

MINUTES

On Wednesday evening, **February 28, 2007** at 7:00 p.m. in the Council Chambers of the Administration Building, the Zoning Board of Appeals held a public hearing. In attendance: **Harry J. Vlachos**, *Chairman*; **Melissa M. Santucci**, *Clerk*; **Deborah Elliott**, *Member*; **Carlos Fernandez**, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk, Absent*; **Stuart J. Bailey**, *Member*.

Tape 1 of 3, Side A

The board voted (4-0) to approve the minutes of November 29, 2006. Ms. Santucci was not present at that meeting and did not vote on the minutes.

The First Legal Notice:

Walter and Eileen Morris, 27 Morrison Road, Watertown, MA, herein request the Board of Appeals to grant a **Variance** in accordance with §4.11(a) & §5.04, Table of Dimensional Regulations, Side Yard Setback, Zoning Ordinance, so as to construct a chimney 2.1' x 4.3' x 28'h, located 4.9' from the existing non-conforming northwesterly side yard setback which varies 6.9'-7.1', where 10' is required at **27 Morrison Road**, located in the S-6 (Single Family) Zoning District.

Eileen Morris appeared at the Board and made a short presentation. She indicated that she has been desirous of having a fireplace and that the family room, located in the left rear corner of the house is the room she is proposing this installation. Plans submitted indicate the proposed zero clearance chimney which is proposed to be 2.1'x 4.3' is situated on the northerly wall of the family room, where one window will need to be eliminated. The chimney will be encased with wood cedar clapboard. It is proposed to be located 4.9' from the side property line. She stated that there was a suggestion to install it on the rear wall; however, they would have to eliminate two windows on the sunny side of the house. Due to the pitch of the roof, that option would make it a higher structure and in full view of the neighborhood. At least on the side, the abutting neighbor also has a fire place structure and Mrs. Morris indicated that the direct abutter did not have an issue with her proposal. The Board notes that there was no opposition to this petition.

There is nothing peculiar to the lot other than the pre-existing non-conforming status of the house. Presently the

house is not centered on the lot, but maintains a non-conforming 7-1' - 6.9' northerly side setback , with 18' on the

opposite side lot line. Circumstances relating to the shape, of the structure are unique and especially affecting such

land or structure but not affecting generally the Zoning District in which it is located.

Records reveal that the petitioner has improved the single-story dwelling by adding a second floor and various other

improvements to the property in the 17 years of owning this home. He states that his family has been desirous of a

fireplace in the family room for many years. The hardship would be that they would lose two windows, eliminating

continuous natural lighting in the family room and bedroom on the second floor, if they were to build this chimney at

the rear. With the chimney located on the northwesterly side, they will be losing only one window where there is little

natural lighting.

Literal enforcement of the Zoning Ordinance would involve a substantial hardship, financial or otherwise, to the

appellant/petitioner.

Staff reports that upon visiting the site, it was revealed that the abutter on this northwesterly side, 31 Morrison Road

have their chimney in addition to one small frosted shadow box window and one-story addition (no windows) very

close to the shared property line with the Petitioner. Staff submitted photographs which are made part of the record.

The addition of this chimney would in no way be a detriment to this immediate abutter. Petitioner has indicated that

they have spoken to the owner and she did not have an issue with his project. The only opening on the abutter's side

of the dwelling is a small frosted shadow box window. Desired relief may be granted without substantial detriment to

the public good.

The chimney has a relatively small projection of 2.1' into the side yard and 4.3' in width. Petitioner cannot locate the

chimney in the rear due to the elimination of natural lighting with the elimination of two windows. It is the opinion of the board that the Petitioner's request is de minimis and that due to the site condition where little impact to the immediate abutter would be realized, the construction of a chimney will blend with the gable side, which is least visible from the street. Desirable relief may be granted without nullifying or substantially derogating from the intent of the Zoning Ordinance.

