

**TOWN OF WARWICK**  
**ZONING BOARD OF APPEALS**

**OCTOBER 27, 2008**

**Members Present:**

**Mr. Jan Jansen, Chairman**  
**Mr. Norman Paulsen**  
**Mrs. Diane Bramich**  
**Attorney Robert Fink**

**Members Absent:**

**Mr. Charles Todd**  
**Mr. Mark Malocsay**

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

**CHAIRMAN JANSEN:** **We are unable to approve the minutes from the meeting held on September 22, 2008 because Diane Bramich was not present. We will just go on to the first item on the Agenda.**

**Public Hearing of SAUFROY FAMILY IRREVOCABLE LIVING TRUST AND MAUREEN COZAD – for property located on the north side of Denton Lane, Warwick, New York and designated on the Town tax map as Section 31 Block 2 Lot 30.21 and located in an RU District for a variance of Section 280-a of the Town Law allowing a single family dwelling on a private road on proposed Lot 1 of a proposed 2 lot subdivision. *Continued from the 9/22/08ZBA meeting.***

**ATTORNEY FINK:** Since the variance was given four years ago, there have been no changes. The Planning Board had originally given a positive recommendation.

**CHAIRMAN JANSEN:** Is there anyone here from the public to address this application? No? The public hearing is now closed.

**ATTORNEY FINK:** This has been previously granted and since no changes have occurred, there is no reason not to grant it.

**CHAIRMAN JANSEN:** None that we know of. Actually, part of the road has been improved since the first time they were here.

**MRS. BRAMICH:** I make a motion that this is an Unlisted Action with no environmental impact.

**MR. PAULSEN:** I second it.

**CHAIRMAN JANSEN:** All in favor? Any discussion?

All in favor (Three Ayes), motion carried.

**MRS. BRAMICH:** I make a motion to grant this variance as advertised.

**MR. PAULSEN:** I second it.

**CHAIRMAN JANSEN:** Any discussion? All favor?

All in favor (Three Ayes), motion carried.

**Public Hearing of VALENTIN PIPA – for property located at 48 Iron Mountain Road, Warwick, New York and designated on the Town tax map as Section 49 Block 2 Lots 33 & 34 and located in an RU District for a variance of Section 164.53B (12) extending a variance of Section 280-a of the Town Law granted on 10/23/06 allowing a single family dwelling on a private road on proposed Lots 2& 3 of a proposed 3 lot subdivision. *Continued from the 9/22/08 ZBA meeting.***

**CHAIRMAN JANSEN:** Please state your names.

**KAREN EMMERICH:** Karen Emmerich and  
Valentin Pipa.

**CHAIRMAN JANSEN:** Any change?

**MS. EMMERICH:** Nothing has changed, we're  
here asking for an extension of a variance that was granted in 2006.

**CHAIRMAN JANSEN:** The public hearing is still  
open. Is there anyone here to address this application? No? The public hearing is  
now closed.

**ATTORNEY FINK:** This variance was  
previously granted. Nothing has changed?

**MS. EMMERICH:** No.

**MRS. BRAMICH:** I make a motion that this is  
an Unlisted Action with no environmental impact.

**MR. PAULSEN:** I second it.

**CHAIRMAN JANSEN:** Any discussion? All in  
favor?

All in favor (Three Ayes), motion carried.

**MRS. BRAMICH:** I make a motion to grant  
this variance as advertised.

**MR. PAULSEN:** I second it.

**MS. EMMERICH:** Excuse me, before you do that, can you tell me how much of an extension will you give?

**CHAIRMAN JANSEN:** We will give the usual 2 years, if construction has not occurred when that time frame is expired, just come before the Board and we'll consider another extension.

