

TOWN OF WARWICK  
ZONING BOARD OF APPEALS

MARCH 23, 2009

Members Present:

Mr. Jan Jansen, Chairman  
Mr. Mark Malocsay, Co-Chairman  
Mr. Norman Paulsen  
Mr. Charles Todd  
Mrs. Diane Bramich  
Attorney Robert Fink

Chairman Jansen called the meeting to order at 7:30 P.M.

CHAIRMAN JANSEN: The first thing we need to do is approve the minutes of the February 23<sup>rd</sup> meeting. We have on correction from page 7, where Mr. McGloin states "They're similar. If you look at the vicinity map, it shows the tax lot 9.1 as site. There are some smaller lots and some bigger lots. The thing about this lot is that it does have two structures on it. And why they were merged is not the Boards issue, but they were merged together for some reason" and it says "after 1995" and it *should* say before 1995, after Mr. Terry owned it. Are there any other additions or corrections? No?

MRS. BRAMICH: I make a motion to approve the minutes with the  
aforementioned change.

MR. MALOCSAY: I second the motion..

CHAIRMAN JANSEN: Any discussion; all in favor?

MR. PAULSEN: Aye.

MR. MALOCSAY: Aye.

MRS. BRAMICH: Aye.

MR. TODD: Aye.

CHAIRMAN JANSEN: Aye.

Motion Carried.

Public Hearing of KASTRIOT RAPAJ for property located at 40 Jersey Avenue, Warwick, New York and designated on the Town tax map as Section 75 Block 1 Lot 21 and located in an SM District for an interpretation of the decision of the Building Inspector that 8 single rooms over a restaurant cannot be rented because the use does not conform to the Code and that their prior legal non-conforming use status has been lost because the use has been discontinued for a period of 1 year or more and that a proposed 4 foot X 5 foot sign does not conform to the Code. **Continued from the 2/23/09 ZBA meeting. Public Hearing closed at the 2/23/09 ZBA meeting.**

CHAIRMAN JANSEN: First item on the agenda, Public Hearing of KASTRIOT RAPAJ. Are you here? No? Okay, then we'll go to number 2.

ATTORNEY FINK: No, no, no. I don't think there were going to show up.

CHAIRMAN JANSEN: Okay.

ATTORNEY FINK: To summarize in so far as the signs were concerned, all though there hasn't been a formal vote, they haven't shown any reason to grant a variance to vote formally on that. More importantly we have the issue with these 8 rooms. Based upon what was presented to the Board it didn't seem there were any issue as the legal pre-existing non-conforming use of those 8 rooms. At some point they were changed or attempted to be changed to something other than just rooms, and those rooms to be changed. To what, apartments? Then the issue arose of the change from just single rooms to apartments. Did that constitute abandonment, or was the change still minor that it wasn't abandonment? That's where we left off. I think it seemed that 2 of the 3 members here thought that, that was abandonment and 1 member questioned it, and that's why we're here tonight. Just to go a little further with that in so far in change of use, let me state some addition cases. There is an Appellate Division Case out of the third department, where there was a commercial enterprise; a Nursery and a Florist shop, where were several commercial things on the property and the owner decided to move the active commercial activities off the property to another location but he maintained a storage facility there and the Zoning Board found that constituted an abandonment. The Court disagreed, stating that although the Petitioner moved the primary location of his business elsewhere in 1988 the record discloses that he continued using at least a portion of the subject property for activities that were similar in nature if somewhat diminished in volume, and intensity to those of engaged in, at the location for approximately 9 years. The court found that wasn't an abandonment, that it was close enough. One of the cases we discussed also that had to do with someone who had a restaurant and bar and changed it into a Bar/Disco. Again the Zoning Board found that constituted abandonment but the Court disagreed. Stating that the fact remains that the pre-existing uses of the Bar continued without cessation and at most this would only constitute a slight a deviation of original restaurant/bar use to a similar type use and the

Distinction between the two uses if one could be found at all would not constitute abandonment. So that is the issue here and admittedly there was a change but wasn't a change to the extent that the original non-conforming preexisting use was abandoned or was the new use so close that it wasn't abandoned.

MR MALOCSAY: If we don't look at that right now but look at this in a different way in that was the proof before us that it has been a continuous operation since a set amount of time that would go back to zoning that would have been 19?? What was the last change before? What year was that 1994? But the question is there and I would think Diane would have to agree that at one point those 8 apartments had been vacant for a period of time. Even though they made testimony at a certain time that there was someone there prior to that they were abandon.

MRS BRAMICH: They were trying to get them out of there. They only showed proof of getting people out of there, not that they were paying, they were transients in there. People that couldn't pay and they were one room, one room. There were no bathrooms in them, there was nothing in them, and they walked down the hall to the bathrooms.

MR MALOCSAY: So the question that I have was there a period time, one year that was not used at all for an apartments and or rooms? In which case they're preexisting, non-conforming, had been abandon and converts back to/or moves to current zoning. In which case it's not allowed.

CHAIRMAN JENSEN: I didn't think that was an issue and I think we would have to review the minutes again if you are raising that specific point, as it seemed to me that wasn't an issue.

MR MALOCSAY: I don't think that was an issue because I hate so see that the first meeting that they were here where they gave a testimony I wasn't here and I never asked the question. But I never saw the question was raised that was there any length of time that there was no one there? People that know that area know that for a length of time that there was nobody in those rooms.

MR PAULSEN How long was the place closed and really totally empty? There was a period there when it wasn't occupied.

MRS BRAMICH: It was quite a long time. The Bar, the Restaurant and the upstairs were empty for almost a year. I would say probably a year. Maybe a couple of months more than that. At one point there was nobody in them. Then there were people in them, and people were just squatting there.

MR MALOCSAY: Is it a reasonable request to ask for, and I don't know if it can be made up or not, but a tax return to show that that was in fact, that they were renting or that there was income for a period of time. I just don't know if somebody can just write something down on a piece of paper and show it to use and we except it ... Is there a way we can ask for this?

ATTORNEY FINK: You can reopen, I see no reason you can't reopen a Public Hearing and ask it for some addition of proof.

MR MALOCSAY: If there was income it's going to have to be shown some place.

MRS BRAMICH: Yes somehow. But it may not be from the owner's of it now. These are new owners.

MR MALOCSAY: Right! But then it would be very easy to show that there was nobody there because they would have to show us some kind of an income or some kind of a tax return that shows that for in fact that they were being rented.

MRS BRAMICH: But that's not the only place that they have that they rent there. So it has to be very specific to over the restaurant.

MR. MALOCSAY: Is it possible to get a hold of the previous owners to find out if there is a length of time?

ATTORNEY FINK: Do you want to subpoena them? You have that power?

MR. MALOCSAY: No I realize that but is there another way besides using the subpoena word?

ATTORNEY FINK: Is there any other way?

MR. MALOCSAY: I was just wondering if anyone knows them.

MRS. BRAMICH: I don't.

ATTORNEY FINK: Are they still there?

MRS. BRAMICH: I don't know but I could find out, I could probably ask around and see if they are.

