

1 PLANNING BOARD COUNTY OF ALBANY  
2 TOWN OF COLONIE

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5 TJ'S CAFÉ  
6 1133 CENTRAL AVENUE  
7 APPLICATION TO AMEND SITE PLAN APPROVAL  
8 FOR FENCING  
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11 THE STENOGRAPHIC MINUTES of the above entitled  
12 public hearing BY NANCY STRANG-VANDEBOGART, a  
13 Shorthand Reporter, commencing on  
14 September 27, 2011 at 7:21 p.m. at the Public  
15 Operations Center 347 Old Niskayuna Road,  
16 Latham, New York 12110

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18 BOARD MEMBERS:

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20 PETER STUTO, Chairman  
21 MICHAEL SULLIVAN  
22 LOUIS MION  
23 KATHLEEN DALTON  
24 TIM LANE  
25 PAUL ROSANO  
ELENA VAIDA, Esq., Attorney for the Planning Board

26

27 Also present:

28

29 Joseph LaCivita, Director, Planning and Economic  
30 Development

31

32 Michael Tengler, Planning and Economic Development

33

34 Joe Grasso, PE, Clough Harbour and Associates

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36 Todd Leach, Applicant

37

38 Kevin DiTonno

39

40 Joe Flanagan

41

42 Eric Williams

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1                   CHAIRMAN STUTO: Okay next on the agenda  
2 is TJ's Café, 1133 Central Avenue, application  
3 to amend site plan approval for fencing.

4                   MR. TENGLER: Tonight we have Todd Leach  
5 who is also the power of attorney for the  
6 Leach Trust here to discuss plans to either  
7 eliminate or modify the existing fence  
8 conditions mandated by the Planning Board in  
9 April of 2004.

10                   TJ's is on a .6 acre parcel that contains  
11 TJ's Café, as well as an associated parking  
12 lot. There is a residential property also  
13 owned by the Leach Trust located at 10 Orford  
14 Street, which by way of a cross easement  
15 allows for parking and maneuvering through the  
16 parking lot.

17                   I'll turn it over to the applicant, Todd  
18 Leach and his reasoning behind the proposal  
19 and appeal of the previous Planning Board  
20 condition.

21                   MR. LEACH: Ladies and gentlemen, thank  
22 you very much. I'm Todd Leach from TJ's Café.

23                   What we're looking to do is respectfully  
24 request to move the fence line as it sits.  
25 Where we placed it initially, there is about

1           10 feet off of the property line of the Orford  
2           Street side of the property. All the other  
3           fence lines on the property would remain the  
4           same. We would prefer to replace the fence  
5           that's there with evergreen arborvitae style  
6           growth and provide the buffering to the  
7           neighborhood so that we can beautify the  
8           property with the greenspace. We'd like to do  
9           that in such a way that my establishment and  
10          my customers can benefit from the visual  
11          aesthetics of the greenspace, as opposed to  
12          the greenspace as it sits. Right now it sits  
13          on the other side of the fence line.

14                 Inside of the fence is all that we see as  
15          you drive into the parking lot. The fence was  
16          damaged from snowfall actually two years ago.

17                 Last summer we replaced the fence with  
18          extra plantings to try to make it nicer on  
19          that side of the property so that everybody  
20          can see it so that it looked more  
21          aesthetically pleasing. We don't like it to  
22          look runned down.

23                 It's a business and a restaurant. We have  
24          a good business and a good track record. We've  
25          been there since 1996.

1           I felt that if we would replace the fence  
2           that's there with more dense arborvitae style  
3           planting, we'd provide a buffer and we'd keep  
4           people from walking through that area and it  
5           would provide an aesthetic so that people in  
6           the neighborhood and the people who are coming  
7           to our establishment to dine would have a  
8           better visual look in that back area. The best  
9           that I could do other than painting the inside  
10          of that fence is to somehow maybe move the  
11          parking area down a little bit and put more  
12          plantings in, but that then would change the  
13          amount of parking spaces that we have. It's  
14          already getting a little tight. We don't have  
15          as many as we certainly would like and under  
16          the circumstances, we felt that it would be  
17          better if we just extended it the other way.  
18          I'd take the greenspace between the fence line  
19          as it sits on the site plan and the road and  
20          plant that with green arborvitaes.

21                 We have a situation where during the snow  
22                 seasons, as we push the snow from the parking  
23                 lot into the back end of the lot, we lose a  
24                 great deal of parking during the winter  
25                 months. Those happens to be our busier months.

1 We don't have a patio. We're not an outside  
2 type of venue. We're not a bar. We don't do  
3 bands and we don't have drinking specials and  
4 parties and so forth. We're a restaurant.

5 Many years ago when I was a little  
6 younger, we used to spend many late nights  
7 with a lot of good clientele having a few  
8 cocktails late into the evening hours. We're  
9 now closed at 11:00 Monday through Thursday  
10 and we close at midnight on Friday and  
11 Saturday. We don't have that type of  
12 environment where people are perpetually over  
13 served and where there are problems with  
14 bottles being smashed and fights in the  
15 parking lot.

16 There hasn't been a police call except  
17 for one specific incident in April, called to  
18 our location for any reason. That was during  
19 the day and it was an issue with the  
20 neighbors. It's a long story. If you want to  
21 ask, I'll be happy to tell you. It's not  
22 important to this discussion.

23 What I'm looking to do is change where  
24 the fence line is so that we could move the  
25 fence line out. Then, we can then contain all

1 of our parking area inside that fence line and  
2 thus give the greenspace to the inside of the  
3 fence, so that the customers can see it and it  
4 looks nice when you pull in. If you don't care  
5 for the plan with just the arborvitaes and  
6 you'd like us to replace the fence, my request  
7 would then be to replace the fence out to a  
8 predetermined line; maybe one or two feet off  
9 the property line into the neighborhood side  
10 of the greenspace, so that we can then buffer  
11 the neighborhood with the fence line.

