

**VILLAGE OF BREWSTER  
ZONING BOARD OF APPEALS  
WORK SESSION  
OCTOBER 21, 2008**

**MINUTES**

Board Members Present: Chairman Richard Ruchala, Board Member Todd Gianguzzi, Board Member Claire Degan Kropkowski, Esq., and Board Member Jim King

Board Members Not Present: Board Member Keith Greene

Others Present: Mayor Jim Schoenig, Village Attorney Gregory Folchetti, Esq., Rick Stockburger, Teri Stockburger, Michael Sirignano, Esq., Laurie Manning, Nelson Colon, Plinio Palmieri and Domenico Palmieri

The Pledge of Allegiance was recited.

Mr. Gianguzzi: I would like to make a motion to open the meeting.

Mr. King: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous. The Board members present are Todd Gianguzzi, James King, Claire Kropkowski and Richard Ruchala. The first thing I'd like to do is to approve the Minutes from the prior meeting. I'd make a motion that we review the Minutes of the previous meeting.

Mr. King: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. King: Aye.

Chairman Ruchala: I see one issue on page "2"; it's not numbered but it is the second page. It concerns the language that says "He might be requesting a use variance for a non-allowable use. I don't know why he'd be at the Planning Board. They'll just send him back tomorrow because he's looking for a use variance. It's a non-allowed use: storage." I think the entire statement belongs to Mr. Stockburger and not myself Richard Ruchala. Does anyone disagree or have a different memory of that?

Mr. King: I think they're fine

Ms. Kropkowski: I have no changes.

Chairman Ruchala: I make a motion we approve the Minutes for the September 22, 2008 meeting except for the portion that was read previously where Mr. Stockburger continued his conversation on the second page of the Minutes. Anybody second?

Ms. Kropkowski: I second.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous. The first item on the agenda is the Colon application.

Mr. Sirignano: Good evening. My name is Michael Sirignano, Attorney-At-Law. I am here with my client Nelson Colon.

Chairman Ruchala: As of the last meeting we had two items that we needed from you. One was what standing does Mr. Colon have before us and the other was the Building Inspector's release of any judgment or issue with you.

Mr. Sirignano: My understanding is that the cabs have been removed from the premises since our last meeting and that the Code Enforcement Officer has been out there to inspect and has certified that they have been removed. I was also told that there would be some memo or writing circulated to that effect. I have not seen it myself. That's what I know about that issue.

Chairman Ruchala: I have nothing in writing but it's been mentioned more than three or four times at other meetings that that's occurred. Does the Board have an objection with this standing, that there was a violation on the property.

Mr. Gianguzzi: You said you had conversations with.

Chairman Ruchala: With Bob Serino. It was brought up at the last Village Board meeting and that they moved the vehicles to the Getty station. And I heard they're now removed from there too. The Building Inspector also said that if they did put the vehicles back at that property there would be immediate tickets given.

Mr. Sirignano: So that the record is clear these cabs were never involved with my client.

Chairman Ruchala: It was a violation on the property period. I have no issues.

Mr. Folchetti: As a prosecutor I can represent that I have no pending matters before the Village Court.

Mr. Sirignano: Secondly, I have a letter signed by Mr. Doupis. It is a Letter of Intent in which he is indicating his agreement to enter into a lease with Mr. Colon

once we get through this process. Obviously we're not going to sign a lease if we can't get the necessary approvals. I think that's sufficient for our standing on this application.

Chairman Ruchala: I thought standing had to be something official.

Mr. Folchetti: Generally, standing is some interest in the property. That can be a leasehold interest, it can be an ownership interest. With respect to this particular matter, the need for a lease would be rendered moot if the relief is not granted by this Board. Personally, and from a legal standpoint I would accept this Letter of Intent to Enter a Lease pending the Board's determination. I don't see a problem with that. The Board can certainly condition a variance upon the actual entering into of a lease at some point within a certain time frame. We made the applicant come back for at least the third occasion. With respect to the property interest this is quasi-advisory in nature and also he has an interest in the property that hasn't yet ripened because he hasn't signed a lease. But why would he sign a lease absent getting the relief he needs for the restaurant purpose. You can't condition an interpretation. You can condition any relief upon the signing of a lease.

Chairman Ruchala: Anyone on the Board have any comments.

Ms. Kropkowski: For purposes of this I would not have any objections.

Mr. King: I have no objections on that.

Mr. Gianguzzi: No objections.

Chairman Ruchala: Then we'll accept this for conditional purposes.

Mr. Sirignano: I'd also like to point out that we have the consent of the owner, Mr. Doupis, and he has cosigned our application.

Mr. Folchetti: I was unaware of that. That certainly helps the standing issue, that the owner of the property has cosigned the application.

Chairman Ruchala: So we accept Mr. Colon's standing on this issue. I have one more thing. I don't know when this should come up because it's an important issue but on the other hand I did receive something from the County regarding 239M, which is an item we have to send anytime an applicant comes before Zoning or Planning and is within 500 feet of a State or County road-we have to get

the approval of the County for the project or a negative declaration by the County. In this situation under 239M I have received something that the County has no interest in the interpretation or the result of this matter. I got that done quickly because I know you wanted this meeting and so we wouldn't have any issues with that.

Mr. Sirignano: I appreciate it. That's not to say that this isn't an interesting application.

Chairman Ruchala: No, it's not.

Mr. Sirignano: The first item of relief requested-after the first meeting we further refined this with input from the Board and counsel-the first thing that we have put before the Board tonight is an interpretation of the 500 foot separation standard according to Section 170-17(a)(15) of the Village Code-that it applies only to a bar, tavern, grill or pub and not to Mr. Colon's proposed restaurant. Since that first meeting that we had before your Board we have further refined the description of exactly what kind of restaurant operation Mr. Colon intends to open. We've also given you a kitchen floor plan, as there were one or more questions about the size of the kitchen, whether it was really sufficient for his restaurant. So we've given you a kitchen diagram demonstrating that it is a full service kitchen. We've also given you a revised dining room plan that shows that the bar area, the physical bar, has been reduced in size from what was originally proposed to this Board. Also we've attached the full menu of the restaurant. So we go to the critical legal issue for which we've asked you for an interpretation: what exactly is a bar or tavern that Section 170-17(a)(15) contemplates. The ordinance itself defines it. It says a bar or tavern is an establishment where the primary use is "the provision of alcoholic beverages to the public." The primary use of Mr. Colon's restaurant is not the provision of alcoholic beverages to the public. It is the provision of a fine Caribbean menu, a dinner menu, as he's not going to be serving lunch. We have further specified in our description that the kitchen will remain open and serve any patron anything on the menu as long as the front door is open, so the kitchen is not going to shut down and the bar remain open beyond the point where the kitchen shuts down. We have no problem with that being a condition of your interpretation and approval. Lastly I would note that this 500 foot separation certainly has a legitimate public purpose. When I was a young lad I used to go over to the bars in New Rochelle-they were right on top of one another and you could walk out one and go 20 steps and walk into the next one. It did cause some problems with public safety and unruly crowds and the like. So I'm not here to argue against the policy. What I'm here to say is that Mr. Colon's operation is not a bar and the fact

that we may be within 500 feet, and I hope we don't have to get out our rulers tonight and measure it and get to issue number two-the fact that we are in some proximity to Norm's Homestead I don't think we're running afoul of either the actual definitional part of the statute or its intent. So what I'm saying is that I think we do no harm to the Village by opening this restaurant. That's really our presentation. You have our submission. I'm here to answer any questions. Please feel free to ask Nelson any questions. He is experienced in the restaurant food business. He has a culinary trained chef ready to go once we get through all of the approval process and get the necessary permits. We're anxious to move forward with this.