**MS. EMMERICH:** Okay, thank you.

**CHAIRMAN JANSEN:** All in favor? Any discussion?

**All in favor (Three Ayes), motion carried.**

**Public Hearing of ERIC & ELIZABETH KOHLMEIER – for property located at 98 Lake Shore Road, Warwick, New York and designated on the Town tax map as Section 75 Block 1 Lot 12.21 and located in an SM District for a variance of Section 164.45 B&C and Section 164.40N allowing an existing single family dwelling to be razed and rebuilt, increasing ground floor area from 1,084 square feet to 1,349 (+/-) square feet, reducing front setback to 8 (+/-) feet where 30 feet are required and both side setbacks to 40 (+/-) feet where 45 feet are required. *Continued from the 9/22/2008 meeting.***

**CHAIRMAN JANSEN:** Has anything changed since your last appearance? I think we had to wait the required time to see if we received notification from the County. We have not heard anything from them.

**ATTORNEY FINK:** We have received a positive recommendation from the Planning Board.

**CHAIRMAN JANSEN:** Okay, let's open this up to the public. Is there anyone here to address this application? No? The public hearing is now closed.

**MRS. BRAMICH:** I make a motion that this is an Unlisted Action with no environmental impact.

**MR. PAULSEN:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Three Ayes), motion carried.

**MRS. BRAMICH:** I make a motion to grant this variance as advertised.

**MR. PAULSEN:** I second it.

**CHAIRMAN JANSEN:** Any discussion; all in favor?

All in favor (Three Ayes), 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.**

**CHAIRMAN JANSEN:** Please identify yourself for the record and explain to the Board what you'd like to do.

**MR. RAPAJ:** My name is Kastriot Rapaj. The sign has been there for years; it belonged to the restaurant.

**CHAIRMAN JANSEN:** Let's discuss the sign first. There was a 5 year period where any signs that did not conform to the Zoning ordinance were going to become illegal and had to be replaced. Even though the sign had been there for many many years, part of the Zoning code was that there was a 5 year life after the code was changed on the signs. At the same time, I have to tell you that the Town Board is considering re-doing the sign ordinance. So at this point, I think we'll leave the sign as it is and whatever the new ordinance is, you'll be subject to it. Tell us about the other issue.

**MR. RAPAJ:** Regarding the rooms, they were already rented before I purchased the property, which was about a year ago. I wanted to change things around and fix things up. I had to put the people out which took about 6 months. I had to get everybody out before I could fix it up. Now it's come to this. I fixed up the restaurant too. It's in operation.

**MRS. BRAMICH:** You've said two things. First you said you put people out, you repaired, and now you said you repaired downstairs but you didn't repair upstairs?

**MR. RAPAJ:** I stopped doing everything upstairs.

**MRS. BRAMICH:** But you started to.

**MR. RAPAJ:** Yes.

**MRS. BRAMICH:** Are there other rentals on the property?

**MR. RAPAJ:** Yes.

**MRS. BRAMICH:** Are they rented also?

**MR. RAPAJ:** Yes. The place was a mess before but I cleaned it up and fixed the restaurant. We're up and running but at this particular time it's not doing as well as I hoped. I'm in danger of defaulting on the mortgage and I was depending on the income from the rooms to help out.

**CHAIRMAN JANSEN:** So you're asking us to continue a previous use even though it's been discontinued for more than a year?

**MR. RAPAJ:** I don't think it's been discontinued for more than a year, it's more like 7 or 8 months.

**CHAIRMAN JANSEN:** The letter from the Building Inspector states that the use has been discontinued for a period of a year or more which is the reason why the use was lost. If you contest that, you need to show proof that it was used within that period of time.

**ATTORNEY FINK:** What the Board would like to see is something very specific. You should provide a chart showing when it was rented; when your evictions took place, some evidence. Something the Board can "hang its hat on" and tell the Building Inspector he's wrong.

**CHAIRMAN JANSEN:** Maybe canceled checks? Anything that will show it was rented within that last year. This public hearing is now open to the public. Is there anyone from the public here to address this applicant?