12 If neighbors have a concern with a cut  
13 through, my question to them would be: What  
14 kind of cut through? We already have a gate  
15 that is part of that fence since the day that  
16 we put it up for the tenants at 10 Orford  
17 Street. The back tenant has the mailbox in the  
18 front side of the building. They would have to  
19 walk around the building to get to their  
20 mailbox. We have a fence and a gate that  
21 already allows that cut through. That cut  
22 through was there in that way since the A  
23 Frame in the late '60's. Strangely enough, I  
24 found some pictures in my desk from before  
25 1998 when we raised that house and turned it

1           into a parking lot. That shows that there was  
2           no fence line there at that time. There was  
3           simply open space. There was no buffer and  
4           there was no space. There was just a house. It  
5           wasn't a very aesthetically pleasing house  
6           which is why we took it down.

7           The tenants that were in the house when  
8           we bought the property were difficult  
9           individuals when we bought the property. We  
10          didn't want to be in the landlord business. We  
11          took that house down and make a new parking  
12          lot. So I would request that we either change  
13          the greenspace there to go out to that section  
14          of the road with arborvitaes, or to move the  
15          fence out within two feet of the property line  
16          on the Orford Street side.

17          CHAIRMAN STUTO: Are there any residents  
18          here from the neighborhood?

19          MR. DITONNO: My name is Kevin DiTonno  
20          from 13 Orford. I live directly across the  
21          street from half of the back of the property  
22          line that TJ's has.

23          It was 12 Orford - the property in 2004,  
24          that was demolished and removed. Part of that  
25          plan and the condition, which I was not

1           against, was to have the trees put in. Those  
2           are the hedges that are there now. I don't  
3           exactly know the distance they have there.  
4           It's probably 400 feet, or so.

5           MR. LEACH: The shrubs on your side of 13  
6           are approximately the center. Part of those  
7           shrubs are four feet off of the property line  
8           on that side.

9           MR. DITONNO: So, you want to put the  
10          fence line on the opposite side?

11          MR. LEACH: Yes. We'd be about two feet  
12          off the road right here (Indicating).

13          MR. DITONNO: And your secondary thing  
14          was you wanted to put the hedges where?

15          MR. LEACH: On the inside of my fence  
16          line.

17          MR. DITONNO: So, you'd have two rows?

18          MR. LEACH: No. I would either remove  
19          that fence and put two rows of arborvitaes, or  
20          leave one row of arborvitaes on the inside of  
21          the fence and put the fence on the roadside of  
22          that line.

23          MR. DITONNO: Either way, you'd be  
24          blocking what's there now.

25          MR. LEACH: If I can't put just



1 arborvitaes there, then I'd like to put the  
2 fence to the outside of those shrubs. I just  
3 want to put arborvitaes through there.

4 MR. DITONNO: I've been waiting for those  
5 to grow in, actually. It took some time for  
6 them to get to where they're at. I just start  
7 to finally accept them and saying that it's  
8 looking a lot better, and for you to put a  
9 stockade fence on that side, I just don't like  
10 the way that it would look. It's kind of like  
11 I'm looking for an alley.

12 MR. LEACH: Was your family the family  
13 that took the house down?

14 MR. DITONNO: They were.

15 MR. LEACH: Do you plow your snow from  
16 your property onto that section where those  
17 trees are?

18 MR. DITONNO: I do not. To be honest with  
19 you, I have a four-wheel drive truck.

20 MR. LEACH: One of the problems that we  
21 had is a lot of the neighbors in the area  
22 plowed the snow in that area onto those shrubs  
23 and onto that fence line into that area.  
24 That's one of the reasons that we wanted to  
25 put the fence there. They're doing a lot of

1 damage to either the fence or the shrubs and  
2 the greenspace that's there. It's not my  
3 desire to put the fence there that way. I  
4 don't want the fence there.

5 MS. DALTON: So, my understanding is that  
6 you want to leave the shrubbery because it's  
7 attractive.

8 MR. LEACH: Exactly.

9 MS. DALTON: Does that mean that without  
10 the fence, you're perfectly happy as long as  
11 you keep the shrubs?

12 MR. DITONNO: Actually, I had a concern  
13 about the fence being broken because one of  
14 the sections on that side got broken recently,  
15 or not too long back. I witness people cutting  
16 through. They're not people from the  
17 neighborhood. I have seen them at times. I  
18 don't think that hedges are going to keep  
19 people out of there if somebody really wants  
20 to walk through it.

21 MS. DALTON: I think that what you're  
22 saying is that the fence doesn't keep people  
23 out either.

24 MR. DITONNO: It's up, but it's broken  
25 and there is section of it gone and that's

1 where I witness people cutting through. It's  
2 not tenants from 10 that are using it. I've  
3 watched somebody park in there at three in the  
4 morning and completely walk over to Crammond  
5 Street.

6 MS. DALTON: So your answer is that you  
7 really want a fence -

8 MR. DITONNO: I'm happy with the way that  
9 it is, and if the fence gets repaired, also.

10 MS. DALTON: But could you be happy if it  
11 was just nice shrubbery with no fence?

12 MR. DITONNO: No. I'd rather have a fence  
13 up. But I don't want to look at the fence. I'd  
14 rather look at shrubbery. If he wants extra  
15 for appearance on the inside, I'd suggest  
16 putting another row of hedges on the inside.  
17 Those four feet of him getting that  
18 room - that's not going to do anything. I  
19 don't understand what you're going to gain.  
20 You're not getting a parking space with it. If  
21 anything, you're going to gain a spot to stick  
22 more of your snow during the winter months.

