

**Approved**

**ZONING BOARD OF APPEALS**

January 15, 2013

Present: Michael Dudick, Chairman, Michael Bloss, Randy Gifford, Chris Lemire (7:07), Amy Standaert, Jennifer Vucetic

Also Present: Joel Peller, Esq., ZBA Counsel  
Steve Myers, Director, Building & Zoning

Absent: Mario Fantini, Doug Strother

Mr. Dudick called the meeting at 7:10 p.m.

PLEDGE OF ALLEGIANCE

**OLD BUSINESS:**

**NEW BUSINESS:**

Mr. Dudick informed the applicants this is a seven member board and to receive approval an application must receive 4 yea votes regardless of the number of members present. There are six members present tonight and therefore the applicant must receive four yea votes out of six. He stated the applicants have the opportunity to defer if they wish and wait to see if seven members are present at the next meeting. No one deferred.

Mr. Dudick announced the board would hear the Masullo Brothers and Vistas application prior to the Boni application.

*The secretary read the legal notice as it appeared in the Daily Gazette on January 10, 2013.*

**1) An application from Masullo Brothers Builders and Tom Amell for a variance from Section 208-86, keyhole lot setback. Section 208-86B requires 50' setback. Requested setback=40', 10' variance requested.**

**Property is located at 27 Tipperary Way, Clifton Park, NY 10265 (Permit #80895).**

Mr. Lemire informed that he personally knows Mr. Amell through their son's baseball team and asked if he had objections to his continuing to hear the application. Mr. Amell said he did not have a problem with it.

Mr. Amell, 9 Donswood Ct, Clifton Park, presented. He stated he and Tom Masullo have an agreement to build a home on Tipperary Way and came to the conclusion that locating the house within the setbacks would be awkward. He said coming into the driveway the focal point would be the side entrance. They want to rotate the house for proper orientation from the driveway. He added it is a keyhole lot, not visible from the road.

Mr. Steve Masullo, of Masullo Brothers, Schenectady, is the builder for the subdivision. He stated the subdivision is in Stage 4. The proposed home is located on lot 27 and has frontage on Tipperary Way. He said the home will be 630 feet from the public road. It is located near an LC Zone which is forested and wetlands. He said they want to rotate the home so it is in line with the cul du sac. He stated that if the home is kept to the 50' setback, the house would have to be pulled forward and it will interfere with putting in a pool and landscaping in the rear. He added it would make it closer to the wetlands and require retaining walls and earthwork. He added that the closest lot is 95 ft and the closest house is 350 feet away.

Mr. Peller asked Mr. Masullo if he owns the lot and if the contract for Mr. Amell to purchase is contingent on the board's approval of turning the home.

Mr. Masullo stated he does own it, and the contract is contingent on the approval. Mr. Amell indicated that the current location plans will significantly impair value and the appearance of the house for curb appeal.

Mr. Dudick announced the public hearing. There were no comments.

Mr. Dudick stated the board occasionally sees situations such as this when the setbacks cause an angling of the home. He recalled seeing something similar in the past. He stated the change would make an improvement and he sees no reason to deny the variance as it makes sense.

Mr. Myers stated he has no issues with what is proposed.

Mr. Bloss made the motion to close the public hearing. The motion was seconded by Mrs. Vucetic. All approved. Public hearing is closed.

Mr. Gifford made the motion to approve the application as submitted. Mrs. Vucetic seconded the motion.

