

Regular meeting of the Planning Board of the Village of Brockport was held in the Conference Room, Municipal Building, 49 State Street, Brockport, New York, Monday, February 11, 2008 at 7:00pm.

PRESENT: Chair Charles Switzer, Vice Chair John Brugger, Member R. Scott Winner, Member Annette Locke, Building/Zoning Officer Scott C. Zarnstorff, Clerk Pamela Krahe.

EXCUSED: Member Arthur Appleby

ALSO PRESENT: Michael Leone (in place of Village Attorney David Mayer), Joan Hamlin, Jim Hamlin, Don Hibsich, Mike Ferraulo, John Kelly, Bob O'Connell (attorney for Mr. Kelly)

CALL TO ORDER: Chair Switzer called the meeting to order and led the Pledge of Allegiance.

REVIEW OF MEETING MINUTES: Chair Switzer called for a motion to approve the minutes of the previous meeting.

➔ Member Locke moved, Member Brugger seconded, unanimously carried to approve the minutes of the meeting held January 14, 2008 as written.

CORRESPONDENCE: None

PUBLIC HEARINGS: None

NEW BUSINESS:

1. Application of: Name: John Kelly for Brockport Stores Inc.
 Address: 32 Main Street
 Tax Map #: 068.52-4-14
 Zoning: Business Use District
 Purpose: Change of use – smoke shop

Applicant Presentation:

Bob O'Connell introduced himself as attorney for Brockport Stores and John Kelly, and stated J. Kelly currently owns a successful business on Lyell Avenue in Rochester called Westside Smoke Shop which is pleasing to the eye inside and out. Mr. Kelly wants to open a similar store at 32 Main Street, that is different in some respects, primarily size. The store will carry fine tobacco, tobacco-related products, will have a humidior room for smoking the products, will also sell memorabilia, souvenirs and clothing. B. O'Connell noted the store was previously retail, a deli, so would not be a change of use, just opening up a different kind of business. B. O'Connell mentioned sometimes having a lawyer impedes things, and he had been unable to respond promptly to CEO Zarnstorff's letter and the inquiries in it. He noted Mr. Kelly is a businessman who does things by the book and on time and it was Mr. O'Connell himself who had other obligations that prevented him from communicating promptly.

B. O'Connell stated J. Kelly has been in the store painting and cleaning. There are no major renovations or structural changes to be made. He mentioned the submitted floor plan and said the best way to see what the store will look like is to visit Mr. Kelly's other store in Rochester. B. O'Connell stated the store hours would be standard with no Sunday operation. The exterior signage would be the same 2'x6' sign, just re-lettered. He asked if there are any exterior requirements that would affect the sign. The sign will be subdued, tasteful, and the same character as other signs on the street. Regarding trash removal, there is an existing dumpster that will be used.

Continued Board discussion on application:

Member Winner asked what makes Brockport a desirable location for his store. J. Kelly replied location. He is looking to do more cigar and tobacco business and he thinks with the canal-fest in the summer he would benefit and the town would benefit with exotic cigars and tobacco. He also stated the age group of the area has a lot of cigar smokers.

Member Winner suggested they "talk about why you are here." Member Winner went on to say there have been communications between the attorneys about the NYS Head Shop law and he noted our Village has one of those laws already as we are a college town. Member Winner inquired what J. Kelly's position is on providing those types of ancillary materials. J. Kelly answered that his store will not be a head shop and will run more along the lines of cigars and tobaccos. Member Winner asked specifically if hash pipes, water pipes, bongs, etc. will be seen in his store. J. Kelly replied those items do not exist in his stores. He said they do have glass pieces that are made especially for tobacco and tobacco only. Member Winner mentioned he was trying to get to the intent.

