ZONING BOARD OF APPEALS

MEETING – JANUARY 24, 2013

(Time Noted – 7:00 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 of the Board is that the applicant will be called upon 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. The Board will try to render a decision this evening on all applications; but the Board may take up to 62 days to reach a determination. I would ask you when you’re speaking to please speak directly into the microphone because it is being recorded and to also either turn off or silence any telephones. And I'd also like to mention that the Members of the Board have made site visits. Roll call please.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 7:02 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 7:02 PM)

GAS DEVELOPMENT LEASE, LLC. 1413 ROUTE 300, NBGH

 (60-3-40.2) I / B ZONE

Applicant is seeking an area variance for an exit driveway shall have an unrestricted width of not less than 25 ft. to build a gasoline station and a tire service business. (Previous variances granted 6-28-12)

Chairperson Cardone: Our first applicant is Gas Development Lease.

Ms. Gennarelli: The Public Hearing Notices for all of the new applications being heard this evening were published in The Sentinel on Tuesday, January 15th and in the Mid-Hudson Times on Wednesday, January 16th. This applicant sent out fifteen total registered letters, thirteen were returned. The mailings and publications are in order.

Mr. Cappello: Good evening everyone, my name is John Cappello I am an attorney with Jacobowitz and Gubitz and I’m here on behalf of the applicant. I’m here solo today so I don’t have my fancy maps from the…

Ms. Gennarelli: John that comes off, you can just pop it off.

Mr. Cappello: …fancy maps from the engineer but what we’re here for tonight if you may recall a…three months back we were before the ZBA as it relates to a proposed gas station facility and a Somerset Tire Service facility located on Union Avenue a…(inaudible) this is the Newburgh Mall right here. We did receive a variance related to the distance requirement which was between gas station and signage. One of the issues that was raised in the Hearing at that meeting and then was raised again by the planning board a…was the ability to make left turns a…from the site out on to Route 300. The applicant does have an easement along the rear of the property to connect to the Newburgh Mall access road in the rear to get to Meadow Hill Lane. At that time it looked like it would be very difficult because over time this area has become wetlands in the rear portion of the parcel so it’s been very difficult to a…obtain a permit but after going to the planning board and as part of the planning board review a…the engineers determined that we would be able to get a permit to construct a one-way (18) eighteen foot wide a…drive across the easement from the rear of the parcel so this is the match…match on the rear of our parcel then across the wetlands area to connect to the Mall a…back road so people could go up to Meadow Hill make the right turn and make a left at the signalized access instead of making a left turn out of the site. The traffic for the site does work and you know, we have had preliminary talks with the D.O.T. a…without this access when we thought it would be a feature a…that the applicant would like to explore. And now it turns out after we design the road and went back to the planning board a…that there is a provision in your Code that says any access drive to a gas dispensing facility must be (25) twenty-five feet in width. For us to construct this (25) twenty-five feet in width we would go above one of the a…one of the thresholds of the wetlands, disturb it which would…which would raise us into another level which would make this impossibly expensive and probably it’s…practically impossible to build because we would then have to do wetlands mitigation outside of a (50) fifty foot a…right of way so this is the widest we could go given the current a…wetlands regulations so while as I said, while the traffic does work without this road it works much better with this road because it allows people one if they want to go to the Mall they just go back up to your…go to the road that will let you go to the Mall and once again the best feature of this is they could leave the site, go back along this road at the access road and then go out, right, in, make a left turn at the signalize light without having to make a left turn and cross traffic on…on 300. So we then would require in order to construct this an area variance from your Board for relief to allow us to build it (18) eighteen foot in width instead of (25) twenty-five feet. The final design of the you know, whole project will still have to go through the planning board review. We have been in front of the planning board a…had concept approval, met with the consultants and have started addressing their technical comments and putting the planning board’s traffic consultant to make sure they’re satisfied that the traffic within the site and out on to 300 works but really what we’ve come here tonight is to ask for relief from that (25) twenty-five foot width requirement to allow us to construct it.

Mr. McKelvey: That’s six…going to be an …just an exit right?

Mr. Cappello: It will just be an exit, right.

Chairperson Cardone: I am going to read the report from the Orange County Department of Planning just in case there is anything you need to respond to. Based upon our review of the submitted materials our office has found no evidence that significant inter-municipal or county-wide impacts would result from its approval. The project site is within one of Orange County’s identified priority growth areas therefore development that is sensitive to the surrounding resources is encouraged. Additionally the project is an adaptive reuse of an existing brownfield which our office encourages over new construction on a greenfield. County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the community and that’s Local Determination.

Mr. Cappello: (inaudible) would be to agree with their recommendation. As it relates to the detriment to the neighborhood this certainly I think explained the benefit of allowing us to a…have a better traffic flow and as far as the you know, detriment to the surrounding area I don’t think it will have any detriment this wetland while technically it’s a wetland really you know, is between is…is to the rear of what was a trucking facility next to the Newburgh Mall. It’s…it’s not a very useable wetland it just happens to be the area where drainage for the Mall and everywhere, you know, just collected. Our disturbance to it will be minimal and, you know, I think we’re doing it in an attractive way so I think the…instead of the detriment I think it would actually benefit the traffic flow in the entire area and a…allow us to you know, redevelop and make this site an attractive site where as right now it’s an abandoned a…you know, former trucking facility.

Chairperson Cardone: Okay, Mr. Canfield do you have any comments on this particular?

Mr. Canfield: Yes, Mr. Cappella…is this on?

Ms. Gennarelli: I’m not hearing it.

(Inaudible) (Floor mics not working correctly)

Mr. Canfield: Mr. Cappella has legitimate concerns. We have discussed at the planning board, I say we…the planning board’s consultants, the drainage consultants about the wetlands concerns. As he points out, 185-28 of our Code requires all entrance and access entrances and accesses to…I think we lost it (the mic), oh, we’re still here…to and from service stations be (25) twenty-five feet in width. Because of the wetlands concern (18) eighteen feet is what they’re proposing.

Mr. McKelvey: You’ve got to talk directly in that. You can see when you turn your head you lose it.

Mr. Canfield: I’m losing it, okay. From the fire protective point of view the secondary entrance and access would be an asset to this project. As we’re all aware of the traffic that is normally on Route 300, in the event of an emergency this roadway would provide a means of secondary access. Normally in this scenario it may not be required by Code however, it would be beneficial to the site. Required width for fire access roads generally is (20) twenty feet a…but we’re talking about an unpopulated area where this roadway is there is nothing there, no exposures. More than likely there will not be any parking or stacking of fire apparatus so (18) eighteen feet is acceptable. Essentially that’s the only comments that I have on it.

Chairperson Cardone: Okay, thank you. Do we have any questions from the Board?

Mr. Manley: Mr. Cappello would it be a…possible that instead of if you abandon the a…access road on that would be the a…the west side and put an access road on the south side directly in to the Newburgh Mall, would that not be more beneficial and therefore you wouldn’t even really need that access point on the west side if you could come down on the south side?

Mr. Cappello: We…we don’t have the…the right to connect. That’s private land, there is a dedicated easement that was reserved for this parcel back in the beginning so that’s where we…the only place we could build over would be within that (50) fifty foot easement.

Mr. Manley: Right, but has the applicant approached the Newburgh Mall?

Mr. Cappello: Yes, I believe they have because it would make...it would be easier…

Mr. Manley: And the Newburgh Mall was not…

Mr. Cappello: …obviously we wouldn’t have to build the road across the a…

Mr. Manley: …they were not in favor of that?

Mr. Cappello: No.

Mr. McKelvey: I think we discussed that when they were here the last time and…and the…they…they said that they couldn’t get that the right of way.

Mr. Cappello: Right it would be obviously less expensive for the applicant to build…you know, build something in there and they wouldn’t have to cross the wetlands but it…it’s…they don’t, you know, have the right to do it.

Ms. Drake: Is the access road wide enough for the trucks to get out that are delivering fuel?

Mr. Cappello: Yes, the…the…because it’s one-way it’s (18) eighteen foot so it would be wider if you had (25) twenty-five foot two-way access you’d only have (12) twelve, you know…(12) twelve and a half feet…

Ms. Drake: Okay, I was…I was just looking at the turns like you got (15) fifteen foot radius.

Mr. Cappello: And a…in the…yeah, the planning board’s traffic engineers has you know, has been reviewing the interior access and truck routes and everything so I know he has a…and he’s working with the project engineer to make sure that all works.

Ms. Drake: Okay, going north it’s twenty… (24) twenty-four foot wide and you’re not restricted by the wetlands there so that easily could meet…meet the (25) twenty-five foot and then where is it changing from (24) twenty-four foot to the (18) eighteen foot? On the turn?

Mr. Cappello: Yes, soon as you leave the…the match line here on the property so this…this access you see here this is (15) fifteen foot on either of the side but the main access into the site is a…meets the Code. This is all (24) twenty-four feet and then just when you get back here because this parcel was developed and the Mall parcel was developed you have this area here that was vacant that’s just where the water…

Ms. Drake: Right.

Mr. Cappello: …catches the drained so it’s not till you actually leave this site that it goes down to (16) sixteen feet.

Ms. Drake: Yeah, you just don’t show it. You show straight out and then you show this being (16) sixteen and this being (24) twenty-four. I was just trying to figure out where it…

Mr. Cappello: It’s (24) twenty-four when you’re turning here and then as soon as you hit this match line this would go attached to here and that’s where it would go down to (16) sixteen…to (18) eighteen feet…

Chairperson Cardone: To (18) eighteen…okay, (18) eighteen.

Mr. McKelvey: Its (18) eighteen feet isn’t it?

Ms. Drake: Yeah.

Mr. McKelvey: Its (18) eighteen feet.

Ms. Drake: Okay. It just doesn’t show where the…where it changes from (24) twenty-four to (18) eighteen.

Mr. Cappello: It would be right where the match line is.

Ms. Drake: Okay, and I’m just saying so you don’t need a variance for the whole…well the…whether either way, whether the (24) twenty-four on the north part there…going north could be (25) twenty-five foot...?

Mr. Cappello: Oh, a…

Ms. Drake: So that a portion of it is, yeah, that part right in there could be (25) twenty-five foot so that part of it is meeting Code.

Mr. Cappello: Yeah, I’m not sure if that’s considered the access road or just the, you know, the interior but I…I’ll…I’ll…ask that I don’t know if anybody frankly ever even caught that but I don’t think that would be a problem.

Ms. Drake: It didn’t seem like it would be.

Chairperson Cardone: Jerry?

Mr. Canfield: Ms. Drake’s a…concerns, the transition takes place in the turn…

Ms. Drake: In the turn, that’s what I was asking…

Mr. Canfield: …if you scale it the turn is (24) twenty-four but as it comes out the turn it’s restricted to the (18) eighteen.

Ms. Drake: Okay so it is in the turn then?

Mr. Canfield: It’s not showing that position; typically we would see that…

Ms. Drake: Right.