23 The people that plow your parking lot  
24 broke that fence.

25 MR. LEACH: For the record, I plow my

1 parking lot.

2 CHAIRMAN STUTO: We appreciate your  
3 point. Anything else?

4 MR. DITONNO: No, that's it.

5 CHAIRMAN STUTO: Joe Flanagan.

6 MR. FLANAGAN: I have pretty much the  
7 same concerns. I've seen people park on Orford  
8 Street, walk across and cut through. Now, if  
9 they're going over there to drink, I don't  
10 know.

11 The way that it's set up now, when they  
12 proposed to tear the house down, it was a  
13 fence and then the arborvitaes in front of  
14 that as a sound buffer - over the years,  
15 hopefully they'll get big enough. All the  
16 trees in there as it is, have been slowly  
17 disappearing.

18 MR. LEACH: What is your address?

19 MR. FLANAGAN: 15 Orford Street. I'm just  
20 up from there.

21 MR. LEACH: Is that the yellow house or  
22 the white house?

23 MR. FLANNAGAN: That's the white house on  
24 the corner.

25 CHAIRMAN STUTO: Can you show us the

1 photos?

2 MR. LEACH: This is what was 12 Orford  
3 Street. Here is the fenced area. Here is the  
4 piece of the fence that is missing right here  
5 (Indicating).

6 This is a picture of the house at the end  
7 of the street (Indicating).

8 This is looking toward Osborne Road.

9 Can I answer any questions?

10 CHAIRMAN STUTO: Is there a fence here?

11 MR. LEACH: There is a fence that follows  
12 the property line all the way over to here  
13 (Indicating).

14 MS. DALTON: So, the cut through is  
15 where?

16 MR. LEACH: The cut through that  
17 Mr. Flanagan is talking about is right here  
18 (Indicating).

19 There is a lot of teen activity here.  
20 They tend to ride their bikes through here and  
21 even when we have the fence up during the  
22 wintertime, they come onto the property and  
23 play on the snow banks.

24 CHAIRMAN STUTO: So, you want it to  
25 remain status quo? You don't want all the

1 arborvitaes.

2 MR. DITONNO: Right. With the fence  
3 repaired and the shrubs - the ones that are  
4 there are finally starting to grow in.

5 CHAIRMAN STUTO: What if they were of  
6 minimum height? Would that make you happier?

7 MR. DITONNO: In hindsight I almost wish  
8 I put up a bigger fight about the house being  
9 torn down at the time because you don't  
10 realize how much of a barrier that a house is  
11 until it's gone. The train is not that far  
12 away near Central Avenue. There is a lot of  
13 just noise in general. So, the trees are  
14 extremely helpful. They make it look nice.

15 As far as on the other side, I don't  
16 know. Maybe something that is aesthetically  
17 pleasing like PVC, or something more  
18 attractive. I don't know. Maybe that's the  
19 answer.

20 CHAIRMAN STUTO: Eric Williams and Sheryl  
21 Cunningham.

22 MR. WILLIAMS: I'm from 6 Orford. He was  
23 just stating that the kids go over and play in  
24 his parking lot. If he had the fence up and I  
25 live at 6 Orford, the kids couldn't get into

1 his parking lot to play.

2 The truck that was supposed to be  
3 there -- that was the agreement when the house  
4 was torn down - that the shrubs and the fence  
5 were supposed to be there.

6 Now, I've been plowing for 21 years. He  
7 plows that and he smashes it up against the  
8 fence so he can get all the parking spots that  
9 he needs. He knocks that fence down. I wish I  
10 brought the pictures. If he's going to push  
11 all that snow from this property, he's going  
12 to rely on the Town and it's going to cause  
13 major parking problems for the residents.  
14 That's why he has all that drainage in his  
15 parking area. Why is that going to be on us?  
16 It shouldn't be. It's going to cause a problem  
17 for the Town and for us. That's ridiculous.

18 Then, he has all the shrubs along my  
19 house and the shrubs are falling apart. I  
20 don't know if he has pictures of that.

21 Then, my daughter's window is completely  
22 exposed.

23 MR. LEACH: This is the picture that he's  
24 referring to (Indicating).

25 You want to show how your daughter's

1 window is exposed?

2 MR. WILLIAMS: Of course, it's gone.  
3 You've seen it.

4 MR. LEACH: Did I move the window?

5 MR. WILLIAMS: The parking spots go all  
6 the way up here (Indicating). If you looked at  
7 it at an angle, you could see my daughter's  
8 window. Mike has seen it, so of course he's  
9 trying to hide it.

10 I took parking spots where he could park  
11 all the way up to his shrubs, and I took  
12 pictures of that because it's way past his  
13 fence. He's going to push all the snow up to  
14 his shrubs. I also have a gully pipe and all  
15 the snow is going to melt and go into my gully  
16 pipe and it's going to cause a major problem  
17 for my foundation. That was the agreement. Why  
18 are we going to go back on our agreement and  
19 cause a major problem for all of us?

20 MR. LACIVITA: I have a question. That's  
21 not the fence that's being asked to be  
22 rebuilt, is it?

23 MR. LEACH: No. I'm not relocating the  
24 fence next to his house.

25 MR. LACIVITA: That fence that he's



1 saying is there, is going to stay where it is.

2 MR. LEACH: That fence stays there.

3 MR. WILLIAMS: Now you're going to put  
4 that fence back?

5 MR. LACIVITA: I think that he's talking  
6 about a different fence area.

7 CHAIRMAN STUTO: Can you show us on this  
8 map where you're looking to put the fence? Is  
9 it the highlighted area?

10 MR. LEACH: Yes, exactly. Mr. William's  
11 house is here (Indicating).

12 CHAIRMAN STUTO: Mr. Williams, can you  
13 come here for a minute?

14 MR. WILLIAMS: Sure.

15 CHAIRMAN STUTO: He's looking to move  
16 this part. I just want to make sure that we're  
17 all on the same page. This is what he's  
18 looking to move (Indicating).

