

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, July 7, 2010, AT 7:00 P.M. AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn Van Millon
Member George Wittman
Member Henry Williams
Member Debra Kaufman

ABSENT: Member Anthony Fusco

Also in attendance was Secretary to the Board, Maria O’Leary, and Attorney Michael Liguori.

Chair Van Millon called the meeting to order at 7:02 p.m. and began with the Pledge of Allegiance. She then read the first item on the Agenda as follows:

CONTINUED DISCUSSION/PUBLIC HEARING - **LukOil** - Z 2009-07 – The applicant seeks to appeal Sections 145-39 C. (2) and D. (3) of the Town of Dover Zoning Law. The requested area variances would, if granted, allow the applicant to have a freestanding price sign exceeding the 16’ maximum dimension by 9’ and exceeding the 10’ height maximum by 2.6’ and also be internally illuminated. This property is located at 3160 NY Route 22 in Dover Plains, NY, and is located in the HM district on tax map #7063-11-534507.

There was no one from LukOil in attendance. Chair Van Millon then read the second item on the Agenda as follows:

CONTINUED DISCUSSION/PUBLIC HEARING – **Dachille 2** - Z 2010-01 – The applicant seeks to appeal Section 145-11 of the Town of Dover Zoning Law. The requested .52 acre area variance would, if granted, allow the applicant to subdivide a piece of property without meeting the required five acres in the RC District. This property is located at 51 Dugway Drive on Tax Map #6959-00-383093.

In attendance were Joel Chase of Zarecki & Associates and the applicant, William Dachille.

The only change from the previous submission in 2004 is road frontage. The original plan in 2004 called for a rear flag lot which did not meet the acreage requirement; the frontage for the rear lot is now satisfied with this application, therefore, it will not be a flag lot; however, a .52 acre variance is still needed for the rear lot.

MOTION: Member Wittman motioned to close the public hearing; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye

Member Fusco – Absent

Member Wittman – Aye
Member Kaufman – Aye

Member Williams – Aye

Attorney Liguori stated that for the purpose of the variance, the ZBA can do an uncoordinated review and do the SEQRA here.

The Board reviewed the criteria for a decision.
Code of the Town of Dover – Section 145-59 D. (2)

- a. Will an undesirable change be produced in the character of the neighborhood or a detriment to nearby properties be created by the granting of the area variance? No.
- b. Can the benefit sought by the applicant be achieved by some method, feasible for the applicant to pursue, other than an area variance? No.
- c. Is the requested area variance substantial? Yes; .52 acres is substantial.
- d. Will the proposed variance have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district? No.
- e. Was the alleged difficulty self-created, which shall be relevant to the decision of the Board, but which shall not necessarily preclude the granting of the area variance? Yes.

SEQRA:

- A. Does action exceed any Type I Threshold in 6 NYCRR, Part 617.4? No.
- B. Will action receive coordinated review as provided for unlisted actions in 6 NYCRR, Part 617.6? No, the ZBA will adopt a neg dec and so will the Planning Board.
- C. Could action result in **any** adverse effects associates with the following?
 - C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems? Based on a two-lot subdivision with one new lot being created, the other one being in existence on a private road and based on the development as proposed, the Board will consider that one additional home will not impact air quality, would not impact surface or groundwater quality or quantity, they will need to get an approval from the Health Department for the septic and well, one additional home will not exceed noise levels or impact the existing traffic pattern or solid waste production or disposal, and the potential for erosion drainage or flooding

problems will be dealt with by the Planning Board in connection with the site plan review of the lot.

