

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: JULY 16, 2008

CASE NOS.: 7/16/2008-5, 7/16/2008-6 AND 7/16/2008-7

APPLICANT: FORTIER ENTERPRISES, INC.
C/O WILLIAM FORTIER
128 WEST BROADWAY
DERRY, NH 03038

LOCATION: 9 NASHUA ROAD, 10-136, C-II

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
NEIL DUNN, VOTING MEMBER
BARBARA DILORENZO, VOTING MEMBER
VICKI KEENAN, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING OFFICIAL AND
ZONING ADMINISTRATOR

REQUESTS: CASE NO. 7/16/2008-5: AREA VARIANCE TO ALLOW A DRIVEWAY TO
REMAIN CLOSER THAN 50 FEET TO AN INTERSECTING STREET.

CASE NO. 7/16/2008-6: AREA VARIANCE TO ALLOW TWO DRIVEWAYS
TO REMAIN CLOSER THAN 50 FEET AT THE STREET LOT LINE.

CASE NO. 7/16/2008-7: AREA VARIANCE TO ALLOW PARKING WITHIN
THE REQUIRED 30 FOOT GREEN AREA ABUTTING A PUBLIC RIGHT OF
WAY AS WELL AS WITHIN THE REQUIRED 15 FOOT PERIMETER GREEN
AREA.

PRESENTATION: CASE NOS. 7/16/2008-5, 6 & 7 WERE READ INTO THE RECORD WITH FIVE
PREVIOUS CASES LISTED FOR MAP AND LOT 10-136.

YVES STEGER: So, if you could describe, in general, the project and those things that you want
and...

LARRY O'SULLIVAN: I'm sorry, can I get your name again?

JACK SZEMPLINSKI: Again, Jack Szemplinski, I'm with Benchmark Engineering. Mr. Fortier, Bill
Fortier, owner of the property. This particular property is located on Route 102, at it's intersection

with Ela Ave and it's on the south easterly corner of that intersection. As you probably know, the property is presently used for a Citgo station and convenience store. As another feature to this site, there is a canopy that covers two (2) pump islands in between the main building at Route 102. The property has, at present time, three (3) curb cuts. Two (2) of those curb cuts on Route 102 and one (1) is on Ela Ave. As you can see, those curb cuts are rather large in size. The rear of the property is actually, I forgot to mention, the property is seven (7) tenths of an acre in size and it's zoned C-II. The rear of the property is zoned residential. The sides, both sides, are C-II. Some of the restrictions on this property, being the corner lot, there's a thirty (30) foot setback from the street and also fifty (50) foot green area setback from the residential area. This property has been initially built in 1968 by Texaco and it has been a gas station, it has been a restaurant in the past. At this point, there was a lot of gas stations at that location and Mr. Fortier would like to try his luck at running a restaurant. This particular restaurant would be pretty much take out but what we are hoping to do is keep the canopy and put some picnic tables so people can sit and eat there but there would be no inside seating at all. In order to accomp...I mean, the property does have individual septic system that services it and also municipal water, actually, Pennichuck water system. Some of the setbacks, if you look along Route 102, there's only two and a half (2.5) feet of green area. I submitted a whole bunch of pictures of that and I'm sure you're familiar with that area. Setback along Ela Ave, at the narrowest point, is about four (4) feet. I mean, this is for green area. Now, this particular site, in order to accomplish what we're trying to do, we're requesting three (3) variances, one (1) being that existing driveway. The regulations state that when you're constructing a new...the regulations state that when you're constructing a new site, the driveway shall be separated by fifty (50) feet. We are about forty seven (47) feet, so that's the first variance. The second one being is that the edge of the driveway, an intersecting street should be fifty (50) feet as well and I believe we only have, like, thirty seven (37) feet. Yeah, it's approximately fifteen (15) feet only, fifty (50) feet required.

LARRY O'SULLIVAN: You say there is fifteen (15)?

JACK SZEMPLINSKI: The edge of...

LARRY O'SULLIVAN: One-five (15)?

JACK SZEMPLINSKI: ...the driveway...the edge of the street line, there's only fifteen (15) feet with fifty (50) feet required. Also, as part of this proposal, if you look at...this site pretty much shows the property as it sits today and if you can observe, there is a huge curb cut up on Ela Ave. That's basically half the frontage on the property. What we are proposing to do is reduce the width of it and create some additional parking here. So anyway, we are requesting to leave existing setbacks, being four (4) feet here, two and half (2.5) feet here and six (6) feet there. This is the Mobil gas station site. Yeah, so basically, there's really three (3) requests, one (1) being, here was the existing situation, we're not planning to change any of it. And the second...and the third one...the third one being leaving the green areas just the way they are. As to, well, actually, all three (3) actually are the same except we are closing a good portion of that driveway, which we are increasing the green area as it sits today. Five (5) points...

LARRY O'SULLIVAN: May I ask what you're gonna do with the...what's that called, the overhang, and the pumps and all that stuff, they're gonna go?

JACK SZEMPLINSKI: The pumps will go and he plans to put some picnic tables there so people can have lunch.

LARRY O'SULLIVAN: What happens to the overhead thing?

JACK SZEMPLINSKI: The canopy?

LARRY O'SULLIVAN: Or the canopy, I'm sorry.

NEIL DUNN: ...stays.

JACK SZEMPLINSKI: Right.

LARRY O'SULLIVAN: That stays.

JACK SZEMPLINSKI: That will stay, right.

LARRY O'SULLIVAN: Right.

JACK SZEMPLINSKI: Okay, five (5) points of the law.

YVES STEGER: These are for only the two (2). Did you mention the green area, the limits to the green area?

JACK SZEMPLINSKI: The green area? Yeah, there's four (4) feet on this side is the minimum and it widens out to about six (6) or seven (7) feet here. There's only two and a half (2.5) feet along the Route 102 side and six (6) feet minimum at this very corner. Again, everything here was existing, with the exception that right now this is paved pretty much up through here. So we would close this entrance quite a bit.

LARRY O'SULLIVAN: Can I ask why you need two (2) entrances to a sit-down restaurant?

JACK SZEMPLINSKI: Any kind of deliveries, it's much easier to come around this way and come out here. As it is, this is somewhat limited. We actually sat with John Trottier, the Town Engineer and that's what we worked out would be the best. So, basically, this entrance, people would have to come up here and here where the [inaudible], there would be a turn around and park in the back, like a hammerhead. And this is basically...there's two (2) sides but they are separated but we don't have enough parking if we were to use only one side or the other.

NEIL DUNN: So, it's because it's changing use from a gas station to a restaurant, you're required to have more parking space?

JACK SZEMPLINSKI: Well, yes. We are because, again, we're getting rid of the spaces under the islands, will be pretty much picnic tables, so we'd have to not really change them but we have to rearrange them. Public Works wants to see that we have, you know, a proper access to those spaces. Obviously, this has to go through Planning Board before it even goes any further.

YVES STEGER: So, essentially, we don't have to worry at this time ourselves about the number of parking spaces that they're asking...

LARRY O'SULLIVAN: Yup, I agree, that's not our thing.

YVES STEGER: ...because that's something that somebody else will take care for us.

VICKI KEENAN: Mm-hmm.

NEIL DUNN: Well, but my point is it's an existing condition, basically. Why are we voting on it is what I was trying to get a point at.

VICKI KEENAN: The driveways?

RICHARD CANUEL: This is a situation where, because it's a change of use, requires site plan approval from the Planning Board. Before the applicant can even proceed to the Planning Board with an application for site plan approval, because of some of the development requirements of the property governed by zoning ordinance, this Board needs to grant the variances before he can even apply to the Planning Board.

LARRY O'SULLIVAN: Right.

NEIL DUNN: Okay, well, that was my point, because it was a change of use.

YVES STEGER: Correct. If they were changing the Mobil by total, we wouldn't have to do anything because it's not a change of use. Because it's a change of use, even though it's completely preexisting, we have to approve anything that is not meeting the zoning ordinances.

LARRY O'SULLIVAN: Okay.

YVES STEGER: Okay, could you go through the five (5) points of law, please?

JACK SZEMPLINSKI: The diminishing of surrounding property values. The surrounding properties are very much in, you know, line with this property as opposed to current regulations that state thirty (30) foot green area setback. Most of the properties on that side, on the Derry side of Route 93 actually don't have hardly any green areas, so that's...And as far as closing this entrance, I think it will improve somewhat of the aesthetics of the property. All the properties around it, on the sides and in front, across 102 are all commercial. The variance will not be contrary to public interest. Driveway entrance, making the driveway entrance smaller would actually benefit public interest. There is really no other changes physically, other than maybe realigning or restriping the parking lot, that would actually make a difference to anybody. Physically, the structure will remain pretty much the same. I'm sure, Bill, you'll paint it and they'll be able to sell food and so there's really very little change to the property. So it will not affect the public interest and actually will benefit public interest because hopefully there will be another restaurant in town and with proper access to it. Okay, as far as special conditions exist that literal enforcement of the ordinance results in unnecessary hardship.

Actually, in this case, first of all, the property is only seven (7) tenths of an acre, so it's on a small site. It's also a corner lot so the restrictions that are imposed by the zoning are pretty severe on corner lots. In addition to that, there is a residential zone in the back so we are required to have a fifty (50) foot buffer, which eats up a lot of that seven (7) tenths of an acre lot, that area in the dark green. That's your residential buffer.

LARRY O'SULLIVAN: Is that a fifty (50) footer?

JACK SZEMPLINSKI: That's fifty (50) feet right here. And that's where the septic is. Second of all, the site has very limited space to be able to adjust these driveways without tearing the entire property down. The curb cuts are already there. The benefit sought by the applicant cannot be achieved by some other method. Again, we are trying to basically take an existing site and change the use of it. We're not trying to make a big new building. We try to take the building, refurbish the building and create a, you know, good environment for people to sit to have lunch and ninety nine (99) percent of this we assume is gonna be take out anyway. Mr. Fortier actually owns Poor Boys at exit five (5), so he's familiar with the food business and...Granting the variance would do substantial justice. Again, Mr. Fortier feels the competition in that area for gas stations is very, very high and this would be a much better use. And to leave the driveway where it basically is, I think would be substantial justice. The use is not contrary to spirit of ordinance. Well, fist, again, the driveway's existing and that area of town, I think if you went from property to property, the current ordinance really does not fit it like it would fit on westerly side of Route 93 because all these properties were done in the '60's and '50's that they don't have the thirty (30) foot setbacks or they don't have the land area. Most of the lots are actually small. I mean, we've done several lots out there for Planning Board and they all have very severe restrictions as far as size, frontage and, you know, and other restrictions, being so old and all pretty much developed.

