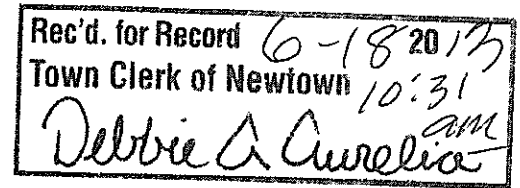




TOWN OF NEWTOWN
ZONING BOARD OF APPEALS



MINUTES

May 1, 2103

7:30 P.M.

The meeting of the Zoning Board of Appeals was called to order by Chairman Charles E. Annett. Members present were: Alan Clavette, Vice Chairman, Barbara O'Connor, Secretary, Timothy Cronin and Ross Carley. Alternates Present: Herbert Rosenthal, Roy Meadows.

Mr. Annett asked the secretary to call the roll. After the roll, he asked her to read the legal notice for the hearing, Docket 13-02, the application of Sugar Hill LLC for the correction of alleged error by the Zoning Enforcement Officer (ZEO) for property located at 153 Sugar Street in the Town of Newtown in an R-1 zone. Mr. Annett then asked representatives of Sugar Hill LLC to come forward, state their names and addresses for the record.

Atty. Jeffrey Tinley, 60 North Main Street, Waterbury, representing Charles and Diane Merrifield, Sugar Hill, LLC, approached the board. He asked the Chair to recuse himself from the hearing due to a visit he made to the property in connection with the current hearing. He felt the board is obligated to decide matters based upon evidence presented during a hearing and was not allowed to develop other evidence.

Mr. Annett said members of the ZBA often visit properties associated with land use issues and zoning variances. He announced himself and explained was there to walk the property, not to investigate, and that he walked along the State of Connecticut right of way (Rte 302). He respectfully would not recuse himself.

Atty. Tinley noted he has witnesses present and submitted documents to the board. Atty. Paul Pollock, representing ZBA, stated that the hearing should proceed and documents be reviewed at leisure by the board since it appears there are legal issues noted. Mr. Annett asked the board if they had any comments. There were none.

Atty. Tinley said the subject matter stemmed from events when the applicant placed 50 yards of gravel in the upper parking area, which led to a citation by the Zoning Enforcement Officer (ZEO) for construction without a permit and then led to several court actions. He noted the court action staid by stipulation between the applicant and the Town. The applicant was asked to return and file an application to be reviewed by the ZEO. If denied it would return to ZBA and compile a record for review by the Superior Court. Atty. Tinley said the alleged error is the denial of the application for a permit to bring an additional 44 yards of gravel material to the property. He noted that Benjamin Doto was present and was hired by the Applicant.

Mr. Clavette then asked if the applicant proposes to bring in an additional 44 yards of gravel when 55 yards of gravel were already brought in a year ago. Atty. Tinley confirmed yes. Mr. Annett then asked Mr. Doto to give his name and address for the record.

Benjamin Doto, license professional engineer, 248 Main Street in Danbury, CT, discussed Mr. Merrifield's request in January 2013 to prepare plans that delineate the upper parking area. He designed a 17 space gravel parking area (90' x 60') with driveway isle totaling 7,000 sf. He explained the slope and sediment and erosion controls.

Mr. Clavette asked about the elevations of the front of the property versus the upper area of the proposed parking lot. Mr. Doto explained the elevations.

Ms. O'Connor asked what the difference was between the proposed plan and what exists. Mr. Doto said the parking area needed to be clearly delineated.

Mr. Annett asked if the area proposed is for parking 17 vehicles. Mr. Doto confirmed yes.

Atty. Tinley asked questions to which Mr. Doto all answered "Yes". Questions were: (1) is the property in an R1 zone; (2) did he examine the Town's zoning regulations when preparing the plan; (3) did he feel his plans complied with all the requirements for parking in an R1 zone; (4) did he examined regulations for a commercial zone; (5) did his plan comply with all the requirements in the regulations for parking in a commercial zone; (6) did he review the aerial photos of the proposed area; and (7) did he observed whether there was a cleared area in the photos. Atty. Tinley then discussed distinguishing trees in aerial photographs, perceiving shadows. Mr. Doto said sometimes trees look bigger, longer, taller than they are because of the shadow of the trees and the angle of the sun at the time the photo was taken.

