The Zoning Board of Appeals of the Town of Cicero held a meeting on **Monday, January 23, 2012** at **4:30 p.m.** in the Town Hall at 8236 Brewerton Road, Cicero, New York 13039.

Board Members Present: Gary Natali (Chairman), Don Snyder, Don Bloss and Charles Stanton

Others Present: Terry Kirwan (Esquire, Kirwan Law Firm, P.C.), Steve Procopio (Code Enforcement Officer) and Tonia Mosley (Acting Clerk)

Absent: Mark Rabbia (Board Member) and Nancy Morgan (Clerk)

Chairman Natali called for the meeting to come to order and asked for the membership roll to be called. He pointed out emergency exits and asked everyone to silence their pagers and cell phones. Then all in attendance recited the Pledge of Allegiance.

APPROVAL OF THE ZBA MINUTES FROM DECEMBER 5, 2011

Mr. Snyder made a motion to approve the ZBA minutes from the December 5, 2011 meeting. **Mr. Bloss seconded the motion.** The motion was **approved** with the following vote:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Abstained noting that he was not a board member at that time.
Mr. Natali:	Yes

Chairman Natali noted that the Cicero Town Board acknowledges the importance of full public participation in all public meetings and therefore urges all who wish to address those in attendance to utilize the microphone located in the front of the room. **I make a motion** that all actions taken tonight are Type II Unlisted and have a negative impact on the environment unless otherwise indicated. **Mr. Stanton seconded the motion.** The motion was **approved** with the following vote:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Yes

Mr. Natali: Yes

Mr. Natali then noted we do have postings which prove that the items on the agenda have been advertised. I would also like to point out that tonight's results will not actually be effective until they are filed with the Town Clerk, which by law is required within two weeks.

AREA VARIANCE (DEFERRED FROM 12/5/11)
CHRIS HUXTABLE OF 5397 GUY YOUNG ROAD

REQUESTS AN AREA VARIANCE TO CONSTRUCT A GARAGE ON AN INDUSTRIALLY ZONED PARCEL. THE PARCEL IS USED FOR A RESIDENCE BUT THE EXISTING STRUCTURE DOES NOT MEET THE SETBACK REQUIREMENTS. THE FRONT SETBACK IS LESS THAN THE REQUIRED 75 FEET. THE SIDE SETBACK FOR THE PROPOSED GARAGE OF 10 FEET (+/-) IS ALSO LESS THAN THE REQUIRED 30 FEET.

Representative: Chris Huxtable

Mr. Huxtable told the Board that he would like to build a building within 10-15 feet of the neighbor on the west side. During the December meeting we discussed where the setbacks for the road were. We were not sure if it was a County or Town road. So, I focused on moving it to the west side. That neighbor was unable to be here tonight, but she did give me a letter stating that she would be fine if the garage was 10-15 feet from her property line. She had no issue with that.

(Mr. Huxtable gave copies of that letter to the Board.)

Mr. Huxtable continued noting that Mr. Snyder was out Saturday. We reviewed this location. The benefit to that location is that it would require less removing of trees. It is a better drained area, there is less flooding in that piece. I do have some photos.

(Mr. Huxtable gave those photos to the Board.)

Mr. Huxtable noted the top photo shows the 30' setback from the neighbors. The Industrial

setback requires 75' from the road. We are basically looking to have a residential setback. Even with that it would be fine with 15' from her line. The one in red would be the Industrial setback of 30'; the yellow would be the residential setback showing 15' from the property line. The orange marker is a corner marker.

Mr. Natali opened the public hearing. ***(The public hearing opened at 4:34 p.m.)*** He asked if there was anyone here to speak for the variance. (There was no response.) He asked if there was anyone here to speak against the variance. (There was no response.) Mr. Natali closed the public hearing. ***(The public hearing was closed at 4:35 p.m.)*** He asked the Board if they had any questions.

