

**ZONING BOARD OF APPEALS
MONDAY, NOVEMBER 23, 2015**

Members Present: Mario Campanello, Matthew Quill, Stephanie DeVito, Scott Kilmer, Susan Marteney, Ed Darrow

Absent: Rick Tamburrino

Staff Present: Steve Downing, Code Enforcement; Stacy DeForrest, Corporation Counsel

APPLICATIONS APPROVED: 23 Orchard St., 359 Genesee St.

APPLICATIONS TABLED: None

APPLICATIONS DENIED: None

Ed Darrow: Good evening. Welcome to the City of Auburn Zoning Board of Appeals. I'm board chairman, Edward Darrow. Tonight we will be hearing 23 Orchard St. and 359 Genesee St. I ask you at this time to please silence all phones or put them in manner mode.

23 Orchard St. Area variance for shed larger than maximum allowed.

Ed Darrow: 23 Orchard St., please approach, give your name and address and tell us what you'd like to do.

Michael Hilmerson: I want to put up a 160 square foot shed in my back yard.

Ed Darrow: Seems fairly straight forward. Ten square feet over the allotted 150. Any questions from board members? You may be seated but we reserve the right to recall you.

Is there anyone else present wishing to speak for or against 23 Orchard St.? Is there anyone else present wishing to speak for or against 23 Orchard St.? Seeing none, hearing none I shall close the public portion so we may discuss it amongst ourselves.

Thoughts? Concerns if any?

Scott Kilmer: Ten square feet is negligible.

Ed Darrow: And when you look at the size of the shed it's in two foot increments and it works out to that size when they're building them.

Susan Marteney: It's a big lot too, down the hill kind of.

Ed Darrow: If there are no objections chair will entertain a motion.

Susan Marteney: I move to approve the area variance for Michael Hilmerson of 23 Orchard St. requesting a variance of ten square feet over the allowed 150 square feet for a total of 160 square feet to build a shed because the applicant has proven the following elements:

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

Ed Darrow: I have a motion, do I have a second?

Scott Kilmer: Second.

Ed Darrow: Roll call please.

All members vote approval.

Ed Darrow: I feel the variance is not substantial by any means and will not impact the yard or the neighborhood. Congratulations sir, your variance has been approved. See Code Enforcement for all proper permits.

359 Genesee St. Area variance for a commercial recycling centre too close to property line.

Ed Darrow: 359 Genesee St. please approach. First, so the board is up to speed. We have to look at this once we ascertain what is going to be going on at the facility and whether or not it's just an area variance or if they have to reapply for a use variance. If you could please tell us what you're looking for and what's going to be going on at the facility.

Justin Huffman, attorney for applicant Kris Lane: We are essentially looking for...well just to make a small correction to the agenda where it lists the property as being zoned C3, it is actually, there's a bit of a hybrid, the property crosses over two different zones. It's partly in a C3 zone and partly in an industrial, I, zone.

Ed Darrow: Are you bringing up a question about its zoning classification?

Justin Huffman: I don't believe there's any question about that. It's just a matter of correction.

Ed Darrow: You're saying there's C2 and C3 all on that parcel?

Justin Huffman: No, it's not C2, it's partly C3 and partly I. What we're looking to do is operate the facility as a collection center where he'll be collecting various items and then redistribution them. Essentially a distribution center more so than and junk yard which has been part of the issue here. What we're looking for is, first of all, because we believe it's a distribution center we don't believe that any variance is required but to the extent one may be needed, which we've been instructed to apply for one, essentially out of an abundance of caution, from the requirement of 500 feet from a non-industrial district. The non-industrial district within 500 feet is the McDonald's property on Genesee St. We don't believe that this counts as a junk yard as you can see in the papers we submitted there's an application to the state where we show that we've applied to be a vehicle collector and a scrap collector. There's no processing of anything going on at the property. It's merely a collection and redistribution center.

Ed Darrow: Would you allow your client to give testimony or do we need to direct all questions to you?

Kris Lane: No, absolutely, you can ask me questions.

Ed Darrow: If you could please approach, give your name and address for the record.

Kristopher Lane, 198 Franklin St.

Ed Darrow: Could you tell me in a day what you expect to see coming in? Are there going to be junk vehicles that you're going to accept?