Mr. Annett asked if he looked into the records to see if at one time the parcel had been adjoined with other parcels of land. Mr. Doto said he only went back through the records being shown. Mr. Annett asked how far back he searched the land records. Mr. Doto said he did not search the Town land records but looked at surveys from 1997, the line survey and the aerial photographs. Mr. Tinley said 2002. Mr. Doto agreed 2002 and up. Mr. Annett then asked Mr. Doto to supply the board with other aerial photos he was referencing.

Atty. Tinley called Larry Powers as a witness. Mr. Annett asked him to come forward, state his name and address clearly for the record.

Larry Powers, 118 Horse Hill Road, Westbrook CT, stated that he owned the property from 1978 to 1997.

Mr. Annett asked if he had the property surveyed, he answered that he did not.

Atty. Tinley asked Mr. Powers several questions. Note: (Q) = Atty. Tinley; (A) = Mr. Powers. (Q) What businesses were conducted at the property during that time, (A) Auto body repairs, general repairs, used car license, towing, and gas; (Q) What was the condition of the property when he bought it, (A) It was a mess with junk; (Q) Was Sugar Hill Road a dirt road, (A) Yes; (Q) Was there a curb cut from Sugar Hill Road, (A) Yes; (Q) What was the upper portion of the property was used for, (A) unsightly cars were put up there; (Q) what was the second level of the building used for and is there an entrance, (A) There was an apartment with an entrance, tenants parked their vehicles on the upper level; (Q) Did he have applications or issues with the Town Land Use authorities, (A) He had no formal applications but there were discussions regarding signage and minor issues; (Q) was there ever an issue made about cars being parked on the upper level, (A) No, the curb cut was for access to the well; (Q) during the time he owned the property was the area cleared on the upper level, (A) Yes, it was dirt; (Q) What businesses were there prior to purchasing it, (A) Auto body, general repairs, used car license and gas; (Q) Who was the prior owner, (A) Leo Simone.

Mr. Carley asked Mr. Powers if he was familiar with the property as it stands today and had he been there. Mr. Powers said it had been a long time but visited the site when he met the owners earlier in the day. Mr. Carley asked if the upper parking area was the same size as when he owned it. Mr. Powers said pretty much the same size.

Mr. Clavette asked how many cars he parked in the upper area. Mr. Powers said it varied, sometimes three or four and sometimes ten. Mr. Clavette asked how many vehicles were kept in the lower lot. Mr. Powers said it was maxed out and they always needed the upper lot.

Mr. Rosenthal asked Mr. Powers asked if he did the excavation around the back of the property. Mr. Powers said no. Mr. Annett asked if there were further questions. With none, he asked Atty. Tinley to continue.

Atty. Tinley asked for Fred Ferris to come forward. Mr. Annett asked Mr. Ferris to step forward, state his name and address for the record.

Fred Ferris, 24 Robin Hill Road, stepped forward. Atty. Tinley asked Mr. Ferris several questions. Note: (Q) = Atty. Tinley; (A) = Mr. Ferris. (Q) How long he had been familiar with the property, (A) Since the age of nine, he worked there in 1963, and the work done then is the same as now; (Q) Was it historically one piece of property, (A) It all belonged to that location; (Q) Was he familiar with the use of the upper portion of the property, (A) Yes; (Q) Did he recall anytime the upper area was not open and cleared, similar to what it is today, (A) It was always open; (Q) Did he recall anytime there was not a curb cut from Sugar Lane; (A) It was always there; (Q) Did he recall any time when cars were not parked or stored in the area. (A) Not to his recollection, although there may have been a week or two it was empty; (Q) Did he recall when Ray Brown owned the property, if there was an apartment in the upper level, and if he parked his car outside the apartment. (A) Mr. Brown owned the property around 1945, there was an apartment he parked his car there.

Atty. Tinley asked Charlie Merrifield to come forward. Mr. Annett asked Mr. Merrifield to state his name and address for the record.

