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don't meet July, August, and December, so
anything on tonight will not be decided until
May the earliest. Anything on for May, will be
decided in June the earliest. If not, then it
will be adjourned through the summer. So
anyone who is considering an application at
home, again, just to remind you.

Next, I'm going to call the roll. Any
items that are on for resolution if the
applicant is not here, it's going to be
decided. If the applicant is here, they could
decide to adjourn or they can decide to
proceed. Same with new matters, I'll see if
the applicant is here and ready to proceed.

There are two items that are adjourned. The
first is 157 Montgomery Avenue, which is going
to be adjourned to the May meeting, and I also
understand now that Saint Luke's Church -- is
the applicant here? Okay. They were here.
They stepped out. We understand that that's
being adjourned for further information to the
next meeting. I will now call the roll.

735 White Plains Road; is the
applicant here? That's proceeding to

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THE CHAIRMAN: Good evening. Welcome
to the Zoning Board of Appeals meeting for the
town of Eastchester for April 10th, 2018. We
begin our meetings with the Pledge of
Allegiance. Please rise.

(WHEREUPON the Pledge of Allegiance
was said.)

THE CHAIRMAN: While everyone is
coming to order and before I call the roll, I
just usually use the first minute or two to go
over the ground rules.

Firstly, we operate under Robert's
Rules of Parliamentary Order if you're
following at home.

Also, any matters that are on for
first time tonight, are not decided tonight.
As a term and condition to your application,
and it's printed when you submit your
application, these applications are heard, the
public is heard, they're deliberated upon. The
reason why I go over this is because we print
our calendar a year in advance, and we only
make nine times a year; we meet once a month,
generally the second Tuesday of every month, we

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resolution.

Number 2, that's 600 White Plains
Road.

APPLICANT: We're ready.

THE CHAIRMAN: Proceed to resolution.

Good.

Under new business, this is Number 3,
49 Hickory Hill Road. Mr. Iannacito, ready to
proceed?

M.R. IANNACITO: Yes.

THE CHAIRMAN: Okay. Number 4, that's
62 Lake Shore Drive. Mr. Iannacito, ready to
proceed. Okay.

Number 5, Classic Audi.

M.S. CHIOCCHIO: We're ready.

THE CHAIRMAN: Ready to proceed.

Thank you.

Number 6, that's St. Luke's Church, we
just mentioned that that's been adjourned.

Number 7, 13 Bronson Avenue.

APPLICANT: Here.

THE CHAIRMAN: Applicant ready to
proceed?

APPLICANT: Yes.

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THE CHAIRMAN: Thank you. Number 8, that's 106 Wilmot Road.
APPLICANT: Yes.
THE CHAIRMAN: Ready to proceed.
The last item was adjourned, 157 Montgomery Avenue.

Before we get to resolutions, I have a motion to approve the minutes of the February 13, 2018 meeting. We did not meet in March.
MR. CAHALIN: Second.
THE CHAIRMAN: Second by Mr. Cahalin.

All in favor.
(All aye.)
THE CHAIRMAN: Okay. Resolutions.
First one is 735 White Plains Road. I make a motion to adopt a resolution approving this application; is there a second to my motion?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. Vote:

MR. CAHALIN: Yes.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: Yes.

THE CHAIRMAN: Mr. Nurzia.

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MR. NURZIA: Yes.

THE CHAIRMAN: Mr. DeMarco.

MR. DE MARCO: Yes.

THE CHAIRMAN: I vote yes. The application has been approved five/nothing.
The next resolution is 600 White Plains Road. I make a motion to adopt a resolution approving this application; is there a second to my motion?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. To the vote: Mr. Cahalin.

MR. CAHALIN: I'm going to vote no.

THE CHAIRMAN: Mr. Miller.

MR. MILLER: No.

THE CHAIRMAN: Mr. Nurzia.

MR. NURZIA: Yes.

THE CHAIRMAN: Mr. DeMarco.

MR. DE MARCO: Yes.

THE CHAIRMAN: I vote yes. That's been approved three to two.

On to new business. For the new business applicants first time on, just to mention that your matter has been marked.

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submitted, all of the documents are part of a public record. You're free to read and go over your five part test or three part test or four part test depending on what you're here to apply for but you don't need to. It won't aid or hurt your application. You could do it if you would like.

Getting to Hickory Hill Road, Mr. Iannacito. When you come up, please state your name and address, although I've already stated your name.

MR. IANNACITO: Good evening. My name is John Iannacito, I'm an architect, and I'm representing Mr. and Mrs. Paul Brown this evening, the owners of the subject property.
We are proposing the construction of an in-ground swimming pool, which is highlighted here in yellow and green, and the legalization of an existing pergola, which is highlighted in pink, in the rear yard of the existing residence. The proposed pool addition and pergola legalization will require seven area variances, and we are requesting the following:
The first is for total impervious coverage. The existing coverage is 3,310 square feet and is currently non-conforming.
The proposed coverage will be reduced by 50 square feet to 3,212 square feet and the required is 3,135. So the total coverage will exceed the permitted by 77 square feet or 2.4 percent. So we've reduced it by 98 but we're still over by 77 square feet.
The pool addition will require three area variances. The first is for the setback to the principal building where the proposed is 8 feet and the required is 10 feet, a deficiency of 2 feet or 20 percent. Second is the setback to the rear yard, where the proposed is 7.5 feet and the required is 10, a deficiency of 2.5 feet or 25 percent. The third variance for the swimming pool is the side yard setback, where the proposed is 8 feet and the required is 10 feet, a deficiency of 2 feet or 20 percent.
The legalization of the pergola will also require three variances. The first is for the setback to the principal building, where the existing is 3 feet and the required is 10 feet.

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be reviewed after the board's comments and questions for this specific point, because the Fire Department couldn't get there and they're looking for clearance behind the building. So anyway, continue, Mr. Cahalin. I'm sorry.

