

TOWN OF SOUTHTON
 ZONING BOARD OF APPEALS
 TUESDAY, SEPTEMBER 27, 2011

Chairman Robert Salka called the Public Hearing and Regular meeting of the Southington Zoning Board of Appeals to order at 7:05 o'clock, p.m. in the Town Council Chambers with the following members in attendance:

Jeffrey Gworek, Matthew O'Keefe, Patricia Potter and Bryan Wysong

Others: Rob Librandi, Zoning Enforcement Officer
 Mark J. Sciota, Deputy Town Manager/Town Attorney

Absent: Ronald Bohigian, Alternate
 Michael Milo, Alternate
 Juanita Champagne, Alternate

A quorum was determined.

The Pledge of Allegiance to the American Flag was recited by everyone in attendance.

The Chair explained to the audience the procedure to be followed in the presentation of an appeal. He advised that should their appeal be approved, they file it with the Town Clerk's Office before proceeding with the project.

ROBERT SALKA, Chairman, presiding:

PUBLIC HEARING ITEMS:

A. APPEAL #5881A, Application of The S. Carpenter Construction Co. for a 7.78' variance for lots #3A & #3B to 92.22' where 100' is required under Sections 5-00.13, 7A-00 & 15-04 of the Zoning Regulations, 176 Town Line Road, property of The S. Carpenter Construction Co. & The Carpenter Realty Co. in an I-1 zone.

ATTORNEY DENORFIA: Good evening, Commissioners. Attorney Andrew Denorfia with offices at 133 Main Street in Southington, representing the applicant the S. Carpenter Construction Company.

The subject property is also known as lot #3 in the Strawberry Fields Industrial Subdivision. It consists of approximately 1.5 acres and is located, as Rob said, in an I-1 zone.

As this commission knows, presently the market has dictated that large industrial sites do not have much demand. The Town of Southington has been very proactive with this in amending some of their regulations to aid in developing smaller industrial lots to enable more businesses to come into town.

Now, based on all of this, the applicant has proposed to resubdivide the existing Lot 3 into two smaller lots. These smaller lots are shown on the map as Lot 3-A and Lot 3-B. The subject property will each be --- each lot will be .75 acres.

However, under Section 5-00.13, lots in an I-1 zone that are serviced by both public water and sewer require a lot width of 100'. In the instant case, both of these lots are to be serviced by public water and sewer and as you can see from the maps, each have a lot width of 92.22'. Therefore, before we could proceed with a resubdivision application to the Planning & Zoning Commission, we have to obtain approval from this Board for a 7.78' variance for each, Lot 3-A and 3-B.

We believe there is a hardship that exists because this is a minor variance of only 7.78' per lot for lot width and in all other respects Lots 3-A and 3-B meet the regulations.

We believe that without said variance these lots are very difficult to market.

With that, I'd be more than happy to answer any questions.

MR. O'KEEFE: Question: Next to Lot 3-B, to the left of it as I am looking at the map, there is a 40' strip.

ATTORNEY DENORFIA: Yes.

MR. O'KEEFE: Is that 40' strip part of Lot 3-R?

ATTORNEY DENORFIA: Yes, that's owned by the Jensen's. Now, actually, you can see on the map here, there is a small little proposed - the Jensen's are actually giving - where this is hatched right here --- they're giving it to the applicant because they would like to see the two smaller lots in front.

The 40' access is owned by Jensen's and it's required when a rear lot was approved under Section 11-14.2.

MR. O'KEEFE: Okay. So they don't have access from the other side of where they are?

ATTORNEY DENORFIA: No. Access for both lots 3-A and 3-B, per town staff's request, would be through the access easement. So there

would not be an additional --- or there is presently not proposed to be an additional curb cut.

MR. O'KEEFE: Okay.

Rob, maybe just a question for you if you can answer it.

MR. LIBRANDI: Sure.

MR. O'KEEFE: If we were to approve a variance, taking this down to 92' for frontage, is there a way of putting a condition in there that the owners of Lot 3-A and Lot 3-B not seek side yard variances in the future given the fact that we've already cut it down once? So that they don't come back to us and say, well, we just need a little variance. You know, you got a little variance the first time. And, then another little variance the second time. Could that be a condition of our approval?

MR. LIBRANDI: I'm not sure if you could have somebody not come in and apply for a variance. Um, if they did come to the Board, again, you'd be able to refer back to this and -

MR. O'KEEFE: Well, we could state for the record if we did the approval that we were doing it under the assumption that somebody wouldn't be coming back. Obviously, that wouldn't be binding -

MR. LIBRANDI: No. We could state that on the record, I guess.

THE CHAIR: I would say just put that as part of the motion if we approve it.

MR. O'KEEFE: Absolutely.

THE CHAIR: Any other questions from the Board?

(No response)

Thank you.

Anyone speaking in favor of this application?

(No response)

Is there anyone opposing this particular application?

(No response)

Anyone opposing?

(No response)

Hearing none, this application is closed.

B. APPEAL #5882A, Application of JK Realty Holdings LLC for a 276 sq.ft. variance for a 24' x 24' (576) sq.ft. pavilion which has already been construction under Sections 2-01 & 15-04 of the Zoning Regulations, 306 Rockwood Drive, property of JK Realty Holdings LLC in an R-40 zone.

ATTORNEY DENORFIA: Good evening. Again for the record, Attorney Andrew Denorfia with offices at 133 Main Street, representing the applicant JK Realty Holdings LLC as the owner of 306 Rockwood Drive.

As Rob said, we come before you tonight for a 276' variance for a covered family pavilion under Sections 2-01 and 15-04 of the regulations.

Now the subject property consists of approximately 2.45 acres and is located in an R-40 zone.

To give the commission a little background on the property and to go along with the maps I handed out earlier in the day, the property is made up of three parcels. And, actually it consists of 2.5 building lots. The original buyer bought two approved building lots as well as a portion of the building lot to the rear of the property. You can see on your map are labeled as "formerly known as Lot 12-R, 11 and 17-R."

The existing pavilion is a 24 by 24 foot pavilion which adds up to 576 sf. I passed around some photos of the existing pavilion and you will be able to see from there that it is really very beautiful and the applicant spared no expense for the construction of it.

It's made with (inaudible) board ceiling and stone pillars. It has an outdoor kitchen with all the appliances. It has a gas built in grill as well as a range. It actually even has a pizza oven and an island for seating.

Now, we don't believe the pavilion is excessive in relation to the large unique size of the property. It's not easily viewable from the street. And, we believe that there is a hardship as this is a unique property that consists of 2.5 building lots which add up to 2.45 acres in an R-40 zone. And, the existing regulations do not take into account such unique properties.

The property, if split up, would be allowed to have an access of 600 sf of accessory structures. So we believe that the pavilion fits in and adds to the property and therefore based on the unique configuration, we request the 276' variance.

With that, I am more than happy to answer questions.

The applicant would have liked to have been here but he happens to be travelling.

MR. O'KEEFE: Question: Doesn't the gazebo count toward the 300'?

ATTORNEY DENORFIA: If the commission --- I did talk to the applicant today --- if the commission so desires, he would be willing to remove the gazebo.

MR. O'KEEFE: No, but I guess my question is, if that's the case, if the gazebo does exist then you are really asking for a variance of 176' plus the gazebo.

ATTORNEY DENORFIA: Right. And, just to clarify, we would be willing to remove the gazebo.

So, the request tonight is for the 276' variance.

(Pause)

MR. O'KEEFE: Now, you mentioned 2.5 lots. But they are not really 2.5 lots. They are parts of three different lots, aren't they?

ATTORNEY DENORFIA: No. They're actually two approved building lots and the one in the rear --- this was originally when Dan Paradis in about 1998 purchased it. He bought lots --- the numbers are right here. Lots --- the formerly known as 12-R and 11 both meet the zoning regulations. Both are approved building lots. And, lot #17-R is just a portion of Lot 17. That's where I'm coming up with the 2.5 lots.

MR. O'KEEFE: Okay. Didn't your client, last year, apply for a zoning permit?

ATTORNEY DENORFIA: Uh, I don't --- I know that they did and they were --- sounds like there was a miscommunication. Um, as I say, my client does travel a lot. Um, so there was a denial. And, it was a miscommunication between him and the builder and that it was now --- that it was actually constructed. And, that's where, when this came in, um, they ceased and desist. The applicant acted pretty quickly to apply for a variance here.

MR. O'KEEFE: Did your client have a building permit when he built the gazebo?

ATTORNEY DENORFIA: No. Not the gazebo ---

MR. O'KEEFE: I mean the pavilion.

ATTORNEY DENORFIA: Yes.

THE CHAIR: There was no permit?

ATTORNEY DENORFIA: That's correct.

MR. WYSONG: There was no permit?

ATTORNEY DENORFIA: That's correct.

MR. WYSONG: The builder was aware that there was no permit?