Mr. King: What was the bar reduced to-I can't figure it out from the diagram?

Mr. Sirignano: We don't have the exact dimensions.

Chairman Ruchala: It was 50 feet. It still is 50 feet, correct?

Mr. Colon: No, it's not. I believe it's 16 feet in-between. It's somewhere like 20 something feet.

Mr. Sirignano: We'll accept if you want to give us 25 or 30 feet, whatever you'd like. We're fine with a specified length of bar. We are going to have 27 tables for dinner service. The bar area is less than 1/5 of our total restaurant, which is further evidence that our primary use here is not a bar or service of alcohol to non-dining patrons but to dining patrons.

Ms. Kropkowski: If I may interrupt. Is that 1/5 number 1/5 of the floor space or 1/5 of the service space?

Mr. Sirignano: I'm not sure I understand the distinction.

Mr. King: Is that including the kitchen?

Mr. Sirignano: I believe it's of the floor area.

Ms. Kropkowski: The floor service area.

Mr. Sirignano: The public area of the restaurant. So whether you want to limit us in actual lineal feet of the bar or you want to limit us to 1/5 of the total restaurant area-either way we would be happy to accept that as a condition.

Mr. Gianguzzi: What is the total square feet?

Chairman Ruchala: I believe it was 1650 square feet. Is that correct?

Mr. Sirignano: Yes.

Chairman Ruchala: The diagram is no longer an accurate depiction. Can we make a new accurate depiction, or this is going to be what's presented?

Mr. Sirignano: We would be happy to do that as part of the Building Department application. Obviously we're going to need some scale drawings for that purpose.

Ms. Kropkowski: And we're still talking about having 27 tables?

Chairman Ruchala: It was 26 I believe.

Mr. Sirignano: It's 27.

Chairman Ruchala: That's strictly a Planning Board issue. The issue here is are you a bar or a restaurant, and is Norm's a bar or a restaurant. That's the gist of it.

Mr. Gianguzzi: I think it's more so whether the restaurant coming in is going to be deemed a bar/tavern or a restaurant.

Chairman Ruchala: That's basically the first question. The second question is- interpretation is an interesting area but we don't want to get legislative.

Mr. Folchetti: If I can interject.

Chairman Ruchala: Sure.

Mr. Folchetti: The discussion back and forth about conditioning any interpretation. I'm not sure you can condition an interpretation; I'm fairly sure you can't. What you do is that in your decision or determination make a very discrete and specific set of factual findings regarding the application. Then you can make your interpretation as to whether or not the application as proposed would fit the characteristics of a given definition. And then you'll have some measuring stick to use as guidance for any other application that comes under that section of the statute.

Chairman Ruchala: Do you have any other restaurants or bars?

Mr. Colon: No sir.

Chairman Ruchala: Because you said you were experienced.

Mr. Colon: I am a certified mixologist/bartender. I've had other types of businesses but not restaurants.

Chairman Ruchala: 27 tables inside 1650 feet. I'm thinking that's quite a few tables.

Mr. Sirignano: It won't be more than that and depending on the Building Department's review of this it may be less.

Mr. Folchetti: There may be fire issues.

Mr. Sirignano: Or the parking may cause us to reduce our seating count.

Chairman Ruchala: This is the third month we've one way or the other looked at the program. Does anyone have any questions of importance?

Mr. King: I think so. When you say we are either to approve or disapprove of this as a restaurant, and it is in fact a restaurant and not a bar or a tavern. Is that what we would we be saying?

Mr. Folchetti: Well what you would do is there's a multi-pronged application. The first prong is a motion to issue an interpretation that the applicant with the proposed use as put before the Board meets the definition of a restaurant, or it doesn't. Then you would go on to the next prong of the application, as there are alternative forms of relief being sought. The practice of this Board to my understanding is that you will take a verbal vote and issue a written Decision and Order, correct?

Chairman Ruchala: We use the Minutes many times but I can also add an Addendum.

Mr. Folchetti: Whatever the case may be there has to be an appealable paper for an applicant, or an aggrieved party in any set of circumstances.



Chairman Ruchala: Reasons will be placed.

Mr. Folchetti: So if that's the protocol, okay, as the Board and I are just getting to know each other on a procedural basis. You can make a recitation right now. The applicant has presented a proposed business with 27 tables, "x" number of square foot bar, a menu with "x" number of items.

Mr. King: The kitchen open the entire amount of time the business is open.

Mr. Folchetti: All of those things. Based on the foregoing we find that the applicant's proposed use either fits the definition of a restaurant under our Code or it doesn't. And if it fits it you don't have a concern with the 500 foot separation requirement. And if it doesn't you have to go to what is Norm's. Is Norm's a bar or a restaurant? And if that doesn't fall in the applicant's favor I believe there's still an application for a variance. That's how I would do it.

Chairman Ruchala: Okay. Any other questions.

Ms. Kropkowski: I can't think of any at this time.

Chairman Ruchala: Do I have to close the meeting?

Mr. Folchetti: No-it's a full public hearing.

Ms. Kropkowski: Perhaps we should call for public comment.

Chairman Ruchala: Public comment. Any one like to say something.

Mr. Stockburger: I'd like to say something.

Chairman Ruchala: Mr. Stockburger.

Mr. Stockburger: I have a copy of a statement that I am passing out to the Board.

Chairman Ruchala: Would you like to read it.

Mr. Stockburger: [reading from the prepared statement]

For full disclosure, I am a member of the Village Planning Board. The Village Parking Enforcement Officer; my wife Terri Stockburger and I were both members of the Rezoning Commission. My wife is an elected Village Board member. We have no financial or other interest in this property.

Let me start by saying that the Code Enforcement Officer determined that this application is for a bar and not a restaurant.

Definition of bar from the 18 June 2008 Village Code, Chapter 170 is bar is a "business enterprise primarily engaged in the retail sale of alcoholic beverages by the drink for consumption on the premises."

Looking at the application presented-the only thing we should be looking at is the application presented in front of us. The kitchen shows an area of 11 by 12, 132 square feet.

The bar area is approximately, as the scale on the drawing is not too good, 33 by 7 feet, 231 square feet.

And the kitchen appears to be far too small to serve food to all the tables shown. It is our opinion, my wife's and I, that the primary use of this business will be for the service of alcohol by the drink. Therefore it fits the definition of a bar and we support the decision of the Code Enforcement Officer.

I would like to add that it's not in the purview of any of the Boards to regulate the hours or conditions of an establishment once it's running. An applicant may say what he wants to do he is free once he's running the restaurant or the bar to change the interior or to do whatever he wants to do. I'm not saying that Mr. Colon's business might fail but somebody else could bring a restaurant and there's nothing to say from the areas presented out there that they couldn't always set down bar tables. So I support the Code Enforcement Officer. Thank you.

Chairman Ruchala: Thank you Mr. Stockburger. Any one else in the public have something to say.

Mayor Schoenig: I do.

Chairman Ruchala: Jim Schoenig, Mayor, Village of Brewster.

Mayor Schoenig: Let me state that I am speaking here as a private citizen and not as the Mayor. My take on Rick's point is the size of the kitchen and that's the one thing that concerns me here. We have 26 or 27 tables, I'm looking at a 46 foot bar, I'm looking at an 11 by 12 kitchen with a 3 foot by two and one-half foot refrigerator, a four foot by a two and one-half foot freezer. It seems like a lot of tables to serve to that many people. The concern that I have is-I totally understand it's your decision but I'm just giving you my viewpoint as a citizen here, not as an elected official. There are enough problems here. Everybody says they're going to

do one thing and when they open up we wind up with something else. I'm not saying he's going to do that but I'm looking at something-my wife's family was involved in the restaurant business. They didn't have 27 tables and they had a big kitchen in their restaurant. It concerns me.

