

TOWN OF DOVER ZONING BOARD OF APPEALS REGULAR MEETING HELD ON WEDNESDAY, March 18, 2009, AT 7:00 PM AT THE DOVER TOWN HALL:

PRESENT: Chair Marilyn VanMillon
Member George Wittman
Member Anthony Fusco

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

Chair VanMillon called the meeting to order at 7:02 pm and began with the Pledge of Allegiance.

Chair VanMillon read the first item on the Agenda as follows:

DISCUSSION – **Ten Mile River LLC** – Z 2008-05 – The applicant seeks a reversal or modification of the decision of the CEO citing Sections 145-13; 145-14; 145-32, 145-35; 145-57 of the Town of Dover Zoning Law.

In attendance was the attorney for Ten Mile River LLC, Jon Adams of Corbally, Gartland and Rappleyea.

Attorney Adams: I see only three members of the Board here tonight, which means if I asked for a vote tonight, I have to have a unanimous vote of the Board; it’s an unfair situation. I should have the ability to address a full Board and not three members; under that circumstance, subject to ruling, I prefer not to go forward with only three members present.

Chair VanMillon: We only have three members on the Board.

Attorney Adams: Well, then you have a serious problem. It’s not your problem, it’s the Town Board’s problem, I fully appreciate that, but inherently unfair to any applicant, particularly to an applicant who’s appealing a decision of a Town official. I note my objection to that procedural issue. I’ll also indicate, before I get into the merits of this appeal, that some of the issues that may or may not be covered by the notice given by Mr. Hearn may be the subject of existing Supreme Court litigation. It’s not possible to tell from the Notice to Remedy that Mr. Hearn provided where those facts that are currently under litigation in Supreme Court between the Town and Ten Mile River start and end. My recommendation given that potential overlap is that any decision be deferred until there’s also a final resolution of that litigation because it’s possible that the final resolution of litigation might be global and address all issues; the issue of the wall has come up in the Supreme Court proceeding; we don’t believe it’s correctly part of that proceeding, but nevertheless, the Town has interjected that issue.

The presence of whether or not that wall should be there or not is already subject to scrutiny by the Supreme Court. Again, I feel now that we only have three members, I have a problem with where does the overlap exist between Supreme Court litigation and the Notice of Remedy. For that additional reason, I think this matter should be deferred. If not, I’m prepared to address at least the Notice to Remedy as to those subjects, which I can identify as being subject to that Notice to Remedy.

The Notice to Remedy with regard to the materials and the wall, I don't know what materials they are, that's simply too vague to identify, particularly because the removal of materials is the primary issue in the Supreme Court litigation. The wall is an issue which post-dates the commencement of that litigation, and I don't mind addressing the issue of the wall tonight, and I believe that the Order to Remedy as to the wall was in fact incorrect. In terms of any other issues, if Mr. Hearn were present or if someone here could clarify what materials he's referring to other than the wall, it's impossible under the circumstances affecting this property to move forward on that issue. If you want me to get into the merits, I will do so in terms of the one issue I can define from the Order to Remedy, and that is the placement of the wall. I'm not certain how many members of the Board have been down to the property and I have some pictures to give everybody a perspective.

Attorney Liguori: Have they done anything since the Stop Work Order was issued?

Attorney Adams: I'm not aware of anything, but I don't know when the wall was completed. I'm going to suggest to you when we get into this, there's no regulation that regulates that wall and I'll explain why. The other thing I want to submit to the Board is that before any construction was commenced on this wall, I submitted a request to the Zoning Enforcement Officer saying, "My client wants to build a wall, will you clarify what regulations, if any, are applicable to that activity." You'll see that there's a confirmation that that fax was received, there's a confirmation on the fax sheet. I received no response to that inquiry, so absent of a response, we obviously proceeded because there was no indication that, in fact, the activity tended to be undertaken by my client required any further permits.

