

**Minutes
Work Session of the Planning Board
Village/Town of Mount Kisco
Tuesday November 22, 2005**

Meeting called to order at 8:00 p.m. Tuesday November 22, 2005 at the Municipal Building Mount Kisco, New York

Members Present:

**Joseph Cosentino
Anthony Sturniolo
Stanley Bernstein
Ralph Vigliotti
Joseph Morreale**

Members Absent:

**Sol Gibbons
Doug Hertz**

Staff Present:

**Whitney Singleton
Nanette Bourne
Michael Stein**

Chairman Cosentino opened the meeting with the Pledge of Allegiance.

Chairman Cosentino: The first item on the agenda is
Conceptual Applications – none
Formal Applications – none
Final Action – none

1. Continuing Review:

**Buckingham Properties – Morgan Drive
Eric Kaeyer architect, David Steinman, counsel for the applicant, Ed
Cohen, Russ Davidson, Joel Gluck**

Russ Davidson: The first thing that we wanted to talk about, were donated drainage and topography of grading with the adjacent development that is going through the approval process, which is the Crème De La Crème day care center. This is their site plan property line, and this is our proposed building. We have met with them and with their civil engineer. This is to combine the, storm drainage system that is originally anticipated with a storm drainage easement. This resulted in a reduction of one pond on our property. There are almost no physical modifications to their system required to accommodate this. It only changes an outlet pipe size from 1 inch to 2 inch. It means in a hundred year flood plane or a hundred year storm, that this pond would slightly be more filled then otherwise. It does not require it to be modified from its current design. This is the site plan that shows both properties. This is what was filed with you, which really shows the grading tying in from property to property. This is all been coordinated. For we have approval of the general layout. This will be filed with DEP. At this point our office has done a combined storm water analysis for both properties. We are able to demonstrate that treatment and detention works with this system. We are ready to move forward.

Chairman Cosentino: Nanette have you looked at this?

Nanette Bourne: Yes. I did look at this but I did not see the combined system.

Russ Davidson: It just shows up more of it.

Nanette Bourne: I would ask that you sent me a copy. Just to refresh your memory on this, the applicant has submitted the SEQR documentation, and we have declared the intent to be lead agency. You are the lead agency, and you still need to make a SEQR determination, I would recommend that that be placed on the next agenda. There are two letters in your packet tonight. One from New York state DEC and the other from New York City DEP, regarding their issues with storm water. I am not sure if you are prepared to address those.

Russ Davidson: I believe that these are being addressed with our storm water plan. Once this layout is approved, it will be addressed.

Anthony Sturniolo: You never received the DEP October 11th letter?

Eric Kaeyer: We did and it is addressed in our storm water plan.

Chairman Cosentino: You are not prepared tonight to discuss this?

Russ Davidson: We would like to meet with DEP and show the storm water plan and deal with it at a later meeting.

David Steinmetz: The board should know the engineer from KG & D has previously met with DEP. I believe Mike was at that meeting as well. So the applicant is trying to actively engage DEP in dealing with this.

Russ Davidson: We are aware that there is more work to be done technically. That is not an issue.

Anthony Sturniolo: You also have the October 24th DEC letter, that makes the reference to the reference to SPP plan. This has to be done first prior to a SPEDES permit being issued.

Russ Davidson: I believe our engineer is fully aware of both of these things.

Nanette Bourne: Just so that you know, it is an awkward sequence with the planning Board, SEQR and DEP. We have gone through numerous projects. The applicant will not get the DEC permit until you have made a SEQR determination, and your past practice has been you want them to go a substantial amount along their permit process before you make that determination.

David Steinmetz: If I could remind the board on what we did with the adjacent property. Nanette is right, if you recall, we actually did it twice on the adjacent property. We initiated the site plan review with your board, and then we began engaging DEP and DEC while keeping your board up to date on what we were doing on storm water. Nanette is correct. She had encouraged us, as did your board to take it to the point where we effectively had nods from DEC and DEP, if they had been satisfied that our engineers had addressed the comments. We then return to your board, to secure a NEG DEC, and then were able to get DEP and DEC to issue permits. We would hope to do the same type of thing here. Keeping you fully informed as to the engineering modifications that KG&D are working on as well as Mike.

Russ Davidson: We were hoping tonight to show you the coordinated storm water and topography and review again with this site layout. So that we can submit our storm water plan and move through the technical review.

Michael Stein: Is the same engineer doing the storm water on both sites?

Russ Davidson: No.

David Steinmetz: However, having said that, because both Buckingham and Crème, the individual clients are very well aware of the need to coordinate. They have both made sure that the two respected engineers have physically met and exchanged documentation. This should make your life DEP and DEC lives much better.

Russ Davidson: Our storm water analysis covers both properties. You will be able to look at one storm water analysis that covers both properties. There was some difficulty coordinating drainage characteristics, and that has all been resolved. We have one that covers both.

Anthony Sturniolo: Somewhat of a follow-up to Mike's question earlier in your presentation. You started off talking that you had been working with the Crème to jointly address the issues. Can we get some sort of a summary or letter that states that both parties agree? This would be for our record.

David Steinmetz: Sure. I can certainly get you that. So you understand I actually provided to Whitney, the storm water easement that we actually talked about two meetings back. That easement agreement basically, which was recorded by Sanctuary Ventures. Encumbers both Buckingham and Crème. It basically mandates that these two property owners cooperate with one another with regard to storm water.

Anthony Sturniolo: I am looking more for the technical dialogue between the two at this point.

David Steinmetz: I see no reason why we can't give you that. As you know Crème has their modified DEP approval. They have their modified DEC approval and they are really on the threshold of completing all of the approvals and proceeding from there. What Buckingham will build will now layer on top of that with the storm water generated from this particular property, and they will address any modifications that DEP will require. That is really what came out of Mike's meeting with DEP. There will be some modifications that are required. We understand that. We have gotten some documentation as to memos, requiring different outlet structure etc. That is all going to be addressed with DEP.

Anthony Sturniolo: That layering is what is going to trigger the modification.
David Steinmetz: We can give you that so that you are clear on exactly what is going on.

Chairman Cosentino: Nanette I am going to depend on you and Mike to be on top of this.

Nanette Bourne: I think for the best of the applicant. You are anxious for the Planning Board to get on with the technical review. You will need to go a little bit further down the road. In the DEP, and DEC so that we know and you can tell the planning Board that your site plan is fairly stable. That there will not be significant changes to the footprint or the location and the size of your basin.

Russ Davidson: We understand that, and we agree. We have done enough pre-application worked in a meeting with them. We are pretty confident of this portion of the plan from the technical point of view. We are hoping to go away with tonight is a nod to continue this portion of the plan.

David Steinmetz: In fact, we have done an analysis that this plan is code compliant. I think Eric wants to take you to very briefly, some numerical calculations that he is run to demonstrate that. So you understand why the plan is involved in this way.

Stanley Bernstein: Before Eric talks I have revision 6/2 -6/21/05, what is that?

Russ Davidson: 10/11/05. We submitted copies about two weeks back. You probably have gotten the recent revision.

Stanley Bernstein: I would like to get that.

Eric Kaeyer: Additional coordination that is happening with the other engineers for crème. We are working with their landscape architect to develop all the wetlands plantings. So that the plantings on their side and our side are consistent. Also, we are working at their site engineer for the lighting. So that they are lighting and are lighting is coordinated of similar quality.

Whitney Singleton: The plan that you were showing tonight is not the plan in their package?

Stanley Bernstein: There is a later revision.

Nanette Bourne: This plan here is a later revision?

Russ Davidson: Because it is issued for storm water plan, and I think it has a couple of additional notes. It is essentially the same one that you were given two weeks ago.

Anthony Sturniolo: Plotted today?

Russ Davidson: Yes.

Eric Kaeyer: Our engineer calls this the kindergartens sketch. He colored it up so everyone could see what was what. This is what we showed you last time, which had the three water quality ponds. Now it is been taken down to two with the third one being on the Crème property.

Russ Davidson: This by the way allows the sewer force main to move through. This serves adjacent property and maintains all the required clearance without relocating that easement for needing variances.

Eric Kaeyer: The sketch down here, we have presented this before. This just shows the building footprint. Our previous plan showed double a loaded parking within 20 feet of the southern border. The revised plan, which pulls it back an additional 10 feet with a

total of 30 feet, with single loaded parking. The balance of the parking that was taken away here, and placed here. As we grade this we would grade down. So that from Radio Circle, you don't see the cars. As you drive in here you are looking across the lawn, and the landscaping. Also at the building and not at the cars, this was what the previous proposal was.

Chairman Cosentino: On the first floor. How many square feet will be on the first floor?

Eric Kaeyer: The footprint is 30,000 ft.². It is actually 28,000. I can get you the exact number. The round number is 30,000 but the actual number is 28,000. That is the gross. In terms of the zoning calculations that were done here. We did calculating with and without the extension. The finger that goes all the way to Lexington. The building requirement is a maximum of 30%. Including that finger, we are at 13%. If you look at this footprint right here. We would be at 14 1/2 percent. It is a slight change if you exclude that strip of land. The development coverage, allowable in this zone is 70%. We are just at less than 40%. Again, if you exclude that strip of land, we would be up to 43.9%. Approximately 44% versus 70%.

Chairman Cosentino: Nanette, this may be premature. I do need some figures. On 30,000 ft.², may be office, non-medical. Just for the 30,000 how many parking spaces, would you need there?

Eric Kaeyer: It is 1 to 250 for the first 10,000. Then 1 to 275 for the additional cars after that. So for the first 10,000 ft.². It is 250. The net total which would be about 213, which is what we are showing.

Chairman Cosentino: How many parking spaces did you get for the 30,000 alone?

Nanette Bourne: We would have to do the math. What Eric said it 1 to 250 for the first 10,000, and 1 to 275.

Whitney Singleton: 110.

Chairman Cosentino: Besides medical, what would take more than 110 for 30,000? The worst possible scenario for the zoning.

David Steinmetz: Under this zoning allowable?

Nanette Bourne: A bank is 1 to 200. No retail.

Chairman Cosentino: Make it an athletic club or something like that.