**MR. KING:** My name is Mike King. My whole concern is that this doesn't revert to what happened before. This is a medium density area. I know this is only regarding renting the 8 rooms above the restaurant but there are other rental properties with the intention of being rented. What is the classification of this?

**CHAIRMAN JANSEN:** It's a prior non-conforming use and as long as the use was not discontinued in excess of a year he has the right to continue the use. That's why we need some proof before we can approve it again.

**MR. KING:** Is the septic and everything else, the mechanics also a priority of this decision?

**ATTORNEY FINK:** No, actually its not. This Board doesn't have anything to do with that. This Board just has to make a decision whether or not that use was discontinued. The fact that this Board might find that it wasn't discontinued doesn't mean proper health reasons or other building reasons that it couldn't be shut down or limited.

**MR. KING:** So my concern would be adequate plumbing and everything else. And again that it not revert to what it was before.

**CHAIRMAN JANSEN:** Okay. We'll leave the public hearing open and continue to next month. *Continued to November 24, 2008 meeting.*

**Public Hearing of KENNETH & JACINDA PORTER – for property located at 480 Liberty Corners Road, Pine Island, New York and designated on the Town tax map as Section 1 Block 1 Lot 56.21 and located in an A1 District for a variance of Section 164.40M allowing an accessory building on a lot with no principal building and Section 164.41.A.(1)(a) permitting a 70 foot X 70 foot accessory building where the Code provides an accessory building may not exceed 1,200 square feet in floor area nor be more than 48 feet in greatest median dimension.**

**CHAIRMAN JANSEN:** Please identify yourselves and state what you'd like to do.

**KENNETH PORTER:** Kenneth and Jacinda Porter. We basically would like to put this building up to store my equipment and tools rather than have everything spread out in all different locations.

**CHAIRMAN JANSEN:** Is there any reason why that cannot be joined with your home lot?

**JACINDA PORTER:** It's across the road.

**CHAIRMAN JANSEN:** Is there a problem with that?

**ATTORNEY FINK:** That's considered a natural sub-division.

**CHAIRMAN JANSEN:** Let me tell you the reason I ask you that. A use variance is extremely difficult to obtain. You would have to show financial proof that you can't make any money out of the property at all and that it is totally useless, so on and so forth. That's a very, very difficult thing to do.

**JACINDA PORTER:** Even though barns were on the property prior for usage for a farm and for machinery?

**Inaudible discussion regarding use (*several people speaking at once*).**

**CHAIRMAN JANSEN:** I think you may need to consult an Attorney or find out a little bit more without putting anything else on the record.

**ATTORNEY FINK:** Agricultural uses are granted great lee-way under the Code as to what can and can't be allowed. Do you have an Agricultural exemption for this property?

**JACINDA PORTER:** We're in the process of getting one.

**CHAIRMAN JANSEN:** Okay, we'll hold this open.

**Public Hearing of BRIAN J. & MELISSA A. SINGER – for property located at western side of Briller Road 1000 feet south of Continental Road, Warwick, New York and designated on the Town tax map as Section 66 Block 1 Lot 75 and located in a CO District for a Variance of Section 280-a of the Town Law allowing a 2 lot subdivision which does not have frontage on a municipal road. *Continued from the 6/23/08 ZBA meeting.***

**ATTORNEY FINK:** This has been one of the more complicated applications before us. Would you care to briefly summarize what your position is and perhaps answer some of the objections that have been raised?