YVES STEGER: Okay, thank you. Questions from the Board?

LARRY O'SULLIVAN: I must have missed number...in the area variance, section under two (2). So, now I'm in (C.2).

YVES STEGER: Oh.

JACK SZEMPLINSKI: C-two (C.2)...

LARRY O'SULLIVAN: The benefit sought by the applicant cannot be achieved by some other method reasonably feasible.

JACK SZEMPLINSKI: Okay. I'll go with...I think I maybe even missed that one. No other land is available to make entrances work with current zoning. The site is also restricted by a fifty (50) foot residential setback along the rear of the site from abutting AR-II zone. I mean, basically, in order to achieve it in any other way, we will have to destroy, pretty much, the whole site and rebuild it from scratch, which is not the intent of the owner.

LARRY O'SULLIVAN: There's three (3) curb cuts? The further one...I'm sorry, the one, as we're looking at it to the left, on Route 102...

JACK SZEMPLINSKI: Right.

LARRY O'SULLIVAN: That is so deliveries can be made and the one that's on Ela Avenue is so that deliveries can be...

JACK SZEMPLINSKI: Well, it's the easiest way, I mean, you take a box truck in here and this truck, I would assume, would come in through here and have at least a way out instead of picking up on a public street. I mean, that was very important to Public Works that they don't wanna...

LARRY O'SULLIVAN: Ela Avenue is a tight street.

JACK SZEMPLINSKI: Right. Well, again, it's a pretty small business. It will not be like daily deliveries there.

LARRY O'SULLIVAN: So you're saying it's a less intensive use than the gas station is.

JACK SZEMPLINSKI: It would definitely be a less intensive use than a gas station and convenience store.

LARRY O'SULLIVAN: And it would be only a restaurant.

JACK SZEMPLINSKI: Right.

BILL FORTIER: Restaurant, take out, seasonal.

LARRY O'SULLIVAN: A clam shack kind of...

BARBARA DILORENZO: Did you...did he say 'seasonal'?

BILL FORTIER: Clam shack...

LARRY O'SULLIVAN: Like a clam shack?

BARBARA DILORENZO: Mm-hmm.

BILL FORTIER: I don't know where that came from.

[laughter]

VICKI KEENAN: Is it morning, noon and night or what are the...?

BILL FORTIER: No, just after...or noon and evening.

VICKI KEENAN: Okay.

BILL FORTIER: Roughly six (6) months a year, weather permitting.

LARRY O'SULLIVAN: And we don't have to do anything about the EPA and all the rest of that stuff because Planning Board takes care of all that stuff anyway, so...

YVES STEGER: Yup.

NEIL DUNN: So, you're actually reducing the widths of the driveways from the existing, is that what...?

JACK SZEMPLINSKI: Yeah...

LARRY O'SULLIVAN: Yeah.

NEIL DUNN: The only reason I ask is it's kinda hard to see here and I don't see anything on any of our plans that were submitted that...

YVES STEGER: If you look at the pictures, you see it very well.

VICKI KEENAN: Yeah, you can see it, actually.

LARRY O'SULLIVAN: Yeah, the photographs.

NEIL DUNN: Well, you don't see...you don't...yeah.

LARRY O'SULLIVAN: Yeah, though, see, the photographs themselves.

NEIL DUNN: That doesn't tell you [inaudible] change...

VICKI KEENAN: Not the plan.

NEIL DUNN:...you know what I'm saying?

JACK SZEMPLINSKI: The biggest one we're reducing...you see, this one, this is all...

NEIL DUNN: That was against the whole area, yeah.

LARRY O'SULLIVAN: Mm-hmm.

JACK SZEMPLINSKI: After this, it's gonna be just a regular driveway.

NEIL DUNN: That's much better, yeah.

JACK SZEMPLINSKI: And I'm sure the Planning Board will impose...

VICKI KEENAN: With the parking here.

JACK SZEMPLINSKI: ...not a lot of restrictions unless I have to get permission from DOT, Department of Transportation before this is [inaudible] anyway.

LARRY O'SULLIVAN: You will be changing the curb cuts on 102 as well, right?

JACK SZEMPLINSKI: These?

LARRY O'SULLIVAN: You're changing the curb cuts on 102?

BILL FORTIER: No.

JACK SZEMPLINSKI: No.

LARRY O'SULLIVAN: Okay, would you turn it over again for me?

JACK SZEMPLINSKI: One (1) of the curb cuts will remain pretty much as the...

VICKI KEENAN: Yeah.

JACK SZEMPLINSKI: The only change [inaudible].

VICKI KEENAN: The Planning Board [inaudible] like, traffic [inaudible] and all that stuff?

BARBARA DILORENZO: Yeah.

VICKI KEENAN: Okay.

BARBARA DILORENZO: Don't worry about that now.

VICKI KEENAN: Okay.

BARBARA DILORENZO: 'Cause they might not like this...

YVES STEGER: Yeah, and the thirty (30) foot green area. That's a figment of the imagination. This is concrete all over. Okay. More questions at this time?

LARRY O'SULLIVAN: I can't think of any.

YVES STEGER: Okay. Anybody in the audience that has...that would like to speak in favor of the application? Seeing none, anybody in the audience speaking against the application or having questions? Seeing none, I'll bring it back to the Board for additional questions.

NEIL DUNN: If I may go to Richard, so the only way that they would not have to be here is if it changed...was another gas station?

RICHARD CANUEL: It would have to remain in it's current use.

NEIL DUNN: Which is a gas station/convenience store.

RICHARD CANUEL: Service station, convenience store, right.

NEIL DUNN: And, I mean, it's quite obvious that this thing's been here forever and there's not a whole lot that, I mean, it's pretty limited.

RICHARD CANUEL: Yeah. It's actually limited by the size of the lot, too.

VICKI KEENAN: Mm-hmm.

NEIL DUNN: And so then the Planning Board would go in there with all the restrictions and exceptions and, I mean, it's like you said earlier, just to let them be able to do their job to best develop this property as it is.

RICHARD CANUEL: Yeah. See, the thing is, the Planning Board cannot grant waivers to issues that are covered by the zoning ordinance. Because the zoning ordinance covers some of the development requirements for this parcel in a commercial zone, that can only be granted by this Board. So they couldn't possibly proceed to the Planning Board without those variances.

LARRY O'SULLIVAN: Have we...can I ask questions and make some comments?

YVES STEGER: Sure.

LARRY O'SULLIVAN: Across the street from you has a really nice looking, probably the best looking gas station around. It's probably a great reason to put some place where people would be sitting outside to be able to see that. One of the suggestions would be, from this Board member, is to put as much green area as you can there to protect against the traffic. So, it would behoove you, in my opinion, to reduce the size of the curb cuts in front for safety sake. If there's going to be outdoor tables, people pull in, I've seen them, in that gas station and the one that's next to it, the...

JACK SZEMPLINSKI: Mobil?

LARRY O'SULLIVAN: ...which one is it, Global or...?

JACK SZEMPLINSKI: Mobil, yeah.

LARRY O'SULLIVAN: No, it's one of those but...people use Ela Avenue as a launching pad to blow up into those and into your place now.

BILL FORTIER: They won't be able to do that with that curb cut shrunk up.

LARRY O'SULLIVAN: Yeah, but they drive across 102 to do it. I mean, they drive from 102 through your corner of your lot, across Ela Avenue and up into that one. I've seen it.

BILL FORTIER: This is true. And they do.

LARRY O'SULLIVAN: And that's what...

BILL FORTIER: But they will no longer be able to do that with that curb cut the way it is. We're shrinking the curb cut thirty feet. They won't even be able to do it.

VICKI KEENAN: ...parking.

LARRY O'SULLIVAN: The Ela Avenue curb cut.

BILL FORTIER: Ela Avenue curb cut, correct.

JACK SZEMPLINSKI: Well, I think that at this stage, we're basically in the initial stages of trying to make this happen. We're gonna have extensive conversation with Planning Board, you know, Public Works and Planning Department, as far as how to make this thing the safest way possible and I think it's in everybody's interest and, you know, I mean, right now, we're just trying to get through this first phase and there will be some alterations to the plan, I'm sure, before it's done.

LARRY O'SULLIVAN: Well, you see, that's where I have a tough time making an opinion that could be potentially, because of the change in use, dangerous to the folks that are there. It's a safety thing at this point. As far as my concern is, why we would grant or not grant an ordinance if it wasn't safe. I wouldn't...couldn't live with myself.

JACK SZEMPLINSKI: Well...

BARBARA DILORENZO: The...

LARRY O'SULLIVAN: So, the suggestions that I would have to make from the Planning Board side. I mean, they'd have to...

YVES STEGER: [inaudible]. Mm-hmm.

BARBARA DILORENZO: I think that's what we have to remember is the Planning Board is gonna say whatever they say. Because of their regulations, so...

VICKI KEENAN: And they're saying it's...

YVES STEGER: Yeah and, you know, I've been to places where you have those kinds of restaurants, you know Moos in Derry? That's a good example, people get in and out all the time of those and, but, on the other hand, this is already used as a gas station and actually, people go in and out of gas stations probably as quickly as they would out of a restaurant.

LARRY O'SULLIVAN: Oh, much faster, I would think.

YVES STEGER: So, I don't know, you know? I don't...I'm trying to find out if what we are trying to approve here, which is the driveway that is closer than fifty (50) feet from the intersection for one of them, well, it's not gonna change much from what it is today from this use to...from the current use. The same is true for the other ones. The two, they are already there for the...the gas stations. Making the restaurant is not gonna change much in terms of safety or other issue that are relevant to the variance. Not those things that the Planning Board is gonna have to discuss. And the thirty (30) foot green area is not available and the fifteen (15) perimeter green area. But given the size of the lot, I mean, I don't know how you could even try to get that. It wouldn't be different from the restaurant than it would be from the previous use.

LARRY O'SULLIVAN: Well, because when you have a change in use, you can rectify some of the outstanding nonstandard issues. The fifty (50) feet closer...I'm sorry, to allow a driveway to remain closer than fifty (50) feet to an intersecting street because today, you can't put a driveway closer than fifty (50) feet.

YVES STEGER: Correct but...

LARRY O'SULLIVAN: Here we're six (6) feet, was it? It's something like that. Eight (8) feet.

BILL FORTIER: Fifteen (15).

