ZONING BOARD OF APPEALS

MEETING – JUNE 26, 2014

(Time Noted – 7:04 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure is that the Board will ask the applicant to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening on all applications; but may take up to 62 days to reach a determination. And I’d like to remind everyone to please put your cell phones on silent or turn them off and to speak into the microphone. Roll call please.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:04 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 7:04 PM)

ANTONINO CASSARA 442 FOSTERTOWN ROAD, NBGH

(17-2-32.12) A / R ZONE

Applicant is seeking an area variance for the front yard setback for an existing residence on Lot #2 of a proposed three lot subdivision.

Chairperson Cardone: Our first applicant Antonio (Antonino) Cassara.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, June 18th and The Sentinel on Friday, June 20th. This applicant sent out twenty-seven letters. All the mailings, publications and postings are in order.

Chairperson Cardone: And for the record please identify yourself.

Mr. Marshall: Good evening my name is Larry Marshall from Mercurio, Norton, Tarolli and Marshall.

Chairperson Cardone: And state your request.

Mr. Marshall: We’re requesting a front yard variance for an existing house on...

Ms. Gennarelli: Excuse me; can you just turn that microphone up a little bit more towards you?

Mr. Marshall: Sure.

Ms. Gennarelli: It comes off if you want.

Mr. Marshall: Okay. Is this better?

Ms. Gennarelli: Yes, thank you.

Mr. Marshall: We're requesting a front yard variance for an existing home on Fostertown Road. We are…we have applied for a three lot subdivision of the existing parcel and because the existing home is located less than 50 feet from the front yard a…or the a…front lot line we have requested a variance. The building sits…currently sits 25.4 feet off of the right-of-way and we are requesting a variance of 24.6 feet.

Chairperson Cardone: And this building has been in that location for how long? Do you know?

Mr. Marshall: Before zoning.

Chairperson Cardone: Okay.

Mr. Marshall: It's a very old building.

Chairperson Cardone: Do we have any questions from the Board? Are there any questions or comments from the public? I have a report from the Orange County Department of Planning which is Local Determination.

Chairperson Cardone: Mr. Canfield?

Mr. Canfield: Yes Grace, one thing a…185-18-4-B states on County roads, which Fostertown Road is a County road…

Chairperson Cardone: Right.

Mr. Canfield: …the setback should be 60 feet…

Chairperson Cardone: Okay.

Mr. Canfield: …instead of 50.

Chairperson Cardone: Thank you.

Mr. Canfield: There is an exception for structures within 300 feet either way but there is a total of seven structures that fall within that 300 feet but the average distance is less or greater than so therefore the 60 feet does apply.

Chairperson Cardone: Okay, thank you. Do we have anything else? Do we have a motion to close the Public Hearing?

Mr. McKelvey: I’ll make a motion we close the Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you. (Time Noted - 7:08 PM)

ZBA MEETING – JUNE 26, 2014 (Resumption for decision: 8:37 PM)

ANTONINO CASSARA 442 FOSTERTOWN ROAD, NBGH

(17-2-32.12) A / R ZONE

Applicant is seeking an area variance for the front yard setback for an existing residence on Lot #2 of a proposed three lot subdivision.

Chairperson Cardone: The Board is resuming its regular meeting. On our first application Antonio (Antonino) Cassara, 442 Fostertown Road, seeking an area variance for the front yard setback for an existing residence on Lot #2 of a proposed three lot subdivision. Do we have discussion on this application?

Mr. McKelvey: The house has been sitting there for several years.

Mr. Masten: Yes, it’s an old farmhouse.

Mr. McKelvey: And it’s a neat piece of property.

Chairperson Cardone: And this is a Type II Action under SEQRA. Do we have a motion for approval on this application?

Mr. McKelvey: I'll make a motion we approve.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

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GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:39 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 7:08 PM)

LZL EQUITIES LLC. 301 ROUTE 32, NBGH

(DUNKIN DONUTS) (14-1-43) B ZONE

Applicant is seeking an Interpretation of Article II Definitions 185-3 - Definitions; word usage - Convenience Store, Drive-Up Establishment, Eating and Drinking Place, Food Preparation Shop and Restaurant for a proposed Dunkin Donut shop in Business (B) Zone.

Chairperson Cardone: Our next applicant LZL Equities LLC. (Dunkin Donuts).

Ms. Gennarelli: This applicant sent out twenty-one letters. All the mailings, publications and postings are in order.

Mr. Bloom: Good evening Madam Chair my name is Dan Bloom. I represent the applicant and I have with me this evening the architect on the project Mr. Joseph Minuta and a…with the Chairperson’s permission I would request that the presentation be made with Mr. Minuta just giving a…a brief overview of the project for the Board’s consideration so that when I make some comments they are properly placed in context if that’s okay with you?

Chairperson Cardone: Yes that's fine.

Mr. Minuta: Good evening everyone, Joseph Minuta the architect…

Ms. Gennarelli: Excuse me could you get closer to that microphone?

Mr. Minuta: Certainly.

Ms. Gennarelli: You can take it off.

Mr. McKelvey: Take it right off.

Mr. Minuta: Sure, better? Okay, good evening Joseph Minuta for Minuta Architecture, representing LZL Equities and Dunkin Donuts this evening. What we have here is an existing site I'm sure many of you are aware of it. It exists on the corner of Route 32 and Route 300 near Chadwick Lake a…on all four corners of the intersection you have the existing location which we are presenting tonight a… formerly I believe it was 1973 approved and used as a restaurant. I think it was Sandy’s Restaurant back then. It changed hands gone through a…pizzeria restaurant and then became a flower shop. On this side of the property a…of the intersection rather, we have Sunoco a…which has within that a Nathan’s Hot Dogs. We have on this side of the property it’s a Villa Italia…I believe Villa Italia Restaurant and then we have Maize’s Deli that many of us are very familiar with. The idea behind the project is simply to utilize the site as it is a…improve the site a…from the…what we consider an eyesore so we’re improving the aesthetics there. We would be leaving the existing foundation where it is and simply cutting off the top of the building and providing a new parameter around that which would conform to a Dunkin Donuts prototype. To the extent that's pretty much the project.

Mr. McKelvey: You're not going to have a drive-thru?

Mr. Minuta: No drive-thru. I'll turn this over to Mr. Bloom I'm here if you have any questions.

Mr. Bloom: Thank you. Madam Chair and ladies and gentlemen a…I’ve reviewed the project with my client and with Mr. Minuta and I’ve reviewed the Zoning Ordinance and obviously everybody in this room is extremely familiar with it. And we’re obviously because nowhere in that Zoning Ordinance is there any specific reference to this type of operation by de…appropriate legitimate and…and…and specific designation. Therefore, when the application for a Building Permit was submitted it was denied. And the determination at least initially at that point, I believe was that it was a…a…it was considered to be a food preparation a…enterprise and there is no specific reference in the Code to pro…for that type of operation and therefore for it to be issued the necessary Building Permit. I gave it some thought and I looked around the Town and I looked at the other similar operations and I went and visited the Code once again and I said to myself I think the only way I can a…intellectually honestly present this to you this evening is to suggest that we have to respectfully suggest that we have to avoid labels and look at the essence and in fact what my client wishes to do here as Joseph Minuta just very a…succinctly described is basically to rehabilitate an eyesore of a building to make it a legitimate enterprise of…an asset to the Town of Newburgh and a taxpaying entity in the Town of Newburgh at the same time fit within the meaning…the essence of the Code. And I respectfully suggest if you read this section of the Bulk Table and you go through it you’ll see that it’s not a restaurant because it doesn’t have service to the tables inside and it doesn’t qualify as an eating and drinking place because it’s specifically is excluded under that interpretation. And then I went and looked and I see convenience store with…with or without pumping stations and I said to myself well what’s the difference if I go to the convenience store and I buy a cup of coffee and a pack of gum visa vie going to a Dunkin Donuts and buying a cup of coffee and a donut. In fact, if I don’t have a filling station on the premises which obviously we will not the intensity of the use in my client’s particular case is going to be substantially less than it would be if it were allowed to be categorized as a convenience store with a service pump. I also looked around the Town and I saw and…and I’m sure you’re all aware of it many other fast food or convenient markets, Subway type operations in the B zone. And I’m sure some or many of them are grandfathered and I’m not going to make specific references for that purpose but I respectfully suggest to the Board that if we sit back and we look at the essence of what my client is trying to do and we forget the label, Dunkin Donuts, I think that it conforms with the spirit of the Code if not the letter of the Code. And I respectfully appreciate your consideration.

Chairperson Cardone: Mr. Canfield do you have any remarks in reference to that?

Mr. Canfield: That was a very nice presentation Mr. Bloom. The only thing I can add is that a…in the past your Board has made the determination of Dunkin Donuts as being food preparation a…I don’t know that it’s ever been asked to be or be construed or equal to a convenience store although Mr. Bloom’s presentation is legitimate to the type of commodity that is dispensed there and then the manner that it’s dispensed a…I don’t know. The only thing I can offer to the Board is that a precedent has been set, past practices and we have utilized Dunkin Donuts a…being labeled as food preparation. Food preparation is permitted as an accessory use in the B Bulk Use Tables. A…the Bulk Use Tables list certain occupancies that…that food preparation can be used as accessory with. That’s all the advice I have for you.

Chairperson Cardone: Better definitions would help, right?

Mr. Donovan: But on this site there is only proposed a standalone Dunkin Donuts. Correct?

Mr. Canfield: I believe that to be correct.

Mr. Donovan: If I may, a question for either Mr. Bloom or Mr. Minuto (Minuta)? Your application indicates that you are seeking interpretation I’m unclear as to exactly what you’re asking us to interpret. In number two of your application you just say 185-3 Definitions and word usage - Convenience Store, Drive-Up Establishment, Eating and Drinking Place, Food Preparation Shop and Restaurant with table service Section 185-11 B Zone.

Mr. Bloom: I’m sorry.

Mr. Donovan: If you could just go ahead and use the microphone. Just so I’m clear on what you’re asking.

Mr. Bloom: Sure, Mr. Donovan a…good question. I should have clarified that more on my presentation. As I said, after I reviewed Zoning Ordinance in the Bulk Table I think the only a…intellectually honest application I can make is for this Board to consider an interpretation that if you look at the essence of the application that we’re really a convenience store with the requested accessory use of food preparation and while we’re not a convenience in the classic definition of a convenience store I use the analogy that if you look at the essence of the definition I don’t see personally a great distinction between going to a convenience store and purchasing a cup of coffee and a pack of gum visa vie going to a Dunkin Donuts and buying a cup of coffee and a donut.

Mr. McKelvey: I’ve never been in Maisie’s but that deli, do they...that deli, do they prepare sandwiches? Do you know Jerry?

Mr. Canfield: Yes, they do. They have a deli.

Mr. McKelvey: So they prepare food too?

Mr. Canfield: That’s correct.

Mr. Donovan: So if we look at the definition of convenience store that’s defined as a retail business selling non-durable consumer goods including but not limited to groceries, prepared and packaged food and gasoline, and providing those services.

Mr. Maher: Will there…will there be tables in the…on premises?

Mr. Minuta: Yes there will be.

Ms. Gennarelli: Please use the microphone, thanks, it is being recorded.

Mr. Minuta: (Inaudible)

Ms. Gennarelli: Yes, it’s on.

Mr. Minuta: Yes, there will be tables.

Mr. Donovan: And I’m sorry, is there a drive-thru?

Mr. Minuta: No drive-thru.

Mr. McKelvey: Have you been before the Planning Board?

Mr. Minuta: Yes, we have.

Chairperson Cardone: Do we have anything from the Board?

Mr. Maher: Jerry, does it change it? I mean obviously the…between eating and drinking place and the food prep I mean it’s…they’re pretty close in my eyes. Does it change it…does it change anything on the application what determines what Dunkin Donuts is in the end? As far as requirements go, the Planning Board side or…or…? You’re lost right?

Mr. Canfield: I’m…I’m not clear what you’re asking Mike.

Mr. Maher: I guess, in the past you said like again the Board has determined a…a food preparation shop has been the past practice for a Dunkin Donuts establishment. The difference in definition between the two a food prep and eating and drinking, I guess it would…I guess really the only difference really is consumed primarily on the premises for eating and drinking. So I guess my question would be obviously based on the eating and drinking then there’s…there are certain requirements as far as parking goes and such versus that of a food preparation. Is it consistent the two of them? Are you familiar or…?

Mr. Canfield: Well, by definition okay, there’s differences by definition. But I think the real issue here is as Mr. Bloom has presented it’s either permitted or not permitted by the Bulk Use Tables so the difference is the advantage to he and his client is that the convenience stores are permitted in the B Zone. Whereas food preparation is an accessory use that is only accessory to specific permitted uses subject planning board review. So even if it is determined as food preparation, they’re not out of the woods, then you’re still into it’s not an accessory to what is permitted. So there is a huge significance here if this Board chooses to allow it to be convenient a convenient store a… Okay? One other point I might add though if…if it is a convenience store and that’s what the Board should choose to…to allow it to be then that raises several other issues…area variances which are of course, much lesser impact but they still do remain. Such as the fact that it would be…it would constitute a change of use which it’s already required and already is in an attempt to secure a site plan approval a…that’s how the applicant got here because the applicant did go before the planning board. I believe it was back in February of 2014 a…but again, the change of use warrants it to receive a site plan…site plan approval but with that they lose any existing non-conforming, grandfathered so to speak, setbacks. In this case with this building there are a few which of course if the use is permitted then only become area variances but that should be noted that that’s an issue that needs to be addressed as well. I don’t know if we get past the use issue then the applicant would be I would think would have to alter his application or create a new application and come back before the Board to address those variances. Not to put the cart before the horse but it’s just more for you to consider.

Chairperson Cardone: And Jerry, in the past you said that the Board had determined that it was a…?

Mr. Maher: Food preparation.

Chairperson Cardone: …food preparation, right. Was that based on a 1989…?

Mr. Canfield: I’m sorry.

Chairperson Cardone: Was that in 1989, I’m asking?

Mr. Canfield: No, I believe as recent as the last meeting we did have an application before the Board which I believe is also later on in this agenda…

Chairperson Cardone: Well that hasn’t been settled yet.

Mr. Canfield: Okay, but I think the…the conversation and the minutes reflect that it was reiterated that it was food preparation. I think previous applications as well and I don’t…I’m not prepared tonight to give you that date and the specific application which I can supply for you but it was the determination of the Zoning Board at that time that Dunkin Donuts was food preparation. Now also I think at some point and…and perhaps Joe can clarify I think the way Dunkin Donuts does business perhaps may have changed. At one point in time they used to actually make the donuts so to speak on site and then at one point in time I thought perhaps they changed and brought the product in and then it was prepared there, such as heated or you know you’re bagels cooked or whatever. I think at one time and perhaps Joe can clarify they had made the presentation that now everything is brought in, pre-prepared. I don’t know if that makes a difference but it may be a point worth, you know discussing.

