

Minutes - Shelton Board of Zoning Appeals
Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.
Tuesday, February 21, 2017 at 7:30 PM.

- 1. #0217-01 **9 Cedarwood Lane, Wayne Hobson of 9 Cedarwood Lane, Shelton**
- 2. #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)**
- 3. #0117-02 **554 – 556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton,**

Chairman Edmund Conklin	Good evening ladies and gentlemen and welcome to the February meeting of the Zoning Board of Appeals. We meet monthly to consider variances on zoning regulations appeals and zoning department decisions and actions. When your application is called 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'll reschedule the hearing for the next meeting. When you come in front of this board, you are giving testimony. This 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 can only hear one person speaking at a time. All conversations at all times is between the person who has the floor and the board itself. Also, please turn off or mute your cell phones and any conversations in the audience need to be taken out into the hallway. Tonight, present are alternate Commissioner James Oraziotti will be sitting in for Commissioner 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. Jamie?
Vice-Chairman Phillip Cavallaro	I'd like to make a motion that we move item number 1 to the number 2 position and the number 2 item to the number 1 position.
Chairman E. Conklin	All those in favor?
Unknown voice.	Aye.
Unknown voice.	Aye.
Chairman E. Conklin	Any opposed? So, moved. Okay.
	#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)
Commissioner/Secretary Philip Jones	To whom it may concern: The following having applied to the Shelton Board of Zoning Appeals for a certificate of approval at a public hearing, such applications will be held on Tuesday, February 21 st , 2017 at 7:30pm in the Hearing Room of the municipal building, 54 Hill Street, Shelton CT. Starting with number 2, that's number 1, #0117-01 405 Long Hill Avenue, Jack and Josephine Gaida of 405 Long Hill Avenue in Shelton (care of Attorney

	Dominick Thomas, 350 Main Street in 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. And this is continued from our January meeting.
Chairman E. Conklin	Okay.
Attorney Dominick Thomas	Dominick Thomas, Cohen and Thomas, 350 Main Street in Derby, CT, representing the applicant. Uh, today I'll, in concluding the public hearing, will focus on responding to some of the questions that were brought up and to the comments made by Attorney Tyma concerning the <i>Verrillo</i> case. The first thing I want to present to you is the map drawn up by the engineer. And I'm going to go in sequence here because we discovered an error in the research, doing it, in the fact that the zone line is actually farther away and I'll address that in a minute. The initial zone line as we presented was in the back of the two longer lots. That's the way it was explained to the engineer and that's the way he did it. And I know there was a question as to the location of the house. So, the engineer, at first when we went back there, placed the house on the map, placed the house on the map, and you can see that the house is totally in the IA-2 zone. Now, I know that someone presented an assessor card to you last time. I will tell you that the assessor cards on this property are all listed as R-1 'cause the planning and zoning commission never changed it back after the Gaida case was decided. They never went back and re--you know, not rezoned it--but returned it as was ordered by the case. So, the assessor's records which obviously are not determinative--because the case is determinative, uh, you will see that the house--the majority of the property is on it. So, what happened after that? Well,
Chairman E. Conklin	... the assessor's card? I went to the assessor's office. I talked to them. As far as they've known, it's always been R-1.
Atty. D. Thomas	No. I'll show that to you.
Chairman E. Conklin	Okay. Yeah, because I asked them about that.
Atty. D. Thomas	Yeah, no, no. It hasn't been. And the case supersedes... the assessors can do whatever they want. The appellate court is what controls. So, what my clients did is they went to the assessor's office and they pulled two old maps. And as you can see from the old maps, the IA-2--you can see it's not always residential--the IA-2 zone and--which I drew, highlighted in a pink line--is actually, the back of the shorter, which is the 200-foot point from Long Hill Avenue--which is what the zone was. So, actually, the zone line runs through the Bienkowski and other lot. That's where the actual zone line runs. Which means we actually need less of a variance, however, my clients have authorized me to state of the commission that they will still maintain as a condition of a variance approval, the buffer from the back of the Bienkowski lot--in other words, the way we drew it up. Even though, when you look at where the actual zone line was, looking at the assessor maps, the 50-foot buffer to the residential zone would actually mean that the parking can be brought up closer to the back of those two lots. But as you can see from these two old assessor's maps... the other thing, by the way, it does show is that you can see that the IA-2 zone at that point in the older zone stretched all the way to the other side of Route 8 where it went up against a what was then a CV-1

	zone, which has changed. So, in fact--
Chairman E. Conklin	Wh-what's the date on these maps?
Atty. D. Thomas	Uh, I'm not sure of the exact date. I think they're in the 19...
Chairman E. Conklin	The reason I ask is because I've been doing some research in the past week and I find that as you state, it's 200 feet from the road is the line.
Atty. D. Thomas	Was--yes. 200 feet from the road is the line. Yes.
Chairman E. Conklin	And all of these lots are 200 feet deep. So, somebody's off in some line here...
Atty. D. Thomas	No, not all the lots are 200 feet.
Chairman E. Conklin	Well, the two, the one right along the edge of that driveway is 200 feet deep.
Atty. D. Thomas	I understand. I'm--we're just--I'm just reporting to you what we did is we put it at the back of the line--the lots that are 200 feet. What I'm telling you is the assessor's records, the assessor's records show the line where it is...
Chairman E. Conklin	Yeah, the line is not an official line. It's a line drawing.
Atty. D. Thomas	Neither is the designation of the zone, an official designation of zone. So, whether it is one or the other, we're agreeing to where we put it in. And whether it is one location where the assessor puts it, or otherwise, the fact of the matter is, the house is fully on the uh, is fully on the uh, within the IA-2 zone. Now, we move to what I did for you is, using, using the information from the assessor's map. You know, I then took the zone that we--a packet of papers here with the zone, the application that we did--coloring up the line at a different location, showing where it is in accordance with the assessor's map. And what we're saying is that we would agree --no matter what you consider to be the zone line—as approved by the assessor, or where are (inaudible), the additional 50 feet behind the Bienkowski lot--we would agree that there would be a condition that that will still be part of a, any buffer; in other words, no parking, no uh, no parking, no building within that area--we'd still need it obviously for access. Now, the next page then is a copy, a blowup, of the zone map. And the purpose of this is to show you the IA-2 zone, how it's stretched across, and uh, the location of my clients' property, and the approximate location--'cause I colored in green--what was based on the assessor's maps, that would be where the IA-2 zone was before the spot zoning case was done. Then the next two simply are the location of the house based on the assessor's, the old assessor maps indicating the zone. So, you can see the house is even farther within the zone, if you use the assessor line. The second page is simply a blow-up so you can see it easier. Because we had him--once we found those assessor's maps--we had the engineer survey or sight it under the assessor's maps. So, whether it's either line, either line, it doesn't change the facts of the existence of the property. Now, the next thing I'd like to do is to address the comments made by Attorney Tyma concerning the [inaudible]. And for your reference, even though I know you're familiar with the regulations, I'm giving you the copy of Chapter 4, Section 41 nonconformity, from the Planning and Zoning regulations. The reason for that, I highlighted relevant language that you'll see is used substantially in the <i>Verrillo</i> case. Now, when, when...

Chairman E. Conklin	There's two issues that I was thinking about this nonconformity: you're basing this nonconformity on the IA-2 zone when you're asking for a variance on the residential zone.
Atty. D. Thomas	We're basing it on the fact that we can't access a--under the regulations, a driveway through a residential zone.
Chairman E. Conklin	But you're basing the nonconformity on the IA-2 zone and the variance is being, trying to be granted on the residential zone. Why aren't you trying to base your nonconformity on the residential zone, the IA-2 is nonconforming?
Atty. D. Thomas	<p>No, what's nonconforming is the house in an IA-2 zone. Residential uses are not permitted in an IA-2 zone. That's why the house is nonconforming. And once we go through the <i>Verrillo</i> case, you will see that the <i>Verrillo</i> case, for two specific reasons supports the granting of the variance. As a matter of fact, the position of Attorney Tyma is totally contrary to what the law is. Because what Attorney Tyma did not do was give you the case. He just cherry-picked language out of it that suited his position. He did not give you the case. This is a very lengthy case. It's one of the most detailed analysis, if not the most detailed analysis of variances. So, what I did is I highlighted certain things and I will point them out to you so that we can go through them, but you're more than welcome, with a warm glass of milk, if you want to read yourself to sleep, you know, you can read through it. First thing you should know--and by the way, it may be hard for you to see--the page references I am gonna reference are at the bottom right hand. They're very light, but they're at the bottom right hand of the case. It's easier than referencing the pages of what we call the West Law sites. Okay, so what was going on in this case? Well, what was going on in this case--if you turn to page 15, because most of the case, most of the pages in the beginning are what we call the head notes, but if you turn to page 15, I've highlighted for you specifically what was being asked for in this case. And the one thing you have to remember about this case that needs to be said from the very beginning is this is a residential house in a residential zone. So, it's a residential, single-family house in a residential zone. It is in Branford; as you can see all the variances here, it's a nonconforming lot; it is a house that formally I think, was a cottage, you know, seasonal, that somebody had turned it into year-round. And now the people wanted to, the defendants--<i>Verrillo</i> was the neighbor appealing the approval of the variance--they wanted to now expand the house to make it more livable. And there's a substantial amount of what's in the case that talked about that. But that was the main thing, it was a preference of the people who owned the house that they wanted to expand it: get more room, make it more livable, more bedrooms, whatever the circumstance. So, they were asking as you can see for a very, enormous amount of variances: reduce the setback, reduce the westerly setback, reduce the easterly setback, reduce the rear setback, increase the maximum floor area ratio, increase the maximum coverage... There was whole bunch... but again, remembering that this is a residential house in a residential zone - totally, completely different than application that you have before you. If you turn to the next page, the next page, the highlighted portion on page 16 is the response of the neighbor's attorney--which is very enlightening--to a comment by one of the zoning board members. And he's responding when asked if the dimensions of the lot,</p>