- C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character? I don't believe a two-lot subdivision would have those types of impacts.
- C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species? Many of these things will be dealt with by the Planning Board in connection with their review. The question is, will the grant of the variance have an impact. There appears to be a stream crossing in this area and the ZBA will condition the neg dec on the grant of the approval to the Planning Board since we don't have the expertise to do the review in connection with that, but certainly that would be covered in the subsequent review.
- C4. Community's existing plans or goals as adopted, or a change in use or intensity of use of land or other natural resources? The variance that's being granted is .02%, which is not enough to impact the community's existing plans or goals.
- C5. Impact on growth, subsequent development, or related activities likely to be induced by the proposed action? There would not be an impact, but it's generally acknowledged that a variance of this quantity, .02%, is not so significant that it's precedent setting, yet people who need that type of variance would be in a position to argue that they would be entitled to one, but that will have an impact on the environment.
- C6. Long term, short term, cumulative, or other effects not identified in C1-C5?
No.
- C7. Other impacts? No.
- D. Would the project have an impact on the environmental characteristics that cause the establishment of a critical environmental area? No.
- E. Is there likely to be controversy related to potential adverse environmental impacts? Anybody object? No.

MOTION: Member Wittman motioned to adopt a negative declaration conditioned on the grant of the approval of the Planning Board; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

MOTION: Member Kaufman motioned to grant the variance; seconded by Member Wittman.

VOTE: Chair Van Millon – Aye	Member Fusco – Absent
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Mr. Chase asked if SEQRA could be taken care of by the Planning Board, if the Planning Board be the lead agency.

Attorney Liguori: Normally, the Planning Board adopts a neg dec and then refers the applicant to the Zoning Board of Appeals because the impact of the variance is already contemplated over the neg dec. Essentially, to save the applicant time and money the Planning Board refers the applicant to the Zoning Board so the applicant is not spending a lot of money in front of the Planning Board without any guarantee to the subdivision. The ZBA is not really equipped to analyze the environmental impacts that are associated with the entire subdivision, even though it's only a two-lot subdivision, but the ZBA can't grant an approval without completing SEQRA first or else the variance will be void. The way to remedy that is for the ZBA to adopt a neg dec and then condition that upon the approval, so if you don't get the approval from the Planning Board, essentially it would be rendered mute, but what would you need a variance for if you don't get the subdivision approval, you need one for the other. What this neg dec doesn't do is it contemplates the impact of your variance but not really impact the actual development.

Chair Van Millon read the next item on the Agenda as follows:

PUBLIC HEARING – Judson Interpretation – Z 2010-02 – The applicant seeks an interpretation of the phrase "same or related ownership" per Section 145-29 (1) of the Town of Dover Zoning Law.

In attendance were the applicants, Marcia Thornton and Cathy Orton and their attorney, Kevin Denton of the law firm Denton, McLaughin, PC.

MOTION: Member Wittman motioned to open the public hearing; seconded by Member Williams.

VOTE: Chair Van Millon – Aye	Member Fusco – Absent
Member Wittman – Aye	Member Williams – Aye
Member Kaufman – Aye	

Attorney Denton brought in an original copy of the subdivision map and wrote a summary of the chain of title for these parcels. He stated that An interpretation of Section 145-29 of the Town's zoning ordinance says that it treats nonconforming lots on existing maps, or existing nonconforming lots and it says that those can be treated as buildable, provided the following conditions are satisfied. 1. "At the time the lot became

nonconforming, it did not adjoin other lots held in the same or related ownership with which it could be merged to create a conforming or less nonconforming lot.” We’re not asking to completely construe all the clauses in that statute. Section 145-29, in my opinion for a very short statute, really has problems in a number of ways, but the key one is the phrase, “same or related.” The idea is that lots that are in ownership, same or related, are merged. Unfortunately, “same or related” is not defined in the glossary, which accompanies the Town Code, so we don’t really know what that means. If we look at, and it’s set forth in both my cover letter and the application, but the way that the two properties came to be, Lot 15 in the Hi-View Subdivision is a .29 acre parcel with a single-family house on it and that was originally in the name of Clinton Judson alone. He later conveyed that joint name to his wife, Pauline, as joint tenant and right of survivorship. He retained title in his own name to Lot 16 and then if you follow the chain, Lot 15, Clinton died April 18, 2005, leaving Pauline as the sole owner. In January of 2006, Pauline conveyed the fee simple interest the underlined ultimate interest to Ms. Orton and Ms. Thornton reserving to herself a life estate and then finally Pauline died June 2009 leaving Cathy and Marcia as the sole owners. It remains assessed to Pauline Judson, life tenant.

