

Town of Victor Zoning Board of Appeals, July 15, 2019

A regular meeting of the Town of Victor Zoning Board of Appeals was held on Monday, July 15, 2019 at 7:00 P.M. at the Victor Town Hall, 85 East Main Street, Victor, New York, with the following members present:

PRESENT: Michael Reinhardt, Chairman; Mathew Nearpass, Vice-Chairman; Donna Morley; Fred Salsburg, Scott Harter

OTHERS: Rebecca Kistner, 1268 Brace Road; James Leitgeb, 1070 Chapelhill Drive; Herb Ego, 7404 Rolling Meadows Way; Shane Wing, 968 High Street; Paul DiTuro, 6595 Bradhurst Street; Craig Welker, Dorchester Park HOA; Karen Petito, Brace Road; Carl Petito, Brace Road; Jeff Thaler, Surmotech; Richard Dupreth; Mike Campoli, Surmotech; Ed Kahovec, Town Board Liaison; Pat & Kim Gerard, 6587 Bradhurst Street; Betsy Brugg, Woods Oviatt; Michael DeNisco, La-Z-Boy; John Brogan, Stickley; Tom Murray, La-Z-Boy; Nancy McKay, Bradhurst; Matt Tomlinson, Marathon Engineering; Paul Colucci, DiMarco Group; Paul Zelter, Horsepower Motorworks; Angel Boev, Horsepower Motorworks; Steve Carozza, Horsepower Motorworks; Martin Avila, Town of Victor Code Enforcement Officer; Kim Reese, Secretary

Chairman Mike Reinhardt opened the meeting, the Flag was saluted, and the Pledge of Allegiance was recited.

APPROVAL OF MINUTES:

On a motion by Mr. Scott Harter, seconded by Mr. Matt Nearpass; RESOLVED that the minutes of July 1, 2019, be approved as submitted:

Chairman Mike Reinhardt	Aye
Matt Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Approved: 5 Ayes, 0 Nays

PUBLIC HEARINGS

WING – FENCE

21-Z-2019

968 High Street

Applicant is requesting 3’ fence across front property line forward of house. The property is zoned Residential 1 and is owned by the applicant.

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Shane Wing, 868 High Street – Basically what we're asking for is to allow us basically to install a three foot tall aluminum fence across the front property line similar to what's in front of the cemetery, already on High Street. So, it would kind of be a continuation of that across our front property line and then around the corner to meet our six foot tall wood fence on the north property line.

Chairman Reinhardt – So, the fence is already existing? It's up?

Mr. Wing – That was a previous installation I did a year or so ago. The six foot fence on the north side, the front property line is not up yet. That's what we're asking you to install and we want to wrap around the corner to meet that six foot tall fence.

Chairman Reinhardt – So currently, there is no fence forward of your house?

Mr. Wing – On the southern property line, the St. Patrick's Church has an aluminum fence across their front property line, but not in front of our house, no. I believe there were pictures supplied with the application. I don't know if you have that or not. It shows the fence in front of the cemetery and our front property line.

Chairman Reinhardt – Marty, two questions, one, fences in front of structures and homes what can they have, the limits, two feet?

Mr. Avila – Two feet in height.

Chairman Reinhardt – And the rules, are they the same for cemeteries? So in other words, did St. Patrick's need a variance or would they need a variance to put a three foot fence where it exists today? If they were to put it in today, would they need a variance for it?

Mr. Avila – Because there's no primary structure on the cemetery's property, probably not.

Mr. Wing – There's multiple structures on the property.

Mr. Avila – But, none are considered a primary residence.

Chairman Reinhardt – So that's an apples and orange argument.

Mr. Wing – There's other properties on High Street that have the same type of fence. I supplied some pictures of that also with the application. There's one across the street that has a split rail fence and then there's one down the street farther north toward the mall that has a vinyl fence.

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Chairman Reinhardt – You're right across the street from the school?

Mr. Wing – Yes, I am.

Chairman Reinhardt – Part of the problem or concern I believe the reason why that code is in place is to eliminate obstructions or minimize obstructions of being right across from the school, and kids are in schools. So, it's safety issue.

Mr. Wing – I absolutely agree. And, that's exactly the reason why I want it is because since the High Street expansion, there's more speed, more of a problem with traffic. There's much more of a problem with cars passing each other in front of the school because now there's a turning lane. I have small children and I don't want to have a chance for them getting near the road, so this is been an ongoing thing. We've asked for the speed limit to be changed. We've petitioned the state through Mark Years. We were told during the High Street meetings by Jack Marren that there'd be speed deterrent devices installed and nothing has been done since this High Street has been expanded. We're even closer to the road than we were originally because of the use of all of the easement and basically it's caused us more of a problem as far as danger and safety goes.

Chairman Reinhardt – Having the three foot fence or a fence that's equal to where the front of your home is and then you have the entire backyard.

Mr. Wing – We're worried about we have kids going back and forth to the car, things like that. It's more of a safety for us as far an insurance kind of thing for us. And having the fence directly adjacent to our property, right to the corner of our property already existing and the hedge row on the other side as far as a view or an issue obstructing our view, I don't see that being more of a problem than already's there.

Chairman Reinhardt – One of the criteria is, is there another way to solve . . .

Mr. Wing – I only have 33 feet there.

Chairman Reinhardt – If I could, let me finish the question. I'll give you all the time that you will to answer it. If this is denied, what are you going to do? What's plan B?

Mr. Wing – Is there another option? There really isn't.

Chairman Reinhardt – Well you can certainly comply with the code and put the fence that's equal to and not in front of the home anymore and it looks like you have a total of $\frac{3}{4}$ of an acre. And, I understand that you want to maximize the use of your property, but if you bring the fence

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back so that it's nowhere in front of the home, you still by my estimation you still have a ½ acre that the kids can play in.

Mr. Wing – It's not about playing. It's about going to and from the sidewalk, to and from the car and our front door is 33 feet from the edge of the road now due at this point to the expansion of High Street.

Chairman Reinhardt – OK, Donna, do you have any questions?

Ms. Morley – What is the speed limit in front of the home?

Mr. Wing – Right now, in front of our home is 40 mph coming down the hill, which is an ongoing problem, too because no one is going 40 miles an hour going down that hill to the 30 mph speed limit which is 400 feet from our property line.

So, I've got fire trucks coming from both Victor and Fishers fire department on a regular basis along with ambulances, speeding up and down the street. Obviously there's emergencies, but there's 30-40 ton fire trucks going by my house 33 feet from my front door. We've had accidents in front of my house since the expansion of High Street and widening now that the turning lane is there. We actually had a car end up in our front yard. I know a fence is not going to stop that. But you can understand my concern there.

The school is an ongoing problem. The school has taken no responsibility for the traffic or the problem at that intersection. I've talked to the superintendent numerous times over the last few years and there's no giving there as far as doing anything on their part. They wouldn't even install a flashing crosswalk, anything like that. I asked for crossing guards to help with the traffic in front of the school and they would not supply that either. There's always cars lined up down the road trying to turn into the school three or four times a day and cars speeding by on the right or left to those cars trying to enter the school. And so it's an ongoing problem with near collisions almost on a daily basis during the school year.

Chairman Reinhardt – Call the sheriff's office?

Mr. Wing – I've had conversations with that and like I said we petitioned the state more than once for the speed limit to be changed there.

Chairman Reinhardt – Who'd you speak to at the sheriff's office?

Mr. Wing – Who did I speak with? I can't give you that name, I don't know.

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Chairman Reinhardt – There's a traffic problem, speeds and things, I would think the local . . .

Mr. Wing – I would also expect the town to help out with that and the school to help out with that, but there isn't been anything done.

Chairman Reinhardt – The Town doesn't enforce speed limits.

Mr. Wing – No, but Jack Marren, you can look in the minutes. Jack Marren mentioned, if you look in the minutes during those High Street meetings that there'd be speed deterrent devices installed. There has not been one. The school zone sign is still leaning against a tree in the hedge row, where it was taken out. I asked for that to be replaced, nothing was done. I talked to the engineers during the process of the expansion and nothing was done. I don't know what else I can do at this point. I'm just looking for the safety of my children at my house. That's all.

Chairman Reinhardt – Donna, do you have any other questions?

Ms. Morley – I do. Are you going to make, if you were to get this variance, a three foot. You have fencing in front of the front line of your home that's not (inaudible.)

Mr. Wing – The plan from the beginning, I had a meeting. I do not have fencing in front of the house. Just the new fence, the six foot fence on the side because of the section, where that section ended it was approximately four feet. I have a picture of that here, if you wanted to see it, but. It's approximately four feet protruding from the front of the house. So, it's approximately thirty foot from the road at this point. And, I left it that way because the conversation I had with the building department was I was going to come for the variance. Because I wanted to be able to connect that corner to the fence across the front so I didn't want to end this section of fence, you know a half a section, so that's why it was left that way. It wasn't in the way 30 some feet off the road. It's on the hedge row. So, I would want to come around that corner to that fence that was installed a year ago. I'd show you a picture if you want to see that. Because I didn't supply that with the application. I have three copies.

Ms. Morley – Yes, can I see the picture? Thank you.

Mr. Wing – This edge is the trim on the house, looking directly at the house and that basically the center of this eight foot section of fence on the side. And this is approximately 30 some feet from the edge of the road.

And, I did have a conversation with Sean. I've never met Marty before or had a conversation. I know you put in this letter about your concerns with that at the time of inspection the end of last year, but you and I never had a conversation. I never met you before, I never had a phone call with you, anything. That's different than I've had experience before with building inspectors

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here. But I did call Sean immediately when I did get the letter and had a conversation with him and he was happy with my solution as far as coming to actually get the variance. So, he was fine with leaving the fence the way it was until I got the variance.

Ms. Morley – I have a question. If we were to give a variance, that fence is six foot and can only be three foot? Or two feet because it's in front of the house?

Chairman Reinhardt – The code allows two feet high in front of the home.

Ms. Morley – So, would that require another variance for that six foot? Because that four foot of fence is six foot high and it can only be two foot right in front of the home? So that require another variance? Or is that the same thing that we would be working with?

Chairman Reinhardt – One variance for the fence that's forward of the primary structure whether it's parallel on the side or whatever is in front of that, the front line of the primary structure.

Ms. Morley – I don't have any other questions.

Mr. Nearpass – I certainly understand the situation you're in. I frequent the school quite a bit as well and like everyone else I see exactly what you see. I just want to kind of drill down a little bit on, seems like the issue is temporary. Right? Kids are going to get older. They are going to grow up, they are going to go to school, you'll be empty nesters in twenty years, all that good stuff. Can you live just staying within the code and putting a two foot fence there to solve, what's probably a two to three year issue?

Mr. Wing – Obviously it was just more of a security thing for us. You know, family or anything over, too. But yes, we could work with something like that if it had to be that way.

Mr. Nearpass – There's the driveway, can't put anything over the driveway, but nothing is still 100%. I'm just struggling a little bit with allowing something like this that has a relatively short start and end, but what we do here tonight will carry into perpetuity with the property. And, so I do certainly want to make sure that obviously you and your family feel safe. To Mike's point, there's obviously a lot of land in the back yard and even you've got the space fenced off. It looks like at one point with the baby gates between the garage and the house. Maybe you weren't living there at the time. I'm just looking at a picture on Google streets here.

Mr. Wing – The garage wasn't even there, I built the garage. I mean there might have been, OK, I know what you're saying now. It's just a plastic, toy. I understand, it was a play pen thing for kids. On the side of the garage, you're right.

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Mr. Nearpass – And, with that, it's do you think you can work with a two foot fence?

Mr. Wing – If it's absolutely necessary. The house directly across the street from my house has a fence taller than three feet or at least at three feet. There's a split rail fence that goes down the property line. Right on the edge of the sidewalk.

Mr. Nearpass – You mean next to it, obviously the school's across?

Mr. Wing – No, well kitty corner across, I guess. I mean part of our property lines up. And like I said the cemetery obviously has a three or four foot tall aluminum fence the entire length of it.

Mr. Nearpass – Is that forward of the front of the house. So is that something that a variance has been granted? Do we know? Marty? Or was it preexisting?

Mr. Avila – I'm trying to figure out which house that you're talking about. Actually I think that may be village.

Mr. Wing – It's not in the village. 400 feet from my corner is the village line. So down to the cemetery driveway.

Mr. Avila – OK. I don't know if there is a variance for that.

Mr. Nearpass – It's a looks like a fence to keep in a dog or a dog house.

Mr. Wing – That's another fence that's on his property. That fence is probably equal or in line with the edge of the house. And there's a split rail fence that runs along the edge of the property right in line with the retaining wall that the town put in there for the widening of the street and the sidewalk.

Mr. Avila – I don't know off the top of my head whether or not there's a variance granted for that but we can definitely check.

Mr. Wing – It's been there for some time. Longer than when I've lived there. Ten years?

Mr. Nearpass – In my opinion whether it's in character of the neighborhood there's a fence next to you with the cemetery, there's fences across the street although time will tell if those are allowed by the code or maybe preexisting. I'm on the fence on this one. I'd like to hear the other board members talk, but my mind is definitely not make up. I can kind of see both sides of this. It seems to me like it's a temporary situation you're in and it'd be great to be able for you

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to have a solution that is temporary, but at the same time we want you to feel safe too. So, let's keep going.

Mr. Harter – You mentioned the rebuild of High Street and some of the changes that happened. Can you maybe give us a little information as to how that affected the frontage of your property and perhaps is causing you to focus in on this project?

Mr. Wing – Basically they used every inch of the easement. The pavement ends at my property line, so there's nothing left. There's no buffer left basically. So a few feet was lost.

Mr. Harter – So, before you had a few feet and not you have zero feet, is that what you're saying?

Mr. Wing – Basically. It's only 30 some feet from the road as it is, but yes we lost a good percentage of that. And, now the telephone poles are literally on the edge. Right on the corner markers of the property on both corners and the easement has been completely used by the highway basically.

Mr. Harter – So, you've seen an increase on the paved area coming toward your house.

Mr. Wing – Yeah, they were originally were going to put the telephone poles in our yard because they didn't have room for them, but I had to fight that to get them off of the property.

Mr. Harter – And so is it safe to say the purpose and intent for your request tonight is largely just for protection and maybe just feeling a little better. A little more comfortable in your residence?

Mr. Wing – Yeah, I mean you never know obviously kids are not going to think about the same way we do and run out the front door and our front door is perpendicular to the road. 33 feet from the road so something could happen someday. We have dogs, too. They stay in the back yard because we have an electric fence, but more about the kids than anything else.

Mr. Harter – And, once again we're talking about a three foot fence which is requiring a variance whereas a two foot fence would not.

Mr. Wing – We just felt it was a little bit safer. You know and it wasn't too high where we wouldn't be able to see over it coming in and out of the driveway. A two foot fence a kid could easily climb over or something, not that they would. But you never know.

Mr. Harter – I have no more questions.

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Mr. Salsburg – There's a picture of 600 High Street that has a white plastic picket fence. What was the purpose of that?

Mr. Wing – I was told to take pictures of any other property in the near area that had a fence forward of the main structure. That is obviously forward. It's right on the edge of the road in front of the house.

Mr. Salsburg – That's more than two feet high for sure.

Mr. Wing – Absolutely. I believe they have stone or concrete pillars at either end of that.

Chairman Reinhardt – Anyone from the public want to speak for or against the application? OK. Usually when we look at situations like this, in fences, fences create obstructions and fences that are forward of the primary structure create obstructions. I appreciate the efforts that you put in place here for us for things to look at. On one hand just because something exists, it's important to know whether or not a variance was granted or whether it preexisted that particular section of the code. But it is one element as far as whether or not it's going to change the character of the neighborhood. If I could ask you, how long have you lived there?

Mr. Wing – I lived there just over eight years.

Chairman Reinhardt – The school was there long before you, is that fair to say?

Mr. Wing – The house was there long before the school. 1851.

Chairman Reinhardt – My concern, I'm not speaking for the board, but my concern is that you're right across the street from one of the entrances to the school. On one hand, I understand your concern for your children's safety. There's a lot of children over there on the other side of the street and it doesn't take very long to be distracted, obstructions. There's all kinds of liability issues that come into play with trees and structures and things and it's hard enough to drive without things in front of you.