ATTORNEY DENORFIA: Sounds like there was --- the best I can tell you is it sounds like there was a miscommunication.

MR. WYSONG: Was the permit denied on the drawings of a wooden structure with internal supports?

ATTORNEY DENORFIA: I believe - and I did not, you know, represent him at the time but I believe it was denied because of the size of it.

MR. WYSONG: So, the builder built it without a permit and changed the design?

ATTORNEY DENORFIA: The design was not changed.

MR. LIBRANDI: He never got a zoning permit for the --- he didn't realize how large it was going to be.

MR. WYSONG: Okay. Correct. The zoning permit that was denied was for a structure of a different design. The same size, different design.

MR. LIBRANDI: Yes.

MR. WYSONG: So the building department has not reviewed the design? They didn't do any in process inspection?

MR. LIBRANDI: They brought it to my attention that there was a structure on the property that had not gotten any building permits. And, that's how we became aware of the structure.

(Pause)

MR. WYSONG: Is it normal for a builder to build an auxiliary structure without a building permit?

ATTORNEY DENORFIA: I can't really speak to normal. Um, it's not

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MR. WYSONG: Is it customary?

ATTORNEY DENORFIA: It's not customary. No.

MR. WYSONG: Do we know who the builder was?

ATTORNEY DENORFIA: I don't. It sounds like from --- you know, I don't think anybody really meant any malice, to be honest with you. But the applicant would be more than happy to have the building department, you know, come out and inspect it.

You know, I've looked at it. It's really, you know, it's really something. It's just the size. You know, I think if we were coming in an R-40 with that, that was actually 42,000 and change feet, I think it's a little bit different. Maybe that would be a little bit big.

We're talking here of something that's approximately 2.5 acres. So I think it is a little bit of a unique situation. I think that's where the hardship really comes in.

MR. O'KEEFE: A 2.5 acre lot in an R-40 zone isn't in and of itself unique is it?

ATTORNEY DENORFIA: Well, it's unusual to have one home on 2.5 or I should say, 2 approved building lots. That in and of itself is unusual. Just for the simple fact of not many people can buy an extra building lot and put one house on it.

MR. O'KEEFE: But the application really, as you look at the face of the application, it's not for a 276' variance. It's for a variance of about 450', isn't it?

ATTORNEY DENORFIA: No, I --- no.

MR. O'KEEFE: Well, the gazebo is there. And, the gazebo counts towards the 300.

ATTORNEY DENORFIA: And, we are saying we'll remove the gazebo.

MR. O'KEEFE: But not in the application. On your presentation.

ATTORNEY DENORFIA: That's correct. So the only thing, we're not asking for 276 plus the gazebo. We're asking for simply the 276' variance.

MR. WYSONG: Well, I know that my opinion on this is probably not of, um, direct application for what this Board does. But I get the feeling that this is a case where your client is asking for forgiveness rather than permission.

ATTORNEY DENORFIA: I don't, you know, it's hard for me to answer that.

MR. WYSONG: I wish your client were here because I would take the time to scold him.

ATTORNEY DENORFIA: I understand. And, I think, I think with the cease & desist and I think going through this whole process, I think he has been scolded pretty, you know, pretty harshly.

MR. LIBRANDI: To the applicant's defense, when we did send the cease & desist, he did contact us very swiftly and gave us the information that is presented in terms of, I told him to give us all the information you have on the structure and we can see what we can do, you know, and you know, they decided that this was the best outlet to ---

MR. O'KEEFE: But he didn't take the gazebo down, did he, before he applied?

MR. LIBRANDI: No.

MR. O'KEEFE: And, he could've done that if he really wanted to show us that he wanted to comply.

MR. LIBRANDI: Yes.

ATTORNEY DENORFIA: In defense to him, I think, I mean, he does take full responsibility for this. As well as I, to be honest, and I think that what I even recommended is, let's go talk to the Board and --- before you start doing anything. Moving anything, doing anything. Let's get the Board's opinion on this before you start taking down structures and moving structures. We just didn't want it to come across as now all of a sudden he's trying to, you know, fix the situation without the, without the Board's knowledge.

So again, it's always been stated from day one that the gazebo will be removed but um, in defense to him, I think it was wait until we had this actual hearing.

MR. O'KEEFE: You had mentioned, you know, the lot was large. Let's assume this lot was in an R -80 zone. Even in an R-80 zone, you can only build 350'. And, he is still looking for 400' on top of that if you count the gazebo.

ATTORNEY DENORFIA: I guess, but again, I, we're not requesting, we are not requesting a variance for the gazebo. We are saying that --

MR. O'KEEFE: I understand that.

ATTORNEY DENORFIA: --- it would be removed. So what we would be requesting for is a variance - of this 350, a variance of 100 and --- if my math is right, 126.

MR. O'KEEFE: But how does this Board find a hardship?

ATTORNEY DENORFIA: I think, I think the hardship again is that it is a unique lot. The zoning regulations don't take into account when you have two actual approved building lots.

(Pause)

MR. O'KEEFE: Well, you have a 2 acre lot, correct? And, even in an R-80 zone, it would be 350.

MR. WYSONG: Well, in defense to what your client is trying to do, it is certainly a unique property. And, from a zoning standpoint I can understand a limitation of an auxiliary building of some nominal square footage and in this case 200 sf I believe is what the zoning board says.

Two hundred square foot on an R-40 lot with a 2,000 sf house may be kind of routine. Your client probably has a five or six thousand square foot house.

ATTORNEY DENORFIA: I believe it's about almost 7,000 sf.

MR. WYSONG: Seven thousand square feet with a pool, with a very generous driveway, with protection on the mountainside behind. It is truly a unique property. And, from a Board of Appeals standpoint, coming before us to say it is unique and the pavilion does add to the ambience of the back yard. It matches the pool, it matches the stonework. It's gorgeous. We're asking to have a variance. I can say very much that is a hardship case. It's a hardship along the use of the property and I don't have any problem with that.

I wish your client had come here shortly after August 6, 2010 when he was denied which was really the proper time for the appeal.

ATTORNEY DENORFIA: I think he wishes he was here earlier, too. I don't think there is any doubt about that. I think everybody wants to remedy the situation as cleanly and as fairly as possible.

MR. WYSONG: I'm finished.

THE CHAIR: Okay. One option is to continue the public hearing and at the next meeting expect the owner to be here --- the applicant to be here. And, you know, talk to us about, you know, why he ignored the cease & desist order, number one. That's an option.

Or we can, you know, just move forward with it and you know, bring it up for a vote at the end.

MS. POTTER: I think we should move forward with it.

MR. WYSONG: He didn't ignore the cease & desist. He just didn't receive a building permit and the builder went ahead and built it anyway.

MR. O'KEEFE: Well, when you say he didn't ignore the cease & desist, there was nothing for him to do because he had already built it.

MR. LIBRANDI: It was after the fact.

MR. O'KEEFE: It wasn't as if he complied with the cease & desist, either. So, I think the corollary is he didn't comply with the cease & desist nor did he ignore it because it's already there.

MR. WYSONG: He is here because of the cease & desist.

MR. O'KEEFE: Right.

MR. WYSONG: It's when he didn't get a building permit from the zoning board his builder went ahead and built it anyway.

Whether your client was complicit in that or it happened when he was traveling --- I have no idea.

ATTORNEY DENORFIA: Obviously, you know, when I say it's a miscommunication, in the end and I don't think he would dispute it; it falls to the owner of the property. You know, he's the one. It is on his property and he understands that.

That's why, when the cease & desist came, he immediately --- I know he talked to the Zoning Enforcement Officer. He called our office, you know, and he's not, he wasn't an existing client. He was a new client. He had a zoning issue.

So, he did act as quickly as possible. The Zoning Enforcement Officer required an A-2 survey. He had an A-2 survey done just to show the location of everything.

So, you know, is this the ideal situation? No. But I think we are trying to remedy it.

THE CHAIR: Well, one of the issues, I guess, and let me ask the question of Rob and that is, we have an application that's asking for a variance of 276 when in fact it's not 276 but it's more like 50476.

MR. O'KEEFE: Correct.

THE CHAIR: And, the application that we have, even though you've said you would tear it down, what's been published in the paper is you are asking for a variance ---

MR. LIBRANDI: You may be able to put a stipulation that says upon

MS. POTTER: Approval of.

MR. LIBRANDI: --- approval, the gazebo must be removed.

ATTORNEY DENORFIA: That was the understanding.

THE CHAIR: No. I understand that. I guess my only question is, this is what was advertised in the paper.

ATTORNEY DENORFIA: I understand.

THE CHAIR: From the application. But that is not what you are bringing before us even though we may stipulate to remove it. I'm just --- I don't want to create a legal problem.

ATTORNEY DENORFIA: No, I understand. And, from a legal, if I was, I think, on the other hand, if we had said, we're trying to keep, then somebody would come in maybe and say, you know, I don't want that there. A neighbor could come in.