19 MR. WILLIAMS: I would want the fence put  
20 back exactly where it was and exactly where we  
21 agreed upon. The three sections of fence; \$15  
22 a section. You see where the tree is missing  
23 right here? Do you see these trees? That's how  
24 it was supposed to be with the agreement. Now  
25 the tree sections right here

1 (Indicating)- that wasn't supposed to be  
2 there. He plows up against here. You can see  
3 the parking spots. He's going to plow all the  
4 snow up to the shrubs.

5 CHAIRMAN STUTO: Did the original plan  
6 call for a fence here?

7 MR. LEACH: When we put that parking lot  
8 in, it called for a fence. We put the fence  
9 where it was supposed to be.

10 CHAIRMAN STUTO: It says existing  
11 six-foot high.

12 MR. LEACH: We moved this fence for them  
13 initially.

14 CHAIRMAN STUTO: Mike, do you know if  
15 there was supposed to be a fence there?

16 MR. TENGLER: The approval mentioned the  
17 fence being put in, to my understanding. Todd  
18 started putting the fence in where he's  
19 indicating where he wants it now.

20 CHAIRMAN STUTO: I'm talking about along  
21 Mr. William's property.

22 There is supposed to be a fence here,  
23 right (Indicating)?

24 MR. WILLIAMS: He wanted to put the fence  
25 to the end of his property line, but I called

1 the Building Department and they said that he  
2 couldn't put it to the end of his property  
3 line because I need space to be able to pull  
4 out of my driveway and have sight distance to  
5 see down the street so I can back out of my  
6 driveway.

7 MR. SULLIVAN: So, that would be right up  
8 against the property line.

9 MR. WILLIAMS: And he said that we shook  
10 on it. We didn't shake on it. The Building  
11 Department made him bring it back here  
12 (Indicating).

13 MR. LEACH: In the program that you have,  
14 you'll see the minutes of the meeting that we  
15 had with Jim Sheehan and Fran McCashon and the  
16 Building Inspector.

17 MR. WILLIAMS: He had the fence way back  
18 here (Indicating) and the Building Department  
19 made him bring it back level with my house.

20 Thank you, very much.

21 CHAIRMAN STUTO: So, can you summarize  
22 what your position is? You're against what  
23 he's proposing and that he should put the  
24 fence in - gussy

25 MR. WILLIAMS: Yes. I want the fence back

1 to cut back on the cut throughs that come  
2 through there and to stop the debris that come  
3 through and the snow. It's going to cause a  
4 major problem for the Town. The fence was  
5 knocked down with the first snow storm. You're  
6 going to see that I called the Town four times  
7 to have the Town come and push the snow back  
8 because we had no way of parking. The Town  
9 couldn't even do it with their back hoes and  
10 bucket loaders and their plows; none of their  
11 equipment. It was too much because he kept on  
12 pushing it with his bobcats and everything  
13 else. I called the Police Department and they  
14 couldn't do it because he kept on pushing it  
15 and pushing it to get more parking spots. When  
16 it drained, it caused a major flooding. That's  
17 another reason.

18 CHAIRMAN STUTO: Okay, we understand what  
19 your position is.

20 MR. WILLIAMS: And the trees along my  
21 house - we didn't buy the property to look at  
22 a parking lot full of cars and to look at  
23 Central Avenue.

24 CHAIRMAN STUTO: Thank you.

25 Belg Schuch

1           MR. SCHUCH: I own a house next door to  
2           14 Orford Street. I don't want that fence  
3           coming out any farther than it already is.  
4           Just like the last gentleman, my tenants are  
5           not going to be able to back out and see. I  
6           can show you a picture of the fence. It goes  
7           all the way along the side of my house. It's  
8           all crooked and it's not maintained very well.  
9           I'm wondering what this is going to look like  
10          a few years from now. It's going to be the  
11          same thing in the front of the street if  
12          people see that. Right now the trees are  
13          growing in and it looks nice. I don't think  
14          that this is a good idea at all.

15          MR. LANE: Can you see with the  
16          arborvitaes there?

17          MR. SCHUCH: You can. I already have a  
18          fence all the way around my house and now  
19          you're going to have more fence around my  
20          house? You can see right here that I can  
21          barely get a lawnmower through there. I've had  
22          issues with the snow removal pushing the fence  
23          over almost into my house.

24          MR. MION: Joe, have we had anyone go  
25          over there to look and see what the distance

1 is and whether it would interfere with the  
2 line of sight?

3 MR. TENGLER: No.

4 CHAIRMAN STUTO: So this alley way - is  
5 that around the corner here?

6 MR. SCHUCH: Yes. Right now it affects me  
7 more than anything. I've got 100 feet of fence  
8 that was put in there because of that.

9 MR. ROSANO: Right now we're talking  
10 about here to here and we're getting way off  
11 the subject. This is all we're looking at  
12 tonight. The highlighted section is right  
13 here.

14 MS. DALTON: The question is whether you  
15 want a fence here and more trees that are here  
16 or a fence here with the trees that are here,  
17 or take out this fence entirely and make a  
18 nice line of trees here so that it's more  
19 attractive both to the neighborhood and the  
20 applicant.

21 MR. SCHUCH: How is a fence going to be  
22 more attractive?

23 MS. DALTON: I think that's the point. I  
24 think that your argument is that there should  
25 be more plantings there to make it more

1 attractive.

2 MR. SCHUCH: Right now the plants are in  
3 front of the fence. The fence should stay  
4 there because you have kids going through all  
5 the time.

6 MS. DALTON: But I think that the point  
7 that he's making, sir, is that kids are going  
8 through there all the time anyway, despite the  
9 fact that this fence is here.

