

**VILLAGE OF BREWSTER
ZONING BOARD OF APPEALS
WORK SESSION
AUGUST 25, 2008**

MINUTES

Present: Chairman Richard Ruchala, Board Member Todd Gianguzzi, Board Member Keith Greene, Board Member Claire Degan Kropkowski, Esq., Village Attorney Gregory Folchetti, Esq., Rick Stockburger, Harry Nichols, Jr., P.E., Aigin Krasniqi, Michail Sirignano, Esq. and Nelson Colon

The Pledge of Allegiance was recited.

Chairman Ruchala: Anyone want to make a motion to open the meeting?

Mr. Gianguzzi: I will.

Mr. Greene: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. Greene: Aye.

Chairman Ruchala: First item on the agenda will be Rick Stockburger, 50 Oak Street.

Mr. Stockburger: I think that everybody got a copy of the Notice.

Chairman Ruchala: How many people were there?

Mr. Stockburger: 21 not counting myself.

Chairman Ruchala: Do you want a copy of these or can I keep them for the record?

Mr. Stockburger: You can keep them.

Chairman Ruchala: Thank you. Anything else you're handing me?

Mr. Stockburger: I think that's all you need.

Mr. Greene: Are we missing Mr. Nixon tonight?

Mr. Stockburger: You're not missing Mr. Nixon. He wasn't invited. The purpose of the application is to remove a condition that had been placed on my December variance that on my garage required that I have pull-down stairs. I'm asking for a removal of that condition and to be allowed to put in regular fixed stairs. The second thing I'm asking for is that my house currently sits sideways on the lot and I have a non-conforming of 9 foot 8. I'd like to put an addition on the back and because the house is sideways on the lot that will bring me further into non-conforming. I'm asking for a variance of 4 feet that will allow me to have an 8 foot side yard. Any questions.

Chairman Ruchala: First on the staircase coming down. How wide is it going to be?

Mr. Stockburger: It's going to be built to replace the existing one with a normal pitch and it will probably be about a 3 foot width.

Mr. Greene: Is it possible to get the head height you need to meet the Code?

Mr. Stockburger: Right now it's strictly an attic stairs from the first floor up to the storage space. So it will be a replacement of a pull-down stairs with a fixed stairs.

Mr. Greene: Will the new fixed stairs meet all of the State requirements for head room?

Mr. Stockburger: Yes. It's 7 foot 5 now.

Chairman Ruchala: So you're going to open up a wider space?

Mr. Stockburger: Yes, it's going to be a little bit wider cause the widest stairs I could get was 24. It will make it more comfortable to go up to the top there. It will have a narrower pitch and be slightly wider.

Chairman Ruchala: So in there you can get 2 more feet to go backward.

Mr. Stockburger: No, it will be completely inside. Let me show you the building plans. The stairs will come up to back here and be 24 inches wide.

Chairman Ruchala: So it's going to be pointed towards the back wall. So it is going into that extra foot.

Mr. Stockburger: It's still inside the envelope. It will come out a little bit further this way.

Chairman Ruchala: Any other questions regarding the staircase.

Mr. Greene: The sink is down in the garage?

Mr. Stockburger: Yes, the sink is down on the first floor in the garage.

Mr. Greene: And you still have outside access out back?

Mr. Stockburger: Yes.

Chairman Ruchala: Any other questions. [No response.] And regarding the 4 foot easement.

Mr. Greene: You have an easement onto the neighbor's property of 4 feet, right?

Mr. Stockburger: We're still working on that. We haven't found an easement yet. The lawyers are supposed to be talking about it.

Mr. Greene: And what is the distance from your line to theirs?

Mr. Stockburger: It's about 22 feet.

Mr. Greene: So even when they give you the 4 feet they'll still have 18 and they only need 12.

Mr. Stockburger: Well the 4 doesn't really count on theirs.

Mr. Folchetti: But the structure's not going up on the neighbor's property.

Mr. Stockburger: No, the structure's not going up on the neighbor's property.

Mr. Greene: But the driveway may.

Mr. Stockburger: If I get the easement yeah. The purpose of the easement is so I can build a driveway that is wide enough to get around the corner of the house.

Mr. Greene: And if you don't get the easement will you withdraw the variance application?

Mr. Stockburger: No, because the easement is really for the driveway. The variance is what I need to actually build the house. The other alternative down the road is to buy that 4 foot section over there. Then I got to come back for a side yard lot line adjustment.

Mr. Greene: But is 8 or 8&1/2 feet going to give you enough to get around the house?

Mr. Stockburger: It should. I may have to diagonal corner like you suggested the last night.

Mr. Greene: It's tight.

Chairman Ruchala: Does he need the easement before we give him a variance?

Mr. Folchetti: Not necessarily. The Board considers the factors. Is there an adverse impact on the neighboring property?

Mr. Greene: As he goes further uphill he's going to get tighter and tighter.

Chairman Ruchala: Is there sufficient room?

Mr. Greene: I think it's tight but the mitigating factor is that he's got more than 16 feet on the east side when he only needs 12. And he states that he's got about 22 feet or so to the next frontage so if this were to be built as tightly as possible on the lot, given the 3 adjoining properties, he's got far greater than 24 on one side and greater than that on the other side.

