

Board of Zoning Appeals – Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.
Tuesday, November 18, 2008 at 7:30pm

AGENDA:

- #1008-1 D. Thomas for Teresa Kleczkowski at 82 Soundview Ave.
- #1008-3 John Guedes, Broadbridge Hill Development, at 159 Long Hill Ave.
- #1108-1 Barbara A. Gilmore at 44 Fort Hill Avenue
- #1108-2 Mark & Lynne Besescheck at 56 Ojibwa Road
- #1108-3 Russell Schif at 60 Little Fox Run
- #1108-4 Ronic Enterprises, Inc. at 167A Bridgeport Avenue

The regular meeting and public hearing of the Shelton Board of Zoning Appeals was held at the above time and place with the following members in attendance: Gerald Glover, Chairman, Phil Cavallaro, Ed Conklin, Bob Harbinson, Jamie Jones and Ralph Matto.

Mr. Glover: Alright, good evening ladies and gentlemen and welcome to the November meeting of the Zoning Board of Appeals. The Zoning Board of Appeals meets monthly to consider variances and appeals. When you speak in front of the Zoning Board of Appeals you're giving testimony. This is a hearing. It would be appreciated if we could have your cooperation to not have discussions in the hall during the hearing because we record it on tape recorders and it will be picked up on the tape recorder and we will not, we'll have a problem with having a clear record of the hearing in the final analysis. And it is that record that goes to court if you disagree with our, if you disagree with our opinion, the record is the only thing that goes to court. So the record becomes important. Our regulations require that you have posted your property and that you have notified your abutting neighbors by certified mail and that you furnish the Board with receipts showing that you did notify your neighbors and that you furnish the Board with four pictures of the property, one of them showing the placarded, yellow placard in the picture. Tonight on the Board, to my far left is Commissioner Ralph Matto, next to Ralph is Bob Harbinson, Lori Michalak is our Clerk, I'm Gerry Glover. To my right is Jamie Jones, to his right is Ed Conklin and to Ed's right is Commissioner Phil Cavallaro. Jamie?

#1008-1 82 Soundview Ave., Assessors' Map 101, Lot 50, Teresa Kleczkowski, c/o Dominick Thomas, Esq., of 315 Main Street, Derby, CT is appealing a decision by ZEO as to issuance of a stop work order dated July 15, 2008.

Mr. Glover: Attorney Thomas, I, yes?

Ms. Kleczkowski: (unclear) he probably is going to be late

Mr. Glover: He's going to be late?

Ms. Kleczkowski: Yeah, I'm not sure what he said, but 7:30 h'ell be a little bit late

Mr. Glover: Alright, we'll go by this one and come back to it. Read the second one.

#1008-3 159 Long Hill Avenue, John Guedes of 1425 Noble Avenue, Bridgeport, CT is seeking to waiver Section 24, Schedule B, Standard 10 by varying the minimum setback from a residence boundary line from 40 ft. to 30 ft. for construction of a 109.25' x 48.25' retail building.

Atty. Rizio: Members of the Commission, Raymond Rizio, I represent John Guedes and John is also with us tonight

Mr. Glover: Attorney Rizio, may we have your address please?

Atty. Rizio: 1 Post Road, Fairfield, CT

Mr. Glover: And these are all your abutting neighbors. And do you have, oh you have some pictures?

Atty. Rizio: Yep

Mr. Glover: alright, let the record show that we do have pictures

Atty. Rizio: Chairman, if you can recall, and members of the Commission, (moving maps right over microphone)

Mr. Glover: Before you start, you've got to stop, because this is going to pick up just rattling of the papers. Alright before we start, a little bit of history here

Atty. Rizio: Yeah, that's what

Mr. Glover: You came in in January of '08

Atty. Rizio: Correct

Mr. Glover: Looking for a variance to build a building on this property. At that time you sited a topographical hardship

Atty. Rizio: Correct

Mr. Glover: And you sited a hardship that the Board, that the parcel was split, the half toward Long Hill Avenue being residential

Atty. Rizio: Correct

Mr. Glover: and the half toward Bridgeport Avenue being commercial

Atty. Rizio: Correct

Mr. Glover: Um, you made, you represented Mr. Guedes at that point, and at that point you convinced us, this Board, that this was a, a good solution to a problem and that we recognized your hardship of topography

Atty. Rizio: Correct

Mr. Glover: and we recognized your, the solution of keeping the residential side residential and the commercial side commercial

Atty. Rizio: Correct

Mr. Glover: Um, it was approved by this Board unanimously

Atty. Rizio: Correct

Mr. Glover: Followed by about 2 or 3 days later when the Planning and Zoning, without having ever been here, appealed the decision.

Atty. Rizio: correct

Mr. Glover: Is that correct?

Atty. Rizio: yes

Mr. Glover: Okay. At this point it's in court

Atty. Rizio: correct

Mr. Glover: and um, we already have recognized a hardship on this property

Atty. Rizio: correct

Mr. Glover: It's pending in court whether our decision is a correct decision or an incorrect decision. The record in my opinion was very clear and very well put by you and as I understand it now, in order to, in order to get building on this property, to expedite this

Atty. Rizio: yes

Mr. Glover: the Planning and Zoning Commission has sat down with the applicant and they've decided that a better variance would be for a commercial building which would encroach on the residential zone

Atty. Rizio: Not exactly. I think our client, everything you said was, it was correct to a "T" Chairman, what we've done is, and it's the first time in my legal career I've ever had a Planning and Zoning Commission appeal a ZBA decision; however, Mr. Guedes has been very successful in town. Mr. Guedes has been very, tried to work with all the commissions in getting his projects approved. So what we decided to do rather than get involved in a long legal battle, we decided to make just a one story retail building, rather than a building that would have retail on the first floor going out to Bridgeport Avenue and residential on the second floor. (unfolding maps over microphone)

Mr. Glover: She's not going to hear anything as long as you keep moving the paper

Atty. Rizio: Oh, I'm sorry. Okay.

Mr. Glover: I don't, we don't need to see that yet, so

Atty. Rizio: So what we did is we've decided to come back and rather than be entangled in a long drawn out battle, we decided to come back and put a just, forgo and abandon our, if we get approved tonight to abandon our previous approvals.

Mr. Glover: But I'm not sure that's your decision.

Atty. Rizio: Well

Mr. Glover: I think it was this Board's decision that we found a hardship and gave you a solution to the problem

Atty. Rizio: correct, I will agree

Mr. Glover: and just, I want to caution you because it is in court

Atty. Rizio: correct

Mr. Glover: and when it goes to court, whatever you say today, may have an affect on what goes on in court. I don't think so because it's just the record that appears in court

Atty. Rizio: correct

Mr. Glover: and what you say here isn't part of that record.

Atty. Rizio: Well, the important thing is we have the same hardship. We're basically putting the same type of building that has the same exact problems that we had before. We have the topography conditions where you have a slope, where the top about 10 to 12 feet from the rear of the property to the front of the property, we have a split zone through the middle of the property. Now the question becomes how can you possibly develop this property in accordance with the regulations. It's very difficult. The same conditions that gave us the hardship when this Commission granted us back in January exists today.

Mr. Glover: With only one difference

Atty. Rizio: Yes?

Mr. Glover: back in January you didn't have a waiver that got you around the hardship. Now you have a

waiver that accepted the hardship

Atty. Rizio: correct

Mr. Glover: and got you over the hardship. So you don't have a hardship

Atty. Rizio: Oh, no, we still

Mr. Glover: because you have a solution to your problem, which creates a bigger problem for you I understand that.

Mr. Guedes: Uh, Mr. Chairman, um, for the record I'm John Guedes, the a, I think what we're dealing here with is your, as Attorney Rizio has said your history is you know, correct up to a certain point. Basically, there are two situations here. The waiver that is being sought today is different from the waivers that were obtained previously. And I'll, I just want to explain that. Basically, you're correct in saying that because of the position that the Zoning Commission took, it has put me in a position whereby I have, I'm, I've been sitting as you, as this Board knows, for going on now two years with a vacant house, which you know I haven't been able to occupy and at the same time I haven't been able to tear it down. So it's been sort of in limbo. What took place was this, that you're correct in the, in saying that you know, that the steps that were taken and how this Commission, this Board derived at it's decision and I thank it for the decision and I think it was a right decision. But, again, in, in my efforts to move this situation forward, as I said I did meet, as you said the record is correct, I did meet with the City Planner and the City Consultant, Tony Panico, and the Chairman of the Zoning Commission, Mr. Pagoda, to see what I could do to compromise this situation and be able to bring this to a head. As this Board knows, the major objection was not necessarily the waivers that the Board granted, the major objection that the Commission had, which I believe it was wrong and I still believe it's wrong, was the mixed use component to the site. Therefore, their, I believe that their, their appeal was not necessarily on the waivers that were granted, it was basically on the position that they took that they should be the Commission to judge as to the appropriateness of use within these areas. And I, you know, these are arguments which unfortunately I'm sort of stuck in the middle of them and shouldn't be. What happened was that as putting aside the mixture component of the building, what happened was that the waiver that's before this Board deals with the positioning of the building due to the requirements for aisle widths that they established for me. Meaning they established a certain aisle width for the driveways and for the fire apparatus and so forth. I had met with the Fire Marshal, I did review with him the plans prior to meeting with the, with the consultant and the city planner and the chairman, but based on what they asked me to, to make the revisions basically what happened was that the building was moved to the rear and it, it's not basically, it meets the setback requirements for the zone, what the building's doing is it's encroaching on the buffer.

Mr. Glover: On the residential zone

Mr. Guedes: on the residential buffer, okay, so and this is again I believe it's encroaching by, I believe it's about 8 feet or so. And the reason again, was that they took my driveways and went from 24 to 26 and took the landscaping area in the front and took it from what I had and they increased it by 4 or 5 feet. And this in turn, because otherwise the building would've met, and you know, we wouldn't have required the waiver, my understanding from what, and Attorney Rizio can answer this better, was that in order for this Board to be able to act on my request, that from what I understand Attorney Rizio had a discussion with the Board's attorney on this as to the legal mechanism to be able to, for this Board to act on it, and I believe that Attorney Rizio can relate

Atty. Rizio: I spoke to Tom Welch today and spoke to Jim Sheehy and what I explained to them was it was my understanding that there's some concern by the Zoning Board of Appeals, that we would be seeking further approvals for a project that had outstanding approvals, and that that was troublesome. We agreed that if we were approved tonight, that we would agree to withdraw or abandon our appeal or agree to settle, that we enter into a settlement and stipulation in court that we would agree to withdraw those approvals. And I wrote him a letter that set those facts and he wrote a letter back to me saying your written evidence of withdrawal dated 11/18/08 appears to be in order and is acceptable for submission to the Zoning Board of Appeals. And the reason I asked him to send this, I said look, I don't want to go there and just report to the zoning commission that I talked to your lawyer and this is what he told me.

Mr. Glover: right, because we haven't gotten anything from Attorney Sheehy.

Atty. Rizio: yeah, this was emailed, faxed to me at 6:21 pm. Let me make sure, at 6:21 pm. It was in my office. I thought I was going to be coming here and saying I spoke to him and he said no problem. But what I did was, and I'll give the commissioners a copy of this, it's basically kind of setting forth the facts Mr. Chairman, as you stated, and this is the original, and it basically stated that we, we reiterated that we sought variances, that we received variances, that the Planning and Zoning Commission appealed those variances and that we would agree to withdraw our approval, upon approval of our current application which is before you tonight, that we would agree to abandon/withdraw it's previous variances that we received from the ZBA February 29th, so there won't be a couple sets of, two projects, two different projects approved at the same time. And we authorize the parties to

Mr. Glover: We wouldn't approve two projects at the same time. We really can't legally. You're a lawyer, I'm not.

Atty. Rizio: Well, technically what happens is, each proposal stands on its own. If John Guedes had gotten that approved, never built it, someone else, even though those approvals were never built on, someone else could come back in with another approval. So, you have the ability to, we want to make it clear that we, this is not an either/or situation. We would agree that if this was approved tonight, this would be the only thing that would be of record for the property that anyone can build on. If someone wanted to come back for a residential component in the future they'd have to come back to you and start all over again. We've decided that, and this is the letter from Attorney Sheehy, which I'll also give to members of the commission, which basically recognizes and says that our withdrawal would be in order.

Mr. Glover: Let me just interrupt you for one other second because there's some facts here that, that aren't really on the record. Our Corporation Counsel is Attorney Welch. When the, when one commission takes an appeal against another commission in town, Attorney Welch has to assign attorneys

Atty. Rizio: correct

Mr. Glover: So the city is now paying for an attorney for the Planning and Zoning Commission and they're paying for a second attorney for the Zoning Board of Appeals. What my Board members may not know is that Attorney James Sheehy is the lawyer for the Zoning Board of Appeals. I think that Attorney Baldwin is the attorney for the Planning and Zoning Commission.