B. O'Connell stated he had conversed with Deputy Village Attorney Frank Aloï about this. B. O'Connell said J. Kelly is a businessman who would like to open a store. He's not doing anything illegal. If there's a question about something that's going on that's illegal then we'll have to see what the store is doing. B. O'Connell noted there is a big trend now to quit smoking, and to have an alternative to buying a pack of cigarettes is something there's a market for across the board, not just for students.

with the current NYS laws on smoking in retail spaces whether it's a restaurant or whatever. His understanding is that it's not permissible other than what was grandfathered in. Attorney Leone replied he'd have to look but he thinks there is a carve-out section for smoke shops. Attorney O'Connell confirmed that that is the case in NYS and Rochester as well, unless there is a local law. Chair Switzer mentioned there are other smoke houses with special rooms, especially cigar rooms. J. Kelly replied this would be a cigar room. Chair Switzer noted that on the drawing it looks like mostly cigars. J. Kelly answered yes. The only other space for souvenirs, tobacco pipes, etc. would be where the main counter was noted. The cigar lounge would have free Internet access.

Chair Switzer asked if the same items sold at the Lyell Avenue store would be available here. J. Kelly replied yes. Chair Switzer asked the location of this store. J. Kelly responded 1105 Lyell Avenue with the nearest crossroad being Glide Street. Chair Switzer inquired what hookah is. J. Kelly replied that it is a tall pipe that flavored hookah tobacco is smoked in. Chair Switzer clarified that people would go in and smoke flavored tobacco and J. Kelly affirmed. J. Kelly also indicated that the cigar wall is actually bigger than it looks on the paper.

Chair Switzer inquired which storefront 32 Main Street is. Member Locke replied the "Hello Deli" and noted that Veyis Kadircan the tailor is on one side and an antiques shop that never opened is on the other. Chair Switzer noted that this really isn't a change of use because it's retail to retail, just a different type of store. He then asked if anyone else had any other questions. Member Locke asked about the venting to the outside and if there are other spaces in the store where one would be able to smoke besides the cigar lounge. J. Kelly noted that smoking will be in the cigar lounge in the back and at the two front tables. Member Locke asked if that would be vented as well. J. Kelly replied there is venting all throughout. Member Locke clarified that the front area is open so smoke would permeate the entire space. J. Kelly indicated that there is a sizable vent in place and other vents would be hooked up to the main vent, which exhausts out back above the back door. Member Locke asked if no smoke would be vented out front. J. Kelly affirmed all venting goes out back. Member Locke asked about the apartment above the store and how that would impact the apartment. CEO Zarnstorff added there is a back door and a window for the apartment. J. Kelly replied the one fan is very quiet.

Chair Switzer asked if there is anything in our local code regarding smoke shops, as opposed to state rules. Member Winner noted according to the letter from Deputy Village Attorney Alois, anything relative to the head shop law is under the purview of local law and asked if that would specifically fall under the Code Enforcement's purview or the Police department's purview. CEO Zarnstorff answered it would be under both. Member Winner added that the Board is not here as an enforcement body, but rather to approve use. It's a legal use, so he would be inclined to move toward approval. Enforcement issues, should they arise, would be handled by the enforcement arm. Chair Switzer asked if there were any SQER issues. Attorney Leone noted it is a Type II action.

Member Brugger mentioned the verbiage in the letter from CEO Zarnstorff as to who said what, and stated his hope is that future dialog from J. Kelly would be more sympathetic and empathetic toward the Village. He continued that to come into a Village and tell them how you are going to do things, legal or not, is just not a good way to start things. Attorney O'Connell noted that it was an unfortunate first meeting with Mr. Zarnstorff and Mr. Kelly was somewhat surprised. Attorney O'Connell said Mr. Kelly is a good businessman and has had no issues with authorities in Rochester and he asked Mr. Kelly to just make believe it never happened. B. O'Connell noted that he thinks it speaks for itself that J. Kelly is opening a store across the street. He's not here for the short haul and lives just a few minutes away from Brockport. B. O'Connell stated that he stressed to Mr. Kelly that cooperation with local government and its people is very important and that Mr. Kelly appreciates that.

