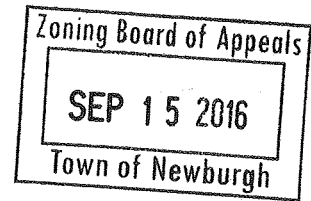


LAW OFFICE
CHARLES T. BAZYDLO
ATTORNEY AND COUNSELOR AT LAW

5 HOWARD SEELY ROAD
THOMPSON RIDGE, N.Y. 10985

(845) 361-3668
FACSIMILE (845) 361-3669



Via Overnight Mail 845-566-4901
Ms. Betty Gennarelli
Secretary ~ Zoning Board of Appeals
Town of Newburgh
308 Gardnertown Road
Newburgh, NY 12550

Re: Application of RAM Hotels, Inc.
Auto Park Place 97-2-37

Dear Ms. Gennarelli:

As per our conversation earlier today please find enclosed an original of my letter to Dave Donovan, Esq regarding the above application. The letter has been provided to Mr. Donovan via email.

If there are any questions on regards to the enclosed please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to be "C. Bazydlo", written over a horizontal line.

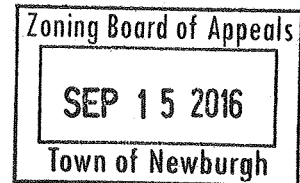
CHARLES T. BAZYDLO

Enclosures

LAW OFFICE
CHARLES T. BAZYDLO
ATTORNEY AND COUNSELOR AT LAW

5 HOWARD SEELY ROAD
THOMPSON RIDGE, N.Y. 10985

(845) 361-3668
FACSIMILE (845) 361-3669



September 13, 2016

Via email to David.Donovan@DDDBLaw.Com

Dave Donovan, Esq
Dickover, Donnelly, Donovan & Biagi
28 Bruen Place, P.O. Box 610
Goshen New York

Re: Application of RAM Hotels, Inc. w Town of Newburgh ZBA

Dear Mr. Donovan:

As per the request of the Chair of the Town of Newburgh Zoning Board of Appeals we write to you to supplement our position that the application of RAM Hotels, Inc. to the Board for relief from the requirements of Town of Newburgh Code §185-27C (1) should be classified and subsequently reviewed by the Board as a "Use Variance".

As you are aware Chapter 185 Article VI of the Town of Newburgh Code contains "Supplementary Regulations Applicable To Certain Uses". Amongst the particular Uses listed within Article VI is "Hotels, Motels and Accessory Restaurants". Specifically §185-27C (1) states that the site of any hotel / motel shall have "principal frontage on a state or county highway". As such although listed as a "Use Subject to Site Plan Review by the Planning Board" on Schedule 8 of the Table of Use and Bulk Requirements for the IB District the additional requirements of §185-27C (1) prohibits a hotel / motel from being located on a site that does not have frontage on a State or County highway. Such a prohibition is not dimensional in nature but rather acts to limit the location of hotels / motels to certain areas of the Town of Newburgh regardless of the particular zoning district designation of the parcel or the Bulk Requirements associated with the zoning district.

Having concluded that §185-27C (1) of the Newburgh Code prohibits the location of a hotel / motel at the site proposed by the applicant without first obtaining relief from the Town Zoning Board of Appeals in the form of a variance, the Board must find that the variance relief sought by the applicant is a "Use Variance" as defined by the New York State Town Law and not the "Area Variance" offered by the applicant. NYS Town

Law §267(1) provides the following definitions for the terms Use Variance and Area Variances:

(a) "Use variance" shall mean the authorization by the zoning board of appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

(b) "Area variance" shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

Clearly the application of RAM Hotels, Inc. seeking relief from the prohibition of locating a hotel / motel on any parcel not having principle frontage on a State or County road is a request for authorization to use the land for a purpose which is prohibited by the applicable zoning regulation and not a request for relief from a dimensional or physical requirement (i.e. a Bulk Requirement). In fact the reference to §185-27 of which §185-27C (1) is included is listed on Schedule 8 of the Table of Use and Bulk Requirements for the IB District under column "D" pertaining to allow Uses as oppose to the physical dimension requirements of the table.

