

Board of Zoning Appeals – Hearing Room, Municipal Building 54 Hill Street, Shelton, CT.
Tuesday, February 17, 2009 at 7:30pm

AGENDA:

- #109-2 Christianne Mills at 36 Stendahl Drive
- #109-4 60-64 Huntington Street, LLC at 60-64 Huntington Street
- #209-4 McCallum Enterprises I, Ltd Partnership at 305 Canal Street

Position Decisions on:

- #1008-1 Teresa Kleczkowski at 82 Soundview Avenue

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

Mr. Glover: Alright, good evening ladies and gentlemen and welcome to the February 2009 meeting of the Shelton Zoning Board of Appeals. Tonight we have, I hope a rather short agenda. I'd like to add to the agenda a discussion of 150 Long Hill Avenue, which is the Guedes decision, which we can do at the end of the meeting.

Mr. Conklin: So moved

Mr. Glover: Do I have a second?

Mr. Jones: second

Mr. Glover: Okay, all in favor? (unanimous aye) So that will, that will be end, that will be a discussion at the end of the meeting. We meet monthly to have hearings and decide variances and appeals. When you talk to the Shelton, any Board of Appeals, you're actually, it's a hearing, you're giving testimony. We keep our records on, we record the testimony on two recorders which later in the month will be transcribed and end up in the Town Clerk's office once they're approved. The, any discussions in the hall, talking on your cell phones will probably be picked up by the recorders and will corrupt our record. So if you're going to have any discussions please take them out in the hall and please turn your cell phones off, or to vibrate. Our regulations require that you, if it's a variance that you've posted the property and that you have notified your neighbors by registered mail and that you present us with four pictures of your property with one of the pictures showing that the property was placarded. When your hearing has begun, I will be asking for the evidence that you have notified your neighbors and for the pictures. If you have them we will be able to continue the hearing. If you don't have them we will continue the hearing until next month. Present tonight to, all the way to my left, your right, is Commission Ralph Matto. Next to Commissioner Matto is Commissioner Fitzgerald, Commissioner Bob Harbinson, our Clerk, Lori Michalak. I'm Gerry Glover, to my right is Commissioner Jones and to his right is Commissioner Conklin and to his right is Commissioner Cavallaro. The, before we start with the hearings we're going to go into a work session and we're going to decide the Soundview Avenue, 82 Soundview Avenue because we have the number of people to vote on it and last month we did not and the applicant had to wait almost to the end of the, or to the end of the meeting to find out that we did not have a quorum for that.

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

The Board, upon motion by Commission Conklin and seconded by Commissioner Cavallaro, unanimously voted to affirm the decision of the Zoning Enforcement Officer.

#109-2 36 Stendahl Drive, Christianne Mills of 36 Stendahl Drive, Shelton, CT is seeking to waiver Section 24, Schedule B, Standard 7 by varying the minimum setback from the front property line from 40 t. to 30 ft. for an 8 ft. x 34 ft. front porch.

Mr. Glover: Is the applicant here please? Would you have a seat? Would you please give your name and address for the record please?

Mr. Aniuk: Okay, Richard Aniuk, A-N-I-U-K,

Mr. Glover: And we have some pictures here

Mr. Aniuk: Yes I do

Mr. Glover: And do you have some receipts for the neighbors?

Ms. Mills: uh huh

Mr. Glover: Thank you. You have four receipts, is that all your abutting neighbors?

Ms. Mills: Yes

Mr. Glover: Thank you. Can you give your name and address for the record, whoever is going to speak, or if you're all going to speak, please all give your names and addresses, but one at a time.

Ms. Mills: Christianne Mills, 36 Stendahl Drive

Mr. Reed: Russell Reed, 36 Stendahl Drive

Mr. Glover: And can you tell us what you want to do and why you cannot conform to the zoning regulations of the City of Shelton please?

Mr. Aniuk: Okay, the setback right now calls for a 40 foot setback, the porch is actually going to be 8 feet wide by 34, okay, so we're shooting for a variance of 10 feet to put an 8 foot porch on, you know, and for, just to be safe to be quite honest with you.

Mr. Glover: Alright, so you're going to put a porch, an open porch on the front of the house

Mr. Aniuk: yes

Mr. Glover: It's not going to be enclosed, not used for rooms or anything like that, just an open porch. And you're required to be 40 feet from the front, street side setback

Mr. Aniuk: right

Mr. Glover: and your porch is 8 feet wide, you're 40 feet currently, you've asked for 30 so you have a little

Mr. Aniuk: a little margin of error, right, exactly

Mr. Glover: Um, is there a porch on the front of the house now?

Ms. Mills: No

Mr. Glover: Any steps on the front of the house?

Ms. Mills: Yes

Mr. Aniuk: Yes

Mr. Glover: Alright, how far do the steps come out?

Mr. Reed: I'd say about 4 to 5 feet

Mr. Glover: Alright, so you have steps on the front of your house that come out about 5 feet now

Mr. Reed: correct

Mr. Glover: those steps are not going to be used, so you're going to come out an additional 3 feet

Mr. Reed: correct

Mr. Glover: from those steps that are already there

Mr. Aniuk: the existing steps, right

Mr. Glover: Um, are there any other houses in the neighborhood that have a porch on the front of them?

Mr. Reed: yes

Ms. Mills: on the corner

Mr. Reed: there's one on the corner

Mr. Glover: And are there any other houses in the neighborhood that are close to the street?

Mr. Reed: That one with the porch is very close to the street actually

Mr. Glover: So it's, this would be in harmony with the rest of the neighborhood because it already exists in that way now

Mr. Reed: right

Mr. Matto: is there a roof over it Gerr?

Mr. Aniuk: yes

Mr. Glover: Yes Ralph, it will have a roof. Is this your only copy of this?

Mr. Aniuk: No, I have more

Mr. Glover: Okay

Mr. Aniuk: Want a big one?

Mr. Glover: No. Ralph, it's a shed roof and it appears that it's up on piers

Mr. Aniuk: right

Mr. Glover: with a rail around it and one step to the ground and it's a pretty simple hand railing around it, around the whole porch.

Mr. Matto: There's only one thread on there?

Mr. Glover: Yes

Mr. Aniuk: Yes

Mr. Glover: Want to see it?

Mr. Matto: you said it was 5 feet long

Mr. Glover: No, the one that's, the one that's there has a landing that comes out probably 4 feet and a step that's

Mr. Matto: Oh

Mr. Glover: and this one's going to have a porch deck and then a step. Alright, it's a front porch so there's obviously no other place you can put it and still be on the front of the house

Mr. Reed: right

Mr. Glover: Any other questions from the Board? (no) Any questions from down that end of the table? (no) Anyone in this room who is in favor of this application? (no response) Anyone in favor? (no response) Is there anyone who is opposed to this application? (no response) Any opposition? (no response) Final questions? (no) I'll declare the hearing closed, thank you very much.

Mr. Aniuk: Thank you.

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

" "In the application of Christianne Mills of 36 Stendhal Drive, Shelton, CT for certificate of approval for an 8'x34' front porch to be located on the property of the applicant at 36 Stendahl Drive, R-1 zone, and which requires a variance in the setback from the front property line,

The application for a variance is approved.