Whitney Singleton: It would have a higher parking count.

Chairman Cosentino: How much higher would it have?

Nanette Bourne: On an athletic club it would be determined by the planning Board, and they would need to provide additional information on the nature of the athletic club to the layout.

Chairman Cosentino: We have 110 now.

Nanette Bourne: It would depend entirely on what kind of athletic club.

Chairman Cosentino: Something like the MAC. What I'm trying to do is to find out how many more parking spaces on the worst scenario on a building like this that is being put up. What would the worst scenario and parking be for 30,000 ft.²?

Nanette Bourne: The way that we would do it. Is that we would look at the athletic clubs that are in the village where you have parking demand information and we would apply those to the amount of square footage. If it is 30% of 30,000 ft.². We would take a percentage of that for office, and he would have to divide it up.

Chairman Cosentino: So we are close. 110 cars are pretty close.

Nanette Bourne: I would have to lay it out.

Chairman Cosentino: I just want to get some sort of idea. You are putting up a new building here and you do not know what is going to be down the road in five years. So you want prepare now. I think it is only fair to the developer and the village that you

prepare now for later. I know you meet the code for office. On the worst scenario. I need to know what it could be.

Russ Davidson: This was gone after your walk-through, because of the desire for additional buffer. If there had to be more parking. There could be more.

Chairman Cosentino: I am not saying there should be.

Russ Davidson: I am just trying to help with the worst scenario. If there was a need to provide more parking, in this site plan. It could be provided for this building, and still maintain your buffers. That is my only point.

David Steinmetz: Any change of use, as the chair knows we would have to come back before the board.

Chairman Cosentino: Right. I think we have to be fair to the developer as well as everybody else. In case something like this happens. You want to know that you can or cannot do it.

Edward Cohen: You are right. The area of Radio Circle could accommodate an athletic club. I agree it should be planned for now.

Russ Davidson: This is really the plan that we would like to move ahead with. We have increased the buffer, we moved parking. We feel very strongly that this plan is well within the parameters established for this zone. We have eliminated a basin, coordinated the storm drainage. As Eric has mentioned, we would like to make this look natural, and all of one piece. We feel we are at the very limit of what is viable from our client's point of view.

Edward Cohen: I have brought something here to help me describe the economic conditions that developers face. It is very difficult to build an office building that is viable, under the current conditions. There are a lot of fixed costs in a development like this. You have the cost of, the site development. You have the fees that are associated with it. And a lot of other conditions go in that describe fixed costs. These at fixed costs are like overhead, which get divided by the number of square footage that the developer can put up. Under present conditions, and in order to develop a class a building. A developer like me would try to get as much square footage as possible. That will enable it to survive under the present conditions. There is a lot of competition. There are vacancies in Westchester. Tenants are playing musical chairs. They go from one building to another building. This has future, we have to be patient. We are going to need deep pockets to maintain it. I am willing to build a class a building. I really do not want to have to cut any corners and build a fabulous building, which the village of Mount Kisco would be proud of. Therefore, I really do need your assistance to help me with the size of the building. Since we are according to code, and help me survive and make this a successful project. For a smaller building, and there was discussion of building a smaller building. Obviously I would have to downgrade the materials. I would have to downgrade the looks of the building. Maybe worst-case scenarios even go into an industrial building. This would be of no great advantage, and would not have a positive effect on the Radio Circle, and the immediate area to upgrade the standards.

Chairman Cosentino: It does come down to economics. Depending on you yourself, the developer and what you want do.

David Steinmetz: The good news is that at least he is standing here before you saying that he wants a good-quality building.

Edward Cohen: I never have cut corners. I always try to put up the best product possible. I wish I could do more.

Chairman Cosentino: I have to say you have a good reputation in the village.

Edward Cohen: I would like to read one paragraph to you. It says that the rising costs of everything from land to diesel fuel are causing the US real estate developers to delay or cancel construction on office buildings. Fewer new buildings mean less space available to rent. That could be good news for landlords, who could raise prices and bad news for businesses that need office space. You see, what has happened with retail space in Mount Kisco. There is limited product to offer. Limited production. Here we are going to put the best product on the market. We have competition, and we are going to try and survive.

Chairman Cosentino: I am not saying the building is too big for that it should be downsized. We have to take all of this into consideration. This has been moving pretty quickly. We have had this on most of our agendas.

Joseph Morreale: Since you raised the economic issues. Given the rent and the competition as the building costs. What is the break even size of the building?

Edward Cohen: It is hard to say. I have these fixed costs that would amount to a substantial amount. It would take a substantial amount of the rent collected. I have to get a little margin of error. I anticipate that the first two years of this development, I will be in the red. Beyond that, I am only optimistic, and I hope that we can improve. I do not have any exact numbers to give you at this time. This is just an overall picture of this development.

Joseph Morreale: Do you feel that the square footage would be able to get you through?

Edward Cohen: I wish I could build more, but I think this would help me defray the fixed costs.

David Steinmetz: When Mr. Cohen originally signed a contract to purchase the lot, and I was involved from the conception, I think his expectation of the potential development, on this site far exceeded what he ultimately learned he could build on this site. Based upon the environmental constraints as KG and D. has revealed. His expectations are finally to the point where he understands what he has to work with, and that is why he is diligently trying to make this a project that he can work with.

Russ Davidson: I think when you look at the coverage and the limit, we are well within it. And Mr. Cohen has been very understanding that this makes good sense. We are anxious to get further along with the technical review of this layout.

Nanette Bourne: I think that if you can bring that to the next meeting. The response from the DEP and DEC and let us know what changes those are likely to be to the site plan if any. If you let me know when you have completed that process and that with both of them. Mike and I can get the nod. So that we can move forward. For the time being, the SEQR application is not complete enough for the planning Board to make a determination. But when you get those resolved that we can bring it back to the board.

David Steinmetz: Has there been a public hearing and should we be scheduling a public hearing to get any input that there might be.

Nanette Bourne: There does need to be a public hearing on the permit.

David Steinmetz: Site plan?

Nanette Bourne: No it is not a wet land.

Stanley Bernstein: Wet lands and steep slopes that is all.

Nanette Bourne: It is a natural resources disturbance permit. I think before we have that public hearing. In light of the comments that you receive from both agencies, I would like to know that your site plan is becoming stable.

David Steinmetz: You would like our engineers to respond to those two letters, meet with DEP and DEC, and determine whether we satisfy them. Then come back and let you know, if we can get on an agenda.

Nanette Bourne: Your submission needs to include a copy of copy of the joint plan, with the two sites, and your landscaping plan, and if you have any revised site plan detail.

Chairman Cosentino: Whitney you will review those joint easement plans?

Whitney Singleton: I just received them today.

Anthony Sturniolo: Part and parcel of the DEP letter, there are three points I would like to highlight. One the DEP letter states that a minimum distance of 25 feet should be maintained between open drainage and sewer lines.

Russ Davidson: Right; and that was accommodated. When we all eliminated that third basin. That sewer line goes through there now. By coordinating to storm drainages, we are able to provide that clearance.

Anthony Sturniolo: Given the previous use of this property. There is additional concern regarding the suitability of existing soils for storm water management and the location of the basins. As such, the applicant should have evaluated a less intensive development. The third point, which also concerns me. The applicant should address what will be done with any water that is pumped out of the existing chambers for any other structure as it may not be appropriate to discharge directly into the existing bodies of water. These are points that I am extracting intentionally for the record, but they are all in your copy of the DEP letter.

David Steinmetz: We will address each of those.

Russ Davidson: There has been some testing done in this area, and there has been an additional soil investigation. We expect the reports back, very shortly. That is underway. Less intensive development.

Anthony Sturniolo: That is a philosophical approach of the overall development.

Russ Davidson: We do not believe that there is a less intent of development.

Eric Kaeyer: We did reduce the building, somewhat. And we have reduced the number of parking spaces, since that letter.

Russ Davidson: There is nothing in the soils or the storm drain, which leads us to believe that this can't be supported and meet the criteria.

Nanette Bourne: The status of your soil investigation, with regards to hazardous materials.

Russ Davidson: It was done for the entire site, as part of a phase two environmental. Now that we have a grading plan, where we know we will be doing more cuts. We recommend it to Mr. Cohen, and he commissioned to have the same firm do some additional soil testing.

It is being done by Tim Miller Assoc.

Nanette Bourne: If you could provide that also.

Russ Davidson: The increase offer on this area looks like a good step in the right direction, assuming the technical on that aspect is supportable?

Chairman Cosentino: Yes.

Whitney Singleton: you are going to check with DEP and the DEC and also verify that this is not an area that needs to re-map DEC?

Russ Davidson: I don't recall having heard that, no.

David Steinmetz: We are certainly in touch with DEC and Crème, but I will confirm that.

Nanette Bourne: As far as the next time before the planning Board, you will notify us when you have all the materials and make a submission.

Russ Davidson: It will not be the next meeting. We really want to get the coordinating and a nod of the layout. Now that we have all the engineering done, we will go to DEP and address those points. You want a response from what I understand from them.

Nanette Bourne: If they are reluctant to give you a written response. Mike and I will make some phone calls.

Anthony Sturniolo: Also, that plan submitted to the planning Board, because it predates the one that we have.

Russ Davidson: We picked up the wrong drawings today.

Chairman Cosentino: Thank you.

