

**ZONING BOARD OF APPEALS
MONDAY, MAY 19, 2014**

Members Present: Susan Marteney, Scott Kilmer, Mario Campanello, Ed Darrow, Deborah Calarco, Stephanie DeVito

Absent: Matthew Quill

Staff Present: Andy Fusco, Corporation Counsel; Brian Hicks, Code Enforcement

APPLICATIONS APPROVED: 339 State St.

APPLICATIONS FAILED: 23 Perrine St.

APPLICATIONS TABLED: 105 Grant Ave

Ed Darrow: Good evening. Welcome to the City of Auburn Zoning Board of Appeals. I'm Board Chairman Edward Darrow. Please silence all cell phones. Tonight we will be hearing 23 Perrine St., 105 Grant Ave and 339 State St.

First order of business, the minutes of the March session. Are there any additions, corrections or deletions to them? None? Seeing none, hearing none they shall stand approved.

Next item, 23 Perrine St.

23 Perrine St. Area variances to re-establish a junk and auto wrecking yard.

Ed Darrow: Please approach and give us your name, address and tell us what you'd like to do please.

Peter Corning, attorney for the owners of 23 Perrine St.: We've been here several times and I feel I'm getting to know you quite well. I would like to hand out a couple items if I could.

As we've discussed before we're talking about property on 23 Perrine St. which for many years, as near as I can figure out since 1927, was owned by families that utilized it as a junk yard or metal recycling, whatever you want to call it. At one time it was called Auburn Rag and Metal. It continued in business up through 2005, I think when I became used for a different purpose which was not a junk yard or auto recycling business. In the interim between 1927 and 2005 there were certain ordinances passed which affected the utilization of the property making it non-conforming according to the newer ordinances.

Recently a purchaser came forward and wanted to use it as a metal recycling property. My handout kind of shows that it's a unique piece of property, it runs along the railroad. I

think it's probably 165 feet in width and 750 feet in depth. The application was made way back almost a year ago for a variance to use the property as metal recycling and there was five objections filed by the City, three of which had to do with fencing, perimeter fencing. One had to do with an ordinance that said that the use for which it was intended to be used could not be held on that property or any property that was within 500 feet of a non-industrial district. Now applying that particular, which in my opinion is the crux of the matter, applying that particular zoning ordinance to this property it would completely negate it for the use our clients want.

My recollection, I think the minutes will bear me out, indicated that the board granted three of the applications for variances, i.e. the ten foot barrier was eliminated on the east. The ten foot barrier was eliminated on the north which was the far gateway and the ten foot barrier on the railroad property on the west was also granted. We conceded that there should be a barrier from the roadway in, Mr. Horton conceded that there would be a fence 25 feet in from the road on the south side which would be the opening. He also conceded that there would be an opaque fence around the property which would seal it from outside view but would also serve a second purpose, it would be security because as we know metal at this point and time is a valuable commodity and it would only make sense to fence it in and keep it private.

The board, as we know, four positive votes are required to pass a variance. The crux of the application centered on the ordinance requiring it to be 500 feet from a non-industrial district. We obviously can't do that. The board voted three in favor of the ordinance and one against and I'm kind of repeating because there are some newer members and I hope I'm not boring people. There were only four people present on the board, three of them voted for it, one of them voted against. The one voted against in essence cancelled and provided that the variance failed on that issue. Also, which I think is more window dressing than anything else, is the 60 foot buffer for environmental planting inside the fence. Whether that is realistic or not is your call but I don't think it's the crux of this issue. The crux of this issue whether or not the 500 foot barrier will be waived or if it will not be. In the prior meeting back in September it was not.

The matter went to the Supreme Court in Rochester. Mr. Fusco and I appeared, and I don't think I'm putting any words in the court's mouth; courts, frankly, would rather not get involved in local matters if they can stay away from it. I've heard 100 judges say 'I'm not here to second guess a Zoning Board of Appeals' but they are forced to sometimes when circumstances so merit. And I think Judge Ark, who heard this case, followed the rule and basically after we made our arguments, said 'Is there any way that you guys can resolve this without me deciding it? I can do one of three things; I can decide it or I can grant it, I can deny or I can send it back and let you guys work with it'. I think clearly that was the avenue that he favored. Mr. Fusco can either agree or not agree but I think we're pretty much in agreement on that.

So we came back and I explained to my clients what had happened and the discussion at the prior meeting seemed to center around cars, bringing in automobiles and dismantling them. I so informed my client and he wants to get along, everybody wants to

get along and I hate it when there's acrimony as you do I'm sure. So Mr. Horton said 'Listen, I'll take the cars off the table. If we have any cars that we're going to dismantle we will do it indoors.' As I've shown you there, the second picture shows the buildings that are there. Under State law now it is required, as I understand it, you must have a rack such as in your oil changing facility, where you take the car up, take the fluids out of it and so forth. Mr. Horton agreed that if any cars were brought there, and he almost said 'I really don't need them', they would be dismantled indoors. Any dismantling of metal will be done indoors and that hopefully would alleviate the problems that were prevalent at the prior hearing. As a matter of fact, the judge did say 'You know it's too bad you can't get this project out of that designation.' And one of the options that we said was 'We'll put it inside'.

I passed that through Mr. Fusco and Mr. Hicks and asked if that would take us out of the realm of junk yard or auto wrecking and I think Mr. Hicks, properly, ruled that the ordinance is very broad and mentions grounds built or structures. Well, a structures a building so a building in my opinion and his opinion does in fact make it still a junk yard or auto wrecking yard subject to the ordinance but we tried. My point being that we have tried in the Supreme Court. So we brought a new proposal to this board through a new application and I understand that under law, my reading of the law, it's ultimately the board's decision to allow a new application and as I see it the law states if it's a different set of facts that a new application is reasonable and acceptable. So that's the first step, is it a new application? I would hope you'd say it was.

Second is, the last time we were here there were five variances. We passed three of them so I think from my point of view that's the law of the land so three are gone so now we're down to two; one being the 500 foot and the other being the 50 foot buffer for planting. So that's about where we are. I think there may be some disagreement on the law as to the status of the three that you've already passed but our position is of course that it's been passed and it's the law of the land, that's done. Whether we'll ever use it or not is another issue.

The only argument I would make is that this is a unique property, it's unique in a lot of ways; one is the dimensions, two is the use that it can be used for given its history and I would have to say to you that I've been there recently as perhaps you have, and it's not a pretty site. To approve the application I think would better the property. What you would have is a business that would generate money. It would not be outside dismantling, noise, dust or anything else, that would all be done inside. And you would have a fence around it much as like, I assume, you've seen as Skeebo's, on N. Division St. or at Pic-n-Pull. You must admit those properties somewhat attractive with those fences and that's what this would be.

I would hope that you can see your way clear to allow Mr. Horton to run a business that he would intend to do, I don't think there will be a lot of truck traffic, there might be some drop offs that he would take. He has two other facilities. He has indicated he would not dismantle cars there; if he's going to do it, it would be done inside but the main idea is to take automobiles and transport them to one of his other facilities. And frankly they all go

to Rochester or Owego anyway to be put in the shredder. I guess that's about all I have to say.

Andy Fusco: I'll make recommendations regarding the legal issues later. What I'd like to try to nail down right now, Mr. Corning, are the facts. Let's say somebody brings in an automobile to the yard. When it's first dropped off, is the automobile dropped off indoors or outdoors?

Peter Corning: The answer to that question would be it would be the ultimate goal to bring it indoors. Now whether down a ramp, or towed or brought inside, we haven't come to that point. All that is going to take a lot of planning, a lot of engineering. We've invested a certain amount of money in this already without success and I can't say that there are any plans in place for the operation of that. What I'm saying to you and when this board grants a variance they have the right to grant conditions with it and there's nothing wrong with that. We're happy to work with it. As I think we're shown we're willing to go the mile to satisfy Mr. Long and the other neighbors even though we're extremely hopeful it's absolutely of no impediment to the enjoyment of their property.

Andy Fusco: My next factual question; again we'll just stay with cars for the time being. The automobile is brought indoors either immediately or after a period of storage outdoors and as I understand it some of the easily obtainable metals will then be stripped or dismantled indoors. Now, what happens to those metals after they are removed from that automobile, in the business plan.

Peter Corning: They would be accumulated to some degree.

Andy Fusco: Will they be accumulated indoors or outdoors?

Peter Corning: I would suspect they would be in bins outdoors. And when there is sufficient...because is this day and age metal is only worth anything if it's pure, not contaminated. If it's contaminated you can't get any money for it. So you have to separate it then you transport it.

Andy Fusco: Now my next question factually; where on this long and narrow parcel do you or your client plan to put these outdoor storage bins for the items removed?

Peter Corning: That has not been decided however my client indicated that it would be his preference in lieu of what has been said previously, to move it as far as north as possible so that it would least interfere with the easterly people who live on the eastern side of the property.

Andy Fusco: Not the far north is the West Park Ave area?

Peter Corning: Yes. And the widest.

Andy Fusco: So contiguous on the map you've given up it would be closest to the Warden J. Oil Co.? That's where the storage bins would be?

Peter Corning: My client's suggestion was, again, let's keep it as far away from Mr. Long as we can.

Andy Fusco: My next question factually, Mr. Corning, once the metals are removed from the automobile what happens to the automobile?