Chair Switzer referred to a stop work order and wondered if it had that been carried out. CEO Zarnstorff replied it is still in place. Chair Switzer noted once this is approved, J. Kelly could open tomorrow. CEO Zarnstorff stated that once he looks at the store, yes. Member Brugger asked CEO Zarnstorff if there were any issues he had seen that need to be taken care of before the store opens. CEO Zarnstorff reported the property is very good, with some electrical upgrades to be taken care of that were left by the previous tenant. The only other issue CEO Zarnstorff mentioned is the extinguishment of smoking materials. His concern is if there would be anything still burning going directly into the dumpster. J. Kelly replied no. There wouldn't be any as things are extinguished in a pail of sand in his other store. Attorney O'Connell clarified that this wouldn't be like in bars of old where many people are smoking at once. It's maybe 3-4 customers at a time as he has seen in Mr. Kelly's other store and there is a plan for extinguishing the materials and it shouldn't be a problem. Member Locke clarified that the plan is to have buckets of sand. J. Kelly noted one bucket that would ultimately go in the dumpster. Chair Switzer asked if the dumpster is enclosed. CEO Zarnstorff stated he doesn't think it can be, as there is no room for that. He also noted he has spoken with the building owner about back area improvements and the owner may come before the Planning Board about the stairwell, wooden porch, etc. CEO Zarnstorff believes the dumpster is owned by C&S. J. Kelly concurred. CEO Zarnstorff asked if J. Kelly had had a conversation with C&S yet. J. Kelly replied no. Attorney O'Connell suggested calling tomorrow.

Chair Switzer asked for a motion, but Member Locke asked one more question about what other materials beside butts at the end of the night, would go into the dumpster and noted that J. Kelly would
MINUTES OF MEETING HELD February 11, 2008 continued.....page 3

probably know as he runs a similar business. J. Kelly replied boxes from orders. Member Locke asked if they were small, J. Kelly replied yes, also boxes from bathroom tissue. Member Locke asked if J. Kelly felt the dumpster would be adequate, J. Kelly replied yes and actually 33 Main Street also has a dumpster that can be used. Chair Switzer reiterated most trash would be cigarette delivery boxes.

Member Brugger asked about hours of operation being 9am-9pm. Attorney O'Connell replied Monday-Saturday, though that could change depending on business. J. Kelly indicated 9-9 right now, but could change to 9-6pm. Member Brugger also asked if the sign in front is backlit to which J. Kelly replied no. Chair Switzer then asked for a motion to approve.

⇒ Member Brugger moved to approve a change of use for 32 Main Street from a deli to a smoke shop, Chair Switzer added as long as Village and state codes are met and upon receiving CEO Zarnstorff's approval. Member Winner seconded, unanimously carried to approve.

2. Application of: Name: John Kelly for Brockport Stores Inc.
 Address: 33 Main Street
 Tax Map #: 069.45-2-24
 Zoning: Business Use District
 Purpose: Change of use – PC repair and electronics

Applicant Presentation:

Attorney O'Connell stated J. Kelly would like to open a store at 33 Main Street for electronics repair and repair of computers. He noted the attached floor plan and mentioned he believed the prior use was an antique shop. Member Locke corrected stating it was the Leoness Gift Shop. Attorney O'Connell continued this was not strictly a change of use. It is retail to retail; there are no major structural changes, the floor plan shows the counter space and display area and he assumes the sign will be a 2'x6', same as the prior sign, which will be re-lettered. The disposal will be the existing carrier and the hours would be 10am-6pm Monday – Saturday.

Continued Board discussion on application:

Member Locke asked if J. Kelly repaired computers himself. J. Kelly replied affirmative. Member Winner asked how many staff would be there. J. Kelly replied himself and one other. Member Locke asked if they would be retailing merchandise, J. Kelly replied yes they would have laptops, monitors, and keyboards. Member Locke asked if they would be new and used, to which J. Kelly replied mainly new. Chair Switzer noted there a couple of other stores in town that do the same thing. J. Kelly replied yes, Chair Switzer noted competition. Chair Switzer also asked CEO Zarnstorff if there was anything with the building that needed to be addressed per code. CEO Zarnstorff replied no. The previous owner did remodel. He noted he will have a walk-through for a closer look later. Member Locke asked for clarification that if the store is open 10-6, would there be someone after hours to complete repairs. J. Kelly replied it is possible. Member Winner asked if he had run this kind of business before. J. Kelly replied that directly across the street from where his business is now in the city, he previously had a computer repair store and a smoke shop in a double storefront (1100 Lyell Avenue). He moved the smoke shop across the street to a bigger store, but there was nowhere to put the computer repair, so it closed.

Chair Switzer asked if there were any more questions, then asked for a motion. Member Winner noted he had one more question regarding the disposal of undesirable parts. J. Kelly answered they have an independent disposal contractor that pretty much goes to all these type stores.

⇒ Member Winner moved to approve opening of the PC repair and electronics store at 33 Main Street as long as CEO Zarnstorff's walkthrough and any code needs are satisfactory, Member Locke seconded, unanimously carried.

The Board welcomed Mr. Kelly to Brockport and wished him luck.

OLD BUSINESS:

1. Application of: Name: Schultz Associates for Canalside Developers, Inc.
 Address: Sunflower Landing – off East Avenue
 Tax Map #: 069.10-5-8.1
 Zoning: Q District
 Purpose: continue review of the following:

- subdivision – elimination of previously proposed single-family lots, which will be replaced by single-family senior patio homes

- Re-subdivision procedure for condominium units – adopt proposed procedure

MINUTES OF MEETING HELD February 11, 2008 continued.....page 4

- Re-subdivision – of the following:
 - Lot 43F – 80 Anita’s Lane
 - Lot 43G – 82 Anita’s Lane
 - Lot 44F – 139 Anita’s Lane
 - Lot 44E – 137 Anita’s Lane

Applicant Presentation:

Kris Schultz from Schultz Associates mentioned he had spoken with CEO Zarnstorff last week to discuss the applications. The CEO had given feedback on the change to the overall and Schultz Associates would like to provide the Board with more information, such as statistics on number of potential buyers who have expressed concerns with residential single-family lots. This will take a little bit of time so they’d like to move that portion of the application to another time. Member Winner asked what the Board would be discussing tonight, and K. Schultz replied the resubs. K. Schultz went on to say currently there are four resubdivision lines and there have been conversations between the Deputy Village Attorney and his client’s attorney and he has also been working with CEO Zarnstorff regarding fire separation code issues and he stated CEO Zarnstorff has done a lot of research.

Continued Board discussion on application:

CEO Zarnstorff reminded the Board of last month’s meeting where an imaginary 4’ lot line was discussed. The request tonight is to take that 4’ line and move it right to the building itself and the remaining land would be under the Homeowner’s Association for maintenance, lawn care, etc. After looking at moving the arbitrary lot line as a possible violation of the Uniform Code for building construction purposes, the CEO stated he wasn’t sure how that impacted the HOA for control of the lands. For example anyone who wanted to build an addition and wanted to put it right on the property line of a neighbor. First, the owner would have to go to the Zoning Board for a variance, and second, it would have to be built with non-combustible materials. CEO Zarnstorff continued that he looked at that code section to see if it would be problematic for these applications. He noted he has requested an interpretation letter from the state on this matter, but hasn’t gotten an official written reply. Knowing this would come up tonight, he spoke with the Building Director of the Town of Perinton to see if they’ve come across similar situation. This gentleman also sits on the Regional Board of Review for the State of NY for Codes Officials and his knowledge is very in-depth on code issues. In his opinion, this is not a code-triggering event which would cause a violation because the HOA has control over any expansion that would change the footprint of the house. The HOA would have to approve before the person could consider getting a building permit. For example a new deck would require HOA approval, a resub of that property around the new structure, then a re-filing of the new lot line change so it won’t violate the setback requirements in the code. This Planning Board can always assure that buildings don’t get too close to each other. CEO Zarnstorff noted as far as he’s concerned the zero lot line is not an issue. He stated someday he may get a reply from the state, but for now he’ll rely on the information he received as credible. Member Winner asked if it was Scott Copp that CEO Zarnstorff had spoken with and CEO Zarnstorff affirmed. Member Winner responded he believes Mr. Copp to be a highly credible source.

K. Schultz stated he had looked online at a NYS technical bulletin about a detached garage and it says to project an imaginary line between the house and garage and the structures have to be 3’ away from that line, so 6’ is the golden number, which is what was in place when they did the project in Hilton. The procedure for resubs has safeguards built in. A plot plan is generated, a footprint would be provided to the CEO, and a building permit is required. Following construction, the C of O goes to the CEO. There are a number of checks and balances in place. K. Schultz mentioned he did have a conversation with attorney Al Mercury about the HOA maintenance of common areas and the association would be set up so the area between units would be subject to maintenance without doing the resubs so the association could actually maintain the lawns and exterior of the building.

Member Brugger asked if a member could choose not to have their lot resubbed. K. Schultz replied no. Chair Switzer asked if the HOA takes care of all exterior repairs. K. Schultz replied yes. There is someone to take care of things if you’re not home or not able to put a ladder up to fix a shingle. Chair Switzer asked if there are standards on gardens and the like. K. Schultz answered there is some freedom. Some landscaping is done, but buyers can add their own touches.

Member Winner stated he still has one question to which he has not received an answer and that was probably raised last time the Board met. He wonders what is the net impact on the potential tax base for the Village for this project with this area of land, the 4’, on these 4 units? Attorney Leone interjected that this is probably an assessor question, but that a house with less land would arguably have a lower assessment. How much that 4’ would impact the owner’s assessment is again, an assessor question, but who now owns that land would pick up the assessment on it. He asked if the HOA is a not-for-profit organization. K. Schultz replied no. Attorney Leone then stated it would make sense then that they would pick up the tax on that 4’ of land. He is just not sure of the formula. Chair Switzer then stated

because there is nothing on it, it would be a wash. Member Winner noted that when the Board goes to a single-family unit discussion, he believes there will be a major difference in the potential revenue. Chair Switzer concurred. K. Schultz stated that when an actual unit is sold, they can actually figure the tax revenue on the single family lots and then the higher-density senior units in the same amount of area. Member Winner noted that the argument needs to be presented so the Board can make a **MINUTES OF MEETING HELD February 11, 2008 continued.....page 5**

responsible decision on behalf of the community and the taxpayers who are here already.

Mike Ferrauilo, owner of Sunflower Landing, asked the Board why they think single-family homes can be sold here. He stated there are 37 in his project and there is a project on West Avenue now with its fourth builder who can't sell a single home. He said people do not want to buy single-family homes in the Village of Brockport because it is in the top two highest tax brackets in the county and it's not easy selling them. He went on to say seniors want a smaller home, single floor, and low taxes. The first thing people ask is what the taxes are and all three developers are battling that now. If there isn't any cooperation to sell these, they're going to lay dormant and there'll be zero income. He said he doesn't know why it's hard to understand but single-family units do not sell in Brockport. He asked how many have been built here in the five years he's been trying to do something. Member Winner told Mr. Ferrauilo the Board understands what he is trying to say, but the tax base should be no surprise. Member Winner stated Mr. Ferrauilo came into this community knowing full well what the tax base was and asked him not to turn the question around, stressing Mr. Ferrauilo made that decision, not this Board. Member Winner also stated that the Board has to look out for the best interest of this community, and building more homes is in the best interest, but everything has to be considered. Member Winner continued, saying it's a tough thing, he doesn't argue that at all, but the Board has to have all the facts so they are fully informed before they make a decision on these single-family parcels. That's his concern. M. Ferrauilo asked what information the Board would want showing that customers don't buy. Member Winner said that's not the issue. The issue is what do we do when we go from single-family plots in the original plan submitted by Mr. Ferrauilo, to something other than that—a condominium where it's only the footprint. M. Ferrauilo said that was always presented. Member Winner argued not for these single-family lots and that's a major change.

K. Schultz interjected that he mentioned at the start of his presentation that they would like to provide that information to the Board. It just will take some time to gather it and tonight they are here for the resubdivisions. He mentioned there is a timing issue and failing to proceed with the resubs puts M. Ferrauilo at a hardship as they need to transfer title, get approval from this Board, take 30-45 days to get the map recorded, and all that has to be done before the transfer of the property. He said he'd like to get approval of the resubs conditionally done tonight.

K. Schultz asked the Village Attorney if there is any reason why the Board cannot approve this tonight. Attorney Leone responded if the Board wishes, they can certainly approve this or not. He noted right now there is a 4' lot line and this is a modification of that. The Board can use its discretion whether or not to grant that. He suggested that maybe the Board has already considered that by changing the lot lines, would that affect the density. K. Schultz asked if he could show the map of lot 43 with four lots and stated they are creating lot lines that follow the actual structure. Chair Switzer asked if on the map there would still be four attached and two attached. K. Schultz affirmed, noting there is no change in the quads or the doubles. Chair Switzer asked why the Board had the 4' lot line originally. K. Schultz replied that CEO Zarnstorff had concerns of fire codes and separation so a 4' perimeter was placed around the house. Chair Switzer asked if there is still going to be 15' between the buildings themselves, K. Schultz answered yes. The 4' was a late change in the process because of CEO Zarnstorff's concerns. Chair Switzer asked the CEO if that was still a valid concern, to which CEO Zarnstorff answered no, referencing his previous statements about his research on the zero lot line. K. Schultz showed the map with the lots and the dashed lines around.