Mr. Stanton noted that he had read the minutes from the last meeting. Generally, everything talked about here is acceptable. But, when I was on the County website looking at property lines and divisions it seems like this is actually two separate pieces of property. I know that it is shown as one and there is the dashed line in between.

Mr. Huxtable clarified. One is for the subdivision that joined the two pieces together. It was filed with the County and the Board of Health.

Mr. Stanton explained his concerns. You show part of the garage on one piece and part of the garage on the other. Thank you for clarifying that the sections have been joined.

Mr. Bloss noted that he had gone out and looked at the property a couple of months ago. I don't have a problem with the change that you made by going to the 15' setback, based upon the yellow markers. I think that was a good move.

Mr. Huxtable thanked Mr. Stanton and Mr. Bloss noting that the change keeps the garage in line with the house.

The Chairman asked for a motion.

Mr. Snyder made a motion to approve the request by Mr. Chris Huxtable at 5397 Guy Young Road for an area variance. It is an Industrial zone, but a residential structure is on the site. Mr.

Huxtable would like to put in a pole barn. He has less than the 30' required by Industrial so we are requesting that we have a 15' offset from the Nichols' property which would then give us the offset of roughly 64' from Oak Street. The questions we have to look at are:

1. Whether an undesirable change will be produced to the character of the neighborhood or a detriment to nearby properties will be created. Certainly not. The facility that he is going to build is going to blend in with the area.
2. Whether it can be achieved by some other method. It can't be because of the restrictions of the site.
3. Whether the requested area variance is substantial. It certainly isn't substantial especially with the change that we have made to 15 feet.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. I don't see where those would be created.
5. Whether the alleged difficulty was self-created. That is kind of a no question at this time. Yes it is self-created because he wants to build a pole barn and he has a rather unique situation with his Industrial zoning when in fact he is a residential situation.

So I want to move that we approve this request. **Mr. Bloss seconded the motion.** The motion was **approved** with the following vote:

Mr. Snyder:	Yes
Mr. Bloss:	Yes
Mr. Stanton:	Yes to the motion.
Mr. Natali:	Yes to the motion.

Mr. Huxtable thanked the Board.

AREA VARIANCE, TIM HORTONS USA, INC
5920 LAKESHORE ROAD/5917 STATE ROUTE 31

REQUESTS AN AREA VARIANCE TO CONSTRUCT A DRIVE-THRU DONUT SHOP THAT REQUIRES A NUMBER OF VARIANCES. THE FRONT SETBACK IS 45 FEET WHERE 50 FEET IS REQUIRED. THE TWO DRIVEWAYS ARE 51 FEET AND 69 FEET FROM THE STREETLINE INTERSECTION WHERE 150 FEET IS REQUIRED.

Representatives: Joseph Durand, P.E., TDK Engineering Associates, P.C.
Robert Bender, Tim Horton's USA Inc.

Mr. Durand introduced himself and Mr. Bender. The plan that you see before you is the compilation of input that we have received from several agencies over the course of six months to a year. Those agencies include the Town's Planning Board, the State and County DOTs and too a lesser extent County Planning. Since Bob and I first approached the Planning Board we moved through a number of site plans that would meet Tim Horton's requirements and satisfy these other agencies. The issue that we have all been struggling with and which we think we have come together with a good solution for, is access to and from the site. I would like to walk the Board through how this sets up.

The property has an unusual shape and is approximately ¾ of an acre enclosed by Lakeshore Road, the Lakeshore Road Spur and State Route 31. The former Dunkin Donuts triangular property is west of the site, the auto auction is south of the site. The Lakeshore Road Spur forms a signalized intersection with Route 31.

The proposed Tim Hortons/Cold Stone Creamery is a 2300 square foot building. There are certain requirements for the business/operations of the site. Tim Hortons had proposed a full access ingress/egress off Route 31. We had also proposed full access in and out off Lakeshore Road. As things evolved through informal discussions with the DOT and the Town this is what was resolved: The NYSDOT asked us to slide the Route 31 access point as far east as possible. They were not opposed to a right-in right-out driveway but the Town's Planning Board was. Your Planning Board had concerns with the potential for illegal left turns out of the site. This is the result.

