

The Zoning Board of Appeals of the Town of Cicero held a meeting on **Monday, April 6, 2009** at **7:00 p.m.** in the Town Hall at 8236 South Main Street, Cicero, New York 13039.

Agenda:

- Approval of the ZBA minutes from 3.2.09 (**approved**)
- Area variance, Benderson Development (Airport Business Park) 5801 E. Taft Rd, lot creation (**approved**)
- Use variance, Parks Storage (deferred from 3.2.09), 8822 Route 11, storage expansion (**to return**)

Board Members Present: Gary Natali (Chairman), Mark Rabbia, Rita Wicks, Robert Bach (Ad Hoc Member) and Charles Stanton

Others Present: Wayne Dean, Director of Planning & Development, Melissa DelGuerico, Esquire and Tonia Mosley, Acting Clerk

Absent: Gary Palladino, Board member and Nancy Morgan, Clerk

Mr. Natali opened the meeting by calling the membership roll. He noted the locations of the three fire exits in the room and asked those present to stand for the Pledge of Allegiance.

APPROVAL OF THE ZBA MINUTES FROM MARCH 2, 2009

Mr. Stanton made a motion to approve the March 2, 2009 ZBA minutes without modification.

Mrs. Wicks seconded the motion. The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Bach:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Mr. Natali noted that 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.

SEQR

Mr. Natali made a motion that all actions taken tonight are Type II Unlisted and have a negative impact on the environment unless otherwise indicated. **Mrs. Wicks seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Bach:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

**AREA VARIANCE, BENDERSON DEVELOPMENT, AIRPORT BUSINESS PARK
5801 EAST TAFT ROAD, TO ALLOW THE CREATION OF A LOT
510 FEET X 286.91 FEET WHERE THE MINIMUM SIZE LOT IS
500 FEET X 400 FEET IN A REGIONAL COMMERCIAL ZONE**

Representatives: Paul Curtin Jr., Esquire
Matthew Oates, Benderson Development

Mr. Curtin introduced himself and Mr. Oates. The property is contiguous to Taft Road and for the most part has been converted to a general office complex redeveloped by Benderson over the past few years. We made an application to the Town's Planning Board in anticipation of subdividing the property for future development. That discussion dealt with parking ratios/areas and how ultimately this area might be developed. The client made application for financing and was able to obtain a financial agreement for future development. The existing financing entity would only retain title or lean on Lot 2, the primary piece. The secondary piece or Lot 1 would be released by way of agreement and could then be financed independently.

We would like to be able to move this application forward to be able to develop the balance of the property. We have been in front of the Planning Board and have worked out a lot of issues that deal with development without getting into a site specific plan. We have not presented anything more than the subdivision plan. We have worked with the existing parking and drive isles and how they interrelate to the roads contiguous to the property and what those impacts might be. I think that we have resolved all issues raised by the Planning Board in a favorable manner. The matter was referred to SOCPA. They came back with a negative declaration.

We have something before you that we believe the ordinance does not anticipate. We have an interior lot to be subdivided which is not contiguous to a public street. It is contiguous to

internal driving lanes, rights-of-way. We have made accommodations for the free flow of traffic by proposing a reciprocal easement agreement. The property would be divided for purposes of financing and development but it would still operate as one property for care, access and overall maintenance.

Because this is in a Regional Commercial District it is subject to the bulk regulations which require 400 feet of building frontage and 500 feet of depth. We are proposing 510 and 287 related. It is in excess of those proposed dimensions if you look at the location of the proposed lot from Taft Road, Church Street and Kreisler. In one sense it does conform while in another it does not by a strict reading of the ordinance. We are seeking an area variance that would allow for the development of the site given the configuration that we are offering. We do not have any other space available not with-standing the notes within SOCPA's referral. We do not have anything that the bank would otherwise agree to release in order to make this lot larger.

We are looking at what the Town would require for a balancing test while looking at the health, safety and welfare of the community and how this application affects those three criterion. It is our position that no undesirable change would occur. The proposed uses would be consistent with the zoning district and would conform to the site specific issues already addressed with/by the Planning Board. But for the variance, financing would not be available and this site would not at this point in time or any point in the future be able to be built out. Therefore there would be some irreparable harm because the financial benefit that the client would be able to obtain would be lost. The property could not yield its highest and best use financially.

We can not subdivide the property given the interpretation of the ordinance without the requested area variance.

We believe the variance is not substantial. We can determine that there is no harm to the community given the configuration of the property, its current uses and the uses in and about it. In effect the property is designed for the type of use that we would otherwise propose. It is consistent with a very well thought out plan of development—the final development of Airport Business Park. No negative effect will be produced. Thus we believe the variance should be granted.

There would be no adverse effect or impact on the physical or environmental conditions in the neighborhood. Please note that the Business Park is in an area improved with like commercial

uses that continue to expand.