Chairman Ruchala: I know this house and it actually goes up slope.

Mr. Greene: He's got ample yard on the east and he's asking for less on the west.

Chairman Ruchala: I know where the neighbors are and it's a little tight.

Mr. Greene: He's asking to go for a 4 foot variance from 12 to 8. The hope is that he won't use it all, that he'll only use 3 or 3&1/2 feet of it.

Chairman Ruchala: There are 2 separate issues here so we'll vote separately.

Mr. Folchetti: You should entertain a motion on each component of the application.

Chairman Ruchala: Any public comment on 50 Oak Street. Anybody have any comments on the Board? [No response.] Okay, this is your read.

Mr. Greene: I make a motion to vote to grant the variance for the removal of the pull-down stairs and the installation in lieu of the pull-down stairs of a permanent stairs.

Mr. Folchetti: Make that a motion to modify the previous Decision and Order of the ZBA with those items being the ones that are modified.

Mr. Greene: Modify the Decision granted in 12/06 to require pull-down stairs so that he can have permanent stairs; delete that provision and allow him to have a permanent staircase.

Ms. Kropkowski: The motion is seconded.

Chairman Ruchala: All in favor. I shall poll individually.

Mr. Greene: Aye.

Ms. Kropkowski: Aye. I vote to grant the variance

Mr. Gianguzzi: Aye on the variance.

Chairman Ruchala: Richard Ruchala yes. The next motion.

Mr. Greene: The language here is not proper in the narrative. The description says 9 quotation marks 8 quotation marks 8 quotation marks 5 quotation marks. Is this going into the record as the application actually?

Mr. Folchetti: Let me see what the application says. The motion would be to grant the application to the extent that it seeks from a 9.8 setback to an 8.5. The application itself can certainly be part of the record as an appendix.

Mr. Greene: I make a motion that we vote on granting an application to reduce the required side yard from 12 feet by 4 feet to 8 feet on the west side to allow an addition to the house.

Mr. Gianguzzi: I'll second.

Chairman Ruchala: How does everyone vote?

Mr. Greene: I vote yes.

Ms. Kropkowski: I vote yes to grant the extension.

Mr. Gianguzzi: I vote yes.

Chairman Ruchala: Richard Ruchala votes yes. Both the modification and the area variance are granted. I make a motion to close this public hearing.

Mr. Greene: Seconded.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: 4-0. I make a motion to open the public hearing on 24 Putnam Terrace, the applicant being Aigim Krasniqi.

Mr. Greene: I'll second that.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: Mr. Nichols. Do we have the envelope?

Mr. Nichols: What we have done is that we have decided not to ask for the variance on the rear yard. It's a single family house and there's room enough to meet all the side yard setbacks.

Chairman Ruchala: Is this the new envelope?

Mr. Nichols: Yes.

Chairman Ruchala: Do you only have one copy?

Mr. Nichols: I have some more copies.

Mr. Folchetti: Let me ask a question about the application. Is there an application for a front and side yard area variance?

Mr. Nichols: Right here. We're going to delete that one.

Mr. Folchetti: Does the side yard variance change at all as a result of that?

Mr. Nichols: No.

Mr. Folchetti: Otherwise I think we'd have to renote it.

Mr. Nichols: We're deleting, that's all.

Mr. Folchetti: You're not increasing the rear yard?

Mr. Nichols: Nothing.

Mr. Folchetti: Okay.

Mr. Nichols: The only relief we're seeking is from the size of the yard and frontage.

Chairman Ruchala: At the last meeting Mr. Greene asked you to produce an envelope.

Mr. Nichols: Yes. That was because we were going outside of the existing setbacks. Take it off the table is what we decided to do.

Chairman Ruchala: There are still 2 variances and you'll still need an envelope for that if I'm correct.

Mr. Greene: He's saying he just took 15 feet off his house. It's going to be 30 by 35. That's the maximum we're going to grant.

Mr. Nichols: You're not going to grant me any waivers on setbacks.

Mr. Greene: You're not asking for one.

Mr. Nichols: No. We have a substandard lot for its size.

Mr. Greene: What's required?

Mr. Nichols: We have 54 and they require 60.

Mr. Greene: You have 50.27 feet of frontage and 60 is required under the zoning laws. You're 6&1/2 feet short on the frontage on Putnam Terrace.

Chairman Ruchala: Is it your feeling that we require a new envelope?

Mr. Greene: No, because he's not asking for a yard variance. The area variance he's asking for doesn't encroach into the yard.

Chairman Ruchala: And the frontage is 6&1/2 feet. That's due to the way the lot is.

Mr. Folchetti: If it's substandard for frontage that's got to be put on the application.

Mr. Nichols: The front yard 60 feet, provide 54; lot area 7500 when we only have 6175.

Chairman Ruchala: I've been there and I've looked at it more than once and there's nothing you really got to do in this lot.

Mr. Greene: What's the maximum coverage?

Chairman Ruchala: It was raised from 20 to 25 in the new zoning.

Mr. Greene: And we're showing in our envelope less than that.

Mr. Folchetti: If he comes to the Building Department and he's looking for a building permit-right now he's just showing you a box on a piece of paper.

Mr. Greene: The box is not dimensioned. 35 is your max? And the total footprint that you're looking for is 30 by 35?

