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Anthony Pilozzi

Vice-Chairperson

Joseph Anzelone

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Christopher B. Maselli, Esq.



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Zoning Board Members

Kenneth Aurecchia
Richard R. Fascia

Alternate Board Members

Bernard Frezza
Alfred P. Cianci

JOHNSTON ZONING BOARD OF REVIEW

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MINUTES

November 16, 2006

The Zoning Board of Review held its monthly meeting on the 16th day of November, at 7:03, in the Library, at the Ferri Middle School, 10 Memorial Avenue, Johnston, RI. All persons interested in the following proposals requested to be present at this time.

Present:

Chairman Anthony Pilozzi, Vice Chairman Joseph Anzelone, Douglas Jeffrey, Kenneth Aurecchia, Al Cianci, Richard Fascia, Bernard Frezza

Also present: James P. Howe, Town Solicitor, Susan Leonardi, Secretary, and Dianne Edson, Stenographer

I. Approve Minutes of the previous meeting (s)

Minutes of September 28, 2006 Zoning Board of Review Meeting

II. New Business

A. ZBR-2006-64

Owner/Applicant: Elizabeth Casey

Location: 1 City View Parkway; AP 22/Lot 500

Lot Dimensions: Frontage: 80± feet; Depth: 100± feet; Area: 9,000± square feet

Zoning District: R-15 (Residential, 15,000 square feet) Zone

Existing Use: Single Family Dwelling

Development

Proposal: Enlarge 2nd floor of dwelling by 250± square feet

Variance Petitioned under Article III, Section N (1) (a) – Enlargement of a Non-Conforming Use

Elizabeth and David Casey, after being duly sworn, stated that they wish to put dormers on the second floor of the home to increase the usable space. Mr. Pilozzi verified that the space would not be used for business or rented out. Edward Moura, after being duly sworn, stated that he is an abutter to the project. He questioned the number of dormers being added and that there would be no stairway directly to the 2nd floor from the outside. Mr. Casey stated that there would be one dormer on each side of the peak and there would be no outside stairway to the second floor. Mr. Anzelone made the motion to grant, seconded by Mr. Fascia. A voice vote was taken, all in favor.

B. File 2006-62

Owner/Applicant: Anthony and Heather Baffoni
Location: 2 Cady Street; AP 41 - Lot 25
Lot Dimensions: Frontage: 216± feet; Depth: 103± feet; Area: 33,326 ± sq. ft.
Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone
Existing Use: Single Family Dwelling
Development
Proposal: Construct a 26' x 22' (572 sq. ft.) addition for additional living space
Dimensional Variance petitioned under Article III, Section F, Table III-F-1
Lot Frontage Required: 40 feet; Proposed Lot Frontage: 33.1 feet; Relief requested for 6.9 feet.

Rear Setback Required: 75 feet; Proposed rear setback: 56.2 feet; Relief requested for 18.8 feet.

Required Right Side Setback: 35 feet. Proposed Right Side Setback: 30.3 feet. Relief requested for 4.7 feet right side.

Terrence Greenlief, surveyor for the project, Anthony and Heather Baffoni were all duly sworn. Mr. Pilozzi asked why the additional space was needed. Mr. Baffoni replied that the house is approximately 1000 sq. ft. and they are a family of 5. Mr. Greenlief explained the project to the Board and the audience. Motion to approve made by Mr. Jeffrey, seconded by Mr. Aurecchia. A voice vote was taken, all in favor.

C. File-2006-57

Owner/Applicant: Jamison and Linda Monello
Location: 2 Bennett Drive; AP 6/Lot 79
Lot Dimensions: Frontage: 100± feet; Depth: 100± feet; Area: 10,000± sq. ft.
Zoning District: R-20 (Residential, 20,000 sq. ft.)
Existing Use: Single Family Dwelling
Development
Proposal: Construct a 26' x 24' (624± sq. ft.) garage
Dimensional Variance Petitioned under Art. III, Section F, Table III-F-1
Minimum Lot Width Required: 120 feet; Proposed Lot Width: 100 feet; Relief requested for 20 feet.

Minimum Lot Frontage Required: 120 feet; Proposed Lot Frontage: 100 feet; Relief requested for 20 feet.

