

**MINUTES
CITY OF ST. CHARLES
ZONING BOARD OF APPEALS
THURSDAY, JANUARY 23, 2014**

Members Present: Chairman Elmer Rullman III
Secretary Nabi Fakroddin
Scott Buening
James Holderfield
Betty Weisman
Charles Simpson

Member Absent: None

Also Present: Bob Vann, Building Commissioner
Russell Colby, Planning Division Manager
Matthew O'Rourke, Planner
Court Reporter

1. Call Hearing to Order.

Chairman Rullman called the hearing to order at 7:00 PM on Thursday January 23, 2014.

2. Roll call.

Roll was called with all six members present.

3. Presentation of Minutes from the July 26, 2013 meeting.

A motion was made by Mr. Fakroddin and seconded by Ms. Weisman to accept the minutes as presented.

4. Variation Application V-1-2014, filed by John Shap and Karen Shap, owners of the property located at 1044 N. 2nd Avenue in the City of St. Charles.

Secretary Fakroddin summarized/read into the record the following:

- Variation Application V-1-2014 for 1044 N. 2nd. Avenue, marked as Exhibit A.
- Variation request was published in the Kane County Chronicle on January 7, 2014.
- Lawrence & Carole Zeno, 1052 N. 2nd Avenue-Exhibit B
- Mike & Kelly Potts, 1025 N. 2nd Avenue-Exhibit C
- Mary O'Conner, 1045 N. 3rd Avenue-Exhibit D
- Molly Graff, 502 Charles St., Geneva, IL-Exhibit E
- Letter from McLoughlin Arboricultural Services, Inc.- Exhibit F
- Plat for the original subdivision- Exhibit G
- Assessor's map of the subject property-Exhibit H

- Sidwell aerial photograph-Exhibit I
- Warranty Deed-Exhibit J
- Affidavit submitted by John Thornhill-Exhibit K
- Objection to Jurisdiction-Exhibit L

Chairman Rullman swore in the following:

- Russell Colby, Planning Division Manager
- Matthew O'Rourke, Planner
- Bob Vann, Building Commissioner
- Attorney Stephen Cooper, Geneva, IL- representing Crane and Susan Patten who are objectors to the petition.
- Mike Potts, 1025 N. Second Avenue.
- Thomas Henson, 1032 North Second Avenue

The attached transcript prepared by Chicago Area Real Time Court Reporting is by reference hereby made a part of these minutes.

A motion was made by Mr. Buening, and seconded by Mr. Fakroddin as follows:

Whereas, the St. Charles Zoning Board of Appeals has reviewed the File V-1-2014, dated 12/3/13, and received 12/3/13 from John and Karen Shap for the property located at 1044 North Second Avenue in the City of St. Charles for a variation to reduce lot area from 18,000 square feet to 16,491 square feet;

Whereas, the proposed variation will alter the essential character of the property; and

Whereas, the proposed variation will be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located; and

Whereas, the proposed variation will impair an adequate supply of light and air to the adjacent property, or substantially increase the danger of fire, or otherwise endanger the public safety, or substantially diminish or impair property values within the neighborhood; and

Whereas, the particular physical surroundings, shape, or topographical condition of the specific property would not result in a practical difficulty or particular hardship to the property owner as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out. The conditions upon which the variation -the petition for variation is based would be applicable to other properties within the same zoning classification, and the purpose of the variation is based upon the desire to make more money on the property; and

Whereas, the alleged practical difficulty of the particular hardship would be created by a person presently involved in having an interest in the property.

Now Therefore, the St. Charles Zoning Board of Appeals denies the variation requested.

Roll Called:

Ayes: Buening, Fakroddin, Holderfield, Rullman, Weisman, Simpson

Nays: None

Motion carried; Variation denied.

5. Additional Business from Board members, Staff, or Citizens. – None.

6. Adjournment at 8:42PM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PRESENT:

- MR. ELMER RULLMAN III, Chairman;
- MR. NABI FAKRODDIN, Secretary;
- MR. SCOTT BUENING, Member;
- MR. JAMES HOLDERFIELD, Member;
- MR. CHARLES SIMPSON, Member;
- MS. ELIZABETH WEISMAN, Member.

ALSO PRESENT:

- MR. BOB VANN, Building Commissioner;
- MR. RUSSELL COLBY, Planning Division Manager; and
- MR. MATTHEW O'ROURKE, Planner.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

3

1 CHAIRMAN RULLMAN: This meeting of the
2 St. Charles Zoning Board of Appeals is called to order
3 at 7:00 o'clock according to the clock on the wall.

4 Mr. Secretary, please call the roll.

5 MR. FAKRODDIN: Mr. Scott Buening.

6 MEMBER BUENING: Here.

7 MR. FAKRODDIN: Nabi Fakroddin, here.

8 Mr. James Holderfield.

9 MEMBER HOLDERFIELD: Here.

10 MR. FAKRODDIN: Mr. Elmer Rullman, the
11 chairman.

12 CHAIRMAN RULLMAN: Here.

13 MR. FAKRODDIN: Mr. Charles Simpson.

14 MEMBER SIMPSON: Here.

15 MR. FAKRODDIN: Ms. Elizabeth Weisman.

16 MS. WEISMAN: Here.

17 MR. FAKRODDIN: Okay. We have all
18 present.

19 CHAIRMAN RULLMAN: All right. We've had
20 one member resign, so the six members are all present.

21 Mr. Secretary, please read the minutes, the
22 previous minutes.

23 MR. FAKRODDIN: Read the minutes, you
24 said?

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

4

1 CHAIRMAN RULLMAN: Or present the
2 minutes. Are there any additions or corrections to the
3 minutes of the previous meeting?

4 MR. FAKRODDIN: I'll move the minutes as
5 submitted be approved.

6 MEMBER WEISMAN: I second.

7 CHAIRMAN RULLMAN: Moved and seconded.

8 All in favor.

9 (Ayes heard.)

10 CHAIRMAN RULLMAN: Opposed, same sign.

11 (No response.)

12 CHAIRMAN RULLMAN: The minutes are
13 approved as submitted.

14 At this time we'll open the variation
15 application V-1-2014 filed by John Shap and Karen Shap
16 who owns the property located at 1044 North Second
17 Avenue in the city of St. Charles.

18 Mr. Secretary, please read the application.

19 MR. FAKRODDIN: Application for a
20 variation, File No. V-1-2014 was received on
21 December 3rd, 2013, in the office of the St. Charles
22 Planning Division.

23 The applicants, John and Karen Shap, have
24 listed their home address as 2917 Glenbriar Drive,

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

5

1 St. Charles, Illinois 60174.

2 The applicants have indicated the property
3 owners of record to be themselves. The owners acquired
4 the property of 1044 North Second Avenue, St. Charles,
5 Illinois 60174, a vacant lot, on May 12th, 2006.

6 The application is signed by both John and
7 Karen Shap, and it's dated December 3rd, 2013.

8 The survey of the property as submitted is
9 sealed and signed by Dale A. Floyd, a licensed
10 professional land surveyor with Registration No. 2876
11 and dated November 19th, 2013.

12 Evidence of publication of legal notice -- do
13 we have that, Mr. Colby?

14 MR. COLBY: Yes.

15 MR. FAKRODDIN: What's the date of that?

16 MR. COLBY: It is dated January 7th,
17 2014.

18 MR. FAKRODDIN: Okay. Thank you.

19 Evidence of publication of legal notice is
20 submitted, and it was published in the Kane County
21 Chronicle on January 7th, 2014.

22 The applicants are requesting to divide the
23 current lot of 35,003 square feet into two parts,
24 resulting in two individual lots of 18,511 square feet

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

6

1 and 16,491 square feet respectively.

2 The variance of 1509 square feet is requested
3 for the smaller lot of 16,491 square feet to meet the
4 required minimum lot square footage of 18,000 square
5 feet in the RS-1 Low-Density Suburban Single-Family
6 Residential District.

7 That is the application.

8 CHAIRMAN RULLMAN: Let that be marked as
9 Exhibit A, please.

10 We also have a letter of objection which was
11 addressed to each member of the Zoning Board
12 individually dated January 9th from Lawrence and
13 Carole Zeno.

14 Please read that as Exhibit B, Mr. Secretary.

15 MR. FAKRODDIN: This letter was
16 addressed to each member of our Zoning Board, File No.
17 V-1-2014.

18 "Your letter of January 7th, 2014, requesting
19 a variance on the property at 1044 North Second Avenue
20 stated a hearing will be held January 23rd, 2014.

21 Unfortunately we will be out of town. I hope that the
22 St. Charles Zoning Board of Appeals will consider this
23 communication expressing our opinion on the variance.

24 "Having built our house next to the subject

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

7

1 property more than 10 years ago, we will have
2 considerable impact if the request is approved. I
3 would ask that the Board look at the frontages of the
4 properties across the street to see that they are
5 comparable to the subject property. The three homes at
6 the end of Second Avenue have unique-shaped lots but
7 with comparable total acreage to the subject lot.

8 "Reducing the width of the subject property
9 to two lots with a width of just over 100 feet each
10 will create two 'hallway' houses in an area of
11 estate-type homes. The neighborhood property values
12 will be negatively affected significantly if such a
13 request is approved. The five houses in the immediate
14 area pay almost \$187,000 in property taxes. I can
15 guarantee that the reduction in home values for these
16 five homes will result in lower property taxes for
17 St. Charles.

18 "I understand the dilemma of making a
19 questionable investment seven years ago, but that is
20 absolutely no reason to reduce the home values of an
21 entire neighborhood of over a dozen residences. Not
22 being able to sell a lot in the last three years with
23 the worst real estate and new housing market in decades
24 is no reason to penalize the neighborhood property

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

8

1 taxpayers.

2 "Please refuse this request for a variance on
3 the subject land."

4 It's signed by Lawrence and Carole Zeno.

5 CHAIRMAN RULLMAN: Let that be marked
6 Exhibit B.

7 We also have a letter submitted from Mike and
8 Kelly Potts. Please read that into the record.

9 MR. FAKRODDIN: This letter is addressed
10 to the City of St. Charles Board of Zoning Appeals,
11 Community and Economic Development Department,
12 St. Charles, Illinois. It's submitted by Mike and
13 Kelly Potts, 1025 North Second Avenue, St. Charles,
14 Illinois 60174.