Chair Switzer noted that people can choose the model they want, so the footprints may differ slightly. K. Schultz affirmed. Chair Switzer asked if there is something that says there is still x amount of feet between D/E, E/F, F/G? K. Schultz confirmed yes that's part of the building permit process. The plot plans showing differences, how it's going to lie, separations, etc. Chair Switzer asked if that would come to the Board before the house is built. CEO Zarnstorff noted "after". K. Schultz confirmed after the house is built, they'd come to this Board for the resubs and then after the Board is comfortable, the procedure would change to an administrative one where the Chair would be authorized to review and approve after the CEO is satisfied.

Chair Switzer noted that with the 4' there would always be a guarantee of 8' between units. K. Schultz reiterated that the Board is guaranteed 15' based on the original approvals and that the HOA governs the other area, the building inspector comes to approve, then the tax assessor comes to adjust assessment for the owner and the HOA and then there'd be a resub.

CEO Zarnstorff brought up the fact that there is currently one tax ID number for the lot, and his understanding is that there will be new individual tax ID numbers for each new unit when built. K. Schultz confirmed. Member Winner asked if that included those that share a common wall. Again, K. Schultz confirmed.

Member Brugger brought up the fact that Schultz Associates had been able to show another municipality a tax study that showed a break-even on taxes. K. Schultz answered yes. As senior developments have become more popular, there was a concern for rezoning and what the tax impact would be because senior houses would not have kids in school. So they did a study of tax revenue per acre of senior housing versus retail property on Ridge Road in Parma, which is their highest tax revenue

MINUTES OF MEETING HELD February 11, 2008 continued.....page 6

property per acre and the senior project generated three times the revenue of the retail property. In Ogden, it was compared to light industrial parks, which they were trying to encourage in their town, and in that instance there was about 3-4 times more tax revenue for the senior development on an acre to acre basis. And senior projects seem to be low crime areas, good neighbors, low noise, etc.

Chair Switzer reiterated Lot 43 had sites A-G; A-D were connected as a four-unit; E-G were single-family set 15' apart, which two of them—F&G—are there already. Then across the street there's A-I; A&B and C&D are attached on Lot 44 and also on Lot 44, E-I are five single-family structures. Chair Switzer noted if the 4' is now a non-issue for at least these two lots and the Board had originally approved this design, he sees no issue why these could not be approved tonight. Chair Switzer wondered if there are any SEQR issues on this. Attorney Leone stated that he would recommend unlisted action for purposes of SEQR and under that, the Board would have to find that there's a negative declaration, which there would need to be a vote on.

Chair Switzer asked K. Schultz to confirm that he is withdrawing the Lot 1-5 issue. K. Schultz affirmed, stating they would like to provide the Board with additional information regarding tax revenue, something in writing from the assessor, buyers who've visited the development and their concerns/comments for the Board. He also stated he does not want to confuse the immediate need of the resubs with something else that's long-term. Member Winner clarified that the Board is talking about 44E & F and 43F & G. K. Schultz affirmed.

→ Chair Switzer then asked for a motion for a negative declaration.

Member Winner so moved, Member Brugger seconded, unanimously carried.

→ Chair Switzer then asked for a motion for the resubdivision of Lots 43F&G and Lots 44E&F that would include elimination of the 4' buffer.