MR. CAHALIN: So I just want to know if anything like that was considered.

MR. IANNACITO: It was not. I was brought in and the owner already had the pool selected. This is paneled pool with a liner, and it's a modular setup where they're 5 foot panels. So I think they went to 30 feet instead of a smaller dimension because the next dimension down would bring them to 25 feet.

Then the width, 10 feet --

MR. CAHALIN: 10 feet isn't a big size for a pool, but in this backyard it takes up almost everything.

MR. IANNACITO: Well, that's why we're here today.

MR. CAHALIN: I was going to ask the question about the house and the Fire Department, I'm glad we asked that one. It just seems like you're asking for a lot. Then

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years back, and --

MR. CAHALIN: So just disregard the permit and just do what you want.

MR. IANNACITO: They didn't do the hot tub but they did the pergola instead and they didn't get a permit for it, correct.

MR. CAHALIN: Okay. Thank you.

THE CHAIRMAN: Anything else, Mr. Cahalin?

MR. CAHALIN: I'm done.

THE CHAIRMAN: Okay. Mr. Miller?

MR. MILLER: None. Just to mention John has once again taken a bullet for his client.

MR. IANNACITO: They couldn't be here tonight.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No, no questions.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing.

THE CHAIRMAN: I have nothing at this time, but I do have a motion to open this matter to the public for a public hearing; is there a second to my motion?

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MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in favor.

(All aye.)

THE CHAIRMAN: Would anyone from the public like to be heard on this application?

(No comments.)

THE CHAIRMAN: Seeing no one, before I make a motion I would like, as point of order, Mrs. Uhle, the fact that we're going to be hearing from the Fire Department on this one issue, do we leave the public hearing open? If we do, then we don't move to revoke at the next meeting, do we?

MS. UHLE: I don't think you need to leave it open, because I think at most the Fire Department can say they're concerned about one of the setbacks and the applicant may have to scale something back but minimizing the extent of the variance you're allowed to do. So I don't believe you have to leave it open.

THE CHAIRMAN: That would be on the applicant's own motion, counselor?

MR. TUDISCO: Excuse me.

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1. this application heard for resolution at the next meeting; is there a second to that motion?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in favor.

(All aye.)

MR. IANNACITO: So the concern with the Fire Department is the setback to the house or --

THE CHAIRMAN: Clearance when they put ladders down to fight a fire.

MR. IANNACITO: So instead of 10 feet it's 8 feet, whether that's a concern.

MS. UHLE: Or just in general. Even the trellis.

MR. IANNACITO: The trellis is a little close.

MS. UHLE: That's close. I would think that if they had a concern, it would be more the proximity of the trellis to the house.

MR. IANNACITO: I think that's why I think it's a good idea to separate the two. If they have an issue with the trellis, we can -- like Mike said, it's not in the best shape, so

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1. property was submitted to the Zoning Board in April of 2017, and it was denied in November 2017. Based on the findings listed in the resolution, the owner has decided to make a few revisions and apply for a new hearing.

So the proposed revisions that were -- the revisions that we're proposing this evening are on the driveway, the width has been reduced from 25.5 to 21 feet. The 21 feet is the minimum width that is required to clear the two overhead doors and allow access to garage. So instead of a 25.5 driveway width that was asked last April, we've reduced that to 21 feet today.

The second was for the curb cut. The curb cut width has been reduced to 22 feet and it will comply, so that variance is no longer required.

On the third, the size of the driveway was reduced and the portion of a front walkway on the side here was removed resulting in a 442 square foot reduction to the impervious coverage.

So tonight we're asking for two area

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1. if it has to come down, we could take that down.

MS. UHLE: Under any circumstances, the Zoning Board is not obligated to vote -- all the variances aren't necessarily connected, but I think they do understand that.

THE CHAIRMAN: The logic here since this is fluid, is that the findings of the Fire Department is only going to minimize your variance, it's not going to expand it. So I think that's where the decision was made.

Okay?

MR. IANNACITO: Yes.

THE CHAIRMAN: Thank you, Mr. Iannacito.

MR. IANNACITO: Thank you.

THE CHAIRMAN: Number 4, 62 Lake Shore Drive.

MR. IANNACITO: Good evening, again.

John Iannacito, I'm an architect, and I'm representing Mr. and Mrs. Contraves, the owners of the subject property. An application to legalize the driveway width, the curb cut width, and the impervious surfaces on this

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MR. DE MARCO: No questions.
THE CHAIRMAN: And I don't have -- one comment, that in addition to your presentation, part of the impervious surfaces a really structured retention terrace that can't be minimized further; is that a fair way to phrase it?
MR. IANNACITO: Yes. We've reduced the driveway and the walkways. The rest of the surfaces are either attached to a building, an elevated patio for the pool so it's part of a structure and can't be reduced any further. We've taken the impervious surfaces down as much as possible.
THE CHAIRMAN: Thank you, Mr. Iannacito.
Okay, I have a motion to open this matter to a public hearing; is there a second?
MR. MILLER: Second.
THE CHAIRMAN: Mr. Miller. All in favor.
(All aye.)
THE CHAIRMAN: Would anyone like to be heard on this application from the public?
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We're asking for something a little bit different. We're conceding or acknowledging that the 1998 use variance included a condition requiring that area of the premises to remain a grassy area. In our interpretation what we're saying is rather than a use variance, we're seeking an amendment to that condition, and the amendment to that condition would be something that the Zoning Board of Appeals would review since it was the body that imposed the condition in the first place. So we're not taking the review authority away from the Zoning Board of Appeals, we're saying, yes, we acknowledge it's a condition; however, the proposal would require an amendment to that condition of the use variance, not a new use variance. As you know, in the alternative we would be seeking a use variance if the Zoning Board of Appeals does not agree with that interpretation.