Mr. Canfield: …but if you scale it out that’s where they’re losing it

Ms. Drake: Okay, in the turn that’s what I thought. Okay, thank you Jerry.

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

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cappello: Thank you very much. I have to leave to go to another meeting, does the Board…

Chairperson Cardone: Okay.

Mr. Cappello: …allow me to call tomorrow?

Chairperson Cardone: Sure.

Mr. Cappello: Thank you very much.

 (Time Noted – 7:15 PM)

ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:55 PM)

GAS DEVELOPMENT LEASE, LLC. 1413 ROUTE 300, NBGH

 (60-3-40.2) I / B ZONE

Applicant is seeking an area variance for an exit driveway shall have an unrestricted width of not less than 25 ft. to build a gasoline station and a tire service business. (Previous variances granted 6-28-12)

Chairperson Cardone: The Board is resuming its regular meeting. On the first application Gas Development, 1413 Route 300, seeking an area variance for an exit driveway. This is an Unlisted Action under SEQRA.

Ms. Drake: I’ll make a motion to…

Chairperson Cardone: Negative Dec.

Ms. Drake: …for a Negative Dec. Thank you.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, is there any discussion on this application?

Ms. Drake: When they were here before for their other variances we had suggested and liked the idea of putting an access road to the back of the property and I’m actually happy to see that they’re doing that so I’ll make a motion to approve the application.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:57 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 7:15 PM)

WILLIAM A. CARPENTER 27 DECKER ROAD, WALLKILL

 (2-2-22.31) R / R ZONE

Applicant is seeking an area variance for no such accessory building shall project closer to the fronting street than the front of the main building to keep a prior built accessory structure (shed).

Chairperson Cardone: Our next applicant William A. Carpenter

Ms. Gennarelli: This applicant sent out twenty-three registered letters, twenty were returned. All the mailings and publications are in order.

Chairperson Cardone: And just for the record would you please state your name.

(Inaudible)

Ms. Gennarelli: If you could tilt that (mic) up towards you?

Mr. Carpenter: How’s that? Is it working?

Mr. Donovan: No.

Mr. Manley: No.

Ms. Gennarelli: It’s not picking up. I don’t know what’s going on with the microphones.

Mr. Donovan: It’s too cold.

(Inaudible)

Mr. Maher: Not yet.

Chairperson Cardone: No.

(Inaudible)

Mr. Carpenter: Can you hear me now?

Chairperson Cardone: Yes, that’s good.

Mr. Carpenter: My name is William Carpenter. I am seeking an area variance for a shed, an outdoor shed that I have that was a pre-built shed. I had it installed on my property towards the front of my house near Decker Road a number of years and I understand now that it’s a Violation. I didn’t know at the time so I’m seeking a variance to allow the shed to stay. I had a little bit of a handicap, a disability handicap and I could not reach the shed that I have in the rear of my property. If you can see there is a shed to the rear…

Chairperson Cardone: I noticed that, yes.

Mr. Carpenter: …okay I had a…I used that for years until I had a a stroke…a…I wasn’t able to get back there in the wintertime especially so I had the shed installed near the street and it’s an area where I can pull in with my car and get to my tools and stuff like that, I have a small snow blower and now that I realize it is a Violation I’m asking for a variance to leave the shed and I’ve put in some photographs and I keep it neat and clean. I’d like to be able to have that stay there.

Mr. McKelvey: You didn’t have a Permit when you put it in?

Mr. Carpenter: No, I did not.

Chairperson Cardone: Do we have questions from the Board?

Ms. Drake: Mr. Canfield, Jerry, Mr. Canfield is there anything you would need to inspect on that? So you would handle whatever inspections that need to be done?

(Inaudible)

Ms. Gennarelli: Mr. Canfield said yes.

(Inaudible)

Chairperson Cardone: And I’ll read the report from the Orange County Department of Planning, which is Local Determination. Any other questions from the Board? Any questions or comments from the public?

(No response)

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted – 7:19 PM)

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ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:57 PM)

WILLIAM A. CARPENTER 27 DECKER ROAD, WALLKILL

 (2-2-22.31) R / R ZONE

Applicant is seeking an area variance for no such accessory building shall project closer to the fronting street than the front of the main building to keep a prior built accessory structure (shed).

Chairperson Cardone: On the application of William A. Carpenter at 27 Decker Road, seeking an area variance shed in a front yard. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: He keeps the shed looking nice. There isn’t too many other places on his property to make use of it. I think it’s a special case for why he needs to have it there, his health reasons and so forth. I'll make a motion to approve the application.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:58 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 7:19 PM)

JOHN LEDWITH 28 TENBROUCK LANE, NBGH

 (51-5-41) R-1 ZONE

Applicant is seeking area variances for the rear yard setback and for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to raise the entire roof and build a rear deck on the residence.

Chairperson Cardone: Our next applicant John Ledwith.

Ms. Gennarelli: This applicant sent out twenty registered letters, eighteen were returned. All mailings and publications are in order. Thank you.

Chairperson Cardone: If you would state your name for the record and your request.

Mr. Ledwith: John Ledwith requesting an area variance a…for raising the roof on an existing structure, entirely within the existing footprint of the building, and also a 3 x 11 deck on rear of the structure. The reason for the request is that part of the structure only has a (5) five foot ceiling on the second floor so we’re raising it approximately (3) three feet to give it (8) eight foot ceiling a…for the entire second floor. We’re also enlarging a small section of the roof a…to make for a more adequate floor plan on the second floor.

Chairperson Cardone: It looks like it has been vacant for a while.

Mr. Ledwith: Approximately ten years the building has been vacant and prior to that it really might not have been maintained too well.

Chairperson Cardone: Do we have any questions from the Board? Okay, I have a letter here I guess this was received…well I just received it anyway, from South Cove Resident’s Association.

I am president of the South Cove Resident’s Association that the above referenced property is part of as well as the adjoining property owner to the west. We spend our winters in Florida and will not be able to attend in person. Mr. Ledwith has been in contact with us throughout the entire purchase of the property and has discussed his plans of renovation to insure compatibility with the association’s recorded by-laws that the property is subject to. Additionally when we came to the lake for the Christmas holiday, Mr. Ledwith came to our home and reviewed the request in front of your Board for variance. The drawings that…the drawing that has been left with me is from Pietrazak & Pfau, Engineering and Surveying. The raising entire roof does not impact our views in any direction and remains in conformity with the neighborhood. The addition of the (3 x 11) three by eleven rear deck is no more than a second floor balcony and does not impact any view from any direction. Most important to our association is the fact that this property has been neglected for well over (10) ten years and left with the landscape turning to weeds, bats living in the house to the degree that at dusk we could not sit outside and bringing down the value of our properties in the community. The entry to our individual homes is from a private entry from Lakeside Road and anyone visiting could and on occasion have questioned the way we live in our community. Mr. Ledwith in my opinion has conducted himself in a professional manner. We are very pleased that he has elected to be a member of our community. Towards that end we recommend the Board approve the request in front of them. All of this has been discussed with Greg Langer, president of the Orange Lake Civic Association. Sincerely Julius (Jay) Coppola

Mr. McKelvey: I think it will be a big improvement of the property.

Mr. Donovan: If I could just ask a question? I see from the request is for a rear yard setback of (2.9) two point nine feet as opposed to the requirement of (40) forty feet. I just want to be clear, make sure I’m clear in my mind. The existing rear yard setback is at (5.8) five point eight feet?

Mr. Ledwith: Yes, we’ve showed it on the plan its (5.8) five point eight feet.

Mr. Donovan: And it…and it’s the second story balcony…?

Mr. Ledwith: Correct.

Mr. Donovan: …deck that’s going to go that extra (3) three feet?

Mr. Ledwith: Yes.

Mr. Donovan: So…so it’s not as if this is a conforming structure to begin with?

Mr. Ledwith: Correct.

Mr. Donovan: Okay and could you characterize this in relationship to Orange Lake with regard to other homes in the community? Is this similar or is it different to be this close to the lake?

Mr. Ledwith: Well I can tell you that the house a…opposite Coppola’s, they have a deck that actually overhangs the lake and I’m not as familiar with the other properties being a new resident there.

Mr. Donovan: Any idea how old the house is?

Mr. Ledwith: A…my home?

Mr. Donovan: This, yeah.

Mr. Ledwith: No I don’t. I’ve witnessed some of the framing members inside. It would not surprise me if the structure was over (70) seventy years old.

Mr. Donovan: So before…reasonably Jerry it was built before there was any zoning in the Town of Newburgh?

Mr. Mattina: Yes.

Mr. Donovan: Thank you.

Mr. Maher: Hey Jerry, one question. On the a…on the way the plans are drawn out, it states the rear deck is (3 x 11) three by eleven and if you look at the a…one elevation it appears to be larger than (3) three foot. Is that a (3) three foot extension on the…is there the existing deck or did you say…is it an error on the plans or…? So let me clarify if it is not.

Mr. Ledwith: I can if you would? I was not aware as you may see in the site plan there is considerably more property there than (5’8) five foot eight and I was not aware that I only own (5.8) five point eight feet and there exact…there may be closer to fifteen feet behind the house so I had originally requested a variance a….that you could not grant me because I was requesting more property than what was there.

Mr. Maher: Okay, so I’m assuming then the deck was…was shrunk to (3 x 11) three by eleven?

Mr. Ledwith: Yes, the deck was shrunk to (3 x 11) three by eleven.

Mr. Maher: Okay, so the elevation doesn’t depict actually…?

Mr. Ledwith: Correct.

Mr. Maher: Okay.

Mr. Ledwith: Yeah, the…the survey was not in accordance with my variance request.

Mr. Maher: Okay.

Mr. Mattina: Yeah, that’s correct. After the original plan review the original deck was beyond the property line so he has shrunk back to (3 x 11) three by eleven.

Mr. Maher: And one other quick question. Is there a first floor deck also going to be constructed?

Mr. Ledwith: I do need at least a set of stairs a…but we will not exceed the (3) three feet beyond the boundary of the property.

Mr. Maher: Okay.

Mr. Mattina: Yeah, the stairs would be exempt anyway so I really didn’t take that into consideration.

Mr. Maher: Well again, in the elevation it shows a rear…a deck on the bottom so I wasn’t sure if they were going to construct one or not.

Mr. Ledwith: The…those elevations will…will be changed on future submittals.

Mr. Maher: Okay, thank you.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public? Yes, could you please step to the microphone and identify yourself for the record?

Mr. Langer: (Inaudible)

Ms. Gennarelli: Greg, can you take that microphone off? That’s not picking up at all. I know it’s shorting. You can just take it right off of there, unless you want to read something…

Mr. Langer: Is that better?

Ms. Gennarelli: Now it is. Thank you. We’re recording.

Chairperson Cardone: Yes.