**2. Ability Beyond Disability –
Brad Schwartz, David Steinmetz counsels for the applicant, Dan
Copleman engineer, Jill Gentile, and Jerry Greenberg property owner.**

David Steinmetz: To give you a little background. We have been coordinating our efforts with the landlord Mr. Greenberg as well as the professionals. The only way for this

application to move forward is to go forward with the cooperation with the landlord and the tenant. At the last meeting that we appeared before your board you asked us as well as Nanette and Whitney to try and take a step backwards Mr. Chairman and document what had been previously approved and provide you with everything. Brad together with Jill compiled and with Jerry's assistance a tremendous amount of information which we have assembled in our submission packets to you. Which contain prior maps, plans, Mr. Messinger's analysis of the use of the space, as well as our berms, and an explanatory letter trying to take you through all of this. I hope that it provided at least a fair amount of background material for everyone. I know we did supply you with an awful lot. We also indicated at the last meeting, we recently met with Whitney and with Nanette and explained a lease modification that was entered into between Mr. Greenberg and Ability. This allows our team to take the lead here and process this application with the full knowledge and cooperation of Mr. Greenberg. We need to get something done. The reason I say we need to get something done is, as you all know, Ability is presently utilizing another space here in the village as well. They are desperately trying to get out of that space and into this one based on Kisco Avenue. They are presently transporting their patients on a daily basis to and from this property. It makes for some operational issues, for Ability and makes some inconveniences for their patients. My understanding is it makes for some significant inconveniences for the village as well. We hope by working together with your board as well as the landlord, we can address the site conditions that need to be addressed: parking etc. You can relocate abilities to use and function in Mount Kisco into this one site. I know Jill would be very excited, and she could get all of her consumers and staff under one roof and one program. And though our client is not-for-profit entity, they are spending an awful lot of time and money and effort in compiling this material and asking us to get in front of you to address all of these points. We have a few things that we would like to address. We have a presentation we would like to take you through fairly briefly. There are a number of engineering issues that we have asked Dan Coppleman to address on the two parking lots. There are some procedural issues in terms of where we may go next with this application which we have at least previewed with the chairman and the village attorney and the village planner, but we obviously did not put it in front of the entire board, as we tried to reconcile the best way to process this.

Anthony Sturniolo: Is this the August 24 meeting, that you reference, you or Mr. Greenberg in this letter.

Brad Schwartz: The August 24th meeting is the meeting that we had met with Nanette Bourne at village hall, regarding what would need to be submitted. That is where we got the information from your consultants to take a step back and provide the comprehensive summary. Where this application has been and where it is going.

Anthony Sturniolo: That was the germination for that document?

Brad Schwartz: Precisely. Following the submission of this document, we met again with Mr. Chairman. and Nanette and Whitney to discuss the submission and where this application is going to go from here, procedurally.

Chairman Cosentino: We did this for two reasons. One the landlord at that time was not too cooperative with what we were doing and we needed a middle person to call the pieces together since he was not doing it.

Anthony Sturniolo: I wonder why.

Chairman Cosentino: Well because he is what he is. Let's get going.

David Steinmetz: I hope that you feel that we have made a major, if not valiant attempt to pull the pieces together and present this. This took an awful lot of effort to get this information together. Now we are here to try and digest it with you and map out where we go from here.

Chairman Cosentino: We agree with that.

David Steinmetz: We appreciate that. As that is background, I'm going to let Brad take us through the initial presentation, because he has been working on the details with Dan with the engineering.

Brad Schwartz: We are here to accomplish three things tonight. First to discuss with the board the parking design standard. That we should use for the north side parking lot. We are seeking to utilize the standards that were previously approved in 1994. Which do not conform to today's standards. One way to do that is to discuss with you, Mr. Chairman, is perhaps to get a referral from this board to go to the zoning board, for an

area variance from today's parking standards. Second I would like to reach a consensus with the board as to the layout of the south lot. We have submitted a code compliance plan, which shows 72 parking spaces. That plan, Mr. Coppelman will explain, cutting into the property. We believe will result in unnecessary adverse environmental engineering impact. We have offered an alternative plan that shows a lesser number spaces, which would require the board utilize your waiver authority over the code. To leave the number of spaces that is actually installed on the property. Justification for the board to issue that waiver would be in light of Ability and the parking demand is not as great, because of the nature of the operation. If we could accomplish those two things design standard for the north lot and the layout of the south lot. I believe that would be a very productive meeting. Third, if we could receive the boards initial comments and feedback on the drainage plan that we submitted as well, and the landscaping plan would be even better. The designer of the landscaping plan is here.

Chairman Cosentino: Let's do one thing first and then go to the landscaping plan.

Dan Copleman: In your booklet we provided you with a copy. This is the 1994 site plan. This plan was approved with certain dimensional parking requirements. The dimensional parking requirements do not meet today's parking requirements. You might say, so what is the impact?

Chairman Cosentino: The year is 1994. How many units did he have internally?

Dan Copleman: We had 44 parking spaces in this north lot.

Chairman Cosentino: How many tenants did he have?

Dan Copleman: We have a 25,000 square-foot building, but it doesn't necessarily refer to tenants.

Chairman Cosentino: Let's just take the square footage.

Dan Copleman: 25,000 ft.² is what we had. This is particularly problematic, because there are crossed easements. Between this property and Zumbach's property to the north. In terms of the driveway there are crossed easements access points, deeded description easements, and everything else. My charge on this north lot, was to see where we are today with the specs to the survey information. One of the things I discovered is if you measure the property from here to here. On this plan versus the survey plan, there are 6 feet missing. We have a dimensional situation. We have literally a property line, that instead of this location. It is 6 feet further south. This infringes upon the parking. It does not change the requirements. It is just a dimensional constraint. These are recorded easements. I am just looking at the north lot. I have a property line that sits at this location and is nonnegotiable. It cannot move six feet in this direction. What I did was lay out the spaces in accordance with the charts and requirements, and I came up with dimensionally 45 spaces. How I came up with that is as follows. You have your space count, which are compact car spaces. Which have typically a 7 1/2 foot width and 16.6 foot in length. You have your islands and here.

Chairman Cosentino: Compact cars?

Dan Copleman: Compact car spaces. That is what is approved on this 1994 plan. I realize that that is not your code today. What I wanted to see, is when I lay this out can I fit the number of spaces and dimensional requirements of this plan and into the site. As per the survey. The answer was yes. I will also tell you a further complicating issue, is it is not physically striped like this out in the field today. There are eight-foot spaces instead of nine. It is not exactly striped in this configuration. But this configuration matches the written word on your site plan approval from 1994.

Brad Schwartz: To put it another way. It is fair to say that the standards that were approved in 1994, we took those standards and applied it to the survey that we have prepared in 2005 at your board's request. That is how we came up with 44 spaces that are shown on both of our plans.

Chairman Cosentino: What size are the parking spaces?

Dan Copleman: It varies. Some are 9 by 16.6 and some are 7.6 by 16.6.

Brad Schwartz: There are 20 spaces up to 9 feet and 20 compact spaces up to 7.6 feet and 4 handicapped spaces.

Anthony Sturniolo: You took a 1994 standard, shall we say. Approved the site plan, and stamped it with a 2005 date in essence?

Dan Copleman: No.

Whitney Singleton: I think that you could it alleviate some of the concerns of the board, if you explain the reason why.

Dan Copleman: Here is the problem. If I go our standard 18 foot depth parking space here, I am parking in a dedicated easement of access. There are crossed easements here between the two properties. This is a 25 foot easement for access. The cars will start to infringe on the easement, which he has rights to.

Chairman Cosentino: So you cannot comply with today's standards?

Dan Copleman: That is correct.

David Steinmetz: If we cannot comply with today's standards, and still have a functional parking lot that works both for Zumbach's to the north, and Mr. Greenberg's property to the south. So to the extent that you have two adjacent properties that have in fact a common parking lot. It makes no sense to bring in the southern parking lot, our north lot to today's standards, and leave Zumbach's the way it is. They will not function, and we will violate any easement that makes no sense. So what we did as Brad was explaining. We understand that there are six less feet. Then, what they thought in 1994. Knowing that there were six fewer feet. We still accomplish the same exact thing that they did in 1994. We have 44 parking spaces, and we have a parking lot that we believe works. With a variety of sizes and dimensions. That is the north lot.

Dan Copleman: the critical issue here is the fact that this north lot is on the piece of property. That includes the building in the south lot. Why are we doing this? Well, we have one site plan. And we have one piece of property. So what ever we agreed to is the north lot has an affect on the lot count. So that is why we spent the effort here, in order to confirm that what was approved in 1994 is still here. Even though we lost some land. We don't violate the easement agreement, if we had these parking spaces. Come out to here and this easement, goes right into Zumbach and the same dimensional. He has the same restriction on his property, they would not match they would be off-center.

Nanette Bourne: The board has been talking about a strict compliance with the current parking code. In essence, they have to respect that. That is the determination that you have made. Even if you were to forget the easement and forget the need to get Zumbach's agreement to all of this. If you were to apply the current code. To this north parking lot and make a dimensionally compliant, you would lose six to eight parking spaces. You are going down in the numbers for a site that you are struggling with.

David Steinmetz: It is our position with code compliance for this north side. It is not technically feasible by the easement. We hope that you can appreciate the fact that what Mr. Coppelman has achieved, is a lot on the north side that still gives you the same number of parking spaces for the same size building that you had approved in 1994. We think that gets us up over the hump of the north side. With that number fixed, we can then begin to analyze how many spots; we need on the south side.

Nanette Bourne: You are also suggesting that you are willing to go get a variance for that.

David Steinmetz: For the dimensional size of the spots.

Brad Schwartz: With the area variance from today's parking standards. It would be permission from the ZBA to utilize these standards on just the north lot.

Chairman Cosentino: In 1994 this was based on the interior space of the building?

Nanette Bourne: It was based on square footage.

Chairman Cosentino: We do not know how many offices were there in 1994. Mr. Greenberg, would you know how many offices where they are, in 1994?

Mr. Greenberg: There was a medical office in there at that time.

Chairman Cosentino: In 1994 how many regardless of medical. How many total offices, did you have there?

Mr. Greenberg: In 1994 Open-Door wanted to come to my building. They are a medical clinic. The building inspector then proceeded to lay out the process I needed to go through. On the chart that was made in 1994, which your board approved, it showed medical office space. Over 3000 ft.².

David Steinmetz: When you got this approved in 1994. You came before the board. How many tenants did you believe you were going to have in the building? One medical for open-door, one which was an existing office. Was there more than one existing office, or was there just one?

Mr. Greenberg: Do you mean, was there just one office? There were lots of offices.
David Steinmetz: Was it one tenant or more than one?

Mr. Greenberg: It was more than one.

Nanette Bourne: This did not break out individual offices. It broke out many offices.

Chairman Cosentino: In 1994 was it blocks of offices?

Mr. Greenberg: Just like when you walked through the other day.