Inasmuch as the proposed porch will not encroach much farther on the front property line than the existing front stops currently due, and

Inasmuch as it will be in harmony with the rest of the neighborhood,

Therefore, with due consideration for the public health, safety, welfare and property values, the approval of a variance in minimum setback from the front property line from 40 ft. to 30 ft. at the above is granted (Section 24, Schedule B, Standard 7) in this instance.

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

#109-4 60-64 Huntington Street, 60-64 Huntington Street, LLC, c/o Dominick J. Thomas, Jr., Esq., of 315 Main Street, Derby, CT is seeking to waiver Section 24, Schedule B, Standard 7 by varying the minimum setback from the front property line from 40 ft. to 10 ft. for a two story commercial building.

Mr. Glover: Would you like to come up and sit closer? Good evening

Atty. Thomas: Good evening. Attorney Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT representing the applicant. Here along with Rob Duvour of Mark Finley Architects.

Mr. Glover: Alright, what did you just say, Lor?

Clerk: Those were the boards that he presented last time

Mr. Glover: If we need the boards Dominick, they're right there

Atty. Thomas: okay

Clerk: I just wanted to let you know I brought them back

Mr. Glover: If you need them, if you don't need them, fine

Atty. Thomas: They were again, they were more informational than anything else. You have the elevations which are again, not primarily of concern but you had some, not the, within the jurisdiction of this board but obviously of concern to the board to see what it looked like. And this was the, this is the copy of the application. And if you recall there was one other one that was presented but had some documentation on it that was, some work information on it and we asked that, and that was on the CAA, a map of both lots together. We actually had shown the maps of both lots together, we have the 66 and 60-64 and there was some work information here that was not full correct and they removed it and just gave a

Mr. Glover: Right, now this is a continued hearing for the record

Atty. Thomas: yes

Mr. Glover: we started it last month, held the hearing open and continued it to this month

Atty. Thomas: right

Atty. White: Mr. Chairman, I thought he was finished last month?

Mr. Glover: Well, we continued the hearing so he can

Atty. Thomas: I'm responding

Mr. Glover: He can respond and then

Atty. Thomas: I'm going to, I'm presenting this evidence and then I'm basically responding to the allegations that were made by the Beard's attorneys and Scanlon's attorneys.

Mr. Glover: Right

Atty. Thomas: The first thing that was addressed, there were several things addressed at the, at the last meeting and actually I did in fact present as a piece of evidence showing what the buildable area of the, of the property was if it complied with the regulations. One of the points that was made in opposition to this application was that this property is not unique in this zone. It's not in any way any different and the zoning regulations affect all the properties the same. Two things I have in response to that, the first thing and it can be passed down is, was the prepared the architect to show you what the buildable area is on this property and this is, this substantiates without a doubt conclusively, the hardship of the property. There's no question about it because if you take this piece of property and you apply the four setbacks to it, you have what I just handed in as the buildable area. Do you have another copy of that to pass down to the other end? Now, the thing I want to point out to you is that's just the pure buildable area. There is insufficient room in 40 feet to put your parking. There would be no parking in the rear, none whatsoever. And there would be insufficient room to put your parking in that 40 feet because you need 42 feet, assuming no sidewalk, which is something the Planning and Zoning Commission has stated on the record numerous times that they want along this area. No landscaping because you'd have to pave from the edge of the road basically to there. In addition then, to get your 42 feet that you would be required you'd have to push the building back 2 feet. The other thing that I'm going to present to you is a copy, this was a map that was an exhibit actually in a zoning application, but it shows the whole zone. And the, just so you understand why the colors are, are the way they are, you can pass that down, just so you can understand the colors, actually in this presentation this outlines the entire CA-2 zone. The colors were there simply to point out to the Planning and Zoning Commission at that time that the green highlighted areas were all of those lots that were under 60,000 sq. ft. This was an issue related to the possibility of a, of a Planned Development District. And the yellow were the ones that were over. But if you look at this property you can see 60-64 in the middle, you can see that there's only, that if you look at all the properties, there's only 2 properties within this entire zone that would be impacted similarly by applying the zoning regulations and that is what I think is identified as 80 Huntington Street, which is a very long,

excuse me, wide but shallow lot, and this lot which is only .2 acres. This lot is in fact the smallest lot in the entire zone and of course, if you applied the zoning regulations to it, it's confiscatory, absolutely, nothing. And I would like to point out one thing, if in fact, we certainly had many hearings, you certainly had numerous times and you had the Beards, who are the main opponents to this, even though at this point and I'll address that even further, there is absolutely no variances requested along their boundaries. This is the first time this has happened in all of the variance applications of the modern era. But with respect to that, the Beards certainly should have had the opportunity, could have had the opportunity presented to you another architect's plan or engineer's plan to construct a building within the setbacks, and of course it's impossible. It's, that is why they can't do it, because you couldn't get anybody other than someone who was not certified or licensed to be able to do something like that. Now, I also pointed out there were numerous prior applications, and there were. The prior applications with the Zabaneths ran into the brick wall of the no access to the rear. I was only involved with one prior application with Dr. Montanaro, the prior owner, and in that application the proposal was for a long thin building that had three requested variances. Those three requested variances were 10 feet to the rear, from 40 ft. to 10 ft. on the front property line, similar to this, the rear property line from 40 ft. to 29 ft. along the Beard, the rear property of this along the Beard property and the right yard setback from 12 ft. to 10 ft. along again, along the Beard property. That was the proposal, therefore, this proposal under the law, clearly and unequivocally is substantially different than the prior proposal because it is the first proposal that contains only one variance request. And it is the first proposal that has in fact removed existing non-conformities along the Beard property. And since Atty. White was citing cases to you about what your duties are, I'd like to point a couple of things to you, number 1, in Fuller clearly it states that the reduction of non-conformities of and in itself is a reason to grant a variance. Second, if you look at the Shelton Zoning Regulations under Section 41 of the Shelton Zoning Regulations, that the effort should be made to, again, not expand any non-conformities and to reduce any non-conformities, especially non-conforming uses. And this property as you remember started out before it began uses as commercial property was residential property. So it was both a non-conforming use and a non, a non-conformity with respect to the bulk standards. And what I'd like to do is give you three cases for the record, Supreme Court case of Vine v. Zoning Board of Appeals of the Town of North Branford, the case of Stan Cunno v. the Zoning Board of Appeals of the Town of Wallingford, which is an appellate court case; and the Superior Court case of Murphy v. Planning and Zoning Board of Appeals of the Town of Greenwich. The reason I'm giving you those three cases, all of which are 2001, 2006, I mean 7 and 2005 cases, is because they all contain the same phrase which is most succinctly stated in the Superior court case of Murphy v. P&Z Board of Appeals in Greenwich, in which it states that in addition the decision of the defendant Board of Appeals was based in part on the fact that the action for which Edward sought permission would reduce the degree of its non-conforming side yard setback. Reduction or lessening of the degree of an existing non-conformity is grounds for the granting of the variance. Simple, classic statement of the law with respect to that. Now, in this case you had, we had four non-conformities, two buildings and five non-conformities if you count the fact that these are residences. And nobody's presented any evidence that the intent of any owner was to permanently abandon the use of a portion of it as a residence. So therefore, by approving this plan what would you be doing? You would certainly be eliminating forever any claim that anybody might have that this would, could ever be used in a residential fashion. You would be eliminating the variances that existed, the non-conformities, excuse me, the non-conformities that exist along the Beard property. And there would be no longer, and those are the only two, the only other adjacent property owner obviously has sent a letter that she is aware of this and she is, that is Wendy Montanaro, and that she supports this and that she is in agreement with what is being done. Because the next step of my client after this is done is to go to Planning and Zoning. And at that point the jurisdiction of the use, the size limitation, architectural, which as I stated to you Planning and Zoning was very satisfied with the architectural renditions when they were presented to it, the parking. All of that will be determined by Planning and Zoning. The location of the dumpster or, if it's okayed. But the reason you don't put Planning and Zoning conditions on a ZBA approval, on a variance approval is because there are things, first of all it would be beyond your jurisdiction very simply, second of all there are things that are not before this. For instance, there's no tenant. Theoretically the issue of parking could go away with a tenant that is for instance an eye doctor who performs surgery in the place who has five employees and no more than five patients at a time, for both exams, and everything, I'm using as an example of a low, a low traffic type use. They can take the whole building theoretically. At that point Planning and Zoning would make its decision as to how it's going to do it. What we're here for is an approval of a floor plan of a building that reduces three non-conformities, if not all four.