Peter Corning: The automobile would then be placed on a truck and according to Mr. Horton, he would take it to one of his other facilities temporarily or take it, there's a shredder in Rochester and one in Owego, they take it and put it down a chute in one piece and it comes out in pieces less than one inch big.

Andy Fusco: So would any of the automobiles after they've been dismantled to the extent your client wishes them to be dismantled, be stored for any period of time on this property?

Peter Corning: As you properly said, and I'm guessing here, if you take off whatever, you wouldn't take on piece to Rochester, you'd store the pieces that you had with those which would be similar.

Andy Fusco: I understand that. Once you've taken those easily obtainable parts off the vehicle and before the vehicle goes on the truck to head to Rochester, Owego or wherever, where will that vehicle be stored? On these grounds or not?

Your clients shaking his head. No vehicles will be stored on the grounds? Ok.

Peter Corning: I would say once they come down from the rack they'd be loaded and then they'd be out of there.

Andy Fusco: Okay, next question. When the vehicles come in they may have gas, oil, antifreeze, etc. What do you do with those?

Peter Corning: That is all State controlled. You have to take out all fluids, that's why they required you to put them up on a rack. The fluids are extracted from the vehicles and disposed of according to State regulations.

Andy Fusco: And what is that disposal process? Are they stored in a tank and where are those tanks going to be located; indoors or outdoors? All inside.

Ed Darrow: Sir, if you're going to be responding to questions I need you to approach, give your name for the record and I need to have your testimony as a matter of record.

Delbert Horton, Jordan, NY: I'll clarify this. I agreed that I would take the cars...people are going to sell cars, we can't prevent that, but I have another facility that's all set up, we

can just load the cars when they bring them in and take them to the other facility. The drain set up is already there. We handle the cars there. I'd say the fact cars ever get taken apart here are very slim because I already have it set up in another facility that's only ten miles away.

Andy Fusco: So now you're saying you're not going to do cars?

Delbert Horton: We'll buy the cars but we're not going to dismantle them here.

Andy Fusco: Okay, so there will be no dismantling of automobiles on this property?

Delbert Horton: People bring them in and drop them off. We're going to load them, take them to the other facility. I'm not going to the expense of building all that stuff here again.

Andy Fusco: Okay. When I bring in my no good automobile anymore and you give me X number of dollars, where does it go then, indoors or outdoors?

Delbert Horton: It will be loaded and go to the other facility.

Andy Fusco: Okay. How many haulers do you have? What is I bring two (vehicles) and you only have one truck? Where's the other vehicle go?

Delbert Horton: It will sit there until the truck comes back.

Andy Fusco: Indoors or outdoors?

Delbert Horton: Outdoors.

Andy Fusco: Okay. Now my next question factually. Let's say I bring an old lamp that I have that has nice metal but doesn't work anymore, you'll accept that for scrap?

Delbert Horton: Depends on what it's made out of.

Andy Fusco: What's an attractive metal?

Delbert Horton: Brass.

Andy Fusco: Brass. You'll accept that? So you'll give me x number of dollars for my lamp that I don't want anymore?

Delbert Horton: Right.

Andy Fusco: Where will you then put that lamp?

Delbert Horton: It will go inside. All your non-ferrous metals are pretty high dollar in value. Copper is 2 dollars and something a pound. Clean brass is \$1.80 a pound. It's not something you're going to leave out for anyone to get a hold of.

Andy Fusco: Now, there appears to be three pre-existing buildings on the property. One is the brick building that's nearest to the street, what will go on in that one?

Delbert Horton: That's where, if you've been there before, that's where the non-ferrous processing was.

Andy Fusco: What are you going to do?

Delbert Horton: We'll do it there also.

Andy Fusco: And then there's another, nearest to the two houses on Perrine St. there's a type of Morton or butler type of garage building. Are you going to use that?

Delbert Horton: Maintenance facility.

Andy Fusco: Maintenance of what?

Delbert Horton: The trucks that we have.

Andy Fusco: All the scrapping will take place in the large brick building and your maintenance in the butler or Morton type garage building?

Delbert Horton: All the non-ferrous scrapping will go on in the brick building.

Andy Fusco: Where does the other scrapping take place?

Delbert Horton: That'll be piled in the yard. We're going to set up a concrete bunker like system so that it can, if it rains or if there's anything on it so it won't leach in the ground.

Andy Fusco: So that will be done outdoors?

Delbert Horton: That'll be done outdoors.

Andy Fusco: For the benefit of the record, I'm not familiar with what you mean by a bunker system, could you describe how that works?

Delbert Horton: Most people would have seen them if you've ever been to a dairy farm, you'll have seen them there. Like your greenhouse supply places where you buy mulch and color stone, they have concrete bunkers with everything divided up so everything is separated nice and neat. It's kept there. We call them commodity bins but I don't know what the technical term is.

Andy Fusco: Are those the things that are going to be located up here closer to West Park Ave.?

Delbert Horton: No, they would be down right, run parallel with the fence behind the shop.

Andy Fusco: These concrete bunkers you just referred to will be next to what's referred to as the Calandro property on this survey?

Delbert Horton: Right. We decided to do that so it won't interfere with Mr. Long, he won't be seeing them when he looks out his window.

Andy Fusco: I just want the facts to be clear this time because I'm not certain they were the last time although Ms. Calarco asked a lot of questions that made it clearer than it had been the last time. Behind the maintenance garage is where you intend to put the concrete bunkers?

Delbert Horton: Yes.

Andy Fusco: And how many concrete bunkers will there be?

Delbert Horton: Probably four to five.

Andy Fusco: What will be the approximate dimension of these four or five bunkers?

Delbert Horton: Approximately 100 cubic yards apiece.

Andy Fusco: Will they be on the east side of the property nearest Calandro, in other words right behind the maintenance shed?

Delbert Horton: Closest to the fence, closest to the tree line.

Andy Fusco: So that is the concrete bunkers are being placed behind the maintenance shed what is going on up at the W. Park Ave wide section, if you will, that Mr. Corning was talking about.

Delbert Horton: At this time nothing. It's a gate, an entrance. There'll be a pass through entrance to Park St., that's basically it.

Andy Fusco: Will there be containers of some type up there? What will go on up there?

Delbert Horton: Maybe parking.

Andy Fusco: Of what, employees?

Delbert Horton: Employee parking.

Andy Fusco: And lastly there's one small building pre-existing, kind of near the railroad tracks.

Delbert Horton: It's not a building.

Andy Fusco: It's not a building? What is it?

Delbert Horton: That was the machine that Alan Aaroneck had, it was a processor.

Andy Fusco: A what?

Delbert Horton: It was a processor?

Andy Fusco: Is that going to stay?

Delbert Horton: No, that's going to be the first thing to go.

Andy Fusco: I don't have any more questions. If you all have any other factual questions please add them.

Ed Darrow: Board members, do you have any questions?

Susan Marteney: I guess my only question is this definitely a new application?

Ed Darrow: Yes. There's no doubt in that, I feel the circumstances have changed dramatically which is one of the requirements to come back before the board.

Susan Marteney: It was just a question I wanted to make sure.

Deborah Calarco: Can you describe the type of fencing you'll be installing?

Peter Corning: The ones I've seen are pretty much consistent with eight foot...

Delbert Horton: I personally like the stained wood fence. It kind of fits in with the greenery. That's my preference.

Ed Darrow: Sir, what are your hours of operation going to be?

Delbert Horton: Standard operation of the city is seven to seven. I'd like to do seven to five during the week and seven to twelve on Saturday.

Ed Darrow: Closed Sundays?

Delbert Horton: Yeah, closed on Sunday.

Ed Darrow: Are you going to be needing any outdoor lighting in the back area?

Delbert Horton: I think we'd probably light it for security reasons.

Ed Darrow: Just security lighting but not as far as like what you would see in, say, Wegman's parking lot but just enough people would be picked up on security cameras?

Delbert Horton: Right.

Scott Kilmer: Mr. Corning, from what you were saying, it seems like the majority of the business operation is going to be way toward Perrine St. and toward W. Park there's not much going to happen there at all.

You referred to some bins that were going to be stored up there. That's off the table now because the dismantling isn't going to occur there?

Delbert Horton: Right. I'm trying to do this to appease everybody else. We need to have someplace for employee parking anyway so we'll just use that portion there for employee parking and cars are only so high so it shouldn't detract.

Scott Kilmer: Just trying to make sure as it was previously mentioned there were going to be bins up there.

Peter Corning: We first came back from Rochester we were trying to focus on a plan that would be most acceptable and least objectionable and that I think we have discussed at that time keeping what we could toward the north which is the gate at Park St. But he's told you what he has in mind and he's the one that's doing it.

Ed Darrow: Do you have a contingency plan, say you do have a brisk day, five, six, seven automobiles come in that you purchase that day. You're having trouble keeping up with shuttling them to the other facility even though it's only twelve miles away, in your business plan or lot plan, do you have an area set aside where you plan on just keeping them for the day until you do shuttle them out of there or isn't that something you've thought that far ahead of yet?

Delbert Horton: There's a lot where the bins are going to be, there's a lot of extra space there. If I lay this out right there's tons of area there. We want to keep my concrete, it's not an issue with the ground contamination so there is probably going to be concrete pad all the way across there. If there's extra that's probably where we'll put them until the trucks come back.

