

COPY

STATE OF NEW YORK : COUNTY OF ULSTER
TOWN OF MARLBOROUGH ZONING BOARD

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In the Matter of

CHARLES GIAMETTA

#1500 Route 9W, Marlboro, New York 12542

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CONTINUATION OF PUBLIC HEARING FOR AN APPEAL
OF CODE ENFORCEMENT OFFICER'S DETERMINATION
REGARDING SITE PLAN.

Date: February 13, 2019
Time: 7:00 p.m.
Place: Town of Marlborough
Town Hall
#21 Milton Turnpike
Milton, New York 12547

BOARD MEMBERS: WILLIAM GIAMETTA, Chairman
JEFF MEKEEL
DAVE ZAMBITO
LENNY CONN
GEORGE SALINOVICH

ALSO PRESENT:

THOMAS CORCORAN, JR. BUILDING INSPECTOR/CODE
ENFORCEMENT

REBECCA A. VALK, ESQ.

PENNY E. CASHMAN, ZONING BOARD SECRETARY

CHARLES GIAMETTA, APPLICANT
JOHN LYONS, ESQ., REPRESENTING APPLICANT
KIMBERLY GARRISON, ESQ, REPRESENTING APPLICANT
BOB AARON, PROPERTY OWNER

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PUBLIC HEARING - GIAMETTA

CHAIRMAN GIAMETTA: I'd ask
you all to stand for the pledge to the flag.

(Pledge of Allegiance)

CHAIRMAN GIAMETTA: Thank
you. Welcome to the February 13th, 2019
special day meeting of the Zoning Board of
Appeals for the Town of Marlborough. It's
now about 7:00 p.m. First item on the
agenda is approval of minutes from a prior
meeting. I believe that was the Dina
matter. Have the board members had a chance
to review those minutes?

MR. ZAMBITO: Yes.

MR. SALINOVICH: Yes.

MR. MEKEEL: Yes.

MR. CONN: Yes.

CHAIRMAN GIAMETTA: Any
changes, deletions, additions, or anything?

(No audible response)

CHAIRMAN GIAMETTA: Having
heard none, I ask for a motion to approve
the minutes from January 10th. Anyone want
to make a motion?

MR. SALINOVICH: I will make

PUBLIC HEARING - GIAMETTA

1
2 a motion.

3 MR. MEKEEL: I will second.

4 CHAIRMAN GIAMETTA: All in
5 favor?

6 MR. CONN: Aye.

7 MR. ZAMBITO: Aye.

8 MR. SALINOVICH: Aye.

9 MR. MEKEEL: Aye.

10 CHAIRMAN GIAMETTA: And aye.
11 I was not here, but I read them and I know
12 from the workshop they are pertinent. The
13 matter before us tonight is a continuation.

14 MS. CASHMAN: There were two
15 sets of minutes from the last meeting.

16 CHAIRMAN GIAMETTA: There
17 were two sets?

18 MS. CASHMAN: We have Charles
19 Giametta's minutes also.

20 CHAIRMAN GIAMETTA: Okay.
21 Let's continue with the minutes. And the
22 Dina minutes we've discussed. The Charles
23 Giametta matter minutes from last meeting,
24 have those been reviewed?

25 MR. CONN: Yes.

PUBLIC HEARING - GIAMETTA

MR. MEKEEL: Yes.

CHAIRMAN GIAMETTA: Are we ready for a motion on those? Would somebody like to make a motion regarding the minutes?

MR. CONN: I will make a motion.

MR. ZAMBITO: I will second.

CHAIRMAN GIAMETTA: And a vote?

MR. ZAMBITO: Aye.

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. CONN: Aye.

CHAIRMAN GIAMETTA: And I have to abstain from that one. I was not in attendance as many of us know. I will officially say I was not here for that meeting, but I am here now, and this meeting is a continuation of the last meeting, particularly, the public hearing portion of the appeal regarding code enforcement officer's determination, appeal by applicant, Charles Giametta. Counsel, do we have to read the public notice?

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: No. You had read
3 it the last time and it was adjourned to a
4 date certain at the last meeting, so there
5 is no need to reread into the record.

6 CHAIRMAN GIAMETTA: Okay.
7 We're going to waive the reading of the
8 notice that was published, and we're going
9 to start to continue with this meeting. I
10 see a gentleman in the audience. Are you
11 part of the public, sir?

12 MR. AARON: I am.

13 CHAIRMAN GIAMETTA: Okay. We
14 will ask if you want to address matters at a
15 certain point during this.

16 MR. AARON: Okay.

17 CHAIRMAN GIAMETTA: Counsel,
18 being this is a continuation, the proper way
19 to proceed would be a summary once again
20 would you say?

21 MS. VALK: If you wish, yeah,
22 you would reopen it as you would any other
23 public hearing.

24 CHAIRMAN GIAMETTA: Right.

25 MS. VALK: Do you want to

PUBLIC HEARING - GIAMETTA

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2 address the request by the property owner
3 that you recuse yourself and the response
4 from the applicant -- or from the appellate
5 that it is not necessary. Do you want to
6 make a statement on the record just to
7 address the issue?

8 CHAIRMAN GIAMETTA: Oh, is
9 this the property owner?

10 MS. VALK: It is.

11 MR. AARON: Yes.

12 CHAIRMAN GIAMETTA: I would
13 like to address the concern about myself
14 being a relative of the applicant. I want
15 the board to know, and the record to reflect
16 that even though we are related, we have no
17 business connections, and I can be fair and
18 impartial with my decision and
19 determination. Does that suffice you, sir?

20 MR. AARON: Yes, sir.

21 CHAIRMAN GIAMETTA: And your
22 name for the record?

23 MR. AARON: Bob Aaron.

24 CHAIRMAN GIAMETTA: Thank
25 you. I ask for a summary on behalf of the

PUBLIC HEARING - GIAMETTA

applicant, if perhaps one of the counsel would like to summarize the matter, please do.

MR. LYONS: Okay. Thank you, Mr. Chairman. Before I do that, I would like just to hand in for the record, in our submission of January 31st, we included an affidavit from Charles Giametta, and so this is the original affidavit. It was submitted electronically.

MS. VALK: The clerk can take that.

MR. LYONS: (Hanging). We wanted the board to have an original.

CHAIRMAN GIAMETTA: Okay. Is that affidavit in our notes also?

MR. MEKEEL: Yes.

MR. LYONS: Yes, it should be. It was connected to our letter dated January 31st.

CHAIRMAN GIAMETTA: Okay.

MS. VALK: It should be Exhibit A to that document.

CHAIRMAN GIAMETTA: Do you

PUBLIC HEARING - GIAMETTA

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2 have that affidavit, Mr. Salinovich, handy?

3 I'm not sure I know what one that is.

4 MR. CONN: (Indicating).

5 It's about halfway back.

6 CHAIRMAN GIAMETTA: Okay.

7 MS. VALK: The letter
8 submitted is eleven pages.

9 CHAIRMAN GIAMETTA: Is this a
10 true representation of that affidavit,
11 counsel?

12 MR. CONN: No.

13 MR. LYONS: No, there are two
14 affidavits. One was submitted in, I think
15 it's in our December 31st package. And then
16 the affidavit that was submitted on January
17 31st is Mr. Giametta's testimony in response
18 to the information that was -- that came to
19 light and was discussed at the first section
20 of the public hearing.