Mr. Duvour: It actually does reduce the front one. The front existing is 9.87 and we're going to 10.

Atty. Thomas: Correction. We're reducing four non-conformities and this, the reason for the exactness is we did, the new owner commissioned a new survey of the property because of conflicting prior surveys. So as a result of that it's actually being pushed back a little. The building cannot go back any farther because you would impact the parking in the back. The building provides a sidewalk which is something the Planning and Zoning, it's location provides a sidewalk and landscaping along Huntington Street, which is something that's preeminent in Planning and Zoning's considerations here, for development along this property. So therefore, we believe we have addressed in this proposal every issue. It's clearly and unequivocally different than the one that was presented to you a year before which had three variances. And frankly, the size of the building that was presented a year before and the size of this building is irrelevant to your determination simply because, as I presented the last time, the size of the building must comply. We're not here for any variances on size. We have to comply with the requirements in the Planning and Zoning for impervious coverage, building coverage and floor, amount of floor space. And this, the proposed building does. Certainly, there is very little room for this building to expand. There is no intention for it to expand. But theoretically speaking, it's 28 feet to the Montanaro property, if a Planning and Zoning Commission looked at it and said we'd like you to move it a foot that way so you can put an extra bush over here, that's what they're there for. And they certainly wouldn't want us to say, I'm sorry, no that's 28 feet but we can't do it because ZBA said no. And you wanted to get an extra, you wanted us to move it a foot so we could get an extra bit of landscaping on the other side. And that's the reason why people in my position attempt to draw the line as to what jurisdiction places, goes which way. So therefore, I believe I have addressed all the issues that were presented. This application is substantially different, not only from the application a year ago but from any, any application with respect to it. The reduction of, reduction of non-conformities of and in itself is sufficient grounds to approve the, this one variance now. One variance, which in itself is also being reduced as was pointed out by Mr. Duvour. You have seen the architectural and without a doubt we realize, even though you don't have a say in the architectural, certainly it's our intention, the intention of my client to go forward before Planning and Zoning with those same architectural which are, which would enhance the area around the green. Given all that, given all that we said, within my client without a doubt would agree, because she knows what Planning and Zoning wants, that the conditions if you wanted to impose conditions, the conditions of the sidewalk, of the front landscaping and would be certainly appropriate to place on this as long as the, I mean certainly in our (unclear) we know that Planning and Zoning wants a sidewalk along the front of the property. We know that Planning and Zoning not only wants that but they're expecting my client to put a plan, to put a sidewalk in front of 66 even though it's not part of this application. And they're, and Planning and Zoning is expecting landscaping in front of the property. So we believe certainly that we would accept those as conditions. In addition to that reason, we have unequivocally and uncontrovertibly shown the hardship because the property is unique with respect to the zone. There's only one other property of the about a dozen or so properties in the zone that is, are impacted by the zoning regulations the same way. And when I say the zoning regulations the setbacks, so the hardship is absolutely clear. The cases are unequivocal and unopposed is the fact that you have the opportunity. And the other issues I believe will be appropriately addressed by Planning and Zoning because my client has to go in there with a tenant and at that point they will determine what other attributes are required with the property.

Mr. Glover: Attorney Thomas, I read your, the entire hearing from last month a couple of times, and I understand what you're saying about what jurisdiction we have and what jurisdiction we don't have. And I understand you say we don't have any jurisdiction over parking, and use, site plans, size of the building, the look, the appearance of the building, we don't have any jurisdiction over any of that because that belongs in P&Z. And I understand that you're telling me what, that you know what P&Z wants because you've had some meetings or whatever with P&Z. I know that the record shows that P&Z has no opinion on this

Atty. Thomas: exactly

Mr. Glover: They don't want to comment on it. They don't want to know anything about it until after we make our decision

Atty. Thomas: correct

Mr. Glover: I may not have jurisdiction over any of that, but I have an interest in all of that

Atty. Thomas: Certainly, and that's why we brought the elevations

Mr. Glover: And I would like to know the elevations. I'd like to know the size of the building that you think you're going to do. I'd like to know what the contours of this property are. I'd like to know what you think the use might be. I'd like to know what you think, how much parking there's going to have to be

Atty. Thomas: Well, I

Mr. Glover: You can tell me I don't have jurisdiction over that, but I can tell you that P&Z's never going to see it if you don't resolve my interest in it

Atty. Thomas: Okay, well, we've shown you the boards of what we're proposing. One of the reasons I brought up what P&Z wants is because Attorney White brought up settlement discussions that had taken place and discussions that have taken place with P&Z on a prior application. And in the technical legal terms what's good for the goose is good for the gander. So I felt and obliged in representing my client to represent that we had discussions. And I'm sure, Rick Schultz is here, I'm sure he wouldn't deny the fact that those discussions took place. They took place before a staff meeting, staff sessions and they took place before the entire commission in an informal session. And certainly, given what's there and given what the alternative is which is rebuilding what is there the, this is the proposal for the

Mr. Glover: It's a beautiful building

Atty. Thomas: for the building. The proposed building that would be constructed on this floor plan, as is in your application, shows on it a 4,776 sq. ft. Now, as we presented the last time, and I would have to get my notes out to confirm that, that that fits within all of the zoning requirements of floor plan

Mr. Glover: you said the building can be expanded up to 5225 feet

Atty. Thomas: right, exactly, it could be, that would be the maximum that you would be able to put on the property. In other words, the maximum amount of rental square feet. My client, I also represented the last time, that my client if this commission felt was certainly comfortable with 4776 sq. ft. I was not comfortable with what was requested is that well mandate that that must be 28 feet. In which case then you're limiting, if Planning and Zoning wanted that moved, we can't move it one foot this way, one inch this way.