VICKI KEENAN: Fifteen (15).

LARRY O'SULLIVAN: Is it fifteen (15)?

JACK SZEMPLINSKI: Correct.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Yeah, I know but you have a property which is about a hundred fifty (150) feet wide. If you put two (2) times fifty (50), you're not gonna have a lot of...

LARRY O'SULLIVAN: Well, you don't need two (2) times fifty (50). The only intersection road is Ela, right? 'To allow a driveway to remain closer than fifty to an intersecting street.'

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: That's what I'm talking about. So, there's...I would recommend that we close up part of the left hand...lower left hand corners entrance way, curb cut if you will, to less than it is now. That would be a restriction that I would suggest. Because right now it's fifteen (15) feet, I guess was what you said?

BARBARA DILORENZO: It was forty seven (47) on that side and fifteen (15) on the other.

LARRY O'SULLIVAN: Right. And if we can get it closer to fifty (50), I think safety is the huge reason for that, I mean, there's no other reason for that.

BARBARA DILORENZO: But...

NEIL DUNN: Where are you getting those numbers from, Barb?

BARBARA DILORENZO: I think, in my thinking, they're saying that they want to allow the driveway to remain closer than fifty (50) feet. I think all we have to do is vote on whether we want it closer or not and the Planning Board's gonna decide exactly how many feet it's gonna be and the same way with the two driveways to remain closer than fifty (50) feet to the street lot line. They're just asking us, 'okay, can we have it less than the fifty (50) feet?'

LARRY O'SULLIVAN: Is that the way you see it, Richard?

BARBARA DILORENZO: ...don't worry about how many feet because the Planning Board's gonna tell them how many feet it's gonna be.

RICHARD CANUEL: Because it already exists that way, it's fine, it's existing nonconforming as it is but once they change the use, all that kind of goes away, you pretty much start from square one.

LARRY O'SULLIVAN: Right.

RICHARD CANUEL: But because the driveways are already there, they're pretty much asking for that variance to allow them to remain that way.

LARRY O'SULLIVAN: Correct. And I'm saying that we can restrict it because we can. So, the restriction that I would suggest is instead of being fifteen (15) feet for the green area or corner space or whatever you wanna call it from the intersection, that we make it twenty five (25) feet or some other number to reduce the size of the entrance off of 102. That particular entrance off of 102. So, whether the Planning Board would go along with that or not or if it's gonna take, you know, the State of New Hampshire's DOT approval and take a year, it's better than what we got now and that's why I would suggest it. It's safer than we got now. And that's why I'd suggest it.

JACK SZEMPLINSKI: Again, the only thing that I would like to say to that is that I think plenty of...I know they will spend a lot of time on that and will try to make it as safe as they can and they still have power to make us move or reduce or whatever to the curb cuts.

VICKI KEENAN: Mm-hmm.

JACK SZEMPLINSKI: And I think this is probably the wrong Board to impose those kind of restrictions, especially knowing that before anything can possibly happen, we have to go through a full review through Planning Board and also DOT.

LARRY O'SULLIVAN: Then the request that you have for less than fifty (50) feet, you would expect them then, at the Planning Board, to restrict it to something other than fifty (50) feet? Is that what you're saying?

JACK SZEMPLINSKI: Well they can...they can, yeah, they have that purview. They could restrict it further.

LARRY O'SULLIVAN: Okay, well...

JACK SZEMPLINSKI: For safety reasons.

BARBARA DILORENZO: I think...

JACK SZEMPLINSKI: I'm just saying, it may get very complicated because we're gonna be dealing with two different entities, DOT and Planning Board...

BARBARA DILORENZO: I think he's saying not for us to put a restriction on certain footage. Let the Planning Board do that. Just answer, do we want them to allow them to do that? And we don't really, on this Board, basically, have anything to do with saying, 'okay, we wanna be twelve (12) feet, fifteen (15) feet, forty (40) feet, whatever. They're just asking for lesser than the fifty (50) feet, which is...

LARRY O'SULLIVAN: Oh, then let the Planning Board decide the restriction?

BARBARA DILORENZO: Yes, that's what they will do. They will decide on what the curb cut's gonna be. They will decide. That's what they do. You know, like he says, they're gonna take forever to make that decision. They're gonna go back and forth on that.

YVES STEGER: Could you show the plan again? The other side, the proposed plan? If I understood correctly, you're gonna keep the canopy?

VICKI KEENAN: Mm-hmm.

JACK SZEMPLINSKI: Yes, sir.

YVES STEGER: So, essentially, cars could enter through one driveway and exit out...

JACK SZEMPLINSKI: No, because...

LARRY O'SULLIVAN: No, it'll be blocked.

JACK SZEMPLINSKI: ...first of all, you will not be able to drive through here, this will be picnic tables right here in the middle. Right underneath the canopy.

YVES STEGER: Mm-hmm.

JACK SZEMPLINSKI: This up here, as you can see, those will be the new parking spaces, so people will be coming in, pulling in here...

YVES STEGER: Yup.

JACK SZEMPLINSKI: [inaudible]...here.

YVES STEGER: So, if that's the case, and that one, actually, is further than fifty (50) feet from Ela Road, so that one would be conforming at this time. The other one, how would they put anybody entering in the other section without having at least one (1) entrance?

LARRY O'SULLIVAN: I'm not saying it wouldn't have an entrance. Not at all.

YVES STEGER: Okay, so, look at the other one and look at where the canopy is today. There is...you cannot put...you have to be much, much less than fifty (50) feet to be able to put any entrance between the end of the canopy and the street itself. See what I'm trying to say?

LARRY O'SULLIVAN: No.

YVES STEGER: If you look at the...

LARRY O'SULLIVAN: I'm looking at the drawing that we have. "Freedom Fuels, ZBA plan, Freedom Fuels," it looks like it's page three (3).

YVES STEGER: Okay. Yup. Okay.

LARRY O'SULLIVAN: For example, you see there's, in the lower left hand corner, there's a dotted line that...in one section, delineates a parking spot and it looks like it swings out and around and is further than the green space that's shown there.

VICKI KEENAN: They're adding the green...

LARRY O'SULLIVAN: I would suggest that it go another ten (10) feet.

VICKI KEENAN: You have to have clearance for the backup parking spaces, which I think, to Barbara's point, the Planning Board is gonna determine how wide that driveway's gotta be so that you can maneuver vehicles in and out and also provide clearance for all the vehicles to back up.

LARRY O'SULLIVAN: If this is a working plan. 'Cause this is just proposed, gang. This isn't gonna be the final. I am sure this isn't gonna be the final.

VICKI KEENAN: Right.

BARBARA DILORENZO: Yeah. Mm-hmm.

LARRY O'SULLIVAN: So, that's where I would suggest, if there's gonna be a requirement for a number of parking places and so forth, that they put on this, they're gonna have to find the place for the parking. The important thing that the infrastructure, the roads and the cuts, be taken care of first.

BARBARA DILORENZO: I think that's what they, that's part of what they do already, too, though.

YVES STEGER: Mm-hmm.

BARBARA DILORENZO: Part of what the...

VICKI KEENAN: Mm-hmm.

YVES STEGER: See, because it is a preliminary plan, we don't even know if the number of parking spots is acceptable to the Planning Board. It may be completely out of the window, whatever we approve of, there is zero (0) green space or thirty (30).

LARRY O'SULLIVAN: So don't use the parking as a reason not to make a limitation. That's my point. Don't use anything that's there to use as a limitation. How would you like to see it? What would be conforming? That's what you start with and you work backwards 'cause that's what we've got. We have the opportunity to start all over.

YVES STEGER: I agree. But on the other hand, I don't wanna put the restrictions that would make, essentially, the project impossible.

VICKI KEENAN: Unusable, right.

BARBARA DILORENZO: That's right.

LARRY O'SULLIVAN: Oh, yeah.

BARBARA DILORENZO: That's right. They would just vote...

VICKI KEENAN: Let the Planning Board...

LARRY O'SULLIVAN: Okay, make it a...

YVES STEGER: So if we say we reject, they don't have anything and they can't move, if we approve, we still have the Planning Board that will be able to find out how is the best way to implement it. But if we just say, well, you know, 'we're gonna put the restrictions, you must be forty five (45) feet,' well, forty five (45) feet may not even work.

VICKI KEENAN: Mm-hmm.

YVES STEGER: So then what we're winding up with, then, is instead of putting any restrictions on it, we would make recommendations to the Planning Board, right? Or recommendations to the Planning Board would be that we work with the applicant on the entrances, for example. That we would approve some distance less than fifty (50) feet, work with the applicant to make the accommodations, so that winds up being the goal, being safer without intruding on the, you know, the neighbors and so forth.

YVES STEGER: No...I understand. But wouldn't the Planning Board have the same incentives that we have to have the safest possible access...

BARBARA DILORENZO: They do, yes.

VICKI KEENAN: Mm-hmm.

YVES STEGER: ...the best parking space, the most green space possible? Wouldn't they have that as part of their own...?

LARRY O'SULLIVAN: Yeah, but these are...there's a difference between the existing zoning, their request and where they wanna go with this. Okay? Why they came here first is to get approvals to go to the Board and say, 'Zoning said that they'd accept these things.' Well, what are the things that Zoning's willing to accept? All of these?

BARBARA DILORENZO: But that's what they're asking is that, will we allow them to have less than fifty (50) feet...

VICKI KEENAN: We don't...

BARBARA DILORENZO: ...in both situations and less than thirty (30) feet, period? Period.

YVES STEGER: Mm-hmm.

VICKI KEENAN: We don't site plan it.

NEIL DUNN: But I...I think I understand...I don't know if we're getting...because I do wanna ask more questions, though.

YVES STEGER: Yeah, go ahead.

NEIL DUNN: It almost sounds like we're deliberating but I...what is the distance on Ela Ave...you're looking for the...case dash five (5) is to allow a drive...a driveway to remain closer than fifty (50) feet to an intersecting street? Your proposed new one where you're getting rid of most of that cut, how far is that?

JACK SZEMPLINSKI: You're talking...

NEIL DUNN: On Ela.

JACK SZEMPLINSKI: You're talking about this one?

LARRY O'SULLIVAN: No, Ela.

NEIL DUNN: No, on Ela.

JACK SZEMPLINSKI: This one. Okay.

NEIL DUNN: The distance from that cut to the intersecting street.

JACK SZEMPLINSKI: From here?

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: Yeah.

JACK SZEMPLINSKI: We're way over the minimum requirement.