21 MS. VALK: That was
22 submitted -- the document that you have in
23 your hand was submitted by Mr. Corcoran, I
24 believe, at the last hearing.

25 CHAIRMAN GIAMETTA: I see.

PUBLIC HEARING - GIAMETTA

MS. CASHMAN: In that thicker packet, Billy, dated January 31st, about midway back you will see it.

CHAIRMAN GIAMETTA: Okay.

MS. VALK: Just so all of the board members are clear, you should have three letters from the Grant & Lyons law firm. The first two are lengthier with exhibits and the third one was a standalone letter.

CHAIRMAN GIAMETTA: Yes, I found the affidavit.

MS. CASHMAN: I e-mailed that to you.

CHAIRMAN GIAMETTA: Yes, I have reviewed this, and I have a good idea of what it states.

MR. LYONS: Okay.

CHAIRMAN GIAMETTA: Thank you for bringing the original.

MR. LYONS: You're welcome.

CHAIRMAN GIAMETTA: If you would continue, please.

MR. LYONS: Okay. I am not

PUBLIC HEARING - GIAMETTA

going to go deeply into summary. Everybody that's present here today was present at the last public hearing, and you've gotten lots of information from us. I would just say to sort of orient us in going forward is that our contention is that the use of the property as is presently being used by Mr. Aaron, and as that use has been characterized by your code enforcement officer, that under the provisions of your zoning law that that use requires both a special use permit and site plan approval in order to be existing validly and going forward in the future, and we have laid out for you in the submission that we turned in up to this point the reasons in support of that argument. I have a few things I would like to say to sum up. I think it probably makes more sense for me to just say those few things all at once after you've taken whatever other testimony that may come in at today's session.

MR. CONN: I have a couple of questions regarding the affidavit.

PUBLIC HEARING - GIAMETTA

CHAIRMAN GIAMETTA: Yes,
absolutely.

MR. CONN: I don't know where
you want to start with this.

CHAIRMAN GIAMETTA: Let's
start with the question by Mr. Conn.

MR. CONN: Okay. Regarding
the affidavit, I looked through it, I have a
few questions. Most of the meeting, the
last meeting was concerning Mr. Corcoran's
faults, misleadings, misrepresentations, was
the basis of the complaint of everything. I
will go through it by the section. Sections
6 and 7.

MR. LYONS: Are you
talking -- you're talking about --

MR. CONN: I'm talking about
the affidavit.

MR. LYONS: Mr. Giametta's
affidavit?

MR. CONN: Correct. "Traffic
impact from Hondat, retail auto parts store
had customers coming and going on a daily
basis, maybe 25, 30 people at a time,

PUBLIC HEARING - GIAMETTA

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2 hundred people a day potentially..." Section
3 7 says, "This is a false statement. Nothing
4 could be further from the truth. As is
5 shown by the photos below..." and so on.
6 You look at the photos, I realize that a
7 picture can say a thousand words, but in
8 this particular instance, it leads me to
9 probably a thousand questions. There is no
10 date and time on when those pictures were
11 taken on page two of the affidavit. It
12 could have been taken on a Sunday
13 afternoon -- at 2:00 on a Sunday afternoon
14 when there was no traffic there. So, that
15 can be somewhat misleading. Sections 14 and
16 15, we are talking about the parking area
17 how it's a blatant expansion of the
18 property. We don't know for a fact that it
19 is a parking area. He could have just
20 cleared some space that he wanted cleared
21 and leveled for a period of time.

22 Section 19, "All photos taken
23 of parking lot and other aspects of the
24 buildings were taken from my property or from
25 a public right of way." How was the picture

PUBLIC HEARING - GIAMETTA

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2 taken of the parking area under Section 13?
3 That doesn't look like it's from his property
4 or from a public right of way.

5 Section 21, I do agree that
6 there is a non-comparison in the pictures,
7 but again, we have no way of knowing, as I
8 said earlier, what day or time of day these
9 pictures were taken. There is no time stamp
10 on the pictures.

11 Section 25, it may be a
12 mistake, it could be a typo, but this is an
13 affidavit, sworn that these are your words,
14 and you said these were true. It's says, "In
15 addition to the general use of the property,
16 physical changes have been made with proper
17 review or approvals."

18 MR. LYONS: Yeah, it's a
19 typo, it should say "without".

20 MR. CONN: I get that, and
21 I'm not necessarily going to dispute it.
22 But someone said, This is my words, this is
23 true, I agree with everything in there.

24 MR. LYONS: Okay.

25 MR. CONN: So I get that,

PUBLIC HEARING - GIAMETTA

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2 yes, it could be a typo. Those are some of
3 the things that we are accusing Mr. Corcoran
4 of, of being false or misleading. And these
5 are some of the few things that I went
6 through in the affidavit that, to me, I'm
7 not going to say that they're false, but
8 they're certainly misleading, particularly
9 with the photos. There is no timestamp
10 there is no date of when it was taken.

11 MR. LYONS: What about that
12 is misleading to you with regard to the
13 photos? In other words, how would --

14 MR. CONN: We're saying that
15 the photos of Hondat's operation and the
16 photo of Balchuna's operation is greatly
17 reduced compared to the photo of New
18 Country's operation. But, again, there is
19 no timestamp on these photos. When were
20 these photos of Hondat taken, when was the
21 photo of Balchuna taken?

22 MS. GARRISON: The Hondat
23 operation, that was taken from Mr. Diehl's
24 affidavit, which was submitted at the last
25 public hearing.

PUBLIC HEARING - GIAMETTA

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2 MR. CONN: But, again, there
3 is no day or time.

4 MR. LYONS: I understand
5 that, but those are not our photos. Those
6 are the photos from Mr. Diehl.

7 MR. CONN: But they're
8 submitted with the applicant's affidavit.

9 MR. GIAMETTA: Well, the
10 Hondat picture, that was -- that picture was
11 submitted in Dennis Diehl's affidavit, and I
12 happened to see the other day that that
13 picture was taken from the property card
14 that's on file with the Town of Marlboro.
15 So that was basically an assessor picture.

16 MR. CONN: I understand that.
17 But you're trying to paint a picture one way
18 saying, look how the building -- look how
19 the use of the property has expanded, but we
20 don't know when those pictures that you have
21 provided in your affidavit were taken.

22 MR. GIAMETTA: Well --

23 MR. CONN: They don't show
24 much use in the picture, but what time and
25 day of the week were they taken.

PUBLIC HEARING - GIAMETTA

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2 MR. GIAMETTA: The purpose of
3 Dennis Diehl's affidavit was to prove that
4 the property had a similar impact. So, that
5 is what they presented as their best case
6 scenario. That wasn't our picture, that was
7 their picture from Dennis's affidavit.