Mr. Langer: Greg Langer, president of the Orange Lake Civic Association, 281 Lakeside Road. A…we have reviewed these plans and I know that you Boards always are confused as to what’s the front and the back of a property, to us the front of the property faces the lake. You…you never think that but a…you know, his plans are fine, you know, Jay Coppola has reviewed ‘em, we’ve reviewed ‘em, brought them at our board of director’s meeting and we’re happy to see this eye-sore a…renovated and a…improved. So we’re all in favor of this and that’s what I have.

Chairperson Cardone: Thank you.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Ms. Gennarelli: Thank you.

 (Time Noted – 7:28 PM)

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ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:58 PM)

JOHN LEDWITH 28 TENBROUCK LANE, NBGH

 (51-5-41) R-1 ZONE

Applicant is seeking area variances for the rear yard setback and for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to raise the entire roof and build a rear deck on the residence.

Chairperson Cardone: On the application of John Ledwith at 28 Tenbrouck Lane, seeking area variances for the rear yard setback and increasing the degree of non-conformity of one side yard setback (and the combined side yards setback) to raise the entire roof and build a rear deck on the residence.

Mr. McKelvey: I think the since association got involved and the a…planned everything there and it’s going to be an improvement of the property. I’ll make a motion we approve.

Chairperson Cardone: Okay. This is a Type II Action under SEQRA. We have a motion, do we have a second?

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:59 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 7:28 PM)

FRANCESCO RIZZO 522 UPPER AVENUE, NBGH

 (37-3-56) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to keep the existing rear deck (has two front yards).

Chairperson Cardone: Our next applicant Francesco Rizzo.

Ms. Gennarelli: This applicant sent out thirty-four registered letters, twenty-six were returned. All the mailings and publications are in order.

Chairperson Cardone: And the record identify yourself and state your request.

Mr. Rizzo: Hi, my name is Carmine Rizzo. I’m Francesco’s son and was asked to help him in this matter. They bought the house, they being my mother and father bought the house and a…twenty-one years ago and at that time, they didn’t or they weren’t advised that the deck that was on the back of the house did not have a…a C.O. on it and so when we found out about it recently because of his health he has to live with me now so a…he’s in the process of trying to sell the house so that’s how we found out that there was a problem. So, the deck was there when they bought they house so they really didn’t know that the…it wasn’t or it needed a variance so for that reason we would be asking for a variance for the existing deck that’s on the back of the house. It doesn’t stick out any further than the house. It’s directly behind the house. I think it’s (10) ten feet shy of the required (40) forty feet from the side yard…

Chairperson Cardone: If I remember correctly, you’re on a corner.

Mr. Rizzo: Yes, yes and…yes that’s correct.

Chairperson Cardone: Okay, do we have any questions from the Board? Any questions or comments from the public?

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

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted – 7:30 PM)

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ZBA MEETING – JANUARY 24, 2013 (Resumption for decision: 8:59 PM)

FRANCESCO RIZZO 522 UPPER AVENUE, NBGH

 (37-3-56) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to keep the existing rear deck (has two front yards).

Chairperson Cardone: On the application of Francesco Rizzo at 522 Upper Avenue, seeking an area variance for increasing the degree of non-conformity of the front yard setback to keep the existing rear deck. This has two front yards. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: Well I mean it’s been there for quite some time that residents around it haven’t really objected to it. It really is in character with the neighborhood. I don’t really see a big issue with it.

Chairperson Cardone: Do we have a…

Mr. Maher: I’ll make…

Chairperson Cardone: …I was going to ask if we had a motion approval.

Mr. Maher: I’ll make a motion for approval.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:00 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 7:31PM)

ZEF GJURASHAJ 34 PLANK ROAD, NBGH

 (84-2-1.1) B ZONE

Applicant is seeking area variances for the minimum lot area, the front yard setback (Stone Street), the front yard setback (Plank Road), the side yard setback, the minimum lot width and the minimum lot depth to convert an existing residence into an 80-seat restaurant.

Chairperson Cardone: Okay, our next applicant Zef Gjurashaj and I hope I pronounced it correctly.

Ms. Gennarelli: This applicant sent out a total of twenty-five registered letters to correct the error, registered letters, twenty-one were returned. The mailings and publications are in order.

(Inaudible)

Chairperson Cardone: We don’t hear you.

Ms. Gennarelli: We don’t hear you at all.

Mr. Raab: For the record, my name is Jim Raab; I’m a planning consultant with Talcott Engineering. We represent Zef and Valon and Vaton Steakhouse a…for this application before the a…Zoning Board of Appeals. We’re here tonight for (6) six area variances which include two front yards, the lot width, lot depth, the a…the lot area. This parcel is located on the corner of Stone Street and North Plank…what used to be North Plank Road but is referred to as Plank Road now. And a…what we propose to do is convert a single family residence into an (80) eighty seat of full service restaurant. A…and that is what’s caused the a…the need for the variances. We do not intend to expand this restaurant externally at all. The existing building will be renovated just as is. So the variances we’re requesting already exist. We’re not asking for anything…these are the setbacks that are at the lot right now. If this was considered a a eating and drinking establishment versus a full service restaurant really pertains more to the chain restaurants a…you wouldn’t need half these variances so a…basically what we have here is that we have no ability to expand either to the north or to the west as we have contacted or have been in contact with both the McCulloms and with a…a…250 Lake Street Properties which own the a…former Jo-Ann Fabrics business…building. But we do the right to park on the Jo-Ann Fabric property as per how our deed reads and a...we will exercise that and we have also notified 250 Lake Street Properties that we are going to do that. And they have no problem with it because we are going to improve their parking lot before they do so…we are in contact with their engineers and we will be…if this goes forward we’ll be working out any ifs, ands, or buts as far as the Stone Street access a…from the back of Jo-Anns a…and into our property. What we propose is a (20) twenty a…car parking lot behind the restaurant and then (2) two cars on that (2) two car parking just off the Stone Street. And this will probably…this may change but as of right now we’re trying to get as many parking spaces as we can get so that we can facilitate an (80) eight seat restaurant. There is going to be no physical change here other than, of course, the parking lot in the back which this is so flat, the old Augustino house a…it was flat as a pancake back here anyway so it’s really not a whole physical change. We’re not doing a lot of grading other than the (24) twenty-four foot access that is going to come in from Stone Street.

Chairperson Cardone: And this is dependent upon a connection to the Stone Street sewer district.

Mr. Raab: That’s correct. Okay? We wouldn’t a…we can go ahead if a…we’ve already got a a…we already spoken with Jim Osbourne. And Jim Osbourne says if by some chance the restaurant is ready before the sewer…the sewer is put in…okay? We can go ahead and put the manhole and the connection to the line on this end but we are going to hook into the sewer. There is no…no holding tanks, no, no, no stop gap measures here. We won’t open this restaurant without the…without having the sewer hooked up so one way or the other, either the sewer is going to be there which construction is supposed to start April 1st a…that was the last thing that Jim Osbourne told us. Okay? And if not, for some un…some you know act of God or something, it’s not there we will have permission to put as much line, the manhole and the connection to the manhole across the street. And I have spoken with Craig Marti from the…the City engineer’s office about that also. He has no problem with that.

Mr. McKelvey: There is this Town water also, right?

Mr. Raab: That’s correct. And we will be putting in a new Town…a new water line because this building will be fully sprinklered.

Chairperson Cardone: I’d like to read the report from the Orange County Department of Planning; in case there is anything you’d like to respond to. Orange County Department of Planning is in receipt of the referral for the above referenced project. Based upon our review of the submitted materials, our office has found no evidence that significant inter-municipal or county-wide impacts would result from its approval. The proposed action is in conformity with the existing surrounding land uses. Our office will have some comments related to the Site Plan, yet we’ll reserve those for when the application is referred by the planning board in accordance with the GML 239. County Planning recommends that the Board make a decision only after weighing the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood and/or community. And the County recommendation is Local Determination.

Mr. Raab: I…I can briefly touch on that and the fact that there will be no real impact to the neighborhood as far as a…cause one, the…the drainage there’s so little increase in the impervious surface on this that we won’t even have to do a full drainage…drainage report for this. This was told to us by Pat Hines when we were before the planning board.

Chairperson Cardone: Do you know if there will be a Public Hearing a…at the time that it’s before the Planning Board?

Mr. Raab: Absolutely, absolutely…I can’t see the planning board waiving a Public Hearing.

Mr. Donovan: Well, just to be clear, we can’t…you can’t say that with any…

Mr. Raab: I can’t say that.

Mr. Donovan: …it’s up to the planning board. The planning board has…

Mr. Raab: The planning board, yes.

Mr. Donovan: …the right to waive if they want.

Mr. Raab: That’s correct.

Mr. Donovan: So…

Mr. Raab: That’s correct.

Mr. Donovan: …that’s discretionary with the planning board.

Mr. Raab: A…I would just like to point out. I’m going to flip the board for a minute here…that all the property surrounding us suffer the same need for var…you know, the setbacks, existing conditions is that the former Finkelstein & Partners building, Beebs or the North Plank Road Tavern, Jo-Ann Fabrics is right up against their back line and also the Sunoco station. And as I mentioned before we did…we had contacted a…Mr. McCullom and they’re both…the dad and…the dad and son are here tonight. And we had contacted 250 Lake Street Properties who said they had no problem with us exercising our right to park on their property but they’re not…they’re not going to sell us any. So, that’s…

Chairperson Cardone: Okay. Do we have any questions from the Board?

Ms. Drake: I have a question. Will the traffic flow go into the parking lot for JoAnn Fabrics and back out through your own property or will they be…?

Mr. Raab: No…no, let me flip it back around…(turning the exhibit) We go in this way and then we have…we have rights to go out that way and these…(inaudible) spaces can be accessed from the back part of Jo-Ann’s Fabrics on Stone Street. These here will be…most likely come in and out, come in and out here but they could leave and go out that way also.

Ms. Drake: Which is difficult to get out if you’re going to make a left hand turn, out of the Jo-Ann Fabric’s area so therefore they could still come out…

Mr. Raab: They could still come out and go this way; they can go out this way…

Ms. Drake: Oh, okay. Oh okay.

Mr. Raab: All right. That’s one of the reasons why we have them going one-way this way.

Ms. Drake: So they’re not coming out onto 9W at all?

Mr. Raab: No, no we’re not allowed to do that.

Ms. Drake: Okay, that’s what I was trying to figure out.

Mr. Raab: We don’t have…we don’t have rights to do that. We’re not saying that it’s not going to get done and 250 Lake Street Properties has acknowledged that they’re not in support of that. Okay? So, they…they have no problem with us exercising our right to use this way but they would have a problem with us...these parking spaces going that way. Now, they know it’s going to hard to prevent it but they do not want that to happen.

Mr. Donovan: Do you have any idea when and how the lot was created?

Mr. Raab: When it hap…when this evolved?

Mr. Donovan: Yeah.