the small size of the lot, would be a hardship (*quoting**) “No, because there is a house on the lot. That’s one important consideration at this point. There is a house on the lot. It’s not as though the applicant can’t build, is being denied use of the property; it’s denied all benefit. There is a house. It’s a residential district.” Now, Attorney Tyma spent a lot of time telling you that you couldn’t grant the variance because there was a reasonable use, the nonconforming use of the lot. You will see later on that that is completely, utterly, and totally contradictory to what the holding of this court is. But the important thing to remember is that in the case, the reason behind that is because it’s a residential house in a residential lot. That was the main purpose of the, of the uh, denial of the variance because they had a use in accordance with the regulation. What they wanted to do was expand the nonconforming house and that’s what they were denied. Now, if you look to page 21, that’s where the court states: What is the goal? (*Quoting**) “As a general matter, zoning regulations... seek the elimination of nonconforming uses, not their creation or enlargement.” It is uncontroverted; there is no issue before you that the house on the lot is a nonconforming use. Never mind whether it’s a nonconforming structure or not; it’s a nonconforming use. It’s a residential use in an industrial zone, not permitted under your regulations. So, given the fact now that as the case states, that’s what the main purpose of, one of the main purposes of zoning is to seek the elimination of the nonconforming. And remember, this case is written up where the applicant wants to expand a nonconforming house in a residential zone. Now, in, if you follow through as you’re reading the case, there’s a lot of talk in here about practical confiscation and there’s a lot of talk about uses being consistent with the regulation. On the very next page, I highlighted the language that is the intent of this section and they’re talking about, (*quoting**) “to permit nonconformities to continue until they are removed, but not to encourage their survival.” So, what’s before you now is the first step in an application to remove—the non, we’re not keeping that. And I’ll be honest with you, I’ve had cases and I, that I was involved in an appeal—not in Shelton, in a different town, where the applicant wanted to put a commercial business in a commercial zone; in that, on that lot was a nonconforming residential two-family house. And what we asked for, was to have on the lot, the business and the nonconforming house. And we were turned down and I told the applicant very honestly, I said you know, it’s a nonconforming use. They’re going to want you to eliminate it, and he eventually chose to go with the business and eliminate the non--What we are doing here, what you have before you is, we’re not keeping that house and putting in... we are eliminating the house. So, we’re following what is in here, in the, in the *Verrillo* house by removing a nonconforming use and proposing--not before you because you don’t approve uses--a conforming building in accordance with the IA-2 standards. If you turn to page 23 where the court states, (*quoting**), “it bears repeating”, well actually before that, at the top of the page is a continuation from page 22 where it talks that the (*quoting**) “principle in Connecticut that ‘nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit - no case should they be allowed to be expanded.’” So, frankly, for instance, if we were before you--let’s say the client wanted to keep the house--if we were before you to add an addition with two bedrooms, uh, onto that uh, that house that’s in the back—and two bedrooms and a deck--you’d have to deny it--because that would be the expansion of a nonconforming use. That’s what this case is saying. It’s not saying what Attorney Tyma was saying which was: you have a use and

therefore, you can't grant the variance. That's not the case. And as they talked at the bottom, under the letter B, (*quoting**) "It bears repeating exactly what this case is--and is not--about. This is not a case involving a proposal seeking to construct a residence on a vacant nonconforming lot in a residential district." It (*quoting**) "is not a case also involving a proposal to do 'nothing more than to alter the interior.'" So, what they're saying there is if you had a nonconforming lot, and you wanted to build a house, they would be treating it differently. In our case again, we are only talking about one single variance to access the property. We are asking for no variances with respect to intrusions into the buffer or any setbacks or anything for any building. The building that will be built in the back has to comply with all the setbacks and everything that are required in the zoning regulations. Now, the, if you go on, and you look, um, at page 26, um, these are some of the quotes that Attorney Tyma gave you from the case. And it talked about (*quoting**) "to prevail under a claim of practical confiscation, a party must demonstrate that a literal application of the regulations at issue 'will not allow any reasonable use of its property.'" And that's what he was to you. He was saying, well, there's a reasonable use of the property: it's a nonconforming use. It goes on to say (*quoting**) "Practical confiscation has been found when 'there are no alternative uses' for a vacant nonconforming property in a residential zone other than constructing a single-family home." In other words, what this is talking about--when you read the case in its entirety--is it's talking about a residential use in a residential zone. Okay, it is not talking about a removing of a nonconforming use. And let me explain something to you here--to take what was stated last month to its logical conclusion--what this, what the proposal is if a--and you'll see as we through it here, it's clearly not (inaudible)--if you were to say that you could not grant a variance if an existing nonconforming use was on a property... that's the case I mean if you stop there at the end of that sentence... then if you had a pig farm, I don't know maybe a pig farm is allowed in a residential zone, I'm not sure, so I couldn't, you know, I might not wanna, I might not wanna go that route. If you had a noxious, old, manufacturing business in a residential zone, and you had residences on either side, and that lot was let's say small and you wanted to build a house on it and knocked the nonconforming use down and build a single-family home and was before you because that lot was undersized, so you wanted to get a variance for that undersized lot, according to what Attorney Tyma said, you couldn't do it. You'd have to leave the noxious, nonconforming use there because it's a use that's on the property. As you will see here, that is clearly and unequivocally not what the *Verrillo* holding is. It, the talk as you read the cases that I, the areas where I've highlighted, and you can read all the other areas too, you will see that they are talking about the fact that within the regulations, and in fact, at the bottom of page 26, (*quoting**) "we reasoned that 'nowhere does the record show that the applicant cannot use the parcel of land in a manner consistent with the zoning regulations and in the same manner as other properties on the street. There was no evidence that a single-family subdivision'" - this is quoting from the case. So, what they're talking about is that they had a use within the zoning regulations. In the IA-2 zone, that house is not, is not a permitted use. The case goes on to state on page 28 that the (*quoting**) "familiar goal of zoning is to abolish nonconforming uses as quickly as justice will allow. Accordingly, the alteration or substantial remodeling of a building as a nonconforming use is logically inconsistent with the principle that essential purposes of stabilizing the use...the fundamental