8 MR. LYONS: That's right.
9 These pictures were offered as
10 representative shots of the level of use of
11 the property.

12 MR. GIAMETTA: And that's
13 their best case scenario pictures. So you
14 have to ask them why they didn't present a
15 picture that was more intensive than that.
16 And probably the answer is, because that's
17 the way Dennis's operation looked. That is
18 how the operation looked on a day-to-day
19 basis.

20 MR. CONN: Not according to
21 the pictures.

22 MR. GIAMETTA: That's the
23 best I can tell you, that it's their
24 picture, they're showing their most
25 intensive use, and I can concur that that's

PUBLIC HEARING - GIAMETTA

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2 the way the operation looked on a day-to-day
3 basis.

4 MR. LYONS: And I believe
5 that, you know, the point that we were
6 trying to make was that the evidence, which
7 was being submitted in the defense of the
8 code enforcement officer's decision,
9 actually ended up assisting the points that
10 we were making on our argument. It's being
11 offered to show the representative, you
12 know, to be a representative of photographs
13 of the Hondat operation.

14 Just to go to some of your
15 other points, I think -- I just disagree with
16 you. I think that that cleared area that's
17 depicted under paragraph 13 of Charles's
18 affidavit, does show a parking area, and no
19 matter what it is, there is -- no approval
20 has been granted for the alterations to the
21 site that have been done in connection with
22 that --

23 MR. CONN: Do we have to have
24 approval to take grass out and put gravel
25 in?

PUBLIC HEARING - GIAMETTA

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2 MR. CORCORAN: No, the
3 clearing/grading allows up to 20,000 square
4 feet without anything else.

5 MR. CONN: Okay.

6 MR. LYONS: And park vehicles
7 there, which if you look down at paragraph
8 16, there are vehicles parked out in that
9 area. Same thing in --

10 MR. CONN: One day, yes. But
11 in the last several weeks, months I haven't
12 seen many vehicles, if any, parked there.

13 MR. GIAMETTA: Since we
14 actually made our submission and said it was
15 being used for a parking area, since that
16 time, it -- all of the vehicles have been
17 withdrawn.

18 But another thing I would
19 like to say is Mr. Aaron wants to use that as
20 a parking area, and I'm actually in favor of
21 him using it as a parking area. It would
22 take away from the congestion on the
23 property. So, right now, the fact that he
24 realizes that he can't use it or that he
25 shouldn't be using it without site plan

PUBLIC HEARING - GIAMETTA

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2 approval, it behooves him to get site plan
3 approval so he can legally use that area. So
4 I don't know why there is such a charade
5 around it's a parking area. It's not a
6 parking area. He obviously wants to use it
7 and I'm in favor of him using it, and he
8 should just go for site plan approval and
9 this is over.

10 And I'm not -- I'm just
11 looking for my complaints to be mitigated. I
12 have made complaints about unsightliness,
13 about noise, about smell, about buffer zone
14 being cut down, and those things shouldn't be
15 happening and I shouldn't have to endure
16 that.

17 MR. CONN: But as Mr.
18 Corcoran said in the last meeting, the noise
19 is a police complaint.

20 MR. GIAMETTA: Not that kind
21 of noise. There is one thing about
22 decimals, but as far as an actual noise
23 with -- Dennis Diehl represented that he was
24 going to work inside an enclosed building,
25 and that is no longer being adhered to. And

PUBLIC HEARING - GIAMETTA

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2 with the doors open, and grinders going and
3 banging going on, that kind of noise is
4 noise that I shouldn't be subjected to, and
5 it was in the site plan that I wouldn't have
6 to hear that, and I never did and most of
7 the time that Dennis owned the property, it
8 wasn't until Balchunas started using the
9 property that I was experiencing those kinds
10 of noises. And the fact of the matter is
11 that my complaints are not being addressed,
12 and I have many of them. And I wish Tom was
13 as zealous about addressing my complaints as
14 he is about denying me site plan approval.

15 MR. CONN: That's all I have
16 for now.

17 CHAIRMAN GIAMETTA: Thank you
18 for your input, everyone involved with that
19 exchange. Further discussion about the
20 matter before us is welcomed. Anyone from
21 the board wish to contribute toward the
22 discussion?

23 MS. VALK: I had a question
24 for Mr. Corcoran actually.

25 CHAIRMAN GIAMETTA: Sure.

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: During the last
3 meeting you discussed that approval was for
4 a building that was not constructed. That's
5 being referenced in the minutes, the 1978.
6 In looking at the site plan and seeing a
7 building in the middle and seeing Hondat
8 toward the road where the existing operation
9 is, do we know what year that was
10 established?

11 MR. CORCORAN: The Hondat
12 building?

13 MS. VALK: Yes.

14 MR. CORCORAN: I can only
15 guesstimate -- they were making a reference
16 to a 30 by 60 storage building that was
17 never constructed, and I think, again, the
18 plan is so incomplete, but there was
19 discussion of this storage building to be
20 constructed on site, which was never done,
21 and I believe a lot of the conversation had
22 to do with inside storage of the automobiles
23 and parts inside that storage building that
24 he was going to build. I guess that never
25 was built.

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: So we don't seem
3 to have records of when this first building
4 was made.

5 MR. CORCORAN: I'd say no. I
6 don't know if there was a predate, or '78.

7 MS. VALK: I have nothing
8 further.

9 MS. GARRISON: If I may just
10 interject to that question regarding the
11 building. When I read the minutes from
12 September 7th and September 21st, 1978 they
13 do reference -- I didn't see anything about
14 a 30 by 60, it did refer to a 50 by 60
15 building.

16 MR. CORCORAN: Maybe that was
17 it, 50 by 60.

18 MS. GARRISON: And it was
19 talking about, you know, 50 feet from the
20 road or 75 feet from the road. When I
21 looked at that sketch plan, it looks like
22 that would be referencing first the building
23 that's closer to the road, because the other
24 one that's in the middle of the property,
25 that doesn't seem like that would be 50 feet

PUBLIC HEARING - GIAMETTA

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2 from 9W. It references the need for a
3 variance to be within the right of way. I
4 don't have the exact -- I think that was in
5 the ZBA or planning board minutes from
6 September '78.

7 CHAIRMAN GIAMETTA: So the
8 discussion as heard is that there may be a
9 inconclusive description as to whether the
10 minutes, back in the late '70s, reference
11 the existing building or a future building
12 that was never built. Is that correct, Ms.
13 Valk?

14 MS. VALK: Well, that is a
15 question that I have, and I will look at the
16 point raised by counsel, but the one thing
17 that jumped out to me in reviewing this is
18 there is a lot of discussion about existing
19 operations on the property which gives the
20 implication that something is there.

21 CHAIRMAN GIAMETTA: Okay.

22 MR. GIAMETTA: I do have some
23 recollection of the history. The building
24 was built after the planning and zoning
25 board meetings. The only thing that had

PUBLIC HEARING - GIAMETTA

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2 taken place prior to the zoning and planning
3 board meetings was blasting.