As to Lot 16, the vacant lot, that remained in Clinton’s name alone. By his will, that would have vested title to Pauline, but as a result of a disclaimer in the surrogate’s court, that really remained in Clinton’s estate, no deed was ever issued there, it’s still assessed to Clinton Judson. What do we mean, then, by “same or related?” There’s no limitation, does it mean blood kin, does it simply mean in-laws, does it mean related businesses? We don’t know and the problem is for a statute to be legal, one must be able to read it and know immediately whether they are in compliance or not, where does the relationship end? When we practice in state, for example, if you use a phrase like “relatives” or “heirs” or “issue” you can look up in the statute and it will tell you exactly how far you go in inheritance before nobody gets anything, before we just don’t bother with the ones that are beyond “second cousins, once removed.” I happen to be a judge in Town of Pawling, we have a whole host of regulations about who can appear before us and one of them will say, “You can’t hear a case where you’re related by “a relative in the sixth degree.” If you want to look it up, you can figure out exactly who is and who isn’t a relative; this statute does not.

Section 145-29 A. is phrased “...provided that the following conditions are satisfied” that “*At the time* the lot *became* nonconforming, it did not adjoin other lots held in the same or related ownership...” When did the lot become nonconforming? Theoretically, that was in 1999 when they changed the zoning ordinance, and in 1999 the ownership was, Lot 16 was in Clinton’s name alone and Lot 15 was in their joint names. What happens after 1999? Suppose today, we want to take two nonconforming lots and own them, but gather ownership together. Under this statute, that doesn’t apply because it only talks about the point at which the lots became nonconforming. I think there are things here that are not for the ZBA to solve, probably require the attention of your Town Board, your Legislative branch, certainly your Town Attorney. A very wise old lawyer once said to me, “Good laws are not made by throwing an inkwell at the devil.” And I think in a sense, back in 1999, that’s what they did here, it needs some attention. We’re not

asking you to construe every phrase, we're asking you to find that it should not apply in a case like this.

How is this going to affect the neighborhood? Not at all. I would hope that most of you or all of you may have taken a site visit to Hi-View Acres. I have to tell you, even though I have handled the estates of both Mr. & Mrs. Judson, I have never been there, and when I visited, I came to the conclusion that this is one of the nicest neighborhoods in Dover. If Lot 16 were separately conveyed, if a house were built on it, it wouldn't disturb that neighborhood at all; it would be perfectly in keeping. The neighborhood has rhythm, it's mature, it has beautiful specimen trees, it just looks like a happy place and it will be disrupted by that. Meanwhile, the house, which is on Lot 15, is entirely oriented towards the front. To tell someone that they have to merge this lot next to it really won't do any good for that property at all.

There are some other oddities in this situation and one is, we know of, for example, a couple of other lots in the neighborhood which incidentally are smaller than the dimensions of these lots owned by the same people, but because they are simply not contiguous, they are presumed to be free to sell or build. We end up with this unequal result, which really is not related to rational criteria which we want zoning to be based on. Zoning should never be based on relationship. We would ask you to look kindly on this interpretation, with the extent to saying it should not be applied in this case, and you might even recommend that maybe it does receive attention with the Town Board.

In some towns, similar ordinances were adopted in order to get rid of those old, sort of post-war, pre-planning board subdivisions, that's not the case here. This lot was approved by the Town of Dover Planning Board, March 11, 1969 (FM #3628), it was Board of Health Approved, as is Lot 16; the owner has been paying taxes as a subdivided, buildable lot ever since then