Mr. Minuta: You’re accurate in that…in your description.

Chairperson Cardone: Because I’m thinking of the a…Dunkin Donuts on North Plank Road and that’s accessory to what?

Mr. Canfield: I don’t know. There was a variance granted on that one. I’ll have to pull that one out.

Chairperson Cardone: That’s what I was wondering.

Mr. Canfield: Yeah, that goes quite a ways back into the 80’s I believe. That was quite a while ago. And I don’t know, perhaps Betty can answer if that information and that ZBA minutes were put in the packets?

Ms. Gennarelli: Well I know the one for Krishna Donuts when it was for the food preparation shop that was 2005 and I’m not sure…I know I gave you a lot of minutes and stuff. It’s been a while since I put it together.

Mr. Canfield: Krishna, for the Board’s…that’s Route 9W.

Chairperson Cardone: Right.

Ms. Gennarelli: Right.

Mr. Canfield: Which I believe they’re on later…

Chairperson Cardone: Yes.

Mr. Canfield: …on the agenda.

Ms. Gennarelli: But that was 2005 and…

Mr. Canfield: But you’re referring to the North Plank Road one.

Chairperson Cardone: Right.

Mr. Canfield: I believe that was back in the ‘80’s.

Chairperson Cardone: I’m referring to one that’s in operation.

Mr. Canfield: And 300.

Chairperson Cardone: Right.

Mr. Canfield: But 300 is part of a plaza type thing.

Ms. Gennarelli: I don’t think I have that one in here unless Mr. Minuta gave it to us.

Mr. Minuta: I’ve just got to check our file and see if we have…have that.

Mr. Canfield: And Mr. Minuta has a lot of our files. He’s FOIL’d a lot.

Mr. Maher: Yeah, it was April, 2005 that a…the application for 9W voted on the motion to define applicant’s business as a food prep shop, April 2005, Route 9W,

Chairperson Cardone: Right but I’m referring to the on North Plank.

Mr. Maher: No I understand I just want to clarify that it was back in ’05. There was two applications before the Board I believe for that.

Mr. Minuta: We do have a file on that property that we FOIL’d from the Town and I just need to…a few minutes to go through it.

Chairperson Cardone: Okay.

Mr. Minuta: I have a file here which is dated 6-16 of 2004, and… well I’ll just read it. To whom it may concern: This letter is to answer your…to your inquiry regarding the above mentioned property. The files indicate that the above mentioned structure was built prior to the Town adopting Zoning Ordinance in 1956. Therefore there is no Certificate of Occupancy for this structure nor is one required. Please be advised the above mentioned road is a public road. In checking our files we find no record of any open violations on the property. No inspection of the premises have been performed and the statement concerning our records should not be relied upon as meaning of no violation in fact exists. Enclosed is a Certificate of Occupancies for alterations to ice cream and donut shop and alterations for a deli. Several sign permits were issued and closed out as completed. Alterations were done in 1993 under Permit #10265-93. This permit was closed out and completed a…emphasized…a…no C.O. is needed for this structure. And that’s from Town of Newburgh and signed by Mr. Canfield.

Mr. Canfield: Yeah, that’s a Municipal Search letter on a Municipal request that’s what that is.

Mr. Minuta: Thank you Jerry.

Mr. Canfield: I think what we’re looking for is the actual a…ZBA Decision and Resolution.

Mr. Minuta: Yeah.

Mr. Canfield: And I believe it was from the late ‘80’s.

Chairperson Cardone: Because I’m curious as to how it was defined at that time.

Mr. Donovan: Jerry, are we looking for the Krishna Donuts decision or the one prior to that?

Mr. Canfield: No, Krishna Donuts is Route 9W.

Mr. Donovan: I understand that but relative to…because that Decision talks about the definition of food preparation in the B District.

Mr. Canfield: I believe it is one in the same, Dave, but I think Grace asked a question specific to North Plank Road.

Mr. Donovan: Only because I have that one so I was just very excited about it.

Mr. Minuta: As I’m going through this a…6-8 of 1993 there is a Certificate of Occupancy which is alterations to create delicatessen and donut shop, just as I’m going through these.

Mr. Canfield: In the interest of time perhaps at the break I can go over and research the file.

Chairperson Cardone: Okay, would you do that? Okay.

Mr. Canfield: Yes.

Chairperson Cardone: Do we have any other questions from the Board or any comments? Do we have any questions or comments from the public?

No response

Chairperson Cardone: I’d like a motion, if the Board would agree, to hold this Hearing open.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Okay this will be held open until our next meeting and we will do further research leading up to that time. And if anyone is here interested in that application you will not be re-noticed. The notification would right now and it would be at our next meeting which is the fourth Thursday of July.

Ms. Gennarelli: July 24th.

Mr. Bloom: Thank you very much Madam Chair and gentlemen of the Board. Thank you.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 7:36 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 7:36 PM)

KEVIN BENTO 12 HOLMES ROAD, NBGH

(20-1-3.12) A / R ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to build an accessory building (pool house 12 x 16).

Chairperson Cardone: Our next applicant Kevin Bento.

Ms. Gennarelli: This applicant sent out thirty-one letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. Bento: My name is Kevin Bento, I live at 12 Holmes Road in Newburgh and this is for a variance. I went and applied for a Building Permit for a pool house which was denied because of a square footage maximum allowed square footage for an accessory building. I believe the reason why I didn’t get the Permit was because on my property there is a barn that I don’t know the exact square footage but it’s around 2000 sq. ft. so it puts me over that maximum amount allowed square footage so I’m here for a variance.

Chairperson Cardone: And the barn is used for storage or…?

Mr. Bento: The barn or the pool house…?

Chairperson Cardone: Excuse me?

Mr. Bento: Existing barn? Yes, storage.

Mr. Donovan: About how old is the barn?

Mr. Bento: A…1865 it was built same…same as my…my house.

Chairperson Cardone: Beautiful piece of property.

Mr. Bento: Thank you, thank you.

Mr. Masten: Yes, it is.

Mr. Bento: Thanks.

Mr. Maher: What’s the height of the pool house?

Mr. Bento: I believe it’s twelve feet.

Chairperson Cardone: And you’ll have electric, plumbing?

Mr. Bento: I definitely want to have electric and water for the pool but no bathrooms or anything like that. Just a…storage…we’re calling it a pool house but it’s going next to my pool but it’s mainly a storage shed for everything that goes along with the pool.

Chairperson Cardone: Right.

Mr. McKelvey: You’re not going to make a kitchen in there either?

Mr. Bento: No, no.

Mr. McKelvey: That’s…that’s happened.

Mr. Bento: Oh, no, no kitchens.

Chairperson Cardone: Don’t give him any ideas.

Mr. Maher: Let me ask you a question, what’s the height of…the height of the pool house with the cupola? Just so we don’t have a problem.

Mr. Bento: I said twelve feet but I’m looking at the picture it doesn’t give the height a…

Mr. Maher: I just want to make sure you don’t run into a problem and get it up and then it’ll come back here because it’s sixteen foot high because of that. That’s why I’m asking.

Mr. Bento: Well I have a picture of it here, you probably guessed, let’s see if the doors…I’d say it was fourteen feet at tops with the cupola.

Mr. Maher: Jerry, the maximum is fifteen, correct?

Mr. Canfield: Yes.

Mr. Bento: Yeah, I’m looking at the picture I don’t think it will be more than fifteen. It’s pre-built; it will be delivered on a tractor-trailer so I don’t think they can go over a certain height anyway so it’s not too tall.

Mr. McKelvey: How big is the total property?

Mr. Bento: A…my house is four and a half acres, I own…I own another three acres right next to my house so it’s about seven, eight acres total.

Mr. McKelvey: A separate lot or…?

Mr. Bento: Seven or eight acres. My house is on four and a half acres but I own the lot right next door.

Ms. Gennarelli: That is a separate lot though.

Mr. Bento: Yeah. Yes separate.

Mr. McKelvey: Yeah, that’s what I meant.

Ms. Gennarelli: Four point seven.

Chairperson Cardone: Any other questions from the Board? Any questions or comments from the public?

Mr. Kelson: My name is Todd Kelson, I live at 42 Lattintown Road in Newburgh a…and though I’m not quite as old as a Mr. Bento’s mine is only from 1890 a…I live exactly catty corner from this home. A…I received his…his Notice I…I had a look at his application, I see what he wants to do. In my view this…this is a…a classic example of some…of a variance that should be granted. It will have absolutely no impact, it will have no impact on the community a…it is virtually invisible from the…from the…from the road if I’m not mistaken. A…his practical difficulty is that he has historic buildings on the property and I think it’s in the best interest of the Town to allow him to preserve those buildings and at the same time live a modern lifestyle which includes a pool with a pump and water and storage. So I ask that the Board a…grant the application.

Chairperson Cardone: Thank you. Do we have anything else?

Mr. McKelvey: I’ll make a motion we close the Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:43 PM)

ZBA MEETING – JUNE 26, 2014 (Resumption for decision: 8:39 PM)

KEVIN BENTO 12 HOLMES ROAD, NBGH

(20-1-3.12) A / R ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to build an accessory building (pool house 12 x 16).

Chairperson Cardone: On the application Kevin Bento, 12 Holmes Road, seeking an area variance for the maximum allowed square footage of an accessory building to build an accessory building to build a pool house 12 x 16. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Maher: I think it will make a nice addition to the property obviously. A…I would just caution to again investigate the overall height of it prior to installing so you don’t have a problem.

Chairperson Cardone: Do we have a motion for approval on this application?

Mr. Masten: I'll make a motion.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:40 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 8:43 PM)

VINCENT & JESSICA WEYANT 40 LESLIE ROAD, NBGH

(26-4-4.1) R-3 ZONE

Applicant is seeking an area variance for pools shall not be located in a front yard to build an above ground pool with a pool deck (Has two front yards Leslie Road and Kohl Avenue).

Chairperson Cardone: Our next applicant Vincent and Jessica Weyant.

Ms. Gennarelli: This applicant sent out forty-one letters. All the mailings, publications and postings are in order.

Ms. Weyant: Good evening, we’re Jessica and Vincent Weyant and we’re looking for a variance to put a pool and a deck on our property. Our property goes between two roads so it’s been deemed that we have two front yards.

Chairperson Cardone: And I went on that other road, believe it or not, because I always like to see the other side of the property.

Ms. Weyant: We have a two acre parcel and there’s a wood line by Kohl Road so… Is all property that runs like that considered two front yards?

Chairperson Cardone: That’s…that’s the way that the Zoning Code is written, yes.

Ms. Weyant: Okay.

Mr. McKelvey: We had one with three front yards because there was a road alongside.

Chairperson Cardone: That’s one of the reasons that we go out to look at the property so we can see and it was very obvious to me that from the other road you couldn’t see anything of your property.

Mr. McKelvey: We run into a lot of these.

Chairperson Cardone: Do we have any questions from the Board? You also have a very nice location, nice and private.

Ms. Weyant: Thank you.

Chairperson Cardone: Do we have any questions or comments from the public?

No response.

Chairperson Cardone: And at the present time you are not building a deck with the pool or you are?

Ms. Weyant: Yes, the plans were for a deck also.

Chairperson Cardone: Okay, was that…? Do we have anything else from the Board? Do we have a motion to close the Public Hearing?

Mr. Maher: I’ll make a motion to close the Hearing.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:46 PM)

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ZBA MEETING – JUNE 26, 2014 (Resumption for decision: 8:40 PM)

VINCENT & JESSICA WEYANT 40 LESLIE ROAD, NBGH

(26-4-4.1) R-3 ZONE

Applicant is seeking an area variance for pools shall not be located in a front yard to build an above ground pool with a pool deck (Has two front yards Leslie Road and Kohl Avenue).

Chairperson Cardone: On the application Vincent and Jessica Weyant at 40 Leslie Road, seeking an area variance for a pool which will be located in a front yard and the property has two front yards Leslie Road and Kohl Avenue. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I think it’s the old case of two…two front yards and it’s not going to hinder anything in putting it where you want to put it.

Chairperson Cardone: And it’s obviously in the back yard.

Mr. McKelvey: Which…which would be a back yard. I'll make a motion we approve the application.

(Inaudible)

Chairperson Cardone: No, no I can’t use that term.

Mr. McKelvey: No, no.

Chairperson Cardone: It’s obviously in the back of the house.

Mr. McKelvey: I’ll make a motion we approve.

Mr. Maher: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:41 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 7:46 PM)

LAXMI ESTATES II, LLC. 5277 ROUTE 9W, NBGH

(DUNKIN DONUTS) (20-2-40) B / LHI OVERLAY ZONE

Applicant is seeking a use variance to allow a food preparation shop with a drive-thru window in the Business / LHI overlay zone.

Chairperson Cardone: And now held open from our May 22nd meeting Laxmi Estates - Dunkin Donuts and I have a letter to read:

Dear Ms. Cardone: On behalf of our client, Amish G. Patel we are respectfully requesting our application for a use variance to allow a drive-thru at the above reference location be withdrawn. We are looking forward to appearing this evening at the Zoning Board of Appeals meeting for the request for an area variance for the existing non-conforming building front yard setback. Thank you for your assistance. Please feel free to contact our office if you have any questions or require anything additional and that’s James Gillespie.

Mr. Gillespie: I’m James Gillespie from Bohler Engineering a…so that’s correct, we’d are…we’d like to withdraw that portion of our application a…

Mr. Donovan: Well, let me just, does that solve the issue though?

Chairperson Cardone: They have two applications. They have an application for a use variance and for an area variance.

Mr. Gillespie: That’s correct.

Chairperson Cardone: And they are withdrawing the use variance but they are still asking for the area variance for the front yard setback for the building.

**(See minutes for the area variance)**

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:48 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 7:47 PM)

LAXMI ESTATES II, LLC. 5277 ROUTE 9W, NBGH

(DUNKIN DONUTS) (20-2-40) B / LHI OVERLAY ZONE

Applicant is seeking an area variance for the front yard setback to build a food preparation shop with a drive-thru window in the Business / LHI Overlay zone.

Chairperson Cardone: And now held open from our May 22nd meeting Laxmi Estates - Dunkin Donuts and I have a letter to read:

Dear Ms. Cardone: On behalf of our client, Amish G. Patel we are respectfully requesting our application for a use variance to allow a drive-thru at the above reference location be withdrawn. We are looking forward to appearing this evening at the Zoning Board of Appeals meeting for the request for an area variance for the existing non-conforming building front yard setback. Thank you for your assistance. Please feel free to contact our office if you have any questions or require anything additional and that’s James Gillespie.