We show the existing access point which is about 75' from the intersection. We slid the drive all the way down so that it does not require a variance for the separation distances in your Town ordinances of 150 feet. Again, we are proposing a full ingress/egress access point onto Lakeshore Road.

We worked through a traffic study at the request of your Planning Board and the NYSDOT and forwarded that information to those agencies. O'Brien & Gere has provided us comments back on behalf of the Town. We have worked through those. The DOT is also looking at the overall impacts on the signalized intersection and things like that. Their feedback is pending. Again, with the County and State DOTs it is all informal. We have not done a formal application yet because we are not at that point in the site plan review process.

As we laid out this project, we tried at every juncture to avoid or at least minimize the need to seek variances. The site is zoned General Commercial. We have been squeezed out to a right-in only on this driveway. The property line itself is not even 150' wide. There is an existing driveway there which we will widen. We have provided ourselves with some redundancies for ingress and egress—two points in and two points out. All of this has been taken into consideration with our traffic study and the signalization of this intersection.

This is a functional layout for Tim Hortons' operations. We think that we have worked through the issues put upon us by the Town and the State and County DOTs.

In a summary on the variances Item 1 is shown here and here. The Town requires a separation distance from the right-of-way line to the edge of the access point of 150 feet. Our actual distance is 40 feet here and 58 feet here. Item 2 is a variance with the setback for the building. You have a required setback of 50 feet and we are proposing a 45' setback from the right-of-way along Route 31. We had to move the building around to make sure that our access to the drive-thru, order station and pick-up window---all of those functions work. These setbacks are consistent with what we see along the Route 31 corridor. We probably have better curb appeal than some of the other properties along here.

Mr. Bender added we have been in with at least a couple of plans where we did not require any building setback variances before the Planning Board. As these points of egress/ingress have changed and the traffic patterns have changed----for example the Town's requirement to have a by-pass or escape lane out of the drive up---and have forced us to keep the driveway down along Route 31 two cars wide in that direction and two cars wide to the north. The corner of the lot becomes a pinch point. As you can see with Item 3 that Jim has not gotten to yet, it is just a sliver of setback right in that corner. We tried to balance these two so that we could have the full egress on both sides of the building. This is the best that we can fit it in.

Originally, we had the building over on this side. We could have made it code compliant. But with the changes that the Town, the County and the State have suggested for these points of egress it pushes the building over to this location.

Mr. Durand agreed noting we really have gone through probably about a half dozen site plans to try and minimize potential impacts. We think this is the plan that satisfies everybody with

the least amount of adverse impact.

Bob mentioned Item 3 the rear yard setback to encroachment within 3 feet. The last one, Item 4 is the side yard setback for the dumpster enclosure. We used the same setbacks for the primary structure for this accessory building. We noted two sections in your ordinance about dumpster enclosures and full screening. We are proposing to do that. There is another about the separation distances between permanent structures of 15 feet. We propose to meet that requirement as well.

Other details of our site plan include an existing stockade fence on the residential property here. There is a chain link fence on this property and some greenspace. We will propose some kind of screening there for headlights.

Mr. Bender noted that property to the east is zoned commercial and from my understanding will be utilized in that fashion. So there is less of an impact there. We also tried to locate the dumpster as far away as possible from the residence that is going to remain up on Lakeshore. We think that we have accomplished that---between their stockade fence and the board-on-board fence that we would use around the dumpster.

We are not even 100% certain that a variance is needed for that. It would depend upon whether you consider the dumpster enclosure an accessory structure. We were not clear on that, but thought that we should include it anyway.

Mr. Natali stated we should ask for it anyway.