Kris Lane: Yes, there's a possibility of accepting junk vehicles at the premises as whole automobiles for no dismantling purposes. I have not filed for a dismantler's license with the State for that purpose. I do not intend to nor do I, in the future, intend to ever dismantle any vehicles at that property. Basically as an inherent vehicle collector and a scrap collector are the licenses I've applied for through the State and I also have an agreement with a local business owner that any vehicles that are purchased on the property from that property will be removed from the property that same business day or the next day if it's later in the business day that they're purchased.

Ed Darrow: So it's your testimony that any vehicles that come in, none of them will have any parts pulled off and stored, they're going to remain in whole until moved on to another facility?

Kris Lane: All the business will be acting as is an inherent vehicle collector where we will be purchasing the vehicle off the title weight, the facility will not have a large truck scale where a vehicle would be driven over to be weighed and another vehicle pulls off for the gross, tare and net, we're only operating with 5 x 7 floor scales inside the building. We cannot, don't have the capacity and won't have the capacity to weigh anything larger.

Ed Darrow: Where will these vehicles be stored for that up to 24 hour period?

Kris Lane: Inside the fence line.

Ed Darrow: I'm fairly familiar with the property, so you mean the fence on the north side?

Kris Lane: Correct, on the north side, not on the south side toward McDonald's which is where we're seeking the 500 foot variance for, from the McDonald's property.

Ed Darrow: What else do you expect to receive in any given day? Precious metals?

Kris Lane: Not necessarily precious metals, more like aluminum, copper, brass, leads, stainless; all in what I call the prepared size. Those are the non-ferrous metals. Other ferrous metals as far as plate and structural, heavy metal, drums and rotors, tin, but everything under a seven foot increment. Once again the scales that we purchased that are inside the building are 5 x 7 floor scales with a capacity of only weighing 5,000 pounds. You can't weigh anything more than 5,000 pounds. The only other thing I purchase are the inherent vehicles. I am not going to be operating what they call a reclamation unit. Reclamation unit is where you put the vehicles on, drain the fluids, store them properly. We are not going to be doing that. We are not permitted to do that and we won't be doing it.

Ed Darrow: Strictly the middle man for those vehicles.

Kris Lane: Absolutely. Those vehicles then would go on to a processor that is licensed by the State to handle those vehicles.

Ed Darrow: So that obviously taking older vehicles in most cases will not be drivable, do you foresee them coming in on a wrecker, flatbed trailer, correct?

Kris Lane: Correct. They would be dropped off and we would purchase off of the title weight. And then I would have the company I'm doing business with notified that the vehicle has arrived and per our agreement on pricing the vehicles as they come in or are dropped off, and then he would be notified and he would pick them up. They would not be on the premises longer than 24 hours.

Ed Darrow: Would you have a problem if that were actually in the variance?

Kris Lane: No I would not.

Ed Darrow: As far as the commodities go, how do you foresee them coming? Something that contractors are coming in, homeowners coming in or are you looking at long, straight trucks, tractor-trailers?

Kris Lane: No, absolutely not. It would all be pretty much homeowners, contractors. Part of our business plan at some point down the road is to do an on-site weigh and pay where we have bins that would be similar to those at Good-Year. They do tires, they do drums, rotors, tins, stuff like that. We would actually place bins, 4x4, at their facility and then we

would change them out with 4x4 bins. So we might have a straight truck coming in that we would own that would bring 4x4 bins to be offloaded, weigh them inside then discard the material outside in the larger containers.

Ed Darrow: Your containers of materials are being kept outside. What is going to be the typical size? Roll off?

Kris Lane: Yes. 20 yard roll off, 30 yard roll off and a 40 yard roll off.

Ed Darrow: Will they be covered?

Kris Lane: No, they will not be covered but nothing will breach...when they're shipped nothing can be above the rail line. They have to be below the top of the container.

Ed Darrow: Are there any other items you foresee yourself receiving such as out of date propane cylinders?

Kris Lane: Propane cylinders can only be accepted if they are punctured, if the valve is off and if there's a hole in the container. They cannot be received whole.

Ed Darrow: What other items might you be receiving.

Kris Lane: Pretty much ferrous and non-ferrous items as stated before, those types of items. Someone might come in with a swing set, or a washer, or a dryer, those types of things.

Ed Darrow: You're going to be running similar to like Empire Seneca where they're commodities...

