

**MINUTES
VILLAGE of ARDSLEY
ZONING BOARD of APPEALS
REGULAR MEETING
WEDNESDAY, OCTOBER 25, 2017**

PRESENT: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq.
Mort David
Michael Wiskind

1) Call to Order

The Chair called the regular meeting to order at 8:01 pm.

The Chair announced that the Agenda will be taken out of order.

2) Announcements and Approval of Minutes

Announcements

The Chair announced that the next meeting of the Zoning Board of Appeals is scheduled for Wednesday, November 22, 2017 at 8:00 pm.

Approval of Minutes

Mr. David moved, and Mr. Amir seconded, that the Minutes of the August meeting be approved.

Vote: 4 in favor, none opposed, none abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Jacob Amir, Esq. –	aye
Mort David –	aye
Michael Wiskind –	aye

3) **Public Hearing**

Application for Renewal of Special Use Permit

Ni Nu Inc., d/b/a Bucci's Irvington Auto Body

646 Saw Mill River Road, Ardsley, New York

Section 6.70, Block 42, Lots 3 and 5, in the B-2 Special Business District

For renewal of Special Use Permit, to continue operation of autobody repair shop (Village Code Section 200-74B).

Present: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq.
Mort David
Michael Wiskind

Mr. Wiskind moved, and Mr. David seconded, that this matter be adjourned.

Vote: 4 in favor, none opposed, none abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Jacob Amir, Esq. –	aye
Mort David –	aye
Michael Wiskind –	aye

4) **Public Hearing**

Interpretation of Village Code Requirements

The Thorpe-McCartney Family Limited Partnership (by Thornwood Four Corners, LLC, Lessee)

657 Saw Mill River Road, Ardsley, New York

Section 6.50, Block 35, Lots 8, 9, 10 and 11, in the B-1 General Business District

For a determination whether legal non-conforming gas station use is abandoned (Village Code Section 200-100D).

The Chair read the Legal Notice, and noted that this matter had been on the Agenda for the August 23rd meeting, had been adjourned to the September 27th meeting, and had been further adjourned to the October 25th meeting this evening.

Open Public Hearing

Present: Patricia Hoffman, Esq., Chair
Jacob Amir, Esq. (recused)
Mort David
Michael Wiskind

Attendees: Cynthia Thorpe Carey, of the Thorpe-McCartney Family
Limited Partnership
Osama Ali, project manager, Thornwood Four Corners LLC
Denise D'Ambrosio, Esq., Allen & Denoyer LLP,
counsel for Thornwood Four Corners LLC
Warren Cohen, Esq., attorney for the Thorpe-McCartney
Family Limited Partnership
Donald Elmendorf, Licensed Professional Engineer
Armand Boyagian, 486 Ashford Avenue, Ardsley, NY
Mark Principe, 54 Bramblebrook Road, Ardsley, NY
Gary Rappaport, Ardsley, NY
Ellen Slipp, 12 Abington Avenue, Ardsley, NY

The Chair announced that there are five members of the Zoning Board of Appeals, and that three of the five votes are required for any decision. The Chair advised that when only four members are present, three votes are still required.

The Chair announced that Mr. Amir has professional relationship with an affiliate of the applicant, and therefore will be recusing himself. The Chair advised that therefore the votes of all three remaining board members would be required.

The Chair also announced that she attended school with Andy Thorpe, who is a member of the applicant partnership, and has known the family for many years. The Chair advised that she had discussed this issue with the village attorney, Judge Ponzini. The Chair advised that, although she did not believe the personal history would render her unable to make an impartial decision based on the interpretation of the law, she needed to disclose this information, and further advised that she would recuse herself at the applicant's request. The Chair noted that if she recused herself, only two Board members would remain, which would necessitate adjourning the matter to the November meeting, at which time there could be only three Board members.

Mr. Thorpe and Ms. D'Ambrosio conferred, and Ms. D'Ambrosio stated that applicant wished to proceed this evening, and further stated that applicant had no objection to the Chair serving.

The Chair stated tonight's meeting will adjourn at 10:30 PM. The Chair advised that the Board wishes to hear the full application and any comments by the public, and that if needed, this Public Hearing would be adjourned to the November meeting.

Ms. D'Ambrosio submitted photocopies of proof of mailing materials previously submitted to the Village Clerk.

Ms. D'Ambrosio introduced herself as Counsel for Thornwood Four Corners LLC, and stated that she that she was appearing in support of the subject application, which is made by Thornwood Four Corners LLC on behalf of and in conjunction with the Thorpe-McCartney Family Limited Partnership.

Ms. D'Ambrosio stated that property in question has been owned by the Thorpe and McCartney families for an exceedingly long period of time, and has remained in the family except for its conveyance to the Thorpe-McCartney Family Limited Partnership on February 11, 1999. Ms. D'Ambrosio added that she had the deed showing that conveyance. Ms. D'Ambrosio also stated that a gas and service station was erected on the property in 1932, and has operated in that capacity throughout the Thorpe and McCartney family ownership. Ms. D'Ambrosio added that she had the building record to show that a gas station was erected in 1932. Ms. D'Ambrosio stated that the Thorpe McCartney family has leased the property to operators, more recently to Thornwood Four Corners LLC on March 1, 2016. Ms. D'Ambrosio noted that the lease, which had been attached to the Osama Ali affidavit, stated that the lease was to use the property "solely as a gas station and convenience store." Owner and landlord, and Thornwood Four Corners is the tenant.

Ms. D'Ambrosio stated that prior to the lease to Thornwood, the property was leased to Getty pursuant to an agreement between Getty and Alliance Energy and/or Global, it was Alliance Energy Global that operated and pumped the gas. Ms. D'Ambrosio noted that this information is also contained in the Minutes of the September 30, 2015 meeting of the Village of Ardsley Zoning Board of Appeals.

At the time Thornwood entered the lease with the partnership, the tanks had already been pulled by Global on or about February 10, 2016. At that time, a spill of petroleum contamination was reported to the New York State Department of Environmental Conservation (DEC). A copy of the spill report is attached to one of the Affidavits in support of the application. DEC closed the spill based on a report provided by Global's consultant, without requiring any further investigation and/or remedial action. And neither the landlord and owner nor the tenant believed any investigation or remedial work to be necessary at that time.

The period of time of the alleged abandonment commenced February 10, 2016, the date the tanks were pulled. by virtue of the referral by Mr. Tomasso to the Village Board of Trustees, which in turn referred it to the Zoning Board. The precipitating event for the referral was the filing of an application for a demolition permit by Thornwood in or about mid-April 2017.

As a matter of law, the applicant owner and tenant were precluded from further development of this site once the referral was made, in June 2017. Oppositions

submitted to the Board, suggesting that there has been a lapse of 18-20 months is grossly exaggerated and somewhat disingenuous.