Mr. Durand reviewed the standards of proof required by the submittal process. Is the request for the variance substantial? We basically feel that these are practical requests to accommodate the traffic situation and the site's geometry. It is a General Commercial property. Someone would have to deal with the access points. Tim Hortons is prepared to do that. This is an existing gravel parking lot with existing access points. We are improving those by moving that driveway further east. So, we don't think that these are substantial.

Will an undesirable change be produced in the character of the neighborhood? Would the variance create a detriment to nearby properties? Again, we feel that we are improving the

situation. We are developing the site for its intended use as a commercial property. Tim Hortons would not add to the traffic in that corridor. It would serve the motorists already using it. We have provided an access point, a means of ingress and egress for motorists to safely get off the road, get into Tim Hortons and get back onto the road in an efficient manner.

Was the alleged difficulty self-created? Again, in our estimation this is something that is just a reflection of what we have been working through with the different agencies. We think that it is good planning on everyone's part. We do not have final approvals from the transportation departments, but we are all headed in the same direction.

Will the variance have adverse effects on nearby physical and environmental conditions? I don't think so. This reflects what Tim Hortons proposed to do to make the property work for them. They have also extended the opportunity County Planning. We are willing to work through their comments via the site plan review process. That includes any comments that you might have.

We think that we have a good site plan and respectfully request that you consider these variances and approve them.

Mr. Stanton asked if the property from the intersection of Route 31 and Lakeshore Road up to the school was all zoned General Commercial. Town code includes something about having loading spaces within 15' of residential property.

Mr. Durand clarified that the property to the east was Agricultural. There are a couple of properties in that area that are zoned AG according to your zoning map. I think that the next property down is GC, where that entire corridor is. We were not sure if there might have been some errors on the map.

Mr. Stanton explained if that is AG, that code would not apply here. My other question is about the adjoining property that is going to be incorporated into this. Are these all going to be combined into one property?

Mr. Durand responded yes.

Mr. Stanton noted that is GC so there are no issues with trying to combine two different zones. The actual setbacks for the driveway distances, these are all measured from the intersection of the driveway with the property line but not with Lakeshore Road. Is that okay?

Mr. Procopio asked for clarification. The property line and the road boundary would be one in the same. Is that what you are asking?

Mr. Stanton continued. They measure from where the driveway intersects with the right-of-way line. But if you look at the radius, that actually gets you a little closer to the intersection. I just don't want to get into a situation where we are approving something that is not constructible the way that it is shown.

Mr. Procopio thought this was one of the things that O'Brien & Gere looked at during site plan review and found acceptable.

Mr. Bender recalled that the variance has to do with our property. The flair being in the right-of-way is not a part of the variance.

Mr. Durand gave further clarifications.

Mr. Procopio asked about Route 31 going south.

Mr. Durand noted that was the same situation.

Mr. Procopio stated it is not on the variance application. From the driveway, the left turn lane on the Spur going south is not included.

Mr. Durand stated we assumed that if you gave it to one direction that you would give it to the other.

Mr. Stanton explained we would likely grant it from the intersection of those two roads which would pin it down.

Mr. Snyder asked wouldn't that actually be two? Wouldn't we be giving a variance for the distance between their exit/entrance on the Spur to Lakeshore as well as one from that to Route 31?

Mr. Stanton noted that we could. But I think that in past experiences if we actually referenced the site plan that locks everything in.

Mr. Natali stated we will list it. Do you know the exact figure?

More discussion occurred.

Mr. Snyder asked is it true that your assumption is that there would be no increase in traffic on either Lakeshore Road or Route 31 because only the people that are currently on those roads would be coming to your site?

Mr. Durand explained that was general statement. I can read you the traffic report prepared by GTS. That is the general scenario.

Mr. Bender noted that the majority of our traffic is by-pass traffic. Our business is what is known as a convenience business. It does not tend to draw traffic from other areas. We have enough other sites in the area and continue to have more. It is a convenience on your way to work or your way to and from more than anything else. Especially at peak times which are 6 until 9 in the morning. We plan for those times. Especially in this situation where the traffic is as heavy as it is in this area. In reality someone is not going to come two miles out of their way, and drive two miles back just to get to this location. We would be taking advantage of the traffic that is already there. That is what we do.