Atty. Rizio: correct, and the reason I asked when Tom directed me toward Attorney Sheehy, because he represents you

Mr. Glover: But they don't, but they don't know that, that's why I'm putting it on the record

Atty. Rizio: Oh, okay, I'm sorry, I apologize

Mr. Glover: My Board does not know who Attorney Sheehy represents

Atty. Rizio: I got the right lawyer at least

Mr. Glover: he represents us. Go ahead

Atty. Rizio: Alright, so that leads us to where we are tonight. Where Mr. Guedes has a project that still works. The variances we seek tonight we, I'm going to be quiet while we turn over, what John's said is he's pushed the property, the building back, in doing so, why we think this is appropriate is there's a difference in grade between where these houses are and the bottom of this, this is about 114 feet elevation. The floor, where these houses sit. This will be our first floor elevation of 104. This allows us to push the building back into the hill, we'll have no parking in the back and act as an excellent buffer between the residential and the commercial line. Now, the building, the setback from a residential line is 30 feet. What happened is, I don't think the regulations contemplated lines running through properties. They envisioned them more running along, in fact the guide that (unclear) State statute is to have these, these lines running along the property lines. So what happens is, even though we're, we create the proper buffer because the line runs through the center of our property, we're stuck with, with a setback that is already 20 feet into our property. So typically where you'd, if a line ran here, most of this building would not have any problem meeting the setback, but

because the setback runs through the property, we end up with this issue. So this about, when you talk about classic hardship cases, not just you know coming here and praying for some support from your guys, and leaving with your hands between, you know your head between your legs, we come here with justifiable, legal hardship, meaning the split line through the property creates an unfair and unjust situation on how we develop this property. And then when you add in the topography difference, it allows us to create the buffer. We think it's, this is a good application because what it does is, if we push the building forward and put our parking in the back, which we could legally do, it would require more earth work, more moving and put the parking closer to the residences than the building. And we think it's better to have the building back there to act as a buffer. The building will basically, and if you notice we're a good 60 to 70 feet from the nearest house. So the buffer pretty much is in tact, but for this unique situation of the, the zone line running through our property. We will make sure that we have the retail part of the, the retail building will only be parked and accessed from the retail part of the lot. So, we really honestly think that this is an excellent application, we think the first property, the first application was a more creative application, an application which I've got to commend this commission for seeing, the foresight in seeing the way Mr. Guedes balanced this off with treating the residential as a residential and the retail as retail, however, we're in a jam. We don't want to be here. Mr. Guedes envisioned this thing being up and built already and the same topographical hardships and zoning line hardships apply, which you found in the earlier application also apply to this property. That's why we think it justifies a variance.

Mr. Glover: Is the building the same footprint?

Mr. Guedes: yes, well, it's slightly smaller. The one thing that I would also add to it, even though when you're thinking about, you know, impacts on residential zones, because this is really what, you know, what it boils down to; even though the building by moving it back encroaches into the buffer, because it doesn't encroach into the setbacks, what it does do however, is that the prior application had access driveway onto Long Hill for the residential part of it, along with parking facilities and so forth, well now that is no longer needed. So what we'll wind up with is basically landscape area. Which means that you know, that these parking facilities are not going to be there. So, you know, it's sort of taking a little but giving, you know, more back.

Mr. Glover: How big of a parcel does it leave in the back?

Mr. Guedes: Well, it leaves the, roughly, again because of the, as we know the shape of it, in one location it's 21 feet from the property line, but in another location it's 75 feet.

Mr. Glover: So there's not enough room to build anything in the future there

Mr. Guedes: No.

Atty. Rizio: No

Mr. Guedes: No, well it's not, it's not a, I mean ideally I'd love to do that because I, you know as I said, and I continue to say and I don't say it just here, I say it publicly to the administration and others that it's ridiculous to consider that Bridgeport Avenue in the downtown area, should not have a mixed use component. I mean it's not, I've never, you know, I mean, but again whatever reasons were used and whatever reasons continue to be used, I think they're wrong and I will continue to say that. But for this particular purpose, for the most part what this building will do, is it'll take, you know the home that's been sitting vacant out of there, and it will create a new building that will be attractive and that'll, you know, get me out of the jam that I'm in. I mean this is, I mean unfortunately and you know, again, I think that this Board needs to evaluate it and obviously on the merits of the, you know the waiver and the hardship in this particular case, you know obviously we have the one situation that's clouding everything. But we also have the fact that, that I'm, you know that for me it still makes economic sense to do this. In order to do it because of the hardship with a split zone that the lot's in, that you know, again, it creates the hardship. If the split zone was not there maybe the building could've been a little bit reconfigured and we wouldn't have had the issues, but if, you know the zone line is there. Now, I did approach the thought of possibly asking the Commission to move that line. And we studied it. I had Nowakowski and O'Bymachow look at the possibility of just saying okay, why don't we just move the zone line to the rear of the property, but the problem that that did is that in order to do it, you would actually have, be having to do it on other property owner's property, and that, you know, without their authorization that can't happen.

Atty. Rizio: The funny thing is Mr. Chairman and members of the Commission what we could do, and this is why this, I want to give you evidence of the hardship is if he were to design it that he could circle the building or park back here, that doesn't infringe on the setback, it's the building setback. So legally they could park back here. What we're saying is if, in giving us, allowing us to push the building back allows us to put up parking up front and that puts it away from the residential parking. There'll be no development in the rear of the property. We'll act as a better buffer than the 40 foot building from the property line, from the zone line.

Mr. Glover: I have another question, but let me read, you spoke last month of a letter and we do have a letter, let's read it into the record so that we can open that for discussion too.

Mr. Jones read letter: "To: Gerald Glover, Chairman, Board of Zoning Appeals. From Richard D. Schultz, Planning and Zoning Administrator. Date: October 16, 2008. Re: ZBA Application #1008-3. Please be advised that the Shelton Planning and Zoning Commission at their October 14, 2008 meeting reviewed pending ZBA Application #1008-3 regarding a variance for reduction of residence setback from a proposed commercial building on property currently identified as 159 Long Hill Avenue. After review and discussion, the consensus of the Commission was to support the proposed variance as noted. During its review, the Commission noted the following observations: 1. The Commission believes that the variance requested will allow for a better design solution for the property which is currently split in two zones. The Commission at this time does not want to adjust the zone line putting the entire parcel in the Commercial CB-2 District. 2. The Commission is supportive of a commercial building only on this property with direct access to Bridgeport Avenue. cc: Planning and Zoning Commission."

Mr. Conklin: Does that mean they voted on it, discussed it?

Atty. Rizio: Can I tell you, one thing I noticed around, because I tend to see, at least in my practice I do a tremendous amount of practice in Bridgeport, Trumbull and Fairfield, that the Zoning Board of Appeals usually deals a lot of equitable situations and they have the right, based on listening to the people, come up with very, I think fair solutions to many problems. What I've seen and it, they started it in Bridgeport, it moved into Trumbull and now it's coming into Shelton, where you have the P&Z's saying that they want to be able to have oversight over ZBA's. I don't agree with it, I don't like it. In fact in Bridgeport and Trumbull they've adopted regulations that said if there's any use variances required that you have to go to the P&Z for site plan review, even though you wouldn't necessarily need another approval.

Mr. Harbinson; Well, that's what they have here

Atty. Rizio: Yeah, which I, which to me, I don't want to get into it, those are your responsibilities. I think they're trying usurp

Mr. Glover: by statute

Atty. Rizio: Yes, commissions are trying to usurp each other's powers and that's not what this is about. This is about equity. This is about determining what's the best property for the, and I think you guys have done an excellent job in the past, and hopefully, we have the same issues here that we had before. Um, it's unfortunate Mr. Guedes is in the middle of it, but I don't think it in any way changes the hardship that we're suffering, that would lead into a different decision than you had made earlier on this property. We still have the same issue with there's a split zone. We still have the topographical issues from front to back, and what we're doing now is coming up with a decision, a plan that will have less intense use of the property and create in effect, less of a non-conformity than was previously approved.

Mr. Glover: How much smaller is this footprint than the other one?

Mr. Guedes: Well the other one was, this one here is 48 x 104, and the other one was 49 x 110.

Atty. Rizio: (unclear)

Mr. Guedes: Pardon? Well, he's referring to the

Mr. Glover: but just the footprint itself

Mr. Guedes: Yeah, this basically is one foot, well it's basically 6

Mr. Glover: it's 6 foot shorter

Mr. Guedes: 6 foot shorter

Mr. Glover: it's 6 feet shorter

Mr. Guedes: Right, because as you move it back the property sort of goes on a skew, and therefore you have to make the building smaller.

Mr. Glover: What kind of a, what kind of a roof do you envision on this commercial building? What will the residential people be looking at? A flat roof?

Mr. Guedes: Well basically, no, basically it's the same design that we previously had. What I've done is introduce you know, dormers and so forth so that it still maintains the residential aspect, it's just not a, you know, multi-story

Mr. Glover: it's not used

Mr. Guedes: Yeah, I mean it's, well no, I put in storage in there. You know, it's, but the fact is that, I mean look, you know, I can beat it to death but the fact is I need to do something here. I can't just have the building the way it is

Mr. Glover: The back wall of this building, the foundation of this building then becomes a retaining wall as well as foundation

Mr. Guedes: a portion of it, yeah, a portion of it yeah. If you look at the site elevations, basically that's what you'll be looking at. Just keep in mind that the lot is such that one corner is higher than the other. So when you look at the sides you can see here that a portion of it is, is hidden but you go to the other side and it's, you know, full height

Mr. Glover: What will you use the second floor for?

Mr. Guedes: Just for storage.

Mr. Glover: For the stores?

Mr. Guedes: Yeah

Mr. Cavallaro: How do you access them?

Mr. Guedes: There's a, if you look at the floor plan there's access being provided through the store.

Atty. Rizio: what's interesting and one of the biggest, and it kind of came out of, unfortunately having to deal with this issue, but one thing we've noticed and I represent a lot of retailers, mostly all of these retail strips are built on slab and the biggest complaint you have from most retailers is that they're paying for, they're paying retail, they have to pay retail rents for areas of their, that they're renting that are really storage. And this gives the ability for someone to use their retail space for the retail purpose, yet to have storage above.

Mr. Guedes: I mean in this particular case, I think the Chairman is you know, is asking the right question, that is, because of the topography if I was to do a one story building, you're right, the people in the back would be looking, I mean, you know, they could have it as a playground back there. I think, what I tried to do is lift up the roof pitches so that we'd have some height too, so you wouldn't have a flat, you know, roof and introduced the dormers and so forth. So what you, what I've done is that (unclear) created a void, so it created space, so you know, I don't have, I don't have the, I mean what we had before was a good balance between utilization in the back, utilization in the front, we were providing adequate parking and facilities for the residential units we were proposing in the back, and we had the parking facilities for the retail in the front. In this particular case, the building is slightly smaller, we do have again, you know, the parking requirements have been met

for it. We can't utilize the back, therefore, we don't have access to the additional parking and therefore the only thing that the second level can be utilized for is storage. If in the future, and this would be in the future, if in the future I'm able to acquire either property to the side or across the street or something, where additional parking could be created, then I would you know, have to follow through and see what requirements there would be to, for utilization of the attic for something other than, you know like an office or something other than storage. But at this time the only thing that it can be used for is storage.

Mr. Cavallaro: Contrary to what you're saying though about retailers having to rent floor space for storage, you have storage rooms in the back of those stores anyway.

Mr. Guedes: Well, it's depicted, I mean basically, you know that any of these there's going to be requirements for mechanical room and the furnace, because the way that this is designed, you know the furnaces will be inside, either on floor or you know hung, so there is going to be a room

Atty. Rizio: If you look at it it's a very small area, when you figure that that's the width of a, of a handicap bathroom

Mr. Guedes: You have handicap, you have utility, you have the mop sink, you have all the things that

Atty. Rizio: There's really not much there for storage

Mr. Guedes: Keep in mind that this as you know, I mean you've been in this for a long time, you depict where you know, floor spaces are going to lie, but you could have one individual come in and take you know, one, half of the building, you know, who knows. I had some tenants but you know, they waited so long that they've gone.

Mr. Cavallaro: But is it the intent to rent out that second floor as storage space units, or is it going to be one big open space?

Mr. Guedes: No it's, right now it's the intent is to try to tie it into the

Mr. Glover: And do they access that second floor from interior of the building or exterior of the building?

Mr. Cavllaro: It looks like only the inside

Mr. Guedes: No, there's interior and exterior, but it's strictly from the parking lot. If you look at the layout for, the new layout, there is no, you know there is no pavement proposed in the back. The driveway would be removed that's there. For the most part this would be just, you know, a landscaped area. Right now there's, the driveway comes from Long Hill, the access to the house. As a matter of fact, as you can see the footprint of the existing house is right there. So the, the existing house actually projects onto you know, beyond the setback. This new building's actually

Atty. Rizio: It might be helpful to see if you look at

Mr. Guedes: the new building's actually in further than, you know, the existing house

Mr. Conklin: As it stands right now the appeal that was approved you cannot park in that back area with this new building at all anyway

Mr. Glover: Just for residential

Mr. Conklin: Right, because it was stated that only residential parking and there would be absolutely no commercial parking

Mr. Guedes: Right

Atty. Rizio: correct

Mr. Conklin: as it stands, would that be, I mean that would have to be a caveat going forward today also

Mr. Guedes: Well no, the way this is set up now, there's virtually very little room to be able to do any parking

Mr. Conklin: well, and then some other Zoning Appeal Board can grant something else up there, I'm just putting it in there that

Mr. Guedes: Yeah, I think the way that this Board had provided the approval, it was that the access from Long Hill could not be utilized for commercial purposes. And that was, but again keep in mind that, you know I was proposing 5 residential units, which had the requirement for 10 parking spaces which were being provided. So you know, everything was set, you know, appropriately to accommodate the uses. In this particular case, you know, moving the building slightly backward, I was able to pick up some additional parking in the front, so that the, the type of building that's being proposed now can accommodate itself you know, without any problem on it, and again, to accommodate fire trucks and so forth there was space lost because, you know the drives were widened to 26 feet and so forth. And as a matter of fact, the driveway was shifted from the west side over to the east side. So there were major changes that, the whole thing had to be redesigned basically.

Atty. Rizio: It's a shame we're back here, I got to tell you. You guys did, you were pleasant enough to listen to me ramble on that night for about 45 minutes and going through and explaining this hardship and everything else, and we're an unfortunate victim of circumstances. However, from a legal standpoint, it doesn't really change our hardship any different than the previous application. It's the same factors that led this commission to grant a variance based on hardship still exists today and exists in this application. This is, you know, it's a compromise that we, we weren't necessarily happy with, but it's one that we're willing to live with. But as I said, the factors still remain the same, and because of this split line we end with, in this situation where we infringe on the buffer even though the buffer is on our property. So it's, that's not really what the regulation was meant. The regulation was meant where you have a commercial zone butting up against a residentially zoned property, that you establish an adequate buffer. We're buffering our own property that's not buildable. It doesn't really seem to make a lot of sense. And for that reason I believe we have a hardship that's different in nature than any other property in the zone. That's not going to cause any kind of negative effect on the health, safety or welfare of the residents and is based, and is a unique, clearly as unique a situation that you'll probably ever see come before this commission.

