

MINUTES

**Town of Wappinger
Zoning Board of Appeals
April 14, 2015
Time: 7:00PM**

**Town Hall
20 Middlebush Road
Wappinger Falls, NY**

Summarized Minutes

Members:

| | | |
|--------------|----------|---------|
| Mr. Prager | Chairman | Present |
| Mr. Rexhouse | Member | Present |
| Mr. Johnston | Member | Present |
| Mr. Galotti | Member | Present |
| Mr. Casella | Member | Absent |

Others Present:

| | |
|-----------------|----------------------|
| Mr. J. Horan | Attorney |
| Mrs. B. Roberti | Zoning Administrator |
| Mrs. B. Ogunti | Secretary |

SUMMARY

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|----------------------------------|---|
| David Plaza | Resubmit |
| Earth Angels Veterinary Hospital | Public Hearing on April 28, 2015 and Site Visit |
| Garth Bosman | Public Hearing on April 28, 2015 and Site Visit |
| Brian Coto | Public Hearing on April 28, 2015 and Site Visit |
| RADD Automotive | Public Hearing on April 28, 2015 and Site Visit |

Mr. Prager: I would like to call the Town of Wappinger Zoning Board of Appeals to order. Roll call please.

Mrs. Ogunti: Howard Prager-----Here
Brian Rexhouse-----Here
Bob Johnson-----Here
Peter Galotti-----Here

Mr. Prager: First on the agenda is the acceptance of the minutes of March 24, 2015, and that meeting was cancelled.

Mr. Prager: The next item on the agenda for discussion is an area variance on:

Appeal No. 15-7546

David Plaza: - Seeking an area variance Section 240-37 of District Regulations in an R-40 Zoning District.

-Where **25 feet** to the side yard is required, the applicant can only provide **11.5 feet**. For a proposed garage, thus requesting a variance of **13.5 feet** for the construction of a detached garage.

The property is located **194 Old Ketchamtown Road** and is identified as **Tax Grid No. 6156-01-332986** in the Town of Wappinger.

Mr. Prager: Mr. Plaza, please come on up. You probably have not been here before so I would like to explain to everybody that's new, what we do here. Basically, you explain what you need and when you need it. If we feel we need more information, we will ask you to come back for a Public Hearing. We will also do site inspections to look at the property so we can understand what you need. So, state your name for the record.

Mr. Plaza: My name is David Plaza.

Mr. Prager: Okay, just explain exactly what you need and why you need it.

Mr. Plaza: I need to build a garage on my property. Where we want to put the garage requires 25 feet, and we are short 11.5 feet. One of the questions that was asked, was if we could put it in the back. My wife and I are disabled, and we cannot go in the back to dig. Putting the garage next to the house would be a more appropriate place.

Mr. Plaza and Board members reviewed survey map.

Mr. Prager: We are going to do a site visit on Saturday, April 25, 2015.

Mr. Plaza: Do you need me to be there?

- Mr. Prager: No, but what I'm going to need you to do is mark out exactly where you want to put the garage.
- Mr. Plaza: I am going to be out of town for two months, so I want to wait until I get back.
- Mr. Prager: Okay, let's postpone this until you get back.
- Mrs. Roberti: There are a few issues here, you say you have 11.5 feet and on here you want to put it a few feet from the property line. So, when you get back, you have to tell us exactly where you want it because, your Public Hearing Notice has to be exact. I can't publish 11.5 feet and then they get there to find you want 2 feet from the property. What we need to do is put this off and when you come back, call the office and we will put you back on for another discussion.
- Mr. Prager: When you get back, see Barbara and get me the right map.
- Mrs. Roberti: Did you have this map when you applied to the Building Department?
- Mr. Plaza: No, I picked this up from Poughkeepsie, from the town records.
- Mrs. Roberti: Okay, but we should have a copy of the survey map.
- Mr. Horan: This is a filed map so you can just print the filed map.
- Mrs. Roberti: Oh, that's what this is? I'll print it.
- Mr. Prager: When you come back, I'm going to need you to give me the dimensions of the shed exactly as it is on the gravel and marked property line, just so you know.
- Mr. Prager: Anything else guys?
- Mr. Johnston: We will need to postpone this.
- Mr. Horan: Just one question for Barbara. What's the separation between the garage and the shed?
- Mrs. Roberti: It is 6 feet.
- Mr. Horan: Is that the minimum?
- Mrs. Roberti: Yes, unless he wants to put a firewall.
- Mr. Prager: So, we have to get some dimensions on exactly what you are doing.
- Mr. Johnston: Do you have a date on when that might come up again.