Chairman Ruchala: Thank you very much Mr. Schoenig. Again, let the record reflect that he was speaking as an individual and not as the Mayor. Anyone else.

Mr. Gianguzzi: Is it possible to give me a better understanding of 11 by 12 feet for the kitchen.

Ms. Stockburger: Count the ceiling tiles above you.

Mr. King: The floor tiles are one foot tiles so we can walk off the tiles.

Mr. Gianguzzi: These are two foot tiles, right?

Mr. King: I have no idea.

Mr. Colon: I've been to the restaurants in town-Kelly's, Fiesta Mexicana and several of the other restaurants in town, Aversano's. They're just about the same size. We're not talking about huge size kitchens in any of these restaurants that we all know in town.

Mayor Schoenig: I just want to point out that these restaurants are outside of the Village limits.

Mr. Colon: I'm just saying local restaurants within Brewster are all the same size kitchens. The width of the business is 46 feet so the bar cannot be 46 feet if the width of the business is 46 feet.

Chairman Ruchala: Somebody said it was 37. I remembered it being 50 at the first meeting. You haven't changed the plans to the best of my knowledge.

Mr. Stockburger: It's 5/7 of 47 feet, so it's 33.7 feet.

Chairman Ruchala: Can I take that as accurate? He's saying it's 33.7 feet I believe.

Mr. Colon: The width?

Chairman Ruchala: 33.7 feet.

Mr. Colon: The paper itself is not an accurate inch by inch-it's not an architectural plan. Once we go forward I will of course have an architect do plans.

Mr. Sirignano: I would like to make two points. One is that I think whether an establishment is primarily for the service of alcohol or for the service of food, the more important determination is not the kitchen but the menu. Again I would ask you to look at our menu. It's a full service dinner menu for appetizers, for desserts. The pricing on the menu runs into the high 20 dollars for main courses. So I think this is not your typical bar fare by any stretch of the imagination. I think that's the more critical issue. Secondly, as to the size of the kitchen-it may be on the smallish side but we have to work inside an existing space. As you can see from the floor plan there's a walk-in box in the storage room and the serving station outside of the kitchen area next to the bar area. I would suggest to you we're working within the confines of an existing 11 by 12 space. To now build an entirely new kitchen would just be too much of an expense for Mr. Colon as a tenant so we're working within an existing space. We also have our walk-in box outside of that kitchen. I think we have ample room and frankly I think it's more important what type of food we're serving rather than how tight the kitchen is for the employees there.

Chairman Ruchala: Thank you. Any other questions from the Board?

Ms. Kropkowski: I have a question. If we were to say that this was a restaurant is that the case for any one else who wants to take over that location? Or is it still a case by case analysis?

Mr. Folchetti: The restaurant would be a permitted use and not subject to the prohibited use restriction in 170. If someone were to take an assignment of lease, if Mr. Colon decided to lease the property, and decided to run a regular retail business there, and someone cleared out all the tables and put in strobe lights and a disco ball, I'm being facetious but you understand what I'm saying, that use automatically would most likely violate the 500 foot restriction because of its proximity to Norm's Old Homestead. But the argument here is that it's a restaurant and it's a permitted use and not subject to the distance restriction. He could assign his lease for any permitted use.

Ms. Kropkowski: What if it's a conglomerate? What if it's a bar/restaurant rather than a restaurant? You have bars, taverns and grills which are primarily for alcohol. And you have restaurants. But there's an amalgam at some point between the two where it could be either a bar or a restaurant.

Mr. Sirignano: Your ordinance doesn't define any amalgam.

Ms. Kropkowski: It doesn't.

Mr. Folchetti: Under our Code it's one or the other, unless it's split 50-50 between food service and the alcohol. I would define "primarily engaged" as a 51-49 preponderance. But we're really getting into the minutiae. Any permitted use that an assignee would get is permitted to the extent that it doesn't violate the permitted uses scheduled in the regulations. In the most extreme version they take out the kitchen and use it for some other purpose. You probably want to deal with it on a case by case basis if in fact there's another applicant for that space.

Chairman Ruchala: Are there any other questions? If I'm correct, and tell me if I'm wrong counselor, the first question is whether it's a bar or a restaurant. Do we have to go through each piece?

Mr. Folchetti: I would go through the application.

Chairman Ruchala: Okay. The first question is is it a bar or a restaurant. If we answer it's a restaurant then the rest of the discussion is moot. If we answer it's a bar then the discussion becomes is it within 500 feet of Norm's. If he is or he isn't what discussion do we have then. Then I think the third part was if he is what is Norm's.

Mr. Sirignano: I think is it a bar or a restaurant-restaurant we go home. If it's a bar you have to then tell us what Norm's is.

Chairman Ruchala: Right.

Mr. Sirignano: You say Norm's is a bar you have to then tell us are we within 500 feet as the statute asks you to measure that. If we are then I'm asking you for a variance for whatever the shortfall is.

Chairman Ruchala: is he asking us for a use variance?

Mr. Folchetti: It would be a use variance to permit a use within 500 feet of an otherwise prohibited zone.

Chairman Ruchala: Alright. Does the Board understand the questions before us? Do I make a motion for a vote?

Mr. Folchetti: You have to make a motion to interpret one way or the other.

Chairman Ruchala: Okay. I make a motion to determine whether or not Cache at 855 Route 22 is a bar or restaurant.

Mr. King: Seconded.

Mr. Folchetti: I would make a motion as to what your position is and see if you have a second.

Mr. King: The Code Enforcement Officer determined that the application was for a bar and not for a restaurant.

Chairman Ruchala: By the way, I have it right here for you.

Mr. Folchetti: You're the appellate branch. Anybody who's aggrieved by a determination of the Zoning Officer is entitled to come to you to modify, reverse, confirm or whatever.

Mr. Sirignano: By the way, I tried to convince your Code Enforcement Officer of my view of this after he issued the initial determination. He basically responded that he thought it was up to you folks.

Chairman Ruchala: And by the way, I have your letter that is in disagreement with the Building Inspector's interpretation that you are a bar. Let's go back again.

Mr. Folchetti: Somebody makes a motion for an interpretation that the application as presented meets the definition of a bar or a restaurant. You say one or the other, I'm not going to put the words in your mouth. You have a second and then you vote on it.

Chairman Ruchala: I make a motion that we make an interpretation on whether or not the Cache application as brought before us by Nelson Colon is a bar. Do I have a second?

Mr. King: That it is a bar?

Chairman Ruchala: That it is a bar. Do I have a second?

Mr. Gianguzzi: Could you please repeat your statement.

Chairman Ruchala: I make a motion that the application before us brought by Mr. Colon is a bar. Do I have a second?

Mr. Gianguzzi: I'll second.

Mr. Sirignano: Just to protect the record for my client I just want to spread on the record that we are not asking for that motion or that interpretation.

Ms. Kropkowski: My understanding is that you're asking for an interpretation that you are in fact a restaurant in contradiction to [inaudible]. Is that correct?

Mr. Sirignano: Yes.

Ms. Kropkowski: And then in fact if it is a bar we go to the next step.

Mr. Folchetti: Correct. Make a motion for an interpretation that the application as submitted meets the definition of a restaurant. And if that doesn't carry you make whatever other motions you want. That's what I would suggest you do. You're not prohibited from doing what you did Me. Chairman but for the sake of clarity that is the application.

Chairman Ruchala: I'm confused on something. They're looking for a vote. I'd be glad to say it's a restaurant or a bar but for convenience I was going with what the Building Inspector wrote.