Kris Lane: Personally I've never been to Empire Seneca, I've heard that a lot, I've heard that it's a comparison besides operating a truck scale and taking in the larger items, I've heard that it's a comparison to theirs but I like to think that I have a different business plan than what they are operating. I'm running something that I believe will provide an asset to the community to be able to have a business here where people don't have to travel to Seneca Falls or have to travel to Syracuse.

Ed Darrow: Any other questions from board members?

Scott Kilmer: What constitutes e-scrap?

Kris Lane: It would be computers, laptops, mouses, monitors, keyboards and eventually at some point I want to become a certified electronic recycler for the City. It's part of my business plan but not something I plan on doing initially.

Ed Darrow: It would all be done inside anyway.

Kris Lane: It would all be done inside, correct. All electronics would be recycled inside.

Scott Kilmer: Would you break down those components?

Kris Lane: No, my plan is to take them in whole and to sell them as is.

Scott Kilmer: How many bins would you have outside?

Kris Lane: Total outside would be five to seven.

Scott Kilmer: How many vehicles do you anticipate being out there at any one time?

Kris Lane: Two or three maybe. It's one of those things where you have to offer the service in order to have some of the other business. If you don't offer the service a lot of times you have someone coming in with a vehicle and they may have aluminum or copper or something else and if you don't offer that service to actually purchase the vehicle you might be losing that business to someone else.

Ed Darrow: Any other questions. You may be seated. I'm not closing the public portion yet but we need to discuss whether you're falling under junk yard or recycling so we know your next step, whether to proceed with the area variance or to instruct that you need to reapply for a use variance.

Kris Lane: As my attorney has stated I know there might be a question in there and I would like Mr. Selvek to help.

Ed Darrow: We will ask you if needed. Task at hand. With the testimony that's been given does it sound like a junk yard or does it sound more like a dismantling and separation recycling center?

Scott Kilmer: I'd like to ask Counsel what the legal definitions are.

Stacy DeForrest: The Code is silent.

Ed Darrow: That's why we're making the decision.

Stacy DeForrest: The City Code doesn't define, that's why it's left to a factual determination.

Robert Barry: I there a chance I can speak on this issue?

Ed Darrow: Not at this point as we still have to determine what direction we'll take. When I call for the public to be heard you'll have your opportunity.

Scott Kilmer: My point of view is that it seems more like a recycling center in that they are not going to store cars long term, it's not going to be a collection of parts for purchase or collect parts like at Pick-n-Pull. It seems to be a very temporary process.

Ed Darrow: To me it's the heart of recycling. The separation of commodities, metals. The cars are staying whole. It's certainly, I don't see how it's going to fit the criteria of a junk yard. Is there anyone who has a different opinion?

Matt Quill: I'd like to hear all testimony involved before we make a decision.

Ed Darrow: We can't go forward until we decide which it is because I can't open a public hearing for the variance if it's not a variance. If it needs to go back as a use variance. That's why it's left to us because City code doesn't completely define what this business is going to be so it's left up to us to decide then we can go forward.

Steve, please.

Steve Selvek, Sr. Planner: What I want to do is clarify to the best I can the issue between being a recycling center and a junk yard. Our code does permit recycling centers. Recycling centers are limited to the I2 district. The I2 district happens to be our landfill. The intent of a recycling center or facility is., from my understanding, not only the acceptable of materials but also the processing. Basically taking those from a scrap item and reprocessing them to the point of being a usable item. I don't know for metal what that exactly is but for paper it's from paper to new paper. Our code does very clearly defines what a junk yard is. That definition is: 'A Junkyard consists of buildings, structures or premises where junk, waste, discarded or salvage materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, house wrecking, and structural steel materials and equipment yards, but not including the purchase or storage of used furniture and household equipment or used cars in operable condition or automobile wrecking yards.'

To understand this you need to understand what our definition of junk is. 'Junk includes scrap iron, scrap tin, scrap brass, scrap copper, scrap lead or scrap zinc and all other scrap metals...' and it goes on to other items. While the concept behind a junk yard that the lay person may have is that of a Kubis Auto or Pick-n-Pull where it's a sprawling set of cars ultimately, by our Code definition, this falls under junkyard. With that said there are other items in the City which would fall under junkyard, for instance where you bring your returnables, but we have commonly considered them a consumer services establishment. In initially speaking with the applicant, ultimately what I came back to was a firm reliance on what our Code is. Now the definition may be too broad but...