15 "Topics of concern:

16 "Stormwater runoff concerns: Reference No.
17 17.04.310 C, 6, and 7 violation.

18 No. 1, stormwater begins at Route 25, Fifth
19 Avenue basically from a little south of Bethlehem
20 Church south past Delnor Assisted Living, the crest of
21 the natural watershed to the Fox River.

22 "There is a constant slope -- No. 2, there is
23 a constant slope west, through the homes on the west
24 side of Route 25 and continues until it levels out and

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

1 into the Fox River at the Pottawatomie golf course.

2 No. 3, the city has curbs and storm sewers on
3 Third Avenue related to the distance explained above,
4 but it is mainly cosmetic because it dumps the
5 stormwater off into homeowner's property just west of
6 Third Avenue. At that time, the cost of handling
7 stormwater runoff is at the homeowner's expense.

8 "No. 4, it is up to the homeowner to make
9 sure that the water that leaves their property goes
10 into the next landowner west of them is moving no
11 faster than it was before. Not an easy task, when the
12 city adds more surface runoff for those chosen
13 channels. Homeowners know this city requirement
14 because the park district letters from their
15 engineering and legal counsel made sure that we had to
16 slow it down before it gets to the golf course.

17 "No. 5, currently, before excavating or
18 building of two lots, a large amount of stormwater
19 runoff comes through that property and flows into
20 residence at 1035 North Second Avenue and then cuts
21 over to 1025 North Second Avenue before it is finally
22 presented to the golf course.

23 "No. 6, there are no curbs or storm sewer
24 system on North Second Avenue. Currently, any

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

10

1 stormwater runoff onto North Second Avenue at this Lot
2 0 and the residence south will flow freely down the
3 street and hang a right turn into the driveway at 1025
4 North Second Avenue. This situation caused the owners
5 of 1025 North Second Avenue to invest in 8-inch
6 drainage pipe around the house and put in crates in
7 front of the garage to handle the stormwater runoff
8 currently today.

9 "No. 7, if the variance is approved, there
10 will be a doubling of the 'flat' surface for house
11 footprints and driveways which will compound the
12 problems and may incur additional investments by the
13 neighbors to handle.

14 "Lot 0 is basically a hill. The east
15 property line is roughly 35 to 40 feet higher than the
16 west property line at North Second Avenue. The prior
17 home built on this lot was a reversed walkout where the
18 second level opened up to the hill facing east. The
19 prior dwelling built was planned to blend into the
20 wooded hill and save the mature trees it had to offer,
21 mainly 100-year-plus oak trees. If the variance is
22 approved, developers will eliminate many of the
23 established trees."

24 "Keeping the community in line with the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

11

1 original home builders of North Second Avenue and to
2 some extent Third Avenue, Reference 17.04.310 6 and 7
3 violation.

4 "Procure a sizable lot, willing to pay
5 additional taxes, and build a home that would blend
6 with nature and sunsets.

7 "Not only build a nice home, but understand
8 the value of a beautiful lawn accented by the mature
9 and westward views across Fox Valley.

10 "Even though per 17 -- per Article 17.04.310,
11 provide for a method to grant relief from conformance
12 with the strict letter of the provisions of the title,
13 et cetera, this is a precedence for this community that
14 is impacted.

15 "Current owners' financial hardship,
16 Reference 17.04.310 C.3 violation.

17 "All of us are responsible for our behavior,
18 and making financial decisions is no different.
19 Obviously, at the time, the current owners thought the
20 price paid was fair and reasonable. Thoughts or
21 intentions change over time. So the financial hardship
22 that they find themselves in will be imposed on the
23 remaining community.

24 "This variance approval will not increase the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

12

1 values of the lots on North Second Avenue. There is
2 always supply and demand. The current owners have not
3 pursued an equitable price that buyers would be
4 interested in paying."

5 It's signed by Barbara Kelly Potts and
6 Michael David Potts on January 23rd, 2014.

7 CHAIRMAN RULLMAN: That will be marked
8 as Exhibit C. Then we have one other letter received
9 by the planning division on January 22nd.

10 Read that into the record as well, Exhibit D.

11 MR. FAKRODDIN: Letter dated
12 January 21st, 2014, to City of St. Charles Board of
13 Zoning Appeals, Community and Economic Development
14 Department, St. Charles, Illinois 60174.

15 "Subject: Variation request application,
16 1044 North Second Avenue.

17 "This application request for a zoning
18 variance to 1044 North Second Avenue should be declined
19 for the following reasons:

20 "A. The property is already the smallest lot
21 of the seven properties on North Second Avenue, see
22 Exhibit A. The average square feet per lot on this
23 section of Second Avenue is 49,343 square feet.

24 "B. The proposed split variation would

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

13

1 result in lots 67 percent to 63 percent smaller than
2 the average properties on Second Avenue and 34 to
3 26 percent smaller than the average lot sizes of the
4 six homes that back up to this area on Third Avenue,
5 Exhibit A and B.

6 "C. If two homes are built, similar to the
7 three houses recently constructed on the 900 block of
8 North Third Avenue, the detrimental effect would be
9 significant. This is in contradiction of the
10 application for a variance, harmony with general
11 purpose and intent, paragraph C, in that it will
12 substantially diminish or impair property values within
13 the neighborhood.

14 "D. All of the properties on North Second
15 Avenue in theory could divide without a variance and
16 six of the seven properties would create lots over
17 21,000 square feet. The seventh lot would be over
18 18,000 square feet.

19 "E. At the time of purchase, May 1st, 2006,
20 Exhibit C, year 2005, EAV," which is assessed
21 valuation -- equalized assessed valuation, "of \$94,791,
22 multiplier of 3 is \$284,373. In 2006, the EAV is
23 \$99,990, and the multiplier of 3 would give \$299,970.

24 "Using this multiplier, the property was

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

14

1 never assessed to be worth \$525,000; rather it was
2 worth \$299,970. The EAV only increased after the
3 applicants paid \$525,000.

4 "F. In the application, action by applicant
5 on property, paragraph B, conditions stated above are
6 not applicable to adjacent properties because none of
7 the adjacent properties are vacant of houses.

8 "G. Owners could sell their present home at
9 their current residence, 2917 Glenbriar Drive, and
10 build on the property instead of dividing it. Assessed
11 value of 2917 Glenbriar Drive on the Kane County
12 property tax records is \$333,780, which is about a
13 sales value of \$1 million.

14 "In the application, action by applicant on
15 property, paragraph D, the answer should be yes. The
16 owners of the property created the hardship by
17 purchasing the lot over market value, reference E above
18 in 2006 during the 'property bubble.' The EAV
19 indicated otherwise.

20 "H. In the application, action by applicant
21 on property, paragraph E, the answer should be
22 corrected to cannot yield a reasonable return on their
23 investment.

24 "I. Based on the assessed value, past taxes

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

15

1 and market conditions, the asking price of \$475,000 is
2 excessive, Exhibit D.

3 "J. A certified arborist has surveyed the
4 area and has identified damage and loss of the great
5 oak trees, further diminishing the value of the
6 neighborhood.

7 "For the above listed reasons, I adamantly
8 oppose the lot split variation to 1044 North Second
9 Avenue and urge the Board of Zoning Appeals to decline
10 the application.

11 Signed by --

12 MS. O'CONNOR: Chairman, if I can
13 interrupt. We have several copies of that letter
14 signed by members of the neighborhood and all put into
15 exhibits.

16 MR. FAKRODDIN: Okay. It is signed
17 by -- I cannot read the signature. The address of 1045
18 North Third Avenue, St. Charles, 60174.

19 CHAIRMAN RULLMAN: That's Exhibit D.
20 Is the petitioner present?

21 MS. O'CONNOR: Yes.

22 CHAIRMAN RULLMAN: The petitioner is
23 present?

24 MS. SHAP: Yes.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

16

1 CHAIRMAN RULLMAN: All right. Would
2 anyone who wishes to be heard on this variation, please
3 rise and raise your right hand.

4 (Witnesses duly sworn.)

5 CHAIRMAN RULLMAN: Please give your name
6 and address to the recorder.

7 MR. COOPER: Would you like me to start?

8 My name is Stephen Cooper. I'm an attorney
9 practicing in Geneva, and I represent Crane and Susan
10 Patten who are objectors to the petition.

11 MS. SHAP: Karen Shap.

12 MS. GRAFF: I'm Molly Graff, 502 Charles
13 Street, Geneva, Illinois.

14 MS. O'CONNOR: Mary O'Connor, 1045 North
15 Third Avenue, St. Charles.

16 CHAIRMAN RULLMAN: Please let the record
17 show that Russell Colby, the Planning Manager, Matthew
18 O'Rourke, Planner, and Bob Vann, Building Commissioner
19 for the City of St. Charles were also sworn in.

20 Does the petitioner have anything additional
21 they'd like to add to the petition?

22 MS. SHAP: My friend is going to help me
23 because I don't have my voice.

24 CHAIRMAN RULLMAN: You have the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

17

1 microphone there.

2 MS. SHAP: What we are just asking is
3 that the lot that is all together is 97 percent of
4 being able to apply for a variance, which is a small
5 portion.

6 CHAIRMAN RULLMAN: I'm sorry. I can't
7 hear you.

8 AUDIENCE MEMBER: We can't hear one
9 word.

10 MS. SHAP: We are asking that the lot be
11 divided and that we are able to comply with one of the
12 lots. The other one is 92 percent of being able to
13 comply. There is a hardship involved with how the road
14 turns on North Avenue that creates a hardship of where
15 it indents to the lot. That's why we're here, or else
16 we would be able to divide it without a hearing.

17 CHAIRMAN RULLMAN: Anything else?

18 MR. GRAFF: Yes. Can we add some things
19 to exhibits, how they answered some of the concerns in
20 the letter that the committee had addressed to them?

21 MS. SHAP: Matthew, did the Board
22 receive like John's answers on this?

23 MR. O'ROURKE: They did. It was part of
24 the application if that's what you're referring to.

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

18

1 MS. SHAP: Okay.

2 MR. O'ROURKE: Yes. They received
3 copies of all that.

4 MS. GRAFF: Okay. I am Molly Graff, and
5 I have been a licensed Realtor in the area for over
6 40 years, and I am the listing agent on this property.