Mr. Nichols: I don't want to encumber things at all but we're certainly looking for a variance from the required frontage and for the deficiency in the area. As Mr. Folchetti said, if we violate anything else when we go to the Building Department for a building permit they would turn around and send us right back here.

Mr. Folchetti: He's not applying for a coverage variance.

Mr. Greene: He has however shown us a drawing in which we can mathematically determine what that number is, say 30 feet by 35 feet is on this drawing. If he

didn't show us any of this and just said I'm going to stay within the envelope he's not restricted to that. He's shown us a footprint that's a 1050 square feet. He's allowed to build 1500 square feet. We can only permit you to build 67% of this whole envelope if we approve this drawing I think.

Mr. Folchetti: You're not approving the drawing. All you're entertaining right now is an application for a frontage variance and a total lot area variance. That's my understanding of what's in the application. The envelope itself is mutually exclusive. The envelope is where the building lies and the coverage is total building coverage. He may need both if he changes location or changes the size. That's going to be determined at another time. The only application before you is coverage and lot area. That's the only relief he can possibly get from Zoning right now. If he comes back and says I want to build and have 5% more coverage than allowed by Code, back here; if he says he wants to encroach on rear yard setback more than permitted by Code, back here.

Mr. Greene: But looking at this right now does not restrict him to building 1000 square feet he's showing. He can build up to the allowed 1500. If he had drawn the envelope on there it might have made it easier for us. But we have the site plan and we'll just disregard the footprint on there because it doesn't encroach. Then the area variance he's requesting are substandard in total lot area and frontage. So he can produce more than 30 by 35.

Mr. Folchetti: He can maximize the coverage within the setback envelope wherever he wants.

Mr. Greene: And because the lot is so small he's never going to get anywhere near the 1500 square feet.

Mr. Nichols: We're still going to need a driveway coming in so we're more or less restricted to something approximately that size.

Chairman Ruchala: So you're going to build a 2 story?

Mr. Nichols: Yes, a 2 story.

Chairman Ruchala: A 1 family, 2 story?

Mr. Nichols: Yes.

Chairman Ruchala: Any other questions right now.

Mr. Greene: Nothing else came from the Building Department?

Chairman Ruchala: Just the application and then we continued it to this meeting. And that's it.

Mr. Folchetti: Before we go to public comments it should be confirmed for the record that a portion of the application has been withdrawn.

Chairman Ruchala: Am I correct that the rear yard setback has been withdrawn from the application which had a rear yard of 35 requirement and provided 20 and now that has been eliminated and deleted from the application at the request of the applicant?

Mr. Nichols: Yes.

Chairman Ruchala: Is there public comment? [No response.] Let me close the public meeting, close the hearing. Is there a second?

Mr. Gianguzzi: Seconded.

Chairman Ruchala: Seconded by Todd Gianguzzi. All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: 4-0. Now we open it to vote.

Mr. Gianguzzi: Move the application of Mr. Krasniqi.

Ms. Kropkowski: Seconded.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: To be clear, this motion is to require a front yard variance of 6 feet and a lot area variance of 7500 where we only have 6175 square feet. And a motion is made to grant that relief.

Mr. Greene: Seconded.

Chairman Ruchala: Seconded by Keith Greene. How do you vote on the motion to grant the variance? Claire.

Ms. Kropkowski: I vote to grant the variance.

Chairman Ruchala: Todd.

Mr. Gianguzzi: I vote to grant the variance.

Chairman Ruchala: Keith.

Mr. Greene: Aye.

Chairman Ruchala: Richard Ruchala. I also vote to grant the variance. 4-0. Unanimous. You're done. Thank you very much for coming. Claire, do you want to make a motion to open?

Ms. Kropkowski: Sure. I make a motion to open the hearing on Colon and a restaurant.

Mr. Gianguzzi: Seconded.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Mr. Sirignano: Good evening. My name is Michael Sirignano. I'm here with my client Nelson Colon. Nelson is ready to sign a lease for some space at 865 Route 22 in order to begin a new restaurant business called Cache. He went in to see your code enforcement officer and explained what he wanted to do and he was told that there is a provision in your ordinance that creates a 500 foot separation between bars and taverns. Nelson came to me and we looked into this and on June 27th I sent you a letter.

Chairman Ruchala: Do you have your certifieds?

Mr. Sirignano: I do not. I understood that the Board's secretary was going to do this for us.

Chairman Ruchala: No.

Mr. Sirignano: This was submitted back in June and if it's our burden.

Chairman Ruchala: It is your burden. We can listen tonight.

Mr. Sirignano: And maybe we could get a sense of the Board and if the Board is comfortable with that.

Chairman Ruchala: Alright, if that's agreeable with everyone.

Mr. Sirignano: And we can address your questions and concerns.

Chairman Ruchala: And we'll continue it if necessary.

Mr. Sirignano: I appreciate that. The ordinance in question is now under the new ordinance. The number was Section 170-13, it's now 170-17(a)(13) of the recently revised Village Code. That provision states the following:

No establishment known as a bar or tavern, the primary use of which is the provision of alcoholic beverages to the public, with or without the provision of food and music or entertainment shall be permitted nearer than 500 feet to any other similar establishment that's existing or for which a building permit has been issued, measured along the street to which entrances for the proposed establishment are to be provided.