Mr. Glover: Alright, does the Board have any other questions?

Mr. Matto: Is there a basement in here, is this a basement?

Mr. Guedes: no, slab

Atty. Rizio: It'll be built on slabs

Mr. Matto: That's why you want upstairs for storage

Mr. Glover: Is there anyone in this room who is in favor of this application? (no response) Is there anyone in this room who is opposed to this application? (no response) Tom?

Mr. Dingle: I'm all set

Mr. Glover: That would be Tom Dingle, the Zoning Enforcement Officer. Alright, any final questions from the Board? (no) Then I'll declare the hearing closed.

Later that evening during the work session the Board voted to table a decision on this application until the December meeting.

#1108-1 44 Fort Hill Avenue, Barbara A. Gilmore of 44 Fort Hill Avenue, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 9 by varying the setback from the right side yard from 8 ft. to 6 ft. 7 in. for a roof over an existing porch, 12'x26".

Ms. Gilmore: How're you doing?

Mr. Glover: Good evening

Ms. Gilmore: good evening

Mr. Glover: Would you please give your name and address?

Ms. Gilmore: Barbara Gilmore, 44 Fort Hill Avenue

Mr. Glover: Um, Mrs. Gilmore as you may or may not know, my daughter lives across the street from you, so although I have no objection to what's going on and I know she has no objection to what's going on, I'm going to recuse myself and let Commissioner Matto run the hearing. So that if there's anybody who doesn't like what's going on they can't say that I did for some other reason. Ralph?

Ms. Gilmore: Alright

Mr. Matto: Do you have pictures and receipts?

Ms. Gilmore: I have (unclear) six people that signed for it and these are the pictures. This is the, this is the existing garage and there's a door that comes out of the house because my dad built this house 60 years ago and his intention was to put a porch on there. So there is a door going out already. I think we're looking for one foot 2 inches. On the left hand side of the house is Mrs. Iwanicki, who works upstairs in the building and she I believe gave someone a letter that she has no objections. And in the rear I have a letter from the property owner in the rear that they have no objection to this, somewhere in here. There it is

Mr. Jones read letter: Okay I'll read these two. "November 17, 2008. To whom it may concern, We have no objection to the zone variance that Barbara Gilmore is seeking for a porch roof and railing at 44 Fort Hill Avenue. Sincerely Susanne & Robert Gilmore, 76 West Street."

Mr. Jones read letter: and this one "MEMO. To: Jerry Glover, Chairman, Zoning Board of Appeals. From: Nancy Iwanicki (42 Fort Hill Avenue). Date: November 12, 2008. RE: 44 Fort Hill Avenue, Deck over Existing Porch. I have no problems with this improvement on the property. In fact ever since Barbara Gilmore moved into this house she has cleared up the unsightly mess that had accumulated over the years on 44 Fort Hill Avenue. I believe this addition to the site will improve the property."

Mr. Matto: This says that, you're looking for a two foot variance from the right side

Ms. Gilmore: I think it's like 1 foot 2 inches or something isn't it

Mr. Matto: It says (unclear) here. And it says that, in other words it's already existing

Ms. Gilmore: the garage is already existing

Mr. Matto: right

Ms. Gilmore: I'll tell you what it is. My mother is 98 years old and she lives there and she's almost totally blind. And I'm afraid that some day she's going to open the door and walk out on there and fall off the edge of it.

Mr. Matto: Alright, but what you're saying is, when you do what you want to do, you're then going to be 6 foot. Presently, presently is the porch railing, presently is the porch railing 6 or 8 feet from the property line?

Ms. Gilmore: There is no porch railing

Mr. Matto: Okay, so there's no railing on there

Ms. Gilmore: It's not going to change anything because the railing will go on the edge of the existing garage

Mr. Conklin: The existing garage then is 6 feet from the property line

Ms. Gilmore: I think that's what it is

Mr. Matto: alright, so 6 feet, so the garage is existing

Ms. Gilmore: yes

Mr. Matto: so that's okay. So now you want to cover it

Ms. Gilmore: I want to put a roof over it, yes

Mr. Matto: you want to cover it

Ms. Gilmore: because over the years it has rotted out with the accumulation of snow and everything on it and I think this will help it.

Mr. Matto: Right, you want to cover this with a roof and the roof will continue an additional two feet?

Ms. Gilmore: No

Mr. Matto: well, why is it

Mr. Cavallaro: I think Ralph, the existing foundation is already within the encroachment

Mr. Matto: It's already 6 feet

Mr. Cavallaro: Well, 6 foot 7, there's 7 inches on the next line

Mr. Matto: So the roof is not going to get any closer

Ms. Gilmore: No

Mr. Matto: alright, so after the roof is built, everything is still going to be the same distance as it presently is

Ms. Gilmore: Yes, exactly, yes

Mr. Jones: They're just going to put a roof over what's there already and it's already over it

Mr. Matto: So it's

Mr. Cavallaro: it's already pre-existing

Mr. Matto: Okay, do you guys got any questions?

Mr. Cavallaro: How big, well, I guess the overhang size wouldn't matter because the roof is going to have to have an overhang of sorts on it, right?

Mr. Jones: Well, the overhang would be where there isn't a

Mr. Cavallaro: Well, it depends on which way they do it

Ms. Gilmore: I don't think there is

Mr. Cavallaro: I don't even know what the roof looks like. If they just go with a gable

Ms. Gilmore: wait a minute

****Several talking at once amongst themselves****

Mr. Matto: Maybe she's got some paperwork on that

Ms. Gilmore: I have something here.

Mr. Cavallaro: I don't know if an overhang technically counts anyway.

Mr. Matto: Well normally, normally

Mr. Cavallaro: if it's under 2 feet

Mr. Matto: normally an, the roof can go an additional two feet

Mr. Cavallaro: right

Ms. Gilmore: Here it is, here's the, here's the rough line of the, what he's proposing

Mr. Matto: in other words now it would be 4 feet from the property line

Mr. Cavallaro: (unclear) overhang

****Several talking at once amongst themselves****

Mr. Matto: Yeah, so you wouldn't, you wouldn't count that

Mr. Cavallaro: Why would you leave that, I don't know, I don't think

Ms. Gilmore: Do you need that?

Mr. Jones: Theoretically once we look at it we do.

Mr. Conklin: Is that the only copy you have?

Ms. Gilmore: Uh,

Mr. Jones: It says copy

Ms. Gilmore: It is, I think we turned one of those in already didn't we? Is this the same thing here? Do you want another one?

Mr. Matto: Who's the architect that drew this?

Ms. Gilmore: It's my builder did it.

Mr. Matto: Okay, any other questions? (no) Is there anyone against this? Is there anyone here in favor of this application?

Ms. Gilmore: I'm in favor

Mr. Matto: You're in favor? Is there anybody against this application? (no response) Final questions from anybody? (no) Alright, then we'll close this application.

Later that evening during the work session the Board, upon motion by Mr. Conklin and seconded by Mr. Cavallaro, unanimously voted that:

#1108-1 "In the application of Barbara A. Gilmore of 44 Fort Hill Avenue, Shelton, CT for a certificate of approval for a roof over an existing porch with railing to be located on the property of the applicant at 44 Fort Hill Avenue, R-5 zone, and which requires a variance in setback from the right side yard,

The application for a variance is approved.

Inasmuch as the proposed construction will be no closer to the property line than the garage structure currently exists, and

Inasmuch as there were no objections from any of the abutting property owners,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in setback from the right side yard from 8 ft. to 6 ft. 7 in. at the above is granted (Section 24, Schedule B, Standard 9) in this instance.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton.”

#1008-1 82 Soundview Ave., Assessors' Map 101, Lot 50, Teresa Kleczkowski, c/o Dominick Thomas, Esq., of 315 Main Street, Derby, CT is appealing a decision by ZEO as to issuance of a stop work order dated July 15, 2008.

Mr. Glover: Attorney Thomas?

Atty. Thomas: Attorney Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT, representing the applicant, Teresa Kleczkowski, who is here, plus a witness, Gail Walsh, who is also here, so I had her come up and I see that ZEO, Dingle, is also here since we're appealing his order. This is a case in which Mrs. Kleczkowski purchased this property located at 82 Soundview Avenue and did appear before this commission. It has 3 buildings on it and these buildings have existed there quite awhile. And she appeared before this commission at a prior time in an effort to see whether or not she would be able to sub-divide the property. I have the sub-division map, I have several copies of it, to be reviewed, to be looked at by the commission members so that you can see it. The a, this is Lot 1 that we are referring to. And the a, the a, they appeared before the commission and, she appeared before the commission in an effort to sub-divide the property asking for certain variances and was denied at that point. This property does not have access directly to Soundview Avenue. It has access to a driveway easement over Lot 2 as part of the sub-division approval. What we are dealing with here is a cease and desist order that was issued after Mrs. Kleczkowski had gone to the a, the town and obtained building permits to drill a new well, install a new furnace and do electrical work to what is the second of the three buildings that are on this property. What, our position is very simple on this, our position is that these properties, in fact we have evidence that all three, but we're focusing on this building, was used as a residence and was a residence. And at the time of the sub-division, when the sub-division was approved, I would call your attention to the right hand side of the sub-division map and all the notes and conditions, none of which removed the use, the pre-existing use of that second property, that second building, which is this building here

Mr. Conklin: Is that the mid-building on this drawing?

Atty. Thomas: the mid of the three buildings, it's the mid of the 3 buildings. As a matter of fact, to give you some orientation possibly, I can, I have a picture which you can pass out, this is the 3rd building. It's in the back. This is the

Mr. Matto: it says V&P Daley on the map, is that this building, the mid building you're talking about

Atty. Thomas: Excuse me? It says existing garage

Mr. Matto: Oh, over here, this piece, okay

Atty. Thomas: Yeah, it's that one

Mr. Matto: alright, so it's Lot 1

Atty. Thomas: existing garage, and what I've taken, the photographs I've taken to show you first of all some views looking out toward the adjacent property to the south and then looking out from there out toward Soundview Avenue. As you can see this is elevated quite a bit over Soundview Avenue. And that is the building. That's the building that, how it existed long before the sub-division and at the time of the sub-division. And I will have Mrs. Walsh testify as to, it's pre-existing, prior to the sub-division what it was used for. The renovations have begun. The reason for the other photographs is to show you some of the pictures of the interior as it exists right now. For instance, this photograph over here in the second row to the right is a photograph of where the furnace existed, there was a furnace there. There was a bathroom on the first floor, as you can see in the back of the house there was a deck and a gas service, propane gas service. This plumbing, which was replaced while she was doing the renovations before the cease and desist order, and at that point she had no idea, I mean she had been given all the permits and then spent a substantial amount of money, but that's, just to replace the existing plumbing, where there was a sink here and also a sink on the second floor. This the room above the garage. There was a sink in this area located right above there, plus on the second floor a fire place and as you can see some cabinets. And I would at this point, just to confirm for the record, its prior use and have, ask some questions of Gail Walsh to present to you evidence as to its use as a residence.

Mr. Glover: Before you do that, the existing family dwelling, is that a tutor type home?

Atty. Thomas: Yes

Mr. Glover: So this was Woods Lightning Rod, prior

Mrs. Walsh: Yes, it was

Mr. Glover: And that building there was Wood's Office, originally

Mrs. Walsh: Originally, then it was sold to Hamms

Mr. Glover: that was, that was his office, okay

Atty. Thomas: And this is, we're going back 15 or 16 years before the sub-division, well before the sub-division

Mr. Glover: We're going back to about '68

Atty. Thomas: Right, but I'm talking about with respect to the testimony of Mrs. Walsh

Mr. Glover: Okay, sorry

Atty. Thomas: I'm just trying to

Mr. Glover: Just for, with reference to it, Woods Lightning Protection was there and I think that Mr. Woods either died or sold the business in about 1968 and then it became, the house became, he lived in the house, but then the house became a house and I'm not sure when this did or didn't become a residence

Atty. Thomas: Our effort is to prove it became a residence prior to 1997, which is when the sub-division went into affect. And Mrs. Walsh, would you please state your name and address for the record?

Mrs. Walsh: Yes, my name is Gail Walsh and I live at 42 L'hermitage Drive in Shelton, CT. And maybe I could just, I'd like to say this, that my experiences in this house was way before I ever knew Teresa Kleczkowski. I have been, I retired a few years ago, but I was a teacher in Shelton for 35 years, 20 of which were spent at Elizabeth Shelton School. That is in the Elizabeth Shelton School district and I had Joy Hamm. They were the owners of the property when I knew them and it was the early 90's. Mr. Hamm was a, a really well to do musician in both Boston and New York and Mrs. Hamm was heavily into the arts. Joy was really pampered and treated like a queen and Joy was in my classroom. I often did a lot of collecting of clothes and food for the needy in my classroom at different times of the year, and Mrs. Hamm would come in to me and say Gail could you come down to my house I have a few things, and she would have these gorgeous clothes

that she would be giving away. And I went into this house. This is where the bedrooms were, this is where they were. And at one time, I said to her, and I went there on several occasions, and at one time I said to her, why are you not living in the tudor house? And she said because I'm restoring it to look like a Shakespearean Pub. And this is what her love was. So I never really went any further, but the whole time that I had Joy that year, I went there maybe 7 or 8 times to collect these things and it was always in the house. And then the following year they moved to the, she went to the middle school and so I, you know I don't know what she did. But that, during that period of time, I definitely know that, and I used to stop every once and awhile, so I shouldn't say that, and just have a cup of tea with her, and it was in that house. It was never, so whether she ever finished doing the Tudor house to look like the Shakespearean Pub I have no idea. But any time I was there with her it was in that house.

Atty. Thomas: And was there in that house, was there a kitchen?

Mrs. Walsh: There was a kitchen, yeah, I had tea. There was a kitchen, there was a bedroom, there was furniture. It was really nice. I said to her, gee this is lovely. She said oh, the Tudor house is going to be beautiful. It's going to be

Atty. Thomas: And if you have any questions for Mrs. Walsh, you know, you can, and then I'm just going to ask Mrs. Kleczkowski, the owner, what the condition was when she purchased the property, with the building. What was in that building at that time.