Some other changes that have occurred in the last 10, 11 years, we noted that in our application, the middle school across the street had undergone renovations, there's now a

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back I went to Classic Audi, was very excited about leasing my first luxury car, it was probably the bottom of the line A4 that you could get, and the saleswoman said, this is a great car, it's the favorite among parents to buy their 16 year old. I think she was trying to make me feel good that it's a great car. I felt a little like, well, I'm in my Thirties and that's the first time I could afford it. But I think it just, you know, signifies a change in times, right. It's great that we could afford to get our kids cars, but there's a lot of demand for parking in the area. So to have more off-street parking at the Audi facility, would alleviate some of that demand.

THE CHAIRMAN: Actually, before we get into the substance, you reminded me procedurally I should perhaps put on the record that I'm a client of Classic Audi. Many of the board members are clients of many applicants that come before us, restaurants, bars, etcetera. I just want to put it on the record, because I recently got my lease a couple of months ago. It's not going to affect my

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paved parking lot in front of the middle school along White Plains Road, there's an addition parking area now in that area. Some of the concerns that were raised in 1998 were, we don't want to see parking or a parking lot on White Plains Road. Well, now you have it with the middle school in that area.

Some of the other changes or changed circumstances, the 2006 proposal the cars were stacked in about four rows in that southern area of the premises, they were pretty much covering that whole area. Here we have less cars, we have tandem parking in two rows, and we tried to push the cars up towards White Plains Road, the busier road, the more traffic road. We also have much bigger setbacks to the car area than the 2007 plan, which allows for a little bit more open space and a lot more opportunity for landscaping and screening.

One of the other changes is the demand for parking in the area. I think over the last 10, 11 years I'm sure there's a lot more high school students that have cars. If you wouldn't mind a little anecdote, a few years

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impartiality, excepting if the cars no good, I'm going to drive it right through the show room window; okay? Other than that, I just wanted to put that on the record.

MS. CHIOCCCHIO: Thank you, Chairman. THE CHAIRMAN: Now, you summarized your argument as it relates to the rehearing. This may be a simplistic way of phrasing it, but I'm also getting from your submission that the argument is being made that once a use variance is granted, it's as if that property is now zoned for that use; am I reading that right?

MS. CHIOCCCHIO: That's correct. So once a use variance is granted for a particular use on a piece of property, that use is now a permitted use on that specific piece of property.

THE CHAIRMAN: Okay. I want to make sure I understand that, because what we're going to do is we're going to refer this to legal counsel on the rehearing and the interpretation, and that's something I kind of focused in on because it's a nuance that I
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1 don't think should be overlooked. Counselor, 2 yes.
3 MR. TUDISCO: I was going to offer -- 4 Ms. Uhle and I have discussed this in a fair 5 amount of detail -- the only thing I just kind 6 of want to put out there is I understand the 7 applicant's argument that they are seeking an 8 amendment to the condition, but I just kind of 9 want to clarify it. In going through the prior 10 record of the minutes of the 1998 Zoning Board 11 deliberations -- and I really have to say I was 12 extremely impressed with the thoroughness that 13 the record was made -- it was really a central 14 condition as opposed to one of many things. 15 The variance was granted based upon a 16 representation. Not only did the Zoning Board 17 at the time have specific concerns about that 18 area, but the attorney representing Audi at the 19 time made a representation that they would not 20 use that area, and it appears that that was 21 kind of a central basis for the use variance 22 being granted. So it really is a determination 23 that the board has to make. The only question 24 that I have is, is it really an amendment of

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1 the condition or a reversal of the condition is 2 essentially what you will have to determine. 3 THE CHAIRMAN: Okay. Thank you, 4 counselor. Well, I think -- not I think -- 5 what we're going to do is we're going to go 6 through the board and they're going to ask 7 questions on this very specific topic, which 8 we're really talking about a rehearing, and a 9 vote on a rehearing, as you know, counselor, 10 has to be five/nothing, otherwise, it's not 11 going to be heard. So that's why I think you 12 want to make as compelling an argument as you 13 can on the rehearing, and you may want to tie 14 in the interpretation because if there's a 15 merit to the interpretation, there's a reason 16 to rehear it.
17 So I'm going to have the board ask 18 their questions firstly, and then we'll have 19 the public hearing. Just so that the public 20 understands, they're going to be limited to 21 speaking on the idea of whether this concept -- 22 this topic should be reheard, as well as 23 anything that may be discussed in the 24 interpretation. Mr. Cahalin?

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1 MR. CAHALIN: I'm going to hold right 2 now.
3 THE CHAIRMAN: Okay. Mr. Miller?
4 MR. MILLER: I'm going to hold also.
5 THE CHAIRMAN: Mr. Nurzia, are you 6 going to hold?
7 MR. NURZIA: No. Actually, one 8 question. You mentioned from the time your 9 client was last before this board, one of the 10 changed circumstances in the neighborhood is 11 across the street at the middle school the 12 parking lot is now in the front across from 13 White Plains Road. I don't know the answer to 14 this, so I pose it just a general question;
15 there's construction of an additional gym or 16 whatever in the back of the middle school and 17 the high school, my understanding was that the 18 parking that's right now along White Plains 19 Road is due to the fact that all of the 20 construction that was behind the middle school 21 is in an off area section, so my understanding 22 was that that's the reason why the parking is 23 there. Is that temporary; is that permanent?
24 I don't know the answer to that, I'm just

