

**ZONING BOARD OF APPEALS**  
**MONDAY, August 26, 2013**

Members Present: Susan Marteney, Scott Kilmer, Ed Darrow, Deborah Calarco

Absent: Richard Tamburrino, Douglas Parker, Matthew Moskov

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

**APPLICATIONS APPROVED:** 266 Seymour St, 105 Grant Ave, 217 Grant Ave, 50 Owasco St.

**APPLICATIONS DENIED:** 23 Perrine St.

**APPLICATIONS TABLED:** 36 E. Genesee St., 230 Genesee St.

Ed Darrow: 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 266 Seymour St., 23 Perrine St., 36 E. Genesee St., 30 Genesee St., 105 Grant Ave, 217 Grant Ave, and 50 Owasco St.

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**266 Seymour St. Area variance for handicapped ramp**

Would 266 Seymour St. approach either podium? Give your name and address and tell us what you'd like to do.

Edward Malinowski, 266 Seymour St.: I would like to have a wheelchair ramp installed for my brother who is handicapped.

Ed Darrow: Are there any questions from board members?

Scott Kilmer: Do you own the house?

Edward Malinowski: Me and my brother.

Scott Kilmer: You both live there?

Edward Malinowski: That is correct.

Susan Marteney: When you mention in your application temporary, what does that mean to you? A temporary ramp.

Edward Malinowski: Right now he's basically wheelchair bound because he can't walk so temporary ramp, I don't know where the temporary ramp came from because we were going through Options for Independence and they said they could put one in but we would have to get the variance and make sure everything is up to code.

Susan Marteney: So you didn't do the application?

Edward Malinowski: No, I didn't.

Susan Marteney: I think when they're saying they're meaning that because it's a modular metal piece, it can be unscrewed and removed. It's certainly lovely that you are wanting to help your brother be able to get out of his house.

Edward Malinowski: He can get out but he needs assistance.

Susan Marteney: It's certainly difficult, absolutely.

Ed Darrow: Any other questions from board members? You may be seated, sir?

Is there anybody present wishing to speak for or against 266 Seymour St.? Is anyone present wishing to speak for or against 266 Seymour St.? Seeing none and hearing none I shall close the public portion so we may discuss it amongst ourselves.

Thoughts?

Scott Kilmer: I don't think it's an unreasonable request.

Susan Marteney: It's the only viable place to put it. It couldn't go in the back or the side or anything. While it may not be attractive, it's the only alternative for this situation.

Andy Fusco: One of the things you can do, because it's a temporary device, you can condition it on however long his brother resides there.

Ed Darrow: Chair will entertain a motion.

Scott Kilmer: I'd like to make a motion to grant Edward Malinowski of 266 Seymour St. an area variance of 19 feet to install a modular handicapped accessible ramp dependent on the residency of the person in need.

Ed Darrow: The chair has a motion, is there a second?

: Second.

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

All members vote approval.

Ed Darrow: Your variance has been granted, sir, please see Code Enforcement for any necessary permits. Thank you.

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**23 Perrine St. Area variance to re-establish recycling business and auto wrecking service.**

Chair: Please give your name, address and let us know what you're looking to do.

Peter Corning: Attorney for Perrine St. Holdings, the seller or vendor of the property in question. We were here last month...

Chair: Counselor, please pull the microphone down. Thank you.

Peter Corning: We were here last month and adjourned until today. Frankly I was kind of proud that Mr. Horton was willing to open up this business on Perrine St. as a person who remembers the golden days of Auburn and the industry that was here at one time. I think that it's important that we encourage industry to come to Auburn. I do that not only because I think it's good for the community but I think it's good for

the people at the present time may go on notice but we really don't have any place in Auburn to sell scrap metal as I remember in older days. We'd take old metal from the garage, take it down to Samuel Schwartz and Son, get our money for it and that is no longer available to anybody in Auburn without going quite a distance. Second feature is it will create jobs and, obviously, taxes. So it will create and fill a void I believe needs to be filled. Since the business opened in 1920, roughly, with Samuel Schwartz and Son, it operated through 2005 and at that time it changed its business from recycling actually to transporting. In that hundred years there have been changes to the zoning codes and that's what we're here to address this evening. There are basically five, as I understand it, parts of the zoning code which we will require a variance for or a compliance with and I would like to go through them one at a time and I would ask if the board might vote on them separately because I think that would be appropriate. As I understand it we're here to determine the benefit that will be gained by the applicant as opposed to any detriment that will be suffered by the community and/or its neighbors and surroundings. The first and probably somewhat important is the map that was attached to the handout given by Mr. Hicks at the last meeting wherein it showed that one of the requirements was a 500 foot set-back from all non-industrial uses. Mr. Hicks was kind enough to give us a handout drawing a line which reflects that 500 feet which if imposed would annihilate the property altogether from that use. I would hope that would not be entertained but in any event it is one of the objections that Mr. Hicks set forth in his handout. The second one, and I'll go right around if you don't mind, the zoning ordinance requires a 25 foot variance or 25 foot space between the street line and a fence to fence the property. My client has no problem with that and it was his intention to move the fence back anyway toward the back of the garage. I wonder if we could put up these over here.

Chair: Counselor, are you saying then in item two, the 25 foot required set-back you're asking to be struck?

Peter Corning: Not in the rear, in the front.

Chair: Okay, 25 foot set-back from public way fencing.

Peter Corning: Right.

Chair: So it is your opinion that can be struck?

Peter Corning: Yes.

Ed Darrow: You're going to conform to that requirement?

Peter Corning: Yes. Moving rapidly we will now go to the...

Susan Marteney: I'd like a clarification. In the packet we received from Michael and Diane Long their first statement is that homeowners did not receive notice of the meeting in a timely manner in order to prepare documentation and I'd like confirmation of that.

Andy Fusco: I'll say this, I had an opportunity to discuss that issue with staff, not in response to Michael and Diane Long but in response to another neighbor that called my secretary and raised that charge as well. It was clear to me in talking to staff that two things happened in this case; that, number one, the notices were mailed in a timely manner and that, b, the post office did not deliver them in a timely manner. After hearing from the first person that contacted my secretary, Rosemary, and then hearing from Mr. Long, who raised the same allegation to me personally, we received a third phone call from another neighbor who said essentially the same thing so I've talked it over with Alicia, I don't necessarily know what we can do to put a fire under the post office, I guess we could, in the future, mail our notices out earlier than we have in the past but since this wasn't an isolated example, it's the first time it really has come to my attention in over a year, we did have a similar problem about a year ago, I wouldn't want to instruct staff to change the way they're doing things for whatever reason this happened in this particular case. Having said that I think the great news here is no harm, no foul. All three of those persons who did contact either me or my office and then one other person who said he got it on time, a day or so before I meeting but couldn't be here and also contacted me, I had the same conversation with that fellow and all of them were instructed in person of tonight's meeting so that all of the contiguous residential land owners have had now nearly a month's notice where I actually told them. While I was very concerned, as are you, Sue, a month ago, I don't see this as anything other than an isolated deviation from how

the post office usually works and hopefully in the future we won't have this problem.

Susan Marteney: I just wanted to make sure that it wasn't the case that the property owners weren't notified.

Andy Fusco: No, I'm very convinced that staff did its job and that the packets were mailed out in a timely fashion. In one case I even saw the postmark, for whatever reason it just didn't get into the hands of the property owners in three of the four cases I mentioned until it was almost too late to react.

Ed Darrow: Thank you, Counselor. Counselor, please continue.

Peter Corning: Thank you. I covered the front Perrine St. requirement with 25 feet from the boundary at Perrine St. back. Moving to the east boundary which probably is the most contentious if there is anything that's contentious, the east boundary \*points out on map area involved\*.

Susan Marteney: Would this be number three on the denial?

Ed Darrow: You're referring to the property with contention as 149 North St., correct?

Susan Marteney: There are other residential properties there. That's not the only one.

Ed Darrow: He referring to the one that is speaking, that's what I'm trying to figure out which one he's referring to. Yes, they're all residential properties but it's also zoned C1.

Andy Fusco: No, it's an industrial zone. What you were referring to, Mr. Corning, is the entire easterly boundary. Yes, this entire line.

Ed Darrow: Okay.

Peter Corning: \*continues referencing area concerned on map\*

Susan Marteney: Is that number three?

Ed Darrow: Please move the mic closer.

Susan Marteney: Is that number three? Which one is he referring to?

Andy Fusco: No, the one he would be referring to would be, I think, number one.

Susan Marteney: That's talking about fencing. He's talking about, the residential or non-residential uses, is that number three? He does not want number two included as one of his variances.

