

PUBLIC HEARING
TOWN OF OSSINING
ZONING BOARD OF APPEALS

**M&S Iron Works, Phillip Spagnoli
Section 80.18 Block 2, Lot 22**

Proceedings
Ossining Operations Center
101 Route 9A
Ossining, NY 10562

September 23, 2013

8:00 p.m.

PRESENT: HON. SALVATORE CARRERA - Chairman
HON. EDWARD MILLER - Member
HON. CHING WAH CHIN - Member
HON. JAMES BLAIR - Member
HON. INGRID RICHARDS - Member

ALSO PRESENT: MARK REISMAN - Deputy Town Attorney
JOHN HAMILTON - Building Inspector
MARGARET CONN - Recording Secretary

CHAIRMAN: Good evening ladies and gentlemen. This is the September 23, 2013 meeting of the Zoning Board of Appeals for the Town of Ossining. My name is Sal Carrera, Chairman. Joining me this evening are members of the Zoning Board of Appeals, Deputy Town Attorney, Building Inspector. For the record we will introduce ourselves.

CHING WAH CHIN: Ching Wah Chin, Board Member.

JAMES BLAIR: James Blair, Board Member.

ED MILLER: Ed Miller, Board Member.

INGRID RICHARDS: Ingrid Richards, Board Member.

MARK REISMAN: Mark Reisman, Deputy Town Attorney.

JOHN HAMILTON: John Hamilton, Building Inspector.

CHAIRMAN: I will read the public notice and then request the applicant or their representative to give a brief explanation of the relief sought. If anyone has a comment, they should raise their hand and state their full name and address. After comments are received, the Board will try to render a decision this evening.

Notice is hereby given that a Public Hearing of the Town of Ossining Zoning Board of Appeals will be held on September 23, 2013 at 8:00 p.m. at the Ossining Operations Center, 101 Route 9A, Ossining, New York, on the application of M & S Ironworks, Phillip Spagnoli, 19 Old Albany Post Road, Ossining, NY, for a variance from the terms of the Zoning Code of the Town of Ossining, Section 200-17 A. (2) Permitted Uses in the Neighborhood Commercial, (NC) Zoning District.

The property is located at 19 Old Albany Post Road, Ossining, New York, and is identified on the Tax Map of the Town of Ossining as Section 80.18, Block 2, Lot 22 and is located in the Neighborhood Commercial (NC) Zoning District.

All interested persons are invited to attend the Public Hearing and be heard on this matter. By order of the Zoning Board of Appeals, Salvatore Carrera Chairman. Dated, September 16, 2013

Okay, may we have someone from M&S give a brief presentation and then we will open it up to the Board and also the audience?

MR. CONNOLLY: Good evening, my name is Neil Connelly. I am the Attorney for M & S Iron Works, Mr. Spagnoli. Preliminarily we did not ask, when we submitted the application, that the Board consider whether the landscaping business is a conforming use. We would like to ask that you consider that. The definition under the code is for a service establishment and you don't find the definition of service establishment really in the zoning code and very many other zoning codes and the State Law. I went to the Federal Fair Labor Standards Act to find some case law that talks about

the definitions of retail and service establishments and what it came down to, and I have the citations for your counsel, what it came down to is they talk about 75 percent of your income being from the term end users, being from the actual people that use your property whatever it might happen to be.

The two cases we found in Federal Courts talked about a computer training facility that they ultimately found was a service establishment because they sold to companies and they trained the people at the companies on how to use the computer. That was the bulk of their business. The other thing that they looked at was whether or not that particular training, or whatever the product was, was it resold. Did they take it and sell it to someone else. Even though the people that they trained, trained other people, the Court said that's not the type of resale we are talking about.

The other case they talked about was a food producing company. A company that was producing food for cafeterias at a school. They were selling food to the school and the school was giving it to the students. The question became, "who is the end user?" The students aren't really paying directly to the food producer. They are paying their money in tuition and then the tuition then pays the company. The court again said, "No, what they are really doing is providing food directly to the students". The way the payment comes doesn't define how the court looked at whether or not this was a service establishment. It was a service establishment.

We believe in this case the tenant North Castle Landscaping and Tree Removal Company is in fact a service establishment. They sell retail to homeowners, to small businesses. They give it to the end user. There isn't anybody else involved in the chain. It is a one to one relationship between them and the customer.

MR. BLAIR: In a commercial zone, assuming you are talking about commercial uses here, what would you think would not qualify as a service that is not provided to an end user?

MR. CONNOLLY: If you were producing a product that was going to be sold to someone who was going to put it together with another product and sell it on. So if you were making cloth, even in a small business, that type of thing, if you were selling it on. If you were putting shirts together, a stitching operation, and you were assembling them then selling that to a retail store who would be selling that on that wouldn't qualify because you're not selling it to the end user. You are selling it to someone else who is going to package it and sell it. That is the type of thing the court looked at. It was "are you selling directly to that end user". The term that they use is "end user", "are you going to the end of the chain?" Wherever the chain starts, when it comes down, what's beyond you. Between your company and the end user, well that's really a retail and a service establishment. That was the definition.

When you look at the neighborhood commercial code, we believe this use is a conforming use under the code. It is in fact the type of commercial business that sells directly to the end user.

MR. BLAIR: If you were manufacturing heavy equipment, engine blocks and you were selling them on the open market, let's say through the internet...

MR. CONNOLLY: I don't think that would qualify, because again, that's not an end user product. That is something that has to be taken and put into a car or a truck, or something else, and then that is going to be the final product. That was one of the things the Federal Court looked at. Who is making use of this final product? If it is going to be someone who has to do something else with it for a final product, I think the answer, the Court would say "that is not an end user product" They might sell it to someone that is going to use it but again, that was part of the definition, is it something that would have to be assembled? Are they going to put it together with something else to use it? If it is, it doesn't qualify as a retail service establishment. You're not getting that final product. It is not the end user.

