

SS:

STATE OF NEW YORK
ONONDAGA COUNTY
ZONING BOARD OF APPEALS

MINUTES OF MEETING
TOWN OF CICERO ZONING BOARD OF APPEALS

DATE: March 2, 2015
PLACE: CICERO TOWN HALL
TIME: 6:00 P.M.

The Regular meeting of the Zoning Board of Appeals was held Monday, March 2, 2015 at 6:00 P.M., at Cicero Town Hall, 8236 Brewerton Road, Cicero, New York 13039

Members Present:	Gary Natali	Board Chairman
	Charles Stanton	Deputy Chairman
	Mark Rabbia	Board Member
	Gary Palladino	Board Member
	Donald Snyder	Board Member

Absent: None

Others Present:	Terry Kirwan, Esq.	Attorney, Kirwan Law firm
	Steve Procopio	Code Enforcement
	Ann Marie August	Recording Clerk

Inasmuch as there was a quorum present, the **meeting opened at 6:00 P.M.**

Chairman Natali called the meeting to order and asked for a roll call of Board Members present. He pointed out the fire exits and requested that pagers and cell phones be silenced. He then asked everyone to stand for the Pledge of Allegiance.

Mr. Natali: Has everyone read the minutes from the January 7, 2014 meeting?

Board: Yes.

Mr. Natali: Are there any corrections or additions?

[Board]: No.

Mr. Natali: I would like to make one. At the January 7th meeting, I read a brief introduction of what the process would be for the meeting and it was not included in the minutes. I have given our recorder a copy of that information and I will be reading it shortly so I will not read it at this time.

[Board discuss attendees at the January meeting briefly]

Mr. Kirwan: Was there something on the SEQRA that you wanted to address?

Mr. Natali: Yes, that's coming up. On Page 2 of the minutes regarding the SEQRA statement, instead of Type 2 Unlisted, it should be Type 2, period.

Mr. Natali: I'll make a motion to approve the minutes, with the corrections, to the January 7, 2014 meeting minutes, seconded by Mr. Rabbia.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	I abstain, I was not here for the January meeting
Mr. Palladino	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: The Cicero Town Board acknowledges the importance of full public participation at 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.

Motion was made by Mr. Natali, seconded by Mr. Snyder, that all actions taken tonight are Type 2 and have a negative impact, that is no impact, on the environment unless otherwise indicated.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	Yes
Mr. Palladino	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

Mr. Natali: We have proof that all items on tonight's agenda have been advertised as directed by law. I will now briefly review the process for tonight's meeting for the benefit of those present that have never been before the Zoning Board of Appeals. (1) Each applicant will have a chance to describe their project. (2) The Board will then ask questions about the project. (3) I will open a public hearing where people will be able to speak for or against the variance. (4) The applicant will then be given the opportunity to rebuff what is stated. (5) Board members will again have the opportunity to question the applicant. (6) The Board will openly discuss among themselves the Five Factors that determine the final decision. (7) A motion will be made, seconded, and voted upon.

WILLIAM AITKEN (APPLICANT)
RICHARD & JOAN KALIN (PROPERTY OWNERS)
5394 MARY DRIVE

AN AREA VARIANCE WHERE THE PROPOSED ACCESSORY GARAGE IS 936 SQUARE FEET IN AREA
WHERE A MAXIMUM OF 700 SQUARE FEET IS REQUIRED.

Mr. Natali: Mr. Aitken would you please come up?

Mr. Aitken: Good evening Board. If I lose my voice, I'm coming to the tail end of a cold.

Mr. Natali: Okay, I see you've decided to downsize the garage.

Mr. Aitken: Yes, we are going to revisit the application for a variance. The original project was for a 30' x 40' structure which is 1,200 square feet and after talking it over with my client, it is preferable to downsize and have some garage, rather than no garage. The current application that we've submitted is for 936 square feet which is just 33% over the current code. Again, this project meets all the other requirements if it were to be constructed any other place. One of the issues I saw that we should talk about is that although it's done in pole-style construction, I don't want you to think that this is a big hulking steel structure. If I may, I have some artist renderings that I'd like to pass out to you.

[Mr. Aitken approaches the Board and distributes the artist rendering of the proposed structure.]

Mr. Natali: What do you plan on having on the second floor?

Mr. Aitken: Storage.

Mr. Natali: Anything special?

Mr. Aitken: No, whatever code is required for the floor load will be what it is constructed at. I am not sure if that is indicated on the construction notes on the page but...

Mr. Rabbia: It won't be a residence, right? You're not going to put plumbing up there, or a bathroom...

Mr. Aitken: Absolutely not.

Mr. Stanton: But...there will be water and power running to the structure?