The Petition for VARIANCE is **GRANTED** by a unanimous vote (5-0) of the Board of Appeals.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

Richard M. Moynihan, Alternate

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Tape 1 of 3, Side A, Continued

Legal Notice:

Timothy Shannon, Trustee, Arsenal Way Trust, 126 Summer Street, Watertown, MA, herein requests the Board of Appeals to grant an **Amendment to Special Permit and Variance #03-32 & ASP & AV amended #05-37**, in accordance with §5.01.3(d), originally granted September 5, 2003 and amended November 30, 2005, for storage of 95 new and used vehicles. Petitioner seeks to allow vehicle leasing operation for 15 vehicles, reducing the storage of new and used vehicles to 80 at **Arsenal Street – Lot 1038 (a/k/a Rear 204 Arsenal Street)**, located in the I-3 (Industrial) Zoning District.

Timothy Shannon appeared and indicated that his present tenant, Peter Fuller, would like to relocate his rental business from North Beacon Street, to 204 Arsenal Street and utilize the now storage lot, leased to Peter Fuller for storage of new vehicles. He is seeking approval to convert 15 of the 95 storage vehicles to rental vehicles.

The Board, having visited the site, found that several large trucks in conjunction with a landscaper, was again occupying the open air parking portion of the site which is a violation of the Special Permit #03-32 & amended #05-37. The Board further received a letter from Zoning Officer dated February 22, 2007, indicating the parking of the landscaper's trucks, the easement and associated landscape had not been finished and parking of vehicles on the easement adjacent the building at 202-204 Arsenal Street. Photographs of existing conditions were viewed by the Board.

In view of the conditions of the site, the Board would continue this petition until such time as the conditions of the special permit are adhered to and that the landscaping and access be made as shown on the control plans.

The board voted unanimously (5-0) to grant a continuance to the March agenda.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

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Tape 1 of 3, Side A, Continued

Legal Notice:

James Cubata, Clerk, Fuller Enterprises, 115 North Beacon Street, Watertown, MA, herein requests the Board of Appeals to grant a **Special Permit** in accordance with §5.01.3 (d) to allow office for vehicle rental operation at **204 Arsenal Street**, located in the I-3 (Industrial) Zoning District.

This case is combined with Arsenal Street- Lot 1038, as just heard and in which was continued to the March agenda.

Harry J. Vlachos, Chairperson

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Tape 1 of 3, Side B, Continued

Hratch Nerkizian, 31 Fairfield Street, Watertown, MA, herein requests the Board of Appeals to grant a **Variance** in accordance with §6.02(b) & (j), Location and Design of Off-Street Parking, Required Size and Side Buffer, to allow 4' buffer reduced to 1' on approved extended driveway 23' in length; further allow winter parking only on existing flagstone patio an additional 23' in length, varying in width 13'–10' with 1' side yard buffer, where 4' minimum is required for 5-6 parking spaces at **31-33 Fairfield Street**, located in the T (Two-Family) Zoning District.

The continued case was heard on **February 28, 2007** by the Petitioner, Maher Nerkizian, another son of the owner. He stated that since the last meeting, they have removed one row of red brick and are seeking to allow the 1' buffer, where 4' is required. He prepared a new supporting statement and 5 new colored drawings of the property which contained two options; #1- having a buffer 26 sf; #2 having a buffer 52 sf. While a professional plot plan was never submitted, he did submit a "critical demensions" (sic) plan. He further indicated that he is amending his request for 5 vehicles, rather than 6, since his brother is moving out and his vehicle will not be there.

In order to minimize the roof runoff onto the asphalt area, three of the downspouts will be redirected to areas of the property that have grass. Redirecting the downspouts will help to alleviate the potential runoff to the abutter. He indicated that they have spoken with professional people and they have suggested a drywell, or drainage piping, which is very costly. Member Elliott indicated she was at the site again and believes that the Petitioner can have the 5 parking spaces and provide the 4' buffer. She had roughly sketched out two vehicles side by side on the original driveway and three tandem behind. Mr. Nerkizian indicates that is problematic due to the jockeying of cars with the tenants. While it is not the best solution, the Board notes that this tandem parking arrangement is found throughout the town. Member Santucci concurs with Ms. Elliott's assessment. Member Moynihan is sympathetic, but the ordinance is clear that to prevent such issue as drainage onto an abutting property, the buffer is required. Member Hernandez acknowledges that it is a limited site and the drainage issue is overwhelming. Members concur that the options submitted did not provide the necessary professional answers to the drainage issue.