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1 posing that.
2 MS. CHIOCCHIO: I believe some of it 3 is temporary. I don't know for sure. The 4 school and the plans, all of that is decided by 5 the state and the state issues the building 6 permit. So that's not even something that goes 7 through the local Planning and Building 8 Department. That's really the parking that's 9 right there on the corner, but if you do look 10 at aerial maps from a few years ago and after 11 the addition, there is definitely a new paved 12 parking lot almost across from the Audi 13 building and not so much towards the corner. 14 That is a permanent paved parking lot.
15 MR. TUDISCO: I just also want to 16 mention -- one of reasons I say this is because 17 this was an issue that was raised and questions 18 that were asked by the Planning Board when they 19 initially looked at this application for 20 preliminary site plan approval -- we have been 21 unable to determine what the situation is with 22 the school and the parking because that was an 23 issue that was raised. It is a state issue. I 24 don't know if that has even been decided by the

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powers that be.
I also do want to add that in my own investigation about the area, I believe there was also a change in the parking in that area by the church behind Audi, and the parking designation in that area was somehow made more restrictive. So that may wind up being a change in circumstances, but you should be aware of that as well, in addition to what may be the case with respect to the school across the street, but we just have not been able to determine that yet.

THE CHAIRMAN: Thank you, counselor.

Counselor, I believe that the parking behind has gone to two hours?

MS. CHIOCCHIO: I believe you're correct about that.

THE CHAIRMAN: I believe that maybe triggered part of this because cars can't be parked on that street for any length of time.

MS. CHIOCCHIO: Correct.

THE CHAIRMAN: Okay. Mr. DeMarco?

MR. DE MARCO: No questions.

THE CHAIRMAN: I don't have any

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questions at this time. I will make a motion to open this matter to the public for a public hearing; is there a second.

MR. NURZIA: Second.

THE CHAIRMAN: Second. Mr. Nurzia. All in favor.

(All aye.)

THE CHAIRMAN: Who would like to be heard on this application?

Come up, state your name and address for the record, and speak freely.

MR. LAURIELLO: Good evening. My name is Anthony Lauriello, I live at 83 Stewart Avenue, which is two houses down from the Audi dealership.

My understanding of one of the application parts is the appeal of the prior determination, and I guess one of my questions on that issue is, is there a statute of limitations as to when you could back and appeal? I mean --

THE CHAIRMAN: If I may --

MR. LAURIELLO: If it was 2006 and 2018 --

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you. Actually, until you just said that, I didn't agree with that because I haven't seen anything that said that.

MR. LAURIELLO: But she conceded it on the record here today. She said that it was a condition.

THE CHAIRMAN: I was going to ask the counselor --

MR. LAURIELLO: She actually said she conceded that the fact.

MS. UHLE: In the written submissions, the applicant made that clear, that they concede that it's a condition of approval. So there's only one what I think is a simple question: If you want to reverse, annul, or amend a condition of approval related to a use variance, does that require that you meet the test for a use variance once again, or does that mean that you come back to the Zoning Board and simply ask for an amendment to the conditions of approval.

The Building Department in 2006 at that time determined that a use variance was required. The applicant is coming back and...

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saying, we want you to reconsider -- and the Building Department -- I think we're obligated to do this because in 2006 the Building Department said a use variance was required, the Zoning Board upheld the Building Department's determination, we almost were forced to make that same determination because we can't over-turn a determination that you made in 2006. So you upheld a determination that we made. Now with the applicant coming back in 2018, we had to come to the same conclusion because that was a determination we made, that was a determination you upheld. You have an applicant coming to you now saying, because of either changes in circumstances or case law that you were not aware of or other issues, we think that that determination needs to be reconsidered, so we want you to rehear the application so that we can explain to you, including maybe providing additional case law, etcetera to support the fact that a use variance isn't required, that you just need to allow them to amend the conditions of approval.

Now, if you rehear it and you say...

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yes, we'll rehear it, you could still come to the same conclusion. You could say, all right, we're not going to allow you to expand within the grass area, we think that was an important part of the original conditions of approval and we're not going to allow it, or you can say, we understand the changes and circumstances, we're going to allow you -- once you go to the Planning Board for site plan approval -- allow you to extend within the grassy area.

So basically the first step is the applicant is just asking you, is a use variance required or can I just ask you to amend your original determination. Does that make sense?

THE CHAIRMAN: This condition, are we talking about parts of a test that apply to a use variance or an area variance when you're talking about the usage of that area?

MS. UHLE: In my mind, when you go through the test for a use variance, the issue with regard to extending the parking area within the grass area was referenced in the findings with regard to the character of the neighborhood and also with regard to the...

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through the test for a use variance again, you say, well, if they planted a row of arborvitae, a 6 foot fence is no longer required. So that would be modifying a condition of the original approval.

THE CHAIRMAN: That was my point. Go ahead, counselor.

MR. TUDISCO: I was just going to say, I think what Ms. Uhle is getting to is essentially you just have to decide at this moment as a threshold issue whether or not you're going to rehear or accept their application to amend the -- if you will rehear the initial argument. They are also saying that if they are not successful on that threshold issue, they're going to be seeking a use variance anew, in which you would have to apply all of the tests, but for the rehearing portion you don't necessarily have to, okay? You have to make that determination first.

THE CHAIRMAN: And that's why I was trying earlier to simplify that point that it's essentially now a conforming use because the use variance was approved.

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facts now? What she claims are new facts, okay. Those facts aren't facts in 2006, okay. If you're claiming that there's a fact that was mistaken at the time, then you have to look at a fact that existed in 2006. She's making arguments about facts that exist today, which goes to the second point of whether this is really a new application that really has to meet the test. If you guys made a mistake in 2006 based on the law, that's one thing. If you made a mistake because there was a fact that wasn't presented that existed in 2006, that's a different thing, okay. That's not what she argued, okay. She argued that the facts today changed, which takes you to your second point, which is do you have to really rehear this whole thing if you're going to consider it and put the test to it. You really could never get to not applying the test, because she didn't argue that there was a fact from 2006 that the board didn't know or that they didn't know, okay. That's not what she argued. She argued parking and such. It doesn't matter. You can decide that. I'm just

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MR. TUDISCO: It does appear to be that way, yes.