Andy Fusco: Well he spoke about number three first. Number three was what he covered first that if this property doesn't receive the 500 foot set-back then it eradicates or eliminates this use. Then he talked about withdrawing the need for number two because they intend to comply with the 25 foot set-back for public way fencing so when he's referring to the easterly boundary I would assume he's talking about, on our list, number one, four and five because one has the ten foot set-back behind the fence itself, four is an additional buffer and five is screening from residential uses. So all of those seem to me to apply to the easterly boundary. Is that fair to say, Mr. Corning?

Peter Corning: Yes, it is.

Susan Marteney: I'm just trying to note which ones you're speaking about.

Peter Corning: Perhaps I should have followed that, I'm going around the block instead.

Ed Darrow: Counselor Corning, so that we can get it on tape the mic is needed.

Peter Corning: Okay. The front or the southerly part of the easterly boundary, as you see there's a brick building and the two residential properties, and the only residential that is adjacent to our property are located in those areas. The remainder of the easterly boundary does not border any residential property, nevertheless, the zoning ordinance asks for a ten foot set-back. If you look at what we have, photographs

of the area, this is a photograph of the residential property on the right and the subject property on the left. You can see the foliage between the two which is on the property line. Going northerly on the eastern boundary it is basically a forest. The distance between the subject property and North St. is 547 feet. All the rest of the residences except the two on Perrine St. front on North St. so that's quite distance away. Between the easterly boundary going toward North St. there's approximately 150 feet of forest which is its own buffer and its own boundary so to speak. There is a fence there. Being it is so far away from the North St. property, being as there's 150 feet of forest between the eastern boundary and those properties it just doesn't seem reasonable that moving a fence ten feet is going to make any difference but it will make a difference in clearing the land to put that fence in because some of these trees have been there for, I won't say hundreds, but they're big trees and I haven't even projected, nor has our architect, what has to go and what has to be cleared, but it would be a substantial job, it would eradicate a lot of the forestry and in my opinion wouldn't really solve anything. Given that the objectors probably, other than the Perrine St. properties, which we would not object to them being treated separately, but as far as the remainder of it, it just doesn't seem feasible that a ten foot difference in a fence line is going to make any difference in that particular situation. Going to the northern boundary...

Ed Darrow: Mr. Corning, could you pull the microphone forward again please?

Peter Corning: Sorry about that. Going to the Park St. property line, that's a dead end street. It ends basically at our property line and we do have some photographs showing that it's basically a desolate area. Across the street from us is another construction yard and I would dare to say, but as you go westerly on Park it stops at the railroad which is obviously our property line. There is presently a fence there, it's a good sized gate, it's locked, it stops anybody from coming in. To move that in 25 feet, which would be required under number two, doesn't seem necessary, probably, or reasonable. Now going over to the western boundary on the railroad, again the foliage on the line is substantial. If you go and look down the railroad track in either direction all you see is foliage on the Perrine St. line and to some degree, on the western boundary of the railroad. Again, to move that fence ten feet in at that



point doesn't serve to benefit anyone and we would ask that the variance be granted to eliminate that fencing altogether. There is a fence there, isn't there? There is a fence there. With that said we pretty much, and my colleagues will address some of these areas more closely than I, basically what I'm trying to impress is that we are agreeing that the Perrine St. boundary be granted. We feel that if it's necessary to protect the two properties that front on Perrine St. we are willing to fence anyway, or screen, but when you get to the rear of those, but I would say this too; none of the operation of this business will really take place in the front part of that property or adjacent to these properties. The business would take place further to the rear which would be behind the properties in question. I don't know whether it's a practice of the board or not to view the premises but if you do I think you'll see what I mean, I went down there myself and I tried to walk through this forest from the yard toward North St. and you really have a hard time getting through it and there's only a couple places you can really travers it. And it is 150 feet of forestry and certainly is a substantial buffer from anything so I can't see the east line being a problem. The north line with Park Ave is just desolate, there's nobody there, there's no traffic, there's no pedestrian traffic and there is a very, very substantial fence and gate there. On the railroad side there is foliage and certainly the railroad I don't think in any way harmed by leaving the fence where it is as opposed to moving it in ten feet. With that said I'm about done. We do have pictures reflecting everything that I've indicated. I don't know if you've been there or if you are going there or what but we certainly do invite you to do that and we think our request is reasonable and again, in the benefit of the city, the benefit of bringing industry to Auburn, we would hope you'd see fit to grant the variances. Any questions?

Ed Darrow: Any questions for Counselor Corning? No sir, you may be seated but we may recall you.

Peter Corning: Okay, thank you.

Ed Darrow: Is there anymore testimony on behalf of the applicant?

John Karpinski: Attorney for Mr. Horton who is looking to buy the property if he can get the waiver. I was at the property yesterday afternoon and was wandering around and who drove up but Judge

Corning so we wandered around together. One point I would make though in somewhat of a way a contrast to Judge Corning is that right at the entrance on Perrine St. where we have this immediate contact with the neighboring homes there is a difference in elevation. I'd like to pass this out to everybody if you'd like to take a look at it a little more closely. As the road slopes down the driveway that serves these two houses that are immediately adjacent on Perrine St., which is level to our property line. Our parking lot is approximately three feet lower than the driveway. So that you have a bank here that you really don't notice until you wander into the foliage and you realize that there is this three foot bank that is right at the edge of the properties. That's where the present fence sits. In fact if we were to comply with the ordinance and move the fence back the ten feet you would have it at a level three feet lower than it would be if it were right on the property line at the top of the bank. So the screening effect would be minimized by the adherence to ten foot set-back. That would also, if you were to look at this map closely, and we'll send this around also, you have a shortening of the frontage and it would be important that there be as much frontage as possible for the access by the people delivering the scrap to the property and that the ten foot reduction in width would cause considerable loss in the accessible area given the fact that the main building takes up, I don't have a distance on that. With the situation of the building in the southwest corner and the ten foot reduction in the width because of the ordinance requirement we would have a 110 foot area to have trucks and other vehicles pull in to deposit the scrap and because it would most likely be something that would be done at that point as the scale is located in that front area, it would necessitate access to the scale and a little area for the vehicles to be able to turn around. Actually, the moving of the fence back would most likely end up with six substantial trees being removed that sit on the property line and provide this natural buffer that would be supplemented with the eight foot solid fence that would be also required under the ordinance. So I think with that we would find that very difficult to not have that full area frontage. There is a fence there, this property, as Judge Corning indicated, was used since about 1920 as a scrap yard until 2005. It filled a need for the city having a place where metals could be exchanged for consideration and provided a location where the owners could gather the scrap and when they had enough of it, ship it off to wherever it is where they have it shredded and processed. It would be because of the configuration of the lot and the location of the

main front building and the scales on which this scrap would be weighed, it would be difficult to live with that restriction on the side of the property. Also, I would reiterate the Judge's remarks to the effect that when you get back in here it is literally like the forest primeval as this wooded area, which is about 150 feet wide, extends north to south on the west areas of the easterly property owners. We also have only, I believe one, which is the Longs, one residential property backing up to it again with their house probably 350 feet, no I think it would be, the rear of the Long's garage is 280 feet from the west line and their home is about 360 with the westerly 150 feet, again being this very heavy forest area, so the necessity for any more buffer there with a ten foot set off really is something that would be just a adherence to a rule that in this situation would not provide any real beneficial effect.

Ed Darrow: Does that conclude the presentation for the applicant, Counselors?

Please give your name and address for the record.

Delbert Horton, Jordan, NY: Ultimately I'll be the one that, if the variances are granted, will be taking over the property and opening up the operation. There are several reasons I chose this property; its proximity to the railroad, its proximity to NUCOR which a lot of this material will go straight to NUCOR. At the present time the city of Auburn does not have one recycling facility. There is nobody in the city of Auburn that provides any material to NUCOR which is one of the last big industries left in this town. As McQuay leaves we hope somebody comes in here and moves into this building. Are they going to be a metal manufacturer? Metal manufacturers are looking for someplace that can take their materials that is close by as currently they either have to go to Syracuse or they have to go to Waterloo. Any questions? I'm happy to answer them.

Ed Darrow: Does that conclude your presentation, sir?

Delbert Horton: Yes.

Ed Darrow: Are there any questions from the board?

Deborah Calarco: I just have one and we keep getting told about the medieval woods. Does that property belong to the homeowners or does that belong to the property in question.

Ed Darrow: Could you pull the microphone closer and repeat your question?

Deborah Calarco: Yes, sorry, we keep being told about the wooded area. But that wooded area, is that part of the property owners' or is that part of the property that's in question?