Mr. Charles Merrifield, Jr., owner of Sugar Hill, LLC and residing at 26 Pocono Road. Atty. Tinley asked Mr. Merrifield several questions. Note: (Q) = Atty. Tinley; (A) = Mr. Merrifield. (Q) How long he has been the owner. (A) Since 1997; (Q) Did he acquired the property from Mr. Powers. (A) Yes; (Q) What businesses were being conducted on the premises at the time. (A) Gasoline sales, auto body, car sales, repair and towing; (Q) Has he continued those uses. (A) Yes; (Q) During the time he owned the property what uses were made of the upper area. (A) Storage of cars; (Q) Is the area used for parking cars now comparable in size to previous times. (A) It's the same size.

Atty. Tinley then asked Mr. Merrifield to address the board and discuss the aerial photographs. Mr. Merrifield displayed the aerials. It was noted that the black and white photo was dated 4-7-02 and taken by Golden Aerial surveys, who does aerial surveys for the Town. He explained the difference in the photos and details in the upper parking. He explained Exhibit #3 aerial dated 4-11-07 and compared it to an aerial dated 3/27/2012. He felt the upper parking lot was exactly the same in all aerials. He explained the gravel was installed because of mud. The receipt for the gravel, dated 12/3/10, was submitted for the record.

Atty. Tinley discussed Exhibit #4 (aerial photograph) used in prior proceedings and a letter (dated 3/31/11) from Mr. Benson to the applicant's prior counsel, copies were submitted. He noted that Mr. Benson relied on the 2002 aerial siting Sugar Hill for a violation for depositing gravel. He asked if the copy of the aerial was a poor photocopy. Mr. Merrifield said it was. Atty. Tinley then asked if the area in question was covered with trees. Mr. Merrifield said No.

Mr. Clavette and Mr. Annett then asked Mr. Merrifield to repeat his answer. Mr. Merrifield said No. Mr. Annett then asked again if he said it was not covered with trees. Mr. Merrifield said the area was not completely covered with trees. Mr. Annett then asked him to circle the area that's covered with trees. Mr. Merrifield circled an area. Mr. Annett asked him to circle the whole area of trees stating that it looked to him that there were more trees than where Mr. Merrifield circled. Mr. Merrifield said there are shadows and that the quality of aerial photographs in were terrible.

Mr. Carley then asked Mr. Merrifield if that was his determination or his opinion. Mr. Merrifield said he was only telling what he saw. Atty. Tinley asked Mr. Merrifield to point in the photo the base of the trees and where the tops of the trees are. Mr. Merrifield pointed out shadows.

Mr. Annett asked if the aerial photograph tells the time of day. Mr. Merrifield said it does not.

Mr. Annett discussed the difference in the time of day and the angles and that without the time of day being known, it was subject to opinion. Atty. Tinley again asked Mr. Merrifield to point out the trees and the angle of the shadows. Mr. Clavette then asked them to go north about four inches from where he was pointing. He asked him to explain that area. Mr. Merrifield said "Trees." Mr. Clavette asked Atty. Tinley to go in 2 to 3 inches from where he was pointing

and asked if he thought it was fairly dense trees. Mr. Merrifield said absolutely, that it is currently. Mr. Clavette said he was looking at the dimension to the house from where the trees are and that in the aerial the trees go right up to the building. He then said the next photo shows the trees cut back. Mr. Merrifield said they took some trees down but replaced them with pines.

Atty. Tinley asked Mr. Merrifield several questions. Note: (Q) = Atty. Tinley; (A) = Mr. Merrifield. (Q) Did he asked Mr. Doto to prepare plans that were submitted as part of his application. (A) Yes; (Q) Did he ask for 44 more yards of material to be brought in. (A) Yes; (Q) For what purpose. (A) To stabilize the mud; (Q) Are there plans to take materials off the premises. (A) No; (Q) During the time he owned the property, did he use the upper area for parking. (A) Always; (Q) Did he ever abandon or intend to abandon the use of parking in that area. (A) No; (Q) Was there ever an extended period of time when it was not used for parking. (A) Sometimes, for weeks at a time; (Q) While owning the property has he had a number of applications for variances. (A) Yes; (Q) Did he have a number of other issues with the Zoning authorities in the Town. (A) From time to time; (Q) During that time did anyone ever say it was illegal to use the area to park cars. (A) No; (Q) Variances were granted, applications were processed, but no one claimed that they were in violation? (A) That's correct until 2010.