structural improvements will serve only to perpetuate a nonconforming use.” When you’re looking at the case, and then the case goes onto say, on page 29, (*quoting**) “In considering the issue of whether a reasonable use exists, we repeat that variances cannot be personal in nature.” The preference of the individual is not what you’re looking at. So, what they’re talking about here is in the *Verrillo* case, the applicant had a single-family house, lived in it, it was fine, they wanted to expand it. His preference as you can see here was to fulfill his personal needs. Okay. Not for any specific hardship or anything of that nature. He was just saying the hardship was we can’t expand the house to be able to live in it. And again, they repeat, you can see on page 30 again they talk about nonconforming uses should be eliminated--which is what this application before you is stating. On page 31, they talk about that variances should (*quoting**) “be granted when the strict application of the regulations results in unusual hardship peculiarly affecting the property.” One of the points they made in *Verrillo* was: all the lots on this street were small. They didn’t have an unusual hardship; they were all small. So, what is our hard--there are two reasons why you can grant the variance under *Verrillo*. One is what are hardships? Well, the hardship is to use the property in accordance with the zoning regulations, you need access through a residential zone. And the regulation says you can’t have access through a residential—can’t have a driveway, in a residential zone. So, in fact, the, you cannot use the property in accordance with the zoning regulations because of 24.8.4. Because it says you can’t access it. So, if you can’t access the property, then you can’t do anything on it. The client wants to remove the residential use which is a nonconforming use and use it in accordance with the zoning regulations--not a personal preference. Is it unique? Well, utilizing your GIS, there are three maps here, because I wanted to make it big enough so everybody could look at it. This is from, the first one is the client’s property and goes all the way down to Controls Drive. It encompasses not only the IA-2 zone, but I figured I might as well for good measure, for good measure, throw in the LIP zone. An, and low and behold there are absolutely no properties that have the same uniqueness of having access through a residential zone--a-ha--except for one--which is very unusual. And that one is the abutting property. The Sikorsky property. Now, of course, it doesn’t have a problem, because it fronts on Platt Street. So, it has access. So, they’d never be able to get a variance because they don’t have a hardship. They actually have access and the access--but for some reason, and we can only speculate--when these two IA-2 properties were developed—and I have no idea what their reasoning was. It could very well be that these large parcels stretched all the way to Bridgeport Avenue at some point, but I don’t know. But the point is that’s the only other--there is no other property in the LIP or IA-2 zone that has an access to a residential zone. So, therefore, in accordance with *Verrillo*, our property is totally and completely unique. Okay. Now, in addition to that--the uniqueness of it—and the fact that it is a hardship, on page 31, there is what is known, and I’ve argued before you, I’ve argued this before this zoning board of appeals before--there is an alternate reasoning for granting variances and that is when you reduce a nonconformity Okay. Now, when you eliminate a nonconformity, that is the ultimate reduction of the nonconformity. But it says that--talking about the *Stancuna* case, where an (*quoting**) “existing nonconforming residential structure is to be razed and replaced with a new structure” that was still nonconforming but less nonconforming. The Supreme Court has held and that--in the *Vine* case as you read in here--that that is a separate basis for granting a variance. So, in

addition to the uniqueness of the property, even if it weren't unique, but it is, you have the grounds to grant a variance, simply because we are proposing the elimination of a nonconforming use, which as you have seen over and over in this case, is the primary, one of the prime purposes of zoning in this case is to eliminate nonconforming uses. So, you're looking at it and saying, well it's a house, but this is--you've got to look at it generically--if this was a residential zone, and--go back to my example--if you had a residential zone and you have a noxious, manufacturing use in the middle of it that went back to the '30s or '40s and was a pre-existing legal nonconforming use and I was before you to remove it, of course it would be removed. That's exactly what you're supposed to be doing. We're gonna remove and we're gonna put a house there. That's what we're doing. Well, we want to remove it and we're gonna put an app--we wanna put what is part of the comprehensive plan. Because the comprehensive plan as it's defined in this case and it's defined in zoning law, and if you look at page 35, (*quoting**) "the comprehensive plan is found in the zoning regulations themselves." Because what they talk about in here is if they granted the variances and they granted all those setbacks and floor ratios and everything, they would be violating the comprehensive plan. It's the exact opposite in our case. The comprehensive plan calls for an industrial building of a certain size, with certain setbacks, in an IA-2 zone. That is what we are proposing. So, therefore our application is totally and completely in accordance with the comprehensive plan. And as he defines it on page 35 it is found in the "zoning regulations." Okay. So, in fact--what, the, and it is a very lengthy case, and I'm not telling you to rely solely on what I highlighted, you can certainly read it yourselves--but I think when you read the entire *Verrillo* case, there is nothing in there whatsoever that says if a property has a preexisting legal nonconforming use on it, that is a use that prevents you from granting a variance. As a matter of fact, when you read the case, it says the exact opposite. It says that the primary purpose is to eliminate nonconforming uses--which is what we're doing--and in fact, whether or not you look at the old maps of, from the assessor's office, or whether you look at where our engineer put the map, put the line at 200 feet, the bottom of the two longer lots--the Bienkowski lot and the other lot--the fact of the matter is: we need a variance to access the property and we're going through a residential zone. My client is prepared to accept the condition--if you want to look at it, if the assessor's map is correct--that the buffer would be 50 feet from the back of those 200-foot lots, the lengthy 200-foot lots. We are eliminating a nonconforming use and putting a use that's conforming with the comprehensive plan, or the zoning regulations, and in addition to that reason--which that alone allows you to grant the variance, or actually mandates that you grant the variance--the second reason is that this property is truly unique. Now, whether it was made unique by Route 8 and the taking of the properties, I don't know, but the fact of the matter is, in the entire IA-2 and LIP zones that border this area, there is no other property that needs--that has a sole access to a residential zone. So, based on, actually, based on the language in *Verrillo* and based on the information in the record, clearly and unequivocally we have both, a, as it says in the very last paragraph of the case before the footnotes on page 36 that in *Verrillo* (*quoting**) "The record did not substantiate the finding that a legally cognizable hardship exists peculiarly affecting the applicants' property or that the proposed expansion would not affect substantially the comprehensive zoning plan." That's what they found in *Verrillo*, because it was a residential house in a residential zone. In fact, in our case, we have

	presented more than substantial evidence that there is a legally cognizable hardship that affects our, this property, alone and the proposed elimination of the house, the nonconforming house, and access through the residential zone so that we can building an industrial building in accordance with the zone would be in effect with the comprehensive plan. Thank you, and I'll answer any questions you have.
Chairman E. Conklin	There's two, two things. This has come before our board before, correct? And what was the outcome of that?
Atty. D. Thomas	In 2004, the board denied it. It was then started to appeal. At that point, the Planning and Zoning Commission re-zoned the property R-1. At that point, we appealed the re-zoning of the property R-1. That went up to the appellate court, and the appellate court at that point found spot zoning. That was the case--I gave you the Gaida case...
Chairman E. Conklin	And what parts--speaking of the appellate court--there were two parts, can you describe that to us? What parts failed, what parts passed at the appellate court?
Atty. D. Thomas	What parts failed? The appellate court found that there was spot zoning and therefore turned it back.
Chairman E. Conklin	I read that. There were three parts of that case that I could find. One was you were, someone was arguing, the property was given on the...
Atty. D. Thomas	No, that was the Snow--that was the <i>Snowday</i> case.
Chairman E. Conklin	So, that was proved to be all proper notices were given. And then the judge said there was a two-prong approach to determine spot zoning. Uh, first, uh is in regards to is it--should it be changed as a zone or not changed as a zone. And second, are someone picking on that individual parcel? And that parcel alone is being picked as a spot zone? The first part and I'll pull a quote out of it, "substantial evidence in the record supported the commission's decision that the zone change was in accordance with the comprehensive plan." And that part passed. So, the judge...
Atty. D. Thomas	No, you're not passing.
Chairman E. Conklin	Well, that's what it said directly in there. They said they proved, that that part was approved. The second part, the zone change--out of that quote--"the zone change was not comprehensive including all parcels along Long Hill Avenue the northeast and south of the property affecting the zone alignment. So, since it was just picking on one individual parcel, and there were more parcels in that general area, it's saying that you're making it directly spot zoning in that case. [inaudible] So, the court did rule that under our comprehensive plan, that should be and can be changed to an R-1 zone.
Atty. D. Thomas	Right, but it wasn't. The court turned it back and no action has been taken by the commission since then to change it to R-1 one. So, it's an IA-2 zone based on the Gaida case. That's what it is. The--there isn't--the Gaida case is not multiple holdings. The court is addressing each of the legal issues.
Chairman E. Conklin	Right.