Minimum Frontage Required: 30 feet; Proposed Frontage: 29.5 feet; Relief requested for .5 feet.

Minimum Rear Setback Required: 50 feet; Proposed Rear Setback: 44.5 feet; Relief requested for 5.5 feet.

Minimum Left Side Setback Required: 25 feet; Proposed Left Side Setback: 11.5 feet; Relief requested for 13.5 feet.

Minimum Right Side Setback Required: 25 feet; Proposed Right Side Setback: 24.5 feet; Relief requested for .5 feet.

Maximum Building Height: 15 feet; Proposed Building Height: 20 ft.; Relief requested for 5 feet.

Jamison Monello, is duly sworn. Mr. Fascia stated that he has a previous business relationship with the applicant, but this will in no way affect his objectivity in hearing and voting on the matter. Mr. Monello explained the project to the Board and the audience. It is a 2-car garage with storage above. His basement is wet and he is in need of the storage area. Mr. Pilozzi verified that no business will be run out of the space; it will not be rented out. No one appeared for or against the project. Mr. Aurecchia made the motion to grant, seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

D. File 2006-61

Owner/Applicant: Joseph R. Vinagro, LLC
Location: 2208 Plainfield Pike; AP 30 - Lot 134
Lot Dimensions: Frontage: 140± feet; Depth: 189± feet; 21,374± square feet.
Zoning District: B-2 (General Business) Zone
Existing Use: General Offices
Development
 Proposal: Construct a 2811± sq. ft two-story office building for relocation of office space. Existing building to be used for storage.
Dimensional Variance petitioned under Art. III, Sect. F, Table III-F-1
Minimum Frontage Required: 40 feet; Proposed Frontage: 21 feet;
Relief requested for 19 feet.

Minimum Right Side Setback Required: 40 feet; Proposed Right Side Setback: 26 feet; Relief requested for 14 feet.

David DiMaio, controller for Mr. Vinagro and Harvey Wagner, architect are duly sworn. Mr. Pilozzi asked Mr. Wagner for his qualifications. Mr. Wagner stated his experience for the Board and the audience. Motion to accept Mr. Wagner as a qualified witness is made by Mr. Anzelone, seconded by Mr. Jeffrey. A voice vote was taken, all in favor. Mr. Pilozzi verified the relief being requested, confirmed by Mr. DiMaio. Ms. Caisse, attorney for Mr. Vinagro, explained the project to the Board and the audience. The company needs more storage room for supplies and business records. Mr. Wagner explained the building elevations and new floor plan to the Board and the audience. No one appeared for or against the project. Mr. Anzelone verified that there would be no need to increase parking or toilet facilities. Mr. Anzelone also asked what size dumpster is on the property. Mr. DiMaio explained that they only have a small one for trash. It sits on the rear of the property and is not visible to the public. Mr. Anzelone made the motion to grant the application, seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

E. File 2006-63

Owner/Applicant: Philip Caputo and Cindy Carlson
Location: 7 ½ Taylor Road; AP 30/Lot 43
Lot Dimensions: Area: 4.5± acres

Zoning District: R-40 (Residential - 40,000 square feet) Zone
Existing Use: Single Family Dwelling
Development
Proposal: Construct 5 – 10' x 10' horse stalls

Variance petitioned under Article III, Section G (7) (c) – Accessory Structure larger than 150 sq. ft.