I show you that only because this was transparent activity; we didn't hide the fact that we were going to do this activity; we announced the fact we were going to undertake this activity, but received no guidance from the Town. The Order to Remedy cites five sections of the Zoning Law being applicable to that activity. The first section cited is Section 145-13. Section 145-13 basically incorporates the floodplain law into the Zoning Law. You're being asked not only to interpret your Zoning Law directly, but other sections that are incorporated into the Zoning Law. The first of which is the floodplain law. However, if you read the floodplain law, which is a separate document, the only prohibition contained in that law is the placement of a residence, new septic or leach field in a floodplain. The wall does not fall under any of those categories. It is our belief that absent a specific prohibition as to walls, that term being used in the same manner as residence, new septic or leach field, the floodplain regulations are not applicable.

Attorney Liguori: I would think the Board would want to know why it would not be considered under Section 81-11, "A development permit shall be obtained before the start of construction or any other development within the areas of special flood hazard..." why would that not be any other development?

Attorney Adams: This is not a development, this is just a wall. Development in my mind would be coming in and starting a new activity. If I want to put up a wall, I don't believe that the burden is on me under that particular section that you just referenced; that's a very broad term. I have an existing use, I'm putting a wall around it, that's not irrelevant. Floodplain walls, I'm going to give you some other material on the floodplain law in a second; the intent of a floodplain law is to make sure that buildings within the floodplain are built to such a manner that they will withstand floods or be eligible for insurance under a federal program that basically is the basis for your floodplain law, so you have to build something, a building for instance, above a certain elevation because if you build above a certain elevation, that building, in theory, would not be subject to damage in the event of a flood.

A wall is not one of the items that the floodplain law seeks to protect. They seem to protect residences, septic tanks and leach fields; obviously leach fields leaking into water becomes a floodplain hazard, eroded the integrity of the leach fields. Additionally, I'm going to submit to you a letter from our floodplain expert. The owner in 2006 retained Leonard Jackson. Leonard Jackson is both an engineer and known among professionals as being one of the leading authorities on floodplain management, and he doesn't address a wall specifically, but he does do something interesting in that letter. He talks about those areas of a floodplain where if you place something, there's a potential impact. Then he also, if you look at the map on the third page, identifies non-effective areas. In a non-effective area of a floodplain, you basically can place anything, that's a little broad statement, but non-effective areas are areas where if you put something it's not going to have any impact such as raising the elevation of future floods. The area in which this wall is located is in what we call the non-effected area. You need to get a perspective of the location of the wall because you can't understand that map. I'm sorry I didn't bring the entire map; I have a survey map and Mr. Hearn has the full map and to give the Board perspective... (Mr. Adams showed the Board a survey map and explained the location of the wall and gave a description of the property and the river flow).

Member Wittman: I haven't been to the property because it was not before the Board and the only time we usually go on any kind of site inspection is with the permission of the applicant.

Attorney Adams: One of the other assertions is that we needed a permit under the stream overlay district regulations. There we have a different situation because the stream district regulations do talk about structures and the definition there, but not in the floodplain law, includes a law for structures. The stream overlay zone is only 150 feet from the centerline of the Ten Mile River into properties adjacent to it. This map is in Mr. Hearn's possession, and is a scale of 1" to 100'. Even if I have 100 feet of that wall in the overlay corridor, I'm entitled to have a structure in the stream overlay zone that's up to 500 square feet based on the footprint without having to get a permit. If I go over 500 feet in the stream overlay zone, then I need a permit, that's clear from the law. However, that requirement only extends to that portion of the wall that is within the stream overlay zone. I can see that if you took the entire wall from its beginning near the entrance going East to where it ends at that portion of the property, I have more than 500 square feet of footprint for that wall, it's probably maybe 1,000' long. But, again, your regulations only address two structures within that overlay quarter, not the entire wall, so that it's our position that we may have 150' at best. If you want to have a site visit, we can certainly consent to that so you can get a better perspective of this between now and any other meeting because you need to see it to understand it.

Attorney Liguori: Was there a building permit retained for the construction of the wall?

Attorney Adams: No. But I don't even think that alleges a violation. You have a building construction law, and that governs the issuance of building permits in the Town of Dover and I don't think the Order to Remedy made that allegation. It's our position that if any portion of the wall is in the stream overlay zone, it is less than 500 square feet of that wall and therefore not subject to a permit regulation. This whole thing goes back to whether or not building that wall was subject to a permit prior to the construction. We solicited that, our reading of the Code says that it is not subject to a permit.