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Mr. Donovan: Well, let me just, does that solve the issue though?

Chairperson Cardone: They have two applications. They have an application for a use variance and for an area variance.

Mr. Gillespie: That’s correct.

Chairperson Cardone: and they are withdrawing the use variance but they are still asking for the area variance for the front yard setback for the building.

Mr. Donovan: Well we have a Dunkin Donuts in the B Zone, right?

Mr. Gillespie: That’s correct. And one of the things…one of the things we need also…I’m sorry.

Chairperson Cardone: There was a decision in the past that allowed this building to be used as a Dunkin Donuts but not with a drive-in.

Mr. Gillespie: Yes, there’s a 2005 resolution…

Chairperson Cardone: Right.

Mr. Gillespie: …and the planning board has asked that we confirm with this Board that that determination would still hold true…that this would be a food preparation service and that it would be allowed so that’s…

Mr. Donovan: I’m sorry but we talked about this briefly last time, food preparation as an accessory use so I don’t…again the question I raised the last is…what is this accessory to?

Mr. Gillespie: Well…the Board determined that the applicant’s business falls within the definition of food preparation shop use and grants the operation of the applicant’s business on the condition that no drive-thru window be installed in the future so that’s how the resolution reads. It wasn’t…it didn’t make mention of an accessory use. It just clearly stated that it grants the operation of the applicant’s business on the condition that no drive thru window be installed in the future, so…

Mr. Donovan: And I’m sorry to interrupt. Do we have any recollection, Jerry, did the…has the Bulk Tables relative to the B District been changed since that was…since that variance was issued?

Mr. Canfield: No.

Mr. Maher: Has the method in which Dunkin Donuts operates been changed in the last nine years?

Mr. Gillespie: A…well this…this particular shop was never operational so…

Mr. Maher: Right, but in general though, I mean the concept was approved in ’05 obviously based on a…on a Dunkin Donuts operation.

Mr. Gillespie: Well this one would never have been a full service…there’s a…there’s a full producer Dunkin Donuts and then there’s the smaller shops that get Dunkin’s…you know, get donuts delivered to them. So this one was never really intended to be a…a full producer so in that respect a…the proposal is the same.

Mr. Donovan: And the reason why I interrupt and ask all these questions, I just want to make sure we are consistent.

Chairperson Cardone: Right.

Mr. Donovan: Because we have you know essentially two similar if not the same applications…

Chairperson Cardone: Right.

Mr. Donovan: …so it’s always a good idea to treat similarly situated people the same.

Mr. Canfield: Just to clarify, Dave, 2004 I believe it was there was a ZBA Decision and Resolution with that in respect to permit this so that’s what the premonition this proceeds.

Mr. Donovan: And I am absolutely aware of that…

Mr. Canfield: Okay.

Mr. Donovan: …if you recall I raised it last time as to why food preparation…basically I read that decision to say, this is a food preparation enterprise. Food preparation is permitted in the B Zone therefore based upon that interpretation you are a permitted use. That’s the way I read that resolution. When I look at the Bulk Tables it says food preparation as an accessory use, accessory to certain designated uses. So, my question is, if it’s only a Dunkin Donuts what is it accessory to? If it’s only a food preparation enterprise what is it accessory to? That’s the question that I have here and the question that I have in the prior application.

Mr. Canfield: And that’s a valid point. But in 2004 that decision I believe was predicated on the site plan that was permitted at the time which there were a proposed retail business and a Baskin Robbin - Dunkin Donuts. So that’s your answer where the accessory was to…on that 2004 application.

Mr. Donovan: Mr. Gillespie just needs to be aware of that fact. Okay?

Mr. Canfield: The current plan just calls for the thirty-nine hundred and thirty square feet to be all Dunkin Donuts. Is that what the application is? Or is there other retail?

Mr. Gillespie: At this time that is what the application is for.

Mr. Canfield: So I think Dave’s point if valid then. What is the food preparation accessory to then? This…that’s the difference between the 2004 application and this application.

Mr. Gillespie: Oh, I just want to get some clarification. I mean we, we may have to revisit the site plan but I think, you know, what we would like to come away with tonight is that well this resolution and the previous site plan as an accessory use that this would still be a…determined as a food preparation use a…and it would be allowed if it were accessory to a retail use and then again we would like to get some clarification on the front yard setback.

Mr. Maher: Well the application before us now is strictly for a Dunkin Donuts, correct? There’s no…

Mr. Gillespie: Correct.

Mr. Maher: …there’s no a…primary use and accessory use currently in your application?

Mr. Gillespie: That’s correct. But I think a…what the planning board Chairman had asked a…is a determination that the use proposed by the application is a food preparation use so that’s, I guess that’s one determination that we would like to come away from here and then the other determination would be that the front yard setback would be allowed. I think that if we could walk away with that…

Mr. Maher: And forgive me for not knowing, I don’t know if you were here before. Were you here for Mr. Bloom’s presentation earlier?

Mr. Gillespie: Yes.

Mr. Maher: Just curious.

Chairperson Cardone: I think we need to clarify this with the attorney but what…what you’re asking is that you’re looking for a variance an area variance…

Mr. Gillespie: Well…

Chairperson Cardone: …based on the building regardless of what the building is being used for? Is that what I’m understanding?

Mr. Gillespie: Well I’m looking for some clarification as to the determination…

Mr. Donovan: I think we’re all looking for clarification.

Mr. Gillespie: …well I’m looking for some clarification that this building…now the failure to comply with the setback is protected under the non-complying building provision of the Town of Newburgh Zoning Chapter. So that is…that’s really what the planning board Chairman is asking that’s really what we’re looking for is clarification from this Board that the existing building…failure to comply with setback is protected under the non-complying building provision of the Town of Newburgh Zoning Chapter.

Mr. Donovan: Now forgive…what…forgive me…what’s there now?

Chairperson Cardone: Nothing.

Mr. Gillespie: Well it’s an abandoned…

Mr. Masten: An abandoned carwash.

Mr. Donovan: So…so we have a change so use so therefore you’re not protected therefore you need a variance. That was easy.

Mr. Gillespie: Okay. I didn’t know it was use specific it’s a…existing building. I mean is that how…?

Mr. Donovan: Well the change…the change of use, you’re going from an abandoned…what was a carwash to food preparation so that…that’s a change of use. That application for a new approval that constitutes a change of use triggers the loss of the protection triggers the need for an area variance.

Mr. Gillespie: Okay but I mean it’s…it’s an existing building.

Mr. Donovan: Yeah.

Mr. Gillespie: I mean is it… is it written that it…it’s use specific in…in the Code or I guess that’s what I’m asking?

Mr. Maher: When you change the use you basically open the door for each of the requirements to be met again so basically you changed the use of the business to go from carwash to a Dunkin Donuts everything becomes…whether…whether it’s better or not is not the issue, it’s just the question of…those things pop up again and those…the setbacks being one of them. Such as the earlier case when we had a subdivision going on, the setback became an issue.

Mr. Donovan: With the house that had a pre-existing non-conforming setback the fact that they were…they had applied that property for a three acre…I’m sorry a three-lot subdivision triggered the loss of protection and they needed an area variance.

Mr. Gillespie: Okay.

Mr. Donovan: So that…that was easy, I don’t think it’s a terribly difficult variance to achieve. I think the more tricky question is the use.

Mr. Gillespie: Right.

Mr. Donovan: So…I think that if you just ask for an area variance this evening and we analyze that an area variance for some non-descript use we would have to make the assumption that it’s a permitted use and then if you went back to the planning board the issue is well is the Dunkin Donuts a permitted use? I don’t know that you…I don’t know that us granting an area variance building specific gets you to where you want to go because I don’t think we’ve overcome, in my mind anyway, the permissibility of the Dunkin Donuts use on the site.

Mr. Gillespie: As a food …well…

Mr. Donovan: As food preparation, as food preparation it is permitted as an accessory use and apparently it was approved ten years ago as accessory…

Mr. Gillespie: Yes.

Mr. Donovan: …to another use, the Baskin Robbins or whatever it may have been. This is different from that.

Mr. Gillespie: Right.

Mr. Donovan: Please I do want to emphasize that it’s not my intention to take an otherwise fowl or abandoned piece of property and prevent it from being developed and being a productive tax paying a…use in the Town of Newburgh. That’s not…that’s not my intention. It’s just whatever we do does have a precedential effect on other applications and I just…my job is to make sure we are consistent and fair.

Mr. Gillespie: I understand. You know, ideally if we can walk away from here with a determination that this is a food preparation…Dunkin Donuts is considered a food preparation use which is allowed as an accessory use and therefore that the front yard setback could be granted because then…then it would be a permitted use. If we could…if we could walk away with that determination I think you know that…that’s what we’re looking for.

Mr. Maher: If it’s classified as a food preparation use and you have no permitted use you still have…you’re still nowhere.

Mr. Gillespie: Well again if you made that…if you just gave us that determination that it would have to be accessory then…then we can walk away with that…

Mr. Maher: We don’t have to that’s already…it’s an allowed accessory use already.

Mr. Gillespie: But we need…the planning board has asked that we come back and get that determination that Dunkin Donuts is classified as a food preparation use so that’s what…that’s really what we need to walk away from here. That the Board a…agree with the previous determination in that 2005 resolution that this is classified as a food preparation use. That’s number one and then as a food preparation use, I mean in your determination you could say well it has to be accessory because clearly this is not shown as accessory and so that would actually…that would have to be conditioned of the set…of the area variance that in order for it to be allowed it would have to accessory therefore we could grant the variance. If that’s at all possible that’s what we would like to have determined.

Chairperson Cardone: I have a question about the use. Jerry, the carwash use wasn’t that before this other decision?

Mr. Canfield: Yes.

Chairperson Cardone: So, since that decision in 2004 was it…?

Mr. Canfield: Yes.

Chairperson Cardone: …has it been used for any other purpose that building? I don’t think so.

Mr. McKelvey: I don’t either.

Mr. Canfield: I believe it’s been vacant that long. And I might add that Mr. Donovan is very consistent in reading the unofficial minutes from the last meeting, that haven’t been accepted yet. Dave was pretty much word for word he brought the same issue up last month with respect to…

Mr. Donovan: Plus Jerry now that I’m over fifty I can’t remember what I said last month.

Mr. Canfield: I just thought you’d like that compliment.

Chairperson Cardone: But if it hasn’t been used in over a year then it uses the…it loses that…

Mr. Donovan: The pre-existing non-conforming use status.

Mr. Canfield: Yes, that’s correct.

Mr. Donovan: If that’s what it was. I don’t…

Mr. Canfield: There’s a Section 185-19 that deals with discontinuance and the period is one year.

Mr. Donovan: Now not to make this any more complicated than it already is or that it needs to be, you should just bear in mind that, you know that as I had advised you in the past that you are bound by prior determinations however, if there is a circumstance under which you find a reason to revisit a prior determination and reach a different conclusion if you have a basis to do that you are able to do that. In other words, the reason to follow your prior precedent should be that it’s good precedent. There’s no…there’s no compulsion to follow something if you don’t or if there’s change of circumstances or for some reason you…you come across new information that cause you to revisit that prior decision.

Chairperson Cardone: Well I think it was said last month also I think we have a bigger issue here as far as the definitions go.

Mr. Canfield: Yeah, I agree with you there Grace. If you remember last month a…we were fortunate enough to have a Councilperson here who had given us a little bit of insight as to what the Board intends to do. However that doesn’t help us today…

Chairperson Cardone: I realize that.

Mr. Canfield: …It’s going to take time for them to add a…there are some issues before them right now relative to banks, drive-thru’s and definitions of fast food and all of that. Yes, that is to come but that doesn’t help us today.

Chairperson Cardone: Right. Do we have any…? I do have a letter that I have to read into the record, from a Barbara Filiberti of 1 North Hill Lane, Middle Hope.

I am not against the new business. I am very concerned about the management of storm water drainage. My letter concerns the new business (Dunkin Donuts) being considered on Route 9W in Middle Hope. Specifically, I have concerns about storm water drainage. Currently the storm water flows under 9W and into a vacant lot. The vacant lot across the street from the new business can’t handle any more water. When the brook floods, the water overflow goes into my basement. This vacant lot receives storm water from DeVito Drive from the south, Orchard Hills (Heights) and Hope View Court from the east and Carter Avenue from the west which crosses over 9W into the field. Is there any way having the storm water flow to the south of the property, to the detention pond that was constructed for the Quick Way (QuikWay) Minimarket/Gas Station?

And I would say that I read this into the record but I would say that this is an issue for the planning board. It is something that if you do go ahead further with your plans that it’s something that needs to be considered. Do we have anything else from either the public or the Board?

Mr. Maher: One more time if you could…if you could restate exactly what you are looking for tonight?

Mr. Gillespie: We’re looking for a determination as to what Dunkin Donuts a…use is a…and we would, you know, respectfully request the Board consider their previous resolution and determination that it’s a food preparation shop use. That’s the first thing we’re looking for.

Mr. Donovan: Mike, if you’d let me try to rephrase because I don’t think that’s exactly… I think what you asked us to do is to determine that you could…we would issue the area variance for a use that is allowed in the B District and specifically to this site it’s a Dunkin Donuts as a food preparation accessory to a permitted use. Right? I think that’s a more accurate…

Mr. Gillespie: Yes.

Mr. Donovan: I don’t mean to put words in your mouth it’s your application but I think that’s what you asked us to do…

Mr. Gillespie: That’s right.

Mr. Donovan: …especially reaffirm the prior decision…

Mr. Gillespie: Yes.

Mr. Donovan: …which is…Mike has pointed out before might not get you get you where you need to go because if you are going to have a standalone Dunkin Donuts only I don’t see how that use is presently allowed given our prior precedent and the status of the Code at the present time.

Mr. Gillespie: Well if…if we can get that determination then we’ll have the option to revisit and making this an accessory use…

Chairperson Cardone: Jerry...

Mr. Gillespie: …at least we would have that, if we had that determination then we could make a decision to look at this plan again and make it an accessory use, that way then it would be allowed. So that’s…I guess that’s what we’re looking for.

Mr. Canfield: I guess, I don’t know, in this ques…I guess I’m just having a hard time getting my hands around this procedurally. I don’t think it’s correct and appropriate the way we are going. I mean just to advise the Board but the agenda said that we were here for a use variance and additionally a front yard setback. The applicant has withdrawn the use variance which seems to be the very topic of discussion…

Chairperson Cardone: Yes.

Mr. Canfield: …so technically the public was noticed for a use variance or excuse me a use variance and an area variance. The use variance has been withdrawn but the public was noticed and what’s left is the area variance for the front yard. However, the use issue has not been settled so I guess, I’m thinking out loud but I think, Mike try to follow me here or Dave, I keep seeing your partner. How would Mike handle this? But a…

Mr. Donovan: My bald headed partner you mean?