Mr. Raab: This lot was created a…well it was created from the a…let me see, I’m going to go back here…it’s the a… Ramsdell property, the Ramsdell estate it was sold to the Augustinos. Both pieces, the Jo-Ann Fabrics parcel and this were on the same piece of property. Okay? And they were sold to the Augustinos from the Ramsdell estate a…that’s how…that’s how this parcel…and then this parcel…

Mr. Donovan: Was it by a sub-division?

Mr. Raab: No.

Mr. Donovan: Okay and any idea how long? My question is whether or not, since we’re looking at it as a non-conforming lot relative to this use, was it a conforming lot when it was created?

Mr. Raab: No. I…oh…let me…let me take that back Dave. A…it’s hard to say because I really don’t remember what the zoning was here when the…when the lot was created a…but it was done by just throwing a lot…putting a lot line in…it was done. I don’t think it was done legally but I…I can’t say. I can’t say.

Mr. Donovan: That’s not really the answer I was looking for.

Mr. Raab: I…I read all the deeds that go with this because of the deed…the need to research the parking issue and I can tell you this, is that the way I saw it is is that they just sold off the Jo-Ann Fabric parcel. Okay? That’s…that’s the way…that’s the way it happened is they sold that to Finkelstein…a…Finkelstein & Partners. Okay? Which really isn’t Finkelstein & Partners, its Finkelstein, Levine, Gittelsohn & Tetenbaum a…those five…those five or four…four members bought this JoAnn Fabric building from a…actually from Augustino and the bank. And the bank was ready to foreclose if I remember correctly. I happen to know Pat Augustino very well. I knew their family very well. We went to (inaudible) together so...

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

(Inaudible)

Chairperson Cardone: Okay, could you please…?

(Inaudible)

Chairperson Cardone: I think that mic is working now so speak directly into the mic and...

Mr. McCullom Sr.: (inaudible) don’t hear well.

Chairperson Cardone: Okay.

Mr. McCullom Sr.: Okay thank you.

Chairperson Cardone: Just identify yourself for the record.

Mr. McCullom Sr.: Bernard McCullom, I own the property next to Augustino’s property that this fellow was speaking about. A…we’ve had it since 1915 but there was no dwelling on it. A…there was a few things I wanted to ask. The property that this man is talking about is a very small piece of property. Mine is also. But there is no sewage area…sewage disposal in that area and from what I read he’s talking about an (80) eighty person restaurant. A…where does the sewage go a…?

Chairperson Cardone: That was the question and probably you hadn’t heard me that I asked him before and there…there is a proposal for a sewer line to go in here. It’s supposed to happen in 2013. I’m not sure exactly when and I asked him that question before. And he said that they have assured him that that line is going in.

Mr. McCullom Sr.: The sewage?

Mr. McKelvey: Yes.

Chairperson Cardone: Yes.

Mr. McCullom Sr.: When is this going to happen?

Mr. McKelvey: This year.

Mr. McCullom Sr.: But it isn’t yet is it?

Chairperson Cardone: No it is not yet.

Mr. McCullom Sr.: There’s no sewage. I…I live next door to it and I know there isn’t anything. We’ve had the property since 1915.

Chairperson Cardone: Right.

Mr. McCullom Sr.: It’s a very small piece of property that he’s speaking about. I don’t know how they can build a restaurant of (80) eighty capacity. That of course, that’s my opinion but a…I do, the a…sewage problem when…whenever it’s going to come due, my question would be answered.

Chairperson Cardone: And I would think that it would not be able to open unless they were connected to that. I’m sure that that’s what would happen.

Mr. McCullom Sr.: Well for an (80) eighty person restaurant a…it’s if…

Chairperson Cardone: Right.

Mr. McCullom Sr.: …that would be. It’s going to be sewage disposal of some kind or you’re going to have a mess. You know…

Chairperson Cardone: Right.

Mr. McCullom Sr.: …it’s not like a…(2) two people living in a house…

Chairperson Cardone: Right. Exactly.

Mr. McCullom Sr.: …where you could get by with a septic tank. But that concerns me…

Chairperson Cardone: Right.

Mr. McCullom Sr.: …and it also concerns me in the size of property they’re proposing to put this restaurant, it has no entrance on North Plank Road. Stone Street is not much more than a lane in that area…

Chairperson Cardone: Right.

Mr. McCullom Sr.: …as you go east or west Stone doesn’t even exist. I question where any parking is going to place, you know, it’s…it’s kind of you’re…

Chairperson Cardone: Well that’s why I asked the question about a Public Hearing a…when it’s at the planning board level because those are things that the planning board will address. They will address the parking and I think that it is very important that there is a Public Hearing so that people in the area can have input into those issues.

Mr. McCullom Sr.: I don’t know if they’re…it wouldn’t greatly affect me as owning the property next door…

Chairperson Cardone: Right.

Mr. McCullum Sr.: …but it would affect the people that live in the area.

Chairperson Cardone: Yes.

Mr. McCullum Sr.: There things much my concern and…and realizing what they’re trying to put there, I say I know the size of the land is and he’s planning on putting a lot of restaurant in a very, very small area.

Chairperson Cardone: Okay.

Mr. McCullum Sr.: I don’t know what else to say.

Chairperson Cardone: Okay, well thank you for your input.

Mr. McCullum Sr.: Well thank you. I appreciate it.

Chairperson Cardone: You can give it (the mic) back to him to see if there’s any…

Mr. Raab: Just to…just to point out we have (20) twenty cars for (80) eighty. That’s what’s required for (80) eighty seats. A…

Chairperson Cardone: Did you say (20) twenty cars?

Mr. Raab: We have (20) twenty cars. We have (20) twenty cars back here, we also have (2) two over here. Like I said, there…there…

Chairperson Cardone: But you have employees also.

Mr. Raab: Huh, yes. Yeah, (22) twenty-two total, right now but we have (20) twenty right in the rear of the back…rear of the rest…restaurant…a…restaurant is proposed. And of course just to reiterate that the…the district has been formed. Okay? And…and the Town is compelled to do this at or from the EPA edict (inaudible).

Mr. McCullom Jr.: Excuse me.

Chairperson Cardone: Yes?

Mr. McCullom Jr.: Can I ask a question on behalf of my father?

Chairperson Cardone: Yes, take the microphone though because it has to be recorded.

Mr. McCullom Jr.: (Inaudible) Thank you,

Chairperson Cardone: Just identify yourself for the record.

Mr. McCullom Jr.: I’m Bernard McCullom as well.

Chairperson Cardone: Okay.

Mr. McCullom Jr.: So you’ve got both.

Chairperson Cardone: Right.

Mr. McCullom Jr.: We haven’t seen the site plan.

Chairperson Cardone: Okay.

Mr. McCullom Jr.: Okay so it’s kind of a surprise to us to see it. All right, and as my father said we don’t…it’s not that we disagree with it we’re just curious about some this so in addition to his comments he also had a question about the actual traffic flow because the entrance to Jo-Ann Fabrics in the back is no longer an access or egress into Stone Street.

Mr. Raab: Why would that be?

Mr. McCullom Jr.: I noticed there’s a gate in front of it.

Mr. Raab: The gates gonna…

Ms. Gennarelli: Excuse me. Excuse me.

Chairperson Cardone: You need to…

Ms. Gennarelli: You have to use the microphone.

Mr. Raab: I’m sorry.

Chairperson Cardone: You have to use the mic.

Ms. Gennarelli: Sorry.

Mr. Raab: A…the gate will be gone, that’s gonna…right now it has to stay up because of what’s been going on, they’re dumping behind it. Okay? A…and a…a…that’s property manager, that’s 250 Lake Street Properties a…their property manager assures me we will have a key in a month for the gate. Okay?

Chairperson Cardone: Okay. Someone in the back wants to…turn around.

Mr. Raab: This is the applicant, Zef.

Chairperson Cardone: Okay just identify yourself for the record.

Mr. Gjurashaj: My name is Zef, and for the gate he says we pull together with the…the guy who bought the (inaudible)…250 because the garbage is inside and that reason we put the gate (inaudible)

Chairperson Cardone: All right. Thank you.

Mr. Gjurashaj: Thank you.

Chairperson Cardone: So that gate will not be there.

Mr. McCullom Jr.: Good, understood. My last question is…

Ms. Gennarelli: Can you give him back the microphone?

Chairperson Cardone: Right.

Ms. Gennarelli: I’m sorry.

Mr. McCullom Jr.: So the last question of course it would be, with the parking situation the way that it is you’re apparently leasing or getting a…a variance from Ted?

Mr. Raab: No.

Ms. Drake: Use the microphone.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Microphone. Unfortunately only one microphone is working today.

Mr. Raab: This is how, when this property was busted off, when they sold Jo-Ann Fabrics to Finkelstein & Partners… Okay? …the Augustinos reserved parking along that parking lot. Along this property line, it…it says the property line not the parking lot so along this property line we’re allowed to park from one corner of the property to the other so that…that’s what we’re exercising. We have a…a what is it…six parking spaces that would be in…on their property not specifically on the parking lot cause we’re gonna revise it the way we want it. Okay? And we had…we have gone over this with their facil…facilities manager.

Mr. McCullom Sr.: There was not always a right-of- way Joe Augustino had the property and built everything there but there was a right-of-way from the back of that house out to 9W but that’s not a business area. That was a private piece that when Augustino passed away that ceased to be.

Mr. Raab: No, it did not.

Mr. McCullom Sr.: It didn’t? Peter just told me that who was a…he lived there.

Mr. Raab: (Inaudible)…runs with the property, we submitted the deed to…to the Zoning Board, you’re free to look at the deed that was submitted it’s a…spelled out pretty clearly that we have rights…the property has rights. It didn’t run just Augustino, the property.

Mr. McCullom Sr.: Where does the right-of-way go to?

Mr. Raab: Out to Stone Street. We do not have the right to (inaudible)

Mr. McCullom Sr.: Inaudible.

Mr. Raab: …that…that…I don’t know, it was never to 9W.

Mr. McCullom Sr.: Well the building was an A&P building …and having lived there for so long I’m familiar with the area.

Mr. McCullom Jr.: So Jim, just to be clear, you said that the parking spot in back of the property, the proposed restaurant, are deeded to that property?

Mr. Raab: Yes.

Mr. McCullom Jr.: Okay.

Mr. Raab: I can give you and your dad a copy of this.

Mr. McKelvey: Hey Jim, if he wants to look at the parking it’s here on the drawing.

Mr. Raab: I’ll even give him…I’ll even give you a copy here…hold on. (Inaudible) The deeds in there.

Chairperson Cardone: Do we have any other…? Yes, please identify yourself for the record.

Ms. Pearl: My name is Christine Pearl and I live at 12 West Stone Street which is…if you come out of the back there…

Mr. Raab: Inaudible.