In addition we note that the Newburgh Zoning Board of Appeals has previously dealt with the very same issue of the proper classification of relief from the requirement of Newburgh Code §185-27C (1). Attached for your reference are the minutes of the Newburgh ZBA for its November 2013 meeting wherein the application of Martin Milano for relief from §185-27C (1) in regards to the location of a hotel without principle frontage on either a State or County highway was reviewed by the Board and found to be an application for a Use Variance.

We trust that you find the above useful in your deliberations on this matter. Please feel free to contact me if you should have any questions on our position.

Sincerely,



CHARLES T. BAZYDLO

Enclosure / Attachment

Cc: Town of Newburgh Zoning Board of Appeals

ZONING BOARD OF APPEALS**MEETING – NOVEMBER 26, 2013**

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: I'd like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision this evening but may take up to 62 days to reach a determination. And, I would ask if you have a cell phone to please put it on silent or turn it off. And when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:01 PM)

ZBA MEETING – NOVEMBER 26, 2013

(Time Noted – 7:01 PM)

MARTIN MILANO

1292 ROUTE 300, NBGH
(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking Use variances for Section 185-27 - Hotels, motels and accessory restaurant. C - Site Planning Standards. (1) That the site have its principal frontage on a State or County Highway; And also for 185-27 D-3 (b) Hotels or motels with more than 100 rooms are permitted a restaurant with bar facilities, which may be located either in the principal building or in an accessory building to allow the restaurant as a principal use on as stand-alone lot of a proposed subdivision in the IB Zone.

Same minutes used for both the use variances and the area variances

Chairperson Cardone: Our first applicant Martin Milano for the Use variances.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, November 15th and in the Mid-Hudson Times on Wednesday, November 20th. For the use variance this applicant sent out nineteen letters. All the mailings, publications and postings are in order. And also for the area variance this applicant sent out nineteen and all mailings, publications and postings are in order.

Chairperson Cardone: For the record please identify yourself.

Mr. Mackay: Good evening my name is Joe Mackay I'm from Catania, Mahon, Milligram & Rider. We're the attorneys that are representing the applicant Martin Milano with respect to the area variances and also with respect to the use variances. I'm here this evening with Justin Dates from Maser Engineering.

Mr. Dates: Hi, my name is Justin Dates with Maser Consulting. What I'd like to do is just take the Board through the plan that I've put over here. Just to orient everyone to the project on the bottom of the page is Route 300...a...to the south or the right that's Palmerone Farms a...the retail development with some restaurants and retail stores in there. To the east would be the exit ramp from 87 it comes down around and then to the north is a...really vacant land a...at this point. The project site a...is about eight point six acres in size and comprised of three tax lots and is within the a...I/B Zoning District. What the applicant is looking to do is to a...with a couple of lot line revisions a...create two proposed lots. Currently on the site along Route 300 here is the existing Gateway Diner which is currently vacant and a...it's parking area and improvements and then directly behind that is the existing Hampton Inn hotel...again with a...parking improvements a...on that site. The both of these are exited through a...there's an entry road that comes off of Route 300 to the east a...and then there's a driveway that peels off for each of the two projects as well as going into the a...Palmerone Farms. What we're proposing is a...like I mentioned is a lot line revision where Lot 1 would be this front lot and would encompass the existing diner and its improvements. A...that lot would be

about one point nine acres in size then the remaining area of the a...the lot about six point six acres would be Lot 2 which we're calling, would encompass the hotel and its improvements. Now the a...a...the parcel is within the I/B Zoning District as mentioned, we do meet all the Bulk Requirements a...with the following a...exceptions. On Lot 1, the diner lot a...we do not meet the sixty foot rear yard setback a...the existing building is about forty-seven point one feet from the rear lot line and that's right in this area. It is also a...it would becoming a stand-alone restaurant which is not permitted within the I/B District so we're here for that Use variance as well. Lot 2 a...the hotel lot, again we do not meet the sixty foot rear yard setback. This corner in the a...northwest of the...the lot here the...the hotel is only forty-nine point five feet from that rear lot line and also a...hotels for the I/B Zoning District must have a principal frontage on a...a State or County Highway which we do not have a...by way of this subdivision, our frontage a...then only becomes off of a...we're calling the entry road into the a...the site.