4 CHAIRMAN GIAMETTA: I see.

5 So, the record now reflects that the
6 building was erected after the meetings; is
7 that correct?

8 MR. GIAMETTA: Correct.

9 MR. CONN: But we don't have
10 any official documentation on that?

11 MR. MEKEEL: Right.

12 MS. VALK: That's the
13 testimony you're receiving and the -- so
14 it's questions on the table.

15 CHAIRMAN GIAMETTA: Okay.

16 Counsel, in light of that, the project
17 setting off its beginning, would have to go
18 before planning board being it was
19 commercial?

20 MS. VALK: Well, if it's --
21 if it were to predate zoning, which is a big
22 "if" right now. I'm not saying that, but if
23 it did, that would not necessarily change
24 the issue because you still have to consider
25 expansion of use, but it would address this

PUBLIC HEARING - GIAMETTA

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2 issue of what was the approved use, because
3 if it predates zoning, any use that was
4 predating of zoning would be allowed to
5 continue under your codes, as long as it did
6 not expand. And I have referenced for you
7 in the outline, I prepared for you the code
8 section of what the nonconforming use
9 restrictions are. It's a similar analysis
10 to the same point that's been raised to a
11 change of use, but under a different
12 principal.

13 CHAIRMAN GIAMETTA: The Town
14 of Marlboro zoning code for the most part
15 was enacted what year?

16 MR. SALINOVICH: '72.

17 CHAIRMAN GIAMETTA: Around
18 '72 Mr. Salinovich states.

19 MS. VALK: If you look at
20 '76, it states at the top that the first
21 adoption was April 3rd, 1972.

22 CHAIRMAN GIAMETTA: 1972
23 zoning code was adopted. This occurred
24 after that, correct, the erection of the
25 building?

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: Based on the
3 information that you have in front of you is
4 the testimony that Mr. Giametta is saying
5 that it was, but we don't seem to have any
6 documentation as to when this building --

7 MR. LYONS: Also, I would
8 like to add the point that Ms. Garrison made
9 about the references in the ZBA minutes tend
10 to indicate that the building at issue is
11 the building that was closest to the road.

12 CHAIRMAN GIAMETTA: Right.
13 And I also see dating on top of this
14 letterhead of 1978.

15 MS. VALK: Yes. The question
16 that I asked was because Mr. Corcoran had
17 said at the last meeting that a number of
18 these discussions were about a building that
19 did not get constructed, and when you look
20 at the site plan that is drawn, it's already
21 referencing an existing business. And then
22 there is this sketch over here,
23 (indicating). So I wanted to see if there
24 was any more information because this is --
25 creates a question as to whether or not

PUBLIC HEARING - GIAMETTA

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2 there was something going on there. It's a
3 question that should be asked.

4 CHAIRMAN GIAMETTA: Right.

5 MS. VALK: I am not making a
6 determination one way or the other. I'm
7 trying to get information to answer a
8 question.

9 CHAIRMAN GIAMETTA: Right,
10 okay. Now, we have a lot of material here,
11 and whoever wishes to answer this, we'll
12 certainly listen to the answers. Was there
13 a ZBA effort back in the '70s regarding this
14 project?

15 MS. VALK: For commercial use
16 in the R1 zone is how the discussion began.

17 CHAIRMAN GIAMETTA: The
18 zoning over the years was changed.

19 MS. VALK: Yes, but there was
20 discussion about impacts and other things
21 which is part of the reason why the
22 applicant has submitted this.

23 MR. LYONS: The zoning has
24 changed, but we're also saying the use
25 changed over time.

PUBLIC HEARING - GIAMETTA

CHAIRMAN GIAMETTA: Right, okay. What year did that zoning change, may I ask, the HD zone?

MS. VALK: I believe in the code it states 2014.

CHAIRMAN GIAMETTA: Does that sound about right?

MR. CORCORAN: Yeah, four, five years ago, give or take.

MR. GIAMETTA: The zoning itself?

CHAIRMAN GIAMETTA: Yes.

MR. GIAMETTA: No, that was the '80s.

MS. GARRISON: Actually, the HD zone is referenced in the 1976 minutes.

CHAIRMAN GIAMETTA: Really?

MS. GARRISON: But it looks like from the ZBA minutes from this property, 1500 9W was in the R1 district.

MR. LYONS: At that time.

MS. VALK: I think we are answering two different things. I was answering the question of when did the

PUBLIC HEARING - GIAMETTA

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2 property get into the HD. The HD zone has
3 been in your code for many years, but I
4 don't think it was applied to this property
5 for many years.

6 MR. GIAMETTA: It was
7 residential in '78 and sometime in the '80s
8 it was changed to HD. Affuso's property,
9 the craft store, Affuso's, Hondat, my
10 property, my house, my house was
11 residential, they changed it to HD.

12 CHAIRMAN GIAMETTA: I see.

13 MR. GIAMETTA: So I'm
14 considered preexisting nonconforming
15 residential.

16 CHAIRMAN GIAMETTA: Right.

17 MR. GIAMETTA: And then there
18 was also a part of that that went down into
19 the industrial park down below by the river,
20 and that was done in the '80s. And then in,
21 I think what? 2014 might be, is when -- in
22 the HD zone there was never gas stations
23 permitted or any kind of filling stations.
24 HD was considered Marlboro corridor, and
25 back in two thousand -- I don't know the

PUBLIC HEARING - GIAMETTA

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2 exact date, but it might be 2014, there was
3 a provision added to the HD zone, and it's
4 right, if you look at the schedule, it says
5 the date right in it.

6 CHAIRMAN GIAMETTA: Yeah.

7 MR. GIAMETTA: That it was
8 added to the HD zone in, I think about 2014.
9 But the original purpose of it, it was not
10 to have these car lots and car repair
11 stations.

12 CHAIRMAN GIAMETTA: Okay.

13 Now, my understanding is that it did go to
14 the planning board; is that correct,
15 counsel?

16 MS. VALK: When both attached
17 to the December 27th submission by Grant &
18 Lyons, and the permit that -- and the
19 submission made by Mr. Corcoran of a special
20 use permit attached copies of minutes from
21 September 7th, 1978.

22 CHAIRMAN GIAMETTA: And along
23 with the planning board responsibilities, in
24 conjunction with this property, a special
25 use permit is also required?

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: I'm sorry, I'm
3 just digesting your question. Under current
4 code, the operations that are conducted on
5 the property is if somebody came in today
6 would require special use permit and site
7 plan approval under --

8 CHAIRMAN GIAMETTA: 155.12?

9 MR. MEKEEL: Yes.

10 MS. VALK: Yes, E.4.A.

11 CHAIRMAN GIAMETTA: E.4.A,
12 okay. In the records, I have a special
13 permit that was issued by the Town of
14 Marlboro. I don't know if everyone has seen
15 his document, you probably have, but it was
16 issued by the building department and shows
17 a start date of when the payment was made
18 and an expiration date also. Can I hand you
19 that for your review, counsel?