Andy Fusco: Do you have this aerial?

Deborah Calarco: I do. I'm looking at the way it looks to me...

Andy Fusco: Most of the woods are on the property owners not on the property of the developer.

Deborah Calarco: So how can that be considered anybody's buffer?

Ed Darrow: We didn't say it was.

Deborah Calarco: Okay, thank you.

Susan Marteney: When I toured the area, the wooded area that's part of the property is primarily cotton woods and other woods in that area that are fast growing. It's not a primeval forest.

Ed Darrow: Are there any other questions for the applicants?

Scott Kilmer: I was only able to get about half way down the property and I see on your updated variance on number nine, it said you will replace existing fences. Is there presently an existing fence all the way down the east side?

Delbert Horton: Yes, there is.

Scott Kilmer: On all the properties?

Delbert Horton: There's a fence all the way around the whole property, it's just not gated in the front. That's the only part not fenced at this time.

Scott Kilmer: I wasn't able to get that far down on the east side so I wasn't able to see for sure. So when you say you're going to replace existing fences, that's all the fences?

Delbert Horton: We're going to replace them with blinded fence.

Ed Darrow: Please repeat that type of fencing.

Delbert Horton: There's a technical term for it but it would be so you can't see through it.

Andy Fusco: What did he say?

Ed Darrow: He's not sure of the proper term but you wouldn't be able to see through it so it would be of a screening nature.

Susan Marteney: And it's wooden or metal or what type of material?

Delbert Horton: We haven't decided that yet.

Ed Darrow: Any other questions for the applicant? Sir, you may be seated but we may recall you.

Is there anybody else wishing to speak for or against this application?

Please come forward, state your name and address for the record.

Diane Long, 149 North St.: You've gotten a letter from my husband and myself outlining the items of the zoning board issues that we object to or we want to see kept in place. I'm not going to go through them in detail. One thing that did come up tonight was the date of the memo for the notification for this meeting. And I just want to let you know how this worked. The date of the memo we received was dated August 13<sup>th</sup>. It was postmarked August 22<sup>nd</sup> and it arrived at our house August 23<sup>rd</sup> which was Friday. Which technically would have given us less than 24 hours of a business week to respond to this had we not been aware of

it prior to now. So I still contend that this is a problem for property owners. I'm a little bit dismayed by the callous disregard for our back yard that was expressed tonight, that's not really what I intended to talk about, but in the photographs that you see, if you look at figure five and figure six, this is our property line immediately bordering the east side of 23 Perrine St. and the northern corner of the property. I don't see where this is a primeval forest. If you look at figures one and two, this is clearly a residential back yard and it doesn't really matter how far back our yard goes, we use this yard, it is our peace and quiet, our serenity. This is where our grandkids come and play and set up their tents. This is where we play ball, we have our little back yard swim pool kinds of things with them and right now it is a place that is non-toxic. I'm quite certain, I pretty much agree, that when this scrap yard goes in, the noise, the odor and all of the confusion that's going to go on immediately behind this fence where we spend our relaxation time is going to turn this into a toxic environment. I really want to make it very clear that I feel pretty strongly that it's really incumbent on the zoning board to hold the potential property owners who are self-imposing this hardship on themselves, hold them to the rules and regulations that are in the charter. History doesn't really matter in this case because according to the 305-85, non-conforming use of land, anything that has been abandoned for at least six months has to be deemed a new venture. This has clearly been abandoned which is why we included those photographs.

Ed Darrow: Mrs. Long, I'm going to have to ask you to wrap up, your time has run own.

Diane Long: That's fine, that's about all I really wanted to say was this is our back yard. This is our life.

Ed Darrow: I have one question for your Mrs. Long, what year did you move into that residence.

Diane Long: 2000.

Ed Darrow: 2000. So it was in operation when you first moved in.

Diane Long: Yes, and we are fully aware of what that was like and how horrible it was when it was there. It was bad. It smelled bad, it sounded bad, it was not a good place to be.

Ed Darrow: Any other questions for Mrs. Long from the board members?

Susan Marteney: I have one in terms of your photos. When you referenced figures five and figure six, it appears to be a wooden fence?

Diane Long: That's our property fence.

Susan Marteney: You put that there?

Diane Long: We put that in. And we put it in because we didn't want to have to look at the ugly rusting fence that shows in figure 7. I would say that the existing fence that is there right now is only partially there. If you look at figure ten you can see the kind of fence that is supposed buffer between our property and the north side which is like not really a fence.

Susan Marteney: It's like chicken wire.

Diane Long: Chicken wire mess, yeah. The fence is, I mean it's only partially fenced in terms of the buffering between our property and this property.

Ed Darrow: Any other questions from board members? You may be seated, thank you.

Sir, please approach and give your name and address for the record.

Michael Long, 149 North St.: As many of you know I've spent a considerable amount of my career working for the city of Auburn in the Planning Dept. I'm a professional planner as well as a landscape architect. I was very much involved with the comprehensive plan of 1992 which basically looked at the pre-existing uses, looked at the residential components of the city itself. The entire comprehensive plan was built on trying to strengthen the residential neighborhoods. According to the map that was provided by the Code office, within that

500 foot boundary I counted 42 to 46 parcels of zoning that are not industrial that are within that 500 foot boundary. There are several parcels that are zoned residential. Our area is actually zoned commercial but it's a residential house. There are many other residences in the neighborhood and I'm sure that there are others that are concerned with this as well. Not just North St. but Perrine St. and some of the other side streets as well. The comprehensive plan also called for very stringent requirements for landscaping. I don't hear anything being addressed. There is a 60 foot set-back buffer between the industrial zone and any of the other zones. I know. It's there. The other issue they have not addressed is that the landscaping requirements are set up because of deciduous trees lose their leaves in the fall. As soon as the forest in our yard drops its leaves come November, December, we then have a clear view right into the scrap yard. I will tell you that our kitchen area is actually what would be on the second floor on the rear of the house. As many of you know, North St. drops off first level at North St. is on the first floor but it's really the second floor in the rear. So, when I'm sitting in the kitchen doing the dishes I look out my picture window and I see the main area of the scrap yard. When the leaves fall off the tree it's very hard to miss. I want to make sure the site plan review that's required under the zoning ordinance, that they address the 60 foot landscape buffer that goes between the residential property uses. The other thing the judge talked about was residential living. There's a difference between residential uses and residentially zoned property. We have a land that is zoned commercial but is used in a residential manner. The zoning ordinance is very specific in that it talks about residential uses, not necessarily only residential zones. That should be clarified as well. The other thing is that in 1998 Mr. Aaronek relocated to the town of Sennett. The city of Auburn was very supportive of moving that operation to the town. Actually had it zoned through the Empire Zone benefits, gave them tax breaks, credits, everything to move the operation into the town because it did not fit within that neighborhood. A couple years later, 2004, he sold the property. He made a lot of money selling that property. All of a sudden now he claims that, 'Oh, I've got to sell the property that I've already sold another business from'. I don't see where this is really hurting him. He talks about the railroad. There is no siding, you could not stop the railroad and have a car decommissioned. The set-backs, as my wife and I have pointed out, our back yard is right up against that fence. Mr. Hicks, I asked him several years ago when



Mr. Aaronnek disassembling the land, what he was using for the fence was really a crushed, corrugated metal that he stuck in and that became the fence. Over time what he did is actually start taking the fence and scrapping the fence too. He needed to make a little more money. It's really unreasonable now.

Ed Darrow: Mr. Long, your time has expired, if you could start wrapping up please.

Mike Long: One other item I want to add is this particular house is a very historic house. As many of you know I have spent my career dealing with historic properties. This is a local historic landmark in terms of the city of Auburn. My wife and I have invested more money restoring this house than he's paying for this scarp yard. So I don't see where there's any economic benefit to having this other business come in on a piece of land that has not been maintained. It doesn't fit within the comprehensive plan. If it's zoned industrial fine, use it for what it's intended for but make sure he complies with all the ordinances, all of the regulations, the 500 foot set-back, the 25 foot set-back on the streets, the ten foot side yard set-backs as well as the 60 foot planting landscape buffer that has to be designed by a landscape architect. 180 plant units per 100 linear feet. Thank you.

Ed Darrow: Thank you, Mr. Long. Is there anyone else present wishing to speak for or against this applicant? Is there anyone else present wishing to speak for or against this applicant? Would one counselor like to rebut any points that were made?

Please approach the podium.