David Steinmetz: According to the 1994 approval plan, there were three what I will call use categories. Medical at 200 a square per space, regular office or existing office at 250 a square per space, and warehouse at 1000 a square per space.

Chairman Cosentino: So you had three offices?

David Steinmetz: Three use group categories.

Mr. Greenberg: I bought the building 1983, and basically was a manufacturing building. With office space in the front.

Chairman Cosentino: That is what I was trying to get at. In 1983. It was manufacturing, with office space in the front. You purchase the building and then subdivided the internal part of the building.

Mr. Greenberg: I intended to use it for my own business. In 1985 I had a very big business, and I employed a lot of employees. We then went to the planning Board and we had the building changed.

Chairman Cosentino: Nanette, what I'm trying to get at is this: in 1983, when this building was put up it was manufacturing, with offices in the front. The amount of parking: what did it need? Today, they have maybe 10 or 11 offices; medical and etc. Did the parking change from 1983 until now?

Nanette Bourne: There were changes.

Chairman Cosentino: That is what I am trying to find out. What changed from the original site plan until now?

Mr. Greenberg: When we got this conversion in 1986. When the building was converted. All the office space that you walk through the other day was all built in 1986. It was converted at that time. The front, which was terrible, office space, and all the office space that you saw was built in 1987.

Chairman Cosentino: I guess I am not going to get the answer that I was looking for.

Brad Schwartz: If you add up the total number of spaces. Based upon these three use groups you have a total of 65.

Chairman Cosentino: Ok 65 in 1994. That does not cover me for 1984?

Brad Schwartz: No. But you are asking how did it change?

David Steinmetz: I think he is asking from 84-94.

Chairman Cosentino: That is right.

Nanette Bourne: The Village requirements changed in 1988 and 1989. It was acquired and 83, it was divided 87, with no change in parking.

Chairman Cosentino: The reason why I said this is because you originally had a manufacturing building, with offices that most likely with less requirement on parking. Then all of a sudden it has changed offices internally, medical etc. That takes a larger count in cars. This is okay. Because what is being utilized for now is not going to be a large count of automobiles, but you still have the internal offices. That will bring the count back up. Ability is not going to have a tremendous amount of vehicles there. If you rented it to anybody other than the Ability. You probably would need more parking spaces.

David Steinmetz: Which is why we are prepared, and we have indicated to your professional staff. And at least in our discussion with the chairman. We are prepared to have this building, encumbered on its C of O with a notation that makes it quite clear if he were to approve the site plan modification today in 2005. Your record would be very clear, that you're taking into account, specifically the use.

Chairman Cosentino: This protects Ability from ever renting the other space for something that would need more of a car count. That would put them in jeopardy again.

David Steinmetz: It also protects the village of Mount Kisco. In the future as somebody comes in, if ability were to leave. They will be on notice, if they do their due diligence and look at your municipal files and they will say that you have restricted this building to this particular use and this car count.

Chairman Cosentino: You don't want to have happen that has happened now. With the automobiles where they are now.

David Steinmetz: What we are ultimately asking you to do is to acknowledge that we actually need fewer parking spaces on this site than, a mathematical analysis would otherwise require. because of my clients very unique use. In the future of somebody else leases the space that we would like to use. They will come before this village, and they will have to seek a change of use permit. They will know that they cannot move in and take on a tenant.

Chairman Cosentino: That protects Ability.

Nanette Bourne: I think you are also asking the board to consider freezing at your tenant allocation and your tenant distribution right now. So that if you have X amount of square feet allocated to warehouse, that it would not change.

David Steinmetz: Unless he increases his warehouse use. This would free up parking spaces.

Chairman Cosentino: I am talking about a greater use. If he wanted to put a bigger a medical facility, transfer the offices now, into a larger medical, the car count would be much greater. That would have to come back before this board. That is all I am interested in.

Nanette Bourne: It is not just the square footage allotted to Ability. It is reflected on all of the building.

Anthony Sturniolo: This is how the property is being utilized. I know we are going to get into the south parking lot. We are going to talk about rocks and blasting and double stacking cars. Let's cut to the chase, Mr. Greenberg. I would love to see Ability Beyond Disability. Occupy your building with as much space as they want. Why don't you remove some of your current tenants and reduce your parking count. To allow them to come in. You have too much in there. Let's open up the doors so Ability can come in

Mr. Greenberg: All these years I have been in this spot and never had a problem. I have never had a complaint from any adjacent properties. There has never been a problem.

Ralph Vigliotti: The bottom line is the parking has to match the uses and that is what we are here to discuss. We have talked on and off about you need a variance of the parking sizes.

Chairman Cosentino: They agree to that.

Ralph Vigliotti: In all fairness, the parking has to match the uses. And that is what we have our professional staff for to make sure that those uses match. If they doubt that we have to go to the next step.

Whitney Singleton: I think the applicant was very helpful in outlining the issues the way that they did. I think if you stay focused and you allow everyone to stay focused on the issues of the north lot then the south lot. It will all congeal. The dimensional deficiencies in the north lot cannot be addressed by this applicant without a change not only to their site, but the adjoining site. In addressing the dimensional deficiencies, if they were to become code compliant in that regard. Not only would that wreak havoc on the site plan. But you have a further added issue. That would result in significant diminishing available parking spaces. And then move to the south lot. I think it will ultimately be much clearer for everybody. We have spent a lot of time on this issue, and it was very confusing. If you try to talk about both parking lots, and the history and the current uses and the future uses to delineate. It will make it much clearer for you.

Anthony Sturniolo: If you take the issue of the north lot and if you make it compliant with the code today you lose five to six spaces. Isn't the rest of the sentence has to be "so how do we make up for that loss in the south lot?"

Whitney Singleton: That part is fine Tony. The bigger question is this. If all of a sudden the parking spaces are doubled, and I'm exaggerating. A lot is always being what the lot is. If all of a sudden, there is 2 feet longer in length then you are double loaded. We now have 4 feet. That is 4 feet taken out of the travel lane that was already deficient to begin with. For putting those in a situation that they can't even redesign their parcel, but the parcel to the north. They can't do it. That isn't just regard with being able to work within that site. The total number of parking spaces as David told you before - he will present a plan to you, which will address the parking issues. The total number of required parking spaces.

Dan Copleman: If you look to exhibit F in you documents, it will clarify some issues for you. As I mentioned here is the easement. You all notice that this easement, continues through Zumbach's and comes back through their entrance, off of Kisco Avenue. If following that statement further, these spaces are all laid out and labeled. What would happen if these spaces, then this easement would not line up with that easement? This is the continuation the loop.

Anthony Sturniolo: Are we absolutely sure that our hands are tied, because one access space will not line up with another one. We are obligated to things, the easement from the 1994 agreement.

Whitney Singleton: What I was saying. They are presenting to you that they have a predicament. And they are not asking your board to do anything other to recognize that predicament. And possibly get a denial. So that they can go to the zoning board can plead their case. They are not asking your board to do anything. They are just simply laying it out for you.

David Steinmetz: The only thing that I would modify that Whitney just said. The one thing that we are asking your board, and I certainly think we made it clear. We are asking your board to acknowledge this issue, and we are hoping that you are giving us a favorable recommendation if we go to the zoning board. As I mentioned Whitney. When we met with you and Nanette, we are hoping that your board will acknowledge the predicament, and as we explained to Chairman Cosentino recommend favorably that the zoning board address the fact that of our 44 spaces in the north lot. How many are actually sufficient 20?

Anthony Sturniolo: David what I am saying is that you have an issue with a problem in the north lot. Whitney can't the problem be addressed, by reducing the amount of spaces on the south lot?

Whitney Singleton: No.

Brad Schwartz: The loss of possibly six to eight spaces is not the only adverse impact. That would result from applying today's standards. That is what Mr. Coppelman is trying to address. The loss of spaces is one impact.

Anthony Sturniolo: Could it be compensated by the south lot?

Brad Schwartz: If that was the only issue, then potentially. The other bigger problem that Mr. Coppelman, has identified. Is that it would render our north lot entirely adjacent to Zumbach's lot. So there is a bigger problem that would result.

Anthony Sturniolo: You are trying to have it both ways with the logic. You are saying if you address the problem in the north lot by reducing spaces on the south lot, there is still another problem and that is the alignment.

Brad Schwartz: Correct, we would be increasing on the south lot. To compensate.

Anthony Sturniolo: I say decreasing; because I would still like to see a couple of fewer tenants occupy the building. And therefore you would have enough parking spaces for Ability. Putting that point aside, if you go to the north lot, Whitney again, are our hands tied. Because of trying to line up these two pieces of property together? I am looking to have Ability Beyond Disability to come here without having to go to the zoning board.

Whitney Singleton: This line here, as they lay out. This is a dividing line between this parcel, and that parcel.

Brad Schwartz: We would love for the zoning board to grandfather these standards in. Based upon the 1994 approved site plan. In our meeting with the chairman and Whitney recognized a valid concern of the board is setting a precedent down the road.

David Steinmetz: Because of the unique circumstances with the adjacent lot, as the 1994 approved. The fact that you're not losing parking count under this variance. I think you have a very tightly drafted variance that I hopefully your board your board can support. Hopefully the zoning board can grant, and we don't feel that Mr. Sturniolo, that that will come back to haunt your board in the future.

Anthony Sturniolo: In essence, we are saying. We have a problem and you are basically asking the planning Board, just to say here it is. Here is a problem; we need to go to the ZBA. Our charge is trying to address problems without having to get all these variances from the various ZBA.

Chairman Cosentino: The problem is this. If you grant them permission, every other applicant that comes before us. They are going to say, why I don't get the same treatment.

David Steinmetz: Anybody with a modification of a pre-existing site plan is going to make that statement.

Chairman Cosentino: I would tell them the same thing. Take your chances and go before the ZBA.

Whitney Singleton: One of the points is this: Going to the zoning board is to address some of the problems that may exist in our zoning board. This is and I don't want say unique, but rare situations where you have as provided in our code. We have a situation where adjoining properties share a parking lot on one or more lots. It happens to be on two lots. Forgetting anything that relates to the issue the number of parking spaces, just to the size. This applicant is representing to you; they have the ability to alter these spaces. They would be happy to alter them. But what happens as you start to extend them in length, and extend them for width, it throws off with regards to the adjoining parcel. All of a sudden, this travel lane, which is up to 25 feet, is now going to be reduced down to 21 feet.