Attorney Liguori stated that he spoke to Marilyn about the Section of the Code that was relied on for a similar application in 2004, and doesn't know how the Board is going to decide. The support is clearly there in an existing Section, but the other Section we rely on is 145-72 and that is a Section that is a transitional provision to the Zoning Code. Subsection F. that says, "Subdivision applications that have received preliminary, final, or conditional final approval shall be subject to the zoning law in effect at the time they received such approval." The ZBA has relied on that Section in the past and I advised Marilyn that I think that's wrong because that Section of the Code is for approvals that are in the pike when the Codes are being changed and, in my opinion, it really refers to subdivision applications and not to approvals that have been granted in the past or else it would render the existing merger provision completely mute. You would never need a merger provision because all prior existing subdivisions would just be recognized under the zoning code that it used to exist under; essentially that doesn't let you up-zone; that deals with people that are subdividing right now, they have preliminary subdivision approval and the Town Board changes the zoning from two acres to four acres and that's going to grant them the ability to go forward under the two-acre zoning during that transitional process. I think if the Board is going to make an interpretation, I think we

could rely on the language that's in the Code already under 145-29, it just depends upon how the Board feels about how it should go.

Member Wittman: From what I have read in the Zoning, whatever they intended there, I don't think they intended to apply to approved subdivisions where the lots just happen to be contiguous, even though that's what it says, but the point is that I don't think they really wanted to say property that is not part of a subdivision, but this was perhaps chopped down from a larger chunk of property.

Attorney Liguori: What the Town Board does is that it paints with a very broad brush and the Zoning Board paints with a very fine line and at the time, they weren't re-zoning by tax parcel, which may have been more appropriate. For instance, when you have very large acres of contiguous tax parcels, they should have carved this out because there's already a community character in a less than one-acre zone with very little opportunity further subdivide; there never will be a further subdivision of any lot in this subdivision.

Chair Van Millon: I think the word "related" has to be defined and the Town Board needs to look at this "related" because this is the second time in four years that we've been asked about this.

Attorney Liguori: My opinion is that it was intentionally left be to give the Board the ability to look past some circumstances that may not be on the "up and up" but here you have a chain of title which identifies that these parcels are not in the same ownership and you have to be "same" to do it. Just because it's the Judson family doesn't mean it's the same and I think Kevin is right. You can argue that you are related or you're not related; you'll never be able to define it, but the word "same" has to be defined literally and if both parcels were held by Clinton and Pauline as joint tenants with right of survivorship, then there really wouldn't be an argument here. They would be looking for a variance or for a subdivision more than anything, but because Clinton had held title separately and distinct from his wife, then I don't think this should fall under. I think clearly the Board has the authority to give them the outcome they desire.

Chair Van Millon asked if there was anyone from the public who wished to speak.

Paul Palmer of 41 Hi-View Drive asked to speak and was sworn in.

Mr. Palmer: I live directly across the street from the lots in question, at Lot 5. I don't think that this would be a disturbance in developing this lot or if Ms. Orton wanted to put a cornfield in there, so be it, it's their property, and Lots 4 and 7 are undeveloped in this subdivision owned independently by the same person, I don't think it should preclude them from doing what they want with their property.

MOTION: Member Wittman motioned to close the public hearing; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

Attorney Liguori: This is a Type II Action under SEQRA. I think that what you want to do is make a motion to interpret the Code based on the facts presented that these lots are not in the same ownership.

MOTION: Member Wittman motioned to interpret the Code based on the facts presented that these lots are not in the same ownership; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

Attorney Liguori: If the same, exact circumstances come in front of the Building Inspector again, the application can be treated the same as this one and will not have to come before the ZBA. The circumstances here are very particular and that's very important because there is a filed subdivision plat. It was filed when the Planning Board was in effect; this wasn't a 1930's map that was just recorded in the County where you have people looking to maximize development to the extent practicable with no review for septic approval; those are where your merger provisions, for instance, around a lake, let's say Pawling Lake Estates, that's where there always seems to be issues. When you have the lake front communities on maps that were recorded without Planning Board review, where you have streets that are too narrow, that's where your merger provisions really come into effect, but unfortunately what happens is I think this is clearly one of those situations where what they could have done is easily just carved out those pieces of the zoning map which would not have made sense to be up-zoned. Our subdivisions in Dover, they're very clear. When you look at the tax map, there aren't that many concentrated subdivisions, so when you go to up-zone, let's say from half acre to two acres, if you have a subdivision that's predominantly four acres, just happen to be that way, then that's OK. But when you have a developed subdivision that's developed in accordance with the plat, there are very few opportunities to further subdivide and I think those are the areas that should be left alone because that just creates hardships for your landowners; you have what happens here, people have to come to the Zoning Board and hire a lawyer.