Mr. Mackay: With respect to the area variances I have submitted a memorandum to the Board in support of the application. I'm going to touch on a few of the basic points if the Board has any questions please feel free to ask. As Mr. Dates indicated there are two...two area variances which are required here. The most important thing to remember is that these buildings are already constructed; they've been constructed since the early 1990's the only issue before the planning board right now is a lot line change or lot line changes. So this is not any proposed development, no proposed change in any structures or any uses it's simply moving lot lines on the tax map. As Mr. Dates indicated there are two area variances required. One is approximately a twelve foot, nine foot (inch) variance and the second is approximately a ten and one half foot variance and that is because in the I/B Zone the sixty foot rear setback is required by your Code. In determining whether or not to grant the area variances this Board has to determine whether they will produce a undesirable change in the neighborhood or in the character of the neighborhood or a detriment to nearby properties. As I've said there's not going to be any physical alteration here whatsoever. These are simply changes on the...on the lot lines a...no physical changes to the structures and their use. They are in the same condition as when they were constructed and there's no changes proposed. For that reason, we would say that there's not going to be any impact on the neighboring properties and it's not going to have any change whatsoever on the character of the neighborhood. This Board also needs to determine whether or not the applicant can achieve through some other feasible means the changes that are required other than by seeking the variance. For some of the same reasons there's really no feasible alternative for the applicant here. Again the variance is sought solely to separate out the diner lot which I think the Board probably knows has been vacant for some time to separate that lot from the current lot. There is no feasible alternative. This is in a sense a...an all or nothing at all proposition meaning that there's really no...no feasible alternative. To separate the diner lot from the a...hotel lot a...these setback requirements would need to be met, per your Code, so that we must seek those variances. With respect to the variances this also needs to consider whether or not those variances are substantial. As Mr. Dates indicated one variance is for approximately twelve point nine feet, the second area variance is for approximately ten and a half feet. Do (So) we submit to the Board that quantitatively they are small variances certainly given the size of the lot which is a little more than eight acres, also a...quantitatively they

are a...small variances, one of twenty-one percent and one of seventeen point five percent. And...and again, you'll hear me say this a lot, again there's no change proposed to the structures of the buildings or their use and we feel that the lot line changes are not going to have any...any impact on the neighboring properties. This Board also has to determine whether or not the proposed variance will have an adverse effect on the physical or environmental conditions in the District. This property is located in the I/B District a...it's surrounded by other commercial establishments. I think the Board is aware that in the past several years at least five a...national change restaurants have been developed on the lot adjacent to the hotel and diner lot. We have submitted or Mr. Dates has submitted to the Board a short form EAF which I think clearly demonstrates that there are not going to be any environmental impacts with respect to this Board granting the variances, no changes sought with respect to water resources, sewer, noise, light or any other potential adverse environmental impacts. Also this...this use will be consistent with the uses that the adjoining lots are...are put to. Again, no changes proposed. This Board also needs to consider whether or not the proposed variance was self-created and I think in this case it's...it's pretty safe to say that this is a...a...that it is self-created. Again it goes to whether or not these lot line changes are made or not a...it is self-created. Of course as the Board is aware the simple fact that the a...difficulty is self-created is not necessarily a reason a...to deny the variance applications, it's simply one factor be considered along with the other factors. In this regard we point out to the Board that there are benefits a...by way of approving these variance a...we've discussed the adjoining lot has been substantially developed in the last several years. There are also other properties along Route 300 which also have free-standing restaurants and this would just be one more a...in that vein. The primary goal here is to provide a...or to separate out the lots so that the...the diner lot and the diner building itself can be properly marketed. I'm sure as the Board is aware the diner has been vacant for a long period of time. There are a substantial number of jobs approximately fifty jobs, local jobs, were lost and are...are being lost by virtue of the diner being closed and this is...this is an attempt to separate out a...that parcel so that an economically viable a...restaurant be it a chain restaurant, a national restaurant or something like that a...can occupy that space, compete with the a...five newly developed restaurants on the adjoining...adjacent lots a...and we think that overall the fact that this would allow the diner building to be properly marketed, renovated and occupied that this has overall benefits to the Town and to the Town's residents. With re...should I go on to the Use variances or does anybody...?