Yeas: Bloss, Vucetic, Gifford, Dudick, Standaert, Lemire    Noes: none  
Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on January 10, 2013.*

**2) An application from The Vistas at Clifton Park, LLC for setback variances from hamlet mixed use Section 208-43 3B. 1) Front yard setback required per 208-43.3B(5)=10'; 9' available; variance required = 1'. 2) Rear yard setback required = 30'; 29' available; variance required = 1'. Newly constructed building needs variances for certificate of occupancy. Property is located at 9 / 11 Vista Court, Clifton Park, NY 12065 (Permit #80896).**

The application was presented by Gavin Vuillaume and Dave McNulty of Parkland Development. Mr. Vuillaume stated they are asking for a setback variance of one foot in the front and rear yard for a two family home which has been under construction for the past year. He said the homes are two family homes in an approved hamlet development zoning district and close to the road with minimal setbacks. The home has a tight fit with the setbacks. He informed that due to construction technicalities, the foundation is 6" over the building line in the front and a little less than 2" in the rear. He stated they are asking for a foot just in case, and that the parts that are over the line are just the corners. He stated the lot is surrounded by wetlands and a community area so there is no interference with neighbors.

Mr. McNulty agreed with Mr. Vuillaume and stated that it was a very tight lot and he was apologetic that it happened.

Mr. Dudick announced the public hearing and asked for comments. There were none.

Mr. Dudick made the motion to close the public hearing. The motion was seconded by Mr. Lemire. All approved. Public hearing closed.

Mr. Myers stated he has no issue with the application. He added that sometimes these things happen during construction. When he was made aware of it, he knew it should go to the ZBA to be sure there would be no problem with the occupancy.

Mr. Dudick added that a few inches here and there is not large and it is a good idea to get a variance to keep it legal. He said it doesn't change the character of the neighborhood and that it wasn't intentional.

Mrs. Standaert made the motion to approve the application as submitted. Mr. Gifford seconded the motion.

Ayes: Lemire, Standaert, Dudick, Gifford, Vucetic, Bloss Noes: none

Application approved as submitted.

*The secretary read the legal notice as it appeared in the Daily Gazette on January 10, 2013.*

**3) An application from Boni Enterprises, LLC & Country Club Acres, Inc for an administrative review by the Zoning Board of decision rendered by the Town Zoning Enforcement Officer per section 208-109D of Town Code. Applicant wishes to build a**

**mix of single family residential and office/warehouse on north side of Ushers Road, west of I87. Property is located on the north side of Ushers Road, west of Interstate 87, Clifton Park, NY (Permit #80892)**

The application was presented by Kevin Dailey, Vischer Ferry, Clifton Park, attorney for the three property owners, Mr. Larry Boni, Mr. Robert Van Patten, and Mr. Peter Belmonte Jr.

He told the board the site plan application for the project (map presented) is before the Planning Board. He said he was advised by the attorney for the Planning Board, Paul Pelagalli, that it cannot be heard because of the dispute between Mr. Dailey and the Town Building Officer (Steve Myers). The dispute involves the interpretation as to what use of the property the town zoning law actually allows. He informed that the map is only for reference and he is not talking about the project but the interpretation of the town code. He stated one of the purposes of the Zoning Board is to hear a case when there is a difference of opinion between an applicant and the building officer. He said the Zoning Board of Appeals is here as a quasi judicial body to determine whether the applicant has the right to proceed to the Planning Board.

Mr. Dailey handed out several documents (numbered exhibits) and briefly explained points in each one:

Exhibit 1 Code of Clifton Park Part II General Legislation/Chapter 208 Zoning Article IV

A copy of the B1 and B2 section of the Zoning law. He informed he obtained it from the town clerk.

Exhibit 2 Excerpt from Town Code Zoning 208-33 B-1 regulations

Page 4 of the zoning law. He said based upon this, an applicant that has a piece of property is allowed to have multiple buildings on the property in a B1 zone. He referred to 208-33 (b). stating "Multiple buildings on a lot are allowed as long as the overall density limitations are not exceeded."

Mr. Dailey asked if he is allowed to ask the zoning officer questions. Mr. Dudick informed Mr. Dailey he should present the information to the Board. He said he would like to gather information and he will direct questions to Mr. Myers.

Mr. Peller agreed that it is more advisable to present to the Board. He asked Mr. Myers, for the record, if there are any modifications to the letter of October 17, 2012 he had written regarding the application.