Mr. Aitken: Yes, as we discussed at the last meeting, there will be power and water to this. I have opted not to pay for the plumbing page, it is very expensive and if you were to approve this project and make that a contingency, I would make sure that it gets added to the revision and submitted as part of the project.

Mr. Palladino: You're still having a bathroom in there?

Mr. Aitken: A utility bathroom with a toilet and sink.

Mr. Palladino: And the old garage, is that still going to be removed?

Mr. Aitken: It will be removed.

Mr. Palladino: The reason we are asking these questions over again, is that basically this is a new application.

Mr. Aitken: Yes, sir.

Mr. Rabbia: The bathroom will be on the first floor or the second floor?

Mr. Aitken: Ahhh, first floor. I'm thinking the west corner...back west corner.

Mr. Aitken: In addition to the artist rendering, I do have a letter that was signed by all the neighbors on the original project, the 30' x 40'. The actual residents of the neighborhood, do not oppose the project and they are aware that a large garage is being built in their neighborhood.

Mr. Snyder: Well, they approved the 1200 sq. ft. structure.

Mr. Aitken: Yes.

Mr. Snyder: Ok

Mr. Rabbia: Can you mention that all the other regulations will be met as far as setback, etc.?

Mr. Aitken: That's correct, yes. Any other questions?

Mr. Natali: Any questions, gentlemen?

Mr. Palladino: We are 30' from How do we address this road, Mary Drive.

Mr. Stanton: I believe the context of our discussion last time was that Mary Drive for intents is a driveway because it's not a public road per se. The front yard requirements actually from Comstock Road then is far surpassed.

Mr. Palladino: I was just making sure because that's how I interpreted it.

Mr. Rabbia: Just to be clear, since it is hard to read on my copy, it is 36' x 26', right, for a total of 936 sq. ft.

Mr. Aitken: Yes, sir.

Mr. Kirwan, Esq: Regarding Mary Drive, the legal description for the road says, "TOGETHER WITH AND SUBJECT TO a 25 foot right of way called Mary Drive, and its extensions, a private road for the ingress and egress in common with others."

Mr. Natali: If there's no further questions, I will open it up for a public hearing.

Mr. Natali opened the Public Hearing at 6:15 P.M.

Mr. Natali: Is there anyone here who would speak for this variance?

Mrs. Kalin: (Joan Kalin – Property Owner) We are going to be moving from a house and we are going to be storing a lot of stuff. I know you asked that question and that's why. We have a boat, skidoo, cars and so that's why we wanted to make sure we had enough room for all the toys and stuff.

Mr. Natali: Okay, thank you. Is there anyone here who would speak against this variance? [No response]

Mr. Natali closed the Public Hearing at 6:17 P.M.

Mr. Natali: Any more questions from the Board?

Mr. Stanton: Mr. Chairman, we are in receipt of a resolution from the Onondaga County Planning Board. Their basic resolution is that there is no significant adverse intercommunity or county-wide implications. However, I did want to note that they do point out that they are advising you to conduct a formal wetland delineation. Did you get a copy of the resolution?

Mr. Aitken: I did but I don't recall reading that portion of it.

Mr. Stanton: We will give you a copy of this. What they are saying is that they recommend, they advise, a formal wetland delineation to determine the presence of any wetlands on site. You're actually within the, what's called the wetland check zone, you're within a half-mile of a federal wetland which triggers that. They are also saying that you should get in touch with the US Army Corps of Engineers and run your project by them because besides the fact that you're within a historic district, you're also within the 100-year flood plain special flood hazard area and there is the potential for some listed species. Again, you're setback from the water but it's still something that you need to check.

Mr. Aitken: Okay.

Mr. Stanton: This pulls us out of the Type 2 action category but what we would do is we would put conditions on there that this would be contingent on you doing your due diligence to check with the agencies.

Mr. Natali: Your building permit will not be issued by the Code Office until these issues are addressed. What we do tonight does not affect your going ahead with the project until you clear those other items.

Mr. Natali: We will now discuss the Five Factors. Who would like to take the lead on the discussion?

Mr. Rabbia: **Factor 1** – Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created?

Answer: No. There are similar type structures along that path, similar size, and similar type structures.

All agree.

Ms. Wicks: **Factor 2** – Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue other than an Area Variance.

Answer: Yes. There is a way to fit a structure on the property without these variances.

All agree.

Mr. Palladino: **Factor 3** – Whether the requested Area Variance is substantial?

Answer: Yes. Again, we are getting into a unique situation in the way the property is laid out but it is substantial, it's thirty plus percent over what the code says.