10 MR. SCHUCH: How are the kids getting  
11 through there?

12 MS. DALTON: Behind the dumpster.

13 MR. LEACH: I've found bicycles and stuff  
14 and kids running through back and forth.

15 MS. DALTON: We can deal with that  
16 perhaps another time, but with regard to  
17 what's happening here -

18 MS. SCHUCH: I think that it's the same  
19 issue. I think that both sides should look  
20 uniform.

21 CHAIRMAN STUTO: Anybody else from the  
22 residents want to be heard on this?

23 MR. DITONNO: The fence would also keep  
24 the rodents away. He's got grease buckets and  
25 dumpsters.

1                   CHAIRMAN STUTO: Any Members want to be  
2 heard on this?

3                   MR. ROSANO: In the parking lot there is  
4 a curb there?

5                   MR. LEACH: We put the curb up to the  
6 backside of the fence. That's not actually a  
7 curb. That's pavement and it was on the  
8 outside of the fence line and that was so that  
9 we could keep a clean area in front of that  
10 fence line because it was easier to clean. We  
11 were trying to keep it clean and aesthetically  
12 pleasing at that time. At this time, it is  
13 admittedly in disrepair. We had discussions  
14 about what we were going to do with the fence.

15                   Last year when the fence came down - the  
16 fence hasn't been down for one year. The  
17 section by Mr. Williams has been down for two  
18 and the section by Mr. Schuch has been down  
19 for this season.

20                   Last year when we damaged the fence -  
21 when we took it down, the Williams family was  
22 attempting to sell their home. They made  
23 overtures to me that they would like to  
24 beautify the area and get the fence fixed and  
25 clean this up before they had their open



1 house. So, I personally with my wife and one  
2 of the guys from my restaurant went out and  
3 took the fence down, put in more arborvitaes  
4 than were asked for, dug up what was supposed  
5 to be grass that turned to weeds and stuff  
6 from the snow deposits. When people on the  
7 street plow their snow onto that outside  
8 section of fence -- at the end of the season  
9 when the snow melts, all the rubbish from the  
10 street is now in that greenspace. So, the  
11 grass died from all the salt and all the  
12 stuff. We put a foot and a half of pavement  
13 between the greenspace and the fence so that  
14 we could clean that section up so when you go  
15 out with a blower you can blow that stuff down  
16 without having to trim the weeds that grow up  
17 through those sections of the fence and so  
18 forth. That's what that piece is.

19 I put those eight by tens out. I just  
20 took those this morning so that you could see  
21 what the sight lines were. Again, in 1998 as  
22 it's in the packet that you have, the minutes  
23 of the Planning Board meeting of 1998 - the  
24 Planning Board came out with Jim Sheehan and  
25 Fran McCashon and Mike Lyons, myself, my

1 father and Mr. and Mrs. Williams and we  
2 discussed the moving of the fence for them to  
3 where it is located now on the site plan. We  
4 initially put it in on the site plan on the  
5 outside edge where they are now objecting to  
6 where I would like to put it. I want to put a  
7 fence there.

8 I don't mean to sound curt in any way,  
9 but those are not my children. Those are the  
10 children from the neighborhood. We've been  
11 there for 15 years now. When we have a season  
12 like we've just had with 80-something inches  
13 of snow, it all has to go somewhere and we all  
14 have to try to accept what is necessary.

15 Mr. Williams came on March 9<sup>th</sup> of this  
16 year and made a big stink about my guys  
17 outside stacking snow in the parking lot with  
18 the bucket loader. Mr. Williams attacked me in  
19 the kitchen and took three swings at me and I  
20 have an incident report regarding that. All we  
21 were doing is stacking snow on my property. We  
22 weren't stacking it up next to his house. We  
23 weren't stacking it out on the street. We were  
24 taking it from where it was three-quarters of  
25 the way down that section of the parking lot

1 and stacking it up closer to the fence line;  
2 to on the other side of the fence line. My  
3 idea was that if we could put those  
4 arborvitae in that area, I could push the  
5 snow up into the arborvitae area so that we  
6 still retain a percentage of our parking lot  
7 in the hard seasons. Now, I have the snow  
8 removed three times with dump trucks this  
9 year. It cost thousands of dollars to do that.  
10 I don't need to tell anybody how bad the  
11 economy is, but it's not something that we  
12 plan on doing year after year. We do our best  
13 to make sure that the neighbors are  
14 maintained.

15 I sent some pictures to the Board and if  
16 you look, you'll see that the dumpsters are in  
17 good repair. There are not rodents or skunks.  
18 There is no grassy area in that back section  
19 of the building. There are parking there.

20 We've had the Health Department there. We  
21 have our Health Department approval. We've  
22 never had complaints about rodents, or vermin,  
23 or any type of vermin in the area that has  
24 come from our location. I would like to fence  
25 it off just for the fact that the cut through

1           that goes there - the children, as they come  
2           through, they're just children. They're  
3           teenagers. They're younger; maybe eight or  
4           ten. When we stack the snow there, they go and  
5           they play in the snow banks.

6           I hate to say this, but I've also learned  
7           over the years that I try not to stir the  
8           hornet's nets with the young individuals in  
9           the neighborhood. They're playing on the snow  
10          banks. They're kids. If I go out there and  
11          yell at the every time they're out there on  
12          the snow bank, surprisingly enough the next  
13          day there is a brick through my window or  
14          graffiti on the side of my building or some  
15          type of vandalism. Why would that be? So, I  
16          try not to do that. We were all children once.  
17          If they want to play on the snow banks, let  
18          them play on the snow banks. I let them dig  
19          snow tunnels. There's a gate on the side of  
20          the Orford Street house that has always been  
21          there.