Mr. Annett asked if the application dated 3/22/13 was submitted by the applicant and if it related to today's hearing. Atty. Tinley said yes. Mr. Annett referenced paragraph D on the 2nd page of the ZBA application, quoting "Previous Appeals or Applications ... list all prior appeals which relate to this property in whole or in part, if this is the first, please enter one". Mr. Annette said only one variance was listed and asked where the other variances where he was referring to. Atty. Tinley said those were going back over years and weren't appeals or pertinent to the present issue. Mr. Annett said it asks for "previous appeals or applications." Atty. Tinley said they weren't related to the present issue. Mr. Carley said it states "related to the property." Atty. Tinley then apologized and said it was the way they interpreted the form.

Mr. Annett asked if there were any more questions. He asked Counsel if they were ready to move forward. He then asked the Town's representative step forward.

Mr. Benson, Director of Planning and Land Use for the Town of Newtown, opened discussion by clarifying some history. He said the opposing attorney mentioned letters he wrote regarding previous violations. He submitted a timeline of the present violation and statements and petitions from neighboring property owners. Mr. Annett said the documents will be reviewed by the board and asked Mr. Benson to clarify his role in Land Use. Mr. Benson stated he was also a Zoning Enforcement Officer (ZEO) for the Town of Newtown. He noted that the case has been ongoing since October 2010 and explained the judge's stipulation for the applicant to go through the process again. He discussed the plan submitted by the applicant for a proposed parking lot that was under dispute for the past 3 years. He said in reviewing the plans he determined it was the expansion of a non-conforming use and that the aerial photograph of 2002 speaks for itself. He discussed the interpretations of the aerials and said there was clearly a difference between 2002 and 2007. He said other criteria for denying the application included surveys, that on several occasions the owner submitted surveys showing only a gravel driveway noted in the upper area. He said the area could not be used for tenant parking which is a residential use. He reiterated that commercial parking is not allowed in a residential zone and that it does not comply with the zoning regs. He also said junk yards are not allowed in Newtown and that there cannot be a pre-existing use that is illegal. He noted that Mr. Ferris and Mr. Powers both stated junk cars were stored in the area. He said it should not be considered a pre-existing use and it does not lead to a parking lot.

Mr. Clavette asked Mr. Benson he has seen if the cars are registered. Mr. Benson said recently there were some without registrations. He said a violation was issued when the applicant began to expand the area into a parking lot. He noted it is in a residential zone off a small road with neighbors that are being impacted. He has witnesses and signed petitions. It is considered an expansion of a non-conforming use and does not belong in a residential zone. He noted the parking lot was submitted to him as a commercial use in a residential zone. He felt it was expansion of non-

conforming use which is why he denied the construction permit to build a parking lot. He noted that the burden of proof is on the applicant to prove that their use is non-conforming and they must prove it to the board since his decision was challenged. He did not believe it was a pre-existing non-conforming use and it's obvious there were a lot more trees there at one point in time.

Mr. Annett asked if he knew when the retaining wall was installed and what type of work was approved for them to do this and if there was second growth after the retaining wall was built. Mr. Benson said he could not testify to this since he was not there at that time. Mr. Annett asked if there were any questions for Mr. Benson.

Atty. Tinley asked Mr. Benson if he was an expert in the regulations that apply to surveys in the State of Connecticut. Mr. Benson said he reviews A2 survey's including driveways, parking lots, buildings and any structures that are pertinent. Atty. Tinley cited Section 20-300.b2 of the regulations of Connecticut State Agencies, asking if he was aware of it. Mr. Benson said when Land Use reviews drawings they must have pertinent information, including parking lots and driveways.

Mr. Annett asked Atty. Tinley what authority he was speaking of. Atty. Tinley said State of Connecticut regulations pertaining to survey requirements. Mr. Benson said he had never seen an A-2 survey that excluded a parking lot, that he follows the Town's zoning regulations and review process. Atty. Tinley asked if Mr. Benson inferred that Mr. Merrifield intended to abandon the use of parking. Mr. Benson said it was never a parking lot and that in numerous A-2 surveys a parking lot in that area was never shown. He felt it would have been important to place a parking lot on an A-2 survey especially in a non-conforming area. He said the client submitted A-2 surveys several times to ZBA showing the area as a gravel driveway and not a parking lot and that was more evidence he has ever seen in any zoning case he ever reviewed. Atty. Tinley said that his client testified it was continuously used to park cars. Mr. Benson disagreed.