7 I would like to just mention that I have some
8 stuff that I would like to pass out to you. It's
9 factual information about the property values, the
10 property values in the last seven years back to
11 January 1, 2007.

12 Also when I was looking at this information,
13 two years ago, two-and-a-half years ago when the Shaps
14 asked me to come onboard and look at selling the
15 property, I looked not only at the north end of Second
16 Avenue, but the whole street is kind of its own unique
17 little development.

18 So what happens on the north end has to be
19 considered as to what is happening on the south end.
20 There are several lots at the south end that are very
21 close -- that would end up being very close -- that are
22 very close in size as to what this particular lot would
23 be if it was split.

24 Almost all of the requests and people asking

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

19

1 questions about the lot have always -- there has been
2 no one who has looked at this piece of property in its
3 entirety. They've always wanted to look at it as --
4 they didn't need that much land.

5 The banks, as we all are very familiar with
6 over the last seven or eight years, but even prior to
7 the banking issues of the last seven years, the
8 economic ramifications of that, the banks will always
9 look at a piece of property and look at maybe that
10 piece of land as being owned 25 percent of the entire
11 package that someone is going to spend in construction,
12 that they will not loan to people who are looking at a
13 piece of land and only going to build a small parcel
14 on it.

15 So the value of these properties, as has been
16 pointed out in some of the other exhibits, is really
17 between 225 and 275. That would make the parties that
18 I have talked to who wish to build on these, they're
19 looking at building properties that are 900,000 to a
20 1.3 million. So I don't really think that there's
21 going to be a negative impact on this neighborhood when
22 additional million-dollar properties are introduced on
23 these lots.

24 The watershed issue is new information to me.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

20

1 Karen and John have never -- and the times that I've
2 walked on this lot in the spring after having heavy
3 rains, there is no standing water on that property. So
4 I don't know that they -- that really is a legitimate
5 concern.

6 So if I may pass these out, Elmer.

7 CHAIRMAN RULLMAN: You may give anything
8 you wish to the Board, yes.

9 MS. GRAFF: I'm sorry. What did you
10 say?

11 CHAIRMAN RULLMAN: You can give anything
12 you wish -- do you have a copy for everyone?

13 MS. GRAFF: I do have a copy.

14 CHAIRMAN RULLMAN: All right.

15 MS. GRAFF: There's also -- the first
16 piece is, I think, maybe what you have as the lot
17 separated, and the second piece is the whole street
18 view, so you can see the smaller lots that are at the
19 south end.

20 CHAIRMAN RULLMAN: This will be marked
21 Exhibit E.

22 MR. FAKRODDIN: Okay.

23 MS. GRAFF: On the second page --
24 actually, it would be -- so this is the copy of the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

21

1 whole street. This is the lot that's in dispute.
2 These are smaller lots that are down at the south end.
3 On the back side of that whole street map are the
4 two -- the only two lots in seven years that have sold
5 were in Geneva in the 250 to 299 range. There was one
6 lot on Third Avenue that was sold that was listed at
7 399, and it sold for 260.

8 Your third page will be the lot, the listing
9 of the lot with all the information on it.

10 Your next page will be currently the land
11 that is on the market for sale, and the subject
12 property is No. 10 at 475, but there are two properties
13 in Geneva on Meadows that are vacant lots that are
14 at 489, and they are smaller square footage than this
15 lot in question.

16 Your next page would be -- I knew that there
17 would probably be concerns with a smaller lot that
18 maybe there would be smaller houses built on the
19 properties, and that is a legitimate concern. I don't
20 think it would pan out here because of the value or
21 what we think we would be able to sell the lot for,
22 which are in the mid to high 2s, from 250 to 285. That
23 being the case, we're looking at houses that are going
24 to be a million dollars plus.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

22

1 This list of 13 is also to show you the
2 devastating impact the economy has had on our higher
3 priced homes. These are the only homes since 2007 in
4 the MLS database that have sold in St. Charles or
5 Geneva with a price from 900,000 to over 2 million, 13
6 properties in seven years, which I think is pretty
7 significant to the economic impact the higher-end
8 properties have had.

9 I also want to mention in defense of the
10 Shaps, I brought this issue up to them. I initiated
11 this conversation. They did not initiate this
12 conversation. I initiated it because my job is to give
13 them real estate advice from the impact of the economy.
14 What was not happening in the new construction area was
15 really my piece of information that I needed to pass on
16 to them.

17 So I have been the one that said we are so
18 close in what we need to have to split these lots. The
19 city has said you can't be anything less than
20 90 percent within that zoning ordinance, and one lot
21 fills the requirement, and the other lot is 92 percent
22 of what is required.

23 So our asking is within the parameters of
24 what the city has set up as a guideline to make the

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

23

1 decision on variances.

2 Are there any questions that you have for me?

3 Thank you for your time.

4 CHAIRMAN RULLMAN: Does anyone on the Board
5 have questions?

6 MEMBER SIMPSON: I just have a comment.

7 I guess I would say the context is important.
8 So the last seven years represents sort of the worst --
9 the aftermath of the worst real estate crash maybe in
10 the history of the United States.

11 So we are still on the upswing in the market.
12 The market is improving. From the real estate agents I
13 know in the area, they say that, you know, inventories
14 are increasing, slightly, but they're getting better.
15 Costs are rising. Demand is rising.

16 So looking into the future as opposed to the
17 past, what would you think the likelihood is if we wait
18 on this property for a year, that the economy improves,
19 wealthy individuals looking to build homes on larger
20 lots might be interested then in getting back in the
21 market?

22 MS. GRAFF: I think that's a really good
23 question, Charles. I would say that in the last year,
24 in my business I have seen a leveling, and then an

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

24

1 increase, an increase in activity; but regrettably, the
2 activity that I see is not in any price range over
3 800,000.

4 I have numerous clients who have homes in
5 Royal Fox that are typically in the 7 to 9 range, and
6 they're selling below 700,000. So that doesn't tell me
7 that the clients who are willing to spend the dollars
8 are out there looking.

9 There was a lot of inventory that was
10 eliminated through short sales and distress property
11 sales by the bank, and we don't have a lot of upper-end
12 properties on the market. So you're right. The
13 inventory is down.

14 But I'll tell you another aspect that really
15 is reflecting the lower, the lesser amount of
16 inventory, and it is the real estate taxes that the
17 community, St. Charles and Geneva, are burdened with.
18 My age or the 40s and 50-year-olds who might buy into
19 these larger priced properties look at that tax bill
20 and go forget it. I'm not spending \$20-, \$30-, \$40-,
21 \$50,000 on taxes. So they will find another way around
22 it, and it is a huge impact.

23 Our clientele that used to buy out here is
24 going to Cook County and South Barrington and areas

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

25

1 that have a much lower tax rate, and they're getting
2 beautiful big houses, but they're not being slammed
3 with the real estate taxes that we have out here.

4 You could have a panel of 12 Realtors from
5 different real estate companies come before you, and it
6 is a huge issue that we are seeing. A huge issue that
7 we are seeing, and the 60 year olds, the baby boomers,
8 which is a huge buying and selling market right now for
9 all of us, they're buying down in the 2- and 300,000
10 ranges, not adding any square footage to their houses,
11 improving the inside of them, so that the tax assessor
12 only looks at the real estate contract, which is, in
13 fact, what really sets the value on a piece of
14 property.

15 That one piece of paper that said the value
16 of the property until the Shaps bought it was 200 -- or
17 \$399,000. A piece of property is worth only what
18 somebody is willing to pay for it, whether it's
19 \$150,000 or a million in this town, and the tax
20 assessor uses that real estate contract in his
21 assessing the value that he is going to place on it.

22 So sadly the days when our large properties
23 would move quickly, we're not seeing that, Charles. We
24 are not seeing it, and it's regrettable. It's a

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

26

1 hardship. I live in a house that is an \$8- or \$900,000
2 house, and I don't have -- you know, I don't have a lot
3 of -- it's a great house, but I think the people look
4 at the impact of my tax bill in Geneva.

5 I sold a house in my immediate neighborhood
6 for just under 7, and that man called me three months
7 after he moved into the house and said what is the
8 matter -- he used another language -- with the tax
9 assessor, that he must be smoking something that he
10 thinks I'm going to pay \$18,000 in taxes.

11 I said, You paid 695,000 for the house.
12 You're going to be paying \$17- to \$18,000 in taxes.

13 MEMBER SIMPSON: Thank you.

14 MS. GRAFF: You're welcome.

15 CHAIRMAN RULLMAN: Any other questions
16 from the Board?

17 MEMBER BUENING: Mr. Chairman, I have a
18 question.

19 The lot split that you're proposing -- you
20 paid about \$525,000 for what it looks like you got was
21 improved for 475 or so.

22 What is your estimate -- I know you're not an
23 appraiser, but what is your estimate on the sales price
24 for these individual lots if the city should approve

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

27

1 this?

2 MS. GRAFF: Scott, what I have to use is
3 the exact same configurations as what an appraiser will
4 use. He will use a paper trail of comps and sold, and
5 he is going to ideally use comps for the same
6 properties within an immediate area within 12 months,
7 and there is nothing to substantiate a sale of 475 on
8 this size property in St. Charles.

9 The only two -- there's three lots that have
10 sold in the last seven years, and it's part of your
11 materials. They were on Shady and First in Geneva, and
12 the only one in St. Charles in the immediate area is
13 Third Avenue, and that sold last year, and it was
14 listed at 399, and it sold for 260.

15 So I think I have to -- I don't think; I know
16 I have to use those comparables in assessing what these
17 lots would be worth, and the comparable paper trail
18 that an appraiser will use is what I have to use -- is
19 what I choose to use because it's the right thing to
20 do.

21 So I think the value for these lots -- the
22 one that's bigger will probably -- we would probably
23 list it for 275, and I think that the price would be
24 between 240 and 265; and I think the smaller one might

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

28

1 be listed at 265 and probably sell under -- right at
2 the 250.