MR MALOCSAY: Ordinarily we want to move on, we want to have some closure on this but right now it's not affecting anyone if we can just find out the truth behind it. The reason I say this is because I don't know how the vote is going to go if we look at it the other way with what you describe because after the case law I would have to say that I agree with Norm, that this is very close to what it was before. Calling them single rooms or apartments is so close that I would have a hard time saying it's different.

MRS. BRAMICH: A single room to a place that you could make food and have. To me a single room is when you stay over night then you leave. You don't stay there for months and months and months. This is a place that they're going to rent that has kitchenettes, bathrooms, and a place to sleep. It's not a one night thing.

MR MALOCSAY: It's more of an apartment in stead of a motel?

MRS. BRAMICH: Yes. So to me that is quite a big difference.

MR. MALOCSAY: Alright but I also know people who rents motels for a length of time. I'm agreeing with you but I'm also saying it is so close that if it goes to Court....

ATTORNEY FINK: Okay let's find out.

MRS. BRAMICH: Okay, so let me see if I can find out who the owner is. You might have a better chance of finding out thru the Tax Assessor.

MR. MALOCSAY: I'll do that and see what I can find out.

ATTORNEY FINK: What you need to do then is to move to reopen this hearing, and the Town has to be notified, Mr. Hicks as well as the applicant, to look more into the preexisting use before you make a decision.

MR MALOCSAY: Okay.

CHAIRMAN JANSEN: Does everyone agree with that?

MR PAULSEN: Agree to reopen the hearing? Yes.

CHAIRMAN JENSEN: Then there has to be a motion and a vote.

MRS. BRAMICH: I make a motion that we reopen the hearing on RPAJ.

MR. MALOCSAY: I second that.

CHAIRMAN JANSEN: The motion is not open for any further discussion.  
All in favor?

MR. PAULSEN: Aye

MR. TODD: Aye

MRS. BRAMICH: Aye

MR. MALOCSAY: Aye

CHAIRMAN JANSEN: Any opposed? Motion carried.

**PUBLIC HEARING OF CHARLES & GRACE BRACK** – for property located at 4 Wisner Court, Warwick, New York and designated on the Town tax map as Section 36 Block 2 Lot 23 and located in the SM District for a variance of Section 164.41A.(1)(b) allowing an existing accessory building less than 5 feet from the side lot line.

**Continued from the 2/23/09 ZBA meeting.**

**CHAIRMAN JANSEN:** The Public Hearing of Charles and Grace Brack continued from the 2/23/09 ZBA Meeting, are you here?

**MR. BRACK:** Yes.

**CHAIRMAN JANSEN:** Okay.

**MR. MALOCSAY:** If I may, I believe we left off with not really having a map that would show give the relief and to give any kind of variance or any kind of relief to give. So we looked at the option moving the shed closer to the house which we found more of a fire hazard, that's why it's suppose to be 10 feet away and that's why they put sheet rock in it because its closer than the 10 feet. So with that I would be willing to make a motion to grant it using the neighbor's survey at the 2.7 feet, I believe?

**ATTORNEY FINK:** We don't have a survey.

**MR. MALOCSAY:** If we find that this is not accurate than the applicant realizes that he is going to come before us to ask for another variance. But in the mean time we cant give him a variance because we don't know, so if we give him a variance for 2.7 feet and if he finds out it is anything different he will have to come back before us.

**MR. PAULSEN:** Is it 2.4 or 2.7?

**MR. MALOCSAY:** We could ask for a survey to be accurate, but to ask for a survey is something and the cost is pretty substantial.

**CHAIRMAN JANSEN:** Are you satisfied that there is even a violation?

**MR. MALOCSAY:** Yes.

**CHAIRMAN JANSEN:** Why? The building inspector looked at what was reported to be the neighbor's survey that's not a survey.

**MR. MALOCSAY:** Alright. If you make the measurements its pretty close to what it should be looking at to what the Building Inspector has, the distance to the house, the size of the shed and then the distance of the property.

CHAIRMAN JENSEN: How do you know where the line is? From his house up to the shed?

MR. MALOCSAY: We don't know exactly.

CHAIRMAN JANSEN: We don't! So how can you say there is a violation?

MR. MALOCSAY: We can deem this as just that and therefore he doesn't have to be before us at all.

MRS. BRAMICH: How can you do that?

ATTORNEY FINK: I don't know where it has been shown that there has been a violation?

MR. PAULSEN: I don't know either, so just let it go and if the neighbor wants to come up with survey and prove it than that's that. Is that reasonable?

MR. MALOCSAY: That's reasonable to me too, absolutely.

MRS. BRAMICH: So you're going to use the neighbor's survey? You're not going to use any survey?

MR. MALOCSAY: No, no.

ATTORNEY FINK: Show me a survey in the file please.

MRS. BRAMICH: How can you do it without a survey? How can you grant it?

MR. MALOCSAY: How can he make a complaint without a survey?

CHAIRMAN JANSEN: We still have this open to the public, right? I don't think we closed this one. Do you understand what we're saying? You being the neighbor, the one being the most affected by this do you understand what we're saying?

MR. BRACK: I didn't hear what you were saying.

MR. MALOCSAY: Okay. We at this point we cant really show that there is volition because we do not have a stamped survey showing that this shed is where the shed is said to be.

MR. BRACK: The property was re-surveyed. But it's not stamped, it's a worksheet.

MR. MALOCSAY: If we have a stamped survey from you at least then we could see about giving the relief or denying the application before us. But without a stamped survey we are only taking a guess.

MR. BRACK: I can certainly get that stamp, I talked to the man that did it, and he'll stamp it.

MR. MALOCSAY: Okay.

MR. BRACK: In three months.

MR. MALOCSAY: Honestly thought we've had this discussion and we said we really can't use it because its not, and I was hoping we could do. or give you a variance for the 2.7 of what that shows.

MR BRACK: No I understand.

MR. MALOCSAY: But the Board doesn't seem to want to give that so in which case he is going to have to provide that.

ATTORNEY FINK: Wait, if you want to provide the survey we can certainly continue this. You don't have to come back and give us a hardship on your end.

MR BRACK: I'll get the survey stamped and get it to you.

MR. MALOCSAY: Okay, you heard the Board. Do you really want to do that?

MR. BRACK: Sure.

MR. MALOCSAY: And you think the Board won't grant the variance?

MR. BRACK: I don't know? I don't think that they should. As far as I'm concerned the variance should be for a hardship but not this one.

ATTORNEY FINK: No that's not what the laws impeaching.

CHAIRMAN JANSEN: We will continue, how much longer do you need? A months, two months?

MR. BRACK: Probably a week. What I sent in is a survey but it's not working. It needs to be stamped but it's a survey.

ATTORNEY FINK: We can come back again.

MR MALOCSAY: Alright.

MR. BRACK: Thanks.

ATTORNEY FINK: Move to make ajurn and we'll continue it.

CHAIRMAN JANSEN: Motion by Diane to continue, Seconded by Norman. Any discussion? All in favor?

