

STATE OF NEW YORK : COUNTY OF ROCKLAND

TOWN OF STONY POINT : PLANNING BOARD

----- X

IN THE MATTER

OF

DUNKIN DONUT/MINI MART

AT WILLOW GROVE ROAD

----- X

Town of Stony Point
RHO Building
5 Clubhouse Lane
Stony Point, New York
October 26, 2017
7:00 p.m.

BEFORE :

THOMAS GUBITOSA, ACTING CHAIRMAN
ERIC JASLOW, BOARD MEMBER
PAUL JOACHIM, BOARD MEMBER
EUGENE KRAESE, BOARD MEMBER
JERRY ROGERS, BOARD MEMBER
MARY PAGANO, CLERK TO THE PLANNING BOARD

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Proceedings

CHAIRMAN GUBITOSA: All right, we're going do start in a second. There's a sign up sheet if you'd like to speak at the public hearing tonight. There's a sign up sheet by the desk. So if we can please stand for the pledge.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRMAN GUBITOSA: All right. Mary, just call the role, please.

THE CLERK: Mr. Joachim?

BOARD MEMBER JOACHIM: Here.

THE CLERK: Mr. Jaslow?

BOARD MEMBER JASLOW: Here.

THE CLERK: Mr. Rogers?

BOARD MEMBER ROGERS: Here.

THE CLERK: Mr. Kraese?

BOARD MEMBER KRAESE: Here.

THE CLERK: Chairman Gubitosa?

CHAIRMAN GUBITOSA: Here. Okay, good evening. If you have a cell phone, just put it on silent.

All right, tonight we're going to have

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Proceedings

the continued public hearing for Dunkin' Donuts. This is the Dunkin' Donuts mini mart at Willow Grove Road. And it's the continued public hearing. Mr. Zigler? Oh, we have -- go ahead.

MR. JOYCE: We're having a continuation tonight of the public hearing for the mini mart that's --

CHAIRMAN GUBITOSA: Just state your name for the record.

MR. JOYCE: Dwight Joyce.

CHAIRMAN GUBITOSA: All right, sorry, go ahead.

MR. JOYCE: That's okay. For the mini mart. At the last meeting, as you know, Mr. Zigler had outlined what the plan is. The only difference between the map that's hanging there now, there's only a couple differences. One of them, there is a canopy that was on the front which we removed. There was some installation of some trash receptacles throughout the property and of the exits.

And the rest of the night, I wanted to

1 Proceedings

2 hear more comments from people as they came
3 in to see if there's something else we can
4 incorporate in the plan that may benefit the
5 community.

6 CHAIRMAN GUBITOSA: All right. Now, the
7 same plan up that's up here, they're in the
8 back, the same plans?

9 MR. JOYCE: Yes.

10 CHAIRMAN GUBITOSA: Yes. Okay, I just
11 wanted to make sure so the public can have
12 the chance to look at them.

13 MR. JOYCE: Yes. So at this point, I
14 would ask if the Board wants, they can have
15 more public comment.

16 CHAIRMAN GUBITOSA: All right. We're
17 going to open the public hearing. Any
18 comments from the Board first, or should we
19 open it up to the public? Public? Let me
20 just grab the sheet.

21 All right, first up for the public
22 hearing, Karla Phillips. Come on up, right
23 up to the podium, and just address the Board.

24 And just, I don't know if -- for those
25 who have not been to a public hearing before,

1 Proceedings

2 it's more just to hear your comments. It's
3 not like a question and answer, so we're not
4 going to answer any questions now. We're
5 just going to be taking your comments.

6 MS. PHILLIPS: Okay.

7 CHAIRMAN GUBITOSA: Go ahead. Yeah,
8 we're going to try to -- if you can keep them
9 under five minutes, but if you have to go on,
10 we'll let you go on a little. Go ahead.

11 MS. PHILLIPS: Gentlemen, you have all
12 been appointed by the previous or current
13 administration to represent and protect all
14 the residents of Stony Point and its
15 development, not just the commercial
16 non-resident. I remind you that I am a
17 longtime tax paying resident of this town,
18 family going back generations. I, and a good
19 portion of the neighbors, have been at every
20 one of these meetings since January, now ten
21 months.

22 There have been informal presentations,
23 ones at which we weren't allowed to speak.
24 Yes, there are emotions. But the demeanor of
25 this Board at the public hearing on

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Proceedings

September 28th was arrogant, defiant, defensive, and downright rude.

There was no shouting, disrespect, or threats from the audience. The attorney, Kevin Conway, and planner, Peter Pulice, presented using a level tone. Yet the acting chair, in a derisive tone, asked the names of who the attorney was representing, not once, but several before an answer could even be given.

When I rose and walked toward the Board to deliver old photos of the station being constructed prior to speaking, I was basically yelled at, told I wasn't allowed to speak, that my attorney had already spoken. That was when I became the proverbial deer in the headlights. A neighbor yielded his time to me. Then I was told forcefully to go to the podium and only speak to the Board.

Many of the neighbors speaking were questioned. Many felt body language and tone of the Board. The Board asked no questions of the presenters this evening.

Some neighbors, and even I have been

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Proceedings

told by Board Members and some employees that there is nothing that can be done. This will be built. It has also been stated that this is the first time we are seeing or hearing this.

I have foiled each and every map and paper and, where existed, transcripts since January. We have been told this is a done deal. And yet, still we are here. Yet again, no questions and comments, like we've not seen this, or this is the first time.