Jean Watts, appeared and restated that she is opposed to this request and it has been a decade that she has been dealing with this issue.

Vartan Nerkizian, owner of the property, told the Board that the neighborhood has water problems, he and his neighbor both have sump pumps. He disagrees that the water in the abutter's basement is from his property. He is trying to do the right thing to accommodate the vehicles on-site.

The Board concurs in its opinion that the 4' buffer needs to be reinstated and the red brick must be removed by April 1, 2007.

The Petitioner states that the width of the property and placement of the dwelling on the property does not permit the full 4' buffer and the required width for two sets of side by side vehicle parking.

Circumstances relating to the shape, or topography of such land and the placement of the structure are not unique in this instance.

The Petitioner requests a Variance from the 4' side yard buffer requirement in order to park up to six vehicles on the lot. The original existing driveway does not have a buffer. In 1994, approval was granted to extend the driveway, varying in width from 9'-15' by 26' in length, with the required 4' buffer. The Petitioner over the years has encroached into the buffer with parking and installing various materials and has since illegally installed brick into the buffer. The Petitioner seeks a Variance to allow a 1' buffer along the 26' extended driveway, retaining the brick. However, the petitioner has revised his request to provide for 5 vehicles as shown on the Current Parking Configuration plan submitted by the Petitioner. The Board presented the Petitioner with an alternative solution, however, he has determined that tandem parking of 4 vehicles is not the best solution with the "jockeying" of vehicles. Literal enforcement of the Zoning Ordinance would not involve a substantial hardship, since the Board believes an alternative parking for 5 vehicles can be achieved while maintaining the 4' required buffer.

The Petitioner has removed one row of red brick, and requests to provide a 1' buffer. The Board heard testimony from the direct abutter that runoff from the Petitioner's property goes onto their land. The

Petitioner has made efforts to alleviate the roof runoff by redirecting the downspouts, however, the provisions of a 1' pervious buffer is insufficient in alleviating this problem. The difficult aspect of this case is that the Zoning Ordinance requires only four parking spaces, which the Petitioner had permission for in 1994, when the dwelling only had a total of four vehicles (including the tenant spaces). The Petitioner's family all have vehicles is now attempting to accommodate five vehicles on site, especially during the winter parking ban. However eliminating the 4' natural buffer has caused drainage problems with the abutter most affected by this request. Desired relief may not be granted without substantial detriment to the public good.

The Zoning Ordinance requires that sufficient off-street parking be provided to the extent possible. However, the ordinance specifically requires the 4' buffer on new driveways and extensions which helps to eliminate potential drainage issues. The Petitioner needs to reinstate the 4' buffer which was previously approved to alleviate the drainage issues from his property onto the abutting property. The Petitioner is requesting to accommodate 5 vehicles off-street, which can be accomplished, without the need for a variance, by tandem parking.

However, the Petitioner finds that the jockeying of vehicles associated with tandem parking is more problematic. The relief requested in eliminating the need for a 4' buffer cannot be granted without nullifying or derogating from the intent of the Zoning Ordinance.

The Petition for VARIANCE is **DENIED** by a unanimous vote (5-0) of the Board of Appeals.

Harry J. Vlachos, Chairperson

Melissa M. Santucci, Clerk

Stuart J. Bailey, Member

Deborah Elliott, Member

Carlos Fernandez, Member

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Carlos Fernandez, *Member*; **Richard M. Moynihan**, *Alternate Member*; **Nancy Scott**, *Zoning Enforcement Officer*; **Louise Civetti**, *Clerk, Absent*; **Stuart J. Bailey**, *Member*.