20 MS. VALK: Yes, we received
21 this at the last meeting, and the appellant
22 has responded to this in their submission.
23 I don't know if any of the board members
24 have any questions on this, but this was
25 submitted into evidence by Mr. Corcoran for

PUBLIC HEARING - GIAMETTA

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2 the record -- evidence is a little strong of
3 a word.

4 CHAIRMAN GIAMETTA: So at
5 this time, does this document appear to be
6 active or expired?

7 MR. CORCORAN: Active.

8 CHAIRMAN GIAMETTA: Active?

9 MR. LYONS: That's Mr.
10 Corcoran's testimony.

11 MR. CORCORAN: That's not my
12 testimony. What happens in the Town of
13 Marlboro is when you go to the planning
14 board you get a special use. The special
15 use is issued. There is not a special use
16 permit, piece of paper issued every single
17 year. The special use given by the planning
18 board is a continued permit special use that
19 continues with the property forever, unless
20 it goes null and void based on a zoning
21 change or something of that. The special
22 use is continued and paid for every year
23 through the fire inspection. In 1996 that
24 was given, don't know why, how, or then.
25 Starting in 1997 -- and counsel has a copy

PUBLIC HEARING - GIAMETTA

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2 of every single fire inspection after that
3 because a fire inspection was not done prior
4 to 1997. The fire inspection constitutes
5 the inspection of the property for its
6 special use, which is still done as of
7 today. So there is no special use permit
8 given every single year as far as a piece of
9 paper is given. A special use is given by
10 the planning board. That continuation
11 continues with the property in perpetuity,
12 and we do fire inspections every year, which
13 includes a fee, which is on the fee schedule
14 that says, Special use fee, fire inspection
15 fee, and they're done at the same time. So
16 the fire inspections are the special use
17 inspection, but there is no special use
18 permit issued by the Town of Marlboro on a
19 yearly basis.

20 MR. LYONS: Can I be heard,
21 Mr. Chairman?

22 CHAIRMAN GIAMETTA: Certainly.

23 MR. LYONS: So we disagree
24 with just about all of that. There is no
25 evidence, there is nothing in the record

PUBLIC HEARING - GIAMETTA

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2 here that indicates that is a piece of paper
3 that is a special use permit issued by the
4 planning board. We have made a number of
5 freedom of information requests to the town
6 seeking that information and nothing has
7 been produced with regard to that. The
8 building department is not authorized to
9 issue special use permits. That document
10 that you have in front of you, it's actually
11 unclear from that document exactly what it
12 is. It is clear that whatever it is it
13 expired. There is absolutely no support
14 within the zoning law to support Mr.
15 Corcoran's other contentions with regard to
16 the special use permit being renewed by the
17 building department through the fire
18 inspections. There is nothing on the fire
19 inspection forms that make any reference to
20 special use permits. We, again, FOIL'd for
21 information for documents to see what was in
22 the town records with regard to renewal of
23 special use permits, and we didn't receive
24 anything. Is there anything that I'm
25 missing, Kim?

PUBLIC HEARING - GIAMETTA

MS. GARRISON: No.

MR. GIAMETTA: I'd just like to make one point. What happened in 1995 that generated that special use permit? There was no site plan approval, there was no planning board, and if they go in perpetuity, it should have been from 1978 when -- if and when there was a special use permit that went back to '78. There isn't. And if it was granted in '78, and it goes in perpetuity, why would there be one in '95, if it's not necessary? That document came out of nowhere. There is no foundation for that document. There is no planning board meeting or site plan approval and nothing happened in 1995 to make that a legitimate document.

MR. CORCORAN: That will be the first thing that I agree with, because there is no such thing as a special use permit. I don't know where that came from. The special use is issued by the planning board, and then it continues in perpetuity. There is no such thing as a special use

PUBLIC HEARING - GIAMETTA

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2 permit in the Town of Marlboro. That is why
3 counsel was never given anything from our
4 department, because there is none. You get
5 your special use from the planning board,
6 under planning board approval, and that
7 special use continues in perpetuity. Where
8 that permit came from, I have no idea where
9 it came from. I just gave it to you because
10 it was in the file. But in no other
11 business in this whole town -- I have been
12 here 17 years -- gets a special use permit,
13 all hundred of them. And out of the
14 hundred, Penny is my fire inspector, maybe
15 80 of them are special uses. We charge them
16 a special use fee every year along with
17 their fire inspection. But no special use
18 permit is given. So I agree with that. I
19 have no idea where it came from, I don't
20 know what it is, but it was in the file, so
21 I gave it to you.

22 MR. LYONS: So I will say
23 that I represented and do represent planning
24 boards and zoning board of appeals and other
25 municipalities where I'm the lawyer for the

PUBLIC HEARING - GIAMETTA

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2 board. I will tell you that when you get a
3 special use permit, you get a piece of
4 paper, okay, because there are standards in
5 every special use permits in every
6 municipality. What a special use means is
7 that the use is allowed, but subject to
8 meeting certain criteria, okay. That's set
9 forth in the zoning law and the special
10 use -- the decision to issue the permit has
11 to show that that criteria has been met
12 and -- anyway, there is no document in the
13 record before this board from the planning
14 board showing the special permit issued.

15 MR. CORCORAN: So I will
16 agree with counsel, and maybe the zoning
17 board of appeals will make that suggestion
18 to the planning board, because as of today
19 and over the last 16 years the planning
20 board has not issued a special use permit
21 certificate to any of our occupants in this
22 town since I have been here. So you might
23 want to make that suggestion to the planning
24 board, because they just give you the
25 special use under the site plan approval,

PUBLIC HEARING - GIAMETTA

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2 and the town -- the code enforcement
3 officer, my department is in charge of
4 keeping an eye on that special use. If you
5 got -- and, for example, if you were given a
6 special use for a barber shop or a hair
7 dressing place that had two chairs and I
8 went back to do your fire inspection and you
9 had three chairs, you would be in violation
10 of your site plan and/or your special use
11 given by the planning board.

12 MR. LYONS: Even if they're
13 granted in the minutes, as the code
14 enforcement officer is describing, there are
15 no minutes for the record from the planning
16 board here documenting the issues of special
17 use permit.

18 CHAIRMAN GIAMETTA: Thank you
19 very much. Any further discussions by the
20 board members, comments, clarifications?

21 (No audible response)

22 CHAIRMAN GIAMETTA: Does
23 anyone from the public wish to speak on this
24 matter?

25 MR. AARON: No.

PUBLIC HEARING - GIAMETTA

CHAIRMAN GIAMETTA: Okay.

Counsel has given us an outline of consideration.

MS. VALK: Well, that would be the document, yes, that you would vote on at the time that you're prepared. I also did a proposed record of findings that outline the relevant code sections. I have not, as I mentioned in my e-mail, done a factual summary yet, but what I wanted to do was provide the board with the relevant code sections to provide you with a guide while you evaluate all of these facts. So, in other words, to help you get your arms around what is in front of you.

CHAIRMAN GIAMETTA: I see.

MS. VALK: If the board has no other questions or areas it feels it needs to inquire, then you may close the public hearing. Then it would be up to you to take all of the factual information in front of you and apply it to the code sections and make a determination.