Philip Caputo and Cindy Carlson, after being duly sworn, stated that they wish to build an accessory structure to stable 5 horses. Mr. Pilozzi questioned the name on the Class 1 Survey, Clara Capparelli. Mr. Caputo responded that Ms. Capparelli is the prior owner of the property. Mr. Pilozzi asked what would be done with the horse stalls. Ms. Carlson replied that they will be used to board horses already on the property. Mr. Pilozzi asked if there were only 5 horses; Ms. Carlson replied that there are more, but the rest have stalls. Mr. Pilozzi stated that boarding horses is a business. Ms. Carlson stated that it is not a business; the horses are owned by them. Mr. Aurecchia asked how many horses, total, are currently on the property. Mr. Carlson stated that, counting the ponies, there are approximately 20 or 22. Mr. Pilozzi asked if there are any other animals on the property. Ms. Carlson replied that there are 2 goats, 1 lamb, 2 ducks, 8 bunnies, and dogs. Ms. Carlson stated that the animals are not for sale. She used to run an animal rescue and these are all the animals she has left from that. Mr. Anzelone questioned why they were asking for an Accessory Structure, not a barn. Ms. Carlson stated that they are asking for a barn. Mr. Anzelone replied that no where on the application does it say "barn". The application clearly states "Accessory Structure". Mr. Howe interjected that according to the Zoning Ordinance, Accessory Structures are usually placed in a rear yard, certain distance from property line and there are size restrictions. The issue in front of the Board tonight deals with the size of the proposed structure. Ms. Carlson stated that "a gentleman" in the Building Department filled out the application for her; she did not fill it out herself. She said that she was told that she only needed a variance for the size. Mr. Anzelone and Mr. Howe discussed that it should have been a Use Variance, not a variance for an Accessory Structure. Mr. Howe stated that the Board should review the application presented, anything not referenced on the application does not apply. Mr. Howe verified that Mr. Caputo and Ms. Carlson did indeed submit the application to the Zoning Office on October 11, 2006. Mr. Howe verified the Article and Section Number on the application. Mr. Howe advised the Board that the review of the application can continue, but the section of the Zoning Ordinance the applicants are relying on is not reflected on the application. If the Board chooses to allow the applicants to amend the application, the Board would be acting in a direction opposite to normal procedure. To allow an amendment would raise issues of notice. Mr. Pilozzi stated that the Board would hear the application as it stands, with no amendments. Mr. Anzelone stated that the grounds being cited by the applicants in regard to agricultural uses are not on the application and will not be considered into the decision. Mr. Pilozzi asked if Ms. Carlson had checked with the Zoning Office before she purchased the property to verify that horses were allowed. She stated she had called the Zoning Office and was told that horses were allowed in an R-40 zone. Mr. Pilozzi stated that many years ago the whole area was a farm. Once it is being used for other things, it cannot be a farm anymore with permission from the Zoning Board. Ms. Carlson stated that she has more than adequate land to support the horses. Mr. Pilozzi stated that that is up to the Zoning Board to determine that. Ms. Carlson submitted a letter written by Arthur and Dorothy Capparelli stating that they are willing to lease land as needed to Philip Caputo and Cindy Carlson for building or grazing purposes. Mr. Pilozzi stated that the letter is not notarized. It cannot be submitted as an Exhibit because it is not notarized. Mr. Pilozzi asked if there was anyone in the audience that was against the project. Several hands were counted. Mr. Lombardi,