It could be said that this is a self-created hardship. We submit to you that it is not. There is no evidence that the variance would have any negative effect on the character of the community. When you apply the balancing test we respectfully submit that the elements necessary for the relief requested have been met.

Mr. Natali asked for more support on why the applicant can not fulfill the setbacks by eliminating some of the parking spaces that they want to protect.

Mr. Curtin responded the parking space in Lot 1 is by way of agreement with the lender to be continued to be secured by the lean of their mortgage. They have determined what is not critical to the areas where there are existing improvements. Each current business has a necessary parking ratio. It has been met and exceeded. This piece is superfluous to that and can be developed independently as long as there is a reciprocal easement agreement for the free flow of traffic. The lender has determined that they will not release anymore than what is shown as Lot 1. We are between a rock and a hard place in that respect.

Mr. Rabbia asked who came up with the dimensions of Lot 1, the client or the lender.

Mr. Curtin believed it was a joint review predicated upon the parking ratios the Town requires. We did go through the same exercise with the Planning Board. We looked at the ratios in terms of the various uses, present, future, more intense, less intense, etc. We determined that this facility is not over parked. We have more parking spaces now, even with the prospect of future development of existing businesses. We have more than what is required by code.

More discussion occurred.

Mr. Rabbia: I am not keen on using the variance process to make a non-conforming lot.

Mr. Curtin: Yes, if you were to do a pure read of the ordinance, I would not paint a different picture. It would be non-conforming. But to what extent would it be non-conforming when you look at the impacts of that lot and how it interrelates to the overall project and the properties around it. When you look at how the courts have interpreted this and those types of variances, a large variance may seem like an excess on paper but when you look at the overall equities and how that impacts this it is really small. The use intended is within zoning. It is completely

consistent with what already exists. From a technical standpoint we need relief to be able to move forward. It is the bulk issue that we need to get around and address. It is a dimensional issue. This is what the lender has agreed to.

Mr. Natali: What size building did you have in mind?

Mr. Curtin: That is a great question within this economy. The Planning Board would like to know that as well. The building will conform and comply with all of the various setback requirements inclusive of parking requirements that the Town normally imposes. What size that is and how it will fit on the property we have not determined because we do not have a tenant. It might be a build to suit a situation where you have a one tenant building. It could be 25,000 to 35,000 square feet. I do know that Benderson will not exceed the normal requirements. They will not be back in front of you looking for another variance. They will fit it within the confines of the parcel.

Mr. Natali: How did the bank evaluate this if they did not know what you were going to build?

Mr. Curtin: They agreed that this was superfluous to what they were securing by way of their lending. It was not necessary. The parking ratios shown on the plan before you are met and exceeded not with standing what is shown on the proposed lot.

Mr. Bach: If the lot was normal size would it still meet all of the parking requirements?

Mr. Curtin: At this point, based upon the way that we have analyzed this, the parking ratios are met and exceeded within the confines of Lot 2. And, when you have a reciprocal easement, the driving lanes are not adversely impacted. It makes sense all the way around. They have more than enough to sustain the uses that are presently there.

Mr. Stanton asked if you have a reciprocal easement for access and you are going to maintain that access could you not do the same for any of the parking. For example the 286.91 dimension that was increased to 400, you would lose approximately three rows of parking. Is there any way that you could have a reciprocal easement setup to retain those three rows of parking?

Mr. Curtin responded in any event we are going to have a reciprocal easement that is inclusive of all of the parking and all of the area for both lots. In a congress way we are providing for that not withstanding the define line that defines the property for Lot 1. The REA is not only for

access and egress; it is also for parking. There may be some spillage out from Lot 2 onto Lot 1. The REA anticipates that.

Mr. Stanton: So, you could move that line to the right. With that reciprocal easement you could maintain the parking.

Mr. Oates: With respect to how the lender looks at it, the mortgage gets put on a title with the property boundaries. The lender only looks at what is within those property boundaries. That is what they can foreclose on for example if financing is not paid for. They do not look at anything outside of agreements for additional parking. They felt for the Park to operate properly this was all of the parking and everything that was needed for the existing development to operate the way that it does. They did not need anything over on this lot for the existing Park to operate.

More discussion occurred.

Mr. Rabbia: The owners of Lot 1 will not be able to put up barriers as far as access across the properties? Someone can come across Lot 2 and get out towards the Taft Road exit or someone can come in off Taft and work their way to Church or Kreisler?

Mr. Curtin: Correct. There can be no impediments what so ever.

Mr. Oates reviewed what was to be done on the site per the Planning Board.

Mrs. Wicks: As you come into the complex where the concrete curb is in Lot 1 running the full length of the Lot 1, will that remain? It was my understanding that you would stay within the side setbacks. The side setback is 30 and this is around 34.

Mr. Oates: Yes, we will stay within the setbacks. We also said that we would not come back in for another variance. We will come back to the Planning Board for site plan approval for a building. That drive isle will stay and function.