In this case, we're saying we're going to remove it. I would highly doubt a neighbor or somebody would come in and say, you know what? Even though the applicant wants to take it down, is offering to take it down, I really want him to keep it there.

I'm not being, I don't know what an actual notice would, would accomplish there just because we're offering, you know, if there is a time frame of how long you want it taken down, it'll be taken down within that time frame.

MR. O'KEEFE: But if the commission --- what's the commission to think if the commission, if the Zoning Board - department turned down the petition for the gazebo and he built it anyway. And, now he says, if he gets the variance for something I shouldn't have done that I did do, I'll do something else in the future. Why would we believe that he would do that?

ATTORNEY DENORFIA: The gazebo, now just to clarify it, we're here for the variance for the pavilion.

MR. O'KEEFE: For the pavilion, right.

ATTORNEY DENORFIA: The gazebo was existing when my client purchased the property.

MR. O'KEEFE: Correct. And, we are not criticizing him for that.

MS. POTTER: The thing is that I wouldn't move it either. If I was - tear down this or tear down that, I would wait until I had a decision from this Board before I went ahead with a plow truck and towed everything down to flat. I would wait. I don't know about you, but I wouldn't start tearing down the -

MR. O'KEEFE: I'm not suggesting that he tear down anything.

MS. POTTER: What I'm saying is you said if he tore down the gazebo then I could see, and that's the right thing. But why should he tear that down if he doesn't know what the right thing yet is to do. Now, you've destroyed two or maybe one or -

MR. O'KEEFE: But that's not what I said. What I saw was the application didn't offer to do that. And, the application could have offered to do that without affecting the structure until this Board made a decision.

MS. POTTER: But he said they went there and they told him from the beginning that they would do that.

MR. O'KEEFE: But it is not in the application.

ATTORNEY DENORFIA: Just, Attorney O'Keefe? In terms of the variance, I don't know, the cease & desist was regarding the 276 feet. We responded to that. I don't know where we would have put in the application the 276' variance and we're going to remove something else. You know, I don't know the --- it was always stated from day one when this process started a few months ago, um, you know, I don't think there was anything duplicitous or, you know, something that we're trying to hide. I mean, you know, we're offering to remove it. It's always been offered from day one knowing that you cannot have two accessory structures on one property. When my client found that out, he said, and that's not even part of the cease & desist, that's just, when he came to me, I said, you know, that's not allowed. Rob told him that wasn't allowed, as well.

So, he said, I'll remove that. You know, the other one is, as you can see from the pictures, very difficult, the pavilion to remove with the pillars in the ground and everything. So, you know, he is willing to remove the pavilion (sic) as a stipulation of this variance.

It is not, again, this is not something --- he would love to keep them both. But I don't, I don't see how, you know, I could come here and say there's a hardship for both of those. So, I think that, you

know, I think there is a legitimate legal hardship for the pavilion with the condition or the stipulation that the pavilion, that the gazebo is removed.

MR. WYSONG: There was a zoning permit for the pool/cabana.

ATTORNEY DENORFIA: Yes.

MR. WYSONG: Is the gazebo the pool/cabana?

MR. LIBRANDI: From what is stated in the zoning permit, the location is, would be, of the pool/cabana would be located where the existing pavilion is.

MR. WYSONG: Okay. So the cabana was never----

THE CHAIR: Well, I think the --- I think what happened was the pavilion took the place of the cabana. I don't think they ever built the cabana. Correct?

MR. LIBRANDI: I am - this was in '89.

THE CHAIR: I have a feeling that this sort of was the next step. They never built the cabana. Which they had approval for.

MR. WYSONG: Which they had approval for.

THE CHAIR: Right. And, they went from a 12 x 16 to a 24 x 24.

MR. LIBRANDI: Do you know if it was an expansion of the cabana? Or did they just remove it?

ATTORNEY DENORFIA: I don't. There was something there.

MR. WYSONG: Well, the appeal tonight deals just with the cabana. It doesn't deal with the gazebo.

THE CHAIR: The pavilion or cabana, whatever you want to call it.

MR. WYSONG: The pavilion. Excuse me, I had the wrong terminology.

THE CHAIR: Right. Not to be labor it, I guess my only real - I guess my biggest concern about this whole thing is we've got a builder in town who doesn't know he needs a building permit. That's a problem that I've got. I mean any homeowner in town knows you need a building permit to build anything in town.

We've got a builder that built a pretty fancy pavilion and didn't have the wherewith all or the knowledge that he needs a building, that's I guess, my concern is.

ATTORNEY DENORFIA: That again, I think that falls to the applicant.

THE CHAIR: No question about that.

ATTORNEY DENORFIA: And, so that is why there is not a -

THE CHAIR: Right.

ATTORNEY DENORFIA: The applicant obviously a miscommunication for it but would give the go ahead.

THE CHAIR: Yup. Okay.

MR. WYSONG: I have the same feelings but I don't think that is the purpose of this Board nor the appeal.

THE CHAIR: No. Are there any other questions of this, of the applicant or his representative?

(No response)

Thank you.

Is there anyone speaking in favor of this application?

(No response)

Is there anyone opposing this application?

(No response)

Anyone opposing?

(No response)

Hearing none, this application is closed.

C. **APPEAL #5883A**, Application of Torrey S. Crane Co. for a 9.2' front yard setback variance to 38.8' where 40' is required & a 28.6' side yard setback variance to 1.4' where 30' is required to add a second story on an existing industrial building under Sections 7A-00 & 15-04 of the Zoning Regulations, 510 Summer Street, property of Torrey S. Crane Co. in an I-2 zone.

DAVID BAKER: Good evening, Mr. Chairman and Board members. My name is Dave Baker. I reside at 77 Hollyberry Lane in Plainville, CT. I'm here tonight as the President and owner of the Torrey S. Crane Company, the applicant for this requested variance.

I should also mention that I was out of town today, also. I was traveling to Ocean City, Maryland and I heard this lady mention Ocean City, Maryland.

But I am here to represent our company. We would like to put a second floor addition onto an existing industrial building at 510 Summer Street. The building has been in existence since probable, I would say, the mid-30's.

We would like to put a second story on to this building to serve for offices. Our offices in our 492 Summer Street building are inadequate for our current needs and purposes.

We'd like to have the opportunity where our exiting offices are to possibly put lunch facilities in that are for our employees and also some of the offices out in the shop, we could then expand additional manufacturing capabilities. That's our request in a nutshell.

MR. LIBRANDI: So, do you know the exact height of the second story?

MR. BAKER: I don't know the exact height, no, I don't.

MR. LIBRANDI: But it wouldn't exceed -

MR. BAKER: I would have to get that from Kratzert & Jones.

MR. LIBRANDI: It wouldn't exceed 65 feet, right?

MR. BAKER: No. The reason we chose this building for the second story is that it is extremely well built and it has steel beams throughout the building. It's more applicable to support any addition than --- if you are familiar with our property, we connected two buildings some time ago. And, the addition that we made is not suitable to put a second story on. And, that's why we're requesting to do it at the 510 Summer Street facility.

THE CHAIR: But it is within the same footprint. It is a second story within the same footprint of the existing building which is what is showing on the drawing.

MR. BAKER: That's correct. You will notice that the second story does not show any windows. You know, seeing as how it is so close to an abutter, there would never be any ability to, you know, look through any windows on the second story. So that would maintain any privacy for the people next door.

MR. O'KEEFE: Do you know what the use of the property is next door at 115 West Main Street?

MR. BAKER: It's a bar

MR. LIBRANDI: I believe there is a parking lot next door.

(Pause)

THE CHAIR: And, how is that --- that is zoned the same?

MR. LIBRANDI: Yes.

THE CHAIR: An I zone?

MR. LIBRANDI: The bar?

THE CHAIR: Yes. Well, the 115 and 119 West Main. How are those zoned?

MR. LIBRANDI: I believe they'd both be zoned I-2. If it was a -

THE CHAIR: I would think so.

MR. LIBRANDI: There is both manufacturing - the same use. So the use is uniform.

MR. O'KEEFE: Do you know the height of the present building now?

MR. BAKER: I would suspect it's, again this is just conjecture on my part, around 15 feet.

Maybe Todd, my son is here.

TODD BAKER: Maximum of 15 feet.

MR. O'KEEFE: Is it a flat roof on the existing building?

MR. BAKER: Yes.

THE CHAIR: Well, it's got a 12 foot door.

MR. BAKER: Correct.

THE CHAIR: So, the height is probably around, I would assume around 15 feet. Somewhere around there. If you look at the drawing, that's --- so it looks like it would be substantially under the 55 feet max.

MR. WYSONG: Well, this gentleman said 65. Didn't you say 65?

MR. LIBRANDI: I-2 zone.

THE CHAIR: What is it, Rob?

MR. LIBRANDI: It's in the I-2 zone, so the maximum height of 3 stories or 65 feet.

THE CHAIR: Sixty-five, okay. It's well under that.

MR. BAKER: Yes.

MR. O'KEEFE: Do you know how close the structure on 115 West Main Street is to your structure?

TODD BAKER: Uh, no. Forty feet. That's a double parking lot.

THE CHAIR: Would you just state your name and address for the record. So Linda can get it. Please. Thank you.

TODD BAKER: Todd Baker, for the record, at 105 McKenzie Drive. Also an employee of Torrey Crane.

MR. BAKER: And, part owner.

TODD BAKER: Uh, that building that is on the corner, um, is it 115 you're saying? It's a triple parking spot or a lot in between our property and that. So, it's 40 feet, I would imagine. It's about 40 feet.

THE CHAIR: Okay.

(Pause)

MR. O'KEEFE: What would describe your hardship as?

MR. BAKER: The hardship is that we need additional office space. That's what our hardship is. And, it would enable us to rearrange some of our manufacturing equipment in our existing area which would enable us to provide our employees with a separate eating area and our existing office space.

MS. POTTER: He wants to know the hardship of the property itself and not of your self-imposed hardship, i.e.: the lot's irregular. The lot's not shaped. The lot does not have the room. You're saying what you want because that's self-imposed. But ---

TODD BAKER: The property abuts that 115 and there is only a 1.something to the property line.

MR. LIBRANDI: Do you know when the structure was built?

TODD BAKER: Probably in the 30's.

MR. LIBRANDI: So it predates zoning regulations.

MR. BAKER: It's an existing industrial building prior to 1930.

TODD BAKER: So, they put the parking lot right up to that building and there is supposedly only a 1 foot something ---

MR. BAKER: As a matter of fact, the original, 510 Summer Street, how it abutted the 492 Summer Street, there was no clearance whatsoever. Our original fence went right down the side of that building.

MS. POTTER: Yes, that's what I was asking. It was already. And, it's not going to change the print of the bottom half of the building.

MR. BAKER: No it will not.

THE CHAIR: Any other questions?

(No response)

Thank you.

Anyone speaking in favor of this application?

(No response)

Anyone opposing this application?

(No response)

Hearing none, this application is closed.

CONTINUED PUBLIC HEARING ITEMS:

A. APPEAL #5870A, Application of Jerzie Joe's Sports Bar & Grill Inc. for a special exception approval to allow applicant to apply for a restaurant liquor license under Sections 11-04, 15-05 & 4.01.32A of the Zoning Regulations, 202 Newell Street, property of Marques LLC in an I-2 zone.

MR. MARQUES: Joseph Marques, 202 Newell Street. I'm here today, I am running my business under an LLC and I'd like to change that to a corporation. So, I need to apply for a new liquor permit.

At the same time I would like to have the possibility of having outside entertainment.

MS. POTTER: I did take a ride by. And, I did see you are way away from everybody. You are kind of centrally located in nowhere. So, at least I saw it. I, like I said, I didn't have a chance before. The last meeting I really wasn't happy with it.

The only comment I have is if we opened up, it's kind of a can of worms because we don't have anywhere else with outside music or anything like that. We do have places where they can have so many a year. Um, that kind of a thing. Would you be open to that?

MR. MARQUES: I'd like to have the possibility. Of course, I would be grateful for anything. But, I'd like to have the possibility. It would grow my business. Bring customers in.

MS. POTTER: Oh, I understand. In this economy I understand immensely.

MR. MARQUES: Anything I can do to make my customers happy and grow my business. Be successful in town.

MR. WYSONG: I have no way of knowing whether the situation of having an outdoor patio/dining/entertainment area in an industrial zone is unique to you or whether other bars in the town for which we have denied some of their outdoor entertainment through the years, are they in industrial zones or are they in residential zones?

MR. MARQUES: I am absolutely in an industrial zone.

MR. WYSONG: I know your situation. And, I guess having looked at the property again, and measured how far the nearest residences are, recognizing that Yarde Metals has now built a wonderful sound barrier on at least three sides of your establishment and the fact you are in an industrial zone, I think I would find that an approval might be something we ought to try.

MS. POTTER: No, I honestly see your point. Like I say, I went out there and I wasn't expecting what I saw, you know?

MR. WYSONG: To your point that we don't want to set a precedent but if the precedent that we set is you can have outdoor entertainment in an industrial, I'm not sure that that is any worse than you can have a punch press in industrial or you can operate 24/7.

THE CHAIR: Well, I, too, rode by it again today. And basically nearest the house now, and I asked Rob that question. You have three houses along that road.

MR. WYSONG: On Newell Street?

THE CHAIR: The one that runs through Jensen's. And, those three houses, or the first house is probably 300 or 400 feet.

MR. WYSONG: Easily.

THE CHAIR: It's a baseball throw. So, it's not that close - or that far away. Then you have Jensen's within probably a tenth of a mile. And, when you look at where the pavilion is, you do have a line of trees but there is no building that blocks that patio from those houses.

MR. WYSONG: From those two houses.

THE CHAIR: There is three houses there and then you've got Jensen's, the entrance to Jensen's with the big gold sign.

That is a concern for me. Um, understanding it is an industrial zone and you do have those trees lining your property or lining the Yarde Metal property. And, I guess it is a concern for me.

And, one of the things that --- we did continue the public hearing and that would have given the people there a chance to voice their opinion. And, that is one reason why I did it or did ask for it.

I would like to consider that if we do this, if the Board decides to do this that we put a one year renewal on it. Take a look at it after the first year. Because, we don't know how it is going to go.

We can't, we can't put a decibel level on it. If he puts a hard rock band out there, I'm not saying he can or he can't, um, they're going to hear it. No question in my mind. At ten o'clock at night, they're going to hear it.

MR. MARQUES: What I'm trying to do is, people dining, have the opportunity to listen to some music.

THE CHAIR: Sure.

MR. MARQUES: Everybody likes to go out to eat and hear a little live music and enjoy a twin lobster dinner.

THE CHAIR: I agree and I'm not -

MR. MARQUES: Outside.

THE CHAIR: -- disagreeing with that.

MR. MARQUES: That's my --- our intention.

THE CHAIR: I just don't want to open it up that all of a sudden we do have a problem because there is no Noise Ordinance in Southington. There's no way to control it. And, I am not saying you would take advantage of it. I'm not saying that at all. But again, once we approve, it goes with the property. It's there forever.

MR. LIBRANDI: Well, n that zone, we wouldn't be able to enforce it with the ordinances. It's an I-1 zone. And, in an I-1 zone, I think the Town Attorney last meeting said in an I-1 or I-2 zone, machinery can go on for 24 hours.

THE CHAIR: Right, and I agree. We've got that same problem on Summer Street with um --- whatever it is there --- Tiger.

So, I mean, again, I'm willing to give it a try. But I'd like to consider putting a one year on it and see how it goes. If we have no problems, then ---

MR. O'KEEFE: Would we be limiting the number of tables? I mean it is sort of open-ended if you are just saying outdoor dining.

THE CHAIR: That's, I'm not taking, you know, I haven't gotten that far, yet. But yes, we should at least consider it. Because the pavilion, how big is the pavilion? It doesn't seem to be that big.

MR. MARQUES: It's 40 by 25.

THE CHAIR: It's not huge but ---

MR. WYSONG: You don't have a lot of property to expand even if you wanted to.

MR. MARQUES: I have a little over an acre.

THE CHAIR: A little over an acre?

MR. MARQUES: Yes.

THE CHAIR: But it is pretty narrow, I think. It goes to a pie.

MR. MARQUES: It's odd shaped, yah. It's long.

MR. GWOREK: Did you state that most events would be Thursday, Friday and Saturday? Weekends?

MR. MARQUES: Probably Thursday or Friday evenings. Very early evening.

MR. GWOREK: Would you oppose a time limit? If we said nine or ten o'clock? Or obviously ---

MR. MARQUES: Like I said, I'd be grateful for anything. But I mean, ---

MR. GWOREK: Just trying to please somebody.

THE CHAIR: One of the ordinances says that there is no noise guideline prior to ten o'clock. So I mean ---

MR. WYSONG: Prior to ten.

THE CHAIR: Prior to ten o'clock.

MR. O'KEEFE: Would you have to build some kind of enclosure to enclose it and to provide that alcohol containers not be taken outside of the enclosure.

THE CHAIR: Well, it is surrounded by fence. There's a fence that goes all the way around his property.

MR. O'KEEFE: Not the property, but the area where people would be consuming alcohol. Do you want people wandering all over the property with open containers?

MR. MARQUES: It's all fenced in. There is no way out without going through the building.

THE CHAIR: Normally, we do - if we have like patio and we've had them before, where we have outside dining but no music. But you know, we make sure that you just can't take alcohol outside the perimeter of that particular area.

And, the one thing that particular area is is it's pretty well fenced in. So you can't, you have to go through the building in order to get to the patio and there is no fence outside it that I could see.

There is no - there is no way -

MR. WYSONG: No access.

THE CHAIR: --- access or -

MR. MARQUES: There's access but it's locked. A locked access.

THE CHAIR: So to your point, I mean, if you want, how you want to frame that as part of your motion, as part of a motion.

MR. O'KEEFE: Okay.

THE CHAIR: It is something to consider. You're right. We don't want people wandering around the property with containers of alcohol. We normally every time we've done it, we've basically said the alcohol would be served in cups or glasses and not in the original container. All of those kinds of things.

So you know, if you want to take a look at what the outdoor dining stipulations are. I think you have a copy of them?

MR. O'KEEFE: I don't think I do.

(Pause)

MR. WYSONG: You are currently serving alcohol outside, aren't you?

MR. MARQUES: Inside. But they are able to go outside. We put them in plastic cups to go outside. Yah, the Liquor Commission, prior to when we opened up four years ago came down and that's the stipulation. Everything, it has to be fenced in. You can't be able to pass liquor through, across, you know?

MR. WYSONG: In the change of your name, do we have to restipulate everything else that went along with your original stipulation?

MR. LIBRANDI: If the management or permittee changes we are starting a new application again.

MR. WYSONG: Okay, but is it the Liquor Commission that puts the stipulation on for limited access or is it us?

THE CHAIR: No. That's us. That's what we --- we've been doing that on all of our -

MR. MARQUES: That's why I'm here. I'm asking for permission to grow my business with live entertainment.

MR. WYSONG: Okay, I understand why you're here. I guess - I'm new enough that I don't understand who does what because you have three or four masters.

MR. MARQUES: I need your permission first.

MR. WYSONG: We're only one of the masters. I'm sure the state and Liquor Commission ---

THE CHAIR: Yah, I don't think they stipulate that kind of thing. But I think we stipulate the number of tables not to exceed and the change in permittee, hours of operation when you're serving outside. Those kinds of things. That's in our list of -

MR. O'KEEFE: But we have in our list, in terms of music, I think we could probably regulate hours of music.

THE CHAIR: Yes. And, the number of pieces of --- if you wanted to say no more than three musicians, you know, whatever you guys, whatever the Board feels is appropriate. Do you have any thoughts on that? I don't want to say two when you think three is ---

MR. MARQUES: I've had a Blues Band in my backroom and sometimes its five pieces. A saxophone, two bases, a guitarist, harmonica, drum. You know, that's the route I'm going. Fun music and fun dining music. Like I said, I'd be grateful for just permission.

THE CHAIR: Okay. Are there any more questions of the applicant?

(No response)

No, I guess the application that we're looking at, you've given us a layout and because it is an application you're asking for outdoor but you are also with the new liquor permit, you've submitted the layout of the facility itself.

MR. MARQUES: We have one inside and one outside.

THE CHAIR: Correct. Right. So, one of the things you want to stipulate on the top here is the number of bar seats, if there's any change to the layout internally you have to come back - you know, significant changes, he'd have to come back. It's the same stipulations you had before. Okay?

Anything else?

(No response)

Thank you.

Anyone else speaking in favor of this application?

(No response)

Anyone opposing this application?

(No response)

Hearing none, this application is closed.

B. APPEAL #5871A, Application of Pattison Brothers Construction LLC for a 14.5' side yard setback variance to 15.5' where 30' is required under Sections 7A-00 & 15-04 of the Zoning Regulations, 1774 Mt. Vernon Road, property of Bell City Rifle Club in an R-80 zone.

MIKE PATTISON: Good evening, Mike Pattison of Pattison Brothers Construction. I reside at 363 Winding Ridge.

I'm here to briefly outline the proposed addition of Bell City Rifle. The building has been in existence since 1938. The current rear corner of the building is approximately 14.5 roughly. We are proposing a 16 x 27 addition off the back. The rear corner of the new addition pulls away from the side set back further approximately 1 foot.

This proposed addition is to upgrade the bullet trap system that's current in place which allows for approximately 4 feet. The new updated traps start at 11 feet minimum and run further 14 to 16 feet. So we're proposing a 16 foot addition off of the rear of the building to accommodate that space.

THE CHAIR: One of the reasons that we continued this public hearing was because of the issues with regards to lead. My understanding is that that test failed.

MR. PATTISON: I didn't have any; get any results on the test.

THE CHAIR: Okay.

MR. LIBRANDI: We just received the results from the health department today and they weren't up to code. So, um, with that being said, we were going to ask for a consent for an extension to the next meeting and maybe you can contact the health department and let them know what is to be done next.

WALT SIMMONS: President of Bell City Rifle Club. I reside at 25 Hemlock Street, Newington, CT.

As far as the problem with the Southington Health Department, the Southington Health Department became involved with our lead abatement program because had a junior shooter with a high level of lead. We no longer have the junior program at our club. So therefore, the Town of Southington has no legal authority over the Bell City Rifle Club according to the statues as long as no one under 18 is being impacted.

THE CHAIR: Well, I ---

MR. LIBRANDI: I'm sorry. The information we received is from the Southington Health Department stating that there is a violation. I would, you could clear that with them, first. But ---

MR. SIMMONS: There are no standards for shooting ranges. We have been in contact with the State Health Department who oversees it. They gave us a clean bill of health. It's a shooting range. You expect to find lead there.

What we are planning to do is we'll be mitigating the lead deposition further by installing new bullet traps. The bullet traps we have there now were designed in the 1960's and they stopped 22 bullets by impingement at a 45 degree angle. That creates lead dust.

We're going to replace those with new bullet trips that channel bullets down in a swirl chamber and drop out. So, they don't destroy and fragment lead bullets. So, overall there will be less lead dust generated.

THE CHAIR: I think, I think, at least - I understand what you're saying. And, I guess the concern I have is that right now we have conflicting reports. I understand what you're saying and you're probably absolutely right. But now, our town, the town health department has basically said it does not pass.

Now, I think, as Rob pointed out, if you could get together with the town and the town attorney and the health department, because I think this is really something that the town attorney would have to make that determination whether what you stated was applicable.

MR. SIMMONS: When the town health department says it doesn't pass, what criteria are they using?

THE CHAIR: Correct. But I think then the town attorney, I would think would have to make that determination saying that the health department is incorrect in their reading.

MR. PATTISON: When Scott was out there doing the test, he had stated that the testing was based on residential and no gun range. So he was pretty much opposed to the standards that were set. So -

MR. O'KEEFE: Aren't you in a residential zone?

MR. PATTISON: It's an R-80 zone.

MR. O'KEEFE: So you are subject to residential regulations. It's a gun range but it is in a residential zone.

MR. SIMMONS: But as far as lead abatement goes and lead poisoning, we are not a residential domicile which the regulations and state statutes address.

MR. GWOREK: This doesn't, obviously, it would be nice to be in compliance with all the town of Southington departments, but we are looking at a zoning issue.

MR. LIBRANDI: Well, in terms of, once a department, once there is any type of violation on a property, we have to -

THE CHAIR: Right.

MR. LIBRANDI: --- correct it prior to - this is our chance to correct issues that, you know, are on the property so they are in compliance with the zoning.

THE CHAIR: I wish we had known this a week ago.

MR. LIBRANDI: It was just brought to my attention and I -

THE CHAIR: Rob just got it handed to him today.

MR. LIBRANDI: At the end of the day. Unfortunately. And, we don't have the knowledge, myself I don't have the knowledge to determine what passes for lead tests or not.

I asked the health inspector and the health inspector told me the levels weren't good. So, in terms of that, I would say that we would just consent to an extension.

THE CHAIR: Could we have a motion - we can continue the public hearing one more time and in the meantime I'll get a hold of the health department and talk to them and find out what is really going on. See if we can get something in writing from them, you know, one way or the other that they are in compliance, that the they are using the --- that the town is using the wrong specifications or whatever.

But I think we can't make a determination tonight without having that from the town.

MR. PATTISON: Scott did request from us also a letter that the junior program is no longer in existence. Basically, that's what this whole situation -

MR. GWOREK: So there is no way can we can put a stipulation pending clarification? We can't pass it or deny? Or is that something you don't want to consider?

THE CHAIR: I'd rather not. I mean, again it is the Board's decision but I would rather not do that. I'd rather have this cleared off the table. And, then we can move forward with a clean slate at the next meeting.

MR. LIBRANDI: Unfortunately, the information was just brought to us at the last minute. If we did have the time to review it and speak with you and you have more knowledge than I would have on this problem.

I would tell you to call the health department tomorrow and call the town attorney to see what authorization we do have so the next meeting we would be able to decide something.

THE CHAIR: Can I have a motion, if you so desire, to continue the public hearing on this application?

MR. O'KEEFE: Make a motion to continue the public hearing on Appeal #5871A.

MR. LIBRANDI: For an extension.

MR. O'KEEFE: I'm sorry, for an extension.