THE CHAIRMAN: Okay. Our speaker brought up a very intelligent point, which has now spurred all of this conversation. So I think we're ready to let you continue. I'm sorry to have interrupted you.

MS. UHLE: Can I interrupt you one more time? I'm sorry, I promise I'll shut up. Your question was whether there is any statute of limitations, and I don't believe there is. Town Law says that there is this process that an applicant can go through where they can request that the board reverse, modify, or annul an original order, and there is no statute of the limitations, that I'm aware of, in the law.

MR. LAURIHELLO: Okay. That brings me to the first part of the issue, which is the appeal part and whether you can rehear it. One of my other questions is -- before I get to the character of the neighborhood -- in rehearing, are you looking at either a mistake of fact at the time or a mistake or a changing in the

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through. To put a fence and trees and cars, it really does change it. It really does make it feel more like Central Avenue than a residential area. I think it's one of the nicer parts of Eastchester. You don't see that kind of street view of a beautiful church with a steeple on a bell. I think it will change it.

A couple of things that she said. I saw the hearing from the prior board on TV, and one of the things that was said today was the parking lot across the street was paved by the county for the school. It's not paved. It's a pervious surface. I do think it's temporary. But that's a county decision. Just because the county decides to do something, that may not be what we want as a town. It does not make it something that we should do on our own choices. Two wrongs don't make a right. So you can't say because the parking increased at the school where we can't control it, that we should allow parking to increase in an area that we can control. That's one thing. I don't think that is permanent. I think that's probably

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more for the construction.

The other thing, she's equating it to the parking being directly across from the Audi Dealership, and that's not true either if you really look at it. She's talking about permanent parking that's paved further down more across from Apple Court than the Audi Dealership. I don't think that's a true fact either. She also talked about high school students parking on the street and driving Audis. I live on the street, they're not parking on the street, and they're not parking Audis on the street either. In fact, I believe some of my neighbors had the parking changed to two hour because they were concerned about the Audi Dealership employees parking on the street and to limit that. That would also limit the high school parking, so that doesn't exist. In fact, if you look at the plan, they're really only adding three parking spaces for their employees, whoever that may be, and there are a lot more people than that that work there. I don't think that's a legitimate issue. Parking is tight everywhere in Eastchester, so you

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I spoke with Margaret during the week about some of the queries that I had as well. The fundamental thing is the character of the neighborhood is going to be changed. I don't want to go backwards, but we do live in a residential area, and again, it's like two wrongs don't make a right by expanding this lot. It sounds like, from what I can glean, that the original use variance did not leave the development of the property unrestrained. It sounds like this grassy area was part of the decision, so I don't know why you would go backwards again. Something that was fundamental to -- I know in New York City we have this thing called restrictive declaration, and I'm not sure if it's the same in Westchester, but you can't just change stuff as you go along.

The other issue I have is the light pollution. Is it going to be like something on Central Avenue? I've got a young family; two year old, four year old, seven year old, and I don't really want to be living in that kind of neighborhood.

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So other items were, you know -- I mean, I think Anthony has covered most of my concerns already, so that's all I really have.

THE CHAIRMAN: Okay. Thank you for your time. Please. If we could limit our commentary to the rehearing portion of this application.

MS. COLEMAN: Hi. My name is Doctor Christine Coleman, I live at 96 Stewart Avenue directly behind the Audi Dealership.

The character of the neighborhood:

1998, 2006, 2009, 2018, children riding bikes on the sidewalks, people power walking, families out playing, school dismissal, arrival, lots of community in that area. It is a residential area and we value that. That's why we live in Eastchester, for that fact.

Audi is supposed to, with their current agreement, maintain the fencing and maintain the landscaping. It looks like a slum with the fence that's patched together, not painted, the plants die. It's not properly maintained. I live behind it. I water their plants across the street from my house because I just can't

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I sit on my porch and have coffee and look at that. By putting a parking lot -- by the way, the Audi employees are not allowed to park on their lot. I don't know if you know that. That's why they park in the residential area and why we had the time change, because the idling was impacting children's health in the summer. There's other reasons as well. There's the litter and we couldn't even get our cars and our deliveries, anything, in the neighborhood.

It's a residential area. That's why people live in this town. I've lived in this town over 50 years and my family over 80 years. I have to tell you, my father was a policeman so I get it, I don't drive an Audi unfortunately, but I do own quite a piece of property and a house right behind there and next to the church. We're good neighbors. But to put a parking lot in this configuration, it's to expand their business and expand their commerce, which is fine, but you know what, it's zoned for residents and residential area and I don't want that to be moved away. It's

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going to impact my property value and my neighbor's property value and the children who play on our street.

My family, my husband and I are opposed to this in every way, shape, and form. Thank you.

THE CHAIRMAN: Thank you for your time. Please.

MS. FORZAGLIA: Hello. Michelle Forzaglia. I'm at 115 Park Avenue, which is right around the corner from where we're speaking of. My daughter is one of those middle schoolers who every day walks to and from school, and that grassy area is where her and her friends meet and they congregate and they might share a snack or they play tag. During parade time, that's where we sit to watch a St. Patrick's Day parade and Memorial Day parade and that's what our community is about. It's a residential area, as echoed by all the other speakers, and we expect it to maintain that.

We try to be good neighbors to our Audi Dealership. I'm not sure why an Audi

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Dealership is allowed in a residential area. So to expand it would seem to be opposite of what we want our kids to do; they scooter, they bike ride, I'm one of those power walkers. It's nice to be neighborly to stop and chat and converse with people. To take away that space, would absolutely be a detriment to our community.

For those of us who live right there, we're speaking very passionately that we do not want you to make this change and honor the commitment that was made back in 2006. Thank you.