There are two other sections that Mr. Hearn alluded to in the Order. Incidentally, you should all have an addendum to the appeal form that I'm simply following that addendum. Down at the bottom of the first page, in that section, there's a typo there, it should be 145-32. That also

references the erosion and control law and that law governs what we call, “site preparation.” I give the definition of site preparation as found in that law, and it is our position that is stated in there that site preparation is defined as strictly excavation, filling and grading. Construction of a wall doesn't fall within any of those terms.

Continuing on the second page, the last section he cited was reference to the wetlands law, Section 145-35 requires all applicants for Town permits incidental DEC or Army Corp regulatory permits for disturbance of wetlands. It is our position that we didn't build on the wetlands and didn't have to get any permits for that purpose and incidentally, none of those agencies have cited us for any violations of any DEC or Army Corps regulations. There's one other section he references, I'm not sure if that's to be informative or not; 145-37, which defines penalties, obviously I think he may be saying these are the potential penalties, but we could be in violation of that section.

Chair VanMillon: Section 145-37 is Protection of Agriculture.

Attorney Adams: We don't have any agriculture, it's an industrial site. The other comment I want to make is, and then I'm going to conclude for now, these laws have to be narrowly interpreted, that is to say, you have to read the law on the surface, if it says it within the verbiage, you have to accept that verbiage; if there's no verbiage there, you can't say that it was intended to be there, therefore I'm going to read into it those words in addition it, and I think that's what happened here.

We're entitled to a narrow construction. The standard we have to follow is the standard that's spelled out in black and white from the language in the Zoning. If it's not in that language, there's no prohibition against it. You can't assume that because they said one thing in the language and intended something else. I outlined that in my agenda. It's our belief that this Order to Remedy was improperly issued and quite frankly, we're asking you to reverse the determination of the Zoning Enforcement Officer. It also goes back to my comment about the content of the Order to Remedy; it's very vague and unless it's very specific, this is a 17 acre site, so if you say there are materials there that shouldn't be there, where on that site. Let me give you an analogy; in our Supreme Court proceeding, the same issue came up and initially the Town said this stuff is everywhere, meaning materials. Finally, when we had the engineers testify, they were asked to delineate specific areas that they refer to; what do you mean by “everywhere?” They simply meant the parking lots; they could have said that, they could have said, “materials in the parking areas of the property.” They didn't say that, and it's our contention that there's an element of what we call “due process” here; in other words, for us to be in violation of something, we have to get reasonable notice as to what conduct we're engaging in that's prohibited, and when you use very general terms, such as “materials” and don't describe the nature of the materials, and don't describe the location of the material, that's the subject of the Order to Remedy, we think that's inherently flawed in terms of a due process consideration. I'm not asking you to pass a due process; I think you can appreciate that if I'm going to correct something, I need to have a reasonable degree of specificity as opposed to generality as to what I've done that I need to correct.

The wall is simple, it's the only wall on the property, so we can relate to the wall, but the balance of our Order to Remedy, we cannot decipher what it's trying to address. I'm happy to answer any questions and since the Board hasn't reviewed all this material or had the opportunity to, if the Board wants to, I'd be happy to come back for a second meeting. If the Board wants to do a site visit to get a better perspective, I think everybody would be better informed when we're all on the same page. I've been on site, I understand the site, I think it's a step that you may want

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to consider for further consideration of this matter. I'm about to make a new offer to the Town and the Supreme Court litigation, which could make this whole thing epidemic. I think the best course of action would be to not take any action tonight and to consider what further steps you want to and when you want to take them.

Chair VanMillon: I don't think we would have taken any action on this tonight, anyway. I have a problem with having papers thrown at me at the last minute. I think that these should have been brought to us or sent to us prior to this meeting, and maps that are a little bit clearer.

Attorney Adams: I can get you a full-size map, there's already one here in Town Hall.

Chair VanMillon: Yes, but we would all need copies of this map.