MS. POTTER: I'll second it.

(Motion passed unanimously on a voice vote.)

8:10 pm

REGULAR MEETING**APPROVAL OF MINUTES - Regular meeting of September 13, 2011**

Ms. Potter made a motion to approve the Minutes as submitted. Mr. Gworek seconded. Motion passed unanimously on a voice vote.

NEW BUSINESS:

A. APPEAL #5881A, Application of The S. Carpenter Construction Co. for a 7.78' variance for lots #3A & #3B to 92.22' where 100' is required under Sections 5-00.13, 7A-00 & 15-04 of the Zoning Regulations, 176 Town Line Road, property of The S. Carpenter Construction Co. & The Carpenter Realty Co. in an I-1 zone.

Mr. O'Keefe made a motion to approve Appeal 5881A with language to be in the approval - not a condition of approval, but language in the approval that the Board feels strongly that it would not want to entertain a future variance request for a side yard variance given the nature of the reduction of the side yard that we are making.

Ms. Potter seconded.

The Chair noted it is a minor variance on its merits. It is a good addition to the motion that we put that in there.

Mr. O'Keefe added for purposes of discussion, it does reflect relative to the economy. The lots are deep. There is still some significant side yard. I do think it does present a hardship under that criteria.

Motion passed 5 to 0 on a roll call vote.

B. APPEAL #5882A, Application of JK Realty Holdings LLC for a 276 sq.ft. variance for a 24' x 24' (576) sq.ft. pavilion which has already been construction under Sections 2-01 & 15-04 of the Zoning Regulations, 306 Rockwood Drive, property of JK Realty Holdings LLC in an R-40 zone.

Ms. Potter made a motion to approve Appeal 5882A application of JK Realty Holdings LLC.

The Chair suggested having the motion amended to what we discussed, from my perspective that as part of the motion that we tear down the original structure.

Mr. Wysong seconded the motion for discussion.

Mr. O'Keefe said not surprisingly, I am troubled by it. They're looking for a variance in an R-40 zone of what would be 480 something feet where in an R-80 431 feet which is more than double. I don't feel there is any hardship other than a self imposed hardship and quite honestly, when Rob had said we can't vote on something where there is a violation outstanding, I don't even know if we can vote on it given that the ZEO has said there is a cease & desist. And, there is not compliance with the cease & desist. I don't know if we can even vote on it.

Mr. Librandi pointed out they did come in front of the Board to remedy the situation because they are in violation. This was one of their only outlets besides removing said structure prior to coming in front of the Board.

Mr. O'Keefe felt it could have been done differently. When the application was made for zoning for a 24 by 24 and it was denied, the applicant affirmatively built it anyway. He could have come back to the commission and said what can we do? Can we do 20 x 20 and have a smaller variance? Can I take the gazebo down? He didn't. He put up a 24 x 24 and he is asking us for forgiveness. I think under our regulations we would find it very difficult and I personally find it impossible to find that there is an undue hardship under our regulations which would allow us to grant this variance. For that reason, I would oppose it.

Mr. Wysong took the other view. It is a lovely property. Its location is such that a 24 x 24 pavilion is appropriate. A gazebo is appropriate. A swimming pool is appropriate. Gardens are appropriate. Flagpoles in the front yard are appropriate. I don't have any problem with it at all.

The method by which we are being asked to judge it now after the fact annoys me and I have expressed that annoyance. If this were a clean piece of paper and the applicant had in fact when refused the zoning permit for a 24 x 24 had come before us and said I've got a really spectacular piece of property out there and I want to build these additional structures. The town will benefit by the assessment of my property. I've got 2.5 acres butted against a mountain and I've got a \$3 million house. I want to build an outdoor gazebo and a pavilion for my guests. I don't think I would have thought five seconds on it to deny an approval.

I don't think the purpose of this Board is to punish for what was done. In fact, I don't think there is within our statutes any kind of

punitive direction we can take or the zoning board can take short of saying, well tear it down. And, I think that would be challenged.

I hope the structure is safe and I presume after --- if we approve it --- the building department has a responsibility to see that the structure is safe and the inspections they need to do after the fact, I will assume that they will do that.

And, if the structure is found to be deficient, then whatever action has to be taken has to be taken.

I think our purpose here is do we allow this variance or not? And, I don't know that it is conditional on the gazebo as a second structure or the gazebo isn't in this appeal, I think what I would like to see is the gazebo, if it is illegal, appear as another appeal. Short of saying well, we'll tear the gazebo down. It seems like economics to me.

MR. O'Keefe responded didn't disagree with anything you've said as to how it looks. I think it looks fine and I am not suggesting in any way, shape or form that the applicant be punished. That's not the intent of this Board.

What I am saying is we didn't adopt these regulations. The Planning & Zoning Commission adopts the regulations and then they tell us how we should enforce the regulations. And, the planning commission, for whatever reason, determined that under no zone in this town would there be more than 350 feet, and that's in an R-80 zone. They're up to 776 feet. That's more than double what it would be in an R-80. It's grossly disproportionate to what is allowed in this town.

And, this two acre lot, while it's beautiful, is not unique. There are other two acre lots similar to it. So, I think the message we would be sending is if you have a beautiful house, the zoning regulations don't apply. I think they do.

Mr. Librandi explained a lot of what we deal with in terms of violations is pretty much after the fact. What we are here to do is to remedy it and bring it up to code to our best ability. You know, they did bring it to --- it did take some time for them to bring it here, but they are coming here you know, to, you know, which is one of their only options, to wait before any decision is made to remove the structures or keep them.

In terms of my job, we just have to keep it in the best compliance as possible. You know, this is all, like I said, after the fact. We have to just remedy it and bring it up to code as best we can.

Mr. Gworek questioned: Now, both the pavilion and the gazebo are not permitted for anything, so if we say no on one, does that mean no on the other, as well?

Ms. Potter pointed out the gazebo is not in question. We can make it part of our stipulation.

Mr. O'Keefe offered that he thought if we were to say "no", the application is as I understand it for the pavilion. And, if we were to deny it vis-a-viz the pavilion, there would be just a non permitted gazebo there. But they could come in and apply for a permit and presumably get it because it is in compliance.

The Chair asked about the cabana. Wasn't the cabana, the 12 x 16 approved back in 1998? It was already approved. So that structure, Rob, is that correct? The way I'm reading it, that was already approved. So what we are doing now is we've got a second building, if you will, on that property which then takes the --- to your point - takes the variance up much higher than the 276.

Mr. O'Keefe said it takes it up to like 770-something.

The Chair agreed with what everybody has said. We've got a very large piece of property and we've got a very large home on that particular property. One thing about the ZBA is we take a look at it and we make exceptions based on a lot of different things, i.e.: hardship, whatever. So, I don't necessarily disagree that the pavilion is appropriate but I would not approve of the pavilion plus the cabana which brings it to the 7--- way, way over what I could even justify.

Mr. Librandi asked if he was speaking about the gazebo.

The Chair clarified they're calling it a cabana. I'm sorry?

Mr. Librandi stated they approved the cabana and the gazebo wasn't approved.

Mr. O'Keefe said they approved the cabana and then a gazebo was put up as a second structure. That has never been approved. Presumably the cabana was razed and replaced by the pavilion.

The Chair asked if it was razed and Mr. O'Keefe said he didn't know. Mr. Librandi said he had no knowledge of that. The Chair asked then how did we come up with the 776? Mr. O'Keefe said we added the 176 to 196. And, that's where you come up with it. I took the 12 x 16. I don't know what the gazebo is. It could be 12 x 12 or 16 x 16. I don't know the dimensions. But I used 12 x 16.

The Chair asked what the applicant would be willing to take down and Mr. Librandi responded the gazebo.

Mr. Gworek noted the 276 comes from just the pavilion square footage minus the 300 he's allowed. The gazebo is not even in question because it's not listed. We don't have square footage.

Mr. O'Keefe agreed, but there is an existing gazebo and it looks like there might've been dimensions, but I don't know.

(Undertone comments over the plan)

Mr. O'Keefe said it is in question as to what the total is. If it were by 12 x 12 or 16 x 16, it would have been significantly bigger. It's 450 or 550.

Mr. Librandi explained once they fill out a zoning permit, if there is a stipulation that prior to the CO the gazebo will be removed, this will bring that down before we sign off on anything.

Mr. O'Keefe said that would reduce it to 276 which I still think is disproportionate. You see, under a different scenario, and obviously that didn't happen, we could have said you make it 20 x 20 and we'll give you a variance and go from 300 to 400. He said 24 x 24, the ZEO said no. And, he built it. Now he's saying it's beautiful and it is. And, I want to keep it. The question is: How do we enforce the regulations in a way that's uniform to all property owners in the Town of Southington?

Mr. Wysong commented that the uniformity to the property owners in Southington is what the zoning process is: 200 square feet. The Zoning Board of Appeal's purpose is to be an appeals board to the decisions that the zoning board makes. That's what we are here for.