Tape 1 of 3, Side B, Continued

Legal Notice:

A. Russo & Sons, Inc., Michael Russo, Trustee, 560 Pleasant Street, Watertown, MA, herein requests the Board of Appeals to grant an **Amendment to Special Permits #88-89-13; #98-11; SP#99-21 & 6.01(g); SPA#99-23 & 24; #01-31; Variance #99-22V and Variance(s)** in accordance with §6.02(k), Parking Buffer; Zoning Ordinance, to allow elimination of easterly driveway entrance; permit razing of 550 Pleasant Street building allowing reconfiguration and enlargement of easterly parking lot adjacent to Paramount Place, providing 2' parking buffer; further expanding parking along the rear property line, providing 0' buffer, where 8' is required, resulting in 72 new parking spaces. Construct rear "L" warehouse/retail addition, 12'x95'x38' with basement. Relocate access ramp to new basement. Relocate south side loading dock and construct 2-story cooler, 44' x 123', with 44'x44' retail and 2nd floor office space. Further construct roofed loading dock, 17' x 169'3" having 12 truck bays and a 21'9"x44' refrigeration addition located in rear; construct access driveway from west-side private way with additional site improvements increasing exterior outside display by 5,240 sf. Petitioner further requests the elimination of Condition #13 from decisions #99-21SP; #99-22V; ASP#99-23; and ASP#99-24 and elimination of such other conditions as may be appropriate in connection with the proposed improvements for the property at **550, 560 & 570 Pleasant Street** located in the I-3 (Industrial-3) Zoning District.

At the continued public meeting on **February 28, 2007**, Attorney Bailey addressed the Board detailing the two major items the Board had asked of the petitioner; to supplement the traffic study in looking at the actual projected traffic flows from the Fluid Management's building; secondly, additional cart corrals in the parking lot. The 4 additional corrals are "clouded" and shown on the revised plan C-2 "Layout and Materials Plan" dated 2/27/07 by VHB, submitted to the Board that evening.

Tape 2 of 3, Side A

Matthew Kealey, P.E., Traffic Engineer, VHB, updated the Board as to what he has done since the last meeting. They reviewed the memorandum by Thomas Stokes, P.E., PTOE,

Howard/Stein-Hudson, Traffic Study Analysis that was submitted by the abutter at the last meeting. VHB have formally addressed their responses in their letter dated January 29, 2007. Two of the issues raised – their future analysis conditions did not account for full occupancy of 580 Pleasant Street (113K R&D plus 5K office) and 594 Pleasant Street (trucking facility) was revisited. They reanalyzed the study intersections; particularly the private way and Pleasant Street and determined that with full occupancy of the two buildings, the future condition analysis with the Russo project in place will still have a LOS of B during Saturday mid-day peak hour and LOS C during weekday peak hour. The next issue was to conduct an operational analysis of the southern portion of Russo's driveway with 594 Pleasant Street and Private Way. That was completed-during the weekday evening peak hour it is expected to operate at LOS A and LOS B at mid-day Saturday peak hours. There were concerns both by the abutter and Board that the intersection (the elbow) of the private way, 594 Pleasant and Russo's driveway would be problematic with access and possible queuing issues. With the traffic signal in operation, there will be no access problem to Pleasant Street.

Attorney Bailey indicated that Russo's is in receipt of draft construction easement documents from the Town for the installation of the traffic signal at Pleasant Street and the private way. Repton Place is installing the traffic signal, ultimately the Town will have the maintenance agreement, so, the Town is facilitating the easement.

The Board then heard from Attorney Edward Rabinovitz, Shadrawy & Rabinovitz, representing American Venture 594 Corporation (Ken Moskow, owner). Attorney Rabinovitz indicated that a subsequent memorandum from Howard/Stein-Hudson, dated February 27, 2007, given to the Board that evening. Main focus of the memorandum is box trucks and semi-tractor trailer trucks entering in and out of the proposed 12 loading bays configuration in the rear. Two of those bays are angled for the semi-trucks, which will access the site from the private way and back into the bay. A safety concern is that a truck coming from the west and taking a right-hand turn into the three-lanes of the private way. Their study indicates that turning radius is too narrow; the truck would hit the car in the third lane waiting to take a left hand turn. This would be consistent with their prior suggestion that the private way be a 4-lane roadway- increasing the safety of both vehicles and trucks moving in and out. Member Santucci asked if Attorney Rabinovitz had the truck template showing the truck going into the lane. Howard-Stein-Hudson did not do the radii, but it was a conclusion based on their knowledge of turning radius.