MR. PAULSEN: Aye

MR. TODD: Aye

MR. MALOCASY: Aye

MR. JANSEN: Aye

MRS. BRAMICH: Aye

CHAIRMAN JANSEN: Motion carried.

**PUBLIC HEARING OF GERALD TERRY** – for property located at 9-11 Upper Hillman Road, Warwick, New York and designated on the Town tax map as Section 22 Block 1 Lot 9.1 and located in the RU District variance of Section 164.40N allowing and existing 20,257 square foot lot with 2 existing dwellings to be subdivided into 2 lots; proposed Lot 1 being 11,550 square feet and proposed Lot 2 being 8,707 square feet where the minimum lot area is 174,240 square feet and allowing variances for minimum lot with, depth, front yard, side yard, both side yards and rear yard for the existing dwelling on each of the proposed lots. **Continued from the 2/23/09 ZBA meeting.** Granted with conditions.

MR MCGLOIN: I don't think anything has changed. Other than I got a letter from Techtonic and reviewed it. Basically when the Terry's took title to the property it was one parcel. The exact date when it was changed I don't know. The Terry's took title to the property in 2006. The deed I got to survey the property was in three parcels. Okay and it was already merged into one tax lot, so it didn't make any sense not to describe the entire parcel as one unit because it had already been noted. The exact date when it was merged, I don't know. Back to the 1996 date that was in the minutes, there is a tax map and I went back through and it's dated 1995, and it shows it as one. But that in itself does not prove when it was merged, because sometimes it takes time for the tax map people to change the maps and show the mergers. Sometimes several years.

ATTORNEY FINK: Did you get the correspondence?

MR MCGLOIN: Yeah I got them, from Techtonic. I'm sure if it gets beyond this point that will be taken care of at the Planning Board level.

ATTORNEY FINK: Yeah.

MR. MCGLOIN: That's really it.

ATTORNEY FINK: Do we have any other questions for John?

MR. MALOCSAY: Did you figure out what all the variances were that you needed?

MR MCGLOIN: I'm not sure about that because again I don't know if we were clear as to whether this was preexisting.

MR. MALOCSAY: I really gave it a lot of thought on the preexisting small lot, and it's a preexisting small lot and these are the requirements for it because we are subdividing a preexisting small lot. But it still makes it a preexisting small lot; I don't see how we can change it. We're not making it a conforming lot.

MR MCGLOIN: But its not preexisting you have two new lots.

ATTORNEY FINK: The only thing that you're actually creating...

MR. MALOCSAY: I'm sorry I tried doing this several different ways.

ATTORNEY FINK: But that's the whole point. You have a lot that is preexisting and it's smaller than normal that you have different bulk requirements. Right?

MR. MALOCSAY: Right.

ATTORNEY FINK: And now you're making a brand new two lots.

MR. MALOCSAY: Umm Humm.

MR. MCGLOIN: If you start with a preexisting small lot I don't know how you could divide.

ATTORNEY FINK: And what happens if you want to do it again? I don't know agree with you but its up to the Board.

CHAIRMAN JANSEN: Here's where I come from with this. Is that the side yards around the outside of the existing parcel, the rear yard and the front yard do not change. What you're creating is the two new side yards in-between the parcels as well as new total side yards. But the front yard and the rear yard remains the same.

ATTORNEY FINK: Yes all dimension have to, can I make this suggestion? Lite on the consensus, but if the consensus is to grant it, why don't you take it before the Planning Board and determine exactly where the boundaries are going to be, and what the dimensions are and the Board will officially grant it and it wouldn't be any issue.

MR. TERRY: Go with the Planning Board end.

ATTORNEY FINK: You're going there anyway.

MR TERRY: I was there already. I'm here because I was there first.

CHAIRMAN JANSEN: Alright but you have to go back now?

MR. TERRY: I'll have to go back, yeah after. The boundary line, they were fine with it the way it was shown on the Planning. They sent me here because it didn't conform to area to start with. And you are creating two new lots and reducing

the lot area by creating the two new lots. The other things they really were unclear about, that's why I'm here. It's strictly an opinion I don't believe that they felt that the outside, just the way I stated it, was changing. What you're doing by putting a line down the middle is creating new non conforming side yards.

ATTORNEY FINK: It doesn't matter. If you subdivide a lot, everything has to conform and what doesn't conform you have to get a variance for it. It doesn't matter that the houses are still there.

MR TERRY: I realize that.

MR MALOCSAY: It's just a technicality

MR TERRY: I understand. So if that the case we need a variance for everything on this list.

ATTORNEY FINK: If you're happy and the Planning Board is happy with just an area variance.

MR TERRY: No I don't think that's the case. I think a side yard and a total side yard.

MR. MALOCSAY: The other conditions are preexisting. That's their perspective.

ATTORNEY FINK: Okay, but I don't agree but I don't have any problem with it.

MR MCGLOIN: Why don't you agree with it?

ATTORNEY FINK: Because the zoning law says everything has to conform. All dimensions have to conform, in order to subdivide. If they don't conform you have to get a variance for the non conforming items. If the Planning Board doesn't care and you don't care...

MR TERRY: You're saying that you want everything all on this list.....

ATTORNEY FINK: I think that would be proper.

MR MCGLOIN: It probably the best thing to do.

MR. MALOCSAY: So let's do that. That's no problem.

CHAIRMAN JANSEN: Because that's the worst case scenario. I don't think coming back here is good for anybody. It doesn't make any sense; you know that's the worst case scenario. It would be for I don't think anything. So lets do it right the first time.

MR. TERRY: Okay.

CHAIRMAN JANSEN: Do you have any other issues?

MR MALOCSAY: We should open up to the public if there is any concerns.

CHAIRMAN JANSEN: Is there anyone from the public to address this application? Yes? Please come on up and give us your name for the record.

My name is Barbara Attompson-Welch.

MRS. WELCH: I had lived on 16 Lower Hillman Road since 1990. At the time I had moved into the house Mr. Swartzberg had that property. And my concern is the new double property having two septic and two wells. Is it going to affect in any way my septic which backs up to that particular property. Would you like to see this?

MR MCGLOIN: Sure.

MRS. WELCH: Okay. This is Mr. Terry's new property and mine is behind it.

MR MCGLOIN: Your spastic and will are where?

MRS WELCH: My well is behind his wall. You see where it says chain linked fence?

MR MCGLOIN: Yes.

MRS. WELCH: That's my property and after the chain linked fence is my driveway. And at the top of my drive way is my well, and that backs up to Mr. Terry's property.

MR. MCGLOIN: Now this has been and existing septic field for..

MRS. WELCH: Yes, since 1990.

MR. MCGLOIN: Okay.

MRS. WELCH: Yes and it was put in by the people who lived there before me.

MR. MCGLOIN: Right. So has there been a problem?

MRS. WELCH: No, but there hasn't been two sets of people living there. Mr. Swartzbergh lived there alone and his daughter visited in the little guest house periodically in the summer. Then Mr. Terry has lived there and rented it out but there has never been two sets of people living in what will now be two houses.