Yes: Mr. Rabbia, Mr. Stanton, Mr. Natali

No: Mr. Snyder, Mr. Palladino

Mr. Stanton: **Factor 4** – Whether the proposed Variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district?

Answer: No.

Mr. Stanton: Qualified, no, based on the results of investigation of the wetland delineation.

All Agree

Factor 5 – Whether the difficulty was self-created?

Answer: Yes. I think the answer to this one is almost always “yes” – however that result is not anything that would deny the applicant’s variance.

All Agree.

Mr. Rabbia: With these types of structures, you’ve got to look at this and say that we may have answered yes to a couple of these questions but, in my opinion, each neighborhood has a little different flavor and I think this one falls into that mix for me.

Mr. Stanton: Yes, I would note that as you look up Comstock...there may not be as much similar construction here on Mary Drive but when you look further up the road on Comstock, there is a lot of construction similar to this.

Motion made by Mr. Rabbia, seconded by Mr. Palladino, to approve the area variance on behalf of applicant, Mr. Aitken, for the property owners, Richard and Joan Kalin of 5293 Mary Drive, for an area variance where the proposed accessory garage is 936 square feet in area where a maximum of 700 square feet is required. All of the bulk regulations will be met for the project. This variance approval is contingent upon the applicant satisfying the terms of the RESOLUTION OF THE ONONDAGA COUNTY PLANNING BOARD as set forth during the meeting of February 12, 2015 for OCPB Case # Z-15-46. [Mr. Snyder provided a copy of the said resolution to the applicant.]

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	Yes
Mr. Palladino	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

BILL ANDRIS (WIDEWATERS) (APPLICANT)

7980 BREWERTON ROAD

AN AREA VARIANCE FOR PROPOSED LOT 1 SITE A: DUMPSTER ENCLOSURE HAS A 3.0 FOOT REAR YARD SETBACK WHERE 25.0 FEET IS REQUIRED AND PROPOSED LOT 2 SITE B: RESTAURANT BUILDING HAS A SIDE YARD SETBACK OF 10.4 FEET WHERE 15.0 FEET IS REQUIRED AND THE DUMPSTER ENCLOSURE HAS A REAR YARD SETBACK OF 0.0 FEET WHERE 25.0 FEET IS REQUIRED.

Mr. Natali: Bill Andris from Widewaters? Would you please come up?

Mr. Zinsmeyer: Good evening, my name is actually Neal Zinsmeyer from Napierala Consulting. I am here for Bill Andris, who is right here behind me. He’s from Widewaters Group. I represent Bill on the site engineering aspects for the project. The project is at 7980 Brewerton Road. You have a copy of our plans. We’ve been before the Planning Board a few times. We have been shuffling things around give

and take and what brings us here are the dumpsters. The Code Office has determined that the dumpsters which are these structures and are within the building setbacks so that brings us here to discuss this with you folks. During the Planning Board process we have moved the southern restaurant building around a few times and that is now within the setback also. We have two parcels here. We have a northern restaurant and a southern restaurant. I am sure you are familiar with the site, the former Sports Page, out in front of Marshall's plaza and it's been vacant for quite some time now and Widewaters has recently taken control of it and are really pushing forward to develop it into something useful. We have some users and a potential user to move forward with this layout you have here. We are here to discuss the project if need be.

Mr. Stanton: I have a question, there's a lot of talk about Lot 1 Site A, Lot 2 Site B, is this going to be a subdivision?

Mr. Zinsmeyer: It is a subdivision. It's actually already been approved.

Mr. Rabbia: Can you step me through, do you have a little summary on your plan of what's required and what's provided? I am trying to line that up to the application language. Maybe you can just step through, you know the plan a lot better than I do, maybe you could just step through everything. We've got a dumpster enclosure with a rear yard setback of 3' where 25' is required on Lot A. I want to make sure I see that here and I want to make sure I see it on your summary of what required and provided.

Mr. Zinsmeyer: That summary is actually for the Planning Board. That's where this plan went to.

Mr. Rabbia: Okay.

Mr. Procopio: Mr. Rabbia it might confuse you a little bit because the subdivision actually calls them Lot 1 and Lot 2 and the site plan is referring to Lot 1 as Lot A and Lot 2 as Lot B. So the description here in our write up says Lot 1 Site A.

Mr. Palladino: I have a question for Terry (Terry Kirwan, Esq.). This is one lot right now and it has been subdivided into two lots. Are we able to cover the variances being requested for Lot 1 and Lot 2 under one application or should there have been two applications?

Mr. Kirwan: That's a question for Steve (Steve Procopio, Code Office) but I would think you can do it under one.