Mr. Canfield: But what I’m…I’m seeing is that you’re being asked to make a decision on something that’s not even on the agenda nor was it noticed to be on the agenda. You still have a use issue. And that needs to be, you know…

Mr. Maher: In essence you need an interpretation at the least.

Mr. Canfield: Well yes, but that’s not what the agenda says and that’s not what everyone was noticed for so again I guess my question is to Dave, procedurally is this appropriate?

Mr. Donovan: Well Jerry, my…my initial inclination was if we are being asked the issue just an area variance for a permitted use since there was notice for an area variance then perhaps we could do that. However, I have to concede that you do raise a good point a…

Mr. Canfield: That’s not my intent, please.

Mr. Donovan: …in that this is not couched, the application in front of the planning board which was then referred here was not for a Dunkin Donuts accessory to a different use. Right? That…that wasn’t the application that was referred here. That’s a good point. I…I think I find myself trying to reach a middle ground only because I feel the applicant’s pain.

Mr. Canfield: And I agree. I concur but however, in this society we act in...in a fishbowl a…our decisions will continue on and we set precedents.

Chairperson Cardone: I do agree with you Jerry. I…I think that…that was my question before that you know, how…was he asking us to give an area variance based on unknown information in other words? On just the building saying that it was not a Dunkin Donuts but that would not be the application that was initially before us.

Mr. Canfield: A suggestion may be I thought I heard the applicant say that there’s potentially…he may go back to his client with what he’s heard tonight and…and perhaps come back to the Board with the food preparation being accessory to what is permitted. Is that what I heard you say?

Mr. Gillespie: I think it’s a…it’s a possibility a…if the Board is a…struggling with a determination, I mean, the determination could be written and based on this plan. They could say well as the plan currently sits a…the Dunkin Donuts is a…classified as a food preparation use and it would not be allowed because it’s not an accessory use however, a…if it were, you know, the variance would be granted. If that’s at all possible then that would be enough for us to…

Mr. Donovan: Well the use…

Mr. Gillespie: …that way you’re commenting on the current application…

Mr. Donovan: If the use variance was…was still in front of us then we would deny the use variance based upon that which we then wouldn’t reach the area variance.

Mr. Maher: The…the issue is the public is here for certain…for two items…

Mr. Gillespie: Right.

Mr. Maher: …and the use variance being one of the so if we were to vote on…on a use variance, it would have to be the way the application was submitted.

Mr. Gillespie: Well, I mean we’re not really looking for a use variance. We’re looking for a determination of a use which is completely ties to whether this area variance can be granted so in essence we are here for an area variance which has been publically noticed and in order to make that determination we have to determine the use. So you know, technically we are, we have advertised for the area variance and we have to…the Board has to make a determination of use in order make that determination of the area variance so I don’t think we’re stepping out of the realm of the…the realm of what we’re here for.

Mr. Maher: Right, but you had stated that after tonight’s meeting depending on the…on the answer that you make go back to your client and change what you…what their view of the building is.

Mr. Gillespie: But the determination will still be the same. The determination will have a written determination that what this use is and that…

Mr. Donovan: Well I don’t know that we would have a determination what the use is. I mean, I think that’s the very issue that Jerry is pointing out. It’s up to you to tell us what the use is.

Mr. Gillespie: Well it’s a Dunkin Donuts but we…we need this Board to tell us if it’s…if the previous determination of a food preparation shop use is…is valid in order for us to get an area variance.

Mr. Donovan: But that…the point is that’s not what you’re asking for. You didn’t ask for Dunkin Donuts as a food preparation business accessory to another use. You didn’t ask for that. Right, you asked for Dunkin Donuts and that’s where…we went off the tracks a little bit. You asked for a Dunkin Donuts as food preparation as a principally permitted use which it is not. For better or worse, I think we know that.

Mr. Canfield: Right and I think Mr. Gillespie you keep referring to the 2004 decision. If you brought back before this Board that very same proposal then I think the Board may be inclined to better exercise consistency with what they approved in 2004 which was food preparation accessory to the other building. Okay, what they were looking at in 2004 was not a single occupancy. I mean it’s just food for thought.

Mr. Gillespie: Well I guess, you know, you have to do what you have to do but if there is any way you can make a determination based on this with a clause or a condition that this would have to be an accessory use that’s what…that’s what we would like to…to have now.

Mr. Donovan: Right, but…but the well founded point made by Mr. Canfield is that’s not what this was…the application was for is not what this meeting was noticed for.

Mr. Gillespie: I realize that. I realize that and I’m asking you to make a determination based on what’s before you and…and what would need to be done for that to be compliant.

Mr. Donovan: Well I’m not…frankly, I’m not sure that we can do that. I think what…what you can hear from us pretty clearly that you know, if you came back with the same application as 2004 and the planning board referred you to us, we…we would likely have the obligation to reach the same determination. That’s not what you brought to us though.

Mr. Gillespie: Yes, that is correct.

Mr. Donovan: We…we can’t say if you brought this to us we would decide as follows.

Mr. Gillespie: Okay, I tried.

Mr. Donovan: You did, you did a good job with not an easy issue so...

Chairperson Cardone: Do we have a motion to close the Public Hearing?

(Inaudible)

Chairperson Cardone: Do I want to close it. Yes, I do.

Mr. McKelvey: I’ll make a motion we close the Hearing.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you. Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. And I would ask in the interest of time if you would step out in the hall and then we’ll call you in.

Mr. Gillespie: Thank you.

(Time Noted - 8:17 PM)

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ZBA MEETING – JUNE 26, 2014 (Resumption for decision: 8:41 PM)

LAXMI ESTATES II, LLC. 5277 ROUTE 9W, NBGH

(DUNKIN DONUTS) (20-2-40) B / LHI OVERLAY ZONE

Applicant is seeking an area variance for the front yard setback to build a food preparation shop with a drive-thru window in the Business / LHI Overlay zone.

Chairperson Cardone: On the application of Laxmi Estates seeking an area variance for the front yard setback to build a food preparation shop with a drive-thru window in the Business / LHI Overlay zone. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Maher: I think our applicant is coming in.

Mr. Donovan: No?

Mr. Canfield went to find the applicant.

Mr. Donovan: Mr. Gillespie.

Mr. Gillespie: Yes?

Mr. Donovan: If you wouldn’t mind coming up? A question for you, if you could use the microphone, before the Board votes if you would want to consider withdrawing your application and resubmitting?

Mr. Gillespie: Yes, I think that would be a wise decision.

Mr. Donovan: And obviously we are not in a position to give you legal advice but you may wish to review the minutes of tonight’s meeting especially relative to the other Dunkin Donuts that was in front of this Board.

Mr. Gillespie: Yes, thank you.

Mr. Donovan: Thanks.

Chairperson Cardone: So we consider that withdrawn?

Mr. Donovan: Correct.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:42 PM)

ZBA MEETING – JUNE 26, 2014 (Resumption for decision: 8:42 PM)

LAKE CREEK PROPERTIES, LLC / 65 NORTH PLANK ROAD, NBGH

LINGO ASSOCIATES, LLC. (76-1-1.1) B ZONE

(McDONALD’S)

Applicant is seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment.

Chairperson Cardone: Okay, we have two Reserved Decisions from last month. And the first one is Lake Creek Properties (/Lingo Associates, LLC.) that’s a McDonald’s they were seeking an Interpretation of 185 Attachment 11- Schedule 11 - to demolish and rebuild the existing McDonald’s drive-thru.

Mr. Donovan: The essence of the interpretation that they are seeking is an Interpretation of Section 185-19 that would allow them to demolish the building because a…and then rebuild a smaller building eliminating and existing non-conforming condition relative to a lot line and the phrase that they are focusing on is that they are allowed to restore a non-conforming a…use after damage from any cause and the interpretation is any cause is not…there is no limiting in there that the intentional demolition would allow the a…reconstruction of a new building after it’s demolished.

Chairperson Cardone: Do we have discussion on this?

Mr. Maher: It’s just a…on the word any, definition of, pretty much every use to indicate one selected without restriction, all without reference to quantity or extent, unmeasured unlimited in amount, number, extent, the word any. Based on that and that…and the testimony at the last meeting I’d have to say that a…any damage would be construed to include intentional demolition of the building. The fact that they are also by doing so reducing the size of the building and the non-conformities; I’d be a…willing to make a motion to approve it.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: That’s the interpretation that we’re approving that interpretation.

Mr. Donovan: That’s, that’s correct.

Mr. McKelvey: That’s the interpretation.

Ms. Gennarelli: Okay. Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:46 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 8:46 PM)

C D & SONS CONSTRUCTION CORP. 12 BANNERMAN VIEW DRIVE, NBGH

(22-4-6) R-3 ZONE

Applicant is seeking area variances for Lot #1 (Building Permit #13-0428) for one side yard setback and the minimum lot width and for Lot #2 for the minimum lot width for a proposed Two-lot subdivision.

Chairperson Cardone: On the Reserved Decision of C D & Sons, I have an email from Talcott, Brown:

We have received comments from the Health Department from 6-23-14 are currently addressing them therefore I am on behalf of my client requesting that the Decision of this application be reserved for another month. Thank you.

So we will Reserve that decision until next month.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:47 PM)

ZBA MEETING – JUNE 26, 2014 (Time Noted – 8:47 PM)

**OTHER BOARD BUSINESS**

JULIUS & MARYANN MAGYAR 5469 ROUTE 9W, NBGH

(9-1-3) B ZONE

Chairperson Cardone: Under other items on the agenda, okay I have a letter from Todd Kelson

I write at the direction of my clients, Magyar Truck Rental and Julius and Maryann Magyar by decision dated July 7, my clients received an interpretation, that was July 7, 1989, my clients received an interpretation from the ZBA although not following the usual analysis essentially constituted a use variance in connection with their truck rental business located at 5469 Route 9W, Newburgh, NY. A copy of this decision is enclosed as you may know within the past year the Magyars sold their adjoining gas station on Route 9W, have consolidated the truck rental business into a new building located on SBL 9-1-3. They thereafter made application to the planning board for an amendment to their site plan to additional permit automobile rentals in the same location. As planning board attorney Donnelly noted in his letter to the ZBA of April 10, 2014, also enclosed. The planning board is seeking guidance as to the nature and extent of the rights conferred by the 1989 decision.

I think everyone has a copy of this letter but I’ll go on with it.

Please note that the applicant does disagree with the attorney Donnelly’s characterization of their current application before the planning board as seeking to maintain as many combinations of cars and trucks on the site as he desires. Although as Mr. Donnelly concedes the 1989 approval does not limit the amount of trucks to be stored on site, the applicant readily agrees that a limitation of no more than ten automobiles stored on the premises is appropriate. My clients have no intention of seeking relief from the limitation which is set forth in the existing Code. Auto rentals are permitted as of right in the B zone and moreover their addition to this particular site would truly have no material impact of any kind particularly when considering the scope of the existing truck business. Magyar Truck Rental has operated from this location for well over twenty-five years without incident or neighborhood disharmony. It blends into this commercial area well and my client has worked diligently to screen the vehicles from view. A casual drive past the site shows a pleasantly manicured building with clear and legible signage featuring opaque fencing concealing the trucks stored within as the most recent site plan. The proposed rental automobiles would be stored within the same enclosure in accordance with Mr. Donnelly’s letter an and the recommendation of Mr. Donovan the Magyar’s request that the ZBA place this issue on an upcoming agenda under Other Board Business and advise the undersigned and Frank Valdina of the date and time. Thank you in advance for your consideration of this request. Very truly yours, Todd Kelson.

I will have one thing to say to Mr. Kelson, you don’t really want those trucks on property, do you? Because when you listed at the top…

Mr. Kelson: Yes a…yes, I saw that after…that’s my property. 9-3-6 is my property. Yes, that was an error. Is this working?

Ms. Gennarelli: Do you have a green light?

Mr. Kelson: I have a green light.

Ms. Gennarelli: Okay.

Mr. Kelson: Okay.

Chairperson Cardone: And I will read Mr. Donnelly’s letter

I write to you as the attorney for the Town of Newburgh planning board. The planning board took up consideration of the above referenced site plan application during its meeting held on April 8, 2014. The above referenced applicant has been before the planning board recently proposing to add car rentals to a previously approved site plan allowing operation of a Budget Truck Rental facility. The property is located in the B Zoning District where vehicle rentals are allowed but where the Code imposes a storage limitation of ten vehicles on an automobile rental facility. The earlier approved site plan did not clearly limit the storage of rental vehicles on the site to ten and the planning board may well have been lax in this regard. In any event, the applicant now clearly proposes a significant change in the site proposing more than ten storage spaces an addition of car rentals to the truck rentals earlier approved. Therefore, the planning board has directed me to refer this matter to you for consideration of the granting of a variance releasing the applicant from this ten vehicle limitation. The application before the planning board involves a building of under four thousand square feet and is therefore Type II Action Under SEQRA. One final matter should be noted that in 1989 the applicant received a decision and resolution from the Town of Newburgh ZBA. I enclose a copy. That decision allowed the applicant to operate a…

I think there is a line missing here.

Mr. Kelson: Gasoline service station.

Chairperson Cardone: Okay.

…that was owned by the applicant at the time. The rental facility was not an allowable use in zone. While one would think this decision constitute a use variance the decision does not follow the usual analysis for a use variance. Moreover while the grant of relief included a condition requiring that all storage of rental vehicles should be located behind an existing split rail fence it is impossible for the planning board to determine the extent of vehicle storage allowed by the decision. It is the applicant’s contention that he has carte blanche to store as many combinations of cars and trucks on the site as he desires under authority of this decision. The planning board cannot reach this determination on the record presented. The planning board therefore refers this matter to you for an explanation or an expansion of expansion of the relief earlier granted if indeed that decision has any viability at all today.

I will note that only one person that is on this current Board was on the Board at that time was absent that particular night.

Mr. Kelson: (Inaudible)

Chairperson Cardone: I know and they spelled my name wrong too. I would think and Jerry you can correct me if I’m wrong on this, just because it doesn’t specify but if the Town Law specifies then it would be understood that that would be specified or maybe the Town did not have that Law at that time.

Mr. Canfield: The number of vehicles…

Chairperson Cardone: The number of vehicles, right.

Mr. Canfield: …specified? Yeah. I can say in 1989 when the original decision and resolution was issued, the existing Code at that time did not even mention rental agencies. I’m not certain; I believe it was Local Law 10 in 1998 when rental agencies were even added into the Code, if that will help with you. But like I said, I did research the old Blue Book and rental agencies weren’t there. Currently they’re grouped in with motor vehicle and service stations and rental agencies which I believe is 185-28 and that’s where the specific number of ten, that seems to be the question here, that’s where that come from but in ’89 that didn’t exist.