Ed Darrow: As you read junkyard I think it's very clear because I, like most others when you say junkyard, we think of dismantling, taking the parts, storing the parts, selling the parts. Where our City Code feel has it defined well.

Steve Selvek: The Code is silent on recycling centers though. So it's a separate issue. It does define junkyard. And recycling center is something limited to our I2 district which is where the landfill is. By defining this as a recycling center for review purposes, whatever the applicant wants to bill him as that's his choice, but for review purposes ultimately the board would effectively prohibit recycling centers within the City because that land is municipally owned land and it would only be a municipal operation at that point.

Stacy DeForrest: The issue came up because that applicant had labelled himself as a recycling centre through-out the application.

Ed Darrow: Now with what Steve has read I think it's much clearer.

Kris Lane: I understand exactly where Mr. Selvek is coming from. For my purpose with the application of saying it's a recycling center, like you just stated, is because I like to get away from the junkyard mentality of calling it a junkyard. Never have I intended in my operation to be labelled as a junkyard so that's why I put it as a recycling center. I agree with the Code 100% and like I said I was coming here tonight to only comply with the Code's interpretation of the business being called a junkyard and asking for the 500 foot variance from a non-industrial district which happens to be the property at McDonald's. I have no qualms or issues with the City stating it's a junkyard.

Ed Darrow: It's our instruction and interpretation that as long as you fall under junkyard, or we feel you do once we poll, then it is just the area variance that's needed and you don't need to reapply for a use variance.

After hearing Steve read the definition I feel it's pretty clear that it's not what we think of a junkyard but it is absolutely and it falls into that category. At that point, as chair, I'll put forth for unanimous consent that this application is classified as a junkyard and we can move forward to part two of the area variance. All in favor? All. Opposed? None. We'll move to the second part at this point when I open the public hearing.

If you could please re-approach. As you heard our finding is it's considered a junkyard under the City standard so we can proceed now with your area variance. If you would like to explain to the board the details of your application.

Kris Lane: The required area variance is a 500 foot variance from a non-industrial zoned district which happens to be the property south of 359 Genesee St. which is 357, the McDonald's property.

Ed Darrow: So you completely understand, you're looking for 443 feet of the 500 feet required.

Kris Lane: Correct. None of the business being conducted is on or will be on the south side of the property.

Ed Darrow: What will that parking lot be used for on the south side?

Kris Lane: That parking lot right now is used to store a couple tow behind trailers, a couple campers on the south side of the building. On the far side toward Veteran's Highway there's a few trailers that the current property owner has that he has stored on that side. There are no intentions to operate any business or store anything or do anything on that side of the property. One of my first visions for the business was to put a drive-through but as I rethought that process through I could see people cutting through the yard to go to McDonald's or something like that so I decided not to do anything like that and to stay on the north side of the property.

Ed Darrow: Any questions from board members?

You both may be seated but we reserve the right to recall you. Is there anyone present wishing to speak for or against the area variance for 359 Genesee St.? Please approach, give your name and address for the record.

Robert Barry, attorney at Boyle and Anderson representing the neighbor to the north of this property, All-Storage Facilities and the owners are here this evening: I'm a little confused and I have a question first. Is it the opinion of this board that this is an industrial zone or a C3 zone?

Stacy DeForrest: It's a split zone. It's industrial and commercial.

Robert Barry: It would seem to me that an area variance is not an appropriate action for a commercial zone.

Stacy DeForrest: It's a split zone and under the Code the least restrictive district governs so that would be the industrial zone.

Robert Barry: I asked that question for a reason. The first thing I would like to do is to present to you a copy of the deed to this property and the survey to this property where Mr. Ferro, the current owner, acquired it. *distributes paperwork* This is very important because if you look at the survey and look at the deed description you will see, unlike what the tax map shows, this property ends at the street line for the Veteran's Highway and the west line of the Veteran's Highway. It doesn't extend across the highway and it doesn't extend into the highway. When you look at your zoning map, as far as I can tell, the industrial zone is the highway boundary as well so it's my opinion, it's our position this is purely a commercial zone, that there's a mistake in the tax maps which I don't know where it would come from as you can see from that description and that map that this does not extend to the other side of the highway. That's the official record of ownership for this property, the tax map is not. It's our position that this is not a mixed zone, it's purely a commercial zone and that's a matter of fact based upon the deed.