Attorney Rabinovitz continued, stating another additional issue: the private way on the southwest is 2 lanes and then it turns into a "Y" having a dedicated left-hand turn lane and right-hand turn lane is only 100 feet in length. Their study indicates that this will back up and they recommend that it accommodate the 95th percentile queue length of 200', which will backup into the driveway area. Conclusion- the private way needs to be 4 lanes. The study indicates that this can be achieved without sacrificing parking – angle park on the west side lot, allowing the additional width for the 4 lanes.

Attorney Rabinovitz referred to the 1999 Agreement between his client and Russo as a result of the expansion by Russo. Russo is prospering and they do not want them not to prosper; however, they can accomplish what they want without detriment to his client if they provide the 4-lanes for safety and accommodation of everyone's needs.

Attorney Rabinovitz focused now to the supplemental request by the Petitioner to remove Condition #13 from the prior ZBA decisions in 1999. This is problematic for his client because they are suggesting that this Board approve their violation of a contract, which was made part of the 1999 decisions. The Agreement reached by both, involved around the usage of trucks in the private way, was due to his client's concern and that of the neighbors at 580, of how intense the truck usage on the private way would be. The Agreement limits the truck usage – See #3 of said Agreement – Box trucks cannot use the private way except: (a) periods when other access routes to or from the property are blocked; or (b) sporadic or occasional use not to exceed 5 trips per day in or out from the property. Semi-trucks can use the private way between 9 pm and 4 am only. They are asking this Board to approve the non-compliance with that Agreement, which was made part of the approval in 1999 by the Board. The expansion of business is fine, but it has to accommodate the abutter's interest as well.

Attorney Rabinovitz asks the Board to be cognizant of setting a precedent by issuing a decision that they (Russo) will not be required to comply with a contractual obligation. He suggests it is a breach of faith. The request is inappropriate.

Chairman Vlachos questioned the condition of the private way since the Agreement. Ken Moskow indicated that there was an agreement to widen it, stripe it, which he believes wasn't done. It is about the same width as Pleasant Street. Board notes that the C-2 plan dated revised 2/27/07 indicates the private way to be 40' wide but further notes the three lanes, totaling 38'. Pleasant Street is an 80' wide public way; however the actual pavement is 40' wide. He reiterated that he is there to protect the access for his future tenants to get in and out of his property.

Member Moynihan asks if the 4-lanes were provided, would they be maintaining compliance with the Agreement or out of compliance. The Agreement contained language regarding the use of the private way by trucks, so it would technically not be in compliance. However, if an agreement was reached on the 4 lanes, they could probably reach an accommodation with them on being relieved of their obligation – truck usage.

Member Fernandez suggested that the private way is as wide as Pleasant Street and the Agreement is based on the premise that this path is a private way. The physical facts of this private way are in fact, an urban city street. Attorney Rabinovitz states the definition of a private way is by ownership and who has rights to it and has not heard it referenced by

width. The width does not make it a public way, the issue is the convergence of four high intense usages at the southwest corner.

Member Santucci questioned the proposed 4 lane configuration – two lanes coming in and two lanes going out-dedicated right turn or straight across to the Repton complex? She wanted to see the configuration. Ken Moskow, stated he is looking for better access and in dealing with his traffic consultant, they proposed the 4 lanes, taking a strip of the Russo property.

Member Santucci has an issue with Howard/Stein-Hudson memorandum recommending that the private way be widened to 4 lanes without turning radius information, templates used - it does not support their recommendation. Chairman Vlachos is unclear as to why two lanes entering the site is needed. Member Fernandez indicated that the lack of graphic information is also absent from the VHB report. It would be good to see trucks turning; radius on the new site plan. Matthew Kealey indicated that he used a 67' truck template for the right-hand turn off Pleasant Street onto the private way. He believes it would fit into the existing 14' wide lane. Member Fernandez states if it is not shown on paper its not proven. Mr. Kealey states confidently the 67' truck will make this turn. Member Fernandez said the report should have shown it. Chairman asked Mr. Kealey to expound on a potential bottleneck at the southwest corner. We are showing a 95th percentile queue, which is the worst, within the 200'- there is sufficient width so that there is no blocking of the driveway.