attorney, stated that he represents 2 of the abutters, Nicholas and Lori Ventetuolo. Mr. Lombardi stated that the Ventetuolo's are immediate abutters to the project and submitted pictures to the Board identifying their home and the subject property. Mr. Pilozzi verified which property is which and noticed that the subject property had a partially finished structure on it. Mr. Lombardi replied that a Cease and Desist order was issued. Mr. Lombardi reviewed the remainder of the pictures with the Board. Mr. Anzelone made the motion to accept the pictures as Exhibit A. Seconded by Mr. Aurecchia. Mr. Pilozzi verified that the building would be on footings. Mr. Aurecchia stated that a barn this size would have to be built below the frost line, not on footings. Mr. Lombardi stated that prior to the Cease and Desist Order the applicants have housed over 50 animals and has pictures to substantiate. He stated that there are a number of abutters present who can testify to the annoyance of the smells, flies, and other issues caused by too many animals. Mr. Lombardi referred to the Zoning Ordinance and the section under which the applicants applied for relief. He stated that the building plans submitted to the Board do not have the height of the building noted on them. There is no request for dimensional relief on the application. He stated that the use of the animals is also in question. The subject property is right next to his client's property and is considered a nuisance. Mr. Lombardi submitted a picture of his client's front door which had 28 flies on it. Mr. Anzelone made the motion to accept 7 photos as Exhibit B for the abutters. Motion seconded by Mr. Fascia. Mr. Caputo stated that there are not 50 animals on the property. Mr. Caputo also stated that there is a pond in the area that attracts the flies, not necessarily the animals. Mr. Pilozzi stated that the flies are caused by animals. Ms. Carlson stated that the pond behind the house contributes to the flies. Mr. Pilozzi stated that the urine and other contaminants from the animals goes into the ground and then into the pond. Ms. Carlson stated that no waste from the animals is near the pond. Mr. Pilozzi stated that it is not a good site for that many animals. Mrs. Carlson asked why it was okay 5 years ago. Mr. Pilozzi stated that the site lost their use because there were no animals on the property for a minimum of 12 months. Mr. Lombardi stated that his clients have lived there for 28 years and only the last 2 years have been reprehensible. Mr. Frezza stated that the fence may not be the property line, because the property was not surveyed recently, it is impossible to determine that information. Mr. Frezza would like to know how far the proposed structure is from the fence. It is supposed to be at least 5 feet. Ms. Carlson stated that she is 5 feet away from the fence and has a photo to show it. The neighbors' greenhouse is not 5 feet away from the fence. Mr. Pilozzi stated that the greenhouse was already there when the property was purchased it is not going to be debated today. Mr. Pilozzi stated that they were not there to discuss the greenhouse they were there to discuss 20 horses, goats and rabbits. Mrs. Carlson submitted photos showing side view of the partially finished proposed structure and how far it was from the fence. Photo accepted as Exhibit A for the applicant. Motion to accept by Mr. Fascia and seconded by Mr. Frezza. Mr. Caputo submitted more photos of the property to the Board. Mr. Pilozzi asked who took the pictures and Mr. Caputo replied that they were taken by Mr. Paul Santilli, Minimum Housing Inspector for the Town of Johnston. The pictures show the fence line, the barn and greenhouse, and some of the animals. Ms. Carlson stated that they started building the barn because when they read the Zoning Ordinance and saw that horses were permitted in an R-40, they thought they were okay. Mr. Anzelone made a motion to accept these photos as Exhibit B for the applicant. Seconded by Mr. Pilozzi. A voice vote was taken, all in favor. Elaine Wilcox, after being duly sworn, stated that she is an abutter to the project and has had horse excrement left at the end of her driveway by riders. She asked the applicant to clean it up and it was not done. She called the police who asked her to be "neighborly" and clean it up herself. Mr. Lombardi asked Mrs. Wilcox if she had ever seen signs on Taylor Road advertising a petting zoo and/or pony rides. Mrs. Wilcox replied that she has seen signs advertising pony rides. Mrs. Wilcox stated that she has 2 questions for the applicants. She asked if the people that wrote the letter stating that they would lease the applicants land if

needed were the owners of that land. Mr. Pilozzi told her to have her lawyer check that. Mr. Lombardi asked if when the horses cut across her land, were they alone or did they have riders? Mrs. Wilcox replied that the horses had riders. Mrs. Wilcox asked if the applicants had obtained a building permit to start the structure. Mr. Pilozzi replied that they had not. Mr. Lombardi clarified that the petition before the Board is for an accessory structure, it has nothing to do with livestock. Joan Ventetuolo, after being duly sworn, stated that she has lived in the area for 48 years. Her aunt owned the subject property previously and never had animals. Her aunt grew vegetables, but never had livestock. She also has had horse excrement left on her property. She stated she confronted Ms. Carlson about riders crossing her property and Ms. Carlson stated that they were riding on the trail. Ms. Ventetuolo stated that there is no trail on Taylor Road. Ms. Carlson stated that there is a trail that goes down Taylor Road and towards the dump. Ms. Ventetuolo stated that that is public property. The stench is so bad she cannot open her windows. Lori Ventetuolo, after being duly sworn, stated that she is in the owner of the property that directly abuts the subject property. She stated that she is the person that took the pictures. She states that some of the animals are housed less than a foot from the fence. There are 3 German Shepherds that are tied to the fence. They are outside 24 hours a day, 7 days a week that bark constantly. Some of her dogs run loose and are not contained. They come into her yard and she is afraid to let her own dog out. Ms. Ventetuolo stated that there have been signs posted on Taylor Road and Plainfield Pike offering pony rides and a petting zoo. The situation has become intolerable. The smell is so bad that she can no longer open her windows. Leann Pappas, after being duly sworn, stated that Clara Capparelli was her great-aunt and the Capparelli's never had animals there. She states that there is a pen attached to her fence with animals in it and she has asked Ms. Carlson to move it. To date, it is still there. The dogs that are penned near the fence are right near her son's bedroom window and they bark all night. Thomas Hartshorn, Jr., after being duly sworn, stated that there are too many animals for the area. Gilbert DeFeo, after being duly sworn, stated that he is the Councilman-Elect for the area and has received phone calls and letters about all the problem that were heard tonight. Mr. Aurecchia asked if Johnston had an Ordinance that stated how many animals a resident could have before they needed a kennel license. Mr. Pilozzi stated that Ms. Carlson was currently in violation. Ms. Carlson stated that she is not. The Johnston Animal Control Officer had visited her property and found no violations. Mr. Lombardi interjected and stated that this information has nothing to do with the application before the Board. Mr. Aurecchia made the motion to deny the application. Mr. Frezza seconded the motion. A voice vote was taken, all in favor. Application denied.