Mr. Myers stated "no," everything is the same. Mr. Peller clarified that Mr. Myers' position is based on the October 17 letter.

Mr. Dailey stated (for the record) they are saying multiple buildings are allowed as long as the density is not exceeded. He added that buildings can be constructed no greater than 12% on the lot size. He gave the example of a calculation for a 40,000 square foot lot which would allow a 4800 square foot building. He said code indicates the minimum lot size is 40,000 square

feet but there is no maximum lot size. He said B1 says one cannot have any building larger than 4800 square feet but can have as many smaller buildings as they wish.

He asserted that as long as the buildings are not larger than 4800 sq ft the applicant can put as many as they want.

Exhibit 3 Excerpt from town code Chapter 208 Zoning Article IV 208-31 and 208-32

Mr. Dailey explained that Exhibit 3 deals with allowed uses in B1 or B2 zone (permitted uses). He presented Section 208-32 permitted uses. He cited pages 2 and 3 are which list 18 uses. He informed the copies are certified by the Town Clerk. He said the 18 uses can be in multiple buildings on a single lot. He then cited #14 which allows one and two family dwellings which shall be allowed in B1 only. He asserted out that for the 28 acres owned by Mr. Boni, this is an appropriate use for that particular lot. He said he and Mr. Myers disagree on this use. He asserted the code allows multiple buildings, up to 12% on the lot and up to one or two family dwellings.

Mr. Dailey said they originally requested duplexes and Mr. Myers responded this is not an allowed use because duplexes require a side yard. Mr. Dailey informed the board that a one family dwelling doesn't require a side yard and with multiple buildings on a lot you can't physically produce side yards.

Exhibit 4 Except on zoning page 208:12.1

Mr. Dailey presented Exhibit 4 and stated that he and Mr. Myers agree that duplexes are not an allowed use and said a two family dwelling semi-detached or duplex requires side yards. He continued that a one family dwelling is a permanent building containing only one dwelling unit. He stated town code says there is no requirement for front yard, side yard or rear yards. He asked what is the definition of a dwelling unit, answering the question by quoting from the definition "one or more rooms for ownership, lease or rent designed to be occupied ..... by one family and physically independent of any groups of rooms or dwelling units which may be in the same structure containing independent cooking, sanitary and sleeping facilities....." He repeated that a one family dwelling is an allowed use in a B1 zone on one lot up, to 12% of the coverage of the lot and doesn't require side, front or rear yards.

Exhibit 5 Density calculation

Mr. Dailey discussed density calculations. He said Mr. Boni owns 28.6 acres, which calculates to 1,245,816 square feet times 12% = 149,497 square feet of buildings. He said calculating a building at 2000 square feet equals 74 units with surplus of 1497 square feet for a clubhouse type building. He said that they contend that the town code does allow them to construct and build what he has applied for in the site plan application to the Planning Board. He said the code is explicit.

He informed that the second part of his presentation deals with Planned Development District #4 regarding lands owned by Robert Van Patten.

Exhibit 6 Excerpt from Clifton Park Code re zoning 208-3 through 208-7

He stated the Van Patten PDD was created in 1970 for warehouse type building use. In 1991 the Town adopted new coding as a transitional zone called B1 & B2 which did away with the PDD.

He stated Mr. Van Patten never received a notice that his PDD was being rescinded. He informed the board that there was no record of notification found in town files. He said the notice in the paper didn't talk about rescinding zoning laws. He stated that the town map, since 1991 continues to show the PDD in existence. He said the town code compels the town to change the official town map after changing a code and after 21 years the town map still shows his PDD as viable. He asked how Mr. Van Patten would know if he went to the town hall and the official town map showed his PDD as viable.