22          These pictures are from 1996 when  
23          Mr. Williams bought his house and when I  
24          bought that building. This is the house that  
25          was next to Mr. Williams' house. To the left

1 side of the picture is where Mr. Williams'  
2 house is. This is what it looked like when he  
3 bought that building (Indicating). There was a  
4 restaurant there. There was a parking area  
5 there. There were cars and trucks coming into  
6 this area as a commercial establishment at  
7 that time. This is not something that we  
8 placed there suddenly after these people  
9 bought these properties.

10 The A Frame as a commercial restaurant  
11 has been there since 1967, in one form or  
12 another. It has been continuously operating  
13 during that period of time.

14 Now, we have expanded the parking lot but  
15 we did so so that we have a segregated parking  
16 area for our customers. There are other  
17 businesses in our neighborhood now that I  
18 don't need to pull into this discussion in a  
19 negative way, but they don't have enough  
20 parking. If you go by their establishment at  
21 11:00 on Saturday night, they're parked on the  
22 street. They're parked on Orford Street.  
23 They're parked on Osborne Road. They're parked  
24 on Fairfield. They're parked in Ziebart and  
25 the old Pellegrino's. They don't have enough

1 parking for the business that they have. It  
2 doesn't disturb me. It is a fact that when  
3 people come to an establishment, they will  
4 find a place to park. We've done our best to  
5 try to contain our business to our property  
6 lines.

7 CHAIRMAN STUTO: Any more questions?

8 MR. SULLIVAN: We have had other  
9 businesses before the Board that have the same  
10 problem with having adequate parking for  
11 business at busy times. It's during the snow  
12 and they don't have adequate snow storage and  
13 they do truck it off site. I understand that's  
14 expensive, however, that's something that you  
15 have to determine whether it's worth it to you  
16 to pay the expense to have the snow trucked  
17 off and have the parking or not. But I do  
18 believe that it's your right to store snow on  
19 your property and you should not be accosted  
20 for that. I do want to know if you had  
21 investigated that.

22 I do understand the neighbors' concerns  
23 with the fence being moved out. I understand  
24 that you don't necessarily want the fence  
25 either. You'd rather have a few rows of

1 arborvitae. My main concern was: Have you  
2 looked into trucking it off site, and you  
3 have.

4 MR. LEACH: If you'll notice on the eight  
5 by tens that I gave you, most of residents  
6 park on the street. They park on the white  
7 line or some degree they park - Mr. DiTonno  
8 has had his RV camper parked on my section of  
9 property by those trees.

10 MR. DITONNO: That's right out in front  
11 of my house.

12 MR. LEACH: On my side.

13 MR. DITONNO: No.

14 MR. LEACH: I apologize. I'm not really  
15 sure. One of the neighbors in the area has had  
16 a fifth wheel camper parked on the section  
17 where those shrubs are.

18 If you look on the eight by tens, you'll  
19 see that most of the residents park at least  
20 one car on the side of the street. The fence  
21 will be inside that section where they park.  
22 My question would be: How much of a difference  
23 is my fence going to be from a line of sight  
24 point of view pulling out of your parking lot  
25 when you have cars parked five or six feet

1 farther out from my fence line that does  
2 exactly what they are complaining about or  
3 what their objections would be?

4 MS. DALTON: Mr. Leach, you mentioned  
5 something about change in use - that at one  
6 point there were a lot of people hanging out  
7 on the deck and stayed late at night and now  
8 you're simply a restaurant.

9 MR. LEACH: I don't have a patio. We  
10 don't have a deck or outside service.

11 MS. DALTON: Have you kind of narrowed in  
12 on restaurant use as opposed to prior uses  
13 which might have been a bar or whatever?

14 MR. LEACH: Yes, to answer your question.  
15 We were the only location that did a larger  
16 bar business in that area than Mochrie's  
17 Italian Restaurant or maybe the A Frame, or  
18 maybe not. I might not be able to remember how  
19 the A Frame was in that day. We're a  
20 restaurant. We don't cater to the bar  
21 business. I'm not really interested in that  
22 sort of thing. Appletini's is across the  
23 street and people rock and roll over there all  
24 the time. That's perfectly fine. That's not  
25 the business that I'm in. I'm a chef. I enjoy



1 selling food. We close at 11:00 at night and  
2 my staff walks out at 11:00 or 11:30. On  
3 Friday and Saturday sometimes we have people  
4 there until 12:30 or 1:00. There may be one or  
5 two people that stay later depending on the  
6 dynamic of the bartender and everyone is  
7 having a good time, but it's not something  
8 where we have fights.

9 MS. DALTON: It's not loud.

10 MR. LEACH: It's not loud or boisterous.  
11 We don't have the police there. The last time  
12 that the police were called to my location in  
13 the last three years was because of  
14 Mr. Williams.

15 MS. DALTON: Have you made cost estimates  
16 with regard to the difference from replacing  
17 the fence where it is, versus moving the  
18 fence, versus taking the fence entirely down  
19 and just putting up more shrubbery?

20 MR. LEACH: I don't have any solid  
21 numbers. That's a 50-foot section on each  
22 side. So, an average fence is eight feet. If  
23 you can find an eight-foot section of fence  
24 for \$15 let me know. They're about \$50 a piece  
25 and another \$10 or \$20 for the post, plus the

1 insulation. You're talking 10 sections of  
2 fence to be about \$500 just to replace.

3 If we were to move it to another section,  
4 it would probably be about 25 percent or  
5 30 percent more, because we would have to dig  
6 new holes to put the fence posts in. One extra  
7 section of fence on the lateral sides and then  
8 all new fencing brought across.

9 MS. DALTON: So, essentially moving the  
10 fence is the most expensive option.

11 MR. LEACH: Yes.

12 MS. DALTON: Replacing the fence is  
13 second, and taking down the fence and simply  
14 putting in more shrubbery is the least  
15 expensive option. Would that be accurate?