Ms. Pearl: It’s the first house so I’m in very…very close proximity to where he’s describing where the traffic will come out on to Stone Street which is a residential area. It’s not…you know, it seems that it’s all great that it’s not coming out on 9W but it ain’t all great that it’s coming out on to Stone Street. They’re saying parking for (20) twenty cars that’s (20) twenty cars at one time but if a restaurant is successful then there’s constant traffic through the whole evening but that’s not even the first thing. I’m very interested because now I don’t live in that home but my children do. So I’m very interested with the health and well-being of everybody on Stone Street. And I know it’s been said before by the two gentlemen previous and by what you said in terms of the septic system. The sewer, I’ve been promised since 2011 that that sewer system is going in so even though it’s in writing on my little letter here that it’s going in by the end of 2013, I don’t believe it just yet. So until that occurs I don’t understand how the Town can approve something like this along with on the other side, the north Carpenter entrance to Stone Street that (6) six unit apartment that has gone in and is in the process of being built without the…without the sewer line being put in. The infrastructure, well first of all, you said in the beginning that everybody did a site visit.

Chairperson Cardone: Yes.

Ms. Pearl: Did everybody do a site visit of that entire area? Because Stone Street is falling apart, the infrastructure of the road is shot it’s not wide enough, it’s not wide enough for those two additional cars that you say go on...if North Plank Road Tavern is open, which it is, people park along that side if you add two cars on the other side how is a fire engine going to get in if there is a fire on Stone Street?

Mr. Raab: We’re not parking on the street…

Ms. Gennarelli: I’m sorry, walk over to the mic or talk into the mic at the end.

Mr. Raab: Just to make that…that straight, we are not parking on what is now Stone Street. This is…Stone Street is way out here. Okay? Our parking lot, our parking is off Stone Street on our property. Okay? Will not be parked on the side of the road…we’re not…we’re not trying to use any parking on the side of the road.

Chairperson Cardone: She is referring to the (2) two spots that you mentioned before. Where are those (2) two spots?

Mr. Raab: They are located right here. Okay? The edge of pavements (inaudible) is out.

Ms. Pearl: The street is already not wide enough as it is and like I said if cars go…are parked there for the North Plank Road Tavern when it’s open which it currently is, it’s already difficult getting by if you have a wide car and there’s cars parked there. So, I…I think that first of all this…this sewer thing has to be resolved first before the Town continues to permit things like this…

Chairperson Cardone: I agree with you on that.

Ms. Pearl: And…and the answer about being able to tie in wherever you just described across the street, well that’s simply not fair to the residents of Stone Street. If you can come in you know, and…and you make this renovation and we have to continue to wait for that sewer project to be completed.

Chairperson Cardone: Okay, that is really an issue that I think is very important to bring to the planning boards attention. There are a lot of…a lot of issues here that they will be looking at and…and one of them is the parking, you know, and certainly traffic flow.

Ms. Pearl: Is it okay for restaurants to exit on to residential streets?

Chairperson Cardone: Well they are in a business zone. They are not in a residential zone.

Ms. Pearl: But the street is residential. The street is residential though and that’s where they’ll…they’ll exit on to Stone Street and the talk was about the gate being closed. I couldn’t be happier that they locked that gate because it stops the thoroughfare and probably every one of us who has lived in the Town of Newburgh for a long time when you come up past old George’s store and that light is backed up well you’re cutting through Stone Street and going down through Jo-Ann’s Fabric if you’re going north. They’ve always done so if...when they closed that gate it’s been wonderful because it has cut off all the thoroughfare that comes through that road. Now if you open up the gate and open the restaurant it starts all over again because yes, they say they won’t go out on to 9W but we all know they do. I’ve owned the home since 1978 and people always do it. I’ve done it myself. I don’t take the left there but if I’m going north I’m going through Jo-Ann’s Fabrics. But the gate is up now and it’s been a beautiful thing, the traffic has decreased and…I think that’s all I have to say.

Chairperson Cardone: Okay.

Ms. Pearl: It has to be dealt with.

Mr. Donovan: If I could now is probably a good time to I think review the jurisdiction of the Zoning Board because the Zoning Board is a Board of kind of limited jurisdiction. Things like traffic, availability of sewer, water, drainage; those are planning board issues in the site plan process. What’s in front of us tonight are a series of area variances essentially because the lot is too small. So we have to determine, we the Zoning Board of Appeals has to engage what the law calls a balancing test. We have to weigh (5) five factors in giving an area variance to determine whether or not we should allow this use which be a restaurant on a lot that doesn’t meet the bulk. It doesn’t meet the front yard setback, the side yard setbacks, lot width and lot depth noting of course that that’s an existing building and a use that is permitted in the B zone. But when we evaluate that we’re charged to look at (5) five factors. We have to weigh whether or not issuing a series of area variances relative to the bulk would create an undesirable change in the neighborhood. We have to also…we would have to analyze which Mr. Raab gave us some information previously this evening, whether or not approving this type of use on this type of lot in this type of building would cause an undesirable change in the neighborhood. Not necessarily would there be an adverse traffic impact. That’s something for the planning board to review in site plan. We also have to take a look at whether or not they can achieve their objective by any other method feasible for them to pursue other than the area variance. We have to take a look at whether or not the variances are substantial. We have to take a look at whether or not granting those variances would create an adverse environmental impact and we also have to look at whether or not the difficulty confronting the applicant is self-created. Then we balance the benefit to the applicant if he gets these variances versus the detriment to the neighborhood. But our charge, if you will, is just with respect to the variances in front of us which is essentially the size of the lot a…and the size of the building on the lot.

Mr. Raab: A…could the a…Zoning Board make a recommendation if they so see fit to the planning board for them to have…have a Public Hearing? Not that that’s in your purview but you could put it in…if…if you choose to grant these variances…could that be part of the…?

Mr. Donovan: Well as I said before we don’t have the authority to a…certainly direct another board and they wouldn’t have the authority to direct us how we should act on the variances.

Mr. Raab: That’s correct.

Mr. Donovan: So, I mean, that’s up to the Board if they want to recommend but I don’t want to mislead anybody to say that if we make that recommendation the planning board is going to follow that recommendation. They don’t have to. They…they evaluate every application that comes before them and they do what they think is in the best interest of the Town of the Newburgh so…

Ms. Drake: Jim, when you’ve been at the planning board has there been any discussion of doing any upgrades to Stone Street or West Stone Street at all?

Mr. Raab: A…in…in my discussions with the Highway Superintendent there…there has been a discussions about doing some improvements to Stone Street in conjunction with a…with the Town when the sewer goes in.

Ms. Drake: Thank you.

Mr. Donovan: It looks to me like you just had one appearance in front of the planning board.

Mr. Raab: That’s right.

Mr. Donovan: Kind of a pro forma, here we are, here’s our plans, send us to the ZBA, we got a bunch of variances before we spent a lot of…

Mr. Raab: That’s correct, yeah.

Mr. Donovan: …money, we want know if we’re going to get those or not? I do see that the a…sewer was discussed and obviously one of the things Pat Hines, the engineering consultant to the planning board indicated that the availability of sewage to this building is going to be a condition of site plan approval. A…I know that you talked about the issue of the…of the shared parking and you have to get those easements to my partner, Mike Donnelly the planning board attorney to review. I don’t know if that’s been done or not. So, I know there’s some open issues in front of the planning board.

Mr. Raab: Yes those easements have been sent…sent to Mike.

Mr. Manley: Jim, I also noticed in the minutes from the planning board meeting there were significant comments from Mr. Canfield concerning the fact that there is going to be probably, if you do receive your approvals, considerable a…reconstruction of the property based on the fact that it doesn’t meet, you know, the Codes for a, you know, a commercial restaurant, sprinkler systems…

Mr. Raab: You’re talking not to the property to the building…

Mr. Manley: …to the building, sprinkler systems a…you know, and potentially ceiling heights may be an issue.

Mr. Raab: We’re aware…we are aware of that and a…we…we…we know we have to completely sprinkle the building. That’s why we’re putting in an entirely new…new water service line.

Mr. Manley: I…I do have an issue with the a…one of the issues that I’m going to have looking at what Mr. Donovan indicated as the balancing test between you know, exactly what the applicant is seeking versus the…you know, the detriment to the neighborhood and the neighbors. One of the big concerns I have are the size of the…the variances. They are, in my opinion, more than…than average. They’re in my opinion they are pretty substantial. From (40) forty thousand square feet down to (14) fourteen. A…it’s quite a bit.

Mr. Raab: A…again I refer to the fact that that, I believe that…that…that the restaurant Code was developed for the restaurant chains which go from anywhere from a (120) hundred twenty to (150) a hundred fifty seats. That’s why they require (40) forty thousand square feet. If…and a…like I said if you take this as just an eating and drinking establishment, which is the way you have to do it for the parking, the…the…most of the variances would go away. And it’s…that is if it was an eating and drinking establishment with (20) twenty cars, with a (20) twenty car parking lot, most of the variances would go away.

Mr. Manley: And I wouldn’t necessarily agree with that in the fact that eating and drinking establishments versus you’re considering this a high class steak restaurant and as the one individual from the audience indicated if it’s a popular restaurant you’re going to have a lot of people there, you know, and a lot of traffic.

Mr. Raab: I…I acknowledge that…

Mr. Manley: So I mean, you can’t it a eating and drinking on one and a high class restaurant on the other. You can’t have it both ways.

Mr. Raab: No, we have…we have the North Plank Tavern right next door I…I…I always considered that a…a high class restaurant. So this existed on Stone Street for a…I don’t know…thirty years…

Chairperson Cardone: And parking is a problem there.

Mr. McKelvey: He’ll have more parking than they have.

Mr. Manley: Have you been over to a…300 here with Longhorn and Chili’s?

Mr. Raab: Oh yeah.

Mr. Manley: Do you ever try getting a parking space over there?

Mr. Raab: You can’t. It’s a chain restaurant. I agree. I agree. I agree.

Chairperson Cardone: Do we have any other comments? Yes.

Mr. McKelvey: Give him the mic, Jim.

Chairperson Cardone: Please identify yourself for the record.

Mr. Massimilian: Yes, my name is…can you hear me? My name is Andy Massimilian I’m at 8 West Stone Street which is actually down below from the subject property. A…I don’t have a problem at all with the applicants, on the a…I think that the character of the neighborhood will not be decreased. Traffic that people have spoken about is pretty much going to enter his establishment not through Stone Street. A…these gentlemen and I don’t know any of these people actually at all. We’ve never met at all so there’s no…they’re not setting me up for this at all but I think it improves the neighborhood quite a bit. They’re obviously investing a ton of money in this project so I think that they’ll…like any private investor they are going to make sure it’s done right. If it is a high end establishment they certainly can manage traffic by reservations. Say it’s a reservation only rather than a walk in establishment that’ll take care of some of the parking problems so…a…I’m for the project again. I don’t know them and I think you should consider the fact that you should go out there and really see that that’s…it…it’s in character of the neighborhood. You’ve got a gas station, you’ve got commercial, the old Finkelstein building, you’ve got the restaurant right across the street...a…there’s really no change in the neighborhood and again I live right behind the West Stone Street.