Peter Corning: I think a distinction has to be made here between the fact that they don't like the business but it's there, and it's zoned appropriately as an industrial and of course the metal recycling is allowed in that area. I don't think anyone wants to live next to anything but a park but reality is reality. They moved in there, it was there, it was in full operation and now they'd like it moved. I would hate the decision to be made on the fact that the forest or brush, regardless of what you call it or how you get through it, that line does go through it, whether it's half way through or whatever, I don't think that's been established.

The picture here clearly shows a good part of that foliage is on the Perrine St. property. Thank you very much.

Ed Darrow: Thank you, Counselor. I'm now going to close the public portion so we can discuss this amongst ourselves. Thoughts, views, opinions?

Andy Fusco: One of the points I'll raise, Mr. Chairman, the advice Mr. Corning did give us earlier that we vote on each of the four remaining items, it sounds to me as if number two on our list have been withdrawn, that each of those be a separate motion and a second and when you vote on each of those four items, members of the board, I do wish you to articulate your reasons each and every time. It may be duplicitous, whether your support it or are against it, but it's important for us to create a clear record of what reasons, if any, you have in support of your vote whether you're for or against.

Ed Darrow: Discussion?

Deborah Calarco: The first question I have is, at first, yes, I thought number two was being pulled back off but after Mr. Karpinski talked I'm not so sure that's the case so I want that clarified. Is it or is it not removed?

Andy Fusco: Do you have our agenda? Number two on our agenda is that you're seeking a 25 foot variance of the required 25 foot set-back for public way fencing. What Ms. Calarco is saying is that it sounds as if Mr. Corning was saying we intend to adhere to that but of course he represent the seller, not the buyer, and Mr. Karpinski may have said something contrary.

Karpinski: I meant to be speaking to the ten foot side yard set-back. Particularly in the area between the concrete block building and the Perrine St.

Ed Darrow: So then does it matter for record, the number two which states 25 foot of the required 25 foot set-back for public way fencing, that has been pulled.

Peter Corning: No.

Ed Darrow: No it has not?

Peter Corning: Only on the Perrine St. side.

Ed Darrow: Counselor, could you please re-approach so we can get this as a matter of record on the transcript?

Peter Corning: It would be two street set-backs by the zoning ordinance, one on Perrine St. and one on West Park. We agree that Perrine St. is a travelled highway that we will concede that the 25 foot set-back would be appropriate. Mr. Karpinski was talking about the ten feet coming in from the east, I think, rather than that 25 feet.

Andy Fusco: So you'll still be seeking a 25 foot variance of the 25 foot requirement on the east, north and west?

Peter Corning: On the north, 25; on the east and west 10 feet. Am I right?

Susan Marteney: Could you clarify what the difference between a property line and a public way fencing is? One and two speak to two different types of fencings.

Ed Darrow: Mr. Hicks?

Susan Marteney: Aren't they all property lines?

Brian Hicks: They are all property lines except for the fact that you front streets or neighboring properties. Public way would be a street. Property line would be your neighboring, abutting properties.

Susan Marteney: Then only the south and the north sides are public ways. Or is the railroad side considered a public way?

Brian Hicks: I would not dare step on the railroad property because I do not believe that to be public. I don't suggest you do that either.

Susan Marteney: So both east and west, then, are property line.

Brian Hicks: That's correct.

Susan Marteney: North and south are public way.

Brian Hicks: That's correct because they front streets. If you're looking at your description for the ZBA for this evening for this property you're seeing that number one is a ten foot property line set-back that would be from the east property line for that existing fencing.

Susan Marteney: And the west side?

Brian Hicks: The west side is the railroad right-of-way and in that area there they did have some gates for deliveries and pickups and offloading and those items there. With that, and we don't have an agent from the federal, or from the railroad company here to dismiss that or to speak for that, that fence exists, in bad repair but it exists, and parts of it are missing. Those are the two property lines. Now Carpenter St. is your 25 foot set-back that the attorneys have spoken to. Carpenter St. is a public way that would be to the north.

Susan Marteney: Park?

Brian Hicks: Oh, yes, excuse me, I'm sorry, Park, that's correct.

Ed Darrow: So then the record shall reflect that all five variances will be voted on as circulated in our agenda.

Peter Corning: Yes.

Ed Darrow: Thank you.

Peter Corning: With the exception [inaudible].

Ed Darrow: Okay, let the record reflect that number two, 25 foot of required 25 foot set-back for public fence way will only be noted for Perrine St. and not Park Ave.

Andy Fusco: Other way around. They're going to comply on Perrine, they wish a variance on Park.

Ed Darrow: May the record reflect then they shall comply on Perrine and wish to request on Park so as not to move the fence that is currently there.

Any other discussion?

Scott Kilmer: Yes, I have a question for Mr. Horton. We've been talking about the loudness of this industry, this may seem kind of technical, but do you have any numbers on decibels? How loud does this get?

Delbert Horton: I think the state law is 90 decibels. I don't see a problem staying within that. You have to remember, in the old days scrap business and the machines that Allen had are outdated and long since are out of use. The way things are done today, everybody uses the word scrap, it's recycling. It's nothing like it was back in those days. It just isn't. We're not looking to work 24 hours a day. We're going to be an eight to five business just like everybody else. I don't know what else to tell you. One thing I'll address while I'm standing up here. We're talking about the fence and the condition of the fence. We've made it well noted that the fence will be replaced with a brand new fence. Anything else?

Ed Darrow: Thank you. Any other discussion or questions?

Scott Kilmer: I have a question for Andy (Fusco). On these individual variances, each one of these would have to be passed in order for this to pass?

Ed Darrow: Yes. Well, if we go ahead and say number 4 isn't passed, it would be up to them to either conform with number 4 or not. That's the purpose of separating them.

Scott Kilmer: My other concern is there's four of us here.

Ed Darrow: That's hard to address. We've tabled it and, we can give them another option but we've taken testimony from them and the public, we've closed the public portion, so the only thing that would be gained by tabling is there may be somebody, and it would all rely on them to actually come up with their notes and to bring themselves up to speed, and being we have one absent chair, I had one noted

absence and one that wasn't noted. I don't know if that would put them in any better position or us.

Do the counselors wish to entertain the thought of tabling for another session due to the fact we are a seven member board with only four present. One no vote kills that variance needed, it's all it takes. Or do you wish to proceed. And unfortunately I apologize for us having two absent members but unfortunately it was beyond our control.

Peter Corning: It's the same reason we adjourned last time.

Ed Darrow: Exactly. And it was the concern, are you going to have more next month? And I had hoped to only be missing one which is an un-appointed vacancy.

Peter Corning: [inaudible]

Ed Darrow: So you'll go forward. May the record show that Counselor Corning spoke that they will proceed forward.

If there's no other thoughts or discussion the chair will entertain a motion on item one.

Susan Marteney: I'd like to make a motion for Delbert Horton of 23 Perrine St. for a ten foot required set-back off the property line fencing.

Ed Darrow: We have a motion, do I have a second.

Deborah Calarco: Second.

Ed Darrow: Roll call.

Andy Fusco: As we vote, I remind you to look at the handout just briefly that I handed out to you earlier today, the rationale I'm going to ask you to articulate in support of whatever your vote is, are the matters that are discussed on that one piece of paper I actually Photostatted the law itself, so there's no question as to what it says. And as Judge Corning said at the outset, what we're doing overall is we're weighing the benefit to the applicant against the detriment to the neighborhood. That's the overall process that we're going through. And in doing that

we're looking to several factors; number one, whether this will or will not make an undesirable change in the character of the neighborhood and whether it will be a detriment to nearby properties. Number two, whether the benefit sought by the applicant achieved by some other method other than seeking this area variance. Number three, whether the variance, each of the five variances, is substantial or insubstantial. Number four, whether the variances will have an adverse effect on the physical environment or the physical conditions of the neighborhood. Number five, whether this difficulty was self-created, as we know the facts are not in dispute, the applicant had a salvage yard on his property until 2005, it ceased being a salvage yard in about 2005 and then therefore the use was something other than a salvage yard so the pre-existing, non-conformity that ran with the land up until 2005 was deemed by our local law abandoned. However, let me say this, this is different, this self-created hardship rule than the use variance cases that we deal with from time to time. In a use variance case a self-created hardship is a bar to recovery. Here, if you feel that the hardship is self-created you can still vote in favor of the variance. The law allows that in area variance cases, it does not allow that in use variance cases. Do we all understand that distinguishing factor? This is an area variance case. Then we're going to look for granting of the minimum variances that are deemed necessary for the health, benefit and character of the neighborhood and we've heard a number of things to that extent that they're looking at these as the minimum that they can possibly live with because the applicant feels that in some cases to comply actually may or may not more harm than good. So that's the law of the State of New York and I ask you that you give reasons, rationale in support of whatever your vote is. Not only number one on which we do have a motion and a second, but as we go through this numbers 2, 3, 4 and 5 as well.

