

TOWN OF WARWICK
ZONING BOARD APPEALS

JUNE 22, 2009

Members Present:

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

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

CHAIRMAN JANSEN: Okay we need to approve the minutes of the March 23rd minutes.

MRS. BRAMICH: I make a motion to approve the March 23, 2009 minutes.

CHAIRMAN JANSEN: Motion to second?

MR. PAULSEN: Second.

CHAIRMAN JANSEN: Norman has second. All in favor?

MRS. BRAMICH: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

MR. MALOCSAY: I don't think I was at that meeting.

CHAIRMAN JANSEN: I think that's the one you couldn't get. Then we had the April meeting. Okay can I have a motion to approve the April meeting?

MR. MALOCSAY; So moved.

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: Motion is second. Any discussion?
All in favor?

MRS. BRAMICH: Aye.

MR. MALOCSAY: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried. We are up to speed. Okay we are going to skip over the first item on the public hearing, and start with the second one.

PUBLIC HEARING OF DENNIS KEELY – for property located at 82 Sleepy Valley Road, Warwick, New York and designated on the Town Tax map as Section 31 Block 2 Lot 68.2 and located in the RU District for a variance of Section 164-41.C(4)(f) permitting a 6 foot wooden fence in the front yard setback where fences are limited to not more than 4 feet in height.

CHAIRMAN JANSEN: Please identify yourself for the record and tell us why you need that 6 foot fence.

MR. KEELY: I'm Dennis Keely and I did submit the reasons why I need the fence.

CHAIRMAN JANSEN: In your words why do you need the fence?

MR. KEELY: Well I to garden in my front yard a lot and I have severe scarring from the war, and I like garden with just a tank top on sometimes and shorts and I need my privacy. That's my personal reason.

CHAIRMAN JANSEN: And deer?

MR. KEELY: Also a lot of deer come in, yeah. They could jump a 4 foot fence easily, you know. I spent a lot of time out there planting trees and shrubs and whatnot. Also the traffic problems have become really something. People are driving very fast on Sleepy Valley Road.

MR. BRAMICH: I didn't hear that.

MR. KEELY: People are driving really fast on Sleepy Valley Road. Its suppose to be a 30 mile an hour speed limit and its not untypical for people to be coming down Sleepy Valley Road at 50 miles an hour or more. I said in my application when I first moved to Warwick in 1986 I was in my driveway taking something out of my car and someone came up Sleepy Valley Road on a motorcycle and hit the utility pole in front of my house and almost hit me. So that is when I decided I needed a fence.

CHAIRMAN JANSEN: So Is your fence in the public right of way?

MR. KEELY: No.

CHAIRMAN JANSEN: The public right of way is what, fifteen feet?

MR. PAULSEN: Twenty five.

CHAIRMAN JANSEN: Twenty five from the center of the road? Is it within twenty five feet of the road?

MRS. BRAMICH: I can't hear, I'm sorry.

CHAIRMAN JANSEN: Is it within twenty five feet of the center of the road?

MR. KEELY: Yes.

MRS. KEELY: It is yes. But what I was going to say is that it is not a fence that is straight across the property. It is kind of sectioned lower then it comes in so that you are a full car length in from the road.

CHAIRMAN JANSEN: And you put it against the plantings?

MRS. KEELY: We actually took down the plantings that were in front. There were pictures actually. We took them. Yeah we did of the sides of the fence and the front. We did have plantings in front of the fence.

MRS. BRAMICH: It is there now?

MRS. KEELY: It is there now. It was actually a replacement fence and it was put up in October of last year. The last one was 6 feet, I was going to say 5 and one half maybe because I think they had built it and the posts were 6 feet. So it gave the impression of a tall fence

MR PAULSEN: How long has that one been up?

MRS. KEELY: That one had been up for years.

MR. KEELY: A good fifteen years.

MR. PAULSEN: I don't know what the Zoning was before. To know if it would be grandfathered or not.

CHAIRMAN JANSEN: It doesn't matter.

MR. PAULSEN: Okay.

