

1 STATE OF NEW YORK : COUNTY OF ROCKLAND  
2 TOWN OF STONY POINT : ZONING BOARD OF APPEALS

3 - - - - - X

REQUEST OF

4 JACK LIEBERMAN

APPLICATION #21-11 AND #21.12

5 - - - - - X

Town of Stony Point

6 RHO Building

5 Clubhouse Lane

7 Stony Point, New York

October 7, 2021

8 7:00 p.m.

9  
10 BEFORE:

11 THOMAS WRIGHT, CHAIRMAN

12 JOSEPH ANGINOLI, BOARD MEMBER

LOU ANN DAVIS, BOARD MEMBER

13 JOHN GAZZOLA, BOARD MEMBER

EDWARD KEEGAN, BOARD MEMBER

14 JOHN LYNCH, BOARD MEMBER

TODD STRIETER, BOARD MEMBER

15  
16  
17  
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25

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2  
3 CHAIRMAN WRIGHT: All right, good  
4 evening, everybody. I call the meeting the  
5 of the Stony Point Board, Stony Point Zoning  
6 Board of Appeals to order. Please rise for  
7 the Pledge of Allegiance.

8 (Whereupon, the Pledge of Allegiance was  
9 recited.)

10 CHAIRMAN WRIGHT: Roll call. Ms. Davis?

11 BOARD MEMBER DAVIS: Here.

12 CHAIRMAN WRIGHT: Mr. Strieter?

13 BOARD MEMBER STRIETER: Here.

14 CHAIRMAN WRIGHT: Mr. Lynch?

15 BOARD MEMBER LYNCH: Here.

16 CHAIRMAN WRIGHT: Mr. Anginoli?

17 BOARD MEMBER ANGINOLI: Here.

18 CHAIRMAN WRIGHT: Mr. Keegan?

19 BOARD MEMBER KEEGAN: Here.

20 CHAIRMAN WRIGHT: Mr. Gazzola?

21 BOARD MEMBER GAZZOLA: Here.

22 CHAIRMAN WRIGHT: Mr. Chairman, here.

23 I'm going to move a couple of items on the  
24 agenda. We have somebody that has a  
25 scheduling conflict that we need to get on

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2 there. So without objection, we'll start out  
3 with, we'll start with the Lieberman  
4 discussions. That would be Applications  
5 Number 21-11 and 21-12. And following that,  
6 we'll go back to the new applications.

7 For the request of Neil Murphy, there  
8 will not be a decision tonight. We'll be  
9 going into executive session on that, and  
10 we'll have a decision probably on the  
11 following night. So there will be no  
12 decision on that one. And I'll finish up  
13 with the public hearings.

14 So with that, what I'll do is, the first  
15 item is going to be Request by Jack  
16 Lieberman, Application Number 21-11. This is  
17 an appeal, appeal of the Building Inspector's  
18 determination that the floor area ratio is  
19 applicable to the residential portions of the  
20 project, per Building Inspector's letter  
21 dated July 4, 2021, 111 South Liberty Drive,  
22 Stony Point, New York.

23 But coordinated with that one is also  
24 going to be a Request of Jack Lieberman,  
25 Application Number 12, which is an appeal of

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2 the requirement of Chapter 215, Article 92,  
3 Section 2, residential mixed use in the BU  
4 zoning district. Residences shall be  
5 permitted by conditional use permit of the  
6 Planning Board in the BU district subject to  
7 the following conditions: Outdoor  
8 recreational space is 200 square feet of  
9 unpaved outdoor recreational area shall be  
10 provided per unit except that such area may  
11 contain block paver areas serving as a patio,  
12 for an appeal of the outdoor recreational  
13 space letter dated March 26, '21, at  
14 111 South Liberty Drive, Stony Point,  
15 New York.

16 We had rescheduled this one. We have  
17 Mr. Max Stach, who is one of the originators  
18 of some of the code there. So having said  
19 that, because he has the conflict, I'll ask  
20 if Mr. Stach would go up and take some --

21 MR. MacCARTNEY: First, let me jump in.  
22 I don't believe, unless my memory is failing  
23 me, which it could be, that we have a public  
24 hearing open yet on Number, Application  
25 Number 11.

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2 CHAIRMAN WRIGHT: I'll take a motion to  
3 open the application for application 21-11.

4 MR. MacCARTNEY: Open the public  
5 hearing.

6 CHAIRMAN WRIGHT: Open the public  
7 hearing. All in favor?

8 (Response of aye was given.)

9 CHAIRMAN WRIGHT: Thank you.

10 MR. MacCARTNEY: And so for the record,  
11 I guess what we're doing right now is we're  
12 going to hold both hearings concurrently  
13 because they're related applications, but the  
14 record should reflect that both hearings are  
15 now open, and the testimony will be accepted  
16 in regard to both matters.

17 CHAIRMAN WRIGHT: That's correct. All  
18 right, Mr. Stach.

19 MR. STACH: Yeah, and thank you,  
20 Mr. Chairman. I had been in contact with the  
21 ZBA attorney, who sort of filled me in on  
22 what the applications and interpretations  
23 are. And I did go back through my notes  
24 following when we prepared the comprehensive  
25 plan update. We did prepare some amendments

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2       to the zoning, one of which allowed for the  
3       mixed use buildings in the BU district. An  
4       early draft or an early recommendation of  
5       that was actually entitled, I believe it was  
6       upper story residential over commercial, or  
7       something to that effect.

8           And in looking back at my notes with  
9       regard to FAR, it became clear to me that the  
10      idea of the underlying FAR was to apply to  
11      the existing commercial building upon which  
12      the residential was to be added. This was  
13      intended to be a way for existing commercial  
14      structures such as what you have on 9W, you  
15      know, across from the diner in that strip  
16      area to be able to put apartments above as a  
17      way of helping the landowners to, whether  
18      they increase taxes at the time that the Town  
19      was dealing with.

20           So in my notes and by my recollection,  
21      it was clear to me that the FAR standard was  
22      not intended to include the residential.  
23      That said, it was clear to me that it was  
24      intended that commercial only be allowed --  
25      I'm sorry, residential only be allowed on

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2       stories above commercial. And that was to be  
3       the controlling factor, that that would  
4       govern along with the height and the parking  
5       requirement.

6           With regard to the open space question,  
7       and this has to do with whether or not the  
8       standard for open space, pervious open space  
9       could be accommodated on the roof. I don't  
10      have any specific notes or recollection on  
11      that, except to say that I think it depends,  
12      in my opinion, on what the nature of the roof  
13      is. If it's a tar roof, that obviously  
14      doesn't serve the purpose of being pervious  
15      open space.

16          I have seen, you know, in modern designs  
17      of buildings, I have seen roofs where there  
18      is storm water planters, and sitting areas,  
19      and recreational areas. And I would say that  
20      does meet the intent of this requirement,  
21      which is really for there to be open space  
22      available to the residents to recreate. And  
23      that area would be green, or at least  
24      semi-pervious for storm water purposes.

25          So that's sort of the intent of the

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2       provision. We don't want a building that's  
3       basically building and parking lot. The idea  
4       was that there would be at least some place  
5       for residents to have an area where they  
6       could have a barbecue, they could have a  
7       playground for the children, they could have  
8       some recreational area.

9           CHAIRMAN WRIGHT: Would you say you  
10       could have a portion of it, or a portion of  
11       it being non-pervious, a portion of it  
12       pervious, or?

13          MR. STACH: There was a provision that  
14       said that, I believe it may be that the  
15       Planning Board may authorize paver, use of  
16       pavers instead of a pervious surfaces. The  
17       idea being that if you were to have a paver,  
18       you know, patio for barbecuing, for picnic  
19       tables, that would also serve the intent of  
20       the green open space.

21          CHAIRMAN WRIGHT: Yeah. I was thinking  
22       more of a hybrid use on a single level,  
23       right. So a single level being half of one  
24       use and half of the recreational use.  
25       Anything like that discussed, if you recall?



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2 MR. STACH: No. I don't think there's,  
3 there's any idea that you have to have  
4 everything contiguous. I think the intent is  
5 for these to be meaningful spaces. So the  
6 idea that it wouldn't just be a strip between  
7 the parking lot and the street, that this is  
8 an area that's useable for the open space  
9 purpose. So for example, if you were to have  
10 a rooftop open space area, it would need to  
11 be a meaningful area of open space. It  
12 couldn't just be sort of up there for  
13 purposes of, you know, meeting the  
14 requirement.