CHAIRMAN: Are you considering the previous tenant, or the owner of site, a service establishment of the construction of railings and everything else they did while they were in business there?

MR. CONNOLLY: That is grandfathered in. They still have been using the site. Basically actually no, since they are grandfathered in. If they were to stop using the site, I don't think they would come back and qualify because they don't sell to the end user. Even though it is light industry. They sell to other companies and its manufacturing for a supplier in the construction industry. Even though that is kind of light industry they don't necessarily sell to the end user. They are selling to some retail. I would say on behalf of Mr. Spagnoli more than 75 percent of his business is as a supplier and to general contractors and subcontractors and therefore; under this definition, it wouldn't qualify, but they're grandfathered in. So that's how they maintain the use.

CHAIRMAN: Is your client currently using that site for manufacturing?

MR. CONNOLLY: Yes he is. He has been continuously.

CHAIRMAN: Well, I was there and there absolutely in no way, shape, or form that I saw any manufacturing going on there and in speaking to the current tenant there, he occupies the whole space other than not going near any of the equipment your client has there.

MR. CONNOLLY: We can ask Mr. Spagnoli who is here, how often he uses the space. He kept one bay of the place to do railings and other light material. It is not as heavy duty as it was when they were using the entire space, but they still do use it because it is a convenience to them. They have a job going on, the Metropolitan Plaza job in White Plains, a new building on Main Street, that is one of their projects there.

MR. BLAIR: Do they have any operations in the railing business other than this location?

MR. CONNOLLY: We can ask Mr. Spagnoli.

MR. BLAIR: Do you have any fabrication operations at locations other than the Ossining location?

MR. SPAGNOLI: Yes, we do.

MR. BLAIR: What percentage of your operations are conducted at that location more than the Ossining location?

MR. SPAGNOLI: The Ossining location we use as a satellite location. The other location is in Rock Tavern, which is west of Newburgh. A lot of our business is down in Westchester so a lot of times the guys have a fix on a railing or need some welding on a column or whatever it may be we have some welding equipment there and the guys can take their trucks there and make whatever fixes they need to make. The majority of the business, the heavy structural steel stuff, is done up north. I would say maybe 80 percent is done up in the other facility, more or less.

MRS. RICHARDS: So, what are you planning to do in the Ossining site? Just explain how the operations work.

MR. CONNOLLY: Do you want to bring Dave up? This is Dave Lowrey.

MR. LOWREY: I run a landscaping and tree business. Basically I store my equipment in parts of the bays. We leave in the morning and go out to work and we come back in the afternoon. The bays are used for minor repairs, nothing major. When you were there I was fixing a wire harness on the back of a trailer because the legs weren't working right when we were coming in. Anything major goes out to a repair shop that does all my truck inspections and I just maintain the equipment, blow it off, clean it off, sharpen things.

MRS. RICHARDS: So, you are going to store equipment at this location, all your trucks?

MR. LOWREY: I have some equipment. Yes, my trucks.

MRS. RICHARDS: And they will be coming off and on the site based upon the work throughout the day?

MR. LOWREY: Ninety percent of the time, we go out in the morning and don't come back until the afternoon drop a trailer and then leave again. There are a couple times where we have to finish a job a trailer and then leave again.

CHAIRMAN: Do you also split wood at the site?

MR. LOWREY: Yes we do.

CHAIRMAN: When is that done?

MR. LOWREY: When we bring it in, we split it and let it season.

MR. BLAIR: Do you sell the seasoned wood from there?

MR. LOWREY: Yes we do.

MR. BLAIR: How much noise is associated with that wood splitting?

MR. LOWREY: It's a lawnmower engine, and that's it. So, it's muffled. We were splitting wood last week.

MRS. RICHARDS: How many times a week does that happen?

MR. LOWREY: I might happen maybe one day every two weeks; it might be two days every two weeks. It all depends on what we are bringing in.

MR. BLAIR: How long have you been leasing there? How long have you been in residence at that location?

MR. LOWREY: I moved in January.

MR. BLAIR: This year?

MR. LOWREY: Yes.

MR. BLAIR: You weren't operating out of there at that time?

MR. LOWREY: I started operating there when I moved in, January.

MRS. RICHARDS: Now, "service establishment" maybe someone can help me with this. They say service establishment, excluding automobile laundries, gas stations and all other similar automotive service establishments, undertakers and funeral parlors. Was there are reason for that exclusion?

MR. HAMILTON: You would have to talk to the Town Board.

CHAIRMAN: Part of the problem is because of the Neighborhood Commercial District and this is a double-edged sword. Number one is that and I'm not going to argue with you with regards to your application plan verses Ossining. I would have to say that the current tenant probably occupies 98 percent of that site and if you do 5 percent of the work there. You would have to prove even that 5 percent because I think he has the whole place. There is trucks, and part of the problem is that when the tenant moved in, he rented place, there was no regard to what the zoning did accept or didn't accept. He just moved in on the premise that with a broker or whoever did the transaction it was okay to be there. How come and why they came in front of us, unless there is some language I do not know of. As my associate said, a service establishment, you maintain your equipment there even though it is for yourself. Also, puts into jeopardy servicing of your trucks, changing oil, changing tires, fixing motors, saws and so on. So there is a crossing here versus what M & S was doing. M & S was manufacturing there. Whether or not they were servicing trucks, I have no idea; I doubt it, because it was a big manufacturing place until the Newburgh site.

This is a real difficult situation to be in, according to 200-17 A. (2) with regards to service establishments. If it was a retail service establishment and you had an office where someone comes in and says cut down our trees. That's one set of circumstances in GB. This happens to be neighborhood commercial zone so that's something our Board members have to take into

consideration with regards to what can go there. If this Board disapproves of this current use, what fits into this 200-17 Neighborhood Commercial and when was this book written and who took into consideration how many types of businesses that are really out there.

Number one for the record and please correct me if I'm wrong, I think 95 percent of this site is run by your tenant that is there.