Chairperson Cardone: Do we have any other questions or comments from the Board? Yes, Mr. Hughes. If you would hand him the microphone please.

Mr. Hughes: Good evening. My name is Hughes, I live in Middlehope. I’d like to clarify some of the things that were put into the record this evening being well aware of the property from being an associate to the Finkelstein group. I see a reference of permission of access over the Jo-Ann parking lot. It was for ingress and egress and there’s no none parking spaces that were attached with it. Mr. McCullom is right. At one time there was another right-of-way in and out of that property. I wasn’t there in 1915. I was there in 1920 so he remembers a little better further back than I do. But there was at one time. How this particular property got into so much of a pickle is when North Plank Road was taken by the State, it chopped off in front of this building. There are some more severe problems here that haven’t been brought up tonight and before it goes to the planning board I’d like make this Board and the Town and the planning board aware of. The lane that is between the (2) two prospective restaurants is a (30) thirty foot lane that’s a leftover from the ramps from the State like Mr. Raab indicated. It’s traditionally parked on both sides of the street, you can’t even get a car down the street let alone a fire truck or a tow truck or an ambulance in any kind of emergency situation. I don’t know the State Law of legitimacy. I think that’s a road by use and not a road by right. I don’t know that it’s a Town road. I don’t know if it’s been accepted. It might be plowed under a back scratching reciprocity agreement between the Town and the neighborhood. I believe that the restaurant on the east side of that lane was the former Toll House for the North Plank Road from I don’t know the late 1700’s or early 1800’s but whether that (30) thirty foot lane has legitimacy to serve any of these properties at all because it used to go behind all of these properties to what is now known as the John’s home. When they chopped up the properties and they chopped up in ‘62 sixty-two the (84) eighty-four entrance and all of that, all of that stuff disappeared. So it’s been a road by use and not by right that I’m aware of for many, many years. I would urge this Board to look at the excerpt that was referred to with liber and pages of that right-of-way because as far as I know it was for ingress and egress only without a numbered, prescription of the number of cars that Mr. Raab references.

Mr. Raab: I…I…that’s correct, it doesn’t have the number of cars. It just said the parking was allowed along the property line between the two parcels.

Mr. Hughes: And while I’m talking, I’m going to take a peek at this because I haven’t seen this but I’ll continue on. My concerns are many. The stuff is running out in the street right now. In 19, or yeah, in 1908 no 2008…I’m dating myself now, in 2008 the Town of Newburgh received a mandate, an edict, a verdict whatever you’d like to call it from the EPA saying, okay you’ve got to do this. Now from 2008 to now is a long period of time and then there’s several different versions of the story the people in the neighborhood have received from the Town Supervisor, the Town engineer and others and it’s like a crap shoot. From 2008 when the EPA finally said, okay we’ve had enough you’re going do this now until now is a long time and I can’t imagine anybody moving forward on this without any real serious connections as I can’t imagine that the building on the other end of that same street was given a Building Permit with nothing to tie it in to. There’s no room where you can put a septic tank. There’s no sewer connection on North Carpenter Avenue. So there’s many serious things here, health, welfare, safety, emergency services on a lane that diminishes as it goes back which used to service the John’s home which is now gated off. I’m an administrator for the Finkelstein group. I know very much about these properties and the Pearls who have lived next door. We’ve had a very good working relationship over many, many years. There’s never been a problem but I don’t agree with the consensus of opinion here that this isn’t going to make a problem. This place is already loaded. If you go down there on a Friday or a Saturday night you can’t get in and out of here. Now I’m not against the project. I not for the project but if you’re going to do something with this thing now is the time to clean up the loaded diaper and get rid of all the stuff that’s here. If the property between the (30) thirty foot lane which diminishes down less than (30) thirty feet were to be processed properly and that the east side of this house that they want to turn into a restaurant had some amenities by the developer to accommodate the need where we won’t have a (30) thirty foot lane with cars on both sides. If you went to the property line and if you were going to give these kinds of variances then built in those variances should be some conditions where they’ll clean up that whole corner of that mess as it exists and can only get worse as it goes along with another (80) eighty seats in there and without those considerations I think it’s foolish to even entertain this on any level. If anybody would like to a…dig in to what the right of way says, the pages and the liber an all that were listed, I know because I spoke to my group and they’re refreshing my memory and saying that it was for ingress and egress only. If they were going to put the parking entirely on their lot here and make an agreement with the Town to do something over here that might be considered but anything shy of that you’re trying to put (10) ten pounds of stuff in a (2) two pound bag. Thank you.

Chairperson Cardone: Mr. Canfield would you know if that is a Town…that is a Town road?

Mr. Canfield: I do not.

Mr. Raab: I can speak on that a…a…Lady Chairman. A…we had researched it with the Town Clerk’s office and it is…there is a minutes that say that the Ely Stone subdivision, all the roads in it were dedicated to the Town. I believe it was in 1917. Now, that’s to include the Lane, I agree with Mr….Mr. Hughes, a…yes, it is only a (30) thirty foot right-of-way but I spoke both the Highway Superintendent and the Town engineer and say it is by use a…a (30) thirty foot right-of-way it is. If the planning board wants us to provide some additional area to widen the road, to help serve our restaurant a…and that’s why I said there’s really only (20) twenty cars because those (2) two cars…we may have to give up those (2) two… (2) two parking spaces to a facilitate widening the road.

Chairperson Cardone: That’s why the issue of a Public Hearing is so important at the planning board level…

Mr. Raab: Correct.

Chairperson Cardone: …because it gives the people in the neighborhood an opportunity to look at many different issues that are not really before us.

Mr. Raab: And any amenities that’ll be added to the…to the site plan as far as landscaping and such which a…we want it to look nice and a…that’s pretty much it. And again, a…if we have to give up those (2) two parking spaces to make that part of Stone Street a little wider so be it.

Mr. Donovan: So let me just ask this question, who…who plows the snow?

Mr. Raab: The Town.

Mr. Donovan: Who fixes the pot holes?

Mr. Hughes: No one.

Mr. Donovan: Oh, okay, don’t ask that question?

Mr. Raab: That was a loaded question.

Mr. Donovan: That was a sore subject? I’m sorry.

Mr. Raab: That wasn’t fair Dave.

(Inaudible)

Chairperson Cardone: We have a comment. Yes? Wherever the mic is yes.

Ms. Pearl: The Town does plow but literally can only make one swipe down the road so if by chance somebody is parked on the street, you know, they’re there upwards from my house and someone is parked on the street and they come by, the end of my driveway could be here and where the snowplow hit here could be here and there’s an extra (8) eight feet that you have to shovel because the Town, you know, the Town has only come in and done the one swipe through there. Also, the potholes…they are fixed when I call and complain, you know, then they’ll come in and fix the holes but it’s just little…little spots here and there.

Mr. Donovan: Okay, okay so…

Chairperson Cardone: Could you point out on this map where your house is? Is it this one right here? Here’s the site, here is Stone Street. Are you right here?

Ms. Pearl: I’m here, the empty lot, all part, I believe these (2) two are all together with Ted’s new place so I’m the first house here.

Chairperson Cardone: Okay.

Mr. Donovan: So just…just to be clear, you’re looking at the tax map. Could you give me…us the number? The lot number?

Ms. Pearl: (2) Two.

Mr. Donovan: Lot number (2) two because it’s not going to show up on the record saying I live here.

Chairperson Cardone: Right.

Ms. Pearl: Okay, I have it written down here.

Mr. Raab: Section 84, block 5…lot 5?

Ms. Gennarelli: (2) Two.

Ms. Pearl: 84-5-2, lot 2, 84-5-2.

Mr. Donovan: Thank you.

Chairperson Cardone: Thank you. Any more comments from the public? Do we have anything else from the Board? Do we have a motion to either close or hold the Public Hearing open?

Mr. Donovan: We have a motion to stay here till it’s warm.

Chairperson Cardone: Right. We’ll be here for a while. Mr. Hughes?

Mr. Hughes: Do you want me to go to the microphone?

Ms. Gennarelli: Please. Thank you.

Mr. Hughes: I want you to understand I’m not for or against the project, number one. My concerns are that (30) thirty foot lane and the problems that exist there have perennially exists there…

Chairperson Cardone: And a chance to remedy it.

Mr. Hughes: …and…and now is the time to clean it up. If you’re going…if you’re going to go and move forward on this project, do it cautiously and carefully but fix that area. It’s a disaster, if a fire truck ever had to get through there in the middle of winter there’d be bodies along West Stone Street. This is no exaggeration. These people have lived there for a long time, there’s another gentleman in the audience said he lived there for a long time, you can’t get down there in the wintertime if there’s a major snow storm. And it doesn’t even have to be a major snow storm. But now is the opportunity to clean this whole mess up. And going back to the 2008 mandate, this is EPA, this is serious, the Town was fined a (1,000,000) million bucks because they didn’t comply and the EPA agreed to allow them to use (900,000) nine hundred thousand dollars to do this project and (2) two others and they only fined them a (100,000) hundred thousand dollars but let them use that (900,000) nine hundred thousand to do the other projects. Where is it? And this needs to be addressed and it needs to be resolved once and for all. I also agree with Mr. Manley. These requests are substantial and the property was as it is, I don’t know if they own the property yet or not. If this gentleman went out and bought it but if he did, he bought it and it was in a wrong zone, I don’t see how you can ever come out of the balancing act and lean in favor of the outcome.

Chairperson Cardone: Well they don’t need a use variance. It’s not in the wrong zone. It is a business zone.

Mr. McKelvey: It’s a B zone.

Mr. Hughes: Yes, no, no I…I understand that but there’s (6) six very substantial requests here and a lot of mess that needs to be cleaned up.

Chairperson Cardone: Okay, anything else from the Board?

Mr. Manley: Just one other question, Jim, you had a…contacted the owners of a…the former Jo-Ann Fabrics and they were not willing to a…relinquish by sale any property…?

Mr. Raab: They have no issue with the parking. A…they…I supplied them with every deed in the chain of title between Augustino and themselves a…what happened was is that their deed didn’t show it. The problem with that is all the previous deeds did. So I gave them a copy of all the previous deeds. And again, there is no number, it just says we’re allowed to park along the property line between the (2) two parcels and that’s all we’re doing.

Mr. Manley: Okay, thank you.

Mr. Hughes: May I?

Chairperson Cardone: Yes. Okay, I think he was first Mr. Hughes.

Mr. Hughes: Sure, go ahead.

Mr. McCullom: Okay, on behalf of my dad again, this brought to mind one last question if you don’t mind answering the question? Assuming Jo-Anns is now developed into a retail site of some sort a…Ted with his motorcycle museums and so on and so forth, there’s several possibilities for that to occur. Is there a defined right of way between the proposed restaurant and the parking for Ted’s that says that this will always remain open as a thoroughfare between both parking lots, or both?

Mr. Raab: A…that’s the type of language they never write into a right of way or any… Okay? A…it says that we have rights to access Stone Street through their property and to park along the property line. It’s very clear. It’s in the deed I have that’s in the package I gave you. So…and it’s also in the deeds, in the chain of title leading up to the purchase of Jo-Ann Fabrics building. The problem was, is there was…there wasn’t any in the deed between John…between FLGT and 250 Lake Street Property. So I gave then copies of the chain.

Mr. Hughes: So, I guess I’ll direct this at the attorney. Is there an appendix narrative description of what’s listed on that deed there on the page or did they just reference that liber and page and leave it to your imagination that that right of way says something.

Mr. Donovan: Well I don’t have anything and I don’t know if it’s germane to the…to the Zoning Board.

Mr. Raab: It’s in…it’s in the deed I put a copy of the deed in the…

Mr. Donovan: Well it’s a reference…I didn’t see…I didn’t see it in my package, Jim.

Mr. Hughes: Jimmy does that clearly spell out…what included in that? Okay so that’s one of my big things here is the fact that is describing that. I’d like to know what’s right.

Mr. Raab: I have no idea. I mean, that’s the big thing...

Mr. Hughes: Are you the owner of the property?

Mr. Raab: Yes, he is.

Mr. Hughes: And you own it in fee already?

Mr. Raab: Yes, he does.

Mr. Hughes: Negotiated deal?

Mr. Raab: That’s correct. I have…my client and the applicant is the owner of the property. He bought it from a…… Diether Fanz. Right? You bought it from Diether Fanz who bought it from the Augustinos.

Mr. Donovan: There was an instrument that was submitted with the application a…I can’t…I can’t tell on the fly though…exactly what it encompasses or what the parties intend.

Mr. Hughes: Could I suggest that we table this event so everybody can become well informed, there’s a mess down there and I think there’s a lot of legal ramifications that could come out of this if we don’t do our homework?

Mr. Donovan: Well I’m not sure honestly what it has to do with the ZBA a…the issues before the ZBA. It certainly has…has issues specifically germane to the issues in front of the planning board. I think that’s why a…the planning board required it be delivered to…to their attorney. I don’t know that it’s germane to the variances in front this Board though.

Ms. Drake: I had a question for our attorney. Can we require the applicant to talk to the Highway Department and come up with some improvements to the road before we would approve the variance or is that strictly a planning board issue?

Mr. Donovan: Well I guess the issue would be how those improvements or what improvements would relate to the variances? If…if Brenda, we’re going to say that a…I don’t know what was there before, was it a house? Residential home?

Chairperson Cardone: Yes, it was.

Mr. Donovan: So now if we put a…a restaurant with parking for (20) twenty additional cars I don’t know what that translates into for trips per day if you’re open lunch and dinner, how many days a week. I don’t know what improvements that…that we would request that would deal specifically with the size of the lot because that’s that’s what we’re looking at. The variances, just to summarize, minimum lot area of (40,000) forty thousand square feet is required, (14,218) fourteen thousand two hundred eighteen is provided because that’s the size of the lot. In terms of the front yard setback (50) fifty feet is required, (32.4) thirty-two point four feet is proposed because that’s the size of the house that’s already there. The front yard setback on Plank Road, the other one is Stone Street, is (50) fifty feet required, (31.3) thirty-one point three proposed. Well proposed because that’s the house that’s already there. The side yard is (15) fifteen, (10.5) ten point five proposed and again this is with respect to a house that’s all…a structure that’s already there. Lot width (150) a hundred and fifty feet as opposed to (100.4) a hundred point four, the lots already in existence. The lot depth is (150) a hundred and fifty feet a…and (141.45) a hundred and forty-one point forty-five is there so I guess I need…back up for a second… You have the ability to impose conditions. The condition has to be…bear some rational relationship to an objective that’s within our jurisdiction and…and if you can tie that together then then we can impose the condition.

Mr. Manley: For…for example, there’s a residential home next door, if the Zoning Board felt that perhaps noise from the restaurant would be detrimental to the neighbor a reasonable condition might be a fence of some sort or screening that would prevent the noise from…

Mr. Donovan: Well if we were talking about a use variance yes, I mean the use is allowed, and it’s also…that’s an issue for site plan a…

Mr. Manley: Well with a smaller area when you have a much…

Mr. Donovan: Okay, that’s a good point.

Mr. Manley: …tighter area…

Mr. Donovan: Yeah, that’s a good point.

Mr. Manley: …the noise may infringe…

Mr. Donovan: With a (14,000) fourteen thousand square foot lot versus (40,000) forty thousand, that’s a good point Jim. Yes, that would be a legitimate condition. Correct.

Mr. Maher: Hey Dave, if in fact there was some discussion about enlarging or…or a…redefining the road area, wouldn’t that someway reduce…or actually increase the variance needed for the side yards?

Chairperson Cardone: Yes.

Mr. Donovan: It could very well if we have a…sure? Actually…I…I…actually I think that’s pretty much a given. Yeah, if they gave it to you, if you…and I guess the other thing is, let’s not be a…unclear of what’s going to happen. If you’re going to offer property for dedication, I mean the Town’s got to decide if they are going to come in and improve it. I mean, I don’t know if the planning board is going to require as a condition that a…the road be widened. I can’t say that.

Mr. Maher: Okay, so the second thing, recently in Winding…on Winding and 32 we had a couple of issues with parking places being on…on public property. If you look at the plans submitted roughly (40) forty percent of the parking places on…on Stone Street are on public property. They’re beyond the property line.

Mr. Donovan: Now Jerry, you were at the…I don’t like to put you on the spot but…did the planning board make any reference, mention of that at all? Is that something that they typically would allow? Because there’s…there’s no referral to us for a parking variance.

Mr. Canfield: My recollection, I believe you…you have a…in your packets, the planning board comments…

Mr. Donovan: Yeah, we do.

Mr. Canfield: The applicant made (1) one appearance before the planning board and it was for conceptual plan a…in nature. There was not a lot of level of detail a…that was provided which typically on a conceptual stage at that point it would not be. I think you hit the nail on the head earlier where the applicant…planning board referred because this was an existing single family dwelling even though at that time it was even not conforming it was known as existing non-conforming. The fact that the applicant proposes to change the use from single family to a restaurant it…the very fact that required it to have a site plan and at that point the project then lost its existing non-conforming protection being that the existing front yard that didn’t comply was permitted. Existing non-conforming means that the property has been that way forever providing that there was no change in the property whether it be in the use or the size. What’s before you now is a change of use; it’s not a use variance because the property is located in a B zone. It’s the last parcel of property in the B zone that extends from 9W easterly, across Stone Street becomes the R zone so it is a permitted use. A restaurant is a permitted use in a B zone. As Dave has explained the issues that are before you are zoning area variances in nature. A…that’s it. The question about Stone Street I don’t know. That’s a Highway Department question…as asked before is a Town road by use? What’s the dedication? I don’t know that. I do know thought that the planning board level they are facilitated with the traffic consultants a…and in the past on many similar applications they have requested traffic reports, traffic analysis to be submitted and they’ll…most of the issues that been raised here are site plan issues. The issue as well as a…we had talked about the sewer line; the proposed sewer line was referenced to the construction of a multi-family residence further east. That was replacement of an existing building. They were granted a Building Permit. They are constructing at their own accord right now. The Building Permit states they will not get a C. of O. for any of the apartments until such time the Municipal sewer line is installed. What does that mean? They can completely construct that building however, they will never be able to occupy it until they have Town sewer. This project could proceed should this Board and the planning board choose to approve it could proceed at the same nature a…whereas the applicant proceeds at his own risk with that understanding that they would never be able to utilize it until they have Town sewer. We also talked about the a…substantial improvements that are going to be required to this building as it was presently a single-family dwelling. The Building Code requirements for a commercial building are much more stringent especially a restaurant…a (80) eighty seat restaurant which would be considered a public assembly. Ceiling heights are different, the applicants are aware of the substantial improvements such as perhaps raising the roofs…roof raising, floor elevations, sprinkler systems are required. The Energy Code compliance is much greater now than it was. We’re talking probably a level (3) three renovation which will mean that the whole building will be brought up to today’s standards, that’s the requirement. I think I’ve covered everything I possibly could for you.

Chairperson Cardone: Thank you.

Ms. Drake: I have a question for you Jerry. When you mentioned raising the roof is that going to make it need another variance for height or do they have enough…

Mr. Raab: Oh, we have enough.

Ms. Drake: …distance between the existing and what they would raise it so it would not need a variance?

Mr. Canfield: The existing height that’s permitted in that area is (35) thirty-five feet.

Ms. Drake: Okay.

Mr. Canfield: Currently as a single-family I doubt if it’s much more than (24) twenty-four.

Ms. Drake: Okay. I just don’t want them to have to come back.

Mr. Canfield: It depends on their…their architectural drawings once they submit what they are going to utilize, if they’re going to use the second floor, use as an office and what they’re going to do. The ceiling height will definitely need to be increased because I believe in there right now, it can’t be any more than (8) eight feet and they’re going have to increase to (9) nine.

Ms. Drake: Okay.

Mr. Canfield: So that’s substantial renovations, roof rafters, floor loading, extensive buildup of the floors to comply with the weight requirements for that…that (80) eighty seat restaurant. And to get…to get to your question, I’m sorry I didn’t answer it. If they exceed the (35) thirty-five feet requirement for overall building height they will be back before you for a height variance.

Ms. Drake: Thank you. I have another question for Jim. How did you come up with the (80) eighty seats? Is that the max that you could fit in there with a kitchen?

Mr. Raab: Pretty much.

Ms. Drake: (Inaudible) Yeah.

Mr. Raab: That’s why it…it could at…at some point, once…if we could get…if we get past this point here… Okay? Then we’ll be taking a hard look at what Jerry was talking about and then we have to see if we can actually fit (80) eight seats. Okay? (80) Eighty seats seem to be a number that Zef picked and we thought worked in our initial review of the interior of the building a…we didn’t see a problem with it a…but that could change and that would mean and we don’t…it isn’t going to change to more, it’s going to…

Ms. Drake: Okay, that was my next question.

Mr. Raab: …it’s going to go the other way…

Ms. Drake: Okay.

Mr. Raab: …so a…that’s why we picked the parking the way it was and we felt really comfortable with where we were right there.

Mr. Manley: Jim, was there any plans for any exterior seating at all in the nice weather, out in the back, front, side?

Mr. Raab: A…yes, yes a…there…there…but we haven’t gotten that far yet. We really hadn’t…hadn’t thought about it a…

Mr. Manley: Would that be included in the (80) eighty or would…

Mr. Raab: Yes.

Mr. Manley: …you increase…?

Mr. Raab: That would be included in the (80) eighty. It would have to be because that’s what the parking is based on.

Mr. Manley: Any live bands at all outside?

Mr. Raab: No, no, no. Zef is one of the owners of Andiamo’s, just for the a Zoning Boards benefit and he runs a very classy restaurant there, this would be the bet…if this goes forward this will be just as classy.

Mr. Maher: Hey Dave, one question. The fact that if this…if this is brought to a vote at some time based on what’s submitted currently and its approved and then on the final design of the building it’s realized that the roof needs to be raised a foot or two, you again have a issue of non-conformity because of the increased wall height and you’re back here for the same thing?

Mr. Donovan: Very much potentially being looking at the…you know, if it’s (2) two inches but if it’s…if it’s (5) five feet then we could very well construe that as an increase in the degree of non-conformity.

Mr. Maher: Only because of the fact that when it’s completed you’re ultimately based on the current plans submitted.

Mr. Canfield: Yeah, once…once you grant you’re variances usually there’s boiler plate language as far as a…what’s constructed must be what’s submitted and again, yes, the height does become an issue. At this point in time though, I don’t know if the applicant has architecturals…

Mr. Raab: We’re…we’re in the…

Mr. Canfield: …or have gone that far. If they do and we find that it is a change then of course they will be back before you but I don’t know if they are prepared to tell you what they’re going to do with the floor-plan. And just one other point that I might add on the occupant load is what we’re talking about, the…the owner, the applicant has plans for an (80) eighty seat restaurant but the true tale of it’s up to the Code Compliance Department to dictate and set the occupant load. And that’s based on the square footage that’s available. Okay? And exiting provisions so rough calculations (80) eighty feet at (15) fifteen square feet per person they need (1200) twelve hundred square feet of dining space. I don’t know if they can facilitate that but the occupant load is set by the Building and Fire Inspector’s office at completion of the building and that’s what dictates what occupant load will be.

Mr. Raab: All right, to answer question one. A…we are probably at somewhere between (30) thirty and (40) forty percent as to what we are going to do with the interior of the building. We had planned on, after we got past this stage to a…sit down with Zef and his a…contractor to scope out the rest of the construction. We don’t plan on raising it any higher than we have to raise a…I…it…it’s not…it would not be our intention to encroach on the height of the…the…of the height limit of the building at all…

Mr. Donovan: Jim…just to be clear though as we’ve done consistently here just look at the side yard setback. If you only have (10.5) ten point five feet…

Mr. Raab: Correct.

Mr. Donovan: …and the magnitude or the scale of a…of a (24) twenty-four foot building at (10 ½) ten and a half feet is much different than the magnitude of a (33) thirty-three foot tall building…

Mr. Raab: Right.

Mr. Donovan: …which while would comply with our height requirements it…it would increase the degree of non-conformity of the…of the non-conformity and therefore kick you back to this Board. Because obviously in terms of scale if you’re at (10 ½) ten and a half feet or (10.5) ten point five feet you got a (24) twenty-four foot building versus a (33) thirty-three foot building it’s a different story and needs to be analyzed again by the Board. That’s Mike’s point. And you know, the answer to your question was yes, I guess we could have avoided the last (20) twenty minutes of conversation just by saying that.

Mr. Raab: Did Mike’s question get asked? That’s…that’s the more serious thing here.

Mr. Maher: Well I guess in the end if we got to this tonight or (30) thirty days or (60) sixty days down the road ultimately a…would we need the final set to be submitted prior to any type of approval or would it be based on plans submitted to the Building Department at that time?

Mr. Donovan: Well, we would rule on the variances in front of us. If they change…and so…?

Mr. Maher: Actually the building as it stands now is would be what is ruled on.

Mr. Donovan: That’s correct. I think that the language that Jerry is referring to is, you know, if this is ultimately approved by the planning board and is submitted to the Building Department is in substantial conformance I think we use the phrase...I say we use the phrase, I use the phrase architectural refinements aside that they’re fine but if…if and we’ve had that happen before. In fact we had it with the first applicant this evening, when they came through they didn’t need the…the variance for the (18) eighteen foot wide road and we’ve had it…we’ve had it before but the Building Department at that stage has no…has no option but to kick it back to us.

Ms. Drake: So I think the question for you to think about Jim is if you plan on raising the roof at all you’re going to need to come back here to us again so therefore would you want to hold off on our decision until you have a determination on how much you’re going to raise the roof so that you can address it all at one…

Mr. Raab: That’s in…

Ms. Drake: …time?

Mr. Raab: … fact the case, Brenda. Yeah, I would…I would want to put it off at least a month so that we can get the plans in front of Joe and Jerry…

Chairperson Cardone: In that case, I would suggest that someone make a motion to hold the Public Hearing open. I wouldn’t want to close the Public Hearing at this point because I think that once we see the final height and so forth issues might come up that people might want to respond to.

Ms. Drake: Exactly.

Mr. Raab: Would it be…would it be appropriate for us to a…meet with the Highway Department in between then…a next month?

Chairperson Cardone: Any additional information you can give us would be a help.

Mr. Raab: Okay, then…that…I just want to know what’s appropriate and what’s not appropriate because…

Mr. Maher: I mean my concern is if in fact you decide to do something with them and to possibly, you know, possibly deed some property over or come up with some agreement as far as the width of the road goes…if in fact you need an additional variance at that time…(Inaudible)

Mr. Raab: Then we’d have to correct the side yard on that side and I…I agree with that. And I was glad that that was brought up because if it hadn’t been I would bring it up anyway. And I’m glad this was brought up because I would not have wanted this Public Hearing to be closed and then have to come back here because we raised the…the floor of the building so…

Chairperson Cardone: Right.

Mr. Raab: …so I would…I would request the…the Public Hearing be held open.

Mr. McKelvey: All right I’ll make a motion that…

Chairperson Cardone: I think that Mr. Hughes had an additional comment so if you could hand him the mic.

Mr. Hughes: While we have the opportunity I would like to recap the stuff that we discussed this evening. And I think one of the one, two, three rudimentary, the ownership or possession of the road is the hinge pin for everything on this. If that’s not clarified and the right of ingress and egress isn’t prescribed in a detail we need not go to the next step. One of my concerns is the segmentation of the presentation of this project and it grows as it goes along. We need to have some answers of the legitimacy for the road use and the ingress and egress and then a negotiated possibility of making amenities. Now this is a substantial request and if we’re going to live with something that’s substantial we need to have all the bugs out of it now. If the applicant is willing to put the money into it to make the amenities so that that road problem can be cleaned up and that the safety and welfare of that neighborhood for emergency vehicles can be resolved then maybe we’re going somewhere but before it gets to that point I agree with the Chairperson that this should be set aside until further consideration and more information can be brought to the table from both sides and make a good decision and make a nice project can it go that way.

Mr. McKelvey: I’ll make a motion that we hold the Public Hearing open.

Ms. Drake: Before we do that, maybe we…I didn’t get a copy of the deed just as Mr. Hughes said some references. I think if that was provided to us a…

Ms. Gennarelli: Dave has it right now.

Mr. Raab: That’s not a problem. In fact, I’ll supply the planning board with a…I’ll supply the Zoning Board with a…

Ms. Gennarelli: Is that a different…excuse me Jim, is that a different one than what you submitted to me?

Mr. Raab: No, I…

Ms. Gennarelli: Well I have that.

Mr. Raab: Well I will supply them with the deeds that back that deed up.

Ms. Drake: Okay.

Ms. Gennarelli: Okay, you can bring that to me.

Mr. Raab: Okay, I’ll bring it to Betty and Betty will distribute.

Ms. Drake: Okay.

Ms. Gennarelli: I’ll make copies for everyone.

Ms. Drake: Thank you.

Mr. Raab: Not a problem.

Ms. Drake: I’ll second the motion to hold the Public Hearing open.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Abstain

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Just a moment. Hold on a moment before you leave I have to give you the date.

Ms. Gennarelli: Jim, Jim.

Chairperson Cardone: Mr. Raab.

Ms. Drake: Jim Raab.

Chairperson Cardone: If you could hold on I just want to give you the date of the next meeting so that everyone knows because you will not be re-noticed. And the date is February the 28th it’s the fourth Thursday in February and you will not be re-noticed on that.

Ms. Drake: Will you be ready for that meeting?

Mr. Raab: I’ll be…I’ll be ready.

Chairperson Cardone: Okay and a…Jerry, go ahead.

Mr. Canfield: Just one thing that Jim Manley had brought up and Dave thought that it was a legitimate concern and I’ve dealt with noise mitigation commonly with these type of occupancies, a point that we have to entertain. You might want to consider the applicant bringing back mitigation measures so you can take a look at that as well.

Mr. Raab: I…I…I…

Ms. Gennarelli: I am so sorry about the microphones.

Mr. Raab: I believe that Jim was making…trying to make a reference for Dave about what they were trying…that Mike suggested…I don’t think you…there’s no residential properties adjacent to us. North Plank Road Tavern is across the street, the old Finkelstein & Partners is across the street on the other side, the gas station on the other side, you know that they’re (200) two hundred feet up the street. I mean, Costa is right here; he came tonight and said he had no problem with us. I’ll, you know, I’ll do whatever the Board directs me to do but I don’t believe there is any place to put a fence in that kind of…

Mr. Canfield: Just my only concern is, I’ve seen in the past where an item is brought up and the applicant is not instructed to include it in his resubmittal and then when he comes back and the issue comes up again comes up again the applicant isn’t prepared so just a suggestion to help thing along…that you…

Mr. Donovan: I do think Mr. Manley’s question was a…kind of an academic one but if that’s an issue for the Board then…but we should let Mr….

Mr. Raab: Okay, we’ll go ahead and look into it. (Inaudible)

Chairperson Cardone: Okay, thank you. Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I would ask in the interest of time if you would wait out in the hallway and we’ll call you back in.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:48 PM)

ZBA MEETING – JANUARY 24, 2013 (Time Noted – 9:00 PM)

END OF MEETING

Chairperson Cardone: Okay, everyone had a chance to read the minutes from our November meeting? Do we have any corrections, additions or deletions?

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

Ms. Drake: I'll make a motion the minutes.

Chairperson Cardone: Do I have a second?

Mr. Maher: Second.

Chairperson Cardone: All those in favor say Aye?

Aye – Brenda Drake, Michael Maher, James Manley, Grace Cardone

Chairperson Cardone: Abstained – John McKelvey, John Masten, Roseanne Smith. We have the four, okay. Do we have other business this evening? We have the Reorganization Meeting every January. Do we have nominations for a Chairperson?

Ms. Drake: I nominate Grace Cardone.

Mr. Manley: Second:

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Abstain

Chairperson Cardone: And we also need a nomination for Vice Chairperson.

Ms. Drake: I nominate John McKelvey.

Ms. Smith: I’ll second.

Ms. Gennarelli: Roll call.

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

John McKelvey: Abstain

Chairperson Cardone: Okay, do we have any other business for this evening?

No Response.

Chairperson Cardone: Do we have a motion to adjourn?

Ms. Drake: I’ll make that motion to adjourn.

Mr. Masten: I’ll second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. The meeting is adjourned.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:04 PM)