Mr. Glover: right

Atty. Thomas: You wouldn't be able to move it one inch this way. We've probably got, you can look at it and say okay you've got 5.6 feet to move it this way, you know backwards, but you have a problem in that you've got to create enough for parking. You've got to create the proper flow. If you want that here you'd impact the ability to access the rear of the building. If Planning and Zoning said you know what, slide this here so you can get a little more landscaping in here, we have room to do that. There's no question about it. As far as what uses, the parking issue, the parking issue and I stated for the record last time and I'll state it again, and we have a letter that was intended to go to a shared parking, depending on the type of uses. There are some uses that won't require shared parking. There is, which would mean, mainly in the office area type uses. If certainly an appropriate tenant came along that would be. The uses that are permitted in the CB-2 zone, some of which my client realizes would not be able to be utilized on this property because of the constraints. But in the, I'm sorry not CB-2, CA-2 zone not CB-2 zone, CA-2 zone. In the CA-2 zone professional offices are permitted, actually in the CA-2 zone which is interesting professional offices are allowed in a dwelling unit if we were to go back to the dwelling units, not something I think my clients, certainly group day care homes are permitted, would that be something here? No, probably unlikely because of the traffic situation. Obviously, that's a, the problem with that is not the issue of parking, there'd be very little parking required for a day care home, I mean a day car facility, it would be being able to get the traffic in and out. Could it be something that could be arranged, if discussed? Possibly. But that only would be a possibility. Other uses that are within the zone, I don't think you're going to see commercial nurseries or greenhouses

Mr. Glover: We don't have to go through that, but my point is, my point is that you're asking us to vote on something

Atty. Thomas: right

Mr. Glover: And you're telling us in a matter of speaking, that's not your jurisdiction, we don't have to tell you

that. That's not your jurisdiction we're not going to tell you that. The record is full of we don't have to explain that to you, that's for the Planning and Zoning, that's their responsibility. A few years ago on the Huntington green there was a gas station that went in. They wanted a big canopy. They came to this board we gave them a variance to let the canopy be closer to the street than was permitted. It was then to go to the Planning and Zoning Commission and they were to approve a site plan. We saw a plan that had a much smaller canopy on it. It went to the Planning and Zoning Commission, I don't think they reviewed any site plan, and up went this great big canopy using the variance that we gave from off the street.

Atty. Thomas: No

Mr. Glover: Yes

Atty. Thomas: No. Know what they were using? This book

Mr. Glover: They were using the variance that we allowed for the, for the canopy to go closer to the street than was allowed. And once we gave the setback variance they went out to a bigger thing. Here we have a project, an application that has no site plan, and whether we have jurisdiction over it or not, we have no idea really what we're, what we're voting on.

Atty. Thomas: I beg to differ. We have a site plan. We submitted a site plan as part of the application.

Mr. Glover: I understand that. What are the contours there? How, what is the steepness of that? Do you, that's a flat piece of paper

Atty. Thomas: The topography of it?

Mr. Glover: Yeah

Atty. Thomas: Uh, at this point the site runs from front to rear but I don't, I mean again,

Mr. Glover: Can the cars go around that corner? Is the grade sufficient to go around that corner?

Mr. Duvour: Uh, we did some preliminary grading for this from the, we did have a site plan that had topo on it, the one that was commissioned. And yes all the grades are within tolerances. There's about a 3 ½ foot wall in the back for a retaining wall

Mr. Glover: Do you think that's important for us to know before we make a decision on this?

Atty. Thomas: No

Mr. Glover: You don't think it's important for us to know how it's going to be used, or how it may be used?

Atty. Thomas: I don't, and obviously I guess I'm trusting the um integrity of the commission to realize that I understand you can ask the question, but I also believe you understand where the jurisdiction lies.

Mr. Glover: I absolutely understand. But I understand also when we make a decision here that Board says what are they doing. What did they make that decision based on? And then they probably will take us to court on it.

Atty. Thomas: Well, I can understand, certainly understand where we're dealing with use variances that there's been some issues. In this situation you're dealing with an application that has four non-conformities in the bulk standards on the property. The application before you and the footprint reduces, eliminates three of them and reduces one. It's, you know, obviously a situation that complies with the zoning regulations, the case law, everything, that you're reducing non-conformities. No alternative, none.

Mr. Glover: Why not?

Atty. Thomas: No alternative has been presented to this Board

Mr. Glover: Do you think it's the neighbor's responsibility to draw a plan for you?

Atty. Thomas: Yes. If you're going to object to it you can't just go in and say well I think it could be smaller, we, and we have addressed the issue that it can't be smaller. In fact you can't fit within there and you can't, you can't push the existing building back.

Mr. Glover: Why couldn't you make the building smaller?

Atty. Thomas: You mean smaller, like less square footage?

Mr. Glover: Smaller in width, why couldn't that building be pushed back 15 feet from the street?

Mr. Cavallaro: Correct me if I'm wrong, but earlier in your dialog you said that parking in the rear had no bearing on the case, which means you could really reduce this to no variances if you pushed the building back. Because you made a statement that parking didn't have to be considered because you have no tenants for the buiding

Atty. Thomas: No, the statement that I made was that if you were to go within the setbacks you could not park in the rear

Mr. Cavallaro: that was a later statement. Earlier you stated that we shouldn't be concerned with the parking because there are no tenants for the building, as such no parking's required yet.

Atty. Thomas: Right there's no, there is no parking, parking standards are established by the use. We're not before you, if we were concerned about parking for a tenant we would come back before you. If we had that issue, we would have to come back before you if we were going to vary what was in the regulations. In fact, and the applicant, the owner is choosing to, to go this route rather than to find an actual tenant and then come in before you with the parking variance because the tenant that she's limiting herself to, or tenants with the shared parking would have to be

Mr. Glover: and what if at that point we said no we don't want to give you a parking variance?

Atty. Thomas: she's out in the cold. If she had to come back to you for a parking variances, yeah, then she would be out in the cold, at that point because there would be no alternative. So that's the risk, that's the risk that she's taking. There's no, because

Mr. Glover: And what happens to the variance that we gave you then, the 10 foot variance from the front street setback?

Atty. Thomas: she has a 10 foot variance which is existing to

Tape had to be changed

Atty. Thomas: 10 foot variance would remain, but now she would have simply a 10 foot variance in the front nothing more, you know what I mean, a reduction, she had reduced all the other non-conformities, she has approval for a site plan that, in which she would not be able to invade the setbacks in the rear of the property, invade the setbacks on the side of the property and the only thing would be to construct something which is a few inches less of a non-conformity than is existing on the property. That's all that she would be able to

Mr. Glover: But back to the, you gave us a document that showed how small the building area was

Atty. Thomas: under the regulations

Mr. Glover: Under the regulations and I agree with you that at some point there's going to have to be some kind of a variance on this property in order to build anything on it because it's just too, it's just too small the building area when you stay within the setbacks that you're required to stay within. But, that doesn't mean that the building that you're building can't be made smaller and conform more than the, than this building conforms.

Atty. Thomas: This building conforms on the three sides. If you were to push it, if you were to push this building, you can't push it back

Mr. Glover: No, but you can make it skinnier by 5 feet

Atty. Thomas: which I think would impact on the architectural integrity of the building, and that's what we're saying that in fact

Mr. Duvour: that and the layout also, by, there are, whatever tenants are going to be in there, if there are multiple tenants when you start putting a core in there and bathrooms and stairs it really reduces the affectability of the building.

Mr. Glover: You said you showed us a floor plan, I think you meant footprint, because I've never seen floor plan

Atty. Thomas: right

Mr. Glover: You just said on the record that you've given, you're giving us a floor plan

Atty. Thomas: well then I misspoke

Mr. Glover: I think you misspoke and

Atty. Thomas: because we don't really have a floor plan because you don't have a floor plan until you have a tenant

Mr. Glover: Do we, do we have a basement in this building? Is it on a slab?