Ed Darrow: Please speak directly into your microphones so it can all be part of the transcript.

Roll call.

Susan Marteney: I vote no. I believe that there is a required fence on that line. That there needs to be...am I interpreting incorrectly?

Andy Fusco: Are you saying, Susan, and I don't want to put words in your mouth, are you saying that putting the fence on the line or putting the fence somewhere other than where set-backs are required would be a detriment to the neighborhood or change the physical condition of the neighborhood? I understand you said something about a fence on a line, but how does that fit with the five standards of law that I just read to you?

Susan Marteney: He's requesting that the fence be able to be less than ten feet from the property line, correct? Or ten feet from the property line.

Andy Fusco: Correct. He wants it to be on or near the property line.

Susan Marteney: The request is that the fence could be ten feet from the property line.

Ed Darrow: Correct. No. They want it on the property line, zoning requires it be ten foot from it. So, item one, is granting a variance that it may be on the property line, not ten foot from it.

Susan Marteney: I vote yes, that it may be as requested.

Andy Fusco: And your reason for doing so is what?

Susan Marteney: I believe there needs to be a proper fence on that line to separate the commercial from residential use and it needs to be conforming.

Andy Fusco: I'm confused now.

Ed Darrow: If you're voting yes, your reasoning would be why you feel that it doesn't need to be on the property line.

Andy Fusco: No.

Ed Darrow: Why it can be on the property line, not ten foot off.

Andy Fusco: The law requires that the fence be ten feet from the property line on the east and west sides.



Susan Marteney: I'm not talking about the west side at all, only the east side on the residential side.

Andy Fusco: Okay. And this applicant is asking for a variance from that. He saying, from what I hear, I want to replace the existing fence with a new fence that's translucent, that can't be seen through, but I want to put it on approximately where the fence line is now instead of having to put it back ten feet? Is that correct, what you're asking for?

Delbert Horton: Answers affirmatively.

Susan Marteney: For a ten foot fence on the property line that is opaque.

Andy Fusco: We're not talking about the height of the fence, we're talking about whether it's back from the property line or not. Opaque is okay, but we're not talking about the fence's height, we're talking about whether it's on the property line, ten foot back from the property line as our law requires, or somewhere in between.

Susan Marteney: Yes, I understand that but when I look back at his amendment he's asking for an eight foot fence, screening fence and earlier it says it has to be ten feet tall. That's why I added that.

Ed Darrow: Eight foot is what I believe to be the maximum for commercial and industrial.

Andy Fusco: I'll defer to Brian on that.

Susan Marteney: Somewhere else I read that it had to be ten feet tall.

Brian Hicks: The highest fence allowed in the city of Auburn is an eight foot high fence. No place in the zoning code does it reference a ten foot fence.

Andy Fusco: So he's saying he's willing to comply with the height rule, what he's asking you for is a deviation from where the fence is located. The law requires the fence be ten foot set-back from the property line and he's saying I want to put the new fence on or near the property

line, about where the old fence is. As he indicated when he nodded his head affirmatively.

Ed Darrow: Your voting yes, you believe it is proper to put the fence on the property line, it does not need to be ten foot off the property line.

Susan Marteney: Yes, that is what I'm voting.

Ed Darrow: Thank you.

Ms. Calarco?

Deborah Calarco: I'm going to say no and here's part of my problem. If we say yes to the ten foot variance and let them put his fence on the property line, we now negate or even possible of saying the 50 foot buffer, the trees, anything because we've now given permission to put a fence on the property line and that negates any buffering, it negates everything. So, how can I approve one...?

Andy Fusco: Hold on, that's not necessarily true, you can approve put the buffering inside your own fence. You don't have to put the buffering between your fence and your property line. You can put the buffer inside the property line. Again, I don't want to put words in your mouth and I don't want to change your vote one way or the other, I just want there to be clarification that there's nothing in our law to restrict the applicant from putting the buffering, whatever the buffering is, on his own side of the fence.

Deborah Calarco: Okay. If that's the case and we can vote on the others, I can agree with the fence on the property line, and not do the ten feet.

Ed Darrow: So your vote is yes for item one.

Deborah Calarco: Yes.

Scott Kilmer: Just to be clear, this is variance number one, only.

Ed Darrow: Yes.

Scott Kilmer: I don't think that would affect an undesirable change, I vote yes.

Ed Darrow: I vote yes. I believe the request is minimal and I believe that it's bordering industrial and commercial that the ten foot is not unacceptable.

Andy Fusco: Okay, let us now go to number two, Mr. Chairman.

Ed Darrow: I will now entertain a motion on item two which is the 25 foot of the required 25 foot set-back from public way fencing which would apply only to Park Ave, not Perrine, they're willing to meet that requirement on Perrine.

Susan Marteney: Are you making the motion?

Ed Darrow: I can't.

Andy Fusco: Actually you can.

Ed Darrow: I'm just saying what number two is.

Susan Marteney: I move that we allow Mr. Delbert Horton a 25 of the required 25 set-back of public way fencing on the Park Avenue north side of the property only.

Deborah Calarco: Second.

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

Susan Marteney: Yes, I believe that's an industrial area and it doesn't impact any residential houses.

Deborah Calarco: Yes, I also believe it's industrial and will not impact anything.

Scott Kilmer: Yes, same reasons.

Ed Darrow: Yes, being that it is on Park Ave I feel the impact is very minimal and it seems to be more commercial around that area.

Andy Fusco: Let us move to number three.

Ed Darrow: Number three. Item three reads a reference to the 500 foot set-back from all non-industrial uses. The chair will entertain a motion for number three.

Susan Marteney: I make a motion for Delbert Horton of 23 Perrine St. that the reference to the required 500 foot set-back from all non-industrial uses be released, I don't know what the right term for that is. Removed.

Ed Darrow: The variance speaks for itself. We have a motion for item three, do we have a second.

Deborah Calarco: Second.

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

Susan Marteney: I vote yes based on the map that was provided there would be no industry in a huge area and there certainly is in that particular area.

Deborah Calarco: I vote yes, the same issues, it is industrial and a 500 foot set-back would make it so there is literally no property left to do any business and it is industrial.

Scott Kilmer: I vote no. I believe it would create an undesirable change. I think it's a substantial variance and I believe it would be an impact on the environmental conditions of the neighborhood.

Ed Darrow: I vote yes. I believe that the industrial property bordering commercial five, if the 500 foot set-back was to be obtained it would render this property almost useless.

Andy Fusco: To number four, Mr. Chairman.

Ed Darrow: Variance number four, 50 foot of required 50 foot buffer yards and associated planting units. Does everybody understand this?

Andy Fusco: This was the matter that Mr. Long spoke to at the end of his remarks regarding the number of plants that are required per square foot and the type of buffering and I'll defer the rest to Brian.

Brian Hicks: That item there, it does state 50 feet on your applications. That is incorrect, it is a typo, it is to be 60 foot for that area and it considers 180 plant units and that would be the area of associated plant units in your write up. So that would be what they're looking for because the buffering that is not something that is going to be able to fit into that area there.

Ed Darrow: Mr. Hicks, for clarification, are we referring to 180 plant units for the entire area, the entire 50 by property line area?

Brian Hicks: What it calls for is 60 foot of buffered distance and then there's a calculation for the 180 plant units per the lineal footage and I don't have that all in front of me.

Ed Darrow: But that's for all the lineal footage.

Brian Hicks: It's not a total of that, it's deciphered back and forth, there's calibers and all of that, you can transfer this and that to come up with it.

Susan Marteney: Different types of plantings, densities and height.

Brian Hicks: Exactly. So it's all up to the landscape architect.

Ed Darrow: Are there any other questions on number four? Okay, the chair will entertain a motion on number four.

Deborah Calarco: I believe we allow Delbert Horton a 50 foot of the required 50, excuse me, 60 feet of the required 60 buffer feet and the associated plant units.

Susan Marteney: Second.

Ed Darrow: We have a motion and a second.

Susan Marteney: No. I believe this should be required to buffer the residential uses of the commercial district on North St.

Deborah Calarco: No. I believe the same thing. I think it's required, we're allowing a fencing to be taken in so we've already given some area variance. I think we need to give the neighborhood the buffering.

Scott Kilmer: No. I believe it's necessary to have the buffer to protect the environmental conditions of the neighborhood.

Ed Darrow: No. I believe 50 foot is not the minimum they could get by with for a buffer zone. I feel there is a buffer zone that can be made, they just need to come to terms with numbers.

Andy Fusco: 60 do you mean?