Mr. Snyder asked if this facility would be the same size as the one just opened on Taft Road.

Mr. Bender responded no. This one is about 1,000 square feet bigger. The store at Northern and Taft is one that we consider a limited service facility. There are only nine interior seats and a walk up counter. This facility would have 34 seats. There is also a Cold Stone Creamery in this store that complements our business very well. It offers ice cream in the afternoon and evening versus our breakfast and lunch offering. We find that it keeps the site a little busier

through out the day.

Mr. Snyder asked if there was anyway to make the building a little narrower so that we don't have to worry about that five foot setback.

Mr. Bender explained that this is the smallest model building that we can include the Cold Stone Creamery. Plus when we get under the 2300 square feet, it does not leave enough interior seats for the Cold Stone. This is the smallest building we have with the Cold Stone Creamery option.

Mr. Snyder expressed his concerns. You are asking us to make approvals for a number of changes because this is where you want to put your facility and you have not bought enough land to do it.

Mr. Bender clarified this is not where we wanted to put our facility. This is where, through all of the things that Joe mentioned with the Town, the County, the State and the Planning Board; where they wanted to see the entrances and exits. It is not our preferred location. This is where they have forced us to put the building. We had the building at both compliant locations over here, with no access onto the Spur on the first three plans that we came in with. It was the Town's Planning Board that asked us to include this access onto the Spur and to eliminate full access onto Route 31. In order to do that we had to move the building away from this exit, pushing us over into this location.

Mr. Snyder stated but if you had more site available at this location we would not be sitting here talking about most of these variances.

Mr. Bender noted I have to let traffic out. I can't let all of the traffic from the site go out onto Lakeshore. It was at the Town's suggestion that we limit access to Route 31 and to use the Spur Road. When we first came in we were told that we could have no access onto Lakeshore Road Spur what so ever. We planned around that. The Town's Planning Board then came back to us saying we want to you to put this access onto the Spur. Once they did that we had to create a path to get to this exit. The only way to locate our building to do that is putting it in this portion of the property. If I was not forced to do that I would have the building over here and would

not have any setback issues. I would have my right-in right-out here and my full access here. Because of what the Planning Board and the other agencies have asked for, they have forced me into this location. This location is not my number one choice.

Mr. Snyder asked about fencing.

Mr. Bender noted there is an existing privacy fence that runs all the way down this property line and all the way up this property line, so we would do nothing different. As far as I know those fences belong to those property owners. We will put in a board on board dumpster enclosure.

Mr. Snyder asked if the existing fences were solid.

Mr. Durand noted they were a stockade type.

Mr. Bloss asked if the adjacent Hudson property was commercial.

The response was commercial.

Mr. Bender explained that he was contacted by Mr. Piazza, another adjacent property owner, during the Planning Board's review process. He told me that his property is zoned commercial and that he was looking forward to our application so that he could start doing something with his parcel.

Mr. Snyder asked if the applicants spoke with Mr. Hudson.

Mr. Bender stated he had not. We are not buying the property, we are leasing the property. Through the entire Planning Board process, we have not had any negative comments so far.

Mr. Stanton assumed that the proper notifications had been made to adjacent property owners and that they would be here if they had issues.

Mr. Bloss spoke about the traffic report noting that he was familiar with the area. I travel in and out of it every day. My concern is the traffic. When Dunkin Donuts was in that triangle, school buses came west down Lakeshore and turned into the Spur. There were a lot of times

that the traffic was bad. Were all of those concerns addressed? I think that Tim Hortons would do a good business there, but in order to do a good business they must have a high traffic flow.

Mr. Durand noted he had been in that Dunkin Donuts before when there was traffic backed out into the street. Tim Hortons does not allow that. That is why we have a thirteen car stack in our drive-thru. If traffic is competing to get back out onto the road, it is held up on site. We look at on site traffic flow very carefully.