Mr. Natali: Based upon what you said, adhering to our setbacks and parking requirements, what would be the maximum size building you could build? You must have put this together to convince the bank to go along with it.

Mr. Oates: 30,000 square feet +/- . That would work with parking, greenspace, setbacks, etc.

Mr. Bach: Did the Planning Board consider the uses of the existing buildings and their possible expansions, including parking requirements?

Mr. Oates: Yes. We provided the Planning Board with a full parking study and full traffic study. They asked a lot of questions to make sure that moving forward would not cause any problems. Their approval of a site plan modification shows that they are satisfied with where we are now and our moving forward.

Mr. Natali: Mr. Curtin you feel that the approximately 290 feet is within the code based upon the fact that this is land locked?

Mr. Curtin: I said that the way the bulk regulations are written the measurement is from the street looking at a strict interpretation. If you measured it from Church, Kreischer or Taft you would be in excess of 500 feet. That is why the measurement piece caught my eye. What the code did not contemplate in an internal subdivision of this type where you are not contiguous to a street as defined by a public way. This is a little unique.

Mr. Natali: We have never applied that concept. The number is where the street is. We probably will not consider that in our judgment. It is what it is. Are you comfortable with that?

Mr. Curtin: I am not uncomfortable with that. It is in the Board's discretion. Based upon what we discussed this evening I would submit that is negligible at best. It is consistent with contiguous uses in all respects. The court cases that we read and submitted as part of the overall package support that as well.

Mr. Stanton: All of the parking required for the 30,000 +/- square foot building on Lot 1 will be contained within Lot 1?

Mr. Curtin: Yes Sir with the understanding that there is a reciprocal easement because we can not control where people will park exactly. For example someone parks here and then they walk over to the parcel next door. The REA is there for that purpose. Having said that, the parking requirements will be met on Lot 1.

Mr. Stanton: Will the physical address be East Taft Road?

Mr. Oates: The existing address is East Taft Road. For consistency I would make the assumption that it would have a Taft Road address. We will apply for the address once we have the building.

Mr. Dean explained that the County would assign the address.

Mr. Rabbia: Is there still vacant space within the WYNIT building?

Mr. Oates: Yes, however WYNIT has an option to expand into that space in the future. We took that into account with the parking. We looked at it as a full build.

Mr. Natali: When you come back with a plan, even though it meets the setbacks, you still have a non-conforming lot. So you will still need a variance. That is our interpretation of a non-conforming lot even though it meets the setbacks. *(Mr. Natali opened the public hearing at 7:34 p.m.)* Is there anyone who would like to speak for this? (There was no response.) Is there anyone who would like to speak against this? (There was no response.) *(Mr. Natali closed the public hearing at 7:35 p.m.)*

Mr. Rabbia: I believe that they have done a compelling job of laying out the argument. While I don't like creating a non-conforming lot with a variance, they have done their homework. The fact that they are not coming back for another area variance is key. **I make a motion** to approve the Benderson Development aka Airport Business Park area variance at 5801 East Taft Road to allow the creation of a lot that is 510 feet deep x 286.91feet wide where the minimum size lot is 500 feet x 400 feet in a Regional Commercial zone. The applicant also reviewed the balancing test. (Mr. Rabbia reviewed the five question criteria for area variances as follows:)

1. Will an undesirable change in the area occur? As a result of this project I do not believe an undesirable change will occur in the neighborhood. I think that it will be a better use and perhaps drive a little more traffic through the area.
2. Can the applicant receive the benefit any other way besides a variance relief? There is some financing contingent upon the lot lines. I think that they have done their homework in terms of what they can go after.
3. Is the variance substantial? I do not think so.
4. Will there be an adverse impact on the physical or environmental aspects of the neighborhood? I don't believe so.
5. Is this a self-created hardship? I don't believe so at all. In my opinion the bank has told them what they need to function and operate. I am not sure that is the developer's hardship.

Mrs. Wicks seconded the motion. The motion was **approved** with the following vote:

Mr. Rabbia:	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Bach:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

**USE VARIANCE, PARKS STORAGE (8822 ROUTE 11, LLC)
DEFERRED FROM 3.2.09, 8822 ROUTE 11
TO INCREASE THE STORAGE FACILITY WHICH IS A
NON-CONFORMING USE IN A GENERAL COMMERCIAL ZONE**

Representatives: Richard Parks and Chad Parks, Applicants
Marco Marzocchi, Esquire, Widewaters Group

Mr. Natali commented that because we are going against the Onondaga County's situation we need a super majority, which we have.

Mr. Marzocchi noted that he appeared before the Board last month to provide testimony on behalf of the applicant at the request of Robert Ventre the attorney of record. He is still the attorney of record. Unfortunately he could not be here this evening because he is traveling. I am here along with Richard and Chad Parks the applicants.

We are here because of an unfortunate series of missteps that started in 2004 when the applicant was referred to the Planning Board for a project involving self-storage on a piece of property that was zoned General Commercial. That referral lead to an approval by the Planning Board of two storage facilities that are shown. The application went through all of the normal channels including SOCPA, the Town's attorney, the Planning Board's attorney, and the Planning Board's engineering review. It resulted in the construction, permitting and subsequent certificate of occupancies for two buildings for self-storage.

As we now know self-storage is only permitted in the Town on parcels that are zoned Industrial. Mr. Ventre noted last month that the Planning Board asked the applicant to appear before this body with the understanding that it is this body that can correct all of those missteps. I believe that is true.

Mr. Natali asked Mr. Marzocchi to repeat that statement.

Mr. Marzocchi repeated this body has the authority to correct all of the unfortunate missteps that have taken place before. The application is in the form of a use variance. This Board has asked for some numbers. You wanted to see what we were talking about in terms of dollars and cents. The applicant has done that. Before I pass those out I want to say that the dollars and cents proof that will be submitted this evening will show that these two buildings today will not function at a reasonable rate of return. Indeed they function at a negative rate of return. Because of economies of scale as more buildings are built onto the site the Net Operating Income (NOI) and therefore the return on the project increases to the point where at full buildout the project will provide a reasonable return--but only at full buildout. The numbers evidence the two buildings there today do not run at a reasonable rate of return. They actually run negative.

Mr. Rabbia: You are also going to come up with some dollars and cents for some of the other permitted uses and show how they don't work out in the application, right? I think we talked about the reason why you can not put an office in is because of sewer and water. Or the reason why you can't do some of the other uses is because of utilities, etc. We went through a bunch of them during the last hearing. I think that is the spirit of the dollar and cents financial evidence for when a use variance is presented.

Mr. Marzocchi: That is an easy question to answer. I think that I provided that testimony the last time. The dollars and cents evidence is a goose egg. It's zero. Of all of the uses that are allowed in this property it was my testimony that none would find a home here.

Because of this approval a wall has been created. Picture a 10', 20', 30' wall that has been built right across this property. It blocks all visibility to the lot behind the storage facilities. I asked the Board the rhetorical question: What use would locate there where there is no visibility what so ever from Route 11 which provides access? It would be zero. We have provided proof to you that what is there today does not operate at a reasonable rate of return. However, given the use variance and allowing the applicant to use the remaining portion of the property as it is used today, would provide that reasonable rate of return.

Mrs. Wicks asked if this was in comparison to anyone else, a similar business that has more of the storage units. So instead of an anticipated gain based upon the number of storage units that would be on the property there are actually documented numbers that show that if you only have two units the anticipated profit is this. But if you have six of them all of a sudden your

anticipated profit is this? Or is this just speculation?

Mr. Marzocchi responded those are real numbers. All of those numbers are real numbers from 2008 given the two buildings are operating today.

Mrs. Wicks: In comparison to..? I am trying to get a better understanding. If someone else in a similar situation had these two properties are they also failing given the economy? Is this truly a hardship? Or, is this because of the location and because there is not enough building there for the applicants to generate revenue?

Mr. Marzocchi: Maybe those questions can be answered by the Parks. They can provide testimony that the numbers that you see, real as they are, are not because of outside factors. I would say given the state of the economy structures such as this are doing fairly well. I would not say that they are recession proof, but I would think that they would survive better than other types of businesses in this type of environment.

Chad Parks agreed. As people down size and move out of their homes which they can't afford for whatever reason they seek out storage places as they move to another town or move in with a relative. We are currently sitting at 80% occupancy. We consider 85% to be full occupancy in the storage business because of unit sizes. We have no 10 x 10 storage units or 10 x 20 units. We turned down three people recently for storage units simply because we don't have those sizes. As we create more buildings we are able to be a more viable real storage complex similar to the other one in Cicero by providing all of the sizes that there can be.

Mr. Marzocchi: Chad is it also a fair statement to say that to be a full service, for example if I wanted to look for a storage shed that was 8 x 8 and I know that for the next year or the year after I may need a larger storage compartment, is it reasonable to say that I would want to start out in a place where there are different and various storage sizes so that I don't have to move my items stored in the 8 x 8 unit across town? I could just move to a larger unit on site. Is that a fair statement?

Chad Parks: We are behind the eight ball right now because people come to us saying for example I need to store couches and various items and we only have a 5 x 10 unit. Essentially that is a closet. A 10 x 15 is generally more than the amount of space that they need. It is reasonable to assume that a client would prefer to move down a couple of doors to a larger space than to move across Town.

Mr. Natali asked if there were any other information sheets to be distributed.

Mr. Marzocchi noted we also have our projections for additional units as they come on line.

Mr. Natali: You have the development costs up front, \$380,000. I have no idea what that was. What was the cost of the house when you first bought it?

Chad Parks: The cost of the first mortgage to purchase the property and put up the first building was \$165,000.

Mr. Natali: No, the first house that you bought on the property. That was your initial investment, when you bought the house with your partners. What was the cost of the house?

Chad Parks: I believe it was \$85,000.

Mr. Natali: \$80,000 is on the Town records. You owned it then you passed it onto your father and/or the company?

Richard Parks: I have two sons that are involved in that. My older son and I made the transaction.

Mr. Marzocchi: The records may state \$80,000 but that is not the true cost. You have to figure in the purchasing of the property, legal fees, bank fees, etc.

Mr. Natali: So where is that? It is not here. I don't know what you are going to show me but you are starting way up the line. You have not convinced us that your initial investment is not giving you a return based on the building. Have you ever done a use variance before? Did you give more details than this?

Mr. Marzocchi: Yes and no. You will never find a use variance such as this anywhere.

Mr. Natali: In order for you to justify that you can not make a go of it you will have to start with the first dollar that you spent. Then break it down showing if that produced any kind of return. You have it passing into the partnership at \$1. We need to know what you bought the house for. Before you decided to build the storage buildings did you try to sell the house? This is the process. There are a lot of things that you should have done before you went ahead and tried to

initiate some other type of venture to get a return. How did you know that this was going to give you a return?

Mr. Marzocchi: This applicant did all of the right things. I was here last month. I listened to someone who went and built a pool without even getting permission to do so. I listened to this Board chastise that person for doing that, and rightfully so. We are not looking at that type of a situation here. We are looking at an individual who came to the Town Hall and asked the appropriate people can I build storage on here. If the answer was no, he would have walked away and we would not have the issue before us. But he was told yes. It was referred to the Planning Board. It went through all of the proper channels of attorney, engineering, SOCPA, etc. and was granted. Whether or not he tried to sell the property before hand, tried to look at other alternatives quite frankly when you look at the criteria, I know that this Board is very sensitive to those criteria, when you look at those criteria all of those questions are quite frankly and with all due respect irrelevant. What is relevant is given the situation that we are in today; can the applicant make a go of what is there today? The answer is no. Can he make a go of any other use on that property? The answer is no because of the lack of visibility. If you were to look at all of the uses permitted on that vacant property each and everyone of them needs something that this property can not provide. That is visibility.

Mr. Natali: You talk about it as it is now.

Mr. Marzocchi: But that is where we are. You can't look at it any other way.

Mr. Natali: If we are going to look at granting a use variance for an expansion...

Mr. Marzocchi: Expansion of an existing use.

Mr. Natali: The expansion by itself is going to have to come under the same scrutiny as if it was not there at all. You made a statement earlier that this body has the authority to correct the missteps. If we did we would say tear it down and not give you the use variance.

Mr. Marzocchi: Well you can't do that, you know that.

Mr. Natali: I understand that—the litigation.

Mr. Marzocchi: We all know that can not be done.

Mr. Natali: You have to show us the break down of the \$380,000 so that we can tell if these are realistic numbers.

Mr. Marzocchi: We can break that down for you tonight.

Mr. Natali: Do you have sheets to hand out to us about that?

Chad Parks: I do not have amortization tables from our two bank loans.

Mr. Natali: Start with the cost of the building.

Richard Parks: The cost of the property was \$80,000. That did not include the bank fees that is what we paid for it. Another \$10,000 was for fees to the bank. We had to have someone come in and do a use analysis of the property so we hired an appraiser to see if this was a viable option. The first building plus the house cost us \$160,000 for site work, the services of Hal Romans, engineering studies, DOT studies, drainage studies—the whole bit.

Mr. Rabbia: Are you combining the two storage buildings together or are you just talking about the first one?

Richard Parks: The engineering study was done for two buildings, but we only put one up first. So we have \$160,000 with the land and building #2 is not up yet. The second building cost me \$105,000 through Finger Lakes Construction.

Mr. Natali: During the analysis whether you were going to invest that, didn't you have some projections, ideas about what the going rates were, what the average capacity is...so that it looked like a viable business?

Mr. Marzocchi: Absolutely. But what is important in that analysis is what Mr. Parks went through was for a full buildout. That was his intent from the beginning to fully buildout the site for storage. He was not looking at hitting a home run here with two buildings. He knew that he wouldn't because of economies of scale. Once the rest of the site is built out the economies of scale kick in. The development costs are spread out over more revenue generating square feet. Your operating expenses do not increase dollar per dollar. Maintenance, marketing and leasing are taking place. So, for every additional building a decrease in the proportion of expenses occurs.

Mr. Natali: I thoroughly understand.

Richard Parks: You are saying to me you are 80% full so why do you want two more buildings? We had one building that was 80% full. We decided to do this as a family and built the second building. The second building became 80% full. We don't know why. As you look more like a corporation you have more opportunities to rent to people and they come. Right now we do not have 10 x 20 or 10 x 10 units. We can not offer them. We turn people away who go to Uncle Bob's, Store America, etc. The whole idea is to make this a nice buildout by getting it fenced in, making it look proper, taking the house down and making a proper building out there with climate control. Then we can have something to offer to everybody. We would have a real business.

Mr. Rabbia: How much additional square feet of building will you put up?

Mr. Natali: That information is here. We will need more of a break down on this because we are not accountants. I would have preferred to have seen the break down just as if you were going to sell it. Have you tried to sell it like it is?

Mr. Marzocchi: Again, with all due respect Mr. Chairman, did you try to sell it is not part of the factors for when you look at a use variance. I am not an accountant either but I believe that what is provided to you is competent dollars and cents proof.

Mrs. Wicks: I totally disagree with you and I want you to take this to heart. I appreciate your expertise. I have listened to every word you have said. I totally appreciate where you are coming from in regards to being handed a hard deal with the Planning Board letting me build these two buildings and not being able to develop further. I want you to appreciate that we are trying to do our jobs in following the use variance that is put forth in front of us. I am hoping that you understand that we have these four factors that we need to take into consideration and we are not getting our answers. Please understand.

Mr. Stanton: The reason for doing this is for your protection and well as the Town's protection. The worse thing that could happen is that we could say okay yes, you have been dealt a horrible deal—here you go. A capricious decision on our part could get overturned. Where would everyone be after that?

Mr. Marzocchi: What are the numbers that you are looking for?

Mrs. Wicks: I think that is what Mr. Natali was trying to explain and perhaps was not being presented. But for what I understand, you really have to show what you paid for the property and did you get what you needed out of the original costs of what you put into the property. For example you bought the house. Did you get that \$80,000 +/- back from that original? Then you should move on towards the buildings.

Richard Parks: That is what we are saying.

Mrs. Wicks: But it is not on paper. All I have is this. The next person that comes in for a use variance for something that was unfortunately dealt with outside of this Board, I can say yes we approved that use variance and our proof is in this paper.

Richard Parks: So for step 1 we are trying to say that we are not making any money on the buildings.

Mr. Natali: This does not prove to me that you have not made money on the buildings. Your initial investment was the house. You rented it. You had a massage operation there. You did not buy the building initially with the idea that you were going to put in self-storage, correct?

Richard Parks: Of course. We came to the Town and said can we do this? We would not have bought the property just to rent the house.

Mr. Natali: Then why does it say that 1997 was the first time it was in the family? It was a house, right?

Richard Parks: It was a house on a commercial lot that we intended to use as an investment to build these. That is why we bought it.

Mr. Rabbia: I think that we have the middle step. Where I am stuck is, you talked in depth about for example if someone wants to put an office building in there and how it would not work. I was looking for someone to jot down, maybe you with your expertise, the typical office buildout is this, and we don't have water or sewers. It does not make sense because you do not have traffic sight. Then you would go on to the next use in this zone for example a community center. That does not make sense because the community center would be 500' off the road and no one could see it. I was looking for someone to put what you said last month in words because you articulated it so well. Then we could have it for the record. This is a good middle step.

I believe that the other step that we are missing is put another \$350,000 into this with your square footage—if you figure at \$23 per square foot. Explain to me how you make more money by throwing that money into it.

Mr. Marzocchi: Those costs that you are calculating for construction of those buildings are fixed costs. It is the costs that were spent up front for development from the property.....

Mr. Rabbia: But he still has a cost there.

Mr. Marzocchi: There are certain operation expenses on the sheet that was provided. Those expenses will not increase. There are two buildings on the property now. There are operating expenses. When you put two more buildings on, those operating expenses will not double.

Mr. Rabbia: Yes, but you will continue to have a mortgage, taxes, etc.

Mr. Bach asked if there was an initial business plan that laid this out from day one to the completion of the rest of the buildings with the financing that you had to look at. There had to be a business plan up front indicating up front costs, operating expenses and anticipated revenues.

Richard Parks: To a degree, yes. Are you asking from the beginning to the end for the total buildout?

Mr. Bach: Yes. You indicated that you wanted this full buildout all along and you anticipated it to be what you are projecting right now. The initial building plan must have indicated first building, second building, rate of return and then adding the other buildings anticipating the rates of return from those.

Mr. Marzocchi: For the record, I have provided you with what I think Mark was referring to, the third stage of the numbers, what they will look like when two more buildings are put on, two more after that and then finally at full buildout. What they show at the end of the day is a rate of return on the investment of about 8%. That is a reasonable rate of return, but that is at full buildout. It is achieved by those economies of scale that I referred to before and by spreading out the initial investment over more square footage. Mr. Ventre will be back well before the next meeting although we were hoping to get a decision this evening—a favorable one. Perhaps then he can provide that first part that you were looking for Mr. Rabbia. I can tell you with the certainty of me standing here that the value of that property for any use that is allowed in that

zone is zero because it can not provide what all of those uses need.