MRS. KEELY: The big reason really is because he landscapes and it is the one thing he can still do and enjoy, and he is self conscious about it. So privacy issues are primary. There have been other things that have happened as well, that has been explained in terms of the traffic on the road. There are a lot of bottles being thrown from cars these days against the sign that is in front of our property, that smash. So it kind of keeps the glass and the rubble, whatever, in fact there was a little notation of all of this from us. The deer was just an aside in terms of as just from keeping the deer out.

CHAIRMAN JANSEN: How far off the road would you say there is a distance?

MRS. KEELY: The furthest part or the part closest to the road.

CHAIRMAN JANSEN: The part closest to the road.

MRS. KEELY: I'm terrible with that.

MR. KEELY: Four feet maybe, four feet, five feet?

CHAIRMAN JANSEN: I mean is it going to be a responsibility of the Town if they plow and it gets knocked down?

MR. KEELY: No, they never knocked the old fence down. And it's actually a little further away then the old fence was.

CHAIRMAN JANSEN: Okay let's open this up to the public. Is there anyone here from the public to address this application? If not public hearing is closed.

MRS. BRAMICH: Does this fence go all the way around the property?

MRS. KEELY: It is the front fence that we are talking about.

CHAIRMAN JANSEN: Anything behind the house is not....

MRS. BRAMICH: I understand that, but that's not my reason for asking. You have a basic fence that goes around the whole property?

MR. KEELY: Not around the whole property, I would say about $\frac{3}{4}$ of an acre.

MRS. BRAMICH: So this is not going to keep the deer out.

CHAIRMAN JANSEN: Yeah because this is a $\frac{3}{4}$ of an acre enclosure. The whole property is more than $\frac{3}{4}$ of an acre.

MRS. KEELY: The whole property is 4 acres.

MRS. BRAMICH: This isn't what I asked.

MRS. KEELY: This is the garden area.

CHAIRMAN JANSEN: They are not concerned about summit.

MRS. BRAMICH: Yeah they are, because they just said the fence is there to also prevent the deer from coming in.

CHAIRMAN JANSEN: Right, and that is why it is enclosed $\frac{3}{4}$ of an acre, which is around their house.

ATTORNEY FINK: Four sides.

MRS. BRAMICH: Thank you.

MRS. KEELY: The fence was actually to keep our dog in, when we got a puppy.

MR. KEELY: This is a side garage access.

MR. MALOCSAY: I kind of missed that. Where is the fence?

MR. KEELY: The wooden fence is back here and goes around the side.

MR. MALOCSAY: It goes there? Okay.

CHAIRMAN JANSEN: Okay, any questions?

ATTORNEY FINK: Now the concern is, is it in the right of way of the Town.

MR. PAULSEN: It looks to be about half the distance, half the width of the road back from there.

ATTORNEY FINK: Yeah.

CHAIRMAN JANSEN: Well you guys put it on the thing that the Town is not liable if the thing gets plowed down by a heavy snow.

MR MALOCASY: You are right but what we have done in the pasted we have asked though on the fences is we usually ask for some kind of a screen to break up like the one on 17A.

CHAIRMAN JANSEN: So trees and shrubbery outside of it would be....

MR.MALOCSAY: Yeah, but the thing that is interesting is that it is that much closer to the road though, because it is in the right of way, but anything to break up looking at the fence.

ATTORNEY FINK: But I don't know if it is in the right of way. If this is correct it looks as though the fence is on your line. Is that right?

MRS. KEELY: It is on our line.

ATTORNEY FINK: And I am assuming that there was a taking at some point so the right of way goes to the line.

MR. PAULSEN: No wait a minute, no just wait a minute.

ATTORNEY FINK: Well the road, not the road of course.

MR. PAULSEN: Wait; let me look at the drawing. It's not on the road, these two...

ATTORNEY FINK: Oh I see, now I see. Yes it is in the right of way.

MR KEELY: That's how I see it.

ATTORNEY FINK: It is, it is, it absolutely is in the right of way. I didn't see that either. I thought the fence was the heavy line.

MRS. KEELY: Can I just see that the right of way is?

ATTORNEY FINK: The right of way goes to your property line.

MRS. KEELY: Goes to our property line?