Mr. Glover: Thank you Mrs. Walsh

Mrs. Walsh: Okay

Atty. Thomas: Mrs. Kleczkowski, would you identify yourself for the record?

Mrs. Kleczkowski: Teresa Kleczkowski

Atty. Thomas: And your address?

Mrs. Kleczkowski: 136 Soundview Avenue

Atty. Thomas: And Mrs. Kleczkowski, when you purchased this property, the building that's in question, the middle building on it, was the building set up like a residence at that point?

Mrs. Kleczkowski: Yes

Atty. Thomas: What was inside the building?

Mrs. Kleczkowski: On the first floor was everything was covered by the carpet downstairs in some dark color like charcoal and upstairs was the covered with the carpet, brown color. The downstairs was the, on the left side was the two rooms and when I go straight through the house there was the sink on the right side and there was the bathroom and was few furniture that they threw out. And upstairs in bedroom was the, the first picture is, I throw out the cabinets which is exactly the same like the color and style on the wall and there's the fireplace. And that was the sink and then it was the stove.

Atty. Thomas: And there were bedrooms in this property?

Mrs. Kleczkowski: There was no furniture, but there was bedrooms. There was on the left side, was there, there was two rooms.

Atty. Thomas: so, what our position is as we stated in the appeal, and I'm, I'm going to actually beg the indulgence because I know you have other agenda, it seems that in rushing between the two hearings I had tonight, I left the assessor's card on my, which I will be glad to get and return you know, very easily to go to my office, the point that I wanted to make is that the Assessor's card, even in the 2006 assessment, even though it recognized this was a garage, okay, it still lists as three residential dwellings on the 2006 Assessor's card.

Mrs. Kleczkowski: I think I have that

Atty. Thomas: Well, if she has the extra one we can do it, I had made the copies and I had left it over there. But our position is that the, as we said in our appeal, that the basis for the stop work order was the fact that it stated that she was denied a variance. Well, the fact that she was denied a variance, the variance was to create two separate ownership building lots. It was not, it had nothing to do with this issue of the pre-existing use of this building as a residence. And the fact that it has been taxed and lists, as, this property has been taxed and listed as a residential dwelling, cape dwelling, in the Assessor's records of the City of Shelton. Apparently, according to the records that, which I will bring over to you, since 1940, I can, I can find the correct one.

Mr. Cavallaro: There's only one tax bill on the property though

Atty. Thomas: There's only one tax bill on the property, yes. But it lists, strangely enough it has, and for a residential piece of property, it has three, three separate sheets. Each of them with the separate drawing on the back. In other words, this is the drawing for instance of, the picture that we sent down, this is the drawing, and this one here which I would like to introduce is the drawing of that and it indicates it's this cape residential dwelling. Now, when the sub-division was approved in 1997 and called "Soundview Heights" it was listed as existing dwelling, existed garage and existing building. Now, there's nothing in the zoning regulations that prohibits or restricts a second dwelling on a residential building lot if that second dwelling pre-exists the sub-division regulations and the actual sub-division of the property. There's nowhere that it says that when you apply for a sub-division you give up that residential use. Clearly, we've established that the residential use have existed. However, when the sub-division was approved, it would have well been within the rights of the Planning and Zoning Commission at that point, to put a restriction on the approval. And I have found no restriction on the approval and in fact in the notes on the map, and if you look at these notes, these very detailed notes, as it talks about who's getting water service, what's getting, which lot crosses another lot, they could have very easily put on there, that in Lot 1 only, only the existing dwelling shall be the dwelling of the buildings, because at that point it was clear that this was, when you looked at the picture, it was quite clear, quite obvious to anybody and you know that they examine the site and everything like that, that this was the type of building that existed. And if you walked in it at that time in 1997, you saw a furnace. You saw sinks. You saw a bathroom. You saw rooms that were bedrooms, whether they had furniture in it or not, it was a dwelling, you understand we have established that it was a dwelling. So the fact that nothing prohibits it, it would have been up to the Zoning Commission at that time to put a condition on the approval, they did not. So therefore, while they did in fact divide the lots, which gave, and divide the lots into the five lots, which therefore at that point, gave this commission the perfect right when it did to deny the variance request. All we're doing here is opposing the cease and desist order, that she has the right to renovate this building, which she's doing, and has spent, based on the permits obtained, a substantial sum of money up to this point and we are saying that the cease and desist order, based on the fact which the only basis for the cease and desist order that was given, was that your application to the Zoning Board of Appeals was denied to split the lot into two building lots, therefore you cannot make a garage building into a residential living space. She's not making a garage building into a residential living space

Tape had to be changed

Atty. Thomas: reason given in the cease and desist order is that this commission denied her request to split it into two lots, which has no relevance with, whatsoever, to the use of the second building as a pre-existing residence on the single lot. So that's really all I have in my presentation on this.

Mr. Matto: It's a one acre zone right?

Atty. Thomas: Uh,

Mr. Matto: One acre zone?

Atty. Thomas: it's R-1, this is an R-1 zone

Mr. Conklin: This woman was not the woman who did the sub-division correct?

Atty. Thomas: No

Mr. Conklin: She bought this lot

Atty. Thomas: subsequent to the sub-division

Mr. Glover: Attorney Thomas, this is an appeal

Atty. Thomas: Yes

Mr. Glover: And I have a letter in here from September, from August saying that the applicant was going to be out of town

Atty. Thomas: She was out of the country

Mr. Glover: out of the country

Atty. Thomas: on medical

Mr. Glover: that's fine, but then you asked us to push to November

Atty. Thomas: Yes

Mr. Glover: Legally, do we need a letter from you telling us that you're granting us more time, because we have what, 30 days from the start, from the time we schedule it to hear it?

Atty. Thomas: You have 35 days, but I don't think you opened the public hearing at, you have 65 days to schedule the public hearing. So that would have been 65 days from the September meeting, which is the first it was. You scheduled the public hearing for October, but did not open it, I believe at that point

Mr. Glover: Did we open it?

Clerk: NO

Mr. Glover: Okay

Atty. Thomas: Okay, so then you're holding your hearing within the 65 day time period and you have now a 35 time period.

Mr. Glover: To complete the hearing

Atty. Thomas: to complete the hearing, I will say for the record, if any extensions are determined to be required, we would absolutely request that they be given

Mr. Glover: Thank you. I mean it's just for the record.

Atty. Thomas: I wasn't here so I wasn't aware whether or not you opened it. If you opened it yet, in September yes I would have to give you an extension.

Mr. Glover: I just didn't want a technicality for one side or the other to

Atty. Thomas: understood, thank you

Mr. Glover: we sometimes get appealed and we want the record to be correct. Alright, does the Board have any questions for Attorney Thomas?

Mr. Cavallaro: Is this all served by septic?

Atty. Thomas: Yes, this one is, it's still served by septic and well, correct?

Mrs. Kleczkowski: No, city sewer

Atty. Thomas: Oh, it does have city sewer in that

Mrs. Kleczkowski: yeah and water

Atty. Thomas: Yeah, because I think it, I'm sorry, I was

Mr. Glover: there's an easement in the back

Mr. Cavallaro: Yeah, there is an easement, I don't think it's connected

Atty. Thomas: When the sub-division was approved it listed Lot 1 as being serviced by on-site well and septic system. When the, when the sub-division was approved. And then the sewers were

Mrs. Kleczkowski: I don't remember.

Atty. Thomas: But it has sewer service now?

Mrs. Kleczkowski: Yes, the sewer and, yes

Mr. Glover: For two buildings or for three buildings?

Mrs. Kleczkowski: for 2

Mr. Glover: Does anybody live in the house now?

Mrs. Kleczkowski: No, because

Mr. Glover: The tudor house?

Mrs. Kleczkowski: No, which one, the first one?

Mr. Glover: the tudor house

Mrs. Kleczkowski: the first one, yes

Mr. Glover: The first house

Mrs. Kleczkowski: yes

Mr. Glover: alright, somebody's living in the tudor?

Atty. Thomas: Yes

Mr. Glover: It didn't become a pub?

Atty. Thomas: No, it didn't become a, a Shakespearean Pub, except at night on a full moon.

Mr. Glover: alright, so your, the question here is whether it was a residence in 1997, correct?

Atty. Thomas: Well, whether it pre-existed, even if it was, even if somebody wasn't specifically living in it in 1997

Mr. Glover: No, I understand that, but whether it was a residence in 1997

Atty. Thomas: at that point, was it a residential building, and did in fact that sub-division remove that residential right, I guess really is the question. And then was the cease and desist order appropriate because it's basis, now you have to focus, this is an appeal of a cease and desist order and its basis for the cease and

desist is, the only one I found in it is that it was denied the variance.

Mr. Glover: It might be appropriate for us to pull the records on that and just look at it?

Atty. Thomas: The cease and desist?

Mr. Glover: No, not the cease and desist, the hearing

Atty. Thomas: the variance

Mr. Glover: the variance here, because there may be something noted in the variance hearing that made reference to this as a garage or a reference, or as a residence. So it would be important for us to go back

Atty. Thomas: absolutely

Mr. Glover: and review that. Alright, does the Board have any other questions for Attorney Thomas? (no) Is there anyone in this room in favor of this application?

Clerk: this is an appeal

Atty. Thomas: This is actually an appeal, the next person to speak would be

Mr. Glover: I'm sorry, you're right, you're right, you're right, yes, thanks for keeping me in line

Mr. Cavallaro: Just to clarify, the kitchen of this existing building is on the second floor?

Atty. Thomas: Actually there were, you can correct me if I'm wrong, but there were actually two sinks

Mr. Cavallaro: Well sinks, but the description explained the stove and the refrigerator on the second floor

Mrs. Kleczkowski: Second floor

Atty. Thomas: There was a stove and refrigerator on the second floor

Mr. Cavallaro: So it's one kitchen on the second floor

Atty. Thomas: one kitchen on the second

Mr. Cavallaro: not a two family house

Atty. Thomas: No, not a two family house

Mr. Glover: Mr. Dingle, sir?

Mr. Dingle: Tom Dingle, Zoning Enforcement Officer. I have three sets of my file. The Assessor's card shows no, no city sewer to any of the buildings there, so I do not know if they were legally hooked up to city sewers. The application that came to the Planning and Zoning, which Attorney Dominick Thomas provided to you, and it's also in my file, shows an existing one family dwelling, existing garage, existing building. If the Planning and Zoning Commission was aware of multi dwellings on a single lot, it wouldn't have been allowed. So whether the applicant misrepresented the sub-division to us, but as far as we know it's a garage and that's what it can be used for.

Mr. Glover: Alright, there's a letter in here, did we receive this letter?

Clerk: I think so, in here, didn't it? No, then we didn't get it

Mr. Dingle: My file has a copy of the letter

Atty. Thomas: Is there an extra copy of that for me that I can just take a look at?

Mr. Glover: alright, there's a letter in there from, probably Rick Schultz? This is from October, do you have this letter too? You did?

Can't make out conversation between Chairman and Clerk

Mr. Matto: Is this supposed to be

Mr. Glover: Hang on Ralph, Jamie's going to read a letter

Mr. Matto: Is this supposed to be a copy of an R-2 sub-division map?

Mr. Glover: I don't know, let Jamie read this letter, letter first and then we'll get to your question

Mr. Matto: alright

Mr. Jones read letter: "To: Gerald Glover, Chairman, Board of Zoning Appeals. From: Richard D. Schultz, Planning and Zoning Administrator. Date: October 16, 2008. RE: ZBA Application #1008-1. Please be advised that the Shelton Planning and Zoning Commission at their October 14, 2008 meeting reviewed pending ZBA Application #1008-1 regarding the appeal of the Zoning Enforcement Officer (ZEO) for the issuance of a Stop Work Order for property located at 82 Soundview Avenue. After review and discussion, the commission voted unanimously to support and uphold the position of the ZEO on the issuance of this Stop Work Order. During its review, the Commission noted the following observations: 1. The Commission remembers approving the subdivision involving this property which identified the existing detached garage. The record map clearly shows the garage as an accessory structure with no living quarters. The ZEO has repeatedly advised the owner of this garage not to convert this structure into a dwelling unit to avoid legal action. When the owner failed to comply with the ZEO a Stop Work Order was properly issued. 2. The Commission notes that the subject property is located within the Residence R-1 District which does not allow two dwelling units on one lot. During the subdivision review if the garage was identified as a dwelling it would have been removed as a condition of approval. cc: Planning and Zoning Commission."

Mr. Glover: Alright, Tom, so the a, the applicant came to the, came to you as the ZEO originally for, for permits to do work in here?

Mr. Dingle: No, because she went directly to the building department because it was internal renovations and

Mr. Glover: Okay

Mr. Dingle: so the building department, I have a copy of the building permit card that is kept in the building department, and shows '06 remove and replace roof shingles, '07 owner Int. Alt operations APC, whatever that means, '07 electrical work, '08 replace existing furnace. Again, they got a complaint about, I guess they were stripping the, the whole building on the first floor is totally bare down to the studs, no insulation, no sheetrock, no sinks, no nothing, and again, basically I was familiar with the attempt to split the lot to make a, make it a legal dwelling unit and that was denied. So, my opinion as the zoning officer, the building should be kept as a garage, workshop, but not a living/dwelling, not for living in.

Mr. Matto: What gets me is if the sub-division, how could they attempt to split it when it's only 30,000 sq. ft. to start with

Mr. Dingle: It's 80,000

Mr. Matto: Oh, it is 80, okay

Mr. Dingle: Yes, so that's, that's why they came to ZBA to split the lot.