3 The desirability of that little stretch of
4 Second Avenue is huge, but it doesn't diminish the need
5 to build an appropriate house in there, and no one is
6 going to go in there and build a cracker box. I mean,
7 I would imagine you all have covenants and
8 restrictions. Nothing.

9 Well, I mean, hindsight is great, but if they
10 are going to a bank to finance the construction loan of
11 a house in your area, the bank is not going to give
12 them money where the home is more than 25 percent of
13 the total value of the package they're building. So if
14 they're paying 250, they should be building a house
15 anywhere from 900,000 to 1.2 million. That I don't
16 think is going to diminish the value of the properties
17 that are there.

18 There's a property at the south end of Second
19 Avenue that was purchased for just over a million. So
20 not all of the properties -- there are some huge
21 gorgeous, beautiful homes on Second Avenue. All of us
22 think it is a wonderful, neat enclave, and it's really
23 not about Karen and John being in a hardship because of
24 what they paid for the lot.

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

29

1 It is the hardship of marketing and having
2 something available to the public, and the way the road
3 cuts in and does this angle into the lot has diminished
4 the square footage that if it had been straight, if the
5 road had been taken straight back to the end lot, we
6 wouldn't be having this discussion. It would have had
7 more than enough square footage that they needed to
8 divide that lot, according to the city fathers and what
9 you've laid out for them.

10 CHAIRMAN RULLMAN: Thank you. Any other
11 questions from anyone on the Board?

12 MEMBER WEISMAN: Yes, I do have one.

13 When they bought this lot, they must have --
14 they liked it or they wouldn't have bought it; right?
15 What's the thought about their building on it? I mean,
16 you like the lot and you like the area, or you wouldn't
17 have bought it in the first place.

18 MS. SHAP: Right now we feel that it's
19 best we stay where we are, and we love the area, and we
20 love the lot.

21 MEMBER WEISMAN: So you love two areas.

22 MS. SHAP: Yes.

23 MEMBER WEISMAN: Thank you.

24 CHAIRMAN RULLMAN: Okay. Anyone else?

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

30

1 I have a couple specific questions for you.

2 It is correct that one of the variations we
3 can grant under the ordinance is to allow a lot with
4 90 percent required area; however, there are certain
5 conditions we're required to consider before we grant a
6 new variation. In particular, I'd like to ask about
7 your question here to No. C on the application. Is the
8 proposed variation based on more than a desire to make
9 money from the property? The testimony we have heard
10 so far indicates to me that it's all to make more money
11 on the property.

12 MS. GRAFF: It's more about the
13 saleability, Elmer, than it is about making money.
14 They paid 525. They have had the survey redone. They
15 have had lots of other expenses; and when they're done,
16 they're still going to take a loss on this property
17 selling the properties at 225 to 265. They're not
18 going to recoup the money that they made, plus the
19 money that they spent to look into -- looking into a
20 variance.

21 CHAIRMAN RULLMAN: I understand what
22 you're saying; however, specifically the ordinance says
23 we must consider if it's the desire to make more money
24 from the property, and it appears to me that that is

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

31

1 the desire, to make more money from the property.

2 MS. SHAP: My desire is to sell the
3 property, but not necessarily make money on the
4 property.

5 MS. GRAFF: Our focus has always been on
6 the saleability. What is the primary way that we can
7 sell this property that the marketplace is willing to
8 accept.

9 MS. SHAP: At a fair price.

10 CHAIRMAN RULLMAN: One of the other
11 things we're asked to consider is has the alleged
12 difficulty or hardship been created by any person
13 presently having an interest in the property, and your
14 answer to that was no.

15 It would seem to me as though you bought the
16 property in full awareness of the zoning ordinance and
17 the regulations that apply to that property, and
18 therefore in my mind, you created the difficulty by the
19 purchase.

20 MS. SHAP: Well, the main thing we're
21 doing is asking tonight if we can divide it into two
22 properties, and, you know, if we would be able to get a
23 variance tonight because we are within 90 percent of
24 being able to do that, and that's the main reason why

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

32

1 I'm here this evening.

2 CHAIRMAN RULLMAN: In considering that,
3 we're asked to consider these things, and so I'm
4 certainly willing to have testimony to the fact that
5 you did not have anything to do with creating the
6 present condition, which you've said you did not, and
7 here I believe the answer to that is an incorrect
8 answer. I think the answer to that is yes, that when
9 you purchased the property, you fully understood what
10 the ordinance is and was.

11 And on the other point --

12 MS. GRAFF: Elmer, I don't think that
13 when they bought the property they were considering
14 splitting the lots. Their intent was to build a home
15 on it; but as their children got older and the
16 economics of building a \$2 million house -- I think all
17 of us have made wise financial decisions in lieu of the
18 last 7 to 10 years, hopefully we have.

19 So I don't know that Karen and John knew the
20 variance issue when they bought this lot. Their intent
21 was to build a single-family home on the lot, but they
22 have altered that view in light of many things. The
23 marketplace, first of all; and secondly, just what they
24 want -- what they want -- the desires of their family.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

33

1 So I don't think that that's fair to say that
2 it's a -- that they -- you know, it's not true. I
3 mean --

4 CHAIRMAN RULLMAN: Well, is it true that
5 they purchased the lot with full knowledge of the
6 ordinance?

7 MS. GRAFF: I think you have to answer
8 that.

9 MS. SHAP: The variance?

10 MS. GRAFF: The variance or the
11 ordinance?

12 CHAIRMAN RULLMAN: No, the ordinance,
13 that they understood that the lot was 35,002.9 square
14 feet.

15 MS. SHAP: Yes, I understood the size of
16 the lot.

17 CHAIRMAN RULLMAN: Okay. And that the
18 district in which you were building or purchased the
19 lot had a definite requirement for a minimum of 18,000
20 square feet, which is substantially more.

21 MS. SHAP: When I bought the lot, I
22 didn't intend on splitting it. So it was adequate for
23 building one house.

24 CHAIRMAN RULLMAN: Another thing we're

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

34

1 asked to consider is would this apply to other lots in
2 the area? To which you answered no. It would seem
3 that many of the other lots in the area could be
4 divided to 18,000-foot lots, that what you're asking
5 could be applicable on other lots, and therefore, it's
6 not unique to this lot.

7 MS. GRAFF: I'm not sure that I
8 understand what you're trying to discern.

9 CHAIRMAN RULLMAN: Well, under the
10 applicants' application for the property, what
11 characteristics prevent the property from being used in
12 conformity with the requirements of the zoning
13 ordinance?

14 So I don't see a physical characteristic that
15 would prevent the lot from being used in conformance
16 with the zoning ordinance.

17 MEMBER HOLDERFIELD: You're talking
18 about the existing lot at 85,000.

19 CHAIRMAN RULLMAN: Yes. Exactly. Are
20 the conditions stated above applicable to other
21 properties within the same zoning classification? You
22 believe so. That's absolutely true. They could be
23 divided.

24 Is the purpose of the proposed variation

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

35

1 based on more than a desire to make money from the
2 property? I already shared with you that I think most
3 of the testimony we have heard so far is based on the
4 desire to make more money for the property.

5 Has the alleged difficulty or hardship been
6 created by any person presently having an interest in
7 the property? You answered no. I think the answer to
8 that is yes. You purchased the property with full
9 knowledge of the ordinance.

10 Based on your answers, what you believe is
11 the most likely thing -- you checked is greatly reduced
12 in value.

13 I don't -- you've answered we purchased the
14 lot in 2006 for X amount of dollars. It has been on
15 the market for three years with no offers. We believe
16 dividing it will present a better option for potential
17 buyers. To me that's another way of saying make more
18 money on the lot.

19 So I'm just asking -- these are the things we
20 have to consider to grant a variation, and I'm willing
21 to hear testimony that those things are true.

22 MS. SHAP: Well -- was making more
23 money -- was that the question?

24 AUDIENCE MEMBER: Could she use the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

36

1 microphone?

2 MS. SHAP: Sure.

3 CHAIRMAN RULLMAN: Use the microphone.

4 MS. SHAP: You're referring to page 13
5 and the question.

6 CHAIRMAN RULLMAN: Page 13 of which now?

7 MS. SHAP: Page 13 of the variation.

8 CHAIRMAN RULLMAN: Of the zoning
9 ordinance?

10 MS. SHAP: Yes.

11 CHAIRMAN RULLMAN: All right. 17.04-13,
12 is that where you're asking about?

13 MS. SHAP: Yes. It seemed like you were
14 responding to a lot of those questions.

15 CHAIRMAN RULLMAN: Pardon me?

16 MS. SHAP: It seemed like you were
17 discussing those questions.

18 CHAIRMAN RULLMAN: Page 13, authorized
19 variations and approved criteria; is that where you're
20 looking at?

21 MS. SHAP: Yes.

22 CHAIRMAN RULLMAN: All right. So it's
23 page 17.04-18 in my book but --

24 MS. SHAP: 17.04.310?

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

37

1 CHAIRMAN RULLMAN: All right. So I see
2 where you're at. All right.

3 MS. SHAP: I guess I'm just asking is
4 that where you were because it says --

5 CHAIRMAN RULLMAN: The criteria here are
6 accurate as I can see here compared to the regulation.
7 So this is a copy of a part of the regulation, and
8 that's the seven points that I was addressing, yes.

9 MS. SHAP: The first, the No. 1, what we
10 find a hardship at this point is when we wanted to
11 divide it into two lots is that where the street cuts
12 into the lot creates a hardship in making it into two
13 lots. It takes a section of the lot out.

14 Yes. We didn't even think about that when we
15 bought the lot because we didn't know we'd be at this
16 point now and wanting to divide it. So that now has
17 become a hardship for us in dividing the lot.

18 We're not trying to make money on this lot.
19 We are just trying -- we've had it on the market for
20 quite a while, and we have a house, and we know that we
21 bought it at the height of the market and there will be
22 no way that we really will make money on this lot.
23 We're just trying to sell it. So I don't know if that
24 satisfies the answer for you or not, but that's a

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

38

1 genuine answer.

2 CHAIRMAN RULLMAN: So making or losing
3 money on the lot is not the issue. It's are we
4 considering if -- the reason for the variation is all
5 we're asking for here.

6 Anything else you'd like to offer?

7 MS. SHAP: No. I don't think so. Any
8 other questions?

9 CHAIRMAN RULLMAN: Anyone else on the
10 Board have any questions?

11 MEMBER BUENING: Mr. Chairman, I had
12 another question.

13 This is directed to staff. We are
14 entertaining a variance here for the lot sizes; but if
15 we were to grant this variance, do they still have to
16 go through the subdivision process, or is this
17 something that can be done with an --

18 MEMBER HOLDERFIELD: I can't hear you
19 down here.

20 MEMBER BUENING: I'm sorry. We're
21 looking at -- the variance process here is to approve
22 or deny the lot sizes that are being requested. My
23 question is if we should approve of this, do they still
24 need to go through the subdivision process in order to

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

39

1 split lots, or is this something that's exempt?

2 MR. COLBY: They would need to go
3 through a subdivision process under the city's
4 subdivision ordinance.

5 MEMBER BUENING: And if that's the case,
6 are there other variances that the Plan Commission
7 would then have to entertain with regards to, you know,
8 pavement width? I mean, there's only about 14 foot of
9 pavement here. There's no sidewalks. It probably
10 wouldn't apply to all the existing trees, but are those
11 things the Plan Commission would be entertaining
12 as well?

13 MR. COLBY: Yes. The Plan Commission
14 has the authority to consider variations to the design
15 standards for subdivision, and that could occur at that
16 time.

17 MEMBER BUENING: Okay. My other
18 question to staff is I believe the current zoning
19 ordinance was adopted in 2006; is that correct?

20 MR. COLBY: Yes.

21 MEMBER BUENING: Do we know how this
22 plays into when they acquired the lot in 2006? Did
23 they acquire the lot before we adopted the new
24 ordinance, or was it afterwards?

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

40

1 MR. COLBY: The zoning district this
2 property is located in -- under the zoning ordinance
3 previous to 2006, it required the same minimum lot size
4 and the same minimum lot width. So the dimension
5 requirements of the lots did not change. So the zoning
6 prior to 2006 was similar as the zoning now.

7 MEMBER BUENING: All right. Thank you.

8 CHAIRMAN RULLMAN: I have one staff
9 question, and that is in granting any variation, one of
10 the things that's included is the stipulation of
11 17.42.040.C. the Municipal Code of St. Charles
12 variation shall lapse after 12 months from the date of
13 variation unless construction authorized is commenced
14 on a building or a building permit specified by the
15 variation within 12 months of use of such period.

16 What is the effect of that if this variance
17 were to be granted?

18 MR. COLBY: Well, the applicant, if the
19 variance were granted, could apply to have the
20 subdivision approved. If the subdivision were
21 approved, the applicant would have that one-year time
22 period from the variance being granted to construct on
23 the lot that was undersized. Otherwise, they would
24 need to come back and apply to be extended or regranted

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

41

1 if it lapsed.

2 CHAIRMAN RULLMAN: Does the applicant
3 understand that?

4 MS. GRAFF: Yes.

5 MS. SHAP: Yes.

6 CHAIRMAN RULLMAN: All right. Any other
7 questions from the Board?

8 (No response.)

9 CHAIRMAN RULLMAN: Are there any
10 objectors present?

11 Do you have any questions for the petitioner
12 or a statement for the Board?

13 MS. O'CONNOR: May I be heard?

14 CHAIRMAN RULLMAN: Yes.

15 MS. O'CONNOR: Thank you. I'm Mary
16 O'Connor, 1045 North Third Avenue, St. Charles.

17 You did a great job -- Nabi, is it? -- of
18 reading the letter.

19 The first thing I want to put into exhibits
20 are copies of that letter have been signed by the
21 majority, the vast majority of the neighbors on both
22 Second and Third Avenue that are relative to this
23 proposed variance.

24 I wanted to make sure that I also put into

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

42

1 exhibits, which I'll do right now and share with you
2 all -- we did get the letter from the arboricultural
3 services talking about what might happen to the trees.

4 As everybody knows, that's a great
5 neighborhood, a grand neighborhood really for trees.

6 So maybe you'll want to just pass that down
7 so that I'm time sensitive.

8 You know, as I prepared to come down here
9 this evening, it occurs to me that the trees and the
10 woods and how that neighborhood was developed should be
11 protected really with the same fervor that we protect
12 our historic buildings. I really do feel that way
13 about our trees in our neighborhood. It makes the
14 neighborhood unique. It makes the neighborhood
15 valuable and also a pleasure to live in.

16 I wanted to -- as I said, I think you did a
17 great job reviewing the letter that we've now all
18 submitted. I wanted to go over a couple points.

19 First of all, to me the only way to get this
20 to facts, if you will, was to go see the estimated
21 appraised values off the tax records, and I think
22 that's very important because in my head it was
23 actually never worth the \$525,000.

24 Being a fair person, I went back, and I took

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

43

1 a look at my own taxes, and I discovered that my tax
2 EAV has dropped from a high of 171,000 to 129,000. So
3 the fact of the matter is that the entire neighborhood
4 is suffering through a 25 to 35 percent loss of
5 property values, and it is my opinion as well as I
6 think the facts that we have stated here is that any
7 split of the lots will most likely end up developing
8 two smaller homes which will continue to devalue, and I
9 want to talk about the physical structure of the ranch
10 homes that sit on Second and Third Avenue.

11 Right now if you look on the 900 block, a
12 property was purchased. We were here actually
13 together. I don't know if you all were on the
14 Commission at the time, but there was a proposed four
15 house that ended up being a three-house deal, and what
16 those very large, million-dollar homes, probably the
17 last million-dollar homes built in our neighborhood,
18 have done is undermined the value of the physical
19 structures, if you will, of the ranch homes that were
20 in the original covenants of that neighborhood.

21 So as I sit in my home, I wonder, gee, should
22 I repair that bathroom or is, in fact, my lot going to
23 be a teardown which is certainly not the intent of that
24 neighborhood. Is my ranch and all the ranches around

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

44

1 me going to come down as a result of splitting and
2 building the big home.

3 So, you know, that's Reason No. 1 for me to
4 say, you know, we can't do this. That will literally
5 take away the value of my physical structure.

6 I wanted to respond just briefly to the kind
7 real estate agent who said that the people who have
8 been looking have been talking about building
9 million-dollar homes. Well, at the same time, she
10 commented that the million-dollar home builders look at
11 our taxes and say they wouldn't pay. So I felt that
12 was a little bit of a disconnect.

13 This is either going to, you know, split and
14 there will be smaller homes, or this is going to stay
15 as is and a home, certainly a million dollars or more
16 makes all the sense on that lot.

17 To answer the question in the application in
18 terms of will it be to make money, the real estate
19 agent said that she'd put the larger lot on the market
20 for 275,000 and the smaller at 265. Well, doing a
21 little bit of math, while they may not make money, they
22 would certainly be recouping money. And, again, if you
23 go back to what has happened to property values of 25
24 to 35 percent, plus your taxes, we are all in the same

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

45

1 boat, that, in fact, this is about the plus or minus of
2 money.

3 I think that's kind of everything that I
4 wanted to cover on behalf of the neighborhood, except I
5 just want to make sure that I reiterate on behalf of
6 all the neighbors that this land is beautiful, and we
7 must protect these oak trees.

8 Any questions?

9 MEMBER HOLDERFIELD: I'd just say I'm
10 curious talking about the trees here, and I'm
11 conflicted on many issues in this whole deal and
12 talking about the situation where two houses that are
13 smaller, that this would cause damage or possible
14 damage to the trees.

15 Would it not cause the same damage, if you
16 put one larger house on this existing lot the way that
17 it is? Would you not get the same --

18 MS. O'CONNOR: Well, I'll answer that
19 because I know the house that was torn down there. You
20 can actually build in the same structure -- I'm going
21 to use Frank Lloyd Wright, but if you build against the
22 hill, if you will, and come down with it, you would not
23 have to touch the trees that are on the periphery of
24 where the original house stood. There are no great

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

46

1 Oaks where the house once stood.

2 There was a substantial home there at one
3 time.

4 MEMBER HOLDERFIELD: There was a home
5 there.

6 MS. O'CONNOR: Yes, yes. But there are
7 two issues: When you cut it in half, you not only have
8 trees that are going to come out, but there is also the
9 root damage to equipment rolling over any trees that
10 you can keep to the side, and, you know, that
11 neighborhood is all about the trees, and it's -- you
12 know, it's right next to the bike trail and the
13 preserve and everything like that.

14 MEMBER HOLDERFIELD: And keeping in the
15 same vein, a lot of this was here when I got here
16 tonight. I wasn't aware of this. But I'd like to
17 speak to this floodplain problem where it would be a
18 substantial higher risk if two houses are there as
19 opposed to one. What's the difference?

20 MS. O'CONNOR: I'm going to let my
21 colleagues Mike Burcelli talk about -- you're talking
22 about the rain runoff. Yeah.

23 Mike is going to answer that. Thank you for
24 your time.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

47

1 MR. POTTS: I wasn't sworn in. Is that
2 okay?

3 CHAIRMAN RULLMAN: No. Raise your right
4 hand.

5 (Witness duly sworn.)

6 CHAIRMAN RULLMAN: Your name and
7 address.

8 MR. POTTS: Mike Potts, 1025 North
9 Second Avenue.

10 The situation -- we're right before the golf
11 course. Fortunately, my father back in the 1940s
12 bought from Lester Norris two acres, the third house
13 built down there. He passed away in '97, and we moved
14 in.

15 We cleared the wilderness. We kept the big
16 trees. That's where the park district made sure that
17 if we had the runoff water, control it.

18 The situation with this lot, as mentioned,
19 and if you had a chance to see the lot, it starts -- I
20 put in there 30 to 40 feet higher on the east side
21 coming down to the west side. Okay. It is basically a
22 hill is what it is, and the prior people, the Albricks,
23 the original owners, cut into the hill some and did a
24 reverse walkout, and they were there for many, many

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

48

1 years.

2 What the city has done with the runoff water
3 from Fifth Avenue, Third Avenue, to us, to the golf
4 course, to the river has channeled in between the
5 houses the runoff water. There is a large pipe coming
6 through that lot that is dumping Third Avenue water
7 into my neighbor's yard at 1035 which is just north of
8 our house. As that comes through there, it meanders to
9 our side, and we take it to the golf course.

10 You do not need a 100-year rain to have a
11 flood there. You get an inch of rain in an hour, it is
12 shooting through there, and we have a flood going
13 through the golf course. The golf course has now added
14 pipelines or drainage to the forest preserve. They
15 have done something there.

16 So adding more footprint of two houses, that
17 I'm hearing million-dollar houses, which would be a
18 large footprint and two more driveways, that surface
19 water is just going to come straight across the road to
20 our property. Unless the city goes in and redoes the
21 road and puts in curbs and storm sewers, which they
22 have never done, they may be able to handle it.

23 But I think there's more variances that are
24 going to be coming to handle this, and this is just a

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

49

1 normal watershed from Fifth Avenue down to the river.
2 Nothing different. We live within the topography of
3 the land, and that happens to be the one house that has
4 a hill.

5 MS. GRAFF: Mike, what is that pipe that
6 goes -- that you said goes through the property?

7 MR. POTTS: It comes through the
8 property onto the road into their property.

9 MS. GRAFF: Is it in the middle of the
10 property, or is it on the outside of the property?

11 MR. POTTS: It's right by the driveway.

12 MS. GRAFF: So that's --

13 MR. POTTS: It comes straight across.

14 MS. GRAFF: To the smaller lot -- on the
15 smaller lot.

16 MR. POTTS: Well, the gravel driveway,
17 the original driveway.

18 MS. GRAFF: Yeah. Where the original
19 driveway was. I'm just trying to visualize where that
20 exists and you say --

21 MR. POTTS: We have been putting up
22 retention walls to slow it down because it comes out
23 really fast and erosion. You know, we're always
24 refilling where the dirt has been taken out. Boulders

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

50

1 have been rolled down to the golf course.

2 So it's interesting in the sense that you
3 don't see it that much during the year, but when you
4 get those rains, the runoff is there.

5 MEMBER HOLDERFIELD: I guess what I'm
6 trying to figure out here based on what you said
7 earlier back there in regards to property values, two
8 footprints of a smaller home and the valuing of the
9 lots at 250,000, and a house built that would be a
10 million bucks, right, that's kind of what you're
11 thinking.

12 So if you sold one lot at 500,000, does that
13 mean that it would be a \$2 million home there?

14 MS. GRAFF: Yep.

15 MEMBER HOLDERFIELD: With twice the
16 footprint, or it's smaller. What are we talking about?

17 MR. POTTS: I think that's opinion.

18 MEMBER HOLDERFIELD: It's all opinion.

19 MR. POTTS: Yeah. I think it's opinion.

20 MS. GRAFF: No, it's not just opinion.

21 If you want to have a banker come in and give you the
22 411 on it. They will look at the entire package, and
23 your lot should not be more than 25 percent of your
24 whole package.

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

51

1 AUDIENCE MEMBER: If you're spending
2 cash.

3 MS. GRAFF: Thank you. That is true,
4 but for the most part when -- there has been two or
5 three builders, custom builders that all of you know
6 that have looked at this lot, and if they take 400- or
7 500,000 for this lot, they are looking at building a
8 home that is \$1.6 to \$2 million and that really is --
9 as far as I'm concerned, I mean, I think that's the
10 hardship, is that where do you price this lot? Do you
11 price it at 250, and you just take that huge hit as
12 that lady said because it's 25 or 30 percent less?

13 I mean, to answer your question about an
14 equally bad predicament, if you put two homes on that
15 or you have one large home, and if somebody pays in the
16 400- or 500,000 range for that house, it's going to be
17 a large house.

18 Karen, you might want to address this, that
19 you had actually planned for two properties -- two
20 houses, a guest house and a main house for this
21 property, and that all would have fit into the zoning
22 and building permits at the time, and that would have
23 been bigger than I think you would see on a split lot.
24 I don't know that. Some of it is just assessment.

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

52

1 MR. POTTS: Well, I can respond, I'm
2 just saying it's up to the individual.

3 CHAIRMAN RULLMAN: The potential water
4 runoff is something that would be considered in the
5 issuance of a building permit, but not something we
6 would consider here necessarily as a Board -- as an
7 issue.

8 This letter from the arborist I think would
9 be entered as Exhibit F addressing the -- detrimental
10 to the public welfare for this property.

11 Anything else?

12 MR. POTTS: No. Unless you have
13 questions.

14 CHAIRMAN RULLMAN: Any questions?

15 (No response.)

16 CHAIRMAN RULLMAN: Anyone else who would
17 like to be heard on this hearing?

18 MR. COOPER: If I may. As I said
19 before, I'm Stephen Cooper. I'm a lawyer representing
20 the Pattens whose home is at the end of -- the north
21 end of North Second Street, and I'm speaking only for
22 them at this point.

23 I'd like to begin, if I might, just by
24 submitting for the record some of the actual plats of

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

53

1 both the subdivision platted in 1956 where this subject
2 property is located and the subdivision that George
3 Havlicek platted to the north of that subdivision, and
4 then the assessor's map of the properties on the west
5 side of Second Street, which together will give you an
6 accurate picture of what exists in that area, the size
7 of the lots. I also have an aerial photograph that I
8 would like to submit into the record. So if I can
9 start by doing that.

10 Unfortunately, I didn't make copies for
11 everybody over at the assessor's office, and the
12 recorder's office didn't. I have marked them, and I'll
13 identify them as I go.

14 Exhibit 1 is the original subdivision for the
15 subject property. It indicates it was platted in 1956,
16 and it shows those lots on the east side of Second
17 Street, including the subject property. If I might
18 offer that and make it part of the record. I have
19 marked that Exhibit 1.

20 CHAIRMAN RULLMAN: We will enter this
21 plat for the original subdivision of the property as
22 Exhibit G.

23 MR. COOPER: Exhibit 2 is the assessor's
24 map of the subject property which shows also the lots

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

54

1 to the west -- on the west side of Second Avenue which
2 are not platted in a subdivision. They are simply
3 individual lots so that you can see the configuration
4 of the west side of North Second Avenue.

5 CHAIRMAN RULLMAN: If the Board would
6 like to see this, you'll have to come down here to
7 look. Exhibit H.

8 MR. COOPER: While you're doing that, if
9 I could identify for the record Exhibit 3, which is an
10 aerial photograph, I believe it's a Sidwell photograph
11 that actually shows that area, including all of the
12 lots that are shown on those other exhibits. You can
13 see the size and the dimension of the houses and how
14 they fit on the lots and how the lot size accommodates
15 the size of the houses. So I would like to offer that
16 as Exhibit 3.

17 CHAIRMAN RULLMAN: Exhibit I.

18 MR. COOPER: The last one, if I may, is
19 Exhibit 4. It's the plat of subdivision for the Woods
20 of Delnor, which shows the three lots that were on the
21 end of North Second Street built by Mr. Havlicek,
22 including the Pattens' house.

23 So those together I think will give you a
24 picture of what we're talking about here in terms of

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

55

1 how this lot that is sought to be varied relates to the
2 existing homes and platted lots in that area.

3 MEMBER HOLDERFIELD: Can you state that
4 again, Mr. Cooper, the point of showing all these plats
5 is to do what?

6 MR. COOPER: If you take them together,
7 you will see the size of the lots --

8 MEMBER HOLDERFIELD: Yes.

9 MR. COOPER: -- and I'll show you in a
10 moment what the square footage is with respect to each
11 of them so you can see how the division of this lot
12 would compare to what exists there now, which is a
13 consideration under the seven standards that you have
14 to assess in granting a variation.

15 I believe, was it Mr. Buening, who asked
16 about when they acquired it. I also have -- and I have
17 copies of these documents for each of the members.
18 Exhibit 5 is the warranty deed from Mr. Havlicek, LLC,
19 for the applicant here. You'll see that that was
20 recorded in May of 2006. I'll give you the originals
21 of this so you have them for the record.

22 The significance of the deed is to show that
23 prior to the time, from 1956 until they bought that
24 lot, it had been configured in precisely the same way

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

56

1 as they bought it. It was recorded in the recorder's
2 office. They clearly had the ability to know exactly
3 what that lot was about, and that it had been zoned and
4 platted for more than 30 years.

5 They purchased the lot obviously as an
6 investment to build a home, and it turned out to be not
7 such a good investment because they didn't build a
8 home, and what we've heard tonight is really an
9 argument why this Board should change what's existed
10 since 1956 and what all of these folks knew when they
11 bought their properties and when they built their homes
12 would be the circumstance, and the sole purpose of this
13 variation as evidenced by what they've said in the
14 application is to enable them to sell the lot at a
15 price greater than what they could sell as a single
16 lot.

17 I suggest to you that that simply is not a
18 factor enumerated in any of the seven factors that
19 you're to consider in considering a variation, that
20 would permit you to vary the lot size, and while we're
21 here I want to say one other thing. There was a
22 question asked about the subdivision of this lot.

23 The Board of Appeals, with all due respect,
24 does not handle subdivisions. They handle variations.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

57

1 There are several ways that the applicants could go
2 about seeking a division of this lot. One would be to
3 file an amendment, a petition to amend the plat, so
4 that they would be focused solely on their lot and
5 would not have to have this Board involved at all. The
6 zoning authority, the legislative branch of the city
7 government handles subdivisions.

8 What you're asked to do here is vary
9 something that doesn't exist. There is no
10 nonconforming lot at this point. You're asked to give
11 an advisory opinion, and it would do one thing, and the
12 sole purpose of this application is to allow the
13 applicants to then proceed to the minor subdivision
14 provision of the St. Charles Zoning Ordinance. When
15 you do that, you avoid all of the studies that have to
16 be done when you proceed under the regular subdivision
17 provision.

18 To proceed with a minor subdivision, there
19 are six requirements. The sixth requirement is that
20 none of the four lots -- and it's limited to four lots.
21 It can't be more than four lots. None of those lots
22 can fail to meet the applicable zoning restriction
23 area, in this case 18,000 square feet.