NEIL DUNN: Then what is case dash five (5) asking, I guess is what I'm trying to figure out.

JACK SZEMPLINSKI: It's from this driveway to Ela Ave.

NEIL DUNN: Okay and then you go to case two (2), "to allow to driveways to remain closer than fifty (50) feet."

JACK SZEMPLINSKI: Okay, 'cause there's three (3) different regulations. The regulations say...

NEIL DUNN: Okay, that's what I'm trying to get...

JACK SZEMPLINSKI: ...when you have two (2) curb cuts, two (2) driveway entrances onto a State road or any road, actually, they've gotta be fifty (50) feet apart.

BARBARA DILORENZO: Mm-hmm.

JACK SZEMPLINSKI: We're only forty seven (47). Okay? There's another regulation that states whenever you're building a new driveway, it shall be fifty (50) feet from the intersecting street.

NEIL DUNN: Okay, so the one...

JACK SZEMPLINSKI: Okay? That's two (2).

NEIL DUNN: Okay, gotcha.

JACK SZEMPLINSKI: Okay? And the third one is the setbacks, the green area setbacks.

NEIL DUNN: Okay, I'm...

YVES STEGER: So, essentially, the one on Ela Road is not...

NEIL DUNN: It's...

YVES STEGER: ...is compliant...

NEIL DUNN: Right, and that's what I was trying to get clarified.

LARRY O'SULLIVAN: They are going to be compliant.

YVES STEGER: Or is going to be but the distance between the two (2) is forty seven (47) instead of fifty (50)?

JACK SZEMPLINSKI: Right.

BARBARA DILORENZO: Mm-hmm.

YVES STEGER: And the one to our left is very, very close to the street and probably can never be close to fifty (50) feet.

NEIL DUNN: And how wide is that first cut?

JACK SZEMPLINSKI: How wide?

NEIL DUNN: We don't have good numbers here, so it's kind of hard to tell.

JACK SZEMPLINSKI:here?

NEIL DUNN: I'm sorry, the one closest to Ela.

BILL FORTIER: I think they're both fifty (50) feet.

LARRY O'SULLIVAN: So they're fifty (50) feet each and forty seven (47) feet apart?

BILL FORTIER: Correct.

JACK SZEMPLINSKI: Yeah.

NEIL DUNN: And is that a normal size of a cut?

BILL FORTIER: It is and if we look at all the other gas stations and all the other facilities and locations around there, they're within that. Shell did their major blow out, which Shell paid for, by the way, this is privately owned, and they were not restricted on anything they did as far as road size was concerned. They added multiple things to their project and were still allowed to continue to draw traffic and do what they had to do. You've got Mobil which is now going through a major renovation. There's nothing changing about that, either. This was once a restaurant. A sixty five (65) sear restaurant and approved by Londonderry...

LARRY O'SULLIVAN: Before my time.

BARBARA DILORENZO: I remember it.

BILL FORTIER: And...oh no, it worked very well. Never had any accidents out there or any problems or issues or anything. And the disadvantage that we've got, and as you can see, if you follow the history, which you read the history on the variances and stuff, if you look at this, what you're seeing is a property that trying to make it survive and pay the twelve thousand (12,000) dollar tax bill every year...

LARRY O'SULLIVAN: Is that all?

[laughter]

BILL FORTIER: And it's gone from a gas station to a restaurant to a gas station. As we all know, nobody wants to be in the gas station business today or it's unaffordable to be in the gas station business today. And now, back to a take out restaurant, whereby leaving most of it alone. In fact, if we look at the plan that exists today, it's almost identical to the old restaurant that did exist. And I don't know whether Jack, you had any copies of that or not but if we can whereby not eliminate any curb cuts, we need an in and out in both of these cases. And given the extra room for that is gonna give maneuverable room. So, the fifty (50) feet, other than the fact that it's noncompliant, I think it's a safe fact, being that if we narrowed it down to say, thirty (30) feet, now you've got a clutter building up there, people trying to come in or somebody going out or whatever. Whereas if you've got the fifty (50) feet, you've got the fifty (50) feet, you've got plenty of maneuverability as far as the room is concerned. That's one. And number two, once you give up, we'll say, a curb cut or a portion thereof, should this thing ever, like, need...go back to a gas station or try to go back to a gas station again, you'll never get that piece of curb cut that you gave up back.

NEIL DUNN: That's true.

BILL FORTIER: It's gone.

LARRY O'SULLIVAN: On a State road.

BILL FORTIER: Exactly. And when you look at the price of these, I tried to buy a curb cut on 102, you can't buy one, you can't buy a piece of one. They're just not available.

YVES STEGER: Yeah, go ahead.

NEIL DUNN: So, Richard, if we say less than fifty (50) in all these cases, then the Planning Board will step in and put what they feel is adequate or...are we set...are we pretty much tying their hands that...and maybe doing more than we should be doing? Not that we should be doing it...

RICHARD CANUEL: No. No, I don't think so at all.

NEIL DUNN: Okay.

RICHARD CANUEL: I mean, the Planning Board's gonna address it based on a traffic study, you know, number of trips per day and so forth and if that other driveway is even needed. I mean, they

could essentially request that that driveway be eliminated if it's deemed to be a hazard. That's under their purview.

YVES STEGER: See, I understand the reason why you're saying what you want but on the other hand, I have probably more confidence than the Planning Board is going to do the right thing. It's clear that we cannot change the fact that it's forty seven (47) instead of fifty (50).

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: Or that may be difficult and...but the other one, you know, the one to the left, it...

LARRY O'SULLIVAN: The Planning Board...

YVES STEGER: ...either it doesn't exist or we're gonna have to approve a variance for that one or it won't exist.

LARRY O'SULLIVAN: That Board's hands are tied closer than ours. The flexibility that we have with restrictions they don't have.

BARBARA DILORENZO: Yeah, but if I could just say from my own personal experience with the Planning Board and with doing site plan, personally, I'm very well aware of what they go by and what they stick to and whatever, so that's why, what I was saying to do with...they're very concerned about safety, very concerned about curb cuts and their engineers are right in there, so, that's why I was going with just, let's just give them, okay, we'll allow it to be less than fifty (50) feet and leave it at that without restrictions because they're gonna make their own anyway.

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: And now, what I was, again, getting to before with the recommendations, I'd rather see less than forty seven (47) feet between curb cuts than fifty (50) foot curb cuts. Fifteen (15) feet or less from a side street.

YVES STEGER: I think we're getting into the...

LARRY O'SULLIVAN: [inaudible] curb cut...so...

BARBARA DILORENZO: But anyway...

YVES STEGER: We're getting into the deliberation already but...

LARRY O'SULLIVAN: Okay.

YVES STEGER: So, are there any more questions at this time? Okay, thank you.

JACK SZEMPLINSKI: Thank you.

YVES STEGER: We will take the case under advisement.

LARRY O'SULLIVAN: We already asked for people pro and against?

YVES STEGER: I'm sorry?

NEIL DUNN: Yeah.

LARRY O'SULLIVAN: Okay. I forgot.

NEIL DUNN: We went out to the general audience, right? Yeah.

YVES STEGER: Yes, I already did both, yes. Yes, yes.

VICKI KEENAN: Mm-hmm.

DELIBERATIONS:

YVES STEGER: So now, we can truly deliberate.

LARRY O'SULLIVAN: Okay, we have other folks here and I didn't know what they're here for then.

YVES STEGER: I don't know.

LARRY O'SULLIVAN: There's no other case, right?

BARBARA DILORENZO: Are they just viewers?

AUDIENCE MEMBER: Spectators.

YVES STEGER: See? Some people still go to the movie and don't watch on TV.

[comments about movies unrelated to the cases, etc].

YVES STEGER: As I said before, I understand the need for restrictions. My only concern about restrictions is that if we make restrictions that are gonna make the life of the Planning Board even more difficult or render their job impossible...

BARBARA DILORENZO: Mm-hmm.

YVES STEGER: ...that's really what I'm afraid of and I have enough confidence in the Planning Board that they're gonna do the right thing that... 'cause right now, I do not know what would be the impact on a restriction that say maximum required thirty (30) feet and if you say fifteen (15) feet and you can't get there, then we are tying their hands more than I think we should. But that's my opinion.

NEIL DUNN: Well, and I think that's why I asked Richard, you know, are we tying their hands and he doesn't feel like we are.

YVES STEGER: Okay.

NEIL DUNN: But I agree with Larry that you have to be cognizant 'cause we do have a little bit more flexibility than the Planning Board in many sense.

YVES STEGER: Mm-hmm.

NEIL DUNN: I guess it gets back to the points, other five (5) points here. It's a unique lot, it's, you know, there's not a whole lot like that around anymore.

YVES STEGER: Mm-hmm. So maybe we should go...

NEIL DUNN: But what can we do to make it better is what I agree with with Larry. It's a hard one to, I guess, without really being on the Planning Board, to know but...

YVES STEGER: So, why don't we go to the...

NEIL DUNN: ...it seems like they're making a definite improvement on Ela, which, in essence, is gonna eliminate half the buzz in and out of the one closest to Ela, so, I mean, already there's some significant improvement.

VICKI KEENAN: Maybe it would be best if we went through the five (5) points of law and see...

YVES STEGER: I was just going to propose that.

LARRY O'SULLIVAN: Right, let's just stick with that, yeah.

YVES STEGER: Why don't we go and see...

VICKI KEENAN: 'Cause I think...

YVES STEGER: ...if we meet the points of law...

VICKI KEENAN: Yeah. I think there are two...

YVES STEGER: ...because, obviously, making any restrictions becomes irrelevant if they don't meet the points of law.

VICKI KEENAN: Yeah.

YVES STEGER: So anybody wants to have opinions?

LARRY O'SULLIVAN: I was having trouble with, that's why I asked him to repeat his area variance part two (2) 'cause I still don't have anything that's actual fact that I could write down for that one.

YVES STEGER: Actually, he did repeat, again, what he had already said.

VICKI KEENAN: For the...

YVES STEGER: C-two (C.2).

VICKI KEENAN: ...feasibility? I think he said that there was...it was difficult bringing deliveries to the site any other way off of Ela Ave and also that if they were to reconfigure the site, it would require modifications to the building which he didn't think were feasible.

YVES STEGER: Mm-hmm. Is that the only one you have an issue with, C.2?

LARRY O'SULLIVAN: Yeah. Yeah.

YVES STEGER: I don't think there is any problem with all the others.

NEIL DUNN: And there's no other land available on this property to meet current regulations.