Anthony Sturniolo: Have you spoken to the adjoining property owner about this concept and they said no?

Ralph Vigliotti: Do you have a good relationship with the property owner to the north or not? Why does this property have to have an ingress egress? Why can't it have one driveway going in?

Chairman Cosentino: That was done years ago.

Ralph Vigliotti: Right now you have ingress; you do the loop around and come out. You have a considerable size coming in. It comes around and comes out. We have a number of businesses in town. There is just one way and at the same way out.

Chairman Cosentino: But they have easements.

Dan Coppleman: Also the parking lot doesn't end at the property line. The property line goes straight through. There is no physical barrier at the property line. The cars do not know whose property they are on when they are parking. You asked what kind of variance and how are we not compliant. I believe that is a very good question. You will notice on exhibit F. what we have is 20 compact car spaces 7 1/2 foot wide. That reflects 20 compact car spaces, approved in the 1994 plan. The rest of the spaces are 9 feet wide. They are supposed to be that. We have for handicapped spaces on the 1994 plan, and the only difference there is the striping for today's handicap spaces is different

than the striping that was done in 1994. They still work, but to strike the requirements were different back then. You have an 8 foot space and 8 foot stripe and an 8 foot space next to it.

Stanley Bernstein: You want to paper over an existing in bad condition. You are asking the planning Board make a recommendation to the zoning board to accept noncompliant spaces. What is going to happen, unless you have a parking guard, do you plan to hire a parking guard, these cars are going to stick into the easement, whether you like it or not. Whether it is striped or not. It is only 15 1/2 feet. They are going to stick into the easement. What do you do then?

Mr. Greenberg: They won't and they don't now.

Stanley Bernstein: A standard car? You are able squeeze them all away out to the guardrail.

Dan Copleman: We have a dilemma with cars today. We have Toyotas and then we have suburbans. The suburbans will fit into that space.

Stanley Bernstein: My Cadillac will fit into that space. We do not have compact cars today. We have more SUVs than we have little Toyotas in this town and in the general area. What you are doing and you're saying is the zoning board is going to allow this and now we have a very nice easement. When the cars stick into the easement. What happens then?

Dan Copleman: They won't stick out.

Stanley Bernstein: They will.

Dan Copleman: Right now, if you put a Chevy suburban in here, and instead of having a 25 foot lane. You are going to curtail that to a 23 foot lane. The only problem that you will have if you had a suburban here and a suburban there. Then he would have a 21 foot length.

Stanley Bernstein: It can't happen? It will happen if there is no parking guard.

Dan Copleman: Jerry you have to explain what goes on there today. How is the parking arranged?

Stanley Bernstein: It doesn't matter, what goes on today. What matters is what we are looking for in this project and the future.

Ralph Vigliotti: You skipped over my thought and I want to get back to that. You need to get together with the property owner to the north, and go over easements, and go over reconfiguring this parking lot, so that you will be able to accommodate the sized parking spaces that meet the code. There is enough space there to accommodate the spaces that you need. You need to sit down at the property owner and reconfigure the parking, with a parking lot specialist and come back to us. There is enough space to make that happen. TJ Max has one way in and one way out. There are other strip malls that have one way in, and one way out. There is a lot of space to be used for ingress egress.

David Steinmetz: Assuming technical logically, that is feasible in terms of the design. The one thing you need to understand is we cannot compel the neighbor to do anything. A court could not compel them.

Ralph Vigliotti: Somewhere down the road they maybe before us and this is going to hurt them also.

Dan Copleman: What we could do to answer your question, is use this division space and go into it further, with the spaces, and cause the depth of the spaces to go further into this island. Thereby create a greater length into the island and lose some of the island. That would technically violate your 1994 plan which shows the island, but it is possible to go into those island spaces.

Ralph Vigliotti: You are still not answering my question. I believe, if you have enough space in this lot to accommodate the spaces the space you need within the code. But you need to reconfigure the ingress egress. I think if you have a consultant, said with you, that it could be redesigned. Assuming that the property owner to the north is willing to share the financial responsibility, and share the new easement. I honestly believe there could be one driveway, going in. Servicing the entire lot and the same driveway being used to come out.

Dan Copleman: One way in and out of the middle.

Ralph Vigliotti: Now we have one curb cut instead of two.

Dan Copleman: Now we have more land unavailable for parking. I understand your point and you are absolutely right.

Ralph Vigliotti: That is what I think and forget all the other stuff that we're trying to do, all the ZBA stuff and everything else. I do not think this board is going to give you a positive as you go to the zoning board. There is another way to do this and I think you need to sit down and rethink this.

David Steinmetz: The property owner needs to make a decision. The overriding concern, that I hope the board will take into account, is that you have a constituency here at Mount Kisco of consumers, utilize our Ability's, facility. It is a necessary facility in our society. We have spent a year trying to get to this point, to try and provide legitimate necessary medical, and other rehabilitative services to these people. The longer that we are embroiled, it becomes harmful.

Chairman Cosentino: As a past chairman I take umbrage to that for the simple reason that it was not your fault, it was not Dahtar's fault, but it was this man's fault. We want to do all we can to help. Let's put the blame where it should be.

Anthony Sturniolo: Mr. Chairman I would like to underscore what Ralph said. I am 100% in agreement with having Mr. Greenberg, the property owner sit down, talk to his neighbor to the north. We can figure something that is acceptable to both people. Acceptable by this board. We iterate to the property owner at Zumback down the road, real soon, you will probably be coming back in front of this board for something. So you might as well address the issues now. I started off when I was speaking, that I wanted to see everything done to make ability have the capability of moving into this building. Visa vis eliminating some of the other smaller tenants in the building. However, what the chairman just said. You have been working diligently. Once you have assumed the responsibility for the applicant in packaging engineering, doing the legal work and doing everything else. So this very well documented booklet can be put together and made sense of it. We have wasted time and time sadly, you are paying a price. Because the property owner never did what he was asked to do by this board. We need to separate the delay. Now things are moving quickly, because you have a team together, doing what the applicant should have been doing on his behalf. Because you are a tenant just like the other 17 tenants in that building. My personal opinion. You have a high priority in there, versus some of the other things that are in there.

Chairman Cosentino: Jill they could move quickly. You have the best of teams here. They could move quickly, but certain things should be done to protect your interest, and where you are growing now.

David Steinmetz: We will be back when we can spend some time figuring out plan B if we are unsuccessful. Or we can come back. I know Mr. Vigliotti will want us to go and do that. It is an excellent suggestion, if we can pull it off. It's a very good idea, because we would pick up spaces. I do not know how Zumback uses their property. I do not know whether this loop was put in, because there are deliveries, drops or something that I would envision your one way in and out, will this property still come in?

Anthony Sturniolo: We need some experts to say that.

Jerry Greenberg: They get forty foot trailers that come in through here and back here is a loading dock here. Part of my building that is warehouse space we get trailers that come in here, back in over here and come out here. You can't get these size trailers in. It is a nice idea.

Ralph Vigliotti: So we are going through a manufacturing use way back when.

Jerry Greenberg: Zumback is very touchy about their trailers coming in.

Anthony Sturniolo: David please explore that whole thing.

David Steinmetz: We will still check it out. We are not going to accept that to be the be all and end all. Mr. Greenberg is certainly not a traffic expert.

Jerry Greenberg: It is difficult for me being blamed for something. I bought this building twenty five years ago. It was a disaster of a building. It was a manufacturing building and had 100 employees working in here. When they broke for lunch they went all over the place and made a mess of the whole thing, and they were forcing the guy to sell. I

bought it and had a distributing business at the time. This grew quite large and I intended to change this building into office space. I hired professional people at the time which was in the 80's. The building was converted to office space of which all this became office space in here. The rest of it remained warehouse space. I had all my people working here. Unfortunately my business did not make it. Little by little to survive I had to rent the space out. I did not have another business to put in here. The space was rented out. When I came to this board in 1993, everything stayed the same except for the spot over here, was going to be converted for medical use for Open Door. I came and an Open Door was going into exactly the same spot that they are going in to today. I did everything that you wanted. What happened was Austin came out and found an old map that went back to 1973, and this part of the parking lot existed and was prior approved. He said we did not have to do anything with it. He said we only had to worry about in this part of the parking lot. So we redesigned it. And all these counts, and the building is exactly the same and I have not done anything different to it other than the spot that they are moving into. Calculated we needed 55 spaces, of which this amount was going to be my Open Door a medical clinic use. I went ahead and made the modifications that you requested, that I had to have any easement agreement. There had always been an understanding that we could go in and come out. There was no written agreement. So, they said, you must get a physical written easement agreement. It took me six months of negotiations with the guy next door, who is so called my friend. But he was fighting with me tooth and nail over this easement agreement. It took six months to get the easement agreement. Actually, you're board, approved it. This was approved in June of 1994. It took on till November to get the easement agreement. So we could not do anything without the easement agreement. Once the agreement was done, we redid the entire parking lot. Because actually the real world was, although it was on paper, looking like it consisted of 44 spaces. You came out and looked at it and said it does not have 44 spaces. Part of this mountain was here, and if you remembered there was all this stone that had to be dug out and this wall was built. That was done. Under the instructions of the engineer, under the building inspector. I took out a bond and spent all this money. I redid this whole thing. Now so much time had gone by, from the time Open Door came to me. They had a very wealthy man, who was finding their change in here. I did all the other work except, taking out the loading docks. At which point they came to me and said they lost their funding. I was two years into this project, I had no rent on that space and spent all this money changing the parking lot and did everything that you wanted. Then I lost the tenant. I never got to take out the loading docks and finished doing, what was on that side. All the rest of this except for the seven spaces here for a brought up to the parking level that we are at. This included the medical use in the same space that these people are going into. This is now an office use, because they are not a medical clinic. Somehow the figure comes out. Instead of 65, it is now 70. The building has not changed their use has not changed; the office space has not changed. The only thing that has changed is this spot here, which was going to be a medical use is now their use.