Each and every time I have foiled and picked up plans, there has been something bigger added to them. Surprise. Including last month, when a 2,000 gallon grease trap was one of the additions. Hmm. That was when oh, we're adding pizza and ice cream was mentioned quietly in the presentation. That's the equivalent size trap for a regular Papa John's or Pizza Hut.

Now, let me add something to put this into perspective. In 2006, I needed to repair and replace a deteriorating cinder block back steps and aluminum awning over

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Proceedings

them on the east side of the house. I did the right thing and paid the almost \$200 for a permit and submitted plans for an eight by eight, or 64 square inch back porch.

Then I was told that zoning had changed sometime in the 90s. I would need to obtain a new permit and go to the Zoning Board of Appeals. I was told that my eight by eight porch could adversely affect my neighbors to the east. Hmm, squirrels, trees, and the station.

That made me angry, but I decided to reduce the size and move on. Thought why do I need to jump through hoops and pay for another permit. Oh, and I did it correctly, it was approved, and I got a CO.

Those same neighbors on the east did major landscaping and put up a chain link fence. I was told by one of the managers this was to prevent litter coming onto the street and my property.

That same fence was subsequently cut and opened up on the Algonquin side because the customers complained they couldn't get

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Proceedings

through it. The customers then come through, stand by their cars, litter, or sit on the bank on my side of the street and leave their litter. All customer generated, not neighbor.

Why do they not have to go to the Zoning Board of Appeals for a use change, large addition including second story to the building, and major development of the land? Point being, are the rules for some permits, and Zoning Board of Appeals, just for some, and not the same for all?

Why is there a big appearance of inequities in this? Why is it that most comments are they have the right, or this will be built? But the neighbors are being poo poed.

This building, a very large commercial building, does not belong in a rural residential zone, period. There are at least 300 signatures against this expansion/use change on the petition presented to this Board on September 28th. Has the Board looked at it?

1 Proceedings

2 It seems rules and procedures are only
3 for the commercial, not for the residents.
4 And again, this is not a commercial corridor.
5 This is a rural residential non-conforming
6 use.

7 I would hope this Board takes a good
8 look at its behavior towards the tax paying
9 regular citizens of Stony Point, and a big
10 step back in their demeanor. It seems
11 awfully clear that new prescriptions, hearing
12 aids, homework, whatever, manners, how a
13 public hearing is held needs to be
14 investigated by those in power.

15 All taxpayers have a right to speak. I
16 was embarrassed needlessly, yelled at
17 needlessly. All I can say is shame on you,
18 and I hope that you were taught better
19 manners by your parents.

20 CHAIRMAN GUBITOSA: Can you just give it
21 to the clerk? Sorry, we have a record.
22 Thank you, Ms. Phillips. Kevin, is it Conway?

23 MR. CONWAY: Conway.

24 CHAIRMAN GUBITOSA: Could you just spell
25 the last name?

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Proceedings

MR. CONWAY: C-O-N-W-A-Y. Thank you, Mr. Chairman. I'm going to limit my remarks, and I'm not going to cover what we talked about last time.

The Board may recall, we discussed with the Board last time both the case law authority and the requirement for the Planning Board to refer this to the Zoning Board for determination whether or not this is an enlargement, and an unlawful enlargement for a preexisting non-conforming use. I still hope that this Board undertakes that step at the conclusion of the public hearing. Otherwise, I believe this Board makes that decision, if it does not, at its own legal peril.

We talked about the case law authority last time, where even with applicants, when they -- there was one warehouse application where they changed their storage equipment from wood to a metal type storage equipment. And even in that case, that was found to be an enlargement, unlawful enlargement of a preexisting non-conforming use.

1 Proceedings

2 So I would implore you to consult with
3 your attorney to determine to review the case
4 law authority. Because case law authority
5 clearly does not permit something of this
6 size to go from 1400 square feet to the
7 original, what was planned, to 4,000 square
8 feet, and I think now, in the ever changing
9 application, I think now we're down to 3400
10 or 3600. But clearly, the case law, when
11 they look at enlargements, there's no cases
12 that I saw that would permit anything of this
13 scope and scale.

14 Tonight, I want to just briefly touch on
15 additional case law authority that deals with
16 Planning Board review and scope, because
17 Zoning Board deals with variances, Zoning
18 Board deals with whether or not there's been
19 enlargement, Zoning Board deals with whether
20 or not an applicant has met a financial
21 analysis, a burden to show why it's needed.
22 That's not dealt with here at the Planning
23 Board.

24 However, there's a case reported from
25 Judge Alfieri, which I'll provide after

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Proceedings

tonight, that deals with the Town of Haverstraw Board. It was the Green Earth Farms case versus Town of Haverstraw where Judge Alfieri ruled that there had been a substantial change in the applicant's site plan from what was originally proposed, a mixed use residential and commercial units.

And as a result, as the plan evolved from beginning, to when it was first presented, to when it was ultimately decided, it had morphed, as this one has even tonight, there's been further changes, the applicant changed the plan from originally a 1500 square foot deli, coffee shop, to a 7,000 square foot gas station and convenience store. Judge Alfieri held that was unlawful segmentation, and a substantial change from what was previously proposed.

So that's different than the analysis that the Zoning Board deals with, whether or not this is an unlawful enlargement. This case dealt with what an applicant presented originally to the Planning Board.

And then ultimately, when the Planning

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Proceedings

Board was asked to decide, the plan had changed substantially from what was originally proposed, and the court determined it was not permitted, and the court determined that it was unlawful segmentation. I will provide that to your attorney and to the Board.