Mr. Matto: Okay

Mr. Dingle: And again, having city sewers (unclear)

Mr. Matto: Then technically if this is the sub-division map, this says garage, the other says existing building, there's only one that's actually spelt out as a, as a livable structure or one that's been lived in. You know what I'm saying? It's not three parcels, or three houses, or two

Mr. Glover: Alright, I think, I think that at this point we should continue the hearing until next month, so that I can get the record of the, the ZBA's record of the attempt to split the lot so that we can see if there's anything in that, in that record from that applicant which was not this lady,

Atty. Thomas: I think it was. Mrs. Kleczkowski, you, you applied to split the lot, she wasn't the sub-division, I want to make sure, she wasn't the one who did the sub-division, but she is the one who did apply

Mr. Glover: to split the lot

Atty. Thomas: to split the lot

Mr. Glover: right, and did she have ownership when she did that?

Atty. Thomas: Yes

Mr. Glover: or was she a pending buyer?

Atty. Thomas: I think she had ownership

Mrs. Kleczkowski No, no, I had ownership

Atty. Thomas: she had ownership

Mr. Glover: So, let me pull the records, the hearing from the attempt to split the lot and see what the testimony is in there that could maybe shed some light on what this was considered at that point or was not considered at that point.

Atty. Thomas: Just, and I will address it when, but just one specific comment and I have never, I had never seen the letter from, from Rick Schultz or anything like that, until tonight, but I was not, obviously I was not involved in the sub-division, I was not involved in the application, neither was Mrs. Kleczkowski. And there's no doubt since I introduced the map that it says existing garage, existing one family dwelling and existing building. And as you can see from the picture in the upper right that is an existing garage. I do not know and maybe I should look at the minutes from there whether or not there was any representations, but the fact of the matter is that the Planning and Zoning Commission and the Planning and Zoning Staff, I doubt very much if they relied solely on the map when you had existing buildings out there. And if you observed that, you can observe, anybody can observe the fact that that is much more than an existing garage because of the size of it. And so, the fact is that it said existing garage on a map, only represented what it was used for at that point, not what it was used for prior. And our argument relates to the fact that it was in fact a dwelling and that the commission in no way prohibited it, even though it was identified as that. Plus the fact you had an existing building in the back and they didn't even address that to say what the building was. That building in fact was used as a dwelling also in the past, even though it's a small size, you can see from the picture that I passed around that it, so my point is, I understand what the Commission, but I want to make it clear that my reading of Mr. Schultz's letter is he's referencing no representations, nothing, other than what is represented on the map, and that is all that he's representing. However, obviously, that would be worth looking at that set of minutes too from 1997.

Mr. Matto: but doesn't it just indicate that there's one existing unit here, livable unit

Atty. Thomas: Well, it says

Mr. Matto: (unclear) garage

Atty. Thomas: It says existing one family dwelling

Mr. Matto: yeah

Atty. Thomas: then it says existing garage, then it says existing building

Mr. Conklin: but the Assessor's card is showing a house

Atty. Thomas: the Assessor's card is showing three residential dwellings

Mr. Conklin: including bedrooms, kitchen

Atty. Thomas: Well, yeah, it identifies the bedrooms and kitchens and everything. And I think even on the third card, I don't want to confuse this, but even on the third card, it lists the third card as a one, as a residential dwelling, I might as well introduce it, I mean just for the, we're not trying to ask for the third building to be a dwelling, but to show you that they actually have categorized it as three dwellings.

Mr. Conklin: And they have, the assessor shows, on this assessor's card, this a building as it stands dating all the way back to 1990, 80, I think I saw, by ownership, change of ownership, sale price

Atty. Thomas: yes, right exactly, going all the way back, the, where's the card that we introduced, that I introduced? Oh, it's right there, I think it's right underneath there

Mr. Matto: but the sub-division map shows '97 and it shows as one residence

****Several conversations going on at once****

Mr. Glover: Okay, until we get the hearings and pull them and read them, we'll a, so we're going to continue this until December

Mr. Dingle: I can add more evidence in December?

Mr. Glover: Can you add more evidence in, yeah it's an open hearing, anybody

Mr. Harbinson: Dominick, it seems to me that this started early as a garage and was added onto, the residential portion was added onto before they, it would be what we would call a pre-existing condition

Atty. Thomas: Yeah, I mean, the

Mr. Harbinson: And this doesn't, the fact that it's called a garage here (unclear)

****Several conversations going on at once****

Atty. Thomas: I think the 2006 point

Mr. Glover: Guys, hey, fellas

Atty. Thomas: Two things, this building according to the assessor's card that we introduced goes back to 1940's. There is a comment and I, it's a very good point I overheard this, there's a comment converted to two car garage, this was, this area here where you see this new-ish looking window here, was a third bay in the garage. There was three bays in the garage, the open house, (unclear) and in fact, in fact this area behind, can you see the picture in the bottom here? This area behind where the downstairs sink was, was actually the third bay of the garage. So there were 3 bays of the garage. There was this area with the, with furnace, sink, bathroom, two bedrooms, which are these two rooms here where the wall was ripped out, there were two bedrooms, these were on the first floor, and then you go up the stairway and when you turn right, then you saw those other, those other buildings, there were two over the three car garage that was there. In 2006, that was taken out as part of her permits, actually it, it went from a three car garage to a two car garage.

Mr. Dingle: So you made it more non-conforming

Mr. Glover: But just to, just to set Mr. Harbinson, this was Woods Lightning Protection he ran a business out of this. Mr. Woods lived in the tudor house. His trucks parked in the three car garage with a little office to the

side of it. So it was not a two car garage that had living space added onto it. It was a three car garage with a small office space in it. And I believe the upstairs in it, they did drawings, that's what this was until about 1968.

Atty. Thomas: And sometime between '68 and '90

Mr. Matto: '97

Atty. Thomas: Well no, not, not '97, sometime between '68 and '91, it was made into a residential and the Hamms were living in it at the time that Mrs. Walsh

Mr. Glover: If it was made into a residentially legally

Atty. Thomas: Well, it would've been, legally it was one big lot. There was no issues, it was one large piece of property. And I would assume, I mean when you look at the assessor's card, and you look at the assessor's card dating that says age of construction 1940 and lists it as a one family, the only way the assessor's card gets that information is through the building department.

Mr. Cavallaro: Not necessarily, they do re-assessments and they go through the property and they discover what it's actually being used as, it doesn't necessarily make it legal

Atty. Thomas: there's no evidence that it was illegal at this point

Mr. Cavallaro: Well, there's no building permit to ever make it

Atty. Thomas: I don't think you're going to get a building permit back into the 70's, but I'll certainly look

Mr. Glover: Well, in any event, we're going to stop here and continue this until next month.

Atty. Thomas: Okay, I'll leave this

Mr. Glover: How's that?

Hearing continued until the December meeting.

#1108-2 56 Ojibwa Road, Mark & Lynne Besescheck of 56 Ojibwa Road, Shelton, CT are seeking to waiver Section 24, Schedule B, Standard 7 by varying the minimum setback from the front property line from 30 ft. to 20 ft. for a 35x6' front porch.

Mr. Glover: Good evening

Mr. Besescheck: Good evening

Mr. Glover: would you give your name and address for the record please?

Mr. Besescheck: Mark Besescheck, and it's 56 Ojibwa Road

Mr. Glover: And do you have some pictures for me please?

Mr. Besescheck: Yes, I do

Mr. Glover: and some receipts?

Mr. Besescheck: yes, pictures from the front and sides, and then from the back looking toward it. These are the receipts that I sent out and these are the copies that I got back

Mr. Glover: I just need the receipts you sent out. Are these the receipts from all your abutting neighbors?

Mr. Besescheck: there's three, yeah, three neighbors, three receipts

Mr. Glover: Alright, it says on the application that you're looking for, a variance from the front yard setback from the required 30 to 20

Mr. Besescheck: yes

Mr. Glover: and it says that it's for a 35x6 foot front porch

Mr. Besescheck: yes

Mr. Glove: I have a picture here with a house with a front porch, are you adding another front porch?

Mr. Besescheck: No, I had started that front porch and I had a cease and desist, so, I had to go and apply for everything

Mr. Glover: Okay, this looks like a relatively new house, when was it built?

Mr. Besescheck: 1984

Mr. Glover: so do you have an A-2 plot plan for it?

Mr. Besescheck: I have a plot plan

Mr. Glover: This looks like an assessor's map, or, I'm not sure what it is. Are you the original owner of the house?

Mr. Besescheck: Yes I am.

Mr. Glover: That's a, that document over there

Mr. Besescheck: Yeah, this is mine, my original one when I built the house. When I originally had built it, it was a 25 foot variance. I had just found that last week. And all we had there was a concrete stoop, 6 foot out, 5 foot wide that was pre-cast that was falling apart.

Mr. Glover: So the original house was 24.99 feet from Ojibwa

Mr. Besescheck: Okay

Mr. Glover: according to this over here. Okay. The reason I ask is that it's not unusual for Pine Rock Park for houses to be built over property lines, over streets

Mr. Besescheck: yeah, I'm aware of that now

Mr. Glover: streets to run through houses, and the only survey group that goes up there is Clark Pearson

Mr. Besescheck: that's who did mine

Mr. Glover: Right, I can see that. And because the assessor's map may say something, it doesn't really mean it's correct. But you have an A-2 survey showing 25 feet from the house, you're putting a 6 foot porch?

Mr. Besescheck: yeah, same as it was before, I'm coming no further than the concrete stoop that was there. It was 6 foot out and 5 foot wide. I'm 6 foot out now, or actually 6 foot 3, I'm 3 inches farther

Mr. Glover: So when you're, when you're through you're going to be

Mr. Besescheck: It's going to be 22 feet from the street

Mr. Glover: Okay, alright, so you're giving yourself a little wiggle room

Mr. Besescheck: Tommy said to go to, make it a 20 foot variance

Mr. Glover: Alright, so you started a porch for whatever reason and you had to go through the process and when you went through the process you found out that the front porch that you'd already built is too close to the road

Mr. Besescheck: Right

Mr. Glover: And so you're in here for a variance from the required 30 which in fact, it's only 24.99 and you're going to be 20 feet.

Mr. Besescheck: yeah

Mr. Glover: Does that make you less than 20 feet? From 24.99 minus 6 is

Mr. Besescheck: Yeah, on this map here it says that I am 25 feet on this map, the actual measurements that we took from the street to the deck though right now is 22 feet and to the, actually to the house it's 28 feet

Mr. Glover: we have to go by that and that says that one corner is 24.99, which is 25 feet

Mr. Besescheck: right

Mr. Glover: okay, so if you're putting 6 feet on the front, you need a variance to 19 feet

Mr. Jones: wasn't he replacing

Mr. Glover: Were you replacing something?

Mr. Besescheck: Yeah, there was a concrete stoop there, I went just as far as the original concrete stoop.

Mr. Glover: Alright, so you replaced the concrete stoop and you're going just as far as it

Mr. Besescheck: Just as far, yeah, I didn't go any farther out

Mr. Glover: Okay, thanks Jamie

Mr. Besescheck: I also have letters from all my surrounding neighbors

Mr. Glover: that are in favor?

Mr. Besescheck: that are all in favor yeah, across the street, next door, behind me. In fact they're upset that it wasn't finished, then they can have their glass of wine on there.

Mr. Glover: Oh, careful now, there's a lot of that going around.

Mr. Besescheck: she needs one right now

Mr. Glover: Alright, so, okay so, Mr. Correia is elated

Mr. Besescheck: Yeah, he's the one that looks at it every day, he opens his

Mr. Glover: that's what it says

Mr. Besescheck: yeah, he's right in front of it

Mr. Glover: Tammy Michaels

Mr. Besescheck: She's to the left

Mr. Glover: thinks it's a wonderful feature.

Mr. Besescheck: She's behind me, she never even sees it because from where her house is behind the house you can't see it, but she's happy, she was there today when she brought the letter.

Mr. Glover: And Mrs. Zielinski has no objection and the Foxes

Mr. Besescheck: Fox, yeah

Mr. Glover: The Foxes say it's an improvement to the neighborhood and only brings value to their, and it fits right in. It just, this just makes it so that he doesn't have to read the entire letter into the record

Mr. Besescheck: Everybody was happy

Mr. Jones: Thank you, Gerry

Mr. Glover: Alright, does the Board have any questions for the applicant? (no) Is there anyone in this room who is in favor of this application? (no response) Is there anyone in this room who is opposed to this application? (no response) Final questions? (no) Then I declare the hearing closed. Thank you, have a nice night.

Later that evening during the work session the Board, upon motion by Mr. Jones and seconded by Mr. Matto, unanimously voted that:

#1108-2 "In the application of Mark & Lynne Besescheck of 56 Ojibwa Road, Shelton, CT for a certificate of approval for a 35x6 front porch to be located on the property of the applicant at 56 Ojibwa Road, R-3 zone, and which requires a variance in setback from the front property line,

The application for a variance is approved.

Inasmuch as new porch structure will not encroach any closer to the property line than the existing porch, and

Inasmuch as there were no objections from any of the abutting property owners,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in setback from the front property line from 30 ft. to 20 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

#1108-3 60 Little Fox Run, Russell Schif of 60 Little Fox Run, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 9 by varying the minimum setback from the left side yard from 30 ft. to 20 ft. for a detached garage/storage area.

Mr. Glover: Good evening. Would you give your name and address for the record please?

Mr. Schif: My name's Russell Schif, I live at 60 Little Fox Run.

Mr. Glover: And are you going to be speaking?

Mr. Johnson: I'm his neighbor

Mr. Schif: no, that's my neighbor, he probably didn't think he was going to be out this late. I'll buy him a beer.

Mr. Glover: Oh, there we again

Mr. Schif: Another alcohol reference

Mr. Johnson: it turns out I don't drink, so, I can nurse a ginger ale all evening though

Mr. Glover: Alright, Mr. Schif, tell us what you want to do

Mr. Schif: I'd like to put a detached garage. It'd probably help to look at the picture here. That shed represents what would be the front corner of the garage, proposed garage, and then a storage area attached to it, single story structure.

Mr. Glover: How big is the garage?

Mr. Schif: the garage

Mr. Glover: I mean is this shed staying and you're adding to it?

Mr. Schif: no, I, in order to do this I have to pull it down, and, it can't be moved

Mr. Glover: So this is disappearing and you're putting up a two car garage

Mr. Schif: In the same, it starts in the same location on the right side of that, which is

Mr. Glover: And when you do it you're going to be 20 feet from the property line?