CHAIRMAN GIAMETTA: You

PUBLIC HEARING - GIAMETTA

earlier stated you would summarize.

MS. VALK: Actually, I believe that was counsel that wanted to make a brief summary before we close the public hearing.

CHAIRMAN GIAMETTA: Well, you just stated in addition to this document.

MS. VALK: Oh, yes. Well, here I transmitted a draft record of findings as well.

CHAIRMAN GIAMETTA: A record of findings?

MS. VALK: Yes. So essentially, what I do particularly, matters of this, where a significant amount of documents and testimony has been prepared is, I do an outline of the appeal, documents considered. I've done a summary for you of the issues, and I copied and pasted the relevant code sections as cited by both parties. And then what's left for you to discuss is the facts, positions of the parties and your determination. I've also included the standard of review for you from

PUBLIC HEARING - GIAMETTA

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2 the town law. So, in other words, as you're
3 digesting these paths, every code section
4 you need to refer to should be included in
5 this shell that I have for you to assist
6 you. Does that makes sense?

7 CHAIRMAN GIAMETTA: Yes, it
8 does. Before we ask to close the public
9 hearing, would counsel's input -- your
10 summary input be before that closing or
11 after?

12 MS. VALK: It would need to
13 be before, but I believe he asked to
14 summarize a few points; am I correct, Mr.
15 Lyons?

16 MR. LYONS: Yes. After we
17 hear whatever other testimony, I'm not going
18 to say much, because we put a lot of effort
19 into the brief. What I do want to remind
20 you though is that you're a quasi-judicial
21 body, and so proof and weighing and
22 credibility and testimony that you receive
23 is very, very important. And we think that
24 we have provided to you, not only the
25 arguments that support the propositions that

PUBLIC HEARING - GIAMETTA

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2 we've made, but also that we have supported
3 those arguments with sworn testimony and
4 also with documentary evidence, and we
5 believe that the arguments that have been
6 raised contrary to the positions we've taken
7 are lacking in evidentiary support.

8 We want to thank each and
9 every one of you for your patience, we know
10 that you have a lot of material, and we
11 appreciate your courtesies that you've
12 extended to us up to this point in the
13 process. We hope that you will see your way
14 to issue a decision overturning the code
15 enforcement officer's decision and requiring
16 cite plan and special use permit approval for
17 this use.

18 CHAIRMAN GIAMETTA: Thank
19 you. Anything further?

20 MR. GIAMETTA: I just have a
21 final thought.

22 CHAIRMAN GIAMETTA: Sure.

23 MR. GIAMETTA: I would just
24 like to urge the board to refer this for
25 cite plan approval in the interest of making

PUBLIC HEARING - GIAMETTA

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2 Mr. Aaron and I good neighbors. He is
3 interested in expanding. I have no problem
4 with him expanding. I would like some of my
5 present concerns to be addressed and
6 mitigated about the noise and unsightliness
7 and buffer issues, and the way to accomplish
8 that is with a referral for site plan
9 approval, and I would think by now he wants
10 to go for site plan approval. He wants to
11 use this new parking area, and he wants to
12 expand his business. I think it would lead
13 to -- a referral would lead to us becoming
14 good neighbors.

15 CHAIRMAN GIAMETTA: Thank you
16 very much.

17 MR. GIAMETTA: Thank you.

18 CHAIRMAN GIAMETTA: At this
19 point, unless there is further input. Sir?

20 MR. AARON: No.

21 CHAIRMAN GIAMETTA: Okay. I
22 ask for a motion to close the public portion
23 of this meeting.

24 MR. MEKEEL: I'll make a
25 motion to close the public hearing.

PUBLIC HEARING - GIAMETTA

CHAIRMAN GIAMETTA: Second?

MR. SALINOVICH: Second?

CHAIRMAN GIAMETTA: Vote?

MR. ZAMBITO: Aye.

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. CONN: Aye.

CHAIRMAN GIAMETTA: And aye.

The public hearing portion of the meeting is closed.

MS. VALK: At this point, the board is free to deliberate about the information in front of you. And before the board does that, for the purposes of everyone here for the public, the public hearing is closed. If you hear the board members deliberating about something that you don't necessarily agree with, please no shouting from the audience or anything. It's for the board members to have a discussion among themselves, but because they are a public body, they do that in a public setting. Unless you have any questions of an attorney/client nature,

PUBLIC HEARING - GIAMETTA

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2 which we would go into executive session if
3 you do, but otherwise, like I said, I have
4 done a shell, I started a bare bones record
5 of findings for you, and I can continue to
6 draft that decision for the board, but I
7 need to know where the board members are as
8 far as where the matter is.

9 CHAIRMAN GIAMETTA: I see.
10 And can we defer our decision after we
11 perhaps --

12 MS. VALK: You don't have to
13 deliberate or decide tonight. If you want
14 to take -- there has been additional
15 testimony this evening. If you would like
16 to digest that and reserve for the next
17 meeting, I can continue to summarize the
18 factual portions, and that will -- but it
19 will be up for the board to deliberate and
20 make its determination.

21 MR. LYONS: And Rebecca, I
22 would add, with regard to the 62 days, that
23 we would be amenable to if the board needs a
24 little bit more time to consent to an
25 extension of that deadline.

PUBLIC HEARING - GIAMETTA

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2 MS. VALK: Okay.

3 CHAIRMAN GIAMETTA: Board
4 members, is it in our interest to ask for
5 further record of findings from counsel?

6 MR. MEKEEL: I think we have
7 a lot of findings here. I think we looked
8 at this, and we've all studied the notes and
9 the affidavits that Mr. Giametta and his
10 counsel has sent us. I mean, honestly, I've
11 read this several times over and over again,
12 and I am looking at the complaints that they
13 have sent. I don't think -- personally, I
14 don't think it's a junkyard, I don't see it
15 being a junkyard, it doesn't meet that. I
16 also think that, you know, based on Mr.
17 Corcoran's decision, you know, that they
18 have not expanded the use of the property.
19 As far as I can remember, they've always
20 sold cars there. They always had parts
21 there, and the body shop, you know, has been
22 there for as long as I can remember, and I'm
23 53 years old. I started driving whatever
24 number of years it was, you know, and it's
25 always been there. Additionally --

PUBLIC HEARING - GIAMETTA

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2 MR. LYONS: It wasn't part of
3 Hondat though.

4 MR. MEKEEL: I personally
5 don't feel that it needs a site plan review
6 currently as it stands. You know, I think
7 it's within, you know, within our
8 regulations of the town. I do agree that if
9 he was to expand and start selling more
10 vehicles or start adding more vehicles to
11 the property, yes, he would have to go for a
12 site plan review, but currently, I feel that
13 it is, you know, this is what it's been
14 since 1978, whatever it has been. I mean, I
15 don't see much of a change there.

16 CHAIRMAN GIAMETTA: Okay.
17 The question that I have asked is, do we
18 need further input from counsel to render
19 our findings? Mr. Conn?