Chairperson Cardone: Would you please.

Mr. Mackay: Okay, with respect to the Use variances, two...two use variances are being sought here. Chapter 187 (185) of your Code requires a...that a...the hotel fronts on a State Highway. Now of course it's adjacent to that State Highway, however, there is a road that leads from Route 300 to the main entrance of the...of the hotel. Based upon the reconfiguration of the lot lines a...the hotel will now not be considered having frontage on Route 300 so we would require a variance with respect to that Section of the Code and also as a...Mr. Dates pointed out in his opening comment, Chapter 185-27 requires that the restaurant only be in an accessory use to the hotel. By separating out that lot from the

hotel lot it will no longer be an accessory use to the hotel, it will be a standalone use. This Board needs to a...make some determinations when considering the use variance request. This Board needs to determine whether or not the property can realize a reasonable financial return a...absent the variances a...and whether or not this is a hardship that is unique to this property. The Board also needs to consider the impact that the variance may have on the character of the neighborhood and it also must consider whether or not this was a self-created hardship. With respect to the first factor which is whether a reasonable financial return can be obtained in the absence of these lot line changes I would respectfully refer the Board to the memorandum I submitted in support of the variance request and I would just like to point out to the Board that the variance the applicant is seeking a...is required by current economic conditions. As I said earlier there has been substantial development along Route 300 specifically adjacent to this lot. There are at least five national chain restaurants that have been developed and opened and approved by your planning board within the last several years directly adjacent to the lot. So this presents this property...this property which had this pre-existing diner use a...in a somewhat unique position and it has created a hardship for the ongoing profitable use of the diner building on that lot. A...these changes in the intensity of use of the adjoining lot makes this a unique a...situation. As I indicated before there has been a loss, the diner has been closed now for a year or more, there's been a loss of approximately fifty local jobs and the applicant comes to this Board because it's very difficult, actually it's been impossible a...for a lengthy period of time to put that parcel to use, to put the diner parcel to a viable economic use. By definition it's vacant, the applicant has not been able to entice either a lessee or a purchaser to purchase that lot and it has to do with the way that the financing is structured on...for these uses. Of course, in this particular case you have the...the hotel use itself and you have the diner structure on one lot. Anytime an applicant be it a lessee or a potential purchaser wants to come in they look to the financing on the overall lot and not just to one or other of the buildings. So every time that this a...a potential lessee is identified a...the applicant is required to work with the lessee and work with their lender to finance any new construction on the lot or remodeling or something that would give this property some type of an economic edge given the a...the adjoining businesses and that has been proven impossible at least for the last year or so. Also we submit to the Board that over a period of years, maybe the last ten years or so, there have been a number of lots which have been developed which have restaurants which we believe or at least appear to be standalone restaurants. Some of them would be the Cosimo's Restaurant on Route 300, the Denny's Restaurant, Perkin's and...and others. We submit to the Board that by granting the use variance to the applicant you would simply be bringing the applicant's property into conformity with the use of other properties in that same general commercial area. And we ask you to treat this applicant in the same manner that either this Board or the planning Board has treated those other restaurants which also appear to be a...standalone uses. We ask this Board to grant the variance so that the diner parcel can be separated off and the restaurant...the diner use can be a separate, independent use and so that it does not...it is no longer required to be an accessory use to the hotel itself. Two of the factors are duplicative with respect to the area variances so I'll just touch on them briefly. As I indicated before we don't believe these lot line changes are going to have any impact whatsoever on the neighboring properties. No physical change whatsoever is proposed. The buildings and structures will

remain as they have been for decades so we see the...we believe there's just simply no...no a...physical impact or adverse impact on...on the neighborhood. Also you need to determine whether or not this is a self-created hardship and as I indicated before this is certainly a matter where the hardship is self-created. Again it's a...a matter of moving the lot lines or not, so, it is a self-created hardship and I would just a...remind the Board that in that regard as indicated earlier a...whether or not the matter is self-created a...is not necessarily a reason to deny the application, it's just one factor to be considered with all the others.