And then finally, what I wanted to cover tonight, Peter Pulice, who could not be here tonight, rendered a supplemental report different than what he -- he covered last time your local code with regard to what a Planning Board is supposed to determine, and all the factors that as Planning Board is supposed to look at with regard to each and every application, and as opposed to what a Zoning Board does.

So I'm not going to recover that area, but I am going to present for the Board's review a copy of his supplemental report. I'm just going to read from a couple portions of it.

And basically, it's not nice to say, but it needs to be said, this application doesn't

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Proceedings

work, clearly, in a residential neighborhood, even with the grandfathering. According to Mr. Pulice's analysis, it doesn't work either if this was just surrounded in a commercial or a business zone where it really properly belongs, because the site itself, with the traffic, the ingress and egress, and the lack of details -- I mean, I look at a lot of site plans. And this site plan, I propose to the Board it still looks like a blank check, where there's no information with regard to the second floor, what's on it. We're told it's warehouse, but there's no details.

The first floor, we're told it's a restaurant, grocery store, convenience store, mini mart, Dunkin' Donuts. And when it morphed into a Dunkin' Donuts, that was after you heard Mr. Griffin testify last time, it was no Dunkin' Donuts proposed then. So all those various uses and things that are going on require clarification.

Even if it were otherwise legal to present to this Board, I don't believe it is, but where is that clarification of the plans?

1 Proceedings

2 There's all that empty, that open space on
3 the first floor. We heard last time maybe
4 it's a pizzeria, maybe there will be a
5 Dunkin' Donuts.

6 Where are the tables? How many people
7 are going to be occupying that? The
8 upstairs, is it going to be apartments? What
9 is it going to be? An upstairs warehouse
10 with an elevator, that doesn't make sense
11 from a practical standpoint.

12 So this isn't a guessing game where we
13 have to discern what the applicant's truly
14 asking for, what they're going to do in the
15 future. It's not a guessing game for you,
16 it's not a guessing game for the public. The
17 applicant's required legally to present to
18 you what it is and what it's not going to be.

19 And I submit to you that hasn't been
20 accomplished even as we stand here tonight.
21 The application keeps changing as issues are
22 brought up. But we still don't know
23 definitively what's it going to be, what's
24 the use going to be?

25 This is hardly anything that it was,

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Proceedings

originally a 1400 square foot mom and pop gas station and convenience store. It's morphed into something that you would see on a Route 80 or a Route 81 next to the highway, not in a residential area. That's what this has morphed into. But the detail, lack of detail in the interior are what's troubling, and why Mr. Pulice believes this wouldn't work even if we were having this discussion and it was not an residential neighborhood that surrounds it.

Specifically, some of the things Mr. Pulice points out, the first floor plan clearly indicates that the front, the portion of the left and right side walls will remain intact. However, a new storage structure is proposed, a construction around a small portion of the existing one story building. As the proposal is for altering the existing one story by more than 50 percent, the applicant should in fact be seeking a new use variance within the RR zone.

The architectural plans are incomplete as they do not offer any information,

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Proceedings

location, or specifications on the following essentials as required for you as the Planning Board for municipal review. Including the kitchen exhaust ventilation systems equipment; retail cooler compressors locations, that's lacking; rooftop equipment; HVAC equipment. Where is it going to be on the plan? Building and lighting; building signage; freezer compressors; proposed kitchen equipment; fire suppression systems.

And most important, occupancy calculations. And what type, restaurant? Where are people going to sit or be seated? I didn't see any of those details either on the site plan last time, or even the architect's rendering.

He goes on that the existing use is non-conforming. It's located in the RR zone, as we know. The proposed addition is substantial and exacerbates the nonconformity in a manner that will have a detrimental effect and impact on the residential zone.

The review of the bulk tables, they're using the RR zone bulk tables, which

1 Proceedings

2 Mr. Pulice and myself both agree should not
3 be the case. Merely because it's located in
4 a residential zone does not get them off the
5 hook with the bulk tables for the commercial
6 zone or the business zone. That's what they
7 should be using here in the BU zone.

8 It's improper or it's, in my opinion,
9 it's not honest to present this as a
10 residential -- it might be in the residential
11 zone as grandfathered, but to utilize the
12 residential tables gets them off the hook
13 with a lot of detail and clarifications that
14 haven't been presented to date.

15 He goes on to say that the size isn't
16 suitable for the proposed additional
17 development. The new off street loading zone
18 will be created within a residential district
19 boundary. That's where they have -- in here,
20 what they're talking about, this rear area
21 where they're going to have trucks come in
22 and out, and load and unload. That's in
23 violation of your Section 215-41, of off
24 street loading berths.

25 They eliminated the canopy. We advised

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Proceedings

last time that that's an additional structure, and that would cause further confusion and traffic congestion. And a canopy is a structure that's not permitted in the front yard. Well, that's been removed.

But notwithstanding, how does that happen? How is it not presented to the Board? I go to a lot of different boards, including in places like Ramapo, and I certainly don't want to compare this to Ramapo. But this type of application, and the nonsense that's going on with this type of application reminds me that perhaps I took the wrong exit off the highway.

The -- moving along -- in the previous testimony, the applicant has not demonstrated thus far how the delivery trucks, fuel trucks, beverage trucks, sanitation, emergency vehicles will enter and exit the site in a safe manner. And the existing fuel line would still, even with the proposed canopy, will continue to cause problems with the traffic flow.