Mr. Annett asked Atty. Tinley to be more specific. Atty. Tinley said he was pointing out that Mr. Benson was trying to establish the intention to abandon a use and what was submitted on an application had nothing to do with that particular part of the property, therefore, didn't need to be depicted on the survey map in order comply with regulations. Mr. Benson said applications must include all the information on the lot and the requirements for a complete A-2 survey includes all pertinent information, including parking lots.

Mr. Rosenthal asked Atty. Tinley about the 9/10/97 A-2 survey saying it looked complete, that it shows a paved parking area, numerous structures, underground structures, etc., and that the only thing it shows in the upper area is a "gravel drive". He said it doesn't make sense that a surveyor would mark the area as a gravel drive if it were a parking lot. Atty. Tinley said the survey complies with the requirements for an A-2 survey, showing all the permanent structures and improvements. Mr. Rosenthal asked why the A-2 survey shows a gravel driveway. Atty. Tinley said it's a survey from 1997 and he can't say. Mr. Benson said there are other surveys showing the same thing. Atty. Tinley said it's unfair to infer from what a surveyor did in 1997 as to what the use was. Mr. Benson noted the 2010 survey his client submitted to ZBA showing the same area as an "earthen path". He submitted it for the record. Mr. Annett said they also had someone testify there were 17 cars there, which would be bigger than a path or a driveway.

Mr. Clavette asked Atty. Tinley if the survey being referred to is an existing building location survey, a zoning location survey, or an improvement location survey because the regs are different for each one. Atty. Tinley said he did not know. Mr. Clavette said the regulation indicates that portions of property pertinent to the issues being addressed must be depicted and if they're talking about an expansion of a use or a change to the property, it would be pertinent to the application. Atty. Tinley said not to the application that was submitted in 1997. Mr. Clavette asked what was the purpose for the 1997 application. Atty. Tinley did not know.

Mr. Clavette asked Atty. Tinley if parking was a consideration in the application and if so, should it have been depicted on the map and that parking is pertinent to all zoning changes or variances unless it's internal to the building. Atty.

Tinley felt what needs to be depicted is what's pertinent to whatever is being asked to be done at that time. Mr. Benson disagreed and stated it should show everything on the property. Mr. Clavette said he did not perceive the regs the same as Atty. Tinley and that in applying for a variance, parking is pertinent. Mr. Benson said other parking is shown so why wouldn't all the parking be shown on the map. Mr. Clavette said the regs actually speaks for the zoning law.

Atty. Tinley then asked Mr. Benson what zoning regulation he was referring to regarding the parking regulations. Mr. Benson said commercial parking is not allowed in a residential zone, that Newtown's zoning is permissive and if it doesn't say it in the regs, it's not allowed. Atty. Tinley then asked again what regulations apply to parking. Mr. Benson said commercial parking is for commercial zones. The applicant has a non-conforming commercial building in a residential zone. The applicant cannot expand parking because it would be an expansion of a non-conforming use.

Mr. Annett asked Atty. Tinley if he understood that the property is a non-conforming zone under the regulations established in 1958, that it is a pre-existing non-conforming property and that there is permissive zoning in the Town, which means the regs state what you can do and not what you can't do; if it's not there, you can't do it. He said that is what the board is empowered to look at. Atty. Tinley said he understood that it is a legal pre-existing non-conforming uses at the location but the uses are not stated and that parking is a conforming use. Mr. Benson said everything done on a non-conforming lot must be approved by the zoning officer or by the ZBA and that no one can expand parking lots even on commercial property without a permit. He reiterated that it is a non-conforming use in a residential zone.

Atty. Tinley said adding to parking to service a legal non-conforming use is not an expansion of a use. Mr. Benson disagreed and then read the non-conforming use statute, zoning ordinance 9.03.210. He said the applicant is increasing the level of non-conformity by putting a new parking lot on a residential street on a different part of the property. He said having a commercial parking lot in a small road within a neighborhood impacts the neighbors.

Mr. Annett said it is an expansion. Mr. Benson said there should not be a parking lot there that allows commercial vehicles up the road. It is a residential road and a residential use.

Mr. Clavette said that Atty. Tinley clearly disagrees with the definition of expansion. Mr. Annett said it's something the board needs to sort out.