Mr. Folchetti: That's fine. I don't have any objection to it. For the sake of clarity in the record there is an application before you to seek an interpretation that that use qualifies as a restaurant.

Chairman Ruchala: What if you don't get a second?

Mr. Folchetti: If the motion doesn't carry it fails. If it doesn't carry by a majority of the Board it fails. Then you can make another motion for a determination that it's anything else.

Mr. Sirignano: Let me just ask a question about the decision of the Building Inspector. I'm not asking you to make a public proclamation that he was wrong. In fact, this application has changed since it was originally presented to your Building Inspector. It's much better defined and fleshed out than it ever was when it was presented to the Building Inspector. I'm sensing some hesitation to declare that he made a mistake.

Mr. Gianguzzi: What's changed?

Mr. Sirignano: We have much more information about the exact layout of the restaurant, the kitchen, the operation, the hours, how the kitchen and the restaurant area are going to stay open conterminously, all of that. I believe that what we've presented to this Board is a restaurant and that's what I'm asking an interpretation on.

Mr. Folchetti: If you make that motion for an interpretation and it doesn't carry and it's denied then you've denied it's a restaurant. If it carries it carries.

Ms. Kropkowski: Excuse me, but I thought the motion was to call for a vote and then say we were going to open it up for a vote by the Board, either second the motion or not and then vote.

Mr. Folchetti: The motion is for an interpretation of a certain definitional item.

Chairman Ruchala: So once I say it's a restaurant am I voting for the restaurant? Or am I voting for the bar?

Mr. Stockburger: You have to vote for his motion if he brings the motion.

Mr. Folchetti: You can make a motion for discussion purposes if that makes you feel better.

Chairman Ruchala: We've already had a lot of discussion.

Ms. Stockburger: You made a motion that you were going to define it as a bar. Then you need to vote on it, yes or no, is it a bar or it's not a bar.



Chairman Ruchala: Thank you. We can do that-let's go forward with this. I make a motion for an interpretation that the use is for a bar or is a bar.

Mr. Gianguzzi: Seconded.

Chairman Ruchala: I got a second from Todd Gianguzzi. Now is that a vote? Jim, do you think this is a bar?

Mr. King: I don't know what to think.

Chairman Ruchala: You should have asked other questions.

Ms. Stockburger: I have a question for Greg. If it's deemed a restaurant and years from now he goes away.

Chairman Ruchala: I'm sorry-I think this is getting past our point here.

Mr. Folchetti: I'm not sure you want to have public discussion while the vote is going on. You vote for or against, for or against.

Chairman Ruchala: The questions are over. Can I ask someone else to vote first.

Mr. Gianguzzi: You usually work that way and we go around.

Chairman Ruchala: I do.

Mr. Gianguzzi: Yeah, you do.

Ms. Kropkowski: Why don't we go the other way?

Chairman Ruchala: I didn't know I was doing that.

Mr. Gianguzzi: You were.

Mr. Folchetti: If that's your regular voting order, once you have the motion and a second just go around. You [Chairman Ruchala] should go last.

Chairman Ruchala: I do go last.

Mr. Gianguzzi: Would you like me to start?

Chairman Ruchala: Yes.

Mr. Gianguzzi: Based on the menu that was presented, based on the floor plan, I don't have a choice but to say that it's not a bar.

Mr. Folchetti: Are you against the motion?

Ms. Stockburger: Are you saying yes?

Mr. Folchetti: You have to say you're for the motion or against the motion. The present motion is that it's a bar.

Chairman Ruchala: He's voting that it's a restaurant.

Ms. Kropkowski: No he's not. He's just saying that it's not a bar.

Chairman Ruchala: Okay. We have a motion, seconded and one against.

Mr. King: I'm against the motion that it's a bar.

Ms. Kropkowski: He's against the motion.

Mr. Gianguzzi: For the record, what was Jim's vote?

Ms. Kropkowski: The motion is is that this would be defined as a bar, correct?

Chairman Ruchala: There's two against.

Mr. Folchetti: The motion is for an interpretation that it's use is as a bar under the Village Code.

Ms. Kropkowski: I would love to abstain on this one. I would have to agree that this is not a bar as such. So I am against the motion.

Chairman Ruchala: I think it is a bar. So yes, I think it is a bar and I vote yes.

Mr. Folchetti: The motion therefore fails.

Mr. Sirignano: I'd ask the Board if one of the Board members would make a motion for an interpretation that the application for Cache as presented is a restaurant, not subject to the 500 foot separation standard. I would like to point out procedurally that once there were two "nay" votes on that last motion that that motion was destined to fail. A tie or a failure of a three vote majority is a failure. So I say that because I'm hopeful that on the next motion that we're going to get three votes one way or the other.

Ms. Kropkowski: As a point, what happens if there's not three votes?

Mr. Folchetti: Then the motion fails.

Ms. Stockburger: We're not going to go any place unless somebody makes a motion for an interpretation that it's a restaurant.

Mr. Sirignano: I have a client to represent. I'm trying to be respectful, but if it's not a bar it's a restaurant. I ask you to so find and if you don't then we have our legal remedies in the State Supreme Court. But we need you to finish this process. And we hope for a logical conclusion based on the first vote that you just made.

Mr. Gianguzzi: What's the next step?

Ms. Kropkowski: The next step is to make a motion that this application, as it has been presented and we have seen it, is a restaurant.

Mr. Gianguzzi: Not a bar, or just a restaurant.

Ms. Kropkowski: Just a restaurant, period. So would that come from you [indicating Chairman Ruchala]?

Ms. Kropkowski: It can come from anyone.

Chairman Ruchala: I'm not making that motion.

Ms. Manning: Can we have public comment again?

Mr. Folchetti: There was no motion to close the public comment. Public comment can be made.

Chairman Ruchala: There's no motion pending?

Ms. Kropkowski: No, there's no motion pending.

Chairman Ruchala: Public comment.

Ms. Manning: Mr. Colon stated that he has not had any restaurant experience as far as owning a restaurant. Who's in charge of purchasing, ordering, that type of thing?

Mr. Sirignano: A chef trained at the Culinary Institute.

Chairman Ruchala: Actually, there's a name on the application.

Ms. Manning: Okay.

Ms. Kropkowski: I have to say that I still think that it's something that's not in our Code. And that's what gives me the most problems. I think that the size of the bar is such that it really could be a bar and be converted into a bar without really any issues. The size of the restaurant is such as it is. The size of the kitchen is not my concern. The most telling thing for me was that the food from the menu would be served at the same times as the bar being open.

Mr. Sirignano: Let me see if I can help the Board here. I'd ask you to make a motion that the application as presented is not a bar as a bar is defined under Section 170-17(a)(15). You don't have to tell me it's a restaurant; tell me that it's not a bar. If I have three voted for that then we're not subject to the 500 foot separation. I think that you've already told me that in the inverse. I'm asking you to make a positive motion that it's not a bar as defined under Section 170-17(a)(15). Does that help you?

Chairman Ruchala: The question is does this become a situation where we revote?

Mr. Sirignano: It's a different motion.

Mr. Folchetti: You can have as many interpretations as you want. That was a distinct motion for an interpretation that it was a bar. Instead of an interpretation that it's a restaurant the applicant is asking for an interpretation that it's not a bar. Someone needs to make a motion. You have an applicant in front of you that's been here on at least three occasions.

Mr. Stockburger: I think the motion ought to be that it's not any of the prohibited uses, because if it's not a bar you still have tavern.

Mr. Folchetti: Bar and tavern are the same, primarily engaged in the provision of alcohol.