20 MR. CONN: I don't think so.
21 I agree with Jeff, the property hasn't
22 changed very much, if any, at all from
23 anything that I've ever remembered. And in
24 my opinion, viewing all of the information,
25 I think that Mr. Corcoran made his decision

PUBLIC HEARING - GIAMETTA

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2 based on the laws in the previous paperwork
3 he had before he became the code enforcement
4 officer and the information that he had to
5 go on. And I feel that based on all of
6 that, he made the best decision possible.

7 CHAIRMAN GIAMETTA: Thank
8 you. And remaining board members, do we
9 need further input from counsel to render
10 our decision?

11 MR. SALINOVICH: No, I don't
12 think so.

13 MR. ZAMBITO: I don't feel
14 it's necessary, no.

15 CHAIRMAN GIAMETTA: Okay.

16 MS. VALK: Are you intending
17 on doing that this evening, or are you
18 intending to continue to digest? We have
19 heard from two board members. Are you
20 intending to continuing to digest the
21 information and render a determination at
22 the next board meeting? I just want to be
23 sure where we stand right now.

24 CHAIRMAN GIAMETTA: Right.
25 Well, that is the very question why I'm

PUBLIC HEARING - GIAMETTA

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2 asking.

3 MS. VALK: Because --

4 MR. MEKEEL: I personally
5 don't think we need to go any further.

6 MS. VALK: Sorry, I don't
7 mean to interrupt. Because I think if I
8 were to answer your question, if there are
9 no legal questions, the only other further
10 assistance that I can provide to you is to
11 summarize the facts in the records to give
12 you the information in one location. I've
13 given you the law. I can provide you with a
14 summary of facts to help you if you feel
15 it's necessary. You have before you a
16 resolution that offers essentially what the
17 four issues are, and it would be whether or
18 not the current operation is a permitted
19 nonconforming use permitted under a prior
20 approval, alternatively, the current
21 operation is not permitted as a
22 nonconforming use under a prior approval
23 and, therefore, special use permit site plan
24 approvals are required. And alternative to
25 the first -- not alternative -- yes, a sub

PUBLIC HEARING - GIAMETTA

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2 to the first question would be if the
3 current operation is an expansion of a prior
4 nonconforming use of prior approval thereby
5 requiring a new approval. And the last
6 question is the current operation is not an
7 expansion of the prior nonconforming use or
8 approval, thereby no additional approvals
9 are necessary. And so we all we go back to
10 the issue of nonconforming use or approval.

11 CHAIRMAN GIAMETTA: But this
12 is an information sheet, this is not a
13 voting card, if you will.

14 MS. VALK: Well, it can be a
15 voting card, because I don't tell the board
16 how to vote. I give you the options. So
17 what I've done is, if you check the first
18 one, you would have to answer three or four.
19 I didn't number them, I should have. If you
20 answer the second one, you don't need to go
21 any further.

22 CHAIRMAN GIAMETTA: Right.
23 Because our normal procedure of voting is
24 upon a motion.

25 MR. MEKEEL: She offered the

PUBLIC HEARING - GIAMETTA

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2 motion to us. So, basically, what we have
3 here is basically a summary of what we were
4 looking for.

5 CHAIRMAN GIAMETTA: So, what
6 if we have four different checkmarks?

7 MR. MEKEEL: Well, then we
8 have four different checkmarks.

9 (Dave Zambito exits hearing room)

10 MS. VALK: You can't have
11 four different checkmarks because they're
12 inconsistent. Essentially, what I do is I
13 offer the possible resolution so the board
14 can determine -- deliberate and make its
15 determination.

16 CHAIRMAN GIAMETTA: On one of
17 them?

18 MS. VALK: Well, it could be
19 one and it could be two, depending on your
20 answer to the first two. I probably should
21 have set this up a little differently, but
22 just to re -- to summarize again. If you
23 answer -- if you check that you find the
24 first one, The current operation is a
25 permitted nonconforming use or permitted

PUBLIC HEARING - GIAMETTA

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2 under a prior approval, you would then skip
3 the second one and go to number three or
4 four to determine whether or not you find
5 it's an expansion of that prior approval.
6 However, if you find that it was not
7 permitted under a prior nonconforming use or
8 prior approval, that ends your deliberation.
9 It is required under the code to get special
10 use permits for site plan approval.

11 MR. CONN: So I say one and
12 four.

13 MR. MEKEEL: I agree. I
14 don't know if we should wait two minutes for
15 Dave?

16 CHAIRMAN GIAMETTA: Yeah, Mr.
17 Zambito has now returned.

18 (Dave Zambito returns to hearing room)

19 MS. VALK: And I think
20 whoever is offering the motion should
21 summarize the issues that they feel support
22 what they're moving, the facts that support
23 it, because we need to cite that in the
24 record.

25 CHAIRMAN GIAMETTA: Mr.

1 PUBLIC HEARING - GIAMETTA

2 Zambito, we just talked about certain
3 selections on this resolution sheet, and it
4 seems that the first items to address is the
5 top and second line item; is that correct,
6 counsel?

7 MS. VALK: I actually just
8 wrote one, two, three and four next to each
9 one. I probably should have done that just
10 to assist us as we are discussing.

11 CHAIRMAN GIAMETTA: Okay.

12 MS. VALK: So you need to
13 decide between number one and number two and
14 should have a discussion of the fact that
15 you feel support your finding.

16 CHAIRMAN GIAMETTA: So one,
17 two, three, four coming down; correct?

18 MS. VALK: So right now it
19 would be number one or number two.

20 CHAIRMAN GIAMETTA: Do you
21 feel we are ready to make a motion on this
22 matter, board members?

23 MR. ZAMBITO: I'm okay with
24 it.

25 CHAIRMAN GIAMETTA: Do you

1 PUBLIC HEARING - GIAMETTA

2 feel you need further clarification from
3 counsel?

4 MR. ZAMBITO: No, she gave me
5 clarification at the last meeting.

6 CHAIRMAN GIAMETTA: Mr.
7 Salinovich, do you need further input from
8 counsel's findings of facts?

9 MR. SALINOVICH: I don't
10 think so.

11 CHAIRMAN GIAMETTA: Mr. Conn,
12 Mr. Mekeel?

13 MR. MEKEEL: No, I am good.

14 MR. CONN: No.

15 CHAIRMAN GIAMETTA: Okay.
16 Well, in light of -- the majority of the
17 board feels that a motion can be brought up.
18 I now ask, as counsel has recommended, that
19 we first select item one or two; is that
20 correct, counsel?

21 MS. VALK: Yeah, somebody
22 will make a motion for what is stated in
23 item -- item number one or item number two.

24 CHAIRMAN GIAMETTA: Okay.
25 Would someone like to make that motion

PUBLIC HEARING - GIAMETTA

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2 regarding number one or number two on our
3 sheet? Dave, would you like to do that?