Mr. Bender added the thirteen cars are here and we still have all of this area back to the Spur. You are absolutely right. If we can't get customers in and out of here we are not going to do a very good business. A lot of that is on us to provide a speedy service.

More discussion occurred regarding the traffic study and adjacent property owner notifications.

Mr. Stanton asked about information from the County's website. It appears to imply that the former Dunkin Donuts' property and a larger portion of your property is one contiguous parcel. Is that correct?

Mr. Jeff Cohen, the owner of the property, noted that they were the same tax map.

Mr. Stanton asked what, if anything, is being planned for the former Dunkin Donuts location. Did your traffic study take into account the eventual occupation of that property and any impacts that might have on Lakeshore and Route 31?

Mr. Bender responded in our discussions with the Planning Board their sense was that there was such a limited number of uses for that property because it would have to come back in. They did not feel that there was anything specific that we could put in there for a proposed use and did not ask us to take that into account.

Mr. Natali stated, but that is not part of your lease.

Mr. Bender responded correct.

Mr. Stanton asked about the entrance off 31. It seems to cross a Verizon easement. Is that something that you are going to need to be able to dig into for access?

Mr. Durand noted we will have to talk to them about that. There might be some shifting of that geometry as we finalize our site plan bur not the location off of 31. We have to look at things like truck deliveries, etc to make everything work. We may need more of a sweep.

Mr. Natali noticed the applicant's address is Lakeshore but that you call Route 31 your front. Which address would you keep?

Mr. Bender clarified for a mailing address we would use 5917 State Route 31.

Mr. Natali noted that would be less of a variance. He asked if there were any other questions from the Board. The response was no. He opened the public hearing by asking if there was anyone who would like to speak for this project. ***(The public hearing was opened at 5:16 p.m.)***

Peter Vogue, Whirlin' Disc Sound DJ, stated he remembered when the Dunkin Donuts was there. I think that this is a great idea for a commercial use because we still have families that can't get out around there. It is good to see that development happening. My only concern is that left turn. Are you going to change the light? That is a left only light.

Mr. Bender noted that was part of what we addressed with the State.

Mr. Natali explained that would be covered under site plan review.

James Piazza, owner of the adjacent property, stated that he was for the project and would like to develop his properties someday. Would dump trucks come at 3 a.m.?

Mr. Bender responded no.

Mr. Piazza asked how wide the Route 31 driveway was.

(The response was not clear.) Mr. Bender noted store owners would be in the store. There should not be any hesitation about asking to speak to the owner or manager. They will work

with neighbors to alleviate any problems. We want to be good neighbors who are here a long time. I can't control when the dumpster guy shows up but if it becomes a problem, our people with work with them so that it is not an issue.

The speaker system is over here. We also use a system that automatically adjusts to the ambient noise level of the area around it. You would get more noise off of the street than from our speakers.

The Chairman asked if there was anyone here who would speak against the project. (There was no response.) I will now close the public hearing. ***(The public hearing closed at 5:21 p.m.)*** Can we have a motion or are there any other questions?

Mr. Snyder stated I still think that we are trying to put too much facility on a site that is too small to take it.

Mr. Stanton made a motion on behalf of Tim Hortons USA Inc. Before I do so I would like to discuss the five factors that we need to look at before granting such a variance.

1. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created. The answer to that I believe is no. the current lot uses are for parking and a vacant house. Anything that we do there would likely be an improvement.
2. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other then an area variance. The answer is no because the existing lot dimensions restrict options regarding building placement while including appropriate parking and access and addressing all of the concerns of the other reviewing agencies.
3. Whether the requested area variance is substantial. I am going to answer yes to this but I want to note that this is not necessarily a factor in deciding whether we grant a variance or not. But the proposed driveways do violate pretty substantially the minimal distances intersecting street lines. But, this has been demonstrated in a traffic study to not have a negative impact.
4. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. In my opinion that answer is no. Currently the properties are not being used and the proposed new construction will

enhance the physical and environmental conditions.