Member Brugger moved, but no second was made. Chair Switzer asked if there were any other questions and noted there was no second on the elimination. Member Locke asked to present a scenario where there would be 15' between each house, wall to wall and someone wants to build a bump-out window and while the foundations have 15' between them, the window now reduces the number of feet between the structures. K. Schultz responded that the setbacks and separations are measured from the foundation. Anything above grade is considered an overhang such as a chimney or an eave. In the initial discussions, K. Schultz noted it was brought up about having enough room between units to get an emergency vehicle through. If one house had a chimney that stuck out 1 or 2 feet and it was opposite a bay window on another home, the 15' between foundations would still give enough room for access. Member Locke went on to ask if, in 5 years, someone wanted to build a 3-foot bump-out, would that be built on HOA "land"—noting it's not really on land because it's floating in space--but that the land under it is unusable. K. Schultz said it wouldn't be considered building on association land, but the way the HOA regulates the development, the homeowner would notify the association, then they would go through the CEO. Member Locke asked if it might not occur to the homeowner to get a permit to change a window in a house. K. Schultz stated that actually, people who live in these developments are part of the HOA and tend to be very restrictive on many aspects of the property, for example size of pets, drying laundry outside, etc. Attorney Leone added that something like a bay window that would be built so it encroached on a neighbor's property wouldn't even get a building permit. So if a building permit was required, it would have to come back before this Board for resubdivision.

Member Locke noted that building the overhangs would then reduce the 15' that the Board wanted, potentially by 6' total, which may restrict access by vehicles. She noted it may be tight and there are lots of variables. K. Schultz indicated that they try to think of all the potentials and he again cited the project in Hilton (Unionville Station) with over 100 lots and things worked very well there. There they were allowed to get within 6' of each other, which is less than half of the 15' here.

Chair Switzer asked why it matters if there is 4' or not. K. Schultz noted that it's mostly issues of the HOA maintaining the house and the land, as they would be on private property, not association property. Attorney Leone then suggested, regarding closeness, if the Board was inclined to grant the lot line at the house as requested. A reasonable condition upon that would be that one structure can never come within so many feet of the other structure as a condition of approval. Is that something the Board was inclined to do? Chair Switzer noted there is already 15' as is. Attorney Leone noted no disagreement. It was just his understanding that if someone put a 3' bumpout on one side and then the

other did a 3' bumpout on the other side, instead of being 15', they would be 9' from each other at a certain point. That was his understanding of where a potential concern was, so that's an idea of what the Board might do, if it was inclined. Member Locke asked if she was understanding correctly that regardless of foundation, that at no time can any part of the structure be less than 15' from another. Attorney Leone said that whatever the Board felt was a reasonable figure. K. Schultz stated his understanding to be that part of the approval would include that with any overhangs or eaves there would be no less than 9' between buildings. Chair Switzer stated it is conceivable you could have two houses with decks surrounding the home and the Board could do a conditional approval to say that we

MINUTES OF MEETING HELD February 11, 2008 continued.....page 7

always want space for some type of vehicle to fit through. Attorney Leone affirmed. Chair Switzer continued to say that there would be 15' between foundations, but we would want to maintain always at least 10' between structures. K. Schultz stated he thought that would be reasonable. Chair Switzer stated that would apply to windows bumping out, decks, bushes, etc. Member Winner restated that the 15' between foundations remains as originally approved, with a minimum of 10' between structures above grade.

Chair Switzer asked for a motion, Member Winner noted it should be a modified motion, Member Brugger noted the first motion should be disposed of. Chair Switzer stated the first motion did not go anywhere and was obviously not approved.

⇒ Member Brugger moved, Member Locke seconded, Member Winner abstained, carried to approve the resubdivision of 43 F&G and 44E&F to include eliminating the 4' lot line to the structure and reiterating there will be at least 15' between foundations of each structure and with a condition of approval of a minimum of 10' for overhangs/everything with the intent of being able to have a vehicle pass through.

Don Hibsich then asked the Board if it was approved as single-family or condominiums as both terms had been used. Chair Switzer said he was not sure how they would be classified. Attorney Leone stated it appears they would be single-family homes in the Q district, these four particular homes. Chair Switzer noted there are others that are attached and Attorney Leone stated those would be condominiums.

Chair Switzer asked if there were any other business. None noted.

NEXT REGULAR MEETING: Monday, 3/10/08 at 7pm
(Application materials due by Noon Tuesday, 3/4)

ADJOURNMENT:

→ Member Winner moved, Member Locke seconded, unanimously carried that the meeting be adjourned at 8:24pm.

Pamela Krahe, Clerk