Ed Darrow: 60, excuse me. May the record show 60.

Item five. A reference to the sufficient screening of the residential uses. Are all members in understanding of what this means or would you like clarification from Mr. Hicks?

Susan Marteney: I'd like clarification please.

Brian Hicks: The section of the zoning code we marked for this is to provide sufficient screening from this type of use from the residentially zoned and residential uses. This all plays into the fact with the buffering requirements, the planting requirements, the fencing requirements, all of those. We can provide that with the proper buffers, plant units and fencing. So this is just a reference point we add on there that we need to be able to maintain this and we do it over the course of the life of the use so that if we do have die off or an issue where we lose a part of the fence or something like that we can maintain that property and that plant life to maintain the screening.

Andy Fusco: Mr. Hicks, any insight from your experience based upon the one bit of testimony, the deciduous trees lose their leaves obviously evergreens conversely do not. Any thoughts on that?

Brian Hicks: I'm in agreement that deciduous trees, they lose that and then we don't have that screening during the winter months. My biggest concern is in this area here, if we were to plant evergreens we would have screening all year long. Unfortunately they have the shallowest root base and they're not very good in high winds. It's an issue we deal with everywhere.

Ed Darrow: Thank you, Mr. Hicks.

Scott Kilmer: I have a question on what number five is specifically asking for.

Ed Darrow: It's asking that we grant a variance that the buffer zone not have to be maintained as other buffers fall out, die out or damaged.

Andy Fusco: Also, that we're not going to require the applicant to install further screening than what has been testified to and what would be required under item number four which was denied. In other words, we heard testimony from Mr. Karpinski and Mr. Corning, both of whom walked the property and they talked about their, and I don't want to put words in their mouths either, what they felt was sufficient screening that exists and so the burden of putting additional screening they felt was unnecessary so they're seeking a variance from that. Now to a certain extent because item number four was denied in the site plan approval process they are going to have to comply with that. Maybe four does have some impact on five but I'm not telling you how to vote one way or the other, I'm just trying to charge you as to the law.

Scot Kilmer: If I understand it right I think Brian also made mention of fencing in the buffer zone so that would mean the fence would have to be maintained and this variance would alleviate that, is that correct?

Ed Darrow: Screening is a broad term in this.

Andy Fusco: I think opaque fencing, as I recall, is required by state law for these types of uses. It may not be in our code, I'm not certain of that. But I do know that it's in the state law. An opaque fence is going to be a screening as well and that will be required as a matter of law for all these types of salvage, junk yard type uses.

Scott Kilmer: So basically if we vote for the variance we're saying this buffer does not need to be maintained, is that correct?

Andy Fusco: I think what we're saying if you vote in favor, a motion and a second in support of number five, is that you are not going to require this applicant to do any additional buffering other than what is required by number four because you turned that down and which is required by state law which is an opaque fence. That would be my interpretation of what a yes vote in support of a motion and second for number five would mean.

Ed Darrow: Is everybody okay with this variance now? Or number five I should say.

Andy Fusco: Doctor, do you understand what I said?

Scott Kilmer: I believe so.

Ed Darrow: Chair will entertain a motion for item five.

Susan Marteney: I make a motion for Delbert Horton of 23 Perrine St. that a reference to the sufficient screening for residential uses be removed.

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

Deborah Calarco: Second.

Ed Darrow: Roll call with justification please.

Susan Marteney: I vote no that the screening and fencing needs to be maintained to keep a buffer between the residential areas.

Deborah Calarco: No, I agree, the same thing, the buffer needs to be maintained. I don't think it's something I can safely say goes up in one year and two years later we don't have it any more because nature takes it out. It has to be maintained.



Scot Kilmer: No, same reasons. According to Mr. Hicks this requirement would have to maintain the buffer, I think that's important and this would substantially just let that go.

Ed Darrow: I vote yes, I feel that the fact that item four failed, which was going to require a minimum of buffering, that minimum buffering would be maintained and would be enough to adhere some barrier between the C5 and Industrial area that we are looking at this evening.

Andy Fusco: Let me just correct what you just said, it doesn't say zone, it says uses so the fact that we have residential houses in a commercial zone is an important factor here. It's not that it's a commercial zone, it's residential uses.

Ed Darrow: I understand that.

Andy Fusco: I just wished to have that clarified because there is a distinguishing...

Ed Darrow: Yes, I understand there are residential houses in a commercial zone.

Andy Fusco: By my score card variances one and two were granted, variances three, four and five were denied.

Ed Darrow: As Counsel said, variances one and two have passed, three, four and five were denied so your next step is your site plan and addressing those.

Peter Corning: By voting no on three haven't we pretty much confiscated the land that it can't be used for this at all.

Andy Fusco: My feeling on that, Judge, is that, and certainly that will be your argument, that it's confiscatory this vote, but that doesn't necessarily mean that your client or Mr. Karpinski's client couldn't use this property for an industrial use that is not salvage or junk yard in nature. There are industrial uses that don't involve scrapping or recycling, at least one of which I can think of is more noxious than a junk yard but we'll not go there. Because not all the uses are forbidden,

just some uses are forbidden, that would be my defense to confiscatory argument. Whether it passes muster or not, I don't know.

Peter Corning: For purposes of this meeting, a no vote on number three says even if we comply with every zoning requirement but that, that we can't do business.

Andy Fusco: I think that's fair.

Ed Darrow: Correct.

Andy Fusco: Can't do business as a salvage yard.

Ed Darrow: Yes, because the 500 foot failed. Thank you for your time and sorry for your inconvenience of having to have it tabled.

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Ed Darrow: Is 36 E. Genesee St. present?

Brian Hicks: He just stepped out into the hallway to take a quick phone call but they do want to proceed.

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### **230 Genesee St. Area variance for sign**

Ed Darrow: 230 Genesee St. please approach the podium. Please state your name and address for the record and tell us what you'd like to do.

Bob Simmons: Lady and gentlemen, my name is Bob Simmons.

Ed Darrow: Okay, sir, I'd like to make sure that you know and are fully aware that this is a seven member board. We are short three members. One 'no' vote, kills it, and unless there's a substantial change in your application you cannot reapply to this board. Knowing that would you like to table this until next month?

Bob Simmons: I think I would.

Ed Darrow: Okay then. I'll take a yay or nay on the board if they're in favor of tabling 230 Genesee St. until next month.

All members vote 'yay'.

Ed Darrow: This is tabled until next month.

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**105 Grant Ave Area variance for addition for cooler.**

Ed Darrow: Is 105 Grant Ave present? Sir, please approach the podium and give your name for the record.

Chris Colella: I'm Chris Colella.

Ed Darrow: Mr. Colella, as you heard me address the other gentleman before; this is a seven member board, we have three members absent. Meaning one 'no' vote and your motion would fail. Therefore, unless there's a substantial change in your application you would not be able to reapply before this board. Would you like to go forward or would you like to table until next month?

Chris Colella: We'll move forward.

Ed Darrow: Okay, thank you. Please give your name again and tell us what you'd like to do.

Chris Colella: I'm here representing Ioannis, Inc. better known as Kosta's Bar & Grill. We're looking to have a back yard variance to install a couple walk in coolers. I've made drawings and I've sent complete packet out to everybody on the board showing the property lines, sketches of the proposed coolers and filled out the paper work of why John needs the coolers. There are many reasons, he needs inside space, a lot of old, small coolers he's running inside that are terribly non-efficient as far as energy use. We want to update and give him a little more room inside.

Ed Darrow: So, what you're looking for is an area variance, a front yard of 30 foot and from the existing building of 21.5 feet. Would that be correct?

Chris Colella: No. It's a back yard commercial to a side yard residential which Mr. Gotsis owns both properties.

Andy Fusco: So if what Mr. Hicks is describing to us, the back yard is already non-conforming and you're seeking to increase the non-conformity that already exists?

Chris Colella: I'm assuming that's the way it is, sir.

Ed Darrow: Is that correct, Mr. Hicks?

Brian Hicks: Yes. This packet was put together by Steve Downing in my office in my absence. What it stated here is the rear property set-back for the C3 zone, when you have front yard parking, would be 30 foot off the rear property line. This is a pre-existing condition where they don't meet the 30 feet as it is now and in order to install these coolers they're asking for additional variance that would drop them down to roughly nine feet. It would be eight and one-half feet.

Ed Darrow: Which figure does not even appear on this application.

Brian Hicks: The 21.5 is what they're seeking.

Ed Darrow: So they're seeking 21.5?

Brian Hicks: Yes.

Andy Fusco: The back end of the cooler will be eight and one-half feet from the property line instead of 30 feet as is required.