Mr. Wing – I agree completely.

Chairman Reinhardt – And the way I'm looking at it is you have alternative ways that you can solve a problem. Two foot high fence, certainly could in my opinion solve the problem. Moving the fence back so it's parallel to the front of the yard is potentially solving the problem. It's a bit of a balancing act that we have, just one particular of the criteria doesn't necessarily mean that you don't get the variance. Is it going to change the character of the neighborhood? It's hard to

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say. Curious to me, we don't know if there's other variances for that, but before, I think what I'd like to do is take a quick straw poll before. Is there anything you'd like to add?

Mr. Wing – Obviously, the cemetery fence has been there for at least 10 years. It's a fairly modern fence, it's aluminum also. It's got to be 400 feet long and it's right up to our property. I'm talking about how it impacts the neighborhood. There's already a fence right there that meets on the corner of our property. And, if we have to work with a two foot fence, I'm not sure that it's going to be worthwhile, but we could do that, too.

Chairman Reinhardt – Donna, where are you on this? Are you in favor of it? Not?

Ms. Morley – I'm in favor of it.

Mr. Nearpass – I'm hung up on the alternatives. I do agree with the applicant that I don't think it would be out of character of the neighborhood, although knowing if there were variances granted for across the street would help. To your point, you know there is a 400 foot long fence probably taller than three feet. I'm kind of looking at it though as what carries more weight here is are their other alternatives? Things considering like what you said, whether it's a two foot fence or a hedge row or something else that wasn't just allowing a three foot fence. To me, it's almost as a three foot fence going to be somewhat out of place, right. You don't see too many of them, but maybe as you get closer to the village. Those homes that have the fences in front of them.

Mr. Wing – That was our thought, too. Obviously, the vintage of the house and we could make something or we would pick a fence that would look appropriate to the vintage of the house. It's in the historical society and all that, so we would want to make sure that it looked right. And as far as the other mention of moving it back to the front face of the house. The front door is on the front of the house, so it wouldn't really have a purpose at that point, for what we are looking for.

Chairman Reinhardt – Let me ask you this. I'm looking at the photograph that you sent us, the one with 600. And by my eye, that appears to be at least, if not more than a car length, so let me ask Marty a question. What's an average truck, 15 feet, 12 feet? How long is a truck?

Mr. Avila – About 16 feet.

Chairman Reinhardt – Where you're proposing to put the fence, is there at least 15 feet from the fence to the thoroughfare?

Mr. Wing – No there wouldn't be, it would be right almost, maybe a foot or two from.

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Chairman Reinhardt – If you pulled that fence back, so maybe there is at least one car length. If we arbitrarily picked 15 feet, so you're still in front of the home, there's a car length, so that the cars can see you and you can see the cars. Would you be willing to do that?

Mr. Wing – I could look at it. There's probably a tree right in line with that. There's two trees on the one property, in the yard to the north of the garage. That would have to be something I'd measure out. Something along those lines, maybe. There's a tree about 10-15 feet from the edge of the road. A large tree.

Mr. Nearpass – Do we know how far the fence from the cemetery is from the road?

Mr. Wing – It's almost on the property line. Because it meets the corner of my property. It's almost in line with the telephone pole. It's probably a foot off the line.

Chairman Reinhardt – I'm certainly not proposing you take the tree out.

Mr. Wing – I wouldn't want to do that.

Chairman Reinhardt – You enclose the tree or put it behind the tree. So that ideally you could get an approximate car length.

Mr. Wing – I agree with what you are saying. So, you can see past it.

Chairman Reinhardt – So if you're pulling out or backing in, you can see traffic and traffic can see you.

Mr. Wing – Alright. We can look at that. As far as what the difference would be and how it worked out. I'm sorry to interrupt, it would not be in line with the cemetery though. That might look odd on that edge. That's the only thing I would say.

Mr. Harter – Well, I think it's all about one foot, from what I can tell. The two foot is permissible and three foot is not and I'm looking at the pictometry aerial and I'm seeing the trees he's speaking of and I agree that that would provide some interference to your idea, Mike. I guess maybe another question I have that's related to what I think is Mike's concern is, is there a fence that has a breakaway component or something if a car were to veer off or something that would fold easily and not be. . .

Mr. Wing – I would think that an aluminum fence is going to bend pretty easily. It's just aluminum tubing and wall tubing.

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Mr. Harter – I guess my opinion in listening to the applicant speak, I think he's shown in the neighborhood there is a variety of fencing and I think for his efforts the additional foot I could go along with.

Mr. Salsburg – I didn't see three feet as being a very big visual impact. I didn't like it quite so close to the road. If it could go back even a few feet, it would lessen the visual impact of the thing and I could go along with it.

Mr. Wing – There is a break in the hedgerow on the north edge, there's a solid hedgerow, but there is a break probably six, eight feet back so moving it back closer to that break or where the hedgerow really starts would probably be doable. You have to work around that one front tree. But moving it back farther than that the hedgerow is going to block it either way. But, yeah, we could look at moving it back a little ways. If that's what you guys want to do.

Mr. Salsburg – Could you make a sketch of that? And, come back?

Mr. Wing – I could. I said though on the south property line, it's going to sit behind the fence that's already existing, that's the only think it might look odd. That's the one thing that I was thinking of. But I understand the safety concern.

Chairman Reinhardt – So if I gather where this board is, I think you've heard, there's different opinions and you may not get the answer you want to hear tonight. So, you do a little homework and you come back the next cycle with maybe some alternatives on what would it look like if that fence was back about 15 feet, is it forward, back of the tree, is it possible, is it not possible. We also then could look into whether or not those fences that are on High Street, if there are any variances, if they preexisted the code. We can do some homework on it and get this right. You willing to do that?

Mr. Wing – That's fine. You just want a sketch on the survey map?

Chairman Reinhardt – Yeah that sketch on the survey map, where that tree is. If there's any other problems that you see. And we're working with an approximate length of a car. If it's 12 feet, 15 feet. There's no magic to it, but an approximate line you would be comfortable with that position, so that at least there's a car length. The theory, at least my theory, is you can see them, they can see you. And I think as far as protection, so there's no misunderstanding that fence that you are proposing that's not going to stop cars.

Mr. Wing – Oh, for sure. I agree with that. I mentioned that.

Chairman Reinhardt – It's a barrier, protective for your kid so they don't go out in the street.

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Mr. Wing – Oh, for sure. That was my statement earlier. I agree with that. It's not going to stop a car.

Mr. Nearpass – Are you OK with me asking if we put a couple flags, three foot tall, stakes in the ground? For us to drive by it and take a look.

Chairman Reinhardt – Could you do that? Could you set that up?

Mr. Wing – The depth that you want?

Mr. Nearpass – Yes, the depth that you're recommending. Nothing elaborate.

Mr. Wing – Right. Just a stake in the ground painted orange or something.

Chairman Reinhardt – Sure and just let Kim know that it's done, so then we can take a quick drive by. Take a peek at it.

Mr. Wing – I'll send an email within a week or something.

Chairman Reinhardt – That's be great.

Mr. Wing – It's a month until the next meeting? Thank you.

Chairman Reinhardt – The next meeting is August 5. Thank you.

STICKLEY AUDI & CO – MONUMENT SIGN

16-Z-2019

40 Eastview Mall Drive

The applicant is requesting area variance to allow proposed monument sign to exceed 20 square feet, to allow to list two tenants/businesses and to allow second freestanding sign for Stickley per Code §165-5(B).

Chairman Reinhardt – So, how'd we do? Last time we were trying to figure out if whether or not La-Z-Boy would be OK with, where are we with that?

Ms. Betsy Brugg, attorney with Woods, Oviatt, Gilman – Yes, last time we were here the board asked whether La-Z-Boy would give up their rights to a wall sign on Route 96 in exchange for the approval of the monument sign. Which I represent Eastbrook Properties and Stickley, the owners of the property. La-Z-Boy is here, I'm going to let them speak to the wall sign. I can that the monument sign is extremely important to the property owner.

Chairman Reinhardt – Understood.

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Mr. DeNisco – Good evening. Getting to know you guys pretty good now. So, thank you. I had a conversation with La-Z-Boy and ultimately they're leaving the decision up to me. They are going to go along with what I decide and I would like just to take a couple minutes if you don't mind. It won't take much of your time, but I'd just like to say a few remarks about it and move forward here tonight. The project is going to cost over a million dollars to put the La-Z-Boy store in that building. I'm going to be spending. I have a few pictures if I could come up and give you and just to review with you for a minute.

As you all know the number one priority for La-Z-Boy and for Stickley is the monument sign. Last time we were here, I had mentioned that the City Mattress store had three signs on it and I was told that they wanted a monument sign as well and the trade-off was they got to have the three signs. And if you just look at photo one, I labeled them in the upper right corner. Coming from north to south, the Stickley building and especially where La-Z-Boy is going to be is completely 100% blacked out by the City Mattress store. So, these are Google pictures, so if you look at page 2, it's just another close up of the City Mattress store. The City Mattress store has the three signs as I said and they gave up the monument sign. You know if I was the City Mattress store, that'd be an easy decision because they are sitting there right front and center on top of the road and easily viewable. What I'm asking for is two signs, one on the north front of the building and the current Stickley sign that's on the east side of the building and the monument sign. Because the monument sign is the most important part of it.

Chairman Reinhardt – You don't need one for the north. Right, didn't we determine that?

Mr. DeNisco – The north is the front of the building.

Mr. Nearpass – The east was the one we are talking about.

Chairman Reinhardt – Eliminate north, we're only talking about the east and the monument sign.

Mr. DeNisco – Understood. If you turn to page three, when you really are on top of the property or the building, you can see that sign. It's not the most visible sign, but it is there and you can see it.

Mr. Nearpass – This is if you were stopped, you can see it.

Mr. DeNisco – Kind of. But if you flip to the next picture, this is the important part. You know I've driven by here a hundred times. I was stopping and looking at it and at nighttime, the sign does stick out, because it's illuminated. And that sign coupled with the monument sign would ultimately be very beneficial to the business.

Chairman Reinhardt – Those five things are in front of the sign. Those are evergreens. They are going to grow and someday they are going to be right in front of that sign. You're not going to see it anymore.

Mr. DeNisco – I know, I'll probably be coming back here to talk to you again.

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Chairman Reinhardt – No, don't do that.

Mr. DeNisco – So, I just respectfully would ask you to just consider it. The sign has been there for thirty-five years, it's not a negative impact on the community. The last page is a picture of the whole Eastview great retail area in Victor and there's probably over a hundred signs if not more in that area. And all I'm asking you just to reconsider that sign on the east side of the building changing to just La-Z-Boy and helping my business be successful. Again, over a million dollars, going to be employing ten people and I want to do everything I can do to be successful there and when you look at that. La-Z-Boy's big concern was that there was no street presence. I've explained that all to you and I won't bore you with all that again and that's why the monument sign was so important. I appreciate your consideration for that, truly. And I'm just throwing a Hail Mary up here to you guys, I just want to be. The sign's been there for thirty-five years, you know. I just don't see the negative impact on it. And the trade-off, if I were able to have three signs on the whole building and see it from the road, I wouldn't even be asking for the monument sign, so again I just ask you to consider it one more time.

Chairman Reinhardt – Review the County Planning Board comments?

Mr. DeNisco – I did.

Chairman Reinhardt – They are not in favor of this.

Mr. DeNisco – I know. But, I'm also told that, and Betsy may be able to back me up on this, that they are typically not in favor.

Ms. Brugg – Yes, they have a policy. It's an administrative recommendation, they don't even review the application, so it's a standard comment.

Chairman Reinhardt – We take signs in Victor very seriously.

Mr. DeNisco – I know you do.

Chairman Reinhardt – Did I get a straight answer from you that if you could have one or the other, you'd take the monument sign. And I think you're arguments are I don't want to quite put it as a negative, that's tongue in cheek, but it's odd that you're saying well gee you can't see it here, you can kind of see it there, but then you can't see it anymore. Well that kind of benefits your argument for the monument sign because you can't see your building because it's blocked by trees and City Mattress. You need some exposure because you're kind of hidden off in the back. So to me, I would think you'd want that monument sign.

Mr. DeNisco – I'm not saying I don't want the monument sign.

Chairman Reinhardt – What we don't know is what that is going to look like in five, ten years whether you're going to be there, we hope you're there. The trees grow and that Stickley could

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carve it up again and it's a whole different scenario. We have to look at what's known now, what is the needs and wants now. Right? Want to add anything?

Ms. Brugg – Only that it's difficult fitting into an existing building, you have to deal with the conditions and what's there. You don't get to design entrances and things. It's challenging and from the property owner standpoint they need this tenant and they need this tenant to be successful. So we are supportive of their efforts. It's just important especially in the retail environment that we're in and it's a tough business. We want to make sure they are successful in this space.

Chairman Reinhardt – So potentially you can have a monument sign and a sign on the building because you don't need a variance for the north side and some tenants don't have that, they get one sign. You potentially could be looking at two. Donna, questions?

Ms. Morley – None.

Mr. Nearpass – I've been here for 12 years and mostly of the signs you're referring to are previously existing, non-conforming and there are a couple cases. It's extremely difficult to get a monument sign, not only a monument sign out of this board, but one that has your business name on it and one that is twice the size.

Ms. Brugg – I appreciate that, really.

Mr. Nearpass – I'm a frequent watcher of Shark Tank and anyone of those sharks up there right now would say take the deal for the monument sign and run.

Mr. DeNisco – I'll take it, there's no question, but I know Mr. Salsburg was in favor.

Mr. Nearpass – For my vote, and I think you've done an excellent job representing the company. It's great that they empowered you to make the decision. For my vote you've got to pick one. There's always a tradeoff. With that monument sign there in any of these locations where you're showing if you're stopped and you look at the building you can see the sign, well you know what you'll know actually be able to see your sign while you're driving by because it's going to be perpendicular to you. I think it's a win-win. I personally just can't support just having the sign because without any trade off or benefit to the community I think not having any signs on the side of that building is the tradeoff and kind of what we've been talking about. That's what I'm in favor for and it rarely comes out of my mouth that I'm in favor of a monument sign with a maximum of two business names on it, twice the size that's allowed. That's a win from my perspective.

Mr. Harter – I agree.

Mr. Salsburg – The monument sign will show on every one of these pictures, I think. Seems like it would. I've never noticed the Stickley sign. I've been here the whole time when the mall opened. I don't think you're giving up, too much. I'm going to hold out for the monument sign

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only. And, then I'm a little confused about the north side. You can have your name on that side to identify which part of the building is La-Z-Boy for persons in the parking lot, so they don't go in the wrong side.

Ms. Brugg – Right, at the parking lot entrance, yes, that's didn't require relief. We talked about that at the last meeting.

Mr. Salsburg – I think that does the job. In fact I like that monument sign so well, I wish the whole town had them.

(group laughter)

Chairman Reinhardt – So, we're clear if the variance is granted and we do need a super majority because County Planning Board said no, they are recommending denial, that the sign on the east elevation that says Stickley is coming down. Correct?

Ms. Brugg – Correct.

Chairman Reinhardt – So, before we proceed, anyone from the public want to speak for or against? Seeing none. Alright, so let's walk through the criteria.

I have it in my mind right that we are going to have enough for a granting of the variance.

The first criteria, an undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: Partly because Stickley is behind City Mattress and the signage that is currently facing east is barely visible and probably won't be visible in the not too distant future with growth of trees and whatnot. Anyone want to add anything else to the first criteria?

Mr. Harter – The applicant indicated it's a different type of use for example than BJs next store which is a higher volume retail business and that it has different types of needs with respect to signage.

Chairman Reinhardt – I can do that. Anyone else want to add anything to the first criteria?

Second, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: Much like the criteria justification for number one, the building is behind City Mattress and to be able to see the building with some business advertising would be difficult so, the monument sign seems to be the best alternative for this particular applicant.

Anyone else want to add anything to the second criteria?

Third, the requested area variance is substantial.

I would argue it's substantial. You are entitled to a monument sign, but pursuant to the code you're getting business names on there and so, arguably it's substantial and twice the size.

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Fourth, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

It's a monument sign and I haven't heard or seen anything that it's going to have any kind of impact on the physical and environmental conditions.