16 MR. LEACH: Almost. I might add that it's  
17 easier to simply replace the fence as it is,  
18 and do nothing else.

19 MS. DALTON: So, your request before us  
20 tonight is primarily based - it seems to be  
21 not the cost but the fact that you think it's  
22 just a better solution.

23 MR. LEACH: Aesthetically and from a  
24 solution standpoint as a business in a  
25 residential area - there are many businesses

1           around our Town that don't have that fence in  
2           that section. They don't have the problems  
3           that I have. I want it to look nice. If I can  
4           border that whole thing with evergreens  
5           instead of fencing, I won't have to replace  
6           the fencing.

7           MS. DALTON: If you're driving motivation  
8           is the aesthetics, then it would be safe to  
9           assume that if the plantings are ruined  
10          because either you push snow on them or  
11          someone else did - come spring, you're going  
12          to fix it and make it look nice.

13          MR. LEACH: Yes.

14          MS. DALTON: For your customers as well  
15          as the neighbors.

16          MR. LEACH: Certainly. For myself, for  
17          our property more so. It's a benefit for the  
18          customers.

19          MS. DALTON: It's a benefit for  
20          everybody.

21          MR. LEACH: During ice storms - that one  
22          tree that's missing from that section next to  
23          Mr. Williams' house that was damaged in the  
24          ice storm last year - that died and we cut it  
25          down. Again, we haven't replaced it because

1 the other ones - if you look the ones that  
2 face Mr. DiTonno's property and Mr. Flanagan's  
3 property and the ones on the side of  
4 Mr. Williams' house - they are 20 or 25 feet.  
5 They're almost as tall as the roof line of  
6 that house.

7 MS. DALTON: Last but not least, you've  
8 showed us some pictures from both 1996 and  
9 from this morning. The ones from this morning  
10 are obviously a picture of a much nicer  
11 environment. My question is: How much time do  
12 you have to spend cleaning up your yard to  
13 take pictures?

14 MR. LEACH: None whatsoever. If you go by  
15 on a daily basis, you'll find that's the case.

16 MS. DALTON: So, it always looks like  
17 that.

18 MR. LEACH: Yes.

19 MS. DALTON: Thank you.

20 MR. WILLIAMS: He says it's quiet, but I  
21 can't keep my window open at night. My doors  
22 are right there.

23 MS. DALTON: I don't think that he said  
24 it was quiet. I think that he said there was a  
25 reasonable amount of noise for the kind of

1 staff that he has.

2 MR. WILLIAMS: I can't keep my windows  
3 open at night sometimes. He's mad because  
4 Appletini's is doing better.

5 He showed you pictures today, but he  
6 didn't show you the pictures at the right  
7 angles.

8 It's \$15 or \$20 a section of fence.  
9 That's all we want there is four sections of  
10 fence. We're going through this for four  
11 sections of fence?

12 MS. DALTON: No, we're actually going  
13 through this because a business owner wants to  
14 make a change to his property and so he's  
15 petitioned us. We're hearing all sides.

16 MR. WILLIAMS: And this was the agreement  
17 five or six years ago that we made for him to  
18 tear down two houses and then he tore down the  
19 back of this building to extend it. That's  
20 where all the rodents came from. I've got a  
21 mouse problem from him doing that. He said he  
22 had no problem with rodents. I'm sorry but  
23 when he did that, I had a mouse problem and  
24 had to call Cat's Eye to take care of my  
25 problem.

1 FROM THE FLOOR: I'm the aunt of the  
2 nieces that live in that house and I spend a  
3 lot of time there. I know what's going on in  
4 that area. People are parking because there is  
5 nowhere to go. When they're cutting through  
6 the arborvitaes, there is trash there all the  
7 time. I go over during the day and let the dog  
8 out. I see the stuff and the broken glass, the  
9 bottles and the wood. Nothing has been fixed  
10 there. The fences haven't been fixed. It's a  
11 cheap fence. If it was a decent fence, maybe  
12 he'd be able to keep something out. I've gone  
13 through that doorway and through that gate and  
14 the locks are broken. Anybody can go through  
15 there. It's not safe. You've got all the kids  
16 running around and all the drunks going  
17 through and I don't care what anybody says.  
18 I've seen the police over there. I've seen  
19 fights in the driveway, whether anybody got  
20 arrested or not. I don't know. I heard a big  
21 fight last summer. Two guys and girls were  
22 going at it. That's not true.

23 We're not here to take away your  
24 business. It's a safety issue. There are  
25 teenaged girls living in that house. There is

1 no privacy covering those windows and it's not  
2 right. It should be fixed for everyone in that  
3 area. That's all I want to say.

4 CHAIRMAN STUTO: Is there any discussion  
5 among the Board? To me, I'm undecided right  
6 now. I'm sympathetic to the neighbors, but I'm  
7 also sympathetic to the owner of the property.

8 MR. LANE: She made one point that I  
9 agree with. The fence isn't good. The  
10 agreement was a combination of fence and  
11 landscaping. That's how I read it. I don't  
12 want to see the fence moved out. I don't think  
13 that's a good idea at all. That will block  
14 sight lines. My opinion right now is that the  
15 fence should stay and the damaged section  
16 should be replaced.

17 CHAIRMAN STUTO: Anybody else want to  
18 speak to this?

19 MR. SULLIVAN: I also against moving the  
20 fence. I would not be against having two rows  
21 of arborvitae. I would be opposed to moving  
22 the fence.

23 CHAIRMAN STUTO: I tend to agree with  
24 that. I would not want to move the fence out.  
25 I have questions as to whether we have a

1 double arborvitae which aesthetically is the  
2 best to me. I'm sympathetic to the neighbors.