Member Wittman: I'm agreeing with what you're saying, I don't think that even if we had all the information we would be ready to make a decision tonight on any of this. We have not visited the site, I think that's very important, and I think that either you or a representative or the owner be there to point out exactly where things are, boundaries, everything else. The other thing is, I would have to defer to our attorney to determine where we are at in this overall thing with the Town because if you point out, I accept it at face value, I have no idea until our attorney tells us what the story is here. Our Board attorney has to determine for us. If what you're saying is true, I believe that it probably would be a good idea if there are important decisions that might contingence on this whole thing, yes, let's put this on hold until we can make sure that's not going to change anything on our decision.

Attorney Liguori: You made reference to an offer that you may make or have made?

Attorney Adams: It's drafted, but hasn't been mailed to Jason yet (referring to Attorney Jason Shaw); I'll copy you on it.

Attorney Liguori: Once Jason has that, then Jason and I can talk and we can advise the Board as to the status of the Supreme Court litigation and there's no issue with differing until next month; that will give Jason and I the chance to talk about what's about to come; I'll advise the Board by letter as to what that is, and then depending on what that is, you (the Board) can make a decision as to whether or not you want to go out to the property or not. If the matter is going to be rendered mute, then there's no reason to go forward; but based on an offer from the applicant to Jason, that would mean that the Town Board would have to get involved; it could be meeting some deadlines that may not fall into place. We don't know when a fourth or fifth member will part of the Board; unfortunately, those are the cards right now. For now it would be beneficial for us to put this over until next month; consider it to be on the Agenda unless you hear otherwise, but the three of us will be in touch. Once we're all in contact and I can talk to Jason and get some advice, then we're going to consider it deferred for one month until you hear otherwise.

Chair VanMillon read the second item on the Agenda as follows:

DISCUSSION - LukOil – Z 2009-02 – The applicant seeks to appeal Sections 145-39D.(3) for sq ft of freestanding sign; 145-39D.(3)c. for sq ft of canopy sign; 145-39(3)g. for total sq ft for property; 145-39D(3) for height of freestanding sign. This property is located at 3160 NY Route 22, Dover Plains, NY, on tax map #7063-11-534507.

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In attendance was a representative for LukOil/Getty Petroleum, George Mastoridis of CoreStates Group.

Mr. Mastoridis: Basically, all the signage, the structures themselves on the property, have been existing. If you go down the road even a quarter mile down on the other side, we have similar structures for the Sunoco and Cumberland Farms Gulf Station, matching similar signs there look larger than what we have on our site. I guess at one time it was legal to have or was in the ordinance to have a larger sign on a gas station property. The re-image from Cito to LukOil was just lenses, just face, copying in and out of the existing structures, nothing else was changed on the site. The only correction that we probably have in our drawings, the freestanding sign, which is allowed to be 50 square feet maximum, we had about 51.2, that was probably just a survey error, sometimes when you get on a 22' sign it can inch off. I would like a chance to actually check on that if it's not a problem and get back to the Board, but I would say that the freestanding sign would be 25 square foot for the ID and 25 for the price sign.

Member Wittman: The reason why you're before us here tonight is because you're looking for four variances and the reason for that is because you were cited by the Code Enforcement Officer?

Mr. Mastoridis: The sign company jumped the gun on this one, and they did re-image the site already from Citgo to LukOil.

Member Wittman: When you say, "re-image," on this one, it has both, it has Citgo and LukOil, by re-imaging, are you saying that they changed the Cito to LukOil, but did not change size of the signs or the sign location, just an exact replacement?

Mr. Mastoridis: Yes. On the freestanding sign, really all you do is pop open the cans, they have an opening, you pop the face in, close it and call it a day. On the canopy, there are new signs which, I'm not sure if we're counting the sergeant stripes, but the signs themselves are only 13 square foot a piece; there are only two signs on the canopy, which is 26 square feet. We did not install the LukOil decal. The sergeant strips are there, but the rest is blank. These signs themselves are actually only 13 square feet a piece and I can see there's another error on this and I apologize, I will correct it.

Member Wittman: I would suggest that maybe you resubmit these and we'll give them back to you because we don't want to have incorrect stuff on them.