MR. MCGLOIN: But the other house has its own septic.

MRS WELCH: I know. But is going to cause pressure on my property and are they coming too close to where my well is.

MRS BRAMICH: How far away is your well?

MRS. WELCH: I'm sorry I don't have that figure.

MRS. BRAMICH: I'll show you where it is.

MRS. WELCH: Right here is the driveway, up here is the well. Right there.

MRS. BRAMICH: Okay.

MR. MALOCSAY: I have a question relating to that. The existing septic and wells, they all me the set back requirements now?

ATTORNEY FINK: We don't know exactly where they are.

MRS. WELCH: That's my next question.

ATTORNEY FINK: There are the wells where they are. The septic location are approximate based on testimony. The house I believe have been occupied at least until recently. For at least a year or two years separately. But with full occupancy. I'm sorry I'm asking MR. Terry.

MR. TERRY: The well in the front one of these lots was drilled recently.

ATTORNETY FINK: Confirming from the Town to separate them so they each has their own water supply. But they were still drawing the same amount of water. And putting that water into the septic systems, when it was full occupancy, which has been about ...

MRS WELCH: 2006 was the purchase of the property. Before that it was Emily Marrel and Susan Martin in 2003.

ATTORNEY FINK: Were they occupied full time, or not at all.

MRS. WELCH: Mr. Swartzberg passed away and then there was no one in there until 2006 permanently.

ATTORNEY FINK: My question goes back to is – can you show on there set backs for septic and well with the other properties?

MR. TERRY: Wells I can't, septic I can. Because I can't see underground.

ATTORNEY FINK: No what I'm saying is can a septic system be put in regardless of where the system is now. Can the septic and the wells be put in and meet the setback requirements?

MR. TERRY: I don't believe so. I don't think that could happen because of the size of the lots and because of the size of the lots around it and because of the slop of the ground. Restrictions are as such that a 200 foot separation is nearly impossible.

ATTORNEY FINK: Okay would you agree then, I really don't think the Board should hear anything else unless the Planning Board can show us that in fact that's the case, that it can work before we subdivide the property.

MR. TERRY: What the Planning Board was purposing to do if we in fact we got beyond this Board was to do dye tests on the septic systems that are there. The feeling was why go further and go thru that effort until there is the possibility to do the subdivision. They can deny it.

ATTORNEY FINK: All I'm saying is that if we grant this variance and subdivide the property and they there is an issue with the well and septic and set backs, ordinarily we see it and everything is fine. We didn't hear that from the Planning Board we were just looking at area variances. And I am not comfortable subdividing a property that the neighbors are going to end up having a problem, might have a problem with the well and septic.

MR. PAULSEN: When they do the dye test, for lack of a better term without negative, you can do whatever is necessary to move on farther?

ATTORNEY FINK: Yes and the Planning Board is not going to allow an approval to something that not in the best interest of the public. There not going to do

it. That's really my perspective. That's their place, to make sure that the septic system and the wells are functional. And if you look in the minutes of the Planning Board it does say if you come back you will have to do this stuff. You will have to do dye tests to prove everything is okay, based upon the bedrooms that are there. Even though they had it occupied for two years, with rentals and themselves. It would have to be proven and presented before the Planning Board before they would let it go further. I don't believe they can pass anything unless it meets those standards. That's where I'm coming from. I'm just one person on the Board and I don't know how everyone else feels about it.

MRS BRAMICH: I just asked Bob and said how we can do that and pass something that we don't even know that is going to work. I cant see that.

MR. PAULSEN: This septic and well is really beyond our jurisdiction. Its Planning Board and takes a hearing.

MRS. BRAMICH: No but we are giving relief for something we don't know if its going to work. But we have the chance to find out if its going to work.

ATTORNEY FINK: What your doing is granting certain variances for area and set backs. And that's the only issue that you're addressing. If the wells and septic don't work then they're not going to be able to subdivide. Its just as if you have property that formed in the first instance and you wanted to subdivide it and you met all the criteria, but if you cant make your well and septic work your not going to get subdivision approval. So in essence it's the same thing.

MR. TERRY: So we can go ahead and do it subject to.

MRS. WELCH: Besides my house which is here next to me facing Upper Hillman is Mr. Bell and he is the most recent of the homes in that area. This was an empty lot for many years, Mr. Bells' property. So his well and septic is also a part of that configuration. So its three people involved in an area now that was only two.

MR. TERRY: Unless it works with the well and the septic we would not be party to approval.

MRS. WELCH: Okay I just need to be sure of that.

MR TERRY: Any decision will be subject to that, but that is in the hands of the Planning Board. So none of our plans are finite until they get all of their results in and they approve that it will work.

MRS. WELCH: But I was never aware of the fact that another well was put in and I really feel that I should have been made aware of that because my well is in a certain place and another well was being put in and all those things are relative to

each other. That particular area is very close. There are many places where there are bigger pieces of land.

ATTORNEY FINK: Any time they do a well in the Town they have to get a permit to do the well.

CHAIRMAN JANSEN: Mr. Terry did you obtain a permit to drill the well from the Building Inspector?

ATTORNEY FINK: In my only other injection is that even if these lots are not separated by a physical boundary line the condition and their use and the number of people that are using them is going to remain the same. Be it tenants or individual owners. Even if this does not get approved you can continue this use the way it is unless there is a violation. I would like to put that out in front of you.

MR. TERRY: I understand.

MR. MALOCSAY: I was going to bring that up because I agree one hundred percent, but I have to disagree with what Bob said on the approvals by the Planning Board. The questions were asked could the setbacks be met. Looking at the size of the lots and where the other places are the answer is no. So therefore I didn't know the Planning Board would give relief from a well, septic, setback. But if its existing it is not an issue. But by us creating two lots to me, it does become and issue. What John had said was this does exist the way that it is right now. And that were the case then no variances were needed before us and I don't even see a reason they have to be before the Planning Board to review any thing with the well and septic unless there is a violation.

MR TERRY: I'm not sure I follow your consent.

MR MALOCSAY: If they don't subdivide than the well and septic is not an issue before the planning board.

ATTORNEY FINK: Correct.

MR MALOCSAY: Unless there is a violation.

ATTORNEY FINK: Correct.

MR MALOCSAY: So by us subdividing it I see it becoming and issue that can it be met that the well and septic have a set back.

ATTORNEY FINK: If they can't and they don't have the power to vary that then they can't subdivide. First of all we can't grant any variance for Health Regulations. So if they don't have the ability to grant some type of waiver from them, then they legally can't subdivide it. Moving back, if this was conforming but then couldn't

meet the health regulations they couldn't subdivide. I'm not sure that your concerns are relevant to the particular issues before the Board. Those are issues the Planning Board has to deal with.

MR. MALOCSAY: So we asked the question and the Planning Board hasn't look at it yet on the setbacks.

ATTORNEY FINK: Mr. Barrlett would be very upset.

MR. MALOCSAY: Can we write them a letter then and find out?

ATTORNEY FINK: This is what they deal with.