Atty. Tinley asked Mr. Benson about his decision of denying the application of 2/25/13 referring to a quote from Judge Fuller's text on zoning and land use. He asked if he viewed the text as an authoritative source. Mr. Benson said yes. Atty. Tinley asked if he read the entire section of the text. Mr. Benson asked him to remain on topic and discuss the parking. Atty. Tinley then discussed the Thomas case. Mr. Benson explained that the Thomas case referred to different regulations.

Atty. Pollock stated that the board decides whether or not it is non-conforming and said he felt the cross-examination was not going anywhere. Atty. Tinley then asked Mr. Benson with his interpretation of zoning regulations if he agrees that prohibition of expansion of non-conforming uses apply only to the aspect of the use or structure which is non-conforming. Mr. Benson said No. Atty. Tinley then said Judge Fuller disagrees with him.

Mr. Annett asked Atty. Tinley to keep the proceedings civil and if he had something substantive to continue with and continue with concrete information that had not already been brought up. Atty. Tinley then asked Mr. Benson if an official parking lot is defined in the regulations. Mr. Benson said he interprets the zoning regulations for the Town and that it is the ZBA's judgment whether his interpretation is correct. Mr. Annett said that the board will make the decision, not the Zoning Enforcement Officer.

Mr. Benson said his decision was not a cease and desist order or a citation where a specific regulations is cited and that it was based on his opinion and interpretation of the regulations. It was his opinion that it is a pre-existing non-

conforming use that's expanded. Atty. Tinley asked Mr. Benson to cite the regulation. Mr. Benson said it is 9.03.210. Mr. Annett asked for anyone who would like to speak in opposition to the application.

Brendan and Michelle Ferris, 2 Sugar Hill Road were present. Mr. Ferris said they are the neighbor to the north and have lived there since 1995. He discussed the gravel/dirt driveway and said when you bulldoze dirt to enlarge an area it will become muddy when it rains, that is why the applicant needed to add gravel. He said that in the past there were more trees.

Ms. Ferris said she and her husband both grew up in Newtown and is very familiar with the gas station. She explained that when they first built their home it was tremendously private with a buffer of trees between the gas station and their home. She has about 200 photos showing before and after pictures of what has transpired on the applicant's property since 1995. She submitted and explained the pictures. Ms. Ferris also submitted pictures of the excavation, trees that were cut down and removed, large tree stumps, and pictures of work being done. One picture included the upper lot full and lower lot empty. She said there were commercial vehicles, tow trucks, Troy Security trucks, a bulldozer, a plow, a trailer, and a burnt out vehicle, most of them had to be towed out. There were also unlicensed vehicles.

Mr. Ferris said the area in question use to be a driveway where the tenant parked one or two cars, it was situated where there wasn't enough room to turn around and they sometimes had to back out of the driveway to get onto Sugar Hill.

Mr. Clavette asked when they thought the trees were removed. Ms. Ferris said a lot of work was done after the applicant was denied for the variance to build an addition. Mr. Cronin asked if she observed the trees being cut down and the bulldozer. Ms. Ferris said yes, that she had photos of it. Ms. O'Connor asked if the trees were cut down on her property or on the applicant's. Ms. Ferris said the trees were on the applicant's property. Mr. Meadows asked the time frame when the trees were removed. Ms. Ferris said within six months of the denial of the variance. It was done in stages and that the pictures show stacks of logs and disturbed soil. The grade of the ground is completely different.

Mr. Annett asked if anyone else wished to speak in opposition.