Had he come with a 24 x 24, I've expressed my opinion. I wouldn't have given it 30 seconds of thought before I would have approved it.

So, to sit here tonight and say well, he didn't do it right and there is another structure. Let's have one of them torn down or let's say tear down the 24 x 24 or chop 12 feet off one side and make it 24 x 12. That doesn't make any sense and that is not what we are here for.

And, within our regulations, what we decide on one property does not in fact carry over to another property.

Mr. O'Keefe interjected: Right. So long as there is a hardship.

Mr. Wysong agreed hardship is one of the considerations. Hardship can be the denial of fair use of the property. Pretty nebulous. But the fact that an exception was made for this particular property doesn't mean that we have make similar exceptions for other pieces of property.

We're stuck here with a dilemma that this thing is already built. And, the normal remedies we would have as the Board of Appeals are very limited. It's: approve it or tear it down. That doesn't strike me as very appealing.

Mr. O'Keefe asked: Would you agree with me that the teardown would be something that's totally self-imposed by the applicant by having built it without seeking a variance. It's a self imposed hardship.

Mr. Wysong agreed it is a self imposed remedy. I have also, in other communities, been faced with having to tell a resident he had to tear down a 2' corner of his house because it was not in compliance with the set back.

The Chair called for further discussion.

Mr. Librandi said that in terms of hardship, we cannot focus on the monetary aspect of it. In terms of it being a very expensive structure and all that, we can't look at it that way. We have to look at it based on the regulations.

Because right now you are pretty much opposing what the previous Zoning Enforcement Officer did. So, he denied it. So you're appealing his denial to a certain degree saying that there is some reason that you are allowing this structure to stay.

The Chair said the structure was built. He then put a cease & desist on it. And, now they've come before us for the variance. And, then we have to make that determination, do we support the Zoning Enforcement Officer or do we look at it as a variance that's appropriate.

The ZEO, as you know, has got to follow exactly the regs. You are not the Zoning Board of Appeals to take into consideration hardship or whatever. You are basically black and white. You are against the zoning regulation or you are not in compliance with the zoning regulation.

It is our responsibility then to decide should we grant the variance for whatever reason, concluded the Chair.

Mr. Wysong said the original denial, I would assume, was based on the regulation of 200 sf. He didn't have a choice. The Chair said that was exactly correct. Mr. Wysong pointed out: We have a choice. That's what we're here for.

Mr. Gworek asked if it would change anybody's decision if we say tear down the gazebo and leave the pavilion. Does that affect anybody? One way or the other?

The Chair said the applicant has agreed to do that. And, I would feel more comfortable with that because it cuts down on the size. When you look at the total structure, the square footage total, even though it is not in this, that is much more appealing to me.

Mr. Librandi commented it is coming more into compliance.

The Chair echoed it is coming more into compliance with the regulations.

Mr. Gworek asked if we could add that as a stipulation.

Mr. O'Keefe explained procedurally you would amend the -- amend the motion.

Ms. Potter said she would amend her motion that they take down the gazebo for the square footage of the pavilion. Cabana. Pavillion. Oh, man.

Mr. Gworek seconded that.

The Chair called for discussion on the amendment itself.

Mr. Wysong stated he didn't have any problem with the gazebo.

Mr. Gworek said he didn't either but if it eases somebody else's mind, instead of taking down both or the pavilion, I'd rather take down the gazebo.

Ms. Potter said that was the way she would go with it, too.

The Chair stated that the amended motion is to pass this taking down the gazebo as a condition.

Roll Call Vote on the Amendment:

O'Keefe:	No for the reasons I stated on the record.
Wysong:	I'm in favor of leaving the gazebo. I am opposed to the amendment. I don't know whether that is a yes or no.

The Chair clarified the amendment is to remove the gazebo so I would think you would say no.

Wysong:	No.
Potter:	Yes
Gworek:	Yes
Salka:	Yes

The motion on the amendment does not carry.

The Chair said we would now vote on the application as it was submitted. The appeal as submitted.

Mr. O'Keefe said he didn't know procedurally if we could do that. Once we vote on the amended motion, I think we're done.

Mr. Wysong said we voted on the amendment and not the amended motion. The amendment fails.

Back to the original motion which is for approval of the application as it was submitted.

Roll Call:

O'Keefe:	No
Wysong:	Yes
Potter:	Yes
Gworek:	Yes
Salka:	No

Motion is denied.

C. APPEAL #5883A, Application of Torrey S. Crane Co. for a 9.2' front yard setback variance to 38.8' where 40' is required & a 28.6' side yard setback variance to 1.4' where 30' is required to add a second story on an existing industrial building under Sections 7A-00 & 15-04 of the Zoning Regulations, 510 Summer Street, property of Torrey S. Crane Co. in an I-2 zone.

Ms. Potter made a motion to accept Appeal #5883A. Mr. Gworek seconded.

Mr. Gworek stated it is pretty straight forward. They're going straight up.

Ms. Potter interjected they are not changing the footprint.

The Chair said it is already a pre-existing nonconforming piece of property.

Mr. O'Keefe said he struggled with the concept of increasing a nonconforming use. However, the hardship I would see here is that it is the same footprint and it is a good use of the property and you have industrial, basically a bar, next door. For that reason I can see a legitimate hardship. That would be my comment.

Motion passed 5 to 0 on a roll call vote.

CONTINUED PUBLIC HEARING ITEMS:

A. APPEAL #5870A, Application of Jerzie Joe's Sports Bar & Grill Inc. for a special exception approval to allow applicant to apply for a restaurant liquor license under Sections 11-04, 15-05 & 4.01.32A of the Zoning Regulations, 202 Newell Street, property of Marques LLC in an I-2 zone.

Ms. Potter made a motion to accept Appeal #5870A.

Discussion of the motion with stipulations. Consequently, Ms. Potter withdrew her motion.

Mr. Wysong made a motion for approval of Appeal #5870A application of Jerzie Joe's Sports Bar & Grill for a special exception approval to allow application to apply for a restaurant liquor license with the stipulations:

- Not exotic dancers, male or female, public or private.
- Number of bar seats shall not exceed 13.
- Live entertainment shall be limited to five band members.
- Any significant change to floor plan as determined by the Zoning Enforcement Officer shall require a new application.
- Any changes in management/permittee shall require a new application.

For outdoor dining on the patio, existing fenced in patio and deck:

- Hours of operation shall be limited to 12:00 am midnight.
- All alcoholic beverages shall be served in glasses, cups, et cetera and not in the original containers.
- Music shall be allowed, live and/or amplified with loudspeakers.
- Approval shall be good for one year.

Mr. O'Keefe seconded the motion.

Discussion of how the one year restriction is enforced. The Chair said at the end of one year they have to come back to the Board and if they don't, they are out of compliance. The onus is on the permittee to come back before this Board for a renewal. Then we'll see whether our two to three neighbors or the Jensen's housing development complained about it.

Motion passed 5 to 0 on a roll call vote.

(Verbatim transcription below)

MS. POTTER: I have one question. I don't think we voted on this um, thing right. Because -

MR. WYSONG: Which?

MS. POTTER: Pavilion, fence, cabana 'cuz I don't think we had a choice once the amendment and that. I mean, it really kind of screwed us. I think that they were willing to take down the thing and then we amended it to vote that way and I think we set ourselves up for failure.

THE CHAIR: We had a chance during that motion for the Board to have them take down the cabana as the um, motion. And, we turned that down.

MS. POTTER: But when we were doing it, it was, would it make somebody feel better and that's why we voted it in. But we didn't, I kind of like, bamboozled because I can't figure out what the hell happened. So, I think I want to withdraw whatever I did.

THE CHAIR: You can't.

MS. POTTER: But, that is what I'm saying. You guys, I just don't feel comfortable with what we just did.

Attorney? Tell me what we just did because I don't feel comfortable with it.

MR.GWOREK: Can they appeal again?

MR. O'KEEFE: From what I understand, typically when you vote, you vote on an amended motion. But it was stated that we weren't voting on the amended motion but we were voting on the amendment to the motion and then there was a vote on the amendment to the motion which failed. And, then there was a vote on the underlying motion because the amendment had failed.

THE CHAIR: Right.

MR. O'KEEFE: That is not the way I normally would see it done. Normally, you would vote on the amended motion and that would be it. But both of them failed, be that as it may.

MS. POTTER: But what I'm saying is, is we didn't have a choice once we put that pavilion back up. I mean, I don't know how the votes would have changed. It could still be the same. I just feel like cabana, no cabana, pavilion, no pavilion. You know, I just feel like I don't know --- I mean, I don't even know like I said, is there any way they can come back in two weeks now that we voted this?

Because like I said, I don't feel comfortable with that vote. I don't know what happened at it. I don't even know. I was there. But I don't feel comfortable with what I did.