Mr. Dailey then showed the town map and pointed out districts. He quoted 208-4, 208-5 and 208-6 explaining boundary lines, establishment, and reference to the official map. He talked about the zoning map and read the legal definition which read: it is always kept current showing the number of districts.....status and use. He stated it must contain sufficient information for a person of reasonable intelligence to determine the boundaries of a parcel of land.

Mr. Dailey referred to a court case Pink vs Schaler Township (Pennsylvania case) where the court held that the municipality has the duty to maintain the map so individuals can rely on the map when making land use decisions.

Mr. Peller pointed out for clarification that this case was venued in Pennsylvania, not New York. He asked Mr. Dailey if he had found any New York cases. Mr. Dailey answered he did not but he is looking. He repeated he checked with the Town Clerk the day before and obtained the map from her. He again pointed out that the official town map identifies the Van Patten land as a PDD.

#### Exhibit 7 -Town Zoning District Map

Mr. Lemire asked if this is the same lot as Mr. Boni.

Mr. Dailey said it is not and showed the location of Mr. Boni's land.

Mr. Dailey asked if he is referring to the PDD from 1970, and was told yes. He clarified the B-1 area is Mr. Boni's and the lower southeast property is a PDD of Mr. Van Patten's.

Mr. Lemire questioned if there are two properties. Mr. Dailey said there are actually three parcels that are combined into the 96.1 acre land. He said they are not talking about Mr. Belmonte's parcel, only Mr. Boni's and Mr. Van Patten.

#### Exhibit 8 -Town law change dated 5/23/91

Mr. Dailey said in 1970 there was a PDD application and three buildings were constructed. On May 3, 1991 the town board adopted a local law in part rescinded the PDD (exhibit 8) but, he repeated, it is still on the official map.

#### Exhibit 9- Gazette Legal Notice

Mr. Dailey continued that, at the time it was rescinded, in preparation for the public hearing a legal notice (exhibit 9) was published in the official newspaper of Clifton Park, on May 23, 1991. The notice is the way to notify the public that a local law is up for consideration and may be adopted. The notice discusses the adoption of the (B1 & B2) or BNR1 and BNR2 zones which were designed by the town to create transition zones between the commercial areas and residential areas. He cited examples in different parts of town. He contended that the public

hearing notice talks about the adoption of a local law but not the rescinding of a local law, which he claims is a flaw. He suggested that Mr. Van Patten would never have known from the notice that his PDD was being rescinded because it was never published. He again added he never received notice from the town and if he came to the town hall to look at the map, it still shows it as a PDD.

Mr. Lemire asked for a location for the property and was told it is on the north side of Ushers Road, east of Woodale Drive.

Exhibit 10 – 208-74B town code

Mr. Dailey contended that when a PDD is rescinded town code compels the town board to change the official zoning map. He quoted Section 208-74B of town code stating that if there is a change of zone is approved by the town board, the official town map shall be amended so as to define the boundaries of the PUD and such amendments shall be advertised in accordance with the requirements of Section 265 of the NY State Town Law. He stated that was not done and the town didn't follow its own ordinance.

Exhibit 11 – Town Board minutes of May 30, 1991

Mr. Dailey asserted what he thought the intentions of the Town Board were at the time. He referred to Mr. Myers letter. He said that Mr. Myers indicates that although the code may say those things it was never intended to have multiple dwellings on one lot, or anything for transition zone beyond small lots and was never intended for the units to be rented.

Mr. Dailey referred to the public hearing that was held of May 20, 1991 and referred to the minutes. (Exhibit 11)

Mr. Dailey noted that deputy town supervisor, Barbara Beach presided and referred to discussion the board had with citizens. He stated resident Norman Goldman approved the adding of residential dwellings and combined office. He asked why “owner occupied” was taken out of page 5, when it previously was there. It was explained it could be a renter and not necessarily an owner. Mr. Dailey stated that, at the time this was adopted, the town board did not decide to just change the transition zoning to small one or two or three acre parcels but applied it to 100 acres some of it being far off of Ushers Road. He suggested that they obviously intended that for B1 and B2 and added it intended that all of the 18 uses be allowed and that the residential units could be used for rental purposes. He said based on the minutes, that is the intent of the legislative body at the time. He said the minutes are guiding him.