Chair Van Millon: I think, too, that a lot of the old subdivisions, like where I live, a lot of those pieces of property were 1/3 of an acre, 3/4 of an acre, and then the zoning was changed, now a lot of people did buy two pieces of property because they thought it was a great deal at the time to pay \$4,000 for a piece of property and I'll buy the one next door for my children, we are now running into that because now, 30 years later, and they want to build homes for their children on the next piece of property, so I think we're going to see more of these coming.

Attorney Liguori: It's good from the municipal perspective to take these on a case-by-case basis and the related language is like fuel for litigation because you can end up in a situation like this; it's undefined, it's too nebulous, you can be brothers and sisters and argue that you're not related; you're related by blood, but there are many ways to argue this, the case law on this is very specific.

Member Wittman: If they were going to do that, they should have defined "related." If they're not going to do that, then you're just throwing it out there for litigation. What I would like to see the Town do is take a look when they re-do this Master Plan. They can get new zoning changes to go along with it, to specifically exempt those subdivisions that they have identified, and on the other hand, identify those areas that fall outside the planning that were done a long time ago and say you're not defending those, that these lots should be upgraded. To add one more thing to what you're saying, if the zoning goes from one to two acres and in this subdivision that's been filed, there are lots that are many times larger, we're also saying that because this is a planned subdivision, it was planned that way, we're not going to permit people to subdivide those because that changes the character of the original subdivision that the Planning Board approved. We should say we're locking in the subdivisions the way that they sit today. If somebody voluntarily wants to merge the lots to save on taxes, that's a different story.

Attorney Liguori: We now have fantastic technology so that mapping is available to map tax parcels and still maintain character. It was there in the past, but it was too difficult to maneuver and now it's just click a button and create a map that is legible and you can understand it.

Chair Van Millon read the LukOil application again; still no one from LukOil is present.

CONTINUED DISCUSSION/PUBLIC HEARING - **LukOil** - Z 2009-07 – The applicant seeks to appeal Sections 145-39 C. (2) and D. (3) of the Town of Dover Zoning Law. The requested area variances would, if granted, allow the applicant to have a freestanding price sign exceeding the 16' maximum dimension by 9' and exceeding the 10' height maximum by 2.6' and also be internally illuminated. This property is located at 3160 NY Route 22 in Dover Plains, NY, and is located in the HM district on tax map #7063-11-534507.

Chair Van Millon: They did put up their plywood to show us where their sign would be. The ZBA members took pictures.

Member Wittman: Maria, did they tell you that they were not going to be here?

Secretary O'Leary: They were going back and forth. After last month's meeting, I called one of them and asked if he was aware that he missed the meeting and he said yes, he knew about it, the others were supposed to call. I called the others and left a message with one of them and I didn't hear back until this week and they said they weren't aware that the other one didn't know, it was just going back and forth. I had told

them way back, the day after our meeting, which was June 3, that they needed to put these up because we needed time to get the members out there to look at it, I didn't hear back until this week and first they said they weren't going to come, then they said they were, and then they said they're not again.

Member Wittman: Did they say they were going to put up the signs?

Secretary O'Leary: Yes, but they didn't put them up until late yesterday. I didn't have time to notify everyone, but Marilyn did, but I had no way of knowing if all of you were going to get there or not.

Member Williams: It's kind of odd that they went through the trouble of doing this and not show.

Chair Van Millon: I think part of the reason they weren't coming is because we don't have a full board and they know that we have to have four out of five for the illumination.

Secretary O'Leary: They asked me if I knew if we were going to have all five members here and I said I knew one will not be here; I can't lie to the applicants if I'm aware of something.