Motion made by Mr. Fascia for a five-minute break. Seconded by Mr. Anzelone. Break taken from 8:42 to 8:56 p.m.

Mr. Pilozzi introduced Attorney Kelly Nicholson Morris. She is representing the Board on another matter. The Board will not be going into Executive Session tonight. If any member of the Board is served with any Court paperwork, please call Kelly, the Zoning Office or myself immediately.

Mr. Anzelone made the motion to adjourn as the Board of Review and convene as the Board of Appeal. This motion was seconded by Mr. Aurecchia. A voice vote was taken, all in favor.

SITTING as the BOARD OF APPEAL

A. Board of Appeal File 2006-02 – APPEAL of Planning Board Decision

Owner: 195 Associates, LLC and Stonehill Drive, LLC
Applicant: Roman Merten
Location: Atwood Avenue at Route 6; AP 44/2 - Lot 66, 73 and 74
Lot Dimensions: Area: 95.11± acres
Zoning District: B-2 (General Business) Zone
Existing Use: Vacant Land
Development
Proposal: Construction of a large retail shopping center

Approval: Extension of Planning Board Approval of Master Plan for
Development of a large retail shopping center

Appeal Petition: Appeal per Rhode Island General Laws Title 45 (“Subdivision of
Land”), § 23-32, §23-34, §23-62 and Section 6 (b) (2) of the Johnston
Land Development and Subdivision Review Regulations.

Recording of Planning Board Decision: 10-26-2006; Land Evidence Book #1763, Page 159

Deadline for filing an Appeal: 20 days after Decision is Recorded

Date Appeal Petition Filed with Johnston Board of Appeal: 10-23-2006

Mr. Pilozzi stated that the case before the Board is an appeal of a Planning Board decision. The owner is 195 Associates, LLC and Stonehill Drive, LLC. The applicant is Roman Merten. Proposal is to construct a large retail shopping center. Mr. Gladstone is the attorney for Mr. Merten; Mr. Jones is the attorney representing 195 Associates and Stonehill; Mr. Howe is the attorney for the Board of Appeal. Mr. Jones introduced himself to the Board. Mr. Howe entered the records of the Planning Board into the official record of the appeal. These records consist of the Planning Board decision dated October 13. Motion to accept document made by Mr. Anzelone and seconded by Mr. Jeffrey. A voice vote was taken, all in favor. Mr. Gladstone attempted to introduce a letter that was sent by Mr. Carpionato requesting the extension into evidence. He also tries to introduce copies of transcripts into the record. Mr. Jones objected to Mr. Gladstone introducing anything new into the record. This is an appeal, not a hearing. Mr. Pilozzi stated that in the past, no additional testimony is allowed to be heard on appeals. Mr. Gladstone stated that he will attempt to protect the record and Mr. Merten was denied the ability to put into the record of the Planning Board. Mr. Jones stated that Mr. Gladstone is suggesting issues or matters that are beyond the scope of the Appeal. Mr. Gladstone’s appeal raises only one issue and that relates to whether or not the extension could be granted after the period of one year had passed. Any other issue is outside the scope of that provision. Mr. Gladstone stated that he will attempt to present his argument. Mr. Howe stated that under RIGL 45-23-70, which addresses the issue of appeals, states that the Board of Appeal must consider the issue upon the findings and record of the Planning Board or the administrative officer. Mr. Howe asked Mr. Gladstone for an offer of proof of why something not in the appeal should be presented tonight. Mr. Gladstone stated that the offer of proof is the letter from Mr. Carpionato requesting the one year extension. It is date stamped August 29, 2006 from the Johnston Planning Board. Mr. Howe asked if the date of the letter was August 24, 2006. That letter was already submitted to the Board as part of the Planning Board record. Anything else as offer of proof? Mr. Gladstone offered two transcripts; A transcript from the August 1, 2006 Planning Board meeting in which the issue of the one year extension was first addressed and September 5, 2006 which addresses the Master Plan Approval Extension. Mr. Merten also sought to address the Planning Board during this meeting and was denied the ability to do so. Mr. Howe stated that a copy of the