As Mr. Ventre stated, this is not your classic use variance. You will never see this, I hope, ever again.

Mr. Natali: In what respect? You are saying that because it is an already existing site and the applicant was given approval?

Mr. Marzocchi: Exactly.

Mr. Natali: We can not look at that. We inherited that. When I look at that in my mind it is not there.

Mr. Marzocchi: You are wrong, I disagree.

Mr. Natali: It's not there. If you came before us what do you think your chances of getting a use variance are? I am saying their initial investment was the house in 1997. Because the family had this investment idea you say at that point you had in mind that you were going to do a mini-storage facility. Then, seven years later, you got approval.

Mr. Marzocchi: Perhaps we should do some legal research on this to make you comfortable because with all due respect, I disagree with your position. You can not, as far as I understand the law, look at this property as if those two buildings do not exist.

Mr. Natali: I am talking about from a pure stand of what the initial investment was. Would they have gone forward?

The Parks responded no.

Mr. Natali: So right now you feel like you would be better off if you never got the approval from the Planning Board?

Mr. Marzocchi: Had Mr. Parks come into the Town and had he been given different information, he could have made a different use of the property, one for the entire use of the property.

More discussion occurred.

Mr. Marzocchi: The fact that the applicants are where they are today is relevant as far as the criterion is concerned. One of the criteria for a use variance is was the hardship self-created. Absolutely not. In an area variance whether or not the hardship was self-created won't make or break the case. In use variances is just as important as the others.

Mr. Natali agreed.

Mr. Marzocchi: So, it is relevant where the applicants are today because it goes directly to that criterion of hardship.

Mr. Rabbia: I am reading the criteria and I am stuck on #1.

More discussion occurred.

Mr. Natali: I want to know what ground zero was. When was the first year you were in business? We are looking at one year, last year. I don't know if you were at 100% capacity prior to that, what your rates are, etc. I am positive that this would match your IRS return, your Schedule C for your LLC. According to the Assessor's Office, the property passed to the LLC. That is who we are granting the use variance to. It was passed to the LLC for a dollar. So with a dollar investment you have the house. You still can not make a return based upon what you did. That is what the record shows the value was.

Mr. Marzocchi: If that is the case Mr. Chairman you should take your criteria for a use variance, you should take the law for a use variance rip it up and throw it in the garbage. You will never ever, ever be able to prove a use variance if you are looking at an investment for a piece of property for a dollar. You make the whole entire use variance application in law totally irrelevant. You might as well scrap the law entirely. But the New York State legislature has not done that. We would like to use real numbers not a dollar.

Mr. Natali: Okay, so we are using the \$80,000. Could you show us for each year that you have been in business a break down, income statements, balance sheets so that we can see what you have done each year, not just last year. Was last year your best year?

Richard Parks: Yes, sure. It was our first full year with two buildings. Both buildings were up and operational. That would be our best case scenario at this point.

Mr. Marzocchi: That would help you; that would be in your best interests.

Mr. Natali: When you look at the backup material that is available I am sure that you realize this periodical: The Short Course For Planning and Zoning Boards in New York State. This is what we have. We know that we have a unique situation here. The mistakes that were made might have been a blessing to you because you have a viable business.

Mr. Marzocchi: This is not a viable business. This is running negative. That is why we are here today. I do not understand how you can say that this is a viable business unless you do not believe the numbers. If it is the format of the numbers that we need to massage or tweak, let's talk about that. But to debate whether or not this is a viable business---I think that it is a forgone conclusion that it is not.

More discussion occurred.

Mr. Bach: Another thing that might make some difference is the number of units that are not generating revenue because someone is no longer paying their fair share. I am sure that some of those units have gone into default, they always do.

Chad Parks: Full occupancy is 85 %.

Richard Parks: That is determined by the New York State Storage Association. They consider 85% to be full.

Mr. Rabbia: Jumping ahead, do you feel that your 8% return is reasonable? Is that steady state?

Richard Parks: We are showing the numbers for 2008. In 2015 our rates should be higher. We should be doing a better job with attendants and climate control.

Chad Parks: Also, when you become a bigger entity you have a better cash flow. We can put that into the security rate and raise our rents \$5-\$10 dollars per month. We can fence it in. We can have someone there part time to catch everyone that comes in. We can provide perks such as trucks.

Mr. Marzocchi: To answer your question Mark, to do a safe development that would generate an 8% return, we would do it all day long.

More discussion occurred.

Mrs. Wicks: Back on April 14, 2004 O'Brien & Gere noted for the impact on water category one small to moderate impact relative to the alteration of drainage patterns on the site. Now you are going to add more buildings. SOCPA also thought that. I think that is something this Board should take into consideration—the displacement of water. I am looking out for life, health, safety and the neighbors.

Chad Parks showed the proposed water drainage/retention locations.

Mr. Marzocchi: If I can be presumptuous, the next step would be to go back to the Planning Board to resolve all of the engineering issues including any impacts on storm water. Those are all legitimate and valid questions that the Planning Board is also asking. They will be reviewed by the Town's engineers and staff. If the go ahead is granted this is not the end of the line for this project.

Mrs. Wicks: Has what we have been given considered competent financial evidence?

Mr. Rabbia: My opinion is we have the middle part and the end part. If Marco writes down his background experience and puts some of what he said last month into words and takes a look at the uses in the district saying why they won't work, we would be closer to competent financial evidence.

Mr. Stanton: I would concur that we have a portion of the competent financial evidence. But I think we are asking that pieces of that be filled out for us. Again, this is for your protection.

Mr. Natali: Would you mind getting some figures from the beginning to give us a better idea of how this \$380,000 breaks down? While you say that no court would allow \$1 to be perceived as the basis for a reasonable return/start it is a reality that the corporation did not have to pay the initial closing...

Richard Parks: The LLC is basically for liability protection. That is the only reason you have an LLC.

Mr. Marzocchi: The members of the LLC have to come out of pocket with \$80,000-85,000. So that value is there. The LLC itself may not have paid that but the members that compose that

Limited Liability Corporation did incur those expenses.

More discussion occurred.

Mr. Stanton: Give us something in writing that we can attach to the back of our form. That would help us a great deal.

Mr. Marzocchi: As far as the numbers are concerned, I do not know how much more detailed we can get. But we will see what we can do.

Richard Parks: Would you like to see where that \$380,000 came from?

Mr. Natali responded yes Sir.

More discussion occurred.

Mr. Marzocchi: We will detail the \$380,000 and detail Mark's concerns about other uses and why they would not be viable. I will talk to Mr. Ventre who I am sure can come up with a narrative.

Mr. Natali: You have almost an \$8,000 fee for accounting.

Chad Parks: That is the time spent weekly for doing all of the accounts receivables and payables for the actual units.

Mr. Marzocchi explained that was on an annual basis. It is for bookkeeping, etc. If you had to hire someone to do that that is what you would probably pay.

Chad Parks: That was 10 hours per week times \$15 per hour.

Mr. Natali: You could expand upon things like that, if that is your going cost. The more material that you can give us, the better it is. We do not want to see any more applicants in here for a use variance for mini-storages up and down Route 11.

If you were on this side of the podium, what would you ask for competent financial evidence?

Mr. Marzocchi responded I would believe these numbers. This Board is a quasi judicial Board. I am an attorney. I am also an officer of the court. These gentlemen are presenting that evidence to a quasi judicial body. Unless there are some legitimate questions regarding these numbers—you can ask all of the questions you want to about them—I would take them for face value.

Mr. Natali: I personally would like to see since you have paid your accountant a substantial fee, some kind of verification of the numbers, unless you want to give us a copy of your LLC return for last year.

Mr. Marzocchi: We will provide these with the verification sworn to by both of these gentlemen under a notary. If I was on that side of the podium that is what I would accept. I think that we understand what the Board is looking for.

Mr. Natali: If you were gracious enough to give us your 2008 return, I would be real happy.

Mr. Marzocchi: That includes other items that I think...

Mr. Natali: Block out whatever you don't want me to see.

Mr. Marzocchi: They are all wrapped into one.

Mr. Natali: I will leave that up to your discretion.

Mr. Rabbia: I am going to let Marco be the competent financial person on the uses and why they can not make a reasonable return.

Mr. Marzocchi: We will provide these numbers and add some details. We will add verification letters and have them signed by a notary.

Mrs. DelGuerico noted that the public hearing was closed at the last meeting. Mr. Natali opened up the public hearing at 8:36 p.m. to allow audience members a chance to speak. When asked if there was anyone here to speak against this there was no response. When asked if there was anyone here to speak for this there was no response. Mr. Natali then closed the public hearing at 8:37 p.m.

Mr. Natali made a motion to defer the discussion until next month to get the items

mentioned. **Mrs. Wicks seconded the motion.** The motion was **approved** with the following vote:

Mr. Rabbia	Yes to the motion
Mrs. Wicks:	Yes to the motion
Mr. Bach:	Yes to the motion
Mr. Stanton:	Yes to the motion
Mr. Natali:	Yes to the motion

Jessica Zambrano asked why close the public hearing if you are going to have another session. Do you have the latitude to open the public hearing next time?

Mr. Natali responded yes. Procedural things are not in cement for the ZBA. They are rarely going to be an excuse to re-hear something. Correct?

Mrs. DelGuerico agreed.

Mr. Natali: We can open that again. We would like to hear more data at the next meeting also.

Mr. Natali made a motion to adjourn the meeting. **Mrs. Wicks 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 8:40 P.M.

Dated: April 20, 2009

Tonia Mosley, Acting Clerk