Ed Darrow: So the variance is actually for eight and one-half feet.

Brian Hicks: The variance is actually for the 21.5 feet.

Ed Darrow: All right. So the variance is 21.5.

Brian Hicks: Of the required 30.

Ed Darrow: Okay, thank you, now I've got it clear.

Susan Marteney: And these coolers and freezers are going where that white, twenty thing is in the back?

Chris Colella: That is correct, ma'am.

Scott Kilmer: Brian, we're asking for a variance of 21.5, is that correct?

Ed Darrow: Yes.

Scott Kilmer: And on this map it says that the building is 20.5 feet away right now. So are we asking for 20.5 or 21.5? Excluding the new cooler. Going to the boundary on the opposite side, in the back of the building it's 20.5 from the existing property line?

Brian Hicks: Yes, that's correct.

Scott Kilmer: So it's 20.5 not 21.5.

Brian Hicks: It's required to be 30 so you have to make up the difference.

Ed Darrow: Any other questions for Mr. Colella?

Scott Kilmer: I think you answered this question already, it's going to go about where the white tent is right now?

Chris Colella: Yes. That's a real dead spot back there.

Ed Darrow: Any other questions? You may be seated, Mr. Colella, we reserve the right to recall you.

Is there anybody else present wishing to speak for or against 105 Grant Ave? Is there anyone else present wishing to speak for or against 105 Grant Ave?

Seeing none, hearing none I shall close the public portion so we may discuss it amongst ourselves.

Thoughts?

Scott Kilmer: If it's going to go roughly where that white tent is, you can hardly see it.

Ed Darrow: I think the big factor is that it's dead space. It's not going to be intrusive. It's a necessity for the restaurant and he also owns the property next door.

Susan Marteney: And there's nowhere for it to go.

Ed Darrow: It's not like there's a lesser of two evils in this one.

Susan Marteney: He states that it's going to save electricity and be more efficient and that's good thing for any business to do.

Ed Darrow: Chair will entertain a motion for 105 Grant Ave.

Scott Kilmer: I'd like to make a motion to grant Ioannis, Inc. at 105 Grant Ave an area variance to build a 12 x 24 cooler addition. The rear property set back in a C3 zone with front yard parking 30 feet. The existing building is non-conforming with a 21.5 foot rear set back with the new addition of 12 feet into the rear yard the variance requested is for 21.5 feet.

Ed Darrow: Would you consider amending to the cooler to be built per submitted plot plan.

Scott Kilmer: Yes.

Susan Marteney:

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

All members vote approval.

Ed Darrow: I feel the request is minimal and there's no other avenue to get the needed results. Sir, your request has been approved. Please see Code Enforcement for the necessary permits. Thank you.

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**36 E. Genesee St. Area variance for number of signs proposed.**

Ed Darrow: Back to 36 E. Genesee St. 36 E. Genesee St. please?

Andy Fusco: What does your client wish to do?

Man in audience: Inaudible.

Ed Darrow: No, because once I open the public portion it will have to stay open so, if you could please give me your name for matter of the record.

Tom Bolt, Bergman and Associates, Western, NY, representing Sunoco, the property owner.

Ed Darrow: Okay, what I would like to explain to you is that we are a seven member board. We have three members absent. If you have one 'no' vote, your variance will fail and unless there's a substantial change in your application you cannot come before this board again. Knowing this would you like to table this until the next regularly scheduled meeting?

Tom Bolt: Yes, we'll table it.

Ed Darrow: Okay then. Let the record show that 36 E. Genesee St. has requested to be tabled. All those in favor, aye?

All members vote 'aye'.

Ed Darrow: Approved.

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**217 Grant Ave Area variance for sign exceeding allowed amount.**

Ed Darrow: 217 Grant Ave? Please give your name for the record.

Eric Olsen with 3i Graphics and Signs.

Ed Darrow: Sir, as you've heard before we are a seven member board, three members are absent. Therefore if there is one 'no' vote your variance will fail and unless there is a substantial change to your application it cannot come back before this board. Knowing this do you wish to go forward or do you wish to table?

Eric Olsen: I wish to proceed.

Ed Darrow: Okay, thank you. Please tell us what you'd like to do.

Eric Olsen: I'm here to represent a new franchise going into the plaza at 217 Grant. This is a frozen yogurt franchise called 'Hoopla'. What we are requesting is an additional seven square feet to the signage proposed for the front of the building. Currently the building occupies approximately 20 linear feet, the sign code allows for two square feet for every linear foot. The signage right now is zoned for 40. Our signage that is proposed and is consistent with other franchise locations is at 47 square feet. We've worked with Mr. Hicks' office to bring this to the Zoning Board of Appeals. We believe the seven additional square feet is a reasonable request. It is the third location for this franchise owner to open. He is very happy to be in the City of Auburn and is looking forward to completing his signage with an opening hopefully for Labor Day weekend.

Andy Fusco: Why does he need the extra seven feet?

Eric Olsen: Currently the owner has already invested in signage which would be appropriate for this property. To make any modification to that would incur new sign construction costs. He bought sign packages at a preferred rate due to the volume that he purchased. This would be an opportunity to utilize already expended money and current assets.

Andy Fusco: Are you saying that the Auburn sign would be the same size as the other signs?

Eric Olsen: That is correct and also a fourth location to be going into north Utica this fall. This franchise owner is looking for consistency of brand. The franchise opportunities are tremendous at this time and he's very happy to bring this opportunity to Auburn. We look forward to a very successful store opening and we think this will do things as far as helping the commerce as well as the tax base for this community. We believe the seven square feet is a reasonable request, nothing excessive and seems to be consistent with the branding or other property with the business owners in the plaza. Thank you.



Ed Darrow: Any questions from the board members?

Scott Kilmer: I've seen the sign and it's in keeping with the others out there.

Susan Marteney: The only thing that's missing is 'frozen yogurt'. That's what you're wanting.

Eric Olsen: Yes, that's all that's missing.

Ed Darrow: Any other questions? You may be seated, sir, but we reserve the right to recall you.

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

Seeing none and hearing none I shall close the public portion so we may discuss it amongst ourselves.

Thoughts?

Scott Kilmer: I don't think it's a big request.

Ed Darrow: Yeah, I think it's very minimal when you consider the signage of that mall, when you consider the shape of that mall.

Susan Marteney: Without that 'frozen yogurt' underneath the sign doesn't give an indication of what it is. And it's no bigger than any of the other signs.

Ed Darrow: I really don't believe that seven square feet is going to turn the mall into the Vegas strip.

Chair will entertain a motion.

Scott Kilmer: I would like to make a motion to grant 3i Graphic and Signs an area variance of seven square feet over the allowed 40 square feet for a frontage sign total of 47 square feet.

Susan Marteney: Second.

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

All members vote approval.

Ed Darrow: I feel the request is very minimal. Your variance is approved. Thank you. Please see Code Enforcement for any necessary permits.

Eric Olsen: Mr. Chairman, for the record I would like to thank Mr. Hicks and his office for their cooperation in making it easy for an out of town business to do business in your city. Thank you.

Ed Darrow: Thank you very much. So noted.

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### **50 Owasco St. Area variances for two additions**

Ed Darrow: Next we have 50 Owasco St. Please approach and give your name for the record.

Michael Palmieri, architect for the project.

Ed Darrow: Mr. Palmieri, I'd like to make you aware that this is a seven member board. We are missing three members. It would take a 'yes' vote from every board member present for your variance to be approved. One 'no' vote would deny it. Unless there's a significant change in your application you cannot reapply to this board. Knowing this do you wish to go forward or table it until the next scheduled meeting.

Mike Palmieri: I'd like to go forward.

Ed Darrow: Okay, thank you.

Mike Palmieri: Representing Fine Food and gas. What the client is trying to is to put on additional space to enlarge the convenience store portion of the building. Right now what we are looking for is a rear setback, I believe. The side setbacks are meeting the local zoning requirements. Right now the existing building is approximately two feet

on one side and tapers down in the rear which is on the face of the existing Utopia Club. We're looking to stay within the same line of the building to add on to the building.

Andy Fusco: Where the two additions will be as depicted on the Marin map, are either of those two where there are current curb cuts for customers to be able to come off either Owasco St. or S. Fulton St. to access the property?

Mike Palmieri: Yes. There is literally no curb in that area.

Andy Fusco: You have to come up hill if you're going off Owasco. In no way will access to the property be altered? By especially the one to the west.

Mike Palmieri: I don't believe it will. That side area really has no use as far as getting to the pumps. It won't impose any restriction in access to the pumps.