Chairperson Cardone: So my understanding is from your letter Mr. Kelson that you would like to hear from us whether or not you need to go for a variance?

Mr. Kelson: Well…well ma’am what we’re…we’re asking is that a…Mr. a…Mr. Donnelly’s letter…Mr. Donnelly’s request of April 10th a…a…of 2014 be addressed by the Board and in connection with that we…you know, we wish to engage in a, you know, in a dialogue as to a…what is the nature of the 1989 decision and how does that play into their current application to amend the site plan a…that’s before the planning board. It…it’s…it’s the applicant’s petition that there is no limitation in the number of trucks that could be stored on the site a…and a…that is…that is borne by…by twenty-five years of practice. Many trucks are stored on the site. It is our position that that issue…the 1989 decision is dispositive of that point, the question of how many trucks. We now say, you know, a…a…metaphorically period new paragraph we now seek additional a…a…a site approval to maintain automobiles on the same site and the Code does provide that no more than ten automobiles are to be maintained and we…we…we agree with that that we’re not seeking any…any variance from that limitation.

Mr. Donovan: So let me make sure I’m clear. What Zone are we in, Jerry?

Mr. Canfield: It’s a B Zone.

Mr. Donovan: And…and does the B Zone as of right now, 2014, allow car and truck rentals?

Mr. Canfield: Yes.

Mr. Donovan: And subject to some sort of limitation?

Mr. Canfield: Yes, subject to 185-28.

Mr. Donovan: And, Todd do you know if you fall within that limitation?

Mr. Kelson: I’m sorry?

Mr. Donovan: Do you know if you fall within the limitation?

Mr. Kelson: With…with respect to the automobiles of course we would but we received prior relief under the prior Code and the prior decision and we believe that’s what governs…

Mr. Donovan: I’m just…just trying to orient myself so in terms of the present…the present code would have, if you know the answer to this, would you have more or less trucks than would be permitted under the present Code?

Mr. Kelson: Oh, we would…we certainly have more, there’s no…there’s no question about that like it’s not a secret and anybody drives past the site can see there’s many trucks there. Sometimes there’s twenty, thirty trucks there easily a…in an enclosed area. A…and…and…and I guess the answer theoretically if we were starting from scratch today we would be subject to that…that truck limitation. I think Jerry you agree with that as well.

Mr. Maher: So…

Chairperson Cardone: But the actual…

Mr. Kelson: There wouldn’t be a debate on either side on that point.

Mr. Maher: Is that the reason you are saying truck then automobile, defining the two?

Mr. Kelson: Yes, yes because we…we received relief at a prior time under a prior code from this Board for truck rentals and we’ve been operating under that for many, many years.

Chairperson Cardone: But there were no limitations at that time?

Mr. Kelson: No limitations, there were no limitations that we’ve operated under…under that…under that decision…

Chairperson Cardone: Right.

Mr. Kelson: …and we’re…we a…continue to operate a…you could I guess one could argue in a certain sense that it’s non-conforming a…

Chairperson Cardone: Right, that would be…

Mr. Kelson: …the…the number of vehicles, the number of trucks we should be…we should distinguish…

Mr. Maher: Well it doesn’t say automobiles it says motor vehicles.

Mr. Kelson: Okay.

Chairperson Cardone: Right.

Mr. Maher: So it doesn’t delineate between the two, a truck or it says motor vehicle period.

Mr. Kelson: Okay. It says motor vehicle…right, we’re…we’re entitled to and we’re entitled to maintain as many mot…well trucks or…the decis…the 1989 decision contemplates trucks. Am I…am I correct there?

Mr. Donovan: Correct, yeah.

Mr. Kelson: Okay.

Mr. Donovan: And it looks like it…I’m sorry, go ahead.

Mr. Kelson: No, you…

Mr. Donovan: It looks like a…at some point the purpose was to make sure you could have the gas station and the truck rental on the same lot.

Mr. Kelson: Right, there was…there was...there were other issues going…background for anybody who…it all used to be across the street at the little cabinet for those who…

Chairperson Cardone: Right.

Mr. Kelson: …yeah and at some point they moved the truck…they moved the gas station across the street to the station that they just sold a…and…and…and then moved everything over and they’ve been operating…they’ve been operating with that for in excess of…in excess of twenty-five years.

Mr. Maher: So is it still on the same site as it was previously when the variance was granted?

Mr. Kelson: Yes, it’s, yeah, it’s across…across the street in a…in a…the original decision actually contemplated that the vehicles were to be stored on the site where they are now but the business operations a…were to be maintained in the a...in the gas station that’s…that’s…that they’ve now sold.

Mr. Maher: So was there a subdivision done?

Mr. Kelson: Oh, it was always two separate parts, was always two parcels and both parcels are referenced in the 1989 decision.

Mr. Canfield: I think at some point there may have been a lot line change, Frank, is that correct?

Mr. Kelson: I think…I think that’s…I think that’s right.

Mr. Valdina: There was a lot line change in conjunction…in conjunction with the a…new project, yes.

Chairperson Cardone: When was that done, the lot line change?

Mr. Valdina: Fairly recently, in conjunction with the site plan approval.

Mr. Kelson: Say in the past two…we’ll say in the past two years…well let’s just say…say…say….safe assumption?

Mr. Donovan: Todd couldn’t you read this…couldn’t you read this decision as…as approving the number of trucks that were there in 1989?

Mr. Kelson: You could and I can tell you there were a lot of trucks there in July of 1989. There were in fact Mrs. Magyar was digging up some old U-Haul receipts and I said well don’t go digging them up quite yet because they’re in a box but they had…they had fif…and those of you who have been in the community would know, they’ve had fifty, sixty trucks right after 4th of July, fifty, sixty trucks…

Mr. Donovan: Well I’m not trying to limit or increase; I’m just trying to make sure I have the right answers.

Mr. Kelson: Yeah, there…there were great…yes, there were…I mean, we’ll…we’ll…we’ll say a…it’s certainly a fair statement to say they’ve always…they’ve always had over fifty trucks. So certainly far in excess of ten a…and…and great magnitude far in excess of ten for many, many years.

Mr. Donovan: This…this interpretation/use variance/whatever it is…

Mr. Kelson: (Inaudible)

Mr. Donovan: …kind of unique…

Mr. Kelson: Yup.

Mr. Donovan: …but it…it seems to me getting from Dan Bloom earlier tonight the essence of the decision is to allow the number of trucks that were present on 1989 to stay was really…seemed to be more concerned with putting the gas station there because the Board seemed to feel that was a better and safer location for the gas station.

Mr. Kelson: Yes, that’s probably true. And…and one can look historically as to how many trucks were there and…and…and no matter how you slice it far in excess of ten.

Chairperson Cardone: Well I guess the question is to, do they need an interpretation? I think that was their question, do they need to come before the Board? This was just an initial discussion was my understanding.

Mr. Donovan: All right so Mike’s first point is the planning board had directed me to refer this matter for consideration of the granting a variance to release the applicant from this ten vehicle limitation. I think Todd it’s your position, if I understand it correctly, there is no such limitation so you don’t need relief from that?

Mr. Kelson: As…as to…certainly as to trucks I would take the position that as to trucks we…we do not have that limitation a…and…and…and we are and as to a additional use...okay…which was not referenced in this decision that is to say automobiles a…we…we a…do not need any relief because we are not asking for any relief from that ten vehicle limitation. We’re…we’re drawing a dichotomy that perhaps does not appear in the Code but we’re…we’re stuck with because of or we’re…we’re…we’re faced with or dealing with because of this 1989 decision. So we’re trying to…to a…we’re trying to…we’re trying to a…imply that a…a…that…that decision, you know, we’re…we are entitled to rely on that decision but at the same time it should not preclude us from exercising an additional use which is an as of right use in the zone.

Mr. Donovan: Do you know were any cars stored on this site back in 1989?

Mr. Kelson: No. I mean I…I…I guess, you know, the people who worked may have parked cars but certainly…certainly no business, no…no…no automobile rental. In 1989 they…they were affiliated with U-Haul and…and they didn’t have car rentals. So yes, this is…this is the…the automobile rental is a complete new proposed business for this site.

Chairperson Cardone: But it is still a vehicle rental so it’s the same use?

Mr. Kelson: Right, that…that’s the problem that we have. That’s the…the…the difficulty that we are all faced with is the…the language of the Code doesn’t make that distinction but we’re entitled to rely on that distinction because of a an existing a…decision that we…that the applicant is entitled…entitled to rely upon. That is in the 1989 decision we’re entitled to rely on that and that should not preclude us from proceeding…I…I suppose we could come back and say a…but we don’t want to do that…we could come back and say what…what a…Mike said in his letter that we want to have unfettered discretion to have any number of cars and trucks a…that’s a possible interpretation. I don’t think it would sit well with anybody in this room or sit well with the other…but we’re not making that application. We…we don’t…that is sort of disingenuous and we’re not suggesting that we should do that. This is…this is I guess really a one off, a one off set of circumstances.

Chairperson Cardone: But you’re saying that you want to take the new business which is still a vehicle rental but that…that business would be limited to ten vehicles.

Mr. Kelson: Yes. From what I’m told it probably wouldn’t be more than five and if that helped anybody, if that does anything we could even consider less than ten cause it’s not likely anyway.

Chairperson Cardone: But Jerry…

Mr. Kelson: If that does anything for anybody.

Chairperson Cardone: Jerry when you look at the vehicles, the ten vehicles you count trucks and cars? Correct or not?

Mr. Canfield: Yeah, the new Code says motor vehicles. It doesn’t make a distinction between trucks or cars; it just says motor vehicles and trailers. And that’s per the Section of 185-28 which what has raised this issue.

Mr. Maher: How many vehicles does it say they could currently have on site?

Mr. Kelson: We think that…well vehicles? I don’t want to use…see I don’t want to use the word vehicles because…because I get a…you get a different answer a…

Mr. Maher: Well currently you shouldn’t because vehicles is…you only have trucks per…

Mr. Kelson: We only have trucks and truck…and…and it…and…and it’s our view that…that there’s…based on this decision that there’s no limit on trucks.

Mr. Maher: No I…that wasn’t…I understand…but the question was how many trucks are currently on site for rentals?

Mr. Kelson: Oh…at any given time…

Mr. Valdina: Actually the number of trucks varies depends on how…the number of trucks actually varies that as how many might be stored on site depends on the business itself as has been noted to the planning board you get around December they may have around a hundred trucks rented out because FedEx rents a lot of trucks from them for the deliveries. That doesn’t mean they are all stored on site, they’re rented out. The approved site plan shows spaces for roughly thirty trucks at a center area for overflow truck parking and then all we’ve shown is the additional ten storage spots for the automobiles on the amended site plan. But the original approved site plan had parking along the south boundary, along the north side of the drive plus the open area between all for truck storage. And that is how the plan was approved by the planning board.

Mr. Kelson: And…and…and guess what when…when there are these large number of trucks they don’t stay long. They come in and they’re gone usually within twenty-four to forty-eight hours they’re…when they have this…this short term seasonal overflow on…on…

Mr. Valdina: There is a…under the planning board requirements, there is a opaque fence that’s been…the entire property is fenced in but the…the front portion is opaque so you can’t see the vehicles stored behind it and that was a condition of the approval.

Mr. Donovan: Let me just say on the truck issue I…I would disagree with Todd that you can have as many as you want. I think…I think you get to have what was present at the site when the variance was issued, that’s a reasonable…

Mr. Kelson: I think that may…that may be…okay that may be reasonable and…and that’s fine because there were even back then a hundred trucks on there.

Mr. Donovan: Whatever that number may be.

Mr. Kelson: Whatever that number might be and I…I…it’s…it’s hard…it’s hard to prove one way or the other but…but I don’t disagree with that Dave. That’s fine.

Mr. Donovan: So, now that issue is so we have ten cars it…it…that it would be the use would be allowed now but you’d be…I haven’t read 185-28 Jerry, would it be limited to ten? Is that what I…?

Mr. Canfield: Ten vehicles total.

Mr. Maher: Well that, yeah, no more than ten vehicles, motor vehicles or trailers for lease for rental may be parked or stored outdoors in the B District. Obviously to bring a hundred of them out, like in and out, usually they’re going to be parked there technically I guess a…I guess the issue would be if you had a hundred back in the course of one day where would do you put them.

Mr. Kelson: I couldn’t…to tell you the truth you know, Maryann has said that to me and Frank has said that to me but I live not…as you know from my our prior application, I don’t live far from there, I’ve never really seen…I’ve never really seen, maybe and I’m not…maybe and some of you have. I’ve never seen you know this huge overflow. I think the…the implication being it comes and goes very, very fast.

Mr. Valdina: It’s not to their advantage to keep any vehicles on site. They are in business to rent them out so storing them I think there is…

Mr. Kelson: Somebody is losing money if they’re storing them.

Chairperson Cardone: Is that realistic, Jerry, for a rental any kind of a rental, car rental only have ten cars on sight?

Mr. Canfield: Well the use is listed, it’s motor vehicle rental, the Code is not specific as far as automobiles or trucks. The use is permitted in a B Zone subject to site plan approval by the planning board which it has received. As…as indicated in Mike’s a…letter, his referral to the Board, he does mention that perhaps the planning board was lax in looking at this specific section with respect to the ten, number ten vehicles but I see as the issue is and I guess it’s a legal question is whether the Board is going to accept this 1989 decision as to disallow the number of vehicles to come into the equation and make a determination difference from trucks and cars. I mean, if that’s the position of the Board the applicant has implied that yes they will comply with the ten vehicles as it applies to automobiles. So I think that what’s before the Board if I understand this correctly is that the applicant is saying will you still honor this 1989 decision and resolution regarding who knows how many trucks. And I think that’s what behooved the planning board as well when this application came before them. It’s like whoa, wait a minute, this is a 1989 ZBA decision and resolution, there has been things that’s happened to the property that is different from 1989, does the ‘89 decision and resolution still apply? Is it still in effect? And I think the planning board’s intent was to give the Zoning Board an opportunity to make ruling on this.

Mr. Donovan: And I really don’t know how…how it couldn’t be. I mean, I don’t think that we can go back twenty-five years and…and say that the Zoning Board at that time should have done something differently or we’re…we’re not sure how they arrived at this although this is really a use variance and they didn’t follow any…any of the requirements. I mean, I think as Todd pointed out they’ve relied, the property owners relied on this decision for twenty-five years so a…I…I would be hard pressed to advise the ZBA to say well that decision is wrongly…was wrongly decided when the statute of limitation to challenge that decision if some neighboring property owner wanted to it would be long gone. Certainly any, you know, for this Board to then revisit and say this was improper or not done correctly or we wished there should be a different result I…I don’t think I could justify that. Now the question then is what do we do with the…with the ten cars? You know, on the one hand do we say listen we think you need to apply for an interpretation? I’m not sure an interpretation of what though, you know.