Mrs. Roberti: He just said he will be back at the end of June. Once he gets back, I'll make sure that he has everything and get it to you and I will put him on the agenda.

Mr. Prager: Next on the agenda:

Appeal No. 15-7548

Earth Angels Veterinary: Seeking an area variance Section 240-71(A,D) of Regulations in an R-80 Zoning District.

-Where a minimum of **10 acres** is required for veterinary hospitals with outdoor runs in a residential district, the applicant can only provide **8.96 acres**, thus **requesting a variance of 1.04 acres.**

-Where the zoning code for veterinarian offices permit one, non-illuminated, free-standing sign, not to exceed **6 square feet** on each side, the applicant is proposing a two-sided sign with **32 square feet** on each side, thus requesting a variance of **26 square feet for both sides of their proposed signage.**

The property is located **44 St. Nicholas Road** and is identified as **Tax Grid No. 6258-01-200871** in the Town of Wappinger.

Mr. Prager: Hi, Why don't you state your name for the record.

Mr. Gillespie: Hi, I'm Mike Gillespie, the consulting engineer for the project.

Mr. Prager: Why don't you give us some information on what this veterinary hospital is all about. I am familiar with the area.

Mr. Gillespie: For those familiar with St. Nicholas Road, this is part of the gun club across the street. About 7, 8 years ago, it was purchased by the applicant/owner, that actually was a wholesale winery type of operation. It was like a club, you could purchase a barrel of wine, and they did wine tasting there. That worked out for awhile and then the property went up for sale. Earth Angels Veterinary operates over the line on Hillside Lake in the Town of East Fishkill. To get there, you take Route 376 by Meyers Corners, go across the tracks and the rail trail. There are a couple of buildings on the left, they are in the back and they rent space there.

Mr. Prager: Yes, I know where it is.

Mr. Gillespie: The intent here is actually for purchase. We are in an R-80 residential zone. This use of a veterinary hospital, is a permitted use via special permit for the zone we are in. With that, there are a couple of caveats that we have to

meet with a special permit. I would also let you know that we are before the Planning Board relative to a site plan application that was required. There are a number of requirements that you have to meet in order to allow this particular use in this zone, and two of them don't meet the requirements. One of them is for a commercial type of operation, which this is and they have to have a minimum of 10 acres. There is the ability to go to a 7 acre requirement if it is a non-commercial zone. The wording is, not to have dog runs and things like that. For what we are proposing, they want to have the flexibility and we do have a fenced in area for boarding and exercising. While the definition of a run can be defined in a couple of ways, that's why we are here. By having those runs, it kicks us in the 10 acre minimum requirement. The first thing we are here for tonight is a variance relative to the acreage. We have 8.96 acres and they require 10 acres, and we are requesting a variance of 1.04 acres. Second, we are looking for a variance related to the signs. It's a residential zone and we don't want to have these big gaping signs out there. We are proposing a large 8 x 4 sf., sign and 36 sf., on both sides and we are only allowed 6 sf., on each side. We had some discussions with the Planning Board and this board would be the one to judge what's appropriate and not appropriate. There should be a letter floating around from the Planning Board indicating that 18 sf., would make a lot of sense. I do have the modified sign and you can take a look. Essentially, we cannot move any further with the Planning Board until we resolve these issues.

Mr. Prager: Why do you want it bigger than the town requires.

Mr. Gillespie: I think a 6 sf., sign for this area is too small and they certainly want to get a little more attention to gaining access in and out. St. Nicholas Road is a cut-through road and although it's a 30-35 mph speed limit, they move a little quicker through there. Part of it is to identify the site. The building sits in the back so having a more prominent sign would be great for the site.

Mr. Prager: Do you know what their hours of operation will be?