Fifth, the alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

As indicated earlier the County Planning Board recommended a denial we're going to require a super majority, no one spoke against the application and also do you want to put as a condition that in related to the third request to the variance, the sign on the east elevation will come down.

Mr. Nearpass – I would recommend two things, one that that space, I guess, is not allowed to have signage on the east side of the building and then that the monument sign is no more than two company names is my recommendation.

Chairman Reinhardt – No more than two company names and the sign on the east elevation, say that again. Will not be permitted?

Mr. Nearpass – Will not be permitted, yes. It's really in lieu of the monument sign.

Chairman Reinhardt – Anyone else, any other conditions?

Mr. Harter – Lighting and illumination of the sign? Specify hours?

Chairman Reinhardt – Any thoughts on that? What's currently the mall? The mall has hours of operation? And that's for the signage as well?

Mr. Avila – I would just recommend that the existing sign code for sign illumination would be applicable.

Chairman Reinhardt – That really doesn't need to be in the condition. You need to comply with the code.

Mr. Harter – That's fine.

Chairman Reinhardt – A motion to approve the monument variance.

Mr. Nearpass – A motion to approve.

Chairman Reinhardt – Second?

Mr. Harter – Second.

Chairman Reinhardt – All in favor? Aye.

Chairman Reinhardt – Opposed? Carried. Congratulations. Good luck to you. Thanks for all your patience and efforts on this. Much appreciated.

Ms. Brugg – Thank you.

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RESOLUTION:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on May 29, 2019 from East Brook Properties for Stickley Audi & Co, 40 Eastview Mall Drive; requesting an area variance to allow a proposed monument sign to exceed 20 square feet, to allow to list two tenants/businesses and allow a second freestanding sign for Stickley, whereas Town of Victor Code §165-5B(1) states one freestanding monument building identification sign may be installed which identifies the name of the building or plaza, but does not identify any specific business. A building identification sign may be freestanding, not to exceed 10 feet in height and 20 square feet in total area; and,

WHEREAS, said application was referred by Al Benedict, Code Enforcement Officer of the Town of Victor on the basis of the variance requested to the Town of Victor Code; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 9, 2019 and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, the Ontario County Planning Board assigned the referral, 122-2019, as a Class 2, AR 2 on June 12, 2019 and returned it to the local board with a final recommendation to deny the application; and,

WHEREAS, this application is classified as a Type II action under the State Environmental Quality Review Act and therefore does not require further action; and,

WHEREAS, a Public Hearing was held on June 17, 2019, July 1, 2019 and July 15, 2019 at which time no residents spoke for/against the application,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: Stickley is positioned behind City Mattress and their signage that is currently facing east is barely visible and probably will not be visible in the future with tree growth. The applicant indicated that it is a different type of use than BJs nearby which is a higher volume retail business. Stickley has different types of signage needs.

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: Stickley is positioned behind City Mattress and their sign is difficult to see. A monument sign is the best alternative for this particular business.

3. The requested area variance is substantial.

Justification: This monument sign lists two business names and is twice the size allowed.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

On a motion made by Mathew Nearpass, and seconded by Scott Harter.

DECISION:

NOW, THEREFORE BE IT RESOLVED that the application of East Brook Properties requesting area variances for Stickleby Audi & Co., 40 Eastview Mall Drive, to allow a proposed monument sign to exceed 20 square feet, to allow to list two tenants/businesses and allow a second freestanding sign, whereas Town of Victor Code §165-5B(1) states one freestanding monument building identification sign may be installed which identifies the name of the building or plaza, but does not identify any specific business. A building identification sign may be freestanding, not to exceed 10 feet in height and 20 square feet in total area, BE APPROVED.

AND BE IT FURTHER RESOLVED that the following conditions are imposed:

1. There will be no signs permitted on the east side of the building in lieu of a 40 square feet monument sign that identifies the two businesses. The Stickleby sign on the east elevation will be removed.
2. The monument sign will list no more than two company names.

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 5 Ayes, 0 Nays

Mr. Nearpass – Number three, they are all going to leave on me.

STICKLEY AUDI & CO – WALL SIGN
40 Eastview Mall Drive

17-Z-2019

WITHDRAWN

The applicant is requesting area variance to allow the existing Stickleby wall sign (90.36 feet +/-) to remain on east elevation in addition to proposed La-Z-Boy wall sign (110 square feet +/-) with a total of 200.36 square feet +/- for two signs on east elevation. La-Z-Boy application pending. Code §165-5(B). The property is zoned Commercial and owned by East Brook Properties LLC.

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Mr. Nearpass – I'm assuming we need to vote on that?

Ms. Brugg – Can we just withdraw that?

Chairman Reinhardt – Yes, that's a better way to do that.

Ms. Brugg – It's withdrawn, thank you.

Chairman Reinhardt – Can you send an email for us, just so we cover that?

Ms. Brugg – I could do that. I'll send it right now.

Chairman Reinhardt – Thank you. Thanks so much. Good catch.

1. BELL ATLANTIC dba VERIZON 23-Z-2019

Moved to August 19, 2019

The applicant is requesting an area variance to §211-47D(1)(a) to allow proposed wireless telecommunications tower at 7385 Willowbrook Road to be located 46' from the property boundary, whereas Code states tower setback from an adjacent property line shall be equal to the tower height plus 20 feet.

SURMOTECH, LLC, 19-Z-2019

7676 Netlink Drive

Applicant is requesting a drive aisle width reduction from 26' to 15' whereas §211-32A(2)(a)[1] states each off-street parking space for residential and nonresidential use shall measure a minimum of 9 feet by 18 feet with twenty-six-foot aisles.

Chairman Reinhardt – Surmotech, two variances. One is for the drive aisle width and a sprinkler waiver. How are you?

Mr. Mike Campoli – We're back again. Trying to get this wrapped up.

Chairman Reinhardt – OK. So we can move forward. Let's do them in order, the driveway width. And if I understand it correctly. The Fire Marshal weighed in on it. You were asking for a reduction from 26 feet to 15 feet, he OK'd 20 feet. If I understood the email.

Mr. Campoli – He told me the 20 foot was New York State code, which we weren't aware of and that's why we sent some revised plans in there showing it to 20 feet.

Chairman Reinhardt – You're OK with the 20 feet?

Mr. Campoli – Yes.

Mr. Thaler – Yes.

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Mr. Campoli – But what that brings to us is that we have to purchase 20 feet of property from 820 Phillips Road which my boss just got back from vacation so, we're stating the process this week to purchase that land from Swiftlift.

Chairman Reinhardt – How do you want to leave it? Do you want to wait until the purchase goes through?

Mr. Thaler – No, what we were hoping for and I'm not sure if you can authorize that without us purchasing the land is the way I understood it when I got back this morning.

Mr. Campoli – The Planning Board didn't want to do it.

Mr. Thaler – The Planning Board didn't want to authorize until we purchased it. What I would like is something saying we'll authorize it pending your purchasing of the land, so at least I know I'll be whole at the end of the process.

Mr. Nearpass – Can the variance have a condition on it that is the purchase of the land?

Chairman Reinhardt – Well there's a couple of ways you can look at it. If the variance is granted and your purchase deal falls through. You can't put a square peg in a round hole. If you don't have the land to do it.

Mr. Thaler – Well he's agreed to sell it to me. That's not a problem.

Chairman Reinhardt – Understood. How long is this purchase deal going to take?

Mr. Thaler – I got to tell you I don't know we haven't entertained it yet, we're waiting to get the approval and then we're basing the purchase of the land on the approval. I found out this morning that you were looking for the purchase to take place first.

Mr. Campoli – That was the Planning Board.

Chairman Reinhardt – Do you have a purchase offer, do you have . . .

Mr. Thaler – I have something in writing from him that yes. That he would sell me the land for X dollars, plus if I pay his attorney fees, he's fine with it. And I wrote back and said I accept the offer. Based on I wouldn't move forward until we had gotten the approvals is what I said to him.

Chairman Reinhardt – I see. So if you don't get the variance, you don't want to purchase the property.

Mr. Thaler – Yes, because I can't do what I want to do. And what this is really all about is our business has been growing in the last five years, from 21 employees to almost 70 and I keep adding employees and I just don't have places for them to park at this point.

Chairman Reinhardt – OK, so if the variance isn't granted, what are you going to do with this problem?

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Mr. Thaler – I don't have a great alternative. I really don't.

Chairman Reinhardt – If I heard you right, your business is growing. You need the space. You have negotiations and a purchase offer in writing in place. You don't have that with you today, do you?

Mr. Thaler – You know, I might. I don't know. I might. I might have the email from him. It's possible.

Chairman Reinhardt – In some ways, not that it doesn't matter because again if the variance is granted and that deal falls through, you won't be able to build it, to do it.

Mr. Thaler – I'm still stuck. If both pieces don't happen, I'm at square one.

Chairman Reinhardt – I'm at least comfortable for now that you have a purchase offer in place and the plan is to buy it so that you can make the variance work.

Donna, you have any questions?

Ms. Morley – None.

Mr. Nearpass – Are we just talking about five, not six? OK, no questions.

Mr. Harter – I think the last time you were before us, I asked the question regarding a pond.

Mr. Campoli – A retention pond. Yes, you did.

Mr. Harter – And, I think I saw a map that came back today that didn't really show that the pond is on any type of an easement or anything, it's just sort of exists there?

Mr. Campoli – I talked to the surveyor and to the best of our knowledge, that's ours. That's our property, so it's ours to keep clean.

Mr. Harter – It's not within a shared easement so you don't have some sort of boundary there that I saw that would interfere with your shed. So, I think my question has been answered. And based on where I see you placing the shed, it seems to me that you could service the pond and still do what you need to do there.

Mr. Campoli – Yes, we can still get trucks there.

Mr. Harter – So I don't have any (inaudible).

Chairman Reinhardt – We're just talking about the driveway right now. The driveway aisle.

Mr. Harter – I was talking about the pond.

Mr. Thaler – And the shed is going near the pond, I can see why you brought it up.

Mr. Harter – Anyway I'm OK.

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Mr. Salsburg – I'm OK.

Chairman Reinhardt – Alright, good. Anyone from the public want to speak for or against? Hearing none, I think it's important the Fire Marshal weighed in and indicated 20 feet would work, per New York State, is that what the code is? Marty, anything else you want to weigh in on this as far as what we should be concerned about?

Mr. Avila – No, they comply with the New York State fire code, as far as the 20 foot drive lanes. We're good with that.

Chairman Reinhardt – I think you're hearing from the board that it's great, business is growing. You are trying to solve a problem. Reaching out to your neighbor, purchasing the property. I think we're going to give that quite a bit of weight, that that's going to happen, because if it doesn't, you're going to be stuck. You got to think of something else to do.

Mr. Thaler – Absolutely. Yes, back to square one.

Mr. Campoli – I might have to build a ramp garage.

Mr. Thaler – Don't start, Mike.

Chairman Reinhardt – So let's just look at the request for the variance for a drive aisle width reduction. And you're going to go with 20 feet?

Mr. Thaler – 20 feet aisle, yes.

Chairman Reinhardt – OK, so looking through the criteria:

No one spoke for or against, undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

Justification: Largely due that there's a purchase offer in place and the Fire Marshal Ok'd a 20' width for the drive aisle. Anyone want to add anything else to the first criteria?

Second criteria, the benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: As indicated by the first criteria, the only way to solve this problem is to purchase the property from the neighbor. Anyone want to add anything else to the second criteria?

Third, the requested area variance is not substantial.

Justification: Especially since the Fire Marshal approved the 20' drive aisle.

Forth criteria, the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

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I don't see any, unless your pond is going to come into play here.

Mr. Thaler – No, it's way in the back. On the other side.

The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

Anyone want to add anything else to the criteria or add conditions?

I'll entertain a motion to approve the variance.

On a motion by Mr. Nearpass, seconded by Mr. Salsburg:

Chairman Reinhardt – All in favor? Aye.

Chairman Reinhardt – Opposed? Carried.

RESOLUTION:

WHEREAS, a revised application was received by the Secretary of the Zoning Board of Appeals on June 25, 2019 from Surmotech, 7676 Netlink Drive, requesting a drive aisle width reduction from 26' to 20' whereas §211-32A(2)(a)[1] states each off-street parking space for residential and nonresidential use shall measure a minimum of 9 feet by 18 feet with twenty-six-foot aisles,

WHEREAS, said application was referred by Martin Avila, Town of Victor Code Enforcement Officer on the basis of the variance requested to the Town of Victor Code; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 9, 2019, and whereby all property owners within 500 feet of the application were notified by U.S. Mail; and,

WHEREAS, Robert Graham, Town of Victor Fire Marshal, reviewed the revised application dated June 25, 2019. In a coordinated fire service site plan review with the Victor and Fishers Fire Services, Mr. Graham commented on June 27, 2019, that the updated plans meet the minimum width of 20' for Fire Apparatus Access Roads required by the International Fire Code and adopted by New York State,

WHEREAS, Public Hearings were held on June 17, 2019 and July 15, 2019 at which time no residents spoke against/for the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals made the following findings:

1. An undesirable change would not be produced in the character of the neighborhood or a detriment to nearby properties created by the granting of the area variance.

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Justification: There is a purchase offer in place for 20' of land. The Fire Marshal stated that 20' width for the drive aisle meets Fire Code of New York State.

2. The benefit sought by the applicant cannot be achieved by some method, feasible for the applicant to pursue, other than an area variance.

Justification: As indicated by the first criteria, the only way to solve the problem is to purchase the property from the neighbor.

3. The requested area variance is not substantial.

Justification: The Fire Marshal stated that the 20' width for the drive aisle meets Fire Code of New York State.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

5. The alleged difficulty is self-created. This consideration is relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

NOW, THEREFORE BE IT RESOLVED that the revised application of Surmotech, 7676 Netlink Drive, received on June 25, 2019, requesting a drive aisle width reduction from 26' to 20' whereas §211-32A(2)(a)[1] states each off-street parking space for residential and nonresidential use shall measure a minimum of 9 feet by 18 feet with 26' aisles, BE APPROVED.

DECISION:

On motion made by Scott Harter, and seconded by Fred Salsburg:

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 5 Ayes, 0 Nays

SURMOTECH LLC

20-Z-2019

7676 Net link Drive

The applicant is requesting a Sprinkler Waiver for a 16' x 40' foot shed. The building is required to have a sprinkler system per Section 83-4F(2)(a) of the Town of Victor Code which states that all structures shall be required to have an approved fire sprinkler system installed and

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operational, however, §83-4F(2)(d) states that the Zoning Board of Appeals can grant a waiver. The property is zoned Light Industrial and owned by 7676 Netlink LLC.

Chairman Reinhardt – The sprinkler waiver for the 16' x 40' shed. The note said it was Ok'd by the Fire Marshal and I thought there was a condition. You're OK with that putting the extinguisher in?

Mr. Campoli – Absolutely.

Chairman Reinhardt – And there's no power, no plumbing.

Mr. Campoli – We are going to attach a solar panel for light. Strictly light, so we can turn it on in the wintertime.

Chairman Reinhardt –What's going to be in the shed?

Mr. Campoli – Ladders, older equipment that we're replacing from a capital standpoint, snow blower, no chemicals.

Chairman Reinhardt – No fertilizer, no combustibles? People are not going to work in there.

Mr. Campoli – No. Power tools. It's just storage.

Mr. Salsburg – No. I think we covered this last time pretty well, to my satisfaction.

Mr. Harter – I'm OK.

Mr. Nearpass – Did you read the comments from the County? The location of the shed doesn't require a variance, correct? Their feedback just said the proposal (inaudible) would preclude extension of Netlink Drive and alternative shed location and perhaps at the north end of the expanded parking area, a legal right of way to transfer. That's their recommendation. I wasn't sure do you have a response to that?

Mr. Campoli – Netlink Drive is a private drive. So, we're not going any farther with it. On the north end, if we continue to grow, you know, hopefully at the pace that we're growing today, the next expansion is blowing out the walls and that would be on the north side of the building. So, my problem would be I would need to have access for fire trucks and 26 foot to get in there, so that's why we don't want to put anything on the north side.

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Mr. Nearpass – And the way I was thinking about it or rationalizing it in my mind is it's just a shed. You wanted a road to go through there you'd move the shed, get rid of the shed and put a road.