Ed Darrow: Then it tends to be more the incentive for getting them out of there on a daily basis, is keeping the concrete area open for the receiving of other vehicles.

Delbert Horton: Yes.

Ed Darrow: Okay, thank you. Yes, please?

Stephanie DeVito: That was one of my questions. So you're not going to have like a set quantity per day that you accept or so many per week? So what happens in a day's time when you get 20 people who possibly show up? Are you going to turn them away or are you going to take them all in? What are you going to do with them, and then you have 20 that come the next day and all of a sudden you have a huge pile of cars.

Delbert Horton: Well I'm trucking them twelve miles away.

Stephanie DeVito: But if you don't have a huge facility you can maybe transport two at a time. Are you going to keep going back and forth all day?

Delbert Horton: They're not all going to come in the same hour, eight hours a day.

Stephanie DeVito: You would hope not, it's speculating what if you had ten cars in one day?

Delbert Horton: I hope we do have ten cars in one day. So that's five trips for one truck.

Stephanie DeVito: I just want to make sure there not going to be piled and all of a sudden it is going to become an auto junk yard.

Delbert Horton: No.

Ed Darrow: Sir, I'm sure that if you have other facilities you have more than one vehicle and one trailer for shuttling?

Delbert Horton: Yes.

Ed Darrow: All right. Any other questions from board members?

Peter Corning: In the matter of a course of a day at your other facilities how many cars do you take in?

Delbert Horton: We don't take any in.

Ed Darrow: Any other questions from any other board members? Gentlemen, you may be seated but we reserve the right to recall you.

Peter Corning: There is one other objection and that is the 60 foot environmental buffer. I say two things to that, we're asking for a variance on that also. One, if there's a fence, really it serves no purpose because nobody will see it anyway. Number two, if you moved 60 feet from the east and 60 feet from the west that's 120 feet, we've only got 167 feet to start with so you're asking him to conduct his business in a 40 foot space. I don't think that's really the issue, I think the lynch pin to this is the question of the 500 foot buffer from any non-industrial district. Thank you.

Ed Darrow: Thank you Counselor.

Susan Marteney: I do have one more question on the legal aspect of the motions we approved the first time through. Are they standing or are they not standing?

Andy Fusco: I'm going to, maybe we can cover these right now, I was going to wait until after we'd heard from Mr. Chatfield, we've all received a letter from him last month that raises a couple of these issues. It's going to be, and I'll get to that, I'll make four recommendations of law right now. It's going to be my recommendation that you see this not as a re-hearing but as a new application and the difference between those two devices is that were you seeing it as a re-hearing of a matter that you already discussed, or decided I should say, it would take a unanimous vote, all six people would have to agree to the re-hearing. Whether that could or couldn't happen, I don't know, I've not polled any of you.

In my opinion, factually, the facts as presented to us now, that is no automobiles being dismantled on the property and the dismantling taking place indoors, are factually different than what we heard the last time hence this is a new application not a re-hearing of the old application. Number two, because this is a new application all five variances have to be granted. Because you granted three of the five the last time is of no matter in this particular case. My recommendation is that we will have a vote on all five of the variances sought. Whether you want to consider the fact that three of them were approved last time or not is something you could consider but we're still going to have to have five separate votes on the five variances requested.

Thirdly, Mr. Chatfield has articulated in his letter to us that something of a fairness argument; the fact that the old application has not been dealt with yet because Judge Ark has reserved decision and it still sits there in Rochester and now Mr. Horton and Mr. Corning are coming before us with a new application, he kind of gets two bites at the apple. I'll be the first to agree that that is out of the ordinary and that usually would be the way this would go is that we would ask that the first application be withdraws before proceeding to the second application. However, the reason we're doing it this way is because Judge Ark asked us to. What Mr. Corning just said about what went on in oral arguments and Judge Ark saying 'I really don't want to decide this, can't you go back and see if you can work something out?'. That's and accurate reflection of exactly what happened when we went up there. It's basically the position that Judge Ark took.

So while I would agree with Mr. Chatfield that this is out of the ordinary to be considering a new application before the old one has been dispensed with one way or the other, while that's very, very unusual, that is what Judge Ark seems to want us to do and Mr. Chatfield and his clients don't like the direct that Judge Ark gave us he can raise that issue at the proper time.

Lastly, point number four, the fact that I agree with Mr. Corning that Judge Ark did urge Mr. Horton and Mr. Corning to tweak their application and come back before us with a

new plan that may or may not be acceptable to the neighbors and urged us to hear the matter when it came back before us, should not be interpreted either way by any of you as Judge Ark is telling us that he wants you to vote in favor or in disfavor of this tonight. That's not what he ordered. Don't feel that you're compelled by the court in Rochester to vote one way or the other in this case, either for or against. That's not the kind of order or flavor of the recommendation that Judge Ark had. Don't see the fact that it's now back before us as some type of tealeaf indication that Judge Ark wants us to do something that will please him. That's not what this was all about. It would please him to not have to decide this case as Mr. Corning has said, I think that's accurate. But by the same token Judge Ark did say 'If I've got to decide it, I'll decide it'.

So those are the four points of law that I'm recommending you follow in this matter and that answers your questions and a couple of the unanswered questions that Judge Corning raised and certainly, I dare say, some of the things Mr. Chatfield says.

Ed Darrow: Is there anyone present wishing to speak for or against this application?

Sir, if you could please give your name and address for the record?

Scott Chatfield, land use planning and zoning attorney appearing tonight on behalf of Mr. and Mrs. Long. As Mr. Fusco indicated I had communicated in writing, and I apologize, I was unable to attend your last proceeding due to a previous conflict. I have a number of issues, number of questions, let me pick up, if I can, where Mr. Fusco left off.

First I respectfully disagree. What makes a new application a new application is not the amenities that the individual poses to do or the manner in which he proposes to do whatever it is they're proposing to do. The jurisdiction of the zoning board of appeals is based on a determination of the Code Enforcement Officer. The determination of the Code Enforcement Officer in this instance was that this particular use on this particular property was not a permissible one. Nothing about this application has changed the classification of the use which is being proposed on this site. The use is still, and if I'm misstating the Code Enforcement officer's position I hope he will speak right up and correct me, the use which is being proposed, while it may have changed from his original manner of operation, is still a use subject to the heavy industrial provisions on the city code. In order for an application to be a different application there must be something in the relief being sought that is different, not the facts of how the use would operate if in fact it was permissible at all. In other words I'm an application that includes four or five variance requests. I'm going to go to 35 feet in a zone that only allows me 25 feet. The Code Enforcement officer rejects it. If I modify my application from 35 feet down to 26 feet that's a difference in the application or the relief I am seeking. If I simply change the location of the windows or paint the house a different color or move my parking lot from the front to the rear, that's not a change in the relief being requested.

And it's the relief being requested that drives the nature of the application and which in fact, in my humble opinion, determines whether or not an application is substantially different from the one previously decided. Why is that important? The provisions for re-

hearing were very artfully crafted and the reasons for the provisions for re-hearing, being a little more onerous as your counselor pointed out requiring indeed a unanimous determination, is so that one, as this board knows on any given night certain number of members may be present and others not, and this is the way of the world, but what the legislative body of the state New York doesn't want to happen is for one configuration of board members constituting a majority to second guess the decision of another configuration of another board on the same issue, on the same relief being requested and the relief being requested in this instance has not changed, it is identical.

As Judge Corning pointed out, the fundamental issue here is the 500 foot provision in the code. That hasn't changed a bit. He's still requiring relief from the 500 foot provision. If they were modifying it, that certainly couldn't be modified, but others may have been or may not have been, but they weren't. I didn't hear anything that the relief being requested, that is to say, the overruling of the Code Enforcement officers decisions and the basis for that decision has not changed a bit, The only things being offered are the kinds of things this board could, in an appropriate case deal with by the way of the imposition of conditions.

As this board knows, if you were to grant an appropriately issued variance, you could do so on the condition that there be no fill in the blank. Those are all managed operation conditions, means by which the use would be carried out but they don't alter the fundamental relief being requested which is the thing that establishes the jurisdiction of the board. So we respectfully disagree and as you know in a small town one lawyer will starve to death but two lawyers will make a good living. The mere fact that lawyers disagree is not to be surprised. I think personally my arguments are better and that this issue is a re-hearing of a previously determined matter. Now that in and of itself raises a very interesting question. The statutes were not so long ago revised. There used to be an issue of what happens if you fail to obtain a majority one way or the other. Which is what in fact happened here the first time around. That was resolved by statutory amendment to say that within 62 days after the close of the hearing if by majority vote the board has not affirmatively over ruled the Code Enforcement officer's determination then that determination by default upheld or stated another way the application is by default denied. That's what happened here.

So there is this question, and I alluded to it in my written documents to you, re-hearing is an interesting issue. Whether re-hearing rules apply when in fact you haven't made a determination. When the determination is made by way of default. And I'm explaining this question to you, I don't frankly know the answer. I recognize it as an issue. But I can't find any case law on it and I've looked and looked and looked. Maybe Andy has found some I haven't found but I can't find out what the rules on re-hearing are when there is a default denial by operation of statute. I say that because I always try to be as absolutely factual and candid as I can where the issues are relatively clear.

That brings me to the next point. I listened carefully as Judge Corning was making his presentation talking about the history of this property and his acknowledgement that what we're dealing with here is a non-conforming use. Well, that's frankly my position and it's

an important one. There's a substantial difference, as I'm sure every member of this board knows, between the appropriate standards for an area variance versus the appropriate standards for a use variance. I agree with Judge Corning that the particular issue which is the 800 pound elephant in the room is the 500 foot provision in your code. In order to analyze whether relief from that provision requires an area variance or a use variance one needs to actually look at the function of the provision that we're dealing with.

As we all know since 1927 the courts have been consistent in requiring that in a municipality the permissible uses, when Euclidian zoning, which is what we have here, is utilized and districts are created the uses within that district must be uniform. So if you create a commercial zone for the city and you stick one commercial zone on the east side of the city and another one on the west side of the city the allowable uses in both of those commercial zones must be identical. The court says you can't do it differently. You can create different zones but the uses must be uniform. And that was the case until the mid-60s.

In the mid-60s the concept of special use permits evolved. The concept of special use permits dealt with this fundamental requirement that the uses be uniform throughout any zoning district. And the reason was frankly the courts recognized that while you may have a commercial zone on the east side and one on the west side and both of them allow, let's say gas stations, it may very well be that the commercial parcel on the east side would be inappropriate for a gas station whereas the parcel on the west side might be utterly appropriate. So how to make that differentiation, how to make that distinction. Well the concept of special use permits evolved to address that issue. The concept is very simply stated and is summarized now in the current statutes. It says that a specially permitted use is a use which is permissible only if the standard specified in the statute are met. Let me repeat that; the use is a permissible use only if the standard set forth in the statute are met. In other words, when looking at whether or not a particular use is permissible on a particular parcel, you don't just stop at the zoning designation and say, 'well, it's industrial, therefore heavy industrial uses are permissible.' You would if you didn't have a special permit provision but you do have a special permit provision and that special permit provision says that heavy industrial uses, while they might be okay somewhere in industrial zones, they're only okay on those lots within the industrial zones in the city, which lots are located 500 feet or more away from non-industrial zoned property. In other words, it creates a limitation or a sub-set, if you will, of land within the industrial zone where heavy uses are permissible but it also by definition creates another portion of the industrial zone in which heavy industrial uses are prohibited. Because they cannot meet the condition of the code, the 500 foot. In other words the use does not become permissible itself, it doesn't relate to the lot it relates to the use.

Now this parcel can be used for a lot of different uses. Go through your industrial zone, you'll see there's a lot of uses that do not fit the description of heavy industrial uses. This parcel can be used for those uses because for those uses there is no 500 foot requirement. It's only those uses singled out by the legislative body as needing to be 500 feet away from non-industrially zoned property that bear that burden. Accordingly what we're talking about is not a geometric restriction like height, it is a use provision, you either

meet it or you don't meet it. It would be like if the city code, for instance if the city code provided that industrial uses were only allowed on five acre minimum sites and somebody came in with a four acre minimum site, could you grant a use variance to allow minimum use? If that was part of the definition of permissible uses of the code the answer is you could not because you cannot act legislatively. You cannot change the law, you can only grant relief when appropriate proof is presented to you. That's your job, like you've heard at the classrooms, heard that little gizmo on the top of the pressure cooker, rocks back and forth to let off relief? Well, I listened attentively to the presentation, I didn't hear dollar one. I didn't hear a single mention of lack of reasonable return. I did hear some arguments about uniqueness.

Andy Fusco: Mr. Chatfield, let me say one thing so that we get this done tonight. If you start arguing all the standards of use variances, which my board knows the difference between the two, a) we're going to be here all night and b) it really is moot. Your argument that really this is a use variance case and not an area variance case has been well articulated however what has brought this matter to us jurisdictionally is a referral by our code officer that all five of the forms of relief asked are in the nature of an area variance and so...

Scott Chatfield: The code enforcement officer did not say that.

Andy Fusco: Yes, he did. Part three of his referral.

Scott Chatfield: Well then we are going to cross appeal that issue to the extent that you believe that's a jurisdictional issue because quite frankly it is not. The code enforcement officer cannot change the state law nor the conclusions are reached by the court of appeals. I take some umbrage at your attempt to cut off my case on behalf of my applicant...

Andy Fusco: No, I understand your point and you'll get ample opportunity to raise that on Article 78 that this is fact a use variance case but I'm going to advise my clients that this is an area variance case, the 500 foot, all five of the forms of relief requested are areas variances and if the courts disagrees with me and agrees with you we'll cross that bridge.

Scott Chatfield: Then we'll simply have wasted a lot of the taxpayers' time and money. Let us assume for the sake of discussion, while I disagree with it vehemently, that the particular 500 foot requirement is variable by an area variance, you all are very aware of the six required standards for an area variance. I didn't hear evidence one about any of those issues this evening. I didn't hear a case in chief at all. The only attempt to establish a case in chief was done by your counsel. He asked some questions to try to establish parameters. But I didn't hear any evidence offered by the applicant. As you are well aware it is the applicant's burden to carry the standards and the board's obligation is to listen to the evidence presented and based on that evidence and that evidence alone reach a conclusion as to whether the applicant carried that burden using the criteria set forth in section 81 of the general city's law. I didn't hear any of that. I don't know, I presume, that an environmental assessment form was submitted. I don't know whether the board has

addressed any of the environmental issues associated with the site. I am aware of the fact that there is significant anecdotal information that suggests that this site is contaminated as a minimum and perhaps even contaminated to the point that it would be, if looked at, placed on a hazardous list. Maybe the board has already hear all that evidence, maybe they haven't, I don't know.

Ed Darrow: For an area variance a SEQR review isn't required by us.

Scott Chatfield: Well, your honor, Mr. Chairman, one of the requirements for an area variance standard is that you look at whether there would be or whether there would not be substantial environmental effects having to do with the proposed use. I'm assuming you're referring to you having your own type 2 list that was adopted by the city? Because the state type 2 list does not exempt all area variances. It exempts certain residential area variances but it does not eliminate all area variances from the unlisted classification. You're welcome to receive advice from your counsel but I submit to you that without addressing the environmental issues associated with this application and this proposed use, be it allowed by an area variance or a use variance, you are not addressing the standards, either of the area variance or, in my humble opinion, the NYS environmental quality review law. I would point out one other matter to you. I'll commend you, although I cannot give you the exact citation, when I heard the earlier presentation about the shredder it put me in mind of a case called Demosco Steel and Scrap Iron vs. Burke. This was a case that was an interpretation case not un-similar to this one. In the Demosco case there was an existing steel and scrap iron metalling facility. There were no provision in the case that specifically made a distinction between those scrap iron facilities that utilized shredders and those facilities that did not shredders. The applicant who had an existing non-conforming business sought to establish a shredder. The court of appeals, when wrestling with the question of whether shredders were permissible as part this admittedly, and this was not even specially permitted use, this was a use as of right, whether shredders changed the nature of the use. The court said it may very well be that these heavy machines, noisy as they are and so on and so forth, were not within the framework or the thinking of the legislative body. However, in the absence of a specific prohibition, the city in that instance was prohibited from saying they could not have such a shredder. I submit to you that should you grant what is in essence a use variance case by way of an area variance, in the absence of a provision in your statute that makes a distinction between those heavy industrial uses to its scarp iron yards that have shredders and those that do not, the applicant will be able to put in a shredder and you will not be able to do anything about it. And my clients and the others in the area will suffer. That's a big part of the concerns here. If we were talking about depriving the applicant of all use of the property there might be a different argument but we're not. This property can in fact be used for any number of uses without having to get the 500 foot relief that Mr. Fusco says is an area variance. There's all kinds of uses.

Andy Fusco: There's 37 of them listed.

Scott Chatfield: Thank you. I didn't do the counting but I know there's a lot of them. Have we gone through each and every one of those uses to determine whether or not a

reasonable return or even, if you prefer the area variance standards, the benefit to the applicant versus the detriment to the municipality? That requires a weighing and an exploration of the availability of those uses. Are we granting relief here for no necessary reason? The applicant wishes this use but that doesn't mean he's entitled to this use when there are other uses out there and available. And that I think is the essence of the arguments. I'd be happy to answer any questions is the board has any.

Ed Darrow: Any questions from board members?

Scott Chatfield: I thank you for your courtesy and your time.

Ed Darrow: Thank you for your testimony Counselor. We're going to be in recess for five minutes.

Ed Darrow: Okay, we're about to reconvene. At this moment I'd like to let you know that it is the policy of this board not to limit the time of any attorney representing the applicant or someone objecting to it nor is it the policy to limit the time of the applicant themselves to speak. But now, anyone speaking for or against the application will be limited to three minutes. So at this time I will entertain for anybody else wishing to speak for or against this application. Please show your hand. Please come forward, ma'am, give your name and address for the record.

Sunny Dow: We have owned a piece of property at 161 North St. for about a year now. We are going to be permanently living there in June of 2014. We hope to start a B & B at this residence. We have put a lot of work and a lot of money into it already and I feel that the hours that they're proposing for this business would be detrimental to our business. Also the noise pollution in that area is already horrendous and I feel that would add to it. I just want to say I'm against it, thank you.

Ed Darrow: I have one question. If the noise in the area is horrendous already why did you buy the property?

Sunny Dow: I did not know it until we got there.

Ed Darrow: Understood.

Sunny Dow: And we tried to sleep through the trucks going through early in the morning. We're just hoping that we can deal with it by adding insulation to the house. I just feel that this is going to add to the detriment of our business.

Ed Darrow: Is there anybody else wishing to speak for or against? Mr. Long, please come forward. Please give your name and address for the record.

Michael Long, 149 North St.: As the new board members, maybe I'll give you a little more background and history but 23 Perrine St. was discussed last year. I worked for the City of Auburn for about 28 years. I worked in the Planning and Economic Development Office.

I was involved with the comprehensive plan of 1992 as well as the zoning ordinance of 1994 which is the crux of the matter here. This issues that deal with the buffering and site plan reviews were all part of the plans that were developed as part of that. There certainly were community wide discussion groups about it. My background, I'm also a professional planner as well as a landscape architect and also a city manager. I currently work in Oneonta, NY.

Now as you can see from the letter I'll just try to summarize some of the things I put in that. The property at 23 Perrine St. certainly was a scrap yard for many years. The Office of Planning and Economic Development helped in 1998, they built a new facility in the town of Sennett. The city also assisted with some tax benefits and other things as well through the Empire Zone to try to subsidize that business and move them out of that specific area. It's been well document that it's been empty. If it's not being used then for six months then at that point you do not have the grandfather juice and I think everyone agrees with that.

The other thing that I think we have to be aware of, and I agree with our attorney Mr. Chatfield, the 500 foot is really a use issue, it's not an area issue. There's certainly several uses that can happen within that zone. This specific use that's proposed is eliminated from that particular area but there are a lot of other industrial areas that that would be an acceptable use. I won't go through all the specifics I've outlined here as to the different sections about the minimum widths, it does not meet those. It was a pre-existing, non-conforming use so it cannot meet those requirements.

We also get into some of the other issues about the specific things in section 305-53, Regulations Applicable to all Industrial Districts; please refer to the minimum conditions of permit issuance for performance standards for 1) vibration; 2) dust and particulates; 5) odor; 6) toxic matter; 7) detonable materials; 8) fire hazard solids and 9) fire hazard liquid and gases and 11) noises. Noises is probably the thing that will affect the neighbors the most. I was in contact with the DEC and have filed a FOIL request to get their information as to what things have happened on that site. They informed me there has never been a permit to dismantle cars on that site. So if it happened in the past it was done illegally. There was also a spill on that site at one time and I have not received the documentation on that as yet. I will go to Syracuse and get the specific information for that.

I think one of the things that was apparent last summer when this was discussed, why weren't the neighbors aware? Why didn't anybody come and complain? Why didn't somebody say anything? I asked for copies from the office here from Corporation Counsel as to who was notified and there were really very few parties. I was notified, an adjacent owner, the Calandros, were notified as well as the cement company. I then walked the neighborhood to try to find out, 'Did you get the notice from July?', 'Did you get the notice from August?', 'Did you get a notice from this last month?'. And to tell you the truth nobody received any notice from the city. And if you open up your packets with the sheet, this is the map that shows the 500 foot boundary. So what I did was I walked the street when I could, I didn't hit every specific house or property and was noted before within

commercial zone, the C5 zone, all of the check marks are the people that signed the petition against this particular application.

Again, it's the same application that was submitted last time and I really don't understand why it's being considered again. But these are the specific house numbers that I put on the map as well as all of the specific check marks so you can see people on North St. were against this, people on Perrine St. were against this, people on Rock Ave are against this and I also found a person up on Pulaski that was against this. Now, I have 30 signatures on this form that's attached and I think that will give you an indication that the neighbors really don't want to see this type of use in this neighborhood. And again, we have some other neighbors that I think are very concerned about this. We have young children in the neighborhood. The truck traffic and noise of that nature is certainly not conducive to the renovations and restorations and as many of you know my wife and I have invested restoring our house on North St. than what he's going to spend on this new enterprise. There's a lot of involvement in that neighborhood. These other copies are restoring their houses as well, both of them. I think what we're trying to do, and when the zoning ordinance was adopted in 1993 and 4...

Ed Darrow: Mr. Long please wrap things up, your time is expired.

Michael Long: Almost. The intent was to stabilize our neighborhoods. To move the economic stuff out in Sennett where it had space but to stabilize our neighborhoods and do that kind of thing. I certainly agree with everything our attorney said. I don't understand why this is being discussed again, it's the same exact application for the same five variances.

Ed Darrow: Mr. Long, thank you.

Michael Long: Thank you.

Ed Darrow: Is there anyone else wishing to speak for or against this application? Sir? Please come forward. Give your name and your address for the record.

Harry Dow, 161 North St.: I have the good fortune of being married to Sunny Dow whom you've already heard. And thank you for time to address you tonight. And I'm grateful for the education I've gotten tonight from counsel, from attorneys, I learned a lot. I'm really concerned about the 500 foot issue. In my mind that's a deal breaker but all of that aside, let me give some perhaps anecdotal perspective. Sunny and I purchased 161 North St. a year ago this month with the intention of residing there when I retire which is next month and turning the property into a bed and breakfast. We love old Victorian homes which is what attracted us to that area and North St. in particular. We feel that this house at 161 is well worth restoring and we're looking forward to it as our retirement home. I mentioned we plan to do a bed and breakfast. It's called The White Swan. We've already registered with Cayuga County to do business here. We're hopeful that several hundred guests will stay at The White Swan over the next few years. Many of them we expect will be first time visitors to Auburn. We'd like them to enjoy themselves, we'd like them to spend their

vacation money in Auburn businesses and we'd like to make a good impression on them, we'd like to have them come back. We've noticed that several of the properties along North St. have been and are well cared for. Many of them are being restored and reclaimed. We'd like for The White Swan to help in these recovery efforts. Sunny and I have been planning to put all of our eggs, proverbially speaking, in this basket, and we've done so. We hope to make this business an asset to the community and we hope to join our efforts with those that are trying to reclaim parts of the city and make it beautiful. We respectfully and sincerely ask that the Zoning Board deny any and all requests for variances or exceptions or usage changes of any kind that will support any business that will cause hardship for other businesses and/or residences in the near proximity. It is our opinion that the business under questions will served to decrease our property values. It will introduce a variety of pollutants into the environment ranging from site to sound and air quality. We believe it will handicap the likelihood of our success as a business and rather than promoting and encouraging recovery will, on the other hand, lend itself to further decline in the general area. So please say no and thank you for listening.

Ed Darrow: Thank you sir. Is there anyone else present wishing to speak for or against please come forward. Please give your name and address for the record.

Connie York, 139 North St.: My husband Donald and my three children, eight and twin five year olds, reside there. For the last nine years I have been an owner occupied house there on North St. We've owned the house for 15 years. They've given plenty of good reasons why, of course, we don't want this in our back yard and we were not, also, notified of this until the neighbor came to us and told us about it. I'm just a face behind why that special permit is there and why the industrial thing is happening next to a residence. I am the resident. I am a stay at home mom. I homeschool my three children. It's very important to me that I have a safe place in and around my property for my children and if we want to homeschool inside or outside I shouldn't have to worry about noise pollution or air pollution or those sorts of things. And I see a lot of the neighborhood growing. There are a lot of tenants around as well as owner occupied. But the children in the neighborhood come and go but we are there to stay. And we also have been improving our property and have put well over 60 thousand dollars into it since we've been there and continue to work on it. There are a number of things that I could address in regards to whether you approve this variance or not, in regards to them actually operating to wanting to make sure that nothing is visible from Perrine St. in regards to wreckage or cars, that fencing be put all around it. I know there is a discussion about no need for plantings because the neighboring properties have plants already and trees but I would argue that these homeowners have the right at any time to remove those trees, therefore removing potential noise barriers. I definitely feel like that would still be something that the business should be responsible for. Planting trees which also if that is something that needed to be done by you guys, seedlings could feel and it takes 20 years to mature plants. So just another thought in regards to that. Also, in regards, I know that, I think things have changed in regards to what they're going to dismantle in and out and whether they're not going to dismantle cars, I don't know, it all sounds confusing, sounds like they've changed their minds here a couple of times so I don't know what is up and down but environmental

concerns, whether you're in or you're out are a priority for the entire city. In regards to storm water and waste water in and outside the property.

Ed Darrow: Excuse me, what number North St. are you?

Connie York: 139.

Ed Darrow: Okay, thank you. Is there anyone else present wishing to speak for or against? Please come forward ma'am. Please give your name and address for the record.

Rita Loperfido, 163 North St.: The reason why I'm here is because I just wanted to add a few things. Park St., which is one of the ingresses and egresses to this property, is a very narrow street and it also happens to be the street that the Darrows have their house on right on the corner. I know they mentioned in the presentation that might not be used a lot but I would think if they're building a business, and I never want to get in the way of someone that's building a business, but as the business grows I would imagine that thoroughfare would be used more and more. As it is the trucks that go up through Park St., it's narrow like one truck can make it on up through so I'm not quite sure physically how they're going to handle going in and out of that back North St. entrance or exit whichever way you want to look at it. The outdoor lighting made me a little nervous. I hadn't really thought about that until someone brought up what the lighting was going to be like. I certainly hope, if this does move forward, it's not going to be like a great big football field back there so that not only at night do you get to hear everything that's going on but at night you get to look at it. Our houses are all kind of like elevated up above this particular site so that was a concern. The other thing I wanted to mention was that the other properties that were brought up that were in an industrial zones like Skeebo's and Pick-n-Pull, they're not in the middle of the city for God's sake, they're out in the country. They're not where there's houses right around them that are used to enjoying their back yards and having a picnic and doing things in their back yards and as I was thinking while driving by Pick-n-Pull I do applaud them, they do have a wonderful fence but you know what it's like behind the fence and I don't have a house right there. I don't think I would really enjoy that nor if I was trying to sell a house that was right next door. It's going to make many of our properties less marketable if we do want to sell in the future having this particular project if it goes forward. I do applaud that they're looking to build a business and I really do love the idea of new businesses in Auburn, I just hesitate right in the center of the city, this particular business. So please consider not granting their application. Thank you.

Ed Darrow: Thank you. Is there anyone else present wishing to speak for or against this application? Please give your name and address for the record sir.

Ron Jacobs, 3 Perrine St.: I just came out to say I wasn't notified of this situation but Mr. Long had stopped by the other day. I do oppose the variance simply because I've been there about a year now and the traffic level is horrendous on North St. and surprisingly just on Perrine St. What they're proposing, there is an entrance and exit on Perrine St. also that probably could be used so from the standpoint I don't know how they'd be

transporting the scrap in and out but probably the most efficient way would be 18 wheelers or tractor-trailers and I could see that happening on a street that's already obnoxiously busy as it is. I'm opposed to also the smell and noise that would be created from having it very close to where I live. That's about it.

Ed Darrow: Thank you sir. Is there anyone else present wishing to speak for or against this application. Yes, ma'am, please come forward. Please give your name and address for the record.

Diane Long, 149 North St.: I've listened to these arguments a couple of different times already so the situation isn't all that new except that today I heard three new things that kind of concerned me. One is the lighting issue. And what is that going to do to my backyard in the afternoon or in the evening. The other was the hours of operations. What I heard today was six days a week, from seven to seven, there's going to be noise issues and traffic and all kinds of who knows what going on in my immediate back yard. Even though Calandros is supposedly the boundary, we're immediately next door to Calandros and you can't tell me that noise is not going to travel from Calandros [inaudible] to ours.

Ed Darrow: Mrs. Long? Just so I may correct you, his testimony was seven to five during the week and seven to twelve on Saturdays.

Diane Long: Still six days a week.

Ed Darrow: Yes, but I wanted the record to stand corrected.

Diane Long: All right, thank you, I appreciate that. But it's still six days a week that my back yard is going to be no long a place of quality of life. There's going to be noise, confusion and all kinds of other things going on. I didn't hear anything at all addressing the noise issue and I can't imagine this is going to be a quiet operation. I just kind of raised that as a point that has been left untouched and undiscussed. Apparently not considered to be addressed in any way shape or form. I just ask this board to really consider that even though supposedly in the minds of the people who are presenting this tonight that it has changed drastically I really don't see how it has changed and I think that appeasing us by putting a little boundary around our back yard really doesn't address the overall issue that this is a scrap yard and that they're asking to put this in in a place that is doesn't belong. Thank you.

Ed Darrow: Thank you ma'am. Anyone else wishing to speak or for against this application? Anyone else wishing to speak or for against this application? Seeing none, hearing none I'm about to close the public portion so we can discuss it amongst ourselves.

Thoughts?

Scott Kilmer: I personally appreciate everybody's comments and concerns. It really does make a difference when both sides get to tell a story. And it's hard, it's a hard decision. I thank everybody. The other thing I'd like to say is that the relief being sought on this

variance really hasn't changed from the original one we voted on last summer. The way the business would operate has changed, that makes it a little more attractive but the bottom line is that the five points of relief are the same and so I'm assuming that would help determine whether it's a, and I don't want to open up a can of worms between the new and old requests, but the request is essentially the same as the original.

Ed Darrow: Yeah, I agree with you there. The area variances are the same. But, as I see it, the business that's going to be performed there has substantially changed in my mind. There's not going to be any dismantling which is noisy, there's not going to be any stockpiling of cars other than the daily take in until they're shuttled out. The fact that it's just receiving, buying cars, buying precious metals and then storing the precious metals inside until they're sold off and then as the cars are purchased daily shuttle them over to his place twelve miles away, which I believe is in Jordan, he mentioned before.

Susan Marteney: There is going to be exterior storage in those concrete bunkers.

Ed Darrow: I believe that was going to be interior because that's where they were going to put the precious metals.

Susan Marteney: No. The bunkers are on the outside. They're like a building without one wall and a roof.

Stephanie DeVito: Right. There's nothing covering them.

Ed Darrow: Okay.

Susan Marteney: There's going to be four or five of them in a row.

Ed Darrow: Well, then, I'm a little confused. Mr. Horton, could you please re-approach to answer a question?

Stephanie DeVito: Those bunkers are going to be placed behind the maintenance shed.

Ed Darrow: The outdoor bunkers, what will be stored in them?

Delbert Horton: Different grades of ferrous metals.

Ed Darrow: Where are the ferrous metals going to come from?

Delbert Horton: People...

Ed Darrow: Off the street.

Delbert Horton: ...off the street.

Ed Darrow: They're not going to come from being dismantle off vehicles.

Delbert Horton: No.

Ed Darrow: Thank you, that was my question.

Susan Marteney: But he did say that there will be dismantling of the cars.

Ed Darrow: No, he said there would be no dismantling of cars.

Delbert Horton: No dismantling of the cars.

Susan Marteney: Oh, so it was your attorney who said that was going to happen, but you're going to take liquids out, for lack of better term.

Delbert Horton: No, nothing's going to be done there with the cars. The cars are going to come in and get loaded and go to the other facility.

Ed Darrow: It's going to be nothing but, in my eye, specialized pawn shop. He's going to buy cars and precious metals, reception center, and sell them. Any other questions for Mr. Horton while I have him? You may be seated sir, thank you very much.

That's where I'm seeing it that it's changed so much, there's not going to be all the commotion, all the noise. The lights, I can understand, enough to light up security cameras because you want to know who's on your property. And with the low lux security cameras they have now you don't need a lot of lighting for that.

Other thoughts and concerns from board members?

Deborah Calarco: I guess I question if it's possible to be done, is I know one of the requests is not to have the 50 foot of buffer, on the property that actually borders the Longs, both sides of it, would it be possible, because there are already trees there, that we say that 25 feet of buffer has to remain in that section? To offset.

Andy Fusco: You could set that as a condition. That was one of the issues that is presently before Judge Ark undecided as you'll recall because you were on the board previously. One of the arguments that the applicant made last time is, in seeking relief from the buffering, was that there was already trees on the property where upon Mrs. Long responded, 'Well, they're my trees. You can't count my trees in buffering the applicant's use.' And then there was also the argument that the trees, whether they were Longs' or Calandros' or somebody else's, that are partially on properties not owned by the applicant. The point was made they are by and large deciduous trees that lose their leaves in the winter and leave the use of the property as 23 Perrine visible basically late fall, all winter and early spring. I reiterate that for the benefit of the new members of our board. The old members I'm sure recall that discussion previously and I think I framed the arguments for you and how you decide is up to you.

Deborah Calarco: I guess I'm not looking at it being that necessarily those particular trees. When I look at the property, yes, most of the trees do belong to the neighbors but when I look at the borders on this map that was actually provided there are a lot of trees that are actually on the applicant's property also. So I guess I was just asking if we could keep that property line that is already treed, maybe put in better ones that would stay evergreen, that would help buffer that whole section. Would that work?

Andy Fusco: You could do that as a condition, yes.

Ed Darrow: The one other thing that I was going through the map that Mr. Long passed out and I do appreciate everybody that took the time to come testify tonight before this public hearing, but I think I counted two or three who's properties are actually adjacent. Now I understand everybody and their concerns, whether they're adjacent or not, but one of them was five places away so I do understand their concerns and we just have to look at it, I believe, as the whole picture, the neighborhood. Is it really a significant change to the neighborhood of how it was or how it would be? How do we preserve what's there and yet preserve the neighbor's rights, the property and their homestead?

Any other thoughts?

Mario Campanello: I'd like to add a thought. I've been to a few scarp yards and in my opinion the term junk yard and scrap yard a definitely less appealing than most people would think. Correct me if I'm wrong, Mr. Horton, people are just coming in here to drop off a bucket of brass, correct? Or a pick-up truck load of...

Ed Darrow: Mr. Horton, please re-approach. I have to have all your testimony on record in case we end up in Rochester.

Mario Campanello: So therefore, in my opinion, there's not going to be a lot of noise, is that correct?

Delbert Horton: It depends on what you call a lot of noise. I'm used to it, the noise doesn't affect me. I don't know what you consider a lot of noise. I mean, if you're sleeping and a car drives by your open window and wakes you up that's a lot of noise. The railroad runs back and forth across there, to me that's loader than anything we probably ever create but can I say that's a definite? No.

Mario Campanello: Thank you. Therefore, continuing my thought, I don't think there's going to be a ton of noise. It's just the average guy that lives down the street dropping off a bucket of brass.

Ed Darrow: It's through traffic. Customer traffic.

Mario Campanello: And they've already said they would not be doing dismantling of cars there. It's just my thought.

Ed Darrow: I see Mr. Horton as wanting to be as good a neighbor as possible. From where this came a year ago to where it is now.

Scott Kilmer: There's definitely been some bending on Mr. Horton's part and I can certainly appreciate both sides. If you take the emotion out of it though, number three on the area variance, we're basically restricted to what the law requires us to do and the law requires us to verify that this is not a substantial variance. You'd be hard pressed to argue that is you want 500 feet of a required 500 feet to be eliminated that that's not substantial.

Ed Darrow: But when you have a property that's this width.

Scott Kilmer: I get that but this is the law that we're bound to.

Ed Darrow: There's also the uniqueness factor of the property and the width is its own uniqueness.

Susan Marteney: That's not in an area variance. Uniqueness has nothing to do with an area variance.

Ed Darrow: It's just like loss of return on property is with a use variance, it's not steadfast in an area variance.

Andy Fusco: It's not applicable, Mr. Chairman.

Susan Marteney: It's not applicable.

Scott Kilmer: If this goes to Rochester and it's filed and the judge is going to stick to the law, he's not going to care if it's a goofy piece of property. He's not going to care if it's anything other than these five points for an area variance. You're going to be very hard pressed to bend his mind to say that 500 feet of a required 500 feet is not substantial. That's the whole thing.

Ed Darrow: Right, but you have to look at it how it's written, how I see it interpreted and understand it. We're required the minimum amount of variance possible. The minimum amount of relief. Now when you look at a property in shape, at what point, what's the measurement when you don't have a property 500 foot wide.

Scott Kilmer: I'm assuming that other uses for that property that are non-industrial wouldn't have that 500 foot requirement. We're required to give the minimum amount.

Susan Marteney: That aren't heavy industrial.

Scott Kilmer: Exactly. But point three of the five points, it's law. It can't be substantial. If you take everything and want that erased and taken away, that's substantial. I understand your point of view and Mr. Horton, I come from a long line of self-employed people, this

kills me. I get both sides completely but you're not going to convince a judge that this is not substantial.

Ed Darrow: To me it's what's being done there. How much noise, what's being created? If it was a convenience store and you have traffic coming in and out buying all day you're not making the same noise as you are a machine shop. Perhaps a machine shop could almost be allowable in here or a machine shop could actually, with machines running, be making more decibels of noise than he would be receiving precious metals and buying junk cars.

Scott Kilmer: I completely understand what you're saying but it still doesn't satisfy number three.

Susan Marteney: The definition is it's heavy industrial.

Scott Kilmer: And substantial. 500 feet of 500 feet is substantial. If you want a three foot variance of 500 that's not substantial.

Susan Marteney: And all of the others are also substantial. And at the same time they would infringe on any reasonable use of that property. And I certainly understand, all of a sudden you'd end up with 60 feet down the center that you could use for any, in this particular instance, what they're requesting.

Scott Kilmer: If you take all the emotion out of it, it's plain and simple, it just doesn't fit the law. We're required to have each one of these components satisfy, this is not satisfying the 500 feet. I hate to say it but that's the way it is. You're not going to change the judge's mind.

Ed Darrow: That's why we're a seven member board, you're welcome to your opinion and I respect it.

Any other discussion? Chair will entertain motions if there's no more discussion.

Susan Marteney: Do we want to break them down individually?

Ed Darrow: Every one.

Andy Fusco: Yeah, go one at a time in the way presented by the application or referral from Mr. Hicks. Then once we've dealt with the five then we ought to discuss potential for conditions depending how those five votes turn out. One other thing, this will be one of those kind of cases where, while we make a decision tonight, I'll wait until Alicia prepares the record, I'll write a resolution that we'll deal with next month and then we'll talk about whether that resolution is what meets what the six of you are going to decide upon the filing of that resolution or amending that resolution. That'll be what starts the statute of limitations, not tonight's vote.

Scott Kilmer: Andy, I have a question. On variance request number five, I may have misunderstood what I heard, but I think I heard the applicant say he was going to put an eight foot, opaque fence up?

Andy Fusco: I don't want to put words in the applicant's mouth, that's what I heard and I heard the discussion whether it was going to be metal or wood.

Scott Kilmer: Okay, so does that take number five off the table? As far as the screening?

Ed Darrow: No.

Andy Fusco: No, the screening...

Ed Darrow: Because that refers to planting units.

Andy Fusco: Right, it talks about plantings.

Scott Kilmer: All right.

Andy Fusco: That was one, five was one of the ones that failed last time.

Susan Marteney: Shall I proceed?

Ed Darrow: Yes.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. because the applicant has proven the following five elements, this is for a ten foot required ten foot set-back for property line fencing.

Shall I read the number?

Andy Fusco: No, the first matter before us requires the fence around the scrap yard be ten feet set-back from the property line. The applicant is seeking relief from that requirement.

Susan Marteney: Because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion, do we have a second?

Debora Calarco: Second.

Ed Darrow: We have a motion and a second. Roll call please.

Susan Marteney: No

Mario Campanello: Yes

Deborah Calarco: Yes

Stephanie DeVito: No

Scott Kilmer: Yes

Ed Darrow: Yes

Item one has passed. The chair will now entertain a motion on item two.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. for item number two, 25 feet of the required 25 feet set-back for public way fencing because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion for item two, do we have a second?

Stephanie DeVito: Second.

Ed Darrow: We have a motion and a second for item two. Roll call please.

Andy Fusco: Before we do the roll call, this was for what?

Susan Marteney: This is number two, the 25 feet of the required 25 feet set-back for public way fencing.

Ed Darrow: Roll call please.

Susan Marteney: No

Mario Campanello: Yes

Deborah Calarco: Yes

Stephanie DeVito: No

Scott Kilmer: Yes

Ed Darrow: Yes

Item two has passed. The chair will now entertain a motion on item three.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. for item number three, a reference to the required 500 foot set-back for all non-industrial uses because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion for item three. Do we have a second?

Mario Campanello: Second.

Ed Darrow: We have a motion and a second for item three. Roll call please.

Andy Fusco: Before we do the roll call, this was for what?

Susan Marteney: I am voting no. I do believe it is a substantial area variance and request.

Mario Campanello: Yes

Deborah Calarco: Yes

Stephanie DeVito: No

Scott Kilmer: No, I believe this is a substantial request variance.

Ed Darrow: I am voting yes due to the fact that I believe the size of the property is not substantial.

The chair will entertain a motion on item four.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. for reason number four, 50 foot of the required 50 foot buffer yard and associated plant units because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;

- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion for item four. Do we have a second?

Stephanie DeVito: Second.

Ed Darrow: We have a motion and a second for item four. Roll call please.

Susan Marteney: I am voting no. I do believe that will have an adverse impact on the environment and the physical conditions of the neighborhood.

Mario Campanello: I vote yes.

Deborah Calarco: I would like to see an amendment to this to say that parts of this would be 25 feet of buffer and plants and then I would be willing to vote in favor.

Andy Fusco: Let's see how the vote turns out first.

Ed Darrow: So what is your vote Ms. Calarco?

Andy Fusco: Stephanie?

Stephanie DeVito: Mine is no.

Andy Fusco: No?

Scott Kilmer: No, I believe would be some environmental issues.

Ed Darrow: What was Ms. Calarco's vote?

Alicia McKeen: She didn't vote.

Ed Darrow: She didn't vote. I vote yes.

Andy Fusco: Then there'd be no need to amend with a condition. It failed.

The chair will entertain a motion on item five.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. for reason number five, a reference to the significant screening of the residential uses.

Andy Fusco: Hold up, let's do that over again. See if we can get a motion and a second to amending number four to reduce the variance request of 50 foot of the 50 foot requirement for buffer plantings to 25 feet.

Chair will entertain a motion for item number four to reduce it to 25 foot of the required 50 foot buffer yard and associated planting units.

Andy Fusco: And we're doing that by condition.

Susan Marteney: Do we have to ask the application if that's...

Ed Darrow: He can always decline it after it's approved.

Andy Fusco: He can say 'No, I don't want to do that'. See if we can get a motion and a second.

Ed Darrow: Can I have a motion? Ms. Calarco? Second? Mario? Roll call.

Susan Marteney: No, I still believe that will have an adverse impact on the environment and the physical conditions of the neighborhood.

Mario Campanello: Yes

Deborah Calarco: Yes

Stephanie DeVito: My answer is still no.

Scott Kilmer: No.

Ed Darrow: Yes.

Motion failed. Amended motion failed, please, for the record.

Chair will entertain a motion on number five.

Susan Marteney: I move to approve the area variance for Delbert Horton at 23 Perrine St. for reason number five, a reference to significant screening of the residential uses because the applicant has proven the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion for item five. Do we have a second?

Mario Campanello: Second.

Ed Darrow: We have a second for item five.

Susan Marteney: I'd like to clarify that, that yes, the applicant will put in an eight fence opaque fence along the running edges.

Ed Darrow: So amended. Roll call.

Susan Marteney: Yes
Mario Campanello: Yes
Deborah Calarco: Yes
Stephanie DeVito: Yes
Scott Kilmer: Yes
Ed Darrow: Yes

Ed Darrow: Motion five has passed.

Andy Fusco: Just so I understand motion five it passed with the condition that the entire perimeter of the property be lined with an eight foot opaque fence?

Susan Marteney: No, in particular we talked about all of the western and northern sides, he talked about that, and the last time he was here he said...

Andy Fusco: The northern side was exempted last time.

Susan Marteney: Okay. But putting it along the railroad track would be...nonsense.

Andy Fusco: Nonsense. Well, not if you live on Rock. You may think it's a good idea.

Susan Marteney: So the whole eastern side.

Ed Darrow: Eastern side property line.

Andy Fusco: Eastern only or eastern and southern? Though southern is largely an entrance.

Susan Marteney: He already said there was going to be one on the southern end that was going to have an entrance that would run along near what he's calling the maintenance garage.

Andy Fusco: So that I understand for the purposes of the decision; the opaque fence is eight foot along the easterly borders, easterly side.

Susan Marteney: Yes.

Andy Fusco: Did everyone else understand that when you were voting?

Unanimous 'yes'.

Andy Fusco: Okay, thank you.

Ed Darrow: May the record please show that. The opaque fence is on the easterly border.

Andy Fusco: Thank you folks.

Ed Darrow: Okay, 23 Perrine St. is adjourned until resolutions are adopted at our next regularly scheduled meeting.

Scott Chatfield: I need to object on the record, Mr. Chairman.

Ed Darrow: Sure. Please feel free to.

Scott Chatfield: Thank you. The board in fact took a vote...

Ed Darrow: I'm sorry, Counselor, please give your name for the record.

Scott Chatfield: My name is Scott Chatfield. The board in fact articulated resolutions and took a vote, it is improper and illegal for you to backfill with a resolution. I intend to request formally a copy of the record, of the transcript of the motions that were made this evening because that is the decisions that were made. You can't change your mind at this point, ladies and gentlemen, nor can you add additional findings of fact nor conclusions of law to that which you've voted upon.

Andy Fusco: Let me say this, Mr. Chatfield, your point is very well taken. I'm just attempting to do what the judges in Rochester tell us to do and tell us what they wish to see. I can assure you that the written resolution will not differ from the decision that was made tonight. It will conform. For whatever reason the judges in Monroe County, which inevitably get our cases for whatever reason, have made it loud and clear that this is what they want done. I don't disagree with anything you said but I don't want to raise the ire of the court.

Scott Chatfield: I will wait until I see what evolves.

Andy Fusco: Your point's well taken, believe me. I've seen this road before.

Scott Chatfield: Madam Secretary? If you need me to follow up with a written formal request I'd be happy to do so but I'd like a verbatim transcript of the proceedings this evening.

Alicia McKeen: Do you have an e-mail?

Scott Chatfield: Unfortunately not but I can give you one you can send it to if it makes it easier.

Alicia McKeen: I'll call you.

Andy Fusco: And note Mr. Chatfield's objection for the record.

Ed Darrow: 23 Perrine is adjourned until our next regularly scheduled meeting.

Anybody that would like to leave please file out in an orderly fashion.

Mr. Sincebaugh, thank you very much for your patience.

May the record show 105 Grant Ave have called and asked to be adjourned until our next regularly scheduled meeting due to a medical emergency.

Andy Fusco: And for the benefit of the new members, I will remind you that the Grant Ave application is an expansion of a pre-existing, non-conformity cured by prior grant. So it's an expansion of a prior area variance granted by this board so there will be...

Ed Darrow: We can discuss that in housekeeping so we don't have to keep Mr. Sincebaugh any longer.

339 State St. Area variance to construct additional garage bay.

Ed Darrow: If you could please approach, Mr. Sincebaugh. Give your name and address and tell us what you'd like to do.

Timothy Sincebaugh, 25 Havens Ave: I have a business, Sincebaugh Automotive, on the corner of York and State Sts. at 339 State St. I'd like to add on one additional work bay on the south side of the building which would put me a little bit too close to York St. as far as the set-backs go. So I'm asking for a variance to build that expansion.

Ed Darrow: Seems pretty clear cut on the blueprint, thank you.

Tim Sincebaugh: You're welcome.

Ed Darrow: Any questions from the board members?

Scott Kilmer: I think it's obvious from the drawing but the vehicles will enter that bay, when they enter it will they be perpendicular to York St. or will they enter, I guess I'm trying to figure, which way will the overhead door face?

Tim Sincebaugh: The overhead doors face State St.

Scott Kilmer: Okay, I kind of figured that because of the dimensions.

Tim Sincebaugh: It will, the way it is now, the overhead door will face, and I'm assuming most of you drove by, the way it is now the overhead door will just be, instead of two in a row it will be three in a row.

Ed Darrow: Mr. Sincebaugh, would this variance even have been required before the city rebuilt York St. and took part of your property?

Tim Sincebaugh: I honestly don't know.

Ed Darrow: About how many feet of frontage did you lose?

Tim Sincebaugh: It kind of goes at an angle.

Ed Darrow: Yeah, I see that angle there.

Tim Sincebaugh: Right next to the building is probably six feet.

Ed Darrow: So it's probably what you lost, the six at that point? All right. And you're needing nine so you probably would have needed three foot.

Tim Sincebaugh: I think I would have needed something, yeah.

Ed Darrow: Okay, thank you. Any other questions?

Susan Marteney: When you drive down State St. going south, you still have plenty of visual to be able to see anybody and on York St. the same way because you're really set back a great deal and the point of the property coming into the intersection is quite long.

Tim Sincebaugh: At that point the building is far back from the road, from State St.

Ed Darrow: Yeah, it's nowhere near the clear site triangle.

Susan Marteney: You have a really good site line coming down and even when you're at the intersection there the way the lights have been set up it's not interfering with anybody being able to see something coming down the road at all, I don't think anyway.

Deborah Calarco: I don't see any hindrance in that aspect of things and I also just wanted to commend you because I remember the last time you were her for an addition to that building because you were growing so, so congratulations.

Tim Sincebaugh: Thank you very much.

Susan Marteney: It's wonderful.

Ed Darrow: Any other questions from board members?

Scott Kilmer: The facility looks nice.

Tim Sincebaugh: Thank you.

Ed Darrow: You may be seated, Mr. Sincebaugh, but we reserve the right to recall. Is there anyone present wishing to speak for or against this application? Anybody else

present wishing to speak for or against this application? Seeing none and hearing none we shall close the public portion to discuss it amongst ourselves.

I think it's a no brainer when you see what's going on. It's clear as day on the site plan.

Scott Kilmer: It's a growing business.

Susan Marteney: That whole area looks wonderful, doesn't it?

Ed Darrow: It is. Probably one of our best streets now.

Susan Marteney: The tree are in bloom and the sidewalks and I know it was difficult for some of the businesses to have their driveways interfered with but it really looks good. It's so wonderful.

Ed Darrow: The chair will entertain a motion.

Susan Marteney: I move to approve the area variance for Timothy Sincebaugh at 339 State St., the area variance of 9 foot 3 inches of the required 25 foot side yard set-back for the construction of a 16 x 27 foot garage bay because the applicant has proved the following five elements:

- The area variance will not produce an undesirable change or detriment to the character of the neighborhood nor the properties in the neighborhood, and;
- The benefit sought cannot be attained by any other method other than an area variance, and;
- The variance is not substantial, and;
- The area variance will not produce an adverse impact on the environment of or physical conditions in the neighborhood, and;
- The applicant's difficulty was not self-created.

Ed Darrow: We have a motion, is there a second?

Scott Kilmer: Second.

Ed Darrow: Roll call.

All members vote approval. Motion carried.

Ed Darrow: Congratulations Mr. Sincebaugh, your variance has been approved. See Mr. Hicks for any permits.

Now if Andy would like to bring the others up to speed on Grant Ave.

Andy Fusco: Well I already did. The existing members will remember it was just a year ago that we granted a variance for this property. Now they seek to enclose and enlarge.

Ed Darrow: When I went up to view it you can see it when you look at the concrete, there is smooth concrete which is what we approved which is where the cooler's going and then you see concrete to the left and right with a broom finish which is where they want to enclose to put dry storage, indoor storage. He's expanding it to the left and right of the cooler but not to the property line but is making something pre-existing, non-conforming more so.

Susan Marteney: Something tickles me that ten years ago we gave him a variance to do something on the...

Ed Darrow: Where the patio is to put bathrooms in.

Susan Marteney: The patio.

Andy Fusco: And he never did it. It wasn't ten years ago. More like four years ago.

Deborah Calarco: He was going to do an addition onto the bar and not have the patio any longer.

Andy Fusco: He didn't do that construction. Where he was having the outdoor concerts. I think the area was more than granting the variance was so many of the neighbors were objecting because of the noise and the rowdiness of it being outdoors. It would be better if it was indoors. And he didn't do that. Then three years ago he was here for a variance on the signage where he wanted to be able to have extra signs than allowed to advertise his specials. And then a year ago he was here for the space that will be the...

Ed Darrow: And recently the new sign and that got all the banners down. Which cleaned up the property a lot.

Andy Fusco: So this will be his fifth appearance here.

Ed Darrow: Motion to adjourn?

We are adjourned.

Recorded by Alicia McKeen