Mr. Procopio: I asked the same question when the application came through. So the preliminary subdivision...they received a preliminary and a final subdivision approval. They have not created the second parcel yet because they haven't filed the final map so there is still just one parcel. Interesting question. The variance is going to go with this tax parcel ID and I guess that's why it's described as it is.

Mr. Kirwan: This is still one lot and it won't be two lots until they file with the county.

Mr. Snyder: You're graph says here 10' 4" where 15' is required. I don't see that.

Mr. Rabbia: Yes, again, I want to make sure I totally understand. Let's walk through it so we know exactly what we're looking at. So, the northern most dumpster, I guess that would be the Dairy Queen dumpster, that's the 3 although it's not labeled on your plan, right, there's no 3' called out on this.

Mr. Zinsmeyer: Correct.

Mr. Rabbia: So it's unlabeled, that would be the 3'. Everybody got that? [Board: Yes] Alright, come to the southernmost dumpster, that's zero because it's right on the lot line, correct?

Mr. Zinsmeyer: Yes.

Mr. Rabbia: Alright, come to the southernmost edge of the property, unnamed restaurant, I see a 10.8, 10.4, 10.4 is what you are referring to on your plan, correct?

Mr. Zinsmeyer: Correct.

Mr. Rabbia: And those are the three dimensions in question, okay, I'm with everybody now.

Mr. Palladino: Why did you pick these locations for the dumpsters? I mean they are about 150' away from the restaurant. That's a long way to haul...

Mr. Zinsmeyer: Well, first of all, parking is obviously the most important thing for a restaurant, for retail, and you want the dumpsters out of the way, visibility, pedestrian traffic as well. I mean here... accessibility as well for the dump truck drivers obviously needs to be taken into consideration. The truck drivers and the existing facilities, they know what they prefer, they know what they have and what they want to use and move forward with. Especially Dairy Queen. Mark Goldberg is here from Dairy Queen as well. He can attest to why they want the dumpsters where they are. It's mainly for access, get them away from the building. Yes, it's inconvenient for the person who may have to carry it out once or twice a day.

Mr. Palladino: Or through a winter like we have now.

Mr. Zinsmeyer: You can't avoid that, that's for sure. This is how their other stores are as well.

Mr. Palladino: I see a possibility for a different location for the dumpster on the Dairy Queen side. Actually in the northeast corner. You'll sacrifice two and a half spots and gain three, so you'll gain a half a spot if you move it.

[discussion among Board Members]

Mr. Palladino: I mean that way you can honestly either (1) eliminate the variance you've requested or (2) you could minimize it to perhaps four- or five-foot variance versus looking for a 22-foot variance.

Mr. Zinsmeyer: I think the issue was it was conflicting with the cars through the drive through. I think we had it up there at one time.

Mr. Palladino: I scaled it out and it doesn't look like...

Mr. Stanton: The dumpster has to be 15' away from the building, is that the...

Mr. Zinsmeyer: The truck's going to be about 60' long. See we angled it so that the truck can come nose in and pick up the dumpster and then back out without conflicting with the cars that are going through the drive through.

Mr. Palladino: How big did you say the truck was?

Mr. Zinsmeyer: I think they are like 60'

Mr. Palladino: This is a 20' scale. If I take 60' from the existing, I've completely blocked... that can't be correct. Even in your present location for the dumpster, if I put 60' on there, you've blocked, pretty much, your right of way through here, your entrance and exit.

Mr. Stanton: They are 20 some odd feet I think.

Mr. Zinsmeyer: I'm wrong, it's the delivery trucks that are 60' long.

Mr. Stanton: I was going to say that 60' is more like a semi.

Mr. Zinsmeyer: The dumpster truck is probably 25' approximately. Where we show it is the preferred location for Dairy Queen in their cycle of refuse pickup.

Mr. Snyder: The two lots A and B is owned by who?

Mr. Zinsmeyer: Widewaters Group.

Mr. Snyder: And who owns the area to the east?

Mr. Zinsmeyer: Widewaters Group as well. The Marshall's Plaza.

Mr. Snyder: So, if we were in fact to change the boundary of Lot A and Lot B on the east side, by rearranging part of that parking lot, we wouldn't have a variance would we?

Mr. Zinsmeyer: I think we would incur more issues on the existing property than we would like to undertake.

Mr. Andris: Anytime we change anything on the site plan, we have to have tenant approvals and that

would be Marshall's, Payless, Wegman's, the nail salon...

Mr. Stanton: Okay, let's walk through what's involved here because right now you are working within the outside boundaries of the existing parcel and just striking a line to create to additional properties. If you now want to move that east line you are getting into another whole parcel which now you're going to have to subdivide the parcel behind it, combine it with these two that you just subdivided and I guess I'm trying to...