Mr. Thaler – I'm not there in my head, but yes, I agree.

Mr. Campoli – And that's why we're putting it on crushed stone.

Chairman Reinhardt – Anyone from the public want to speak for or against? OK, as Fred indicated earlier we've touched on this before walked through it quite a bit and I think it's these types of requests, one of the primary concerns is safety. Safety of the firefighters, safety of people so no one gets hurt, but since it's a shed, storing equipment, tools, granted snow blower is going to have some gas in in, but the amount of combustibles and things are going to be in a minimum. And, as Matt said it's a shed.

So, with that walking through the criteria:

I think we would agree that there is an undue hardship for the installation of a sprinkler system for a 16 x 40 shed.

Physical or legal impossibility.

Well you can do it, but it's going to be expensive to do so.

Impediment to the intended objectives of this section.

As we indicated, its fire fighter safety, so they can get there and suppression's already started but it's a shed and there's equipment, workers will not be in there on long term. They are just going to be in and out.

Necessity in light of other viable alternatives which meet the objectives of the code section.

You could, but it's going to be expensive and with the Fire Marshal recommending extinguishers should solve any concerns for safety.

Recommendations and comments submitted by the Coordinated Review by the Fire Chiefs of the Victor and Fishers Fire Districts and the Town of Victor Fire Marshal.

We've indicated, seems to be OK with it provided that you'll have at least one extinguisher in there.

Anyone from the board want to add anything else to the criteria? Good.

Chairman Reinhardt – I'll entertain a motion to waive the sprinkler for Surmotech for the 16 x 40 foot shed.

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Mr. Salsburg – I'll make that motion.

Ms. Morley – I'll second.

Chairman Reinhardt – All in favor? Aye. You have your sprinkler waiver.

Mr. Thaler – Thank you very much for your time. I appreciate it. I got to tell you, I appreciate your concern for the safety as well. It's nice to hear. Thank you.

Mr. Nearpass – Thank you.

RESOLUTION:

WHEREAS, an application was received by the Secretary of the Zoning Board of Appeals on June 3, 2019 from Surmotech, 7676 Netlink Drive, requesting a Sprinkler Waiver for a 16 x 40 foot shed. The building is required to have a sprinkler system per Section 83-4F(2)(a) of the Town of Victor Code, however, §83-4F(2)(d) states that the Zoning Board of Appeals can grant a waiver; and,

WHEREAS, said application was referred by Martin Avila, Town of Victor Code Enforcement Officer, on the basis that the structure is required to have an approved fire sprinkler system installed and operational; and,

WHEREAS, a Public Hearing was duly called for and was published in "The Daily Messenger" on June 9, 2019, and whereby all property owners within 500 ft of the application were notified by U.S. Mail; and,

WHEREAS, Robert Graham, Town of Victor Fire Marshal, reviewed the application. In a coordinated fire service sprinkler waiver review with the Victor and Fishers Fire Services, Mr. Graham commented on June 11, 2019, the Fire Service acknowledges the request for a sprinkler waiver for a 640 square feet storage shed without electricity to be a reasonable request. The waiver should include the conditions listed below;

WHEREAS, Public Hearings were held on June 17, 2019 and July 15, 2019 at which time no residents spoke against/for the application; and,

WHEREAS, after reviewing the file, the testimony given at the Public Hearing and after due deliberation, the Town of Victor Zoning Board of Appeals considered the following:

1. Undue economic hardship.
Installation of a sprinkler system would be cost prohibitive for a 16 x 40 storage shed.
2. Physical or legal impossibility.
Although a possibility, it is cost prohibitive.

3. Impediment to the intended objectives of this section.
Space will only be used for storage, with no heat or no electricity. No employees will be in the building on a long term basis.
4. Necessity in light of other viable alternatives which meet the objectives of the code section.
Sprinkler system is expensive and the Fire Marshal recommended at least one fire extinguisher in the building.
5. Recommendations and comments submitted by the Coordinated Review by the Fire Chiefs of the Victor and Fishers Fire Districts and the Town of Victor Fire Marshal.

10 lb ABC fire extinguisher be located in the shed. As part of the approval process, the applicant should be aware that most shed fires burn to the ground prior to the fire department's arrival, and encourage the very best fire prevention methods be implemented.

DECISION:

On motion made by Fred Salsburg, and seconded by Donna Morley:

NOW, THEREFORE BE IT RESOLVED that the application of Surmotech, 7676 Netlink Drive, Victor, NY, 14564, requesting a Sprinkler Waiver for a 16 x 40 foot shed whereas Section 83-4F(2)(a) of the Town of Victor Code states that all structures shall be required to have an approved fire sprinkler system installed and operational, however, §83-4F(2)(d) states that the Zoning Board of Appeals can grant a waiver; and, BE APPROVED; and,

HOWEVER, IT IS FURTHER RESOLVED that the following conditions are imposed to minimize any adverse impact such waiver may have on the neighborhood or community:

1. 10 lb ABC fire extinguisher be located in the shed.

This resolution was put to a vote with the following results:

Michael Reinhardt	Aye
Mathew Nearpass	Aye
Scott Harter	Aye
Donna Morley	Aye
Fred Salsburg	Aye

Adopted: 5 Ayes, 0 Nays

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Horsepower Motorworks, 1256 Brace Road

Applicant is requesting area variances to §211-24A(9)(b) & §211-24A(9)(c) to construct a motor vehicle repair facility whereas Code states the vehicle repair facility must be 1,000 feet from the residential boundary & 500 feet from a structure of a residential use. Also requested variances to §211-32A(2)(d)[1][a] & §211-32A(2)(d)[2] to allow parking 36 feet from the right-of-way instead of 80 feet per Code and allow a 76 feet parking buffer instead of 100 feet per Code. Also, requested is reduction from 120 parking spaces (six per repair bay) per §211-32B to 92 (4.6 per repair bay). The property is zoned Commercial/Light Industrial, is in the 96/251 Overlay District and owned by Edward Angelo.

Matt Tomlinson, Marathon Engineering – I was here a couple weeks ago and was asked to provide quite a bit of additional information, both by the board and by neighbors. We have submitted some of that information through the secretary to the board. Those items included updated information on the SECR form relative to the reduced limits of disturbance that are consistent with the Planning Board application and storm water pollution prevention plan that we have submitted to the town Planning Board as well as the County when we went for both zoning and planning referrals. We did appear before the County last week and got a recommendation from them with a few comments that I believe you guys have probably seen by now. In addition we also prepared a proximity figure that more clearly defined for the board and also hopefully for the neighbors relative to which properties are effected by the requested variances for the 500 and 1,000 feet from a motor vehicle. And, then we also have submitted a noise study that includes quite a bit of information both at the existing Horsepower site on Phillips Road as well as background information at the proposed site with regards to ambient noise.

I wanted to talk quickly through the proximity study to start and then I'll touch on the noise study and then the final piece of information can be provided by Paul Colucci who is with me representing the owners relative to some other sites that they explored placing this facility on. So the proximity study, I don't know if you guys have that in front of you, but it looks something like this and we have attempted to match the Zoning district colors on your map, but the green is residential single family, the blue is residential multi family, there's a three unit facility there off of Route 96, yellow is the commercial/light industrial and we talked last time I was here I was not aware that the structures on 14 and 12 were within the 1,000 feet, so I said 5 properties; there's actually a total of 6 that have structures within the 1,000 feet and then there are some additional properties that we've identified on that key and legend that have a piece of their land or property within that 1,000 feet, but the actual structure on that parcel was not within the 1,000 feet. So just so the boards aware, 1, 2, 5, 7, 12, and 14 which are across Route 96 and up on Plastermill all have structures within the 1,000 feet from the facility. The properties that are touched, but the properties are not included are 4, 6, 8, 13 and 15 and then there were some specific dimensions requested from the proposed facility to specifically properties 1 and 2. 1 being 1268 Brace Road and 2 being the Serenity House. 427 feet from the ultimate build-out to number 1 which is the only residential structure once the town completes purchase on 11, that

falls with the 500 feet from the facility. The Serenity House is approximately 560 feet from the full buildout. Any question on the proximity study before I touch on the noise study?

On the noise study what we have attempted to provide to the town is ambient noise readings meaning noise that is normal day to day at both the existing facility and the proposed facility. How we did that was we took a look at multiple different locations both immediately adjacent to the existing facility and immediately adjacent to where the proposed facility is and then at the same distances that the two residential properties that I think we're most concerned with being 1268 Brace Road and the Serenity House. To get an idea of what those readings are normal noise levels and we recorded them along a period of time, 5 minutes at each location and recorded the highs and lows across the meter and just wanted to give the reasoning behind why we did that was because we didn't want to just pick an instant in time that was very quiet versus and instant in time that's very loud as I don't think that's a fair representation of what can be expected in any neighborhood or along Route 96 for example when a tractor trailer goes by down shifting is very different then at 2 o'clock on a Tuesday afternoon before school hits and there's just a couple of cars going by. So we did readings through the morning rush hour at both facilities and then also while the existing facility was open for business with garage doors open and provide a sampling of readings there. In general, the ambient noise depending on the distance from the facilities was between 38 and 47 decibels generally averaging out to around 41 for the lows read. The highs were between 56 and 76 decibels generally in the 60 neighborhood and then the averages for all of the locations depending on how far away you got from the road was 48-60 decibels. At a distance of approximately 100 feet from their existing facility on Phillips Road there was no noticeable increase in noise levels above the ambient road noise is what we concluded in there.

Now just because and for the boards clarification, just because a noise is heard for example someone dropping a wrench and angle grinder going there can be a distinction in the noise that's heard. Like if a louder lawn mower is going, but that doesn't necessarily raise the noise levels on the meter just because you can distinguish a sound differently than another sound that reads at the same level. So I just wanted to mention that just for the board. I think that's it from the noise study. I can have Paul speak on other sites that he looked at or I can answer specific questions?

Chairman Reinhardt – I think the primary concern from the last time we were here the nutshell version is the residents are concerned about the noise. So, appreciate the study that you did and I think the question is that is going to be asked is where you going to be? Where is the business going to be on a low, if it's closed it's going to be zero and you're not going to hear anything. But at its maximum business hour? What can those residents expect on this continuum of noise level? I'm not going to start guessing, tell us where it's going to be?

Mr. Tomlinson – At a distance 50 feet on the existing Horsepower Facility beyond Phillips Road, the average decibel reading was 60.5 decibels which is approximately 5 decibels above the

ambient noise level at a distance of 100 feet and again this is normal operating hours. We didn't tell them we were coming, stop by there's four garage doors open. The decibel level was 55 decibels, 100 feet from the building and so there was no noticeable increase above the ambient road noise level.

Chairman Reinhardt – This is where the business is now? The max noise level is what?

Mr. Tomlinson – The current facility on Phillips Road. The maximum noise level 50 from the existing building was 77.5, the maximum noise level 100 feet from the existing building was 69 with a low of 41 maximum. For reference the maximum ambience roadway adjacent to 251 was 75.8 so within 2 decibels of the maximum observed from 50 feet from the existing building.

Chairman Reinhardt – How much bigger is the new facility going to be than the current facility?

Mr. Tomlinson – Phase 1 is essentially the same square footage, 42,500 within a couple hundred square feet.

Chairman Reinhardt – And as far as your thoughts on Phase 2?

Mr. Tomlinson – 63,500 is what we

Chairman Reinhardt – When would we like that to happen?

Mr. Tomlinson – I believe at the last meeting, we anticipated five years at the earliest would be when we anticipate that happening.

Chairman Reinhardt – I'm sure the board will be asking some questions, but I think the concern was not to get too far ahead of the plan. Plans are good, but if you start looking for at Phase 1, 2, 3 and 4 then the whole notion of variances are granted it starts to lose its effect. If you look at just the Phase 1 piece of it and if everything goes right, I think you have a better chance then of looking at is saying, *oh gee this is Phase 2 and here's what we'd like to do* and now we have a real look at if the variance is granted what does this project look like in Phase 1 and how much noise is it producing? There's a lot of concern out there for residents about this is going to be not very pleasant for those residents.

Mr. Tomlinson - Hopefully some of the data that we have supplied leaves the board a comfort level relative to that. Understanding I would like to mention that the Planning Board obviously we need to obtain approvals from them Phase 1 and Phase 2. Noise is something that they consider as part of environmental impact from the SECR standpoint as well, so the Town does have additional steps that are going to weigh into that so obviously coming back to the Zoning Board, as much as we like speeding time with you guys, our preference would be to not have to come back given that there is a noise concern that could be looked at at the Planning Board level which we would obviously also have to obtain.

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Chairman Reinhardt – Does the board want to ask questions about the noise first or do you want to hear a whole presentation? Why don't you finish up?

Mr. Tomlinson - Just some other properties that have been looked at and then we can answer some questions.

Mr. Paul Colucci with the DiMarco Group – Good evening. I was unable to be at the last meeting, but I read through the meeting minutes and appreciate all the concerns that were raised by residents, as well as board members. One of the comments that was made was why this site? Has the applicant looked at other locations and the answer is yes. As you know, Horsepower is currently leasing their facility on Phillips Road. They expressed interest in trying to stay in the Town of Victor that was paramount importance to them. So, when this site was first identified, I started to do some due diligence and one of the first things I did was went and met with the Supervisor, Director of Economic Development, Kathy Rayburn and Kim Kinsella for just an informal meeting, just to review this particular application and for this property and they asked the same question, have you looked at some other sites and the applicant had been on a search for other property and was unable to find anything that was either economically feasible or met the space constraints of where they were looking to ultimately be. So with that we worked with economic development to identify some sites that were in the town of Victor and were potentially for sale or for consideration. One of them was on Rawson Road. There's was a 20 acre piece that we placed several calls into and never received any response back relative to a potential lease or sale of that property. Another one was identified was Cobblestone Court, the vacant K-Mart. Completely economically infeasible. The square footage price and it could only be a for-lease opportunity. The retail rates are not commensurate with what they are willing to pay for rent. School Street was one that was somewhat promising, 62 School Street. It had proper zoning. Unfortunately there was a sale pending. The building, we did look at and toured the building. There's 27,000 square foot building on site that is as everyone is familiar you can see the building behind Duncan Donuts. That building we looked at would need to be taken down. Even if there could be a potential sale for this particular applicant unfortunately that sale pending continued and we were unable to reach any terms to continue on that site. Another one was on County Road 42 it was a former concert site, we looked at that. There's vacant land. The initial price offering cost per acre was very expensive. We looked at that and essentially had the same variances that we would be balancing here, so we decided not to continue to pursue that one. So ultimately this piece of property was put under option by ANAC Holdings, one of the principle member of ANAC Holdings is Angel Boev, and Dr. Boev is here tonight. He is going to be the property owner. And, as you know you met Paul Zelter who is going to be the operations side of the business, so collectively we have both ownership groups here tonight and they did an exhaustive search of other parcels and the alternatives were potentially taking the business outside of town and that was just something they didn't want to explore. They've established a client base here. They've become known in the area and have built a reputation and they'd like to stay in Victor and they'd like to be community assets. So, I think you've

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heard from Paul and if there's any other questions that you have specifically I hope we have the team here tonight that can answer them for you.

Ms. Morley – Marty, can you tell me this property that's zoned what per say else could go on this besides this business? What would be allowed?

Chairman Reinhardt – Marty, why don't you look at the code and what else can fit there without a variance?

Mr. Nearpass – It's really what allowed uses are there in commercial and light industrial.

Ms. Morley – Right. Exactly.

Mr. Avila – In the commercial/light industrial district it's all uses that are allowed in the commercial district which would include bed and breakfasts, health and institutional facilities, retail, restaurants, banks, theatres, auto sales, hotels, automobile repair, dog kennel, gas station, car wash, adult entertainment, self-storage and, with a special use permit, a heliport.

Ms. Morley – I don't have any other questions at this moment.

Mr. Nearpass – First of all I concur with what Mike was talking about earlier with looking to support what would be a set of Phase one variances. On the sound side, I appreciate the study. The feeling I walked away with last time everyone was together was, I don't believe the sound from the facility is going to be what precludes something like this. I don't think it's going to be out of the ordinary from what I've seen. But it was really more potentially your customers. There were talks of auto shows, and those kinds of things. I don't know if you put thought to not having auto shows or hosting auto shows here as a concession or maybe just doing one a year or I don't know if you reached out to them. That was one of the concerns I heard. The one that really stuck was fast cars, people are going to want to go around that turn and kind of open it up. Or if it was an auto show what types of shows are there. In general, I think the most noise that will come from that site was probably going to be somebody mowing the lawn. Just from what I've seen here. It's obviously not going to be hundred plus decibels all the time or inside the facility. There's plenty of buffer with the other surrounding neighbors. But I do have a concern with on the customer side what are they going to do, are they going to go and open it up. I can't really preclude; I don't know how to prevent that. I get that people are going to be people, but that's certainly a concern. Anything that goes there will also carry its own set of pros and cons. I mean at the end of the day, it is a commercial/light industrial district and so the owner of that land is allowed to realize the benefit of the zoning that it's in and we exist here, as well as the Planning Board to try to minimize any impacts to the neighborhood, but there are a lot of other things that I think that could be there that could be worse. I think in good faith, you've done a good job of pulling data together. I'm not sure how much you've reached out to the neighborhoods since we spoke. So it'd be good to hear that in a little bit from the public potentially. But I don't have any real concerns other than if you could try to articulate what you can do about the auto show situation and your customers, trying to prevent them from deciding

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to take something out for a ride and opening it up down Brace Road which is a nice long country road and I'm sure it will be very tempting and that's certainly a concern I think that was expressed last time. Again, not really sure what kind of teeth we have to prevent that? We can certainly discuss it as a board, too, but that's my main concern. I think that your willingness to work with us and minimize these impacts is great. There's plenty of things that we just rambled off that could go there that I think would certainly be out of character or also not wanted in a district like that so close to a residential neighborhood. They wouldn't have to come in front of this board, so I think it's to everybody's benefit that we're having this dialogue and discussion. If you could talk a little bit to the auto show aspect of it and what you think your customers are going to do when you give them their brand new car with a tricked out engine, where they going? What are you going to tell them?

Mr. Colucci – I think a lot of those are operational constraints, but I can touch what we spoke before hand relative to the car shows. I did see that comment in the meeting minutes. They do wish to be able to hold car shows here. To what extent, I'll let Paul talk about. But it's not a weekly occurrence, it's not a monthly occurrence. From my understanding it's a unique type of event that they hold.

Mr. Zelter – We currently, I wouldn't call them car shows as what you think of a car show. We don't have hundreds of cars come down and loud music and things of that sort. We currently have a show that's hosted by the Landmark Society that people pay to attend. It's a high end car show. People bring rare and classic cars. Some bring some hot rods. That's been going on for years now. We also hold an open house where we invite people to bring their cars down, tour our facility, have something to eat, enjoy themselves and things of that sort. And we've been doing that now for some number of years. It's not what you'd typically think of when you think of I'm going to a car show with a bunch of hotrods and everybody doing a burnout on the way out. It just doesn't exist like that. To address, do I have control of what somebody does leaving there? I don't. I can tell you it has happened at my facility currently and that person got a phone call and was asked if he can't control himself, please don't bring his car back. Because we are respectful of it and that's not what we want to put out there and that's not what our clientele is.

Chairman Reinhardt – I can put it maybe in a little perspective I'm fortunate to have a lake house. 4th of July, everybody has fun, it's now July 15th, they're still shooting them off. And it's getting old. So I think what the neighborhood is worried about is some definition of *well not many*. If there's a definite time that you can pin point and say well one open house will be on this weekend or a car show on this weekend. So at least some preparation that should the variance be created giving them some notice about this is what it's going to look like and you do. And I think a phone call certainly helps, but you do have control over your clientele. Say, we're in a neighborhood here, you be respectful of my neighbors. I want to play nice in the sandbox as the phrase goes. So do you have an idea on when these shows/open houses?

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Mr. Zelter – Both our open house and our car show, if you will, are in September. One is the second week in September and one is the, I believe the third week in September. Open House is Saturday, from noon to five and the Carburetors and Cocktails is from 6:30 pm to I believe 10 pm.

Chairman Reinhardt – If I understand you correctly, those are the only two events that you would host. Not during the course of the spring or the summer. It's normal hours of business operation.

Mr. Zelter – Those two are done off of business hour operation.

Chairman Reinhardt – I was trying to pin down, I think, is here is what does not many mean? We're going to hold you to.

Mr. Nearpass – How many special events?

Mr. Zelter – Two to three a year.

Chairman Reinhardt – What's the third? You gave us two.

Mr. Zelter – I don't know what the third may be, but I don't want to say that I'm never going to do something and then do it and then have people upset. I assure you of this, . . .

Chairman Reinhardt – If the board holds you to a condition, say you get two events a year, would you be OK with that?

Mr. Zelter – If that's what it came down to, sure.

Chairman Reinhardt – I think that's what we're trying to, the ifs and buts gives this board a bit of problems because then we're potentially we hear it from the neighbors or the Town, what kind of variance did you grant here? So we're trying to be as specific as we can if we grant variances.

Mr. Nearpass – Then the public also talked about teeth, right, what teeth do we have? When you start talking about Phase 2 and Phase 3, we look back at how well you did on Phase 1 and I guess to a certain extent that's where teeth can come into play. Right how good of a neighbor are we being?

Mr. Zelter – I'll look at it in a different way, if we come down to if we have to agree on two, then that's absolutely fine. The only thing that I would add ask in return is a year from now or two years from now when those have already happened and gone on, and people see that there's no issue maybe to allow us to do a third.

Chairman Reinhardt – When you get to Phase 2 certainly we can revisit variances and all and as time goes on, but if you get two events and I use the phrase again you're not playing nice in the sandbox all these neighbors are going to come back and say we hear them, way too loud.

Mr. Zelter – Understood.

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Chairman Reinhardt – That's the notion I think of what we're concerned about is getting too far ahead of ourselves.

Mr. Zelter – Totally understood.

Mr. Colucci – The other mechanism that you could request is that there's an event permit that would potentially need to be obtained by the operator and that would run through the building department so that if there was concern and they wanted to see a site logistics plan and they wanted to see how many vehicles, how are you dealing with safe ingress/egress, how you dealing with acoustics and how many people are you going to have. That's stuff that we work with the town on in over events that we do in towns. So, that's another mechanism that you might be able to suggest.

Mr. Harter – You mentioned that the SECR form had changed since we were last here. What has changed on the SECR form?

Mr. Tomlinson – Just the area of disturbance on that. Originally, we has listed almost 11 acres of disturbance and through the flood plain mitigation design of the ponds we're under 9 acres of disturbance for that and that was provided to Kim and to Wes.

Mr. Harter – So now we're looking at an unlisted action and not a Type 1 action, is that correct? I had a chance to go through your sound study and I noticed that you did what you said, which is that you went around the existing building and you took measurements there and you went out to the site and took measurements there. But listening to you speak about the potential events, those would seem to be unique situations where that would be the, if you will, the peak sound item that you would need to analyze. I mean I think you all know in our industry we don't look at average events, we look at peak events whether it's traffic or drainage or whatever it is, so my recommendation is in order for that study to be effective is that you simulate whatever this assembly is going to look like in terms noise or unwanted sound, do your calculations from that. I notice in looking at the site on the drawings that you provided and also aerial that there's a substantial item in your favor I think which is the southern tree line. That would seem to be an excellent natural buffer for lighting and sound. I guess a question I have for you is that to be protected, will that be in a conservation easement or something to that effect so that there is a permanent buffer measure?

Mr. Colucci – I think both Matt and I can weigh in on that. The answer Scott is yes, we do want to preserve that southern property line and that natural buffer that's there. Additionally we have as you would well imagine, we're going to have a surplus of top soil when we strip the site and we build the area that's going to be structural, either building or parking. And, our intent is to the maximum extent as we can to berm on the southwest corner of that property and when I say the maximum extent we have to balance that with the flood plain mitigation. I can't berm in the flood plain because it's essentially counter intuitive to what you are trying to do. But our goal as we try to develop these plans further is to work with Planning Board and town engineer to take

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that excess top soil and berm it and I'd like to get a berm as high as we can there. It's just going to be a balance of what we can do and maintain existing natural vegetative buffer because I'd hate to put a berm and lose that vegetation. As you've seen it's very tall, it's pretty dense, so we'd like to keep that but between that vegetative buffer that's there and the existing flood plain limit our goal is to berm as much as we can.

Mr. Tomlinson – And within the vegetation area just so the board is aware that goes up quite steeply to the residential property that the Town is purchasing on the grading plan it varies from six feet at the kind of northwest end to almost twelve feet high at the southeast end, so there's no benefit to clearing or removing any type of vegetation over there, since we can't do anything with it.

Mr. Harter – I think for the board's benefit a berm is an elevated ground surface which I think would help emulate what the trees are currently doing there and that makes sense. You've presented to us your request for dimensions, specific dimensions that you'd like the board to approve relative to your layout. And, the item that I struggle with because this is going through planning as well and you mentioned they are going to look at some of the things we were going to look at. How do we know that these dimensions will work properly, that they will provide the project with what's necessary in terms of area for flood plain mitigation for your drainage ponds. How do we know that when you get further into the details potentially with the Planning Board, that you're not going to have to revisit some of these variances that you are requesting tonight?

Mr. Colucci – That's a great question and that's kind of the chicken and egg we get into going between Zoning Board and Planning Board.

Mr. Tomlinson – We've submitted a full site plan package with flood plan mitigation calculations, a full swift design, everything to the town. We are still in the review process of that however we are confident that what we are requesting provides the room to construct what we're proposing at this time.

Mr. Harter – I guess related to that question, are we premature, I guess in my thinking I think perhaps we are. I don't know how the rest of the board feels, but I would feel more comfortable if there were some acknowledgement back to our board from the Planning Board saying that they have reviewed what you provided them and that that they felt from a general layout perspective, it was acceptable. I'm much more prone to be accepting of your layout if I know that we've buttoned up the issues. We're obviously looking at some residents that are very concerned here and I'd like to have something to hang my hat on. A little more solid than well this is the drawing that we currently have, which is nice display drawing, but it's not really showing me this is where we're redoing the flood plain, these are the trees we are going to hold, keep, this is the area that we are going to berm, so that I can look to the public and say I think that they did a good job here. That's what I'd like to be able to say. I'm not saying that it's your fault. I'm just saying we have a general drawing to work with at this time. In my mind it might be more prudent to let this go a little further on down the approval line with the Planning Board and I

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think you've heard us speak tonight. I don't think anybody is horribly against your project, but I think speaking for myself I'd like to see the justification behind the decision to grant you the variances.

Mr. Colucci – Sure and I can appreciate that. I think when I read through the meeting minutes last time, I don't know if it was you Matt who read the comments from the informal review we had with Planning Board. So while understanding completely what you're saying the Planning Board gave us some feedback at concept review which we incorporated into this plan and then their basic direction was go see what the Zoning Board says. And that's kind of that dance I was talking about so we prepared a full site development set of plans and have done the engineering background and calculations and yes we are going to review that with the town engineer. That process is ongoing. We'd like to conclude a step to get somewhat closer so we can go back to the Planning Board with confidence, to say the Zoning Board has granted us our variances and this is area that we need to exist with it. This is the level of variance that they were comfortable with. I'm afraid if I go back to the Planning Board, I'm going to get what did the Zoning Board say and that's kind of the difficult situation we're in and we're trying to follow the Town's process. Trying to stay on a time line and give the information to the Zoning Board that you need to make the decisions that's in your jurisdiction and then Planning review is going to occur with the town engineer. There's certainly going to be storm water review. There's going to be review of natural vegetative buffer and other buffers that we can offer, so I hear what you're saying. I'm not 100% opposed to saying OK, we could go and wait and table this but I'd like to also try to conclude a step so that we can be that much more assured that we're moving forward in the right path.

Mr. Harter – The flip side to that and I understand the chicken and the egg and the ying and the yang all that. The flip side is you can go to the Planning Board and say we got the variances, I mean I've been in that position. That's an improved position versus saying we don't have the variances yet. I get that, but I just think that this project is a sensitive project. I as a board member, would like to have a comfort if I vote in favor of your variances, I'd like to have the comfort of knowing that the Planning Board is solid with their review of the impacts and they concur with the design presented. That gives me all kinds of confidence in going with the positive route with your application.

Mr. Colucci – I appreciate that and I certainly wouldn't want to force you to make a decision where I'm hearing you, where you'd like to at least get some feedback from them.

Mr. Tomlinson – Scott, are you suggesting approval from them first?

Mr. Harter – No, in fact I mentioned to Mike and Matt if there's an upcoming meeting with the Planning Board and you'd like me to attend in a volunteer capacity from this board I'd be happy to attend as a functional liaison type of role, so I could speak to our board members and tell them what I saw at the meeting if I felt that the Planning Board was taking the requisite hard look as

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they are supposed to do and if they had addressed these issues and if we were in a position of what I would consider to be comfort in order to go forward.

Mr. Tomlinson – We are on the agenda for an upcoming Planning Board meeting. I don't have it right in front of me, but we're on within the next two weeks.

Mr. Colucci – Next Tuesday.

Mr. Salsburg – What's the New Era Performance Company? There's Horsepower Works and then there's this New Era Performance.

Mr. Zelter – It's the same thing, it's just a division that we have under Horsepower Motorworks.

Mr. Salsburg – So, I was over there. It's full of antiques and classic cars and the few cars that you would find objectionable, the motors sticking up out of the hood, aren't street legal. The concern for noise is the hot rod. What's the percentage of noisy hot rods that would run up the road coming out of your place?

Mr. Zelter – Probably 20-25% of our business, if that. A majority of what we do is the classic antique cars.

Mr. Salsburg – Which must be in there for months and months and months?

Mr. Zelter – Years.

Mr. Salsburg – They were making a fender it looked like.

Mr. Zelter – We did. That's two years going.

Mr. Salsburg – That's not going to make any noise. All those 50-80 year cars aren't going to make any noise either.

Mr. Zelter – A little back fire now and then.

Mr. Salsburg – I should know more about noise because I lived at Serenity House for a few months. During the time that Bradhurst Street was being constructed, with the dump trucks and the trailers, cement truck, bulldozers, all that stuff. And, the only noise that I can remember being irritated with was the lawnmower. Because it was on this side and then it was in back and then it was on the other side. If something noisy was going up the road, it's pretty set back 250 feet or something like that. Bradhurst houses are really back further. I think the perception of the noise is much less or the perception is greater than what it's going to be. I don't think it's going to be very much, so I'm too worried about the sound anymore. I'm more concerned about the dynamometer. I think it would be interesting to see a sound check when that's running, with the doors shut. The thing is set in there and there's two big garage doors and it's right next to the building and I looked at the garage door and geez there's all kinds of people out there and he says he's never had a complaint.

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Mr. Zelter – Never had a complaint.

Mr. Nearpass – Does the dynamometer have a spec? Is it a product that can have a data sheet and it will say sound pressure level 10 feet, 5 feet, 20 feet?

Mr. Zelter – A dynamometer in itself makes zero noise.

Mr. Salsburg – It's the car on it.

Mr. Zelter – It's whatever car you're running on it.

Mr. Nearpass – You're going to put it in a sound proof, sound dampening

Mr. Zelter – Right now it is wide open to the outside.

Mr. Nearpass – I get that, but you're planning on putting it in a sound dampened room. Is that sound dampened room have a specification at this frequency, this amplitude, this is what you would expect x number of db's?

Mr. Colucci – The acoustics are essentially mitigated primarily for indoor occupant comfort because those are the people that are in there day in and day out.

Mr. Nearpass – This is something that's inside, so it's acoustically dampened and it's also inside of a building.

Mr. Colucci – It's inside the building and it's going to be designed to acoustically dampen for inside occupant comfort, so that they are not having damage from this. They are working there. They are the ones that are dealing with it on a day to day basis. So to answer your question, Matt. It's what we design it to and when we get to the level of designing the building, I haven't released that piece of it yet, because I want to make sure we're moving forward in the right path granting variances, getting Planning Board approval, then we'll design the dynamometer in the room. We have latitude as to what we design that too. The wall thickness, the amount of installation we put in there, so it's without a doubt not going to be discernable to the receptors we're talking about.

Mr. Nearpass – I can see that as something tangible that could easily make its way into a condition which is to the point of this thing is tuned to where it you don't need ppe 5-10 feet away from it. I'm sorry to take Fred's time, I'll give it back to him.

Mr. Colucci – We'd be comfortable with a condition that said that the acoustic properties of the dyno room to be reviewed by the building department and calculations submitted by the architect of record demonstrating what the sound attenuation would be for indoor occupant cover and what the noise level might be from say 50 feet outside the building. That's something we can do and plan to do.

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Mr. Tomlinson – If we could just touch briefly on Scott’s comment relative to simulating a car show. I think Paul can probably verify it and you will probably need to, but again the operation of a car show that is not an anticipated to be a louder or a larger noise than normal operation, day to day. It’s just vehicles arriving, vehicles leaving. There’s not firing up engines, racing, nothing of that nature, so and especially since they don’t happen until September that may be somewhat difficult for us to simulate as well. I don’t know if that answers your questions or not.

Mr. Harter – It’s your position that it’s not a bunch of hot rods or something like that, it’s a low key affair.

Mr. Tomlinson – It’s not a larger noise generator.

Mr. Zelter – C’mon down. The Cocktails and Carburetors event other than cars sitting in our parking lot is all held inside of our building. These are people who are pretty prominent in the area. Again the Landmark Society of Western New York puts it on. It’s also part of a multi event thing. We have a car show at Oak Hill Country Club on the following Sunday. They do a tour of private car collections in and around the area that people would normally not get a chance to see. This is a paid for event. This is not something that somebody just shows up to. They have to buy a ticket in advance. They have a string quartet playing inside of our building.

Mr. Salsburg – This is quite of interest to me. A great big room dedicated to photography.

Mr. Zelter – We have a photo studio in house, absolutely. This is high end stuff. The gentleman who does our photo studio used to work for Car and Driver magazine. He currently works for Vintage Motor Sports. These are not cheap propositions that he does. Again it’s very high end.

Chairman Reinhardt – So you talked about two phases. I think you are having an idea if the board is going to be more comfortable with Phase 1. I’m looking at 5 requests for variances. To me, it’s a safe bet. You need variance 1 and 2 to go through for Phase 1.

Mr. Zelter – Correct.

Chairman Reinhardt – What about 3, 4 and 5? Is that Phase 1 or Phase 2?

Mr. Tomlinson – Sorry. I just have to find my letter list to make sure I have the numbers straight.

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Chairman Reinhardt – The first variance to locate a motor vehicle repair facility 100 feet from a boundary of a residential district when 1,000 feet is required. Second a variance to locate a motor vehicle repair facility 300 feet from a residential use when 500 feet is required. Third a variance to locate parking 36 feet from the right-of-way when 80 feet is required. Fourth – a variance to locate parking 76 feet from a residential district when 100 feet is required. Fifth – a variance to provide 92 parking spaces (4.6 per repair bay) when 120 spaces (six per repair bay) is required.

Mr. Tomlinson – So 4 would not be required. Phase 1 is 100.3 feet away from residential boundary. The number slightly change for 1, 2, 3 and 5.

Chairman Reinhardt – Let me try it this way. What variances do you need just for phase 1?

Mr. Tomlinson – So we need the 500 and the 1,000 separation distances.

Mr. Nearpass – I thought the actual values in those variances changed because you're looking at bumping those buildings out. It's not necessarily that one goes away. It's that one might be slightly shorter because they will bump it out. Can you tell us what that number is?

Mr. Tomlinson – It depends on whether or not you want to grant the variance to the house that the Town is going to demolish if they continue with the purchase or if you want to the nearest across the road so, there's some differences in that. And then the ratio for the parking spaces is also going to be different depending go how you want to calculate the banked spaces. They are somewhat depend on each other from the parking standpoint.

I will say this if you don't grant the 100 foot buffer, we cannot expand the building to the south or to the east without encroaching in that 100 foot buffer. So any expansion, meaning if you said we're not going to grant that variance, but we'll grant the other 4, even if they change slightly the other four would not be affected. That 100 foot, if we want to expand at all we would have to come back in here for. That gives the teeth that you're looking for.

Chairman Reinhardt – Variance 1 and variance 2 are critical. If you don't have them, project is not going through.

Mr. Tomlinson – That's correct.

Chairman Reinhardt – We're going to take some questions from the public. Before we entertain questions from the public, I've seen some faces here before. I appreciate your patience. What I'd like to do it try and consolidated as best I can. So if you're going to come up here and spend 10 minutes saying the same thing the person said before, we're going to be here until 10:30 and that's not quite going to work. I have a petition from the Dorchester home owners association, I

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think a total of 35, so if you're on the list say so and if you can be as brief as you possibly can. It's the noise issue. OK, we got it. If it's something different, love to hear it, but if you could be respectful of the time of everyone else and be as concise as you possibly can.

Inaudible audience question – Asking about the blue highlighted areas on map, if they are both in consideration.

Mr. Harter – No, just the east one. They are property lines.

Chairman Reinhardt – With that being said, who'd like to speak for or against the application?

Herb Ego, Board Chair of Serenity House, 1278 Brace Road – On the southern end of that map that's being displayed. Serenity House, and I won't repeat myself from last time, has been on that property for twenty years. Recently celebrating our twentieth anniversary. I think everyone knows what we do there. We do not wish to be unreasonable, that being said the board had a meeting tonight and our opposition to the at this point is still in place. My concern basically related to the sound is it sounds like the ambient noise measurements that I heard about were taken during normal operation when the concern was how much noise does this dynamometer make. I didn't really hear anything about what is the ambient noise when that thing is running and it's currently outside. If the board were to proceed in any way, it would seem to me that putting teeth into this means that that sound deadening room for the protection of their own employees would have to be required. We just can't take it on their word. If it's sitting outside right now and they are operating the business that way and have for some time, that they are just going to out of the goodness of their heart move this in and spend the additional money necessary to protect not only their own employees but the neighbors. So that's really my concern that there's something put in place.

The other concern I have is that we're essentially asking for variances for a Phase 2 which may or may not ever happen and even if it does happen, it happens five years from now and it seems to me we should be asking for variances for the building as it is proposed because we're looking at a 90% reduction. We're looking to take what's a 1,000 foot buffer and knock it down to 100 feet. So, you're asking for a 90% reduction and I haven't really heard a compelling reason why that needs to be done now. Get that variance five years from now if you need it. Tell me what you need now to put in that building and what's the impact going to be on my property and I'm willing to listen. I'm willing to tour their facility. I'm willing to find a compromise, but some of what I've heard just does not fit together. We're talking about putting 95 parking places for a building that they told me the last time has five or eight customers a day. So I just see some disconnects in what I've heard and I need some assurances that teeth will be put in to protect the residents. Thank you.

Chairman Reinhardt – They provided a sound study and their estimations are in the neighborhood of what lawnmowers, food blenders, recreational vehicles make. Would as chair of the Serenity House . . .

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Mr. Ego – We have our own lawnmower, we don't need a lawnmower sounds.

Chairman Reinhardt – Let me finish the questions. So, if the noise level is equivalent and does not exceed what a lawnmower would make if one of the conditions was that should any operation exceed the noise level of 85-90. So whatever noise that they are making whether it be a lawnmower, or cars or whatever it is exceeds 90, they will be in violation of the variance. I'm not saying it's going to happen, but how would Serenity House feel about that?

Mr. Ego – Again, to me it would be the frequency. You mow the lawn once a week, maybe twice a week. You mow the lawn once a week for an hour. If you're using the dynamometer and it creates noise on a daily basis that is the sound that a lawnmower makes or more, then yes that would be a problem.

That's what the soundproof booth or whatever comes into play. I don't think it would be reasonable to expect our residents to listen to something at that noise level on a consistent daily basis, no.

Chairman Reinhardt – Thank you.

Mr. Jim Leitgeb – I'm on the board at Serenity House. I just wanted to briefly illustrate; I'm not a physicist, I can't tell you a lot about decibels, but I do know that the figures of 70-75 percent or decibels are equivalent to about a lawn mower. Keep in mind, we can control when we mow our lawn at Serenity House, we can't control neighbors, but we can control when we mow our lawn. But if 70-77 decibels are about the same as, I just googled it, a vacuum cleaner. And, just think about this scenario, where your loved one has come to spend their last days with us and he or she is spending his or her last days with us in a hospital bed over there and at that moment of death someone flicks on a vacuum cleaner. That's all I wanted to say. That to me is not very reasonable scenario.

Chairman Reinhardt – Thank you. Anyone else like to speak for or against?

Ms. Karen Petito – And I spoke with you a couple of weeks ago to go about this. You asked that I bring some documentation that I was allowed to speak on behalf of my mother and my uncle who live at 1306 and 1316 Brace Road. And I did. I summarized their concerns, if I may give this to you. They are both opposed to the project for a lot of the reasons that everyone has said and listening to you, the meeting tonight, one of the concerns that's not in there, but it has to do with the events and that is again as the gentleman just talked about 90 some parking spaces and I think that those spaces are going to maybe fill up during events and I don't know how often that will happen, but we're really, really concerned about the traffic and especially coming in from 96, going out from 96. I know that was stated last time I'm hoping that someone is going to look closely at traffic study with respect to that because it's dangerous as it is right now. The other thing I wanted to say is I really appreciate all of the consideration to changing the character of the neighborhood in previous items in tonight's meeting with signs and fences. And while that little piece of property is commercial, Brace Road is definitely a residential area. Parks are

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going in, children and families are walking along that street and again it comes down to what are the customers going to do and that's all I have to say tonight.

Chairman Reinhardt – You, just a quick note and this is for the public in general, hopefully you heard our code enforcement officer say there are a number of other businesses that could go in there that don't need variances. And you may not like those, but we don't have any control over that.

Ms. Petito – That is true and I understand. You could have a hotel, you could have a lot of things there, but when you're mixing events with cars and I, with all due respect, having a string quartet there doesn't matter and I realize that older cars are maybe not hotrods, but still mixing cars and alcohol on a country road in a residential, highly residential area. A doctor's office, any other thing that goes there I understand there could be other commercial businesses there.

Chairman Reinhardt – Adult entertainment. It's probably not going to happen, but we can play this ifs and buts game all night long. There's a whole bunch of bad things we can create. So, I hear you and we're concerned. We're very concerned. We're taking a lot of time on this.

Ms. Petito –Thank you.

Chairman Reinhardt – You're welcome. Thanks for your time. Anyone else want to speak for you against. C'mon up.

Mr. Richard Dupreth – I live at 1745 Brace Road, well outside of the area of concern as far as this project goes however as a volunteer at Serenity House for the last four years and having spent a good number of hours there I share the same concerns that have been expressed by our board members. However there are a couple things that I would be thinking of if I were sitting in one of your seats. I heard more than once tonight, concern expressed over changing the character of the neighborhood over something as, to my mind, as superficial as a fence in front of a residence. So, I'd like you to consider this like the lady that spoke before me expressed. From the northern (inaudible) limits to Brace Road all the way to the southern (inaudible) limits of the town line at approximately Cherry Street with the exception of the water treatment plant and the golf course, everything is strictly residential. We are talking about two building projects and I haven't seen the architectural but I'm assuming that by the virtue of the nature of the business that this is all going to be on one floor, am I right?

Chairman Reinhardt – Is that accurate? Yes.

Mr. Dupreth – OK. So we are talking about building things that are going to have a footprint, Phase 1 if I understand 44,000 square feet approximately just shy of the area of a football field. Both of them together 125% of the area of a football field. I question whether that's maintaining the character of the neighborhood. Thank you.

Chairman Reinhardt – Thank you. Anyone else want to speak for or against the application?

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Mr. Paul DeTuro – I live on Bradhurst Street, I've been there eight years. I love cars, I'm into cars myself. I have a 68 Camaro, 454 big block, (inaudible description), dual exhaust, gorgeous, I love it. I'm into hot rods. Is anybody on this board go to car shows or listen to hot rods or listen to these cars, anybody?

Mr. Salsburg – I do.

Mr. DeTuro – And, you don't think that a hot rod with that type of engine isn't loud? When people are coming in and out. I'm not concerned about the building, I'm concerned about the people who stop in with their cars, leave with their cars. I go to auto shows there's always people peeling out. There's always, it's just part of the game. And, it's loud. It's very loud. The thing is this is a residential area. We got the houses, starting at 350 up to 550 thousand on Bradhurst and all of the sudden a 125,000 square foot within 5 years? Not to mention the traffic concerns alone. I'm for these, I love cars. I really do, but unless any of you, other than one person, Fred, have not heard how these cars sound and stuff. And, again, it's not the business itself, but you put something like that there with these houses and it goes beyond Bradhurst. You're just looking of trouble down the road. It's going to cause problems. I know it is. So, having said that I think you should really, really do your research on not only the decibels and how loud it's going to be, but experience it yourself because again, it's the people going and leaving. It's the people stopping in, it's the car shows, it's the people drinking in the car, it happens. It happens all the time, I go to all the car shows.

Chairman Reinhardt – Are you on the petition?

Mr. DeTuro – I am on the petition, yes. Just having said that, really do your job.

Chairman Reinhardt – Thank you. C'mon up.

Ms. Nancy McKay – And, I also live on Bradhurst Street.

Chairman Reinhardt – Are you on the petition, as well?

Ms. McKay – I am. I really wasn't too concerned initially, because I was like, oh, it doesn't seem like they're going to have a lot of traffic versus something else may have a lot more traffic, but I came in one day and spoke with Marty. And we were talking about Boosted Creations and I guess there were a lot of people that came in on a regular basis on Phoenix Mills, so that's when I started to get nervous when I heard that the other auto repair shop that was in Phoenix Mills, I think they just rented the space. That people were coming in. I think you said very often complaining of the noise and I guess they ended up leaving. So, I guess that's when I got concerned because Victor has had many complaints from the business and that business, because they rented the space did end up leaving and so that's when I got concerned. These guys are going to own the building. How often are people going to come in and complain like they did with that other business? I think you said you heard they came in quite often.

Mr. Avila – We had a number of complaints towards the end there.

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Ms. McKay – And those were businesses that the homes were across 96.

Mr. Avila – They were, but one difference being that their dyno was in garage bay, with the doors open and run typically that way. And actually more often than not the complaints were of cars peeling out and zipping down 96.

Ms. McKay – OK. And just one thing else, minor thing, the tree line that is there does have a lot of ash trees, that are already half dead. So, if we can just keep extra planning and more trees the better, but I do know a lot of that tree line is ash trees. And, I know that one neighbor initially wasn't, I got concerned, too when one neighbor that was closest to this variance, never even received a mailing and when she came in after I approached her, they looked it up and they said this was an oversight and that concerned me too, that one neighbor didn't receive a mailing notice. Thank you.

Chairman Reinhardt – Anyone else? Question, try and ask it this way. What is the minimal amount that you need for Phase 1? Going through those variances.

Mr. Colucci – Matt and I were just looking through that and I think he can answer relative to the way the site plan is currently shown that the two critical variances in that and some thoughts on the parking variances.

Mr. Tomlinson – The critical variances, motor vehicle repair facility located 100 feet from the boundary of any residential district Phase 1, 150 feet would be the minimum required versus the 100. Motor vehicle repair facility located 300 feet from any offsite structure of residential use, I believe until the town completes purchase and demolishes that house, we would still need that variance. That one is a minimal. Parking located 36 feet from the right of way versus the required 80 feet, we are proposing to bank those parking spaces, however if we do not receive or we get minimal relief from that variance it actually makes our variance greater for number 5 as far as the ratio of parking spaces, so I would say that that is the minimum requested relief that's in the front yard and not towards the residential properties. Number four minimal relief would be no variance for that and Phase 1 we are proposing 100.3 feet, just over a 100 feet from the drive aisle around the rear of the facility to the south property line, so we would be in compliance with the 100 foot buffer in Phase 1. And then number 5, I don't believe we're changing the number of required bays, so the actual ratio that we're proposing for the final would be the least relief. We would actually need to build more parking spaces in order to have a lesser relief on that variance, which kind of goes against the green design the flood plain mitigation that we're proposing and everything else. I would state that that one is also the minimum relief required as far as impact.

Chairman Reinhardt – Let's take a straw poll here. Scott, where are you on this?

Mr. Harter – I think I understand the phase idea, but I think I'm going to stick to my guns and I would prefer to see more information on the mitigation as it goes through the Planning Board. I also thought that the woman who spoke about the ash trees that was an interesting comment,

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because if they are ash trees, that potentially compromises the value of the tree row. I guess I'd like to know some information on that. I guess my position is I'm generally in favor of the project if it can be shown that the impacts can be mitigated properly. So, that's where I am.

Mr. Salsburg – I don't want it to bother the neighborhood. And I think it's the dynamometer preview, but it can't be anywhere near the sound level of that 24 horsepower Ferris lawnmower at Serenity House. That's much too loud. I don't know what it is in decibels.

Mr. Tomlinson – Are you suggesting that, and I think that we'd be amenable to a condition on that variance from a noise conditioning, you know working through the building department?

Chairman Reinhardt – One of the things that caught my ear the most, it's one thing when you hear a lawnmower, your neighbor's lawnmower going on once in a while, once a week. I think Mr. Ego said that. But if you hear it every day, 24/7, I know there's sometimes where I'm having dinner and my neighbor hires somebody and almost always between 5 and 6pm, they are mowing their lawn on Wednesday, it's like really any other time, even just that one day a week. That is nerve wracking.

Now that's on one hand, but on the other, I'm looking at the distances that you have and at 100 feet it's 69 and I think it was point something, at 50 feet, 77.5. Outside of the, I think the closest residence is beyond 500?

Mr. Tomlinson – Once the town completes their (inaudible), it's about 425 feet to the closest residence.

Chairman Reinhardt – There's arguments, serious arguments on both sides. If the wind is blowing in the right direction, you can hear the Thruway from here, right?

Mr. Zelter – Can I just address one thing with the dynamometer? Just to give you an example, it hasn't run in two weeks. It's not something that's a daily occurrence. And when it happens, the noise level happens for minutes, actually seconds. So, all you do is you take it from a baseline speed up to a full throttle, but for a split second. That's the noise level. Even when we're really busy with it, you're talking maybe two, three times a day for seconds. As far as a lawnmower goes, you're cutting the lawn. The dynamometer, it runs for seconds. And, again it hasn't run in two weeks at this point, it's not something that's a daily occurrence. It's not something that, do I know when it's going to run? Not always. But it is not a normal business operation of ours to run it on a daily basis.

Mr. Tomlinson – And also, again just to mention the hours, to make sure that they are in the record. Typically 9 to 5 Monday through Friday is the business hours and that's with closing up shop and opening shop and it's not something where we're running it 24 hours a day for sure.

Mr. Nearpass – I think Fred very articulately described it, is that it sounds like it's, the dynamometer and a lot of that is exaggerated because none of it has experience with it and we're just hearing all these things. I think the biggest one is the just going to be customers. And if it

was a restaurant/bar/grill that was going there you're going to have the same thing except that's going to be in the evening and on weekends and during the night. If you have a hotel that's going to go there, you're going to have other issues and it's never a perfect fit, especially when a district like this butts up against a residential area, you're always going to have the natural contentions that are going to exist. We can't just blanket, say nothing can go there. I think you're doing a good job trying to be a good neighbor, but I too, I concur with Scott and Fred and I also would like to see some kind of condition that quantifies the sound level outside of it. I still believe the loudest noise coming from it, this going to be when someone mows the lawn and it's the closest to the property line number 11 or number 1 here, because if you're telling me that this dynamometer is going to be run to its peak and you're going to be able to stand next to it without PPE, unless you're saying that you're venting the sound out the top where there's no exhaust system or something, I can't imagine it's going to be louder than standing next to a lawn mower 450 feet away when there's a dozen homes and I'm sure everyone doesn't synchronize when they mow the lawn, so on average there's probably be a couple people mowing their lawns a day. Just like in my neighborhood and everybody else's neighborhood. So, I do think that the noise from whatever is created inside the building is probably getting spun up a little bit, and we appreciate anything you can do to help us curtail that, but the biggest issue is somewhat uncontrollable, but obviously being good neighbors, you could help like you said you picked up a phone and called a customer type of thing to prevent the hot rodding that may happen. But, I'm in favor of the Phase 1 with those conditions. I don't know if there's the next best step is to just communicate that to the Planning Board through the minutes or are you thinking we proceed with a variance?

Chairman Reinhardt – Let's come back a second. Donna, where are you on this?

Ms. Morley – I think they could do worse with having other businesses. It is zoned for this. I get the noise, what they are saying, but every day, whatever road you live on, somebody goes by with a motorcycle or a hot rod and they are not even for that business, so I don't know how they would even curtail that if they didn't want it to happen. Or you didn't want it to happen.

Mr. Colucci – Route 96 is heavily travelled, we all know.

Ms. Morley – Heavily travelled. I get their issues though, with what they are saying. Everybody likes their own, they moved there for a reason.

Chairman Reinhardt – I'm not sure we can quite carve out Phase 1 other than the first, that they need 150 feet. They are so tied in together, but the dilemma that I have really as I'm going through the criteria and the one that is seriously jumping out at me, is the one that the variance is substantial. You are asking for a ton. It's needs to be 1,000 feet. But on the other side of it, if a number of other businesses go in the identical spot, there's no need for a variance and yet it's still the same distance from those residences. If you have a hotel in there, there's cars going in and out, in and out. We can play again, ifs and buts a lot and a number of other businesses could go in there and create traffic noise.

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Mr. Nearpass – The way I was rationalizing the 1,000 foot buffer was for typical auto repair shop that is worst case scenario with the dynamometer outside with the doors open and banging out fenders outside, putting cars outside so there's more of a negative visual impact. I agree that they are asking for a sizable variance from going from 1,000 to 100, but I think that what balances that is all your work is done inside. Everything you are doing to counter the sound escaping the building, the types of cars and work that you do work on and so we and maybe that also leads to yet another restriction is that associated with that is the fact that they are working on classic cars. You're not getting cars in everyday from Geico auto accident customers and insurance customers and you're not piling up out front and maybe there is a way to also put that kind of condition on here that it is a high end, classic car, work is done inside, a facility that everybody can be proud of when it's done and up and running and not your typical Joe's auto body shop where the doors are always open and there are cars getting towed in all hours of the night kind of thing.

Mr. Tomlinson – It's large is number, but I think we've been able to demonstrate low in impact. And the 100 feet again is to a property line that the town is soon going to own. We're 400+ feet to what will be the nearest residence.

Chairman Reinhardt – Marty, is there a mechanism in the code that whether it be by code or conditions to a variance that the person who is awarded the variance is in violation of one or more of the conditions, what happens then?

Mr. Avila – From code enforcement standpoint, we can issue a violation based on being in violation of a conditional variance.

Chairman Reinhardt – That's a civil penalty?

Mr. Avila – Correct.

Chairman Reinhardt – On a daily basis?

Mr. Avila – Per violation, per day.

Chairman Reinhardt – And is there any mechanism, that if it's repeat offender, if it keeps happening again and again?

Mr. Avila – The zoning code I believe, yes, that fee goes up per occurrence, per day. For second and third offenses. Just to note too and you may have brought this up already, Paul, last time you were here. But I believe that the orientation and the placement of the building was largely predicated on comments from the Planning Board.

Mr. Colucci – That's correct.

Mr. Avila – I don't know if that influences the numbers of the five variances, but it's just something for the board to keep in mind. On the informal review.

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Mr. Tomlinson – This plan reflects the changes the Planning Board asked for as well as the driveway location, as we mentioned last time.

Chairman Reinhardt – If I understood the numbers right, the maximum read that you had was 77.5? You were throwing out some numbers, what I was looking for, was, Scott pointed out. We're looking for the peak.

Mr. Tomlinson – It's in the appendix on the last page of the report.

Mr. Nearpass – Keep in mind this is only five minutes.

Chairman Reinhardt – The peak decibel out of that business is only going to be what? At any point in time.

Mr. Tomlinson – The peak decibel that we read was 50 feet outside the building and again that was for short durations, 77.5. And, that was without their dynamometer running.

Chairman Reinhardt – Is it fair to say then that that business will never exceed 80 decibels, whether it's for a second, five minutes, five hours. It will never exceed.

Mr. Nearpass – Are you talking about noise generated inside the building? Or a customer coming in and throttling it, going around a corner.

Chairman Reinhardt – Let's do one at a time.

Mr. Tomlinson – I think that it is fair to say that at any property line, reading it right outside of a building door at any one second could it possibly get up that, yes, but at the property lines at the distances that we are talking about I think that it's fair to say that.

Chairman Reinhardt – What I'm looking for is balancing between what your clients are looking for and the unknown of if you don't get this someone else may go there and the residents may have something that they didn't want to begin with and there's no variance needed. They have some real concerns here and if there was some amount of decibel readings that in any point in time, if they came to the town and said it's a lot louder than we bargained for and it's reading higher than 80, a code enforcement officer should be able to go whether it's every day, every week, every month. You're in violation, you are not doing what you said you are going to do. Right now that seems to be a viable teeth to a condition to keep your clients honest about what you're doing. And if it turns out, even if it's the customers and if it continually happens the owner should be able to say, you know what, you can't do that here anymore if you're going to keep doing that; I respect this neighborhood, you have to take your business elsewhere. Whether it's inside the neighborhood or out, 80 decibels is a lot.

Mr. Colucci – You heard from Paul, there's certainly the ability and the willingness for him to enforce those types of parameters on customers. I'm confident that the day to day operations of this facility are not going to be discernable to the neighbors. That the level of noise that they are

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experiencing, their ambient and background conditions when we designed this building, I'm very comfortable with the condition of some acoustic properties being demonstrated for the dynamometer room that we are going to build that the day to day operations of this facility are not going to produce noise above that, the readings that we gave you. And to pick a number 70 or 80 decibels is somewhat arbitrary because there are cars that are going up and down Brace Road and up and down 96 that are going to be much louder than that.

Chairman Reinhardt – That's what sheriffs are for. State troopers. And so as my next point, that if there is a speed issue up and down Brace Road or even if they are going into that development, certainly going to pick up 911 hopefully troopers or sheriffs will come out and rectify that situation. But we're looking at the noise level concerns that happens on your client's property.

Mr. Colucci – Yes, and that stuff that's within our control and we are looking at the intelligent building design and placement of doors where the dyno room is going to be located and how we are going to acoustically deal with that. And, I'm comfortable with the condition of that level. I'm struggling with the thought of having some decibel reading that if someone is magically sitting there and this loud sound goes off and they record it and run and call Marty, because I don't know if it came from their facility. I don't know if that was a resident that lives on Bradhurst with their motorcycle coming home or if it was someone going by on 96.

Chairman Reinhardt – It would trigger an investigation. Whether it be code enforcement officer on up to a police officer, there's probably cause. If a resident gives Marty or any other code enforcement officers reason to go out and investigate and listen to it again and if it keeps happening then I think there might be citations.

Mr. Colucci – And that's operational parameters that that Paul and his team can address. And that type of stuff we're not concerned about. You know we're very comfortable with the Phase 1 variances that I think Matt started talking about last time we met and where I think you are going. They want to prove that they are good neighbors and that the facility is going to be a significant investment and they don't want to be investing this kind of money and not only in the purchase of the land, but the construction of the facility and be in jeopardy of having repeat code violation which is going to hamper their ability to operate there. He's comfortable with the way that their current facility operates and that there's been no complaints, there is residences around them. We recognize where we're going. We have some mitigated measures that we can put in place when we get into the Planning Board review. Some stuff that we hinted at today, so I think ultimately the only other comment that I had was relative to the number of parking spaces and why we are showing 92. That's a significant reduction from what we would be required to, as the code relates. We prefer to bank those and show them as we could produce those spaces. If you go to their facility and for those of you that have been there, they pack the vehicles in there at night and it's really. Again, these are high end vehicles that they bring in at night and then during the day they do get moved out, so that they have room to work in the facility otherwise they would have to build them a facility probably about 100,000 square feet, so that they had

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room to put everything in storage while it's being waiting to be worked on. So there is a bit of during the day, every inch of that facility or at night, the vehicles are brought in, but during the day when they go to work they need to move them out onto hard surface parking so that they can operate. And that kind of in and out happens on a daily basis. And these aren't junker vehicles, these aren't vehicles that would otherwise ever want to stay outside for other than during business hours, so they can have room to work in the facility.

Chairman Reinhardt – What's concerning me as well, when you say banking spaces. Understood variance 3 that's a part of Phase 2, is that right? Variance 3, a variance to parking 36 feet from the right of way when 80 feet is required. Then you said something about you want to bank those?

Mr. Tomlinson - We're proposing to bank the spaces along the front of the facility meaning they would approved, so that we don't need a greater variance for the number of spaces that we are building, but we would not build them at this time. But again that's in the front toward Route 96, not toward the rear. Right on the corner there.

Mr. Colucci – That 36 feet is from a future bank space to the right of way. We're prefer not to build those, but show that we have room to do them.

Chairman Reinhardt – What I don't know if how we can differentiate between a Phase 1 and a Phase 2 with the variances you're proposing. There's seems so much overlap.

Mr. Tomlinson – In the parking spaces, there is. And that's why I would suggest if the board's OK with it, again, we can't build any future phasing to the rear or along this side of the building. We can't build a Phase 2 without the 100 foot reduction, which in Phase 1 we don't need 100 feet to the property there. We have to go down to 76 feet, which is what we're requesting there. So, even if you granted all the other variances as they stand now so that there's no confusion or difference in numbers in the paperwork. If that one is excluded, number 4, it would still give the Town the protection because we cannot expand without number 4 being granted to that side.

Chairman Reinhardt – And you wouldn't need that for two plus years.

Mr. Tomlinson – Until we're ready to build additions to the building.

Chairman Reinhardt – That's more than two years out.

Mr. Tomlinson – That's what we anticipate.

Chairman Reinhardt – The mechanism is either you withdraw it, we deny it and you ask for it somewhere down the line, but we have to do something with it.

Mr. Tomlinson – So we would withdraw that one if the other ones would stay. Would be my anticipation.

Mr. Harter – That presumes that the building is being built exactly as shown. Correct?

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Mr. Tomlinson – Correct. And again as Marty pointed out that building placement is as suggested by the Planning Board during the concept review.

Ms. Morley – I understand from the last meeting, did you say, have you had any noise complaints from your business on Phillips Road?

Mr. Zelter – I have never received a complaint.

Mr. Avila – We actually researched that on our end, and where they are currently now, there's no noise complaints and from what I can tell you guys are approximately 450 feet-ish or so from the closest residential building?

Mr. Zelter – Correct.

Chairman Reinhardt – That helps. Thank you.

Mr. Zelter – That's with the dyno open to the outside.

Chairman Reinhardt – (to audience) you have something you want to add?

Ms. McKay – I know that they don't have soundproofing right now, but my friend does own a business right next to you guys and had great things to say about your guys, but he said it SUPER, super loud, but that is without the sound proof room. But, I know they said it's very very loud.

Chairman Reinhardt – Your friend's not here. It's hearsay. We could do this all day long, it's like my grandmother's aunt said this.

Ms. McKay – I do have a question. Is it a one story or two story building?

Chairman Reinhardt – One story.

Ms. McKay – OK, because as the first meeting, I thought it was two story, that they stacked the cars.

Mr. Colucci – One story with a mezzanine. Center court.

Chairman Reinhardt – OK.

Mr. Nearpass – On the whole sound side, we could just maybe look to you to come back to us with a number, but I'm of the opinion that it would have to be sound generated from inside of that building. If you really want to quantify it, it's going to have to be sound that's generated from the daily operation of the building.

Chairman Reinhardt – I'm going to disagree with that.

Mr. Nearpass – How do you differentiate from someone on 96 or driving down Brace Road that has nothing to do with this business? Or a lawnmower, it's going to be 85 db, mowing the lawn.

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I just don't want to create something that already sets them up for failure. If them mowing the lawn puts them in violation of a restriction. That's not fair. However we want to quantify it. I want to restrict it. I just also want to make sure that it's a smart restriction, that's all. Because if they mow the lawn, they are in violation of it, I would have an issue with it. I think everyone here would, too.

Chairman Reinhardt – Sound is coming from their property, that's from an automobile, whether it's inside or out.