ATTORNEY FINK: That is correct.

MRS. KEELY: Okay.

MR. PAULSEN: You can look on the map.

MRS. BRAMICH: Since this is on Town property it's a right of way from the road.

CHAIRMAN JANSEN: This is your property and this is where the fence is, so it would be on the property line.

MR MALOCSAY: So should we just put down that the Town is not responsible, for damage in case of....

ATTORNEY FINK: At any time of screening to break up the fence.

MR. PAULSEN: How big a deal is it to move it back?

MRS. KEELY: It would be a big deal to move it back.

ATTORNEY FINK: Out of curiosity what brings you do the Board? I know that you applied for a building permit. Why did you apply for a building permit?

MR. KEELY: Actually we didn't.

MRS. KEELY: We didn't know we needed a building permit.

MRS. BRAMICH: And you are in violation because of where it is?

MRS. KEELY: Because of the height of the fence. There was always a fence there, for years since 1980 something. The height of the fence. That was the issue.

MR MALOCSAY: It's not on their property. Have you seen it? Do you think the Highway Superintendent should take a look at it?

MR. PAULSEN: Yeah.

MRS. BRAMICH: I don't know. It's on Town property.

CHAIRMAN JANSEN: We could ask him to take a look at it yeah. It is a problem then we will talk to him about it.

MR MALOCSAY: We can ask him the question about the possibility of getting some screening in front of it, if there is room or if they think it will be too close.

ATTORNEY FINK: That's some kind of feedback for the next meeting.

MRS. BRAMICH: Yeah.

ATTORNEY FINK: That's fine.

CHAIRMAN JANSEN: So we will stop this hearing and reopen to the public hearing, but apparently none of the neighbors are that concerned.

MR. MALOCSAY: Okay yeah, I think that would be best.

MRS. KEELY: Okay, so the next meeting we have to be present for or.....

CHAIRMAN JANSEN: You don't have to be.

MRS. KEELY: Okay.

ATTORNEY FINK: Whatever I get or Connie gets we will pass that on to you as soon as we get it. And it can be faxed but you have to call 1st right?

MRS. KEELY: I'm sorry?

ATTORNEY FINK: It can be faxed to you but ...

MRS. KEELY: Yes.

ATTORNEY FINK: Its phone/fax but you have to telephone first, and you'll have to set it up.

CHAIRMAN JANSEN: Okay, then we'll continue. Next item on the agenda Milosh and Sherry Bukovcan.

PUBLIC HEARING OF MILOSH AND SHERRY BUKOVCAN – for property located at 33 Big Island Road, Warwick, New York and designated on the Town tax map as Section 16 Block 1 Lot 17.13 and located in the RU District for a variance of Section 164-40N reducing 1 side set back from 50 feet to 44 feet 5 inches where 75 feet are required for the purpose of extension of a master walk-in closet on and existing single family dwelling.

CHAIRMAN JANSEN: Go ahead and tell us what you want to do.

MRS. BUKOVCAN: Well actually we built our house about 27 years ago, and at that time the closets in the house were very small. Then we put in central air and the sleeves of the central air took up half the closet. So we have a very small space in all the closets in the house. So we thought if we just added on in the Master bedroom it could help us to put our clothes or have more comfort in the house. To benefit from. The side that we are expanding is the side where my sister lives, our neighbor next door, and they have no objection to it.

MRS. BRAMICH: The master bedroom is downstairs?

MRS. BUKOVCAN: No they are upstairs, on the second floor.

MRS BRAMICH: So you're building out on the upstairs and downstairs.

MRS. BUKOVCAN: No just coming out a little from the second floor. It's a post. It was approved by the architect.

ATTORNEY FINK: What is the size?

MRS. BUKOVCAN: Of the closet?

ATTORNEY FINK: Of the out side dimensions.

MRS. BRAMICH: I'm not sure. Does it say there? Well my husband normally takes care of this and he is out of town, so I don't know.

MR. PAULSEN: It's coming out here right?

MRS. BUKOVCAN: On the side of the house, yes. It doesn't come out by thirty. Maybe 5x10? Do you think that much?