The Code legal definitions. You must read “intent” into the abandonment definition. Section 200-1, which provides for word uses and definitions, words used in the present tense include future tense, and the words ‘used’ or ‘occupied,’ as applied to any land or building, shall be construed to include the words ‘intended’ arranged or designed to be used or occupied’.” There are no definitions for

Opposition has said that this section does not apply, but D’Ambrosio Apply to the entirety of the Code, definitional and word usage section. Ms. Added that there are no definitions for discontinuation of use or cease to operate.

Even if you don’t read that into it, and say that intent is not to be read, there has been no discontinuation of use of the property as a gas station, and no cessation of the functionality of the property as a gas station. You cannot base this decision solely on whether or not gas has been pumped from tanks installed in the ground. As a matter of practicality, if one is going to improve the gas station, take out tanks and remediate property, then you can’t be pumping gas at the same time. You have to discontinue the pumping of gas to improve any gas station. So with any other use, such as a commercial building in a residential zone to do a major overhaul. To read the section that you have to redevelop for the exact same use, any redevelopment must start and end within a six month period, you would not have an industrial renovation and have people do industry in it while they are rehabbing the whole thing. Could not read your statute that way.

In this case, from beginning to end, there is no doubt that the sole intended use of this property was for use as a gas station. It is provided for at the outset in the lease, there has been no indicia nor claim that there has been any activity on the property other than toward keeping this site as a gas station.

There is no case law particularly on point with this site. The case law that talks about abandonment or ceasing use, all of those cases have some indicia of another use, even the Prutco Court of Appeals case that has been referenced by Mr. Rappaport in opposition, they used the site for one year for a tobacco shop. That is not the case here. It has been used for no reason other than a gas station.

Not in my papers, just became aware of it. Knew we had installed a diesel pump for the purpose of servicing people with diesel, cognizant that the issue of abandonment might otherwise arise, but the property became too unsafe to have anyone on the property to pump any sort of fuel. Also recently learned that Thornwood did purchase motor fuel from another gas station and sold it to the contractors that were on site, for their use of large equipment. Attachment to Osama Ali’s Affidavit, there were many pieces or large equipment on that site for extended periods of time. You bring fuel onto the site, because you don’t want huge pieces of machinery traversing from that site to a station to get fuel.

The common practice on development properties is to bring the fuel to the site and to fuel those machines on the property.

Regarding continuing and intended actions, most of which are in her papers, and some of which she will add. (she FOILED them contemporary with filing this application, but hasn't received them yet)

2016 March 1 – entered into the lease

2016 March 30 – prepared site drawings for installation of new tanks and dispensers and appurtenances necessary for the gas station

2016 April 16 – engineering drawings for tank installation were submitted

2016 April 20 – applicant was issued a work permit for installation of tanks. Work commenced. Another spill was called in. In the context of digging up the soil for those tanks, there was some evidence of contaminated soil. To the best of our knowledge, I believe it was all removed. We removed almost 500 tons of soil that was ultimately stockpiled on the site. When you have contaminated soil, you have to put liners, put the soil on top of the liners, you ultimately have to have it sampled, then you ultimately have to find an appropriate disposal facility, as you can't just take it anywhere.

On or about August 4, DRE Environmental, our consultant, submitted additional engineering drawings. These were more details for the gas station and for the convenience store.

On or about June 10, 2016, the dispensers were ordered.

On or about August, CDSP, another consultant, was retained to install the tanks.

On or about August 17, 2016, a fence was installed around the property.

On August 18, 2016, we submitted another design plan.

On August 30, 2016, soil samples were taken.

On September 16, 2016, it was determined that a surveyor had to be retained because the property line was different than what our client had thought it to be.

On September 20, we filed for an extension of the work permit. That permit was extended through December of 2016.

Between September and October 2016, we continued to excavate soil. As soon as we started excavating, not only did we hit the contaminated soil, which we took out, a lot of

water was running into the excavation. Because of the way the topography is on the site, we located our pumps towards the back of the property. There is a steep incline of the property there, and the water just ran right off the property, right into the hole. So it was extraordinarily difficult to keep the site from being wet, and you can't have a puddle of water in a site to install the tanks.

Because we hit this water, in or around October 12, 2016, we were required to get a shoring company to shore up the walls of the excavation, because they weren't secure. You need a secure environment to get the tanks into. Also because of the water and the erosion of the excavation, there was a determination made, and concurred in by the Village, that trees that were bordering the street, and lost between the street and excavation might be posing a health and safety issue, so permission was asked and granted that they be removed.

Thereafter, the excavator that was there could not handle the problems, so we had to get other excavators and bigger trucks and bigger equipment. The site became a major problem in terms of water. We engaged in de-watering, we were taking water out of the hole. As you know from our papers and the report about this, the DEC Environmental Conservation Officer issued a violation for us de-watering the site. That violation was resolved. And we took the protective measures that the EnCon Officer had recommended. We thought that that was the end of it. Recently, we learned that DEC is unhappy with what we did. We will be resolving that with them. But at the time, and even today, it was recommended that we do that, and the EnCom Officers saw it and were okay with it, they came out to the site after we had taken the measures that they had suggested.

Finally, on December 14, we began to install the tanks. I don't know if we got it done that day or not, but in mid-December they were installed. Shortly after that, we had a very large rainstorm, which caused one of the tanks to shift. I want to say that while we are trying to install the tanks, the tanks are not actually installed, because installed means that you have attached the pipes and you have attached it to the dispensers, installed is more than just putting the tanks into the ground. All we have done at this point is put the tanks in the ground. They are connected to nothing. Once you place them in the ground, you have to something in them so they don't float, which we did, but there was so much water, that one of them tilted. Due to all the water, we weren't able to get back into the ground until April 11, when we restabilized the tanks. However, that process started before April, because it was a totally different type of replacement, insofar as we took the tanks out, had to remove the water yet again, this time put in a cement slab and put in metal braces for the straps that would wrap around the tanks and anchor the tanks down so that you would not have a problem in the future with regard to water infiltration. That type of installation is not required. It is not that anyone skimped in the first instance. The first placement of the tanks was entirely appropriate. But confronting what we confronted on the site, we went to a better remedy for that situation, and that took time.

In or about April 22, 2017, we took asbestos samples in contemplation of the building being taken down, and in or about mid-April, we submitted our application for a Demolition Permit. Mr. Tomasso was somewhat concerned about the way the site still looked, so he asked us to take some remedial measures with regard to site presentation, but nevertheless, at this point, he should refer it for an interpretation.

All of that, taken in conjunction with the other actions that you can glean from the Affidavit of Osama Ali, you can tell that there was a tremendous amount of activity at the site in the course of that year. And, as you can tell from the Affidavit of Osama Ali, at considerable expense, in excess of \$643,000. It is a tremendous amount of money when you still have yet to investigate and remediate the property, and it certainly is indicia of intent to use the site for that purpose. They still want to move forward at a rapid pace once we get beyond this proceeding.