VICKI KEENAN: Right.

YVES STEGER: Yeah.

VICKI KEENAN: Right. [inaudible].

NEIL DUNN: Well, the parking is proposed and is existing or will remain unaltered.

LARRY O'SULLIVAN: Well, there's...

NEIL DUNN: I'm on dash-seven (-7). I thought it was the same for all of them. Let me check. "No other land is available to make entrances work with current zoning, site is also restricted by fifty (50) foot setback along the rear of the site from the abutting AR-I zone."

LARRY O'SULLIVAN: I don't understand what that has to do with a fifty (50) foot curb cut, though. I mean, you can put up a cell tower on that lot if you use these...right now you could put a cell tower on this lot but at the same time, 'cause it's commercial and we allow that with certain restrictions.

BARBARA DILORENZO: Don't give anybody ideas, Larry.

LARRY O'SULLIVAN: But the...don't give them any ideas?

NEIL DUNN: Yeah.

LARRY O'SULLIVAN: But, you know, what I mean is you could put anything you want if you say that that is the reason. I mean, this what you have. Every other lot on that street is like this one.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: What makes this one unique?

NEIL DUNN: Alright.

VICKI KEENAN: It's on a corner.

LARRY O'SULLIVAN: A side street?

VICKI KEENAN: Mm-hmm.

LARRY O'SULLIVAN: Well, there's two (2) other gas stations on side streets right up the corner. There's one (1) opposite that...I think the Lebanese...

NEIL DUNN: Yeah, that Global, yeah, Global or whatever...

LARRY O'SULLIVAN: ...family runs and then there's the real inexpensive one and then the...

YVES STEGER: Yes but the others have the same situation. There's also nonconform...

LARRY O'SULLIVAN: What makes them unique...

VICKI KEENAN: Right.

LARRY O'SULLIVAN: ...to allow them to change their use and to get this exception? That's what the point is. They're all the same. They're all in the same boat.

BARBARA DILORENZO: This almost looks like two (2), though...

YVES STEGER: No, no. The area variance (C.1) doesn't say it has to be different from the others. It has to have special conditions in the property itself and the special conditions are it is a very small lot, it has, what are they, it's only point seven (.7) acres, it is at a corner lot and we still need to leave fifty (50) feet between the residential area, so...

LARRY O'SULLIVAN: Okay. If it's a special condition, that means different than their neighbors, that's what that means, and I'm saying it's exactly the same as their neighbors, as on the opposite side have the same problems. What makes this lot unique?

NEIL DUNN: And are you saying this for all three (3) cases?

LARRY O'SULLIVAN: Pretty much. I mean, if he could have said that, you know, this one is...we already have several variances on this property that were approved regarding that overhang and all the rest of that stuff. Those stay in place.

NEIL DUNN: Forever.

LARRY O'SULLIVAN: Right? And that overhang's not coming down. This already has that as a uniqueness, that it has those variances, 'cause the one up the street, we didn't allow that really inexpensive place to go as close to the road as this one was.

YVES STEGER: Yeah, but the other ones that are the same as this one are also nonconformant.

LARRY O'SULLIVAN: Right.

YVES STEGER: So?

LARRY O'SULLIVAN: They're not changing their use. They're not asking for a variance, additional variance.

YVES STEGER: So, a special condition would be if you could compare with a property that is compliant but...

LARRY O'SULLIVAN: No, nearby properties.

YVES STEGER: Well, but if you compare to something that is already noncompliant, so you're not different from a noncompliance and the only thing they ask is to be the same as another one. To me, that makes sense.

LARRY O'SULLIVAN: But what I'm looking for...

YVES STEGER: Okay, so when you say 'what is different,' okay, so...

LARRY O'SULLIVAN: What I'm looking for is the uniqueness of the lot. What makes the lot unique?

NEIL DUNN: The special conditions of the property and, yeah, to me, it's that whatever's unique to that lot in that setting, so it's kind of a micro/macro...

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: Correct.

LARRY O'SULLIVAN: Sure.

YVES STEGER: But it would be comparing with others that would be compliant.

LARRY O'SULLIVAN: Not necessarily but okay.

NEIL DUNN: I could see where, yeah, I can see what you're saying but otherwise...yeah.

LARRY O'SULLIVAN: If the setting, though, has compliant or noncompliant neighbors, I don't see what the difference is, what makes it unique from its neighbors is what my question is. It's a corner. The opposite corner on the other side of Ela is another gas station. Same circumstances. Less than, probably, I think it was a half an acre or something like that on that lot. Two hundred (200) yards away on the opposite side of the street are two (2) gas stations on corners. That's Londonderry Road, at the corner of Londonderry Road there's two (2) gas stations. Same limits. Go down the hill, the Shell. I think the Shell probably had a bigger lot but I think the Mobil and there's, I think, another gas station in there, too, could all have a small, old, I mean, from 1960's or '50's lot sizes, so, what makes them different than his neighbors? Than the people that are surrounding, what makes him unique? Why should he get the special treatment and not...we shouldn't give it to his neighbors?

VICKI KEENAN: The restaurant is a permitted use, correct?

YVES STEGER: Yeah.

LARRY O'SULLIVAN: It's a C-II, so...

VICKI KEENAN: So isn't the...isn't the way to look at the special circumstances are sort of basically the practical considerations for the special conditions on the property and for that permitted use, so it's not necessarily what makes them special against everyone else, it's the special conditions that exist on that site for that permitted use.

LARRY O'SULLIVAN: Right.

VICKI KEENAN: But, right...

LARRY O'SULLIVAN: I agree.

YVES STEGER: Right.

LARRY O'SULLIVAN: Absolutely.

YVES STEGER: Mm-hmm.

VICKI KEENAN: Does that make sense?

YVES STEGER: Yeah.

LARRY O'SULLIVAN: What's special.

NEIL DUNN: But it's a nonconforming use so the thought is to clean it up as it goes, as it changes use, right? I mean, so, there is reason to maybe look harder at these than just to say 'oh, well, geez, you know, they're doing business anyway, let 'em do business as a restaurant.'

YVES STEGER: Okay, but...

NEIL DUNN: The intent is to clean up a little, too.

BARBARA DILORENZO: Mm-hmm.

YVES STEGER: But you compare to another one and the other ones are doing exactly the same thing and they...

VICKI KEENAN: That's right.

YVES STEGER: ...cannot be conforming either, so why would we force somebody to become conformant because they change use when it is not practical because of the special condition of the size, the fact that it is a corner lot, the fact that there is that fifty (50) foot in the back.

VICKI KEENAN: The buffer.

YVES STEGER: So, I'm afraid that we're trying to find something that is impossible to realize and we're asking too much in terms of...that is reasonable to expect.

NEIL DUNN: I guess my thought is, yes, and that's the trouble of grouping them together. I think if we look at case dash six (-6) where they're saying, 'to allow two (2) driveways to remain closer than fifty (50) feet,' didn't we hear they already...they're forty seven (47) feet or something?

YVES STEGER: Yeah.

NEIL DUNN: So...

VICKI KEENAN: Between the two (2) driveways.

NEIL DUNN: So, you clean up three (3) feet and get rid of that variance, I mean, there's more variances on the property than...I mean, again...

YVES STEGER: Mm-hmm. Yeah, I agree.

NEIL DUNN: So, trying to get out of that nonconforming use and into a new use, I mean, again, you could look at it either way, 'oh, it's three (3) feet, who cares?' I mean, again, it...but, you know, are we just forever keeping things crazy and does that change the fifty (50)? I mean, some of them you can't change. They are doing some good ideas but I think that's where I'm...you have to look at each case and each request. That three (3) feet, there's no real special features of the property for case number dash six (-6), if you ask me. Three (3) feet...

BARBARA DILORENZO: Right.

NEIL DUNN: You can close that if you've got two (2) fifty (50) foot openings, so I don't care what...

VICKI KEENAN: I think...

NEIL DUNN: ...there's nothing special about the property that could be...that may apply to the rest of it that would apply to case six (6).

YVES STEGER: Okay. So, is there a proposal that we separate case five (5), six (6) and seven (7) at this time?

LARRY O'SULLIVAN: Well, we're gonna vote on them separately. We're gonna do that for sure.

VICKI KEENAN: We'll vote on them separately.

NEIL DUNN: No, I..

LARRY O'SULLIVAN: We just didn't hear them separately.

VICKI KEENAN: Mm-hmm.

YVES STEGER: So, essentially, if you reject...if you keep the other one and you reject six (6) and you say, 'okay, forty seven (47) to fifty (50), you will find a foot and a half (1.5) on both side and you are gonna correct it,' that would be acceptable if that's the motion?

NEIL DUNN: Right and I was just bringing that up to say that because some benefit sought cannot be achieved by some other reasonably feasible...method reasonably feasible and the unique conditions of the property can change by the case, so when we're all just sitting here generically saying...

YVES STEGER: Mm-hmm. Okay.

NEIL DUNN: ...well, the conditions...I guess, so maybe we do need to give more thought to the condition and look at what the case is.

VICKI KEENAN: I think that's a good point on the second case. Mm-hmm.

YVES STEGER: Okay, so, let's see...

BARBARA DILORENZO: Could we maybe, like, vote on case five (5) and get that out of the way...

YVES STEGER: Yeah.

VICKI KEENAN: And then deliberate on six (6)? Mm-hmm.

BARBARA DILORENZO: ...and then have more discussion on two (2)...on case six (6)?

YVES STEGER: I'm all for...I agree. Is that what the Board suggests?

VICKI KEENAN: Mm-hmm.

BARBARA DILORENZO: I'd like to make a motion, then, if that's...

YVES STEGER: For 7/16/2008-5?

BARBARA DILORENZO: Yes.

YVES STEGER: Okay. Go ahead.

BARBARA DILORENZO: I'd like to make a motion, Mr. Chairman, to grant case 7/16/2008-5.

VICKI KEENAN: I will second.

LARRY O'SULLIVAN: Because? May I ask...

YVES STEGER: Yeah.

LARRY O'SULLIVAN: ...if you any justification for that one?

BARBARA DILORENZO: I probably should just read the whole thing. To allow a driveway to remain closer than fifty (50) feet to an intersecting street.

YVES STEGER: See, you may want to indicate that they are meeting the five (5) points of law.

VICKI KEENAN: Points of law.

BARBARA DILORENZO: I'm sorry.

YVES STEGER: That's what you meant?

BARBARA DILORENZO: Oh, is that what you want me to do?

LARRY O'SULLIVAN: Yeah. Yup.