THE CHAIRMAN: Thank you. Counselor and then counselor.

MR. ACCINELLI: Good evening, Mr. Chairman, members of the board. My name is Steven Accinelli from Veneruso, Curto, Schwartz & Curto on behalf of the property owner Seminara & Sons, 505 White Plains Road.

I'll limit my comments -- I have comments with respect to both prongs of the application. I know they're being presented kind of in the alternative, so I'll limit my

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comments to strictly this threshold issue.

THE CHAIRMAN: Thank you, counselor.

MR. ACCINELLI: I think I echo the comments that others have made here before me this evening. I think what's very critical is, number one, I think this question has been asked and answered by both the Planning Director for the town as well as the Zoning Board back in 2006, 2007. So I think, quite frankly, this is a re-ask years later of something that has already been decided by this board and by the Planning Director, number one.

Number two, the applicant in its submission letter and materials makes an interesting argument relative to the basis for the rehearing, which I think is fundamentally flawed, and that is an attempt at bifurcating the condition relative to the expansion area as parking versus the use of the property, and the applicant is taking the position that, well, the use isn't changing, we just want to park some cars there, and it's really more of an area variance type application because it deals with off-street parking requirements. But that

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consider a gateway to that western spur of Eastchester, which is 100 percent residential. I will stop there as it relates to the threshold issue. Thank you.

THE CHAIRMAN: Thank you, counselor.

MR. TUDISCO: Mr. Chairman, I just wanted to address one issue since it was raised. It's my understanding -- and counsel for the applicant can correct if I'm wrong -- my understanding is procedurally there is the threshold use issue. If not, they will be seeking a use variance anew. But also, in addition, I believe there will be an area variance required for the parking based upon the configuration. So these would be separately reviewed by the board. The parking area variance was just raised in that last comment, so I just wanted to put that out there.

THE CHAIRMAN: Yes. I appreciate that, counselor. I didn't want to cut off counselor who was being concise to begin with, which is against everything we learned in law school, so I didn't want to cut him off, but I

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fully understand your point, and that was what I was trying to get out earlier about the issue versus a use variance.

While you're on the spotlight, I want for you to clarify the threshold for what entails a rehearing, because I don't want the public to get this idea that somehow we're resurrecting the Dred Scott decision. This is not what's happening here. You may want to explain what is the showing for a rehearing. It's a very low bar.

MR. TUDISCO: In this particular case, it seems to me the way the applicant is bringing this before the board, it really is with respect to that condition. To reverse it, to modify it, to extend it is really the question. I think that it is up to this board on the threshold issue whether or not -- based upon the arguments that they have submitted -- whether or not you are going to allow them to argue to amend that condition, but it's got to be a five to nothing --

THE CHAIRMAN: Right. Understood.

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it back to its original condition; right?

MS. UHLE: Well, no. This is what the consequences are -- actually, the applicant may end up at the same point no matter what. The rehearing, again, is simply to say, please listen to me again, I have some additional information. You listen to it. You could say, we still are going to uphold the determination that a use variance is required for you to expand your parking lot, in which case the applicant will try to convince you that they meet the test for a use variance. Or you could say, based on the information you've given us, we don't believe that you have to meet the test for a use variance, so we're going to look at your application with regard to character of the neighborhood, some of these other issues, to see whether we think we will want to modify that original condition of approval that says you're restricted with regard to that grass area. After all, that you could still say, we don't think you should be able to expand because we still think it will be out of character with the neighborhood, we don't think

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any, factual circumstances you want to consider in order to rehear or not. For instance, a comment was made from the public earlier that you are limited -- or was asking if you were limited to the facts as they existed in 1998 or the facts that existed in 2006, 2007, or the facts as they exist today. I believe the applicant, part of their request for you to rehear or re-discuss this or revisit this condition, contains a factual argument that circumstances have somehow changed. So you're not limited in terms of the timing of any of these decisions. You either vote to rehear it and readdress the condition, or you tell them we're going to hold to that decision of the prior Zoning Board and the Building Department and we'll hear your application for a use variance anew.

THE CHAIRMAN: Just to further clarify, we're referring this to legal counsel to drill down on the interpretation, not on whether or not to rehear, that's something that is unique to the board and that's got nothing to do with what we're referring to counsel.

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We're not deliberating over what the standards are for a rehearing. I just want to be clear on that.

MR. TUDISCO: That's correct.

THE CHAIRMAN: Thank you. Counselor, I'm going to afford you an opportunity to reply, but first I think there's one other member of the public that wanted to speak, so you then you could speak totally.

MALE SPEAKER: I'm okay.

THE CHAIRMAN: Okay. Never mind. Does anyone else from the public want to be heard on this application as it relates to the rehearing?

(No comments.)

THE CHAIRMAN: Okay. So I'll now give you an opportunity to reply.

MS. CHIOCCHIO: Actually, I think Ms. Uhle touched on what I was going address with respect to the rehearing. There is no threshold. You actually even don't have to show changed circumstances or new facts. However, we do feel, as I said earlier, that there are some changed circumstances and new

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facts that would warrant the rehearing in this case. Once again, as Ms. Uhle said, it's at the discretion of the board. We understand that it's a unanimous vote. But we do feel, like I said, the circumstances have changed warranting the rehearing to give us an opportunity to talk about our request for an interpretation.

THE CHAIRMAN: Board members. Mr. Cahalin, any questions or comments?
MR. CAHALIN: I realized that I was on the Zoning Board when this application was brought in originally, but I was pulled up to the Town Board the following month. So I remembering hearing a prelim, and I recall that the grass was a very important part of what was going on at that time, but then I was moved up to the Town Board. I just noticed my name was on the stationary, you know, which is kind of like, wow, how did that happen.

I think the point is, certainly we're in control. If we decide not to hear this for any -- if anybody votes no -- there's always the opportunity to say no to this. Even if we...