Mr. Zinsmeyer: That would be an option if the parcel to the east was being subdivided also but we are just focusing on the Sports Page parcel and we are splitting that in two.

Mr. Andris: We don't want to have a third subdivision or actually a second subdivision. The ownership entities are separate entities too, different partnerships, etc.

Mr. Zinsmeyer: They all fall under Widewaters but they all have their own policies and what not.

Mr. Snyder: What finally happened as it related to the road work? I sat in a number of planning meetings and I know there was discussion by the Planning Board to change the road. Did that get done?

Mr. Zinsmeyer: That's not resolved yet. We are going back before the Planning Board after this meeting. Our approach is to keep this project moving forward knowing we want to move forward with the variances so we're here, then we'll go back to the Planning Board obviously.

Mr. Snyder: I'm just wondering if that, depending how that came out, your variance for Lot B may change. That may not be a problem.

Mr. Zinsmeyer: Ideally, I think we'd still like to have the dumpsters there. For Lot B is we move it anywhere else, we'll lose parking spaces. We'd lose four or five parking spaces.

Mr. Palladino: Do you know what's going to be in Lot B yet. Do you have a proposed restaurant?

Mr. Zinsmeyer: It's another restaurant. There's no assigned user yet?

Mr. Palladino: So, you don't know if 2,200 sq. ft. is accurate or if it's 1,800 or 2,000? You don't know if you need that many...

Mr. Zinsmeyer: This is their box, it's a tenant that hasn't signed a lease yet so we can't announce who it is but this is their footprint so to speak, 2,200 sq. ft.

Mr. Snyder: I mean the location of the box for Lot B or number 2 is also a potential for an accident scene because you block the vision of people that are trying to drive out...

Mr. Rabbia: Which...what are we talking about? You're talking about the trash enclosure? Okay.

Mr. Snyder: Yes, because it's going to be an enclosure which you're going to have solid sides on and you will not be able to turn the corner and see.

Mr. Andris: It's a four-way stop at that...proposed at that intersection, where the driveway meets the existing drive. It's a proposed four-way stop.

Mr. Snyder: Would it be a stop sign, like a "real" stop sign or the kind they have around Lowe's and...

Mr. Zinsmeyer: It'll be a real stop sign set into concrete. I don't even know why they have those, they are awful.

Mr. Palladino: I'd like to ask the Board a question. Is this a road or a driveway?

Mr. Rabbia: I don't think it's a road.

Mr. Zinsmeyer: It's like a drive island, in a way, called ring roads.

Mr. Rabbia: That's what it is a ring road.

Mr. Zinsmeyer: So, like I said, we've been before the Planning Board and we've mixed the plan around quite a bit and we feel we've done our best for tenants for what they need and the parking required. We'd like to keep moving forward.

Mr. Stanton: For the benefit of the notes, could you address whether the building locations were specifically prescribed by the Planning Board or were a result of comments given by the Planning Board.

Mr. Zinsmeyer: Yes.

Mr. Stanton: Likewise with the dumpsters or that's more of a

Mr. Zinsmeyer: That's a result of their comments. They did not say put the dumpsters here. They are the results of working with them through various issues has led to this. We had to take their suggestions and this is what we came up with. This is a middle ground so to speak at this point with them.

Mr. Andris: Originally there was some head-in parking that was backing out into that internal drive.

Mr. Zinsmeyer: For example, we had the southern building rotated 90 degrees with head in parking and they didn't like that so actually, that's why we had to spin it the way it is now and that put us into the variance. Because of comments like that, that is what has forced us to adjust to some of the comments.

Mr. Andris: We didn't want to have the building right up against the driveway so we put a little sidewalk buffer and that's what's forcing us into the setback here.

Mr. Rabbia: I think it might be appropriate at some point to go through his Five Factor analysis as well, just for the record.

Mr. Procopio: (Code Office) Just so you are aware, this has not gone to the county yet and the applicants are aware of that but they wanted to get on this Board's agenda. So they knew they would be back here one more time anyway after we hear back from the county.

Mr. Zinsmeyer: Yes, the county meeting is tomorrow or the next day; but in keeping with the process of moving forward, we wanted to show up anyway.

Mr. Snyder: And when you go to the south, toward Valvoline, their structure is a number of feet away from the lot line so we aren't looking at a building where you're asking for the variance of 10.4' we were many feet between your property line and Valvoline's building.

Mr. Zinsmeyer: Their building is probably 15' or 20' off.

Mr. Stanton: We're 56'...sorry wrong scale. We are about 23' from the edge of the restaurant to the edge of what's called the tarvia drive which I believe runs along the side of that so we're fairly well separated from the Valvoline building.

Mr. Rabbia: The building's got to be another 20' past that, right? Because there's a driveway to get to the back where they drive in the cars.