ATTORNEY FINK: That little square?

MRS. BUKOVCAN: Yes.

MR. PAULSEN: Oh the little square.

MRS. BUKOVCAN: Yes.

MRS. BRAMICH: Thirty is the house.

MRS. BUKOVCAN: It's not that size, no.

ATTORNEY FINK: The reason for my question is, the Board is supposed to grant the minimum variance. This closet is smaller.

MRS. BUKOVCAN: Well to honest with you actually no, because going thru the expenses of expanding it we wanted it to be at least a decent size that is worth doing it.

ATTORNEY FINK: That's great but what is the size?

MRS. BUKOVCAN: You know you go 2 feet or 4 feet you pay the same amount. So that is the reason if we are going to do it we may as well do it a good size.

MRS. BRAMICH: It the Master Bedroom this whole piece that comes out here? Is this the Master Bedroom? Here is the closet.

CHAIRMAN JANSEN: What is seven inches long?

MRS. BUKOVCAN: The Master Bedroom is here.

MRS. BRAMICH: Is there any reason why you couldn't.....

MRS. BUKOVCAN: Well apparently we couldn't because what we want to do is just exactly on a side just like a closet, go a little bit out. And the way that the architect measured it, he said that would be the most effective way. Less costly and just not to mess up the shape of the house. That's all.

CHAIRMAN JANSEN: He didn't do a very good job giving us dimensions. Its says here 5.7 foot.

ATTORNEY FINK: Past the 50 foot buffer.

CHAIRMAN JANSEN: Right.

MRS. BRAMICH: Yeah.

MRS. BUKOVCAN: Well as I said that is the side my sister lives on and they have no objection of that.

MR MALOCSAY: If I may, there are two other things we always look at, well three things, because we ask if there is any additional property bought or someone else living near that has a problem. I'm going to follow up and ask the Building Inspector because this addition doesn't come any closer then the house is now. And usually the Building Inspector doesn't see that it is an encroachment upon the....

CHAIRMAN JANSEN: But it does come closer.

MRS. BRAMICH: It comes closer.

MR. PAULSEN: It does come closer, Mark.

MRS. BRAMICH: It has too.

MR. MALOCSAY: Okay, if this is the road and that is the corner of the house, which is the closet point to the road, isn't this further away?

CHAIRMAN JANSEN: We're not talking about the road.

MRS. BRAMICH: We're talking about the side line.

CHAIRMAN JANSEN: The side line.

MR. MALOCSAY: Oh, okay, alright, good. I was looking at it.... Okay the 50 feet is now 75 feet, is the front yard setback for this area. So I was looking at that in comparison to the side yard. But what I was going to say is the next question is that in the old zoning, that was 50 feet.

CHAIRMAN JANSEN: Yeah but now its going to 44.7. So now its 5 foot 7 inches.

ATTORNEY FINK: I see what you're saying it doesn't meet the minimum set back.

MR. MALOCSAY: Okay and the 50 foot over here are new. The old code was, I think it was 30 feet, or 35 feet. But what we have to look at is the character of the neighbor with the homes and on this street there are a lot of homes that sit closer than this one is at the 44 feet 5 inches.

CHAIRMAN JANSEN: I don't think that has anything to do with the character of the neighborhood. It's a minimum variance.

ATTORNEY FINK: This is the 50 feet right there. There's the old end road. This thing is 300 feet or 200 feet.....

MR. MALOCSAY: Okay.

CHAIRMAN JANSEN: They're asking for 5 foot 7 inches.

MR. MALOCSAY: Yes, on one side. What I'm saying is, if you drive down the road that there are a lot of houses.....

CHAIRMAN JANSEN: Wait we haven't even got to that, its only feet. Okay does anybody have any more questions? Public Hearing is open is there anyone from the Public who wants to question this application? Public Hearing is closed. We are looking for a 5 foot 7 inch variance.

ATTORNEY FINK: Reduction from 50 to 44 five.

CHAIRMAN JANSEN: Right. Is there no other questions? Mr. Fink?

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

MRS. BRAMICH: No.

MR. PAULSEN: No.

ATTORNEY FINK: Why?

CHAIRMAN JANSEN: Because the neighbor who owns the property next door doesn't have a problem with it. And there are other houses on that street who have a much narrower side way.

ATTORNEY FINK: That was an objection that one word says detriment to near by property owners that was the one.

CHAIRMAN JANSEN: That was the neighbor.

ATTORNEY FINK: Can it be achieved by any other feasible method?

CHAIRMAN JANSEN: You know it could be moved up forward, but then it wouldn't be next to the bedroom, so why would you want to do that?

MRS. BRAMICH: Or at all.

CHAIRMAN JANSEN: That doesn't necessarily make it work because of the windows and stuff.

ATTORNEY FINK: Adverse affect or impact to environmental conditions?

CHAIRMAN JANSEN: No.

MRS. BRAMICH: No.

ATTORNEY FINK: Self created?

CHAIRMAN JANSEN: Yes.

MRS. BRAMICH: Yes.

MR. MALOCSAY: Yes.

ATTORNEY FINK: We actually this is one; because it is a single side setback, by law its type 2. So we don't have any radical issue there. Would someone care to move that it be granted as advertised?

MR. MALOCSAY: So moved.

CHAIRMAN JANSEN: Motion by Mark. Second?

MRS. BRAMICH: Second.

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

MRS. BRAMICH: Aye.

CHAIRMAN JANSEN: Any opposed? Motion carried.

MRS. BUKOVCAN: Thank you so much.

CHAIRMAN JANSEN: Thank you.

MRS. BUKOVCAN: Can you tell me what would be the next step?

ATTORNEY FINK: The decision will be in, in just a couple days and Connie will actually have it before it is even signed.

MRS. BUKOVCAN: They will notify us?

ATTORNEY FINK: You can assume she is going to have it within two days.

MRS. BUKOVCAN: So I can call up?

ATTORNEY FINK: You can call her and go in and take your application for the building permit.

MRS. BUKOVCAN: Thank you very much.

CHAIRMAN JANSEN: Okay anybody here from Rapaj? No? Okay. Mary Ellen, come on up.

OTHER CONSIDERATIONS:

1. **Mary Ellen Riccardo** – ZBA to discuss the Mary Ellen Riccardo Subdivision ZBA application as to whether or not to deem the application as abandoned.

CHAIRMAN JANSEN: If you could just update the Board on as to where you are.

MRS. RICCARDO: Okay, I brought an Engineer with me. So he can tell you the update.

ENGINEER: Recently about within the last month eight additional holes were dug in the septic area. Tectonic visited the site and approved all the holes. All the changes that the Planning Board wanted last time have been made on the Plans already. The septic system plans are about eighty percent done. Based on those results that the perk test was approved and witnessed there was a, I don't know what happened. We did the perk test and they were there, and we said....

ATTORNEY FINK: Excuse me you see now, none of that really matters. Do you know the variances you need?

ENGINEER: Yes it's just the bulk of the lot, four is required.

ATTORNEY FINK: Okay, but it's not the same as the variances that you requested before. It's exactly the same?

ENGINEER: Yes the same.

ATTORNEY FINK: Okay, but are you sure?

ENGINEER: Yes it meets everything else. The side yard, the rear yard, back yard, the size of the...

ATTORNEY FINK: I honestly forget what was the variance you requested before?

ENGINEER: To change to four acres per lot, and the whole lot is six, and there are two lots. So one is not three and three but they are both less than four.

ATTORNEY FINK: Yeah but are they the same size as before?

ENGINEER: Yes.

MRS. BRAMICH: Not from my drawings, no. They're different from my drawings.

ATTORNEY FINK: What we're going to need is this is going to have to be readvertised, so if you would just file with Connie a copy of what it is you want to do. It should be on your copy the variances you need. Do you have an extra one that I could take now or not?

ENGINEER: I could give you this one.

MR. PAULSEN: How far are those poles?

ENGINEER: What I need from you is an extension, so I can go back to the Planning Board.

ATTORNEY FINK: You can act on this now if you know what you need.

ENGINEER: The Planning Board was going to approve before we came back here.

ATTORNEY FINK: No they're not. They're not going to approve it until you have your variance.

ENGINEER: Well that's not what they, that's not what, as we said we have to get it approved as buildable lot. That's why this could never be done. That's the order.

ATTORNEY FINK: You don't have to wait for that you could go forward.

MR. MALOCSAY: I would much rather have an approved set of plans first.

ENGINEER: Then its one issue, one issue that the Planning Board, that the lots include the road. They go into the middle of the road. So I would imagine that the Planning Board would be interested in taking that piece of property in front and putting it on to the right way. Which would then change, slightly the calculations of what the variance would need? You are talking about a couple of thousand square feet. That's the one issue I can see. They expressed interest in it.

MR. MALOCSAY: I'd rather that go before the Planning Board.

ENGINEER: The next Planning Board submittal is tomorrow. I can't physically get everything. It would be on the next agenda. We will be on the agenda, I don't know when they're going to have it.

ATTORNEY FINK: Alright so just for calendar purposes we'll put it over for 3 months.

ENGINEER: They will have meetings, I know they're going to have meetings. They will take some of the summer ones.

CHAIRMAN JANSEN: Motion to accept the 3 months?

MRS. BRAMICH: Three months.

CHAIRMAN JANSEN: Motion to second?

MR. MALOCSAY: Second.

CHAIRMAN JANSEN: Motion is second. All in favor?

ATTORNEY FINK: Aye.

ENGINEER: Thank you very much.

MRS. RICCARDO: Thank you.

CHAIRMAN JANSEN: Anything else? Motion to adjourn?

MRS. BRAMICH: No.

MR. MALOCSAY: No.

Public Hearing or Kastriot Rapaj – for the 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 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 4/27/09 ZBA meeting.**

ATTORNEY FINK: I went over all the minutes again, and let's see if I can summarize it. This originally came to this Board based upon Mr. Batz's letter of September 8, 2008 to the applicant saying the Building Department can not grant you a building permit to remodel eight rental rooms above your restaurant as these rooms are non-conforming to the current Town of Warwick Zoning Ordinance and have been vacant for over 3 years. And the proposed restaurant sign exceeds the prior size limitations in height requirements, that it may be sought by applying to the Zoning Board of Appeals. And a variance was not requested, and interpretation was requested. As far as sign there was a resolution passed denying any relief in so far as deeming this to be non-conforming. So there is no issue to the sign. Now as to the interpretation, that was the February 9 meeting. This first issue as I see it is this property was purchased by the applicant in May 07', and there were tenants there. Is this an issue as to whether or not there has been a year laps of tenants during the current applicant's ownership of the property, and I believe it was shown and conceded by Mr. Hicks, thru the court documents that in fact there had been occupancy there. And that a year had not elapsed. In fact he was trying to get the people out. So as I read the minutes, I don't think there is an issue as to whether or not more than a year elapsed with no tenants there. With this applicant. The second issue I saw was the use of the tenants, was it ever legal? According to Mr. Batz's letter it was legal at that point for eight single rooms above the restaurant. So the lease says as of January 01, the Building Department recognizes it as being legal. Then the third issue was what the preexisting legal use? Transient tenants, and I believe that is what everybody agreed the legal use was, as of January 01. Then the next issue I say was, was use of the premises and tenants discontinued for more than one year, between 01' and 07'. There was no proof by the applicant that it had been continuously

occupied that there was no year lapse. By the same token I don't think there was any conclusive proof that there had been a lapse. This is then is who has the burden of proof, and it would be the applicant. The last issue was, but let me back up a minute. It was also a question as to whether or not Mr. Batz's letter referred to this vacancy for over a year, pre the applicant buying the property in 07' or after. That's ambiguous. It's not clear based on the letter. The last issue was if you were to assume that there had not been a termination of use for more than a year, during the entire period, it would appear from the record that it had changed from transit use to apartment use so that there was a conversion of a non-conforming use to another non-conforming use and did that in itself make the one year. There is case law on that and to summarize it very briefly: If the change in use is rather dramatic there is no question about access to surrender the previous use. If the change in use is rather similar then the courts are generally held that that is not enough to constitute a change in use. This Board considered that particular question in one of the previous meetings and one of the Board members, there were only three present, one of the Board members felt it was sufficiently close so it didn't constitute a termination of the use and two of the Board members seemed inclined to think that it wasn't close enough. But then the Board remained more concerned with whether or not the prior non-conforming use was showing to not have existed from 01' when the applicant bought it in 07', and that's, I believe where the Board was hung up on. In addition as to whether or not there was this sufficient change, and that's where we are.