Atty. Thomas: well, we testified last week, go ahead and repeat what you

Mr. Glover: I'm confirming it, this is on a slab, there's no basement

Atty. Thomas: no, there is a basement

Mr. Duvour: we're considering a basement

Mr. Glover: You're considering a basement now

Atty. Thomas: with no windows

Mr. Glover: But last month you weren't going to have a basement were you?

Atty. Thomas: no

Mr. Duvour: No

Mr. Glover: You are going to have a basement

Mr. Duvour: and an attic

Atty. Thomas: we testified basement and an attic. And the basement of the property there was, and we agreed at that point, that there would be, there's no rentable space in either location. Why don't you explain what we planned for the basement

Mr. Duvour: Mostly utility rooms, mechanical spaces, storage

Mr. Glover: And how about the attic?

Mr. Duvour: The same

Mr. Glover: Stairs to the attic, pull down stairs to the attic, how are we going to get there?

Mr. Duvour: we haven't gone that far. We weren't considering any rental space up there

Atty. Thomas: But the 4,776 sq. ft., does not include basement/attic, and they certainly would agree to the basement and the attic of that size of a building being storage only. And that's all, that's all in the proposals it would be mechanicals and it would also be, the basement would also be only for utilities and mechanicals and storage.

Mr. Glover: Alright, does the Board have any other questions? Anybody down that side?

Mr. Conklin: so you're saying this is the rear elevation here and you're (unclear) that whole lot, is this the rear or the front?

Mr. Duvour: That's the rear

Mr. Conklin: rear, so at this point what you're saying by destroying the (unclear) you're going to (unclear) put a retaining wall across the whole back side of the Beard property to bring it up to elevation with Huntington Street

Mr. Duvour: No, there'll be a slight grade from the front to back

Mr. Conklin: and you're not showing any grade here

Mr. Duvour: the white line at the top there that's the street elevation

Mr. Conklin: right

Mr. Duvour: So that is sloping from the street to the rear of the building, at the face of the building at that point

Atty. Thomas: You can see it in the side elevation

Mr. Conklin: But you're, in other words, putting a retaining wall somewhere of a reasonable size in the back of that building though

Mr. Duvour: Again, we just did some preliminary grading, but the site would continue to grade toward the back, and

Mr. Conklin: The reason why I'm saying you are showing no foundation wall in the back of this

Mr. Duvour: At, well, we're actually looking at the rear of the building across here. This continues a slope to the back where there would be a retaining wall

Mr. Conklin: okay, but I'm talking about you're showing now foundation on this, so

Mr. Duvour: oh, correct, no dotted foundation or something like that, no basement, no windows, nothing, but there is a basement in

Atty. Thomas: Yeah, I think it was asked and answered last week, would there be

Mr. Glover: Do you propose an elevator in here?

Mr. Duvour: It's not a walk-out basement

Mr. Glover: Do you propose an elevator?

Mr. Duvour: Um, we haven't, again haven't gone to that much, if it's an, it might be an accessibility issue.

We're providing handicap parking spaces, again, we haven't, if it's one tenant they might not need an elevator. It's more of a code issue at that point.

Mr. Glover: Is the grades too steep for handicap accessible to go to the front?

Mr. Duvour: No, that's why it is the way it is where we have this and we have a handicap access coming around to the front

Mr. Glover: okay, is that ramp?

Mr. Duvour: It's all, again it's rough grading, yeah, it's within the code

Mr. Glover: Alright, any other questions from the Board? (no) Attorney White?

Atty. White: Thank you Mr. Chairman. I'd like to congratulate you on your analysis of this. I'm not going to repeat everything, and you're not going to let me repeat everything I said last time. I got all the basics in there. But this is the same as it always has been. They don't choose, I agree that they probably can't comply with this envelope

Mr. Glover: they cannot

Atty. White: I'm not even going to

Mr. Glover: perhaps they can come closer

Atty. White: but there's never been a reason that they can't come closer than they are here. They don't have to be 10 feet from the street. Now in the submission, the site plan that they showed, they took about reduction of non-conformities. If you look at the boxes that they put there and then you look at the new building, the old building would fit in the new building. The conformity, the non-conformity if, even if they could be held to this the non-conformity along Huntington Street exceeds the non-conformities in the other, as the buildings presently are. Can they build a smaller building? Yes. They've, that's the reason I pointed out the prior applications. They have proposed buildings, the application just before this in February of '08 that you denied was a 4400 sq. ft. building. It's smaller. It had 15 parking spaces, more parking spaces, less chance of having a problem with this shared parking whatever it's going to be. So there were other, over the years there have been other proposals for as little as I think I mentioned, as like 38 or 3900 sq. ft. So they can put a smaller building there and they should put a smaller building there. And that will relieve the parking problem, shared or unshared, because the building will be smaller and they won't need as many off site parking and it will improve sight up here. It'll improve congestion between the sidewalk and the building in case the snow plows come by and that kind of thing. The other thing is, that came out of this argument and you hit it, I'm going to propose some conditions. Well, I don't want to, I'll take one thing at a time. This has to do with it. They're showing a building that's 28 feet from the parcel, the southerly boundary of the parcel. So without another variance they could come over another 8 feet when they go to P&Z. And that's the problem I sited and you've been talking about it. In other words, they can fill this envelope and just keep adding off-site shared parking to the property next door or maybe to the former Rocket property next door by getting a lease over there, because I know that was in the works at one time on one of these applications. So all this parking would be shoved over someplace else to make this building bigger. So there's, there's a principal that's in case law that says that your, your job is to, where there's a hardship your job is to grant variances, give the minimum relief necessary to mitigate the hardship. In other words, you don't, they don't have to build the maximum they can possibly think of on this property, which would be 5200 sq. ft., but this is very close. They just have to mitigate the hardship. There has been absolutely no justification for this, for the, for the reason to go from a 38 foot building 10 feet from the street to a 68 foot building 10 feet from the street. You'll be going down Huntington Street and you're going to be staring at this things. Plus it's a bigger building. It's a big 3, it's not 2 floors, it's 3 floors. That top level is, is a floor. That's why it scares us, because you could easily put offices up there or have them up there. So, I mean, there's no question in my mind the similarity, the prior case, the prior case that we sited which was the February '08 case where you denied them, it doesn't have to be perfectly the same, it has to be similar. That's the case law. It is similar and you turned it down. There was no hardship. Why? The same arguments that we've made for years. The project is too big for the site. And that project was 4400 sq. ft. It's still too big and it all has to do, from our point of view, with what is the impact going to be on our shopping center's parking. That's really what it comes down to. And that's what,