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the determination that that grass area belongs to -- they don't get to use that because they already conceded that as a condition of the original approval. We could always stick with that.

I don't know where we're going to go with this. I mean, we're going to get counsel on this for sure, but I'm interested to see what they're going to say. I think it's a straightforward what they're asking for and what we need to do. I'll stop there.

THE CHAIRMAN: Thank you, Mr. Cahalin.
MR. MILLER: Quite honestly, I -- unfortunately, counsel, I think you had the last application to rehear in front of us. The chicken case I think you had?

MS. CHIOCCHI: I'm sorry, what was that?

MS. UHLE: No, that wasn't.

MR. CAHALIN: It was the garage.

MR. MILLER: That was just the garage.

Okay.

I always struggle with these rehearing...

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say they need to get a new use variance, they would still have to meet the test, and there's no guarantee that we're all going to agree that that is part of what they're entitled to. You know, it is a difficult application in the sense that you have an established commercial business in essentially an all residential district. I was out at the site, I'm in the neighborhood there, I go by it dozens and dozens of times and, you know, I don't really look that carefully at it, but when I did go out to take a good look at it, you know, some of the comments the neighbors make are correct.

The property is not maintained the way it was intended to. The fence is a disgrace back there. Nothing has been raked. You know, I walked it the other day, I mean, I looked at their plan and I see the topography of it falls off, and I know that's a Planning Board issue so I'm not going to go into that. I think everybody is getting held up in the law part of it, but ultimately I understand it to be, we're going to make a determination -- even if we decided to rehear it, we could still come to...

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since the 1920's at one point, so it's always historically been a car dealership. It's always been in that neighborhood.

In 1998 when the use variance was issued, it's now a permitted use in the neighborhood on that piece of property. So what we're saying is, times have changed, situations have changed, we feel that we should be able to present a case of why we think we should amend this condition.

MR. MILLER: To be honest, I don't know if times have changed with respect to that neighborhood. There's still kids running in the street, there are still kids riding a bicycle.

THE CHAIRMAN: The point that she's making is, she wants to have the ability to make that argument. Am I saying that right?

Mrs. Uhle?

MS. UHLE: What I was going say -- again, I think there's a little confusion -- the rehearing the only law that you could look to is Town Law Section 267.A.12.

MR. MILLER: Which does nothing. It explains nothing.

MS. UHLE: It doesn't, because what you're saying is actually then the -- you're asking for the information that she would provide if you were to allow the rehearing because then you would move to the interpretation. So as part of her argument for the interpretation she might say, I have case law here that supports the fact that a use variance is not required under these circumstances. I think that what you're asking for is actually not with -- you'll get if you would allow the interpretation. The rehearing, the only law that I think anyone could point to is town law that gives you the ability to rehear something if you want to.

Then the only other thing that I wanted to clarify, it really is just about is a use variance necessary for them to expand the parking lot or is an amendment. If you say an amendment is required, you could still deny their ability to expand the parking lot. If the use variance is required, you could still deny their ability to do that. It's really

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just which process the applicant has to go through. So by agreeing to the rehearing, by listening to an interpretation, it doesn't bind you to anything. It just allows you to reconsider. You could still uphold your original determination and say a use variance is required, or you could agree with the applicant that a use variance is not required but still restrict their ability to expand within the grassy area. So allowing the rehearing and the interpretation really doesn't indicate that it's going to somehow change the outcome. The outcome could be the same regardless.

MR. MILLER: Okay. I have no further questions.

THE CHAIRMAN: I believe -- if I may -- I believe also the reason why we're getting the interpretation is to get some feel for whether there's any merit to the argument behind the interpretation and it will enable you to hear it.

Mr. Nurzia, do you have anything?

MR. NURZIA: Yes. I guess my comment is -- this is just a follow up comment. I'm looking for some clear, convincing evidence about why the rehearing should be issued. We've talked about changed circumstances and that kind of thing. This is not going to the point of potentially a use variance request, but just that threshold issue of, the board is here, it's got to be unanimous, and there's not necessarily a set standard. I don't know if that is something that is --

THE CHAIRMAN: Counselor.

MR. TUDISCO: I was just going to offer some guidance. Essentially, what I hear board members saying is if you want us to reconsider the application or if you want us to reconsider this issue or rehear it, you have to give me something. What essentially the applicant is saying here is, I have something to give you if you will give me the opportunity to present it, I believe. So I think they are -- now, ultimately, if you agree to hear them, you still may disagree. But if you want more information, I think they are telling you that they are prepared to provide it. So I

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think you just have to make a gut call at this point in time.

THE CHAIRMAN: Mr. DeMarco.

MR. DE MARCO: I have nothing, thank you.

THE CHAIRMAN: I know you wanted to speak, so continue.

MS. CHIOCCHIO: I don't want to confuse the issue.

THE CHAIRMAN: Please.

MS. CHIOCCHIO: However this proceeds with respect to the Zoning Board's review, there is an opportunity to comment on what we've proposed. I know a lot of times, you know, we come in with a proposal and issues are raised, like okay, can you change this, how about modifying this, how about, you know, doing it this way, or this is my concern and so forth. So, I mean, that's just something else to consider when you're deliberating or making your decision this is what we're proposing. If comments do come up, there is a review process.

THE CHAIRMAN: Well, my comments have been dispersed throughout the entire

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application. Although, I would like to correct the record. When Mr. Cahalin was hearing this on the board, I was in grammar school. So I don't have much of a recollection on this. I'm going to reread the prior decisions and minutes, etcetera, or look at them in depth. I just want to be clear on one other point procedurally. I'm inclined to leave the public hearing open on this issue. I think that we should be resolving to make a decision on the rehearing at the next meeting, and the reason being is because we're going to be provided with outside legal counsel's interpretation of the interpretation, which will give us some support for what every -- unfortunately, every board members comes with their own experiences and prejudices because you have four attornies on the board. So everyone is looking for you to make some sort of motion to reargue, which is what you do when you're an attorney. Being a former hockey player and coach, every hockey movie I watch annoys the hell out of me because they don't use real hockey players. I can't watch them.