Mr. Snyder: Is there a way to move one of these dumpsters, the one for Lot A or 1 if we move the island with the lights on it over just a bit toward the west, then it could sit right there. It would be easier in and out and you would get your...the parking would be the same as far as the number of spots and you would be away from your side lots.

Mr. Zinsmeyer: And the dumpster doors would face....?

Mr. Snyder: The dumpster doors would face east.

Mr. Zinsmeyer: One of the problems with a dumpster there is the dumpster is 22' wide and the parking spaces are 18' so it would be a little tight in there. 22' is Dairy Queen's requirement and...that might cause visual impact of people driving through.

Mr. Snyder: Well not really because they are driving straight through they are not turning.

Mr. Rabbia: I know we are playing jam the dumpster wherever we can but I'll take my turn at this. Have you tried rotating Lot B's dumpster roughly 90 degrees and then kind of aligning it along the

southeast, kind of corner... I guess my concern is the site lines and a little bit of a safety risk as you exit the property. I'm trying to find a way to get it away from where folks turn out. So maybe turning it not quite 90 and then backing it all the way down so that it would face like the northwest.

Mr. Andris: We looked at that and what happens is the corner of the dumpster closure then rotates out into the drive isle.

Mr. Stanton: Perhaps the thing to do here would be to rather adjust the location of the stop bars. You have control over where you stop the cars which then controls the site distance. I don't know if we really have jurisdiction over that.

Mr. Rabbia: What you could do from a safety issue, that's my only concern. I have no problem with where it's located except for the safety of cars coming in and out of that area.

Mr. Palladino: Two things though. That location is probably the worst as far as safety goes; and second, it's zero, it's 100%. I mean we have a hard time giving variances and this is 100%. This is right on the line, you can't get anymore.

Mr. Rabbia: I know but it's not like someone is building a residence.

Mr. Palladino: But it's still a road and there's still traffic going through there.

Mr. Rabbia: I'm not arguing with you, all I am saying is it's a three-walled concrete shield.

Mr. Palladino: I don't look at this much different than a corner lot. I think of this as a front yard, I mean because we have traffic going out of there. It's a designated area to drive so it's a road and to put the dumpster 10 foot away from there on that corner...

Mr. Rabbia: I'm not denying that there's potential safety issues.

Mr. Palladino: I see possibilities for Lot A but Lot B, without sacrificing a parking lot or two, I...

Mr. Stanton: I apologize if you already said this but there has been a lot of conversation going on, how tall of an obstruction does this present? Six feet, eight feet?

Mr. Zinsmeyer: There just six feet fences or whatever the Board wants. We have spent a lot of time putting these dumpsters in every location. The problem is again we are trying to balance the tenant needs and owner needs and design needs as well.

Mr. Stanton: Just at first blush when you look at the turning radius of a trash removal vehicle, I guess I can buy that those are pretty good locations as far as the logistics of getting into them.

Mr. Andris: From an operations point of view, it seems that that works the best.

Mr. Snyder: I was wondering if there was a way of getting to the dumpsters from the drive road that is part of your other operation such that you literally take the truck that's dumping these things out of the picture totally. If the dumpster for Lot 1 was in the corner and it was accessed from your adjacent parking lot, then that truck wouldn't interfere with any traffic at all. I am wonder if we couldn't do the same thing with...

Mr. Stanton: But they'd be pulling right across the ring road which would push the conflict off on to the other parcel and then you're predicating the access to these dumpsters on a lot that's currently owned right now by Widewaters but may not be in the future so you'd have to have some kind of future rights to access.

Mr. Andris: That's a good point.

Mr. Stanton: Did you consider incinerators? [laughter]

Mr. Andris: Sometimes I wish you could.

Mr. Rabbia: Shall we have the applicant step through his analysis of the Five Factors for the record? Would you mind doing that?

Mr. Zinsmeyer: Sure. We've put this together with the Widewaters Group.

Factor 1: Is the variance substantial? No. Well, to us anyway. We say that because I know the code's office is kind of a grey issue. To us it's not even a structure, it's a fence. The code's pretty vague. The code reads anything that is attached to the ground is a structure. Well I mean that's a light pole, that's concrete curbing, that's everything. So, that's why we said no on that, we really don't feel that it's a structure.

Factor 2: Will an undesirable change be created in the character of the neighborhood? We say no to this. We are in a commercial area, we have traffic moving here, there's restaurants behind us, across the street, commercial use next door.

Factor 3: Can the benefit sought by the applicant be achieved by some other method feasible for the applicant to pursue. We day not to this feasibility wise because like I said the tenant issues is really what drives the location of these dumpsters and mixing it with the Planning Board requirements and what not, so we say no to that.