Atty. D. Thomas	But in the end, it found spot zoning. And in the end, then it ordered that we got what we asked for which was the return to the existing zoning which was-- however you want to find the line, you know whichever line you want to find--which was R-1 in the front, IA-2 in the back. That's what the, the proposal was. That's what the finding was. Since that time, the Planning and Zoning Commission has not taken any action to re-zone the property. So, the property is IA-2. And that's been challenged at any level in any circumstance.
Commissioner Bryan Vasser	So, the current owner bought it with the zone split, right...knowing that the
Atty. D. Thomas	Right. Yeah.
Comm. B. Vasser	Then, fought the decision to change it to R-1 to keep it in the position that it's in today?
Atty. D. Thomas	Well, right, because R-1 would have, would have severely hampered the value and he fought to keep it in the IA-2 zone.
Comm. B. Vasser	Knowing there was no access?
Atty. D. Thomas	Knowing that there's a, you need a variance, yeah.
Comm. B. Vasser	Knowing that you need a variance.
Atty. D. Thomas	The fact that someone purchases a property is not--that's zoning 101--that's not a self-created hardship to protect your purchase. If in fact, if in fact, the best example I can give you is--there's actually a case pending with respect to this--if in fact, he owned an access... let's take the Sikorsky property, okay? If in fact he owned that piece and he sold off a lot, land locking him on Platt and only had that little strip, that's a self-created hardship. That's what a self-created hardship is. When you do something that causes the zoning regulation to adversely affect your property. Not buying a property--you can buy a property that has a, you can a pre-existing nonconforming lot, you don't lose the right to claim it as a pre-existing nonconforming lot or anything, just because you bought it like that, if you need a variances, to build your house. You don't lose it by buying the property. There's no, there's no, and in fact, one of the key points is that's why variances--if you read your nonconforming section, it talks about that. Variances don't, nonconformities, pre-existing legal nonconformities and everything, doesn't, isn't affected by changing of title. Nothing is affected by change of title. It is affected when you create your nonconformity and I think the Sikorsky property would be the best example. If somebody sold off a lot and land-locked it and just said I'm gonna use that 30, 40, 50, whatever it is, foot strip off of Long Hill Avenue through the residential zone, that would be a self-created hardship.
Chairman E. Conklin	Okay, any other questions?
Commissioner James Oraziatti	What about the Moon versus the Zoning Board of Appeals, it says uh,
Atty. D. Thomas	Which page?
Comm. J. Oraziatti	Page 35

Atty. D. Thomas	Hold on
Comm. J. Orazietti	You have Section 85, page 35...
Atty. D. Thomas	Uh-huh.
Comm. J. Orazietti	It says (<i>quoting*</i>) “Put differently, a ‘variance should not be granted unless it is in harmony with the general purpose and intent of the zoning ordinance.” If you change this, it would be spot (inaudible), well, I’m looking at it as, if you change it, it’d be putting the rest of the neighborhood in a commercial zone.
Atty. D. Thomas	No. You’re not doing any zone. All you’re doing is granting a variance. We’re not asking the uh, anybody to change the zone for the rest of them.
Comm. B. Vasser	Well, I think what he’s, I think what James might be getting at is now we’re going to be chucking down between two houses; people have created a life there; they have a home there; and now we’re going to be chucking things in between their houses. Am I right?
Chairman E. Conklin	Through a residential...
Comm. B. Vasser	...Through a residential zone which is not in harmony with the neighborhood. In general, along, along, I think that’s what--
Atty. D. Thomas	The harmony factor is what the zoning regulations, the zoning regulations on that property call it to be IA-2. Uh, Planning and Zoning could have taken steps, other steps--I could go down a long list--they didn’t. It is an IA-2 zone. Now,
Vice-Chairman P. Cavallaro	You, you highlighted this though...
Atty. D. Thomas	Right.
Vice-Chairman P. Cavallaro	(<i>Quoting*</i>) “Put differently a variance should not be granted unless it is in harmony with the general purpose and intent of the zoning lines.”
Atty. D. Thomas	Right. The zoning ordinance is IA-2. This is what the (inaudible) is: that’s not the point. In other words, if you interpret that to mean, we can never grant a variance that conflicts with the zoning regulations, then you guys might as well go out of business.
Comm. B. Vasser	Well, I think the point is, is that yes, it’s an IA-2 zone in the back, but it’s an R-1 zone in the front. So, you’re gonna disrupt one to allow for the other.
Atty. D. Thomas	Y, yes. I suppose you could look at it that way. There’s certain, there are certain requirements that Planning and Zoning has able to be putting on a site plan, given the circumstances, they can attempt to impose our restrictions and stuff as they do very often. For instance, um, Big Y PDD: trucks aren’t supposed to be delivering at a certain time, but [inaudible] and the same thing they can do on the site plan, because of the location of the site plan. They can uh, there is a buffer requirement of 50 feet; there’s a whole bunch of things. The fact of the matter is that when you look at the types of zoning regulations and you look at the property, you’re not going to be having any semi’s going

	down there, you know what I mean? That's, there's probably going to be a restriction. But that's not your job. It's Planning and Zoning's job.
Comm. B. Vasser	Well, it's our job I think to maintain a harmony of the neighborhood.
Atty. D. Thomas	No, it's not. Your job is to maintain the harmony of the--it's your job to--you're confusing this in the circumstance. If somebody comes in for a variance, a good example to give you. If you have a bunch of small single-family homes and somebody says well I want a variance and I want to be able to build this monstrosity and go right up, almost to the property line--5-foot setbacks or something like that--that's not in harmony with the neighborhood. Now, you also have arguments that I'm sure have been made before you where somebody comes in and says, uh I want to be able to build on this lot, even though it's not a building lot, I want you to grant me a variance because of the size of the lot because I'm going put a small house and these lots are the same size as all the rest of the lots in the neighborhood before they were zoned to be nonconforming. It's not an approved building lot, uh, even though it's in harmony--you can't use the harmony as a basis. So, it's not the neighborhood that you're talking about, it's the comprehensive plan that you're talking about. The comprehensive plan as it specifically states in here is the zoning regulation, okay? And in, you're reading the Moon case, (<i>quoting*</i>) "Put differently, a variance should not be granted unless it's in harmony with the general purpose and intent of the zoning ordinance." Remember we are talking about a use. The fact of the matter is, that that house in the back, and I know it sounds like a conundrum, the house in the back is not in conformity with the general purpose intent of the zoning ordinance which calls for that property to be industrial in some fashion.

Clerk Tina Kelly	Mr. Chairman, I have to change the tape.
Atty. D. Thomas	It's important when you're reading a case like <i>Verrillo</i> to read the whole case. You can't excerpt things out of it. But that, the term harmony there is not talking about a neighborhood. It's talking about whether or not, if you, if the position is, no, we're not going to grant the variance, then the property in the back cannot be used in accordance with the zoning regulations because it can't be accessed. Not a question of it could be used - well you could build a smaller industrial building. No. You can't build any industrial building which is what the zoning regulations permit.
Chairman E. Conklin	And this property was originally all R-1, from what I could find, correct?
Atty. D. Thomas	No. The R-1 change was the change in two thousand and...(inaudible)
Chairman E. Conklin	Originally, this property was zoned R-1 before Route 8 went through.

Atty. D. Thomas	No. Oh, no. It was industrial. That's the
Chairman E. Conklin	As far as, when I went through the zoning books, I thought I could find that it was R-1 originally.
Atty. D. Thomas	No.
Chairman E. Conklin	That didn't go through until after Route 8 was built?
Atty. D. Thomas	Look at the uh, look at the uh, uh, 2 assessment maps.
Chairman E. Conklin	Yeah, but those are both after Route 8. I'm talking pre-Route 8 when this house was built.
Atty. D. Thomas	Pre-Route 8? We have to remember Route 8 was commenced, was relocated in the 1970s, Okay, and the zoning, zoning regulations, (inaudible) regulations, I think are 1963. I
Chairman E. Conklin	As far as I can tell, this was re-zoned in 1977 is what I could find.
Atty. D. Thomas	Whether it was or not it was long before my client's time that it was, it was, uh, resolved.
Chairman E. Conklin	Well, then the zone was changed after Route 8 was put through.
Comm. J. Oraziotti	Route 8 was '74.
Atty. D. Thomas	I'm not, I'm not aware of that. I, you know, I didn't research it but it's not relevant to this case. It's not relevant – I mean if at some point in the past it was zoned, uh, it was zoned IA-2, and you can see from that it abutted up against a CV zone. And as was typical back then, they made residential zones whatever. Whether it's 200 ft., whatever the (<i>circumvention?</i> – <i>unclear</i>) from the centerline of bah bah bah bah Long Hill Avenue to the edge of the right of way Long Hill Avenue. What you find – if you go through the town, you find it all over the place, which is what they did, where you have, especially where you have proximity, residential zones proximate to commercial, industrial zones. That's what they did back then.
Chairman E. Conklin	All right. Uh, obviously we're
Comm./Sec. P. Jones	Attorney, I just, explain to me again why you included a map here that's got a sixth lot. That subdivision..
Atty. D. Thomas	I just blew up, no, no, no, what I did was, that's when we found the assessor's maps which had the line in a different location, so I had the uh, if you look at the map right before that, I had the uh, uh, surveyor locate the house using the assessor's map line. And all I did with that map you're looking at is blow it up so you'd have a little easier view of where the house was vis-à-vis the zone line, uh, uh, in the uh, vis-à-vis the zone line in the uh, assessor's map, which is actually closer to Long Hill Avenue than the, and I and I, I tend – nobody relies on assessor's maps for accuracy. So, I tend to think that certainly a finding as your Chairman said, that 200 feet in