MR. MALOCSAY: I realize that but I don't know how long it was before the Planning Board and I don't know how much of it was....

ATTORNEY FINK: Believe me, Techtonic they are not going to miss that question. We can highlight the fact that we realize we are not granting any variances ect, ect, I mean they're not going to miss that issue.

MR. MALOCSAY: Can I ask you another question then? Pre-existing non-conforming small lot. We're looking at it as a new application or has it conformed with the current code because if we're subdividing it, its two new lots, aren't they?

ATTORNEY FINK: Yes

MR. MALOCSAY: Two new lots would then have to conform with the well and septic.

ATTORNEY FINK: I don't know powers the Planning Board or the County Health Department has to vary these items. I don't.

MR. MALOCSAY: If we are looking at it as two new lots I could see the Planning Board can only look at it as two lots meeting up and they can't use a pre-existing well and septic that are not conforming.

ATTORNEY FINK: Now you're apples and oranges. Whether its preexisting small lot under a code or not it's totally irrelevant as to well and septic.

MR MALOCSAY: But we're creating two new lots, that's what you said. And if we're creating two new lots we have new well and septic that we have to deal with that have to conform.

ATTORNEY FINK: No we don't the Planning Board does.

MR. MALOCSAY: That's why I'm asking you, if we don't have to deal with it we have to make sure the Planning Board knows that if we're creating two new lots, those lots have to conform with well and septic.

CHAIRMAN JANSEN: It will be in the minutes. But John you have something else.

MR. MCGLOIN: Yeah I'm going to read the last paragraph, I could read the whole thing but its lengthy. It was a letter dated March 3, 2009 from Zen Welczak one of the consultants for the Town. The last paragraph states: "Existing separation distance between existing wells and septic absorption fields do not meet New York State D.O.T separation distances for new construction. However since the dwellings are pre-existing the Planning Board is considering requiring a septic dye test for each septic system and portable water test for each well. The ZBA may make additional requirements as part of their finding." That's the letter that was sent to you guys.

ATTORNEY FINK: First of all we need to insist that the do the dye test.

MR. MALOCSAY: I think the point is irrelevant.

ATTORNEY FINK: I don't think its irrelevant.

MR. MALOCSAY: I do. We're looking at what Bob said and we're look at two new lots.

ATTORNEY FINK: Our discussion is for new lots and pre-existing lots had to do the bulk area requirements and they had nothing to do with septic and well. The nomenclature of it, the new lot, and the pre-existing lot is totally irrelevant as to the issue of septic and well in the zoning sense.

MR. MALOCSAY: The use is now increased by this application

ATTORNEY FINK: That's a whole other issue.

MR. MCGLOIN: I agree.

CHAIRMAN JANSEN: Water and septic use should theoretically be the same.

MR. MALOCSAY: They way I'm looking at it is we're creating two new lots and the well and septic should conform to new lots and only from a stand point of setback requirements.

CHAIRMAN JANSEN: Then you get into setback, separation distances.

MR. MALOCSAY: Exactly.

CHAIRMAN JANSEN: Not part of our deal. That's the Planning Board. That's the Planning Board's function. That's not your function.

MR. MALOCSAY: Just voicing my opinion, only one.

CHAIRMAN JANSEN: Anyone else from the public wanting to address this application?

Yes Jason Pitingaro, I'm the President of the Home Owners Association for the development here.

MR. PITINGARO: Beyond Barbara's concerns, her valid concerns for her own health. I know there were some concerns from the members of our community last time. I wasn't able to make it last time, but I know there were some concerns regarding the subdivisions of the property. We are in agreement that we are okay with what's going on. We are okay with the subdivision of the lot but one thing we would like to ask is that as a condition of the approval is that the new lots and their deeds be subject to joining the Homeowners Association. It's a condition of all the lots in the development already.

ATTORNEY FINK: This is a public road isn't it?

MR. PITINGARO: No its not it's a private road. We just want to make sure that any future owners of those lots are understood. Because there is some dispute among other homeowners not this particular parcel but where they feel that they are not obligated to continue to maintain their road. So I don't know it that should be addressed at the Planning Board? Whoever is going to have a condition of what's being put in the deed?

MR. PAULSEN: Even If we cant put it in you can send it to the Planning Board.

MR. MALOCSAY: Well I have a question. Is there some reason...?

ATTORNEY FINK: There's not a request for at 288 variance here?

MR. TERRY: Because its not in construction.

MR. MCGLOIN: Its existing.

MR. MALOCSAY: Was it asked for? Could we at least talk to the Planning Board now with a couple of concerns before we make a decision? John are you ready to give us all the numbers for the front yard, side yard, rear yard set backs?

MR. MCGLOIN: I could read them now, its not very difficult. As far as joining the HOA I don't really know if that is a matter of this Board's decision to deal with that.

CHAIRMAN JANSEN: Of making the join the HOA, because this has nothing to do with us.

MR. MALOCSAY: Isn't that an irony on all the lots. Probably not,

ATTORNEY FINK: I don't think so. Do you have it in your deed that you were forced to be a member of the HOA?

MR. PITINGARO: Anybody buying an existing house in that subdivision are required to join. We figured it would be a simple as a note on a client.

ATTORNEY FINK: A 288 is not an issue, because they are existing buildings. I don't think there is a problem with putting a notation on a map that states, and then again, this could be done on Planning Board level, that the property is on a private road that is only maintained by a Home Owners Association just to give notice to any proposed purchaser that that is the case. I don't know if any of the Boards can do anything legally binding with an HOA.

MR. PITINGARO: I just thought it would be sufficient.

ATTORNEY FINK: But I think that that needs to be a map note, and it could be addressed at the Planning Board level, that's my opinion. Just remember what we just said incase it does go further and it does get a variance and gets approved and goes to the Planning Board cause that's really the place to make that statement.

CHAIRMAN JANSEN: Okay anyone else from the public? No? If not Public Hearing is closed. Mr. Fink?

ATTORNEY FINK: Is this is going to create and undesirable change to the character of the neighborhood or be detriment to the near by properties?

MR TERRY: No because they are already existing.

ATTORNEY FINK: Can the benefit itself of the applicant be achieved by any other method.

MR TERRY: No.

ATTORNETY FINK: The only other issue would be property.

MRS. BRAMICH: Property, yeah

ATTORNEY FINK: Are these substantial variances?

MRS. BRAMICH: Yes

MR. TERRY: Yes

ATTORNETY FINK: Is this going to have an adverse affect or impact upon the physical or environmental conditions in this district?

MR. MALOCSAY: We don't know.

ATTORNEY FINK: We don't know but you going to make conditions and the Planning Board will say that it wont but you will be setting forth those conditions. With the conditions is it fair to say that it wont? As long as the conditions are met.

MR. PAULSEN: Techtonic is going to make sure its good.

MR. MALOCSAY: Alright what are we talking about the conditions? What conditions?

ATTORNEY FINK: The dye test. And that there is not going to be an impact on the neighbors well.

MR. MALOCSAY: So there going to have to do a well test?