15 CHAIRMAN WRIGHT: Questions from the  
16 Board?

17 BOARD MEMBER KEEGAN: Could you  
18 reiterate why the floor area ratio was  
19 negated for the residential portion of it?

20 MR. STACH: So the structure of the  
21 zone, the zone, the BU zone existed at the  
22 time that we wrote this law. And the idea  
23 was that there were going to be structures  
24 already in the zone that were built to the  
25 FAR.

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2 So for example, you might have a small  
3 lot where several small lots abut each other,  
4 and there are commercial uses on each lot  
5 with zero lot lines, party walls. And the  
6 idea was that those types of developments may  
7 already be built to the FAR, meaning they're  
8 already at the maximum floor area necessary.

9 So the question is if that is the case,  
10 can you then not put an apartment above. And  
11 that was established. Rather than amending  
12 and or adjusting the FAR requirement, we were  
13 going to essentially remain silent on the  
14 bulk standards, make sure that the underlying  
15 building commercial use was built to the bulk  
16 standards, and then the residential use would  
17 just be limited to upper stories of whatever  
18 building was there.

19 If it didn't have upper stories, you  
20 could add it. If it didn't have upper, or if  
21 it already had upper stories that were used  
22 for office, you could then use it for  
23 residential. But the intent was to remain  
24 silent on the bulk standards because we  
25 didn't want to change it for the underlying

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2 use, which is whatever the commercial use  
3 was.

4 MR. MacCARTNEY: Could I follow up with  
5 a question on that?

6 MR. STACH: Yes.

7 MR. MacCARTNEY: What was the intent in  
8 regard to building height, then?

9 MR. STACH: Building height is, still  
10 has to be adhered to.

11 MR. MacCARTNEY: Whatever the underlying  
12 primary use is, that remains the max building  
13 height no matter what.

14 MR. STACH: That is correct. Again,  
15 this provision was actually intended to  
16 serve -- there were two purposes established  
17 in the code. One was to allow apartments  
18 above existing commercial. And then there  
19 was supposed to be a revisiting of the, of  
20 the comp plan with a further zoning amendment  
21 that would allow new construction buildings,  
22 large new construction buildings that were  
23 mixed use with residential and commercial.

24 On sites at the time, I believe it was  
25 before Aldi's and Tractor Supply had come in,

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2 and they had a vacant supermarket. I guess  
3 it was Stop and Shop was still there. And  
4 the idea was that might be some sort of town  
5 center.

6 But that part of the zoning never  
7 proceeded. Where that part proceeded, I  
8 think we would have come back and limited  
9 this other provision. So it was sort of a  
10 stepping stone to another process that never  
11 ended up happening.

12 BOARD MEMBER KEEGAN: So what is the --  
13 I don't understand where we have any  
14 containment. Is that in the bulk  
15 requirements?

16 MR. STACH: Any containment to the size  
17 of the building?

18 BOARD MEMBER KEEGAN: To the size of the  
19 building, the height of the building.

20 MR. STACH: Yes. It would be the height  
21 prescribed by whatever the commercial use is.  
22 So for most uses in the district, I believe  
23 it's two and a half stories. I would have to  
24 look at the code.

25 So if you have a building that was

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2 constructed to house a retail store, it has a  
3 certain requirement for the building height.

4 So that's the building height you could build  
5 to. And you could then put the residential  
6 above. If it was built as an office  
7 building, it would allow a higher height.

8 And I think that's, that's where this is  
9 attempting to take advantage of that height.

10 BOARD MEMBER KEEGAN: Excuse me. This  
11 is where I'm getting confused. You have a  
12 commercial use, okay. That has a specific  
13 height requirement.

14 MR. STACH: Uh-huh.

15 BOARD MEMBER KEEGAN: Now we're talking  
16 about putting a residential use on top of  
17 that. That has another height requirement.

18 MR. STACH: Correct.

19 BOARD MEMBER KEEGAN: Okay, so what --

20 MR. STACH: No, no, no, no. I'm sorry,  
21 that is not correct. So the height  
22 requirement is based on whatever the  
23 principal use of the building is. So if you  
24 have a restaurant or a retail shop, it allows  
25 for a multi-structure building. Multi-story

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2 building, I'm sorry. And that would be the  
3 height requirement, irregardless of whether  
4 you have the residential on the upper floors  
5 or not. It's nothing additional.

6 MR. MacCARTNEY: So you're saying you  
7 would use the bulk -- I'm sorry. You would  
8 use the bulk table applicable for the, like  
9 in this case, they're proposing I think  
10 office space. You would, even though the  
11 mixed use is not in the bulk table, it never  
12 got carried over, you would still use the  
13 primary use bulk table as though it were  
14 there for the building height. But you would  
15 not use it for the FAR. The building height,  
16 whatever the primary use, here it's 45 feet.  
17 They can't build 45 feet of office space and  
18 then build whatever fits on top of the  
19 45 feet. The 45 feet is the ultimate  
20 maximum, that's what you're saying.

21 MR. STACH: Correct. Yeah. And it's  
22 the same with the -- well, the FAR, right,  
23 governs the floor area of the ground floor  
24 structure.

25 MR. MacCARTNEY: And was the intent of

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2 the code to have to do, did it have anything  
3 to do with the type of use that could be on  
4 the first floor? For example, could you make  
5 your primary use just parking for the  
6 residential?

7 MR. STACH: No. No.

8 MR. MacCARTNEY: Why is that?

9 MR. STACH: It was intended to be  
10 residential units above a commercial use for  
11 the purpose of helping the commercial use to  
12 survive the economic conditions at the time  
13 the comp plan was written.

14 MR. MacCARTNEY: Right. So if the plan  
15 calls for any parking on the first floor to  
16 be the commercial use, that's not  
17 permissible.

18 MR. STACH: No, no. Well, that would be  
19 another interpretation. I would ask what's  
20 the parking serving. So is it parking  
21 serving the residences, that's clearly not  
22 permitted. Because the residential use is  
23 supposed to be on the upper stories. At  
24 least that's not what was intended. That was  
25 what was intended, correct.

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2 BOARD MEMBER GAZZOLA: Excuse me. You  
3 made a statement earlier, and maybe I  
4 misunderstood. I like simple language. You  
5 said that if there was a restaurant on the  
6 first floor or commercial, that there were no  
7 caps on the height of the building, you could  
8 go to any height. Is that correct?

9 MR. STACH: No. The height requirement  
10 is what is established by the zoning for  
11 restaurants.

12 BOARD MEMBER GAZZOLA: Who establishes  
13 it?

14 MR. STACH: The code, the bulk table.  
15 So if you go to the BU bulk district  
16 regulations, the table, every use is  
17 established a use group. And that use group  
18 has a height attached to it. So restaurants  
19 are assigned -- restaurants with drive  
20 through, because I can see it here, is use  
21 group D. So if you have a restaurant with  
22 drive through at use group D, you would then  
23 go to the bulk table, and use group D would  
24 allow you to build to --

25 BOARD MEMBER GAZZOLA: It's just



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2 because it's --

3 MR. STACH: 35 feet.

4 BOARD MEMBER GAZZOLA: Right. We have a  
5 thing with the master plan of 35 feet, except  
6 there are certain segments within the Town  
7 that can go to 45 feet. Okay. And I think  
8 this location that you're talking about has  
9 45 feet as the cap. But I thought what you  
10 earlier said, something about there was,  
11 like, no cap on if you had commercial on the  
12 first floor.

13 MR. STACH: I think what was posed to me  
14 by Mr. Anginoli -- I think you asked me the  
15 question about if the height was added, or  
16 was that you, Mr. Lynch?

17 BOARD MEMBER LYNCH: I don't recall  
18 right now.

19 MR. STACH: Yeah. Somebody asked me  
20 if you have a -- I'm sorry, maybe it was you,  
21 Mr. Keegan. Somebody asked me whether or not  
22 there's a requirement, like, you get a height  
23 for the underlying commercial plus you get an  
24 additional height for the residential. My  
25 answer to that was no. There's no separate

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2 height requirement for the residential, or  
3 allowance for height on top of what's allowed  
4 for commercial. So the commercial  
5 establishes the setbacks, the yards, the  
6 heights, all of the standards for the  
7 structure.

8 BOARD MEMBER GAZZOLA: It's just that I  
9 have some trepidation when you can maneuver  
10 back and forth. And you know, all of a  
11 sudden, we're going to wind up with something  
12 that we don't want.

13 MR. STACH: Understood. I understand  
14 that. And when I was first posed -- so when  
15 we first saw a conceptual development at the  
16 Planning Board, because I advise the Planning  
17 Board, my review memorandum did state that  
18 the FAR would apply to the residential  
19 sections. And it was not until I got the  
20 question from Mr. MacCartney and I went back  
21 in my notes that I realized we did discuss  
22 it, and it was not intended to apply.  
23 Because the idea was you might have some  
24 structures that are built too close to the  
25 FAR standard in the BU district, and it would

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2 preclude them having those second story  
3 apartments.

4 BOARD MEMBER GAZZOLA: Well, that's my  
5 concern.

6 MR. STACH: Understood.

7 MR. MacCARTNEY: Is the notes that you  
8 have in your recollection, my memory, my --  
9 without seeing the environmental impact  
10 statement, I thought that there was an  
11 inquiry by the Rockland County Department of  
12 Planning back in 2013 when this was enacted  
13 where they had asked -- one of their comments  
14 was that the criteria list for this mixed use  
15 zone should be expanded to also indicate that  
16 all of the bulk requirements for the BU  
17 zoning district must be met for the non  
18 residential use so as to ensure development  
19 does not result in an overutilization of the  
20 site. And that the Town Board's response was  
21 that it's implicit that all BU zoning  
22 district bulk requirements must be met, as no  
23 exception from such requirements are  
24 indicated in the special permit.

25 MR. STACH: That is correct.

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2 MR. MacCARTNEY: Is that correct? And  
3 how might that apply to what we're talking  
4 about here?

5 MR. STACH: I think that, again, the  
6 idea is that with regard to things like  
7 building height, setback, side yards, all of  
8 those factors, they would need to be met by  
9 the structure in order to, in order for it to  
10 receive an approval. The --

11 MR. MacCARTNEY: The underlying  
12 structure.

13 MR. STACH: The underlying structure,  
14 right. Again, because this was intended,  
15 again, not for new construction. It was  
16 intended for the addition of residential  
17 units to the, to an existing structure in the  
18 downtown. Either an existing space that's  
19 already a two-story or third-story space, or  
20 a single-story building that will build a  
21 second and third story.

22 That is not how it was written  
23 ultimately because I think there was a  
24 thought that you could end up having this  
25 situation where this second phase may take a

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2 long time to get through, that we were  
3 anticipating embarking on, to have these  
4 mixed use buildings. And so it ended up  
5 being transformed late in the stage, or late  
6 in the game to apply universally and not just  
7 so existing buildings.

8 And with regard to the FAR again, you  
9 are correct that it was phrased in the  
10 response by the Planning Board and the EIS  
11 that the existing bulk requirements would  
12 apply to the building, and therefore, we  
13 didn't need -- I believe Rockland County was  
14 asking us to have a second, or a unique bulk  
15 requirement for these mixed use buildings.  
16 So with mixed use buildings, we would have a  
17 letter C, or a letter E that was unique to  
18 them. And the response was well, we already  
19 have these buildings built to bulk  
20 requirements. We're going to keep the bulk  
21 requirements we have.

22 MR. MacCARTNEY: So it seems, though,  
23 the response of the Planning Board, or  
24 whoever gave that response, they were saying  
25 that all the bulk requirements, all the

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2 existing bulk requirements would apply. Not  
3 just the building height, but all of them,  
4 which would include the FAR. Didn't that  
5 stand to reason?

6 MR. STACH: Correct. The notes that I  
7 have regarding this FAR issue were separate  
8 and apart from that response.

9 MR. MacCARTNEY: So let me ask you,  
10 there's the issues of statutory construction,  
11 which is what the Board's tasked with right  
12 now. There's one, there's a number of things  
13 that apply. One of them, and I'll just give  
14 you a quote and I want to get your reaction  
15 to it to see how you think it falls on here.  
16 I know you mentioned that you didn't think  
17 that the Board had in mind when it enacted  
18 this, it was thinking about the situation  
19 where you have existing built out structures.

20 MR. STACH: Correct.

21 MR. MacCARTNEY: And then trying to  
22 disperse an economic development by allowing  
23 some residential above the existing  
24 structure.

25 MR. STACH: Exactly.

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2 MR. MacCARTNEY: They weren't really  
3 thinking about the situation where here,  
4 where it's just a fresh construction, or a  
5 demo and a fresh construction of a brand new,  
6 you know.

7 MR. STACH: Correct, correct.

8 MR. MacCARTNEY: So there's some law  
9 that talks about this in terms of when you  
10 try to figure out what the intent of the  
11 code, a code section is. And sometimes you  
12 have to look at what the result would be to  
13 see if it makes sense. And it says that  
14 where the literal construction of an act will  
15 produce results so extraordinary that they  
16 cannot be deemed to have been within the  
17 legislative intent. The general language of  
18 the act may be restricted so as to accomplish  
19 the general intent and purpose of the act.  
20 And that an ambiguous statute should be given  
21 a practical or workable construction. And  
22 that a practical interpretation is one which  
23 will prevent harm and mischief, and which  
24 will give life and force to a public body,  
25 which should always be sought if possible. A

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2       bad result always suggests a wrong  
3       construction.

4           So my question, hearing that as what  
5       some of the courts have talked about, can you  
6       give the Board some enlightenment as to  
7       whether the result here if applied, if no FAR  
8       applied here, is the result here so  
9       extraordinary that it couldn't be deemed to  
10      be within the intent of the Board, or it's  
11      not so extraordinary and it's not that far  
12      out of whack.

13          MR. STACH: Yeah. I would not be able  
14      to give you immediate judgment on that. I  
15      would probably have to review the plans in  
16      hand. I saw an early version. I don't know  
17      what the current version is.

18          I would say that again, to me, if  
19      somebody were to build an office building in,  
20      you know, a one or two-story office building  
21      in the BU district, and want to come in and  
22      add residences to it, or even a 45-foot  
23      office building and add residences to it,  
24      that is within the purview of what was  
25      intended by the law. If somebody wanted to



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2 add a second floor, we actually had an  
3 application for an office building that,  
4 where somebody had -- we actually had two  
5 applications. One was a dentist's office  
6 that was just south of the Stony Point Fire  
7 Department, where they had residential on the  
8 ground floor and the dentist's office on the  
9 upper floor. And this was used to reverse  
10 that.

11 Additionally, we had another application  
12 for -- I forget which office it is, where  
13 there is offices, one story, and they wanted  
14 to put residential above. I don't believe  
15 that in either case we would have, you know,  
16 if that office building on the first floor  
17 was approaching the FAR required by the code,  
18 and had ample parking, and met all the  
19 setback and open space and coverage  
20 requirements, that we would have looked at it  
21 being contrary to the code to put additional  
22 residences above it.

23 This, this, as what I saw when I first  
24 looked at it, there are portions of this  
25 building that aren't above commercial. There

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2       are portions of this building that are built  
3       at grade that have residences in them. There  
4       are portions of this building that has, when  
5       I last saw it, has parking below it, that I  
6       assume that parking is intended for the  
7       residences because you don't normally, when  
8       you build a residential building, have  
9       in-structure garage parking for commercial,  
10      and then the residential outside. It's  
11      usually the other way around. So usually, I  
12      assume it's residential parking.

13           I would say those are contrary to the  
14      intent of this. The idea is that you would  
15      have a ground floor commercial use with  
16      residences directly above it. Not that you  
17      would have a token land use on the ground  
18      floor in order to get residences above it.

19           CHAIRMAN WRIGHT: And you've seen some  
20      of the plans they're proposing here?

21           MR. STACH: I saw an early plan, yeah.  
22      I forget if it was in just for the TAC  
23      meeting, or if it was actually an official  
24      submission to the Planning Board. But I did  
25      review it. I did have a review memo in which

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2 I raised this issue about the FAR.

3 CHAIRMAN WRIGHT: Are you able to share  
4 that memo with us at all?

5 MR. STACH: Certainly. I think the  
6 Building Inspector should have a copy. I can  
7 certainly forward it to you as well.

8 CHAIRMAN WRIGHT: Thank you.

9 MR. STACH: You're welcome.

10 CHAIRMAN WRIGHT: Any questions for  
11 Mr. Stach?

12 BOARD MEMBER LYNCH: Did we ever  
13 received the plans to view of what they're  
14 intending? I'll tell you now, I didn't see  
15 any.

16 CHAIRMAN WRIGHT: I didn't see any. I  
17 know we, at the last couple meetings, we  
18 talked about them. I don't know if we saw  
19 them.

20 BOARD MEMBER ANGINOLI: Well, actually,  
21 at the last meeting --

22 CHAIRMAN WRIGHT: I don't think I saw  
23 them.

24 BOARD MEMBER ANGINOLI: -- we needed to  
25 see them.

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2           BOARD MEMBER LYNCH: We said we wanted  
3 the plans. And now they're just coming  
4 around for us to see for the very first time.  
5 So we're just listening to you right now,  
6 basically.

7           MR. STACH: Understood.

8           BOARD MEMBER LYNCH: Without knowing the  
9 intent of what was even being built.

10          MR. STACH: I'm happy to come back.  
11 Unfortunately, like I said, there was a bit  
12 of a mixup with the dates today. So I do  
13 have to head out the door.

14          CHAIRMAN WRIGHT: We may ask you to come  
15 back.

16          MR. STACH: Understood. And I'd be  
17 happy to do that. Thank you.

18          CHAIRMAN WRIGHT: Thank you. At this  
19 point, I'll ask the applicant or  
20 representative if they have anything they  
21 want to offer. Just identify yourself.

22          MR. DeGENNARO: Ken DeGennaro, engineer  
23 for the applicant, Brooker Engineering,  
24 74 Lafayette Avenue, Suffern, New York.

25          Yeah, to touch on some of those items,

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2       we did submit the concept plan that we had at  
3       TAC to the Zoning Board. So we can resubmit  
4       that if you'd like to review it. But again,  
5       I just, we talked about this last time. This  
6       is a very preliminary plan. It's based on  
7       the zoning interpretations, and it will  
8       change.

9           CHAIRMAN WRIGHT: Now, is that just in  
10       general, is that what Mr. Stach was referring  
11       to? Has he seen a copy of that plan, or?

12          MR. DeGENNARO: Yeah, I think we went  
13       to -- yes. We went to TAC three different  
14       times before this issue came up and, you  
15       know, we'd like to resolve it here.

16          So a lot of the questions that,  
17       especially a lot of part of the conversation  
18       dealt with specific site plan issues which  
19       are not yet determined. They're subject to  
20       TAC review, Planning Board review, and  
21       potentially, if we need relief from some of  
22       those items, to additional Zoning Board  
23       review.

24          In terms of the rooftop recreation area,  
25       right now, we are proposing a combination of

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2       rooftop recreation area and at grade  
3       recreation area in the rear of the property.  
4       So it's not the whole roof that is going to  
5       be used for recreation. I think we had about  
6       designated roughly an area of 6,000 square  
7       feet, which is just a small corner of the  
8       building. And that's subject to everyone  
9       else's input, you know, including how the  
10      architect ends up designing it.

11           Additionally, we did show some  
12      underground parking, which would be at the  
13      first floor. And the Building Inspector's  
14      interpretation is that you cannot have any  
15      accessory uses for the residential use on the  
16      first floor. So either we can eliminate that  
17      parking, or designate it for use of the  
18      commercial first floor structure. And the  
19      code is clear on that. There's no, you know,  
20      appealing that decision from the Building  
21      Inspector.

22           The way the topography of the site  
23      works, we do not have a full first floor  
24      commercial use for the entire layout at this  
25      point. We could potentially change it. So

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2 in the wings of the building as it, you know,  
3 projects to the west side, where it goes  
4 uphill, instead of having a commercial use in  
5 the back, that is -- it was buried, it's just  
6 at grade. So it only becomes three stories  
7 in the back at that location with no use at  
8 all on the first floor.

9 But again, those are site plan issues  
10 that we can, that we'll be discussing in  
11 detail based on the interpretation. Not  
12 interpretation, you know, based on the  
13 appeals that we're requesting tonight.

14 CHAIRMAN WRIGHT: And just so, I want to  
15 make sure I'm clear on this, so the appeal is  
16 that the floor area ratio is applicable to  
17 the residential portion of the project. And  
18 you're saying that it wouldn't be, per the  
19 Building Inspector?

20 MR. DeGENNARO: Correct. The  
21 determination was the floor area ratio that's  
22 listed in the bulk table for the office use  
23 is applied to the entire building. So we are  
24 appealing that because in the mixed use  
25 section of code, there are other limiting

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2 factors that limit the size of the building,  
3 namely the unit count that's allowed, and the  
4 size of the units. It was actually the  
5 minimum size requirement, as opposed to a  
6 maximum. And the parking that's required for  
7 each unit. And the recreation area that's  
8 required for each unit. So there was several  
9 other items in that portion of code specific  
10 to mixed use that are applied to this site  
11 that essentially prevent, you know, an  
12 overdevelopment, an overutilization of this  
13 site.

14 CHAIRMAN WRIGHT: So just to make sure,  
15 so you're saying the floor area ratio is not  
16 applicable. The residential portion of --  
17 the floor area ratio of the residential  
18 portion of the project is not applicable at  
19 this point.

20 MR. DeGENNARO: Correct. The floor area  
21 ratio applies to the first floor commercial  
22 use, or whichever use gets decided on. And  
23 not applicable to the residential use.

24 CHAIRMAN WRIGHT: Any questions from the  
25 Board?



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2           BOARD MEMBER KEEGAN:  Yeah, I have two  
3   questions.  My first question is the height  
4   of the building in this case is going to be  
5   45 feet.  Am I right about that?

6           MR. DeGENNARO:  Yes.  We do not  
7   anticipate asking a variance for building  
8   height.

9           BOARD MEMBER KEEGAN:  I'm sorry, what?

10          MR. DeGENNARO:  Yes.  It would be a  
11   maximum of 45 feet.  We will not ask for a  
12   variance for building height.

13          BOARD MEMBER KEEGAN:  When you say a  
14   maximum, are we -- is this building going to  
15   have an elevator?

16          MR. DeGENNARO:  Yes.

17          BOARD MEMBER KEEGAN:  Okay.  Will the  
18   elevator go past the roof, the floor of the  
19   roof?

20          MR. DeGENNARO:  However it's designed,  
21   yes.  So the roof might be flat with a peak  
22   on maybe one side.  You know, we're not sure.  
23   But certainly, however the code defines  
24   building height with respect to elevators, it  
25   would be part of the design.  So we'd have to

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2       design around that.

3           BOARD MEMBER KEEGAN:   Okay.   So it's  
4       possible this would be 55 feet or -- and it's  
5       going to have a staircase coming up to the  
6       top, I imagine.

7           MR. DeGENNARO:   Certainly, yeah.   If we  
8       have the rooftop recreation area, it would be  
9       both.

10          CHAIRMAN WRIGHT:   But I think at this  
11       point, you're still designing it.

12          MR. DeGENNARO:   Correct.

13          CHAIRMAN WRIGHT:   And you just need to  
14       finalize it.   And if you're going to exceed  
15       the variances, you come back to us for those  
16       things.

17          MR. DeGENNARO:   Yes, that is correct.

18          BOARD MEMBER KEEGAN:   The second part of  
19       the question was, I understood the previous  
20       fellow to say that the bulk requirements for  
21       the commercial would determine what went  
22       under the residential.   And now you're saying  
23       it doesn't apply.

24          MR. DeGENNARO:   Well, he, he said that  
25       in his notes that the floor area ratio was

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2 not. He said the other bulk requirements  
3 apply because they typically apply to the  
4 footprint of the building with respect to  
5 setbacks. So you have commercial use on the  
6 first floor, and that has its own  
7 requirements in terms of side yard setback,  
8 front yard setback, rear yard setback. So  
9 that applies to the entire building.

10 I mean, I guess you could cantilever it  
11 out. But, you know, we wouldn't. So we're  
12 limited by those bulk requirements for the  
13 first floor as applied to the entire  
14 building.

15 BOARD MEMBER KEEGAN: Well, what  
16 restrictions are on the building itself? I  
17 mean --

18 MR. DeGENNARO: The number of units.

19 BOARD MEMBER KEEGAN: We just --  
20 whatever we want there?

21 MR. DeGENNARO: No. It's the number of  
22 units that are allowed per acre. It's the  
23 minimum floor side, floor area of each unit  
24 that is required. It has to, units have to  
25 be at least 800 square feet. So that limits

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2       how densely you could develop.

3           BOARD MEMBER KEEGAN:  Do we have any  
4       idea how many units we're talking about?  How  
5       many?

6           BOARD MEMBER LYNCH:  80, 90 units, at  
7       the last meeting.

8           CHAIRMAN WRIGHT:  I don't think we're --  
9       I think the question here really, I mean --

10          BOARD MEMBER KEEGAN:  Well, I'm trying  
11       to determine what kind of limiting factor in  
12       the zoning code --

13          CHAIRMAN WRIGHT:  I know, but I'm just  
14       saying --

15          BOARD MEMBER KEEGAN:  -- governs this.

16          CHAIRMAN WRIGHT:  The question is about,  
17       he's asking for an interpretation on whether  
18       or not the FAR is applicable to the, floor  
19       area ratio is applicable to the residential  
20       portion of the project.  We're not really  
21       talking, we're not willing to -- we're not  
22       here to answer the density question right  
23       now.  That may be something that comes across  
24       next time.  That's not the issue before us.

25          BOARD MEMBER KEEGAN:  No, my -- after

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2 the question is, okay, if we're not using the  
3 residential FAR, right, we're using the  
4 commercial FAR. Is that right or not?

5 MR. DeGENNARO: That's correct.

6 BOARD MEMBER KEEGAN: You're saying that  
7 doesn't apply.

8 MR. DeGENNARO: We're using that for the  
9 commercial portion of the building.

10 CHAIRMAN WRIGHT: But there's still a  
11 residential question that's coming up.

12 MR. DeGENNARO: Right.

13 MR. MacCARTNEY: Yeah. What -- just to  
14 frame the discussion and the, to get you two  
15 speaking the same language is that the  
16 applicant is saying there's an FAR. The FAR  
17 applies only to the primary commercial use on  
18 the first floor. It does not apply to the  
19 residential use above it. But what you're  
20 asking is to say okay, if that's the case,  
21 then what limits you, what limits how many  
22 residential units you could put on there. If  
23 not for the FAR, what's the limit?

24 BOARD MEMBER KEEGAN: Exactly.

25 MR. MacCARTNEY: So that's the question.

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2 MR. DeGENNARO: So there are limiting  
3 factors to prevent the building from being  
4 too big. And the limiting factors include  
5 the parking that's required for each unit.  
6 You have to build a parking lot, you know.  
7 You can't put a thousand units in when you  
8 have to build 2,000 parking spaces. That's a  
9 limiting factor. The required recreation  
10 area, 200 square feet per unit, you have to  
11 find a place on your site to meet that  
12 requirement.

13 And the original building footprint,  
14 that's, you know, and the setbacks. Those  
15 really limit how big this building can be.  
16 It's not, you know, let's just make it as  
17 tall as possible and as big as possible.  
18 There are limiting factors.

19 So the zoning, the zoning code for this  
20 overlay district was meant to supplement the  
21 bulk table. The bulk table was never  
22 amended. There wasn't a separate section of  
23 the code, a section line item added to mixed  
24 use in the bulk table. The original bulk  
25 table remained the same. So when Max was

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2 speaking before, he did say that they didn't  
3 add a floor area ratio component to the  
4 overlay district because they wanted people  
5 to be able to build and not be limited by  
6 that.

7 MR. MacCARTNEY: So can I just ask you a  
8 followup question, then? Would it stand to  
9 reason also, would you agree, then, that the  
10 parking for the residential use can't be  
11 below the actual residential use that you're  
12 proposing?

13 MR. DeGENNARO: Correct.

14 MR. MacCARTNEY: Otherwise, there's no  
15 limits on anything you could do.

16 MR. DeGENNARO: Correct. And there, the  
17 code is very clear. Nothing on the first  
18 floor can be accessory to the residential  
19 use. So we can't have parking for the  
20 residential use on the first floor. And we,  
21 you know, it's very clear there's no, you  
22 know, appealing that.

23 CHAIRMAN WRIGHT: Can we just say that  
24 there's really no bulk table established now  
25 for the number of units you're going to put

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2 out there? You're not using the residential

3 one, and the commercial one doesn't apply.

4 Is there another floor area ratio that would

5 apply, or not?

6 MR. DeGENNARO: No, because it's limited

7 by the size of the units, the minimum size

8 that's required.

9 CHAIRMAN WRIGHT: So it's the size of

10 the units that are really going to tell

11 you --

12 MR. DeGENNARO: Yes.

13 CHAIRMAN WRIGHT: -- how many units you

14 can put in there.

15 MR. DeGENNARO: Yeah.

16 CHAIRMAN WRIGHT: In 4,000 square feet,

17 each one is 800 square feet.

18 MR. DeGENNARO: Yeah. It will be a

19 range from the early designs, probably 800

20 square feet to maybe up to 1200 square feet.

21 Again, that's subject to change and, you

22 know, pro forma and other items.

23 CHAIRMAN WRIGHT: Any questions?

24 BOARD MEMBER KEEGAN: Did you say how

25 many units were --



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2           BOARD MEMBER GAZZOLA:  Dave, I'd like  
3   you to participate in the answer.  My  
4   concern -- and maybe I'm out of order, tell  
5   me -- we have not seen a rendition, an  
6   architect's rendition of what this building  
7   is going to look like.  Okay.  Whether it's  
8   going to have the commercial stores on the  
9   bottom.  And if it is, what type of  
10   commercial stores.  Supermarkets,  
11   restaurants, medical offices, attorney's  
12   offices.

13           I mean, this is a major project for  
14   Stony Point.  And we are in need of ratables.  
15   But we have not seen a architect's rendering  
16   of what this thing is going to look like, and  
17   how many apartments, that it's going to be  
18   residential and commercial, total  
19   residential.  Is this too much to ask for?

20           MR. MacCARTNEY:  No.

21           CHAIRMAN WRIGHT:  Well, I think what  
22   they're saying is that --

23           BOARD MEMBER GAZZOLA:  What's that, Tom?

24           CHAIRMAN WRIGHT:  I think what they've  
25   been saying at this point is they really

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2 can't show us a rendering.

3 BOARD MEMBER GAZZOLA: I just think we  
4 should know.

5 MR. MacCARTNEY: Well, let me, let me  
6 address that, because it's a tough legal  
7 issue, right. Because, Mr. Gazzola, you're a  
8 hundred percent right, right. It's a big  
9 project, and you want to know what does it  
10 look like before you know, you know, how do  
11 you feel about this.

12 BOARD MEMBER GAZZOLA: How do you ask  
13 for approval, right?

14 MR. MacCARTNEY: On the other hand, you  
15 know, legally, when you're looking at it from  
16 what's presently before the Board, right,  
17 it's not a variance application. In a  
18 variance application, you'd be applying  
19 certain criteria, the five factors, and the  
20 balancing and weighing the benefits to the  
21 applicant against the detriment to the  
22 community, and the usual balancing test. And  
23 in that case, there's no question that you'd  
24 be entitled to, and you'd be remiss if you  
25 didn't ask for, you know, what's the project.

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2       You'd have to. You'd have to know what the  
3       project is in order to answer, you know, and  
4       apply the balancing test.

5           When you have a situation like this,  
6       where jurisdictionally, what's before the  
7       Board right now is an interpretation of the  
8       code, and it's understandable that you'd want  
9       to see the end result, but when the end  
10      result depends upon what the answer is, it's,  
11      it's, it is understandably difficult for the  
12      applicant. But we're not here to be easy on  
13      the applicant. We're here to follow the law,  
14      right.

15          So the law is, you know, you're supposed  
16      to look at the code, and listen to what the  
17      intent of the code was, and determine based  
18      upon the various statutory construction  
19      criteria that I can give you in a, you know,  
20      an attorney-client session, and tell you what  
21      standards apply and don't apply and so on.  
22      And typically speaking, it doesn't  
23      necessarily fall, or fall upon or change  
24      depending upon the actual project.

25          So it's a long-winded way of saying it's

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2 a little bit of a gray area. I understand  
3 why you're asking. But it's hard to ask an  
4 applicant who's not before this Board for an  
5 actual approval or for an actual variance to  
6 say show us each and every detail of your  
7 project when they haven't developed it yet.  
8 And the legal issue is what does the code  
9 mean, not are you approving our project.  
10 Because you're not approving the project.  
11 That's going to be the Planning Board, if  
12 they ever get that far.