Mr. Mastoridis: Can we make it a condition of approval, if it is approved, that pending revised drawings, which I can have to you by tomorrow morning? The only reason why I ask is because my office is about three hours away.

Member Wittman: I just thought that before we get involved in anything with the final record, whatever the record may be, so we should really have exact dimensions.

Mr. Mastoridis: Then the only two variances, which are correct on the drawings that I'd really like to see because I really think we will need the other two, would be the height of the free standing sign, which did not change from the existing. The existing was 22' 8" and we left it exactly the same which meant the footings were not changed, the structure, everything is exactly the same as it was and the overall signage on the property; I believe we're only allowed 37.5 square feet and if anything, we reduced the overall signage from the Citgo image. The site is only allowed 37.5 square feet.

Attorney Liguori: This is a very unusual situation here because I spoke to Laurel Walyga (of CoreStates Group) and I explained to her that the applicant came before the Architectural Review Board about six months ago, but never continued the process; there was just a submittal. What we did was the ARB reviewed the site and on October 24, 2008 I drafted a letter to the applicant to explain to them what was needed in order for the application to be processed, identifying what issues were non-conforming, what would need a variance, etc. The first question, which is absolutely necessary for the Board to have the answer to, is that there are multiple commercial uses on the site; there's a commercial garage that has signage and when there are multiple uses on the site, there still is a limitation on how much square footage, now that limitation is directly related to the amount of frontage the property has on the road. In this case, the property has 75 feet of frontage, so overall, all of the uses combined, they're only permitted to have 37.5 square feet of footage of signage. Whether or not that's enough, that's for the Board to decide, but what's very important here is knowing how much square footage that commercial user is using because in theory, if they had 30 square feet of signage used for their sign, there's only 7.5 feet permitted for that other use. I explained for Laurel that she would need to have the property owner go out there, take a tape measure and measure what those other signs are because the Board will need to consider that in their determination, because that's part of your job when you say is 37.5 feet enough for two business to exist, you need to know what "A" has in order to know what "B" is going to need, that is a very critical piece of information that's needed.

Chair VanMillon: I do know that there is a garage there, but I don't remember seeing a sign that says there's a garage there.

Attorney Liguori: It could or could not be. The ARB seems to think that there is.

Chair VanMillon: There's an "A-Frame" sign, that's it.

Mr. Mastoridis: The gas station is the primary use and the other garage, like you said, is a movable sign in the back.

Chair VanMillon: I only see the A-Frame and there is not a big sign there.

Attorney Liguori: I haven't looked at the Code particular to this one issue. If he has the NYS registration signs, I don't know if those are calculated into the overall signage; I can get back to the Board on that.

Member Wittman: We need to know what the gross allowed is and how much is there and how much we're really talking about for a variance.

Mr. Mastoridis: Usually the State allows for the registration signs, the decals on the dispensers as well as the price toppers, because it is State Code.

Attorney Liguori: I'm not saying that it's not permitted; I'm just saying that I would just need to advise the Board as to whether or not the municipality has regulated over the State, which they are permitted to do.

Mr. Mastoridis: And I have seen, like Schenectady, as certain square footage for dispenser signage that you're allowed. I don't believe I've seen it in this Town's ordinance.

Attorney Liguori: The second thing is the order for process here. This is probably the more interesting aspect of this and this is what Scott Daversa, the Chairperson of the ARB, is writing to this Board about in his correspondence, which is that the Notice of Violation Order to Remedy and that cites failure to obtain ARB approval for the re-imaging. It was improper for it to be re-imaged or re-sized without the ARB approval. The Notice of Violation Order to Remedy says failure to obtain ARB approval, so the Chair of the ARB has written a letter to the Board to say, "I don't think that it's proper for them to be able to make application directly to the Zoning Board to vary the zoning requirements." It should have been more appropriate for them to appeal the provision of the Code that prevents the ARB from receiving an application while there's a violation on the site. There is a provision in the Code that says, "The ARB is not permitted to receive an application when there is a violation pending."

Chair VanMillon: We can't either.