24 So they can't get to the minor subdivision

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

58

1 provisions of the zoning ordinance without having this
2 Board grant a variation, which I suggest that you
3 simply don't have the power to do, and you certainly
4 don't have the power to grant a subdivision, and we're
5 talking about this as a resubdivision of an existing
6 lot, and it should go through the proper zoning
7 authorities to do that.

8 They could also simply ask that it be
9 subdivided without amending the plat and go through the
10 normal processes. If they did that, they would
11 address, and the city staff would address all of these
12 issues that we've talked about tonight. Trees,
13 drainage, traffic, all of those things you don't have
14 to do with a minor subdivision.

15 The people here tonight are entitled to have
16 that addressed when somebody wants to reduce the size
17 of the lots in their neighborhood, and obviously
18 anybody buying in that neighborhood is looking to
19 buy -- to build a significant home.

20 You buy property, we all do, and we all have
21 suffered in the recession. There's no doubt about
22 that. I'm very sympathetic to the position the
23 applicants find themselves in, but it's no different
24 than any of you or anybody sitting on this side of the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

59

1 desk would have if they wanted to sell their property
2 for an increased amount of money.

3 Now, one of you, and I don't remember which
4 one it was, asked an interesting question about the
5 effect of subdividing this lot. The question, as I
6 recall, was whether under the applicable enumerated
7 seven considerations that you're supposed to make,
8 would it affect other -- and the question was would it
9 affect other properties in the area?

10 In fact, if you read the section of your
11 ordinance, it doesn't say "in the area." It says "in
12 the zoning district." So the answer to the question
13 would be if you were to grant a variation so that you
14 could subdivide this lot in an area of variation, it
15 could affect every large lot in the RS-1 single-family
16 zoning restriction in the city. Not just in that area,
17 but everywhere, and the reason that's in your
18 considerations is to avoid just that. Variations are
19 supposed to identify particular hardships in particular
20 lots.

21 Let me see if there's -- I want to give you a
22 couple of other exhibits.

23 Exhibit 6 -- and I have copies here for all
24 of you -- is an affidavit from John Thornhill, a

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

60

1 present surveyor and land planner and actually
2 developer in the area, in which the affidavit portion
3 simply tells you in part what his credentials are and
4 that he is qualified to do what he did.

5 I asked John to look at the plats that you
6 have in Exhibits 1, 2, 3, and 4. Those involve 14
7 lots, all of them developed except Lot 0, the lot
8 that's subject to this request, and to compute from
9 those actual plats the lot sizes, the lot areas of
10 those 14 lots.

11 I did that so you can see -- and it's
12 attached to that Exhibit 6, the last page. You can see
13 his tabulation of the areas, and it does first the
14 tracks adjoining Third Avenue, which is to the east,
15 the back of this lot. Now, those are smaller lots as
16 you can see on the plat.

17 If you look at the larger plat of the area,
18 you'll see that the planning has gone -- when you start
19 at 25 with smaller lots, and they get larger as you
20 progress down to Second Avenue. But the Third Avenue
21 lots on the west side of the street, some adjoin the
22 subject property and others are within the near area.
23 So to be fair, we included those lots to determine the
24 average lot size of the 14 houses in the area.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

61

1 The second group would be the east side of
2 Second Avenue, North Second Avenue, and that would
3 include Lot 0 of the subject property.

4 Then you have on the north side -- I'm
5 sorry -- the west side of Second Avenue three lots that
6 he has identified -- no, I'm sorry. That's the Woods
7 of Delnor. Those are the Havlicek lots at the end of
8 Second Street, and then he did the lots on the west
9 side of North Second Avenue.

10 If you look at his affidavit and what he did
11 to summarize that, that was Exhibit 5, you'll see that
12 the average lot square footage of the 14 lots,
13 including this lot, is over 39,000 square feet.
14 There's 44,560 square feet in an acre. So together
15 they get close to the 1 acre size.

16 If you look at Lot 0 divided, you put that in
17 the middle of these average large lots, including the
18 small lots on Third Street, and they're less than half
19 the size, the smaller one is 16,000 some feet or 17,000
20 and the larger is just over 18.

21 Clearly something very different than what
22 exists in the area, and that's one of the criteria
23 you're to consider in granting a variance. Is it
24 compatible with existing uses and residences in the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

62

1 area, and clearly it's not. It's much, much smaller.
2 That lot size would be more appropriate up closer to
3 Route 25 but certainly not in the area of probably the
4 largest single-family lots, platted single-family lots
5 in the city.

6 Let me just talk for a minute about some of
7 the other factors that we haven't talked about tonight.
8 I'll do that in terms of the actual seven factors.

9 The first factor is the particular physical
10 surroundings, and then they specify what those are.
11 It's shape, topographical condition of the property in
12 question. It doesn't say anything about area. It
13 doesn't say anything about value. Does this request
14 relate in any way to the physical surroundings, the
15 shape or the topographical condition of Lot 0, and I
16 suggest to you it simply doesn't, and there has been no
17 evidence that it did.

18 They go on to say there in terms of the
19 hardship, is it a mere inconvenience; and if it is,
20 they haven't met their burden in terms of satisfying
21 even the first of the seven conditions.

22 The inconvenience here as they state very
23 clearly is that they can't make as much money unless
24 they can divide the lot, but that's inconvenience.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

63

1 That's not something that relates to the physical
2 surroundings and the lot that disables them from using
3 the property or selling it for whatever they can get.

4 Those who have been in the stock market know
5 when the stock went down, you sold it if you had to for
6 what you could get, and people did that with their real
7 estate. This situation is no different than that.

8 The next is you're to consider the conditions
9 upon which the variation is based would not be
10 applicable generally to the property within, and as we
11 talked about, the same zoning classification. It's not
12 just in the area. It's the entire city zoning
13 classification.

14 The third is that the purpose of the
15 variation is not exclusively based on a desire to make
16 more money out of the property. Well, we all know what
17 has been said here. We haven't heard anything else
18 that would justify the variation other than a desire to
19 make more money.

20 The fourth is the particular hardship has not
21 been created by the person who presently owns the
22 property. As your chairman has said, they made an
23 investment. They did it to build a house. They
24 created the problem by making an investment that turned

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

64

1 out, like all of ours, to be less than favorable. So
2 they don't satisfy that condition either.

3 And the fifth is the variation, if granted,
4 will not alter the essential character of the
5 neighborhood. I think it's very clear when you look at
6 the plats and you look at those large houses that are
7 accommodated by large lots; and then you think about
8 building two houses, and if we're talking about
9 million-dollar houses, the only way to do that on those
10 lots is to go straight up in the air. If you go there,
11 you'll see there's nothing like that in the area.
12 Those are all houses that are built on large lots to
13 accommodate an expansive, graceful look, and to
14 accommodate the existing environment, the forests that
15 are there. That couldn't be done on Lot 0 if you
16 divided it in half.

17 6 is a little more difficult. We haven't had
18 any testimony with respect to it, but it deals with
19 will not be detrimental to the welfare or injurious to
20 the property improvements in the neighborhood.

21 That's always hard to prove. It certainly
22 hasn't been proved here other than the people have the
23 opinion that it will damage their values.

24 And that's really 7. 7, if you grant a

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

65

1 variance, you have to find that it would not
2 substantially impair property values within the
3 neighborhood, and everybody on this side would tell you
4 that it would; and obviously the applicant would tell
5 you that it wouldn't.

6 The real estate broker -- and I thought it
7 was interesting what she said about how the appraisals
8 are done and how valuations are done. That simply has
9 nothing to do with the inquiry here. The inquiry here
10 is not on this property and what its value would do.
11 The inquiry is on what it would do to these folks'
12 values.

13 So when you put it all together, we simply
14 haven't had any evidence tonight that would satisfy any
15 of the seven requirements.

16 My final exhibit, and with all due respect to
17 you, is an objection to your jurisdiction to even hear
18 this. I'm not going to argue the legal niceties of
19 that. I'm just going to file that for the record so
20 that if a review is required later on, it hasn't been
21 waived.

22 Simply stated, we don't believe that the
23 Zoning Board of Appeals has the authority to make a
24 zoning decision When you look at the state statute and

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

66

1 you look at your own ordinances. We have argued this
2 in this filing, but I'm not going to argue it tonight.
3 So I just want to make that part of the record, and
4 that's Exhibit 7.

5 That's all I have unless you have questions.

6 CHAIRMAN RULLMAN: I would like the
7 staff to address the last point --

8 MR. COOPER: I'm sorry, sir. I'm having
9 trouble hearing you.

10 CHAIRMAN RULLMAN: I'm sorry. I would
11 like the staff to address the point you just made last.

12 Under the ordinance, authorized variations,
13 the Board of Zoning Appeals may grant variations only
14 in the following instances and in no others.

15 Item No. 3, permit the use of a lot for a
16 prohibited use solely because of insufficient area or
17 width, but the area or width of the lot -- so we're not
18 talking about a lot here.

19 MR. COLBY: Correct. We're talking
20 about a proposed lot which would be carved out of an
21 existing lot.

22 CHAIRMAN RULLMAN: But we are not
23 authorized to hear variations of proposed lots. We are
24 only authorized to grant a variation of a lot, which is

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

67

1 not able to do anything other than the 90 percent here
2 that exists in the regulation.

3 MEMBER BUENING: If I may, I think it's
4 probably a chicken or the egg situation here because I
5 think what the staff is probably looking at is if a
6 subdivision were to be proposed, they can't approve of
7 it unless they have the authority to have a smaller
8 lot. So it's -- you know, I understand what you're
9 saying with your argument, but I think you can go
10 either way. I mean, it should be going concurrently,
11 but I can see why staff has taken the position in doing
12 what they did.

13 CHAIRMAN RULLMAN: Okay. So the staff's
14 opinion is that we have the legal authority to hear
15 this petition?

16 MR. COLBY: Yes. Because the applicant
17 inquired about the possibility of subdividing this lot,
18 and we informed them that this would be the appropriate
19 first step to take because our subdivision code does
20 not by right allow our City Council to grant a variance
21 by way of creating a lot that is below the minimum
22 standards of the zoning district, unless it were in a
23 PUD situation where they would be asking for variances
24 in connection with a larger project.