Mr. Canfield: I…I…yeah, I agree…I agree. I…I think the big issue is the ’89 ZBA decision and resolution, just in my opinion. The applicant has already testified that he will comply with the ten vehicles, the cars, if you are willing to accept that, then so be it. I mean I think that’s…

Mr. Donovan: I mean does that make any sense or does this open up a whole different can of worms if we say, okay, we’re going to establish…we’d have to establish what that number would be instead. Whatever the number is…pick a number, there was a hundred in or about 1989, that’s the number so…

Mr. Kelson: I don’t think you’re being asked that Dave, you’re not be asked a…respectfully, and I because I agree with your prior comment we’re…we’re specifically not asking you to do that. We would ask you to find that the number of trucks allowed is the number of trucks that was allowed in 1989. That is sort of an open number, I agree, but we’re not asking you to…to…a…to hold that, you know, two hundred trucks are permitted or one hundred trucks are permitted. Whatever was permitted in 1989 such as it was, is what we are asking you to…to…to…a…we’re not asking…we’re…we’re…we’re…we’re asserting a…continues to, you know, the…the vested right of the applicant a…so we’re…we’re…we’re…we’re really not asking you to…to…to revisit that at all and that’s all I…I…

Mr. Donovan: Todd, where I was going with that is that if that…if that was the number do we say that that’s the number of motor vehicles that are allowed?

Mr. Kelson: You could…you could say that, I mean maybe that would be a successful…I mean that would be fine for the applicant to say how…our…our…our…our position now is however many…so let me…let me put this into a logical…logical conclusion. Are you saying that however many trucks were permitted by the 1989 decision is now the number of motor vehicles that is permitted…

Mr. Donovan: Well I…I…

Mr. Kelson: Is that where you were going?

Mr. Donovan: Well I put that out there for discussion because what follows from that is if the number was a hundred you could then have ninety-nine cars and one truck…

Mr. Kelson: Yeah.

Mr. Donovan: …which is a totally…

Mr. Kelson: And we’re not…we’re not…and we’re not asking for that…that…that’s more generous than what we’re asking for which…

Mr. Canfield: I would have to caution the Board here because in reviewing the ’89 decision there is no number.

Mr. Kelson: Right.

Mr. Donovan: Well that’s why I’m saying…

Mr. Canfield: Even though if we continue to revert to the ghost decision and resolution then we all know we do thing differently in this day and age than they did back in ’89…

Chairperson Cardone: That’s right.

Mr. Canfield: …for this very reason. These things were very unclear and non-specific and I think instead of moving forward and accurately addressing the issues we would be skirting them by saying whatever is consistent with the ’89 decision and resolution which we know there is no number present. So what is the number? So if the applicant decides to put three thousand vehicles there if he could physically fit them where is…where do I have any enforcement regulation because there is no perimeters?

Chairperson Cardone: I…I have a question Jerry.

Mr. Canfield: That’s what I would caution on that.

Chairperson Cardone: They are before the planning board, why are they before the planning board?

Mr. Kelson: To amend…to amend the site plan to permit automobiles.

Chairperson Cardone: But if they are amending the site plan doesn’t that then negate what we have here?

Mr. Canfield: I know because the issue was raised as the application of the ’89 decision and resolution.

Mr. Donovan: It’s like the planning board is throwing it back to us and saying what does this thing mean?

Mr. Canfield: Right, exactly.

Mr. Kelson: That’s exactly right.

Mr. Canfield: That’s exactly right, Mike or Dave or not…

Mr. Kelson: Dave, the one with hair.

Mr. Maher: The current site plan you have presented there, what’s the…what’s the date on that?

Mr. Valdina: (Inaudible)

Ms. Gennarelli: Can you use the mic, please?

Mr. Valdina: (Inaudible) The…the planning…it was signed by the planning board Chairman, the original site plan on April 6, 2012.

Mr. Maher: And at that time in 2012 how many parking places were accounted for?

Mr. Valdina: Well at that time we had shown roughly thirty parking places with an overflow parking area. That’s not counted the parking required under the Code for the building and use, etc. This was for vehicle storage, truck storage and I said we have roughly thirty parking spaces delineated and then an overflow area behind the building, all behind the fence.

Mr. Donovan: Can…so tell me why…I didn’t realize it was a 2012 site plan. Why did you go to the planning board in 2012?

Mr. Kelson: They didn’t…they didn’t…

Mr. Valdina: (Inaudible)

Ms. Gennarelli: You have got to use the microphones, please, Frank.

Mr. Kelson: They didn’t…they didn’t…they didn’t ask for cars in 2012, they…they thought that the business was going just well and…

Mr. Donovan: So, so I thought when…when Mike said the planning board may well have been lax in this regard he was talking about 1989, I didn’t realize he meant 2012.

Mr. Kelson: No, no, no, he was talking about 2012.

Mr. Canfield: Twelve, twelve.

Mr. Kelson: He was talking about 2012 and you know, I…I think the planning board did just fine in 2012 but of course…but…what else could I say?

Mr. Canfield: And another suggestion may be, in light of what Frank just said, the light went on in my mind, if the Board is inclined to come up with a resolution instead of referring and again I caution you against referring to this ’89 decision and resolution simply because there is no number there. But if you were to refer to something, refer to the approved site plan in 2012 which does delineate parking spaces and does talk about vehicle storage specifically. If you could use that as a specific reference that’s something I could use as an enforcement tool. I have something tangible to go back to.

Chairperson Cardone: And what…what do…in 2012 what do they say about the number of parking spaces?

Mr. Canfield: I think they agreed with what was delineated, what the spaces were provided for and there are a list of site conditions. I think that they are behind the fence; they are behind the vehicle and in the parking spaces delineated.

Mr. Valdina: The approved site plan back in 2012 had delineated roughly thirty parking spaces as we said, with a large area of overflow parking, indicating there will be…would be times where there would be more vehicles stored on the site than what the parking spaces indicated. The planning board was advised as I mentioned earlier there are occasions, rare occasions where there are a large number of vehicles on the road or rented out not necessarily being stored but until they get picked up they have to store them somewhere because they bring them in from other locations when the demand is large enough and then they take them back to the other sites once they are through with them. So at some point in time they may have fifty vehicles stored on site.

Mr. McKelvey: What’s the overflow handle?

Mr. Valdina: This is just an overflow area, it doesn’t…there is no number.

Mr. Donovan: Jerry, that’s not going get you anything either because there’s no…there’s no…we talk about thirty delineated spaces with…

Mr. Canfield: Unknown overflow.

Mr. Donovan: …unknown number of overflow.

Mr. Canfield: Perhaps you could arrive at number to set perimeters on this.

Chairperson Cardone: And the Town differentiates between truck rental and car rental? No they don’t.

Mr. Canfield: No they do not.

Chairperson Cardone: So why did they then have to go back to the planning board is my question when they then were going to add the car rentals?

Mr. Valdina: It was a amended…amendment to the site plan.

Mr. Canfield: That’s the way it was viewed as an amendment to the site plan whereas something was introduced that was not originally introduced.

Mr. Valdina: That was a requirement of the planning board...to go back before them as an amended site plan.

Chairperson Cardone: In the meantime the office was already moved onto that…

Mr. Valdina: Yes.

Chairperson Cardone: …property?

Mr. Valdina: It was generally was in use.

Mr. Canfield: Yes. Essentially what happened Grace is Frank had contacted my office what his client’s wishes were. I had spoke with the planning board Chairman, he had suggested that I come to a work session with the planning board and present it to the entire board and then the board decided that they wanted to see it as an amended site plan…

Chairperson Cardone: Oh.

Mr. Canfield: …so that’s how it got back to the planning board. And of course that’s when also this ’89 came out and…and that’s when the planning board said we…we should kick this back to the ZBA and see what this ’89 thing means, so…

Mr. Scalzo: If I just could ask just a couple of things I’m slightly confused. In 1989 the approval was for this lot where the storage of the vehicles or trucks are?

Mr. Kelson: No. (Inaudible) The trucks were always there, they used this building as their administrative…their rental offices the people would come and check out and then check in but the vehicles were always stored on this parcel.

Mr. Maher: But the business was conducted on the other parcel.   
  
Mr. Kelson: The…the…the cash register and what have you. There was no building over here.

Mr. McKelvey: I was going to say the building was added.

Mr. Kelson: Yeah the building is brand new.

Chairperson Cardone: And the other is eliminated.

Mr. Kelson: The other is sold. The building is still there…but it’s…it’s got…

Chairperson Cardone: I mean it’s…it no longer belongs to the same company.

Mr. Kelson: That’s correct.

Mr. Canfield: The gas station was sold.

Mr. Kelson: That’s correct.

Mr. Maher: So I guess where did the business take place? The variance is for…the original variance in ’89 was for…?

Mr. Valdina: The storage was here.

Mr. Kelson: Actually it was for…was for both.

Chairperson Cardone: Actually the…

Mr. Donovan: The gas station there and allowed the truck rental.

Chairperson Cardone: …I think the main focus was moving the gas station across the street, was the focus I think.

Mr. Kelson: Yes.

Mr. Valdina: (Inaudible)

Ms. Gennarelli: Frank, can you please the microphone?

Mr. Valdina: I’m sorry.

Ms. Gennarelli: Thank you.

Mr. Valdina: I believe there was a requirement in the Code about a thousand feet between a service station…gas stations so when they moved this one; the stipulation was they had to abandon the other one across the street.

Chairperson Cardone: That sounds like an attorney question, Dave.

Mr. Kelson: I’m…I’m going to add one more…one more little factoid to the mix because this was talked about tonight. And that was the fact of precedent and I don’t think we have to worry about that because any decision or any interpretation here is really going to be limited to the facts of this site and this decision. So as you think about I…I…it’s my view that you…you don’t have to have to worry about somebody else trying to latch on to it.

Mr. Donovan: Well, Todd when you and I first spoke I think it was your position that you didn’t need to come to this Board for…for anything.

Mr. Kelson: Well, we…that was our…that was our…that was our view and it actually still is our view that and that is to say that…that you know as I said, we’re entitled to rely on the…on the variance for trucks and we’re entitled to…to automobiles as of right and…and that’s…that’s…that is my view a… We’re here of course at the request of…of Mike and…and it’s good…you know its good discussion and…and we should…I think the applicant and the Code Compliance Department and the two a…and the two Boards should be all on the same page. It’s…it’s probably a discussion worth having, you know, regardless.

Mr. Donovan: So, I think if I understand the planning board’s question and perhaps Jerry’s question is that you would like to…you would like to be able to fix a number? Right? Isn’t that what…?

Mr. Kelson: There’s another…you know, could I…there’s a idea, there’s another way to fix a number a…I know that a…we talk about a…in other contexts we talk about average size spaces, average size vehicles and it would be a question of math. We know what the overflow…the size of the overflow area is…we could…we could…we could a stipulate as to the average size of the truck and do the math and you will know and I guess it may be shoehorning but that’s a…you want a number that’s how you could derive at a number.

Mr. Canfield: A suggestion may be because this is an application, active application, before the planning board so once this Board grants a decision a…the applicant may end up going back to the planning board to complete that amended site plan process. A condition of approval may be to mathematically calculate, the size of the vehicles for the overflow parking so, you can come up with a number.

Mr. Donovan: Well Mike’s…the first point is…in his letter is the planning board has directed me to refer this matter to you for consideration of the granting of a variance releasing the applicant from his ten in a lot limitation. Now if…if this Board was so inclined, you know, we could write a letter back saying the 1989 decision the best we can say limits the number of trucks to the number of trucks that were there then that’s not satisfactory but if we’re going to grant a variance to stay the ten lot or the ten vehicle limitation that that’s an application, that’s a Public Hearing. I don’t know if you…you...I don’t know that you think you need that but to me if we got…now we have the next issue is what variance is it?

Mr. Canfield: Well again procedurally I think you’re right. At this point, this isn’t a Public Hearing, it hasn’t been noticed, it’s just a discussion. So before I think and…and Dave you can best advise the Board before they can make a decision they need to have something before them.

Mr. Donovan: Well if the conversation that…that Todd and I had is…is you know, he got Mike’s letter…he disagreed with him and so you know, he…he said, hey listen, I’d like to get on and discuss…make my argument to the Board without an application, without a Public Hearing that hey, listen you guys made a…not…not us, and certainly not Grace because she wasn’t here that night…but you guys issued…you issued a decision that…that you may not like but it’s still a decision. You can’t pretend that it didn’t happen. And we, my clients relied on it for twenty-five years and we don’t think we need anything else and he wanted that…the opportunity to make argument to the Board. Right? So that’s…that’s what we’re doing tonight.

Mr. Kelson: That’s…that’s correct.

Mr. McKelvey: Back in ’89 that was just an open lot right?

Mr. Valdina: Yes.

Mr. McKelvey: So you really had no…no parking pattern.

Mr. Valdina: No, the only stipulation was the parking was to be behind a split rail fence which there is no indication where that is or was. A…based on the condition of the lot when it was originally surveyed there was a lane through here and who knows where the split rail fence may have been whether it was on the east side, west side. The current fence is roughly along where the west side of that lane was. But there’s no physical evidence, there isn’t any mapping, nothing available a...to indicate where that fence was…

Mr. McKelvey: I just remember trucks being parked there and there wasn’t a great number of trucks there.

Mr. Valdina: Well I think as the business developed the years the number of trucks…

Mr. McKelvey: Yeah.

Mr. Valdina: …of course, increased. What they had in ’85 is not what they had in ‘90 or ’95 or 2000, you know.

Mr. Kelson: So I think it…I think it…

Mr. Valdina: It’s a business you hope it grows.

Mr. Kelson: I think it’s ebbed and flowed over the years is what we would say after all.

Mr. McKelvey: Oh definitely. I’m not arguing that.

Mr. Valdina: Well the number of vehicles it may have had in ’85 may not really be the number of vehicles that a…that were actually utilized. Because in ’85 (’89) was when they first got the variance to do it.

Mr. McKelvey: I’m saying you’re talking ’89 now…

Mr. Valdina: Or ‘89 right.

Mr. McKelvey: …and you got a lot more now than there was then.

Mr. Kelson: I don’t…I don’t…I don’t…I don’t know that we can really say that. They…they had a lot of vehicles they had…that’s…that’s what…what Maryann was saying to me…they…she was finding some U-Haul records. They had at some time, varies by season, sometimes they had a great number of vehicles even in the ‘80’s but as we say…it’s a…you wouldn’t see it as I wouldn’t see it because it’s for a short amount of time. They come in…I mean, on…on…on an average basis in the middle of you know, in the middle of July now not that…well not even actually what I don’t want to say July because 4th of July is also a peak day of the firecracker guys.

Mr. McKelvey: She…she couldn’t give you an idea…a rough idea of what was there in ’89?

Mr. Kelson: She has said to me that they have had fifty and sixty and eighty and ninety vehicles for short amounts of time and then it will fall back down to twenty or you know, thirty or fifteen or whatever and that seems to be the…the medium…most of the time…

Mr. McKelvey: Oh, I understand…

Mr. Kelson: …but there’s…there are certainly peaks to it.

Mr. McKelvey: …I understand some of them are out on the road.

Mr. Kelson: Right.

Mr. Donovan: Well I officially have a headache so…

Chairperson Cardone: Right.

Mr. Maher: What…what space did you leave for the trucks as far as a parking area goes? On the left…the left hand side what size would you say that is?

Mr. Valdina: Well that varies, some are a…three and twelve by forty feet but they were…they were band…they were stacked…a…there’s a twelve wide by forty long…

Mr. Maher: …did you take into account…

Mr. Valdina: …you know…

Mr. Maher: Did you take into account the ten foot off the property line that’s required?

Mr. Valdina: A…yeah, every things within the fence.

Mr. Maher: No, I mean but it does state the ten foot off the property line the maximum…the closest you can park the vehicles.

Mr. Valdina: Whatever is here, I don’t have my scale with me to…they’re not right up to the a…here’s the property line, the simulated property line you can see these are back in here. These are the other ones on this side and they’re again twelve feet spaces by thirty feet for larger vehicles.

Mr. Kelson: But remember it’s been…but remember it’s utilized that way irrespective of the current ten foot limitation since then prior to that decision.

Mr. Maher: Well it was the same owner so it really didn’t matter then.

Mr. Kelson: That’s right.

Mr. Donovan: What the side bar discussion here is a…whether or not this Board could refer you back to the planning board to say now listen you approved the site plan in 2012 that’s…that’s the site plan that…that you approved so, you know, there’s no issue for the Zoning Board. Now the only issue that doesn’t address is what how we fold in the car rental because that wasn’t envisioned in the 1989 decision.

Mr. Kelson: Right and that’s all we really want to talk about to be honest with you. The rest of this is interesting but not why we’re here.

Mr. Donovan: But, you know, just appreciate we’re in a situation where there was a variance that approved whatever it approved and now the Code allows you to have ten motor vehicles so give…give us those ten but we’ve already got approval for the fifty, sixty, seventy, eight, ninety.

Mr. Kelson: Well we can…we could say it this way Dave, we could say the ten vehicles are inclusive of the number of vehicles that would have been permitted in 1989. It’s still an amorphous but theoretically I think that would be…that would be correct.

Mr. Donovan: Well that’s what I was talking about before.

Mr. Kelson: Yes. And…and…and what…and Mr. Canfield suggested and I think it’s interesting food for thought is to mathematically calculate those number of vehicles, throw a number on it a…based on the total number of vehicles and the spaces and the overflow area and those…those engineering guys must have some formula and I’ll leave it to them…

Chairperson Cardone: But…but…

Mr. Kelson: …and…and…and then we…and stipulate that that would be the total number.

Chairperson Cardone: But in essence that would be kicking it back to the planning board because in 2012 they approved of this site plan. The lines have not changed. The area is still exactly the same. So now if they calculate, they are going to calculate within that area so that would be up to them.

Mr. Kelson: It would be up…it would be up to them but…but…but…but it could be…but this Board, I think what they’re looking for is for this Board to say, yes go ahead and have that exercise we’re fine with it.

Mr. Donovan: And…and…

Mr. Kelson: Is that a fair statement? I wasn’t in the…I did not appear before the planning board.

Mr. Valdina: Well like you’re saying the planning board had been advised at times there are more, it could be up to a hundred vehicles on the site so it’s not a number that was unknown to anyone.

Mr. Kelson: Right, it’s not a secret to them.

Mr. Valdina: Right. So…and as far as calculating the area I mean, again, we have to come to some agreement as to what type of vehicle we’re talking about. Are we talking about enough for automobiles, are we talking about a average size truck because I don’t know what their demand is as far as legals.

Mr. Donovan: But…but…but if we…if we were to just go back on something I said before, if we were to say listen we’ll refer it back to the planning board and say you get the number of motor vehicles that you could have got and that was…that was not could have got, the number of motor vehicles that equate to the number that you had in 1989…

Mr. Kelson: But the…right, right.

Mr. Donovan: …right and that when you go back for site plan you could fix the number of how many are trucks, how many are cars are designated on the site plan and say go by site plan approval. Does that work?

Mr. Kelson: Yeah, I mean that’s what we wanted…I mean we want…we…we…we would be happy to say, yes we are limited by the agra…we’ll…we’ll…we’ll…we’ll take this little leap of faith we’ll say, instead of this decision only applying to trucks we’ll say, the number of vehi…the number of trucks referred to in this decision…follow the logic…substitute for purposes of this discussion, substitute the word vehicle for truck so if there were…if the planning board accepted and if the…if that a hundred trucks were permitted under the 1989 decision then you would say that no more than a hundred vehicles are now permitted under the 1989 decision and we are willing and…and…and…and…and just for…for additional or comfort or how ever you want to characterize it, good planning, how every you want to characterize it…we…we further stipulate that no more than ten of those vehicles will be cars.

Mr. Maher: I think that we’re using for part of the…we’re considering from the 1989 really shouldn’t be applied because they both lots to use.

Chairperson Cardone: Right.

Mr. Maher: Now they only have one.

Mr. Kelson: Cars were only…the trucks were only stored on the one lot, they were not stores on the other lot. Trucks were only…

Chairperson Cardone: They weren’t allowed on the other.

Mr. Donovan: They weren’t allowed; they made them move in the 1989 decision to the other lot.

Mr. Kelson: Yeah, they specifically said you can have an cars on this truck…a…a…trucks.

Mr. McKelvey: They just ran it out of there.

Mr. Kelson: They…they…they had an office here didn’t they. The…the same number was always stored on this lot. There was never any storage on this lot.

Mr. Donovan: So, just, I’m only so smart because I have it in front of me. So the 1989 decision says the Board finds that the storage of rental trucks which use presently dominates lot 6 must be moved to lot #3 and only the paperwork aspect of the truck rental business may be conducted in the existing structure on lot 6. So they had…had to move the trucks next door.

Mr. Kelson: And that’s what’s been ever since exactly. The trucks from then and till now all trucks are on that lot. So there’s no change in that respect.

Chairperson Cardone: Does that present a problem, Jerry, with the…to just send it back to the planning board?

Mr. Canfield: I…I don’t have an issue with that. And actually I was looking, there’s sections of 185-13 and it talks about what the planning boards, you know, parking requirements may be and I was looking at a section which I’m not certain that applies here which deals with combined parking areas and when it talks about a building that has two or more uses it allows the planning board to designate what the parking calculations shall be. And it’s in reference to using Chart 3 in the back which is a work table, you know, for during hours of operation. I think that section is specifically for a…something similar to like Palmerone Farms where you have so many parking areas but the uses on that mixed use site, peak times are different times of the day so it’s so to speak shared parking. So if you looked at the bulk…the table requirements for parking, calculations specific to a type of use there would be X a number of spaces required what that section is allowing the planning board to alter that. I don’t think it would apply here. That’s what I was looking for but not to be longwinded no, I have no problem with if…if this Board sees that the ’89 decision and resolution is still in effect and you don’t feel it’s a matter before your Board put it back to the planning board and let them make the determination consistent with their site plan. I don’t have an issue with that. At least with that though and my big concern is in allowing me something to enforce. If the applicant should, like I had said before choose to put…

Chairperson Cardone: But once the planning board determines where those…they will be very specific on where those parking places are, I’m sure.

Mr. Canfield: Yes.

Chairperson Cardone: Then that would become easy to enforce.

Mr. Canfield: Yes, exactly.

Mr. Donovan: Easier, nothing is easy.

Mr. Canfield: Easier. Yes, exactly. It’ll give me a starting point and we might end up back here but…

Mr. Kelson: Yeah, but we can…we can designate these are the…these are the spaces where…where cars need to park and no place else, we can do that. I don’t see and that would be…that would be foursquare within the purview of the planning board.

Mr. Canfield: Right.

Mr. Maher: I think…I think it has to be.

Mr. McKelvey: You have to figure the overflow?

Mr. Maher: I think he’s utilizing all the vehicles on the lot not just the cars, spacing for all the vehicles on the lot, not just cars.

Mr. Kelson: I wouldn’t want to reopen that…I don’t think we’re…I don’t think we would be reopening that…that…that…that train left the station, the number of…the number of vehicles.

Mr. Canfield: It is going to be designated by the number of spaces available.

Chairperson Cardone: Right.

Mr. Kelson: Well…well what the from the overflow.

Mr. Canfield: That’s what Mike is saying.

Mr. Kelson: Oh, for…for…for cars.

Mr. Canfield: For vehicles.

Mr. Kelson: Well I don’t think that’s what he’s saying though.

Mr. Maher: Well the cars are easy to do, if you have ten, you have ten.

Mr. Kelson: Right.

Mr. Maher: It’s easily, you know, you drive by and count on two hands there but my I guess my…I was thinking to enforce that only seems to be a little, that’s not what the issue is at the end of the day, the car issue…is about the car issue…car only…

Mr. Canfield: No, no I’m looking at vehicles period.

Mr. Maher: That’s my point.

Mr. Canfield: Yes.

Mr. Maher: I think that’s what needs to be…needs to be decided upon is…is the maximum number of vehicles that you can park in there based on the area you have available. I mean…

Mr. Kelson: Right, but for…but as…as Dave says, right or wrong, he…a…a…he…a…a…we’re all you know, we’re happy you’re stuck with that decision. A…and…and…and…and…and we…

Mr. Canfield: That’s my point Todd; I’m trying not to be stuck here.

Mr. Valdina: Theoretically…

Mr. Kelson: No, no, no, you don’t need to be stuck here a…

Mr. Maher: So Todd, you’re saying if you have a hundred parking places there you can park two hundred cars there, two hundred vehicles there?

Mr. Kelson: A…if there was…if…no, I’m not…I’m not going to say that. I’m going to say…I’m going to say if two hundred vehicles…if two hundred trucks were parked there in 1989 hypothetically I suppose that might be true but I…I’m here to tell you that that would not be true. There were never two hundred trucks.

Mr. Maher: But my…my point is though but so if you only have eight-nine parking places or a hundred and ten parking places you can’t logically think though that the Board would give you approval for a hundred and twenty vehicles then?

Mr. Kelson: I could…I could…I could say this…I know we’re really starting to split hairs but we could say and I…I…I’m kind of following the logic a…it becomes…it becomes like solve our X, the number of vehicles is now the number of trucks is the number of trucks in 1989 minus ten.

Mr. Maher: Right, but…but you’re allocating that for trucks.

Mr. Kelson: He has for cars.

Mr. Maher: He has to have some type of enforceable, we can’t get it in fact you are starting to double stack them, you’re bring racks of double stacked vehicles now whatever the case may be, there has to be some method to enforce that with a number.

Mr. Canfield: That’s correct. Again, going back to ’89 there is no number.

Mr. Kelson: There is no, right, there is no number and yes, he…

Mr. Donovan: And that’s what I was trying to achieve.

Mr. Kelson: …he has…yes, he has a reasonable quandary and I…I you know, and I feel it, I see your legitimate problem, okay, but you know a…but it…but it…but it’s his problem not the applicant’s problem. But not withstanding that I mean, we’re willing…I mean we want to…we want to come to some consensus. I mean, we think…we actually and a couple of ideas and…and the number is…how many can you mathematically fit there is the number and maybe that number minus ten if there’s cars. Maybe that’s the way to do it?

Mr. Maher: That’s…that’s what he stated.

Mr. Canfield: That’s exactly what I stated.

Mr. Kelson: The number…the number…

Mr. Canfield: The one thing that I’d like to clarify…Todd…

Mr. Kelson: Say it again, say it…say it again…go ahead.

Mr. Canfield: …the one thing I’d like to clarify with your point that it is my problem and that’s why I’m here.

Mr. Kelson: No, of course, of course.

Mr. Canfield: And that’s why I go to the planning board meetings as well to limit what gets dumped on me…

Mr. Kelson: Of course.

Mr. Canfield: …because now it’s an enforcement issue. So and I think the both Boards and my office work together very well to kind of limit this so that we are all going in the same direction and we’re on the same page.

Mr. Kelson: Well and I…I think I said that a few…a few minutes ago when…when we look at the minutes and we do…we all do want to be on the same…

Mr. Canfield: Right.

Mr. Kelson: … page, there’s no question about it. And we’re…we’re trying to explore a way to address that legitimate concern but without denigrating the vested rights that the applicant has. Okay? The two…the two have to somehow be harmonized. I think and I think that…can you agree that that’s a fair statement?

Mr. Canfield: I think that it can be done through enforcing the site plan but again I…I totally against…

Mr. Donovan: That’s the direction we were trying to go in so I don’t know…I thought we got there and then took a couple of steps back.

Mr. Kelson: Well…

Mr. Donovan: The idea was to take…to establish on the site plan the number. I’ll call it the 1989 number subtract ten for cars and that was your number. And…and I don’t know, I mean, Mike is saying that’s kind of be up to the planning board engineer to (inaudible)…

Mr. Kelson: Right, right.

Mr. Donovan: …but you’re showing thirty, you showing overflow parking. In that overflow parking there are a finite number of vehicles that you can fit there. You don’t have to answer that but there are a finite number.

Mr. Kelson: Oh, yeah that’s right you can’t.

Mr. Donovan: So I think we want to establish what that…that finite number is.

Mr. Canfield: And it’s mathematical.

Mr. Kelson: That…you’re right…that…that…I agree…I agree with…completely that’s a…and…and…and…and…

Mr. McKelvey: That’s…that’s why I say you’re going to have to know what you can put in that overflow area.

Mr. Valdina: Well as you know that…the overflow it could be calculated as far as what area is available, area assigned for the vehicles it says the number. What it does not take into consideration of course nowadays if you’ve been down to the airports how they stack cars on top of each other on racks so…you know…

Mr. Maher: Well I think…

Mr. Valdina: …what’s that number?

Mr. Maher: I don’t think that six foot is going to hide those stacked cars with that. That was my point though that’s why I…

Mr. Valdina: All it says is behind the fence…all it says is behind the fence.

Chairperson Cardone: Well Jerry will be at the meeting to make sure there is no stacking.

Mr. Valdina: Just says behind the fence.

Mr. McKelvey: The planning board can say no stacking.

Mr. Maher: Create the math that’s necessary to figure the square footage based on the vehicles that you store there and again like they said, it’s X number of cars…X number of vehicles minus ten for cars that….that’s the number you come up with. Whatever you can physically put in that site that is going to allow egress around the site that’s really what you’re going for.