Factor 4: Will the variance have an adverse effect on the nearby physical and environmental conditions. We say no again. We are in a heavily commercial area, shopping plazas, food restaurants, Wegman's and Valvoline is nearby as well.

Factor 5: The alleged self-created. We'd like to argue no because... [laughter] only because again, working with the Planning Board has kind of forced us to do what we have and, again, our tenants' demands. It really has put us where we are today regarding the location of the dumpsters. To meet the

parking requirements of our tenants and satisfy the Planning Board as well to the best of our ability.

Mr. Snyder: I mean if a tenant would say, "I'm not going to have my restaurant right there because you took two parking spaces away from the number that are there." That would amaze me.

Mr. Zinsmeyer: Actually, the restaurant that is looking to go there has another restaurant nearby and they have less parking spaces. They have 37 and we show 44 and they are jam packed with that 37. They need like 50 so we are trying to provide the most for that restaurant.

Mr. Andris: That really would be the issue.

Mr. Zinsmeyer: Yeah, that really would be a deal killer for a lot of people.

Mr. Andris: We are trying to fight for every space we can get.

Mr. Snyder: That would make life easy if they would sacrifice a spot or two.

Mr. Zinsmeyer: By moving the dumpster, we would lose four spaces. I mean we've looked at this every way possible.

Mr. Palladino: And you don't think or they don't think that the common parking center parking lot couldn't be utilized by both restaurants where you could sacrifice two spots on Lot B.

Mr. Rabbia: Use one dumpster for both users or in the common area?

Mr. Palladino: No, you've got a common area here where you've got traffic going in both directions. You basically could use the center area for a common...

Mr. Zinsmeyer: Oh, there's no doubt that they will cross over and park...

Mr. Palladino: Knowing that and I know that that is going to happen because it does and you can put your signs up saying so and so's use only but it's not going to be adhered to.

Mr. Zinsmeyer: Right, but both these users have a high demand for parking. I mean the Dairy Queen, well Mark you tell them.

Mr. Palladino: Seriously? I mean the Dairy Queen. I see it as a drive through. There's a lot of sit in traffic.

Mr. Zinsmeyer: They have two new stores out in the Webster area, if I'm not mistaken, and...

Mr. Goldman: We have three stores in Rochester, one in Webster, one in Henrietta and one in Greece and when we opened up in Henrietta, first store in Rochester it was like...

Mr. Palladino: Did you have a lot of sit down business.

Mr. Goldman: It's about 60%...55-60% drive through and then the balance is like "in" or take out but our parking lot right now in our Webster location gets pretty tight. As much as the tenant in Lot B is thinking they are going to park where we are, I'm thinking our customers are going to be parking in their spots. It'll be tight, especially in the beginning.

Mr. Zinsmeyer: Can we ask for approval tonight contingent upon county approval?

Mr. Natali: No because we don't have it back yet. Would you consider any of the thoughts tonight that have been presented?

Mr. Zinsmeyer: Absolutely. We would entertain ideas, take them into consideration.

Mr. Snyder: I think you hear the dumpster issue is a concern for me. The restaurant offset is not a concern for me. I have not heard any movement that can come out of a zero or a three and ...

Mr. Zinsmeyer: Are your thoughts that the restaurant B dumpsters are the major issue or...?

Mr. Snyder: I think they are both an issue. The one at B is definitely an issue, it's a zero. I mean you are asking us to give you...I love percentages but that's, I mean zero of 25 or zero of 15 is more than 100%.

Mr. Palladino: I think that's why I picked my beginning question was is this one piece or two pieces. Is Lot A going to be treated separately than Lot B and as a personal note, I see less of an issue with Lot A because I do think there is some room to move that dumpster in that northeast corner and not sacrifice any parking and really not be...I mean I've seen these garbage guys they move around and they can do this without an issue and it lays out a foot print where you can get at a minimum request for a four or five foot variance and I see that as being a win situation personally. Lot B, if you lock it all in together, Lot B, that dumpster, as Don (Snyder) said the restaurant being a few feet off for a variance, I don't personally see that as an issue, the dumpster, I do. So, if you want to lock it all in together...I'm just saying...maybe you want to think about...

Mr. Snyder: Look at the Dunkin' Donuts on Route 31 and see where that dumpster sits in relation to the cars that are parked there and I have personally watched that guy come in and with cars parked, he can still dump that dumpster. And it's way tighter than this.