Mr. Nearpass – What if it's a lawnmower? A lawnmower here says it's 85-90 db.

Chairman Reinhardt – Listen again. If the sound is coming from an automobile that exceeds 80 decibels whether it's coming inside or outside the property, they would be in violation of the condition.

Mr. Nearpass – 80 decibels? How far?

Chairman Reinhardt – What do you mean how far? If it's on their property.

Mr. Nearpass – Is it 80 decibels, five feet from it? Is it 80 decibels, 100 feet from the source? How far?

Mr. Avila – It would have to be at the property line. At their property line, otherwise it's noise trespass, per code.

Chairman Reinhardt – They are responsible for what happens on, in, above, anything in their property. They are responsible for. I agree with you, if it's a lawnmower, it doesn't count. But if it's an automobile, that's what their business is. They are not repairing lawnmowers. So, if it's an automobile, motorcycle, anything that is road worthy, we can go on and on, if you'd like. Anything that requires a license to operate.

Mr. Nearpass – Comes from their property.

Chairman Reinhardt – Comes from their property.

Mr. Avila – Just to give you an idea of what the noise chapter of the Town Code reads, “143-6 (a) says the following shall constitute excessive noise at all times. Bullet point two is the unnecessary creation of sound from motor vehicle including the squealing of tires, racing of engines and playing of electronic equipment including radios audible at 25 feet from the vehicle.”

Mr. Tomlinson – It already would be a violation.

Chairman Reinhardt – It doesn't say anything about the amount of, when you get into the excessive noise then it gets into the problem of well, what you consider excessive isn't excessive to somebody else, but if there's a number to it. And the resident says I was at the property line

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and it register 100 from this hour to this hour. It's not a lawn mower and it was something that had substance to it and Marty goes out there, no we got it, there it is, we listened to it. They said it wasn't going to be over, it was just going to be a brief minute, but it's going on and on. You should be cited for that. Because right now, we are dealing with a bunch of unknowns and a few promises that, no, no, it's not going to happen. But once it's up and running, there's not much we can do about it anymore.

Mr. Colucci – I get that Mr. Chairman and I think from an operational standpoint, that's something that Paul and his team can control. And I don't think that there's any concern that there's some amount of noise that if measured at the property line that you would be put on notice and be able to solve.

Mr. Zelter – Absolutely. I don't think it's going to be any different than any else that happens normally. Meaning you're at a restaurant and somebody comes up on a loud motorcycle that's there for a second. I totally agree. We have a business to run. I want to talk on the phone without having to yell and scream. So we want to keep that level at a norm. But to say that for 5 or 10 seconds something doesn't go beyond that, for that period of time, I'm not going to say it's never going to happen. No different than something firing a car up in their driveway in the neighborhood. It may happen for a split second. If it's something that's continuous, first of all I would deal with it before anybody else got involved in it. Because we don't want that. But to say that it's never going to go over 70-80 decibels ever, that's not, I don't think, real. I think there's going to be very, very minimal spikes that last that maybe a couple of seconds.

Chairman Reinhardt – I think what generally happens is, whether you have code enforcement officers, police officers, if there's loud parties, the restaurants what have you, they make a courtesy call and say look you've had some trouble from the neighbors. They are saying x, y and z. Do you think you could cool it? Sure officer, we'll take care of it and they give you a chance to rectify it. I don't care if it's a restaurant, a hotel or anything else. If a customer is being disorderly, he will certainly have the power and the authority to pick up the phone and call 911 and say they are being disorderly. Please help me. You call the authorities and they help. These residents need something to know that it's just not going to be in their mind, out of control. You get to do whatever you want. I think they understand other things can go there, but with the business that goes there, the repairs, motor vehicles and car shows and whatever it is that may happen their concern is that it's going to be so loud that it's going to disturb people in the final days. It's going to disturb people that live there on a day to day basis. I think they understand that up and down Brace Road, once they are on Brace Road, you really don't have a lot of control over that. They're going to have to call the authorities, but anything that happens on your property you most certainly have control over it and they need to know that. That the Town or the sheriff or whoever will address the problem after you've given a chance to rectify the problem. That's what I'm hearing.

Mr. Zelter – Absolutely.

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Mr. Ego – Matt was just saying 80 decibels measured at the property line is reasonable.

Mr. Tomlinson – I do not anticipate, generated by normal operation of the business. I think that's a fair way to (inaudible)

Chairman Reinhardt – That's what I'm seeing, if it's at your property line and you're at 80 decibels you've got a problem.

Mr. Tomlinson – I really don't anticipate that. Especially for a measureable period of time.

Mr. Avila – And in the event that we did get a complaint at the code office, it would be just like the chairman said, it would be a phone call or a letter figuring out what's going on, if it becomes something that where we were getting repeated calls, then it would become a violation of the zoning code, but that would be something that would we investigate and there's nine factors listed in the code under the noise ordinance that we have to look into or complaints to that. Is it unusual, is it something that's happening on a daily basis, eight hours a day during operating? From a code standpoint I think I'm in agreement with what Matt was saying and what I'm hearing from the board that if we put a number to it, that as long as it's a reasonable number at the property line that something that would be enforceable and something that we could investigate if necessary.

Chairman Reinhardt – Alright, so what I'm hearing is if the conditions were, I'll take a straw poll in a minute, two car shows in September, 80 decibels maximum from any motor vehicle on or in your property, in the building.

Mr. Harter – Measured at the property line.

Chairman Reinhardt – Measured at the property line and the construction of a berm, at the southwest portion.

Mr. Nearpass – I should also add that the condition for receiving the 100 foot versus 1,000 is that it is, I don't know how we want to quantify, but it's a high end car repair, all work is done indoors, so if this changes hands in two or three years and Joe's auto body repair comes in, it would trigger somebody coming in front of us because it's not intended to be used as a traditional auto body repair shop where you're storing cars in various different forms of wreckage out front, where you're working on things out front, not the traditional auto body repair shop that 1,000 feet is really trying to prevent.

Chairman Reinhardt – So, all repairs inside.

Mr. Avila – That's part of the zoning code currently, for this particular use. All work in an auto repair facility.

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Mr. Nearpass – All repairs inside. All work inside. I'll look to you for a recommendation. What would be different, maybe nothing is different? I don't know. As long as I guess, all work is done inside.

Mr. Tomlinson – They have to comply with the same noise conditions as we heard, we have to comply to as well.

Mr. Nearpass – Yes, those would be on a condition. Then maybe we're covered.

Chairman Reinhardt – Anything else, on the conditions?

Mr. Salsburg – Daytime operation only?

Mr. Avila – Hours are set as well in the code, hours of operation. It's 9 to 5 Monday through Friday and 9 to 6 on Saturday. I'd have to verify that. I'm sorry, 7 am to 7 pm, Monday through Friday and 7 am to 6 pm on Saturday.

Chairman Reinhardt – So, the hours of operation per code. You won't need the fourth variance. The first you will only need 150? You're going to be 100 feet from the boundary line? That's what you're asking for?

Mr. Tomlinson – A little inside 100.

Mr. Nearpass – I think you're asking for all of them as is, except for four.

Chairman Reinhardt – Four, OK. Alright. Fred you OK, if this variance is granted with the conditions that we proposed?

Mr. Salsburg – Yes.

Mr. Harter – No.

Mr. Nearpass – Yes.

Ms. Morley – Yes.

Chairman Reinhardt – What else you need to see, Scott?

Mr. Harter – I'd just like to see it go a little further with the Planning Board and see what they come back with in terms of their mitigation measures that they direct the applicant to perform.

Chairman Reinhardt – I think I don't know what the Planning Board is going to do with primarily with the noise issue.

Mr. Harter – I think what the Planning Board will do, I they will take a look at the berm and the grading plan and they will assume a noise generation location and they will assume a receptor location and they will ask you to show a calculation between the two and you can show all the berm functions. And I think that in and of itself goes beyond the study that you provided. I

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think that is a, I can't speak to what the Planning Board is exactly going to ask for you, but if I were on the Planning Board, that's what I would ask of you. I would look at that and I suspect if you do what you say you are going to do, you will be able to show good control. And for me, voting on this that would be a very big positive to this issue that's been, I think, well discussed at this point.

Mr. Tomlinson – I think from that standpoint, the noise generation being so low compared to the ambient noise spikes, I don't know that that berm is going to show anything based on that study any more than the separations that we're providing without it would, but I understand your comments.

Mr. Harter – I guess I come back to we've had a lot of good discussions and we have a generalized plan and once again we've had good discussions, but a little more numerical solidarity I think would help with that one and as I said before I think it helps the board look to the public and justify their vote.

Mr. Nearpass – What's an alternative, we can communicate via our minutes to the Planning Board and you still have to go in front of them and then come back in front of us.

Mr. Harter – And I would be happy to attend the meeting on Tuesday night and reinforce this conversation that we've had with you.

Chairman Reinhardt – So, it's next Tuesday, so they could have the minutes by then? They won't be approved, but at least they could have the proposed minutes. They would see the concerns that we have. I think the direction of where we're going.

What's your proposed dig date?

Mr. Tomlinson – As soon as we get all of our approvals.

Chairman Reinhardt – Sooner, rather than later.

Mr. Colucci – Their lease ends at the end of this year. They are obviously going to have to deal with an extension is what I'm saying. The least amount of an extension is preferable because typically when tenants need an extension from a landlord it's usually not favorable rent. So, our goal is to try to gain the approvals, so there's a time frame on the purchase agreement that's in place that we've had one extension exercised. I'm hopeful the seller will grant us another extension, should we need it, it's up at the end of July, and so that's kind of why we'd like to conclude what we can with this Board. I appreciate Scott's concerns. I think much of those are addressed at Planning Bboard level. And I'm hearing that given the conditions and the phasing back some of these requests that most of you are favorable, so I don't know if you are willing to do that tonight. I don't want to put you in a position to make a decision unless you are comfortable with that.

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Chairman Reinhardt – Well I appreciate that. And, I think with the amount of feedback that we've had from the neighbors and paperwork. They were here tonight, they were here last time. They have some real concerns. If those opinions weren't there, this might be a little bit easier for us. But because they are there, it's a bit of a balancing act and I get the chicken and egg issue and Planning Board and Zoning Board and which comes first and it's a bit of a dance I get that. Do you see anything more that you learned, Matt, if you hear a better direction from the Planning Board?

Mr. Nearpass – Obviously, the Planning Board would be another, I guess, insurance policy that the numbers that we have in the variance are locked in and solid. I'm comfortable with what we've discussed from a sound level. So, I'm OK either way. It's always better to have more data, but I'm also comfortable with what we've discussed over the couple sessions with the applicant. If something else comes up in Planning Board then we can revisit it, too.

Chairman Reinhardt – So if they address some serious concerns that impact our decision on our criteria it might be helpful for us then to be a little more certain on which direction we go?

Mr. Nearpass – Yes.

Mr. Harter – I said it before, I'll say it again, whether it's the Planning Board looking at environmental concerns or it's the Zoning Board looking at neighborhood concerns, we're all looking really at the same thing, so given that we are two boards who represent the same town and given this is a, I would call it a very sensitive application, compared to the ones we normally get such as the three foot high fence or something like that, although I think we gave that a good one, I think that maybe we need to just take a little more careful approach here.

Mr. Colucci – And, I'm comfortable with tabling. I don't want to put you in a position to make a decision that you don't want and wind up having a vote that's not favorable because then we're really not making any progress.

Chairman Reinhardt – I think what I'd like to do is give the Planning Board a clear opportunity that we're close to making a decision. That if they have some real solid concerns that we need to know about then you better say it. Because I think we have and you've done your homework, we have lots of information in front of us. I think it would be helpful if we just had that Planning Board say either we like it, we don't like it or well we're going to wait to see what the Zoning Board does. If that's what they say, then we're going to make a decision next time. I think we're prepared to do that.

Mr. Nearpass – And I think the Planning Board has plenty with what we've discussed tonight and if Scott does attend the other meeting, I think our opinion is well known on Phase 1 and the restrictions and conditions is that we support alongside of it.

Mr. Harter – I don't think we are interested in delaying your project or making it more complicated than it needs to be. I think we have a very sensitive project on our hands, that's all.

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Mr. Colucci – I appreciate that. We're comfortable tabling for feedback from Planning Board and just as a side, Mr. Ego's been up here a couple times talking and I have a relationship with him and if there's something I can do to help him tour the existing facility, ask questions as the liaison to Serenity House and try to put together a meeting at that facility where we can talk directly and he can tour the facility and see for himself.

Chairman Reinhardt – Do you have business cards that you could pass out to the members of the public and say if you ever want a tour, here you go.

Mr. Colucci – Herb knows how to get in touch with me. I know how to get in touch with him.

Chairman Reinhardt – Well that's Herb, but there's other people here that they have concerns as well.

Mr. Colucci – Understood. And, absolutely. I think Paul has said it anyone is welcome to their existing facility, unannounced, show up.

Chairman Reinhardt – You all heard that, if you want a tour of the facility. It sounds like they are open to an opportunity to check the place out and not interfere with business operations.

Mr. Zelter – I won't be there Thursday through Sunday, but you can come anytime.

Chairman Reinhardt – So we have a plan. We'd like to hear from the Planning Board. Our minutes will go to the Planning Board and then next time around, August 5, we'll catch up again. And, if there's any other information that you have for us, we'll take a look at it. Same thing, the public, if there's anything else that you want to add. I don't want to hear the same thing, but certainly if there are other issues that you want to bring forward to us, we'll take a look at, be happy to do so. So, it's August 5.

From audience – Quick question. Just for my application, you're talking about decibels, I don't really know what the sound is, you referenced, lawnmowers. But in theory at the levels that you're talking in various modes of operation a resident on the road like at 1306 or 1316 might hear for a continuous period of time possibly for the whole operating time something equivalent to a hum or a droning sound, that would not necessarily stop, is that true?

Chairman Reinhardt – Well sound is a funny thing. Not funny, ha ha, but again depending on the wind direction, if you're standing probably on this corner, you can hear the thruway. If it's going south to north, you're not going to hear it. It depends. If it's droning noise, how do you know where it comes from? The measure of decibels per code needs to be taken from the property line, so even though you hear it and you could be 10 feet from the property line or 2,000 feet from the property line, the measure is going to be taken from their property line.

Mr. Nearpass – I think to alleviate that. And, correct me if I'm wrong guys, I don't think the applicant has said that or mentioned that there's a piece of equipment that is going to be continuously running, that there may be some bursts of sound from the dyno or whatever it is,

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but there isn't anything that should increase the noise flow over the entire duration of your operation. Is that correct?

Mr. Tomlinson – We do not anticipate any continuous noise levels higher than the sound of traffic on Route 96.

Chairman Reinhardt – So if you really wanted to do some, if you will, investigation, they've offered, this is the second time I've heard them offer. Contact them. Go take a tour. Walk around the building and go to their property line, get a feel. Noise, I get it, it's important. But you have to be careful on, well not in my backyard. We've heard that before so, businesses can go there. It has to fit and it has to be in compliance with the code and we're doing our best to figure out whether or not this business can go there. OK? Got a quick question?

From audience – Real quick. The last meeting that we had it seemed like the hours of operation were going to stay the same. The 9 to 5 Monday through Friday and everyone seemed happy with that and now I'm hearing 7 to 7 plus a Saturday working hours?

Chairman Reinhardt – If the code permits a certain period of time, we can't cut it back further. If they want to do something shorter, that's certainly fine. It's when it happens the other way, when they ask for more than what the code allows is when variances kick in.

Mr. Nearpass – I don't think they've changed their position, I think that they continue to say they are Monday through Friday, 9 to 5, but when we asked the code enforcement officer what's actually allowed, he said 7 to 7 and then 7 to 6 on Saturdays. Correct if I'm wrong, I don't think you have any intention of operating on Saturdays?

Mr. Zelter – I don't want to work Saturdays.

Mr. Nearpass – They haven't changed this position, but the Town allows a business to operate.

Chairman Reinhardt – I think we have a solid game plan. I appreciate your patience.

Mr. Colucci – I appreciate you guys taking a hard look at this. Thank you.

Chairman Reinhardt – Thank you so much for the public for your concerns and thoughts. Very much welcomed. See you in August.

It was unanimously agreed and RESOLVED that the meeting was adjourned at 10:05 PM.