Mr. Kelson: I agree and I can’t see stacking and why because there wasn’t any stacking in 1989 so I…I…I…so that’s a fair point but…but I think you know, you know, we’re…we’re trying to you know find parameters I mean, there’s…there’s certainly a bright line that…that nobody would dispute. There was no stacking in 1989 so there could not be stacking now. I don’t think anybody would dispute that.

Chairperson Cardone: So our decision is to…we’re not really making a decision but our recommendation is to go back to the planning board. At least that is my recommendation and have them determine...

Mr. Donovan: They wanted to know the parameters of the 1989 decision as best we can say is that limited number of vehicles that were present when the decision was granted and they…and we recommend or we could say that they established the site plan, the numbers allocated to trucks to number to cars. I mean, that’s…so I mean that’s…that’s the fastest way you get back to the planning board.

Mr. Kelson: And…and I, Dave I think I agree with that…

Mr. Valdina: I don’t quite…

Mr. Donovan: I don’t talk for the Board though that’s not my…I don’t get a vote.

Mr. Kelson: No, I understand of course but…but…but that I think that’s consistent with my analysis as well.

Mr. Valdina: I don’t know whether I quite agree it. The reason being we don’t know the number in ’85 (’89) since then the number may have increased from practical aspect as I mentioned before as business grows the number of vehicles increased…

Chairperson Cardone: But we’re not going with the…

Mr. Valdina: ’85 (’89) was the decision they got to…it wasn’t dependent upon the number of vehicles that were utilizing at that point in time. I think we may have a number that may be lower than what is even approved now.

Mr. Maher: But we…we have no hard number for ’85, ’89, ’90.

Mr. Kelson: No we have no hard number.

Chairperson Cardone: ’89…’89.

Mr. Kelson: The only hard number is what the limitations of…of physics will allow, I guess.

Mr. Maher: And that is exactly what Mr. Canfield needs to have some type of information.

Mr. Kelson: Right.

Chairperson Cardone: And the planning board would make that determination.

Mr. Valdina: My concern is the planning board now may look at it and say you limited to ten.

Mr. Kelson: I don’t…well, I’m not sure I…

Mr. Valdina: (Inaudible)

Mr. Kelson: I can’t…I think if this Board articulates that…that its view that I think there’s the consensus on here and that is as Dave articulated, the limitation is not ten, the limitation is the limitation that existed in 1989. That clarifies for the planning board that we’re not bound by ten.

Mr. Valdina: (Inaudible)

Mr. Kelson: Well of course it doesn’t clarify but it…it doesn’t clarify the number it clarifies what is not the number. It clarifies that ten is not the number beyond that it doesn’t clarify much.

Mr. Valdina: I think if you’re saying the number that the site…could be parked on the site in 1989 then I could agree with that.

Mr. Kelson: Yes, and that is what I…I…

Mr. Valdina: Well that’s what I was saying.

Chairperson Cardone: Well that would be the same as the number that would be parked today.

Mr. Maher: Well no I don’t…I don’t agree because in 1989 the building wasn’t there, number one, you don’t know where the fence was, number two so in essence you could have had cars parked up to within the right of way area all the way to the front right of way. In essence you could have had those cars there in 1989. Currently based on the size of the lot and the way…the way it’s put together with a building in place you can’t put that many cars there.

Mr. Valdina: But there is nothing that says…

Mr. Maher: But I know…

Mr. Valdina: …based on the discussion that we can calculate the number of vehicles on the open space on the site but there’s nothing says the planning board has to accept that. They may say, we made a mistake; we’re going to limit you to ten cars.

Mr. Kelson: No, that…and that we don’t agree with.

Mr. Valdina: I know we don’t agree with that.

Chairperson Cardone: But that…that’s…that’s a discussion…

Mr. Kelson & Mr. Valdina: (Inaudible)

Mr. Kelson: …I don’t think they’re asking for that.

Chairperson Cardone: … discussion you would have to have with the planning board.

Mr. Maher: In the currently designated area…

Chairperson Cardone: I think that we need to just decide right now what our recommendation is.

Mr. Valdina: Well but what they’re saying is going back to the planning board for the planning board’s determination of the level of parking allowed. The planning board could take the position code says ten that’s all you’re allowed.

Chairperson Cardone: A…do we have a consensus here that we should send this back to the planning board?

Mr. McKelvey: I think we should.

Mr. Masten: Yeah.

Chairperson Cardone: And then they would determine…

Mr. Maher: Recommendation that based on the current area…

Chairperson Cardone: Right.

Mr. Maher: …that they have for the storage of vehicles that they calculate the maximum number of vehicles that they can be stored in that area…

Chairperson Cardone: Right.

Mr. McKelvey: Minus ten.

Mr. Maher: …obviously, you know, if you can fit a car, you can fit a car there.

Chairperson Cardone: Right. They can do…

Mr. Maher: Based on their calculations minus ten.

Chairperson Cardone: …they can do whatever combination they want that’s all up to them. That’s how I feel anyway.

Mr. Valdina: Maximum ten automobiles. Is that…?

Mr. Kelson: Right, we always agree, maximum ten automobiles. That has not been an issue for an hour and a half now that has not been an issue.

Chairperson Cardone: So, are we ready to take a vote on that recommendation?

Mr. McKelvey: Yes.

Mr. Maher: By all means.

Mr. McKelvey: Do you need a motion?

Mr. Maher: Dave, would you like to…would you like to summarize before we…?

Mr. Donovan: Actually, I…I don’t want to beat this horse which is long dead but let me make sure I understand, cause I’m saying it’s the number of cars that…or the number of vehicles from 1989. I think you are saying the number of vehicles that are supported at the site now…which is a potentially a different number.

Chairperson Cardone: Yes, that’s what I…that’s what I’m saying too.

Mr. Maher: Based on the site plan submitted there is an area prescribed for storage of vehicles whatever number they can squeeze in that area, that the planning board you know, says okay if you want 9 x 18 or 10 x 20 areas for…for passenger vehicles you want 12 x 30 area for storage…it doesn’t make any difference what configuration, how many of each I don’t care. In that area that’s currently defined on the site plan what they can fit in there is what they are going to be allowed to store there.

Chairperson Cardone: Right.

Mr. Maher: Which I think is what we discussed originally.

Chairperson Cardone: That they refer to 2012 site plan and whatever they were basing that site plan on that would be the same…pretty much the same site plan and they would designate the parking places.

Mr. Maher: Right, it doesn’t reduce anything; it’s the same area you had before.

Mr. Kelson: I only…I only…I only ask…that…that…that whatever communication comes forth from this Board be clear that the Board is…is accepting as…as valid the 1989 decision and that there is no ten car…there’s no ten vehicle limit. That…that part of the decision is…

Chairperson Cardone: That’s not…that’s not the decision I’m think we’re making.

Mr. Kelson: Then I apologize, go ahead. I’m sorry.

Chairperson Cardone: I think the decision that, at least this is what I think, I think that we should just send it back to the Planning Board they should look at the 2012 site plan that they already approved, that’s an approved site plan and then base whatever combination they, you know, they feel should be on the new site plan. In other words, it’s not…it’s not for us for us to decide on the number. It’s up to them to decide based on their mathematical calculations.

Mr. Kelson: Well that…well that’s fine but they…but they…but they have to…they also have to know and that’s what Mike was asking, they have to know in doing so as an overlay to the…to the current Code they are also entitled…that the applicant is entitled to rely on…on the ’89 decision as well.

Chairperson Cardone: That there is not the ten…the ten vehicle limitation?

Mr. Canfield: (Inaudible)

Chairperson Cardone: Right so we cannot say based on that number….we cannot…

Mr. Donovan: Let’s try to approach it a different way then. So the 19…the 19, there is no ten vehicle limit and the 1989 decision should be read to say that you can fit as many cars on…vehicles on that lot as the constraints of the lot provide, that number should be fixed by the planning board when they issue their amended sit plan approval.

Mr. Canfield: Exactly.

Chairperson Cardone: Right.

Mr. Kelson: Betty, make sure it get…that’s exactly, yes.

Mr. Donovan: Betty gets everything right.

Ms. Gennarelli: It’s on the tape.

Mr. Kelson: Only if you spoke into the mic.

Mr. Maher: Is that…let me just, based on the site plan currently in their hands?

Mr. McKelvey: Yes.

Chairperson Cardone: Yes.

Mr. Maher: Right. Well that…that’s… listen, I…I…you can come back tomorrow with an amended site plan and then move the fence up thirty feet to incorporate more cars, that’s what I’m looking at.

Mr. McKelvey: It’s hard to use the ’89 too because you didn’t have a building on the property.

Mr. Maher: That’s right, they didn’t have the building.

Mr. Valdina: Physically you can’t, septic system is here, the building is here, parking is here to the building so it’s restricted, they really can’t go…

Mr. Maher: So then it doesn’t make a difference, then it’s a moot point because you can’t make that area any larger so it really doesn’t make a difference in essence. Right, am I…? I mean you can make the building…the area any larger to park cars so …

Mr. Valdina: No it’s every area within the fences area we have to work with basically.

Mr. Maher: Right, so there’s no issue then. There’s no issue at all. That gives… now gives Jerry a number he has to work with in the end.

Mr. Scalzo: And he can hold them to the ten foot off the property line. That’s what the Code says.

Mr. Valdina: We have…we have…there’s areas here behind the storage bins that is well off the property line (Inaudible) in there, you know.

Mr. Maher: So, Darrin has a good point there so there are other…other requirements in the Code. The spacing between the vehicles, off the property line, is that part of…?

Mr. Kelson: But those requirements are not included in the 1989 decision and they may…Jerry I can’t speak to a…accurately as to whether they exist or did not exist…

Chairperson Cardone: That’s why we’re referring to…that’s why I was saying we are not the number of the ’89 decision.

Mr. Kelson: …in 1989, if they did not or they do. They did not? So let’s be clear on that…

I mean we’re getting a clarification that ten foot limitation did not exist in 1989.

Mr. Donovan: Well, here’s what the conditions of the 1989 resolution. Applicant storage of the trucks on Lot #3 shall be behind the split rail fence, in the event such fence is removed storage shall be no closer than that distance from Route 9W, that’s number one. Number two, applicant conforms with all applicable building, safety, health and environmental Codes…

Mr. Scalzo: There you go.

Mr. Donovan: …and three, the existing station located across the street is to be eliminated before the C.O. can be granted, well we don’t have to worry about that.

Mr. Maher: Four?

Mr. Donovan: There is no four, sorry. But number two is applicant conforms with all applicable building, safety, health and environmental Codes.

Mr. Valdina: And like say the location of that split rail fence is unknown.

Mr. Donovan: I’m sorry, say again.

Mr. Valdina: The location of that split rail fence is an unknown location.

Mr. Donovan: Unknown?

Mr. Valdina: That’ right.

Mr. Donovan: Well I mean it’s not there anymore?

Mr. Valdina: No.

Mr. Maher: You’ve established your…you’ve established your site plan though.

Mr. Kelson: No there’s a different far more substantial fence now.

(Inaudible)

Chairperson Cardone: But I think we are in agreement anyway Mike, right?

Mr. Maher: Yes. I don’t know if Mr. Valdina is in agreement but…

Chairperson Cardone: But he doesn’t have to be, the important thing is that we agree.

Mr. Kelson: He doesn’t have to be. It’s you guys. And we agree that the outcome such as it is is going to be correspondence from the Chair or the Attorney back to the planning board?

Chairperson Cardone: That’s correct.

Mr. Kelson: Okay, thank you.

Chairperson Cardone: Do we have it that we are not going to mention any number?

Mr. Masten: No, let them go by the site plan, the approved site plan.

Mr. Donovan: So what I said before then is that the a…there is no ten vehicle limit as I understand what you want to do, and that the number of vehicles is limited by site constraints and…

Mr. Maher: Based on the current…

Mr. Donovan: …based on the current site plan. Is that the pleasure of the Board?

Chairperson Cardone: Yes.

Mr. Masten: Yeah.

Chairperson Cardone: Do you want to take a vote on that?

Ms. Gennarelli: Do you want to wait for John? He will be back.

Chairperson Cardone: Okay, we are ready to vote, just waiting for you John.

Mr. McKelvey: What are we voting on?

Mr. Donovan: John, congratulations you are the new Chair.

Mr. McKelvey: I run ten minute meetings.

Mr. Donovan: That’s right.

Chairperson Cardone: Okay Dave, read it again, or…?

Mr. Donovan: Okay as I understand it, there is no…we’re going to communicate with the planning board, there is no ten vehicle limit, and that the number of parking…number of vehicles allowed are limited by site constraints and applicable provisions of the Town Code.

Mr. McKelvey: Okay.

Mr. Donovan: Do I got it Mike?

Mr. Maher: Sounds good to me.

Chairperson Cardone: I just want to know if it’s okay with Jerry.

Mr. Canfield: Yes, I concur.

Chairperson Cardone: Okay.

Ms. Gennarelli: Okay, we’ll have a vote?

Chairperson Cardone: Yes.

Ms. Gennarelli: Okay.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:04 PM)

ZBA MEETING – JUNE 26, 2014

END OF MEETING (Time Noted – 10:04 PM)

Chairperson Cardone: You have the minutes from last month? Do we have any additions, corrections?

No response

Chairperson Cardone: Do I have a motion to approve the minutes from last month?

Mr. McKelvey: I'll make a motion we approve the minutes.

Mr. Maher: I’ll second it.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Do we have a motion to adjourn?

Mr. Maher: So moved.

Mr. McKelvey: Second.

Chairperson Cardone: All in favor say Aye?

Mr. Canfield: Grace, I have one thing, I know it’s late but if I could discuss something with the Board?

Chairperson Cardone: Sure.

Mr. Canfield: I don’t know if it should be executive session or not.

Mr. Masten: You’ve got two minutes.

Chairperson Cardone: Well if…if you think that it should be then a…we

Mr. Donovan: Well Jerry, why don’t you tell me generally what the nature…I mean there’s…there’s obviously specific things that can be discussed other than that there can’t be any executive session.

Mr. Canfield: It deals with scheduling.

Mr. Donovan: Well why don’t we do this, Todd hurry up and leave.

Mr. Kelson: Good night.

Mr. Valdina: Good night.

Ms. Gennarelli: Is the meeting closed or not yet?

Chairperson Cardone: Shall I close the meeting first or do you want this in the record?

Mr. Canfield: Yeah, no, it’s off the record.

Chairperson Cardone: Okay, do I have a motion to close…to adjourn?

Mr. Maher: So moved.

Chairperson Cardone: Second?

Mr. McKelvey: Second

Chairperson Cardone: All those in favor?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The meeting is closed.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ROSEANNE SMITH

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:15 PM)