CHAIRMAN JANSEN: Well I don't think the applicant have given us anything that that six year spread the place was working.

MR. MALOCSAY: We specifically asked a question and there was no proof.

ATTORNEY FINK: Exactly. I think the applicant was asked that question. I think the record shows that they said that they didn't know, and that they didn't know any way to comply. Then the application was continued and the question as asked again.

MRS. BRAMICH: You were also saying if I heard you correctly that going from a single room to an apartment is not a large enough change?

ATTORNEY FINK: No I didn't say that, that was voiced by someone on our Board.

MRS. BRAMICH: It is.

ATTORNEY FINK: Well you thought that it was.

CHAIRMAN JANSEN: But Norman said no.

ATTORNEY FINK: And Norman didn't think it was.

MR. PAULSEN: I don't think it was.

MR. MALOCSAY: I was on the fence with it as far as the use, but I didn't want to spend a lot of time on it, because I truly felt that they lost what they had because there was lack of proof that a continuous use from 2001.

MR. PAULSEN: How long did this guy own it?

ATTORNEY FINK: He bought it in May 07'.

CHAIRMAN JANSEN: Yeah but there is a six year period. I guess you can call the previous owner up.

MRS. BRAMICH: Yeah but now many times are we going to ask all these questions and everything. It went from a single room with one bathroom to do eight rooms to an apartment that you can eat in that has a bathroom. So how can you say that's not a significant change? It's an extreme change.

CHAIRMAN JANSEN: Not if it was rented out, well if was like that for and extended period of time then it's a big change. That's a matter of semantics. I want to know what happened during the six years, from the time that we don't know about.

MRS. BRAMICH: But they haven't answered that. The burden of proof is on them, not on us.

MR MALOCSAY: That's it, and because of that I feel we can deny the application.

MRS. BRAMICH: I do too.

MR MALOCSAY: And there is no reason to even talk about the other because at this point it's mute.

MRS. BRAMICH: No, right.

CHAIRMAN JANSEN: I would say give them one more month.

MRS. BRAMICH: No.

MR. MALOCSAY: No.

ATTORNEY FINK: No we have sent letters.

MRS. BRAMICH: And they don't even come.

ATTORNEY FINK: Well they didn't have to. They had something misunderstood.

CHAIRMAN JANSEN: If they have definite definitive proof that that was used for six years prior to them buying it, for that use, I think you should allow it.

MRS. BRAMICH: No, I don't. I definitely don't.

ATTORNEY FINK: Well other than the fact that they have been given.....

CHAIRMAN JANSEN: We didn't ask them to come to this meeting.

ATTORNEY FINK: We asked specifically the question and it has not been answered.

MR. PAULSEN: I suggest we write them a letter...

MRS. BRAMICH: What letter Norman?

CHAIRMAN JANSEN: Write them to prove or then next month it will be denied.

MRS. BRAMICH: That's what we said the last time.

CHAIRMAN JANSEN: What was the last letter you sent?

ATTORNEY FINK: Back on March 31, saying that on the March 23rd meeting the Zoning Board reviewed the proof presented by the Town and applicant, and this went to both Hicks and Crow. In regard to the non-conforming status of the eight rooms, based upon the letters of the Building Inspector dated 1/22/01 and 5/4/01 the Town apparently concedes the legal use for the eight rooms for transients from August 16th to January 01'. The Board noted the proof submitted by or on behalf of the applicant has the continued use of the rooms for either transient or apartment use, by the conversion of one non-conforming use to another, i.e., transient to apartment use, constituting and abandonment, is an issue the Board is still considering. The evidence submitted by or on behalf of the applicant was that there were tenants in the premises when he took possession on or about on March 07', but there was no direct evidence about occupancy from 01' to 07'. The Board is willing to reopen the Public Hearing on 4/27/09 to take evidence as to the use or non-conforming use of the premises during that period. If you will to submit such evidence in writing without appearing please file your response with a copy to me and the other party not later than 4/22/09. If no additional evidence is presented the Board will make its decision on the existing record on 4/27/09.