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

68

1 MR. COOPER: Could I just make one
2 response to that, Mr. Chairman?

3 If you have the power to vary the lot size so
4 as to avoid the effect of the sixth condition of the
5 minor subdivision ordinance, you have the power to
6 alter or vary any of the other five requirements, and
7 you don't need a zoning ordinance if you only want less
8 than four lots if you can come to this body and you can
9 vary those requirements. That doesn't make any sense.
10 You're reading a whole section of the zoning code out
11 of existence if you do that.

12 CHAIRMAN RULLMAN: All right. We have
13 an affidavit here which will be Exhibit L --

14 MEMBER HOLDERFIELD: I have a question
15 on this.

16 CHAIRMAN RULLMAN: -- and a variation
17 and objection to jurisdiction, which will be M.

18 Jim.

19 MEMBER HOLDERFIELD: This is germane to
20 the topic we're discussing here, and in a way it isn't.

21 Bob or Russ, maybe you can answer this
22 question for me. Instead of talking about -- I just
23 want to know how this would work. Instead of talking
24 about Lot 0 and you just happen to be talking Lot N,

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

69

1 let's just reverse it, and people wanted to subdivide
2 that lot into two lots. Easily done, 18,000 for each.

3 Would there have been any objection by the
4 Plan Commission or the city for letting them do that,
5 or are they completely within their rights? I just
6 wonder how that works.

7 MR. COLBY: It would be required to go
8 through a subdivision process to have those lots
9 created, but there could not be an objection on the
10 basis of the lot area alone.

11 MEMBER HOLDERFIELD: They could not
12 do it, you mean?

13 MR. COLBY: No. They could.

14 MEMBER HOLDERFIELD: They could.

15 MR. COLBY: The city could not deny the
16 subdivision on the basis of the lot.

17 MEMBER HOLDERFIELD: We're really
18 talking only about the issue of the variance here of
19 the 92 percent level and trying to determine hardship.
20 That's what was said.

21 MR. BARONE: You said that you could not
22 grant it on the area alone, but you could not grant it
23 on other areas -- on other aspects; correct?

24 MR. COLBY: Yes. If there were other

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

70

1 aspects of the subdivision that were the basis for the
2 city not granting the approval of the subdivision.

3 THE COURT REPORTER: Could I get your
4 name?

5 MR. BARONE: Chris Barone, B-a-r-o-n-e,
6 1035 North Third.

7 MS. O'CONNOR: May I? And just so
8 that -- to finish that thought, so not just on the area
9 but on other issues.

10 And I think what we've clearly demonstrated
11 here tonight is it is not just one of the several
12 criteria, but we've met many of the several pieces of
13 criteria in order to decline the application.

14 CHAIRMAN RULLMAN: Is there anyone else
15 who wishes to be heard on this variation?

16 MR. HENSON: I haven't been sworn in.

17 CHAIRMAN RULLMAN: Were you sworn?

18 MR. HENSON: No.

19 CHAIRMAN RULLMAN: Raise your right
20 hand.

21 (Witness duly sworn.)

22 CHAIRMAN RULLMAN: Please give your name
23 and address to the recorder.

24 MR. HENSON: Thomas Henson, 1032 North

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

71

1 Second Avenue, H-e-n-s-o-n.

2 I've lived in our neighborhood for 17 years.
3 I'm adjacent to the property that's being requested to
4 be divided, and I just wanted to make one comment, just
5 kind of -- something less factual and more from the
6 heart. So we moved into Delnor Woods, and we have
7 lived there where four of the ranch houses have been
8 torn down and seven new houses have been built in the
9 last 17 years.

10 So our desire is to remain in an area where
11 it's wooded. There's large lots, large -- it's okay
12 with large houses, and we just see this division as a
13 potential to start to change that.

14 We've seen -- you know, we've seen the houses
15 being built, even the big ones, and the White Oaks and
16 the Oaks that we have on our property are very
17 sensitive to the construction that goes on.

18 So our fear is just that if this house is
19 divided -- and we do have a lot of water that gets
20 pooled up between our property line and the neighbor's
21 property line -- that that smaller lot is going to be
22 extremely troublesome to whoever buys it; and that when
23 they build two houses on those two lots, it's going to
24 end up taking away from the wooded feel of the area,

REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014

72

1 you know, and, you know, maybe even drive where we
2 start to see more of that happen, and we end up instead
3 of Delnor Woods just being like the rest of the
4 neighborhood closer to downtown.

5 That's all I wanted to do is make that appeal
6 to you guys that I'm trying to preserve the woods that
7 I live in. Okay.

8 CHAIRMAN RULLMAN: Thank you.

9 Anyone else who wishes to be heard?

10 (No response.)

11 CHAIRMAN RULLMAN: All right. Then the
12 testimony on this variation is closed.

13 Now, I would like to remind the Board of the
14 rules under which we can grant a variation. According
15 to the ordinance, we're asked to look to seven points
16 which are in the ordinance.

17 We have heard a lot of testimony, some of it
18 germane. It's our job to decide what's germane and
19 what's not germane.

20 Any other questions from the Board?

21 (No response.)

22 CHAIRMAN RULLMAN: If not, I'll
23 entertain a motion.

24 MR. BUENING: Mr. Chairman, before we

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

73

1 make a motion, I'd just like to mention a couple
2 things. I do have concerns whether or not this
3 actually meets the standards. I've heard the testimony
4 from the petitioners as well as the objectors, and I
5 have gone to the property. I've looked at it. I have
6 a hard time really believing that it's going to meet
7 all the standards for a variance, and you've covered
8 some of them regarding the financial issues.

9 But I think it also is pretty evident that
10 it's not going to meet the character of the
11 neighborhood. The lot is substantial -- the lots that
12 would be created would be substantially smaller than
13 are out there right now.

14 I would say I have some concerns with the
15 roadway. It's a narrow roadway. It's probably about a
16 14-foot-wide roadway that has posted no parking on both
17 sides. This would create a 10 or 11 percent increase
18 in the number of lots on this road which, you know,
19 means an additional six trips each day. That's a
20 substantial number of cars for the type of street
21 this is.

22 So I do have some concerns that I don't feel
23 this is going to meet the standards for a variance.

24 MEMBER WEISMAN: I didn't hear the last

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

74

1 part.

2 MEMBER BUENING: I have concerns that I
3 don't believe it will meet the standards for a
4 variance.

5 MR. FAKRODDIN: Do you want to make a
6 motion?

7 CHAIRMAN RULLMAN: Do I want to make a
8 motion? No.

9 MEMBER HOLDERFIELD: I have a question
10 in regards to this form, to the whereas. I'm talking
11 about the third paragraph down here. Do all those
12 apply in that?

13 CHAIRMAN RULLMAN: We need a motion
14 that's applied to the facts as they apply to the
15 requested variation. So you may address all seven of
16 those. You don't necessarily have to address all
17 seven.

18 MEMBER HOLDERFIELD: You may.

19 MEMBER BUENING: Mr. Chairman, if you
20 like, I can make a motion.

21 CHAIRMAN RULLMAN: Go ahead.

22 MEMBER BUENING: The St. Charles Zoning
23 of Board of Appeals -- whereas, it is the
24 responsibility of the St. Charles Zoning Board of

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

75

1 Appeals to review all applications for variations;

2 Whereas, the St. Charles Zoning Board of
3 Appeals has reviewed the File V-1-2014, dated 12/3 of
4 2013, and received 12/3 of '13 from John and Karen Shap
5 for the property located at 1044 North Second Avenue in
6 the City of St. Charles for a variation to reduce lot
7 area from 18,000 square feet to 16,491 square feet;

8 Whereas, the proposed variation will alter
9 the essential character of the property;

10 And whereas, the proposed variation will be
11 detrimental to the public welfare or injurious to other
12 property or improvements in the neighborhood in which
13 the property is located;

14 And whereas, the proposed variation will
15 impair an adequate supply of light and air to the
16 adjacent property, or substantially increase the danger
17 of fire, or otherwise endanger the public safety, or
18 substantially diminish or impair property values within
19 the neighborhood;

20 And whereas, the particular physical
21 surroundings, shape, or topographical condition of the
22 specific property would not result in a practical
23 difficulty or particular hardship to the property owner
24 as distinguished from a mere inconvenience if the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

76

1 strict letter of the regulations were to be carried
2 out.

3 The conditions upon which the variation --
4 the petition for variation is based would be applicable
5 to other properties within the same zoning
6 classification, and the purpose of the variation is
7 based upon the desire to make more money on the
8 property, and that the alleged --

9 Whereas, the alleged practical difficulty of
10 the particular hardship would be created by a person
11 presently involved in having an interest in the
12 property.

13 Now, therefore, the St. Charles Zoning Board
14 of Appeals denies the variation requested, with the
15 stipulations as specified in Section 17.42.040.C from
16 the Municipal Code of St. Charles -- that's not
17 applicable.

18 So I'll end that it denies the variation
19 requested.

20 CHAIRMAN RULLMAN: Is there a second?

21 MR. FAKRODDIN: I'll second the motion.

22 CHAIRMAN RULLMAN: It's been moved and
23 seconded.

24 Is there any other discussion among the

**REPORT OF PROCEEDINGS -- 01/23/2014
PETITION NO. V-1-2014**

77

1 Board?

2 (No response.)

3 CHAIRMAN RULLMAN: If not,
4 Mr. Secretary, please call the roll.

5 MR. FAKRODDIN: Mr. Buening.

6 MEMBER BUENING: Aye.

7 MR. FAKRODDIN: Nabi Fakroddin, aye.

8 Mr. Holderfield.

9 MEMBER HOLDERFIELD: Aye.

10 MR. FAKRODDIN: Mr. Rullman.

11 CHAIRMAN RULLMAN: Aye.

12 MR. FAKRODDIN: Mr. Simpson.

13 MEMBER SIMPSON: Aye.

14 MR. FAKRODDIN: Ms. Weisman.

15 MEMBER WEISMAN: Aye.

16 CHAIRMAN RULLMAN: The motion is denied.

17 Thank you for coming.

18 This will close the hearing on this
19 variation.

20 PROCEEDINGS CONCLUDED AT 8:42 P.M.

21

22

23

24