Chairperson Cardone: For a use variance you must meet all four of the criteria unlike the area variance.

Mr. Mackay: Well the...what I'm saying is the overall benefit is not only to the applicant, the benefit is to the Town and we have a concern that the other properties along 300 are being...have restaurant uses which are essentially standalone and that if this Board were not to grant this particular variance then this property would not be treated similarly with those.

Mr. Manley: You indicated that the property has been vacant but you weren't really specific as to how long. You said, a year or more. Can you get this Board an exact date as to when?

Mr. Mackay: I can and my client was unable to be here this evening. I am approximating. That's why I didn't want to give the wrong information so I did approximate. Yes, we can supply you with the exact dates.

Mr. Manley: The...the other thing is a...what attempts have been made by the applicant to lease that property and do you have a...something that you provide this Board to show as to how many attempts were made, how long it had been listed for for a lease, whether or not you had any offers? And then the last question that...that I have a...and if you could, going back to that second question, provide a copy to the Board of the listing that was placed for that space. The other question would be with respect a...the loss of income that you're saying has occurred over time a...does the applicant have any financials or anything to support the fact that there's been a loss of income to the property as a whole and that he hasn't been able to, you know, obtain a reasonable return from the property based on that loss.

Mr. Mackay: We can provide the Board with supplemental information to answer those questions. Of course, we...we submit that the diner obviously has not been a...rented for a substantial period of time and that's obviously a dire economic impact with respect to the parcel as a whole but we can provide you with the...with more specific financial information.

Mr. Manley: And...and, you know, the fact that it has been vacant for...for some time, you know, with the economic conditions as they are today they are not the only location in the Town of Newburgh that's vacant because of, you know, economic times. There's

plenty of buildings, you know, in the Town that have been vacant for over a year because of the, you know the economic, you know factors and the factors that new places open up you know for example, everybody wants to be where the new...the new place is so you know, unfortunately due to the success of the Town sometimes you...you know, you wind up unfortunately with...with vacancies. A...you know, and that's just you know unfortunately what sometimes what happens. I think that information if you can supply it may be helpful.

Mr. Mackay: We'll get you that, sir.

Mr. McKelvey: You say that this is on the market. Have you had anybody interested in it?

Mr. Mackay: Well I think that that's the similar what Mr. Manley asked for. We can provide the Board with some more specific information concerning how long the...the property has been on the market for lease, etc. We can provide you with that.

Mr. McKelvey: I'm just curious, is it going to remain the same building or is it going to take it down and put another restaurant in?

Mr. Mackay: I have no way...my client has not said that to me at all a...I...I...I'll find out from...from the applicant.

Mr. Manley: This would be a question for Mr. Donnelly but a...with a use variance it's getting a reasonable return for anything within that particular I/B Zone so it doesn't necessarily have to be a diner, it could be something else within that Zone that could go into that spot.

Mr. Donnelly: Correct. Yeah, let me...let me just focus in if I could? Joe it would be our advice to the Board that 267 B-2 of the Town Law requires that you demonstrate that for each and every use in the Zone you cannot receive a reasonable return on your investment and that you can for this use. So you need to go through the Table and there's about twelve or fifteen uses I think listed in the I/B Zoning District and demonstrate in some fashion that for each of those a reasonable return of your investment is impossible. And you'll need to demonstrate that for the use that you propose a standalone restaurant on its own lot a reasonable return is possible and that's important on that factor and that proof needs to be, as Mr. Manley has pointed out, dollars and cents proof numbers that show that analysis with assumptions for what a reasonable rate of return is, etc. On the self-created hardship a...factor, as the Chair has pointed out to you, that is fatal for a Use variance unlike for the area variance. And I think you may have conceded it a little too soon. If in fact this property has been in this configuration and use since the early 1990's or perhaps earlier I have no idea what the Code said then but if at the time the prohibition on standalone restaurants did not exist you may be able to argue, I...I...I'd have to look at it further and advise the Board and the Board would ultimately have to decide it that it is the change in that Code, if there was one, that has resulted in the hardship and not the lines on the piece of paper. But if you can't fashion an argument of some kind that

demonstrates that this is not a self-created hardship I would have to advise the Board that they would be duty-bound to deny the use variance part of the application. The self-created hardship is just one factor for the Board to consider on the area variance. And if I could one last comment just to make sure that I understand it and the Board does the lot line creates no new Bulk non-conformity on either side?