In some respects, I would argue that Thornwood has almost a vested interest in this, and if not a vested interest, there is some equitable estoppel argument at play here. Because if you strictly interpret the abandonment statute as six months, then arguably, the Village should not have been working with us beyond August. If the beginning date is February 10, 2016, then the six months would have tolled in and about August, and we were out there working with Mr. Tomasso every single day. And by the way, Mr. Tomasso was fabulous, he was invaluable to us, he was out there all the time, he was a witness to all the problems we encountered from the contamination through the water,, through the excavators getting stuck in the mud requiring additional excavators, so that the tanks that were placed in the pit had to be replaced and all the work that we engaged in for those purposes.

Another thing is that these are the actions of the tenant. The property owner got lost in this. If this is deemed to be an abandoned site, because of the actions of the tenant, then you are holding the owner accountable, who arguably had no right whatsoever to enter those premises and make those decisions, pump gas, or do anything else, as a matter of law.

A few other comments with regard to opposition that was made. One of them being the argument of unclean hands. Being attributed to the tenant. There is no unclean hands here by the owner. And unclean hands is not an issue before this board. The focus of the Zoning Board is not on the occupants, the focus is on the use, and the interpretation should be focused on the use, not who is before the Board.

With regard to mention that this is a contaminated site, and we may or may not be responsible for it, we should have known about it, we have taken on the responsibility of investigating and remediating this site. We intend to do that. We did not know the extent of it at the time that we entered into this lease. And in fact had every reason to believe

that no investigation and/or remediation would be required where the pumps were, other tanks having been removed from the property many years ago. If there was any contamination, it should have been a --- and at the time that these (other) tanks were removed, so was it a surprise to us, yes it was, certainly to the extent and where we found contamination, because we put the tanks in in an entirely different place. The fact that it is going to be investigated and remediated is a good thing for the property, because it needs to be done, and if we're not going to do it, who is? Maybe the owner, yes. But the owner is not the one who is responsible for contaminating it either. Yes, by virtue of being the owner, and there's a navigation law for liability, but the lawsuit is going to be against Getty, Alliance Global, and a whole host of other people, because they are the ones who operated the site. And that's just going to embroil this whole thing in litigation.

Again with regard to the site contamination, the opposition says you should know. Well, DEC closed the spill. When we went to meet with DEC, about their concerns, one on them being the one I told you about, about running water into the site, they conceded that that spill never should have been closed. They conceded that a site assessment should have been performed, and they also conceded that they will be either reopening that spill with or without a new number, i.e., with the same number or with a new number. To the best of my knowledge, it has not occurred yet. She has gone to them and said "when," and I haven't gotten a response.

Another thing that the opposition, Mr. Rappaport, said maybe they should have brought an injunction. I don't interpret the sections the way he does, so why would I bring an injunction, I think his interpretation is entirely wrong. But if Mr. Rappaport felt that six months was the applicable period, why didn't he bring an injunction in August? A little late to the table after we spent a tremendous amount of money.

Mr. David thanked Ms. D'Ambrosio for her presentation. But you made an emphasis, in your own words, on the focus of "use." Are you acquainted with the definition of a "gasoline station" in our Village Code? "any area of land including structures thereon that is used for the sale of gasoline or other motor vehicle fuel and oil and other lubricating substances including any sale of motor vehicle accessories, and which may or may not include facilities for lubricating, washing or otherwise servicing motor vehicles, but not including the painting thereof by any means." Your presentation is focused solely on the distribution or the sale of gasoline. There was nothing to preclude the servicing of vehicles. As a matter of fact, after gas ceased to be pumped, I had my car inspected there, I had repairs made there, and that could have continued independent of the pumping of gasoline. Which in my mind was a total discontinuation of use, because those services could have continued, and they were not. Ms. D'Ambrosio replied that "there was a point in time where there was inspections and servicing of cars being done in the bays. Not exactly sure when that discontinued. The inspection sticker was on the building for the site up until October 2016. We had contacted DMV to see how far down the road that was actually done, but I wasn't prepared to represent a time frame to you,

because I do not know the answer to your question. However, you were there, and perhaps you were there some time after February. The reason we had to discontinue servicing cars in bays for any purpose is that the site was not safe. The site was inappropriate for people, in my opinion, to be bringing any sort of automobiles to be serviced in any fashion. Also, I would bring to your attention, that I am currently working on another site that DEC has issues with, and they believe that a site assessment is necessary, and they have said to my client, "why haven't you closed the service station for any use, given the fact that you need to do a site assessment"? So, to suggest that we should have been servicing anybody on that station, other than providing fuel to the construction machinery, seems to her would have been a big liability risk. Also a risk to the health and safety of the public. At some point, obviously, the site had to be fenced, and was fenced, for access by people for use or walking, anything, so it wasn't functional for any purpose.

Donald introduced himself as the consulting engineer. He was the original designer of the station back in March-April of 2016. The intent at that time was to put new tanks in, where the Getty tanks had come out, and continue the service station, expand a little bit to a convenience store and such. But then as time went on, I got called back in in August, it was determined, based on my own evaluation, that building was not suitable for redevelopment. There are structural problems, there are aging problems, since the building has been there since 1930s before any service business, there are a lot of internal components that would not be cost-effective to re-use that station. So at that time, I sat down with Mr. Tomasso, I presented original drawings to him to discuss, in August 2016, to tear that building down, put a convenience store in the back, put the pumps in, a pump island, where the existing building is now. So to the fact that the service station could have continued, they did continue, as you stated, for a short period of time, which we had the permit absolutely enabled cessation when they were doing ... But I have to say, I have forty years as a licensed professional engineer, most of my time in either health and safety, environmental, and the buildings and such. For us to have had any public on that property.

People were on the property without our permission. Customers of the deli across the street were parking on our property. We even had fencing and they were moving the barrels. We were trying to prevent people from being injured, we've got heavy equipment, large tanks, not to get into the weather conditions, that was just August, September, October. Then we got really bad weather that year, exceeding rain fall, the site turned into a big mud pile. I recommended shoring. My concern that there is a six or eight inch gas line on Ridge Road. I had to be careful and systematic with the contractor, take a little bit out, shore it. We probably could have rushed it, but we went slower so as not to shift or disrupt that gas line. For the interest of the public health and safety, for the interest of the crews on the site, for the interest of the Village, we took our time. We lost an excavator on the site for over one week because it was up to the cab in mud. The hillside collapsed around it and covered it in mud, so it took a week to get that out. It was

a little bit of “keystone cops,” one foot forward and two feet back. To answer the question, could we have continued gasoline, first of all, where would anyone have parked cars. We used every square inch of this property to either stage tanks, equipment, safety equipment, fencing, etc. That would have precluded using the station.