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THE CHAIRMAN: Number 7, 13 Bronson Avenue.

MR. DE MARCO: If you say the word rehearing, you're banished.

APPLICANT: I'll banish myself.

MR. DE MARCO: Fair enough.

Hi. Good evening, Chairman, members of the board, Ms. Uhle, Mr. Tudisco. I've never done this before, so I may need some help.

Our project at 13 Bronson Avenue involves replacing and extending our existing deck, as well as creating stairs to grade. So we're requesting a proposed side yard setback of 0 feet, which is deficiency of 6 feet or 100 percent. As part of the plan, a new retaining wall will be created to buttress our existing retaining wall.

I could read the answers to the test for area variances, but basically this is our second plan. The first plan involved demoing this huge, unsightly slab, and was so costly and expensive and we're also on a steep hill so contractors couldn't figure out how to remove the slab. So it just didn't make sense in any way, shape, or form.

Then just a few weeks ago as I was writing this, I realized that there already is decking right on our property line in the form of a fence. This is a fence that had a variance many, many years ago. Our neighbors, the McMillens, at 11 Bronson, they're right -- we share the fence -- they asked for a variance and actually put the fence on our side of the property. It's a beautiful fence, so we said, okay. I think we paid for half of it. So in actuality, it's at zero percent, or however you say it, of the property line. Also, it

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occurred to me that the decking is just cosmetic. The cement will still be there. So in a way it's just cosmetic the decking portion of it. It's going over this concrete slab. So the masonry is staying at the property line.

If you have any questions, my husband is here to help answer them.

THE CHAIRMAN: Thank you for your presentation. We won't let local land use attorneys and architects know that you did such a good job because you would be putting them out of work. You did a very good job synopsizing because on paper we always look at the extent and severity of the request. At first it jumps out at you at 100 percent, but what you highlighted and when you look, you see that a lot of this is an existing condition.

What we usually do is reserve this time for the board to ask questions. So I'll start with my usual wing man, Mr. Cahalin.

MR. CAHALIN: Sure. The first thing I look at is the variance, and when I see a hundred percent, I'm always startled. When I visited the property, I noticed that there is

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nothing you can do back there. Actually, this will be a big improvement. I'm not crazy about, you know, of course the zero, but the way that property falls off is amazing. So, I mean, I have no issues with this, and I'm usually the guy who gives everybody a hard time about the percentage. I don't think this can be achieved in any way, shape, or form. Don't stare at me.

MR. DE MARCO: That's Mr. Cahalin's way of saying he has nothing to say.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: I have no comments.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No comments.

THE CHAIRMAN: Mr. DeMarco?

MR. DE MARCO: Nothing, thank you.

THE CHAIRMAN: I have nothing at this time. I have a motion to open this matter to the public; is there a second to my motion?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in favor.

(All aye.)

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THE CHAIRMAN: Would anyone like to be heard on this application?

(No comments.)

THE CHAIRMAN: Seeing nobody, I make a motion to close the public hearing.

MR. CAHALIN: I'll second that.

THE CHAIRMAN: Second by Mr. Cahalin.

All in favor.

(All aye.)

THE CHAIRMAN: Only because I have to, Mr. DeMarco, we'll start with you, any comments or questions?

MR. DE MARCO: Still no comments or questions.

THE CHAIRMAN: Mr. Nurzia?

MR. NURZIA: No, sir.

THE CHAIRMAN: Mr. Miller?

MR. MILLER: No.

THE CHAIRMAN: Mr. Cahalin?

MR. CAHALIN: Nothing.

THE CHAIRMAN: All I have to say is it's a very straightforward application, you were clear and you met the five part test. So we will make a motion to come back for a

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resolution and decide this application at the next meeting; is there a second?

MR. DE MARCO: Second.

THE CHAIRMAN: Mr. DeMarco. All in favor.

(All aye.)

THE CHAIRMAN: Thank you.

APPLICANT: Thank you so much.

THE CHAIRMAN: Last item on the agenda tonight, 106 Wilmot Road.

Mr. Iannacito, let's see if you could be as concise as the prior applicant.

MR. IANNACITO: Good evening, again. John Iannacito, I'm an architect, and I'm representing Mr. and Mrs. Marsallo, the owners of the subject property. We are requesting one area variance to legalize an existing enclosed porch at the rear yard.

The existing covered porch was approved and constructed with permits in 1962. The approved covered was open on three sides, and it did conform to all zoning requirements at that time. The covered porch was later enclosed without the proper permits by the

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other than di minimus?

MR. CAHALIN: That's all I got.
THE CHAIRMAN: Mr. Miller?
MR. MILLER: I have no questions.
THE CHAIRMAN: Mr. Nurzia?
MR. NURZIA: No questions, no comments.
THE CHAIRMAN: Mr. DeMarco?
MR. DE MARCO: No, thank you.
THE CHAIRMAN: Not only is it di minimus, but I think you met the five part test in your application very succinctly.
I'm going to make a motion to adjourn to have this matter resolved at the next meeting; is there a second to my motion?
MR. MILLER: Second.
THE CHAIRMAN: Mr. Miller. All in favor.
(All aye.)
THE CHAIRMAN: Thank you, Mr. Iannacito.
MR. IANNACITO: Thank you.
THE CHAIRMAN: I make a motion to close the meeting for April and we will see you in May; is there a second my motion?
MR. DE MARCO: Second.
THE CHAIRMAN: Mr. DeMarco. All in favor.
(All aye.)

MEETING ADJOURNED.

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