And the traffic study, I listened to

1 Proceedings

2 that last time, that was anything but a
3 traffic study. That's someone who took a
4 look at what the tables were.

5 There was no traffic count, there was no
6 actual traffic study where you go out at
7 various times, and dates, and days of the
8 week to determine what the actual traffic
9 flow is, in addition to what the traffic flow
10 is going to become, because even if they
11 don't put in -- because again, you don't know
12 what they're going to put in there, with the
13 drive through window, with the Dunkin'
14 Donuts, it's going to operate as a drive
15 through notwithstanding for the people on
16 Algonquin. Because that condition doesn't
17 exist right now.

18 So the -- as finally, he just advises
19 that the applicant and their design
20 professionals have not disclosed, addressed
21 the complete details regarding the proposed
22 development, and it's their job to do it.
23 It's not your job to sit there and just say
24 all right, well, we don't really have much
25 here, so we're going to make a decision. And

1 Proceedings

2 it's not our job to play detective as to what
3 they're really going to put in.

4 It's their job to disclose in the very
5 first instance, not as we're going along, and
6 it keeps evolving and changing. When that
7 happens, applicants are told to go back and
8 refile, and start the process again, not
9 morph as you go and change it on the fly as
10 the Board or the public may like or dislike a
11 given item. And that's what's been happening
12 here.

13 Well, actually, I haven't heard anything
14 yet from the applicant. I'm hopeful that
15 they're going to address some of these
16 concerns because the fact that their silence
17 has been deafening here, it does give the
18 appearance, unfortunately, to the members of
19 the public that the decision's already been
20 made, and that would be unfortunate. Because
21 I don't want to believe that that's the case.
22 And certainly, I don't think the general
23 public wants to believe that that's the case.

24 The realty here, according to
25 Mr. Pulice, is that the applicant and their

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Proceedings

design professionals are using this, quote, alteration tactic as a guise to create a large, inappropriate mixed use business that is not permitted in the zone. And frankly, I don't think this Board would permit it or approve of it if this was in a commercial zone. The design will create a detrimental intensity surrounding a residential zone as a litany of traffic, circulation issues, noise, cooking odors, and poor neighborhood esthetics.

The Board heard the testimony, real life testimony from the poor people that live around this application right now at 1400 square feet. The Board heard all the problems that occur there on a regular basis. For the Board to think that those problems are going to be solved at 3400 square feet, and with now a big, enormous one way in and out onto Algonquin, it just, it boggles the mind.

So I would ask the Board to hold the applicant's feet to the fire the same way that I would expect this Board to do with

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Proceedings

every application. Commercial applications and the term ratable should never come into this purview of this Planning Board. Because ratables are what got this town into trouble with its current tax upside down, where people can't sell their homes because of Mirant.

And ratables are creating a problem, further problem here if that Board, if this Board, or the Zoning Board, or even the Town Board were to consider that as a legitimate reason to approve something like this. So thank you again.

CHAIRMAN GUBITOSA: Thank you, Mr. Conway. Next person, George Harris. The pen is over there. Just put your name.

MR. HARRIS: Boy, this fellow, he took all the wind right out of me because --

CHAIRMAN GUBITOSA: Just state your name and address for the record, George.

MR. HARRIS: George Harris, 327 Willow Grove Road, just up the street from Dunkin' Donuts. But anyway.

The Planning Board, I just wanted to

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Proceedings

reiterate what Karla said. It's your job to represent the residents of this town more so than some merchant that wants to expand his business. That's your job.

And the thing is, it involves the expansion of a non-conforming building. And from what I was told, that the lawyers are saying, they can pretty much do anything that they want because they're grandfathered in. That's kind of what I get from talking to people.

The present owner, from what I understand, he wants to increase his business because of the school, the kids from the school. And the people visiting the park, they want to pick up provisions or whatever, extra provisions for their stay in the park or what have you. So that's the reason he wants to do this.

Number one, I don't know if there's very many people in this building that remembers Frank Rose's store at the corner of Filors Lane and Hammond Road. And when that store was taken over by Tiger Morano (ph), I

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Proceedings

believe, he ran a little sandwich place serving the high school kids. From that corner until the high school, it was garbage all over the place. And nobody from the store came out there and cleaned up the garbage.

Now, if that's what he's intending to do, he wants to serve sandwiches or whatever he wants to do from the window, there's no seats in there, so they're going to pick up whatever they want and walk back to the high school and what have you. So you can imagine what it's going to look like between the store and the high school.

This project was presented to the Architectural Review Board. I'm a member of the Architectural Review Board. We were told that we were only allowed to deal with the esthetics of the building, how it looks. Can we -- usually right now, the big thing is doing the solar panels, and we try to make them look a little bit better.

This we tried to make a little bit better. There's no way in hell that you can

1 Proceedings

2 make this building look good. It's ugly from
3 Willow Grove Road. It's ugly from Algonquin.

4 And the thing is, I don't know, they got
5 all these little dormers up there. They got,
6 what, five dormers on one side, four on the
7 other, or whatever. And the thing, for what
8 purpose? For more space upstairs?

9 And the thing is, well, if he wanted
10 space upstairs, why didn't he put in a
11 variance to put an extra floor on, you know,
12 to get the space and make it -- to me, it
13 looks terrible. It looks ugly from both
14 Willow Grove Road and Algonquin.

15 And the people, the people that have
16 bought these houses up in Algonquin paid big
17 money for their homes. And I think they
18 deserve for you people to take a good look at
19 what this guy is doing.