Mr. Schif: I will end up being, that right now is 20 feet yes

Mr. Glover: And you're supposed to be 30 feet from the property line

Mr. Schif: yes

Mr. Glover: And would the non-drinking gentleman next to you be the property on that side?

Mr. Schif: He's the one it would effect the most, yes

Mr. Glover: Across the, well it's a 1.35 acre piece, but there's a conservation easement across the side of it and the back of it

Mr. Schif: Yes

Mr. Glover: So it cuts the square footage down somewhat

Mr. Schif: Yes

Mr. Glover: In the back you have a septic system, a septic system and a pool

Mr. Schif: a septic system and a pool, yes

Mr. Glover: and so it would appear that there's no other place to put this garage except where you want to put it now, is that correct?

Mr. Schif: Yes

Mr. Glover: The garage, one story?

Mr. Schif: single story, yes

Mr. Glover: How big is the garage door?

Mr. Schif: The garage door I believe is 8 by, I think it's 8x8, I don't have my scale with me. I believe as it was drawn it was an 8x8

Mr. Glover: Okay, and what are you going to put in the garage?

Mr. Schif: Uh, basically whatever's in the shed right now would be part of that, but I have a 10 ½, a 12 ½ and a 14 ½ year old sons and I'm anticipating a used car parking lot soon, so I'm hopefully putting some cars in there

Mr. Glover: Okay, but you're not going to run a business out of it

Mr. Schif: No, no

Mr. Glover: You're not going to move in there are you?

Mr. Schif: No

Mr. Glover: a few years from now come back and tell us that it was used as a residence?

Mr. Schif: No, no, no

Mr. Johnson: Unless he's in the doghouse with the wife

Mr. Schif: No

Mr. Glover: Okay, so it's a single story structure, the only place you can put it, it's going to have an attic to it?

Mr. Schif: No, no attic, it's all going to be open on the inside

Mr. Glover: Okay, all open, no heat

Mr. Schif: No heat

Mr. Glover: no water

Mr. Schif: No water

Mr. Glover: Electricity?

Mr. Schif: electricity

Mr. Glover: Electric from the house?

Mr. Schif: yeah

Mr. Glover: Alright does the Board have any questions for the applicant? (no) Is there anyone else in this room who is in favor of this application? (yes) Now would you give your name and address?

Mr. Johnson: James S. Johnson, 64 Little Fox Run, Shelton

Mr. Glover: And Mr. Johnson this encroaches on your property?

Mr. Johnson: It doesn't encroach

Mr. Glover: It comes closer to your property

Mr. Johnson: It comes closer to my property

Mr. Glover: It's not on your property, but it's an encroachment, he's supposed to be 30 feet and he's only going to be 20

Mr. Johnson: Right, and the outer edge of the building Russ wants to put up is no closer to me than the existing shed

Mr. Glover: So you're in favor of this?

Mr. Johnson: Yeah, I'm fine with it. I would encourage it.

Mr. Glover: Any questions from the Board? (no) Anyone in the room who is opposed to this application? (no response)

Mr. Schif: I have the receipts and a letter from the only other neighbor that's attached to my property, which would be behind me.

Mr. Glover: Do they drink beer too?

Mr. Schif: Uh, yes, everybody but James here.

Mr. Glover: Okay, this is a letter from Greg and Ann Prindle and the relevant paragraph is "we have no objection to the request for this variance from the left side setback from 30 to 20 okay? I'm saving you again Jamie

Mr. Jones: Thank you

Mr. Glover: Final questions? (no) Then I'll declare the hearing closed. Thank you very much.

Later that evening during the work session the Board, upon motion by Mr. Jones and seconded by Mr. Cavallaro, unanimously voted that:

#1108-3 "In the application of Russell Schif of 60 Little Fox Run, Shelton, CT for a certificate of approval for a detached garage to be located on the property of the applicant at 60 Little Fox Run, R-1 zone, and which requires a variance in setback from the left side yard,

The application for a variance is approved.

Inasmuch as it is the only place on the property the garage can be placed due to the shape and topography of the lot, and

Inasmuch as the proposed garage is going to replace an existing shed on the property and will not encroach any closer to the left side than said shed currently exists,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in setback from the left side yard from 30 ft. to 20 ft. at the above is granted (Section 24, Schedule B, Standard 9) in this instance.

This certificate of approval is contingent on the following stipulations: 1. The garage will be a one story structure with no living space. 2. No commercial business will be conducted out of this garage. This certificate of approval shall take effect on the date following the publication of the statutory notice in a newspaper having circulation in the City of Shelton, provided that a copy thereof has been recorded by the petitioner in the land records of the City of Shelton."

#1108-4 167A Bridgeport Avenue, Ronic Enterprises, Inc. of 90 Soundview Avenue, Shelton, CT is seeking to waiver Section 23, Schedule A, Line 62D and Section 24.8.3 by allowing access to commercial

building through a residential zone and construction of off-street parking within residence setback.

Mr. Glover: Good evening Roger.

Mr. Spinelli: Good evening

Mr. Glover: It's been awhile since you've been here

Mr. Spinelli: I try to stay away

Mr. Glover: Could you give your name and address for the record please?

Mr. Spinelli: My name is Roger Spinelli and I reside at 90 Soundview Avenue in Shelton

Mr. Glover: Did you do that sub-division?

Mr. Spinelli: I did

Mr. Matto: Is it a house, a garage, a building and a house, right?

Mr. Glover: No, you can't talk about that

Mr. Spinelli: You can't talk about that. The hearing's open until next month

Mr. Glover: right, the hearing is open on that, but I'll just confirm that you did built it, my memory was that you built that sub-division, isn't your house on part of that?

Mr. Spinelli: It is, yeah

Mr. Glover: Alright, to the business at hand. We have a piece of property here that's in both an R-1 and a CB-2 zone. Would this be the property that we just recognized and granted a variance to Dominick Thomas about a month and a half ago?

Mr. Spinelli: That is correct and I have a question on that, briefly, I think the ruling that Ramon Sous made on this is that the, the town ordinance says you need 20 feet on a town accepted road and I think Ramon Sous, Assistant Town Counsel, said that because it pre-existed zoning and, it carried through for not only the ordinance but for the frontage on the lot. But my question is, is wouldn't Black Hills Road be a legal frontage for this lot? I don't think that anyone ever looked at it that way.

Mr. Glover: I uh, I don't know to be honest with you. Nobody ever brought that up

Mr. Spinelli: Well, I'm going to bring it up tonight as I go through the presentation very quickly and very briefly.

Mr. Glover: Okay, so

Mr. Spinelli: because there's a method to my madness

Mr. Glover: there always is. The front part of this, the one that's closest to Bridgeport Avenue is the CB-2 zone, according to this map

Mr. Spinelli: uh, which map, yes

Mr. Glover: Okay

Mr. Spinelli: This is all CB-2, this is the line right here

Mr. Glover: right

Mr. Spinelli: Yes, correct

Mr. Glover: Okay? And, and the rear part of it that is closer to Black Hills Road is the residential zone

Mr. Spinelli: that is correct

Mr. Glover: Is Black Hills Road in a residential zone too, is that an R-1 also?

Mr. Spinelli: it's an R-1 also, and it's a town accepted road

Mr. Glover: And the, what we did, I don't know, a couple months ago, there was a driveway that came through here and as I remember it there was I think 4 or 5 lots and this lot was a vacant lot between

Mr. Spinelli: between two houses

Mr. Glover: between the two, it was developed on both sides

Mr. Spinelli: that is correct

Mr. Glover: and, and so we recognized the lot with frontage on that right of way

Mr. Spinelli: Bridgeport Avenue

Mr. Glover: and Bridgeport Avenue

Mr. Spinelli: correct

Mr. Glover: Now, tell me what you want to do

Mr. Spinelli: Okay, first of all let me get all this out of the way. This is the receipts you need?

Mr. Glover: Yes

Mr. Spinelli: this is, I don't know if you need copies of the letters I sent out?

Mr. Glover: No

Mr. Spinelli: and these are the photos of the poster and all the sides of the property

Mr. Glover: Can you tell us what you want to do here?

Mr. Spinelli: Yes, I'm just trying to get myself organized here so I can pass some things out.

Mr. Glover: Who did you notify from the City of Shelton?

Mr. Spinelli: Nobody, I was told I didn't have to, I asked that question, because it's a town road there's no, it goes up to a town road

Mr. Glover: The property goes up to a town road?

Mr. Spinelli: Well, Black Hills Road is a town road

Mr. Glover: I understand that, but does the property go that far back?

Mr. Spinelli: Oh, no it doesn't, I mean that's the only other, you can access it from Black Hills Road

Mr. Glover: So, is it the city's property between Black Hills Road and this property?

Mr. Spinelli: I believe it is, it's just like any other setback you know, from a street that I would assume, you

know, I asked that question of Planning and Zoning when I went up to get the application, they said it wasn't necessary, so, I think it was Rick Schultz that told me because he helped me out with the application.

Mr. Glover: Okay, well as of, as of later tonight our regulations will change, so if you come up against the City of Shelton again, you have to notify the conservation commission.

Mr. Spinelli: Oh, I didn't know that

Mr. Glover: Well, you don't have to do it until we vote on it, but that's coming

Mr. Spinelli: Okay. The Planning and Zoning 2006 plan of conservation and development is to change all the R-1 zone in the area to a central business district. I also want to just make things a little bit easier so you can comprehend what I'm talking about. I know you have one map, but I'd like to give copies also because I have to reference this, sorry. I know I'm throwing a lot of stuff out here, but it's the only way you're going to get the whole picture.

Clerk: Thank you for not talking while you're unfolding those

Mr. Spinelli: I'm sorry?

Clerk: Thank you for not talking while you're unfolding those. I really appreciate it

Mr. Glover: She doesn't have a vote so don't worry about it

Mr. Spinelli: Now, using this map over here, this shows the, the subject parcel. This shows the residential houses that are above it to the, to the west and Constitution Blvd., future Constitution Blvd. North is over here. And the opening statement I made is to change all of this blue to a conservation

Mr. Glover: commercial

Mr. Spinelli: Conservation and development for a central business district, and I also put on here what that says, and basically, let me just read this, it says areas that serve a neighborhood or city center function suitable for commercial, office, residential and in some instances light industrial uses and mixed use environment. So that's what the future plan is to do with that particular area. Now the purpose, the proposed commercial building that I have on this map here can be elevated and I can put the parking underneath coming from Bridgeport Avenue, but, but that would create traffic on an 8 foot right of way that would adversely affect the two existing houses, one on the left and one on the right. Only one vehicle, if you've been up there can come in and go out at one time, otherwise, somebody's got to back up. The resident in this house, 167 was coming in and it was snow and ice and he slid backwards down here and he got hit by a car. And if you've ever come out of this driveway over here looking north there's like a little blind spot, and what happens is that, here's some photos, the way they travel on that road somewhere around 80 miles an hour, up 80, about 40 miles an hour, sorry about that

Mr. Glover: you were pushing that a little bit

Mr. Spinelli: Yeah, I was pushing that a little bit. Let me see, I just want to share this with everybody so you have it,

Mr. Glover: How many trees did you cut down to do all this paperwork?

Mr. Spinelli: I didn't, but the point I'm trying to say, if you're looking at the site line if you're coming out, out from the property onto Bridgeport Avenue, it's horrendous, you can't really see. And I've attached to the photos of the site line, was the Shelton Police Department's case incident report for accidents, and if you look at it underneath the photos there's quite a few of them over there. And as I say, the one resident at 167 got hit last year with a car coming from the north going to the south. So it is really a terrible, terrible site plan. But like I say, I can still develop this and elevate the building which would look funky compared to the two existing houses, but the problem is really if you've been up there, that narrow driveway, it's horrendous and with one car coming and one car going it's just not going to work. So I really feel that the prudent alternative is to come from Black Hills Road and the commercial building will stay in the commercial zone, I'm not looking for, it's 40

feet from a residential zone I'm still within that. It's just to put the parking up there. But if you look, if you look over here, coming from Black Hills Road through the commercial going to residential, you only got 1, 2, 3, 4, 5 houses that you're traversing over here. And the nearest house to, to coming in here is 270 feet and they're going to be residential cars, they're not going to be trailer trucks coming in there like, I know why they probably had the regulation, they didn't want to have big trucks coming into a residential neighborhood. But this would just be residential cars coming in here, other than the time that they have to move into the building and, you know, for a moving truck.

Mr. Glover: What will this be used for, the building?

Mr. Spinelli: Well, right now I'm talking to someone, actually it's an engineering company. And they would be an engineer survey. And they come in at 7:30 in the morning and leave at 5:00, five days a week. No big traffic except for someone coming down there to see them.

Mr. Glover: Can they help you out with that topography from Black Hills,

Mr. Spinelli: Yes they can, but you see, because the City owns such a distance in there you can actually come in

Mr. Glover: diagonally

Mr. Spinelli: diagonally, and that's what makes it better. And for fire reasons, if you ever had a fire truck come down here, it can service any fires for these existing houses. To get a fire truck coming up around this bend in that narrow strip, you know, that's pretty tough. Okay, let's see

Mr. Glover: Have you been to the P&Z with this plan?

Mr. Spinelli: I did, I was with Rick Schultz

Mr. Glover: What did he think, did they review it at all?

Mr. Spinelli: Oh, you mean the commission?