	<p>those lots or 200, you know those longer lots, 200 feet, that would be appropriate. It's just that, we, in our due diligence we found that and I wasn't certainly going to conceal what we found. You know, that we found it. So, whatever it is, we're prepared to have the buffer go farther back.</p>
Chairman E. Conklin	All right. Okay. I can see people, Attorney Tyma..
Unknown voice	So, I didn't realize...
Chairman E. Conklin	Excuse me, just quickly give your name and address
Atty. A. Tyma	<p>My name is Attorney Alan Tyma, across the street, 231 Coram Avenue, Ryan and Tyma. I appear before you on behalf of the Fitols who are abutters in this particular venture. Uh, so I want to start off by saying that I've been called a lot of things but never a cherry picker so that's an unusual characterization. What I do suggest is as you read the case, you note what your primary responsibility is. Um, there's no such thing as a minor variance. The law doesn't support minor variances, whether it's a request for one, which is an access, or it's a request for many. It's about whether or not the record allows for a variance. Now, Mr. Thomas on behalf of his client needs to go and provide proof, because he has the burden of proof, as well as the burden of persuasion. What I heard in front of you tonight was a lot of attempted persuasion, but I didn't hear anything about the burden of proof and the law that exists and that you are to abide by. Now, having been in this business for about as long as Dominick has been, we'll have our difference of opinion, we agree many times and we obviously are representing our clients. In this particular case, as I view it, and if you read really through this whole case, it doesn't matter that it was a variance for an enlargement of a non-conforming use. What mattered in that particular case was the law on variances. And the law on variances and the law on variances talks about confiscatory issues. It talks about the fact that the property can't be used in its present form for anything. It doesn't talk about the opportunity to develop it in accordance with, what the zoning is. That's not the issue. The issue before you is not even the issue of whether or not he's going to remove the house. The facts are the facts now, not somewhere down the road. And the facts as they exist now is that he has a pre-existing, nonconforming use and structure, which is residential, actually in conformity with most of the rest of the neighborhood. And he'd like to go and use that back piece which if you look back historically is a compilation, right, of some other pieces that he didn't exactly own that at the beginning. So, he would like to use it in accordance with what it could be used for in an industrial zone. But he's got to meet the burden, right now, of saying as it exists, is this in fact something that should be granted a variance. So, he has to prove that hardship requirement. And I think the record, everything that I've heard, in light of the law, once you read the entire case, reflects that there is not the required hardship, it is not confiscatory, he has a building there – he'd love to go and expand it to be able to use the entire property, but he's not entitled to that, unless he could demonstrate that in fact, as it sits, his client doesn't have a reasonable use of the property. And he does. He's using it residentially and we know from that case – and so as long as we're pointing out different issues – now I've got probably a different version on it so I'm not sure,</p>

uh, what page it's going to be for you. But it's somewhere before the capital B, here it's 687, uh and it talks about, (*quoting**) "the quintessential example is the precept that a lawfully established non-conforming use" that's what he has, (*quoting**) "is a vested right entitled to constitutional protection." So, you got to start with that. And that's something that means no one can force him out. If he chooses to go and knock it down that's his business. The characterization of what is a self-created hardship, um, the example given to you is not the only example of what self-created hardships are. And I think the amassing of the property and the attempt to go and use it through the industrial zone that was established some time ago, may actually be contradictory to what Mr. Thomas said. It may in fact be an attempt at a self-created hardship. Maybe a judge is going to have to determine that – I don't know, but I would say to you that I don't agree with his characterization. Um, the other thing that's in that case a little further down – because it isn't on all fours with this case – I mean it's clear that that was a small structure the guy wanted to expand to get a bunch of variances, etc. But the essence of talking about the confiscation – this is at, in my page 700, this is citing this *Bauer* case and that the one you were citing, Commissioner, um which is (*quoting**) "a practical confiscation occurs where a landowner is prevented from making any beneficial use of its land, as if the government had in fact confiscated it." That's the standard. Okay. And what they tell you here, is that you're not supposed to be granting variances. The idea that you could be out of business – the answer is, and again I just, I've represented a past iteration of this board – but part of the terminology is when can you grant a variance. And probably, most cases, legally speaking you're not supposed to grant the variance. But you may. You may look at various factors, some which ought not to be considered. But the bottom line is, it's to be sparingly used. And in this particular case let's talk about reality. So, I think the record should reflect that on March 22nd, 2017, a public hearing to establish an initial concept Planned Development District has been filed by Mr. Thomas on behalf of his client with the Planning and Zoning Commission. As of late this afternoon, that's not been withdrawn. Okay. So, when he says well, the town hasn't done anything about making this residential, he and his client are trying to do something about making it residential. So, I think you got to be well aware of that. Um, that's got its own list of issues that are going to go out there. But I think for someone to come before this commission and say well, as I sit here today, my client wants to use this to put up an industrial building and he wants access to it – which conceivably and agreeably is going through a residential neighborhood- so it's definitely having an adverse effect upon that residential neighborhood. Well, in fact, he does want it to be residential. Okay. Because that's what out there, that's the public domain, that's got to be reflected in the record. Um, just one or two more items because I don't want to be repetitive. There's, there's a case that I was looking at sort of as a follow-up, let me just give you the name of it. And I'm sorry I'm not passing out these things because some of it's on the fly, you know as you go and you listen to what's going on. It's called *Green Fall Associates, LLC, vs. the Zoning Board of Appeals in the town of Montville*. Um, and I'll just give you the cite, 138 Connecticut Avenue, 481 to 2012 case, not been overruled so no negative treatment in subsequent cases, and in that case there was a denial by the board of a request for a variance. And I just want to make sure that you understand

you're empowered to deny this as I feel you don't have the proper record before you in order to grant it. But if someone says well you shouldn't and one of the reasons in that case – and let me just see if I can find the language – In Connecticut, okay, (*quoting**) “a practical confiscation occurs when a landowner is prevented from making any beneficial use of its land, as if the government had in fact confiscated it. It doesn't occur when the landowner cannot take advantage of the myriad of uses acceptable under the applicable regulations.” So, what would be acceptable under the applicable regulations would be putting an industrial building in the back. That's not sufficient. That's one of a myriad of uses you might be able to use. The landowner itself has made that limit its land use options. He's got that place up there. If he comes, so if he goes to the Zoning commission and he gets it zoned residential, it's a totally different story, right? If he goes there and of course, they could decide to grant some or all of what that proposal is, he may never come back here. If in fact, they didn't grant it for whatever reason and then he decided to take down the house, different factual situation for you then, interesting question as to whether or not that has provided him with again, a self dealing aspect of it--in other words, a self-created hardship, because no one could force him to take the house down. The idea that it's a preexisting nonconforming use has great and very severe um, importance in all cases, but especially this one. Just cause he can't use it all the way he wants do, he can still use it reasonably. And that's the measure that you need to have in terms of what I would suggest: denying the application because that is not been proven to you: that he has no available reasonable use of the property as it exists.

Chairman E. Conklin You're saying he has no confiscation property?

Atty. A. Tyma There's not even close to a confiscation! And you couldn't do it anyways and the city couldn't do it any way either. I mean if they wanted to take that property, let's assume for the moment, they wanted to take it and allow for the backside to be developed, they'd have to pay him a reasonable value for whatever that property is. Okay? But would they want to take it? Back to your original thing: do you want to allow the trucks. This is not Bridgeport Avenue. I mean the example given to you was so off base. I mean where the new shopping center is right, it's on Bridgeport Avenue. I understand that the trucks are coming in and they're gonna go behind, right--they want to limit the time where they were originally going to do it. But the access isn't through where the residential neighborhood is. It's totally different. I mean years ago I actually represented the residents when they put in Walmart. Remember how that is? And they have the walls up over there and so the condos behind? And one of the issue that I raised on behalf of the residents, which they took to heart, was they knew the access was off of Bridgeport Avenue, but limit the time for the trucks to come in. But that's not at all comparable to what you have here. And again, I think we all have to have a reality check; I mean all of these political things that go on out there--I mean there's something--facts do matter. All right. And if you do have something in front of you saying that well, wait a moment, for someone to say that the town hasn't done anything, well maybe that's correct. But you know there's been a decision; no one's made the next step from a town perspective--probably because they're waiting for an applicant to come in, ya know, with a sensible proposal. Well, that applicant did come in with a sensible proposal, in their estimation, to put in condo units there. And if you remember what