CHAIRMAN JANSEN: Alright and this is 6/22.

ATTORNEY FINK: We didn't have a meeting last month, they haven't asked for more.

MRS. BRAMICH: But we had a meeting in May.

CHAIRMAN JANSEN: Diane, I'm willing to send them a last note and next month we vote. What was it costing us?

MRS. BRAMICH: It just keeps going on and on.

CHAIRMAN JANSEN: So we put another definitive date. If you have not answered us by 7 twenty... whenever our meeting is, it will be deemed abandoned.

MRS. BRAMICH: No. A decision will be made.

CHAIRMAN JANSEN: Alright, however you want to do with it.

MRS. BRAMICH: I make a motion we deny the application.

ATTORNEY FINK: Why don't we... No you can't do that.

MRS. BRAMICH: Why?

CHAIRMAN JANSEN: How can you deny the application?
The application has been filed?

ATTORNEY FINK: No you can make a motion ...

CHAIRMAN JANSEN: That's its abandon.

ATTORNEY FINK: Yeah.

MRS. BRAMICH: Then I make a motion that it's abandon. Which means they would have to file again.

ATTORNEY FINK: That's an interesting question.
Normally speaking, and it could be made.

CHAIRMAN JANSEN: You could make it be without prejudice.

ATTORNEY FINK: Normally speaking you get one crack at it. Otherwise the applicants would keep coming back and coming back. That would be highly unusual that it be voted on without prejudice.

MR. MALOCSAY: You had said something that I didn't see at all until tonight, and it was the key word of "interpretation".

ATTORNEY FINK: Correct.

MR. MALOCSAY: So Diane's motion to deny the application I don't think is the correct wording because it's an interpretation.

ATTORNEY FINK: No the motion would be that the interpretation would be that the non-conforming use was lost.

MR. MALOCSAY: Okay.

ATTORNEY FINK: Because there is no sufficient proof that it wasn't vacant for more than one year as set for in Mr. Batz's letter.

MR. MALOCSAY: Diane, do you want to take back your motion and make that new motion?

MRS. BRAMICH: Sure.

MR. MALOCSAY: I'll second.

CHAIRMAN JANSEN: Okay now we have discussion. I always like to decide on the least amount of error, so I would prefer that we send them another notice, and that would be a final notice and we can make that vote next month. It's not costing us anything and from a legal standpoint I think at least, we have given them every benefit of the doubt.

ATTORNEY FINK: Diane's motion to pass these three permit votes, anything less than three, its no vote, and then you would decide what you are going to do.

CHAIRMAN JANSEN: Norman?

MR. PAULSEN: ?????

CHAIRMAN JANSEN: That's a no?

MR. PAULSEN: That's a no.

MR. MALOCSAY: I'm a yes.

MRS. BRAMICH: I'm a yes.

MR. MALOCSAY: And you're a no. Okay.

CHAIRMAN JANSEN: And I'm a no.

MRS. BRAMICH: They're working in there. It's still in the newspaper that they are working in that place, and nobody is stopping them.

ATTORNEY FINK: Anyone from around here can file a complaint with the Building Department and if they have no permit to do what they are doing, then Batz has to file a stop work permit.

MRS. BRAMICH: I don't agree but if the motion was made then we stay with it, but I don't agree with it. That's my opinion.

CHAIRMAN JANSEN: Motion for adjournment?

MR. MALOCSAY: Motion by Mark. Second?

MRS. BRAMICH: Second.

CHAIRMAN JANSEN: All in favor?

MRS. BRAMICH: Aye,

MR. MALOCSAY: Aye.

MR. PAULSEN: Aye.

CHAIRMAN JANSEN: Meeting adjourned.