13 BOARD MEMBER GAZZOLA: No, I hear you.  
14 But it's just that I get the impression we're  
15 being asked to approve conceptually. And  
16 later on, when it becomes reality, it's  
17 totally different. The taxpayers are mad at  
18 us for approving it, and why we didn't demand  
19 this, and why we didn't demand that.

20 CHAIRMAN WRIGHT: It will still be, it  
21 will still be a Planning Board to go through.

22 BOARD MEMBER GAZZOLA: Excuse me, Tom?

23 CHAIRMAN WRIGHT: It will still be a  
24 Planning Board to go through. Some, part of  
25 what we come up with here is to drive the

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2       design.

3           BOARD MEMBER GAZZOLA:   Well, we're also  
4       challenged to do a job, so.

5           CHAIRMAN WRIGHT:   I know, but the job  
6       here is interpretation.

7           BOARD MEMBER GAZZOLA:   Yeah.

8           CHAIRMAN WRIGHT:   The job here is an  
9       interpretation of the code, which is going to  
10      apply to anybody, it's not just here, right.  
11      This is we're just setting a standard. This  
12      is the first instance of hey, we're not sure  
13      what to do here. Coming to us, we apply the  
14      standard, or we make this, we make this  
15      decision, it could be, affect a whole bunch  
16      of other things we haven't even seen, haven't  
17      even designed yet. So.

18          BOARD MEMBER GAZZOLA:   I think you're  
19      right, Tom.

20          CHAIRMAN WRIGHT:   Anyway. Any other  
21      questions from the Board? Okay. All right,  
22      so. Does anybody have anything to say?

23          MR. HAGER:   I might be able to clarify a  
24      little bit for you guys. I'm John Hager, I'm  
25      the Building Inspector. Can you hear me

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2 okay?

3 CHAIRMAN WRIGHT: Yeah. If you could  
4 just identify yourself, Mr. Hager, and your  
5 job.

6 MR. HAGER: Yeah. John Hager, Building  
7 Inspector for the Town of Stony Point. Thank  
8 you.

9 So the application has not been  
10 officially brought to the Planning Board yet.  
11 It's been taken to a few of the TAC meetings  
12 which we had, which are a technical review to  
13 get the applicant ready for the Planning  
14 Board. And that's where these questions came  
15 up, and why interpretations were asked of me.  
16 And I rendered my interpretations or  
17 determinations, however you want to say it.  
18 And then these two that we're talking about  
19 were appealed.

20 But the application, the drawing that I  
21 sent around to you guys on the bulk table  
22 that's presented, they're looking at Use H  
23 from the BU zoning district, Column B, which  
24 when you go to the bulk tables, that is one  
25 of the only uses that gets you to the

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2       45 feet. So Use H is Number Seven on the  
3       Column B, office buildings for business and  
4       professional use including administrative  
5       scientific research and development training,  
6       and statistical, financial and similar  
7       purposes to connection with such use.

8               So the way I see this, I don't think  
9       you're going to see any retail on the bottom  
10      floor. It's all going to be some kind of  
11      office. And it's, there's a distinction  
12      between local office business uses and this.

13             So that's really one of the only ways  
14      that they're getting the 45 feet. Any of  
15      these other uses they choose would give them  
16      35 feet. And I think 35 feet, even with a  
17      flat roof, would only support a three-story  
18      building. So there's a limitation there of  
19      what can be on this bottom floor as far as  
20      these numerous uses allowed in that district.  
21      They narrowed themselves into that pretty  
22      small area of office, business, professional  
23      use.

24             CHAIRMAN WRIGHT: Any questions for  
25      Mr. Hager? If not, then --

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2 MR. MacCARTNEY: I just have one more  
3 question for Mr. DeGennaro on the other  
4 issue, the recreational use issue. Because I  
5 thought I heard Mr. Stach getting at what the  
6 intent was in regard to that recreational  
7 use, suggesting that there would be some  
8 green or permeable component to the  
9 recreational use, whether, wherever it may  
10 be. Would you agree with that, and if so,  
11 what are your, what's your position on that,  
12 and what would be your plans if it is placed  
13 on the roof?

14 MR. DeGENNARO: Well, for this overlay  
15 district, the code says at least 200 square  
16 feet of unpaved outdoor recreational area  
17 shall be provided per unit, except that such  
18 area may contain block paver in areas serving  
19 as a patio. So it specifically makes the  
20 exception that portions of the recreational  
21 area can be patio. So if there's a way to  
22 promote it more as green infrastructure, to  
23 develop a design that's more favorable to  
24 those that are reviewing it, we're certainly  
25 open to those suggestions. But our position



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2 is it's not a requirement as per the way it's  
3 written in the code.

4 MR. MacCARTNEY: So also, how do you  
5 square up the contrast between your answer to  
6 my earlier question, where you agreed with me  
7 that the parking can't be the primary  
8 accessory use, it can't be below the  
9 residential. It can't be, the parking can't  
10 be on the first floor servicing the  
11 residential above. How is that consistent  
12 with the idea of making the recreational use  
13 that's required for the residential use on  
14 the same building? Isn't, aren't they two  
15 mutually exclusive things? Either they're  
16 the same in both instances -- they have to be  
17 the same in both instances, don't they? Why  
18 would be the parking be allowed for the  
19 residential use below, but the recreational  
20 use permitted above the residential use on  
21 the roof?

22 MR. DeGENNARO: Well, the parking isn't  
23 allowed for the residential use on the first  
24 floor.

25 MR. MacCARTNEY: Right. I'm sorry, I

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2 may have misspoken. But my point is you  
3 can't use the parking, you can't have the  
4 parking for the residential use within the  
5 four corners of your building servicing the  
6 residential use above. So why should you be  
7 able to use the recreational, use the roof,  
8 which is just above? It's sort of the, it's  
9 the inverse, the flip flop to service the  
10 same recreational use. Each one is something  
11 that's required to permit the residential  
12 use, right. You need recreational use and  
13 you need parking. And if you can't put the  
14 parking below, why should you be able to put  
15 the recreation up above?

16 MR. DeGENNARO: Because the code does  
17 not want to see residential uses on the first  
18 floor of the structure. So if we're putting  
19 the accessory use, you know, on the roof,  
20 it's above the first floor.

21 MR. MacCARTNEY: But -- I'm not  
22 following that answer. Could you explain  
23 that again?

24 MR. HAGER: Dave, these are provisions  
25 that are under 215-92.2. The use table

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2       establishes the mixed use as a special  
3       conditional use. And then that takes you to  
4       this section of the code.

5           And it's got several things here, and it  
6       says residences shall be permitted by  
7       conditional use permit of the Planning Board  
8       in the BU district, subject to the following  
9       conditions. And it gets into some of these  
10      things, okay. Letter A, residential unit  
11      shall not be permitted in any ground story,  
12      or on any story located below grade or below  
13      a story containing a nonresidential use.  
14      Letter B, the ground floor of the building  
15      must contain a nonresidential use which is  
16      permitted or a conditional use permit  
17      nonresidential use within the BU zoning  
18      district.

19           So that Letter B is how I formed my  
20      interpretation that they can use a portion of  
21      the business floor, the bottom floor for  
22      commercial and business use, for parking as  
23      long as it's certainly associated with the  
24      commercial establishment and not offered to  
25      the residents for some kind of premium indoor

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2     parking. And it also has to be accessory.  
3     They can't fill up 85 percent of the building  
4     with parking and 15 percent with offices. It  
5     needs to be clearly, you know, incidental  
6     use.

7                 So that's how that interpretation came  
8     about. Again, this came out of the TAC  
9     meetings. Questions were asked. The  
10    interpretations were made. That particular  
11    interpretation was not appealed by the  
12    applicant. So they're in agreement with my  
13    interpretation that a portion of the ground  
14    floor can be used for commercial parking.

15                MR. MacCARTNEY: No, that's fine.

16                CHAIRMAN WRIGHT: Any questions from the  
17    Board?

18                BOARD MEMBER LYNCH: John, you have the  
19    zoning table, the general use requirements,  
20    215 attachment 11 up there.