BARBARA DILORENZO: Okay. That they meet the five (5) points of law.

LARRY O'SULLIVAN: To your satisfaction?

YVES STEGER: Would you like to...

VICKI KEENAN: I will second.

YVES STEGER: ...second? Motion to grant by Barbara, second by Vicki. Any more discussions? Okay, everybody in favor say 'aye.'

NEIL DUNN: Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Aye.

YVES STEGER: Aye. Everybody against?

LARRY O'SULLIVAN: No.

YVES STEGER: Okay.

Clerk Larry O'Sullivan read the results of Case 7/16/2008-5 into the record (i.e. approval 4-1-0).

YVES STEGER: Do you want to address 2008-6? Any suggestions?

VICKI KEENAN: I think Neil's point to what he just said about the distance between the two (2) driveways is very valid and I would have a hard time, sort of, approving (C.2), the feasible...reasonably feasible method.

YVES STEGER: Okay. Neil, would you like to make a motion?

NEIL DUNN: I would like to make a motion that we deny case number 7/16/2008-6 based on the fact that it does not meet the requirements of (C.1), special conditions of the property.

YVES STEGER: Anybody wants to second that one?

VICKI KEENAN: I second it.

YVES STEGER: Okay, we have a motion to deny by Neil and a second by Vicki. Anybody in favor of the motion to deny...

LARRY O'SULLIVAN: We're not gonna discuss it first?

YVES STEGER: Oh, yeah, go ahead.

LARRY O'SULLIVAN: Okay, we haven't said anything about the public interest, serving the public interest. Is it in the public interest to grant a variance or to continue a variance that they have for their driveways for case...this case or any other case? Is it in the public interest? That's what we're talking about, we're not talking about what they're gonna use it for. We're talking about the public interest for that variance.

YVES STEGER: I...

LARRY O'SULLIVAN: Right now, does it make a difference to the public, private...I'm sorry, health-wise, neighbors, property values, the safety, sight, smell, all the rest of those things, the public interest part of that?

YVES STEGER: What is the importance of that at this time? If we reject already because they don't meet two (2) of them, we cannot approve because they meet one.

LARRY O'SULLIVAN: Okay. Fine. I just want you to be thinking about it is all.

YVES STEGER: No, I mean, if we already reject it because they don't meet one (1) of the article of the five (5) points of law, we don't need to discuss the other ones, actually.

LARRY O'SULLIVAN: Okay.

YVES STEGER: Well, don't you agree?

LARRY O'SULLIVAN: I think you should do what you like but I would suggest that you have more than one (1) at interest, more than one (1) reason to deny it, you should say it. Other than that, we have a motion and a second...

NEIL DUNN: I guess I can see where Larry's going. To be honest with you, (C.1) and (2), I don't think there's...

YVES STEGER: Mm-hmm.

NEIL DUNN: ...they can be achieved by some other reasonable thing, changing the dimensions by a few feet. So, maybe if we did withdraw that and put more information in there. The public interest...

LARRY O'SULLIVAN: Especially when you're denying...

NEIL DUNN: Yeah, I understand.

LARRY O'SULLIVAN: ...you should put all the evidence that you feel exists in your reasons for denial. It also gives the applicant and the Planning Board additional information about what we think, alright? It really is to help the next group out.

NEIL DUNN: So if you withdraw your second, I'll withdraw my motion or amend it.

VICKI KEENAN: I'll withdraw my second, mm-hmm.

NEIL DUNN: But...

YVES STEGER: We have a motion?

NEIL DUNN: Although I'm not sure that the public interest is where I would go with it but I would make a...I'd like to make a motion to deny case 7/16/2008-6 based on the noncompliance with section (C.1), special conditions of the property in regards to case six (6) and that the fact...section (C.2), the benefit cannot be achieved by some other reasonable method. The reasonable method is very easily achieved with two (2) fifty (50) foot driveways to close that up.

YVES STEGER: Okay. Are you satisfied by the change?

LARRY O'SULLIVAN: Every bit of information helps.

YVES STEGER: Thank you very much.

VICKI KEENAN: I cancelled my second. Does someone else...?

YVES STEGER: Oh.

VICKI KEENAN: Anyone want to make a second?

BARBARA DILORENZO: I'll second it.

YVES STEGER: Okay, we have a motion to deny by Neil, a second by Barbara. All in favor of the motion to deny say 'aye.'

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye,

VICKI KEENAN: Aye.

BARBARA DILORENZO: Aye.

YVES STEGER: Aye. All against?

Clerk Larry O'Sullivan read the results of Case 7/16/2008-6 into the record (i.e. denial, 5-0-0).

YVES STEGER: Okay, one more to go, 7/16/2008-7. This one is for the thirty (30) foot green area abutting a public right of way and the required fifteen (15) perimeter green area. This is, essentially, the most important one in the change of use because it's the one that creates parking.

LARRY O'SULLIVAN: I don't know if anybody else did Google Earth when they were searching for these...the pictures of these places.

NEIL DUNN: I just use...

LARRY O'SULLIVAN: If you do Google Earth, it'll show you the ground view of the lot and gives you a, if you require it or request, a three hundred and sixty (360) degree view. Far better than the GIS system we've got, but, for the pictures, but it gives you the ground view, like somebody drove by and took a motion picture of the property.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: If you went across the street, what a difference. I've never seen...I didn't realize this until I saw when it gave me the address, it popped up, the Shell station and I said, 'that's the Shell station?' I had forgotten that there's so much green in front of that place. And that it actually makes it look good. Did I actually say that? I mean, it really looks professionally done, nicely done, and yes, I understand they have unlimited budget, but doesn't...?

YVES STEGER: They also are more than three (3) times the...

LARRY O'SULLIVAN: The size.

YVES STEGER: ...the size.

LARRY O'SULLIVAN: Right. Right.

NEIL DUNN: The lot is, yeah.

LARRY O'SULLIVAN: Right, that's because when they rebuilt on that lot, they did the right things when they requested things and when our Board restricted stuff from having, you know, the buffer is less than thirty five (35) feet, well, if you're gonna have less than thirty five (35) foot buffers, we want something in front in the way of more green space or something along those lines and I remember the days when the ZBA used to do that. 'Cause you can. We have the unusual right to put in whatever restrictions we deem are necessary for the character and the development to the way that our Master Plan requires and it has everything to do with why we exist.

YVES STEGER: So, what would you be...would be your proposal?

LARRY O'SULLIVAN: I'm against this one, too, so...

YVES STEGER: I'm sorry?

LARRY O'SULLIVAN: I'm against this one, too, so...I'd love the idea of the business. Love it. And anything to do...I'm sorry, anything that can do good in that part of the world to make it look better, act better, have less heavy traffic, less intrusive on their neighbors, those are good things. And believe it or not, it is better than the use that they've got there now for the impact in the area, in my opinion. However, I think this is the...when somebody wants to change the use of a property, this is the time where you can get them back to the standards that we're trying to set and we shouldn't lose the opportunity because we do because the Planning Board can't do it by themselves. So...

NEIL DUNN: I guess, looking at the thirty (30) foot setback, though, and the...it doesn't leave anything.

BARBARA DILORENZO: Yeah, there's nothing there.

NEIL DUNN: It's one of those ones, what do you do when it's such a small lot and now special...in my thought process, now special conditions of the property affect this one dramatically. I mean, it's...a thirty (30) foot green zone, I mean, you know? There's really nothing left.

VICKI KEENAN: It's a small site.

BARBARA DILORENZO: 'Cause they can beautify it in other ways.

NEIL DUNN: Right and that...I think that's what part of Larry's point is but I was also trying to get a sense of what he thought of the thirty (30) foot green belt, I mean...

LARRY O'SULLIVAN: Well, there's nobody on that road that's got that. Nobody on that road has a thirty (30) foot green zone, so...

NEIL DUNN: No...

YVES STEGER: No.

LARRY O'SULLIVAN: And that's not what the point is, either. Across the street, it looks nice and I don't think they had more than eight (8) or nine (9) feet.

NEIL DUNN: Mmm.

LARRY O'SULLIVAN: But it can be done. And we can either go along with leaving that looking like...you know, I don't mean this particular lot, but it's done lot at a time to make, you know, the area look nicer. That's gotta be one of the most ugly commercial sections in Londonderry, period. And this isn't just this lot. This lot, as a matter of fact, is better than it was 'cause that was really...they had all kinds of junk parked there, there were trucks out front blocking the road and, you know, I tried to go in there from time to time and I'll tell you, it didn't make it comfortable driving through there.

YVES STEGER: So, definitely, the goal is to do that.

LARRY O'SULLIVAN: To make it better.

YVES STEGER: And I agree that we should take advantage of the change of use to do that. On the other hand, if the result of our actions is that we prevent them to do the changes, we're gonna get that ugly concrete for the rest of our lives because nobody's gonna have to do that. So, yes, I agree...

LARRY O'SULLIVAN: Somebody's gonna...somebody's...

YVES STEGER: ...it's not gonna better...

LARRY O'SULLIVAN: Yves...

YVES STEGER: ...if that can't do and follow through.

LARRY O'SULLIVAN: ...what I recommend is you look across the street. Somebody ripped up concrete or black top or something to put in green space. It can be done. Right across the street, if it can be done, it can be done across the street from where they are. But that, again, by itself, isn't the reason to say yes or no. It is...

YVES STEGER: I know, the points...

VICKI KEENAN: Well, what the points of law...

LARRY O'SULLIVAN: It is the points here...

VICKI KEENAN: Right.

LARRY O'SULLIVAN: ...that I still think the public interest has to be served and I think that the safety and things...if you change the use and put picnic tables out there and you don't put up the proper guardrails, nobody says anything about guardrails at this Board but that kind of thing, you're not adding to the safety of the patrons. You're inviting somebody stepping on the gas instead of the brake. I'm thinking of Clam King and the other places that are around that we...that I go to.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: And if this happens to turn into a fish place and it's not safe, I'll probably still go there. But the point would be...

YVES STEGER: Correct but let's restrict ourselves to what is in here. We're trying to look at...should we request...not allow to have less than the thirty (30) foot or the fifteen (15) foot perimeter? Safety has nothing to do with this at this time. This is...

LARRY O'SULLIVAN: I think it does.

YVES STEGER: This is an issue for the Planning Board.