Ed Darrow: I'm not seeing anything on the map you handed out that disputes the zoning. Or am I missing that?

Robert Barry: The zoning line, if you look at your zoning map where the purple comes in, appears to be...

Ed Darrow: Did you give us a zoning map?

Robert Barry: No, I assumed you had your own.

Ed Darrow: We go by the information given us, we don't bring zoning maps with us. So what you're referring to we have no visual contact of.

Robert Barry: You have to make a determination of what zone this is in is my point and I think the perception here is that it goes into the industrial zone is the result of the tax maps which are incorrect.

Discussion between Robert Barry, Stacy DeForrest, Ed Darrow, Steve Selvek off-mic.

Ed Darrow: Sir, just so you know, if there is a zoning issue you feel, it would be something that would have to be ironed out with the City if you completely disagree with the City zoning map. As far as the use variance we would still move forward with that pending any determination because the public hearing notices have been made for what we're doing so therefore we'll follow through with this action of the area variance but if there is a determination made by you with the City that disputes and proves it isn't zoned properly as to what we have at that point they would have to apply for a use variance.

Robert Barry: I don't know where it got zoned industrial because your notice for tonight says C3, the tax records say C3 but yet when we arrived here we're being told it's industrial. I understand the reasoning behind it but... *refers to tax map on view screen* That's my point. This is the property in question right here. This squiggly line there to there would indicate that property [inaudible] and that's I think where the industrial zone comes in, anything this side of that line. I supplied you with a copy of the deed itself and the survey map which matches the deed which indicates a fully legal description and the only title of property he has ends at that line I'm talking about which means all of this property is solely in the commercial district.

Ed Darrow: For the sake of argument, like I said, if you are right the burden lies on you with the City to show them that their map is wrong.

Robert Barry: The map's not wrong.

Ed Darrow: If you're saying their map is wrong. For us to take this part, all that this part means is that they need a use variance too which the applicant can apply for so taking all that into consideration and being part of the minutes we're going to proceed with that so noted. And then proceed just with the area variance of 443 feet that are being sought. Just so you understand where we're at. That one item that you've brought up does not halt our process but it is duly noted.

Robert Barry: Can I ask you where and when was the determination made that this was an industrial zone?

Ed Darrow: That is done in Codes when this is put together.

Robert Barry: It says on the notice C3.

Ed Darrow: Maybe it was a bad map, I don't know.

Steve Selvek: I can shed light on the process by which this parcel was determined to be split zoned. In 2006 the zoning map was converted from hard copy Mylar to a digital zoning map. At that time what was done was an analysis of parcels that overlapped zoning boundaries. The analysis that was done was based upon available tax maps. The City did not have deeds available to go through parcel by parcel to make that determination. So what we looked at was this zoning map right here and it was noted that the zoning map itself shows that this parcel has property currently on the west side of the parkway as well as the east side of the parkway. This actually happens numerous times from a tax map parcel standpoint throughout the City where a parcel has property on either side of the streets and rights-of-way. When I change from here to the...what that ultimately did is inform this particular map which this map you see here is a draft map that we utilize internally when we're looking at and dealing with particular parcels. So the parcel in question is this here as well as this side over here based upon the tax map I just showed you. Because a portion of that parcel, and you can see all the other parcels throughout the City that are hatched like this that ultimately have this split zone configuration, is in the I zone as well as the C3 zone. We looked at this and said it was in a "split-zone" parcel between C3 and I zoning districts. The term 'split-zone' is an in-house term, it is not define anywhere within our Code. *refers to e-mail* Within section 305-96 which is the zoning district boundaries under subsection C-4 "When a lot held in one ownership on the effective date of this chapter is divided by a district boundary line, the entire lot shall be construed to be within the less restrictive district." So anytime when we went ahead and revised the zoning map, not revised the zoning map, when we translated it from paper base to Code base, any of these parcels that overlapped boundaries were highlighted so we can make a reference back to them fairly easily. This is one of those parcels. The actual zoning map, what I would say is the official zoning map, is such that the zone boundary comes down along the side of the park across and grabs this portion of the parcel. This does not specifically highlight the split-zone parcel and it's easier to see where a zone like this comes right down the center of a parcel vs. this particular case. But that was staff's determination behind applying the I zone to this particular parcel in question.