Rough Draft Transcript dated September 5, 2006. It was also part of the package submitted from the Planning Board to the Board of Appeal. Mr. Jones stated that he has not an opportunity to review this transcript. Mr. Jones stated that he sees no reason to include it again, it was already submitted. Mr. Gladstone insisted that the August 1, 2006 transcript be submitted as it is the meeting during which the issue of extension was first addressed. Mr. Howe again stated that the appeal only addresses the meeting of September 5, 2006. The August meeting is not referred to in the appeal. Mr. Gladstone stated that because Mr. Carpionato was put on notice at the meeting about the extension request, it should be included. The request wasn't received until the Master Plan had already expired. Mr. Howe asked Mr. Gladstone if that wasn't the basis for the Appeal. Mr. Gladstone stated that Mr. Carpionato failed to request the extension before the original approval expired. The Planning Board acted beyond the scope of their jurisdiction and granted an erroneous extension. Mr. Howe stated that the action taken by the Planning Board was taken in the September 5, 2006 meeting and that action is the basis of the appeal. The state legislation is very clear on what can be reviewed during an appeal. The record appealed from is the September, 2006 meeting, not the August, 2006 meeting. It appears that you (Mr. Gladstone) are trying to supplement the record in an effort to inquire into the intent of the Board. Mr. Howe stated that if this Board accepted a record or transcript of any meeting prior to September 5, 2006, it is beyond their authority. Mr. Gladstone stated that he wishes again to submit the transcript of the August 1, 2006, meeting as an offer of proof. Mr. Jones objected. Mr. Gladstone stated that the offer of proof is the August meeting and he respectfully requests the Board to make this his first exhibit. Mr. Jones objected. Mr. Jones continued, stating that he has already made his reasons clear, and in an effort to move the appeal along, he requests that the Board mark the transcript for identification purposes only, but not as an exhibit. If Mr. Gladstone wanted this transcript to be marked as an exhibit, he should have presented it before the Planning Board, not before the Board of Appeal. Mr. Gladstone stated that this is one of the reasons for appeal. The Planning Board did not allow Mr. Merten to speak. Mr. Jones objected again. Mr. Gladstone asked why people were sent a notice as an abutter if they will not be allowed to speak. Mr. Jones objected again. The Appeal does not address the issue of Mr. Merten being precluded from testifying. Mr. Pillozzi stated that it is past practice not to allow any new evidence at an Appeal Hearing. Mr. Gladstone stated that the September 5, 2006 transcript is already part of the record. Because it is part of the record, he would like to refer to it now. Mr. Jones objected. Because the Board was given a rough draft transcript and Mr. Gladstone has a final certified copy, Mr. Jones could not be sure that they are the same and he has not had an opportunity to review both. Mr. Gladstone offered Mr. Jones a copy of the final copy. Mr. Jones stated that this is not the time or the place for him to review these documents. Mr. Gladstone read from the September 5, 2006 transcript, "Mr. Pitochelli speaking. 'Mr. Chairman, before you vote, I know there's someone here who wants to put something in the record, too, regarding that. It should be made part of the record.' Mr. D'Amico: "I don't believe anything out there on that floor's going to change an extension of Master Plan. I'd rather not go to the public right now. I would just ask if we can just hold off. We've got other extensive reviews to go through. I don't think this is going to help." Mr. Merten: "When do I have to hold off to? I've put some time into something here which I think is pertinent." Mr. D'Amico: "There will be public hearings and you can do that, but this is not the time." Mr. Merten: "I came tonight. I thought it was good word that we could—" Mr. D'Amico: "No, let's let them do the engineering." Mr. Merten: "It seems like I'm being stifled here." Mr. Riccio: "Why can't we just give him 60 seconds?" Mr. D'Amico: "Because, Bill, I don't want to." Mr. Gladstone concluded his reading of a portion of the September 5, 2006 transcript. Mr. Pillozzi asked if Stonehill Marketplace was on September's agenda for an extension. Mr. Gladstone replied that it was. Mr. Pillozzi asked about the August agenda. Mr. Gladstone explained that Stonehill Marketplace was only at the August meeting to give the Planning Board a progress update. Mr. Gladstone asked the Board to look at the dates when the Master