Scott Kilmer: Do you find many people parking in those spots presently? Will you be losing parking?

Mike Palmieri: Most of the parking is in the front of the building. What's shown is what is existing there now. It's the convenience type of business for people coming in and out.

Scott Kilmer: So technically those are not parking spots right now?

Mike Palmieri: No.

Deborah Calarco: The only question I have is on the west side, there's currently the dumpsters, where would they be going.

Mike Palmieri: They're going to disappear completely. They're using them now but not in a considerable amount. They will use inside the building for the minimal amount they need.

Ed Darrow: Any other questions? You may be seated but we reserve the right to recall you.

Is there anybody else present wishing to speak for or against 50 Owasco St.? Anyone else present wishing to speak for or against 50 Owasco St.? Seeing none, hearing none I shall close the public portion so we may discuss this amongst ourselves.

Thoughts?

Scott Kilmer: I have a question for Brian. There's no issue with the north and south boundaries on this, correct? The border of S. Fulton and Owasco St. It's just the west boundary?

Ed Darrow: Just the rear.

Brian Hicks: The setback requirement off the public sidewalks? No. There is nothing there.

Ed Darrow: That's the big thing for me to factor. Only one variance is needed here, for the rear, and it's going to keep the building in a straight line. Makes more sense to me.

Also, part of it on the west side is like walk or curb, like three feet of it or so.

Andy Fusco: Any thoughts regarding the turning radii of cars exiting the gas pumps to be able to get to S. Fulton St. and Owasco St. if the six parking spots in front of the store are filled?

Brian Hicks: That is a concern. It is depicted here on the drawing, he doesn't show that as a turning radius or give us a dimension to determine that. That might be a question for the applicant as far as distance from that. We could possibly scale it, but I don't know if we could draw the proper radius or turning lanes for that.

Susan Marteney: There are no curbs along there, too, that one has to be careful of pulling out onto Owasco.

Brian Hicks: That's correct. The only curbed area is right at the flat iron nose.

Ed Darrow: Any other questions for Mr. Hicks? Thank you, Mr. Hicks. Mr. Palmieri, could you please re-approach?

Is it fair to say with your scaled drawing here that any radius turns either way, in or out of the pumps, will not be met with a hazard getting back onto S. Fulton or Owasco?

Michael Palmieri: They are both one-way. Fulton is north bound way and pulling out on Fulton there's no issue. There's plenty of space. The spaces I have shown are existing, it's the way the business is run right now. The Owasco St., the drawing speaks for itself.

Ed Darrow: So is it your testimony then that the addition areas currently are not used for egress or ingress to the property?

Michael Palmieri: Yes.

Ed Darrow: Any other questions for Mr. Palmieri? Thank you, you may be seated.

Any other discussion amongst board members?

Scott Kilmer: I'm sorry Mr. Palmieri, I have just one more question for you. The addition facing S. Fulton St., is kind of 'L' shaped that comes in part in front of the building?

Michael Palmieri: Yes.

Scott Kilmer: Is it also true to state that the front addition wouldn't affect the turning radius of the cars at the gas pumps? I believe the Chair's question was basically for the addition on the two ends of the building. Do you feel there is still enough turning radius with that addition on the front?

Michael Palmieri: Yes. I stopped there at the doorway and didn't continue that down to the Owasco St. side because of the change and location of the pumps. The pumps on the Owasco St. side are a little bit tighter to the building than they are on the Fulton St. side.

Andy Fusco: In other words the 'L' shaped portion on the front of the building doesn't put the parked cars any closer to the pumps?

Michael Palmieri: The 'L' shaped does. It does, it's a six foot projection of the addition at the front but I feel it doesn't affect the radius turn out onto Fulton St.

Andy Fusco: The difference between the two drawings, which show this the original plan which didn't have an addition to the front and the revised plan which does have an addition to the front, the two hypothetical parked cars near Fulton St. don't move in either of those.

Michael Palmieri: In the building?

Andy Fusco: In other words there's a space between the parked cars and the existing building where now the addition is on the amended drawing.

Michael Palmieri: They moved forward six feet. Right?

\*general consultation of the drawings by the board, staff and Mr. Palmieri\*

No, you're right, they haven't really moved, no.

They've moved forward a couple feet. They're not in line with the original. What we're doing is trying to enlarge the building to get as much as possible and I've taken advantage of the pumps on the Fulton St. the parking spaces if they've moved has moved a couple feet to the south.

Ed Darrow: Any other questions for Mr. Palmieri? You may be seated.

Any other discussion?

The chair will entertain a motion.

Scott Kilmer: My concern is that the pumps, usually there is two pumps per island, and you may have two cars in this spot where there's just one on the gas pumps, one would be pulled forward and one behind.

Ed Darrow: I don't know that there's usually two pumps per island. The pumps are back to back. Sir?

Andy Fusco: There's two pumps total?

Ed Darrow: No, it's back to back.

Michael Palmieri: There's one pump per island.

Ed Darrow: May the record show that Mr. Palmieri testified that there is one pump per island, double sided.

Scott Kilmer: I'd like to make a motion to grant Fine Food and Gas, LLC dba Auburn Mini Mart of 50 Owasco St. an area variance for a rear property setback of 18.8 inches.

Susan Marteney: Second.

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

Motion carried.

Ed Darrow: I feel that it keeps in the lines of the building and does not hinder any egress or ingress to the property. Sir, your application has been approved. Please see Code Enforcement for any necessary permits.

Any other business?

Andy Fusco: Just in the way of housekeeping, two matters. Number one, I e-mailed everybody and I requested a one month adjournment on 108 South St. As you know from reading the paper the Historic Resources Review Board made a decision in the matter at their last meeting that I will have to research what effect, if any, it has on us, on this board.

Ed Darrow: And what was their decision?

Andy Fusco: I wouldn't want to specifically say. All I know is what I read in the newspaper. The two business days immediately after the matter was heard I wanted to debrief Christina Selvek but she was unavailable so all I really know is what I read in the paper and I don't know how accurate that is. What I would like to do is review the minutes and see exactly what was said. The reason I asked for time is because given the Schwartz Theatre matter which is very time consuming, I'm not going to be able to look at 108 South St. until I get this theatre matter behind me on September 5. The other thing in the way of housekeeping, two months ago we had a matter from Gloria Wristen before us regarding the parking lot behind her house. It was adjourned one month because there was no appearance. She was here earlier tonight and left when seeing it wasn't on the agenda. I requested it be moved to the next agenda due to her attorney, Bob Barry's question of why a variance was required at all. I inspected the property and spoke with Brian Hicks on the matter. But the fact the application has now taken more than 62 days to decide does not mean it's a denial as the other side has stipulated to an extension so I expect to hear that at the September meeting. The only question that will come up is whether they need a variance or whether they just need an interpretation and I'm going to leave that up to Mr. Barry. I'm satisfied with the explanation from Mr. Hicks.

Deborah Calarco: On housekeeping I would also like to bring up the neighborhood notification. I know I didn't get a notification on a matter that pertained to Orchard St. back in April. I'm not sure what we can do but I think we need to be a little more persistent. If it's necessary, send out notices earlier. I don't think it's good for neighbors not to get notification until the last minute.

Ed Darrow: I'm not trying to defend anybody but everybody in this building is doing more and more with less and less. My whole thing was if she had brought the envelope that showed our postmark on it that recent to her receiving it, it would weigh heavily in the fact that it isn't getting out in time and not the fault of the postal service but then again it could be the fault of the postal service as I've had mail lost for weeks.

Deborah Calarco: I agree. Like I said it bothers me that they don't get the kind of notification.



Andy Fusco: Let me say this. I think is interesting that of the four people that brought to my attention this problem, three of them didn't come tonight. I don't know what's up with that when I personally invited them and told them. I have the same concern you have. We'll work on it.

Ed Darrow: Mr. Hicks, do you have something to add?

Brian Hicks: Yes. I'd like to continue with what Andy stated, we need to continue forward with the system we have in place. I hate to try to push things out too early in the month due to our cut off dates. I don't want to have to make the cut off dates earlier and have people waiting two months before they can present at a meeting. I need time to review the applications and get all paperwork done that is required and get everything distributed.

Ed Darrow: Anything else?

[Inaudible.]

Andy Fusco: Yes, there is. There just was one July 21. The county sponsored one. Unfortunately I didn't find out about it in time to notify this board so what I think I'll do is ask the county planning department to include all seven of your e-mails on their lists so when the notices go out between a meeting you can be advised.

As far as vacancies on the board, if any of you know of a republican who'd like to serve let me know and I will advise the mayor.

Meeting adjourned.

Recorded by Alicia McKeen