MRS. BRAMICH: A well test and dye test.

CHAIRMAN JANSEN: Potabilitly test is what you're talking about right?

ATTORNEY FINK: Oh you not talking about volume chemicals or volume or anything like that?

MRS. BRAMICH: You can't control the volume.

MR. MALOCSAY: Is this a self created difficulty?

MR. TERRY: Yes.

CHAIRMAN JANSEN: Does someone care to move this type and list of actions and diverse requirements.

MR. MALOCSAY: So moved.

CHAIRMAN JANSEN: Motion by Mark. Second?

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: Second by Diane. Any further discussion? All in favor?

MR. PAULSEN: Aye  
MR. TODD: Aye  
MRS. BRAMICH: Aye  
MR. MALOCSAY: Aye

CHAIRMAN JANSEN: Any opposed? Motion carried.

CHAIRMAN JANSEN: Movement to be granted as advertised with the following conditions. Well you need all these setbacks right?

ATTORNEY FINK: The setbacks will be supplied to me and a decision will await that. A written decision.

MR. MALOCSAY: Okay. I may have questions about how to develop a lot but I'll discuss that with you.

CHAIRMAN JANSEN: What other conditions? Dye test, septic, potability. Is it just your well that's impacted or it is your neighbor's well also?

MRS. WELCH: I don't know about Mr. Bell's. I don't know.

CHAIRMAN JANSEN: So we don't know about Mr. Bells but we'll put it in here for now anyway.

MR. MALOCSAY: In other words the condition is going to be that the water be tested on adjoining properties? Is that what you're saying?

MRS. BRAMICH: How can you do that?

ATTORNEY FINK: Why not?

MR. PAULSEN: What happens if they come up negative and decide not to subdivide?

MR. MALOCSAY: Unless there is a violation issue, then everything stays exactly the same.

ATTORNEY FINK: You're talking about a potability test now not pump test. But a potability test on who's wells?

MR MCGLOIN: On the lady up there.

MR. MALOCSAY: As long as you're asking for those tests then is it unreasonable to ask for a test for the neighbors to make sure that they are not affecting the wells of the two properties.

ATTORNEY FINK: That's what we're looking at.

MR. MALOCSAY: No, we're only looking at the septic of the proposed subdivision.

ATTORNEY FINK: Then I wasn't clear. That's exactly what I said. Whose wells are you checking potability on?

MR. MALOCSAY: Okay.

MR MCGLOIN: We are also doing a dye test on the applicants septic and that's it.

MRS. BRAMICH: They're saying no. They're saying on Mrs. Welch's well.

CHAIRMAN JANSEN: Mrs. Welch's well should be tested also.

MR. MCGLOIN: If is her coli form it's not a big thing. But she is going to have to allow access. It's not an expensive test. The problem is that when you do a coli form test the contamination could be coming from anywhere. That's where you start running into an issue. But is may not just be coming from uphill, it could be coming from anyplace.

MRS. BRAMICH: John what is the lay out of this land? Is it flat land, is it hilly land?

MR. MCGLOIN: No it's sloped.

MRS. BRAMICH: Who's on the hill?

MR. MCGLOIN: The Terry's are on the hill and it slopes down toward the lake.

MRS. BRAMICH: The Terry's are below the Welch's?

MRS. WELCH: No, my name is Welch and I am below the Terry's property.

MRS. BRAMICH: He's higher? Okay.

MRS. WELCH: Upper Hillman is his property line; his address is Upper Hillman mine is Lower Hillman. As the water from East Ridge Road rushes down on both or our properties and then we have the lake on the other side of the street from my property.

ATTORNEY FINK: Can you identify from the vicinity map exactly what lots we are taking about that are to be tested? Here is the subject property.

MRS. WELCH: He's nine? Is he eight or nine? He's nine.

ATTORNEY FINK: Nine.

MRS. WELCH: Okay and I am Lower Hillman. I'm right here, I must be seven.

ATTORNEY FINK: You're seven?

MRS. BRAMICH: She is seven and Mr. Bell is twenty-nine.

MRS. WELCH: Mr. Bell is right there.

ATTORNEY FINK: Seven and Twenty-nine?

MRS. BRAMBICH: Yes seven and twenty-nine.

MRS. WELCH: Now in addition to Mr. Terry's property there is someone that connects to him.

MRS. BRAMICH: But that doesn't matter we didn't give him a letter.

MRS. WELCH: These are the two people I'm concerned with, you don't quit understand. I got a letter, and they are adjacent and they did not get a letter.

MRS. BRAMICH: You have to get a letter in this area.

MRS WELCH: They did not, because I asked Mr. Bell, he did not get a letter.

ATTORNEY FINK: Who did the mailings? We did right?

MRS. WELCH: The only other person would be David Williams; he is the other person on the other side, the far right. I'm sorry but these are all relevant issues to this particular situation.

ATTORNEY FINK: What I do have to say is that I go back to one of my statements that I said earlier. By putting a physical boundary between these two lots are we increasing the use on the well and septic system? We are getting beyond what I am here for. I'm here for a physical boundary line with setbacks, with a pre-existing condition where the water use and the septic system, the effluent that is going into them should remain consistent. You had X amount of bedrooms in each dwelling. There are no records of violations from the Building Department on anything here.

MRS. WELCH: There were not two bedrooms before.

ATTORNEY FINK: Okay but it has been used this way for a period of time. A year and a half?

MRS. WELCH: I don't know if there had been people in both houses at the same time. I haven't kept track of that.

ATTORNEY FINK: They were. I know they were up until a couple of months ago because I was there taking photographs.

MR MCGLOIN: This tenant left two months ago?

ATTORNEY FINK: Mr. Terry was living in the other house so it was occupied and being used. The wells and the septic systems by numerous people not one individual. So again by creating a physical boundary you're not increasing the use of water and the amount of effluent discharge in those septic systems. It is faced downhill and as I said before if test a well and out that there is cali in it. It tests positive; it could be coming from anywhere, not necessarily from the applicant's well or septic system, in this case septic system. So how far do you go? How far do we test when there is no violation and there have been no complaints as far as septic and well from the applicant?

How much do we do here when we are putting a physical boundary in and not creating more water?

MR. MALOCSAY: Are you going to say the same thing to the Planning Board?

ATTORNEY FINK: Yes I am. I don't know how far I'm going to get.

MR. MALOCSAY: I understand what's before the Board and I understand the setback requirements but I also understand that we are creating two new lots. These new lots we need the variances as what he requested. But the question is raised as to the well and septic. And the engineer himself says it does not meet the setback requirements, so is there a reason now for us to deny the application? I don't know, I would really like to hear more from the engineer and having some tests done.

ATTORNEY FINK: My statement is that the engineer would say also that if we did not put this physical boundary line in here the Town has nothing to do with anything. And no one asks for tests or whatever because the use is not changing and there are no violations. That's my argument because that will not be increasing the use of water an effluent by putting a physical boundary to these lots. So they'll test it.

MR. MALOCSAY: I'll say that to the Planning Board too. What they're going to say, I don't know.