Ed Darrow: Thank you, Steve. So just for the record so I have it clear and solely noted in our minutes and transcript, it is your contention that when they purchased the property they did not buy any of the property that's in purple or that is the industrial part of it. All they received was strictly commercial.

Robert Barry: That's correct.

Ed Darrow: Okay. Our transcript and minutes will reflect that. If there's anything you have to add?

Robert Barry: That's all I have on that point. I would like comment on your proceeding with the area variance. If this were a permitted use, and it would be if this were an industrial zone, there are still in your statutes some special restrictions that apply to junkyards which you've determined this is. And those are that there has to be an eight foot fence around the property and also it cannot be within 500 feet of a non-industrial district which this is, the entire parcel is within 500 feet of a non-industrial district. So that's a special provision that was added to the law when it was enacted because of the inherently troublesome nature of a junkyard as defined in your statute. Under the circumstances, since it is a very special provision that applies to one particular type of development, it doesn't apply to anything else, any other kind of use in an industrial zone, I don't think it should be lightly overlooked or waived and I don't think the normal test for an area variance can be met in this case because first of all, the applicant doesn't even own this property. He wants to lease it and run a business there. He's got no hardship at all. He can find another location that is a real industrial zone or he can open his junkyard business which is not within 500 feet of a non-industrial use. There is not hardship at all. It's self-imposed completely because he doesn't have to lease this property, it's not like he's owned it for any period of time no less a long period of time. And it would have an adverse effect upon the neighborhood and the environment. My client's run a storage facility there which is used by the public on a daily basis. The only access to that storage facility goes right by this property. It's 30 feet on the left side. To get to it you come up to their gate. If we were to allow this junkyard to be put in directly adjacent to that I think it has a clear economic and environmental impact on that property as the people will have to look at a junkyard. It makes it far less desirable, it makes it a much less friendly place for the trade of the common person to go and check his storage, bring stuff in and out. I don't think there's any reason to believe an area variance is appropriate. Finally, I think that if the board grants a variance of any kind it's an action that would require SEQR review.

Ed Darrow: If it's a use variance it would require SEQR review. An area variance will not require SEQR review.

Robert Barry: Well I would like it noted that we differ on that because this is a variance that will permit a use in a district.

Ed Darrow: The variance won't be permitting a use as we've already determined that it being classified as a junkyard it is permitted in there. Therefore that's why an area variance is all that's required.

Robert Barry: It's not permitted within 500 feet. By taking this action your permitting a use within 500 feet which is not otherwise allowed and that's why we feel SEQR review would be required. I would just like that noted.

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

Edward Eberhart, 67 Frances St.: I'm the building maintenance supervisor for the County of Cayuga and the downtown campus. We have been able to actually save money by using Kris' business as far as recycling for our downtown campus. One of our big jobs that we do is to destroy the DMV plates which are aluminum and recycle them. Prior to Kris' business being in the area we would have to drive, and I would lose a person for two hours, to Seneca Falls to recycle these plates. When Kris started this business he approached us on the ability to come in with a portable scale and has been actually lucrative for us in not having to lose people for the drive and gas money. Being able to recycle through Kris has been much more economical for us and he provides a service for the County and the tax payers.

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

Please approach and give your name and address for the record.

Mark Locastro, 5 Linn Ave: I would just like to say that Kris should be commended for this endeavor he's doing here. Thank God he didn't choose a location outside the City, we can use the tax dollars here. To say he doesn't have a hardship involved in this, we won't get too much into that but I know his heart and soul is in this project and it was quite a hardship to change horses in midstream at this point. That said, I think his project will definitely have multi-benefits for the City of Auburn. As my employment I drive around the City a lot and I've seen computers, laptops, TVs dumped in the woods, wherever there's any type of vacant lot you can bet these types of items are being thrown in there. And not just there I had to call the City the other day because someone dumped a monitor in front of my own business on Wall St. I hope, know you are reasonable and really hope you support this endeavor.

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

Justin Huffman: As an initial matter with respect to Mr. Barry's concerns on behalf of All-Storage I don't believe they have any relevance here because the only item that we are seeking a variance from is the 500 foot requirement from a non-industrial property and their property is industrial so that clause is not even intended to have any benefit for their property. The only non-industrial property within 500 feet is the McDonald's property and from what I've understood so far I have seen no objection from McDonald's.