MR. CONNOLLY: I disagree.

CHAIRMAN: Thank you. The rest of it is why you are here for an interpretation of a zoning variance to see if this use fits into the neighborhood commercial?

MR. CONNOLLY: I have signatures from a bunch of the neighbors. I have copies here.

CHAIRMAN: I would like to read this into the record, I am not going to read off all of the names; I am a resident of the Town of Ossining and neighbor to M&S Iron Works, Inc. and their tenant North Castle Tree Service and Landscaping located at 19 Old Albany Post Road. There has been no opposition or negative impact to the community since North Castle Landscaping started operating at 19 Old Albany Post Road. There are dozens of names on here. We can keep that for the record.

Does anybody in the audience have a comment?

MS. SOLLA: My name is Carmelita Solla. I live at 17 Old Albany Post Road. I am the neighbor, right next door. Really, I have no comment to say anything about them. I don't see them. I don't hear them. I hardly see trucks going in and out or anything. They don't seem to bother anybody.

CHAIRMAN: Are you a tenant in one of the homes or any of the buildings owned by this site?

MS. SOLLA: I'm next door. I have to say, it doesn't bother me.

CHAIRMAN: There are two homes right next to the site owned by your client, and you are a tenant in there?

MS. SOLLA: No, I am before the Ironworks.

CHAIRMAN: This is the house before you get to the site?

MR. MILLER: Do you have piles of wood stored behind your house?

MS. SOLLA: Yes.

MR. MILLER: Sir, when you bring in a tree cut it and split it, where do you stack it, because I did not see any stacking of trees on the property?

MR. CONNOLLY: In the back, you have that 30 to 40 feet, stone, its back there, underneath the awning overhang. Not visible from the street and just another thing about the North Castle operation, they don't work weekends. They're a Monday through Friday operation. To me it is a little

bit unusual for a landscaping operation because I usually see them in my neighborhood Saturday morning or Sunday when they wake you up. That is not the type of business that they do.

MR. MILLER: I have another question if I may. You are saying the company is landscaping and tree service. Is there a difference in the type of business? In landscaping you can be selling shrubs, that's landscaping and tree service to me, it's like you explained cutting down trees.

MR. LOWREY: Let me give you a background, I am a College educated horticulturist. So we get into landscaping and tree service. It is all part of the green industry; mowing lawns, planting shrubs, pruning trees, removing trees that are hazardous and/or need to be pruned down in order for landscaping to work underneath.

MR. MILLER: Would you have any intentions of selling retail out of this facility?

MR. LOWREY: As in bringing in plants? No sir.

MR. CONNOLLY: One other thing just in passing, the type business that he does as far as tree removal and so forth might be handy to have in the winter time with the type of storms we've been having, the type of damage that takes place, trees coming down. You've got a business in the Town that can help the Town to remove trees that have fallen down. It's not a bad business to have in town.

CHAIRMAN: The only comment I have with regards to that, and I have worked for the County of Westchester for many, many years, is that they don't just go out and just hire someone from the corner. It has to be bid out. In most cases it has to be on an approved list. It's great to have someone like that but there are rules and regulations in regards to making that kind of decision. That is the least of my worries at this stage of the game. Are there any more comments from our Board members?

MR. BLAIR: The ordinance states as one of its goals, the gradual elimination of non-conforming uses and I think it is important that we establish whether this is consistent with that goal. It seems to me that this probably needs to make an election between whether he's maintaining that he's looking for a definition that this is a service establishment, or whether he's looking for a use variance, because he is submitting that it is not a conforming use.

MR. CONNOLLY: We actually are submitting a conforming use variance, but in looking more deeply into it, we wanted to present to the Board that when they originally brought the tenant in, they thought it was a conforming use. They looked at it as a service establishment. So they didn't go in blindly, on the other hand, we are going with the alternate, if you don't believe it is a conforming use, we are asking for a use variance. Mr. Spagnoli hasn't spoken about it yet, but there was a financial impact. The company did fall behind on its taxes for the property. The only way to become current with the taxes was by having a tenant in the space. He was able to pay enough money to cover the

taxes. So there was a financial hardship they were incurring for several years, until they were able to catch up. With that being said.....

CHAIRMAN: But that is kind of self imposed. If they were in this position, in this current location, and they did not move to the other site where they're doing big work. So now they have two sites to worry about. One where they do about 98 or 95 percent of their work, verses the 5 percent they do down here, which God knows if they even do anything down here. That is self imposed. One of the questions I have for the Deputy Town Attorney and our Building Inspector is and it hasn't been brought up; was M&S or is M&S a non-conforming and is it currently grandfathered in there?

MR. HAMILTON: Yes. At this time it is. It was there prior to the ordinance being created.

MR. BLAIR: Could I make a suggestion, given the two problems.

MR. CONNOLLY: My apologies, it should have been done.

MR. BLAIR: Our experience is that we've got a high burden, a heavy burden, when you're going to try to convince this Board all of the elements for a use variance. We could handle the application in two phases right now. We could try to establish that it is or is not a service establishment. If we say it is not, and then we could proceed with your justification of the use variance which to go through that ahead of time may be unnecessary if we are of a mind to define this as a service establishment.

MR. REISMEN: May I?

CHAIRMAN: Yes, please.

MR. REISMEN: Given the fact that the, and I understand why you did it, it's an interesting argument. If the argument in the first instance is going to be that it is a service establishment based on a citing of the fair labor standards act, which obviously is applicable to labor and employment cases of certain types, but not necessarily to something like this. Frankly, I am not sure if the Board would be in a position to accept that definition without having a chance to look into it. It might make sense to either adjourn the hearing so that we could look into it further, or perhaps make a decision as to whether you want to pursue that particular argument or rest solely on the application for a use variance. That, to me would make the most sense.