Chairman Cosentino: Don't you think that it would have been easier. Before you started building to come in for a building permit.

Jerry Greenberg: I thought that this was approved. I did not understand it. When the first time that you called me in here. I said I was sorry and I made a mistake, and I know Austin and did not deliberately try to do anything. Austin was sick during this time, and I did not have a chance to really go through things. I spoke with Austin and told him the predicament that we had. He said to just finished doing the loading dock and straighten this out. That is when he came back after being sick. Then the fur started to fly, because they had a problem and the other building. People came in here and started yelling and screaming.

Chairman Cosentino: The needs for Open Door are completely different from the needs of Ability Beyond Disability.

Jerry Greenberg: It was a medical clinic.

Anthony Sturniolo: The operations are different. Let's end this conversation and allowed David to start to explore on your behalf, discussing with Zumbach and see what can be done.

Whitney Singleton: I just want to clarify one thing. I understand the predicament that you are in. For purposes of clarity, I don't want there to be a misimpression that the only thing that has changed is that they are coming back to you. You are approved site plan shows over half the building is warehouse. What you are proposing now and your existing occupancy. You have 5000 ft.².

Jerry Greenberg: We went through this when we came here in the beginning. What happens is this. The plan was done in '87 and the '94 plan. They did the plans that converted the office space. They had all the numbers for everything. In 1994 when this calculation was made, they considered the corridor, which there is a huge amount of space. You walked through the building and saw the corridors. A very large percentage of this building is not used by people. There are a lot of bathrooms in here. What happened here is that in the warehouse count. He threw the corridors into the warehouse count. That is the way it was figured.

Whitney Singleton: Even so it has some significant conversions of some of the warehouse use.

David Steinmetz: Let's move to Tony's comment. Tony wants us on your behalf to go back to Zumbach. We will do that immediately. I assume that I can say to Zumbach, that the planning Board has encouraged us to have this conversation. I think if you were to contact the planning Board. They would encourage you to cooperate with Mr. Greenberg, in terms of the reconfiguration. We are going to find out function whether that will work. Rather than sitting here tonight, and discussing and debating alternative possibilities. Give us the month to find out if this will work, I would ask you for the benefit of Jill and Ability, if you could carry us on to the December agenda, so we could come back and report to you.

Chairman Cosentino: The problem is that there is only one meeting in December.

Davis Steinmetz: We will be back then in early January to brief you on what has happened, and hopefully have the ultimate solution. All I ask is that you don't leave tonight having made a decision that you would never consider and favorably recommending the variance. If you want to help Ability and you want to see this plan somehow work and you don't want us standing in front of you for the next year going around in a circle that at least seems like people have been going in. Please keep an open mind. I think it is an option; it may not be as good an option as Mr. Vigliotti suggested.

Chairman Cosentino: We need you to come back to show us what you can design. If you want to bring Zumbach in here that would be fine.

Nanette Bourne: They can come back for continuing review.

Anthony Sturniolo: The first meeting in January is a regular meeting.

Chairman Cosentino: They can only be heard on the second meeting of the month. We will see you then January 24, 2006.

**3. N4Fitness – 293 Lexington Avenue
Dan Hollis, counsel for the applicant
George Grenier, President for N4Fitness**

Dan Hollis: We were first here in June with discussion of resolution of approval that you granted this property in April of 2004. I believe I called attention to certain provisions of that resolution of approval. The usual condition that you have retaining original jurisdiction in condition number two. In condition number 16. There was acknowledgement by the board at that time of the fact and I quote, the 58 total spaces are available. Do not constitute sufficient parking on the site. There was a chart attached to the resolution of approval that set forth a utilization schedule for each all of the seven stores. Totaling the 58 spaces. Since we were here in June, we have provided you with two excerpts provided by N4Fitness, setting forth their generic generalized business plan. Then in response to certain questions that board members had more specific responses to issues about the age of the people who would be using the facility. Whether there would be outside events and an issue regarding an arcade. Those were also addressed. We have provided you with a John Collins, parking analysis before the September meeting. That set forth his analysis of the site on a number of occasions. There was never utilization of over 50%. It was 40 to 48% at the most, and less than that a lot of the times. Then there was a question with regard to the actual square footage of the demised species in the building. We provided a pictorial of that in our most recent submission. In my cover letter to that, I provided a chart, setting forth the square footage of the different spaces for the total square footage of the building. I believe we provided you with all of the information that you requested. We are here to answer any questions, and what ever the board's pleasure.

Chairman Cosentino: Did we ever find that 250 ft.²?

Dan Hollis: The 250 ft.² is within the 10,620 square feet. The 250 ft.² is not there as a separate. If you look at the map, I gave you and the schema of the stores, store 1,2,3,4 and five, and 6, 7. That is the square footage. There is the column that says the resolution, and then there are the actual demised rental spaces. You will see where that adds up. There is no 250 ft.² space.

Chairman Cosentino: Nanette do you remember something about 250 ft.²?

Dan Hollis: At one time, you will see on the chart. There was a reference to 250 ft.², and our client was going to use that for his own use, so was to be able to use the basement, for the storage of records. He has abandoned that plan, when other tenants began show interest in store number seven, and we needed the totality of store number seven. So there is no 7A, now there is just store seven. I thought I had made that clear, the last time.

Chairman Cosentino: We could not find the 250.

Dan Hollis: That is why I gave you the pictorial of what the spaces are, right there at the site.

Whitney Singleton: I think what Mr. Hollis is saying, is that the uses that were reflected originally are not precisely accurate, as to the actual square footage of the plan. Were it said 4400. It was 4500. Where it said it was 1300. It might be 1380, that constitutes the difference.

Dan Hollis: I think the differential is 26 ft.², which is probably the size of this table. There is no store 7A, it is just store seven, and that is what we are hoping, you will see fit to approve for N4Fitness.

Chairman Cosentino: Going by there today, there are always parking spaces in the back, and in the front. I am aware of that Bits And Pieces sold. For the last two days the front parking has been completely filled, why? Are the new people doing that much more business?

Dan Hollis: I think that they seem to be a little more successful than the previous owners. I think even if the utilization was so below 100%. If you look at John Collin's chart, the highest percentage of utilization was at 40. Even if half of the remaining was used up by Bits and Pieces, they are not going to be that busy during the whole day. They are going to be busy at lunch and dinner. It is not a continuous thing, like my office, or a medical office for any 9-to-5 business. Were you having people that come and stay all day? At the pizza place you drive there, eat your pizza and then leave. The people that are in there now have a successful track record with other restaurant businesses. That will add to the vitality of the Center, which is what everyone wants. So what we are asking of you that you have the continuing jurisdiction and says in your resolution, you said that we cannot use any other space, until we come back to you. We are coming back to you for an amendment to your resolution, to permit this use. We recognize that any resolution of approval, would say that this use of store seven is only for N4Fitness, and any change of the tenant to a use other than N4Fitness, is taken over by another fitness operation using the same equipment, and the same operations, I should not have to come back. But if there is a change in use, like your ordinance already provides for, and the opinion of the building department that the new use, would warrant an increase in the parking utilization, then we will be back.

Nanette Bourne: The last time you were before the board. You did a parking demand. What was the conclusion of that parking demand?

Dan Hollis: The conclusion was that there was at the time. It was utilized was the highest percent of occupation at any one time was 40%.

Nanette Bourne: The parking demand required for N4Fitness.

Dan Hollis: N4Fitness. There are two employees and the most children that would be there, Mr. Grenier and Mr. Macalan, principals for N4Fitness are here. The most at any one time would be a class of 10 children. It would be 10 coming and 10 going at the most.

Nanette Bourne: That is what you suggested last time was that you needed 10 parking spaces?

Dan Hollis: No that is the most; I don't think I said anything, but the utilization. If the kids aren't siblings and if they are each coming in a separate car, then there are 10 kids that have to get there. They are all under the age of sixteen that would be taken there.

Whitney Singleton: The Pilates studio is a similar use. You have ten participants and X number of employees, a parking at requirement is 10.

Dan Hollis: I think you can draw an absolute analysis.

Nanette Bourne: If that is the case.

Joseph Morreale: Do the parents drop the kids off and leave?

Dan Hollis: They dropped the kids off and leave.

Joseph Morreale: That is not the same as Pilates. Don't the people that use Pilates park their car and stay?

Dan Hollis: Yes, they park the car and stay, so that means the space is taken, for a longer period of time. Here they drop the kids off, leave and then come back at the end of the session, and pick the kids up. So the parking space is not utilized for an hour and a half. I wanted to try and be fair, and the presentation. So I don't say that it is a drive-through, and I want say that the parking space will be used, for a brief period of time. When I say that it is allocated, and that it is internal traffic. There is no waiting road, where the parents can watch their kids do what they do through a glass window or anything.

Chairman Cosentino: They do not go in there and watch them?

George Grenier: We are not going to turn them away. As a parent I would not force it that they would have to leave their child and go away.

Chairman Cosentino: So you could possibly have ten parents?

George Grenier: Yes.

Dan Hollis: We have the space. With the 58 spaces. If the most that ever being used are 40% are 24. I have 34 spaces that are available there. Even with an increase of business with Basillico, will be between 11:30 and 1:30 and then from 6:00 till 8:00. Those other hours in the middle of the afternoon when there will be the greater activity from the school kids. There will not be activity at Basillico.

Chairman Cosentino: There is still parking in the back also.

Dan Hollis: The bank at the end of the day when the pizza might be busier, the bank won't be. So there will be a shift in the availability. Based upon our current mix. I think that is part of the strength of our presentation, is that of the current mix is really working well for the number of spaces we have there.

Chairman Cosentino: There is plenty of parking in the back of the building. You notice that the restaurant next door they park in Martabano's lot and walk to the restaurant. When Elman's is filled up. There is plenty of parking as far as I can see. The back is never being used.

Dan Hollis: I think that we have worked our way through where the problems were on this property. We have tried to be responsible in the way we have addressed those things. In less we are able to do this that store 7 that has now been vacant since April of 2004.

Chairman Cosentino: You really did not know what was going to happen?

Dan Hollis: We anticipated this sort of retail use, but the saving grace for that site was the fact that the bank took 3 stores. That cut down on overall traffic and parking demand. That was what really made the site. If those had been 3 separate stores with different retail uses we might be having a harder time making an argument.

Chairman Cosentino: I myself do not have a problem with that. The parking is there.

Ralph Vigliotti: I have three or four questions. Hours of operation?

George Grenier: When the children get out of school. Middle school kids get out around 2:00 until about 7:00 p.m.

Ralph Vigliotti: Saturdays and Sundays?

George Grenier: We would love to have kids on the weekends. Starting in the morning, probably until about 2:00 in the afternoon.

Ralph Vigliotti: That sounds like a lot of business hours. I hope things work out for you. It is all by registration for classes as opposed to an open gym situation. Ten for an hour to hour and half, they leave and ten more come. Are there dressing rooms or locker rooms?

George Grenier: No, they have their own cubbies for their coats. Children are expected to come in with workout clothes on. We will have restrooms.

Ralph Vigliotti: The age group is from 6-16? The classes will be for 6, 7, 8 year olds?

George Grenier: They will be broken down in the same way they are broken down in school.

Ralph Vigliotti: Later in the afternoon the upper grades?

George Grenier: Actually the other way around. The younger kids get out later. They would probably be around 3:30 – 4:00.

Ralph Vigliotti: One more question. There was something in here about arcade or coin operated machines.

Dan Hollis: Not in the sense that we had on North Bedford Road. They are interactive machines that the kids use to guide then or instruct them.

George Grenier: I tried to explain so that you could understand what it did. They are all machines made for the fitness industry and not arcade machines.

Anthony Sturniolo: The children go out; I think we lightly touched on this the last time. The children go out the back door?

George Grenier: They come in through the front door. I have already purchased a security system and the management software. We will have a card reader at the front door where the parents can check them in.

Anthony Sturniolo: The parents have a card?

George Grenier: The parent will be able to park in the back and use their card to check their kid out through the back if they wish to park back there. Again it is parent control; it is not the child that can just walk out the back door. My initial concern when I heard the thing about the back door was I have to take care of these kids and know where they are. We can check them into the security system and we can have two readers operating.

Anthony Sturniolo: So the parents come in the back and put the thing in the reader. It allows the door to open and then in theory their child is waiting by the door?

George Grenier: It will allow the door to unlock so they can come in. Then when they leave the computer tells me that particular child has been picked up. I will have a screen that will have those 10 faces of who was suppose to be there. It will show me they are being checked out.

Anthony Sturniolo: The other question Mr. Chairman we are a little unclear on some square footage in the front of the store.

Chairman Cosentino: That was the 250.

Dan Hollis: Once upon a time we started to talk about a store 7 and 7A. 250 square foot store 7 or 7A, I don't know how we described it. Then 1550 square feet for some tenant like Mr. Grenier. When the owner did not want to use the 250 square feet, now there is only a store 7. There is not a 7A.

Anthony Sturniolo: I thought we were talking about something within the confines of store 7.

Chairman Cosentino: They never did it.

Anthony Sturniolo: Are we looking for an office area?

Chairman Cosentino: They never put it there.

Anthony Sturniolo: The last time we were together it is what we discussed.

Dan Hollis: We talked about it and it was a plan. It was planned but it was never done. It is not there.

Chairman Cosentino: It is one big store now. That is it.

Joseph Morreale: The new restaurant that went in, is it a pizza place?

Chairman Cosentino: Yes.

Joseph Morreale: You have 16 year olds coming to your place. I am wondering about a hang out after they leave you, they go to the pizza place and hang out. Is there any control?

George Grenier: As far as I am concerned all the children are minors. None of the children are going to be able to check themselves in or out regardless of age. Parent control, I need the release so that I am covered, insurance wise. If the child and their parent go next door that is one thing.

Dan Hollis: a 14 year old kid cannot leave by him or herself with the card. There has to be an adult is the way that I understand it with a card to get that kid out. If that parent then says to junior ok go ahead and stay in the pizza place there is no difference then if the kid walked down from Boltis Street.

Chairman Cosentino: The quality of this guy is not going to make this a hang out. They are good business people.

Ralph Vigliotti: You are comfortable with the security system that you outlined? Which is a parent coming in the back door putting in the card that will open the door for them to get their child? It shows up on a computer system and then without you really physically seeing this happen they just leave. You are ok with that? You might want to rethink that. Particularly if it is 6, 7, or 8 year olds. Ok mom here is your child scoot along.

Dan Hollis: They can go in the front too. They can go in the front or the back with the card reader.

Chairman Cosentino: I think you will have more control if let them go through the front than the back.

Ralph Vigliotti: I don't particularly care for the back personally.

George Grenier: I thought the back because there seemed like the parking would be easier.

Chairman Cosentino: I would prefer the front and keep that door locked.

Ralph Vigliotti: I think you need a small waiting area. Reality is there is always a small waiting area. Especially if a parent is five minutes early or if you are running three minutes late. Otherwise they don't have any other place. The back parking lot really should be for the employees for all of the stores.

Dan Hollis: That is what we are trying to do. We will stress that more to our client, the landlord.

Chairman Cosentino: I think if I had a child going there I would not want them going through the back door.

George Grenier: The parent would have to make that decision because they have the card.

Dan Hollis: I think what Mr. Vigliotti is saying that somebody promoting the card and they slip the card through the reader in the back grab the kid and left.

Ralph Vigliotti: The back lot should be for the employees.

Anthony Sturniolo: Does every parent have a different code scan into their card?

George Grenier: Right. It is just like the grocery card.

Anthony Sturniolo: It is tailored for each family.

Chairman Cosentino: That is up to you. It is your business and you do what you feel is best. I prefer the front door.

George Grenier: As a parent I do too. If the parking is an issue, and required to use the space for the students we will comply.

Stanley Bernstein: Are there to be any special events?

George Grenier: That was part of our original business plan that we would have special event. Possibly bringing in a speaker to discuss nutrition. There was a concern that would cause more traffic.

Chairman Cosentino: If you bring one in and figure a Sunday where there is no activity. Or say a Saturday when the bank is closed and no activity and it is going to help your business.

George Grenier: In my letter I think I say I would love to have these guests.

Chairman Cosentino: I would not want a jam of cars there.

Dan Hollis: Maybe if we said that it could only be evenings and weekends.

Chairman Cosentino: Yes, something like that.

George Grenier: I think the positive effect on the children would be to their benefit from those types of events.

Stanley Bernstein: What about outings? Do you anticipate a bus coming in and taking the children somewhere?

George Grenier: I have not even considered that.

Ralph Vigliotti: I guess you know 14, 15 and 16 year olds most parents say here is the card punch yourself out and I will meet you at the pizza shop or walk yourself home. I think you need to have some contingency plan. That is what most parents are going to do especially with that age group. It is going to be very limited particularly a lot of kids walking there from town. You are going to get a lot of people from out of town. It is not untypical for a parent to say punch yourself out and I will meet you at the Gap.

Dan Hollis: I don't know Mr. Grenier's business but I would think the 14 year olds are going to go to the Mac or Saw Mill, because their other friends are there.

Ralph Vigliotti: I just want to share that with you. I wish you good luck.

Nanette Bourne: The applicant needs to take his parking utilization and then submit to the board what the parking demand is. What you will have to do is make a modification to the approved site plan resolution and factor this in so that every use has their proper allocation.

Dan Hollis: We might end up over 58?

Nanette Bourne: You have to adjust for the utilization.

Dan Hollis: Perhaps if we just considered a waiver of the requirement?

Whitney Singleton: There are two mechanisms that I can see. The planning board can either send it to the zoning board for a variance. The other alternative would be based upon what I am hearing tonight, your concerns relative to operating hours, your concerns relative to how many employees and what class sizes are going to be as represented by the applicant. Your board could make a determination as to propose use has substantially different operating hours. If they don't really start to gear up until 2-3 in the afternoon and on the weekends. The bank is basically winding down at three o'clock. You could determine there are substantially different operating hours and you would still determine and establish a parking requirement for this use. It would still be a requirement that they provide that parking. That would require the property to come back to you when either the bank leaves or you leave.

Dan Hollis: If the resolution of approval were cast that way I would have no problem with that.

Nanette Bourne: That is pretty much what I was saying. I think you need to substantiate that there is given the demand in the hours of operation for existing use, that there is sufficient parking.

Chairman Cosentino: If he has to go before the ZBA they won't get in until February or March.

Whitney Singleton: It will not get back to your board until January.

Dan Hollis: I think if there is an opportunity to work on the terms of the resolution then we can perhaps get in there and start doing his work and he realizes he can't open. Your question about the waiver.

Chairman Cosentino: I do not have a problem with it.

Dan Hollis: I'll tell you the reason it is different than what you heard before. In this building when it was first built and that is why I quoted from your resolution. There was an acknowledgement they won that this building the site has 58 total available and approved parking spaces. This does not constitute to sufficient parking on the site. There was an acknowledgement from the beginning of this building's life that there wasn't sufficient parking on the site for a store 7 in particular. Because that store not accounted for at the time this resolution was passed. At that time we did not know the makeup at the time the resolution was passed of the tenants. The only tenant we knew of then was Pilates and Bit's and Pieces. The bank had not come through yet. The nail salon had not come through yet.

Chairman Cosentino: You are happy with that?

Whitney Singleton: There are a couple of questions I would like to ask. If you are predicating your approval based upon substantial different operating hours is the applicant making a presentation that will be enforceable after the hours of operation? Is that something you want to see? Or are you going to accept this representation that he is going to be open generally from 2-3 in the afternoon on. If you don't put that in and I am not suggesting that you do. He will be free to operate 24 hours a day. If you are going to make a determination based upon the different operating hours. It is very possible that as far as you are concerned there is enough parking for him to operate 24 hours a day. We are predicating it based upon different operating hours.

Dan Hollis: I think if the resolution could say whereas the uses here for are approved are bank and a pizzeria which uses have demand at different times and contemplated by.