Bill Beckman, 10 Sugar Hill Road, said he lives on the south side of the property (since 1983). He resubmitted letters previously submitted through the years. He said he does not argue there is an apartment with a driveway used for one or two cars. It was a very wooded, quiet piece of property along the road. He said there was never that intensity of use up in the area and the aerial photos do not show large activity of parking in that time period. He believed the trees started being cut in July / August 2010 and submitted pictures and letters showing the activity. Pictures from 3/14/11 show a sense of the size of the trees and number of stumps and logs that were cleared. He said the Ferris' use to have a wooded setting in the back and now they can see a vehicles. Neighbors on Sugar Hill and Sweet Meadow once had a nice quiet road, now they see a bunch of parked cars. He discussed the clear cutting. He noted that stipulation 10 allows parking of up to 8 vehicles while the stay is in action. He discussed the term "vehicles." The explanatory statement indicates to park 17 vehicles. He then asked to compare that to the first item in the stipulation. The applicant is directed to submit an application that cites specifically the parking of "cars." He discussed the distinction between the term vehicles and cars. The application, designated for vehicles, is not consistent with cars specified in the stipulation. He then said stipulation 10 C indicated that all other items had to be removed 14 days from the day of the stipulation dated 1/10/13, which would be 1/24/13. He submitted pictures explaining they show vehicles, a piece of a trailer, a truck bed, a plow assembly and assorted junk. He felt the applicant has not complied with that part of the stipulation. He then said the area in question more qualifies as a vehicle storage area and that Town regulations distinguishes between parking lots and vehicle storage areas. Parking lots are transient in nature whereas vehicle storage areas are where vehicles are there for periods of time. Pictures submitted shows vehicles that have been there for months. He felt the removal of trees, grading, and installation of gravel was not consistent with the use prior

to 2010. He said the aerial photographs were taken at times when there were no leaves on the trees and that typically aeriels are taken in the winter, fall, early spring. The trees in the photographs are pine trees and you can't tell the degree of vegetation easily because the rest of the trees don't have their leaves.

Mr. Annett thanked him. He then asked if anyone else that would like to speak in opposition to the application. Hearing none, he then asked if there was anyone who has not spoken before and in favor of the application to come forward. Hearing none, he then asked Atty. Tinley if he would like to recall a witness.

Atty. Tinley asked Mr. Doto with regard to surveys, common practice and what regulations require regarding A-2 surveys, if he was familiar with the regulations. Mr. Doto said no but he looks at A-2 surveys as a Civil Engineer. Atty. Tinley asked if his experience was consistent with what Mr. Benson said in regards to whether an unpaved parking area would be depicted on a survey. Mr. Doto said a grassed area with no gravel would not be picked up. The intent is to show the parking as numbered or with wheel stops. He asked to look at the 1997 survey and said it is was not done to show a parking count but that it does not mean there wasn't parking around the gravel drive, that the gravel drive is shown as leading to nowhere. There's no garage so one can infer that there would be parking around it, the extent is not clear. It looks like grass or woods based on the survey. Atty. Tinley asked if he had occasion to review aerial photographs. Mr. Doto said he has although it's not his profession. Atty. Tinley asked if he knew the time of day the photographs were taken. Mr. Doto said one can't tell the time of day, based on the date, but he thinks they were done in late winter, early spring.

Mr. Clavette said they were all dated March or April. Mr. Doto then discussed the angle of the sun and he saw that most shadows were cast to the northwest and feels they were taken in the morning. The time of year suggests the sun is at a lower angle. Mr. Annett said it's assuming he had knowledge of the cloud layer. Mr. Doto said they wouldn't be taking aerial photos on a cloudy day. Mr. Clavette said they're taken at low altitude Mr. Doto said with low altitude you wouldn't see shadows. Atty. Tinley discussed the aerial photograph and the trees as viewed from above. He asked Mr. Doto if people can park cars under trees. Mr. Doto said some deciduous trees not evergreens. Atty. Tinley said Robert Merrifield would like to address the court. Mr. Annett asked Mr. Merrifield to step forward, state his name and address for the record.

Rob Merrifield, GM Sugar Hill, LLC, at 153 Sugar Street in Newtown, said the Ferris' were correct in that there were more trees. There were several trees but not a single tree has actually been taken down since 2007 or 2008 when Mr. Benson sent another letter citing an obscure regulation regarding clear cutting that applied to new construction. He said it was the last time a chain saw was on the property; not in 2010 as been testified. He said between 2007 and 2010 is when action took place. He said stumps in the ground were removed with a backhoe not a bulldozer and that there was never a bulldozer on the property.

A Board member said there was a picture of a bulldozer and a backhoe submitted. Mr. Merrifield apologized and said he didn't remember a bulldozer. He then discussed when they had Cedar trees removed in the front and planted more trees near the landscape wall.

After further discussion, Atty. Tinley said he had nothing else to add.

Mr. Annett then declared this hearing closed.

Respectfully submitted by Tammy Hazen