The building code enforcement officer interprets Norm's Old Homestead, which is shown here fronting on Route 22, to come under the category of bar or tavern, which by the way in the ordinance says by definitional purposes, that:

For purposes of this Section an establishment called a grill or pub shall also be considered to be a bar or tavern under the definitions contained herein.

So they're all interchangeable-bar, tavern, grill and pub. Apparently the code enforcement officer, Bob Serino, deems Norm's to be a bar, tavern, grill or pub. He also interpreted Nelson's new restaurant, to be called Cache, to be a bar, tavern, grill or pub. We respectfully differ with Mr. Serino's interpretation so we've come to this Board for two reasons: first, for an interpretation and application of that new section, 170-17(a)(13) whether Nelson's proposed new restaurant is in fact a bar, tavern, grill or pub. And if you deem that it is, we're going to ask you for some relief, to give us a variance from the 500 foot separation provision. I've provided with my application a copy of his proposed menu, and as you can see from the menu he's going to offer a full dinner menu with entrees and house specialties ranging in price from on the low end \$10.95 and on the high end \$24.95. He has an arrangement where he's going to be employing a full time certified chef, Elsa Armidorri [ph], serving Caribbean food. He's proposing 17 tables and we gave you a floor plan. There is a bar area but the critical thing is that your own statute says that the bar, tavern, grill or pub is defined by the primary use of provision of alcoholic beverage to the public. It's our position that Nelson's place is a full service dinner restaurant, the primary use of which is not to serve alcohol at the bar or at the tables but to serve a full dinner to patrons, a dinner that is prepared by a certified chef. We strongly believe that Mr. Serino misunderstood what Nelson was trying to accomplish here, what he hopes to open here. We're going to have waiters and waitresses come to the tables, take orders, serve food, clear the tables and a menu that covers appetizers, entrees, main courses and a full menu of desserts. We don't think this is a pub menu or tavern type food. It's specializing in Caribbean food, fine cuisine. It's not your typical pub food. As I said, there will be a bar which is partitioned off from the main restaurant and not in the open area, where people sit down at the tables, 27 of them, for drinks. They're going to be sitting down at the tables for a full service dinner. Nelson is here to answer any of your questions about the nature of his operation. And we can go on to part two of this if need be, which is the need for the variance. The statute talks about a 500 foot distance measured along any street from which the entrance to the proposed establishment is to be provided. Nelson's restaurant at 865 is going to be in this part of this larger building. It's a two story building where his restaurant will be and it's not fronting on any town road or state road or county road. Norm's entrance is on 22 so it becomes a question of how do you measure under this

standard-500 feet measured along any street from which entrance to the proposed establishment is provided. Exactly how should that measurement take place? I've been unable frankly to come up with whether we meet 400 but not 500 or 300 but not 500. I'm at a bit of a loss on that and I'd like some guidance from the Board.

Mr. Folchetti: So you're asking for some guidance and an interpretation on how to couch the variance.

Mr. Sirignano: Correct. I think we need you to interpret that so that if we have to get to the variance we'll know exactly how many feet that we're substandard and you'll know how much of a variance you're granting me. I'll say this-I understand the purpose of this section of the ordinance. When I was a kid I used to go to the bars in New Rochelle on North Avenue. Things tended to get a little out of control when people had a few too many and they were all piling out of six different bars in very close proximity. I don't know if you've had the same experience here in the Village but I understand the rationale for trying to get some separation between bars. His restaurant is not going to put people out onto the streets of the village in an intoxicated condition because he's serving dinner. It's a full service restaurant. Families are going to be coming for fine Caribbean cuisine and we're not catering to the sports bar crowd so to speak.

Mr. Gianguzzi: May I ask a question. There will be seating at the bar, correct?

Mr. Sirignano: Yes.

Mr. Gianguzzi: And there will be a bartender there?

Mr. Sirignano: Correct.

Mr. Gianguzzi: And is it the intention to close the bar once the kitchen stops serving? Or if the kitchen stops serving at 10:00 do you plan to stay open until 2:00, 3:00 or 4:00 in the morning? Correct?

Mr. Colon: The bar will stay as long as the kitchen is open.

Mr. Gianguzzi: So you'll be serving dinner till whenever the restaurant is open.

Mr. Sirignano: As long as the front door is open to the public we'll be serving dinner. And if I can just bring your focus back to the language of the statute itself,

it speaks specifically to the primary use is the provision of alcoholic beverages to the public. That's the way your Village Board defines a bar, tavern, grill or pub.

Chairman Ruchala: This is where?

Mr. Sirignano: This is Article V, down at the bottom of the first page.

Chairman Ruchala: I was looking for it. For the record, this is Article V under the Supplementary Regulations 170-17, Prohibited Uses, page 33. What part of that are you concerned about?

Mr. Sirignano: The interpretation is are we a bar, tavern, grill or pub, which is defined specifically as that establishment the primary use of which is the provision of alcoholic beverages to the public? By the way, I'm assuming that Norm's is a pub or bar, I don't know and I'm not disputing it. Norm's is not my client and I'm not going to speak for what a nearby establishment is. I'm assuming that that is a bar or pub. If you folks have a different opinion of that establishment it might make this whole thing easy. I don't have a particular familiarity with that establishment.