	<p>happened with that: ultimately there was no decision made and they withdrew that application. So, now there's a new application. So, what I think is being done is they're asking for the indulgence of your time when actually we're quite premature. I mean this is really a cart-before-a-horse issue. I mean I do agree with Dominick on this one point that the appellate court decision does control. Okay? I don't know all the aspects as to what the setbacks were etc. I wasn't involved in the case certainly and he was. But I will tell you that there is an attempt now to make it residential. I think you need to let that play itself out before you make any determination here because you know you're gonna end up in court. I mean, ya know, I'm gonna represent my client and we'll be in court if you grant it. Okay? Not a threat, just a statement of fact because I firmly believe the confiscation issue, etc. doesn't apply here. But I think the practical way for the board to handle it is you know, you've got a 65-day opportunity after the public hearing is closed. You could see what happens, you know with the Planning and Zoning commission and maybe you could make a determination and maybe it never even becomes an issue for you; maybe it's withdrawn because there's some level of success that occurs within that 65-day period. Again, I don't know what'll happen at the public hearing. I'm sure you're gonna have a differences of opinion, but I can tell you, at least from my client's perspective that residential is clearly better than industrial. And I think that's what was talked about before. The question of the amount and the type of housing is still the issue. And again I don't want to be repetitive about anything else that I'd like to put on here.</p>
Chairman E. Conklin	Any questions?
Comm. B. Vasser	Well, I'd like to, have you define what is reasonable use. Who, if you have an industrial piece of property, and as in this case, the only access to it is through a residential zone--not the greatest situation, but doesn't someone have the right to use that property um--what did you say--for it's best reasonable use.
Atty. A. Tyma	No, that's, that was the argument being made. And I think the answer is: I think the property as it's being used, okay, is not showing a confiscatory effect. That's--you use it from the rear end not the front end. It's not that I own this whole thing and I should be able to develop it to its utmost. What I was saying under that case law--
Comm. B. Vasser	Well, that's what I'm asking: doesn't a property owner have the right to use it to its utmost potential?
Atty. A. Tyma	No, not under--not when you're coming before a Zoning Board of Appeals. Because you're not talking about the right of the property owner to develop it fully. You're talking about whether or not the opposite has happened which is that the property--in how it's being used, or how it's proposed to be used--will be confiscated by the governmental entity. That's the viewpoint. It's a little different point of view. And, if in fact it has small value it's still available under the case law to say that it's sufficient and it isn't confiscatory. Again, start with the premise ZBA varying the ordinance. Right? It's not the ordinance that's says you can develop it to your full potential. That's not what it says. The ordinance says this is the zone. Or in this case there was some question I guess as to whether or not that zone lay. But you use the property as it exists, rather than the property as I would want it to exist, pursuant to a full build-out under the zoning limits. Does that make sense?
Vice-Chairman P. Cavallaro	Yeah. Well, basically there's a reasonable use of it now.

Atty. A. Tyma	Well, that's what I'm saying to you. Clearly reasonable use of it now. And, and the only way I think those factors might change--and I can't sort of predict it--but if one were to knock down the house so as to get--and then come back and say geez I'm entitled to a variance because I knocked it down. That might play into what Dominick was saying about well maybe you created that hardship.
Comm. B. Vasser	Right.
Atty. A. Tyma	So, what I'm saying is I'm not so sure that's something that could and ought to be done.
Vice-Chairman P. Cavallaro	So, he can't expand the house either because it's preexisting nonconforming?
Atty. A. Tyma	You know...
Vice-Chairman P. Cavallaro	You're not supposed to increase the nonconformance?
Atty. A. Tyma	Yeah, I think that's the general rule, okay, in terms of doing it. I think they do give you some limited options. But again remember, it's not the <i>de minimis</i> rule; it's not like they just do it a little bit. So, it generally is kind of an all or nothing thing. Is it being confiscated? Yes or no. If it isn't, go on to the next step. All right. So, you can't issue the variance; that's how I would say you'd need to look at it. That's the case law as I understand it. And irrespective of whether the fact situation is comparable to this, that's never the compelling reason to grant or deny. You know, the real issue is, what are your powers granted under the general statutes and how need they to be exercised, and they need to be exercised sparingly, and they to be exercised by virtue of proof and persuasion. Okay. And I think in both of these, he's derelict; no matter how he wants to read this case. And I think the case law is very, very specific and any other case I cited; and there's really a supreme court case on it where, where they, they actually granted--they found a taking only where a regulation denied all economically, beneficial, or productive uses of the land. That was the supreme court of the United States and that's a US Supreme Court called <i>Lucas vs. South Carolina Coastal Council</i> . Um, so CT does it under the <i>Bauer</i> case which is what you were reading before and that's really kind of the seminal law, and that's what the limiting factors are.
Chairman E. Conklin	I was trying to do some research on--you brought up <i>Verrillo</i> . The <i>Verrillo</i> case, I was trying to find out where it was used, and I found other, other case and I looked for <i>Caruso vs. the ZBA of Meriden</i> . Uh, and I found another reference to (quoting) "thus in accordance with our taking jurisprudence, we have conditionally held that variance cases that when a reasonable use of the property exists there should be no practical confiscation." And that came out of the <i>Rule Water Company vs. ZBA</i> in that case itself.
Atty. A. Tyma	That's the <i>Rule Water Company</i> case and then below that is a <i>Chevron</i> case which is also cited in there and that's a very fundamentally known case, ya know, within the trade. Okay, which, that involved a vacant lot, but uh, the idea was what could you put on it. And again, this confiscation test is really the primary test for when you're looking at it. I know Dominick mentioned another one, but that's not really been um, tried and true tested which is like--you're reducing the nonconformity. I mean I think that's usually the goal of what people want you to do. But again, I

	think you gotta do the holistic approach. You've got something out there; it's gonna probably result in a good look at whether or not a residential usage of that entire parcel would be correct and the extent of what's, what is gonna happen. So, I mean again, if you close your public hearing, uh, if you think it's important to see what goes on there, then, you know, you've got some time in which to go and do it.
Chairman E. Conklin	Okay.
Atty. A. Tyma	But I don't think you have the record made. I appreciate you listening.
Chairman E. Conklin	Thank you.
Atty. A. Tyma	Thanks very much.
Chairman E. Conklin	Okay. Does anybody else want to be heard in this case? Okay, one quick...
Atty. D. Thomas	As Attorney Tyma mentioned, I have the burden. I will briefly conclude again with the, the... Attorney Tyma--none of those cases cited involve the situation here where you have a nonconforming use in another zone. None of them. You have them, you have residential uses; <i>Chevron</i> , commercial use in a commercial zone where they're trying to expand--in <i>Chevron</i> , the variance was actually granted where they're trying to expand it. But I'm gonna conclude with just two things. Number 1 is the quote about, the quote about the um, the fact that a nonconforming use is constitutionally protected, what, again, you can't, you gotta read and you have it all before you on page 22, (<i>quoting*</i>) "It is therefore not insignificant that the property in the present case"--remember it's a residential use in a residential zone--(<i>quoting*</i>) "contains legally existing nonconformities with respect to the lot and the existing structure. To the contrary, the presence of that vested right is crucial to our consideration of whether the requested variances properly were granted. The existence of such nonconformities, however, does not, a fortiori, entitle the property owner to a variance to expand those nonconformities. The defendants have provided us with no authority so indicating. Such a proposition stands in stark contrast to the fundamental principle in Connecticut that, (<i>quoting*</i>) nonconforming uses should be abolished or reduced to conformity as quickly as the fair interest of the parties will permit and in no case should they be allowed to increase" citing <i>Adolphson</i> . So, when you read the whole paragraph, it doesn't say anything nearly what is being said. And I encourage you to read <i>Rural</i> and <i>Bauer</i> and you will find out that they don't say what is said. But as far as terminating the property, please read, PLEASE read page 34 in which you have the <i>Hescock</i> case and the <i>Adolphson</i> case, both cases in which the individual was before a Z, Zoning Board of Appeals for the purpose of getting a variance to tear down a nonconforming use and rebuild it. In the case of <i>Hescock</i> , it was to tear it down and to build it less nonconforming. And in, in <i>Adolphson</i> , it says that, (<i>quoting*</i>) "a variance will eliminate a nonconforming use constitutes an independent grounds for sustaining granting a variance." This is in <i>Verrillo</i> , citing <i>Adolphson</i> , and it is NOT as Attorney Tyma said a iffy area of the law. It's the law.
Vice-Chairman P. Cavallaro	But in reality, nothing has to happen. The property has a house being used. You're asking us to grant a variance to make more use of the commercial side.
Atty. D. Thomas	No, there is no legal use of th--other than the pre-existing legal nonconforming, that is a nonconforming use. The cases in here-- <i>Adolphson</i> and everything are cases in which an individual went before a Zoning Board--exactly what we're doing--to