Mr. Gillespie: No, that question was asked by the Planning Board. I believe it is Monday through Saturday from 9-5pm. Keeping that in mind, they are a hospital and there are a number of times they are called in the middle of the night or on a Sunday and they will meet someone over there if there's an emergency.

Mr. Prager: That was my question why does it need to be illuminated since it's a very small road.

- Mr. Gillespie: I guess in the middle of December when it gets dark at 4:15pm and they close at 5pm, and if there's an emergency, they can quickly find it. We are doing an external illuminated sign and not internally.
- Mr. Prager: Will it be illuminated all the time or will the shut it off at 5pm?
- Mr. Gillespie: The applicants could not make it here tonight so I certainly do not want to give it all away. The intent was to have it illuminated all night.
- Mr. Johnston: Are you going to board animals?
- Mr. Gillespie: Yes.
- Mrs. Roberti: How far is it from the property line? The way the sign code is today, it has to be 25 ft. from the property line. On April 27, 2015, there is a Public Hearing with the Town Board to change certain things in the zoning codes. If this goes through on April 27, 2015, and the Town Board approves these quick fixes, one of them will be that the sign can now be close to the property line but, not closer than 15 feet from pavement. What that means is we are trying to help Route 9 and Route 376 because the State owns 20-30 feet. So going another 25 feet, you are practically in the building. In a case like this, you will get the 15 feet from the pavement so it won't affect sight distance when someone is going out of the place. By the time this plan goes through, the law should be in place.
- Mr. Prager: Again, we haven't gone with the larger signs on Route 9 because of the speed limit, and this is a rural area.
- Mr. Galotti: If this place is going to be externally lit, do you have any idea how that's going to be done?
- Mr. Gillespie: Here's the modified layout. So you shouldn't see any glaring and it will project down on the sign.
- Mr. Prager: Is this the picture of what the smaller sign looks like?
- Mr. Gillespie: That is a 36 x 72 sf., sign.
- Mr. Johnston: How many dog runs do you have?
- Mr. Gillespie: In terms of a traditional run, they don't plan on having that. They are planning on having an open area. The way I understand this operation is it will be a holistic type of deal. They don't set up dogs in these 50 feet. runs. They have a fenced in area in the back for boarding and exercising, and for the dogs to roam in that particular area rather than set up a run. So when the issue came up regarding runs, that's traditionally for a veterinary

hospital or that type of use that you are familiar with and that's not what they are doing here. The code only points to runs and there's no other definition to show what they are doing here.

Mr. Prager: Barbara, anything else?

Mrs. Roberti: For the Public Hearing, could you provide the measurements from the road or the property for the sign so we know what that is. I also brought up at the Planning Board, that you have the paddock for the mini horses in the front, and they asked if you would be doing a shed?

Mr. Gillespie: Yes.

Mrs. Robert: Where would you put that? If it's in the front of the building, that would also need a variance.

Mr. Gillespie: This plan was submitted at the same time as the other one.

Mrs. Roberti: Before we do a Public Hearing notice, I'd rather know now, unless you are going to put it somewhere in the back.

Mr. Gillespie: The paddock will be in the front, the idea would be to have a small structure to be like a run in shed for small horses. It's more of a holistic type of thing.

Mrs. Roberti: They do hands-on, and I think acupuncture. I'm asking because you brought this up at the Planning Board. If you are looking to propose a small shed for the horses and you can only have four horses, and she said she only has two. Do you want to propose that before we publish?

Mr. Gillespie: Yes, when I speak with them, I will get the size and then we can include that.

Mr. Horan: The variance is simply the authority to put an accessory structure in the front yard.

Mrs. Roberti: So we can just add it?

Mr. Horan: If it meets the setback.

Mrs. Roberti: He puts it somewhere around the paddock, where there's 50 sf., to the side.

Mr. Prager: Do you need an area variance?

Mr. Horan: It would be an area variance because it's in the front yard.

Mr. Gillespie: Is it front yard or because it's in front of the principal structure?