20 And if he can enhance his project, like
21 I said last time we were here, I said
22 bulldoze the damn thing down and start from
23 scratch at some point and build a really nice
24 building. That would be an asset to the town
25 and to the merchant. But I thank you very

1 Proceedings

2 much.

3 CHAIRMAN GUBITOSA: Thank you, George.
4 All right, Margret Evangelista?

5 MS. EVANGELISTA: Greetings,
6 Mr. Gubitosa and Members of the Planning
7 Board. My name is Margret Evangelista. I
8 live at 54 Wilderness Drive here in
9 Stony Point, which is part of the Indian
10 Hills Parkside Estates. My husband David,
11 who will be speaking in a moment, is a
12 lifetime resident of Stony Point. And his
13 father built his own house by hand in 1955.

14 When we closed and sold it last year, it
15 was amazing to see every single receipt,
16 every single thing accounted for that he was
17 required to do by the Planning Board back
18 then. And he kept every single receipt for
19 every single nail, and every single shovel
20 full of dirt that got hauled out of that
21 property.

22 Since we've lived here in Indian Hills
23 Parkside Estates since 1996, and a few months
24 ago I wrote a letter to you that was
25 addressed to the Board, hand delivered here

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Proceedings

at the May Board meeting, and said I calculated that since we lived, since moved there in '96, between David and I, we have each conservatively driven through the intersection at Algonquin Drive and Willow Grove Road at least 12,000 times. I know that sounds extraordinary, but anyone who's lived there, stop and think about it. So we and all of the residents are the best traffic study you will ever have for what the effects of that property will be.

But I want to talk about a different issue. I addressed my other comments to you about safety, about the traffic, and it's been already well documented. And I certainly defer to Mr. Conway for his incredible expertise on land use law.

I am a corporate attorney by profession. That means I've spent my career helping clients to anticipate problems and find solutions before the worst happens. I don't sue people. If one of my clients gets sued, or has to sue, it means that maybe I haven't done my job.

1 Proceedings

2 So I want to focus my remarks today on
3 some of the legal problems here that are
4 really concepts that I'm going to call common
5 law, because it's really common sense. And
6 I'd like to bring us back away from the nitty
7 gritty of case law, and non-conforming uses,
8 and preexisting conditions, all of these
9 things, to just take a broader look at what
10 we are looking at for this property.

11 And it really comes down to the
12 balancing of property interest. And as the
13 Planning Board, you have had to deal with
14 that on a regular basis, I'm sure. It's the
15 right of one owner to use and enjoy their
16 property versus the rights of other owners to
17 also use and enjoy their properties without
18 harmed by the first owner's use.

19 And it's also about a matter of a
20 concept of the duty of care that's owed by an
21 owner to those who enter an owner's property.
22 As property owners here in Stony Point, and
23 as yourselves as well here, we owe a duty of
24 care to prevent foreseeable injury when
25 somebody comes on our property.

1 Proceedings

2 We owe the lowest duty to trespassers,
3 and we can all discuss and debate what we
4 would do to trespassers on our property. But
5 we owe the highest duty to children. And as
6 the gentleman on the Architectural Review
7 Board mentioned, that was apparently the
8 biggest reason that's being cited by the
9 owner of the property as to why he needs to
10 expand, because of the increased business for
11 children.

12 Anyone who's put in a pool in
13 Stony Point in their home is very familiar
14 with another concept called the attractive
15 nuisance doctrine. Basically, we owe the
16 greatest duty to children because children
17 have no common sense. As much as we love
18 them, as much as they are our pride and joy,
19 they sometimes do things that are really,
20 really dumb. And so we have a duty as
21 homeowners, and as property owners, and as a
22 community to plan ahead to see what we can do
23 to protect them from foreseeable harm.

24 Now this property, for all of its --
25 again, for all of the details, and I'm not

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Proceedings

going to discuss about the specifics of the property proposes an exit on Algonquin Road, on Algonquin Drive as the only exit. We already know that there have been numerous near misses, near accidents on Willow Grove Road and on Algonquin Drive. It's already been raised with you and, you know, by myself and by others.

The number of school buses, utility trucks, landscaping trucks that line Algonquin Drive in the mornings because everyone wants their coffee and doughnuts. We need them to start the day, whether they're here or somewhere else. And putting a sign that says no parking isn't going to stop that. It may move it further down.

And at least adults that are going to be driving in and out of that store will be able to take responsibility for themselves. But again, let's put the human factor back into this. Just like Chesley Sullenberger did when he talked about the Miracle on the Hudson, it was the human factor that made the different between success and failure in that

1 Proceedings

2 way.

3 When people are coming in in the morning
4 at 5:30 and they've got to get to work by
5 seven, or all the teachers have to be at the
6 high school before 7:30 and are running in
7 for their coffee or their gas, or all the
8 other people that are having to come in. The
9 kids that are driving in, racing before they
10 have to get a detention slip. So they're
11 running in there.

12 People are going to get frustrated.
13 They're going to get cranky. And sometimes
14 they're going to get enraged.

15 And if the only exit is on
16 Algonquin Drive, then the realty is when
17 people can't go left, and they can't get back
18 to Willow Grove Road because the school buses
19 are trying to get out, because the 6:00 a.m.
20 landscape trucks have parked their way,
21 either within the no parking zone or further
22 down, they're going to start racing down,
23 turning right, and trying to get out.

24 And anyone who knows Indian Hills
25 Parkside Estates knows that the only next

1 Proceedings

2 exit is through two stop signs to make a left
3 on Indian Drive. Locals may know how to get
4 out of there.