Later on, when the building was being undermined, and we couldn’t even use that. how are we going to let in someone sit in an office when underneath his office there is nothing holding it up. If there is a multitude of safety, not only public, but employee safety, liability of the Village, liability of the owner, liability to the tenant. This is where all these decisions were made. To have rushed in would have been to have done a haphazard job.

Mr. David asked about the convenience store, original use had no provision for the convenience store. How does that enter the picture when it was not a use since 1932? Donald said that you can go into the building now and see that the front or South third of the building had been converted to a convenience store. They were selling sodas and other things. Donald is looking at it as a forensic look, so can’t speak to what they actually sold. However, given that, the original intent was to use that building as is. But given the multitude of obstacles to make that functional safe building, it became apparent that it was most cost-effective to change the configuration of the property, tear this whole building down safely, and get it back off of the highway. That’s another consideration too. You’ve got those gas pumps right on top of the street. Cars staging. Traffic is bad enough there as it is, trying to get in and out of Riviera and Carvel. But you have cars staging to get fuel on top of everything else. The safest way to do that is to take the cars and push them back on the property, put the parking toward the back of the property, and that’s what I sat down and talked to Mr. Tomasso about in August. Mr. Tomasso was on board with that, he understood where we were going, he understood the limitations we had. And if we hadn’t run into all the weather problems and all the soil problems and the water problems on that site, we probably wouldn’t be standing here.

Ms. D’Ambrosio added her belief that a convenience store is an appropriate use in a B-1 zone, and while I realize that we will need Planning Board approval, architectural review, and a whole bunch of other approvals, I don’t anticipate seeking variances. To date, we have not gotten any push back from the Building Inspector on it being inappropriate.

Mr. Wiskind asked whether it was the landlord or the tenant buying diesel fuel and selling it to the contractors, and the period of time over which these transactions occurred. Ms. D’Ambrosio clarified that it was the tenant who purchased fuel from another gas station, brought it on site, and then sold it to the contractors. Mr. Osama Ali, project manager, stated that he had records of these from April 2016, September 2016, October 2016, November 2016, December 2016, and then March 2017. Mr. Ali added that “then because we were hearing about this thing here, I insisted that I sell a little bit more in September 2017, just because I wanted to make sure that this six month thing is a

technicality that people look for.” Mr. Wiskind then asked if the fuel was purchased in a batch and then sold periodically. Mr. Ali answered that “we are well aware of the six month use thing here, and I have been in the gas business for 28 years, and I’ve been through construction on different sides and different locations, and I’ve seen in all these passing years, and just for the sake of the technicalities in certain jurisdictions, I intended to sell or trade the fuel at the location in these times to make sure that the continuation selling of the fuel is having, it does not happen to have out of a full petroleum tank, it does not have to happen out of a pump, because there is nothing stated that I have to sell gas out of a pump. Certain people that they like to create issues.”

Mr. Wiskind asked if the dates reflect when the fuel was purchased by you or when it was sold to the contractors or when you invoiced them or when they paid for it. Mr. Ali replied, “it is the time that I purchased it and I sold it, at the same time. I would go and I would purchase the five gallons of fuel, and I go and sell it to them at the time.” Mr. Wiskind asked if this was the sole source of fuel that they used for their equipment on site. Mr. Ali replied, “it was more than five gallons, and it was only the excavators that were there at the site, or the equipment that is being used.” Mr. Wiskind asked if this was an arm’s length transaction, you invoiced them and they paid you. Mr. Ali replied, “just a quick transaction through the ... I would go out in my truck, I purchased the gas, so I could sell it back to them with no, for my sake there was no profit made on it, just changing hands.” The Chair asked Mr. Ali if he had invoices. Mr. Ali replied, “I have some receipts, I have some rate receipts that I used.” The Chair asked, you have receipts for purchasing it, and do you have invoices. Mr. Ali replied “of course.” Mr. Wiskind added, with dates and amounts. Mr. Ali answered, “Of course, I mean I have that, it just that I don’t have it with me. I just have it recorded here, that I made note of it, because I know that some of this stuff is going to come up.”

The Chair asked what type of containers were used. Donald explained, “on the site, there was a 500 gallon concrete tank behind the building, steel and concrete. That was a heating oil tank. That was converted to a diesel tank for use on the property. Mr. Wiskind asked if that was to be available when the contractors needed it. Donald answered, “yes, they put a temporary pump out front, piped to that from the tank out there, so they converted the use, which is a registered use, from that heating oil to diesel, and the diesel being the same sort of ... So that’s how it was conveyed. How they took care of the transactions, that’s not my part, I just took care of the fuel.”

Mr. David said that the description of bringing fuel on to the site gave the impression of ‘Gerry cans,’ and asked how this jived with a 500 gallon tank, which would seem to require a truck to deliver the fuel. Donald, “as I believe that big tank had fuel in it, so that had to be made up when the contractors used it. They don’t use 500 gallons at a pop.” Mr. Ali added, “no they don’t. when we connected that tank that is the back, we did not use it because we did not want to bring in a truck load of gasoline to 500 gallons and not use it or lose it, we’re not sure when or how much we’re going to use, so we’ll

just bring in enough for the excavators to use, that's all, and I did not have to sell it out of a pump, I could sell it out of a 'Gerry can' container.

Mr. Wiskind specified that he wanted Mr. Ali to "substantiate with dates and amounts and prices. Was this one sale and then another sale six months later of ten gallons, or was it..." Mr. Ali said, "I have it down here, I have the one sale that I did in April 2016, and the next one was in September 2016, and September was only one time, and then October was another time, and November and December. And after that, from December through March there was no work being done there, so in March, I sold again." Mr. Ali added that just for the sake of [the six months], "I did sell it again in September [2017] by just meeting the contractor there so that I could sell him that gas there." Mr. Wiskind said that the Board would like to get written documentation of all this, with specifics and paperwork to show a true sale.

The Chair would like to know how it was transported from the gas station where Mr. Ali purchased it. The Chair also asked, "did you bring it in five-gallon tanks, ten-gallon tanks, and was it then stored at the facility and used when necessary, or was the equipment there and they needed gas so you went and got it. We need dates, times, amounts, purchase and sale information."

Mr. David asked if the equipment used gasoline or diesel. Mr. Ali said that most of it uses diesel, and added that the one [sale] in September was gasoline. Mr. Ali reiterated that the September sale, which may sound silly, was to "offset" the technicality.

Mr. David stated that in the 44 years that he has lived near the gas station, diesel was never sold there. Mr. Ali said that there was no diesel there. Ms. D'Ambrosio explained that they installed the diesel, with the expectation that we might be able to pump diesel fuel while we were doing the tanks, but it never came to pass because of what transpired. Mr. Ali stated that there are two tanks in the ground, one of which is a five and seven split, for 5,000 and 7,000 gallons, one of them is going to be diesel and the other is going to be premium. In every station that we build we add diesel. If there is no diesel there, we add diesel, any station. After the blending happens, you don't have to have a regular, a plus and a premium, so there is always an extra tank in the ground that we could always convert into a diesel.

Mr. Wiskind asked the intended timetable of when the new tanks would have been installed. Mr. Ali stated that in any building they do, they want to do it immediately. That's why as soon as they were discussing the lease, which was signed in March, but before that, we were already, planning, drawing, as soon as I saw them in the conference room signing the paper, I was on the phone ordering the tanks. The tanks usually take six to eight weeks, they were at the location on, I believe, on April 25. We suggested that we cannot put the tanks in because the contamination happened. Mr. Wiskind asked if, before they knew about the contamination, they had a time table. Mr. Ali said that they

did have a time table that he had prepared. Mr. Wiskind asked what the time table would be, in general, based on his experience. Mr. Ali said that it was a two and a half month project to run the station the way that it was going to run, without knocking the building down, with just adding the two dispensers, and we were adding a third one. Originally, we were going to just replace the two dispensers that were there and we were going to add a third one, and then finally when Don said “what are you doing with this building, you cannot do with this building,” we said that we were going to try. At one point, we put the actual Gulf pumps in and we installed them on the island, and then we had to remove them, because they told us we cannot do this. So at every point we tried to continue every way to start doing business, because we are in business, not in business of delaying things, we are in business to open up and collecting my pay and rent and making business or trade, this is what we are in business for, we are not in business of just. Do you think that we want to be in construction for eighteen months? That doesn’t make any sense. Ms. D’Ambrosio added that it is not practical, that they “are paying rent, paying taxes, covering full boat on the property until such time as it became clear that the lease was renegotiated based on all the problems at the site and the contamination that was found.

Mr. Wiskind referred to Ms. D’Ambrosio’s earlier statement that they were precluded from development during the period from February 2016 when the spill was discovered and sometime earlier this year, and asked when that “earlier this year” was. Ms. D’Ambrosio replied that once Mr. Tomasso made the referral to the Board of Trustees was made, they could not proceed any further. Mr. Wiskind asked if that was based on receiving [the application for] the demolition permit. Ms. D’Ambrosio replied that when the [application for the] building permit was filed in April 2017, coterminous with replacing the tanks in, because now we want to get the building done, we want to start connecting things, and then we couldn’t proceed, because as of April, we couldn’t get [the application for] the permit acted on, and the referral came in June.

The Chair prior to your signing of the lease in March of 2016, what was the termination date of the prior lease. Mrs. Cynthia Thorpe Carey, of the Thorpe-McCartney Family Limited Partnership, stated that it was February 2016.

The Chair asked if the tanks were removed on February 10, 2016 under the prior lease. Mr. Ali said that yes, it was from Alliance or Getty or whomever the prior tenant was.

The Chair asked the date of the first spill. Ms. D’Ambrosio said that it was the same date [as the tanks were removed]. Mr. Ali explained that usually when they open up the ground, they want to report a spill, and then they will close it. So they opened the ground, they reported a spill, and then they closed it that it was satisfied. That is how they do it when they dig. The Chair asked if every time they are going to remove tanks they open the ground and report a spill even though there is no indication that there may have been a spill. Mr. Ali stated that that is the definition of a spill, is not as simple as

you smell gas or anything. The spill is anything that goes into each other, so if there is gravel that goes into other gravel, that is considered a spill, and you need to check it out if it is actual contamination of the ground.

The Chair asked if tenant signed a lease for a gas station that had no tanks in it. Mr. Ali said that there were no tanks there when they signed the lease, but added that during the negotiation of the lease, they did not know that they had removed the tanks and the pumps because there was a gas station operating there. We were rushing to go into business and start business on March 1st. But as the negotiations and contract preparations proceeded, Global decided to take the tanks out.

Mr. Wiskind referred to Mr. Ali's deposition, where he stated, "on February 10th, the owner of the property caused the former tenant to remove the gasoline tanks... ." Mr. Warren Cohen stated that it was not done prior to asking the owner, but the former owner, as part of a lease with Getty, it was their responsibility to remove the tanks. Their lease ended February 28, 2016. When their lease ended, they were supposed to deliver the property back to the owner and eliminate those tanks, which they did, but apparently there was contamination that was found when the tanks were removed, but as Mr. Ali said, that spill was closed. As Ms. D'Ambrosio, now the DEC has taken a position that maybe that spill should not have been closed. Ms. D'Ambrosio provided the Board a spill closure report, a "Spill Incidents Database Search Details" printout showing a "spill date" of February 10, 2016 and a "date spill closed" of March 31, 2016.

Mr. Wiskind asked if the spill has been cleaned up at this point. Ms. D'Ambrosio stated that they do not know. She advised that DEC wants an investigation and a remediation. DEC wants someone to come to table and execute another Order on Consent for their purpose, and we, under the lease, are obligated to investigate and remediate the property, and we recognize our responsibility to do that, so we are ready to investigate and remediate. Whether we will be the one to sign the Order on Consent or we both sign, that is something we have to work out.

Mr. Wiskind asked if the new tanks are in a different location than the old tanks. Ms. D'Ambrosio said yes, and 500 tons of soil were excavated and taken off site to put them there.

The Chair asked if the 500 tons of soil that were removed were pursuant to the spill. Ms. D'Ambrosio said that's correct. The Chair asked if that was because that spill was opened and closed without them finding any contamination. The Chair asked for the date that the second spill was reported, and asked if that was at the installation of your tanks. Mr. Ali said yes, that was April 21, 2016.

Donald said "to make it more precise, Getty/Alliance or whoever took those tanks out historically, the DEC gave them a clean bill of health, a closure, saying 'we're happy

with what you've done, there's no contamination.' Then, when Thornwood Four Corners LLC is on the site in April and started to dig, and identified contamination while they were digging, putting in the tanks that I had designed to be placed next to the building. At that point in time, Thornwood LLC took out upwards of 500 tons of contaminated soil and stockpiled it at the rear of the property. That stopped everything. Until that part looks like there is possibly contamination under the building, that part made me assess the quality of the building, the composition and construction, going to back to my decision that the building, as much as it's falling down, it's in the way. And that spill is still open, because we recognized at a later date that there could be other contamination on the property. But, at our most recent meeting with the DEC, they conceded that Getty's spill, that they closed in February-March, should not have been closed.

Mr. David asked if the 500 tons of contaminated soil still on the property. Donald said that it was transported to Pennsylvania. Ms. D'Ambrosio said that it was removed and disposed of on October 12, 2016. She does not have the manifest with her. She added that only 286 tons were taken there, as the portion of the soil that was deemed to be contaminated. Donald clarified that the soil was identified to be contaminated in April 2016.

The Chair asked Ms. D'Ambrosio to provide a list of dates when: the lease started, the site drawings were sent, the installation of tanks, the work permit, the second spill, so that we have a full timeline. Ms. D'Ambrosio said that a lot of it is in the Affidavit, but there have been additional pieces of information she has obtained since submitting the application, and she will be happy to put it on a timeline and sequence it.

Mr. Wiskind asked Ms. D'Ambrosio to include in the timeline the various difficulties encountered, to the extent that they are datable to a specific event or range of events, if there were meetings with the Building Inspector, and the fuel sales. Donald said that he could say with a certainty that Mr. Tomasso was out almost two to three times a week, so you can't put everything in the timeline. But whenever I or my people are on site, I make them take photographs of that date which are all date-stamped. I believe there are a number of dated photographs in my Affidavit.

The Chair asked if the applicant ever came to the Village to request an extension of time to complete the project. Mr. Ali said that the work permit and the tank installation permit are still active. The Chair said that the tank installation permit did not come from the village. Mr. Ali said that one permit came from the Village and one from the County. Ms. D'Ambrosio said that they got the first tank installation permit in April 2016, and we got an extension in July 2016, and that extension took us through December when the tanks were ultimately placed in the excavation. One of the issues that was raised was that DEC said that when you took the tanks back out, for the purposes of laying the slab, you should have gotten another work permit from the county. Our position was we don't think we had to do that, but okay, so when we placed the tanks the first time, we had a

work permit, and when we repositioned them the second time, and yes, we did lift them out and put them back in, the permit was not in effect for County purposes, and the Village permit was still in effect. The Chair asked what type of permit the Village permit was. Mr. Ali said that it is a Building Permit to install pumps and tanks. The Chair asked if that Building Permit included and anticipated concrete to be poured. Mr. Ali said that Mr. Tomasso was aware of every move that was going on, and did not object to it or say anything to us about it. Donald said that the Village Building Permit has to follow the International New York State Code Building Code. The design that I did was in accordance with that. Anything in excess of that does not need approval from the Village. The County permit, while it sounds like a work permit, is really an acknowledgement that a contractor is licensed and recognized, and the County gives them permission to work on tanks and such in accordance with County Code. There are no drawings that are submitted to Westchester County to obtain a work permit. There are no inspections by the County during the term of work, there are no reporting requirements. So although they call it a work permit, they are really acknowledging that the contractor meets the county's minimum standards under the PBS code, and that's it. The Village, and Mr. Tomasso's authority, is for the New York State Building Code. When the first permit is taken out from the County, they give it for X period of time. Sometimes, many times on a project, you will let that expire because nothing is going on regarding the County aspect of the installation. Then you reinstate when you start work again. Like what was done on this job, you put tanks in the ground, you place them, that's it, nothing happens for a period of time, you do all the other stuff, then you start putting in the piping, the electrical, the turbines, all the components onto to the tanks, that's when you have your permit from the County restarted. But the Village permit just stays in effect, and the Building Inspector inspects throughout the term, and this is what Mr. Tomasso did, and he had communication with me quite often, and never any objections. My company's job is to be clerk of the work too. So we photograph and keep track of everything that's going on, so that in the future, five years down the road, twenty years down the road, we have photographs on what was installed.

Mr. David asked Donald, as clerk of the work, to explain that a piece of equipment sat idle on the Northern perimeter of the property for three months. Donald said that we are not allowed to do any work on the site. Mr. David asked why a contractor would not use that piece of equipment elsewhere. Donald said that he is not a contractor, but that in his experience, contractors do often leave equipment on site, and he thinks it is because it is cheaper than paying for storage if they are not using it. Donald said that he suspects that if that piece of equipment could be making money for the contractor elsewhere, it would not be parked there.

The Chair asked if the County is required to do an inspection of the installation of the tanks. Donald said no. Ms. D'Ambrosio told Donald that the Chair meant final installation. Donald said for final installation, yes, at this point no. The Chair asked if there was any requirement for the County to come out and inspect when the tanks were

set in December. Donald said no. The Chair asked if when the tank or tanks shifted and had to be removed and reset, were both tanks removed and set in concrete, or just the one. Donald said that the slab was put in place, and the tanks were installed on the slab. They both had to be moved. All the peat gravel, everything, had to be taken out of the hole, and they had to be repositioned back on the slab. Ms. D'Ambrosio clarified that only one tank shifted, but that both had to be removed in order to lay the slab, and then they had to be repositioned on top of that slab. The Chair asked if an inspection of the resetting of those tanks was required. Donald said no. The Chair asked if no inspection is done until the final installation when all the pipes, etc., are configured and installed. Ms. D'Ambrosio said that she understands that the hole is not closed yet. Donald concurred, adding that you can see the top of the tanks, that there is peat gravel all the way up to the top of the tanks, and that's because you still have to access the tanks, then pump the sump covers, the collars, and then build up the grade from that.

The Chair asked at what point was a change in plans from the use of the current building as the convenience store to when it was determined that using the current building would not be acceptable and that they needed to put in a new building, which then changed the whole configuration of this project. Donald stated that in August 2016, he was asked to redesign his original design. Mr. Wiskind noted that they didn't do a demolition permit until June [2017]. Donald replied that paperwork was put in, but of course it was not formalized, and once we submitted it in April 2017, Mr. Tomasso did not act on it.

The Chair asked if there is a date for a meeting with the DEC to discuss the second spill and closure of the second, and maybe of the first. Ms. D'Ambrosio stated that they met with them on October 6, 2017, and that they anticipate meeting with them on October 27, 2017.

The Chair asked, barring further issues, how long would you anticipate this project would take between now and completion. Ms. D'Ambrosio asked Mr. Ali if it would take two weeks to do the demo upon receiving the permit. Mr. Ali said yes. Ms. D'Ambrosio continued, then we would be able to immediately do an investigation of the entirety of the site. Don could have a work plan prepared and submitted to DEC within those same two weeks. We would take down the building and plan on where we are going to do our sample in the perimeter. DEC will weigh in, she can't say how long that will take. If they allow us to start doing the sampling, we will do it, if they don't, we can't, but we can start the sampling ourselves in certain logical given areas if they permit us to. Mr. Wiskind said demolish, samplish. Don said then there needs to be time for the analysis of the sampling, and we would have to go to the State and include the Village in that. Once that is determined, to the extent of any contamination under the building or in front of the building, we can start work immediately. Ms. D'Ambrosio added that remediation can be combined in conjunction with construction, with which Donald concurred. Ms. D'Ambrosio said that the only issues are what we have to do, and that will dictate how quickly we can do it, but if it's a dig and haul, it's not a big deal.

The Chair asked if the work that will be required will be able to continue during the winter months. Donald said that we can still do investigation, plans and demolition in the winter, the hardest part of construction is pouring concrete, and like you said, we don't see that starting tomorrow, we'd be into January before we got consensus the DEC and got the samples back, so by the time you hit January-February, we would have all our answers back from DEC, now we're looking at warm weather coming fast, so I don't see winter being a major problem.