Mr. Rabbia: I'm not a traffic guy but maybe you guys can comment. If you take the southernmost line of Lot B and you've got 22' between what I'll call that last row of parking and call it the edge of the pavement. Is there a reason for that 22' feet and you kind of carry it around the perimeter of the property because what I was getting at earlier, you could rotate that trash bin on Lot B, I don't know 50 degrees kind of counter clockwise if you will and then sail it right up...again, my opinion is, I don't mind it being on the line, I just want to get it out of the site line, it would leave you like eleven or twelve feet. I don't know if there's a requirement as you make that corner there to have 22 feet...I

don't know.

Mr. Zinsmeyer: You mean make the parking aisles dead end?

Mr. Stanton: Twenty-two feet is the standard aisle width so that might actually be proscribed by the code.

Mr. Rabbia: They have two way traffic in the middle at 22' and I don't know if this would be defined as two way, maybe it would and maybe that's the issue of why you didn't put it there.

Mr. Zinsmeyer: 22' is the minimum that's allowed and as well, that would probably result in the loss of some parking and, again, that's what drives the dumpsters to the back is parking closer to the building.

Mr. Palladino: The concrete pad for that dumpster on Lot B, the corner is only 15' from the parking spot, you're 22' from the edge of the parking spot, to the edge of the blacktop. Now if you go up to the corner of where the dumpster is, that dumpster goes in another 5...err 7 foot, so from edge of the parking to the corner of the dumpster you're only 15' at that point.

Mr. Zinsmeyer: I mean they can still drive on the concrete pad, I mean the dumpster's got to be close.

Mr. Palladino: So how much is going to be fenced in?

Mr. Zinsmeyer: Four sides.

Mr. Stanton: Well the doors, it looks like the doors stop at the 22 feet.

Mr. Rabbia: It looks like it's eleven feet on one side and maybe 22 feet on the back side.

Mr. Stanton: The doors stop at the 22 feet if they're closed, you're out past the 22 feet. The pad you can drive on, the pad's for driving.

Mr. Snyder: When the guy's dumping, those gates are going to be open and you're not going to be able to drive down that 22' drive.

Mr. Zinsmeyer: Well, we appreciate your input. What you see is sketch 18, we've put together 17 before this and again it's a balancing act that's what we do with the Planning Board and your Board as well but we will take your advice into consideration. Perhaps the southern restaurant can reduce the dumpster size. We know the Dairy Queen needs the dumpster to be that size for the northern parcel.

Mr. Palladino: I think that's right know that you have Dairy Queen, you've got this locked in, you've got a deal going on and we're trying to work with that. This one as far as I'm concerned is tentative, it may not be a restaurant, they might not go through with it. It may be a parts place and not require that much parking. So it's kind of, not knowing what this is and not having this locked in, it's...

Mr. Zinsmeyer: Well, we are negotiating a lease right now.

Mr. Palladino: See if you...and I know there's proprietary infringement...but if you had a signed lease, then we know what's going in there definitely and the owner of the property is in agreement with this lease and is in agreement with the requested variance. Getting a variance on a piece of property that you say is a common owner but isn't a common owner, makes me a little uncomfortable in another way. If you had a locked in restaurant or locked in lease, we'd know what we had to deal with and it would be...we'd still have to fight for that dumpster but at least we know that it's a deal and a place has to be found for that dumpster. Because if it's not a restaurant, this dumpster can go anywhere.

Mr. Zinsmeyer: We're going through the same thing with the Planning Board as well, I mean until the lease is signed, we're...in the same boat...I know what you're saying.

Mr. Stanton: As an in between measure, you may want to look at the location of the stop bar, coming out of Lot B to see if you can get a little more distance there.

Mr. Zinsmeyer: So put the stop bar closer to the ring road?

Mr. Stanton: Potentially, if it's possible.

Mr. Zinsmeyer: If we can keep the dumpster there, sure! [laughter]

Mr. Stanton: We are jesting about it right now but the reality of the situation is that possibly you could show that the site distance from someone sitting about four or five feet back which is where the driver would be and would be able to see anything on that little speed ring road.

Mr. Natali opened the Public Hearing at 7:00 P.M.

Mr. Natali: Is there anyone here who would speak for this variance? [no response] Is there anyone here who would speak against this variance? [no response]

Mr. Natali closed the Public Hearing at 7:00 P.M.

MOTION by Mr. Natali, seconded by Mr. Snyder to defer this variance to the April 6, 2015, meeting.

Motion was put to a vote, resulting as follows:

Mr. Rabbia	Yes
Mr. Snyder	Yes
Mr. Palladino	Yes
Mr. Stanton:	Yes
Mr. Natali:	Yes

Motion duly carried.

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Motion and vote were unanimously approved to adjourn the meeting at 6:35 P.M., as there was no further business before the Board.

Respectfully submitted,
Ann Marie August, ZBA Recording Clerk