Mr. Kealey explained that in doing the assumptions of the backfill, he notes that the Howard/Stein-Hudson memorandum dated February 27, 2007 were different by 2 vehicles during the peak hours – concluding both traffic engineers dealing with the same numbers.

Attorney Bailey believes the Watertown Zoning Board does look to balance different interests, but those interests were balanced in 1999. Russo was approved with all the traffic study and reports given for the expansion that is existing now. Mr. Moskow appealed, sat down and worked it out. They (Russo) expanded the two lane Private Way to three lanes; however, the Traffic Commission wanted a traffic signal and Russo contributed \$80,000 towards that. On the contrary, when Mr. Moskow bought his property, it had access on two-lanes. He now has had it widened to three lanes with future signalization and all at no cost to him. In the balance of things, Mr. Moskow is ahead.

Attorney Bailey addresses the economic argument: The improvements the Petitioner is requesting are largely to relocate a loading dock that historically has been an issue for the Board - they requested Russo to relocate the loading dock to the rear, away from the residence on the easterly side of Paramount Place/Pleasant Street. Operationally, the Board is on record as stating a much better location for the loading dock is in the rear. There are

several produce cold storage tractor trailers at the site now. Three-quarters of the expansion is for cold storage bays, therefore, the tractor trailers will be eliminated. The produce will be moved inside. The retail expansion is small.

Attorney Bailey addresses the precedent issue: They negotiated and bargained in 1999 and Russo's refused to do a deed restriction limiting their use of that private way. It is a contract, it is open and if things change; i.e., traffic light installed, they can return and make a case to the Board and the Board, under its discretion, can decide whether it is appropriate under the circumstances.

Member Moynihan to both attorneys asked: There is a settlement agreement, a contract – doesn't that have legal significance, regardless of what this Board does? If you're aggrieved, you go to a court and seek to uphold your rights under the contract agreement and even if we (the Board) grant relief as requested, that court may decide to uphold your rights, prohibiting Russo from doing what we are giving them the right to do. Might that be a scenario that could play out?

Attorney Rabinovitz stated this Board cannot relieve Russo from its contractual obligation. However, there is a greater principal involved. Russo is saying this Board is giving permission. Knowing there is a contractual obligation, the Board is going to tell you to go ahead and do it and the Board is not going to say we think that we're going live with our decision in 1999 which incorporated compliance with that contract.

Chairman Vlachos ask why involve this Board in a private contract. The Board can go by the decision then and on its own merits decide whether that should be amended. Attorney Rabinovitz says the Board is acting as a broker and while not a signatory to the Settlement Agreement, the Board put their stamp of approval on it in issuing their decision. His client removed his objection to the Board's approval of that decision, knowing that the Board had put in their decision that Russo would have to comply with a contract they made with him.

Nancy Scott, Zoning Officer, indicated that it was a mistake to put that as a condition back then. That should set the precedent - this Board should never get involved with party agreements that are outside of this Board. Member Santucci asked if the condition has anything to do with zoning. Ms. Scott indicated no.

Attorney Rabinovitz believes the agreement binds its successor to the contract if Russo's sold. Chairman theorizes – Russo out of business –contract too onerous with just 5 trucks per day - building empty for 5 years. Given that, the Chairman queries that by not

taking action with regard to the private way, we're allowing a situation to exist that is not in the best interest to the neighborhood and Town.

Attorney Rabinovitz again contends that the Board is sending the message in relieving Russo and his Attorney from conscious economic decisions they made in 1999. What his client is asking for is parity-fairness. If they are not willing to abide by the contract in 1999, his client is willing to work out an alternative. The alternative should not hurt his client by their expansion for their economic benefit.