The Chair asked if you get your answers from DEC by January-February, project it out, when we this project conclude. Don thinks they'll have answers to extent of contamination, our samples conducted, all the engineering field work could be done by January, that includes results and reporting to everybody. We work all winter, drilling and sampling, that doesn't affect us at all, because these machines will go through rocks, so frozen ground is not a problem.

The Chair asked if you get your answers in January-February, when could you pump your first gallon of gas. Mr. Ali stated at this rate, with what's going on, we are thinking June 1, 2018.

The Chair asked if applicant at any time requested an extension of the six month period, what needed to be done to move forward with that, was there ever any correspondence from your side. Mr. Ali said that he may have an email, but that he is not sure, and he will look to see if he has the emails. Ms. D'Ambrosio said that short of a FOIL request, she has no problem coming and looking at the records. She has not yet been able to ascertain what is actually in there, coming in later in the process. She did FOIL the DEC records, the Village records, and the County records. The Chair asked the date of Ms. D'Ambrosio's FOIL request to the Village. Ms. D'Ambrosio had prepared a FOIL request for Building Department records on August 31, 2017, which was not delivered to the Village until September 6, 2017, and added that they got back to her and told her that it was going to be delayed.

The Chair asked the date of suspension of all service at the gas station, and from your presentation, I hear that you don't consider this an abandonment, but as a "suspension." Ms. D'Ambrosio said, "correct, I do not consider this an abandonment. I do not think that there was a cessation of the use or a discontinuance of the operation. I see it merely as a renovation that, as a practical matter, requires you to be unable to pump gas. If that is the determining factor, and I do not think that that is the sole determining factor. The renovation in effect precluded us from using it for any gas station definitional purposes at a particular point in time, for health and safety reasons. I am not aware of any case that does not allow you to renovate, or that a renovation in the context of a time frame set for abandonment constitutes an abandonment.

The Chair asked if any member of the public wished to speak on this matter.

Mr. Gary Rappaport said that they have conceded the six-month rule. After that, in terms of the referral, and the language of the statute, six months use it or lose it, they lost it, the end. The Village Code was revised a couple of years ago, it says six months. Well, if there's force majeure, if mother nature intervenes, maybe mother nature is telling them to stop what they are doing. There is nothing in the Code that allows all these excuses. It is everybody's fault, DEC, Mr. Tomasso, the Village, the weather, it is everyone else's fault but theirs. Mr. Rappaport said that it says in the Ardsley Historical Report that the property had been owned by a blacksmith that closed in 1947. This is a non-conforming use. They are acting and behaving like this is something we want. The Village says we don't want this.

Ms. D'Ambrosio said that they did not make accusations about Mr. Tomasso or anyone else. Ms. D'Ambrosio produced a photocopy of a Village of Ardsley Building Department Property Record Card showing that a gas station was erected on July 18, 1932.

Ms. Ellen Slipp said that she would hold her comments until next month.

Mr. Armand Boyagian, of 486 Ashford Avenue, which abuts the subject property. He has occupied that building continuously since purchase in 1981. Ward Thorpe was a salesman for that building, there is a lot of history. I object to gas station for several reasons. I have watched the operations taking place there, I have 60 years of construction experience, and it seems to me that things were not done in a professional manner. Do I object to presence of a gas station behind my property? Yes, I have been paying substantial taxes at the major intersection of the Village of Ardsley, and the gas station itself was not itself what I consider a significant feature for our village, so that its removal would probably be a blessing for the Village, which is now engaged in a downtown redevelopment, to see something come forward, and that could possible include my property, which is being considered for development, into a grander type project. The building that you are looking at came out of the Saw Mill River Valley in 1921-23, and it was moved and set on a new foundation. It functions as an office for me, but certainly is not a significant structure for the village. I have this issue with the gas station being in the midst of what is metropolis Ardsley, so I oppose it.

Mr. Boyagian continued, I also oppose the fact that, during the course of the construction, somewhere all along the line of this invisible time line that you've been hearing, workmen came over into my property and broke the masonry wall. Why? Because the land excavation operation, the excavated material was stockpiled in the back end of the property, and as a result of that, it's my humble opinion that there was considerable amount of ground water changes, which resulted in my property being flooded in the back end of it. So, as a gesture, uninvited, unasked, this masonry wall that has lined my

property for decades, along the Bramble Brook, which is the dividing line between the two properties, the wall was broken, and a drain pipe was presumably put there, it's Keystone Cops stuff, how they offered to take care of flooding on my property by breaking my wall, never asking me, and then putting this pipe in, as though it was going to carry the water off into the Bramble Brook, which, by the way, during the initial excavation, bulk excavation period, was totally blanketed, and if there were a discussion about excessive water, G-d sent this rain, but the excessive water came from underground conditions that caused the water to shift its course, the grade had been changed, instead of having a nice valley-type trough, which existed there for decades, that carries the water from the high end of Bramblebrook all the way down into the Saw Mill River.

The Chair interrupted Mr. Boyagian to say, "Mr. Boyagian, if I could just interrupt you. I hold you in the highest respect your engineering. You have done so many projects for the Village and designed things for the Village. The Zoning Board's scope of tonight is an interpretation of the Code, and specifically whether the applicant has abandoned the use. And so I appreciate the information about the damage to your property and the water usage, but we need to keep ourselves on target as to the issue of the Code and the abandonment issue."

Mr. Boyagian continued. "Well, ok, not that I want to opine on my skills and expertise, however, I happen to be a super expert in litigation when it comes to delay, interruptions and durations of things, and I am looking at the timeline myself as an opportunity to take apart this project. You have already heard my opinion. I do have a problem with damage to my site. I think there is a permanent change to the groundwater conditions in that backyard area. In fact, the generosity of those people running the project went beyond breaking the wall and putting in this plastic pipe, laying it on the ground, they also provided me with a sample of the soil that was dug up from the site. Now I got a little bit of a problem not knowing whether that is contaminated or clean soil. However, it was taken and deposited on the full width of my property, which is fifty feet, to a depth of two to three feet by perhaps six feet wide. I did not ask for it, but it was bequeathed on me because I think somebody on the other side of the brook thought that it should be filled. So if I am telling that I am against this project, I am against it for another reason, I have been violated.

The Chair asked Mr. Boyagian if he had sent any correspondence to the applicant to report the situation that has occurred on your property? Mr. Boyagian replied, "no I have not." The Chair asked Mr. Boyagian, "you have not corresponded with the applicant at all?" Mr. Boyagian replied, "no, I am doing it tonight." The Chair asked Mr. Boyagian, "other than at this hearing, have you notified the Village?" Mr. Boyagian replied, "I have been at the Village meetings continuously from all of 2015 and going forward, and I reported this to the Village, and they tell me that I have to go to the Police, and I tell them that they are my police, that's why they have the job."