Whitney Singleton: Obviously I have to worry about the use being successful. I have to worry about the problem the property owner has. Fortunately as Boston Market it became successful and it is possible some of these places will go out with other uses that come in and that are very successful. I want to ask the board the question because I don't want them to come back what do you mean Pilates went out and another use came in.

Ralph Vigliotti: I would be very careful with the hours. Personally I don't think we should hog tie you. You have to make a living.

Dan Hollis: I think we can say whereas at present pending configuration provides enough flexibility those hours of utilization. As an example there is ample parking will be sufficient for all tenants because of the different high intensity of operation.

Nanette Bourne: All I am suggesting is that you provide on behalf of your applicant some representation as to their operation.

Dan Hollis: As to the maximum?

Whitney Singleton: As to the maximum number of employees.

Chairman Cosentino: You could say that, you think we are going to police it?

Whitney Singleton: You cannot police it if you don't say it.

Chairman Cosentino: Do we police the Saw Mill?

Whitney Singleton: We police them on other items. They are not a physical training studio. The parking requirement for physical training is predicated on...

Dan Hollis: We can say it is predicated on two employees and maximum class size of 10.

Nanette Bourne: This actually would be good.

Whitney Singleton: Your letter stated that you are anticipating not less than two employees. I want you to give me a realistic number.

George Grenier: To be honest for me I believe 2 will be sufficient for this size class. If I need three I do not know at this time. I will know the day I open.

Whitney Singleton: Would the planning board be comfortable with not more than 4 employees?

Chairman Cosentino: I think that would be fair and reasonable.

Dan Hollis: If it is more than four each kid would have a personal trainer.

Whitney Singleton: A maximum class size of 10.

Nanette Bourne: That would all be in your letter.

Dan Hollis: Do you want a letter on Mr. Grenier's stationary?

Nanette Bourne: It has to be incorporated into the resolution.

Dan Hollis: I will transmit it to you and Whitney and to the board.

Whitney Singleton: Does your board have any concerns.

Ralph Vigliotti: I don't think we should limit it to 10. Personally I just want to see the employees' park in the back all the time.

Dan Hollis: That could be a condition of the resolution.

Ralph Vigliotti: If you are going to be a success I would like to see you grow but not to 18-20. I don't want to limit you to 10. I am doing the math in my head and I am hoping everything is successful for you. I don't know if it can be based on 10.

Whitney Singleton: The parking is determined for this particular use by virtue of the maximum class size.

Chairman Cosentino: If the class is 12 no one is going to police it.

Joseph Morreale: Why is this business different from the pizza place or anything else? Why do we specify at 10?

Whitney Singleton: That is what the code provides for. Practically speaking is there sufficient parking on the site, the board feels there is. The question is how do you shoe horn this into a means by which it can be approved without violating the code?

Dan Hollis: Also creating a precedent that you do not want to have. The precedent is the whereas should also recite the history of the fact that at the time of the initial approval it was acknowledged that the site was sufficient. For the purposes of this I will put 4 employees and 12 kids.

Michael Stein: Are there summer hours and will this extend the hours of operation?

Dan Hollis: We are not going to put a time. Mr. Vigliotti mentioned not having a time.

Whitney Singleton: do you want to make note of no buses?

Chairman Cosentino: No buses. If you have students that come in after school and a bus drops them off let's not consider that.

Dan Hollis: A school bus cannot get in there.

Ralph Vigliotti: The classes should not be back to back. There needs to be 10-15 minutes in between in order to drop off and move kids out of the class prior to. Class ends at 3:00 and the next class starts at 3:01 we have a major problem.

George Grenier: We do not have the room inside for 20 kids. I believe we schedule 15 minutes in between.

Anthony Sturniolo: I am assuming that in NYS you can get a drivers license at 16.

Dan Hollis: You have to have a permit for 6 months now before you can get your license.

Anthony Sturniolo: Then they would not qualify as a student in the program. You have exceeded the age maximum.

Whitney Singleton: Are we putting an age limit. He represented he was to market a certain age group. Are you going to restrict him to that?

Ralph Vigliotti: He restricted himself. It says 6-16.

Whitney Singleton: His marketing is going to be targeted to that.

George Grenier: Our equipment we have no weight bearing equipment.

Chairman Cosentino: It should read 6-16.

Whitney Singleton: What about accessory uses like a birthday party? Special events? Right now we have pet stores that birthday parties. Unless you restrict it he would be entitled to have.

Dan Hollis: If the kid in the class had a party at a different time I don't think it would be a problem.

Chairman Cosentino: Any other questions?

Dan Hollis: We will get that letter to you and the board and will see you for the resolution in January.

Environmental Monitoring:

Nanette Bourne: Woodcrest is being monitored and we are checking the wetlands.

Chairman Cosentino: What about the stream coming down on the doctor?

Nanette Bourne: What they did was they cleaned out the drainage pipe.

Michael Stein: The doctor had it done and paid for it. It was the doctor's pipe. He took care of getting that cleaned. I was out there today and there was nothing going across the driveway.

Chairman Cosentino: Has the flow decreased going to the drain?

Michael Stein: It was not as much as it was.

Anthony Sturniolo: Back to the berm issue. The trees are in place?

Nanette Bourne: Yes.

Special Discussion:

Chairman Cosentino: Rules and Regulations. On the first page on 1 the meetings are to be adjourned at 11:00 p.m.

Ralph Vigliotti: Are we just putting that in or are we going to stay with this?

Chairman Cosentino: We are staying with it. Whitney how would Nancy let the applicant know that 11:00 p.m. is the cut off time?

Whitney Singleton: It should be reflected on all applications that are handed out. More importantly I think that the operating procedure your board is going to have to make an assessment at a certain point in the night. I had no idea Ability was going to take this long. It is only 10:15 right now that I can tell you looking at the agenda that the last four items we are not going to get to.

Chairman Cosentino: I will take care of that, which is not a problem.

Nanette Bourne: One thing that some of the communities do is they give an approximate time for applications. In the past one of the things that have taken a lot of time is the conceptual. We have tried having the conceptual at the beginning, trying to get them out of the way and sometimes they have take 45 minutes to an hour. WE have tried it the other way and had them at the end. I am not sure which way you prefer. If we were to allocate a certain amount of time it would help move it along.

Ralph Vigliotti: I would like to see a guide line time as a time frame. Certainly let the applicant knows you have a half hour. I guess the key thing is once you get to 10:00 p.m. it is up to the chairman to really start moving things up a bit.

Whitney Singleton: I think it gives you an opportunity to give these applications that seem to go on to limit them to half an hour.

Chairman Cosentino: I know how to handle that. On the same page site inspection meetings, we are changing the building inspector to Board Secretary. On the middle of site inspection sentence 3. On the last paragraph board meeting agenda in 2 places. Top line and bottom line.

Nanette Bourne: We also need to change the submission requirements. It says 10 days prior and if you look at the applications summary it explains the various submission requirements for conceptual. The last line. We have that summary that is given to the applicants and I think the paragraph explains the submission.

Anthony Sturniolo: The changes that we are making regarding the time and the applications should also be reflected on the web site so when people download an application it will say it right there. We are obligated to vote on the rules and procedures on our first meeting in January and please make that an agenda item.

Correspondence:

Chairman Cosentino: NWH letter and a matter of them almost are done with the master plan. The board has no problem with their beginning work on the 2nd story of the Cancer Center. Nanette is going to prepare a resolution for the January 10, 2006 meeting. We would like them here for a Final Action.

Nanette Bourne: It will be a modification to their approved site plan.

Chairman Cosentino: Letter from Diamond Properties.

Too Many People Speaking.

Chairman Cosentino: The letter from Austin on CoCo Rumbas. There are some issues. I don't understand what he needs.

Whitney Singleton: He can go up to 10 for outdoor dining without having to come to the planning board.

Stanley Bernstein: He said that may be eliminated because of the vested rights.

Whitney Singleton: I think they are coming back to your board anyway regardless.

Chairman Cosentino: If they just want the ten tables there is no reason for them to come back.

Whitney Singleton: That is what I tried to flush out with Austin. He said that is not exactly true. Apparently there was a requirement that in order to put the outdoor dining it has to have a fence in the back. The fence in the front issue (5 foot) they need site plan alterations. He said they have to come back to the planning board because even though they are not enlarging or anything else they are re-striping the parking lot. They are re-striping the fashion which in Austin's estimations works better than what is there. It is the same exact number of parking spaces but a better and more efficient layout. To that extent they are changing the site plan. They understand that is something they have to do. I guess they want to do it because it works best for them.

Ralph Vigliotti: Their outdoor dining permit is an annual permit renewable by the building department each year.

Whitney Singleton: But that application is to the building inspector.

The question is does the building inspector have to make an assessment as to the preexisting noncompliant aspect of the site.

Anthony Sturniolo: If the fence issue goes away and if the only outstanding issue is the re-stripping of the parking lot that is the only reason they need to come back to this board?

Chairman Cosentino: They have to put a fence on the property line. They have to remove the oil tank. There was an issue that was brought up with the fire escape in the back is on village property.

Whitney Singleton: It lets out onto village property not on village property. The triggering event now is the fact that they are proposing to re-stripe their parking lot. That is what Austin believes send it back to your board.

Ralph Vigliotti: Austin is not here to hear our conversation. He may give a building permit for 10-20 seats for the outdoor dining.

Whitney Singleton: He can't. He can only give 10.

Ralph Vigliotti: The bottom line is that we can't believe his employees are going to take a cab to the restaurant. So 10 spaces will not be needed. We cannot be continued to be hoodwinked.

Whitney Singleton: I agree 22 spaces are inadequate under our code. However it is a pre-existing non-conforming restaurant. He has the right to operate as a restaurant so long as he does not use the interior of the premises for a seating capacity which was not previously approved. Austin has looked at the seating plan. Austin identified there are no changes in it. The reason for coming back was the parking is not what was previously approved. Same number, different layout.

Anthony Sturniolo: Motion to adjourn

Joseph Morreale: Second.

Board All Ayes, meeting adjourned at 11:p.m.

Respectfully Submitted By,

Stanley Bernstein
Board Secretary