Mr. Mackay: Right.

Mr. Donnelly: And the only non-conformities that exist now in the rear yards are pre-existing and you're not altering those in any fashion?

Mr. Mackay: That's correct.

Mr. Donnelly: Okay. But I think the Board would need to have that additional proof on the use variance and I think it makes sense that they not decide the area variances till they have all the proof before them, it would be my recommendation.

Mr. Mackay: We can supplement with the financial information that the Board has requested and I can address the a...issue that Mr. Donnelly a...raised.

Mr. Maher: You say that the a...the restaurants popped up such as Denny's, Perkin's are consistent with standalone restaurants, correct?

Mr. Mackay: I believe.

Mr. Maher: Are they located in the same Zone? The same I/B Zone as far as consistency goes?

Mr. Mackay: I believe that they are. I can get a...specific information as to whether or not they are in the I/B Zone.

Mr. Donnelly: Restaurants are allowed in conjunction with certain other uses in the I/B Zone most notably shopping centers and I think at least some of the ones that Joe mentioned are in fact, in conjunction with shopping centers and therefore permitted.

Mr. McKelvey: Yeah, Palmerone is a shopping center.

Chairperson Cardone: Do we have any questions from the Board or comments? Do we have any comments from the public? If so, please step to the microphone; state your name for the record.

Mr. Cordisco: Good evening everyone, I'm Dominick Cordisco and I heart the question as to how long the Gateway Diner has not been there. A...I just know this because I actually had an important business meeting that I was supposed to coordinate and set up and I a...did that and invited clients that were coming in and traveling to Stewart Airport

and I invited them to the Gateway Diner on November 5th of 2012 only to pull up that morning and find that the doors were closed a...so...

Mr. Manley: How did that meeting go for you? Good?

Mr. Cordisco: A...well, you know, so but it...it...it's been at least a year a...it...it may have been a...shortly before that but a...it was right around that time.

Chairperson Cardone: Thank you.

Mr. Manley: Thank you.

Chairperson Cardone: Any other comments from the public? I have the report from the Orange County Department of Planning. Do you have that in your possession or not?

Mr. Mackay: No, I do not.

Chairperson Cardone: Oh, because there are several items there that really don't maybe pertain to what we're discussing but I'll read a little bit of it and then you could get a copy of this because they are things that probably have to be addressed at the planning board level.

Although the subdivision in itself is not the subject of the ZBA's scrutiny, County Planning would like to offer the following guidance for the Board's consideration as deemed appropriate. Additionally we would like to inform the applicant of potential issues identified that may need consideration prior to any approval by the planning board. These comments are informational only because this variance is expected to be an early action leading to additional referrals and to fuller review. County Planning will expect to comment specifically on the subdivision and other next actions when referred to us under the GML process. 1) There is an existing waterline on proposed Lot #1 that provides water to the existing diner as well as a fire hydrant on proposed Lot #2. The proposed easement may need to be expanded to include the portion of the existing waterline on proposed Lot #1. Portions of the existing storm water drainage system on proposed Lot #1 include the infrastructure on proposed Lot #2 including but not limited to underground piping, catch basins, vegetative swales and a storm water management pond. Our office recommends that the applicant determine in appropriate drainage easements, I think they meant to say if appropriate drainage easements are needed on proposed Lot #2 along the north side and east side of the existing development as well as around the existing storm water pond. And they say this is a matter for Local Determination. But these were just some guidelines that they sent.

Mr. Mackay: I understand that those were comments that were made with respect to the planning board application, are you asking that we address them?

Chairperson Cardone: No, this was a...this was sent to us when we sent the referral to them.

Mr. Mackay: Okay.