The Chair then asked Mr. Boyagian, “you indicated that you have an expertise in litigation regarding timelines and construction. So, to the issue of abandonment, do you have any challenges to the timeline that the applicant has presented tonight?” Mr. Boyagian replied, “well, I know that the applicant attempted to ameliorate the six month issue by going and selling gasoline or diesel off a truck. I don’t know if that’s permitted. I don’t know if that validates the six months. However, in my mind’s eye, the six month time period has been overrun. I have a copy of the document that was given the ZBA and I began to pull out the dates, but as I listen to the dialogue, there were activities and events that were not posted in this document that was submitted and it only came to surface when questions were asked. So will I be doing that? Absolutely. I happen to be a professional engineer in the State of New York, and it will be under my seal that I will submit that timeline, a record of dates, a chronology of dates.”

The Chair said that she asked “because Mr. Elmendorf, the engineer for the applicant, has given us dates and times and things that have happened. You are an engineer, your property is adjacent to property in question. If you have challenges such as ‘Mr. Elmendorf says it took three weeks to get something done, and you say well it should have taken two days because the guys were taking sandwich and beer breaks in the afternoon,’ whatever your challenge may be. But you are an engineer, and so you have the opportunity to give us dates and times challenging the applicant.” Mr. Boyagian replied, “I can’t do it in twenty minutes.” The Chair said that the Hearing will be continued until November 22, which will give you an opportunity to focus your objection to what’s before this Board, and that is the abandonment issue.

Mr. David added that the Zoning Board “will base its decision, not on mistakes, but on our understanding of the Zoning Code. Whether the gas station is attractive or unattractive, that is for the BAR to deal with, that’s not our objective.”

The Chair thanked Mr. Boyagian.

Ms. Ellen Slipp said that she would not “go into the aesthetic value of yet another gas station in the Village of Ardsley. I am going to speak to the fact that the applicant has blown by their six-month stay of execution. And what I heard today from the lawyers, both of them, as well as the engineer, and as well as the actual owner of the property, is that it was poor business management. They can try to blame it on acts of God, they can try to say that deliveries didn’t happen, that the assessments didn’t come in, whatever, it’s poor business management. These people are cocooned, cocooned with experts, engineers, lawyers, etc. They should have the eye on the prize. If they knew that they had a six-month period within which to get their act together, they should have got their act together. The fact that they do not, and the fact that they incurred \$600,000 in out-of-pocket expenses as a result of their own lethargy is mismanagement is not a problem for the Village of Ardsley. The rules were made for a reason. And the rules were made for people to stick to them. The fact that they chose to discard those rules is not our issue.

They broke the rules. They should bear the consequences. As —, who used to be on this Board and on the Board of Architectural Review, used to say when applicants came and said ‘geez, well, really nice siding, and really nice finishes are expensive,’ he would say ‘that’s not our problem,’ and I would echo his sentiment here, by saying that their poor mouth cries about \$600,000 and wasted time is not the Village’s problem. The fact that they wasted money is a bad business decision, for which we don’t need to underwrite, and I implore this Board to say ‘no, no it’s not okay.’ And I’m not even looking as to what we can do with that site, but we don’t need another gas station, and we don’t need people who are going to break the rules, and we don’t need people who were fined after hurricane Sandy for gouging gas prices. This is not what we need. Thank you.”

Mr. Mark Principe, said “fairly new resident to Ardsley. Didn’t really expect to speak tonight because I thought there would be more villagers here. I guess a lot of what I think has been said, and obviously I don’t think Ardsley needs another gas station, that’s not a question. However, the zoning issue and the six months to me, sounds like there were a lot of questions that should have been answered before the work even started. I could have told you that building was going to fall down any day now. It didn’t take a year and a half and floods and all these kinds of things for them to say that building is not strong enough so we have to take this other route. So that, and I think other issues that you have raised, should probably have been investigated before you said ‘hey, let’s get the bang for our buck’ and rip out tanks, throw in the new ones and keep doing business. They should have looked at that before they started the work in the first place, which then would not have led to this six-month issue, I believe. In addition, I would ask you all to consider, because I don’t know zoning codes and laws and things of that nature, if we are now considering a brand new gas station. You are literally removing all the tanks, you are removing the building. It’s basically an empty lot. This is a grandfathered-in property. How is that not, forget about the six-month issue, shouldn’t that go as a new building, I guess it’s not a new use, maybe that’s the answer, it’s something completely new in a zone that’s not zoned for a gas station. Should that be considered, and forget about the six months? I don’t know the answer and I’m probably wrong, but I would say consider that. That’s all I have to say. Again, echoing your point that Ardsley does not want another gas station, that villagers do not want another gas station, I believe the master plan or something that’s in the works — I’ve sat in on those meetings where they are crafting the plan for downtown Ardsley, which is pretty much a highway today, nobody in those meetings wants a gas station. Again, that’s not a question, but I just want to say that. Thank you.”

Ms. D’Ambrosio just wanted to indicate that “I don’t know who conceded the six months as a time frame. Mr. Rappaport, forgive me for mentioning his name, indicated that we conceded the six months. We did not concede the six months, and that not pumping gas was a concession, because we don’t believe that there was an abandonment in the first place. We believe that it is a renovation. It is a legal non-conforming use as a gas station. We have a right to put a gas station, revised, new or otherwise, until such time as

this Board makes a determination that we have abandoned the use. And again, I would just say that we have not done that.”

Mr. Principe said “there was one thing that I left out which you reminded me, and thanks with helping me with how it works. You guys were asking a lot of questions about the act of gas can and sold it on the property so that it’s in use, maybe it’s getting all the facts, I believe it is ridiculous to consider that as the ‘in operation.’ It’s clearly not an operation if you have to walk down the street to another gas station to bring the gas to your gas station and then sell it, that’s not operational, so if that’s a question, I would also ask you to just consider that in your thinking.”

The Chair thanked Mr. Principe.

The Chair asked the Board members if this application should be continued until next month. Mr. David stated that, although the Board is only three in number, he thinks that this has dragged on long enough, and the applicant has not asked for an adjournment, he is ready to vote. The Chair stated that she does not think that the Board can vote on the matter, as she has asked applicant to provide the Board with additional information, and as Mr. Boyagian has indicated that he will provide the Board with some information, and that the Board should give Board member Ms. Phelan-Gorman and opportunity to weigh in on this as well.

Ms. Slipp asked if the Chair knew if Ms. Phelan-Gorman would be available, and if the Board will have a quorum. The Chair replied that everyone said they would be here.

On motion of Mr. Wiskind, seconded by the Chair, the Public Hearing was adjourned on a vote of two in favor, one opposed, and none abstaining, as follows:

Vote: 4 in favor, none opposed, none abstaining, as follows:

Patricia Hoffman, Esq., Chair –	aye
Mort David –	nay
Michael Wiskind –	aye

5) **Adjournment**

The meeting was adjourned at 10:20 PM.

Respectfully submitted,
Judith Calder
Recording Secretary