CHAIRMAN JANSEN: There is more work to be done. Do you want us to go forward?

MR. MALOCSAY: Yes we will that's fine.

CHAIRMAN JANSEN: Okay, what else do we have?

ATTORNEY FINK: We have two lots that we want to test on. Seven and Twenty-nine. Is that it?

MRS. BRAMICH: Yeah.

MR. MCGLOIN: Yes.

ATTORNEY FINK: Alright so then the motion has been made as advertised with the conditions stated. Mr. McGloin is going to get the setback to us, we're going to get dye tests, caliform tests is going to be on lots seven and twenty-nine. Any other conditions?

CHAIRMAN JANSEN: Then motion.

MR. PAULSEN: I motion.

CHAIRMAN JANSEN: Norman seconds it.

MRS. WELCH: I'm sorry I have a question. Who pays for the testing?

MR. MALOCSAY: The applicant. Oh there was one other also that had to do with the note, subdivision note as to the HOA.

CHAIRMAN JANSEN: I have a motion. Do I have a second?

CHAIRMAN JANSEN: Norman made the motion, seconded by? Can I have a second?

MRS. BRAMICH: I second.

CHAIRMAN JANSEN: Motion was seconded, end of discussion. All in favor?

MRS. BRAMICH: Aye.

CHAIRMAN JANSEN: Any opposed?

MR. MALOCSAY: Wait that one no vote.

CHAIRMAN JANSEN: Aye, aye, aye. No this is just the well. I'm making an aye so we are three to two. Norman do you vote for the variance?

MR. PAULSEN: Yes.

**PUBLIC HEARING OF BRIAN J. & MELISSA SING #2** – for property located at west side of Briller Road, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 75 and located in CO District for a variance or interpretation of Section 164.22 Open Development Area to allow a 2 lot family residential subdivision to be accessed by a private road within the CO District.

CHAIRMAN JANSEN: Again please identify yourselves for the record.

MR. MALOCSAY: Item number four?

CHAIRMAN JANSEN: Item number four they're not going to be here and asked to be removed today.

MR. MALOCSAY: The next one and I just want to check with the Board members that I understand there is a conflict of interest and if the Board feels differently I'll stay out of it and be quite.

CHAIRMAN JANSEN: On which one?

MRS. BRAMICH: On Singer.

MR. PAULSEN: Why is there a conflict of interest?

MR. MALOCSAY: I do land clearings and the possibility that I might be doing the clearing for them.

ATTORNEY FINK: Then you should vacate the podium.

CHAIRMAN JANSEN: Okay lets proceed.

GARY GOLDSTIEN: Good evening, Gary Goldstein for Mr. and Mrs. Singer. We are back again. This issue that has been presented to the Board this evening was informally presented to the Board back on October 27<sup>th</sup> of '08 by Luke Charde, Phyllis Briller's attorney and it deals if whether or not a variance is needed for a seventh lot for Mr. and Mrs. Singer 2 Lot subdivision application that's pending before the Planning Board. At the request of the Planning Board attorney this variance application was filed to get a determination from this Board to see if even whether or not the variance is required, and if so, for the granting of the variance. Now I know back in October 27<sup>th</sup> Mr. Fink had indicated that based upon his review of the Code he couldn't find any authority for the position that the subdividing the two lots would require a variance for the 7<sup>th</sup> lot.

ATTORNEY FINK: Can someone tells me where it the code it says, I mean, I realize there are two specific, cluster type subdivisions. It specifically says that. That doesn't apply with 164.41.1 and .2. But that doesn't apply hear as far as I can see.

MR. GOLDSTIEN: Correct, and I don't see anything in the Code either. I think the Planning Board is sending us here basically in determination from an interpretation from the Board that the variance actually is not required.

ATTORNEY FINK: I don't think so. I think they take the position it is and too presumably we grant the variance that would be one thing. But when looking at the definitions and ODA. No, it does say in there the definition of an ODA both in our Code and in 280A; it speaks of and open development area. It's District wherein Lots in new subdivisions and land where a common right of way, in place of a public road upon special applications to in review and approval by the Planning Board. Subject to such limitations and conditions as may be prescribed by general or special rule of the Planning Board under 3280A. Is this their position, there some kind of limitation or condition as prescribed in the general or special rule of the Planning Board. Is that their position? I don't know.

MR. GOLDSTIEN: All we know is what was prescribed at the first two section points of sequel dash 22 Town Code for public development area.

ATTORNEY FINK: Okay, and do they have a special condition that would apply here?

MR. GOLDSTIEN: I don't know. As far as we know they do not.

CHAIRMAN JANSEN: Do I detect that we have Planning Board members here? Perhaps someone from the Planning Board could help us out here.

ATTORNEY FINK: There are six lots existing. They want to subdivide one of the lots, which would make a seventh lot, and they were sent here by the Planning Board because somehow this violates the open development area provision and definitions in the Code. And we just wonder what this is violating. Where in the Code does it say that? That's all we want to know.

ZEN: At our initial application we've had this discussion. Examples are Buttermilk Falls Road.

ATTORNEY FINK: Oh but this wasn't because we made a mistake before we have to continue.

MR MCGLOIN: The section that John Bollenbach is referring to I don't see anything there that could.....

ATTORNEY FINK: Wait, its going to come to the horse's mouth.

CHAIRMAN JANSEN: Deadly silence.

MR. MCGLOIN: Do you want me to just address the issues why I think it is required; why I think it should be?

CHAIRMAN JANSEN: No, lets here it from the Planning Board.

ATTORNEY FINK: Please.

ZEN: There is a section of the Code, where, and this is not it, but there is a section in the Code where we had very separate body that refers back to Town Law. New York State Town Law. And New York State Town Law it has an open area development which is defined that you have no area development road, you can have no more than six houses on it. We have had subdivision over in Amity called Old World Estates, which were eight lots on a private road. We had to send that to the ZBA for a variance because you can only have six lots on a private road according to that section of Town Law.

MRS. BRAMICH: So the variance would have been for the extra lot.

ZEN: Yes anything over six lots.

MRS. BRAMICH: Has to have a variance.

ZEN: There is some threshold for that I'm sorry that I'm not finding the exact thing. But I remember we had this whole big discussion with John Bollenbach about this.

MR MCGLOIN: I think the Old World Estates was different because that was a new subdivision.

ZEN: Yes

MR. MALOCSAY: This isn't older?

ATTORNEY FINK: It was specifically provided for them before 4140 was due. Also I have 280A which mirrors.

ZEN: Well 280A you don't have an access turn.

ATTORNEY FINK: Well this Open Development Area is defined in 280A by the subdivision forms their verbatim.

MR. PAULSEN: Where is an Open Development Area now?

MR. MALOCSAY: Well it's a subdivision.

MR. PAULSEN: Is it like a cluster development?

MR. MALOCSAY: No.

ZEN: Before you had zoning you could have an Open Area Development.

ATTORNEY FINK: Its part of a 280A variance. It's a separate variance with specific provision within section 280A which allows the Planning Board and the Town Board to grant this without there having to be a variance from the Zoning Board, for 280A that in essence is what it is.

ZEN: I don't know if it was in the letter that John had sent?

ATTORNEY FINK: No.

ZEN: That would be my best hope, give me one second.

MRS. BRAMICH: So the only thing that's before us is that they need a variance for the extra lot.

MR. PAULSEN: That for sure or do you or is it a 280A?

ZEN: The 280A was granted.

ATTORNEY FINK: Yeah. The Planning Board apparently is looking for a separate and distinct variance from this requirement where it can't be more than six lots. In cluster developments yes.

ZEN: Actually they're not cluster developments its called common tie way which is different from a private resident.

ATTORNEY FINK: This is not a cluster zone.

ZEN: It's also in the conservation density subdivisions.

ATTORNEY FINK: Right. 41.1 And 41.2. Perhaps John could tell us by the next meeting what development that is.

MR. GOLDSTEIN: He did previously I think in the letter to the Board back in June, yeah September 17<sup>th</sup> he wrote a letter. That's when he referred to section 164-1. I have that and he feels it might be required under that section but I don't see it, and why I think its what the Boards interpretation could be, so our interpretation of the Code is that its not required.

ATTORNEY FINK: My own feeling is if that the Board Attorney believes that it is, and I know I have that letter, he cites the definition; definitions of sections, but I certainly would be uncomfortable overriding the Planning Board with out giving the Planning Board the opportunity to be more specific as to why they believe this should be. Mr. Bollenbach perhaps copied you with whatever his authority is and it might not necessarily come to this. That's my suggestion to the Board.

MR GOLDSTEIN: Let me just clarify he stated that the open development area was the reason for us to come here. He said to have the ZBA to clarify that, that's why they sent us here.

ATTORNEY FINK: No, I think they're looking for more than clariforifaction. I don't feel comfortable with this Board overriding what the Planning Board considers to be the Zoning Law unless they are given the opportunity to tell us specifically why. I don't think that letter was what we need.

CHAIRMAN JANSEN: Okay so we will...you're in front of that part right now. Right?

MR. GOLDSTIEN: Yes and I guess their application's on hold pending the granting of this variance, if in fact it's needed.

ATTORNEY FINK: When is the next meeting ?

MR. MCGLOIN: If there is a next work shop it would be two weeks from tonight.

ATTORNEY FINKS: Unless the Planning Board comes up with something we don't' see where it applies.

MR. GOLDSTEIN: So you're saying that you can't give a vote off for tonight anyway because in effect it would almost be granting a variance that's not required?

ATTORNEY FINK: Yeah, kind of caught between.

MR GOLDSTEIN: Right.

ATTORNEY FINK: It's just the species of 280A where by the Planning Board can grant the relief of homes being on a private road. The applicant doesn't have to come before this Board. That's in essence what it is. It's within the 288 section.

CHARIMAN JANSEN: So right now we don't see any reason why they should be here?

MR. GOLDSTEIN: By stating that the three letters that John Bollenbach sent. It cost a lot of money for the activity.

ATTORNEY FINK: It will be done by the next meeting. And unless there is something definitive in the correspondence, I would suggest that it probably not even necessary for you to come. I'll communicate with Mr. Bollenbach.

MR. GOLDSTEIN: Please pin point specifically what it is we are asking for relief for.

ATTORNEY FINK: Yes, exactly.

MR SINGER: We're looking for somewhere in that Code that states that I need to come to the ZBA.

ATTORNEY FINK: For a variance?

MR. SINGER: For a variance, right. And I'll sign that definition.

MR. GOLDSTEIN: We're looking for that from Mr. Bollenbach, really just to get a clear explanation of how a second home can support as far as the second lot.

CHAIRMAN JANSEN: Okay let's open to the public. Anyone from the public then that would like to address the application? You want to say something?

MR MALOCSAY: Yeah, I'm really confused because this is the only Board that has the power to interpret what was presented to you.

ATTORNEY FINK: We don't know if its interpretation though, Mark. He could point to the Code and say "look we just aren't aware of it."

MR. MALOCSAY: But it said on the application that it was an interpretation, an interpretation as for variance.

ATTORNEY FINK: Right but we haven't found it but Mr. Bollenbach may be able to point out to us why we should interpret it that he needs a variance. This

Board ultimately is the one that is going to do it but certainly if the Planning Board feels that they need it.

MR. MALOCASY: On the applicants behalf though if John Bollenbach didn't provide what you're looking for I don't understand why you can say no it's not needed and let them know that so they can go back to the Planning Board. You're just asking John to give them more information and hold up for another month. I think he gave you some information; the Board can look at it and say, "We don't think so, it's an interpretation, and we don't see it" and leave it at that.

ATTORNEY FINK: The Board can vote but my recommendation is we certainly don't want to make a finding contrary to what Planning Board thinks the Zoning Law to be without giving the Planning Board the opportunity to point it out to us why we're wrong.

MR. MALOCSAY: I don't think this should go on it that has something else and you have to send it back. At least they could move forward. But I don't think you can do anything before the Planning Board. I'm asking the Board members, and you heard it if he didn't give you anything then vote on it now and John Bollenbach decides there is something ... "Oh this is what I wanted" ....or something else, he can send it back to the Board.

ATTORNEY FINK: No he can't. We voted on it. He can bring, the Planning Board can bring an article 78 against the Zoning Board.

MRS. BRAMBICH: May I ask a question? How many people, how many cars are allowed on a private driveway?

ATTORNEY FINK: Driveway or road?

MRS. BRAMBICH: On a shared driveway.

ATTORNEY FINK: By zone?

MRS. BRAMBICH: Yes.

ATTORNEY FINK: I don't see anything in the Code that limits it, either than if a Cluster Development, then I see the Code specifically limits it.

MR. MALOCSAY: There is about three that I know of, one of them is a Cluster the other one that we have is Denton Lane, it's a private road which is no more than nineteen.

ATTORNEY FINK: That's in the Code?

MR. MALOCSAY: Yes. Denton Lane, in fact the last application was a question of and brought up making sure that there no more than nineteen lots off a private road.

ATTORNEY FINK: Where in the Code is that?

MR. MALOCSAY: I know it's in there.

ATTORNEY FINK: But you can only have nineteen lots?

MR. MALOCSAY: Yes a maximum of nineteen lots off a private road.

MR MCGLOIN: Because for twenty you need two entrances.

ATTORNEY FINK: Well that's different. Now you're talking about the subdivision regulation, or no that's apples and oranges.

MR. MALOCSAY: I just know there are restrictions on the size or on the number off lots off a private road.

ATTORNEY FINK: Yeah with a single entrance, absolutely.

MR. MALOCSAY: Okay.

CHAIRMAN JANSEN: Okay anything else? Motion to adjourn?

MRS. BRAMICH: Yes.

CHAIRMAN JANSEN: Motion by Diane. Second? No one wants to second anything?

MR. MCGLOIN: I'll second.

CHAIRMAN JANSEN: Thank you. Meeting adjourns.