a briefing schedule set. Tom and I have agreed that until you decide we'll just continue it under the administrative appeal, we're not going to push it. He doesn't want to cause the town any expense and I don't want to cause my client any unnecessary expense, there's no point in doing it

Mr. Cavallaro: How much of the wall, I know you said it varies in height, but how much of the wall is over 6 feet actually exists, I mean, 20 feet of the wall, 10 feet of the wall

Mr. D'Addario: You know, I'm not even sure, it's over 6 feet, just a guess it would probably be about 15 feet maybe, maybe a little bit less

Mr. Cavallaro: (unclear) 4 feet is what the

Mr. Glover: 4 feet

Mr. Cavallaro: 4 feet is where

Mr. D’Addario: probably 25 feet of it

Mr. Cavallaro: 25 feet of it

Mr. D’Addario: about that.

Mr. Glover: Alright, any other questions? (no) Alright then the all important words are I declare the hearing closed.

Atty. Thomas: I thank you for your consideration.

Later that evening during the work session the Board voted to table a decision until the next regularly scheduled meeting.

**Approval of Minutes**

During the work session the Board upon motion by Commissioner Conklin and seconded by Commissioner Cavallaro, unanimously voted to accept the minutes of the October 16, 2012 meeting as submitted by the clerk.

Respectfully submitted,  
Loreen Michalak, Clerk