**KIRK ROTHER:** We are before this Board, Mr. Singer has been, requesting a 280a variance to allow a 2 lot subdivision on approximately 13 acres of land in a CO zoning district with its access being off of a private road with a right of way on a portion of which is known as Briller Road. Mrs. Briller has argued as to the right that Mr. Singer has to use that portion of Briller Road for access. I have been before the Board on several occasions. You have referred us to the Town of Warwick Planning Board. We'd made an application to the Planning Board before we came to you initially. We have since been back to the Planning Board with the same plans you've seen. There's been some topography done from the end of Briller Road down to Mr. Singers property. There's a road profile prepared. There is a right of way deed plot that shows the various overlapping right of ways from Continental Road to Mr. Singers property. The Planning Board has seen this information and they referred us back to your Board because they can't act until the variance is granted. I believe Mr. Singers Title Company clarified to the Planning Board Attorney John Bollenbach definitively that Mr. Singer does have right of way onto Continental Road. John indicated that in his letter to the Board dated 9/17/2008. That's it. We're back before this Board to hopefully have a firm direction as to whether or you're comfortable granting a 280a variance. We also have correspondence from the Police Department indicating that access is not a concern. Another question has come up about an existing lot that's on the corner of Continental Road and Briller Road that was in existence prior to Mrs. Briller's subdivision and a portion of that driveway is accessed off of Briller Road. So now the question is raised; is Mr. Singers 2 lot subdivision going to result in 7 lots being accessed from Briller Road.

**ATTORNEY FINK:** This six lot minimum, is that not in a section of the Code that has to do with cluster subdivisions?

**KIRK ROTHER:** Actually, my familiarity with the Code and everything that relates to private roads and common driveways is in the Conservation.....subdivisions where they allow six lots, up to twelve if you have 2 points of access. I wish Mr. Singer's attorney was here to explain this little better.

**MR.SINGER:** He is in Court.

**ATTORNEY FINK:** Originally, this variance was advertised simply as a 280a. Thereafter there was the issue of 6 lots.

**MR. SINGER:** I bought this property from Phyllis Briller in June of 2005; we've been in contract since October of 2002. Of the six lots, this parcel, the one that has access, is not in the road maintenance agreement for this road. That parcel was done in 1920, subdivided from 1.5 acres from the Coleman Farm. He gave it to his son. That's where the right of way comes from. The Briller subdivision was done in 1977 *after* that road and never included in the Briller subdivision as paying for road maintenance toward the road.

**ATTORNEY FINK:** Was the original subdivision in 1977 three lots?

**MR. SINGER:** Yes, three lots. I bought the property in 2005 with the intention of building one house and I have stated my reasons before why I changed my decision. My son has special needs and my wife no longer works outside the home. I want to subdivide and sell 1 lot and probably build on the other. She's (Mrs. Briller) argued that I don't have any access to my property now because it's only 14-15 feet wide. I can't use the utilities that run across my property because she didn't grant me a utility easement even though the Utility Company disagrees. I'm frustrated because I've spent over \$10,000 between legal fees and the Town Engineer and I don't know how much longer this process will go on for. We're dealing with 51 feet of access to that lot.

**KIRK ROTHER:** And Brian's scheduled fee from Mrs. Briller specifically states that he's obligated to pay a pro-rated share which is currently one fifth including Brian's lot.

**MR. SINGER:** Including the ones behind us. Her other issue of stating how wide it is, I don't know how else to prove it except have her go to the records. It states in 2772 pages 183 and 184 that it's 27.08 feet to 31.7 feet. She keeps saying its 14-15 feet. That has been put forth 3 times now to both the Planning Board and the ZBA.

**CHAIRMAN JANSEN:** Okay, Mr. Charde?

**LUKE CHARDE:** The six lots that are already in use include the Barnett lot which fronts on to Continental Road. It's the availability of putting a driveway from the house to Continental Road. I won't tell you it's impossible, but it would be a major engineering feat to do so.

**MRS. BRAMICH:** What is the address of the house?

**MR. CHARDE:** I don't know and I don't think it's relevant. It could be Continental Road, it could be Briller Road, I don't know.