Member Wittman: This is the reason that I wanted to have them put a piece of plywood or cardboard up. When it's up there, it looks a lot different than a lot of verbiage and I don't like it at all. Number one, it blocks everything and it's going to be covering most of the neighboring signs. I would like to see them relocate the whole sign someplace else.

Member Williams: The options are either the neighbor move his sign or they move their sign.

Chair Van Million: The neighbor went to the ARB and he did everything right and got his permission and he had to move his sign there. If you're going South, this sign covers the neighbor's whole sign.

Member Wittman: The 16' maximum, I think they're talking about square foot, right there because of the size of the sign, where they're located, the first thing is, in my opinion, is I wouldn't even consider granting the variance for addition 5 square feet because it's in the wrong spot, and so forth, and the free standing 10' height, I assume, is at the top of the upper plywood sign.

Chair Van Million: It's two feet off the bottom, and you have two 8' pieces, so I'm assuming that's where it's going to end.

Member Wittman: This has been going on "forever." They don't show up and when they do show up, they're not prepared to do whatever it is that they should do. I don't know where we're going with this; it's frustrating, I'd like to get this resolved and they don't seem to be all that concerned about getting it resolved.

Member Williams: I thought tonight would be the night that we take care of it given the fact that they put the plywood up and they tried to give us something to look at; obviously not.

Member Kaufman: Is it for the pricing? Why can't they put it on the canopy?

Member Wittman: They could; there's any number of ways they could do it.

Chair Van Millon: Some gas stations actually have their price digital up on the top of their awning because a lot of the areas are not allowing these signs to be put out anymore and illuminated.

Attorney Liguori: Out Code prevents the internal illuminations.

Member Wittman: The problem here is that we do not have here tonight after all of these months somebody, either an engineer or somebody from LukOil that we can discuss these things with, so here again we go on for another month. OK, they put up the plywood, we know a little more there, but we can't discuss anything and get this resolved and I would at this point suggest among other things that if they can't put it on the canopy, that perhaps they can move it to the other end of the property. There's a telephone there, but if it's not being used any longer they can put it there, but we can't discuss this with them and this is frustrating, I would like to know when they're going to show up.

Chair Van Millon: I would entertain a motion to keep the public hearing open for one more month.

Attorney Liguori: You can deny it or you can grant it, it's up to you.

Chair Van Millon: I feel uncomfortable denying it if they're not here. But then again, there's no guarantee that they're going to show up next month either.

Member Wittman: We hold it over for another month and issue a letter to them stating that we were fully prepared to discuss this on numerous occasions including the most recent one when you put the plywood there. If you or your representatives do not show next month so that we can resolve this issue and discuss it with you, we will terminate and deny your request for all the variances because of your inactivity.

Attorney Liguori will write a letter.

Chair Van Millon: If they don't have anyone to rent the space, they're not going to do anything.

Member Williams: The problem is that there's no sense of urgency on their part.

Member Wittman: What really annoys me is the fact that they asked Maria how many people were going to be there; it shouldn't have to be that way. They're going to "attack the court, so to speak" so we can get a better vote on the illumination?

Attorney Liguori: What would be appropriate is that they would be here and say to the Board, we need four out of five; let's say they get to the point where they feel that the Board is reasonably satisfied enough to take a vote and they would say, look, it would be customary for Boards to do this, if you would like to put it over for one more month in order to have the full Board, then we can do that, but it's on the Board's response, not the applicant's response. I'm not actually sure if there's a body of case law that says that the applicant won't get a fair shake if the full Board is not there, but it is harder when the County has determined that you need four out of five.

Member Wittman: If we were down to three, I would understand that.

Attorney Liguori: If we were down to three, then they would not get a fair shake regardless because they could never get the super-majority.

Member Wittman: I don't want any applicant saying that this Board did not give them a fair chance to represent their case; we've done that and I think we've been more than generous in continuing this discussion, but as I think I said to you last month that I'm tired of this thing.