THE CHAIR: Unless there were significant changes to the - uh, they have to wait six months to come back.

MS. POTTER: Yah, but that's what I'm saying. If they take the cabana out or the gazebo out of it, the total element, is there any way they could come back? That would be a total change because ---

MR. WYSONG: It wasn't in there to begin with. We're the ones that put it in there.

MS. POTTER: But that is what I'm saying. How can we put it in and vote on it? I'm confused. I don't know.

MR. LIBRANDI: You could -

MR. GWOREK: Since they are in cease & desist, now do they have to tear down the pavilion?

Can we put a stip?

MS. POTTER: That's what I'm saying. I don't feel comfortable with my vote. I don't feel comfortable with it. You won't let me take it back, so let's figure something out because I am not comfortable with that vote.

MR. LIBRANDI: Once that gets torn down, they start the process over again.

MS. POTTER: What I'm saying is, if we let them come back in two weeks with the pavilion completely off of the chart ---he said you have to --- I'm sorry, the gazebo. He said he had to make a specific change. If we take that out --

THE CHAIR: The way the regulation is he'd have to make a significant change to the application and then -

MR. O'KEEFE: And, then a new application would have to be filed.

THE CHAIR: -- a new application.

MS. POTTER: But the gazebo was never a part of it. So how could we add square footage in and take it out and then put it in and we made amendments of something that wasn't even there.

MR. GWOREK: Well, if he filed another appeal saying that he is going to take the gazebo out, isn't that a complete, major change?

MR. O'KEEFE: The problem - the problem -

MS. POTTER: (Interjecting) I'm sorry. Like I said, it probably won't change the way I voted or the way you guys voted but it just, to me, it is not sitting right now.

MR. O'KEEFE: I understand what you're saying if you took the gazebo out. The problem with taking the gazebo out is the request, under this application, was for 276 -

THE CHAIR: It doesn't change it at all.

MR. O'KEEFE: And, it doesn't change it at all. So that is not a substantial change.

MS. POTTER: But we voted on an amendment the first time. The gazebo should never have been a part of that first amendment. I should not have put the gazebo in because the gazebo was never a part of it. So how can I vote to do it ---

MR. O'KEEFE: But let's assume that the gazebo wasn't in. Then the vote was 3 in favor and 2 against.

MS. POTTER: Like I said, I would just be happy with another vote. But I just am not happy with the way it went down because it was either with the --- I just wasn't happy about the way it happened. And, I'm sorry.

MR. GWOREK: I wanted to put that in my amendment because I thought it would sway somebody's opinion.

MS. POTTER: Yah. I think it really hurt us in the long run. And, like I said, you guys probably won't change your votes and we'll go through this in two weeks, but I don't feel comfortable with the amendment and the second to the amendment and then the amendment went down and then the vote happened. I am not happy. And, that's just my own feeling. I think that, like I said, it probably won't change the vote but I would feel better about what I was voting on. And, that's how I feel about it.

Like I said, it won't change their vote, you guys can keep your vote, but at least for my own, for my own sake of knowing what I voted on, I would like to know what the hell just happened.

THE CHAIR: Well, one of the things is we can check with the town attorney and find out what options we have because I'm not sure --- and maybe you know, but I am not sure what options we have at this point.

MS. POTTER: Make an amendment because ---

THE CHAIR: I mean, again, because we're looking at -

MR. LIBRANDI: Well, if they change the application, ---

MR. O'KEEFE: But keep in mind the application was for a 276 sf variance. It would have to be different.

MS. POTTER: But we put it, we put the gazebo in as part of the deal on that.

MR. O'KEEFE: We actually didn't. We voted on whether or not to consider that and we decided not to consider that. So, we never technically voted on that as a motion.

MS. POTTER: But I mean, it never should've been in to vote on as a motion. I think it got put in there and it should never have gotten put into that whole -

MR. O'KEEFE: I don't disagree with that; I don't disagree with that at all.

MS. POTTER: I just got confused on -

MR. O'KEEFE: But it doesn't change the vote. The vote was for the variance that was applied for. The vote was three in favor and two against.

MS. POTTER: Yah, like I said, I was just not happy about the whole way it was handled. It just ---I'm sorry. Like I said, it probably wouldn't change but it would just make me feel better if there was something we could do about it.

THE CHAIR: You voted in favor of it, correct?

MS. POTTER: I did. I did vote in favor of it. But I also voted in favor of the amendment which just got knocked down, too. But I am just saying I wouldn't have put the amendment in there to get it voted and then--- I don't know.

Like I said, I never would have made the first amendment. I got confused and then I made the amendment and then the amendment got voted on and it got knocked down and then we made another vote without the amendment and then it got knocked down. But did I ever vote on it?

I mean, it was like we were voting on amendments. It wasn't voting on -- yah, I just want to explain myself because I just feel like I lost track. It probably won't change anything but I would hope that ----

THE CHAIR: There's not much --- I'm sorry?

MR. WYSONG: Can we suggest ways forward on this? Is it appropriate?

MS. POTTER: I would really because I would feel better.

THE CHAIR: What I'll do tomorrow is I'd like to talk to Mark Sciota and just see what options we have. Um, you know -

MR. O'KEEFE: Well, if you are going to discuss legal actions, you should discuss it in executive session.

THE CHAIR: Okay. Between now --- let's plan on doing that at the next meeting then. We'll go into executive session before the meeting and we'll have Mark there and we'll look at the option we have --- what options we have.

MR. GWOREK: So, is there a stay on the -

(Everyone speaking at one time)

MR. O'KEEFE: Except here is the problem: We voted on an application. Then there is nothing pending to discuss relative to legal options because there are no legal options because there is nothing on the table. There is no jurisdiction.

THE CHAIR: The only thing that would be on the table if they appeal. If they appeal our vote. The applicant.

MR. LIBRANDI: That's their option.

THE CHAIR: That's their option.

MR. O'KEEFE: We don't have an option. We're done.

THE CHAIR: Well, that is what I am kind of thinking but maybe Mark-

MR. LIBRANDI: If they submit something different or change -

THE CHAIR: I'm sorry?

MR. LIBRANDI: If they change the plans and give us something new?

MR. O'KEEFE: What I'm saying is we're discussing anything to do with the law; we should be in executive session now to discuss it rather than on the record.

THE CHAIR: Okay.

So, right now, we should just leave it the way it is.

MR. O'KEEFE: It is the way it is.

THE CHAIR: Exactly right. Okay.

B. APPEAL #5871A, Application of Pattison Brothers Construction LLC for a 14.5' side yard setback variance to 15.5' where 30' is required under Sections 7A-00 & 15-04 of the Zoning Regulations, 1774 Mt. Vernon Road, property of Bell City Rifle Club in an R-80 zone.

Extended the public hearing.

Discussion: The Chair advised Mr. Librandi that he needed to follow up with the health department to find out is it in fact now that they've withdrawn with the letter, whether that state test is valid. Mr. Librandi said he would speak to the Director of Health.

Mr. Wysong asked if it is an issue as to whether the test is valid or is the entire non compliance. Mr. Librandi explained the information he received from the health department showed that it wasn't up to the health department standards in terms of lead.

Mr. Wysong asked if that was for under 18 or in general? Mr. Librandi said he didn't know in general. He was told by the health department that the test failed and from that I would assume they are in violation still from the health department.

Mr. Gworek mentioned the residential indirect exposure criteria is a factor.

Mr. Wysong noted that as it was presented two weeks ago, there was an outstanding non compliance from four years ago. And, they had not brought it up to standards. Mr. Librandi agreed they had not, but this is what brought them to try to bring it up to standards.

The Chair said the new wrinkle is they no longer allow anybody younger 18. But that is a new wrinkle that was not part of the original four year ago noncompliance.

Mr. Wysong said the Board needs to determine whether the noncompliance from four years ago is in fact still a non compliance or does the removal of the youth program bring them into compliance.

Mr. Wysong voted for the extension because we were waiting for test results to bring them into compliance on something from four years ago.

The Chair said what happened is they did not take any action on that particular matter and then they did take action and it still failed. Now what criteria did they fail is the question.

MISCELLANEOUS

A. Election of Officers

The Chair opened the floor for nominations. Ms. Potter nominated Mr. O'Keefe for Vice Chairman.

Mr. Gworek nominated himself for Vice Chairman.

Mr. Wysong moved the nominations be closed. Ms. Potter seconded. Motion passed unanimously on a voice vote.

Roll Call:	O'Keefe:	O'Keefe
	Wysong:	Gworek
	Gworek:	Gworek
	Potter:	O'Keefe
	Salka:	Gworek

Commissioner Gworek is the Vice Chairman.

Congratulations!

Ms. Potter made a motion to adjourn the meeting. Mr. Gworek seconded. Motion passed unanimously on a voice vote.

(Whereupon, the meeting was adjourned at 8:50 o'clock, p.m.)

Robert Salka
Chairman
Zoning Board of Appeals