Chairperson Cardone: And they also stated that even though this, you know, this was not subject our scrutiny they felt that they should mention it since you're in the early process.

Mr. Donnelly: Give you an early start.

Mr. Mackay: Okay.

Chairperson Cardone: Right, a head start right.

Ms. Gennarelli: Grace, was that the one for the area variance or the use variance, because there were two?

Chairperson Cardone: This was for the use variance.

Ms. Gennarelli: Okay.

Chairperson Cardone: Right. And the one for the area variance said the same thing.

Ms. Gennarelli: Okay.

Mr. Donnelly: And in both cases Local Determination.

Chairperson Cardone: Yes.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Okay. You can have this copy because I have another copy.

(Mr. Mackay approached)

Ms. Gennarelli: They are both posted on our website also.

Chairperson Cardone: Am I understanding that the Board would like to hold the Public Hearing open on this?

Mr. McKelvey: I think so.

Chairperson Cardone: Do I have a motion to that effect?

Mr. McKelvey: I make a motion we hold the Public Hearing open.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Mr. Donnelly: I would advise that you either announce the date and time or we'll have to have the applicant re-notice.

Ms. Gennarelli: Well we do have a difficulty...

Chairperson Cardone: We do have a difficulty, we don't know if we're going to have a December meeting.

Mr. Donnelly: Okay.

Chairperson Cardone: As it stands right now we only have three Board Members which would not give us a quorum.

Ms. Gennarelli: For December 26th.

Chairperson Cardone: For December 26th.

Mr. Donnelly: Well why don't we say it's continued to the 26th unless its otherwise re-noticed?

Chairperson Cardone: Right.

Mr. Mackay: That's fine, that's fine to us.

Mr. Donnelly: December 26th?

Ms. Gennarelli: 26th.

Mr. Donnelly: At 7PM unless re-noticed and then we'll have to let you know and you can re-notice.

Mr. Manley: Will they be able to get the information that will be needed by then?

Mr. Donnelly: That...that's another question. Is that realistic?

Mr. Mackay: Well first you need to tell us whether or not you believe you are going to have the meeting on the 26th.

Mr. Donnelly: Why, you need a deadline to work?

Mr. Mackay: I mean, we do have deadlines for a reason but assuming it's a ten day time frame...

Ms. Gennarelli: Right, we're going...we're going to know...

Mr. Mackay: Are we talking about the first meeting in January?

Ms. Gennarelli: ...we're going to know by December 3rd I believe.

Chairperson Cardone: Yes.

Ms. Gennarelli: We need one more Board Member.

Mr. Manley: Would it be better just to give them the January date?

Ms. Gennarelli: Why wouldn't we give them the January date?

Mr. Mackay: It might be.

Mr. Donnelly: It might be.

Chairperson Cardone: It might be better to hold it over to January.

Ms. Gennarelli: January 23, 2014.

Mr. Mackay: That's the first meeting in January?

Ms. Gennarelli: Yes.

Mr. Donnelly: The 23rd?

Ms. Gennarelli: Yes. It's the fourth Thursday.

Mr. McKelvey: I think that would be the best decision.

Mr. Manley: This way either way they are protected, they have a date.

Mr. Mackay: It doesn't sound like you're really going to have that December meeting anyway.

Ms. Gennarelli: It's doubtful.

Chairperson Cardone: I doubt that.

Mr. McKelvey: We doubt it.

Chairperson Cardone: And you understand the information we are looking for?

Mr. Mackay: Does the Board have a specific timeframe? I know this is going over to January, ten days or so before the meeting is that acceptable, two weeks?

Chairperson Cardone: Yes, ten days before the meeting.

Ms. Gennarelli: So I can distribute it to the Board Members.

Chairperson Cardone: Keeping in mind that there are two of the criteria under the use variance that we really need to look closely at, one of them being the self-created difficulty and the other being the financial hardship. So if there is anyone here that was interested in that particular application we will be discussing that on January, in January at the January meeting. Okay, thank you.

Mr. Mackay: Thank you very much.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
ROSEANNE SMITH

ALSO PRESENT:

MICHAEL H. DONNELLY, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:36 PM)