that's what we're afraid of. Now I know that you're not going to put, at one time we figured out mathematically that just to comply with the parking and with the side lines, the combination of parking and building, you could build like a 3000 or 3200 sq. ft. building. Well, okay, there's nothing wrong with that. We don't have to, they don't have to max out their investment here. But that's what, that's what they can do to use, to do everything on this site, say 3200, give them 3200. Now they're up to 47 and they could go, before P&Z they could go to 52 by getting the use of the attic or something like that. So I'm just saying it's very big. Where is it? I don't know where it is. People have indicated that we've been thinking about, that it should be 4000 sq. ft. you know, with this combination, I'm not going to say one way or the other. But it's not, it's not this. And there's no, there's definitely no hardship here. If, if you ever decided to grant this I prepared, we thought about conditions. And this hits one other points, points you made, Mr. Chairman, about how do you control what they do there. And I'm going to give you this. I've got a couple of others, I can put them on either end if anyone wants to take a look at them. And I'll tell you where we're coming through, from on this is freezing what they've represented to you here. And it almost comes off if you read what I've put here and I don't, I'm sure you would have to go through the town attorney for some of this because I'm not sure you've dealt with this problem, at least not recently. Okay, I'm saying whereas they've represented a certain project here, an intensity of project and what it's going to be. And then I'm saying a variance is hereby, in other words, why would you do this? You do this to protect the public, to protect the health, welfare, convenience, education, not education, welfare of the public. And what you're trying to do is to make sure they don't overstep what they've shown you here. Make sure they stick to what they've shown you here. And this is probably not perfect, I mean I, I used my own creativity on it. The sides, and let me say one other thing as far as number one is concerned here, I have a partner who's the chairman of the Ridgefield ZBA, they use these all the time. Other, other regulations even have things like this in it. The side shall developed solely in accordance with the plan, which is the plan they've shown you here, and the presentation and representations made by the applicant in conjunction with this application. Any contemplated exterior changes to the building or its location or to any other improvements set forth on the plan, which in any way may affect the intensity or level of mass constructed within the setback area hereby waived and reduced by approval of the variance, will be subject to the prior written approval to this Board. In other words, that says they have to come back to you if they change what they showed you here. And then I, these other ones are actually a little bit within this. The total floor area which may be used for an approved permitted use of the building shall not exceed 4776 sq. ft. and no such permitted use may be carried on except on the first and second floor, and that should say as presented to this Board. 3. There shall be no staircase, no stairway or any other direct access to the attic/loft area from the interior of the building. And the use of such loft area shall be limited to housing utilities and medical systems exclusively servicing the building

Mr. Glover: You mean mechanical right?

Atty. White: what did I say?

Mr. Glover: Medical

Atty. White: oh, housing

Mr. Glover: No you said medical systems

Atty. White: oh medical, I um

Mr. Glover: You don't want any doctor's offices or

Atty. White: Oh, I'm sorry, mechanical systems, exactly. The building structure shall be erected within 20, no building or structure shall be erected within 28 feet of the southerly property line. That's there now on this plan. But they could, they could expand this building another 8 feet to the south toward the Montanaro property next door. And then I put in there shall be not less than 12 parking spaces approved for the use, it figures that's what they have there, 12 is really minimal. The one that was turned down last year had 15 spaces for a 4400 sq. ft. building. And I know they were going to use, they were going to get other spaces from next door on that one and it was turned down. So, what I'm, I'm proposing that this waiver should not be granted, and the records would seem to be pretty clear on it, between what you folks have said and what I've said. But I'm also saying that in cases like this where you have this dilemma about what's going to, what's going to, the canopy case if you will, and this case or other cases, what's going to stop them is you really should consider getting some language which says if you change what you've shown us and make, and

basically make fools out of us for giving you the waiver, you can't do that and you've got to come back. And the town attorney may be able to come up with better language than I have here. Um, let me see what else you said that I, in the rebuttal. That's really it. It's all in the record from before. This is too big a, too big a project for this property. It's not, it's an expansion of the non-conformity, not a contraction because of the size of that building.

Mr. Glover: Thank you sir

Atty. White: Thank you

Mr. Glover: Anyone else?

Atty. Scanlon: Attorney John Scanlon, I support what Attorney White is indicating and has said and again, I point out that this again is not a, a reduction in the non-conformity. It's actually doubling the non-conformity as it sits on the 10 foot line in front of the building. And I'll point out, point out that I was speaking to my client, my brother, today about the building and he indicated that they actually had difficulty bringing in the tractor trailer truck into the shopping center, and as it was where the, where they have the shrubs there now the truck came very close to hitting those shrubs that are, that are presently there. If you have a building sitting right on top of the line, 10 feet from the road, you're creating a safety hazard, not only of the sight lines going down as I indicated before, but also hazards of a blind spot of trucks or cars coming into the center itself. So again, I point out it's, it's not a reduction it's a doubling. Thank you.

Mr. Glover: Anyone else in opposition? (no response) Dominick, before you, one correction to the record, last month, last month it was stated that there was a traffic light in this area. There's not a traffic light at this driveway, it's a traffic light down on the next driveway.

Atty. Thomas: The traffic light for the side street?

Mr. Glover: The traffic light is, is down at the next driveway, yeah. It's not at, it's not where, I thought it was too, what you said I thought was correct and I went and looked. It's the next driveway down

Atty. Thomas: So is it in between the two driveways?

Mr. Cavallaro: Well

Mr. Glover: In between the Beechwood and the building that has Ted's Appliance

Atty. Thomas: right

Mr. Glover: that's where it is

Atty. Thomas: It's actually, the traffic light is actually for, for that side street, I can't think of the name that goes down the green. That's what the traffic light is for. I just thought, it's off set, it's not a "T" with the

Mr. Glover: No, but it's quite a ways down

Atty. Thomas: but it basically controls the traffic coming out of both of those driveways

Mr. Glover: Right

Atty. Thomas: Controls them in that that's how you get access

Mr. Glover: Right, it is a one way street

Atty. Thomas: yeah

Mr. Glover: And the traffic light is at the point that it, no it's not, it is a one way street the whole side of that green

Atty. Thomas: the whole side of that green is one way, and the road coming down is one way

Mr. Glover: right, both, both

Atty. Thomas: Well, all the streets are one way

Mr. Glover: Coming down I think is 108, Route 108

Atty. Thomas: Yeah, Route 108 that's one way coming down

Mr. Glover: Nichols Avenue, I think it's still an extension of Nichols Avenue

Atty. Thomas: right

Mr. Glover: but that's, that's where the traffic signal is, it's not back

Mr. Cavallaro: That traffic light actually causes traffic to back up to that other driveway. And I've seen people trying to scoot out towards the Montanaro property to get in line because of the traffic, so it does hamper that second driveway. Which means when your building is that close, it's going to be (unclear) sidewalk

Atty. Thomas: The building that exists there is that close, it's closer, so I don't understand, the other thing is

Mr. Glover: I'm just correcting the record, that's all.

Atty. Thomas: Right, right, the other thing is that, obviously the proposal and the plan that we've done and we would certainly agree to a condition, doesn't have a curb cut on our property, which is a very important safety issue

Mr. Glover: It doesn't have an additional curb cut

Atty. Thomas: an additional curb cut, which they would be entitled too. If they went back to the two houses, the only way that, really operate, or have that property function is to have a curb cut on Huntington Street which cannot be denied and run down between the two buildings and building a retaining wall and do it. So it, it, which would, I mean I don't know what else to say and I guess, with respect to this issue of the non-conformities are greater. I mean, when somebody makes a statement like that you look at it and you say, the non-conformities are not how long it is along a setback, the non-conformity is what it, how it interferes with the setback. With respect to the issue of the sight line, I think I addressed that, whether the building was two feet wide or 20 feet wide it's impacting the sight line, and obviously no one should be turning left. The other thing that I did, did not mention at the last hearing, mentioned at prior hearings numerous times, is that the edge of the driveway entrance encroaches upon the, this property, 60-64. There is a pavement of the driveway as a result of the survey that is actually on the 60-64 property. But that goes back to one of the Zabaneth applications. What I'd like to point out in response is that the 4400 sq. ft. building which is only 200 or 300 or so feet difference, the 4400 sq. ft. building was accomplished and the 15 parking spaces were accomplished by doing three variances. Three, by having a non-conformity in the rear property line, a non-conformity along the Beard property line and side property line and a non-conformity on the front. So basically, you would, if you wanted to shrink the building, you'd have to come back and ask for more variances to make it viable, viable both economically which is a consideration in all of the regulations when you are considering confisca, a confiscatory regulation. So in fact when you look at this and you look at the, the envelope you cannot look at the envelope and say okay, fine you can construct a building in there. You would not be able to construct it within the envelope without pushing it back and you would have, I mean and I know you don't like me to tell you what Planning and Zoning likes, you would have parking in front. You would have no sidewalk and you would have no landscaping, which are not factors that they want along Huntington green.

Mr. Glover: I just don't like voting on something when you say, what's it cost that's in this bag? What's in the bag? I don't know, I don't have to tell you. I'm going to tell those people later.

Atty. Thomas: Well, certainly as I stated the last time, my client agreed if this Commission felt it was a concern, to the limitation of 4,776 sq. ft. of rental space. There's no problem with that. There's no issue with that. And looking at Attorney White's suggested conditions I mean, if you want to become the architectural

commission and say that it has to be architecturally the way it's been presented to you, you can certainly, you're welcome to put that in as a condition, maybe P&Z would appeal you on that, but

Mr. Glover: We've been there before

Atty. Thomas: you've been down there before, but I mean you can certainly put it in. My client's, has spent the money to have this drawn up because that's what she intends on doing. She has to make it attractive to attract clients, to attract possible tenants. If we're at the 4776, we represented to you and we have no intention otherwise, that the attic which creates a, a definite beneficial architectural look to the building, and the basement which would have no windows are not usable rental space. That's not, that doesn't mean that they wouldn't be used for storage for a tenant, you know what I mean, but they're not usable rental space. As far as no stairways, you have to have access to the, to the attic somehow to take care of the mechanicals, you're getting into architectural stuff at that point. Again, I've already addressed the issue of the 20, 28 feet. If the Planning and Zoning Commission came to us and said we wanted it, if we're limiting ourselves to this amount of square footage there's no need to address the 28 foot thing, because if we moved it a foot over to get, you know, to get more landscaping on the other side, or if we had to move it a foot over because we have a driveway encroaching upon that corner, and I don't know if we can because we have to get vehicles in. And that is another reason when you're looking at the envelope, you've got to realize that you've got to consider all the factors of like access to the property, parking and everything. In this case here we have to get people in and to the back of the property for the parking places, which means to continue to have this sidewalk we probably couldn't move it over. Certainly, and as far as there should be not less than 12 parking spaces for use on the, on the parcel, again, you can certainly, you're welcome to put that in. The situation that I give you is simply the fact of an extremely low traffic tenant where Planning and Zoning decides that rather than have that number of spaces, they'd rather have a little more green. Just to give you an example, if an office used, took over the whole building that didn't have a lot of heavy traffic, and you could see, I could see Planning and Zoning saying you know what, get rid of these two spaces and put more green here. You know in other words, if you came in with a tenant that only needed the rear spaces, I can clearly see Planning and Zoning, so again you're welcome to put it in, but I'm just explaining to you issues that would be addressed, say okay fine, they would prefer to have that, that area landscaped if you came in with a tenant that truly did not need that, that use. And of course the client has to focus on low, lower impact tenants, lower traffic tenants given the configuration that she has to deal with. So I mean, certainly some of these conditions, like I said the size of the building we can clearly, clearly agree to. We have no problem with limiting it to that amount of space. Pushing it back, since it cannot, since the entire building cannot go back any farther, if you want to eliminate the variances that, the prior, I mean the law as far as similar, similar applications clearly states that whether new and additional factors, and the new and additional factors are unequivocal. The prior one that was presented to this Board had three variances, and I'm going to repeat them again. It had three variances, it had a side yard variance of 2 feet, it had a front yard

Mr. Glover: You don't have to, don't repeat them again

Atty. Thomas: well, because it's, I've got to establish the record

Mr. Glover: You have the record, it's been established about three times

Atty. Thomas: And so there is, and it actually defeats the comment that Attorney White made about the fact well do a 4400 sq., yes you can if we come back with more variances, which would be contrary to the case law that I presented to you where we've shown to you that we can reduce the non-conformities in three of the areas and including along the Beard property and by, and slightly along the front and develop a building of appropriate size that complies with all the other zoning regulations. The impact of shopping and the parking, parking in the shopping center parking lot, I mean is not a relevant issue. But that's all, my response.

Mr. Glover: Thank you. Attorney White, I think we have enough information.

Atty. White: I just didn't want the implication to be that I gave you the conditions because

Mr. Glover: I understand

Atty. White: that would be acceptable to us, it's not, but I think you should no that you can,

Mr. Glover: We know that

Atty. White: Yeah, okay

Mr. Glover: I do know that and I understand that the, that the conditions that you suggested do not mean that you condone the building

Atty. White: that's exactly correct

Mr. Glover: you're just saying, making us aware that we could do that

Atty. White: Miss Bishop would like to say something, she missed the fact that you closed

Ms. Bishop: I just wanted to get a correction in there. My name is Jill Bishop, I'm 180 Leavenworth Road in Shelton. Last month Mr. Thomas stated that there was hedges between our property and his property, the Beard family, I'm a member of the Beard family, and that the hedges went all the way up to Huntington Street, well if you drive in that driveway and you look, those hedges are 20 feet back from the property line. So there is no visible, no visibility issue with those hedges. And also, I was at a meeting with the Zoning Commission in their offices with Mr. Schultz, Mr. Pagoda, Mr. Panico, Mr. Montanaro and Mr. Mingoello, and they all agreed on a 4100 sq. ft. building at that particular time. It was a two hour meeting and it was March 5, 2008. And I think Mr. Schultz can verify that.

Mr. Glover: It, it may have been but it also may have been between Mr. Mingoello and a prior owner, because I think this probably has a different owner now

Atty. Thomas: different owner and

Ms. Bishop: Mr. Montanaro is listed as the member on Huntington Street, LLC, 64 Huntington Street, LLC, so he was at that meeting

Atty. White: It shows they could do a 4100 sq. ft. and be satisfied with it

Ms. Bishop: and that was discussed for two hours

Atty. Thomas: With, and I will repeat the same thing again, with three non-conformities, not reducing the non-conformities along the Beard properties on either side and, and so the issue is not if you're going to reduce the non-conformities and placing it like this, this building reduces the non-conformities and complies with the zoning regulations.

Mr. Cavallaro: So how is it that you can put a 4700 sq. ft. building with one variance, but you can't put a 4100 with one variance?

Atty. Thomas: Because when you're turning it around, getting the parking in the rear, the parking when that building was oriented if you can see where the prior plan, when that building was oriented it was jammed against the Beard property. And the access was over this way and there was parking, some parking along the rear, some parking along the front and the building was thinner with the variance. They were able to turn the, turn the building around, orient it to the street, okay, and as a result of turning it around and orienting it to the street, they were able to eliminate the variance along the Beard property, eliminate the variance along the rear, eliminate the variance along the side. The fact is, that there's no way to push the building any farther back and it was explained by the architect and no one has contradicted him. I want that very clear on the record, no one has introduced any evidence, any credible evidence whatsoever, that you could take the building and make it smaller going back this way and make it, have it architecturally, have the appropriate architectural integrity to have stairwells, a potential elevator and any other thing you are required to be able to put into that building. If you took the building and oriented it a different way and had many variances you might have a different architectural design of the building and that building would not necessarily fit if you layed it along the front. And again, there has been no evidence, no credible evidence presented that it can be.

Mr. Glover: Alright, does the Board have any other questions? (no) Any final questions? (no) Then I will declare the hearing closed. Good night, Attorney Thomas.

Later that evening during the work session the Board tabled a decision on this matter until the March 17, 2009 hearing.

#209-1 305 Canal Street, McCallum Enterprises I, Ltd. Partnership of 2874 Main Street, Stratford, CT is appealing a cease and desist order dated January 8, 2009.

Mr. Glover: Rick, do you want to come up? Alright, Jamie do you want to read the

Clerk: Did you read it?

Mr. Jones: Yeah

Mr. Glover: Oh, you did?

Mr. Jones: Yes

Mr. Glover: Oh, I'm sorry. Alright,

Atty. Pepe: We're going to be quick, for the record

Mr. Glover: Please give your name and address

Atty. Pepe: My name is Greg Pepe, I'm legal counsel to McCallum Enterprises, Limited Partnership and the Shelton Canal Company. Prior to this hearing I showed Rick Schultz a CT Supreme Court case that he and I both agreed need to be further researched by Assistant Corporation Counsel. It seems to deal with the issue involved in his cease and desist order and we've agreed that while that issue is being researched he will not enforce his cease and desist order against McCallum. They have a meeting of the Planning and Zoning Commission on March 10th. If they conclude that this Supreme Court decision applies in this instance they'll withdraw their cease and desist. If they decide that they are still going to go forward with the cease and desist order I'll be back in front of you. So what I would do is ask for stay of this hearing until such time as they have their legal opinion.

Mr. Glover: We've opened this hearing, we'll continue the hearing

Atty. Pepe: great

Mr. Glover: And if, if it becomes necessary we will ask you for an extension of the time.

Atty. Pepe: I brought two copies of the Supreme Court decision it's Hackett vs. GLG Properties. It's the Connecticut Supreme Court deciding whether or not federal, the federal power act pre-empts local zoning.

Mr. Glover: Okay. Rick, do you agree with that?

Mr. Schultz: Yes, Mr. Chairman, Rick Schultz is here in my capacity as Zoning Enforcement Officer. As you know I'm the Planning and Zoning Administrator, but I issued this order as the Zoning Enforcement Officer. I agree that this case law has relevance and I am going to make a referral to Assistant Corporation Counsel. As Attorney Pepe indicated, the Commission meets March 10th. I hope to have a legal opinion by then, that's before your next meeting in March and hopefully there'll be a resolution on it. So we're going to do our homework on our part and see where it takes us.

Mr. Glover: My apologies to both of you that we had to sit through an hour and a half of, I mean it's their right to do that, but if I had known that we were going to do this, I would have brought you in and

Atty. Pepe: Well, as the attorney who did the zoning for Mr. Montanaro's adjacent office building, I found it very entertaining.

Mr. Glover: (unclear)

Atty. Pepe: My hats off to you as volunteers for this

Mr. Glover: Drive safely.

Work Session:

Guedes Property at 150 Long Hill Avenue

Mr. Glover: With respect to Mr. Guedes' property on 150 Long Hill Road

Clerk: Long Hill Avenue

Mr. Glover: Long Hill, is it Avenue?

Clerk: Yes

Mr. Glover: I've got it as Road here.

Mr. Glover to parties in ahll: As you know, we're not going to decide anything tonight so don't hang, don't hang around.

Mr. Glover As you remember, I think about a year ago we approved a building that was between Bridgeport Avenue and Long Hill Avenue, one side was commercial and one side was residential. And we granted a variance for Mr. Guedes to, Mr. Guedes application to have commercial on one side and residential on the top. After that the Planning and Zoning Commission appealed our decision because they didn't like it, which is still ongoing in court. After that Mr. Guedes came in here last month to a, with a variance from the residential buffer, giving up the second floor and pushing the building over to the left. We denied him because he had already had a variance and until it played out in the courts we, we didn't, we had no reason to give him another variance, he had a variance, he had no hardship. Subsequent to that, I found out that Mr. Guedes had not filed or recorded the variance that we'd given him a year before. And that recording of that on the record, land records, would have concluded that process. But technically that process is not complete. In addition to that, we found out after the last hearing that the Planning and Zoning Commission had formulated a new site plan which is their right, which the site plan would not allow him to have residential upstairs and commercial downstairs. Which means that if we prevailed in court, Mr. Guedes could still not build the building because of the site plan. I suggested to Attorney Sheehy, who represents this Board, that if he hasn't recorded it perhaps we should look into him not recording it, him withdrawing that variance and him coming back in with the variance with the difference now that Planning and Zoning has now changed the site plan and he can't build the building anyway. That Planning and Zoning would then drop their appeal against us, the city would save money on attorneys, Mr. Guedes would save money because he wouldn't have to wait another year, and Mr. Guedes would be able to build the building that we denied. The thing that would've changed now would've been the no prior variance and the site plan change. I, everybody is on board for that, that agreement if this Board agrees with that. And you do not have to agree with that. You can let it go, we can let it go to court, in which case I do think we will win the court case but Mr. Guedes still can't build the building after we win the court case. So it's, just seems like it costs a lot of money and a lot of time, a lot of delay and their's, the loser's the applicant, as well as the city monetarily. Does, how does the Board feel about the concept, the idea?

Mr. Conklin: (unclear) amend his application for site plan variance

Mr. Glover: You mean goes back to, yeah okay, to the P&Z

Mr. Conklin: Yeah

Mr. Glover: that would keep the battle going a little longer. Is that what you want? Or was that tongue in cheek? Would someone like to make a motion to give me some authority to go on with that resolution? Or do you want to stay and fight the battle?

Mr. Jones: I don't want him to lose his

Mr. Glover: Well, okay, make a motion to settle it

Mr. Jones: So, I make a motion to do what you just said

Mr. Harbinson: Second

Clerk: Seconded by Harbinson

Mr. Glover: Alright, we have a motion to enter into the settlement with all the powers or all the different players. All in favor?

Mr. Conklin: Do we have that in writing in front of us or something

Mr. Glover: They're all set to go, I said don't do it. The Planning and Zoning was all set to pull the appeal. I said don't do it, because you can't do it with me until the Board says so. I could've been nasty and let them pull it, but that's not fair. I have no credibility after that either, so. Alright, all in favor? (unanimous "aye") I'll call Attorney Sheehy tomorrow and tell him to put it together. Just as an after, you talked about in writing, I have a letter from Guedes attorney saying that they have not filed, they will not file that variance and that it's his intention to refile the application that was denied, which I told him if we did this tonight, I would allow him to come in next month.

Approval of Minutes

During the work session the Board, upon motion by Mr. Conklin and seconded by Mr. Cavallaro, voted unanimously to approve the minutes of the January 20, 2009 hearing as submitted by the clerk.

Respectfully submitted,
Loreen Michalak, Clerk