Member Santucci states this Board has nothing to do with their agreement - the Board should get out of it. Attorney Rabinovitz said they are willing to work it out. He further suggests that Russo do an agreement and then come back to the Board. Russo would not be as successful and as big if it were not for the favorable decision in 1999 and they would not have had that approval without the settlement agreement. Russo is taking the benefit of the agreement and not the detriment. Again, the Board is sending a message – we think that Russo should be relieved of their obligation that they voluntarily entered into.

Member Santucci disagrees with Attorney Rabinovitz. The Board removes Condition #13 and there still exists a valid contract. In her opinion the Board has nothing to do with that obligation. Attorney Rabinovitz states Russo begins the usage, the burden shifts to his client- to go into court, get an injunction and it is inappropriate.

Member Fernandez has discomfort with the petition - the fact that the inclusion of a condition from a contract between two individuals was entered into the zoning decision and the act of a board on behalf of the benefits of the town. The issue of hardship. The town has said that this is needed for 15-20 years and it's unfortunate that the record reflects Condition #13 – it was bad judgment. Board's decisions should never include any legal obligation between two individual parties. The Board is trying to accommodate and relieve the hardship on one side and our actions may lead to hardship on the other side, in terms of pending legal costs having to litigate this matter.

Member Fernandez states the request for 4 lanes is not a small matter due to topography changes between the private way and parking lot – an additional lane implies massive retaining wall work to accommodate the lane. Changing the angle of the parking does not relieve Russo of having to install foundations and retaining wall along the 200' private way.

Chairman Vlachos stated that 8-10 years ago the situation of access and parking at Russo's was chaotic. He states that the proposed plan is a huge improvement over what was in the past. Things have dramatically changed.

Clarification of trailer-truck traffic anticipated was asked by Member Elliott of Mr. Russo. He indicates that between 5-10 trailers will deliver late evening to early morning (after 9pm and until 7-8 a.m., 2-3 trailers during the day, because they cannot dictate arrivals. Mr. Russo indicated to the Board that the expansion is to eliminate the exterior dry and cold storage trailers, which is over 25 trailers. Operationally, with the addition of cold storage, they will have less activity-using less of their equipment to store things in.

Member Moynihan states, given that the Petitioner has made a business decision, seeking relief from this Board that is assuredly resulting in litigation and in his opinion, knowing that an appeal of our decision will be forthcoming. The uncomfortable situation is when petitioners come before the Board knowing an appeal will be taken and asking for variances where good analysis is needed. He asks Attorney Bailey to address that.

Attorney Bailey believes that circumstances have changed. Their view is that the settlement agreement was directly related to the settlement of the 1998-1999 litigation and is limited to that. We never agreed to forever limit truck use of Private Way. They disagree with that. That's an interpretation issue for the court. Litigation has not been uncommon over these types of permits, so coming to this Board is that risk.

Member Fernandez believes the economic equation is such that you either litigate or settle – perhaps in two months Russo arrives at a new settlement agreement – how does the Board look having acted in a manner that led to this series of events.

Attorney Bailey acknowledges that the Board is in a tough position and believes it will be in the same tough spot whether there is an agreement or not. Mr. Moskow was making similar arguments the last time Russo was before the Board – he has vigorously opposed Russo's expansions in the past. Regardless of an agreement or not, he would be arguing for 4 lanes; he'd appeal and we would have to make a decision whether to defend the decisions or settle.

Member Fernandez states the negotiations are over a private way owed by individuals and not the Town, which makes it uncomfortable for him. Attorney Bailey understands the difficulty.

Chairman Vlachos suggested that in eliminating Condition 13, they propose a new condition which provides for a period of review of traffic, given that there are some issues that have not been proven-predicted and any other issues. Attorney Rabinovitz believes it's an appropriate thing for the Board to do but does not agree to it in terms of accenting to the decision thereby waiving any rights to an appeal. Attorney Bailey has agreed to that in the past – if it is reasonable in time and duration he would be agreeable. Construction is a multi-phase project – the relocation of the dock is first and then the infill.