5. Whether the alleged difficulty was self-created. I believe that the answer to that is yes. The applicant did choose to build on a geometrically constrained lot. However, they have attempted to mitigate impacts with a proposed placement of the structures and taking into account comments from the other reviewing agencies. Again, I have to note that this is not necessarily a deciding factor in granting a variance.

So with that, **I would like to make a motion** to write an area variance to construct a new commercial building on a lot zoned General Commercial as shown on SITE PLAN – VARIANCE SUMMARY dated 9/14/2011 by TDK Engineering Associates. The minimum lot depth from NYS Route 31 is approximately 173 feet on this contiguous portion of the lot where 200' is required. The proposed front setback from NYS Route 31 is 45' where 50' is required. The proposed rear setback to the northerly face of the proposed structure is 22' where 25' is required. The proposed side yard setback to the northerly face of the proposed building is 6' where 15' is required. The proposed driveway onto Lakeshore Road is approximately 40' from the intersection of street lines of Lakeshore Road and Lakeshore Road Spur where 150' is required. The proposed driveway onto Lakeshore Road Spur is approximately 58' from the intersection of street lines of Lakeshore Road and Lakeshore Road Spur where 150' is required and 80' from the intersection of Lakeshore Road Spur and NYS Route 31 where 150' is required. Additionally, a dumpster enclosure will be constructed with a proposed side yard setback of 4' where 15' is required and a rear setback of 3' where 25' is required. **Mr. Natali seconded the motion.** The motion was **denied** with the following vote:

Mr. Snyder:	No
Mr. Bloss:	No
Mr. Stanton:	Yes to the motion.
Mr. Natali:	Yes to the motion.

The Chairman stated based upon the fact that this could fit without any variances we have to send you back to the Planning Board.

Mr. Bender stated that won't be happening. We are going to walk away from this parcel, but thank you for your time.

Mr. Cohen stated this Board is losing an opportunity. Mr. Snyder says that the site is not big enough. He is totally wrong. Tim Hortons has many locations in other communities smaller than this. You are loosing an opportunity for a first class tenant. They jumped through all of the hoops from the Planning Board. It does not seem like you care.

Mr. Snyder stated I do care.

Mr. Cohen continued. If you care this much you would reconsider this because right now they are gone.

Mr. Snyder responded from that location maybe.

Mr. Cohen noted maybe they will find another location in five or ten years. In the mean time you are loosing that tax base and that employment base. You are taking a piece of dirt and letting it sit there for no reason. And now you're smiling?

Mr. Snyder: I am not smiling. This is not something that I take lightly. I take this seriously.

Mr. Cohen: The County approved them. You are the one that is squashing the deal. You are not doing anyone any service.

Mr. Snyder: I was asked to give my opinion relative to the facts that were given and based upon the facts that were given.

Mr. Cohen: You are giving your opinion based upon nothing. You virtually said that the site is too small. Based upon what? I would like your professional opinion on why the site is too small.

Mr. Snyder: I am not sure that is something that I need to do at this point. But I….

Mr. Cohen: That's right. You don't need to do anything but kill deals. You should be proud of yourself. I'm not surprised. I appreciate the work that you put into it. But in this economy to make them go through what they have done---you should be disgraced. The both of you.

Mr. Natali: Okay, we have heard your position sir. If they want to make this fit at this point they can go back to the Planning Board. Unfortunately, we have a member not here which might have made a difference either way.

If there is no further business **I make a motion** that we adjourn. **Mr. Stanton seconded the motion.** The motion was **approved** unanimously.

IN AS MUCH AS THERE WAS NO FURTHER BUSINESS BEFORE THE BOARD, THE MEETING WAS ADJOURNED AT 5:25 P.M.

Tonia Mosley, Acting Clerk