Kris Lane: I'd just like state also and address the issue he brought up as the compliance with the eight foot fence. It was already understood through Code and that was already in the process of being built until I was told I had to stop. That is something we will

comply with whatever regulations that the City states we need to comply with. At no time, nor does the property actually allow for “junkyard use”. It’s not a big enough parcel to operate a full scale junkyard that the owners of All-Storage state that they think we’re going to intend to operate. It’s just not possible. I’ve been in the business for 17 years as the general manager, as a facility manager, as an operation manager for various companies. This part of the community here, my kids go to school here, it’s something I’ve always strongly felt, to be part of and to offer the opportunity to the City and to give back. I believe we’re in the right use for what we’re trying to do and we’re trying to go forward.

Susan Marteney: I have one question for you. Mark mentioned TVs and you didn’t mention those specifically when you were mentioning the items you would take in.

Kris Lane: I did. Right now I’m not a certified electronics recycler and that’s something I would have to be certified to do. It’s something I fully intend to do. It’s part of my business plan. I also want to get into some plastics recycling, other types of recycling as well. Right now to start the business, I’ve always been in the recycling business on the ferrous and non-ferrous end, it’s what I’m passionate about, it’s what I’m driven about. Like I said it’s something that I will expand into. It’s just not something I’m going into initially. It will come along, it’s part of my business plan.

Susan Marteney: But otherwise you’ll take all kinds of computer parts? Those are different?

Kris Lane: Correct. As an example I took my daughter to the batting cage at the high school and I noticed the school was collecting three or four different [word not understood] boxes. I texted my cousin who works in maintenance and asked what they were doing with the electronics and who was handling them as it might be a service I can offer.

Ed Darrow: How long do you think it will be before you’re certified for electronics?

Kris Lane: It won’t take long at all. Once I’m up and running. If we weren’t at this point here now I’d probably already be certified. Probably within the month.

Ed Darrow: I’m about to close the public portion so we can discuss it amongst ourselves.

Thoughts? Concerns?

Scott Kilmer: When a district has a hybrid use for zoning, is that entire property, is anywhere on that property eligible for either of the two uses?

Stacy DeForrest: The Code specifies if there is what we refer to as a split-zone district that property is governed by the least restrictive district. In this case it would be the industrial.

Ed Darrow: Discussion? As we spoke earlier, clearly it fits into the use of junkyard. The roll offs being six or eight and I understand are going to be on All-Storage's side of the property. I understand that All-Storage's counsel about what it was going to look like for their clientele. Yes, I suppose everybody that enters All-Storage will see them but they're majority of units run perpendicular to Veteran's Memorial Highway so it's not like once they're in they're staring at them, they are simply going by them and they are going by through a deeded right-of-way. The deeded right-of-way is protected for them.

Scott Kilmer: Plus there will be an eight foot fence. They quite often store vehicles of their own; RVs, campers, etc. and there's no fence now and there's more vehicles there now and he says there will only be three or four a day.

Ed Darrow: That's a separate fence area. That fenced area, there are two fenced areas with one going with the Reva property and the other is the All-Storage property, there's a fence between them.

Kris Lane: Mr. Reese has a clear understanding of this as well. The leased property you're talking about with the boat storage, that is actually Reva's property that he has a current lease on, that he is leasing from Mr. Ferro, the owner of the Reva property.

Ed Darrow: Even the second fenced area, besides the one Mike has where he keeps his stuff adjacent to the building?

Kris Lane: Correct. It's a fenced area with the RVs and the cars and everything, stuff that's actually on Reva's property that Mr. Reese, All-Storage currently leases from Mr. Ferro.

Scott Kilmer: That is Reva's property?

Kris Lane: Correct.

Alicia McKeen: And you're leasing that area?

Kris Lane: No, I'm currently have a signed lease with Ferro Property Services for...

Alicia McKeen: Right. Who's leasing the area where all the RV's...

Kris Lane: That is All-Storage but it's Reva's property.

Ed Darrow: Other thoughts? The variance is substantial, 443 feet. There isn't much we can do as we're obligated by law to give the least amount of variance necessary. This is what it is because it goes off the setback.