Exhibit 12 – Memorandum from Mr. Dailey written in response to Mr. Myers letter.

Mr. Dailey then discussed the 1970 sunset provision that would make the PDD void if, within one year, commencement of the construction of the development had not begun, or if substantial progress was not made without undue interruption thereafter. He presented cards which showed that dates of construction of three buildings: 315 Ushers Road 1970 (11,479 sf), 331 Ushers Road 1971 (16,176 sf) and 313 in 1972 (71,106 sf) for a total of 98,752 sf. He said construction was commenced and completed in a timely fashion and he feels that Mr. Van Patten would therefore have vested rights in the property and as such the PDD cannot expire.

He summarized that the applicant has a right to build residential buildings to own or rent on the B1 zoned area, although they cannot be subdivided. He asserted he has the right to build 74 of

them. He continued that Mr. Van Patten's PDD exists and although the board took action to rescind it, they did not take the proper action. Mr. Dailey referred to the Wagner case recently where the PDD was restored by the town board. He asked that the PDD be restored because it never went away.

Mr. Lemire asked if this is two separate issues but all part of the same site plan for Boni and Van Patten. Mr. Dailey answered in the affirmative that it requires two decisions.

Mr. Dudick asked Mr. Dailey if he is saying they cannot subdivide and must build all residential on one lot and asked why it couldn't be subdivided for each residence to have its own property.

Mr. Dailey answered that to subdivide they need a lot with road frontage and proper dimensions and setbacks. He said they don't want to subdivide and want to build up to the limits allowed.

Mr. Dudick asked if it is a question of can't subdivide or don't want to. Mr. Dailey said they don't want to. He added that in a B1 zone, for separate lots, they must have 40,000 sq ft which would give them a maximum of 20 or 30 lots.

Mr. Myers stated he has no comment, that he had made his points in the letter and he had nothing to add at this time.

Mr. Dudick announced the public hearing.

Mr. Jack Rajczewski, Wood Dale Drive in Country Knolls spoke. He said he is not sure if much of what Mr. Dailey brought up is fully logical. He referred to Mr. Dailey claiming the public notice did not announce the dissolution of the PDD is a fatal flaw. Mr. Rajczewski stated that public notices are general and asks if there is a requirement in the law that says a public notice has to contain all the details of any law under consideration. He suggested that it is implicit in Mr. Dailey's argument that the whole law change should be in there. His second point was that he believes the map is essentially aimed at showing the current status, but does not make the law or explain the existing law. He felt that is a crucial issue. He questioned whether a map, if it is inaccurate, defines the law or is it simply a human error, an imperfect act of the government agency. If a government agency does not do something perfectly, does that create new law? He asked again, does the map create new law because there is failure to catch an error. He suggested that given the nature of a public notice that Mr. Van Patten would have noted a major change in law and become familiar with it and would have brought it up at the time, He added, he took no action. He mentioned that the Pennsylvania law cited is Pennsylvania law, not New York.

Mrs. Gretchen Ruhl, 168 Wood Dale Drive, spoke. She questioned whether the calculation of density takes into account the entire property or of just the buildable area. She noted that the Boni property has wetlands and ravines and slopes that cannot be built on. She asked if the percentage of density includes all the areas on the parcel that can't be built on.

Mr. Myers answered that there is not a straightforward answer because every proposal is slightly different. He said they haven't actually determined what they feel a buildable area is. He continued that as a general rule, they probably count the entire area of the lot. He added, if there

are wetlands and steep slopes, that would be taken into consideration and upon further review they may determine those were not part of the whole lot. He informed they have not gotten to that point yet, and he has not been on the property so can't tell her the numbers.