Attorney Liguori: The Code also makes reference to the Zoning Board of Appeals, but I've done the research and regardless of whether there is a violation on site, you cannot be prevented from going to the Zoning Board of Appeals. There's an issue with our Code, because of the authority in 267B of the Town Law; 267B of Town Law says that any land owner can appeal the order of the Building Inspector directly to the Zoning Board of Appeals, that's something that we have to follow; you (the Board) can receive an application, but what would have been more appropriate was for you to receive a variance request to vary the section that says, "the ARB can't receive an application if there's a violation pending." You (the applicant) could have done two things, it's a little complicated, but essentially, we could have made them take down all the signage, nobody wanted to do that, we like our property owners here even if there has been mistakes; we don't want to penalize a gas station, then they would have to take down their numbers, etc., so we're not into that. I want to explain what Scott was looking for. Ideally, Scott would have liked to have seen them vary this section of the Code to permit them to go to the ARB, have the ARB review the site, get it to a state where they could refer it back to the Zoning Board for variances. But instead, the applicant does have the authority under 267B to come straight to the Zoning Board, appeal the violation and ask for the variances directly, and that's what happened here.

Mr. Mastoridis: It's not that we were trying to bypass the Board. Once we realized that the sign company installed without the approval, being a major corporation, the people from Getty wanted to resolve it as soon as possible and I do apologize.

Attorney Liguori: If there was an issue, your signage would be down.

Mr. Mastoridis: We tried to resolve this issue as soon as possible, we realized we needed variances and we wanted to the Town know in good faith that it's not the corporation trying to get over on the Town or trying to blow them off; we wanted to do something about it, that's why we went straight to the Zoning Board.

Member Wittman: I would feel more comfortable if we leave the signage where it is for the time being until we resolve whatever the issues are and that we refer it back to the ARB for a full consideration of signs and if variances are needed, then the applicant will then come before the Board with the recommendation of the ARB and then we consider the variances.

Attorney Liguori: The applicant would have to agree to that.

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Member Wittman: I certainly am not an expert on this, and we would have to go through this whole thing again until we determine what the gross square footage is, how they're interpreting what signage down there is appropriate and when they make that determination, then the applicant can come to us and seek some sort of variance from that if they feel that's what's necessary. I just thought that would be the cleanest way to do it, but I think to be fair to the applicant, we just hold this violation notice until this has been resolved and I'm sure that's what will happen; and I can fully appreciate your situation; what will happen at the end is that this will be resolved, the violation will be cleared up and you will have the signage that's necessary for the operation of business. If you agree, I would rather you go back to the ARB and we will hold things until you are finished with the ARB and there will be no strict enforcement of taking the signs down in the interim until this issue is resolved.

Chair VanMillon: I would rather have Scott from the ARB be specific on what needs to be done.

Attorney Liguori: We may want to refer the applicant to the Town Board for a waiver of that section; that's the other way to get the waivers, they haven't asked you to waive that so I don't think the Board has the authority to say, "Go back to the ARB, you are permitted to receive this application," and we say OK without the request from the application. Here's what we don't want to have happen... we don't want you to go through the Zoning Board process and then get denied, because then you would start all the way back to zero; you would have gotten nowhere and to drive three hours for six months in a row to get nowhere is not beneficial for anybody. My suggestion is that you write a letter to the Town Board, "Dear Town Board, there is a violation on the site, we met with the Zoning Board," and I'll send the Town Board an e-mail to confirm. "The Zoning Board has requested that we go to the ARB, go through the ARB process and then be referred back for the variances that we need."

Mr. Mastoridis: I'm sure I'm wrong, but I thought we did request to the ARB, we did get some sort of waiver, and I'll check the record.

Attorney Liguori: I can guarantee that they didn't take any action because we received the application in October, we went through it at the November meeting and then I wrote a correspondence back to the Board, so I know that they didn't take any action. It was re-submitted by you back to the Board with this application, so what we'll do is, I think you can get through the Town Board a little quicker than you would the next Zoning Board meeting because that's not for another month.

Member Wittman: I don't think there's any need to come back; I think all this can be handled over the phone or by e-mail. What we could do is table this and hold any action on this until we hear from both the Town Board and the ARB or from you and that way you won't have to come back before us until the appropriate time.