21                BOARD MEMBER GAZZOLA: Calling out the  
22    names, John? We have a vote, we're going to  
23    vote? Are we voting?

24                CHAIRMAN WRIGHT: No. He's just asking  
25    a question of the Building Inspector.

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2 MR. HAGER: Which table?

3 BOARD MEMBER LYNCH: 215 attachment 11  
4 is what I'm looking at the Zoning Board here.  
5 And there's a list of actual businesses that  
6 could use in the conditional uses as by the  
7 Planning Board. Because we keep on saying  
8 office buildings. But I can only read on my  
9 print right here one, two, three, and four,  
10 you know, but I'm missing five, six, seven,  
11 and eight. Like, one of them is restaurants  
12 with drive through service, automobile sales  
13 subject to --

14 MR. HAGER: Yeah, my table has 1 through  
15 15 for uses permitted by right. And it  
16 has --

17 BOARD MEMBER LYNCH: A day care center.  
18 Commercial recreation establishment greater  
19 than 4,000 square feet including -- it's  
20 getting too small for me to read.

21 MR. HAGER: Yeah. You want me to read  
22 you a specific one here?

23 BOARD MEMBER LYNCH: Yeah. Well, just  
24 yeah. Just read five, six, seven, and eight.

25 MR. HAGER: Five is wireless

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communication facilities on existing buildings as per A 1 B, subject to Article X. Six is wireless communications facilities on existing structures as per A 1 C. And seven is office buildings for business and professional use -- that's the one I just talked about -- including administrative or scientific research and development training, statistical, financial, and similar purposes to connection with such use.

BOARD MEMBER LYNCH: All right. We're looking at a different table.

MR. HAGER: This table was last revised September 1, 2015.

BOARD MEMBER LYNCH: September 1, 2015. And this came with the application that was sent to us. This bulk. And you just read things that weren't on there.

MR. HAGER: The revision date is at the bottom right corner of my sheet.

BOARD MEMBER LYNCH: Yup.

MR. DeGENNARO: I believe the use table that was submitted with the application is the one that John is referring to. And so

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2 just to clarify --

3 BOARD MEMBER LYNCH: You want to see  
4 your application, and what was sent to us,  
5 and your attachments right there? I'm  
6 talking about this column right there.

7 MR. DeGENNARO: Right, right. So  
8 it's -- you're looking right here.

9 BOARD MEMBER LYNCH: Right. The  
10 conditional use for the BU.

11 MR. DeGENNARO: Right. So this is the  
12 use. And this is the use group. So Number  
13 Seven applies to H. So this is a complete  
14 table.

15 BOARD MEMBER LYNCH: Okay. All right.  
16 Thank you.

17 MR. DeGENNARO: And as John read.

18 BOARD MEMBER LYNCH: Okay. He was  
19 reading Column One, I was reading Column Two.  
20 That's fine.

21 MR. DeGENNARO: Yeah. Yeah.

22 MR. HAGER: Now, unfortunately, the  
23 conditional use that's in the 2015 92 doesn't  
24 show up in this Table C here. So it does not  
25 have a use group associated with it. It's

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2       one of the reasons that there's confusion,  
3       and that there's questions asking for  
4       interpretation on this matter.

5           BOARD MEMBER LYNCH:   Exactly.

6           MR. HAGER:   As Max had testified, you  
7       know, at the time, I guess they wrote this  
8       mainly with existing buildings and existing  
9       scenarios in mind.  They had intentions of  
10      coming back and expanding on that code, and  
11      they probably would have added it to this  
12      column and created a use group for it.  But  
13      that did not happen.  So we're stuck using  
14      the code we have as written.

15          BOARD MEMBER LYNCH:   All right.

16          CHAIRMAN WRIGHT:   Any other questions?

17      All right.  With that, then, unless there are  
18      any objections, I'll go ahead and open up to  
19      any members.  So members of the public, if  
20      you want to speak, what's before us isn't the  
21      approval of the plan.  We've been asked to  
22      take a look at some interpretations that the  
23      Building Inspector made and apply them, and  
24      then those will go back to the Planning  
25      Board.  And the site plan and the like will



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2       be, go ahead and approved by them or not  
3       approved by them.

4           So feel free to speak, but please feel  
5       free to speak within two areas, right. One  
6       is the interpretation as to the floor area  
7       ratio which is that does the business  
8       floor -- does the residential floor area code  
9       apply. And the other one is they want to  
10      split recreational area between two different  
11      spots. One would be on the top of a roof.  
12      The other would be someplace else on the  
13      property.

14          So those are the two areas. If you want  
15      to comment, please comment. There's a lot of  
16      people here, so we'll limit your comments to  
17      three minutes. But I'll go ahead and ask for  
18      anybody who wants to speak, just please  
19      approach the microphone, identify yourself  
20      and your address. And three minutes. Sir?

21          MR. MORAN: I'm going to look at the  
22      people I'm talking to. This determination --  
23      this gentleman is going here right now to  
24      find out what he's allowed to do?

25          CHAIRMAN WRIGHT: One second.

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2           BOARD MEMBER ANGINOLI:  Who are you,  
3   sir?

4           MR. MacCARTNEY:  Hold on.  You haven't  
5   identified yourself.

6           MR. MORAN:  Mike Moran, Stony Point.  
7   Been in this county for 51 years.  
8   Stony Point resident for the last 20.

9           CHAIRMAN WRIGHT:  Your address?

10          MR. MORAN:  7 Govan Drive --

11          CHAIRMAN WRIGHT:  One at a time, please.

12          MR. MORAN:  7 Govan Drive, Stony Point,  
13   New York.

14          CHAIRMAN WRIGHT:  Okay, thank you.  Go  
15   ahead.

16          MR. MORAN:  My question is you're asking  
17   this gentleman, we're here tonight to see  
18   what he's allowed to do?

19          CHAIRMAN WRIGHT:  No, that's not what  
20   we're -- our job is to -- he's come up to us.  
21   The Building Inspector has made a couple of  
22   determinations.  He's made some  
23   interpretations of the building code.  They  
24   disagree with his interpretation.  They're  
25   asking us to go ahead and review that based

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2 on the testimony he's given, testimony he's  
3 given, and the building code. So it's not --  
4 we are not here, we're not here on the act of  
5 saying we're going to take this and we're  
6 going to approve this, or it has nothing to  
7 do with us. The building, the Planning Board  
8 will do that. We're just here to give an  
9 interpretation on a couple different codes.

10 MR. MORAN: So the question is no one  
11 knows how high this building is going to be,  
12 how many units there's going to be. You guys  
13 are using the interpretations of FARs, bulk,  
14 BU. A lot of us don't understand. You got  
15 to come down to at least my level and explain  
16 what, what's the ratio. Give us some  
17 comparison.

18 CHAIRMAN WRIGHT: Well, part of what --

19 MR. MORAN: What's this building going  
20 to look like is the most important thing. We  
21 all, we all here know. We don't want a  
22 Kiryas Joel on 9W. That's that.

23 CHAIRMAN WRIGHT: All right. Are there  
24 any other comments, please?

25 MS. CAREY: Megan Carey, 27 Waldron

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2       Drive, Stony Point. This is my main concern.  
3       The height of the building. Which is, from  
4       what I am to understand, 45 feet from 9W.

5           CHAIRMAN WRIGHT: Sorry, just real  
6       quick. I'm not -- we're not here, we're not  
7       approving the height of the building right  
8       now. So that would be -- if it was out of  
9       compliance, we would be here.

10          MS. CAREY: Well, my understanding is  
11       that is what the interpretation is. I want  
12       100 percent to get rid of the crack den that  
13       is 111 South Liberty Drive. My house has  
14       been broken into three times since I moved in  
15       there 25 years ago. My mother-in-law's house  
16       happened to be Mike Moran's house, and they  
17       never had any issues. My entire neighborhood  
18       is very concerned about what's going to  
19       happen here. I would really love for it to  
20       be developed and not be what it is right now.  
21       My main concern is the height of the  
22       building.

23          CHAIRMAN WRIGHT: And we just don't want  
24       to mislead the public into saying we're  
25       approving or disapproving a building of 45 --

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2 that's not before us. That's not before us.