- Mrs. Roberti: It's either or, however you want to look at it.
- Mr. Horan: Front yard is defined by the principal structure. That's something we have never looked into. I believe the way the code is written, it is not allowed.
- Mrs. Roberti: We basically draw a line across the front of the structure and anything forward of that is in the front yard.
- Mr. Gillespie: So even though it's always been interpreted as anything in front of the front yard?
- Mr. Horan: Not the front yard setback.
- Mrs. Roberti: I have one where the house was built sideways, so front door is really on the side of the house. Someone in our office let them put a shed in the front yard because they thought the front yard was the side. We draw a line and I don't care where your front door is, that's the front yard. So, do you want to apply for that variance? You will need to get the paperwork to them, but I can add it to the Public Hearing notice so it could be a part of it, or wait until you have the paperwork and amend it.
- Mr. Horan: No, we'll just amend it. I think it's easier.
- Mr. Prager: We are going to do a site visit next Saturday, so if you are going to have a shed, I want to know exactly where it's going to be.
- Mr. Gillespie: The width of the lot in the front is 450 sf., across.
- Mr. Horan: So, we don't have a front or a side yard issue.
- Mr. Gillespie: That paddock we show is all within the setback.
- Mr. Prager: Mark out the shed, and exactly where the sign is going to be.
- Mr. Gillespie: Okay, we can do that. Are you guys going out on your own or do you need me to be there.
- Mr. Prager: No, you don't have to be there, at least have it marked before April 25, 2015.
- Mrs. Roberti: Approximately, how big do you think the shed will be?
- Mr. Gillespie: In terms of the size or where it will be located:
- Mrs. Roberti: Just the size.
- Mr. Gillespie: What is permissible in terms of an accessory building? I think 10 x 12 sf., I cannot image it being more than that.

Mrs. Roberti: I'd rather not tell you.

Mr. Gillespie: I will speak with them and get it in print.

Mrs. Roberti: I will just make the Public Hearing to show a shed structure in the front yard because that's what the variance is for.

Mr. Prager: I would like to make the Public Hearing for the next meeting.

Mrs. Roberti: That would be April 28, 2015.

Mr. Prager: Bea, could you send out an email for the site inspection for Saturday, April 25, 2015. I think that's it Mike, I cannot think of anything else.

Mr. Gillespie: I appreciate this. Thank you.

Mr. Prager: The next item on the agenda for discussion is an area variance on:

Appeal No. 15-7547

Garth Bosman: Seeking an area variance Section 240-21, (B)(4) of District Regulations in an R-40 Zoning District.

-Where 6 feet fence height is the maximum allowed, the applicant requests a **12 feet** height for a proposed fence, thus requesting a **6 feet** variance to allow for security.

The property is located **86 Ketchamtown Road** and is identified as **Tax Grid. 6157-03-150311** in the Town of Wappinger.

Mr. Prager: I read your letter. Please state your name and tell us why you are here.

Mr. Bosman: Hi. The best way that I can show you is to show it on the map.

Mr. Prager: Come up here and we can all gather around.

Mr. Bosman: This is my house on Ketchamtown Road and this is my garage. We bought the house knowing that the garage did not sit on our property.

Mr. Prager: So this parcel right here is not your parcel? We are looking at a small area south of it which is not your property.

Mr. Bosman: Yes, this is Central Hudson right here, the power lines are right here, and a little piece of vacant property is between us and the power lines. The garage which the driveway leads into, which all of the previous owners of the house have always used as their garage does not sit on our parcel.

- Mr. Prager: Is the larger piece your parce?
- Mr. Bosman: This little piece is connected to 34 acres and this is the only frontage for the 34 acres to the road.
- Mr. Prager: That's Ketchamtown Road right here?
- Mr. Bosman: Right. We bought the house three years ago and we knew there was a cloud over the title to the garage. Nothing had been done to this property for 60 years, so we proceeded accordingly. Since then, we've gotten into a very ugly dispute with this owner. We are now in litigation over the title to the garage. He believes he needs to break down this garage in order to put a road through to access his property. The litigation may take up to 5 years. In the meantime, I have my wife and two small children at home. These guys like to send their rough necks to drive their vehicles and cut down trees, trying to disrupt our lives has much as possible to get us to give up the garage or drop the lawsuit. All I want to do is put a fence along the property line to shield us from this nonsense.
- Mr. Johnston: Is there a fence there right now?
- Mr. Bosman: No.
- Mr. Galotti: If you put a gate there, will you still have access to the garage?
- Mr. Bosman: We are not going to put a gate there. We are going to leave this open. We have hired Tony DeFazio to represent us and he thinks we can put a fence up from the corner of the garage.
- Mr. Prager: Are you still using the garage?
- Mr. Bosman: Yes, absolutely.
- Mrs. Roberti: Are you going to put any fencing this way?
- Mr. Bosman: Yes, we are going to go down about here.
- Mrs. Roberti: How close to the road are you looking to go?
- Mr. Bosman: You said we need 12 feet. The reason I want to go above 12 feet is this land over here is a highpoint, and a 6 ft fence is low here and it rises up again to the house. Therefore, 6 feet is not going to shield us. Does it make sense, and do you have any questions?
- Mr. Johnston: You said that you had disputes and you are worried for your family. Do you have police reports?

- Mr. Horan: Yup.
- Mrs. Roberti: Yes, and both he and his wife have called and been in my office several times over the last two years.
- Mr. Prager: Is that 12 feet fence going to make a difference? So you are going to put the fence over here with an opening and bring it up to the building?
- Mr. Bosman: Ideally, I will bring the fence up to the building. It's not on my parcel but Tony DeFazio thought since we were claiming title and exclusive use to the garage and the driveway leads in to the garage.
- Mr. Horan: This is the first time I've seen this survey. I am aware that there was a complaint filed regarding this property and the police were called and they made a trespass claim. Mr. DeFazio represented your wife with respect to one of the issues. You claim trespass that you are not on the property you have the right to be on. So there's an adverse possession claim pending. For purposes of the fence on the property here, I'm not comfortable with this board authorizing a variance to put a fence, absent the court order.
- Mr. Bosman: You mean the height?
- Mrs. Roberti: No, you said you are going to put it to the line, what happens if the guy knocks it down?
- Mr. Horan: With regards to the 6 ft. height fence, that's another issue with respect to fences as the applicant states. We don't actually have flexibility in the code where the typography varies. As a straight reading of the code, the typography dips to the extent there are some variation in typography. A code as currently written, doesn't say the average height or anything like that, it's just the straight 6 feet. To the extent that you have a gully that's 6 feet deep, you will have to bring the fence down 4 feet to match the typography of the gully. Unfortunately, that's what ZBA's do.
- Mr. Galotti: How is the typography, is it an opened ground?
- Mr. Bosman: It rises from the road up to this highpoint and then it goes down.
- Mr. Prager: Okay, we will see that on the site inspection.
- Mr. Johnston: If we allow a variance on this property that's in dispute, will it be on this property?
- Mr. Horan: No, it will be on his property.
- Mr. Prager: I want this property line marked properly before April 25, 2015. I'm assuming you live there and you will be there.

Mr. Bosman: Yes, and I will be there.

Mr. Johnston: I won't be on April 25, 2015, but I will be there on Monday evening. May I have your cell number so I can call you when I'm coming.

Mr. Prager: Okay, we will put this on for a Public Hearing on April 28, 2015.

Mr. Prager: The next item on the agenda for discussion is an area variance on:

Appeal No. 15-7545

Brian Coto: - Seeking an area variance Section 240-37 of District Regulations in an R-40/80 Zoning District.

-Where **75 feet** is required for a front yard setback on the state or county road, the applicant can provide **51.2 feet** for an existing deck, thus **requesting a variance 23.8 feet.**

-Where 75 feet is required for a front yard setback on a state or county road, the applicant can provide **53.4 feet** for an existing Pole Barn addition, thus requesting a variance of **21.6 feet.**

The property is located **1985 Route 9D** and is identified as **Tax Grid No. 6056-02-656759** in the Town of Wappinger.

Mr. Prager: Good evening, and please state your name.

Mr. Coto: My name is Brian Coto.

Mrs. Roberti: I'm not sure if you have that in front of you. This was sent to the Dutchess County Planning since it is a State Road and they sent it back as a matter of local concerns.

Mr. Prager: How long have you lived there?

Mr. Coto: I've lived there 2.5 years.

Mr. Prager: Was the pole barn there when you bought the property?

Mr. Coto: Yes, it was there before I bought the house.

Mr. Prager: Do you know long ago it was built?

Mr. Coto: Maybe 20 years ago.

Mrs. Roberti: The pole barn that was built where it says garage.

Mr. Prager: The one on the right side:

Mrs. Roberti: Yes, it's the one on the right side. It was 30 x 40 sf., when it was built in the 1980's and it was issued a CO back in the 1980s. At some point, somebody added another 15 x 30 sf., without a permit and that part does not meet the setback. Neither is the original part, but since it's added and it doesn't have a permit, it needs a permit. We need to get the variance and include that with it.

Mr. Horan: You realize that, right?

Mr. Coto: Now I do. I just found that out.

Mr. Prager: Can you get the paperwork going, Barbara?

Mrs. Roberti: It's already added to the deck. It says addition on pole barn.

Mr. Prager: Do we need any money for that?

Mrs. Roberti: No. They'll take care of that at the Building Department.

Mr. Johnston: Are we just talking about the deck that's in front of the house?

Mrs. Roberti: The deck and the addition.

Mr. Prager: Has the deck always been there or you put it on?

Mr. Coto: I put it on. Our front porch was about 6 feet wide and it was all concrete, and the whole thing fell off. I'm a first time homeowner and didn't know that I needed a permit when I built the deck. I got a letter from the town, so I came in. Mrs. Roberti gave me enough time to rectify the matter and we got a surveyor.

Mr. Prager: How big is the deck?

Mr. Coto: I don't know exactly how big.

Mrs. Roberti: The deck is 22.9 x 10 feet.

Mr. Prager: Okay, any other questions?

Mr. Galotti: So, they are facing multiple variances.

Mr. Prager: Yes, two.

Mr. Horan: What's the setback in this zone if it's not on a state road?

Mrs. Roberti: It would be 50 feet if it was on a town road.

- Mr. Horan: He needs a variance because he's on 9D.
- Mr. Prager: We are going to do a site inspection around 9:30am on April 25, 2015.
- Mr. Johnston: I won't be able to make it on April 25, 2015 but I will be there on Monday.
- Mr. Prager: I will set this for a Public Hearing on April 28, 2015.
- Mr. Coto: I just want to mention something. There are two houses in front of me that are vacant. Do I still have to mail to them?
- Mrs. Roberti: Yes, mail it anyhow. They may have mailing addresses somewhere and someone owns them.
- Mr. Coto: I just want to make sure.
- Mrs. Roberti: Even if it's the county, someone owns them.
- Mr. Prager: That's it. We will see you a week from this Saturday.
- Mr. Coto: Okay, thank you.
- Mr. Prager: Last, but not least:

Appeal No. 15-7549 (Interpretation)

RADD Automotive: Seeking an Interpretation of the Determination from the Zoning Administrator in regards to the whether or not automobile repair is a service business or not. The business is in the R-20 residential zoning district and is a legal non-conforming business. Section 240-16 (C)(1)(b) states: *Further, a building or structure which contains a legal nonconforming use shall not be enlarged relative to the size of such use on the effective date of this chapter, nor shall any external evidence of such use be increased by any means whatsoever, except that when authorized by special permit of the Planning Board, a building containing a nonconforming retail or service business use may be enlarged or extended to an extent not exceeding 50% of the gross floor area of the building devoted to such nonconforming use which legally existed on the date that such use became nonconforming under the terms of the Town of Wappinger Zoning Law.*

The property is located **1441 Route 376** and is identified as **Tax Grid No. 6259-04-840023** in the Town of Wappinger.

- Mr. Prager: Hi there.
- Mr. Cappelli: Good evening, Al Cappelli, Architect. We put together a pretty comprehensive package to explain our case. We went before the Planning

Board, there's a little site plan, a narrative that we submitted to the Planning Board. There's also a separate narrative geared for you guys.

Mr. Prager: Basically, you are just talking about the extension in the back?

Mr. Cappelli: That's correct.

Mr. Prager: I see that on January 10, 1984, we granted a variance to allow an expansion of a greater than the 50% of that sign. Is that right?

Mr. Cappelli: Correct.

Mr. Prager: Explain to us a little bit about that.

Mr. Cappelli: You mean back in 1984? No, Barbara knows better.

Mrs. Roberti: It appears from the records which are very minimal, that it was a carwash that was never built. They received the variance, but for whatever reason they chose not to go ahead.