LARRY O'SULLIVAN: I think it does because the same reason that we have islands in the middle of turning lanes now or to divide turning lanes, to slow people down because your thought is when you see green space and when you see unpaved areas or something growing in an area, you don't go as fast, plain and simple, that slows people down which makes it safer. And that's why we have the intersections built off near Shaw's and that neck of the woods on whatever that road is but the reason why the Shell across the street is more appealing to me, as a consumer, is because we can pull in there and people aren't wheeling in off the street because there's nothing to impede them. The trees, the buffer that they have set up slows you down because you're gonna go around it more carefully than if it wasn't there. And that's the reason why we ask for it in the first place. But I mentioned when we

started that I didn't think that this was...the presentation, I didn't think, covered several areas, one of which was the public interest. So, that was all it took for me.

VICKI KEENAN: Can we walk through the five (5) points of law?

YVES STEGER: Yeah. Go ahead.

VICKI KEENAN: Sort of just have a discussion...

YVES STEGER: Alright, so diminished property value.

LARRY O'SULLIVAN: I didn't have any argument there.

VICKI KEENAN: Yeah, that's [inaudible] for me.

NEIL DUNN: That's good.

YVES STEGER: It is okay. Would not be contrary to the public interest.

LARRY O'SULLIVAN: It is, in my opinion, contrary to the public interest to allow the conditions to exist and...not to exist but to continue because, again, this is...there's nothing unique about the lot to allow it to be justified, in my opinion. So, you go ahead and...next.

NEIL DUNN: Well, I guess if we look at the answers, it says the lot is currently developed as a gas station, setbacks for some of the existing pavement will remain unchanged, paved opening along Ela Ave will be reduced and have a four (4) foot wide green area. It doesn't really talk to the public interest. I guess they're trying to say that indirectly, is that what...?

LARRY O'SULLIVAN: It's in the public interest to have a wider green area.

NEIL DUNN: [inaudible].

BARBARA DILORENZO: But you could also look at it to say with something like this, you might look at it as being the betterment of that area.

VICKI KEENAN: Mm-hmm.

BARBARA DILORENZO: Like you say, one site at a time, you know?

LARRY O'SULLIVAN: A less intrusive, yeah, a less intense use in that area. That's definitely...

BARBARA DILORENZO: And it's not gonna be open seven (7) days a week, three hundred sixty (360) days a year, either.

VICKI KEENAN: Right.

BARBARA DILORENZO: You know?

YVES STEGER: Yeah, actually, that was mentioned during the presentation. I remember they said, you know, this is...

BARBARA DILORENZO: Seasonal.

YVES STEGER: ...less intensive, so...

LARRY O'SULLIVAN: Today.

YVES STEGER: ...that's part of the public interest.

LARRY O'SULLIVAN: Today. And you're gonna put a restriction on it? Say that it can't be three hundred and sixty (360) days a year?

NEIL DUNN: Yeah.

LARRY O'SULLIVAN: Are you gonna say it's gonna six (6) months a year? Then don't consider it a...if it's...because a variance goes with the property. This is not regarding the presentation 'will only be open six (6) months.' Don't even consider it because unless you're gonna restrict it, it's not required. They can turn around tomorrow and be open twenty four (24)/seven (7) or whatever the restrictions are for the area but there's nothing to restrict them to six (6) months.

BARBARA DILORENZO: Well, I don't even think he states it on here anyway, that he's only gonna be seasonal. I don't think I remember seeing that, but...

LARRY O'SULLIVAN: It wasn't written but it was said.

BARBARA DILORENZO: I know but that's what I'm saying, it's not documented.

LARRY O'SULLIVAN: So don't use it as a...you have to discount that, Barbara, because it's a variance.

BARBARA DILORENZO: Sorry, [inaudible]

LARRY O'SULLIVAN: No, I just meant you have to discount it, that's all.

VICKI KEENAN: Next point, the area variance, prong one (1).

YVES STEGER: Okay, that's the one he said small size, corner lot.

VICKI KEENAN: Mm-hmm.

BARBARA DILORENZO: Mm-hmm.

YVES STEGER: Further limited by the...

VICKI KEENAN: Buffer.

YVES STEGER: ...fifty (50) foot buffer in the back.

VICKI KEENAN: Mm-hmm.

YVES STEGER: I mean, they're showing the thirty (30) foot green area in there. If they have to meet that, they can't put any parking lot, period.

NEIL DUNN: They'd have one (1), two (2), three (3), four (4), five (5), six (6), seven (7)...eight (8)...

YVES STEGER: Yeah.

NEIL DUNN: Maybe. I don't know.

YVES STEGER: Okay.

NEIL DUNN: I agree that, well, let me see what he put for...site frontage on two (2) streets, has a fifty (50) foot set...I agree those are pretty special conditions of that property.

YVES STEGER: And because it's a corner lot, he has to have a thirty (30) foot all the way around here except on the other side.

VICKI KEENAN: Right.

YVES STEGER: I mean, look at this.

BARBARA DILORENZO: Right. It just isn't there.

VICKI KEENAN: And it's such a small lot.

YVES STEGER: It's just not there.

VICKI KEENAN: It'd be useless.

YVES STEGER: So...

LARRY O'SULLIVAN: How do you distinguish this lot from other lots in the neighborhood? What makes it different? I mean, I really just...I have a hard time with that.

YVES STEGER: You would have to find another lot that is conforming.

LARRY O'SULLIVAN: The Shell station directly across the street's got...

VICKI KEENAN: Is it on...?

YVES STEGER: It is different, it is more than three (3) times the size.

BARBARA DILORENZO: Yeah.

YVES STEGER: So there is a difference between the two.

LARRY O'SULLIVAN: Okay and the one that's on the corner, opposite it?

NEIL DUNN: It hasn't changed use.

LARRY O'SULLIVAN: It's also a...right, that's the only that's different between them is they're not trying to change the use at the other gas station. That's what my point is. You know, the thing that makes the property unique is the thing that...is the reason...the major reason why you get a variance is because there's something unique about your property. If there is nothing unique about your property, then you should fall within the requirements as everybody else. Am I wrong with that description or interpretation?

YVES STEGER: No, it's just because you try to compare with other properties that are nonconforming. So, if there was a...if they were trying to put now a new gas station...

LARRY O'SULLIVAN: Okay...

YVES STEGER: ...from a restaurant to gas station, they would be conforming as well.

LARRY O'SULLIVAN: Take it to the logical conclusion. If everyone, every other one of the gas stations wanted to do the same thing on this street and all of them, except for the Shell station, were nonconforming because of the lot size being, you know, whatever it happens to be.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: Each one of them can say that 'we're unique because of our size.'

YVES STEGER: Correct.

LARRY O'SULLIVAN: But that doesn't make them unique if there's six (6) others on the street and that's what my point is.

NEIL DUNN: Okay, but...

YVES STEGER: So, when you do the normal variances, okay, somebody has a very narrow lot. There may be another narrow lot which is also nonconforming. Just because there is another lot that is similar and nonconforming would not be a reason to reject this one because that specific property, being very narrow, would meet the requirement of having a special condition on the lot. You don't have necessarily to compare to others. Especially when they are...

LARRY O'SULLIVAN: I believe you do. I believe you absolutely, positively have to compare it to others.

YVES STEGER: It says 'special condition of this property.' If your property is very narrow, it doesn't matter if there is another one that is very narrow, too. If there is a special condition in this property, that will allow you to give the variance.

LARRY O'SULLIVAN: I must be missing something, I'm sorry. I'm...

NEIL DUNN: No, I think you're just...you're both firm in your thoughts on what you would approve...

LARRY O'SULLIVAN: See, I look at...

NEIL DUNN: ...so, I think we should move to the next one.

LARRY O'SULLIVAN: We'll have a discussion over a beer, maybe.

NEIL DUNN: Yeah.

YVES STEGER: Okay. Okay, achieve by some other method, the (C.2). Do you think that...?

NEIL DUNN: If I was to comment on this one, I, you know, is it feasible, does... I mean, I believe we all know restaurants take more parking. Is there another usage? This one I have trouble with because if you look at his answer, 'no other land is available for this property to meet current regulations. Property is currently developed as a gas station and convenience store. Most of the parking as proposed is existing' or...it's a nonconforming condition so he's looking to change usage. I mean, I kinda see where he's going with it but by the same token, if you put in a different type of business that had less parking requirements, then would we be in trouble in this green zone? I don't know.

YVES STEGER: I do not know.

VICKI KEENAN: Is it...?

NEIL DUNN: ...and there wasn't enough information put here to tell us that, I guess, so sometimes when we don't get enough information, I feel like we're being handicapped too and it's the presenters or the petitioner, whatever you wanna call it, responsibility to give us enough information to make us comfortable with our decision. So, I don't know, I...

LARRY O'SULLIVAN: We do have a resource for reference if it's required.

YVES STEGER: Yeah.

LARRY O'SULLIVAN: Richard is here.

NEIL DUNN: Well, I know, it gets back to we don't have enough information, I don't think. We're not...

YVES STEGER: So...

NEIL DUNN: I don't think we should go through every scenario where parking is needed for every type of business.

YVES STEGER: For clarification, are there uses that would require less than...what is it, eight (8) parking lots?

NEIL DUNN: Twenty five (25), you mean?

RICHARD CANUEL: That's a very good question. You know, when you're approaching the issue of uses for the property, something particular about that lot that restricts the owner from having a reasonable use of that property, there's some thirty (30) different uses in the Commercial-II zone that maybe, could be put to use for that particular property other than a restaurant. Any of those uses are gonna require additional parking than what's there now. So, if you look at it from that respect, then there is something unique about the property because of that, because regardless of what use they apply to that property, it's gonna require additional parking. That additional parking's gonna have to go into that green space because of the size of the lot, so...You can say that there is some unreasonable restriction there. I mean, there's any number of uses.

NEIL DUNN: And I...

LARRY O'SULLIVAN: I'm sure...oh, go ahead...

RICHARD CANUEL: If you look for a restaurant, for instance, what the parking is required for a restaurant in particular, is one (1) space per four (4) seats plus one (1) per employee, you know? It's hard to say 'cause this being a fast food restaurant, there isn't gonna be any sit down in that restaurant, so...is this use is, you know, one (1) space per two hundred (200) square feet of gross floor area for the building. Any use that you apply to this particular lot is gonna require additional parking. Just because of the size of the lot, that parking's gonna end up in that green space, no matter how you look at it. If there was some other reasonable use that would fit in there that the existing parking would work, then you could say, you know, the owner has a reasonable use of the property if he uses it for this other use, so, then that would be reason to deny the variance, based on the additional parking requirements alone, that poses a restriction there...