	remove a nonconforming use. That's exactly what--and it states unequivocally, no ifs, not a b--that that is a basis for granting a variance.
Comm. B. Vasser	But we're creating a nonconforming use by running trucks through a residence.
Vice-Chairman P. Cavallaro	That's correct.
Atty. D. Thomas	No, you're not creating
Vice-Chairman P. Cavallaro	You're creating a new nonconformity.
Atty. D. Thomas	Well, if, if you, okay I--
Chairman E. Conklin	So, what you're saying is this house was built originally in a nonconforming zone?
Atty. D. Thomas	I have no idea when it was built, this house probably pre-dates zoning. It pre-dates zoning.
Vice-Chairman P. Cavallaro	So, by granting a variance for a driveway in a residential zone, we're creating a new nonconformity.
Atty. D. Thomas	Under that proposition, you would never be able, never be able to approve a variance where a preexisting legal nonconforming use existed. Therefore, you would be in direct contravention of Section 41 of the zoning regulations, which encourage the removal of nonconformities and Connecticut law under, as stated clearly in <i>Verrillo</i> . I just ask you to, uh, believe me, the fact of the matter is, a client--anybody, anybody can file multiple applications. There's no, the fact that I have that other application pending is immaterial. It's not relevant at all to this--
Comm. B. Vasser	When's the hearing?
Atty. D. Thomas	Huh?
Comm. B. Vasser	When is the hearing?
Atty. D. Thomas	The hearing is the 22nd if we decide to go forward and the decision probably wouldn't be made until two months after that. And I would expect that--based on past experience--that that's not going to be the only hearing, based on past experience. Okay, thank you very much.
Comm. B. Vasser	Thank you.
Chairman E. Conklin	Okay, I declare this hearing closed.
<i>Multiple voices, ting*)undiscernable</i>	
	#0217-01 9 Cedarwood Lane, Wayne Hobson, of 9 Cedarwood Lane, Shelton
Comm. P. Jones	Uh, continuing with Number 2, formerly number 1, 0217-01, 9 Cedarwood Lane, Wayne Hobson of 9 Cedarwood Lane, Shelton, for the following 3 variances in order to construct a one-story, detached 30' x 35' x 26' garage: One variance to

	Section 24, Schedule B, Line 9 to reduce the minimum setback from the right side property line from 30 feet to 25 feet; two variance to Section 24.12.1 to increase the total floor area (all floors) for a one story structure, detached garage from 750 sq. ft. to 1,050 sq. ft.; and three variance to Section 24.12.3 to increase the maximum height of a one story detached garage from 20 feet to 26 feet, all in an R-1 zone.
Chairman E. Conklin	Name and address for the record please.
Wayne Hobson	Wayne Hobson, 9 Cedar Wood Lane
Chairman E. Conklin	And do you have something for us?
Wayne Hobson	I do. I have--here's pictures of the property and the placard. Also, in there, there's pictures of the design we plan on doing. And here's the actual rough plans of the garage.
Chairman E. Conklin	All right. And do you have any other photos, (<i>specific? – inaudible</i>)
Wayne Hobson	Yes. Here's the receipts for the uh...
Chairman E. Conklin	1, 2, 3, 4, 5, 6, 7 - Are there 7 here or 6 here?
Wayne Hobson	There's six. Tom said only the, uh, just the ones that are touching the property?
Chairman E. Conklin	I have 7 listed here.
Wayne Hobson	Uh, the other ones are across the street.
Chairman E. Conklin	Oh, okay.
Wayne Hobson	Yeah these are the...over here, just adjoining.
Chairman E. Conklin	Okay.
Wayne Hobson	Here and here, and this one here. There's only, there's 5.
Chairman E. Conklin	What's, uh, this is the street here?
Wayne Hobson	Yes.
Chairman E. Conklin	Okay. All right. Tell us what you're trying to do and why you can't meet the zoning regulations please?
Wayne Hobson	Okay. Um, I purchased the property in 2010 as a foreclosure. I've cleaned the house and exterior [up?] I have since gotten married and now have one child. I really like the neighborhood and am looking to make this property our forever family home. We are now limited to a one-car garage that doesn't fit any of our vehicles. Our home also has an, a, has a trust attic which leaves us with limited attic space. I'm looking for the space to put all my vehicles. I have an extended cab pick-up truck, an extended work van with ladder racks and a family SUV so they are out of the view of the neighbors. I am looking for a space for personal belongs and children's toys as well. I own my own construction company, specializing in kitchens and bathroom renovations. I am in need of a place to put my tools as well as a spot for extra materials. In the winter, I also plow snow and not only looking for a place to

	store my plough when not in use, but in an area to be able to work on things out of the weather. We chose this particular design because we wanted to go with an old farm-style look um we wanted to use custom doors on it to avoid the commercial feeling of it. Umm, we picked the saltbox style structure as we feel it helps to shrink the overall front-view of the garage, compared to a traditional just square-shaped garage. Um, we feel this design is less intrusive and more eye appealing for the neighborhood. So, really we are just looking to kinda clean up my other side where my driveway is to get everything out of the driveway and kind of in a parking area.
Chairman E. Conklin	Why aren't you putting the garage on the side of the driveway?
Wayne Hobson	I don't have enough room on that side, on the left side there. Um, there's only 50 feet.
Chairman E. Conklin	And you're telling us that you're gonna run a business out of this?
Wayne Hobson	No, I purely want it just to be able to clean up my stuff, have somewhere to store things. That's part of the reason--
Chairman E. Conklin	Where is your business address out of?
Wayne Hobson	Uh, it's out of 15 Woodfield, which is my brother's house. But there's no, we don't have anything for storage it's just hand tools.
Chairman E. Conklin	How high are the doors on this garage?
Wayne Hobson	Uh they are 9 foot 6, but that's because of, in the pic--the things I gave you there's...
Chairman E. Conklin	We have a limitation of 8 feet.
Wayne Hobson	Well, the only reason I ask for the 9 foot 6 is because the newer vans are taller. The newer vans are over 8 foot with a ladder rack on it.
Chairman E. Conklin	Okay, we, there is a limitation--there will be a limitation of 8 feet on the doors.
Wayne Hobson	Okay. I mean I also chose the custom look I put in the, in the pictures of a traditional swing-style barn door to kinda eliminate the eyesore of bigger doors.
Vice-Chairman P. Cavallaro	Actually, you're not supposed to have commercial vehicles
Chairman E. Conklin	Yeah..
Vice-Chairman P. Cavallaro	in your property anyway... in a residential property.
Chairman E. Conklin	Uh...
Vice-Chairman P. Cavallaro	That's why there's an 8-foot limitation.
Chairman E. Conklin	Yeah, the limitation on the doors are 8 feet, uh,
Wayne Hobson	Yeah, it's only, it's not like I have employees. It's me; I'm the only...

Vice-Chairman P. Cavallaro	The rule has changed they, from years ago because of the exploitation of building buildings that hold spaces for commercial vehicles.
Wayne Hobson	Okay.
Chairman E. Conklin	Yeah. I didn't see the uh... you weren't asking for an 8-foot door or higher than 8-foot door in here either.
Wayne Hobson	Yeah, when I went over it with him, I didn't realize there was a limitation on the height of the door. So, I mean if that's an issue, then...
Chairman E. Conklin	Okay, is there any reason why you can't straighten this garage out to be within the zoning regulations?
Wayne Hobson	Um, I kinda wanted to leave it to have that detached look. I stepped it back a little bit so it wasn't as in view with the house there. I mean I, I could shift it a--maybe two feet and it would still work.
Chairman E. Conklin	Well, I'm just talking about rotating it so it's perpendicular to the, I'm sorry, parallel to the property line, perpendicular to the edge front.
Wayne Hobson	Um... I could I just thought it would be more of an eye sore if, not lining up like that and having something facing the other way.
Comm. P. Jones	What was the reason why it wasn't over here?
Wayne Hobson	I, I don't have enough room on that side. Um, it's only 50, 51 feet to the line there.
Comm. P. Jones	Yeah.
Wayne Hobson	And it's a pie-shaped lot so it's kinda tough to get a lot of things to work on there.
Chairman E. Conklin	Could I see a picture of the garage again, please? How high is the garage inside? It must be the first...
Wayne Hobson	Um, well with the higher doors, it was going to be a little higher. I think overall it's 26 feet tall to the peak.
Comm. B. Vasser	How far away is the building?
Wayne Hobson	Right now that's at 15 feet.
Comm. B. Vasser	And you can't make it 10? You're only looking for...
Wayne Hobson	I mean, I, I could, I could shift it over a little bit.
Comm. B. Vasser	Well, you wouldn't even need a variance for that, because, right?
Wayne Hobson	Yeah, if I shift it to ten I won't.
Comm. B. Vasser	And having just the 10-foot separation -
Vice-Chairman P. Cavallaro	But it's still oversized.