**MR. SINGER:** It's 108 Continental Road.

**MR. CHARDE:** You should know that the driveway accesses onto Briller Road and that person is a participant to the road maintenance agreement. He doesn't pay a full one sixth share, he pays 10% and the reason is that he's so close to the front that he just needs access for a short period and he's been paying all along. And he in fact does use Briller Road. You should also know that in a letter from John Bollenbach to Mr. Fink dated 9/17/08 his opinion is that it appears that at six lots already access Briller Road. So I think that's the opinion of the Planning Board and I think the creation of the subdivision would put a seventh lot on there. You should also be aware that in your file there are objections from all the property owners using this roadway. Mr. Bollenbach in his letter to Mr. Fink says that they need a variance. If they do need a variance, it is obviously not tonight. Because there is nothing in the public notice about a variance for this purpose, it is only for a 280a variance that is sought. If they do need a variance, I submit to you that it be a use variance, and as Mr. Jansen was telling another applicant earlier tonight, a use variance is a very, very difficult thing to get. Earlier you heard that the Title Company has said that they do have access. We agree 100%. They guaranteed access when they originally issued the title report. I believe that this Board and I know that Mr. Bollenbach asked the applicant to get something from the Title Company showing that this access that they say they have, not the 14-15 foot... We acknowledge there's a 14-15 foot right of way from Continental Road all the way up to the Singer property. They maintain that it's much wider than that. We acknowledge 14-15 feet; we acknowledge that they have access by that. They were asked to provide proof. They have gotten nothing. They provided a Title report and the Title report states that they have access to Continental Road. They have not said they have access over such and such a portion of land or access as described in a certain easement. I dare say that they won't get that from this Title Company. They won't get a guarantee that what they *maintain* they have a right to, that they actually have it as insurable title. You have a letter in your file from Chief McGovern indicating that he thinks that the road is and I presume he meant will be, suitable for emergency vehicles. There is also a letter from the Ambulance Corp. and they agree but they say if this, this and this are done then they think there will be suitable access. I submit to you that the thing you need

most is a letter from the Fire Department. The Police and the Ambulance all drive 2 axle vehicles, they don't drive Hook & Ladder vehicles, and they don't drive vehicles that are 40-50 feet long over roadways that have at least a 14% grade. My point is that it's your duty as the Zoning Board of Appeals on a 280a variance is to ascertain whether there's access to the premises by Emergency vehicles. I think the Fire Department would be the most relevant of the 3 in the Town to find out if the access is sufficient.

Now regarding the road profile, you have before you the same plans that were before the Planning Board. In those plans you'll see a profile of the driveway for house #1 on the Singer property, a profile for the driveway of house #2 on the Singer property. You'll see everything except what you really need which is a profile of the roadway that is *going* to be constructed in this area. He does have a graph showing what the percentage of slope is and it shows on there that in one spot the percentage of slope is exactly 14%. That's important because the ordinance allows the Planning Board to vary it up to 14% but not in excess of 14%. Back to the main point on the profile, I would think that you would want to see a real road profile that you would on a major subdivision showing what this road is going to be built on. What's it going to look like? Where is it going to be located? What's the slope? What's the material; what's the base material? That's what's going to tell you whether or not you're going to get suitable access by Emergency vehicles.

I know they mentioned something about the Utility Company. There is a dispute whether or not the Singers have access over the Briller land to install utilities and Mrs. Briller has said all along that they can have access for whatever is necessary for the one lot you told me you were going to build.

**ATTORNEY FINK:**  
relevant?

Is that really

**MR. CHARDE:**  
they did. That's all I have to say tonight. Thank you Ladies and Gentlemen. Are there any questions?

I didn't bring it up,

**CHAIRMAN JANSEN:**  
contention that the original lot that was on the main road is part of the subdivision?

I have one. Is it your

**MR. CHARDE:**  
subdivision; it is part of this private roadway usage. That's the relevant thing. Whether or not the road is servicing. It's not whether it's part of this subdivision rather it's a private road that is servicing 6 or more and here it clearly is servicing 6 and with their subdivision it would be 7.