5 People who just happened to stop by
6 because they were driving down the road, the
7 ones going to the parks or wherever, aren't
8 going to know that. What they're going to
9 know is they're angry, they're frustrated,
10 and they're going to start flying through
11 those stop signs, those off set stop signs,
12 those cul-de-sacs where people aren't
13 expecting that.

14 There are kids that already can't really
15 ride their bicycles on that street because
16 it's not safe. People who walk and run on
17 that street still have to walk and be
18 careful. But the drivers who are going to be
19 upset and frustrated aren't going to be able
20 to take that. You know, they're not going to
21 be paying attention, and it's going to be a
22 recipe for disaster.

23 Who is going to be responsible, then?
24 The duty of the business owners, his duty of
25 care ends at the property line. So then who

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Proceedings

is responsible for Algonquin Drive? Who will be responsible when a school bus gets T-boned by someone flying out of there?

And again, that's adults. They have at least some sense, some ability to protect themselves. But I'd like to also talk about the children that have been mentioned here.

Again, we all know the problems of Willow Grove Road. But you don't have the power and authority to do that because it is a county owned road. And so we rely on the county to pave it when there's potholes. We rely on them to deal with issues when there's broken water mains as there were, or the flooding on Knapp Road that diverted traffic all throughout.

But what we also know is that kids do come over from the high school. There is nothing over on Hammond Road. It is a nonconforming unconventional intersection there. There are no crosswalks. There are no sidewalks.

In my letter to you in May, I mentioned that I had personally witnessed children

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Proceedings

nearly getting hit, lots of near misses driving back and forth, taking my kids to school and everything, back and forth. I also mentioned that I knew of a child who had been harmed. And in fact, after I wrote the letter, I reached out to that family.

And the father of that girl, who was a swim mate of my daughter, spoke last meeting. And unfortunately, I wasn't able to be there. But in speaking to her mother when I reached out to them, her daughter is now serving our country, but she still is traumatized by what happened to her. And all because she just simply wanted to get something to eat.

But we talk about our kids, that as much as we love them, they're dumb. I have a very smart and sensible daughter who knew Liza and knew what happened to her. But one day on a Friday, she and her friends were hungry because they were on the drama crew, and they were going to be there until 9:00, and this was 2:00. And they needed to get something to eat, and there's nothing else around.

And the owner of the Dunkin' Donuts is

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Proceedings

relying on people to either spend more money in their store, or to bring more cars in, either by car or by foot. And so these kids are coming from the high school, and running over to have to run back.

So my bright daughter did the dumbest thing I've ever known her to do. She was in a wheelchair, just off of surgery with a cast on her leg. And she and her friends walked all the way down the sidewalk on Hammond Road until they got to that intersection. And there's no cut to go down for a sidewalk. And at least they had the sense for her not to try to roll herself across the road.

So one of her friends who was a football player and a volunteer firefighter picked her up and carried her in his arms across the street. Now, that was noble and gallant of him. But that was even more dangerous.

And added on top of that, all of those kids then piled their backpacks into my daughter's wheelchair. And one of the kids wheeled that wheelchair across the street until they were in the alleyway, and then

1 Proceedings

2 walked over to Dunkin' Donuts. And after
3 they got their food, they walked all the way
4 back.

5 And when I found out about it, I was
6 horrified because I knew what had happened to
7 Liza, and thank God, by the grace of God, she
8 was okay. She didn't get killed. And my
9 daughter lived to tell the tale.

10 And tonight, my daughter's home
11 finishing her college applications. And her
12 friend is now serving in the military, in the
13 army in Oklahoma right now. And thank God
14 nothing worse, but we know that with the risk
15 and increased risk, things will happen.

16 That we also know that in the spring and
17 fall, Willow Grove Road becomes Stonehenge.
18 Late day, the blinding sun prevents even the
19 most conscientious driver from sometimes
20 being able to see. And the kids are darting
21 across the street because there's no safe way
22 for them to cross this very attractive
23 nuisance that the Dunkin' Donuts will become
24 in our community.

25 That someone will be hurt again. It's

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Proceedings

not a question of if, it is a question of when. And then what are we as a community going to be able to say? We were on notice. We know what has happened.

Now add to that these kids that live here know about the intersection. They know about the risks. But North Rockland, because of our wonderful sports facilities, also attracts a number of very large sporting events. The Red Raider Relays comes in the spring, again, at the same time as Stonehenge of the sun.

And hundreds of kids come from other school districts to compete. They come for soccer tournaments. They come for other events, when the ROTC comes, or football games. And the kids walk and they come across.

But imagine now that the child that crosses is not one of our kids who at least knows the area and knows the neighborhood, but doesn't have the good sense, and just simply crosses, or runs across, and doesn't know to pay attention because the road coming

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Proceedings

in from Filors Lane doesn't have a stop sign. And that the kids, after they've run through that other house through the backyard, that they don't know that the cars are going to be coming at least 30 miles an hour, or maybe further.

And if I am now -- and as I said, I'm a corporate attorney, I don't sue people. But if I put on my hat of a trial lawyer, a plaintiff's lawyer, I'd go back to first year legal, you know, torts law, which says if it sneezes, sue it. And I'm going to look at every single person, every single town, every single agency, and try to find and understand, backtrack how could this have happened? Who knew about this situation? And could it have been prevented?