Mr. Greene: I think he has fewer seats per linear foot of bar than you do.

Mr. Sirignano: I don't know how he deems himself and I don't know what his menu looks like. I don't know if it's typical tavern food or is it more like a full service family style restaurant.

Chairman Ruchala: It's Americana.

Mr. Greene: Is there a part of the menu that's missing? That's a huge bar. Are there drink specialties? It's an enormous bar. You can do everything on your menu with a little fountain so to speak.

Mr. Sirignano: Oh no, we're serving alcohol, a nice bottle of wine for people that are having dinner. We're not saying this is going to be an alcohol free restaurant. The ordinance doesn't say it has to be alcohol free. You just put 500 feet of separation if the primary use of two nearby establishments is service of alcohol for the public.

Mr. Greene: You have a kitchen that's 11 feet by 12 feet. Are you serious? And you have a bar that's 50 feet long. You're not going to serve that menu out of a kitchen that's 11 feet by 12 feet. There's no way you can do that. If this is to scale there's no way.

Mr. Colon: The kitchen in Kelly's is the same size as ours.

Mr. Greene: 11 feet by 12 feet.

Chairman Ruchala: It's just that the kitchen at Kelly's is narrower. This is more square like.

Mr. Greene: The kitchen area is the size of a small bedroom.

Mr. Sirignano: I represent a restaurant, Bocio, in Cross River, where the kitchen is smaller.

Mr. Greene: Smaller than 11 feet by 12 feet? The proportion of the kitchen to the bar is a question. I'm going to have to get there.

Mr. Sirignano: As you know, the Zoning Board can condition the variance, impose reasonable conditions in order to protect the public interest as you deem appropriate. If you want to limit or reduce our bar size we're certainly willing to consider that. But on a total area basis the bar area is less than one-fifth of the total restaurant. So again, we don't think we come near that standard of primary purpose or use of serving alcohol to the public.

Mr. Greene: Do you have a diagram or floor plan?

Mr. Sirignano: This is very preliminary. It will be subject to the Building Department's very careful review.

Mr. Greene: Has anyone looked at available parking yet?

Mr. Sirignano: We haven't gotten to that issue yet.

Mr. Folchetti: You're going to have to meet that before going before the Board.

Mr. Sirignano: We know that the parking area is going to be shared with an existing deli. But that deli does not do dinner so that deli is a breakfast and lunch establishment. So we think it's going to work well, utilizing the same parking.

Mr. Gianguzzi: Is this where they wanted to store the taxis?

Chairman Ruchala: It's where Mr. Doupis, who was here last time, wanted to store 5 taxis. He's at the Planning Board on that issue. Now Mr. Colon is here. How much parking is there?

Mr. Colon: I think there are over 40 parking spaces.

Mr. Folchetti: You have to deal with it before you get building permits. If there's substandard parking in the lot it's coming back.

Chairman Ruchala: My question to Mr. Doupis, who owns the property and was asking for five commercial spaces, had been how much parking there was, and he had said there was plenty. Now, there's a restaurant coming in.

Mr. Gianguzzi: To go back to the parking issue, we have 3, 6, 9, 12, 15, 18, 21, 24, 27 tables.

Mr. Sirignano: We have 27 tables.

Mr. Gianguzzi: 27 tables. I think today the question is what constitutes a tavern "slash" restaurant.

Mr. Sirignano: Today's issue is the showstopper. If we can't get your interpretation and/or relief then we have to go look somewhere else for our restaurant. And if we do get a favorable interpretation or relief and we can't do parking either we're going to reduce our table size or we're going to come back and ask you for more relief.

Chairman Ruchala: The first interpretation, and the most important one, is is it a bar or a restaurant. I mean is it a bar, tavern, etc. Now when it comes to that where do these interpretations fall? Is it a yes or no?

Mr. Folchetti: I haven't seen the application in and of itself. It seems to me it's a three pronged application. The first interpretation is under the statute does this establishment as proposed meet the definition of a bar or tavern that triggers a

prohibited use at the given distance? That's interpretation one, and please correct me if you think I'm off.

Chairman Ruchala: You're right on.

Mr. Folchetti: Number two, if in fact it does there's an interpretation within the statute as to the minimum distance between those types of establishments. Really, it's an interpretation of how to apply the distance-that's the second one. The third thing, if both of those interpretations are not favorable to the applicant, is should there be a variance? I think it's a use variance myself because it's a prohibited use.

Chairman Ruchala: Actually it's in B-4.

Mr. Greene: It's only a prohibited use if it's within the 500 feet.

Chairman Ruchala: 500 feet, deemed to be a bar or tavern.

Ms. Kropkowski: The actual statute says bar, tavern or grill. So if we have a classification as a restaurant then the 500 feet doesn't apply in the first place.

Mr. Folchetti: The way I read the statute is that a bar and tavern are the same thing. Restaurant is very specifically and distinctly defined differently. Bars and taverns are primarily engaged in the business of selling alcoholic beverages.

Mr. Greene: Do you have another restaurant anywhere?

Mr. Colon: No.

Mr. Greene: This would be your first?

Mr. Colon: Yes.

Ms. Kropkowski: Do you have a liquor list or a drink list yet?

Mr. Colon: No, I don't.

Mr. Sirignano: I'm sure it's going to feature Caribbean drinks.

Mr. Greene: I'm a little shocked by the prep area and the bar area. From the sketch, they're disproportionate. Unless the bar is to become this huge design element it's not a bar.

Mr. Sirignano: As I said earlier, if you feel it's appropriate to downsize the physical bar area I'm sure we would try to work with you on that.

Ms. Kropkowski: Do you have anywhere where there is a definition of restaurant?
Mr. Folchetti: It's right in the Code. I would caution you that I don't disagree with Mr. Sirignano. I don't think you can base an interpretation on the fact that there is relief granted. If you have to go to the variance you're entitled to grant it on whatever conditions you want,

Mr. Greene: The Code says:

Engaged in preparing and serving food and beverages as permitted by the Alcoholic Beverage Control Board, selected from a full menu by patrons seated at tables or counters served by a waiter or waitress and consumed on the premises.

So what I would infer from this is that primary is food and secondary is alcoholic beverages.

Mr. Gianguzzi: I go to Norm's with my family.

Mr. Greene: A lot of people go there just to eat.

Mr. Sirignano: I don't know Norm's but from 10:00 to 2:00 is it strictly drinkers, or are there still people going in there to eat?

Mr. Greene: I think they close the kitchen. They're a bar in my personal opinion.

Mr. Gianguzzi: I would say they're a bar restaurant "slash" pub "slash" grill. I think they close their kitchen and have only bar patrons for several hours.

Mr. Sirignano: I think you can go to Cache and have a great meal, great Caribbean food. Look at the menu here. And then if you're hanging around and we close down because it's a restaurant you can go over to Norm's because they're open. But there must be room in the Village for our kind of place. Outside the Village on Route 6 there are a couple of places, and there's Norm's. The deli closes.

Mr. Greene: It is fantastic though.

Mr. Gianguzzi: Our decision though is to define what constitutes a bar, tavern, restaurant. That's it. Correct?

Mr. Sirignano: We're asking you for a fact specific determination.

Chairman Ruchala: We don't have to declare for all time what direction to go.

Mr. Folchetti: You can do it in my eyes in clearly defined parameters saying an establishment with "X" number of tables with "X" number of people of capacity seating fits within the definition of a restaurant and does or does not trigger that. So that way if somebody comes and says I have a different location, a different establishment, you can look at the next application because it's certainly capable of repeating itself. You need at least 2 interpretations before the variance relief here is appropriate is consider.

Mr. Greene: The intent of the glass wall partition is that it looks like you're not going to get 2 and 3 deep at this bar. We have to draw some information out of the applicant to help make this decision. If he had a mission statement that said my bar closes at 10:00 and I'm closed at 11:30, and they're there to eat, if there was a mission statement and that was something we could write into our agreement or variance that's something but we don't get that from him. We've got a huge bar, 27 tables and a kitchen. Maybe that's the way this kind of cooking is done. I would think the kitchen has to be much bigger. If he had three other of these things and we could go and have some sort of a flavor for how the thing really closes down or how the people leave, what time they have a lot of traffic through there.

Chairman Ruchala: Once we approve this all that goes out the window. It's not like you're putting it on a deed.

Mr. Folchetti: There are restrictions you can always ask for.

Chairman Ruchala: He doesn't own the property.

Mr. Folchetti: We're descending a slippery slope here. You have a couple of interpretations to make here and if he fits within that you're done. You're going to make an interpretation of whether it's a restaurant. Then the question is does the

restaurant also trigger that restrictive provision. That's what you're going to have to interpret.

Mr. Sirignano: Your question is if you approve something with 27 tables and all of a sudden it goes down to 2 tables and everybody is at the bar I think the Code Enforcement Officer would be well within his rights to come out and shut us down till we return to a restaurant.

Mr. Greene: Have you been to the Health Department for any type of County determination on types of establishments in terms of permits.

Mr. Folchetti: There are obviously going to be permits that will need to be issued by the Health Department.

Chairman Ruchala: What would you recommend?

Mr. Folchetti: I'd be looking at your Code and requirements and making a determination. If there's ambiguity there are other sources you can look at to clarify.

Chairman Ruchala: Well there's definitely ambiguity.

Ms. Kropkowski: What about the alcoholic beverages control laws?

Mr. Folchetti: There are different types of liquor licenses you get for different types of establishments. There are 4 or 5 that come to mind. If there's an SLA liquor license [inaudible].

Ms. Kropkowski: What I don't know is if the ABC laws separate restaurants from bars.

Mr. Folchetti: The Village has definitions for restaurants and definitions for bars. The operative thing here is that there is a restrictive provision for prohibited use within this 500 foot distance. Does this establishment meet the criteria to trigger that?

Mr. Sirignano: We are going to have a full service liquor license, just like you would find in any fine restaurant where you could have a bottle of wine bought to the table or a mixed drink or a beer.

Mr. Gianguzzi: Any fine restaurant I go to closes at 10:00 the kitchen and you move on.

Chairman Ruchala: What is your intent Mr. Colon? When the restaurant closes is the bar going to stay open or not?

Mr. Colon: The restaurant and bar will stay open to the same time so they match.
Mr. Gianguzzi: Are you serving lunch?

Mr. Sirignano: No.

Mr. Colon: It's going to open like at 5:00. I'll be there at 3:00 preparing but more or less 5:00 is when we'll be open.

Mr. Gianguzzi: Can we close the meeting to the public and discuss it?

Mr. Folchetti: At the end of this you can do that. You don't have a public hearing really. You're entitled to meet with me in executive session. There is attorney-client privilege in the executive session.

Chairman Ruchala: So the first interpretation we want to get is whether they're considered a bar or a tavern.

Mr. Folchetti: I think there are at least 2 interpretations. I'm not sure how they appear on the application. But being there's going to be a noticing mechanism here they're going to be crafted differently or amended I would deal with them as they come in.

Mr. Sirignano: Currently the first request is for an interpretation is whether we are a bar, tavern, grill or pub as defined in your ordinance. The second one was that if you find that we are a variance, but implicit in that are we 500 feet or more. We're going to need your help to determine.

Mr. Folchetti: I think that should be a separate branch.

Mr. Sirignano: I have no problem with that.

Mr. Greene: The alternative relief would be that if they don't have any benefit from the interpretation then there's going to be an application for a variance.

Mr. Gianguzzi: Can we get copies of that?

Mr. Sirignano: Oh sure. This is the only one I have. Can I circulate it by mail?

Chairman Ruchala: We can make copies here.

Mr. Folchetti: We can move to continue the public hearing or hold it over to the next meeting.

Chairman Ruchala: And what are they going to come back with?

Mr. Folchetti: With an amended application. What can happen is that you withdraw the prior and then you're going to have to have a brand new noticed public hearing on something completely different and then fine. My point is there's a certain application before you, but you don't have the public here because the notice was not made. In the interim the applicant is entitled to withdraw that application and no action on it and submit a new application and do the notice provision. Maybe 75% will be the same but that will be a new notice application and if there's any additional relief, and that includes that other interpretation, it will have to be re-noticed anyway.

Mr. Sirignano: It's a technical modification, correct, just breaking two requests into three.

Mr. Folchetti: But there's nothing holding this session over to the next meeting. If there's an amended application in the interim then we open up on this new application. If it's an amended application or a new application the board has been pretty firm on this.

Mr. Sirignano: If I may, before Nelson spends more money on application fees and legal fees is there a sense, I'm not asking for a commitment here, that this is something you would give consideration to, or does your gut tell you that this is a bar and that's that?

Mr. Gianguzzi: I would definitely give consideration to it because I think we need to discuss each mutation.

Ms. Kropkowski: Likewise, same with me.

Chairman Ruchala: I think it's more like a bar.

Ms. Kropkowski: If the kitchen and the bar are open at the same time then it's less of a bar and more of a restaurant. If you have the kitchen closing down and liquor being served then it really is a bar. But if you have the kitchen and bar closing at the same time, or within say 45 minutes of each other because they're cleaning up, then I'm less inclined to consider it as a bar.

Chairman Ruchala: It's 3000 square feet, is that correct?

Mr. Colon: 1650.

Chairman Ruchala: Is there an upstairs in that?

Mr. Colon: There is an upstairs.

Mr. Sirignano: But it's not occupied.

Mr. Colon: There is an office upstairs.

Mr. Sirignano: It's not going to be any part of our restaurant.

Chairman Ruchala: I know that spot and I know it's 3000 square feet.

Mr. Colon: Upstairs is an office but it's rented to someone else.

Mr. Sirignano: What is it we can do to change this ratio to make it more comfortable that this is more of a restaurant than a bar? Certainly the menu is a restaurant menu but is it the relationship of the bar area to the restaurant area?

Chairman Ruchala: It's a big bar, I mean the area, and I think it would be a bar.

Mr. Colon: If that is what you would suggest I am willing to make it a smaller bar.

Mr. Sirignano: If that would help you be more comfortable with the restaurant determination, we can certainly do that.

Mr. Gianguzzi: There is a difference between a service bar and a full service bar.

Mr. Greene: A business enterprise primarily engaged in the retail sale of alcoholic beverages by the drink for consumption on the premises.

Mr. Gianguzzi: You're reading off the definition of a bar?

Mr. Greene: A business enterprise primarily engaged in the retail sale of alcoholic beverages by the drink for consumption on the premises.

Mr. Sirignano: I think it does make a distinction between a bottle of wine that's bought to a table and [inaudible].

Chairman Ruchala: I have another question or two. If we hold this over do we have an obligation to give a written interpretation on anything at this point?

Mr. Folchetti: You wouldn't give a written interpretation at this point because there hasn't been a full notice public hearing. You're entitled to meet with me in attorney-client executive session any time that you want as long as we announce it. So you can discuss with me what you will in that executive session.

Mr. Sirignano: I'll stay here all night to answer any questions you might have.

Mr. Greene: The question I have here is would you be willing to make an application to us again and really get down to the meaning of our Code so that we could put restrictions on you to make sure you're not a tavern?

Mr. Folchetti: You can't restrict an interpretation one way or the other.

Mr. Greene: What I'm saying is can we restrict his use so we can make sure he can't be a tavern?