Mr. Dailey stated he thought that in some residential areas the town code might exclude wetlands, but in a B1 area there are no exclusions.

Mr. Myers replied that state building code will control if the property is viable based on the slopes and wetlands. There is definitive state code that states you can't build within a certain distance from a steep slope, etc.

Mr. Dudick then cited an example of a one acre property with a lake, that if most of the lot was lake, you couldn't count the lake and build the house on a tiny piece of property.

Mr. Dailey said they would only put units where they could be built, and did not include slopes or wetlands in the plan.

Mr. Rajczewski then said his essential point is that Mr. Dailey said the lot size is the saleable buildable property, but later he said the whole lot is included in the calculations. He asked if the Zoning Board of Appeals would check Mr. Dailey's calculations at a future date. He requested the board exclude the wetlands and slopes in their calculation of density.

Mr. Lemire said Mr. Dailey has presented twelve exhibits some of which are from excerpts of the town code. He said he would assume the board would make a decision based on the whole code.

Mr. Dailey agreed. He repeated that Mr. Myers said in his letter that it was never the intent of the town government to allow multiple rental units on one lot and to have that you have to have a PDD. He said he believes there is one exception to that intent and that is in B1 zoning where it is a permitted use and goes along with the intent of the town board expressed in 1991.

Mr. Lemire asked if he is basing that opinion on 208-33D. Mr. Dailey said yes, that there are 18 uses listed and that includes single rental units.

Mr. Dudick asked about one and two family dwellings. Mr. Dailey said, in his opinion, there are 18 uses in a B1 zone and you can have any or a mixture of the 18 up to the density limitation. Mr. Dudick asked if you can have one family or two family units. Mr. Dailey said you can only have a two family if you can establish a side yard. He added that he and Mr. Myers agree they can have multiple buildings and 17 out of those 18 uses. He repeated that Mr. Myers said it is not intended that residential buildings can be in a B1 zone and he disagrees.

Mr. Lemire read the description of a "lot" which includes the mention of a principal building. He asked if you have one lot, and you want to have 74 residences, what is the principal building of the 74 buildings?

Mr. Dailey said he is splitting hairs and they could have a principal clubhouse and 74 ancillary buildings.

Mr. Lemire said that this does not answer the distinction between a dwelling and a building which is defined in the code. He read the description of a building and stated that it could be a barn, a garage or a house. He quoted 208.33b and said it does not seem to be inconsistent with having a primary principal building on a lot. Mr. Dailey then disagreed.

Mr. Dudick referred to Exhibit 11 (public hearing) where Ms. Beach made reference to BNR1 was inadvertently omitted from BNR2 would be added. Mr. Dailey said it was added later.

Mr. Dailey repeated his contention that only in B1 are you allowed to have multiple residences. He said you can have any of those 18 uses in a B1 zone.

Mr. Dudick asked why he highlighted it? Mr. Dailey answered that it can be owned or rented and that was the intention of the town board that multiple buildings on a lot were an intended use of B1 and B2 zone. They discussed and clarified that the omission was only on the BNR1 and BNR2 and didn't apply here.

Mr. Lemire referred to Exhibit 9 that the Gazette didn't use words that rescinded the law and asked if he is saying it is not proper.

Mr. Dailey contended that to enact or rescind a law requires a public hearing. He said you can't rescind a law without putting a public notice in the paper. He suggested that there are other lands on the east side of Ushers and it could have referred to them, and Mr. Van Patten wouldn't know that.

Mr. Peller stated that he is not convinced that the Zoning Board of Appeals has the authority to make a decision on whether the PDD was rescinded or not. He asked Mr. Dailey why he thinks the board has the right to do that. Mr. Peller continued he believes this request is beyond the scope of the authority of this board and should properly be before the Town Board.