And you're going to look at all of these agencies. Did the county just sign off because they didn't want to pay? That they didn't want to have to expend the extra funds, because we are fiscally stressed, to fix a known hazard at the intersection of Hammond Road and Willow Grove Road and Filors

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Proceedings

Lane?

Is it going to be the responsibility because this is on the town line between Town of Haverstraw and the Town of Stony Point? And the kids were stuck in the middle because they crossed a line, so whose responsibility is it, really?

And will this lawyer use a lot of creative legal strategies, and maybe win a settlement? But he's going to be looking in the eyes of grieving parents and have to answer how and why did this happen? And who could have prevented it? And no amount of money is ever going to make up for a lost child.

You know, you are the Planning Board for a reason. And for all the legal arguments that could be made as to why this property should or should not be allowed to use the property -- the owner, rather, in the way he would want to use it. Or it, I don't know who exactly is the owner of this property. Maybe it's going to require that this Planning Board talks to our Town Board, and

1 Proceedings

2 that the Stony Point and Haverstraw look at
3 this, the big picture, and say what can we
4 do?

5 And maybe the two towns work together to
6 push the county and say this is a known
7 problem. And if we want to build our
8 ratables, if we want to make our community an
9 attractive place, to increase property
10 values, to increase businesses, then maybe we
11 need to take a step back and look at this,
12 and figure out how we can solve a problem
13 before some parent is going to have to look
14 and identify a child who has fallen and been
15 harmed.

16 I don't think I am being --
17 exaggerating. You know, all of us who live
18 in that area raise children, and some of them
19 have grandchildren, and there are children in
20 the schools. I think that all of you have
21 the best of intentions to do a volunteer job
22 here on the Planning Board. And I think you
23 all love the town, or you wouldn't be doing
24 what you're doing.

25 But I'm asking you, and asking everyone

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Proceedings

who is involved in this process to stop looking at what can we do and what do we have the right to do, but instead, what do we have the duty to do as a community? And how can we make whatever comes out of this better?

And it may mean in the end that a property owner doesn't have the right to sell more doughnuts and coffee if it means it's going to harm his neighbors and harm the children in our community. So I thank you for your time.

CHAIRMAN GUBITOSA: Thank you. David? David?

MR. EVANGELISTA: Good evening, Members of the Board. I am David Evangelista and I also live at 54 Wilderness Drive. You just heard from my wife Margret.

Margret came to Stony Point because of the charm of Stony Point. The character, its personality. We decided to stay here. She decided to move here.

I go back 55 years in this town. Many people here go back a little longer. But this town has always had a personality. It's

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Proceedings

always had its image. And if you look today versus 55 years ago, 40 years ago, things are just about the same as they were in terms of what is in what location.

So here, we have something that's coming in that's going to be different. It's going to be a massive retail establishment in a residential neighborhood that doesn't exit back out onto the main street, but wants to exit, only exit and entrance into a residential neighborhood, onto Algonquin Drive.

There's been many great periods of leadership in Stony Point. One of the earliest ones I remember was the government under Lucien Conklin. Many of you know Lucien, remember Lucien.

When there was a debate on something going on in Stony Point, you would go to Lucien's house on Cedar Flat Road, and he would sit in his chair next to the wood stove, and you would talk to Lucien. And that's how things were solved. How many people remember that, right?

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Proceedings

And the reason there was such great leadership at that time, and some of the administrations before and afterwards, is that common sense ruled. What made sense to the town of Stony Point? What kept the town in its character? What made sense to all the residents of Stony Point, not to one unique person or one unique business, but what kept us in our character?

So one question you all need to ask today, as part of the current administration and the current leadership, do you want to be remembered as part of a great leadership and a great administration? Do you want to continue in the tradition of common sense and keeping this community the way it was way back when, the way it was during my childhood, the way it was during my children's childhood?

Or do you want to allow this to come in and start changing the image of the entire town? You're talking about a two story. How many things in Stony Point are commercial retail with two stories, and where are they?

1 Proceedings

2 They're not in a residential neighborhood.

3 That is changing the character.

4 So I ask you to think about that. You
5 know, I remember that little gas station.

6 And what you're looking at on this Board is
7 not that little gas station. That was like
8 the little gas station in Mayberry, right,
9 right. It was just a little thing in the
10 community. People would go, they'd talk,
11 they'd have the car fixed, they'd get some
12 gas. That's not this.

13 So I'm going to leave you with that
14 thought. Do you want to be the Planning
15 Board, does your administration that appoints
16 you want to be the leadership that changes
17 the tone, that changes the quality of life,
18 that changes the tradition that Stony Point
19 has been for 200 plus years? Think about
20 that. What legacy do you want to leave on
21 this town?

22 And also, obviously, think about the
23 liability. Think about happens to the Town
24 of Stony Point, with not many large ratables,
25 when a lawsuit hits, and the Town is a party

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Proceedings

to the lawsuit and loses. We're still suffering from losing litigation on ratables and power plants. If we had to deal with a multimillion dollar settlement because this Board, this leadership made a bad decision, all of us are going to suffer. Everyone in this room, everyone in the town. And that also has to be considered.

So I thank you for your time, and I ask you to do the right thing and keep Stony Point as Stony Point was meant to be. Thank you.

CHAIRMAN GUBITOSA: George? George, I know we're running low on time, but I'm not going to --

MR. POTANOVIC: I'll be quick.

CHAIRMAN GUBITOSA: All right, thank you.

MR. POTANOVIC: Thank you. Chairman Gubitosa, Members of the Planning Board, George Potanovic, 597 Old Gate Hill Road, Stony Point. And also president of SPACE.