MR. BLAIR: If we don't have a specified definition for this term and I think Counsel has indicated that he has done some research looking for a definition in other quarters, are we not left to the standard of plain interpretation of the English language? I mean use that a guide to determine....

MR. REISMAN: Yes, I mean under the New York State, I forgot exactly the name of the statute, but I believe it is the general construction law. The answer to that question is, yes. Unless there's a special meaning, you adopt the plain meaning. As you were speaking, and I don't want to dominate this, but as you were speaking I was taking a look at the ordinance 200-17. They talk about

the permitted uses in the Neighborhood Commercial zone to be stores and shops, for retail business, that's in number one and in number two they talk about service establishments. They talk about excluding automobile laundries, gas stations, and things of that nature. Although, it is not specifically in the statute, it almost sounds like the intent where this would fall under some type of storage facility, not a retail establishment. There is not really any service being offered on the premises. It would seem if you take all this together.

CHAIRMAN: Putting aside that M&S is grandfathered in and at this stage of the game, in my personal opinion, that doesn't mean much to me. I think what this Board has to concentrate on is that this is an application that were being asked to see if the current tenant that's in there is a service business. I think that's what we really have to concentrate on and not worry about what M&S did there before and that their grandfathered. They're no longer there. So if you play this out whether it's this landscaping tree service company or somebody else that comes in here...Is it a service business that falls into permitted uses? As our attorney said, you have under A. permitted uses; stores and shops, service establishments, fully enclosed eating and drinking establishments and then you have areas that you can't have. Is this business a service business?

MRS. RICHARDS: What if we say, yes it is a service business; there's exclusions to those services, based upon it being in a community, an area where we have residential homes. So, even if we determine that today and say, yes it is a service, there are exclusions that apply to that service definition. It says, specifically the intensity of the use, in my mind when I read that and the character, the intensity. That's what makes it somewhat difficult, and that much more difficult.

MR. CONNOLLY: You do have a difficult job because you don't have a lot of guidance in the code and what the definition is of a service establishment. When you look at retail.....

MR. CHIN: I wouldn't want to say we don't have that much of guidance. Although your definition from an outside source is interesting, we do have the guidance of the other types of zoning. As we get into heavier types of business districts, we notice that the definitions start tending towards more of what your tenant is using it for.

MR. CONNOLLY: I looked at them and I didn't find anything that talked about landscaping business.

MR. CHIN: Except that when we went to your site, we noticed that even as your description is, we noticed that you are basically storing the vehicles. When I was there you had trucks basically taking up all of the spaces there which is fine, whatever, but that would fit into the definitions of the heavier districts where it goes and says you can use it for parking spaces as a permitted use.

MR. CONNOLLY: I believe they are allowed to have a certain number of vehicles on the site as part of the business.

MR. CHIN: Well, going towards the fellow Board members description of prohibited uses there's clearly tendency not prefer a heavier traffic type of use, in the General and the NC zoning.

MR. CONNOLLY: Automobile laundries, gas stations and other similar service stations, undertakers and funeral parlors, those are excluded. I don't see how they translate over easily to a landscaping business.

MRS. RICHARDS: With trucks that are coming in and out of the site, they are in use and then it comes back.

MR. CONNOLLY: Once again....

MRS. RICHARDS: It leaves then it comes back. To the neighboring areas, that's twice a day, every day.

MR. CONNOLLY: But, that's any business, if you are driving a car to the store...

MRS. RICHARDS: Right, but it's not a car, it's a truck right.

MR. CONNOLLY: We're not talking about an eighteen wheeler. We are talking about pickup trucks.

MRS. RICHARDS: Which generates more noise than a Sedan or an SUV, or even a Minivan. Those are the things that we have to understand. That is why I thought it important to describe the use.

MR. CONNOLLY: If you want to ask him further questions, I am sure he will be happy to talk about more about his business.

MR. REISMAN: Is equipment being hauled on trailers?

MR. LOWREY: Yes, I have some equipment on trailers.

MR. REISMAN: How big?

MR. LOWREY: I have two small tractors and a stump grinder that go on an open trailer. Then I have an enclosed trailer the equipment goes into.

MRS. RICHARDS: I find it interesting that you submitted this to the Board. Did you fully explain the operations of the use when you went around to these neighbors?

CHAIRMAN: Yes, please step forward and give your name and address.

MS. KEHRLE: My name is Maria Kehrlé. I reside at 1 Cliff Drive. Our property is up on that plateau and the Ironworks is down there. I have only good things to say, as far as, the area is always been kept neat. There is actually less traffic. As far as I am concerned, there were times when a long trailer came in and traffic was stopped but with the smaller trucks and vans and whatever, I hear less noise than there has ever been. They've always been good neighbors especially in keeping the area clean. As far as all this traffic that is being mentioned here I mean if anybody sees during school bus time, how the cars come down around the hill there past the park as they zoom through, that's a

different thing but this business of these trucks going in and out, what is it since January? I've never been held up for anything going in and out. I am retired and I go out later than that, but as far as this business and those trucks I've never been happier.

MR. CONNOLLY: Can I ask you something. Are you one of the signatories on the document?

MS. KEHRLE: Yes.

MR. CONNOLLY: Who spoke to you about it?

MS. KEHRLE: Mr. Spagnoli spoke to us about it.

MR. CONNOLLY: Did he tell you what it was about.

MS. KEHRLE: Yes. I called the Planning Board, the Town Board and they received this letter and they said "what's it about?" because it was a change of usage and it's going to be landscaping now and so this is why we are here.

MR. BLAIR: I reviewed the statute, the ordinance, and I think as a general matter I came up with the feeling that, unlike the Village of Ossining, there is not a provision made in our ordinance for industrial uses, for heavy uses it is basically designed around residential and light commercial however you define them. So if this were to be deemed to be anything other than a service establishment we wouldn't have any way to define it, it is not in the code.

MRS. RICHARDS: Does that mean that it is not permitted?

MR. BLAIR: It doesn't, I asked for some guidance on this and I didn't get any back.