Mr. Mastoridis: I'll do whatever is going to help resolve this in the best way.

Member Wittman: I think that maybe that would be the best way to keep everybody happy, but I certainly don't think you need to take any signs down in the interim.

Attorney Liguori: If we can put this on hold for now and resolve it the right way, we'll move forward.

MOTION: Member Wittman made a motion that this LukOil discussion be postponed until we hear more subject from the Town Board granting a waiver of that provision of the Code that

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prevents the ARB from receiving an application when a violation exists; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Attorney Liguori: There are many aspects of the application that need variances and 2004 was the end of the amortization period for signs, so that's an issue.

Mr. Mastoridis: I don't know about the other stations, but everybody has large signs right there. We can definitely present it at the ARB and I think we'll move through the variances because we will correct the plans and it will make it that much easier.

Chair VanMillon read the next item on the Agenda as follows:

MOTION - 14 Mountain View Lane – Z 2007-003 – Motion to confirm that 7.38' area variance to subdivide a piece of property without meeting the required 250' road frontage for a town road in an RU District that was issued on 6/20/07 is still valid. The property is located at 14 Mountain View Lane. Tax map #7160-00-720215.

Member Wittman: I would like to put something on record on the discussion of why we're doing this. There was a parcel of property, this goes back to 2006, where we gave them a variance for this; he went back to the Planning Board and somewhere along the line, somebody discovered that the measurement was wrong, so they came back before us on 6/20/07 and we changed it to the 7.38' area variance. Apparently they have let this expire.

Secretary O'Leary: It's not like they didn't act on it; they had to go back to the Planning Board to get the full subdivision approval, they've been in front of the Planning Board all this time, they haven't let time lapse.

Member Wittman: It seems silly to me that they would have to come back to renew the variance because they're not finished with the Planning Board.

Attorney Liguori: Our opinion on this is that generally when an applicant comes to get a variance, let's say it's not associated with a site plan approval, it's up to them to get a building permit and if they don't get their building permit within the required time frame, then their variance expires. When you have another approval component, let's say site plan approval component, and they cannot act on the variance because they can't get a building permit because they don't have the site plan approval, then basically the trial court has determined that it would be inappropriate to start the clock on the day of the granting of the variance; the clock would run the day of the granting of the site plan approval because that's when a building permit can be applied for; it's the actual, "When can you apply for a building permit" that would trigger the timeclock.

Secretary O'Leary: It hasn't been granted yet, but it's not like he didn't go directly back to the Planning Board; he has been in front of the Planning Board all this time, not every single month, but he did go right back.

Attorney Liguori: You can take a very strict interpretation; it's within your purview, if they want to challenge you then that's perfectly fine.

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Member Wittman: I have no problem with it, I was just wondering if they can't act on it until the Planning Board gives it's final approval, then yes, the clock really starts running, but if it's just a matter of formality, I don't see any reason why we can't do it.

Attorney Liguori: I didn't know it was going to be on the Agenda.

Secretary O'Leary: Victoria Polidora of Rapport, Meyers (attorney for the Planning Board) called late today asking for an actual motion from this Board stating that it is still valid because she knew we were meeting tonight.

Member Wittman: I would assume, as Mike said, the clock really does not start ticking on that one-year time period until they are in a position to act on it.

Attorney Liguori: If there was an application out there that was not being diligently prosecuted and you wanted to take a strict interpretation because so much time has gone by that things have really changed, then you could; but for tonight's purposes, the record reflects that they have been diligently pursuing it.

MOTION: Member Wittman motioned that the ZBA confirm that the previously granted area variance for 14 Mountain View Lane is still valid; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

APPROVAL OF MINUTES - Approve February 18, 2009 minutes.

MOTION: Member Fusco motioned to approve the February 18, 2009 minutes; seconded by Member Wittman.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

MOTION: Member Wittman motioned to adjourn the meeting at 8:05 pm; seconded by Member Fusco.

VOTE: Chair VanMillon – Aye Member Fusco – Aye
 Member Wittman – Aye

Meeting adjourned at 8:05 pm.

Respectfully submitted by:

Maria O'Leary
Secretary to the Zoning Board of Appeals