I just want to begin by -- Chairman Gubitosa, you weren't here last month for the

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Proceedings

September 28th meeting. But how disturbed I was at the way that the acting chair Peter Muller tried to cut the public off from speaking. I expressed these concerns to the Town Board at the following Town Board meeting.

There's no excuse for that. It was rude to the people of this town, the neighbors who now have hired an attorney because they don't feel the Town is representing their interests. You're there to represent the Town's interests.

The applicant has their own attorneys. They have their own engineers. You're here to represent us, and obviously, the people in this room don't feel that you are when their voices are being cut off and prevented from speaking at a public hearing. So that's what I want to start with.

This is an expansion of a non-conforming use. I believe that it should be before the Zoning Board if they're looking for an expansion beyond what was granted originally. In the 1988 letter from the Planning Board

1 Proceedings

2 which gave -- from the Zoning Board which
3 gave them the right to expand the use beyond
4 a gas station for a convenience store, this
5 is certainly well beyond that. The proposed
6 expansion goes well beyond the capacity of
7 this intersection to handle the traffic.

8 As I mentioned at the last Planning
9 Board public hearing, I travel quite a bit to
10 this Dunkin' Donuts. My wife happens to like
11 the iced tea, so I go there quite a bit, in
12 and out of it. And I can see firsthand the
13 impact of traffic, the existing problems with
14 traffic.

15 When somebody's at the gas station, so
16 you have two cars waiting at the gas station,
17 and a third car comes up to the gas pumps,
18 they literally are blocking the intersection
19 of the people getting into the parking lot.
20 This plan does not address that at all. And
21 now you're going to talk about a larger
22 building with, you know, perceivably more
23 traffic, it's only add to that problem.

24 It competes right now with the exit on
25 Algonquin Drive. You have people leaving.

1 Proceedings

2 And then Algonquin Drive, it's very
3 confusing, especially with traffic coming
4 down the hill.

5 The applicant doesn't have enough land
6 to do this. And that's why they're using
7 Algonquin Drive as the exit for their
8 property. They're using a public road to
9 expand the use of their personal, their
10 property to allow an exit, which I believe is
11 also going to require the cutting down of
12 trees. I thought heard at the last meeting,
13 which I think is wrong, if that's the case.
14 Now you're having to change that road in
15 order to accommodate the exit for this
16 property.

17 There was a, there was a traffic study,
18 which was incomplete, that was presented at
19 the last public hearing. So I guess I'd like
20 to ask if you've since received a more
21 complete traffic study that could be
22 presented tonight. That would be something I
23 think the public would like to comment on.
24 There was not a complete traffic study that
25 was presented at the last public hearing.

1 Proceedings

2 And also, I'd like to know if the County
3 of Rockland Department of Planning has
4 submitted comments. And if so, could you
5 read them? I'd like to hear what the County
6 of Rockland has said regarding this
7 application. Okay, thank you very much.

8 CHAIRMAN GUBITOSA: Thank you, George.
9 Now, I think we're going to be keeping the
10 public hearing open. I know the traffic
11 study, they're still not finished with it,
12 Dave, right?

13 MR. ZIGLER: Yeah. We're incorporating
14 some of the questions and comments from the
15 last -- so it will probably be ready in about
16 a week. It will be delivered to the Town and
17 be available.

18 CHAIRMAN GUBITOSA: All right. I think,
19 I know the County is still waiting because of
20 the traffic study. They're going to comment,
21 and that's what we're waiting for, their
22 comments. We're still waiting for the
23 traffic study. And I know the County of
24 Rockland's looking at this. Planning and
25 Highway are looking at it. And drainage? I

1 Proceedings

2 think they're all -- no, just Highway and
3 County.

4 MR. ZIGLER: Just the Town is looking at
5 the drainage.

6 CHAIRMAN GUBITOSA: And the Town, all
7 right. What I'll do is, if there's no one
8 else, we'll keep the public hearing open
9 until next month. And you know, you still
10 can always submit your comments, you know, by
11 mail or by email. We still take them, and we
12 look at them. So it's not, you know, the
13 public hearing is not closed. We'll still
14 take comments.

15 So at this time, I'll take a motion to
16 continue the public hearing to next month.
17 Oh, I'm sorry. Wait, that's right. Our next
18 meeting is December 7th. We combine November
19 and December into one meeting. So the next
20 meeting will be December 7th at 7:00 p.m. So
21 I'll make a motion to keep the public hearing
22 open until December 7th.

23 BOARD MEMBER JOACHIM: I'll make that
24 motion.

25 CHAIRMAN GUBITOSA: Second?

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Proceedings

BOARD MEMBER ROGERS: I'll second it.

CHAIRMAN GUBITOSA: Any discussion? All
in favor?

(Response of aye was given.)

CHAIRMAN GUBITOSA: So we'll move the
public hearing to December 7th. We're still
waiting on the traffic.

MR. HARRIS: That's Election Day.

CHAIRMAN GUBITOSA: December.

THE CLERK: December. December, George.

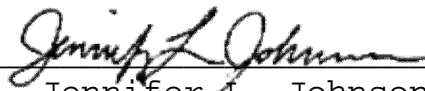
CHAIRMAN GUBITOSA: Pearl Harbor. All
right, so we'll take a five minute recess.

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Proceedings

THE FOREGOING IS CERTIFIED to be a true
and correct transcription of the original
stenographic minutes to the best of my ability.



Jennifer L. Johnson