Susan Marteney: There's a building there so he would have to destroy the building.

Ed Darrow: And the building isn't even that big so there goes...the property wouldn't even be usable for that. Now the affected neighbor is McDonald's and there's no representative here from McDonald's. All-Storage is affected in a sight way as noted by their counsel. What it's boiling down to is the 443 feet of that south side setback of the 500.

Scott Kilmer: We had another area variance where they requested the entire 500 feet and that in fact is substantial. There is buffer here and it is to the south side and as you said nobody representing McDonald's is here tonight with that concern. Even though it's a large number it's not the entire 500 feet. I think it's a good use for the property.

Ed Darrow: Other thoughts or discussion?

If there are no other thoughts or discussion the chair will entertain a motion for the area variance.

Susan Marteney: I move to approve the area variance for Kristopher Lane at 359 Genesee St. because the applicant has proven the following elements:

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

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

Mario Campanello: Second.

Ed Darrow: I ask all members when voting please give your reasoning for that vote in case this should end up in an Article 78 or litigation.

Susan Marteney: I believe as the decision in terms of what type of zone it is that it does not have an undesirable change and won't have a detriment to the character of the neighborhood.

Matthew Quill: I vote yes for the same reasons.

Ed Darrow: Verbalize them please.

Susan Marteney: The same reasons. The zoning district is what we said it was and it's not going to have a detrimental impact on the area.

Mario Campanello: I vote yes for the same reasons. I don't believe it will be an issue because of what we've determined.

Stephanie DeVito: Yes. And I agree with the last three, it will not be a detriment to the area.

Scott Kilmer: Yes. I don't believe it will be a detriment to the neighborhood and I feel in fact this is a mixed zone and goes with the entire property, not just a portion of it and I agree it goes with the least restrictive part of the zoning.

Ed Darrow: Aye. I feel the variance isn't going to change the character of the building or the buildings around it. The most affected property the 443 feet would be abutting has no representation here. I feel it will actually help the community.

Your area variance has been approved. Please see Code Enforcement for any necessary permits. There is a note by counsel for All-Storage that there may be a zone problem but we're going with what we have until proven otherwise.

Counsel for All-Storage, please contact City Corporation Counsel with your debate with how zoning is and that they acquired none of the industrial zone when purchasing the property. As far as a use variance, whether or not needed, Corporation Counsel will decide that.

Housekeeping.

Ed Darrow: Any housekeeping?

Scott Kilmer: Did we decide whether or not there is a cut off to be supplied with additional information? I've noticed increasingly we're getting more and more substantial information the night of the meeting and it's not a good thing to just peruse it so quickly. Is there a cut off?

Ed Darrow: There is a filing deadline that everything has to be in to get our packets together. Yes, when we receive something like this tonight there's no time for us to read it, go through it.

Scott Kilmer: I guarantee no one was able to read what we received tonight.

Ed Darrow: You're absolutely right but it is at least in the record and that is the problem with it.

Scott Kilmer: It puts us under pressure. We spend about a week looking at the applications and now we get just as much information the night of the meeting. It's confusing and it's inconsiderate.

Susan Marteney: We can't give everything full attention on such short notice.

Ed Darrow: Stacy, can we as a board make a policy...

Scott Kilmer: Can we stop this last minute stuff?

Ed Darrow: That's what I was going to ask. If we make a policy that if you want to give us information you need to ask for an adjournment and table until the next meeting.

Stacy DeForrest: I think it's fair to do that as long as you're stating that in the notices on the agenda. You have to make sure that the applicant and all interested parties know that we're will to accept additional information but.

Scott Kilmer: But why should an applicant have to adjourn if another party turns in additional information as was done tonight? That wouldn't be fair.

Ed Darrow: I'm talking if the applicant wants to give more. Unfortunately what happened tonight is what it is and we can't review what we don't have the time for.

Susan Marteney: When does the notice go out?

Steve Selvek: Notice is in the paper ten days prior and agenda notices are mailed out about a week prior so they may have five days of notice prior to the meeting. To have someone opposed to an application come in and present this board with information the night of honestly shouldn't be uncommon. That's normally their opportunity to weigh in on something.

Ed Darrow: Next meeting is scheduled for December 22, 2015.

Susan Marteney: I will not be at the December meeting.

Meeting adjourned.