MRS. RICHARDS: Because in the Village of Ossining if that use is not expressly stated in the document, it's not permitted. That is why I asked that question.

CHAIRMAN: If you take a look at North State Road which is GB and you look at the zoning that's been updated along North State Road, a business similar to this someone would have to come in and ask us because again in my interpretation of what Mr. Lowrey does, is he stores his equipment there, he stores his trailers there, he does repairs, he services his equipment, it is almost like a bulk storage complex. The majority of it inside, with some parking outside which you are always allowed to have.

There is delineation with regards to the GB and this Neighborhood Commercial. I think it is our responsibility here which I think is twofold. Number one, again putting aside M&S being grandfathered, I think we have to consider pursuant to their request is this a service establishment number one, and number two, you have forty or fifty names who live in and around this are who are complimenting this use, which to me, if there were ten people here that said this is absolutely terrible with regards to him splitting his wood, having trailers backing in, and I haven't seen that yet. I personally feel that we could beat the horse to death here on what they are asking for. I would like to concentrate on the application of 200.17 (A) 2. Is this a service business, and I would like to make a

judgment call on that rather than going back and saying you're going to come back in there for a use variance. To me it is a use variance and it fits into this 200-17. My opinion, without it being General Business, you have to have a retail outlet there where someone could come in off the street and say, "hey listen I want to buy a shrub, or an air conditioner, or I want to buy ice cream" this here is a little different because it is Neighborhood Commercial. I think we have to take everything into consideration in giving this out. Putting aside the grandfathered use, because I don't think M&S has anything to do with this. If it's okay with this Board, I would like to move forward on their application of 200.17(A) 2. business or service business. If it is and we say it is a service business then he deserves to be there. I don't see anyone here with a negative attitude, and that is something we usually rely heavily on with regards to making a decision, besides following this book. So, it's not detrimental to the area at this stage of the game, my opinion.

MR. BLAIR: Sal, before we go to the vote on that, I would just like to express a thought that this is an odd application or rather it's an odd section of the law as it is applied in this case and this are because the neighborhood commercial is jammed in the middle of a residential area. How that happened, no one knows, but it is nevertheless, it sort raises consciousness about impacts in a residential neighborhood on one hand, but on the other hand you could say that the people who wrote ordinance says this is okay, to have a non-residential use smack in the middle of this. If we can fit this use into that envelope, I don't think we should be too terribly concerned with surrounding residential uses.

MR. CHIN: It certainly doesn't seem like neighbors have a problem with this. If we were to discount what the previous use of it was and clearly, the previous grandfathered use could have been much more annoying to the neighbors than the current use apparently. My fear is that if we grant this the consequences going forward in terms of the definition of the service establishment may not match what is intended. For instance, if we look at the general business district or manufacturing district, there is. There is, in the next section, which is office research manufacturing district. That one even prohibits heavy industrial nature, like we've pointed out. I would think that the manufacturing district is probably the heaviest district where you are allowed to have in terms of that sort of manufacturing with residential nearby. When I was looking at the comparisons of the different zones from the general business districts all the way up to the manufacturing districts, it seemed to be that the NC designation was a much lighter type of use but it seems like these particular type of tenants may be matching that use, but if we grant it, what are we saying for the future in terms of when someone else comes in and is saying "well this is just a landscaping business" but it may be a totally different behavior path.

CHAIRMAN: I understand what you are saying, and I understand about the general business and light manufacturing and everything else, but we are stuck with the neighborhood commercial there. That is what we have to make our decision on with regards to 200.17. We can't, or we should not bring into effect all the other zones that have more meat to it than this. One of the questions I have, is would we be able to give a temporary zoning variance for this current tenant until the lease expires or is renewed, so that if anybody else that comes in, we would have the opportunity to look at it?

MR. REISMAN: I have never heard of that. You either grant the use variance or don't grant it. I have never heard of a temporary use variance. I don't know if anybody else has.

The other question I have is if there is going to be a use variance granted for this particular use, does that mean that there's an intent on the part of the owner of the property to discontinue the grandfathered use?

MR. CONNOLLY: I believe that is the intention, yes, at a point in time in the not too distant future to discontinue all operations in Ossining. That is their ultimate decision. Whether that is going to be at the end of this year or continue on into the following year, because of their ongoing jobs here in Westchester, I don't think they have made that determination yet, but yes they will discontinue their operations in Ossining within the very short future.

MR. REISMAN: So, it sounds like your request, and I think it is in the application, to only ask for a use variance for a portion of the property, not the entire property.

MR. CONNOLLY: No, it is not for the entire property.

CHAIRMAN: That was my next question, with regards to the two homes that are there. Is that part of the neighborhood commercial or is that residential?

MR. CONNOLLY: It is part of the neighborhood commercial.

MR. SPAGNOLI: We are a non-conforming lot.

CHAIRMAN: The whole site is one non-conforming lot, including the two residences?

MR. SPAGNOLI: Yes, including the two residences.

CHAIRMAN: So, the unforeseen here knowing that they would be selling this site someplace along the line, and someone else can come in and knock down those two buildings, the two residential sites and then make that whole property a neighborhood commercial site.

MR. CONNOLLY: On the other hand, if you determine that this landscaping business is a conforming use anyone coming in with a subsequent business, not just a tenant, would have to come back and qualify as a conforming use if their operation was in any way different than this tenant's operation they would then have to qualify, for example, if they were not a landscaping business, they were tree shrubs, that wouldn't be the same thing.

MR. BLAIR: Counsel, do our decisions have precedential value.

MR. REISMAN: Do they have precedential value? I would say no, although that's a slippery slope too. If you make one isolated decision, does that necessarily set a precedence for the entire neighborhood, probably not but the argument would be there.

CHAIRMAN: John, how many neighborhood commercial districts are there is in the unincorporated Town of Ossining, just this?

MR. HAMILTON: Just this, yes.