Mr. Sirignano: And a bar is not a prohibited use in this District. It's prohibited only if it's within 500 feet of another bar.

Mr. Folchetti: For clarity sake the motion should be, as counsel suggested, that it is a restaurant as defined under your Code.

Chairman Ruchala: Does anyone on the Board want to make that motion?

Mr. Gianguzzi: I make a motion to take a vote on a motion stating that this is a restaurant, period.

Mr. Folchetti: Within the meaning of the definition section of the Town Code.

Mr. Gianguzzi: Yes, within the definition. What section was that, 170-15?

Mr. Folchetti: No. A bar and restaurant are defined in the Village Code in Section 170-3. It would be a motion for an interpretation that the application as presented fits the definition of restaurant under Section 170-3, definitions of the Village Code.

Mr. Sirignano: A bar is defined under Section 170-17(a)(15).

Mr. Folchetti: No, it's in 170-3.

Ms. Kropkowski: So have you made the motion?

Mr. Gianguzzi: Yes.

Ms. Kropkowski: For the vote?

Mr. Gianguzzi: Yes.

Ms. Kropkowski: I'll second the motion for the vote. Will there be public comment?

Chairman Ruchala: Public comment is closed.

Mr. Gianguzzi: Jim, do you want to start?

Mr. King: I'm going to vote.

Chairman Ruchala: We're not voting yet, just taking Board comment.

Mr. King: My concern is whether what we're looking at is going to remain that.

Mr. Sirignano: That's what we're asking. If you find anything differs from that it may become an enforcement issue.

Mr. King: That's the problem that I have to think about-the enforcement of it. But, I will vote that what is put forth in this application is a restaurant.

Mr. Folchetti: So that's for the motion?

Mr. King: Yes.

Chairman Ruchala: Claire.

Ms. Kropkowski: The items that were put forth in the original discussion, along with the menu, with the additional information that the bar appears to be smaller than is drawn here, that it's truly 1/5 of the floor space and not otherwise, and that we seem to have sufficient room in the kitchen to do this, and that for my purposes the most important thing is that both food and alcohol are served at the same time from the menu, from the way that it's been presented I think that is in fact a restaurant as per our Code.

Mr. Folchetti: Is that for the motion?

Ms. Kropkowski: That's for the motion.

Chairman Ruchala: Todd.

Mr. Gianguzzi: Based on what was presented, the menu, based on any time the doors being open the ability to be served food off the menu that was presented to

the Board, I would agree that this is a restaurant based on the motion. So I'm for the motion.

Ms. Kropkowski: I'm sorry. I just wanted to add one other thing. The other thing that I understood is that there would also be a waiter or waitress at all times.

Mr. Sirignano: It's table service.

Ms. Kropkowski: And that would be during the times it was open. That also was taken into consideration.

Chairman Ruchala: Richard Ruchala. I think Norm's is a bar, I think other than a few modifications here I think that this is a bar, and I vote against the motion. The motion carries 3-1.

Mr. Sirignano: Thank you.

Ms. Kropkowski: In a written decision do we put down specifics?

Mr. Folchetti: I would make a factual recitation of what you based your interpretation on. It's no different than if you gave a use variance and wrote a factual recitation.

Ms. Kropkowski: Are we going to write it or are we going to rely on the Minutes?

Chairman Ruchala: I think on this one I'll write one.

Ms. Kropkowski: If that's the case I want to make sure that it's all those things-it's the waitress service or waiter service, serving food and alcohol at the same time, the size and dimensions of the property that is on here, it's not just the layout that's not accurate and not to scale.

Mr. Gianguzzi: We can put into the record that our decision was made based on the following assumptions that Claire has just stated.

Mr. Sirignano: I want to thank the Board very much. This was not an ordinary run-of-the-course matter.

Chairman Ruchala: Thank you. It was very nice dealing with you.

Mr. Sirignano: It was a pleasure being here.

Chairman Ruchala: Good luck to you Mr. Colon.

Mr. Colon: Thank you for your consideration.

Ms. Kropkowski: When do you expect to be open?

Mr. Colon: As soon as I get all the approvals. I'll be there working seven days a week.

Chairman Ruchala: Next on the agenda is an informal meeting about Plinio Palmieri.

Mr. Plinio Palmieri: Plinio Palmieri. P-L-I-N-I-O P-A-L-M-I-E-R-I.

Chairman Ruchala: Mr. Palmieri, please speak.

Mr. Plinio Palmieri: At 2624 Carmel Avenue there is an apartment on the third floor.

Mr. Gianguzzi: Is that the actual address, 2624?

Mr. Plinio Palmieri: Yes. 2624 Carmel Avenue.

Chairman Ruchala: You are the building just to the right of Beals from your house.

Mr. Plinio Palmieri: Yes.

Chairman Ruchala: Go ahead.

Mr. Plinio Palmieri: That apartment was legal for a long, long time. I don't know, maybe 100 years, maybe 80 years. A few years ago it wasn't renting so I decided to do something-there was a huge room in the back of the house.

Mr. Gianguzzi: How many family house are we talking about?

Mr. Plinio Palmieri: Four.

Mr. Gianguzzi: So it's a legal four family, is that correct?



Mr. Plinio Palmieri: There's two with one bedroom, a two bedroom and a three bedroom.

Mr. Gianguzzi: So it's a four family house

Mr. Plinio Palmieri: A legal four family house, yes.

Chairman Ruchala: A legal four family house, yes. And the fifth is legal for storage. At this point.

Mr. Plinio Palmieri: At this point, because what I did is that I made the third floor for storage. But it was legal for a long time.

Mr. Gianguzzi: It was legal as a.

Mr. Plinio Palmieri: It was legal for a hundred years, but a few years ago what we did-it was not renting too well up there.

Mr. Gianguzzi: It was vacant space?

Mr. Plinio Palmieri: For a while. It was not doing too well but then what we did is-there was a huge room in the back on top of the garages. And we made that a two bedroom apartment.

Mr. Gianguzzi: Is it attached to the house?

Mr. Plinio Palmieri: It's attached to the house, yes. You [indicating Chairman Ruchala] saw it.

Chairman Ruchala: Let me explain. At one point it was approved as a five family at some point in time. So you had a garage in back against a white house, the white house to the right of Beals. The house in front of it is a beige house. The garage space in front he turns into an apartment.

Mr. Gianguzzi: Let's back up please. So it was a five family and that was an apartment up there? I don't get it. We're saying it was a five family house and it was a legal five family but now we're converting it to.

Chairman Ruchala: Because he left it open.

Mr. Gianguzzi: But we're saying it was a legal five family-how would it be open?

Mr. Stockburger: Because the C of O has been changed to a legal four family. The C of O is a legal four family.

Chairman Ruchala: Right. It's a legal four family now. This is what it is. It is an apartment going up the stairs. When you get to the third floor there's a two bedroom apartment that was meant for storage. Please don't take this as gospel- Bruce Zireskie [sp] came along-you bought it in 1998 or so?

Mr. Plinio Palmieri: Yes.

Chairman Ruchala: Bruce came along and gave him an Order of Remedy for that apartment because it was only a four family. He was using it for storage.

Mr. Gianguzzi: When was it a five family? That's what I'd like to know. We're saying it was a five family legal for 100 years or whatever. Then it became a four family-I'm not understanding.

Chairman Ruchala: So let me ask you [indicating Mr. Plinio Palmieri] very directly. When you bought the property was it a four family or a five family?

Mr. Plinio Palmieri: Four family.

Chairman Ruchala: So you bought it as a four family?

Mr. Plinio Palmieri: Four family.

Mr. Gianguzzi: Then Bruce came in and said-because you have an illegal apartment-correct? And then Bruce came in and gave you an Order of Remedy to convert it back to a four family.

Mr. Folchetti: Let me clarify.

Mr. Gianguzzi: Thank you.

Mr. Folchetti: It's in the PB zone. That means it's either a legal non-conforming or a previous non-conforming.

Ms. Kropkowski: And how long ago for the previous non-conforming?

Mr. Folchetti: I'm guessing it was during the previous Village Code. Previous non-conforming use means it was legal at some point during any of the derivations of the Code that existed and now it's been zoned out. So it's legal as a legal non-conforming if it's legal or preexisting for that matter. I don't know when it was built; I don't know when your first Code is. The four family legality has to be classified that way. It's not a permitted use in PB.

Ms. Kropkowski: But it's been that way for a number of years.

Mr. Folchetti: Agreed. There are certain parameters to the application when they involve a legal five family under the current Code.

Ms. Kropkowski: This is the one that Beals is right next to.

Mr. Plinio Palmieri: Yes. Beals is right there.

Ms. Kropkowski: And then you have that huge apartment house right behind it, correct?

Mr. Plinio Palmieri: To the other side.

Ms. Kropkowski: The other side of it.

Chairman Ruchala: In the back there is an apartment.

Ms. Kropkowski: Is it here?

Chairman Ruchala: Attached to the main house here. Beals is right there I think. It's a big one, right?

Mr. Plinio Palmieri: It's a big one, yes.

Mr. Folchetti: The legal non-conforming status-whatever was legal non-conforming when it was four family or five family-once you abandon use for a year it's non-conforming status is gone.

Mr. Gianguzzi: A non-conforming is still five family.

Mr. Folchetti: Once you take a non-conforming use-whether it be legal non-conforming or preexisting non-conforming-you abandon that use or you discontinue that use for a period of a year, your non-conforming status is a complete loss.

Mr. Gianguzzi: Right. And you have to conform to the current Code.

Mr. Folchetti: To the current Code.

Chairman Ruchala: Are you saying that we're going into a use variance situation?

Mr. Folchetti: Without a doubt.

Chairman Ruchala: Okay.

Mr. Folchetti: Right now there could be two things. If it was a five family house and they dropped their non-conforming at some point-the fifth apartment was vacated for a period over a year. The second thing is-you have a four family right now-at the very least a non-conforming if not preexisting-so either way you're stuck with the use variance. There's no way around it.

Mr. Plinio Palmieri: Nothing has been added to it.

Mr. Gianguzzi: Understood.

Mr. Plinio Palmieri: Everything is 100 some years old. Everything has been there.

Mr. Gianguzzi: You had storage space and then you added two bedrooms to it.

Mr. Stockburger: Let's back it up. Under the old Code he could have applied to legalize the five family and would have been fine. The new Code comes and in PB you can have one dwelling unit per lot. So he's allowed one apartment as of right. If he uses preexisting non-conforming to whatever he had before, which is a legal four family, his last legal C of O, if he tries to do the five units he's non-conforming.

Mr. Gianguzzi: Understood.

Mr. Folchetti: It would be the expansion of a non-conforming.

Ms. Kropkowski: Except that if you rented this place within a year then the old non-conforming use that had been preexisting is still there. That's my understanding of it.

Mr. Gianguzzi: Was it four apartments or five apartments His legal non-conforming use was four units. What was the legal non-conforming use if that zone permitted multi-family, permitted a four unit? What was his permitted use at that time? Was it four apartments or five apartments?

Chairman Ruchala: Four apartments, and with the change of the Code there is an issue.

Mr. Folchetti: You can't zone him out.

Chairman Ruchala: Let me put this so we can understand it. I spent time with Peter. We went to his house and I told him we'd give him one informal hearing. He wanted to get the feeling of the Board so he can know what to expect if he goes forward or he doesn't want to go forward with it where it's very expensive and there's little hope of trying to get something and also he'd like a clear understanding from the Board. Like I told him, I'm only one of five. He's coming here for an understanding and an idea so he doesn't wind up spending a lot of money trying to do something if it's not going to be worth it. So this all in good faith and I'm just trying to get it so they understand why you're here. What they're saying right now is, the brunt of it is, that in the process, as we talked about, the Zoning Code has changed. And that's creating a hardship-Rick here is on the Planning Board-I think you're on the Rezoning Committee and as such they changed it to one family only. So you're coming in with a legal four family-the attorney right now is saying you have to go to a use variance.

Mr. Plinio Palmieri: Yes.

Mr. Domenico Palmieri: My name is Domenico Palmieri. I'm the son. D-O-M-E-N-I-C-O same spelling Palmieri P-A-L-M-I-E-R-I. If you grant us the fifth apartment it's not like you're changing the appearance of the house. Also to the fact that I took apprentice plumbing classes and the sewage system that the Village put in would be able to carry out that extra family of the DFU's. We keep the house in great shape as you [indicating Chairman Ruchala]-we keep the house in awesome shape and we won't be changing the appearance like we're adding an extension. It will still have the old appearance. The DFU's will be able to carry on the extra load plus we are responsible people and we make sure that the house is in

great shape for the families. We're not adding on an extension, we're not adding anything else, we're just adding a family. We keep the house in great shape and the DFU's, according to the National Association of Plumbing Code, we are in fact indeed within Code of the Plumbing Association that DFU's can carry on the extra fields. The sewer plant was built about a year and a half ago and to this day is below maximum capacity so even if you put that it's still within maximum capacity of the sewer plant as well. So the sewer plant is okay, the DFU's are okay and as far as the appearance of the house you're not adding anything. If we can add the extra family it would be a little extra income for us is all.

Mr. Gianguzzi: What about the parking situation?

Mr. Plinio Palmieri: Richard has seen it. There's plenty of parking.

Mr. Gianguzzi: Plenty as in how many spots?

Chairman Ruchala: I did not count them.

Mr. Gianguzzi: Could you estimate?

Chairman Ruchala: It's a Planning issue.

Mr. Folchetti: Not necessarily. How is Planning going to be involved in this? If Zoning gives him the proper Zoning permits, how is Planning going to be involved?

Mr. Stockburger: Under the Code any commercial building has to have a precise plan. I don't mean to take your thunder, but a use variance is very, very difficult and expensive to get. And the whole purpose of the Zoning Code was to reduce it, and you're trying to increase it.

Chairman Ruchala: You're [indicating Mr. Stockburger] not on this Board but you are on the Planning Board. The issue does come down to a use variance.

Ms. Kropkowski: Are we saying that that apartment has been vacant for more than a year?

Chairman Ruchala: Yes. But that's not the issue though. Let's just define the issues correctly. One thing I don't want happening is I don't want these people

spending money for no reason. They want to get a clear idea of what's going on before. It's always been a four family since he's owned it for the last ten years.

Ms. Kropkowski: Okay.

Chairman Ruchala: And that's probably-if we're looking at our PB we're looking at one set of details but when it comes before us the next time he'll be spending money. It's now a single dwelling versus if he came six months ago for the Zoning where it could have occurred a lot easier. The last thing I'm trying to do is be negative here but on the other hand.

Mr. Stockburger: Six months ago all he would have had to do was supply the Building Permit for the Building Inspector to legalize the illegal apartment, get a new C of O, pay his retroactive building costs and all the rest and there we go. Since that time we zoned it out of existence, we zoned that five units out of existence. Now if he wants to go beyond one dwelling unit-to four or five-it's a use variance.

Mr. Folchetti: He'd be expanding a non-conforming use and that requires a use variance anyway.

Chairman Ruchala: So from a legal opinion you're saying that this Board would need to consider a use variance only and the criteria involved in it, is that correct?

Mr. Folchetti: That's correct.

Chairman Ruchala: Just give me a feeling from the Board on that. Are you agreeing with what Rick and the attorney are saying?

Mr. Gianguzzi: That they would have to apply for a use variance-yes, I would agree with that.

Chairman Ruchala: I also gave Mr. Palmieri the same information. I didn't really read the Code before I got there so I wasn't sure but just in case I thought I would. Jim.

Mr. King: It looks like a use variance.

Ms. Kropkowski: For the use variance there are four criteria. If he's missing one can we grant it?

Mr. Folchetti: If he's missing any of them you go against him. A self-created hardship is not in and of itself enough to deny an area variance but it is enough to deny a use variance. Dollars and cents proof of the hardship is required. It's that he cannot realize a reasonable rate of return without the variance, not that he can out it to more profitable use with the variance. Those are truly the two that make getting a use variance so difficult.

Ms. Kropkowski: For a use variance there are four criteria, but two of them I don't think would ever change.

Chairman Ruchala: The quality of the neighborhood.

Ms. Kropkowski: The quality of the neighborhood or anything like that.

Mr. Gianguzzi: the parking could be an issue. What if they're stacking cars on the front lawn, that would deteriorate the neighborhood.

Ms. Kropkowski: I've driven by as well and it appears there is plenty of parking.

Mr. Gianguzzi: Exactly. How many parking spaces would be an issue.

Mr. Domenico Palmieri: There's plenty of parking. Also the house is in great shape.

Mr. Gianguzzi: I'm not worried about the plumbing, to be honest with you. I agree that the plumbing's terrific. But again you didn't tell me how many parking spots the dwelling has.

Chairman Ruchala: We can go there. If you want we can go take a look at it.

Mr. Gianguzzi: Well, I would imagine you know [indicating Mr. Plinio Palmieri] fit in there.

Mr. Plinio Palmieri: Well, five, six, seven, eight. Eight cars.

Mr. King: Well you're the one making the request. We're trying to think about that in the future, maybe less responsible people will take over the house one day and not be as responsible. So that's another thing to think about.

Ms. Stockburger: Do you have parking spots for five apartments-



Mr. Plinio Palmieri: I would have to count. I'm not sure now. Eight or ten.

Ms. Stockburger: There has to be two spots for each family, ten spots.

Chairman Ruchala: Alright. Does everyone sort of understand the issue? Todd.

Mr. Gianguzzi: Yes. You've stated it exactly.

Chairman Ruchala: I'll apologize to you [indicating Mr. Plinio Palmieri] because we've changed the zoning and you may not have been aware of it but once it's changed it's changed. And in fairness you came here informally to see what the issues are.

Mr. Plinio Palmieri: Yeah, because it's a lot of money.

Chairman Ruchala: I can see from the lawyer and I can see from Planning, which Rick is a member of, that we're the ones to give you the variance. Parking is one issue and the use variance would be the other. The important part of the use variance is, and these are hard to get, I won't lie to you, these are very difficult standards to meet for a use variance. Remember I gave you this and told you to look it over and read it, because I had a feeling that this was it but I wasn't sure. I hadn't read all of the laws to date, so I had to review them myself. I told the Board members to go visit and look and just get a feel so we could have this conversation. It is very difficult to get and you have to show that you cannot realize a reasonable rate of return as shown by competent financial evidence. That means you need somebody to actually sit down, a CPA, and write up all your books for all the years and show. And then you have to show that your alleged hardship has not been self-created, which is also very difficult to meet. And then the one that I don't have a problem with is that the alleged hardship is unique and does not apply to substantial portions of the district or neighborhood. And then the requested variance does not alter the essential character of the neighborhood. But "one" and "four" are very difficult standards to apply to and you're going to need very strong CPA evidence. And the self-created portion is that you couldn't do something else and make more money, like rent it. With a PB you can also put in professional offices. So instead of putting in an apartment you could rent it as an office and make it professional. That's just one of the options you have.

Mr. Plinio Palmieri: Are you going to write it, about the professional offices?

Mr. Folchetti: That criteria you just mentioned really goes back to the first element-whether he can make a reasonable rate of return in his legal non-conforming status or under current zoning. I got a guy who built an addition on his house because he wanted more floor space. I got a guy who carved out an illegal basement apartment and now he wants to legalize it. That's a self-created hardship because he did it himself. That's an example of self-created hardship. Self-created hardship is not buy a four family, I want to make it a five family-if zoning didn't permit it then that's a self-created hardship.

Chairman Ruchala: So in and of itself you're saying that that would be a difficult test to pass.

Mr. Folchetti: Yes, and not only on Mt. Palmieri's potential application. Use variances are exceedingly difficult and the proof has got to be brought in on the financial end, in dollars and cents for your consideration. It's not a balancing test. All four of the criteria have to be met. Self-created hardship without a doubt can lead to the denial of the application. I'm not begrudging the applicant's right to bring the application.

Chairman Ruchala: Can you please explain self-created once again, on a different level so he understands it.

Mr. Folchetti: Self-created hardship means either that the problem you're having is self-created or that you were aware of.

Mr. Plinio Palmieri: I understood you.

Chairman Ruchala: Hold on-your son would like to say something.

Mr. Domenico Palmieri: Well, you're talking about an extension but this is not like a person deep in his basement saying give me an extension. This is not a typical extension. The character would still be the same thing. Do you understand what I'm trying to say?

Mr. Folchetti: There is an argument to be made that a change in the intent of the use is not necessarily an expansion.

Mr. Domenico Palmieri: The intent would be the same thing as current. We're not extending the physical appearance of the premises. We would be conforming with the actual appearances.

Chairman Ruchala: Your father asked me, in all fairness we try to give one informal meeting to just to see where you want to stand. It seems to me that this is going to be a hard standard for you to meet. The lawyer has said it, the Planning Board, the people that did the rezoning have stated it. I was here to get a feeling so you would know. The fees for continuing are, just so you understand it, \$500.00 for each meeting, \$500.00 escrow, and then, depending on how many meetings it's \$500.00 a meeting, you're going to have to get accountants, you're going to have to get lawyers, you're going to have to do these things. And after that you're going to have to go to Planning. Planning has \$450.00 or \$500.00 a meeting and you have to put down another \$1,000.00 escrow with them because they have to have their engineers look at the plumbing, look at the storm water runoff, look at this, that and the other thing. And all of this is going to come into play for you. I told you when I met you that let's at least figure out what this is going to be, what it is, working backwards for you so that way you understood what you were getting into when you did it. I said I'd be honest with you. I don't want you being dragged in the dirt not knowing what you're going into. I want you to be here understanding the problems you're facing, what you can do to conquer it, and trying to put together a number that you think it would cost you and then you have to decide if you think it's worth it.

Mr. Plinio Palmieri: The chances are very slim I see.

Mr. Stockburger: I'd find a land use lawyer at least and talk to him.

Mr. Plinio Palmieri: Who's a good one?

Mr. Folchetti: That guy who was here, Mr. Sirignano.

Ms. Kropkowski: if he puts an office on the first floor does he need a variance?

Mr. Folchetti: It sounds like a mixed use.

Chairman Ruchala: You can have offices, personal services or a single family dwelling.

Mr. Gianguzzi: You cannot have a mixed use.

Chairman Ruchala: There is no mixed use.

Mr. King: Where can you have a mixed use?

Chairman Ruchala: In B1.

Mr. King: B1?

Chairman Ruchala: Yes.

Ms. Kropkowski: Does one or more mean it's a mixed use?

Chairman Ruchala: In any PB district a building or a lot of land can be used for one or more of the following mixed uses.

Ms. Kropkowski: One or more-does that mean it's mixed?

Mr. Gianguzzi: One or more could mean it's an office downstairs and an apartment upstairs.

Ms. Kropkowski: That's what I wanted to know.

Mr. Folchetti: If he puts an office are we getting back to the standard? If you add use there's no logic behind it.

Mr. King: Is he makes that change is it within permitted use?

Mr. Folchetti: It's within permitted use.

Ms. Kropkowski: Let me explain to you what I'm thinking and see if I understand. You have a legal four family. I have five spaces that I can use as an apartment but it's a legal four family. Can I move an apartment to the attic, have apartment, apartment, apartment and on the first floor provide an office?

Mr. Folchetti: Let me break that question down.

Ms. Kropkowski: Okay.

Mr. Folchetti: If you have a legal four family dwelling by virtue of the legal non-conforming use.

Mr. Gianguzzi: Where do you get five apartments? There aren't five apartments.

Ms. Kropkowski: He has five spaces.

Mr. Gianguzzi: But it's a legal four.

Ms. Kropkowski: I know. But he has five spaces. If he has five spaces and he shifts the spaces does it take away the prior non-conforming use?

Mr. Folchetti: In a legal non-conforming four family within the existing structure without expanding it you can relocate the apartments. You would have to make a determination, a factual determination, whether it is an expansion. What you would probably use as the criteria for that is whether there is a quantifiable change in the amount of floor space in the apartments. And then if that's substantial then it would be an expansion. If you have a four family, and I'll defer to Mr. Stockburger as he knows the Code a lot better than I do, as soon as he adds a use to the four family he's expanding.

Chairman Ruchala: He would need a use variance for the non-conforming use.

Ms. Kropkowski: So it's dependent on the use whether it's an expansion?

Mr. Folchetti: Are you saying whether he's expanding it affects whether it's a legal use. In my opinion I would say no. As soon as he adds a use to a legal non-conforming use I would say it's an expansion. Even if it were a permitted use in the District I would say that that's an expansion. I'm not sure he's contemplating that scenario but that would be my opinion.

Mr. Plinio Palmieri: it used to be I believe, years ago, because I see the evidence of a stairwell from the third to the second, what if I put back the stairwell from the third to the second and reconnect the second and the third?

Ms. Stockburger: Make that one apartment?

Mr. Plinio Palmieri: Make it one apartment.

Chairman Ruchala: That would be up to Bob, the Building Inspector to make sure you met all the Codes, because the building is a four family.

Mr. Plinio Palmieri: There's evidence there, and Mr. Serino saw it, there's evidence of a stairwell, an existing stairwell one time.

Mr. Gianguzzi: You'd still have to be current with all of the Codes.

Mr. Folchetti: You could keep it a four family and put a several thousand foot expansion on it and divide it up between the four families-it would still likely be an expansion. I wouldn't get into quantifying the actual floor space.

Mr. Plinio Palmieri: Make it like a playroom?

Chairman Ruchala: You have to have an inside entrance to the apartments. If this is even allowed it has to be the staircase connecting the apartments. You're not going to go outside.

Mr. Plinio Palmieri: No, it would be inside.

Mr. Folchetti: If that's a proposal he can go to Bob. If Bob said he can't do it he would kick it to you for either a variance or an interpretation. You can ask for an interpretation that it's not an expansion of the non-conforming use and maybe you would only need an area variance for a setback. Do you follow what I'm saying?

Chairman Ruchala: So that's something you can try with the Building Inspector. But next time you come in regarding this Board you're going to have to pay all the money.

Mr. Plinio Palmieri: I understand.

Chairman Ruchala: Ask Bob if it's acceptable and let Bob make a determination, because right now you have an Order of Remedy. Right now it's an illegal apartment. So first you have to handle that. So when you do that you can ask in the other District and maybe you'll be able to not come here and accomplish something, or he may so no. And the next time you come here it's not going to be informal and you're all of a sudden going to need \$500.00 escrow, \$500.00 per meeting, and if the escrow goes down because we have to use extra legal or extra meetings you're going to have to pay for all of that.

Mr. Plinio Palmieri: So to conclude.

Chairman Ruchala: Yes.

Mr. Plinio Palmieri: The idea of five families-do you think it's feasible?

Chairman Ruchala: It's up to you, but it's going to be very expensive and as the attorney has basically said, it's very difficult.

Mr. Plinio Palmieri: It's negative.

Mr. Folchetti: It's very difficult. I don't make the Findings of Fact, but I will tell you the burden on those is very difficult.

Mr. Plinio Palmieri: It's not easy. The Village is very expensive now, the water, the garbage.

Mr. Gianguzzi: The rents are very high in the Village too.

Mr. Plinio Palmieri: Not really.

Mr. Gianguzzi: They're up there.

Mr. Plinio Palmieri: Could I say something please, and then I'll go.

Chairman Ruchala: Go ahead.

Mr. Plinio Palmieri: For a one bedroom apartment, what can you charge? \$900.00? For a studio what can you charge? \$700.00?

Chairman Ruchala: Section 8 gives you \$1,100.00. Just to put it into perspective. That's the Social Services program.

Mr. Gianguzzi: For a one bedroom?

Chairman Ruchala: For a one bedroom. So if it's \$900.00 for a one bedroom you can get \$1,100.00 from Social Services so you should get more than \$900.00 if the apartment is in good condition. So I'm just telling you you can go to Section 8 and see what they'll give you. But for now I think you have the information you need.

Mr. Plinio Palmieri: Yes.

Chairman Ruchala: I hope it helps you. We're doing our best.

Mr. Plinio Palmieri: Thank you very much.

Mr. Gianguzzi: Thank you Mr. Palmieri.

Mr. Plinio Palmieri: Thank you.

Chairman Ruchala: You're very welcome. Next on the agenda is the new ZBA applications. I've given everyone a copy of one. Review it and if there's something you object to let me know at the next meeting, because otherwise it will become the official application.

Ms. Kropkowski: Okay.

Chairman Ruchala: I've included all the things we did at the last meeting.

Ms. Kropkowski: Okay.

Chairman Ruchala: And if I don't get your answers in the next two to three days I'm going to assume it's good. If you can review it I'd appreciate that. The next topic is continuing education. You [indicating Mr. Gianguzzi] need to be done with your quizzes by December 31<sup>st</sup>.

Mr. Gianguzzi: Let me get some clarification. Do I have to do all nine, three or four?

Chairman Ruchala: Four sounds reasonable.

Mr. Gianguzzi: I will get you four quizzes from four segments and you as my Chairman will grade the quizzes. Will the passing grade be 50?

Chairman Ruchala: Whatever you think is reasonable on this one. I'm most interested in the actual educational aspect for the benefit of the Board and its business. We had our own education and it was great.

Ms. Kropkowski: Yes it was.

Mr. Gianguzzi: I'm sorry I missed it.

Chairman Ruchala: It was fun and it was very informative and instructional. Any public comment?

Mayor Schoenig: Just a point of information. That house that burned down on Michael Neuner was legal two family but in the new Zoning it's going to be a one



family. So be prepared for him to come in front of you because I think Mr. Serino has given him more than 50%.

Mr. Gianguzzi: Damage?

Mayor Schoenig: Damage on the property.

Chairman Ruchala: I make a motion that we adjourn the meeting. Do I have a second?

Mr. Gianguzzi: Seconded.

Chairman Ruchala: All in favor.

Mr. Gianguzzi: Aye.

Ms. Kropkowski: Aye.

Mr. King: Aye.

Chairman Ruchala: Unanimous.

[Whereupon the meeting was adjourned at 9:15 p.m.]