Mr. Glover: Yeah

Mr. Spinelli: No, it was just strictly Rick, that's all. Now, I lost my notes, here they are, so by granting relief to access the property from Black Hills Road from the residential zone would be a prudent alternative to the present access from Bridgeport Avenue, on a narrow 8 foot right of way. Emergency vehicles accessing from Black Hills Road would better serve the existing structures, 167 and 167 ½ Bridgeport Avenue, as well as the new commercial building in the event of a fire. There are no residential homes in the R-1 zone on Black Hills Road that would be effected by the parking spaces proposed in this development. The closest residential home to 167A Bridgeport Avenue is house number 39, which I showed you is approximately 270 feet away. So if the 2006 Conservation and Development Plan is to convert all the R-1 zone into a central business district, the variance requested would be consistent with the comprehensive plan only earlier rather than later. The variance would not impact the safety and the welfare of the adjoining property owners. I want to just submit this also. This is a letter from a few of the adjoining property owners, specifically the one on the left and the one on the right of the proposed building. They obviously would rather have me come from the top down for the parking because you know, it's so difficult maneuvering in there. And I don't know if you've been up through there, and I don't mean to throw a lot of stuff at you, but at your leisure you can look at, you know, coming up on that driveway it is very very difficult. Have you been up there at all?

Mr. Glover: No, never been

Mr. Spinelli: So you can take a look from the first photo it climbs up the hill and then when you're up to the top it shows you coming down. The garage that's over here for this house #167, they've got to back up and go forward and back up again just to get out of here. And this guy here's got to back all the way down here to go all the way out. Now, if you add traffic coming through underneath this building, it's going to be absolutely horrendous. The granting of a variance has two basic requirements. The variance must be shown not to affect substantially the comprehensive zoning plan and two, adherence to the strict letter of the zoning

ordinance must be shown to cause unusual hardship, unnecessary to the carrying out of general purpose of the zoning plan. In regards to number one, the 2006 Plan of Conservation and Development, to change all of the R-1 zone to a central business district is in harmony with the comprehensive zoning plan. And in regards to number two, because the topography, the narrowness of the access-way opposed by owners of 167 and 167 ½ Bridgeport Avenue, the fire and safety issue and a dangerous site line exiting onto Bridgeport Avenue adherence to the strict letter of the zoning ordinance would cause an unusual hardship. And under the current regulations in zoning this is the only board that I can come to to get some sort of an appeal. This property over here which is PDS was in a residential zone and a commercial zone but he had 60,000 sq. ft. so he was permitted to go in and do a PDD. So presently, right now you have a building that's sitting inside of an R-1 zone but it is being accessed from Bridgeport Avenue through a commercial zone. You know, had I had 60,000 sq. ft. I could do it, but I don't. So I just think for the safety reason and the severity of this narrow driveway and this horrendous site line coming out of there, this is the most prudent way to go in here and develop the property. Now I highlighted in green on this map using the condominiums over here that was developed probably in the 80's, the regulation says that you go with the most restricted zone. It's an R-5 zone and this is a CB-2 zone. So, they were able to develop this into multi-family condominium. But these are old existing things coming in from a residential into a commercial properties. And up over here, this is, that's the Quick-Pik, I think they might have been before your board. Actually if you look down here and I did photos, this building is primarily in the R-4 zone. And, I guess it's the R-1 zone, I'm sorry, the R-4 zone comes this way. And some of these other buildings existed, you know, within the 40 feet of the setback for a residential. So I mean looking at the overall picture and you know the circumstances involved, I really think this is the most prudent thing, and looking at the map, the bigger map, it just shows you that you're not going through somebody's real neighborhood. There's nobody up there and it's only just to service that one building which seems to be the most practical thing to do.

Mr. Glover: Black Hills Road is a pretty twisty skinny road though

Mr. Spinelli: It is, I don't know what the plans are with the school

Mr. Glover: It's blocked isn't it to the school?

Mr. Spinelli: It's blocked now, yeah, it's blocked now. But, I imagine they're going to block it some other way some time.

Mr. Glover: yeah, cause otherwise the kids sneak out the back

Mr. Spinelli: Oh, is that how, I never went there so

Mr. Matto: Rick Schultz is thinking about commercial (unclear) up the top there, the sooner the better, because this road is crazy, trucks and this and that

Mr. Spinelli: so that's basically

Mr. Glover: Let me just read, Jamie, could you read that one into the record please?

Mr. Jones read letter: "November 18, 2008. Zoning Board of Appeals, Gerald Glover, Chairman, City of Shelton, 54 Hill Street, Shelton, CT 06484. RE: Application 167A Bridgeport Avenue. Dear Mr. Glover: We the undersigned are in favor of Ronic Enterprises, Inc., application for relief under section 23, schedule A, line 62D and section 24.8.3." Signed Bruce Butler, PBS Enterprises, LLC, 99 Bridgeport Ave., William C. Nimons, Shelton R&B Development, LLC, 153 Bridgeport Ave; John Tocie, 159 Bridgeport Avenue; Don C. Stanziale Jr., Stanmar LLC, 180 Bridgeport Ave., and Robert Guarino, 167 Bridgeport Ave.; and one more, John Domeracki, 167 ½ Bridgeport Ave.

Mr. Spinelli: Those last two people are the people that live on the left and the right side of the proposed building.

Mr. Glover: Yeah, putting a commercial building there would almost make their property more valuable, wouldn't it?

Mr. Spinelli: Well, right now that Domeracki's been there so long as a residential, where as the other guy just

moved in about a year ago, at one time I think they had some sort of an office working out of there years ago.

Mr. Glover: Alright, does the Board have any other questions for the applicant? (no) Anyone in this room in favor of this application? (no response) Is there anyone opposed to this application? (no response)

Mr. Conklin: I sort of have one concern, we're saying that this is the City of Shelton property, I mean by doing this we are giving him automatic authorization to cross that property without finding out what right he has to do that.

Mr. Glover: No, and it would be my inclination to, for me to have a conversation with the city engineer before we, before we grant this

Mr. Spinelli: The city engineer, you can talk to him, but the city engineer said that that is a town accepted road and as you know you have a property line here and you have a buffer a lot of times between the road, which is

Mr. Conklin: That's an awful big buffer

Mr. Spinelli: Well, my house I live on 90 Soundview Avenue, but most of that street is at least 40 foot setback from the road to the property line because at one time I think they wanted to widen that road to go all the way up into White Hills, so it's really not

Mr. Conklin: It's just a concern

Mr. Spinelli: Oh no, I understand, I'm not questioning you, I was just, you know

Mr. Conklin: I'm just stating that it's awful big and I want to make sure that

Mr. Glover: that you're not giving something away that you don't have the authority to give away

Mr. Conklin: Before we get taken to task again

Mr. Glover: Oh, you think?

Mr. Spinelli: I didn't know that happened here

Mr. Glover: Often. Alright, then I'll declare the hearing closed and we'll get back to you.

Mr. Spinelli: Okay, thank you.

A decision on this matter was tabled until the December meeting.

Work Session discussion between Board and Corporation Counsel regarding variance previously granted on applications #508-1 and #508-2, James Blakeman at Buddington Road, Map 62, Lot 12 (Lot 1 and Lot 2) with possible consideration for modification by the Board.

Mr. Glover: Alright, before you start, do you guys want to come up here? These are the neighbors

Atty. Bellis: Oh, okay

Mr. Glover: and let's let them come up so they can hear what's going on.

Atty. Bellis: How're you doing?

Mr. Nemetz: Good, and yourself?

Atty. Bellis: good thanks

Mr. Glover: Alright, by, by way of explanation of, as I understand what's going on here, the, as you probably all know, we granted a variance to Mr. Blakeman for minimum square on the lot?

Atty. Bellis: correct

Mr. Glover: minimum square on the lot for a rather large piece of property on Buddington Road. And when we did we stipulated, we had 3 or 4 stipulations, one of them was that he could not blast, and another one, was, although it sounds silly, if he did blast he would have to survey the wells in the area. I put the last one, if he did blast he'd have to survey, anticipating that if somebody, the courts or somebody had a problem with saying we can't blast, he would still be required in the variance to protect the wells of the, of the adjacent neighbors or whatever.

Mr. Conklin: and also during the meeting he had no objection to doing pre-surveys of adjoining neighbors

Mr. Glover: right, um, subsequent to that meeting, that decision, Mr. Blakeman brought an appeal against our decision which has been making its way through the process in the courts. And I guess Atty. Bellis represents Mr. Blakeman

Atty. Bellis: I do and Tom asked me to come in his stead tonight and I have some additional information for you

Mr. Glover: I understand that and we were supposed to have a work session last month with Corporation Counsel Welch, but he had a conflict and didn't come, so we pushed it off to this month and again he has a conflict. I think that he's got a zoning conflict where he's working in another community and, and there's something coming up in that community that he's required, he has a client that has to be there so he's got, he can't be two places at once. He called me today and told me he was going to make a packet for me which he did, and that I think by way of, I think they're trying to find a settlement without going to court on this issue, without further

Atty. Bellis: we're already in court

Mr. Glover: I know you're already in court, but without arguing it more in court

Atty. Bellis: I agree with that statement, yeah

Mr. Glover: And so I guess Attorney Bellis is here to make a presentation to us with regard to that and we knew that, we knew the subject of this, of this work session when Atty. Welch wanted to do it last month, and originally it was going to be an Executive Session and in an Executive Session it would be our attorney just talking to us with nobody else in here. And we decided, I guess I decided, that if we were going to have any discussion about this property that the people who we knew who had an interest in this property should be invited here to listen and put their, and have their say, rather than make it look like a back room thing or that a deal was made and oop it changed. Okay? So that's why you all are here. I think there was one other lady that

Atty. Bellis: I wasn't here Gerry, so

Mr. Nemetz: Mrs. Sierocki

Mr. Glover: Was she here, wasn't there one woman?

Mr. Nemetz: At the closed meeting she was here

Mr. Glover: So, Atty. Bellis give it a shot

Atty. Bellis: You did a great job summarizing. I have a map and the reason why I appealed the decision was that there's a statute in CT that says that the Commissioner of Public Safety has exclusive jurisdiction over blasting. And um, that the, so that was the basis for the appeal, because they said that there was a condition that there was, that there could be no blasting on the property. So that's the basis of the appeal, that the ZBA cannot restrict blasting because only the Commissioner of Public Safety can restrict blasting, and he does

that through the fire marshal. So that having been said and done, I spoke to Tom Welch and we did, as Gerry has stated, instead of continuing to litigate this matter, I brought to Tom's attention that the Iroquois pipeline has very restrictive blasting requirements that I don't think came before your board when Jimmy Blakeman did this on his own without a lawyer. And I asked Tom to give you those, I don't know if you have them

Mr. Glover: He has

Atty. Bellis: but basically, to summarize, if you do any blasting activities I think it's within 200 feet, yes, within 200 feet of the pipeline and this is within 200 feet of the pipeline, that you have to contact the Iroquois representative and they basically have monitoring equipment and they have all these restrictions about how big the blast can be. And I can give you a copy of these restrictions

Mr. Nemetz: That protects their interest, not ours

Atty. Bellis: I understand that, yep, I understand that. But the reason I say that is that there's minimum, there's requirements that a blast can't exceed certain levels and that sort of thing that would not be imposed at the State level. So having said all that, the second thing that I wanted to just point out, so I have those restrictions and Jimmy Blakeman would agree to obviously contact Iroquois, they have to set up, they would set up a blasting plan and follow the requirements under the Iroquois blasting requirements. I'm not going to read through all of them, but they're pretty comprehensive.

Mr. Glover: I've read through them.

Atty. Bellis: The second thing was that a lot of people are under the misconception that the report of the ad hoc blasting committee required mandates that exceeded the State statute. That was a blasting committee's report that was approved by the Board of Alderman, I don't know, 6 months ago? And I think some of the commissions, I don't know about this commission, may not understand or may not know that in that report it says the State of CT through the Department of Public Safety has exclusive regulatory authority over all blasting operations. Our local fire marshal simply enforces State regulations. So what, what they did was request certain things from the blasters, notification to certain property owners that are within a certain distance, requiring seismographs, but they can never exceed, and they recognize that in this report, what State statute requires. So what I think Mr. Blakeman had said, and I don't know if one of you said it, he had agreed that he would abide by these new adopted regulations. Um, maybe that's not the word

Mr. Conklin: No, that's not what he said. He didn't say he'd abide by any regulations. He asked, we asked him if he had any objections on his own to do a pre-site surveys

Atty. Bellis: right, that's part of it

Mr. Conklin: and he said no

Atty. Bellis: I agree, okay. And so

Mr. Conklin: It had nothing to do with any other discussion or, of city regulations

Tape had to be changed

Mr. Conklin: City regulations or State statutes and we asked him if he would as a contractor agree to do this

Atty. Bellis: right and he agreed, yes, and he's not changing his position. So what I'm saying is Tom and I have agreed that in all likelihood my appeal would probably be successful and it would just be a waste of time and money and that we should come here and try and settle the case and that's what Tom and I have agreed to do, but we can't just settle it with us two attorneys, would any other case we'd have to come back before your board and let you know what we're doing. And the judge has imposed, the judge has asked us to do that and that's why we're coming back here. What I meant to say, Ed, was that Jim's not changing his position on monitoring the neighbor's properties, that's not part, the settlement is as follows, we would abide by what the Iroquois, you know by contacting Iroquois pipeline people and go by their blasting requirements because they're within 200 feet, and he would also agree, and I don't know how applicable or how far you people are away from the blasting site, to do a pre-blast survey as Eddy, as Eddy has said. I don't know, because I

wasn't here I don't know how far away you guys are.

Mr. Nemetz: the only problem is that the houses are of varying age. I probably have the oldest house on the (unclear)

Atty. Bellis: where are you, I have a map?

Mr. Nemetz: I'm 145 Buddington

Mr. Glover: Time out, give me your name and address from the record?

Mr. Nemetz: My name is Martin Nemetz, I live on 145 Buddington Road. I've lived there for 33 years, okay? And I have always had problems with the well because it's shallow. As I said it's the oldest house on the street. It's the old Kichar house. Mr. Reyen and Mr. Farrell have newer homes so they have wells that are much deeper. My well is shallow enough where I have the pump in the house

Mr. Reyen: My well is almost on Buddington Road. It's in the front of the house almost on Buddington Road

Mr. Nemetz: right, and that's, that's what the problem is

Mr. Reyen: And the problem for me also, I own the property at 162 and 164 Buddington Road, and the problem is the closeness to that pipeline because all of the, you know, publications from Iroquois and the legal staff and what not, that's all fine but I'm a believer that things happen, you know, and I'm very very close, you know. My house is close to the road then there's Buddington Road, you go down the embankment there and there's the pipeline

Mr. Nemetz: He's in much more physical danger than I am

Mr. Reyen: yes, it's very frightening to me

Mr. Nemetz: The reason why I'm here is because, as I said, I don't want to repeat myself, I have a little old house, blasting does have an effect on foundations. I don't feel like repairing something that I've been repairing already for the past 32 years. And I find it hard to believe that anybody's actually going to buy a house on that ledge, but of course that's another topic. And that's really all that I have to say. If you guys can guarantee that my well's going to be as good after as it is before, have at it.