MR. REISMAN: These things have to be taken on a case by case basis.

CHAIRMAN: I would want to go back to my original, if it's not legal then I would rather be told that, but I don't have a problem moving forward with this applicant and only this applicant for the length of the of the current lease that's there for this type of usage and if anything else happens to that piece of property whether he moves out on his own or he buys the site then I would want that to come back to us to see if it fits into 200.17 with regards to a service business.

If he came back here in a year from now and he bought the site and he knocked down the two buildings and he puts up a garage, that you can't do. It would be very difficult.

MR. BLAIR: Are you saying that the case for a use variance is okay.

CHAIRMAN: If we say no to this service business, I would like to know what type of service business could go in there. What fits in to that service establishment?

MR. MILLER: I certainly think it's a service business. If I had a tree laying on the roof of my house and I got on the telephone to call that gentleman to come help me out and come get the tree off of there, you say that he's not providing a service, I don't see how you can argue that point.

MR. REISMAN: I'm not saying it's not a service.

CHAIRMAN: What is the name of it.

MR. LOWREY: North Castle Landscaping and Tree Service, Inc.

MR. MILLER: I don't see how we can deny that it is not a service business. In my mind and I think, if I may, although this not probably what I should be saying, looking down this list of names they have provided, there is a lot of old timers in Crotonville on this list and if they are in favor of it and knowing the Crotonville community like I have for 70 years, I think we should give that some credence. I really do. If they are happy and if we can keep them happy boy oh boy, I think under the circumstances as long as there's control on it.

CHAIRMAN: What I propose to this Board is to move forward with 200-17 (A).2 whether it is or is not a service business. That is what we are here to do. I am ready to go forward with a yea or a nay with regards to this applicant that's in front of us tonight.

MRS. RICHARDS: So may I clarify? The question on the table is, is this a service business? That is what we are being asked. To me it can be considered a service business but there are exceptions to service businesses in this zone.

MR. MILLER: Can you show that to me in that zone.

MR. REISMAN: Well, it calls it out.

MR. MILLER: If you look at A. permitted uses and then go to 2 the very first thing it says is service establishments, excluding automotive laundries, gas stations, and all other similar automotive uses. So the service establishment is a permitted use.

MRS. RICHARDS: Right.

CHAIRMAN: And that is what he is here for.

MR. MILLER: That is what he is here for.

CHAIRMAN: And his card basically says North Castle Landscaping and Tree Service, Inc. which lends some credence to what the guy does. It is a service business, whether or not you have an office where you could walk into and say do this or you get the phone number and you call, it's a service business.

MR. BLAIR: Since, the Building Inspector is the person who brought this before us, is it your position that this is not a service business?

MR. HAMILTON: I based my decision on the definition in the code here of a personal service establishment which shows a business enterprise engaged in providing services involving the care of a person etc. etc., and in my opinion at that time, that says to me that your service has to be on site. That's where I fell into this category and referred to the Zoning Board, this is not onsite.

MR. MILLER: I don't think it has to be on site under this code.

MR. HAMILTON: That's the Zoning Board's decision.

MR. BLAIR: What you are saying is you looked in the definitions.

MR. HAMILTON: You can look in the definitions.

MR. BLAIR: Page 89?

MR. HAMILTON: Well, Section 200-53.

MR. REISMAN: Personal service establishment, a business enterprise engaged in providing services involving the care of a person or his or her personal goods or apparel, including but not limited to beauty and barber shops, dressmakers, tailor shops, watch repair, clothing and shoe repair, Laundromats, drop-off laundry and dry cleaners (not including commercial or industrial laundries), nail salons and tanning salons.

MR. HAMILTON: That would be a personal thing, however I said to myself If all of these fell into a category of onsite, I took it to the step of service establishment should be something onsite and referred it to the Zoning Board.

MR. REISMAN: That is the closest you can get. Look at the definition in the code of storage facility. An establishment engaged in the storage of goods, products or materials for business purposes.

It is arguable that you are also a storage facility.

MR. BLAIR: From a construction standpoint, if we have a definition of personal service establishment in the definition section, but in the operative section of the consideration 200-17 the words "personal" have been omitted. How do we construe the fact that it has been omitted, do we assume that that was done with intent?.....

Don't think any more

CHAIRMAN: I think we as a Board have to concentrate pursuant to the application under 200-17.

MRS. RICHARDS: Now laundries, excluding laundries, why would it exclude laundries.

MR. CHIN: On top of that there is a limit of how many people you can have. There is also a limitation on the number of employees.

MRS. RICHARDS: Yes. I find it compelling that the uses under this neighborhood commercial district are to be very light in nature. Laundries?

CHAIRMAN: But that is the cards we're dealt and that is what we have to go by without, in my personal opinion, taking into consideration every other interpretation of every other district in the unincorporated Town of Ossining that have something better for us to go by.

MRS. RICHARDS: I just don't know why laundries would be excluded from this district.

MR. CHIN: Well, laundries are not excluded from the other districts, so you can compare them. You can say "well okay this is a lighter district", you can compare it. That is why I am sort of forced, and Counsel correct me if I'm incorrect, you are sort of forced into comparing it to the other zones because you are looking for a better definition. Just because you have to make the assumption that they would have not made the difference in the zoning of these other categories unless there was a better reason. So those are heavier use districts and they exist to fit this category better. Then it is my assumption has to be that the lighter district doesn't include them.

CHAIRMAN: Years and years ago before a number of people were here North State Road where the Garden Center was, was a Laundromat and it was personal Laundromat where you dropped off your stuff and they washed and pressed and they also had a manufacturing place and

that is a General Business district. When you take a look at that and I understand what you are saying, this is very light. You are 100 percent correct. This is very light.

MRS. RICHARDS: Extremely light! There's no live entertainment or live music. Fully enclosed eating and drinking establishments, provided that no live entertainment or live music is supplied or dancing permitted. Light!