Comm. B. Vasser	Well, I'm just taking one thing at a time. <i>(Laughter)</i> What's the reason it needs to be 26-feet tall?
Wayne Hobson	With that particular design, um to get everything to kinda work, I kinda need that height. I could drop it down to 24 and still make everything work with it.
Chairman E. Conklin	What utilities were you planning on having in here?
Wayne Hobson	Uh, just basic power.
Chairman E. Conklin	Just power?
Wayne Hobson	Yeah.
Chairman E. Conklin	Questions? Jim?
Comm. B. Vasser	It's two levels?
Wayne Hobson	Uh, there is a little bit of storage for the upper part there.
Comm. B. Vasser	And it's a two-car garage, two-car door?
Wayne Hobson	It's a two-car. So, that right now I have laid out for 13-foot-wide door.
Comm. B. Vasser	One door?
Wayne Hobson	That's two. I was gonna do a like a traditional swinging.
Comm. B. Vasser	Oh, okay.
Vice-Chairman P. Cavallaro	Is this 13-foot doors?
Wayne Hobson	No, no no: 13 overall. And that's the style I was planning on doing.
Chairman E. Conklin	I mean this has an extensive upstairs.
Wayne Hobson	Well, I mean that's just a basic idea. I shrunk the overall size of that; that's so, that's just to give you a visual of it.
Vice-Chairman P. Cavallaro	So, it's not going to be two stories?
Wayne Hobson	No, no it's, it's gonna be like this here that's just the...
Vice-Chairman P. Cavallaro	That's the basic concept?
Wayne Hobson	Basic concept and this is for me to work for what I'm trying to do. So, it has a smaller appearance than just a huge square box garage.
Vice-Chairman P. Cavallaro	What's the size of the property?
Wayne Hobson	It's just over three-quarters of an acre. I mean in the future I do plan on adding onto

	the house. I mean it's a nice neighborhood. A lot of people are starting to turn over and start to do remodels.
Chairman E. Conklin	What's the size of that? It's 30 by...
Vice-Chairman P. Cavallaro	30 by 35.
Chairman E. Conklin	30 by 35. It's big.
Vice-Chairman P. Cavallaro	Yeah.
Wayne Hobson	It's just tough because a lot of my, the vehicles I have are over-sized. I have a Dodge M 2500 extended cab and then...
Vice-Chairman P. Cavallaro	But that's a commercial vehicle.
Wayne Hobson	Well, it's my pick-up truck. It's not lettered. I don't use it as commercial.
Vice-Chairman P. Cavallaro	It doesn't matter. It's still commercial. Right?
Chairman E. Conklin	Yeah. Okay. Any other questions? Is anybody in favor of this application? Anybody in favor of this application? Is anybody opposed to this application?
Unknown	I'd like, can I just make a comment?
Chairman E. Conklin	Yes.
Unknown	Should I come to the podium or?
Chairman E. Conklin	No, come here please. Name and address for the record please.
Mark Wirth	Mark Wirth. 15 Cedarwood Lane. I'm on the side where he wants to build this.
Chairman E. Conklin	Okay.
Tina Kelly	Please spell your last name.
Mark Wirth	W, I, R, T, H.
Tina Kelly	Thank you.
Mark Wirth	Yep. So, you, you just brought up something about the, whether it be parallel to the house or face the street.
Chairman E. Conklin	Parallel to the property line.
Mark Wirth	Right. I, I would prefer it be, if you approve this, that it be parallel to his house because I think that will--one of the things Wayne and I have talked about was, was the privacy factor.
Wayne Hobson	Yeah, I included some pictures, I wanted to do those giant arborvitaes along the

	property line just to you know, block his side, his view of it.
Chairman E. Conklin	Well, being parallel to the property line wouldn't affect that because it'd actually...
Mark Wirth	No, I'm saying if he, if he does that, the face of his garage will be directed more towards my house as opposed to away from it.
Vice-Chairman P. Cavallaro	It'd be more visible, you're saying?
Mark Wirth	Yeah. So, any lighting--I assume you'd have lighting and stuff in front of that--so...
Wayne Hobson	Yeah, it would all be facing, how I have it, it would all be facing the road.
Mark Wirth	Right.
Chairman E. Conklin	Okay.
Vice-Chairman P. Cavallaro	So, you're basically in favor of this?
Mark Wirth	I, I'm not opposed to it. I, you know, I, I, again, it's a nice buffer that we have there now. So, I, you know, the discussions I've had with Wayne have focused more on, you know, what could be done to um help with the privacy, and he shared with me his plan to put the trees there, um, which I, I think should, should help.
Chairman E. Conklin	And if it was to pass, you would have no problem with the, uh, requirement of the arborvitaes being planted?
Mark Wirth	Oh, definitely yes.
Chairman E. Conklin	Okay. Any other questions? Anybody else opposed to this? Okay. Any other questions from the board? Being none, I declare the hearing closed then. All right thank you.
Wayne Hobson	Thank you.
	#0117-02 554-556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton
Comm. P. Jones	Number three, #0117-02, 554 – 556 Howe Avenue, Pramod Kandel of 556 Howe Avenue, Shelton, CT, 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.
Chairman E. Conklin	Please come up and have a seat.
Comm. P. Jones	And that's from January.
Chairman E. Conklin	Okay. Yeah, it was just brought over from January. Name and address for the record please.
Pramod Kandel	This property is 556 Howe Avenue. My name is Pramod Kandel and I

Chairman E. Conklin	Okay.
Pramod Kandel	I live at 556 Howe Avenue in Shelton.
Chairman E, Conklin	Okay.
Pramod Kandel	So, I bought that property in 2006.
Chairman E. Conklin	Okay, do you have any pictures...
Pramod Kandel	I do not have anything because I have been over there...
Chairman E. Conklin	All right, so we're going to open this hearing and leave it open and next month you have to come with all the requirements, uh, that are needed.
Pramod Kandel	Okay, boss.
Chairman E. Conklin	Okay.
Pramod Kandel	Okay.
Chairman E. Conklin	All right, thank you.
Comm. P. Jones	Just so he knows what, he's gonna need pictures, does he have notification?
Chairman E. Conklin	Do you have that green copy where you notify all your abutting neighbors?
Pramod Kandel	Yes.
Chairman E. Conklin	And you need, at least four pictures of the property, but as many as possible that show what's you're...
Pramod Kandel	Okay.
Chairman E. ConklinThe property itself, the area that you're trying to do your work on, and one picture of the placard on the front.
Pramod Kandel	Okay.
Chairman E. Conklin	And all this has to be done at least 10 days before, uh, the hearing next month which is on the third Tuesday of the month.
Pramod Kandel	Oh, I'll come back before that.
Chairman E. Conklin	Okay?
Pramod Kandel	Thank you.
Chairman E. Conklin	All right. All right. We're all set.
Tina Kelly	Did you declare closed?
Chairman E. Conklin	Okay, yes I declare it uh, it's continued. It's continued until next month.
Tina Kelly	Oh, okay. Okay.

Chairman E. Conklin	Okay. I declare hearing closed.
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***NOTE: Transcribed exactly as individual read quote. Actual quote may differ from what was read aloud.**

WORKING SESSION:

1. #0117-01 405 Long Hill Avenue, Jack and Josephine A. Gaida of 405 Long Hill Avenue, Shelton, (c/o Atty. Dominic 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.

Motion made by Commissioner Jones and seconded by Commissioner Oraziotti to postpone the decision until the March hearing. Motion approved by unanimous vote.

2. #0217-01 9 Cedarwood Lane, Wayne Hobson of 9 Cedarwood Lane, Shelton, for the following 3 variances in order to construct a one-story, 30' x 35' x 26' detached garage: 1) Section 24, Schedule B, Line 9 to reduce the minimum setback from the right side property line from 30 feet to 25 feet; 2) Section 24.12.1 to increase the total floor area from 750 sq. ft. to 1,050 sq. ft.; 3) Section 24.12.3 to increase the maximum height from 20 feet to 26 feet, in an R-1 zone.

Motion made by Commissioner Vasser and seconded by Commissioner Cavallaro to deny the variance. Application for variance denied by unanimous vote.

3. #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.

Hearing will be kept open until the March meeting.

Acceptance of the Minutes of January 17, 2017.

Motion made by Commissioner Vasser and seconded by Chairman Conklin to approve the minutes as presented by the clerk; with one correction identified by the Chairman to be made. Motion passed by unanimous vote.

Hearing adjourned at approximately 9:10 P.M.

SHELTON BOARD OF ZONING APPEALS

Respectfully submitted by **Tina M. Kelly**

for Commissioner Philip Jones, Secretary