Mr. Dailey informed they had to come to the Zoning Board of Appeals because he was directed here and he must exhaust all administrative remedies. He stated going to the Zoning Board is the next stop after Mr. Myers, if they disagree. He made an application for site plan approval but cannot go to them (Planning Board) until this is resolved.

Mr. Peller said he is still not convinced the Board has the right to decide whether the PDD is rescinded. Mr. Dailey said they have no choice because they have to be here.

Mr. Dudick said he is looking at the public notice put in the paper by the town clerk and read the description of the location of the property. He asked if this notice encompasses the property they are talking about. Mr. Dailey said "possibly but there are other parcels". Mr. Dudick asked again if this parcel would be included in the description. Mr. Dailey said "maybe" they don't know, they can't tell. Mr. Dudick asked if he can't tell, what made him think it was their property. Mr. Dailey answered because of the dates, and added he got it directly out of the town clerk's file.

Mr. John Ducharm, attorney representing Lakshmi Mohan of 159 Wood Dale Drive spoke. He stated that Mr. Dailey is asking this board to act as a court to rule on whether or not the town enforcement office made the correct interpretation of the code. He said most courts would give a lot of discretion to the professional employed by the town to interpret the code. He informed that he has read Mr. Myers letter and he thinks he did an excellent job, spending the time to interpret the code and gave a response. He pointed out that the board was given excerpts of the code, not having the time to review the whole code, and asked them to either give discretion to Mr. Myers decision who has reviewed the whole code or let Mr. Dailey bring an article 78 and take it to court and let the experienced judicial system make the decision.

Mr. Dailey stated, for the record his qualifications; former attorney for the Town Zoning Board and the Planning Board and former Town Supervisor in the 1980's.

Mr. Ducharm said he didn't mean to impune Mr. Dailey, but pointed out that as a lawyer, when you represent a client you assert and represent for your client's best interest which is not always what a court would find what the law rules. He said Mr. Boni is asking that the board to allow 74 residential units on a 28 acre parcel of land which is an incredible situation. He reminded that Mr. Dailey is working on behalf of his client, whereas Mr. Myers is working on behalf of the town.

Mr. Lemire asked about the PDD regarding 3 buildings on the property, and whether there has been any construction since then (1972). Mr. Dailey said no, Mr. Van Patten has been holding the property. They have been before numerous boards since 2008.

Mr. Dudick said the PDD was issued in 1970 so it could be said this project has moved slowly so there is no rush to make a decision now. He stated the board is not obligated to make a decision tonight.

Mr. Dudick made the motion to reserve decision and review the code and follow up with a letter as to whether Mr. Myers is correct and evaluate whether this project is part of the PDD.

Mr. Peller said in the event the board has additional questions, to direct them to him. Mr. Dailey agreed.

Mr. Lemire asked if they would close the public hearing. Mr. Dudick stated that since this is not an application, a public hearing is not an obligation, but he felt the public should be allowed to speak if they want to.

Mr. Bloss asked how the issue will be resolved, will it be by letter or re-appearance.

Mr. Dudick said he wants the opportunity to review the code and pass information through Mr. Peller. Mr. Peller said he would prefer a written determination from the board.

Mr. Dudick added they could invite them back if they wanted to come.

Mr. Dailey said a written response won't be necessary but he hopes to get an answer within 30 days so they can move on. This was agreed on by the board.

Decision deferred.

Mr. Dudick made the motion to approve the minutes of the December 4, 2012 meeting. The motion was seconded by Mr. Gifford. All approved. Mr. Lemire was not present at that meeting and did not vote. Minutes approved.

Mr. Dudick made the motion to adjourn the meeting. Mr. Gifford seconded the motion. All approved. The meeting was adjourned at 9:00 pm.

The next meeting is February 5, 2013.

Respectfully Submitted,

Susan White  
Secretary

cc: Town Clerk, Town Board, Town Attorney, Zoning Board Members, Joel Peller, Counsel, Steve Myers, Department of Building and Development, -, ECC, Assessor, Highway