Mr. Prager: So what happened after that? Did they just withdraw?

Mrs. Roberti: It was voided out.

Mr. Cappelli: Probably previous owners and generations ago. It wasn't this gentleman.

Mrs. Roberti: It was a gas station then. Whoever the gas company was, that was what they were looking to do. That was prior to your client.

Mr. Horan: Just for the board's record, procedurally, Mr. Cappelli is here appealing a determination that the zoning administrator, Barbara Robert, made by a letter dated March 26, 2015.

Mr. Cappelli: Right, which you all have in your little package there.

Mr. Horan: Procedurally, that is in essence what the board is reviewing with respect to that. Barbara made her interpretation with respect to what some of the history means. Mr. Cappelli's client did not agree with that determination and is here to exercise his right to appeal that determination and have the board revisit the determination. Barbara set forth some of the facts here.

Mr. Horan: What's the new building going to be used for?

Mr. Cappelli: Two additional automotive phases. As outlined, the addition will be in the back of the existing building and you are not going to see it, and the garage door will be facing the back.

Mr. Prager: I see some things are going to remain. Will some things be removed?

- Mr. Cappelli: There will be many things removed. Perhaps the Planning Board may want more items removed, but we are not here for that. His business is doing well which is good for him, so we are looking to get rid of some of those containers on site.
- Mr. Johnston: Was there a question about automotive vs. service?
- Mr. Cappelli: Yes, that's correct.
- Mr. Horan: It's in the first paragraph of the zoning administrator's determination. The question is whether RADD Automotive is a service business under Section 240-16 (C) (1)(b). The language states *a legal nonconforming use*. Again, there's no dispute that this is *a legal nonconforming use*. Everyone agrees that this use predated zoning and was lawfully in existence at the time it was created. So it's a *legally nonconforming use and shall not be enlarged relative to the size of such use on the effective date of this chapter*. There would be some questions how to interpret that, but as far as which time it would be. All the evidence we have and what Mr. Cappelli has submitted, and it looks like the size and at least the building has not changed since 1963 when zoning has been enacted.
- Mr. Cappelli: Probably pre-1963, and you can go on Google Earth and look at the footprints going back to 1938.
- Mrs. Roberti: There was a home I think on this property.
- Mr. Prager: It says here that "several of the storage containers in the rear will be eliminated as shown on the site plan. We would like to discuss with the board the possibility of constructing a storage barn in the future and eliminate the individual containers".
- Mr. Cappelli: Correct. I discussed it with Barbara and at the appropriate time either with the Planning Board or perhaps the Zoning Board here. Yes, I would like to clean up the site even more by taking all the garbage in those things and putting it in the barn. Logically, if it was a residential use, I would be perfectly to build a storage barn in my backyard. First of all, we don't know if we could get off ground zero, if it's a service business, and that's number one. No. 2, the 50% limit expanding the nonconformity, does that mean the building only? Or does that mean the building and that storage barn? I want to do the service business first and come back to you. First, I want to build the storage barn and clean up everything.
- Mr. Prager: Even though it's an interpretation, I wouldn't mind seeing the property. I know it's not an area variance but I would still like to see the property.

Mr. Cappelli: Sure. Not a problem. He's opened half a day on Saturday. Otherwise, the back is fenced in and all the cars go in the back. He keeps a very clean operation.

Mr. Prager: Okay, tell him that we will be there on April 25, 2015.

Mr. Cappelli: As a matter of fact, I will be there just to walk you around.

Mr. Prager: We will be there around 9:30am on April 25, 2015.

Mr. Cappelli: So you don't need anything else from me?

Mr. Prager: No. The Public Hearing is set for April 28, 2015.

Mr. Cappelli: Thank you very much.

Mr. Prager: Do I have a motion to adjourn this meeting?

Mr. Johnston: I make a motion to adjourn this meeting.

Mr. Galotti: Second

Mr. Prager: All in Favor – Aye

Mr. Rexhouse – Aye

Mr. Johnston – Aye

Mr. Galotti – Aye

Mr. Prager – Aye

Respectfully Submitted,

Adjourned: 8:00pm

Bea Ogunti
Secretary
Zoning Board of Appeals