Mr. Glover: Let me, let me just, the other speaker was Mr. Reyen. Mr. Reyen, you have his address and his name. Let me just say, this is kind of informal. It's not a hearing. It's a, it's two attorneys who've gotten together and they're coming and saying we have a problem, we don't know how this problem is going to, before we whack it out in court, let's come back and talk about it. And so this really is not a hearing. It's open to the public and I think that you people who had some adverse reaction to the hearing should be in here to say so. Steve, I, did I understand that Mr. Blakeman is going to volunteer to abide by the ad hoc committee's recommendations?

Atty. Bellis: Yes

Mr. Glover: Okay. Then

Atty. Bellis: Even though he's not

Mr. Glover: he's not bound to it

Atty. Bellis: bound by it, that's what I was trying to say

Mr. Glover: He's not bound to it because they're over and above the State regulations

Atty. Bellis: yes

Mr. Glover: But he's stipulating that he'll abide by them

Atty. Bellis: yes

Mr. Glover: Okay, and those have some pre-blasting survey reports and

Atty. Bellis: they do

Mr. Glover: And well tests for purity, clarity to be offered to residents within 300 feet of the blast area

Atty. Bellis: yeah, that's why I said, I don't know how far these people are

Mr. Glover: I don't know, are you

Mr. Nemetz: Could be, it's probably more, we're probably more. The problem is is that's, you know yourself as a builder, that's ledge. I don't care how far you are away, it has ever reaching effects on the water supply. When they were building by Bob's father-in-law I believe they had cracks in the foundation right? From all the blasting they did there. So

Mr. Farrell: My name is Bob Farrell. I live at 141 Buddington, right next to Marty, at the crest of the hill. Let me say this right from the beginning. I have no objection to someone trying to develop or use a piece of their property within reasonable means. Okay? Alls I'm concerned on this and why I came, I've come to this meeting or whatever and the prior ones, the question of the blasting. I've been through this. Alright? With the seismograph, I'm well aware of site work, what it needs to be done, what has been done and the process in it's course. Heritage Point they did the blasting over there next to my wife's parents house and that well was 225 feet deep

Mr. Nemetz: right, mine's only 130

Mr. Farrell: an excellent well, alright? The D'ambroso's did the blasting alright, I felt confident at that point that the D'Ambroso's were going, you know, abide and everyone (unclear) anybody in the blasting business today is going to abide by State regulations. That's who decides what towns do whatever, you know, fire marshals they have a say but you know what the State is the one that, here's the regulation, they decide. The blasting affected because the aquafier in that vicinity comes that direction. I know for a fact. Alright? The aquafier comes from where Jimmy Blakeman has this project toward Buddington Park. They started to blast. Three months later, not even, the well goes bad. Alright? Fortunately for us I took the time and I had it certified. Alright? And they came and said oh well your well (unclear) forget about it I don't want to hear it. Alls I'm concerned about is you want to come and certify our wells, go right ahead. I don't have any objection to coming, you want to build these houses here, go right ahead. That's your business. If you think you can sell in there, fine. All's I'm concerned about is that when it's all done and minimum (unclear) rock is rock, it shatters, shock waves. Alright? I don't want to see my well going and turning the faucet on and have nothing come out of it. No one wants to see this. And Jimmy Blakeman doesn't want to see it and you don't want to see it

Atty. Bellis: No, I agree with you

Mr. Farrell: and none of these people want to see it. But there's, you know what it's very disheartening and very aggravating

Mr. Nemetz: Well, plus the inconvenience. Let's say our well goes, are you going to let me shower at your house until you fix my well? Probably not

Mr. Farrell: The gas line is within less than 100 feet of where he wants to blast. And Iroquois is going to be all over those people like a cheap shirt

Atty. Bellis: Yeah that's what I said, they will be

Mr. Nemetz: But that's only to guarantee their interests, that you don't blow the place up. They're not guaranteeing our interests. That's all I'm saying is, and I don't mean to be a pain, but I don't want to go through the inconvenience. You know, you say oh we're going to survey your well, okay, geez Mr. Blakeman,

my well's dry, or geez maybe we'll be there next month. What are you doing to do until then. I don't want that. Plus I've got a barn there that you know well, a field stone barn that's put together with straw and mud. It's been there for probably 100 years. I don't know what that's, what effect that's going to have on it. Now all of a sudden I go out there and I've got a barn falling down on me that I've stored stuff in for 33 years and have to worry about. Blasting is blasting. Okay? And that's what I'm concerned with. He, you know, if the guy wants to build, let him use pneumatic hammers and drill the damn thing out.

Mr. Glover: Okay, now

Mr. Nemetz: Okay? That's what I say.

Mr. Reyen: Well I think to, Bob, if you recall the crack in my foundation in the back of the house, which I had no way of proving but, I live directly behind AJ Grasso's project there. And I attended all the meetings and I recall on the night of March 25, 2003 there were about 50 neighbors from Buddington Road and all the different little side streets there opposing that project and Mr. Pagliaro thanked everyone for their comments and it would be taken into consideration and of course the whole thing went through with no trouble. You know, I suffered with the, the tremors of that blasting from that project, you know, and as these gentlemen say about the annoyance of it, you know, I lived there 30 years, remarkably landlocked land became unlandlocked, wetlands became dry land and up go 41 houses on 17 acres of land. So, you know, things happen, things get put through, you know, but when you're affected by it as the property owner you find yourself very much alone. Mr. Bellis is nowhere to be seen and you're very much alone with the dangers and the you know

Atty. Bellis: Well, the reason I'm coming here and speaking to everyone is, I mean we can go ahead with the lawsuit and if I'm successful and then you'll be very much alone, because if I'm successful he won't have to do anything and that's not what I'm advocating here today. I want to work with you. That's why I'm here and that's why Mr.

Mr. Nemetz: All we said is guarantee our wells

Atty. Bellis: I don't know what guarantee means, I don't

Mr. Nemetz: so that I have the same amount of water that I had before and that I will have after and that there's no inconvenience

Atty. Bellis: I don't think anyone can do guarantees, I mean

Mr. Glover: At this point, at this point, we've heard all of you and I, I don't want to sound condescending but I appreciate what you, what you said, that's why I had you come here

Mr. Reyen: Thank you

Mr. Glover: To, the real topic now is between Attorney Bellis and Tom Welch supporting the, representing this Board. This Board has a decision I think and basically it comes down to do we want to make the deal or do we want to let you go to court.

Atty. Bellis: That's right, I agree with that

Mr. Glover: And if you go to court and you, the court rules that we have no jurisdiction over blasting therefore, Mr. Blakeman can do whatever he wants to, then we and they lose out on everything that's in that ad hoc report that is over and above, we lift all restrictions off Mr. Blakeman and he can do pretty much what he wants to, except what Iroquois is going to require him to do anyway. Okay? Now, the, the last thing that's in here, and I don't know whether you know it or not Steve, but Tom also sent me, did he talk to you about Farmington Avenue Baptist Church vs. the Town of Farmington

Atty. Bellis: Yeah, I'm well aware of it, it's a Superior Court case

Mr. Glover: It's a case that's, it's similar but not the same as this, it's a case where they said no, no blasting, the Commission said no, I guess the ZBA, or some commission said no blasting. They took it court. They're

concern was the methane gas because it was next to a landfill

Atty. Bellis: landfill correct, I'm familiar with it

Mr. Glover: And the court held that the prohibition of blasting was justified by substantial evidence by the regulation. So there is some, some precedent in the court saying wait a minute they were right, we don't want you to blast. But, I've been on this Board for almost 25 years and I could tell you that some things go to the courts and I could swear that the Judge doesn't even read the, read anything, he just makes a decision. And he, you know, he just makes a decision based on whatever. And I've seen some decisions that I've said, gosh did he even listen, did he even read any of this? And I know whether there's a case in here that, that may relate to this or may not relate to this, you put it to a judge and the judge can do what the judge wants to and usually will.

Atty. Bellis: A lot of them don't have the familiarity of, as all of you, with land use issues, they may have done divorces their whole lives, or they may have done other things, so they really don't know, they may not know these issues as well as even you guys do. So they have problems with these land use cases a lot of them. I think that's why Gerry, you see some funny decisions. They're just not familiar with them.

Mr. Glover: So to the Zoning Board of Appeals members, you've given a decision to Mr. Blakeman that allows him, grants him a variance for the minimum whatever

Atty. Bellis: minimum square on the lot

Mr. Glover: minimum square on the lot and one of your stipulations is that he cannot blast. And I wasn't sure when we made it, when we made the decision whether it would prevail because, and that's why I put in the issue of you know, you survey, I mean anybody who looks at it says, you will not blast, but if you do you'll survey. I mean, it's like whoa wait a minute. So to the Zoning Board of Appeals we have to make a decision whether, whether we want to authorize Corporate Counsel Welch to draw up an agreement between Attorney Bellis representing the Blakeman's or Mr. Blakeman, saying just what we talked about tonight, that he's going to have to deal with Iroquois, which is has to anyway, and that in addition to that he's going to follow the, the recommendations of the ad hoc committee on blasting, which we have no authority to make him do.

Mr. Conklin: Question on that though, as this gentleman has said, they might live, that piece of property was unique because it was so long

Atty. Bellis: Yeah, I have the map, yeah

Mr. Conklin: Okay and being so that, you know, on the angle some of these houses might exceed the 300 feet, but Mr. Blakeman had looked and said originally that he agreed that anything along the frontage of that, that he would agree that he would survey on

Atty. Bellis: Yeah, I just said I didn't know where they were because I didn't go to the hearing.

Mr. Nemetz: Yeah, Mrs. Sierocki is the one, the only that probably abuts that property and Mr. Reyen probably. I'm one more over

Atty. Bellis: Yeah, this map doesn't help you guys, it doesn't help me

Mr. Glover: No, because you can't, it doesn't tell who the neighbors are

Atty. Bellis: actually it's too big

Mr. Glover: but it doesn't tell you who these neighbors are over here

Mr. Nemetz: You can't even tell where, it's Old King's Highway, oh, I'm here Here, this is Old King's Highway, this is Mr. Sierocki right here, and I'm here, I'm right over here and Bob's over here

Atty. Bellis: and how about you sir?

Mr. Nemetz: He's over, he's here, that's Old King's Highway and Mr. Reyen is over here somewhere

Atty. Bellis: Okay

Mr. Conklin: (unclear) across the street on the (unclear)

Mr. Nemetz: right, he's on the opposite side of the road from the power lines

several talking at once

Mr. Nemetz: because this is Old King's Highway, that's the dirt road and this is the yellow house and then you're like right here somewhere

Mr. Glover: If it's 300 feet, you've got 6 or 7 inches on that map right?

Atty. Bellis: yeah I think so

Mr. Glover: So Marty do you think you're within 7 inches of that?

Mr. Nemetz: No, well, a piece of property is 200 feet wide, Mr. Sierocki is 200 feet wide, so that's 200 feet, so I probably am 300, I probably am within 300 feet because the road we'll say 25 feet and that's his property.

Atty. Bellis: So you're okay then, basically what we're saying

Mr. Nemetz: I'm probably within the 300 feet

Mr. Glover: And it is 300 feet isn't it, in the

Atty. Bellis: I brought it with me.

Mr. Glover: It's the Shelton

Atty. Bellis: I thought it was 500 feet

Mr. Nemetz: If it's 500, then you probably are too

Mr. Glover: No that's notification

Atty. Bellis: Notification is 500 and blasters are required by (unclear) 250 feet of a blast site, well test residents 300 feet

Mr. Nemetz: but that's really why I came here was to

Atty. Bellis: but I'm willing to do it

Mr. Conklin: He's willing to do it anyway

Atty. Bellis: I'm willing to do it anyway

(unclear – several talking at once)

Mr. Glover: I don't know where you live. I wasn't being sarcastic, I really don't know where you live

Mr. Nemetz: No, I didn't think you were. I can't speak for Russ or Ron, but the reason why I came here was, like I said, I don't want to be inconvenienced because somebody wants to build a piece of property

Mr. Glover: Alright, thank you all for coming

Mr. Nemetz: Thank you for inviting us

Mr. Glover: I represented it correctly?

Atty. Bellis: you did a fine job.

Mr. Glover: Okay, thank you.

Mr.Nemetz: Have a nice evening.

Mr. Reyen: Thank you.

Mr. Glover: We'll vote on it later. We'll discuss it and decide what we want to do later and

Atty. Bellis: And then you'll let Tom know

Mr. Glover: I'll tell Tom and Tom will

Atty. Bellis: call me up,

Mr. Glover: He'll probably see you in court or come over and sign the papers

Mr. Conklin: He'll probably see you in court anyway, right

Atty. Bellis: No if we agree to settle it I just, we report to the judge that it's settled

Mr. Glover: it's a stipulated agreement

Atty. Bellis: It's a stipulated agreement. You have the Iroquois I gave that to Tom

Mr. Glover: I've got the Iroquois here, he gave me a whole package.

Approval of Minutes

During the work session the Board, upon motion by Mr. Jones and seconded by Mr. Conklin, unanimously voted to approve the minutes of the October 21, 2008 hearing as submitted by the clerk.

Approval of Revised Regulations

During the work session the Board, upon motion by Mr. Conklin and seconded by Mr. Matto, unanimously approved the revisions to the ZBA regulations as presented to the Board. Said revised regulations are effective for all applications submitted after December 1, 2008.

Respectfully submitted,

Loreen Michalak, Clerk