Plan approval lapsed – August 3, 2006. A letter dated August 24, 2006, received by the Planning Board on August 29, 2006, requested the extension – 27 days after approval expired. This is the primary issue. Mr. Pilozzi stated that the Zoning Board, sitting as the Board of Appeal has to now look at the facts and make a decision. The Board will also look at past practice. Mr. Gladstone argued that 195 Associates, LLC and Stonehill Drive, LLC did not accomplish the necessary items to ensure the project would be completed on time. The abutters fighting the project are doing so to protect their neighborhood, natural resources and quality of life. Mr. Gladstone stated that he wished to enter Mr. Merten’s letter into the record. Mr. Jones once again objected. Mr. Howe asked Mr. Gladstone to identify the letter. Mr. Gladstone stated that it is a letter written by Mr. Roman Merten, dated September 5, 2006, and it addresses the issue of the 1 year. Mr. Pilozzi asked if this was the same letter than Mr. Merten tried to get into the Planning Board record on September 5, 2006. If it was not accepted then, it can’t be accepted now. Mr. Gladstone asked that the letter at least be marked into identification. Mr. Pilozzi asked Mr. Gladstone to come forward and identify each item he has asked to have marked for identification. Mr. Gladstone named the items as follows: 1. Letter dated September 5, 2006, written by Roman Merten; 2. Transcript dated August 1, 2006, 11 pages. 3. Letter dated August 24, 2006, to Jeanne Tracey-McAreavey from Alfred Carpionato, received by the Planning Board on August 29, 2006; 4. Transcript dated September 5, 2006, 12 pages. Mr. Howe stated that the Board should identify by way of motion the items to be accepted for identification purposes, namely the first 2 items, the letter dated September 5, 2006 and the transcript dated August 1, 2006. Mr. Anzelone made to the motion to accept these two items for identification purposes only. The motion was seconded by Mr. Jeffrey. A voice vote was taken, Mr. Anzelone aye; Mr. Fascia nay; Mr. Aurecchia nay; Mr. Pilozzi aye. Documents were accepted and identified and passed to Mrs. Leonardi, Zoning Records Clerk. Mr. Howe then addressed the issue of the letter dated August 24, 2006 addressed to Jeanne Tracey-McAreavey, signed by Mr. Alfred Carpionato. The Board needs to have a motion to have this accepted and identified. Mr. Jones stated that in order to speed up the process, items 3 and 4 can be accepted and identified at once, he has no objection. Mr. Anzelone made the motion to accept items 3 and 4 for identification purposes only. The motion was seconded by Mr. Jeffrey. A voice vote was taken. Mr. Fascia nay; Mr. Aurecchia nay; Mr. Pilozzi aye. Documents are accepted for identification only and passed down to Mrs. Leonardi.