MR. CONNOLLY: May I make a comment, they added that back in at the end. They added fully enclosed eating and drinking establishments where live entertainment and live music are supplied. That is now allowed.

MRS. RICHARDS: That's now allowed.

MR. CONNOLLY: If you look at A. (7) Self-service or hand laundry and dry-cleaning establishment, provided that not more than two workers shall be engaged in the dry-cleaning process.

If you look at automobile laundries, I don't go to too many automobile laundries but I am assuming they are talking about a car wash. So, they do allow laundries of a certain size. They do allow certain activities that are related to that.

MR. CHIN: Wait, but automobile laundries is excluded.

MR. CONNOLLY: Automobile laundries are excluded, but hand laundries are allowed. Under number (7) Self service or hand laundries are included.

MRS. RICHARDS: I see what you are saying. Gas stations and all other similar automotive service establishments....

MR. CONNOLLY: Those are excluded, but if you go to number (7) you can have laundromats dry-cleaning establishments, accessory uses, you can have a fire station, a police station, so in some of those respects they get pretty heavy activity.

MR. CHIN: Fire and Police are different. No. That's different.

MR. CONNOLLY: I understand, yes.

MR. REISMAN: 200-17 A. (7) no more than two workers in the dry-cleaning process, extremely light.

CHAIRMAN: Well, we don't have a dry-cleaner in here, we have a landscaper and tree service business, so I think that is what we have deal with and if there is a recommendation from this Board and our Town Attorney with regards to holding off on this application and asking for a real use variance which I think they're asking for currently because everything in 200-17 is light. We are not being asked to re-write this code. We are being asked for interpretations and a use variance. That is what we are here for. It's up to the people who get paid on a weekly basis to go and redo this book if they want to, not us. Ours is interpretation and whether it fits into 200-17. I do appreciate reading

everything else but I don't think it is our job to read all the other districts and see how heavy or how light they are. This is what we have in front of us to make a decision.

MR. CHIN: If that was the case then using the straight definition of what is in front of me in terms of service establishments and the examples of which are given, I would have to say this is not a service establishment.

CHAIRMAN: On what grounds is it not a service?

What does he do?

MR. CHIN: Well let's put it the other way if we were to say that just because he provides a service like that, it's automatically allowed. What wouldn't be allowed?

Everything would be allowed and that cannot possibly be the answer.

MR. MILLER: And that may be very true for that particular pocket of business that they zoned out in the Town. I own a business and it's in the Village of Ossining and I am in the same situation. They had to make me special name, we're right in the middle of a residential area.

MR. CHIN: Obviously, I would be more inclined to give a use variance so we can have more control over this, then making a decision saying that a service establishment is so wrong, I am more afraid of that.

CHAIRMAN: I have no problem with that.

MRS. RICHARDS: I would be more comfortable with that.

CHAIRMAN: I have no problem with that. That goes back to giving a temporary zoning variance to this tenant only at this time until his lease expires, or renews, or he moves out. I don't have a problem with that because this is light. If we're having this much difficulty on whether or not this is service business. As far as I am concerned, personally, it is a service business. You're right everyone can fit into here but guess what; not everyone could fit into here because there are restrictions of who can't go in here, so there is something there. I don't have a problem with giving a special variance during the course of that.

MR. BLAIR: Sal, my problem with that is I don't think we can get there without full blown use variance here. We have got to go through the whole nine yards. Unless we make it up, but I don't think we should. So, we haven't heard anything about the dollars and cents group, or the conditions that are required for a use variance and I'm not saying that we shouldn't do that, but we have to do it the right way. I would say that frankly, if we simply state that this is a service business, it doesn't have any precedential value. It simply says this business as it stands before us we deem to be a service business that is the end of the case. Someone else comes in here and they choose to do some other variation on this. We can come up with a different answer a different rationale and a different result.

CHAIRMAN: What you are saying and I am agreeing with you, if we do it as a special, we are going to have a lot more control as time goes on. Not that is a complete service business I think it takes care of everyone's concerns at this table to say yea or nay for him.

Listen, let's play this out, we say no, he has sixty days or ninety days to move out, or they do an Article 78 whatever they want, or let's say he doesn't do the Article 78 because it cost too much money and it goes back to the owner. The owner has had financial problems in the past, so he has a great business upstate and this lien is around and then we start getting into tax certiorari and they come to this Board and we don't know what a service business is pursuant to 200-17 and anybody that goes to him to rent will go and say "are we going to be able to fit in here?" They are going to come back to us again and say "does it fit in here". What is a service business? There are exclusions here for the service business, tree service and landscaping service, to me, that's a service business.

The longevity of this, and they're going to sell the property sooner or later and then someone else is going to come along and throw him out if we approved it, but it still a neighborhood commercial district. Maybe someone is going to come in here and throw him out and build two houses there. I don't know that would be wonderful. They are still going to have come in here and ask if we can turn this into residential.

It's the same thing along North State Road. When you are in the General Business there and you want to do residential, you give up the GB for site forever and residential is built and that's the end of the story. It's been done a few times already and it's going to be done even more as we move down the line. I think to satisfy some of the Board members here, I don't mind putting on the table, that we move forward on a resolution yea or nay, as a temporary pursuant to his lease and or renewal for that site only.

MR. MILLER: If I am not mistaken, that is the only property that is involved in that zone.

CHAIRMAN: Yes, it is the only one in the Unincorporated Town of Ossining.

MR. MILLER: So at least that maybe controls it. Maybe this would help, if you read the code, 200-17 A. Permitted Uses, again back to (2), Service establishments, you put a period where the comma is or change the word excluding, instead of excluding say except.

CHAIRMAN: Yes, but that is not our job.

I understand.

MR. MILLER: I'm saying we're very confined to this code. I'm trying to work with this code, not wander out of this code. We are being asked specifically under 200-17 A. (2).

CHAIRMAN: 200-17 A. (2), service establishment, excluding, he's not an automotive laundry, gas station.

MR. MILLER: He's not.

CHAIRMAN: He's a service business and I consider my landscaper that takes care of my lawn, to be in the service business. That's what it is. He's not a doctor or a lawyer, or a carwash. He is a service business.

MR. MILLER: It definitely is in my opinion.

MRS. RICHARDS: I believe that if it is, it would have been up to the Attorney to document why he believes this is a service business through a memo to the Board or something saying this is why we are a service business, but what happened was they came in for a request for a use variance so that is what makes our job tonight extremely difficult.

MR. CONNOLLY: I just want to throw something in, I don't think, based at least on what I have heard, that a use variance would be appropriate because in my opinion, the mere claim that your business, for whatever reason sitting on a piece of property is not a growing concern, doesn't mean you can't get a reasonable return on your property, right. That is what you have to show to show that you are entitled to the use variance. I don't think frankly that we've seen enough to draw the conclusion for that use variance. Which again; brings us back to whether the tenant is or is not a service business and ultimately you will either do it tonight or some other night you will probably have to make a determination as to whether it is since the statute doesn't specifically define a service business, although, I respectfully disagree with the chairman that you can't necessarily take the definition of service of this section by not, and it's wrong to look at the other sections, especially when you look at 200-18 where they define the storage business, that sheds some light on what a service business is. I envision reading whole statute particularly and it's not a question, well there's no question that the neighbors object to this that is not the issue at all. There has been nobody who has come forward, so it's really a question of how you are going to apply this under the statute and whether you are going to do it tonight.

MR. CHIN: I think we have the votes to pass it as it actually is a service establishment. I believe you have three votes.

MR. CONNOLLY: If I can just say one thing. I don't think we can say it's temporarily a service establishment, or it's not. It either is or it isn't.

MR. CHIN: That is correct. The problem I have with it is I think it is for the long term and we will be stuck with the definition and even though we say it doesn't set a precedence it does.

MR. CONNOLLY: I think if you take the position, if you interpret the meaning of service with this there's no question other people will take that to be precedent in an argument, there's no question.

MR. BLAIR: I am saying that that case arises if someone comes before us with a tree and landscaping service on Quaker Bridge Road in the Town of Ossining and there is a similar neighborhood consent and each and every element is mirrored in that application.

MR. CHIN: Neighborhood consent doesn't come into question as how we define service establishment. Let's say we define this as a service establishment, if all of the neighbors object, we would still have to define this.

MRS. RICHARDS: That's right.

MR. CHIN: We would have to live with this.

MR. BLAIR: But it bears on us.

MR. CHIN: No, it has no bearing whatsoever.

MR. BLAIR: Then it shouldn't have any bearing on what we do after.

MR. CHIN: No, no when it is a variance the neighbors have a bigger voice. When we are just interpreting what a service establishment is we are not going to have the ability to take their opinions. Like our opinions won't matter, same thing.

MR. BLAIR: I see.

CHAIRMAN: May I ask a question, does Mr. Lowrey have the right of first refusal on that whole piece of property?

MR. CONNOLLY: No.

CHAIRMAN: He is basically a tenant on how long of a lease sir?

MR. LOWREY: Five years.

CHAIRMAN: Any cancellation clauses from the landlord?

MR. LOWREY: Yes.

CHAIRMAN: And what does that say basically?

MR. LOWREY: The attorneys wrote it up. I can't remember the whole thing. He gives me time to get out, if I have to get out, if there was a problem. I don't know, it stated a couple of problems but I can't remember what they were.

CHAIRMAN: But there is a cancellation clause over the course of the five years.

MR. LOWREY: If I had a financial hardship, got sick, or passed away.

CHAIRMAN: If they found a buyer and that buyer did not want you there, they have the right to give you sixty or ninety days to get out because they have a buyer that wants to use it for some other neighborhood commercial district use.

Besides making this decision, I have to look at the future with regards to that plot of property including the two homes that are there and if you are closing out that business which might be the case there already from a financial standpoint, if someone did have a good use in mind or a change

of use, they would have to come in front of this Board you could just cancel this lease, or expand the site into the same type of service.

MR. CONNOLLY: I don't believe there is a termination on behalf of the applicant/tenant, I think it is just for failure to pay.

CHAIRMAN: For the landlord?

MR. CONNOLLY: Yes, we are looking at the lease, failure to pay, improper conduct, failure to perform any terms of the lease....

CHAIRMAN: Does the landlord have 30, 60, 90 days to terminate the lease?

MR. CONNOLLY: No.

CHAIRMAN: So he is there for five years?

MR. CONNOLLY: Yes.

CHAIRMAN: As long as he pays his rent.

MR. REISMAN: So if the property gets sold and as long as Mr. Lowrey's company has paid, he can stay even if the property is sold.

MR. CONNOLLY: According to the lease, yes.

CHAIRMAN: I would like to propose to this Board, after listening to everyone's concerns and understanding there is a five year lease in effect the current owners may or may not sell the property over a period of time. What is encouraging about it is that they can't throw him out as long as he is paying his rent. I want to make a decision on the application this evening on the application as it stands right now under 200-17 A. (2) whether or not this North Castle Landscaping and Tree Service fits into a service business.

Ingrid?

MRS. RICHARDS: I personally do not have enough information to make that determination.

CHAIRMAN: Then just say no.

MRS. RICHARDS: No.

MR. MILLER: Yes.

CHAIRMAN: Yes.

MR. BLAIR: Yes.

MR. CHIN: I vote no. No.

CHAIRMAN: Let the record show that the majority of the Board voted in favor in granting a variance as a service business for North Castle Landscaping and Tree Service.

MR. CHIN: It's not a variance.

CHAIRMAN: Not a variance, to show that North Castle Landscaping and Tree Service fits into a service establishment.

MR. BLAIR: Amend my answer to be on the plain reading of the term "service establishment".

CHAIRMAN: Thank you for your time.