4 MR. ZAMBITO: I don't fully
5 understand what you want us to make a motion
6 on.

7 CHAIRMAN GIAMETTA: Counsel,
8 please.

9 MS. VALK: I would ask that
10 one of the board members make one of the
11 following motions if you feel you are ready.
12 Either one, that the current operation is a
13 permit nonconforming use or permitted under
14 a prior approval. If you make that motion,
15 I would ask that you support that motion
16 with your factual synopsis of what supports
17 that. Number two, the current operation is
18 not permitted as a nonconforming use and
19 permitted under a prior approval and,
20 therefore, a special use permit and site
21 plan approval are required. Again, I would
22 ask that you do a factual synopsis of what
23 you feel supports that determination.

24 CHAIRMAN GIAMETTA: I see.

25 MS. VALK: Depending on which

PUBLIC HEARING - GIAMETTA

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2 motion is made. Because I have to finish
3 the record of finding. I need to know
4 what -- we've heard a lot of facts. I think
5 we all have a good summary of those facts,
6 but deciphering those facts, and as counsel
7 said, weighing the credibility of the
8 opposing testimony that's been offered, is
9 something that needs to be done in a
10 deliberation.

11 MR. MEKEEL: Well, I'm going
12 to make a motion that the current operation
13 is a permitted nonconforming use under a
14 prior approval. My facts are based on,
15 first off, back in 1978, the board that was
16 at the time approved it, they let the
17 building go up, and the business has been in
18 operation for whatever number of years since
19 1978.

20 MS. VALK: So just to be
21 clear, it's your determination that the
22 scope of the use is in compliance with the
23 1978 approval?

24 MR. MEKEEL: That is correct.

25 MS. VALK: Does anybody else

PUBLIC HEARING - GIAMETTA

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2 wish to offer any additional comments on
3 that, factual comments?

4 MR. ZAMBITO: I will. The
5 only thing that I saw when I was reviewing
6 this was, the question was, is the operation
7 now compared to back in '78, is it impacting
8 any additional traffic in and out, parking,
9 water usage, et cetera, and from what I
10 reviewed, it doesn't seem to have impacted
11 more than it did back then. It almost seems
12 to be less than it was back then, if that
13 makes any sense.

14 MS. VALK: Well, I think what
15 you're starting to get into is the second
16 question, whether or not there is an
17 expansion.

18 MR. ZAMBITO: Oh, I'm sorry.

19 MS. VALK: No, it's a valid
20 point, but I just want to keep the
21 discussion. So the -- I just want to make
22 sure the record reflects that the board's
23 feeling is that the operations fall within
24 the scope of what was approved in 1978.

25 MR. MEKEEL: I will make a

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PUBLIC HEARING - GIAMETTA

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motion that that is what my determination
is.

3

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MS. VALK: Any further
discussion or debate on that?

5

6

CHAIRMAN GIAMETTA: Any
further discussion, debate?

7

8

MR. ZAMBITO: No.

9

MR. SALINOVICH: No.

10

MR. MEKEEL: No.

11

MR. CONN: No.

12

CHAIRMAN GIAMETTA: Seems as
though we have a motion on the table or not
quite yet, Ms. Valk?

13

14

MS. VALK: I'm just looking
at, just to make sure the record is
reflecting discussion.

15

16

CHAIRMAN GIAMETTA: As
counsel to our board, do you feel
comfortable with us moving forward without
you elaborating on your record of findings?

17

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MS. VALK: That is a question
I would feel more appropriate to answer in
an attorney/client session because it may --
my answer may involve matters that are not

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appropriate for public consumption.

CHAIRMAN GIAMETTA: I see.

MS. VALK: So, at this point, I think just to assist the board in this process, because this is a complicated matter, I would recommend that we do have a brief attorney/client session so I can give you some advice procedurally on it.

CHAIRMAN GIAMETTA: Okay.

Counsel has asked for a confidential meeting. We would ask that others take departure from the room and we'll remain.

(The board has gone into executive session with Ms. Valk off the record)

MS. VALK: The board had an executive session for the purposes of the attorney to ask questions of an attorney/client nature. The board has asked that I summarize the motion that they will now vote on, which is, they are asking me as counsel to continue to draft a record of findings summarizing the facts and

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2 information before the board for their
3 review and deliberation at the next meeting
4 of the board. Is that a fair synopsis of
5 what the board would -- would somebody move
6 that motion if it's a fair synopsis of what
7 you would like me to do?

8 MR. CONN: I will make a
9 motion.

10 CHAIRMAN GIAMETTA: And a
11 second?

12 MR. ZAMBITO: I will second.

13 CHAIRMAN GIAMETTA: And a
14 vote on that?

15 MR. ZAMBITO: Yes.

16 MR. SALINOVICH: Yes.

17 MR. MEKEEL: Yes.

18 MR. CONN: Yes.

19 CHAIRMAN GIAMETTA: And yes.

20 MS. VALK: Are there any
21 additional comments or concerns that board
22 members feel of particular pertinence that
23 you would like me to consider while drafting
24 a resolution or any determination on the
25 conflicting facts that have been offered

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2 that we've had testimony that conflicts at
3 times -- that was a compound question. Are
4 there any other guidance the board would
5 like to give me?

6 MR. CONN: Just one thing, I
7 mean, we keep going back to '78 when they
8 were approved for commercial use. I don't
9 see anything that has gone outside the scope
10 from 1978 to what they're doing now outside
11 of the commercial use or anything that is
12 expanded in that way.

13 MS. VALK: Okay. I think
14 it's fair to say I have feedback from the
15 board members. I am going though to do the
16 synopsis of the facts. Based upon that
17 synopsis, that you will review before the
18 next meeting, you will then make a
19 determination based upon the questions
20 presented to you and vote at the next
21 meeting. Is that correct?

22 CHAIRMAN GIAMETTA: We're all
23 agreed on that?

24 MR. MEKEEL: Yes.

25 MR. CONN: Yes.

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MR. ZAMBITO: Yes.

MR. SALINOVICH: Yes.

MS. VALK: Now, the next question is, are we going to do this at the regular March meeting or do you want to do it at a different date? I just want to see what your preference is. I think you only meet once a month; is that correct?

CHAIRMAN GIAMETTA: Once a month.

MS. VALK: Yeah.

CHAIRMAN GIAMETTA: Unless it's a holiday, I would think the next scheduled meeting.

MS. CASHMAN: March 14th.

MS. VALK: March 14th.

CHAIRMAN GIAMETTA: March 14th.

MS. VALK: Now, that draft will be circulated to you in advance, but you will deliberate on it in the meeting.

CHAIRMAN GIAMETTA: Okay. I want to thank everybody for attending tonight's meeting, a little lengthy, but

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important. If there is nothing further, I
ask for a motion to end the meeting.

MR. MEKEEL: I will make a
motion to close the meeting.

CHAIRMAN GIAMETTA: And a
second?

MR. ZAMBITO: I will second.

CHAIRMAN GIAMETTA: And a
vote on that?

MR. SALINOVICH: Aye.

MR. MEKEEL: Aye.

MR. ZAMBITO: Aye.

MR. CONN: Aye.

CHAIRMAN GIAMETTA: And aye.
Until next month, folks.

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(Time noted: 8:23 p.m.)