Secretary O'Leary: I think one of the reasons they didn't show up is because I told them the next day to put the signs up. I didn't hear back from them until this week and they asked if they're still on and I said you're still on, but I don't know if there's anything that has changed from the previous month unless you get those signs, so we didn't think they'd get them up and then it was late yesterday where somebody actually got them up and then I said that I don't know if I can get all the ZBA members there, so that's when she called back again and said then they're not going to come because you don't have a full Board and I forgot what else, but there were two reasons on that last email. If they got them up sooner, they most likely would have been here, but they're not communicating with each other and I'm not going to call all the different people; I called one and he said he was going to call the other and then three weeks later, she calls and said that she just found out; I can't call every one of them every time; I called the one who was here at the last meeting and he put it back in someone else's hand, so they're all passing it around.

Member Williams: I think we need that letter.

Secretary O'Leary: And we should send it to every one of them if we have to and then they were going to send a totally different one tonight anyway, so I don't know who to call anymore.

Attorney Liguori: There is an applicant, it's Core States Engineers, so that's who will get the letter.

Member Williams: We've all seen the plywood. Is it fair enough to say they should remove the plywood at this point because I think it's unfair for it to be up there.

Chair Van Millon: Yes, because I don't want that plywood to interfere with the signs that are already there, which is what it's doing now because right now, it is blocking Frescho Twenty Two's signs.

Members Williams: I think we need to let them know that they need to remove it.

Secretary O'Leary: They thought they could just give us pictures without putting it up and I said no we want to see the actual wood up because you could take a digital picture of what you think it's going to look like and you can stand at angle and make it look perfect and that's why I told them the ZBA wants to see the actual plywood in person, not just in pictures because your picture came out the true way it looks, but you can stand at an angle and make these look perfect.

Member Wittman: Does the Board think its necessary that we get the ARB involved in this?

Chair Van Millon: If their variance is denied, then they would have to go back to the ARB anyway.

Secretary O'Leary: And I told them if anything on your application has changed, we need to see it in writing so we know if it has to go back to the ARB or if it can stay here because if anything changes, maybe it wouldn't even need a variance, so then it would have to go back to the ARB. I told them all this on June 3rd.

Attorney Liguori: If the variance is denied, they can keep the 10' sign, they can still have that, it would just not be 12' 6", it would be 10' and no internal illumination. You're not exactly remedying the situation, you're just foreclosing the opportunity for the extra 2.6'.

Member Wittman: That's why I would like them to be here, to try to negotiate something that's going to be good for everybody.

MOTION: Member Wittman motioned to extend the public hearing on LukOil to August 4, 2010; seconded by Member Kaufman.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

MOTION: Member Kaufman motioned to approve the June 2, 2010 minutes; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

Member Wittman: I want to ask if Rasco is going to come in front of us or not.

Attorney Liguori: We had spoken and it was coming, then they went to the Planning Board and asked the Planning Board. Basically Jon Adams presented information to the Planning Board that we didn't know when the three of us met, this is over an application that was at the time coming to the Zoning Board, it has some history to it, I sat down with Marilyn and George to discuss it in anticipation of getting an application on it, and at the time it was coming, but then Jon Adams found information in the Master Plan, the Master Plan findings identified the use as stated in no uncertain terms that it was a legitimate pre-existing, nonconforming use and he presented that to the Planning Board and asked the Planning Board to make a determination that night and so they went forward and adopted a negative declaration and then they said they were leaving it up to the attorneys to figure out what to do. I said to Jon Adams, in my opinion, your options are to go back to the Zoning Inspector and ask him to rescind his letter or come back to the Zoning Board of Appeals on referral. We had left off that he was going to come to the Zoning Board of Appeals, which the last time I spoke to you, they were going to the Planning Board; when we spoke, they were coming to the Zoning Board, we had one further conversation that they were not coming, now we're back to, they will come to the Zoning Board, but at that point, they missed the deadline. If it gets here, it gets here.

MOTION: Member Wittman motioned to adjourn the meeting at 8:03 p.m.; seconded by Member Williams.

VOTE: Chair Van Millon – Aye
Member Wittman – Aye
Member Kaufman – Aye

Member Fusco – Absent
Member Williams – Aye

Meeting adjourned at 8:03 p.m.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals