

Minutes - Shelton Board of Zoning Appeals  
Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.  
Tuesday, January 17, 2017 at 7:30 PM.

- #0117-01      405 Long Hill Avenue, Jack and Josephine A. Gaida of 405 Long Hill Avenue, Shelton, (c/o Atty. Dominick Thomas, 315 Main Street, Derby)**
- #0117-02      554 – 556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton**
- #0117-03      6 Harvard Avenue, Artur and Marta Mierzejewski of 6 Harvard Avenue, Shelton**

Commissioner Edmund Conklin	Good evening ladies and gentlemen and welcome to the January meeting of the Zoning Board of Appeals. I wish everybody a Happy New Year. We meet monthly to consider zoning var--variances of zoning regulations appeals and zoning department decisions and actions. When your application is call please come up to the table and give your name and address. To start the hearing our regulations require that you have placarded your property, that you provide four pictures--one including the placard--and the receipts indicating that you notified your abutting neighbors 10 days in advance of tonight's hearing. If you don't have these, we will reschedule the hearing for the next meeting. When you come in front of this board, you are giving testimony. It is a hearing. If the decision made by this board at the end of the hearing is appealed and taken to the next level, it is the recorded testimony that is presented, and not any member of the board. Our minutes are transcribed verbatim. Two recorders on the table up here can only hear one person speaking at a time. The conversation at all times is between the person who has the floor and the board only. Also, please turn off or mute your cell phones and any conversations that need to be had, please take them out into the hall. Tonight, present are our Commissioner James Oraziotti will be sitting in for Linda Adanti; our clerk, Tina Kelly; myself, Ed Conklin; to my right is Jamie Jones; to his right is Phil Cavallaro, and to his right is Bryan Vasser.
	<b>#0117-01 405 Long Hill Avenue, Jack and Josephine A. Gaida of 405 Long Hill Avenue, Shelton, (c/o Atty. Dominick Thomas, 315 Main Street, Derby)</b>
Comm. Philip Jones	To whom it may concern, the following having applied to the Shelton Board of Zoning Appeals for certificate of approval, the public hearing and such applications will be held on Tuesday January 17 <sup>th</sup> , 2017 at 7:30 p.m., in the hearing room of the Municipal Building, 54 Hill Street, Shelton, CT.  #1. Number 0117-01, 405 Long Hill Avenue, Jack and Josephine A. Guida of 405 Long Hill Avenue of Shelton (% Attorney Dominick Thomas of Derby) for a variance to Article 24 section 24.8.4 to create driveway access through an R-1 residential zone to an IA-2 industrial/commercial building zone.
Attorney Dominick Thomas	Attorney Dominick Thomas, Cohen and Thomas of 315 Main St. Derby, CT representing the applicant. I have for you the certified notices and behind them, by the way, are the pictures of the postings of the property

Comm. E. Conklin	Tell us what you're trying to do and why you can't meet the zoning regulations.
Atty. D. Thomas	Okay, the variance as stated are for variance to Section--Article 24 Section point 8, 24. And so what I've done--couple things that I have first for commission members--this is 28. --the section of 24.8.4 that we are concerned with and the second page is from your scheduled B standards for IA-2 zones and it identifies the setbacks of concern to this, uh, this application. And I know I submitted with the... submitted a plan to highlight the problem with your application. I don't know where--this is a blow-up of the--well, this is actually the sized plan that was submitted with the application to the--you already have...
Tina Kelly	Here you go.
Atty. D. Thomas	Before I get to the rest of the stuff, a little bit of history: this was before you--in maybe 2002, 2003--and the purpose of the variances is that, uh without a variance the property is confiscated, so to speak, because it is, it is, was then and is now the result of a court decision that I will present to you in the IA-2 zone. This property is unique as I will show you in uh, showing you, uh, an assessor's map. In that it was one the properties among many, many, many that was cut, severed in some way by the installation of Route 8, and its current location instead of where it was supposed to be on Bridgeport Avenue.
Comm. E. Conklin	You say confiscated "so to speak." What you mean by "so to speak?"
Atty. D. Thomas	Well, if you--if it's an IA-2 zone, which means you have industrial uses, if you look at the regulation, the regulation says no part of the area required for setback from a residence district boundary line--this is for all industrial districts--shall be used for driveways or off street parking. So, if you can't have a driveway from Long Hill Avenue, which is the only way of access, than you can't have an industrial use. And it's zoned industrial. So, you can't get to it, so you can't use it for anything.
Comm. E. Conklin	Well, that's not for anything. It can be used for anything at all?
Atty. D. Thomas	There is an existing house on it, which is rented, but is a nonconforming use.
Comm. E. Conklin	So, you're saying--
Atty. D. Thomas	Because in the industrial zone, residential uses are not permitted.
Comm. E. Conklin	So, you're saying that if this is not, can't be used for industrial zone, it can't be used for anything else at all... is what you're saying?
Atty. D. Thomas	Other than to continue to use a nonconforming use--that's the only use it has. But if you want to use it as it's zoned, it's,
Comm. E. Conklin	Well, you have a house on it - I'm trying to look at what you're defining as confiscation.
Atty. D. Thomas	If you have, using it as it's zoned for--meaning it's zoned for industrial--without the variance to this regulation, you cannot get access to it. The regulation is

	quite simple; it's one sentence. It just says--
Comm. E. Conklin	But if you were intending to use it as an industrial zone, but it does have other uses, you're saying?
Atty. D. Thomas	No. I'm saying to you it has a pre-existing legal nonconforming use. That's the house that's on it as you will see from the photographs I will show you. But there is an existing house that's on it, but it's a nonconforming use because of the current zoning regulations residential uses, single family, family residential homes are not allowed. In the interest of full disclosure, I will explain to you that we had, we did have a, an application for a PDD, which was withdrawn as the commission was not going to to approve it for a multi-family condominium. There is a current application pending but the client--because of the process, because no application could be filed to the Planning and Zoning commission for industrial buildings, similar to what I've highlighted in yellow on the map until the variance is, and because we have no guarantee that the commission will--that the new application which is filed, uh, with Planning and Zoning--is for six single family homes. But it requires a Planned Development District approval.
Comm. E. Conklin	I'm just trying to make sure I'm understanding that--
Atty. D. Thomas	Yeah
Comm. E. Conklin	--if you, if you're saying we do not grant this variance, we are confiscating the property is what you're--
Atty. D. Thomas	Under the current zoning of IA--
Comm. E. Conklin	--so it's strictly under the current zoning--
Atty. D. Thomas	[Inaudible]
Comm. E. Conklin	Well, it's not confiscation--confiscation of the property, we're either taking the property or we're not taking the property.
Atty. D. Thomas	No, no. You're not taking the property. Confiscation means that without a change to the zoning regulation it cannot be used for what it's zoned for. That's the term confiscation when you're talking variances. You're not talking that you're taking the property, you know what I mean? That would be another action in another court, okay, that would be called inverse condemnation. The purpose here--the use of the term
Comm. E. Conklin	No, I understand what you're saying.
Atty. D. Thomas	Yeah, the use of the term confiscation here means there is no, you--under the current zoning, you cannot use it.
Comm. E. Conklin	So, the definition you're giving is under current zoning.
Atty. D. Thomas	Yeah, under current zoning.

Comm. E. Conklin	All right.
Atty. D. Thomas	<p>So, to indicate, to show you, to follow up even further, you can see this is your G.I.S. map. The, uh, yellow highlight is the uh, subject site. The pink is, as you can see that I've identified, the, uh, is the broad swath (?) of industrial, which is both IA-2 and, IA-2, and R-1 zones. But I did that for another reason also when you look at this picture this way, you can certainly get a good look what Route 8 did to those parcels of land that were along here. Now, eventually the city took Forrest Parkway and put it in and developed those as you are aware to invite industrial buildings. Next to the property, and unfortunately my pink marker covered the building, of course next to the property, to the south of the property is the very large Sikorsky--I think it's a public parts, their parts place, a very large uh, building. So, all of that creates this, certainly, the, fulfills the uniqueness of the property. It is shaped like a very strange looking lollipop with its only access being the 30-foot access to, uh, Long Hill crossroads. And in order to use it, what I've had the engineer do, as you can see from the other plan, is he shows an approximately 18,000 square foot building, uh, and the reason I had him show an 18,000 square foot building, I wanted to make sure I didn't need a variance for any parking within the 50-foot setback, which we do not. We're not asking for it. We're only asking for access. So, what happened? Well, many years ago--10, 12 years ago, whatever it was--we applied for a variance. The variance at that point was turned down. We were in the process of making an appeal to the court when in fact the Planning and Zoning commission decided to try to zone the property residential. It did. The case went to the appellate court of the state of Connecticut and as you can see from the appellate court case, it found that it was spot-zoning for a specific reason, and at that point ordered a remand with direction which was to remove the spot zoning. As a result of which, and I'm, I'm gonna refer you back to the G.I.S. map, 'cause I, approximately, if you look at the yellow, you'll see a blue line coming across sort of there, that's where the zone was. Familiar with, uh, where it existed, we also have that zone line highlighted by the engineer on our plan and that's where the zone line was. So, that's the basis of where we have to compute our 50-foot residential setback and it is that residential setback and through residence zone that we cannot access--that's why we are asking for the variance to access the industrial property, which again borders right on, uh, substantial industrial property. So, we're not inserting it anywhere, and it borders on Route 8. Uh, as per your requirement, and per--I don't know if I have one of these for everybody because I had a little too much on here--this is a set of photographs taken from the center of the, uhm, the uh, taken basically in a circle--let's see, I guess I do have enough--taken in a circle. This first one is looking toward Route 8. The second one is looking towards Sikorsky's. The third one is looking towards Long Hill Avenue, the house that is to the left of the entryway as you enter the property, on the right as you exit. The next one is to the left or the south of the entryway as you're looking out, or to the right as you're coming in, at that property. And the final one is looking generally north, and a little bit, uh, west towards you know, Route 8 would be to your left and it's looking down towards the property. So, once the court case was decided, the property was returned by court edict to its zone of being split by the R-1 and IA-2 zone and uh, the purpose of the variance is to permit the parties, the party, the owner of the property, the applicant herein, to access the property for its intended use. And</p>

	<p>that's why in our, in my application, I also, we had the engineer at least draw the approximate size of the industrial building it would be able to be used on. Now, I will tell you this--and, and I know people will say "Oh my God, look what he's doing: he's filing both applications to threaten P&amp;Z." No, my clients have very much been concerned about the time, timing of it. When they took the first application at the advice of their counsel, me, the first "P" (?) to the application, I said I think we can work it out. They made some reductions. And as a result of it in the end, Planning and Zoning was not interested in, uh, condominiums which was the proposal, on the condominiums. Uh, they had wanted to pursue simultaneously therewith, because they wanted to do something with the property--uh, the, uh, industrial use--and I explained to them that you can't do it until you get a variance. You can't file the site planning in this case because you cannot comply with 24,8.4, uh, 'cause you have to dri--you have a driveway going right through the residential area and right through the residential setback. So, at this point, we have re-tooled the PDD but also, uh, we need to proceed with this because, uhm, if that doesn't go forward, then they want to go forward with their industrial building, and this is the first step that's going to be required. Uh, I would state for the record after a discussion with my client that uh, and I believe that the variance should be granted because I think it's the classic case of a unique property with a unique problem, uhm, from the zoning regulations. So, I think the variance is almost mandated. It's the classic variance. But we would accept a condition on it that if a residential use is approved, the variance, uh C, would be avoided. In other words, their main intent is to try to use it for--they want to use it properly. The main intent is to use it for uh, residential use. You know, and the proposal before the commission is six single-family homes. But, they want to be able to use the property as anybody would, and this is the first step to use it under current zoning regulations. That's about the extend of the...</p>
Comm. E. Conklin	So, six-fam--six-fam--six single-family homes... was there condominium clusters?
Atty. D. Thomas	No. The condominium cluster was larger than that.
Comm. E. Conklin	Okay.
Atty. D. Thomas	And that, it was
Comm. P. Jones	Is the house currently inhabited?
Atty. D. Thomas	I believe it may have a tenant in it. It may have a tenant or caretaker in it. You can see the house, I think, in one of the photos.
Comm. E. Conklin	I see a garage. I'm trying to--looking at this drawing does not where the existing buildings are that are going to be...
Atty. D. Thomas	There's only one. It's right, and it's right here on the Sikorsky side. Yeah, this is Sikorsky.
Comm. P. Jones	Attorney, what is residential zone next to it?

Atty. D. Thomas	R-1.
Comm. P. Jones.	R-1
Atty. D. Thomas	<p>Yeah, most of the lot as you can see from looking at that, even though it's R-1, most of the lots are pre-existing legal nonconforming lots. They're in the neighborhood of, of anywhere from 20,000 to 30,000. And there's a couple of large ones you see, that were also cut by Route 8, you know what I mean, at some point. But then the majority of the lots along here and here. I believe one of these roads is a PRD and the majority of the lots among the lots along this area, they're also R-1, uh, are smaller-sized lots. What was done in zoning and is not done now, very often, is when they laid zones down. They just simply said 200 feet from Long Hill Avenue and that's where they put the zone line. You didn't follow property lines so properties were cut in half. This one, I'll be honest with ya, I haven't gone back to the 70s or 60s to see where this site was, but this site, certainly this site was severed in some fashion by Route 8. And just by looking at it--whether it was just cut short, how it was. What's very interesting that I noticed in going through it and representing this, if you look, if you go, if you look at this map, You see how this parcel has this small, 30-foot entryway. If you go up--even though they don't use it--the Sikorsky parcel has the same thing in between two of the residential lots. And whether or not someone was doing that intentionally way back when, I don't know, but it had, of course the Sikorsky parcel was so large--whether it was consolidated you know by other parcels--it has "farmer john class?" and if we had "farmer john class?" we wouldn't be here.</p>
Comm. P. Jones	And there's no way to access it through the Sikorsky [inaudible]
Atty. D. Thomas	No. That was actually looked at a long time ago. But no.
Comm. E. Conklin	Okay, then what's in red is what you're asking for the variance on in this drawing.
Atty. D. Thomas	Well, and I highlighted on red the area on the entryway and the setback that would be required for drive in to the place. We do not need any parking--all the parking can be.
Comm. E. Conklin	But in that case, you mean that the vehicles would be within the--is it 50 or 40-foot setback of the residential...
Atty. D. Thomas	60.
Comm. E. Conklin	This says 50.
Atty. D. Thomas	Yeah, I put it in the uh...
Comm. E. Conklin	50-foot setback of a residential zone on a commercial property.
Atty. D. Thomas	Industrial
Comm. E. Conklin	Industrial

Atty. D. Thomas	It applies to industrial and RIP zones.
Comm. E. Conklin	So, you, by giving this variance, you couldn't have a driveway right against the property line with parking starting from there.
Atty. D. Thomas	Parking can't start from here. Parking has to--I'm not asking for a variance for parking. All my parking has to be inside here.
Comm. E. Conklin	Okay.
Atty. D. Thomas	I--that's why I had the engineer design it--so that I had to know whether or not I needed to ask for a variance for parking. And the decision of the property owners and the engineer was not to create a larger building--initially there was a 20-something-thousand-square-foot building on the property--but that required too much parking under the parking zoning regulations which would have pushed the parking into thing without going that far.
Comm. E. Conklin	I just wanted to put in the record that you are not looking to do anything other than have access to this property.
Atty. D. Thomas	Nothing other than access.
Comm. E. Conklin	Okay.
Atty. D. Thomas	That's it.
Comm. P. Cavallaro	But this red area can actually be paved and used for access.
Atty. D. Thomas	Access only.
Comm. P. Cavallaro	So, this whole, this isn't necessarily a buffer this is a 50-foot setback, but can be used to access other parts...
Atty. D. Thomas	Yeah, yeah that's the prohibition in there. Now, right at the present time--uh, I don't know if you can see-- a lot of the area is paved now.
Comm. P. Cavallaro	Yeah, I can see that.
Atty. D. Thomas	Yeah, yeah, you can see that yeah. I mean I don't know if you have a really clear--
Comm. E. Conklin	It doesn't show you exactly how close it is to.
Atty. D. Thomas	Well, well, if you look at three, you can see how it fans at the very end of the-- you know what I mean? You see how that fans out?
Comm. P. Jones	I'm trying to get to the--it looks like the left side, the left side
Atty. D. Thomas	The Route 8 side?
Comm. P. Jones	Yeah. Is it wet?

Atty. D. Thomas	There is a stream that runs through there and that's one of the reasons why the building was kept where it is. There's also a detention pond that is--I don't know how much of it would be necessary in the LIP. It's necessary in the, you know, residential that's up to planning and zoning if they approve it. The proposal that's before would be--lot fee owners? with that area being common owners, you know, ...[inaudible]... not to use it. That property was sold by the state to the current property owners as access right-of-way. So, that actually--when the state took, took actually, all the way up.
Comm. E. Conklin	All the way up to the back of the residential properties?
Atty. D. Thomas	No! N,n,n,no.
Comm. E. Conklin	Okay, not quite all of it? Okay.
Atty. D. Thomas	I mean to the, to the toe of the slope.
Comm. E. Conklin	The detention pond was built by the state?
Atty. D. Thomas	No, no, there is no detention pond. That detention pond was left on there by the engineer. It was part of the prior proposal.
Comm. E. Conklin	Okay.
Atty. D. Thomas	It is part of that, but will there be a required detention pond there? Most likely. Will it be that size? I'm not an engineer.
Comm. E. Conklin	Okay. It doesn't exist. Okay. Right, right.
Comm. B. Vasser	In this area here... has there been any discussion as to how far back the paving can be from this point they can be? In other words, how much can they leave as a buffer for landscaping?
Atty. D. Thomas	Okay, I, again, the commission and site planning. Obviously, we're not gonna pave right up to the edge here. I did that only because I was filling in an entire 50-foot--this didn't come out that well, but there--but you can see some of the parking spaces here. So, basically, what you would need is the ability for vehicles to turn, for a fire apparatus to be able to turn. So, I'm pretty sure there's not gonna be any requirement. Now, if you look at photograph--and these are taken in the winter so there's no leaves on them--but if you look at photograph 4--I think, 3 or 4? Four. Going in, uhm, you can see that even in the winter, there is a relatively substantial buffer on the, on the other property--that obviously is not going to be touched. But yes, there is enough room, there's certainly enough room there to create a, a, you know without looking at the size of the turnarounds to create a, you know, whatever it is.
Comm. B. Vasser	What would your plan be? Are you opposed to having the condition that that there be substantial trees and foliage there to help screen?
Atty. D. Thomas	We don't have any problems with that.
Comm. B. Vasser	What about on this side over here?



Atty. D. Thomas	Well we're not, we're cutting out pavement here, but yeah that's not a problem there. You know we're trying to think of a reasonable uh number--they're usually you know within, you know, 5 or 7 feet and you know, you can do pretty good plantings as far as I think you would want. Nobody wants white pines anymore 'cause everybody has found out about the white pines have the tendency to fall over in storms and plus, you know, the other thing about white pines is they lose their buffering capability on the bottom as they grow bigger. But out of variety, whatever suggestion, I don't think my clients would have any problem with that at all.
Comm. P. Cavallaro	So, this property, this is the zoning line right here?
Atty. D. Thomas	Yes.
Comm. P. Cavallaro	So, part of this property is in fact a residential territory.
Atty. D. Thomas	Oh, but that's, if it wasn't I wouldn't have to be here. Because it's in a residential zone, you know what I mean, and because the residential zone extends down, and because we have the buffer, you know what I mean?
Comm. P. Cavallaro	Right, but this, this piece of yellow, is it zoned industrial, or... ?
Atty. D. Thomas	No. That's the, that's the, that, from that point that way on your map, is R-1.
Comm. P. Cavallaro	So, it is a split zone then?
Atty. D. Thomas	It's a split zone.
Comm. P. Cavallaro	Ah-ha.
Comm. B. Vasser	So, it's R-1 all the way to here.
Comm. P. Cavallaro	Because otherwise this entire back lot would be under access rules to have the split zone.
Atty. D. Thomas	Okay. Yeah, that's the split zone. And like I said, that line...
Comm. B. Vasser	So, this building is going to right up against an R-1 zone, right?
Atty. D. Thomas	No, that's not, this is the zone right here.
Comm. B. Vasser	Oh, oh.
Atty. D. Thomas	The R-1 zone line is right here.
Comm. B. Vasser	Okay, this is R-1.
Atty. D. Thomas	This is, this is the 50-foot setback. This is the 50-foot setback.
Comm. B. Vasser	Oh okay, alright.
Atty. D. Thomas	So, the building is complying with the 50-foot setback. Okay?

Comm. B. Vasser	I see.
Comm. E. Conklin	It's sort of confusing going from this one to this one--
Atty. D. Thomas	Well, yeah
Comm. E. Conklin	--because there's no lot line on this drawing to show where this house is. So, what you're saying is this somewhere--the actual property line is somewhere up here?
Atty. D. Thomas	The property line, yes, the property line is somewhere up here.
Comm. E. Conklin	Okay.
Atty. D. Thomas	In fact, the property line is—this is this property line...
Comm. E. Conklin	But this one steps down...
Atty. D. Thomas	Yeah, you can see this one is a little.
Comm. E. Conklin	So, this one right now does look like this is the property line and I'm trying to look at this dotted line he has through here...
Atty. D. Thomas	Yeah, you can't go by, you can't go by this one. This may very well be at the back of the property line or very close to it.
Comm. E. Conklin	Something doesn't seem--between these two maps, if this is the Connecticut GIS...
Atty. D. Thomas	No, this is, yeah, this is the city of Shelton GIS assessor's map. You cannot rely on it for accuracy of any dimensions or anything like that.
Comm. P. Cavallaro	This is the piece that's residential.
Comm. E. Conklin	Well, there's a question. He's saying the line is here; the GIS map is saying the line is back here.
Atty. D. Thomas	No, that's not the GIS map, that's Dominick.
Comm. E. Conklin	Oh, you drew this line?
Atty. D. Thomas	Yeah, [laughter] I drew that line.
Comm. E. Conklin	Gotcha.
Atty. D. Thomas	Yeah, no, that's Dominick. I was just trying to show...
Comm. E. Conklin	Then this shouldn't say GIS because then you're.
Atty. D. Thomas	Right, right.
Comm. E. Conklin	Okay. All right you drew up that little line. That's why I'm trying to figure out what relates to which--because this drop here, if you're saying that it is on the

	property line is...
Atty. D. Thomas	This is the property line. This is the house as you're looking out.
Comm. E. Conklin	Right.
Atty. D. Thomas	This is the house on, uh, picture three, photo three.
Comm. E. Conklin	Okay.
Atty. D. Thomas	That's the house on photo three. And as you can see on the assessor's map, it appears that the land--the lot line for the house on photo, uh, four is slightly farther back.
Comm. E. Conklin	Yeah, that's why it does set back. Okay.
Comm. P. Cavallaro	But this is their property, right?
Atty. D. Thomas	Yep, but we're not proposing...
Comm. E. Conklin	That's the only residential section here. If I went by this map, it shows that the line is somewhere down here which is not correct.
Comm. P. Jones	No.
Atty. D. Thomas	Yeah, yeah, this line, this property line is probably somewhere right in here. Eh, it's a little deeper, slightly deeper.
Comm. E. Conklin	It steps down.
Atty. D. Thomas	It's slightly deeper. I don't think it goes all the way down to zone right there.
Comm. P. Cavallaro	And you're saying P&Z isn't interested in putting residential?
Atty. D. Thomas	Well, we have another application. This one, we've gone back to a single family not multi--
Comm. B. Vasser	What is that going to be voted...?
Atty. D. Thomas	Uh, they are, on Thursday they will accept and set a public hearing date. So, my guess is...
Comm. B. Vasser	Do you know how many days?
Atty. D. Thomas	Oh, they're probably have a public hearing date in February, but I'm not--they have 65 days to set a public hearing date, so they'll probably set it sometime in February, and then they have 35 days to complete the public hearing and 65 days to make a decision.
Comm. B. Vasser	Is that city or state?
Atty. D. Thomas	Huh?

Comm. B. Vasser	Is that city regulations?
Atty. D. Thomas	That's the regulation for the planning and development district.
Comm. P. Cavallaro	To me, this would be a moot point if it just went residential.
Atty. D. Thomas	It very substantially could be.
Comm. P. Cavallaro	So, why the exercise?
Atty. D. Thomas	Because the timing-wise, they don't want to have to--then they'd have to wait until they go through the whole zoning process, and they'd have to start this all again from scratch. They want to be able to do something with the property. So, we're doing this now so that if, in fact, it is not approved we can file the application to the site planner. Because this that--once the variance is granted, that is not a, it's a site plan [inaudible]. And their intention, I'll be very honest with you; their intention is not anything high intensity or anything. It's a welding shop; they have some interest in carpentry. You know, people, a lot of people, businesses are picking up now and they're looking for small space, and the goal here is to create small space, not one big, you know two or three small spaces.
Comm. E. Conklin	Any more questions...Jim?
Comm. J. Oraziotti	No, I'm good.
Comm. E. Conklin	You guys got any more questions at the moment?
Comm. B. Vasser	No.
Comm. E. Conklin	Okay. All right. You can have a seat for a minute and we'll see what's going on. Okay, I'd like to hear anybody who's in favor of the application. Is there anybody in favor of this application? All right, is anybody opposed to this application? Please come to the table. Yes, up here please.
Attorney Alan Tyma	Atty. Dominick Thomas and I have been around this, uh, track, but not with you guys. For the record, Attorney Alan Tyma, Ryan and Tyma across the street at 231 Coram Avenue. Over the years, I always used to have the pleasure of--among other things--representing...
Tina Kelly	Excuse me, could you spell "Tyma."
Atty. A. Tyma	T, Y, M, A.
Tina Kelly	Perfect. Thank you.
Atty. A. Tyma	And I don't want to preach to the choir, but I have to make a record, so if you'll just bear with me a little bit. I represent Fitols and the Fitols are abutters at 401 Long Hill Avenue. I want to preface my remarks by saying that Mr. Thomas is entirely correct to the extent that there is another application pending which is, I guess, going to be accepted at the next P&Z-and set up for a public hearing--I understand that is going to be in March, sometime. And that is to make a

residential use. There was a prior application, which he commented on, for condominium use that had gone through a couple of public hearings. I was at those public hearings. Eventually, it was withdrawn. And so, if you note, by looking at all the information you have here, it is, Commissioner Conklin, a single-family area. So, that, my client, and I'm sure you'll hear from others within the neighborhood, that if there's going--if there is going to be any other development of that, it ought to be in the nature of single family homes. The application that's pending, which would be for a new PDD--Planned Development District--is for 6 of those homes. And I'll point out that that's going to be an exercise at some later date for a different board, uh, but that obviously is about double the amount that would be allowable in that particular area, for a variety of reasons. So, what I want to comment on initially is because that application's there, you're asking for a change of zone, you're asking for a change of use, as Mr. Thomas has pointed out--you obviously can't put residential in an industrial zone--and the other thing you're asking for is about double the amount that might be permitted off a normal 30-foot right-of-way of a rear lot based upon the full area. There are some other issues that weren't brought up in front of you, may have been brought up by other people, and it have to do with how that lot was developed because a good portion of it was bought from the state a long time ago at a very inexpensive price, uh, and you'll find out that a lot of it had to do with the fact that it was not deemed to really be developable. There's also been a lot of in-filling of the property and I'm sure Mr. Thomas will agree that there's been no permits ever pulled on the property, and that in-fill has resulted in--we don't know them--under surface conditions, sub-surface conditions, but I'm sure when it gets to the P&Z for the residential use, someone's going to require test boards to be sure that it's available and useful for that particular purpose. None of those are really your bailiwick. Your bailiwick is can we vary the zoning ordinance because we have a legislative fiat which says it's now an industrial zone and so therefore, is there anything that would be deemed confiscatory under the case law of the state of Connecticut. And so your regs. under, again, to make the record 4.2.3, give you an opportunity, you have to find two things. One is that the literal enforcement of the regs. would result in exceptional difficulty or unusual hardship and you have to decide that the utilization will be consistent with the plan of conservation and development. So, those are the two findings you have to make. There's a recent case that came down within the last couple of years, I just want to put it on the record, because it deals with a lot of this, and I'm sure Mr. Thomas knows the judge. This is an appellate court decision just like the one he gave to you. I'm going to recite it to you. It's called *Anthony Verrillo* versus the Zoning Board of Appeals of the town of Branford. It's at the appellate court March 10th of 2015. The number is AC 36196. It's a fairly extensive case. I'm not expecting you to have to read it, but I want to recite from it, just some of the aspects because this is the most recent case. It hasn't been overruled, and it dealt with, interestingly enough, a residence that was nonconforming, in that case, a residential zone, which the applicants wanted to expand. It was a two-story residence. The setbacks before there were zoning regs. was built before '56 in Branford--zoning regs. came into effect in '56 and the house itself was very close to the property lines. So, the question is, would they allow him to built a third story, and still use the footprint of what was going on there, and reconfigure it so that it would be most useful. Because it was a commendable way of trying to use an

	<p>existing residence. And so, throughout they talked about the fact that they were trying to make this a compelling use. This was something that made a lot of sense; it was very reasonable to use. And what the court talked about was about the variance powers and they said when you're looking for a variance, the idea of difficulty or hardship means it has to be a practical confiscation that has to occur. And it has to prevent any beneficial use of the land. So, one of the questions was well, we're going to make it look better, so isn't that enough? And there is a case, and this is not what you're being presented here, which is a new structure on a vacant lot. What we have--as you've been told--is an existing structure, whether it's being rented or not, it is--and I agree with Mr. Thomas--it is a presently, currently, noncompliant, but appropriate when it was built as a use. And so, they can rent that, and frankly, unless they can get some additional way to demonstrate that there is no utilization of the property, the idea that it may be zoned industrial with a pre-existing, nonconforming use does not give him, from my study of the law, an opportunity to prove difficulty or unusual hardship, exceptional difficulty, unusual hardship which is the standard that you have to use.</p>
Comm. E. Conklin	It is not complete confiscation of the property?
Atty. A. Tyma	<p>It is not a confiscation and I'm going to read you some more language if you don't mind because it is very important. A variance is not a tool of convenience, but one of necessity. They're only to be granted when the strict application of the regs. results in it peculiarly affecting the property, but to the level where you're confiscating the property and the current, nonconforming use demonstrates that there is no confiscation of the property. And he has the right and this court talks about it. Uh, a fundamental distinction between the legislative function of the zoning commission and the administrative and quasi-judicial function that the Zoning Board of Appeals board serves. The zoning commission acts as the land use and the Zoning Board of Appeals is the equity court and it is only when you can demonstrate with certainty the equity. The variance is to be an instrument of relief, not rezoning. So, the current complexity, and I listen, and you know, we don't want to be political about all this, but you hear a lot of things that people say and people do in the recent past and people say, "I didn't mean it, but I said it" or "what you see is not really what happened" and I'm seeing two things here. What I'm seeing is we have exceptional difficulty or unusual hardship, but by the way, we're using it residentially and we want to expand the residential use, and we got an application pending. So, the simplicity of it is, the cart's before the horse before this commission at this time. So, I think you got to let him go do his work. It's not going to give you the basis. And on behalf of my client, I'll be appealing it if you do, and I know the law supports what I'm saying. The other problem is, is it in harmony with a comprehensive plan? And frankly that decision talked about the comprehensive plan and it is an unusual area because you do have, you know, the Sikorsky plant there and you have industrial uses, and I think most of the people in the neighborhood have felt pretty comfortable with the fact that an appropriate residential use should occur, if at all. And if it's not just a single family, if you've got to add on to that appropriately because the land is buildable and setbacks are appropriate et cetera, let them consider it. But it's quite premature for your consideration at this point of time. The only other thing</p>

	<p>I want to add is just one more point of language which I thought may be helpful. Practical confiscations have been found where there are no alternative uses--that's not the case. There is a current, nonconforming use--whether they're using it as a rental or not--but it's there. It's on the site the way it is. Frankly, it's very much like the homes that are there in the neighborhood. Okay? What's there--it's only that he has a larger piece of property and so I think let him work out his issue, let him go to the P&amp;Z, see where that goes. Uh, if he doesn't get anywhere with the P&amp;Z and he wanted to come back here, then maybe there'll be a bit of a different proposal. Because I don't think you know whether it's one thing or the other. We're hearing it's industrial, but we're hearing I want it to be residential. And it's part residential and it's part industrial. So, I think you got to let him work through that part of it right now and then we can figure out where we should go next. The other item is: the degree of consideration has to be to the degree of diminution in value of the land. Okay? And you'll also have to look at whatever public harm might be imposed. Okay? And what are available alternatives to the landowner. And he's told you what those alternatives are: they're maybe not yet available, but certainly they need to be looked at and they need to be clarified and then I think we'll know more down the road. So, I think under the strict issues of variance law there's no exceptional difficulty or unusual hardship. He has a plan to make it all residential and more importantly he has a current nonconforming use which no one is looking to take away. And that is something that the law treasures. It doesn't mean it can't be better used, it just means that we can't deal with a personal interest, their financial capacities - -you know those things don't amount to hardship. And the fact that he has a residential use but he wants more, more homes, maybe because that's the application. Even there, that wouldn't provide in and of itself something that would be reason for you to grant the variance. So, I'll entertain any questions you may have, but I want to make sure we go on the record with what I understand to be the state of the law and I know that there are some other people that want to speak. So, thank you very much for your attention.</p>
Comm. B. Vasser	Well, I want to come back to the point that it is currently zoned for industrial, yes?
Atty. A. Tyma	Uh, the back piece is, not the front. Part of the property is residential.
Comm. B. Vasser	Right, we, that it is the back part of the property is zoned industrial. So, how do you make that property usable under that zone without access to it?
Atty. A. Tyma	It is usable. The current--no you don't--that's not your consideration. The current use is what we talk about not what was talked to you before about the fact that it was zoned industrial. That's not the issue. The issue is the property as it sits with the use that's on it.
Comm. B. Vasser	The nonconforming use.
Atty. A. Tyma	Right, the nonconforming use is a use. And that under the law, no matter how minor it is, it's not confiscatable.
Comm. P. Cavallaro	But the fact remains; it's still industrial property.

Atty. A. Tyma	Well, it's zoned industrial for the moment.
Comm. P. Cavallaro	So, then it could be used for industrial purposes?
Atty. A. Tyma	Well, it could be...
Comm. B. Vasser	But not without access to purpose. Not without access.
Atty. A. Tyma	Well the answer is: it could be so long as there is a proper variance that can be granted. But the fact of having an existing home as a nonconforming use means there's no variance that can be granted. That's the state of the law. And you, I--talk about it with counsel. You know, I've done this; I've represented towns. I've represented this town. I'm very clear on that issue.
Comm. P. Cavallaro	That fact that's residential property that needs access to it--you're allowed to use the 50-foot buffer zone to access the rear property, correct?
Atty. A. Tyma	It's not 50-foot. It's only 30 feet. It's not 50-foot. If it was 50-foot, it would be a roadway and you might be able to be in a different situation. It's only 30 feet.
Comm. P. Cavallaro	Regardless of whether it's 30 or 50, that piece of property can't be parked upon, but it can be used to access.
Atty. A. Tyma	Not really.
Comm. P. Cavallaro	No?
Atty. A. Tyma	No, not at this point... that I'm aware of. But again, the fact that you want to access to make an industrial use--because of the way they changed it over--I think you got to look at the fact that right now he's coming to you talking this way and that way. Because there's no proposal here. In all the case law that I've read, there's a proposal as to how I'm using the property. He's using it differentially to an industrial use. He's got an application pending to change the zone and change the use. He can't have both.
Comm. B. Vasser	Well, not at the same time.
Atty. A. Tyma	That's right and he does.
Comm. B. Vasser	Well, I mean use at the same time. You can have applications pending at the same time--there's nothing wrong with that.
Atty. A. Tyma	You have to make a determination based upon how you want that property to be used --that's part of the variance procedure.
Comm. B. Vasser	It's already zoned like an industrial--
Atty. A. Tyma	It has a home. It has a nonconforming use of the home. You cannot grant a variance on the--
Tina Kelly	I have to change the tape.



Comm. E. Conklin	Hold on one second.
Tina Kelly	Yeah.
Comm. E. Conklin	All right. I think your 30 foot--just to clarify--I think the 30-foot is the width of the driveway going back.
Atty. A. Tyma	Mm-hmm.
Comm. E. Conklin	Okay. So, it's a 30-foot right-of-way heading to the back property.
Atty. A. Tyma	And it's actually not a right-of-way. It's owned.
Comm. E. Conklin	It is owned. Correct. I'm sorry. It is owned.
Comm. P. Cavallaro	So, it's used to access that back property currently.
Comm. E. Conklin	Which is being used --
Comm. J. Oraziotti	Which is used as residential, but if the home wasn't there, then what would be the situation?
Atty. A. Tyma	But the home is there, and that's why you can't grant a variance.
Comm. E. Conklin	[Laughter]
Comm. P. Jones (?)	How long as the home been there?
Atty. A. Tyma	Oh, it's--a long time. They could probably tell you from the neighborhood. I don't know that, but it looks older.
Comm. B. Vasser	Is there any, is there any, uh, part of the law that says if a home has been on a property that's zoned industrial, it's all of a sudden zoned residential after a period of time? It makes, because that home is there, now makes it not industrial anymore?
Atty. A. Tyma	Uh.
Comm. B. Vasser	That's what I'm driving towards here.
Atty. A. Tyma	Not that I'm--not that I'm aware of.
Comm. B. Vasser	You're saying that we can't--because--we couldn't grant a variance because the home is there. Well, where does it say anywhere that because the home is there now all of sudden it's not industrial and can't be used as such?
Atty. A. Tyma	See, it's not a, about the reasonable use of the property or what it's zoned as.
Comm. B. Vasser	Mhmm.
Atty. A. Tyma	It's all about the fact that there's something that makes it not confiscatory. The variance is--that's the measure of when you grant the variance and because there's a pre-existing nonconforming use, there's no confiscation of the property

	no matter what the zone is. I think that's as simple as I could put it.
Comm. E. Conklin	All right, Jim? Thank you very much for your time.
Atty. A. Tyma	Thank you very much.
Comm. B. Vasser	Thank you.
Comm. E. Conklin	Anybody else opposed? Next person that stands up.
Tina Kelly	[Laughter]
Unknown voice	I thought that we would be using a mic. so that all of us can hear it. I thought that would seem reasonable, so that I have some--
Comm. E. Conklin	If anybody can't hear it, you'll just have to move up closer.
Unknown voice	Well, even there it's not--you know--you keep speaking this way so...
Comm. E. Conklin	Uh, before we start, name and address please?
Unknown voice	Regis Do--well okay--this, my name and address is up here, but--
Comm. E. Conklin	You have to give--
Regis Dognin	Okay, Regis Dognin. Uh, 342 Long Hill Avenue on the corner of Constitution and Long Hill--the light that is there at the corner--that's, that's my house. Built in 1894, it's a Victorian.
Tina Kelly	Can you spell your last name please?
Regis Dognin	D, o, g, n, i, n.
Tina Kelly	Thank you.
Regis Dognin	And I have some proof of outputs here. These are stapled here, about three sheets each. And this is something which you can just keep in your pocket. We're not gonna discuss it much here today. All right, let me know when I can start [laughter]
Comm. E. Conklin	Go ahead.
Regis Dognin	I'm gonna read my--and I'm not a lawyer, I'm a resident and I don't have a law degree, I'm a PIS guy. I make all the maps in the other room and I make all the maps for the city and uh, so I... The reason I gave you those is number 1, as you go from the top, it shows all the wetlands that are there. This is from the Valley Council of Government site in Derby and it covers the four towns. And this is information that is available to anybody that wants to look at it. In fact, the website is on the bottom left side. Uh, there's a great deal of wetlands in the property that's being considered and there's also that pond. It's the Burying Ground Brook and we'll demonstrate through the Connecticut map presented to Mr. Guida when he purchased their piece of it that that particular stream has

been moved some 31 feet to the northwest, which is a sign of how much it's been filled. The second page shows an aerial, which gives you some idea also, and I think Mr. Thomas has already given you some of those. And the third one, the third page is the actual map from the state. It shows the original stream location and it shows the current stream location and if you measure those, you'll see that that, that--it's not a pond, it's really the river, the brook itself just widened at that point, so you could call it a pond--and it's moved 31 feet away. And it's moved that way because the land above it has been filled to such a degree. So, I would recommend you taking a look at that. Now, let me move on. Uh, the variance should be denied for the following reasons. Uh, request to the P&Z--and the applicant has said that it was, that, the applicant was refused and I take exception to that. After six months and many well-attended hearings by neighbors, the P&Z graciously offered a PDD with 3 single-family residential--which was sort of cutting the pie in half for the residents who wanted one house because that's all that's there right now and of course, the applicant who started with 18 condos, went to 14 condos, and eventually was offered the three single-family homes--although it wasn't an official order because the application was pulled within the week of when it would've been presented. Uh, second thing is there is absolutely no hardship in this case. The way Mr. Guida bought the property in 2002 is exactly, precisely the same zoning as what it is today. There's been absolutely no change. You heard about the effort from P&Z to change it from IA-2 to R-1 and it was denied by the Supreme Court, so we're back to square one. But there is no change. In other words, if he wanted new great things and build lots and lots of condos, he should have known and he did know at the time he bought it that he had exactly the situation he has today. So, it can't be a hardship if he bought the situation himself. Uh, he had full knowledge of what he was buying. Okay, the entrance and exits are inadequate for industrial traffic. Access to Long Hill Avenue is a tight 30 feet. And I stress the fact that that's between the two posts that are on both sides of that. One belongs to Mr. Bienkowski and the other post belongs to the lady at uh, 407. Uh, it, from that point it goes an 8 percent grade--which is not a good thing--to a curve on Long Hill Avenue--which is another not good thing. Long Hill Avenue is sub-standard itself at 23 feet wide. It would never be acceptable as a subdivision street. As it is, it bears heavy traffic at certain times of day. The turning radius from this driveway is totally inadequate for this narrow entrance and exit driveway. You could not get a semi in there without making maneuvers in Long Hill Avenue. You could not do it. Long Hill Avenue is unique because there are three major medical complexes that deal with elderly patients, ambulances, and I'm on the corner, so believe me, I hear them coming down the bridge, turning around at my corner, and going up the hill and they come down the hill. I hear every one of those twice because there's always a paramedic in the second vehicle. In addition, there are daycares and Long Hill school and as well as that, there's the Pine Rock Fire Department, which also makes noise as they honk their horns coming down to the light and there are three places of worship that use Long Hill Avenue. Fifth, there was possibly filling of the wetlands when Mr. Gambry was around--there's no question that there have been gross zoning and wetlands violations during Mr. Guida's ownership. This would include approximately 6,000 cubic yards of rock from the blasting of the [inaudible] on Bridgeport Avenue where Wendy's is located today. Photos of this action are partially available and they're in the back of this document, there's four photos--

	<p>five I think, that show the kind of situation that the wetlands commission was able to--wetlands enforcement officer was able to take pictures of in 2007 and else. Those photos are, uh, proof--this, this right here--is proof of the extreme land filling and the fact that the historic Burying Ground Pond within the property has been shifted northwest some 31 feet as compared to earlier aerial photographs. The land no longer resembles wetlands, as strange wildlife exists in the disturbed areas full of voids today. And there's steaming and there's all kinds of funny phenomena in that place. It's not a wetlands and has been totally altered. No permits were ever taken out. Such behavior should not be rewarded. Long Hill Avenue is an old residential area. My own Victorian was built in 1894. Over 700 homes use Long Hill Avenue for access. It is also an alternate for Route 110 and Bridgeport Avenue when those get heavy. This variance has residents very concerned. John Anglace said he had never seen so much attendance at the P&amp;Z hearings of which we had three--very heavily attended. Heavy trucks and industrial traffic is completely unsuitable for Long Hill Avenue. It is a serious threat that should be avoided. It would make a difficult situation more dangerous. We solemnly request that the Zoning Board of Appeals deny this request. As I say, this will give you some ideas of the pictures of the back and a lot of factual information about visits by the wetlands people of what the property has looked like at various times including 2007 when Mr. Gambry was long gone. This is all under Mr. Guida. So, I stand, that's the end of my presentation if you have any questions I'd be happy to answer them.</p>
Comm. E. Conklin	<p>Questions? Questions, Jim? Well, thank you very much for your time. Anybody else opposed? Please step to the table.</p>
Joseph Bienkowski	<p>My name is Joseph Bienkowski. I reside at 403 Long Hill Avenue. Here's the spelling, ma'am.</p>
Tina Kelly	<p>Thank you.</p>
Joseph Bienkowski	<p>I have resided adjacent to 405, the subject of your application, on Long Hill Avenue since 1955. The applicant purchased this property with its one family dwelling and attached two-car garage as a nonconforming rear lot approximately 15 years ago--I have 16 here, but I heard tonight it's 15. This applicant has a history of non-permitted filling and wetland violations resulting in the degradation and actual displacement of the east branch of Burying Ground Brook and its adjacent wetlands. The stream channel has been forcibly pushed several yards to the west by illegal and unmonitored massive filling during the applicant's ownership. There's never been a fill permit for this massive filling and wetlands destruction. Five new truckloads of fill have been dump as recently as late November and early December of 2016 without a filling or wetland approval. In addition to the aforementioned environment violations, the fact that Long Hill Avenue has a travel width of only 23 feet creates an unacceptable public safety hazard. Long Hill Avenue is a major thoroughfare, over 3 miles in length, and is the primary road serving all of south Shelton and the entire Long Hill and White City neighborhoods. This substandard, heavily traveled road is a full 7 feet narrower than a new dead-end subdivision street would be, which may serve less than a half a dozen houses, as is required to be a full 30 feet in width. Long Hill Avenue serves three houses of</p>

	<p>worship, a public school, the Pine Rock Fire Station, the Board of Education headquarters, several day-care facilities, a large senior housing complex, and two convalescent home facilities. The last two of the aforementioned uses generate several multiple ambulance and paramedic vehicle responses daily, including during the rush hour and evenings. Increasingly, Long Hill Avenue is becoming a bypass alternative for traffic backups on Bridgeport Avenue, River Road, Main Street, and Route 8. There is absolutely zero justification for a variance that would allow this increase in density and resulting traffic on a substandard road that is already overburdened as a vital public safety lifeline. Also, I'd like to read a section of our zoning regulations, Section 32: Excavation, filling, grading, and/or removal of earth materials. Section 32.1, Purpose: Activities which are covered by this section include excavation and earth materials, blasting, grading, deposition of earth materials, including filling and stockpiling, processing earth materials in conjunction with the contract as business and any other earth moving or land-clearing activities. The purpose of these regulations is to regulate such site clearing, earth-moving, and stockpiling activities so as to minimize surface runoff of rainfall and melt water; to prevent injury to adjoining properties resulting from erosion, transport of sediment, and increase in overland flow of storm drainage and prevent creation of or exacerbation of safety hazards such as sharp declivities, cliffs, and unstable slopes; preserve distinctive natural features such as rock outcrops and ridge lines; limit the total amount of field material that can be placed on any lot in order to restrict the development of those parcels of land where an excessive amount of fill would be necessary in order to make the land more developable and to prevent adverse draining impacts on surrounding properties as a result therefrom; and five, protect the ecological processes by preserving natural vegetation, cover essential to maintenance of soil stability, microclimate moderation and property values. Mr. Thomas stated that there's a confiscation going on here. I would beg to differ. I think the confiscation has been the peace and tranquility of the residential neighborhood over the years. I don't know when this is going to stop. I live there with my mom; she's 96 years old. Truck traffic comes in, dumpings going on; it's unmonitored. Uh, he had an acre of dry land there with an existing use--and by the way it is rented, the house. The fill that was brought in that buried the brook and buried the wetlands came from the Wendy's project on Bridgeport Avenue. I don't know if Mr. Guida got paid to take that fill. Okay, so he's profiting from rental of the house and he may have profited from taking all that fill at our expense. We need protection from this board and the Planning and Zoning commission. We're taxpayers as well. As I say, I've lived there since 1955. Mr. Guida knew what he was buying. He knew it was wetlands. He knew that there was a brook on the property; it's on city maps. I thank you for your attention this evening. And I have copies here for the board.</p>
Comm. B. Vasser	Have there been any--that you know of--reports to the zoning, to the zoning office--
Joseph Bienkowski	Yes.
Comm. B. Vasser	--about this fill--

Joseph Bienkowski	Yes, yes, there has.
Comm. B. Vasser	--and things that are going on?
Joseph Bienkowski	Yep.
Comm. B. Vasser	So, there's been formal--
Joseph Bienkowski	He's been stopped over the years many times, but the city never asked him to remove the fill. And that's another thing, it probably should have went to wetlands first even before it comes to this board or the Planning and Zoning Commission because he created land from wetlands. I mean if that could be done for him, I'm gonna buy all the wetlands I can.
Comm. B. Vasser	So, it's been documented, reported--
Joseph Bienkowski	Mh-hmm. You could ask Mr. Dingle, he's a zoning officer. Any further questions?
Comm. E. Conklin	Any questions? Thank you.
Joseph Bienkowski	Thank you.
Unknown voice	Hello.
Comm. E. Conklin	Hi.
Stephanie Kampler	My name is Stephanie Kampler. I live at 397 Long Hill Ave. I'm also representing Elizabeth Quarters from 407 Long Hill Ave. I work and live on Long Hill Ave. I actually work at 405. I take care of an elderly lady with dementia. Uhm, first I want to address the pictures. I didn't bring my copies but-
Comm. E. Conklin	405 is the property in question.
Stephanie Kampler	Correct, I'm sorry. I work at 407. Sorry.
Comm. E. Conklin	That's alright; go ahead.
Stephanie Kampler	These pictures were not taken in the winter. They were in the autumn. These would be picture—at least one picture - I can get copies from the wintertime.
Comm. E. Conklin	We would have to have copies if you were giving something--
Stephanie Kampler	Okay, at the last meeting--
Comm. E. Conklin	Otherwise, we'd have to take your phone... [Laughter]
Stephanie Kampler	Well, I'll make copies--that's not a problem. But you could clearly see that this was done in the winter. There's a height difference so these pictures are very biased. Where he was looking was straight at the tree. All of our houses are up much higher, uhm--when my husband and I bought our home about 9, 10 years ago.

Unknown voice	2008.
Stephanie Kampler	We were told that our back deck--don't worry about building, it's wetlands. We've been told this by two different real estate agents. Uhm, I enjoy looking at the wildlife. I enjoy the privacy in my backyard moving to Shelton from Waterbury. Uhm, and I'm also very concerned about my elderly neighbors. One at the house 407 where Elizabeth lives--how long have you lived there? 72?
Comm. E. Conklin	If she's gonna talk, she has to come up and give her name and address.
Stephanie Kampler	Okay, she's elderly and has mobility problems, but anyway, uhm. Long story short, it's just I'm completely opposed to it. It's a residential neighborhood. I know there's some problems with the way it was originally zoned. If you drive up and down Long Hill, you could clearly see it's a residential neighborhood. If there is a, that one house is rented. The tenants are very happy with the property. They will stay there for the rest of their lives if they could. And it's, it's just, I don't know what else to say other than I'm opposed to it and I don't know which argument to take on: the fact that he wants to do the, uhm, the 18,000-square-foot buildings where there's gonna be trucks coming and going all day or the fact that he wants to put six houses on maybe an acre of property 'cause on the maps it clearly shows about 2--is it two acres, a little more--for a dog park. Where is this going? Is it going in my backyard? Where there's clearly wetlands and I'm just, I just think that you know one house, as it is, is fine. And the renters are there and they're happy to stay forever. So, thank you.
Comm. E. Conklin	Thank you. Anybody else opposed? Okay.
Stephen Kampler	I'll be quick. I'm Stephanie Kampler's husband. Stephen Kampler--
Comm. E. Conklin	All right, hold it. Please come up here so we can hear you in the microphone.
Stephen Kampler	Sorry. My name is Stephen Kampler. I live at 397 Long Hill Avenue. Uhm, and I'm offended, and I'll tell you why. Mr. Guida, is it, keeps putting out maps that don't show 407, they don't show Mary's house, they don't show, uhm, Elizabeth's house, the lines are incorrect. We get answers like I think the guidelines are here; I think the boundaries are here. Uh, the man has over the years done pretty much what he pleased and my feeling is that if he gets any type of a variance that would only be the beginning of what would happen to that property. Uh, I don't think there'd be any regulations that would pull him back at that point. Uhm, so I want him to know that Mary and Elizabeth are the neighbors that he's affecting when he draws those maps and I think that what I need to do is to have boundaries scoped on my land by a surveyor because I feel that the things that he's been drawing have been encroaching on the back end of my property because my property goes back pretty deep. Uhm, I've gone back there and found sticks with the orange flags on them from, uh, his people. And uh, I'm gonna have my land scoped out so that, you know, I'm not affected without knowing about it.
Comm. E. Conklin	Are you adjacent to 401?
Stephen Kampler	I'm 397. I'm the large lot.

Comm. E. Conklin	Okay, so you would be the first large lot.
Stephen Kampler	Yes.
Comm. E. Conklin	Which is to the west side of--
Stephen Kampler	Yes, right there, right.
Comm. E. Conklin	--the property. Okay.
Stephen Kampler	I've walked back there and somebody's done some markers back there but I don't think they conform with the property that I own, so.
Comm. E. Conklin	Okay.
Stephen Kampler	All right?
Comm. E. Conklin	All right. Thank you.
Stephanie Kampler	Also, may I add for the record--sorry--I've personally witnessed the dumping myself six times within an hour.
Comm. E. Conklin	Okay, that's not a purview of our board.
Stephanie Kampler	Okay.
Comm. E. Conklin	You'd have to go up and see Planning and Zoning, okay?
Stephanie Kampler	What do I do in the future? Do I--who do I--
Unknown voice	Call the police and make a record of it.
Comm. E. Conklin	Yeah, or call the Planning and Zoning or somewhere else, okay?
Stephanie Kampler	Okay. Sorry.
Comm. E. Conklin	Okay, anybody else opposed? Attorney Thomas?
Atty. D. Thomas	Yep. The first to address, Attorney Thomas' comments. Uh, I think the reason he didn't give you <i>Verrillo</i> , uh, the whole case is because he was plucking relevant language out. The <i>Verrillo</i> case is a very strict case. The <i>Verrillo</i> case talks about the fact that you have to have a, that these people had a use and they wanted to expand their property, uh, their house within this residential zone that was, ah, the use was an approved use in the zone, and they wanted to make their house larger. They wanted to make it nicer, not just up I think out also. And the problem was that they couldn't establish that it was sufficiently confiscatory because they had a purely functioning one-family house in a residential zone, even though the structure was nonconforming. What nobody read to you about this property--and I wish I had brought my copy of the zoning regulations here--is the fact that there are specific zoning regulations in the city of Shelton that say it should be the desire to remove all nonconforming uses. So, my client is before you complying with the zoning regulations to say that what we want to



do is remove a pre-existing legal nonconforming use and use the property as it is zoned. And it is zoned IA-2. So, in fact it's the zoning regulations of the city of Shelton that punch a hole in what Attorney Tyma says. You cannot say because you have an existing nonconforming use it's not confiscatory because you're regulations request that all nonconforming uses be removed if possible and the property be used as compliant. For those of you that don't understand what the comprehensive plan is, the comprehensive plan is not the plan of conservation and development. The comprehensive plan is the zoning regulations of the city of Shelton. And the comprehensive plan therefore, has determined that the property on which my client wants to build an industrial building is zoned industrial. The problem is when you get to that point and you comply with the zoning regulations by removing the nonconforming use on the property, which--contrary to what Atty. Tyma told you--is not a basis for denial of the variance because it is a nonconforming use. In fact, as a commission, if you use that as your basis you would be actually using a nonconformity to reject a variance, which is the exact opposite. You are suppose--when you deal in nonconformities, you're supposed to have a hardship. In this situation, the hardship is obvious, because you cannot get to the property for its zoned use without going through there. That's all we're asking for. All of the other stuff, the part about filling and the complaints which has gone on--this has been brought up over the last 10, 12 years, that this has been before various boards--is the jurisdiction of other boards and commissions. It's the jurisdiction of wetlands. If wetlands wants to issue and NOV, notice of violation, then the client has to comply with the requirements. With respect to the issues of traffic, and other issues, planning and zoning will take care of that because even though an industrial use is a site plan use, it's still requires the applicant to comply with certain requirements of health, safety, and other issues. So, therefore, it imposes a limit on the client. For instance, the comment was made--I think by Mr. Dognin--about semis, you're not going to get a use permitted there, even under a site plan that has semi traffic because of the size of the driveway. So, the use that you're going to get is the kind of use that would probably be operated--I'm giving you an example--with box trucks but it's not your concern. It's the concern of Planning and Zoning. Planning and Zoning is gonna make that decision. Too often, people come before you--whether it's proposing or objecting and think you are approving buildings--you're not. All you're doing is looking at the regulation, and--there are plen- your approval gives my client nothing in the way of constructing anything in the back. All you do is set a framework, in this case because without that framework he cannot use the property as it is zoned. The zoning regulations and you're welcome to get them and read them mandate, request, that in all, every possibility a nonconforming use is removed. This isn't--we're not talking about a nonconforming structure like in *Verrillo*--one that was too close, you know, in a residential zone along the water that they wanted to expand--we're talking about a nonconforming use. You got to distinguish between the two. Nonconforming structure is one that is simply in violation of a setback, but the use itself is permitted within the zone. This is a nonconforming use which--according to the regulations--should be removed and that's what we're here to tell you. The fact that I told you about the other application that is pending was simply in the form of complete disclosure. I didn't want you to think I was trying to sandbag you or anything like that, so I explained to you, we do have another application pending. And as was stated,

	<p>clients can have multiple applications. It would be kind of foolish for us to say okay fine, you want us to take care of it? We'll withdraw the PDD application and we'll just let you decide. And once (undistinguishable) --clients, because you can't file multiple applications and because they want to pursue something to do with the property, they chose to file applications in two different quote, unquote, jurisdictions. One was your jurisdiction for this avenue that eventually leads to P&amp;Z and wetlands, and the other one in the P&amp;Z, which it will be required to go to wetlands. We'll be required for traffic studies, and by the way, just so you know, in the application that was pending, the Planning and Zoning commission--while it has the ability to modify a PDD application, it does not have the ability, really, in a situation to approve something that is so different, so substantially different in use from the condominiums to this--that's why it withdrawn. And the clients decided to look at--they called the comments--and chose to go back on that. But, at the same time they have the right to attempt to use the property in accordance with the appropriate zone. So, that was the, that was the purpose of that and much of the stuff that was presented, was, uh, related to other issues. The, interestingly enough, when Attn. Tyma was explaining to you, he used the phrase--because he was picking phrases out--he used the phrase "diminution of value". And that phrase "diminution of value" issues in <i>Verrillo</i>. And in <i>Verrillo</i>, why would there be any purpose of using diminution of value if in every case you had to prove absolute confiscation, total and absolute confiscation? That is not the case. I encourage you to read <i>Verrillo</i>. It's not total and absolute confiscation. In this situation, you cannot use a nonconforming use on a property as saying well you have the use of the property, because then what you are saying--if the person says I want to comply with Section--and I, I can't remember the article in your regulations off-hand, from memory--I want to comply with the regulation, zoning regulations that says you should make every effort to remove nonconforming uses. So, I want to remove it. That's the first step to removing a nonconforming use is what we are doing today.</p>
Comm. E. Conklin	Couple of questions here. You showed us drawings here with these buildings on them, but does--and obviously the filling that's been done on the property is the only way these buildings could be established.
Atty. D. Thomas	No.
Comm. E. Conklin	There doesn't--
Atty. D. Thomas	We, well we--first of all, we--my clients dispute that filling and if there was an illegal filling, that's going to be an issue that's going to be addressed by planning and zoning.
Comm. E. Conklin	Well, you're putting this in front of us.
Atty. D. Thomas	I'm not putting the buildings. I'm just; I just show that to you for the purpose--I could have submitted this application without any buildings on it at all. We just showed it so that we could--
Comm. E. Conklin	Okay, your applicant bought this in 2002 with that house on it?

Atty. D. Thomas	Right.
Comm. E. Conklin	Knowing that at that time it was commercial zoned with residential usage.
Atty. D. Thomas	Right. And that has no bearing whatsoever.
Comm. E. Conklin	Okay.
Atty. D. Thomas	You do not lose.
Comm. E. Conklin	Well, I read one today that--I don't remember the name of--that did have, a court case in Connecticut, that did have, it did have...
Atty. D. Thomas	I want to know what the court case is because you do not lose the right to go for a variance just because you buy a property. You lose the right to go for a variance if you self-create the hardship. So, for instance, if this client, owned another access, if this client owned a right-of-way through the Sikorsky property to Platt Street and he gave it up by selling it or some other fashion, by selling it to Sikorsky's, that would be a self-created hardship.
Comm. E. Conklin	This case was directly the person bought the property which was being used as another--in this case, we'll just use it as is--was being used as residential when it was zoned as something else and they did lose the case. I think it was Kelly if I'm not mistaken.
Atty. D. Thomas	Well, you'd have to look at the case because all the person has to do then is simply remove the nonconforming use in accordance with the zoning regulations and that's it. They're compliant. You understand, to remove a nonconforming use is to comply with the zoning regulations. That's what your zoning regulations say. That you should, make every effort--
Comm. E. Conklin	--make every effort. It doesn't say we have to. It says make every effort.
Atty. D. Thomas	Okay, well.
Comm. E. Conklin	Is how it's worded.
Atty. D. Thomas	All right, well we, we beg to differ, and again if you're gonna make any reference to <i>Verrillo</i> , I strongly suggest that you uh, read it, because if you adopt the complete and utter position that it has no use then you're going to be saying no to probably most any variance when that person comes into you and says I uh, need to, I want to put a bedroom on for my kids and it goes over my septic system so I have to go to the other side and go into the setback which is a relatively--not a common request, but a request that comes before you--the answer is no. Have your kids sleep on the floor, I don't care. And the basement because we can't give it to you because you're using it as a house. So, there has to be some--and even if you read <i>Verrillo</i> --there has to be some discretion in the board to look at the situation. I don't have to worry about that kind of discretion because it's a kind of simple in this case. The fact of the matter is you have an unusually shaped piece of property, severed at some point by Route 8, which has a single entrance to a res--to an industrially zoned piece of property and the

	<p>only usable portion of the property is zoned industrial. And the nonconforming use can be--we're removing a nonconforming use from the property. So, that's our position with respect to, uh, to that, to that. Uh, the rest of it, I think they've raised these issues before. Certainly, my client if he receives anything from Planning and Zoning or Wetlands would be willing to address it, but it's not your concern. Your approval of the variance in no way gives me any abil--my client any ability to build or do anything. Everything has to be complied with. If there's illegal filling, that will have to be complied with as he goes through zoning.</p>
Comm. B. Vasser	Thank you very much.
Comm. E. Conklin	Any other questions? Okay.
Atty. A. Tyma	My I rebut something because I think it's important for it to be on the record.
Comm. E. Conklin	It has to be done up here though please.
Atty. A. Tyma	Absolutely.
Comm. E. Conklin	As long as it's nothing new.
Atty. A. Tyma	It's something new and it's a rebuttal to him, but something new--
Comm. E. Conklin	Well as long as it's rebuttal...
Atty. A. Tyma	<p>Absolutely it's rebuttal and normally I wouldn't want to interfere, and I understand he has the burden of proof so we'll start with that. The burden of proof is to demonstrate, again under your regs, exceptional difficulty, unusual hardship. The issue of having a pre-existing, nonconforming use was just explained to you in a way that I've never heard before, OK. You do have the right if hardship is demonstrated, to vary the regulations, but you gotta demonstrate hardship. And if you've got a valid, pre-existing nonconforming use, you don't have a hardship. So, I think you gotta start with that. And I just want to read to you--there's one other case that's recited in this case, and I just want to put it on the record for you. It's called <i>Lamparosa</i>. It's a North Stonington case and it went to the Supreme Court on an issue of whether or not, uh, as applied to the plaintiff's property--if taking of the plaintiff's property without due process was done. It had to do with mobile homes and uhm, a little bit different than this case, but part of the language is very important. It said that case is a quintessential example of the precept that a lawfully established nonconforming use is a vested right and is entitled to constitutional protection. All the zoning, if you read everybody's zoning regulations, they all say we'd like you to make nonconforming uses conforming, you know, that's what everybody wants to do because it means it's tantamount to compliance with the zoning regulations in effect. But they can't ever force you to do it. And so the issue becomes, right now as we sit here, you've got a rented house that was bought at the time--zoning regulations have been changed. Guida added onto his property. You heard a lot of the information there. But it's sitting there being used and that's under the current, nonconforming constitutionally protected right. So, if he comes to you, he's got to demonstrate that that particular right he</p>

	<p>can expand it. He can go and do something different than what he already has and that's personal gain. That's the thing you can't give him. Just because he wants to get more uses out of the property--whether he wants to put up the building, or he wants to go--and as I said before, he's got a zoning application--you're right, we can all plead in the alternative, but when you have that it's an indication that which should come first the chicken or the egg? - you got to let them play out. This other application that's out there. And then, if there's no way that he can do it, maybe he has a methodology that he can demonstrate for you. I don't believe he does. But I just wanted to make sure that case is recited for you.</p>
Comm. E. Conklin	All right. Thank you very much.
Comm. B. Vasser	If that home were removed tomorrow, what would the situation be?
Atty. A. Tyma	<p>If the home were removed tomorrow, he would then still have to demonstrate that he was going to be putting up the building that he's talking about. He's telling you that I'm not sure about that building. He just put it on the map. But the fact of the actual utilization of the property requires the whole concept of what am I putting there and how am I getting there. It's not just the fact that I'm going through a residential zone and I'm not supposed to be doing it to get to an industrial zone. That's not the issue. It's the whole picture together. And what you're getting is, you're getting, one picture and then another picture. So, in two weeks or whenever they have the hearing for the other one, that'll be the other picture. It'll be a different presentation maybe at that time.</p>
Comm. B. Vasser	Thanks.
Atty. A. Tyma	Thank you.
Comm. E. Conklin	You want to wrap up please?
Atty. D. Thomas	<p>Uh yeah, I uh, it's a very interesting comment. I agree that nonconforming uses are a constitutional right; they're statutorily set in 8-2 of the regulations. But I want to thank Atty. Tyma for agreeing with me that it says in the regulations and it says in the Shelton regulations that you are encouraged to remove them. So, what Atty. Tyma was saying about it was, if I was here before you, asking for a variance and I would need a variance to put a deck on that house because I would be expanding a nonconforming use, residential property if I wanted to put a 2-foot addition on that house that's the expansion of a nonconformity, your response would be you can't expand that nonconformity. You have, you have no hardship; you can't expand it. I am the thought that that, well you gotta, actually it would create the situation where I'd have to bulldoze the house first before coming to you which is ridiculous--ah, this plan here shows that we want to use it for industrial purpose. I drew a--very often when people come before you in a situation like this, the question is often asked, well what do you intend on doing? I have, the purpose, I had the engineer draw that was simply to be able to show the size building that would fit so I could make sure I didn't have to ask you for a parking variance in the 50 foot setback and I left it on there. That drawing has no relationship; your action has no relationship to what P&amp;Z would do. I would have to comply with all the P&amp;Z regulations, you know what I</p>

	<p>mean? As far as that. So, it is, no--I just wanted to make sure I showed you it was outside all in the industrial zone. The fact that I'm going to remove a nonconforming use and put a conforming use is not personal gain. You can't have personal gain if you're complying with the zoning regulations. I'm asking you only for a variance with access and my client has gone the extra step of not trying to propose and ask for variances. In fact, I think a good example is this: if I came to you and asked for a variance to stick that building into the 50 foot setback because I wanted a bigger building and I wanted extra parking--that would be asking for a personal gain. In other words, I would be going beyond it. I am asking for the minimalistic variance, the right to drive in, nothing more, nothing less and as part of that I am compliant with the zoning regulations by removing a nonconforming use. Thank you.</p>
Comm. P. Cavallaro	<p>Let me ask you a question. The existing house, uh, this is a split zone property: part of it's residential, part of it's industrial.</p>
Atty. D. Thomas	<p>Right.</p>
Comm. P. Cavallaro	<p>Where does the house sit?</p>
Atty. D. Thomas	<p>Industrial</p>
Comm. P. Cavallaro	<p>You sure?</p>
Atty. D. Thomas	<p>The edge of it, the edge of it may, the edge of it, a small portion may be over the line.</p>
Comm. P. Cavallaro	<p>This property was purchased at two different times.</p>
Atty. D. Thomas	<p>No, this was purchased first. This is the second purchase back here from the state of Connecticut.</p>
Comm. P. Cavallaro	<p>Back here?</p>
Atty. D. Thomas	<p>Yeah, that was all--that was the initial, roughly along the stream was the boundary line and the balance of the purchase from the state as excess right-of-way. The state often markets excess right-of-way; excess right-of-way is that area there. And if you look at the--I think you can get a good look at that, if you look at the uh, yes, the uh map you can get an idea, you know, this is, you know this the--</p>
Comm. P. Cavallaro	<p>The stream.</p>
Atty. D. Thomas	<p>Yeah. Uh, yeah. And this is the</p>
Comm. P. Cavallaro	<p>Or is that a "Dominick Thomas" line?</p>
Atty. D. Thomas	<p>No, that's a stream. That's actually the stream there. Okay, (Dominick Thomas, ha ha), and then you can get an idea there. That is the, the parcel that was bought from the state and you can see here is the right-of-way, right-of-way stuff way down, you know they purchased way down here and cut off those lots, too. I think one of the people that bought this lot may be that one there, and the</p>

	reason he would see those is, is that
Comm. P. Cavallaro	I'm very curious as to how much of that house is sitting on the residential property.
Atty. D. Thomas	Uh,
Comm. B. Vasser	Quite a bit of it.
Comm. P. Cavallaro	Yeah, that's what it's looking like.
Atty. D. Thomas	What?
Comm. P. Cavallaro	Quite a bit of it from the looks of that picture.
Comm. P. Jones?	But the house—(undistinguishable) the garage is just the part that's over it.
Comm. P. Cavallaro	What makes it not pre-existing non-conforming.
Atty. D. Thomas	Uh-huh, yes, no, it is pre-existing non-conforming.
Unknown voice	Chairman?
Comm. E. Conklin	No.
Unknown voice	[Inaudible]
Atty. D. Thomas	No, I don't think that it uh, what he's saying--whether or not, whether or not it is, even if that portion of the property is on the industrial zone, it's still a nonconforming use. All right thank you.
Comm. E. Conklin	All right, we're gonna leave this hearing open. We're not going to close this hearing.
Regis Dognin	Can I make a comment, please? Why not? Well, he made about 10 comments.
Comm. E. Conklin	It has to be--the reason why he made it was in relationship to something that was said in rebuttal to him.
Regis Dognin	That's what I'm doing here. He wanted to know if the house was in R-1 - the assessor map, the assessor sheet.
Comm. E. Conklin	Okay, if you have something directly in regards to the question that was asked, yes.
Regis Dognin	Here's the assessor's sheet. You can keep it.
Comm. E. Conklin	Okay.
Regis Dognin	I'll get another one tomorrow.
Atty. D. Thomas	Well, if the hearing's going to be kept open, I'll address it down the line.

	<b>#0117-02 554 – 556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton</b>
Comm. P. Jones	#2. #0117-02, 554-556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton, for variances to Section 24, Schedule B, Lines 9 and 10 to reduce the minimum setback from the left side property line from 12 feet to 7 feet and to reduce the minimum setback from the residence district boundary from 40 feet to 30 feet in order to construct a 2-story, 13' x 16' rear addition in an CB-2 zone.
Comm. E. Conklin	Is the application--is the applicant here please? Do you have this?
Tina Kelly	Do I have it? No.
Comm. E. Conklin	Okay. So, you need a copy of that. You need this.
Comm. E. Conklin	Is the applicant here for 544/556 Howe Avenue?
Tina Kelly ( <i>Changing Tape</i> )	Okay
Comm. E. Conklin.	Okay
	<b>#0117-03 6 Harvard Avenue, Artur and Marta Mierzejewski of 6 Harvard Avenue, Shelton</b>
Comm. P. Jones	#3. #0117-03, 6 Harvard Avenue, Artur and Marta Mierzejewski of 6 Harvard Avenue, Shelton, for a variance to Section 24, Schedule B, Lines 7 and 9, to reduce the minimum setback from the right side property line from 15 feet to 8 feet and to reduce the minimum setback from the front property line from 30 feet to 11 feet in order to construct a second-floor addition measuring 36' x 37' and 9' x 20' over the garage in an R-3 zone.
Artur Mierzejewski	My name is Artur Mierzejewski, I'm going to represent my wife and me.
Comm. E. Conklin	Okay.
Unknown voice	I'm the owner of the house.
Comm. E. Conklin	Okay
Artur Mierzejewski	I'm coming here because we want--
Comm. E. Conklin	One second. I need these. I need [inaudible]. Pictures please.
Artur Mierzejewski	I am sorry I just made one copy of this.
Comm. E. Conklin	That's OK.



Artur Mierzejewski	Because I didn't know we need more of this.
Comm. E. Conklin	No, you don't need it. Let's just take a quick look. All right.
Artur Mierzejewski	Can I start talking?
Comm. E. Conklin	Uh, one second. Let me just take a quick look here. So, I can pass this on. All right. Pass these on. Okay. All right. Can I see those pictures? No, you can keep those; we don't need those. Okay. Tell us what you're trying to do and why you can't conform to the regulations please.
Artur Mierzejewski	Okay sir, first of all just to be clear we don't want to change any distance between that property to the border zone or something because the A [inaudible] is existing [inaudible] right now.
Comm. E. Conklin	Okay, but it, what exists--
Artur Mierzejewski	Correct.
Comm. E. Conklin	And it is non-conforming. So, it has to be listed. That's all.
Artur Mierzejewski	Yes. We want to fix my roof because my roof is leaking and that is the case. That is the scenario and we get one very close neighborhood which is, your say that it's supposed to be five feet. My existing feet is 8 feet, which I am not asking anything right now. Also when, to fix that roof--we want to increase a little bit high to make a better pitch because--
Comm. E. Conklin	So, in other words, you're adding on another floor, but you are not going out of the existing structure frame of this house--
Artur Mierzejewski	No, no.
Comm. E. Conklin	--at all.
Artur Mierzejewski	I get my friend who has the paperwork, the drawing who can show you exactly how it's going to be looking.
Comm. E. Conklin	Okay we got his, he's, you got plans?
Artur Mierzejewski	He's my contractor.
Comm. E. Conklin	Okay.
Artur Mierzejewski	He's going to be building [inaudible].
Comm. E. Conklin	I want to add to this so you can see--let me make sure we have everything correct now. Your house is this one that's on point?
Artur Mierzejewski	Yes, this is--you, you require 15 feet, here just 8 feet, on that corner.
Comm. E. Conklin	And that's the existing structure as it stands...?

Artur Mierzejewski	Correct.
Comm. E. Conklin	OK. Pass this down to Jim.
Comm. P. Jones	You're just going straight up?
	[Voices talking over each other]
Comm. E. Conklin	That's the house.
Tina Kelly	Here you go.
Artur Mierzejewski	[Voices talking over each other] The house 5 years ago they tell me okay, that's a brand new roof. After one year, I get the leaking. And now, I has to do something. (Inaudible)
Comm. E. Conklin	Okay. All right. And going by those pictures—we'll just go by those --because if you show us those drawings, we have to keep them. So., let's see if we can go through without having to show the drawings. Okay? All right. The pictures are just simply going straight up--
Artur Mierzejewski	Correct.
Comm. E. Conklin	--with the house itself.
Comm. B. Vasser	From here? Straight up from there?
Comm. E. Conklin	Yeah.
Artur Mierzejewski	And this is going to be increased...(inaudible)
Comm. E. Conklin	Another floor? Or width of the floor?
Artur Mierzejewski	It's not a floor. It's a half a floor. 4 feet flat.
Comm. E. Conklin	Oh, okay, sorry. Name and address for the record, please.
Peter Matyszczyk	My name is Peter Matyszczyk. 13 North Coe Lane.
Tina Kelly	Can you spell your last name please?
Peter Matyszczyk	M, a, t, y, s, z, c, z, y, k.
Tina Kelly	And your address?
Peter Matyszczyk	13 North Coe Lane.
Tina Kelly	How do you spell that?
Peter Matyszczyk	C, o, e Lane
Tina Kelly	C, o, e Lane.

Peter Matyszczyk	Ansonia.
Tina Kelly	Okay.
Peter Matyszczyk	I'm the contractor.
Tina Kelly	Thank you.
Comm. P. Cavallaro	Is this going to be occupiable space, the second floor?
Artur Mierzejewski	It's storage right now because...
Comm. E. Conklin	You're going to use it for... what's the usage going to be for? Bedrooms, or?
Artur Mierzejewski	In the future maybe, right now I just want to fix the roof. After, (inaudible) you know, I want to put little...
Comm. E. Conklin	Since you're doing the work, you're going to raise the, raise it up. All right. Okay.
Comm. B. Vasser	I'm sorry, you're going to use it for what? I'm sorry?
Comm. E. Conklin	At the moment nothing, he just wants to--he's gonna fix the roof, raise it up and have it for future use.
Comm. B. Vasser	So, it's going to be adding 4 feet plus the roof?
Peter Matyszczyk	It's going to be 4 feet wall like the, like the...
Comm. B. Vasser	So, it's going to be storage?
Peter Matyszczyk	Right now, it's going to be storage.
Comm. B. Vasser	Is there going to be a ceiling? Will there be access to getting into that area?
Peter Matyszczyk	Not really. We will keep the open ceiling where the columns face. And in the future if he wants to leave...
Comm. B. Vasser	So, it's just taller ceilings at this point?
Peter Matyszczyk	Yes.
Comm. E. Conklin	Oh, okay. All right. So, you are not adding a floor? You're just simply raising--making a higher pitched ceiling...
Peter Matyszczyk	Correct, yes. I'm sorry.
Comm. E. Conklin	Oh, okay.
Peter Matyszczyk	I'm sorry.
Comm. B. Vasser	So, in the process of the repairs you're just making a higher..

Peter Matyszczuk	At this point, we need to rise and go this way.
Comm. E. Conklin	Okay
Peter Matyszczuk	Because it's very flat. So, many problems with the snow. So, many bad leaks. We need to build the [unintelligible] and just go with that.
Artur Mierzejewski	One of those pictures - You can look what I did. I try to fix it. I put additional cover on the top. But that doesn't make sense for something permanent.
Comm. E. Conklin	Okay. So, he's not going out of any pre-existing nonconforming use. He's just simply going up slightly on the house and making repairs.
Comm. B. Vasser	To make the area less flat.
Comm. P. Cavallaro	So, why are the variants even on here?
Comm. E. Conklin	Because it has to be. Because the house is nonconforming.
Comm. B. Vasser	In order to do anything...
Comm. E. Conklin	Right, you have to list the variance because it's never been applied for before. The house is pre-existing of zoning.
Comm. B. Vasser	We're not making it further nonconforming.
Comm. E. Conklin	Right, we're just staying with--in fact, we're not even changing it down low... [Laughter]
Comm. B. Vasser	We're not changing the footprint, I got it. I got it.
Comm. E. Conklin	I had an old house and I was doing the same thing just raising the roof. And I had to put the variances too just because of that. Okay, any other questions from the board?
Comm. J. Oraziatti	Yeah. I'm just not quite clear. You're raising it 4 feet. You don't have to raise it 4 feet to change the pitch on the roof, but you're raising it 4 feet, which would make it you know, like the upstairs on a Cape. It would be 4 feet and then the roof on it, so is that going to be an existing--I'm not quite clear on it so I want to be perfectly clear on this. Is that going to be an existing space up there at sometime? Because I'm hearing other talk here that you're just raising the interior ceiling.
Peter Matyszczuk	It's going to be like a second story--
Comm. J. Oraziatti	Right.
Peter Matyszczuk	--of the house.
Comm. J. Oraziatti	Right.
Peter Matyszczuk	Because the pitch of the roof.

Comm. J. Oraziotti	But you could change the pitch of the roof without raising it four feet.
Peter Matyszczyk	Yes. But if we raise like four feet, we have extra space.
Comm. E. Conklin	He's saying that he's trying to alleviate this problem of the roof, with the pitch of the roof, by raising it up above it.
Peter Matyszczyk	And they have very low roof, like a 6,5 roof.
Comm. E. Conklin	So, you don't have to, (Voices talking over each other) valleys sitting (Voices talking over each other)
Comm. J. Oraziotti	I got it.
Comm. B. Vasser	The way I understand it is they're just increasing the interior ceiling height. At the same time, they're repairing the roof. Is that correct?
Comm. J. Oraziotti	They're still adding a second floor on it. (Voices over each other)
Comm. B. Vasser	It's only four feet how are they going?
Comm. J. Oraziotti	Four feet is a Cape, is a typical Cape. That's what a knee wall is on a Cape, on a cape is 4 feet. So, that's a second floor is what I'm getting at. Just so you know what, so you know what he's building.
Comm. B. Vasser	Well that's why I asked.
Comm. J. Oraziotti	Well I heard that, that's why I want to be perfectly clear here. So, everybody knows.
Comm. B. Vasser	It's not going to be livable space. You're just making the interior ceiling higher at the same time that you're changing the roof.
Peter Matyszczyk	Right now not livable space. In the future, could be livable space because of the height of the, of the--Let's say this is a peak. It would be like a second, second floor.
Comm. B. Vasser	And would they need a variance to make that a livable space at that time?
Comm. E. Conklin	No, no.
Comm. B. Vasser	They would just go back and ask planning and zoning?
Comm. E. Conklin	Well, it'd be building, building department.
Comm. P. Cavallaro	Just to clear it up, you're not eliminating existing ceilings in the house.
Peter Matyszczyk	No.
Comm. P. Cavallaro	They're staying.
Peter Matyszczyk	They will stay. Eventually, we can rise the ceiling if we need it because it's very low ceiling. We can, but we don't know yet how the structure of the house looks

	like. If they expect us, say, okay we can rise this, you know. We can up like one foot in the first floor. After four feet walls and build the roof. You can say this is going to be like a second floor of course, right?
Comm. J. Oraziotti	Absolutely.
Comm. P. Cavallaro	Well that's how it's listed is as a second floor.
Comm. B. Vasser	So, we can safely say this is gonna be a second floor. That's what I'm wondering.
Peter Matyszczyk	But he's not gonna finish right now this floor. It's like a storage space. In the future that's absolutely possible to finish. [Voices talking over each other]
Comm. E. Conklin	Okay. Okay. But we're not going on pre-existing conforming...
Comm. J. Oraziotti	I just want you guys to be clear because I heard two different stories from both of you guys down there.
Comm. E. Conklin	Okay. Any other questions?
Comm. P. Cavallaro	No.
Comm. J. Oraziotti	I'm good.
Comm. E. Conklin	Okay, we better...
Artur Mierzejewski	Do you need the paper - what I sent to my neighborhood?
Comm. E. Conklin	No. I declare this meeting closed. Thank you for your time. Thank you.
Artur Mierzejewski	Thank you so much for the opportunity to be here.
Comm. P. Jones	I make a motion to approve this one, the variance. Anyone opposed to this application?
(Board members laughing)	
Comm. E. Conklin	Is there anybody opposed to this application? Is there anybody in favor of this application? Okay, being nobody. I declare the hearing closed.

#### WORKING SESSION:

1. #0117-01 405 Long Hill Avenue, Jack and Josephine A. Gaida of 405 Long Hill Avenue, Shelton, (c/o Atty. Dominick Thomas, 315 Main Street, Derby), for a variance to Article 24, Section 24.8.4 to create driveway access through an R-1 residential zone to an IA-2 industrial/commercial building zone.

**No decision made; hearing will remain open until the February meeting.**

2. #0117-02 554 – 556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton, for variances to Section 24, Schedule B, Lines 9 and 10 to reduce the minimum setback from the left side property line from 12 feet to 7 feet and to reduce the minimum setback from the residence district boundary from 40 feet to 30 feet in order to construct a 2-story, 13' x 16' rear addition in an CB-2 zone.

**Applicant not present; hearing will be carried to the February meeting.**

3. #0117-03 6 Harvard Avenue, Artur and Marta Mierzejewski of 6 Harvard Avenue, Shelton, for a variance to Section 24, Schedule B, Lines 7 and 9, to reduce the minimum setback from the right side property line from 15 feet to 8 feet and to reduce the minimum setback from the front property line from 30 feet to 11 feet in order to construct a second-floor addition measuring 36' x 37' and 9' x 20' over the garage in an R-3 zone.

**Motion made by Commissioner Jones and seconded by Commissioner Cavallaro to approve the variance. Motion approved by unanimous vote.**

Acceptance of the Minutes of November 15, 2016.

**Motion made by Commissioner Vasser and seconded by Commissioner Jones to approve the minutes as presented by the clerk. Motion passed by unanimous vote.**

Meeting adjourned at approximately 9:20 P.M.

SHELTON BOARD OF ZONING APPEALS

Respectfully submitted by **Tina M. Kelly**  
for Philip Jones, Secretary