Chairman Vlachos likes the project – the plan appears to improve the flow of everything; people, trucks. He reiterated that he has seen Russo come before the Board previously and the situation in the parking lot has been chaotic. He has seen the progression of improvement over the years. He does not think the board should be involved with a contractual dispute. He is not persuaded by the abutters argument that the trucks turning into the site from Pleasant Street are not being able to make it in because of the queuing on the private way or the congestion at the lower end of the site. He is in favor of the project but with a condition of periodic reviews staggered along the construction period to see if there are any issues; and if found to have traffic problems, address them immediately. Members Santucci and Member Elliott concur with the Chairman. Member Fernandez comments that if upon a review, remedial work could be a huge financial cost. Member Santucci notes that the private way configuration has not changed and is the same but acknowledges the amount of vehicles will increase. Member Moynihan is supportive of the project and agrees with the assessment of the Chairman that the expansion will improve the area and improve safety. His only concern is being asked to remove the Condition. He agrees with Staff, that he does not think it wise that it was put in there but it can't be ignore. He would be amenable to approving the project, not act on the deletion of the Condition – for further review.

Chairman queried Attorney Bailey. The construction of the loading dock cannot be done. Attorney Bailey states the concern the abutter is raising is that there is going to be a queuing problem accessing his property. Russo will stand by their traffic studies and evaluate it during and after improvements. It's speculation. Russo's has agreed in the past to traffic reviews because the Board had concerns as to what the traffic is really going to be and how is it going to work. Russo acknowledges if there is a problem, they need to address it. Member Elliott is supportive of the petition with periodic reviews focusing on any impacts to the abutter. Member Fernandez reiterated his discomfort with the issue of access to abutters. The proposed additions and site improvements proposed will improve Russo's site but the open question remains, what is the impact on the other two along the private way and Condition 13, which directly addresses that. The financial cost associated with pending reviews and the timeframe of the reviews – with the one abutter's property empty –what the traffic flow will be speculative until a tenant is found. The timeframe on when the reviews are done is important. Chairman Vlachos believes at least one review has to be done when the abutter is occupied- reasonable tenanted. Member Moynihan suggested when the project is done, a date certain after that. Members suggest after Certificate(s) of Occupancy is/are issued. Zoning Officer said since this is a phased project, there will be various Certificates. Member Fernandez suggests it's in reference to the occupancy of the abutter-that potential hardship. Chairman suggests 6 months after each Certificate of Occupancy is issued. Member Santucci suggests that a review shouldn't be done if the abutter's property is not occupied.

Attorney Bailey indicates the critical construction points that would cause a traffic change – the relocated loading dock; then its full build.

Chairman suggests 6 month review upon completion of loading dock and 6 month review after completion of the project. If abutter at 594 Pleasant Street is not substantially tenanted at the time of the final Certificate of Occupancy is issued, a one year review shall be done from the date of the final Certificate of Occupancy. Clarification was made that the Board will eliminate Condition 13, and is instituting reviews, as stated. The Board notes that abutter and owner of 580 Pleasant Street (Fluid Management) has not appeared at this hearing or past hearing.

The Petition to Amend Special Permit(s) #88-89-13; #98-11; #99-21 and including the removal of Condition #13; Special Permit in accordance with 6.01(g) noted therein is **GRANTED** by a vote (4-1) of the Board of Appeals with Carlos Fernandez voting against.

The Petition to Amend Amended Special Permit #99-23; #99-24; #01-31 and including the removal of Condition #13 noted therein is **GRANTED** by a vote (4-1) of the Board of Appeals with Carlos Fernandez voting against.

The Petition to Amend Variance #99-22; including the removal of Condition #13 noted therein and is **GRANTED** by a vote (4-1) of the Board of Appeals with Carlos Fernandez voting against.

The Petition to Amend Special Permit Amendment #99-23 & 24; #01-31; including the removal of Condition #13 noted therein is **GRANTED** by a vote (4-1) of the Board of Appeals with Carlos Fernandez voting against.

The Petition for Variance in accordance with 6.02(k), relating to buffers is **GRANTED** by a unanimous vote (5-0) of the Board of Appeals.

The meeting adjourned at 10:25 PM