It's not part of this

**ATTORNEY FINK:**  
number of private roads and subdivision requests and 280a variance requests that have come before the Board and they weren't part of the same subdivision. The issue of more than 6 lots being on a private road has never been an objection from the Planning Board unless it's part of the same subdivision.

There are any

**MR. CHARDE:** You're telling me what the Planning Board has objected to; I don't know. They apparently are objecting here by saying that it poses a problem to them. It poses a problem to us because we think that there's some rationale to that sixth lot thing and they're asking for seven. We also know for sure that Mrs. Blake in the back wants to subdivide and there are a couple more people in the back that want to subdivide. Their access is through here and if you can give 6, can you give 7, can you give 8, can you give 9, where do you stop? Well maybe you should stop where the ordinance says.

**MR. PAULSEN:** Are you saying there are six on the same subdivision?

**MRS. BRAMICH:** I wouldn't count that. It's a Continental Road address and the only thing on here is a driveway into that lot.

**MR. CHARDE:** The point of it is not where you say you live; they could change just by going to the Post Office. The issue is how many driveways and homes access onto the private road. It's not a road that the Town maintains; it is a road that this group of people maintain.

**MRS. BRAMICH:** The 911 address is Continental Road. To me it is relevant because if this is the main road, and that's the address of the house, then that would be the access. That would not say that Briller Road is the access and the main entrance to the house.

**MR. CHARDE:** You would need a billy goat to get in there.

**ATTORNEY FINK:** Honestly, I don't agree with that legally speaking. Mr. Charde is correct when he says you could just go to the Post Office and change the address.

**MRS. BRAMICH:** It's very difficult; I've tried.

**ATTORNEY FINK:** Again, I don't know if the address has anything to do with it.

**MR. CHARDE:** There is in the deed to their property, a deeded easement to go out to Briller Road. They have frontage to Continental Road.

**MRS. BRAMICH:** Brilller Road was put by whom?

**MR. CHARDE:** A 1977 subdivision.

**MR. PAULSEN:** It doesn't matter when it was started.

**CHAIRMAN JANSEN:** Do you have anything else to add, Mrs. Brilller?

**PHYLLIS BRILLER:** Only I would reiterate that while the Singers and their representatives have said that they do have a wider easement than 14-15 feet, when I signed the deed over to them I also signed an agreement with them. The deed was signed first, the agreement second. Both are filed in Orange County court and the agreement reiterates the fact that I reserved unto myself those lands on parcels 1 & 2 for purposes of future development. The Singers maintain they have rights to them. There was never any intention to deed that to them. I reiterated in that agreement that I would continue to maintain them. I also in that agreement reserved the same rights over the Singer property for purposes of future development. You need to understand when we came before the Planning Board in 1977, John Bollenbach's father was very insistent that we had to understand that the lands beyond us might someday become developed. He was insistent that we should be able to have public access to those lands. When I sold lots 2 & 3, I reserved a strip of land across each one so that I could use it for future development. That is for ingress and egress or for running utility lines or for creating a public road. When I sold the Singers their parcel, I did the same exact thing. Now the Singers have exactly what was deeded to them which is the 14-15feet. I have reserved to myself a wider stretch so that at some point if it seems appropriated it could become a public road.

**CHAIRMAN JANSEN:** Okay, but do they need anything more than the 15 feet?

**MR. CHARDE:** To build a roadway where there is a 14% slope you would need to build not just the roadway but drainage on both sides and you need access for two cars passing each other, not just one. Parking spaces are 10 feet wide so two parking spaces would be 20 feet wide. That's why it would be nice if we had a real road profile.

**CHAIRMAN JANSEN:** That is a Planning Board issue.

**MR. CHARDE:** Yes, I agree, but with a 280a variance you're obligation is to determine if there is suitable access for all emergency vehicles.

**CHAIRMAN JANSEN:** We will do that.

**MR. CHARDE:** How can you make that determination if you don't know what kind of roadway is going in there?

**MRS. BRAMICH:** We have already received responses from two of them. We just have to get the Fire Department to answer.

**MRS. BRILLER:** I guess the question is do you want to sanction 3 houses on a 14-15 foot road with a 14% slope? One of the reasons for the agreement was that if the easement that was given to the Singers was not appropriate, that because I have retained additional lands, we could create a different easement for the Singers if that became necessary. No request was made and no request was granted. Brian indicated that he simply wanted the road upgraded which I did and he wanted a 50 foot turnaround created which I said in the agreement that I would do at my cost and I did. Then he came first to the Planning Board and subsequently to you folks and said he wanted a 2 lot subdivision.

**CHAIRMAN JANSEN:** Okay, thank you.

**MR. SINGER:** May I speak now? Mrs. Briller has said all along "for future subdivision, for future development", so she's allowed to subdivide, but I'm not. She sold me the property. Here is how it's written. 14-15 feet because there has been a disagreement that she's had with the Blakes for the past 20 years that I can put a road next to, 14-15 feet for me and 14-15 feet for the Blakes. It's in our agreement.

**MR. PAULSEN:** Side by side?

**MR. SINGER:** Side by side.

**MR. PAULSEN:** That would be 28 feet.

**MR. SINGER:** Yes, 28 feet.

**MRS. BRILLER:** I disagree.

**MR. SINGER:** Would you like me to show you? We're going to spend the night because I have each piece of paperwork dating back from the beginning.

**MR. ROTHER:** Here is the deed prepared by Mr. Charde to the Singers from Mrs. Briller. Schedule B together with and subject to an easement for ingress and egress to and from Continental Road as reserved in deed 2772:182. That is the right of way we spoke about which varies from 28 to 32 feet in width. Regarding the recent Title insurance...

**ATTORNEY FINK:** I have a question, with regard to the deeded easement, is that what you show on this?

**MR. ROTHER:** What you're looking at there does not show that.

**ATTORNEY FINK:** So we don't have that?

**MR. ROTHER:** No.

**ATTORNEY FINK:** What is this that I'm looking at?

**MR. ROTHER:** I've never seen that before. So the Title insurance policy in question, there is no prior 14 foot easement?

**MR. CHARDE:** Sure there is, it's the same one that goes back to the Blake property.

**MR. ROTHER:** This type of insurance policy indicates that access to and from Continental Road is insured for ingress and egress over an easement that has been reserved in at least two prior deeds.

**ATTORNEY FINK:** This is what you presented to the Planning Board?

**MR. ROTHER:** Yes. As far as the Fire Department is concerned, we sent correspondence to all the Emergency Service providers on 2/20/08. If there was no response after 30 days which is standard procedure, we assume that they had no problems. The road profile is a profile of the driveways as they currently exist; the worst is right around 14%. That is an existing conditions profile.

**MR. SINGER:** If the Blakes who are behind us and have lived there for 20 years have access to a Fire truck, why wouldn't I?

**MR. PAULSEN:**  
a problem getting in and out of that road?

**Has there ever been**

**MRS. BRILLER:**  
sound flip, but yes.

**I don't mean to**

**MR. SINGER:**  
never had a problem getting in and out of that road.

**The Blakes have**

**CHAIRMAN JANSEN:**  
issue or is it the 7 lots? I think the other Board Members feel that it's not the number of lots. I would suggest that we take another look at the property and come to a final decision at the next meeting. *Continued to the 11/24/08 meeting.*

**Is the road the big**

**MRS. BRAMICH:**  
adjourn.

**I make a motion to**

**MR. PAUSLEN:**

**I second it.**

**CHAIRMAN JANSEN:**

**All in favor?**

**All in favor (Three Ayes), motion carried.**

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**Frances N. Sanford ZBA Recording Secretary**