3 What this -- you saw this is the first time  
4 we got, these are preliminary plans. They  
5 really can't come up with the detailed plans  
6 until they have our interpretation. So  
7 there's a catch 22 here that we're trying --  
8 believe me, we're just as frustrated as you  
9 are. We'd love to see what do you want to  
10 put in there. But they're not going to have  
11 that until we make an interpretation. Then  
12 they'll go to the Planning Board. And if  
13 there are issues, they'll come back.

14 MS. CAREY: I personally am saying to  
15 you approve this. All right. Thank you.

16 CHAIRMAN WRIGHT: Anyone else?

17 MR. HART: Hi. Greg Hart, 5 Rochelle  
18 Court.

19 CHAIRMAN WRIGHT: I'm sorry, your name?

20 MR. HART: Greg Hart. Yeah. My  
21 concern, what I was concerned about here was  
22 you had said previously that it was the, you  
23 know, when the law is nonspecific or, you  
24 know, it's about kind of the practical usage,  
25 the application of the zoning laws and the

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2 rules on this. And is there some sort of  
3 mechanism to kind of eliminate an obvious  
4 loophole? Because it doesn't seem like, it  
5 doesn't seem like they care what the  
6 commercial purpose is. The whole point is to  
7 get the building to a height to have a water  
8 view to sell some expensive apartments.

9 So it seems like there's some sort of  
10 disingenuous representation of, you know, of  
11 what's going on here, of saying well, we  
12 don't need to have all that green space  
13 because we found this loophole at the bottom  
14 floor of it being completely commercial. And  
15 there's no, you know, they haven't said -- I  
16 know the plans aren't done of what that's  
17 going to be. But it seems like when you  
18 said, you know, when the law isn't exactly  
19 specific about this, it should be the best  
20 intention of what the law was meant to do.

21 If the example that the first gentleman  
22 who spoke said was to put, allow a business  
23 owner to add one apartment on, then that was  
24 what the purpose of the law was. The purpose  
25 of the law was not to figure out a way to put

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2 some commercial property on the first floor  
3 and then build up as high as you can per the  
4 law. It wasn't the original intention.

5 And therefore, I think that the  
6 practical application of all of the rules  
7 here, you know, should say this is not  
8 allowed, that the FAR should not be removed,  
9 that the green space should be continuous.  
10 And you know, isn't that in place not only  
11 for the quality of life of the people there,  
12 but to preserve the character of the Town?

13 So the answer to me, the interpretation  
14 here is that they're just looking for a  
15 loophole to build as big of a structure as  
16 possible. And I don't think that's what the  
17 intent of the law was. And I implore you to  
18 keep that in mind when you make your  
19 decision.

20 CHAIRMAN WRIGHT: Thank you, sir.

21 MS. NAGLE: Hi. Dorothy Nagle, 26 Govan  
22 Drive.

23 BOARD MEMBER ANGINOLI: Please speak up.

24 MS. NAGLE: Oh. Dorothy Nagle,  
25 26 Govan --

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2           BOARD MEMBER ANGINOLI:   You can bend  
3   that down.   Bend the microphone down.   Bend  
4   it down.

5           BOARD MEMBER DAVIS:   It bends.

6           MS. NAGLE:   How is that?   Okay.   It's  
7   actually a pretty quick question.   Does  
8   Stony Point actually already have rooftop  
9   recreation anywhere?   Have they allowed that  
10   before?   Specifically in residential?

11          CHAIRMAN WRIGHT:   Don't know.

12          BOARD MEMBER LYNCH:   Not that I'm aware  
13   of.

14          MS. NAGLE:   I'm just wondering what that  
15   would look like.

16          PUBLIC SPEAKER:   What was the question?  
17   We can't hear.

18          MS. NAGLE:   Oh.   Whether --

19          CHAIRMAN WRIGHT:   The question was is  
20   there rooftop recreation anywhere else in  
21   Stony Point.

22          MS. NAGLE:   Has it ever been approved  
23   before?

24          CHAIRMAN WRIGHT:   I don't know the  
25   answer to that.



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2 MR. MacCARTNEY: I know the issue has  
3 not come before this Board for sure.

4 MS. NAGLE: Okay. That's it.

5 CHAIRMAN WRIGHT: Are there any other  
6 questions for this?

7 MR. MAHER: Good evening. Kevin Maher,  
8 130 Central Highway, Stony Point.

9 In regard to the green space on the  
10 roof, you have to understand green  
11 infrastructure is not meant for recreation.  
12 It's meant more for storm water management.  
13 So you've got to be more concerned about  
14 that, especially when you're redeveloping a  
15 piece of property. The State requires that  
16 you reduce the runoff by 25 percent. You  
17 have to. So the green roof should really be  
18 restricted to storm water management only.  
19 If you start mixing it with recreational  
20 usage, you're going, you could damage its  
21 use.

22 And -- but I have more, much more  
23 important point to bring out here. When I  
24 reviewed the meeting minutes, I noticed that  
25 Bill Sheehan testified on behalf of

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2 Mr. Lieberman. That's a violation of the  
3 Town's code of ethics. Section 15 6 C says  
4 no municipal employee is allowed to testify  
5 on behalf of any applicant except for himself  
6 or herself. Therefore, it's my opinion that  
7 any testimony he's given should be stricken  
8 from the record. It's not legal. Thank you.

9 CHAIRMAN WRIGHT: Any other questions  
10 from the public?

11 MS. CAREY: I'm sorry, but I just  
12 testified as a public official. Should it be  
13 stricken from the record?

14 MR. MAHER: You testified as a resident.

15 CHAIRMAN WRIGHT: Let's just -- we'll  
16 just accept everybody's testimony here. It's  
17 a public hearing.

18 MR. HART: Can I ask one more question?  
19 How, I don't understand --

20 MR. MacCARTNEY: Just again, for the  
21 record, identify yourself. I know we know  
22 you're Greg Hart, but.

23 MR. HART: Yeah. Greg Hart. Thank you.  
24 5 Rochelle Court. How does the elevator  
25 structure going above the 45 feet not count

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2 towards the height of the building? I don't  
3 understand that.

4 CHAIRMAN WRIGHT: That's -- I understand  
5 the question. It's not before us right now.  
6 But if it comes up there, then we'll address  
7 it. Thank you. All right. Hi.

8 MR. MULLIGAN: I have a question.  
9 George Mulligan, 4 Liberty Square Mall,  
10 Stony Point. And in listening to the  
11 comments tonight, what my question would also  
12 be, was it the intent of our law change to  
13 allow commercial occupancy on one story, and  
14 then actually construct up to three stories  
15 of residential above that? Was that the  
16 intent at the time of those who enacted this  
17 law? My understanding was it wasn't. But  
18 that's why I'm raising the issue tonight.

19 CHAIRMAN WRIGHT: Thank you very much.

20 MR. MULLIGAN: Okay. Second, there's a  
21 second point that is not going to address the  
22 two issues that are before your Board. But  
23 just for informational purposes here, this  
24 past summer, there was a private company  
25 drilling in the field just south of Liberty

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2 Square Mall. I went out and approached the  
3 contractors, and said what's going on. And  
4 they said we're doing this for the Department  
5 of Environmental Conservation. You will have  
6 to contact them. Which I did, and I got a  
7 case number.

8 And what I was told, and this could be  
9 wrong, they were drilling because of 125  
10 South Liberty Drive, Gabriel Manufacturing  
11 Company, a number of years ago had been  
12 designated as a hazardous waste site. And in  
13 this information that I printed off from DEC,  
14 the last sentence says the Gabriel  
15 Manufacturing site was reclassified to a  
16 Class Two significant site in 2001.

17 So just, I just want to bring this out.  
18 And although I realize, Mr. Wright, that is  
19 not why you are here tonight, but I just want  
20 to make this as part of the public record  
21 because it -- something doesn't quite seem  
22 correct right now. Thank you.

23 CHAIRMAN WRIGHT: Thank you, sir. I  
24 appreciate it. All right. With that, then  
25 unless there are any other questions from the

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2 public, or anybody from the Board have a  
3 question, anybody, we'll go ahead and move on  
4 to -- we have a couple of new applications,  
5 I'm not sure if they're here. Request of  
6 Bruce Miller, Application Number 21-17, area  
7 variances from the requirements of Section  
8 215 -- thank you for coming, everybody.

9 (Time noted: 8:10 p.m.)

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3 THE FOREGOING IS CERTIFIED to be a true  
4 and correct transcription of the original  
5 stenographic minutes to the best of my ability.  
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Jennifer L. Johnson  
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