LARRY O'SULLIVAN: I see what you're saying.

YVES STEGER: So, essentially that...

LARRY O'SULLIVAN: Why didn't the applicant say that?

NEIL DUNN: See, that's what I'm saying. So many times we're not given enough information and it makes it harder for us to even deliberate on because we don't, you know, they're trying to, not twist it, but present it in their eyes instead of giving us all the information and sometimes you can't answer everything.

YVES STEGER: No, I understand but it is one of the issues that we're facing is that many applicants are not enough aware of the conditions of the five (5) points of law and how to answer them. I mean, we have been guilty of coaching more than once, any one of us...

NEIL DUNN: Tonight, yeah.

LARRY O'SULLIVAN: This applicant's been before us before. Not the applicant, I'm sorry, but the presenter has been before us before.

BARBARA DILORENZO: Yes.

VICKI KEENAN: Well, let's focus on the five (5) points and see if he...

YVES STEGER: Yes. So, right now we have...

LARRY O'SULLIVAN: Vicki's getting tired, too.

VICKI KEENAN: Yeah. I'm gonna keep you guys on task here.

YVES STEGER: So...

VICKI KEENAN: I just...on (C.2) is sort of where we left off...

YVES STEGER: Yes.

VICKI KEENAN: I'm just reading in Boccia, the Boccia case, and it says here that practical considerations make it difficult or impossible to implement a permitted use, given the special conditions of the property. So, given the lot size, given the Ela Ave, given the fifty (50) foot buffer, it's just...there aren't practical considerations that I think are feasible to take away more land to allow them to go forward with this permitted use to get more green space. I think, Larry, to your point earlier about putting a recommendation in here about what you do with the little green space that is there or that it's developed further, I think it's a great recommendation but I just feel if we push beyond that, the limitations on this site, for the permitted use, are gonna be just that, very limiting.

NEIL DUNN: If I may, I guess when I look at it again, without having more information presented to us by the presenters or the public, it's a worse case scenario so if we say, 'yeah, you can park in there within that thirty (30) foot green zone,' and they're going for the max amount of parking spots they could ever need for any usage in there, I agree with Larry, do we really wanna go there or should we...even looking at the Boccia, or should other uses be considered or maybe it should have been presented a little bit differently. I just think that's excessive parking in there and that without putting some kind of restrictions on that green area that it's just overkill. And you're going from a

nonconforming use, it's a time to clean it up and when people go for...I realize maybe the gas business isn't the best business to be in right now but when you go to pick your next line or whatever, you have to look at the ordinances that are gonna kick in and to present this like this with twenty five (25) parking spots, I just don't...I'm not as comfortable with it without maybe a restriction or something and that's why I have trouble with the 'feasible,' because we weren't given enough information to support that, maybe to help us understand that better. So that's where my thought is on that and I don't...I'm not sure that I feel they gave us enough on (C.2).

VICKI KEENAN: Is there some way that we can say that there's a restriction on the parking in terms of guidance to the Planning Board on minimum number of spaces for this type of use, a take out restaurant so that if those parking spaces are not needed for the ratio, then they are not granted as part of the Planning process. I don't...can you make a contingency like that?

NEIL DUNN: I don't know...

YVES STEGER: No, because the case here is to...

NEIL DUNN: Yeah.

YVES STEGER: ...thirty (30) feet and fifteen (15) feet.

VICKI KEENAN: ...yeah.

YVES STEGER: It doesn't talk about parking space. That is something that the Planning Board is gonna have to take care of. The Planning Board says 'you only need ten,' obviously...

VICKI KEENAN: Right.

YVES STEGER: ...they are going to insist themselves that they use everything else for green spaces within the limits.

VICKI KEENAN: Right.

YVES STEGER: But I don't know how many spaces are gonna be needed.

VICKI KEENAN: That's right, we don't know that. The Planning Board is going to determine...

YVES STEGER: It's not something that...

NEIL DUNN: Right, exactly...

YVES STEGER: ...that I need to...

NEIL DUNN: I'm sorry, go ahead.

YVES STEGER: We have to look at what is being requested.

NEIL DUNN: Right.

YVES STEGER: And I am not going to and it's not actually part of our privilege to discuss the number of parking spaces.

NEIL DUNN: Right, no, but I was using that for an example of a reasonably...of (C.2), a benefit being sought, which he's looking to change use, you know, he can change to whatever you want, it can't be achieved by some other method reasonably feasible. In regards to case seven (7) where he wants to go into the thirty (30) foot setback and so that's where I'm...I'm just...my point was so that we can try to get this and get to a vote, I'm not comfortable that he met that. So, I think maybe...

YVES STEGER: Okay. Alright.

VICKI KEENAN: (D)...

YVES STEGER: Yeah, alright, (D), would do substantial justice. Even though we would have less space, we would definitely have more space and we have a use which is improving the community, so that probably...and would allow them to do a business other than a gas station. I don't know how...

(overlapping comments)

NEIL DUNN: ...substantial justice...

VICKI KEENAN: [inaudible]

NEIL DUNN: Yeah, I don't know. That one doesn't...

VICKI KEENAN: Is the loss to the individual outweighed by the loss to the public for not having more green space? I would say no.

YVES STEGER: You're saying...you are saying that the loss to the individual would be higher...

VICKI KEENAN: Would be greater.

YVES STEGER: ...than the loss to the community?

VICKI KEENAN: That's right.

YVES STEGER: Which is one of the criteria that is used.

VICKI KEENAN: That's right, which is (D).

NEIL DUNN: Yes.

YVES STEGER: I agree.

VICKI KEENAN: Yup.

YVES STEGER: Do you agree or disagree, Neil?

NEIL DUNN: It's a close one. I don't have much trouble with that one.

YVES STEGER: Barbara?

BARBARA DILORENZO: No, I think the way you said it...

YVES STEGER: Okay, yeah.

VICKI KEENAN: Yeah.

BARBARA DILORENZO: That's...

VICKI KEENAN: And (E)...

YVES STEGER: And then not contrary to the spirit of the ordinance. Any opinion?

NEIL DUNN: Well, again, you can say what you're looking for in that but where he's...the verbiage or the language speaking to the spirit of the ordinance, we don't know how many. It says the remaining parking areas within the setbacks will remain unchanged from existing conditions. I mean, I'm not sure how that deals with the spirit of the ordinance when we're going from a nonconforming use to a conforming use. I guess it's just not clear, I guess is what I'm having some issues with. The clarity is not really what I would be after.

YVES STEGER: Mm-hmm.

NEIL DUNN: But that's all I can think of.

LARRY O'SULLIVAN: I think we have to leave the message with the Planning Board that we have, you know, pretty much a nonconforming use here that's gonna have to be continued in some shape, manner and form, so, good luck dealing with it. So, I mean, that's really what they got, what we've got.

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: You know, the owner has lots of different options and I think this one, we have more say on and they will have more to say about, so, but I do think what we should have said, kind of is my overriding thought right now, is that they can't do much with this without having parking spots and this is the only place you can buy a parking spot in this lot is in that green area setback, so, this happens to be the only one that I'm in favor of now.

NEIL DUNN: Well, that's why you discuss, right?

VICKI KEENAN: There's no green space there.

YVES STEGER: It's only concrete at this time. There is a little bit of green space right now. Not enough here but at least there is a little bit more than we have today. 'Cause right now it's nothing, it's just pure...

LARRY O'SULLIVAN: If you look at the picture that, again, we're looking at the 'ZBA plan, Freedom Fuels, tax map ten (10), lot one thirty six (136), page three (3) I think, yeah, page three (3), I made it larger so we can read all...I can read all the text, on the right hand side of that lot, that's where we see the edge of the existing pavement and then where there's two (2) lines, two (2) dotted lines showing the building area setbacks and the fifteen (15) foot setbacks and so forth, I mean, there is potential for there to be some kind of edge of pavement, let's say, regardless of whether you make it green or not.

YVES STEGER: Mm-hmm.

VICKI KEENAN: Yup.

LARRY O'SULLIVAN: So there's a possibility. But that's not for us to determine. That's, again, for the Planning Board and I understand that but...

YVES STEGER: I agree.

LARRY O'SULLIVAN: So my recommendation would be to approve it, put the restriction on it saying that we should find any additional, you know, green area that we possibly can and...wherever on this lot...

VICKI KEENAN: I agree.

LARRY O'SULLIVAN: ...whether that be at the loss...

YVES STEGER: I agree.

LARRY O'SULLIVAN: ...at the expense of lost parking spaces which are required or not, and it is preferable to not putting it in at all...

VICKI KEENAN: I agree.

LARRY O'SULLIVAN: ...and allowing fewer parking spaces. So that would be my recommendation.

YVES STEGER: So, actually....

LARRY O'SULLIVAN: And I'd vote for it.

YVES STEGER: Alright.

VICKI KEENAN: I suggest you make a motion then, Larry.

YVES STEGER: Who would like to make a motion?

LARRY O'SULLIVAN: I make a motion with the recommendation to the Planning Board for...as mentioned earlier, to approve case 7/16/2008-7. Can you insert that in, what my recommendation for the Planning Board was?

VICKI KEENAN: With his recommendation...

JAYE TROTTIER: You need to say it.

LARRY O'SULLIVAN: The Planning Board recommendation being to find the green space wherever possible and preferably to lose parking spaces on the lot in preference for green space.

YVES STEGER: Okay. Anybody seconding it?

VICKI KEENAN: I second the motion.

YVES STEGER: Okay, we have a motion by Larry, seconded by Vicki to approve with recommendations.

VICKI KEENAN: Mm-hmm.

YVES STEGER: Further discussion? Okay, all in favor, say 'aye.'

LARRY O'SULLIVAN: Aye.

BARBARA DILORENZO: Aye.

VICKI KEENAN: Aye.

YVES STEGER: Aye. Against?

NEIL DUNN: Aye.

Clerk Larry O'Sullivan read the results of Case 7/16/2008-7 into the record (i.e. approval with recommendations, 4-1-0).

RESULT: CASE NO. 7/16/2008-5: THE MOTION TO GRANT THE AREA VARIANCE WAS APPROVED, 4-1-0.

CASE NO. 7/16/2008-6: THE MOTION TO DENY THE AREA VARIANCE WAS

APPROVED, 5-0-0.

CASE NO. 7/16/2008-7: THE MOTION TO GRANT THE AREA VARIANCE WITH RECOMMENDATIONS WAS APPROVED, 4-1-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED SEPTEMBER 17, 2008 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 5-0-0.