Mr. Jeffrey stated that he is trying to determine the Board’s exact purpose tonight. He told Mr. Gladstone that he would like to draw an analogy for him. In the prior application, (from which Mr. Jeffrey recused himself) there was conversation about dogs, horses, petting zoos and riding stables. Mr. Gladstone agreed. But, the application was really only about the structure. He feels the same thing is happening with this application. The application only refers to the September 5, 2006 meeting and items relating to another issue are trying to be put into the same application. Mr. Gladstone stated that the Board has the ability to seek clarification of the record and if there was any information that improvidently excluded this Board can include it. Mr. Gladstone went on to cite the case of Shalvey vs. Zoning Board of Review, 210 A 2d. 589. This case states that, “The powers of a regulatory agency of this type are limited to those conferred in the enabling legislation and may not enlarged or restricted by legislative action on the part of a municipality”. Then in the case of John Gibau vs. Michael DiChiara, Lexis cite – 1995 Rhode Island Super, Lexis 61. “This court finds that the Board acted in excess of the authority granted to it by ordinance and statute in granting said extension.” Mr. Pilozzi asked Mr. Gladstone that based on the case he just cited; once an approval expires the applicant has no recourse? Mr. Gladstone confirmed. Mr. Pilozzi stated that if the project was a new project, he would be inclined to agree. This project is ongoing the developer has not abandoned the project. Mr. Gladstone replied that because the one year approval expired, the developer should have to start the whole process over again. Mr. Howe

asked Mr. Gladstone to cite the legislative mandate concerning the one year. Mr. Gladstone stated that the cite is in the appellant documents. Mr. Howe states that it is Section II of the Procedure for Filing Land Development and Subdivision Applications, Article C, Submittals and Review Required by Land Development Type – Major, Subpart (h), subparts 1, 2 and 3. Mr. Howe asked if this was correct. Mr. Gladstone could not say for sure. The application for appeal cites 6 (b) (2). Mr. Howe asked Mr. Gladstone if this was correct. Mr. Gladstone could not say for sure. Mr. Howe then read Question 11 from the application. Mr. Gladstone agreed that the answer was correct. Mr. Howe asked Mr. Gladstone to cite the legislative mandate that he is relying on in bringing the appeal. Mr. Gladstone stated it is on page 44 of the Land Development and Subdivision Review Regulations. Both gentlemen agree that it is the correct page, subparts f, g, and h. Subpart h. – “Vesting of Master Plan.” Both parties agree on correct subparts. Mr. Gladstone reads, “The approved Master Plan shall be vested for a period of one year with a one-year extension upon written request by the applicant, who must appear before the Planning Board for the annual review.” Mr. Howe asked Mr. Gladstone if this is the basis for his appeal. Mr. Gladstone stated that it was. Mr. Gladstone also cited page 171, “Johnston Land Development and Subdivision Review Regulations, Section IV, Administrative and Enforcement, Article C, Enforcement”. Mr. Piloizzi states that he believes that Section VIII, No. 2, “Vesting may be extended for a longer period for good cause shown, if requested by the applicant in writing and approved by the Planning Board”. Both were done. Mr. Gladstone stated that it must be done before the approval lapses. Mr. Aurecchia stated that enough testimony has been heard and he moves for the question. Mr. Jones stated that he would like the opportunity to present his side before the Board votes. Mr. Aurecchia withdrew the motion.

Mr. Jones stated that the ordinance does not have anything about “expiration” in it. There is nothing in the Johnston ordinance that causes a Master Plan to expire. This development is also a phased plan and the Johnston ordinance has special provisions for phased plans. “Phased plans must have Master Plan approval of the entire site. Thereafter, the plans may be submitted for preliminary and/or final review.” Mr. Jones stated that none of the ordinances have a provision for expiration. He urges the Board, based on this information, to deny the appeal.

A member of the audience tried to interject their own feelings on the issue. Mr. Piloizzi stated that no new testimony is allowed at an appeal hearing. The abutter stated that he would state his feelings anyway. Mr. Piloizzi said he could not, it would cause the meeting to be in violation and the stenographer should strike any comments.

Mr. Gladstone stated that the developer did nothing to preserve their rights. No action was taken until after the one year expiration.

Mr. Piloizzi asked for a motion to grant or deny. Mr. Aurecchia made the motion to deny the appeal. This was seconded by Mr. Jeffrey. Mr. Anzelone deny; Mr. Fascia deny; Mr. Piloizzi deny. Record shows the vote was unanimous to deny the appeal. Mr. Anzelone made the motion to adjourn the meeting. Seconded by Mr. Jeffrey.

Meeting adjourned at 10:15 p.m.