Mr. Folchetti: The first thing that's happening is an application for an interpretation. You can not condition that. If in fact there's an enforcement mechanism, where there's an observation where in fact the facility is being used really for a tavern or a bar or a grill or a pub and not a restaurant as the applicant is representing to you, there's an enforcement mechanism. That is something that can be brought in the Courts and the applicant at that point can be violated for. What he is looking for, whatever the final determination is, here's a floor plan and here's a table count, is it a restaurant or is it a bar. That's the first thing. And if he changes the bar size in the interim you're looking at that criterion among what else you're looking at to be able to say there's "X" number of tables there's "X"

number of square feet “X” number of percentage of that is bar space we determine it to be a restaurant or bar or tavern. Then depending on whatever that interpretation is it may trigger the restrictive use and it may not. It may stop right there.

Mr. Sirignano: What I can offer as far as you’re concerned, because I think I know where you’re going with the restriction, is we can do a better job of defining exactly what our operation is going to be in terms of hours, in terms of tables versus bar seats and things like that. We can try to nail it down much better for you so if you interpret it as we’ve defined it as a restaurant, if we move away from what we’ve represented then we’ve got an enforcement problem on our hands.

Chairman Ruchala: Is that true?

Mr. Folchetti: Say you decide this applicant knows what he’s doing and you make a determination it’s a restaurant. He subleases it and they go in there and wipe out every table, put in strobe lights and a lighted dance floor. Is it a restaurant any more? No, it’s not. That occupant will be subject to an enforcement proceeding because now, if your interpretation is if Norm’s is a bar, it triggers the restrictive use prohibition now we’ve got an illegal use and the person, whoever the occupant is at that time, if you’re proceeding in court is subject to an injunction proceeding in Supreme Court. There are all sorts of things. In all candor, you try to craft your variances and your interpretations to minimize the difficulties in enforcement. You have to try and do that but there’s only so much you can do. Someone can go in there and blatantly disregard the use—that can happen with a guy you give a variance to put a garage 10 feet closer to the line than it got to be and he puts a 3000 square foot apartment above it. You’ve got an enforcement problem there. Now he’s got living space up there, he’s got two single family occupancies on one line. What do you do? Enforcement. You try to minimize it and I think you can with this application but there are just some things you’re never going to minimize and if people disregard it you’ll have to deal with it down the road. You take it on faith it’s not going to happen.

Mr. Greene: A clear line has to be drawn. Once it’s opened up to the public we’re going to have people in here saying it’s a restaurant or it’s a tavern.

Mr. Folchetti: The criteria you use for the interpretation may have a ratio of tables to floor space or table count to bar space. There’s something that can be done

there so that the next time the next applicant sees if he's under it and then doesn't fall into category.

Mr. Sirignano: We will better define this for you.

Mr. Greene: It has to be defensible because you're in very close proximity to an ongoing business, for obvious reasons.

Mr. Gianguzzi: I got a feeling it's a different market.

Mr. Greene: It is but they're entitled to be heard on this.

Mr. Folchetti: The competition is not grounds for denial of his application.

Chairman Ruchala: If letters were sent out I think Norm's would have been here tonight. They've been here every other time on all other applications.

Mr. Folchetti: You must amend relief-wise or if it's just better defined, more particularly defined.

Mr. Greene: I understand hours of operations, but there are other establishments in the Village and we can't all of sudden make them restaurants by definition, because they're taverns. So we have to be very careful.

Chairman Ruchala: I totally agree.

Mr. Greene: He's probably going to be open to some very specific conditions because it's going to promote his business.

Mr. Sirignano: He's not serving lunch so nobody is going to go there for Friday happy hour.

Chairman Ruchala: But he can always start serving lunch.

Mr. Gianguzzi: He can change the menu too. He can take tables out and take that glass partition and put it three deep. He can do a lot of things, right. We don't know.

Mr. Sirignano: Or Norm's can change into an Italian full service restaurant. Then that solves our problem and it never becomes an enforcement issue.

Mr. Folchetti: Anybody here can finish their basement with a CO or put an addition on without a CO. Then it gets to enforcement.

Mr. Sirignano: I think that's an inherent problem in the definitional part of your ordinance. But in any event Nelson is willing to make a major investment in the Village and I think it would be a wonderful benefit to the residents here. We appreciate your keeping an open mind. We'll re-notice this, define it better and come back and see.

Chairman Ruchala: So at this point I think we should just make a motion to continue this meeting but we need to make a date and we haven't. How about September 22nd?

Mr. Gianguzzi: Will you give me a moment please.

Chairman Ruchala: I will.

Mr. Gianguzzi: That's actually good for me. I have jury duty but that's it.

Ms. Kropkowski: I shall make myself available.

Chairman Ruchala: I say we continue this meeting to the date of September 22, 2008 at 7:00 p.m., Monday at 208 Main Street, Brewster, New York and I move that we do so. Can I have a second to that motion please.

Ms Kropkowski: I second.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: I make a motion that we go into executive session on this issue.

Mr. Gianguzzi: Second motion to go into executive session.

Chairman Ruchala: All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

Chairman Ruchala: I make another motion that we adjourn.

Ms, Kropkowski: Seconded.

Chairman Ruchala: Seconded by Claire. All in favor.

Mr. Greene: Aye.

Ms. Kropkowski: Aye.

Mr. Gianguzzi: Aye.