3 MS. DALTON: The whole point of the  
4 double arborvitae is if he moved the fence  
5 out. He could do both, right?

6 CHAIRMAN STUTO: It was either the fence,  
7 single arborvitae or double arborvitae; am I  
8 correct?

9 MR. LEACH: Fence with arborvitae on the  
10 outside, or no fence and a double arborvitae  
11 in that area.

12 CHAIRMAN STUTO: You say outside - you  
13 mean facing the restaurant. The arborvitae is  
14 going to face the restaurant.

15 MR. LEACH: There will a fence.

16 CHAIRMAN STUTO: One of your proposals  
17 was to move the fence out and have arborvitae  
18 facing the parking lot; am I correct with  
19 that?

20 MR. LEACH: Yes.

21 CHAIRMAN STUTO: And the alternative was  
22 to have double arborvitae.

23 MR. LEACH: Actually it's the opposite. I  
24 want to do the double arborvitaes. That was my  
25 big thing. That's really what I wanted to do.



1 MS. DALTON: His number one request was  
2 to take down the fence because it's broken and  
3 unattractive and add arborvitae.

4 CHAIRMAN STUTO: That's double  
5 arborvitae.

6 MS. DALTON: With no fence.

7 CHAIRMAN STUTO: Correct.

8 MS. DALTON: What it sounds to me is that  
9 would be the most attractive option. There is  
10 no security now and that's what I'm hearing.  
11 Even if you replace that one section of fence,  
12 you've got a gate that's not well used. You've  
13 got other gaps in the fence that kids are  
14 coming through. I think that the point that I  
15 would try to make is that it doesn't sound to  
16 me that even if you replace that one area of  
17 fence, it's necessarily a secure environment.  
18 It may block vision. It may serve for other  
19 purposes, but I don't think that's security  
20 necessarily.

21 MR. LEACH: The tenants in the house have  
22 access to storage space in the basement, which  
23 is access through the back of the house. If  
24 the tenants don't lock the gate on their way  
25 back through - it's never been locked. In 1996

1           that was just a chain going through there to  
2           keep cars from driving through. It was always  
3           a pass through for people in the neighborhood.  
4           When I was a young man, I would drive for my  
5           father's hardware store on Crammond Street and  
6           go through the A Frame through that back  
7           driveway. That was always a pass through. It  
8           was a pass through when we discussed this in  
9           1998 with Planner Lyons and Mr. Sheehan. The  
10          pass through was blocked off to keep the cars  
11          from driving through there; not the foot  
12          traffic.

13                 MR. MION: So, if you're going to replace  
14          the fence, you're going to take that gate out?

15                 MR. LEACH: The gate will stay.

16                 MR. MION: That's still a safety issue?

17                 MR. LEACH: The gate will stay. That gate  
18          is part of the 10 Orford Street property.  
19          That's for the tenants at 10 Orford Street  
20          that use it to go from the front of the  
21          building to the back of the building.

22                 MR. ROSANO: We're talking about from  
23          here to here (Indicating). This gate - this  
24          other section of fence -- none of this has  
25          been before this Board tonight.

1           Let's start at the beginning and go back  
2           to what Mr. Leach wants to talk about.  
3           Everything else will be another time and  
4           another day, another place. Right now, we have  
5           to stay on track and talk about from this  
6           corner to the existing fence that's there now,  
7           which is approximately 50 feet. We have three  
8           decisions; two rows of arborvitae, the fence  
9           stays where it is or move the fence back on  
10          the other side of the arborvitae. That's what  
11          we have to decide on.

12                 MR. LANE: Or put the fence back where it  
13                 was.

14                 MR. ROSANO: Well, if he put the fence  
15                 back where it was, he wouldn't have to come  
16                 here tonight.

17                 CHAIRMAN STUTO: Anyone have any further  
18                 comment or does someone want to make a motion?

19                 MS. DALTON: I'll go out on a limb and  
20                 make a motion that we allow Mr. Leach to take  
21                 down the fence and put in a double row of  
22                 arborvitae with the understanding that the  
23                 arborvitae must be maintained spring, summer,  
24                 fall and winter, despite any damage that has  
25                 come after a snowfall.

1                   CHAIRMAN STUTO: Any comments on that  
2 motion?

3                   I have a question on the motion. You  
4 would take down the fence on the 50-foot  
5 section.

6                   MR. ROSANO: It's not there now, Peter.  
7 There is no fence there now.

8                   CHAIRMAN STUTO: Okay. Leave the existing  
9 trees and plant more or are you going to do a  
10 whole new -

11                  MR. LEACH: Leave the existing trees and  
12 plant more or -

13                  CHAIRMAN STUTO: Is there enough dirt  
14 there to plant more?

15                  MR. ROSANO: You could stagger them.

16                  CHAIRMAN STUTO: What height is the  
17 current arborvitaes?

18                  MR. LEACH: Currently they're five or six  
19 feet.

20                  CHAIRMAN STUTO: Are you going to put the  
21 same height in?

22                  MR. LEACH: At least that height. If I  
23 find some arborvitaes that are taller, I'll  
24 put those in. I'm not concerned either way if  
25 they're five or eight feet. They're going to

1 grow. The ones that are in those pictures next  
2 to Mr. Williams' house were five feet when we  
3 put them in back in 1998 or 1999. Now they're  
4 as tall as his roof line.

5 MS. DALTON: Then I would modify my  
6 motion and say that they have to be mature  
7 trees. If you put in a double planting, it's  
8 also going to provide more sound buffer.

9 MR. ROSANO: We'll go with a minimum  
10 height of five feet. That's what you're going  
11 to find out there right there. You may find  
12 some taller ones at some of the commercial  
13 nurseries but mostly, they will be five feet.  
14 Let's do the same style so that it will be the  
15 same plantings.

16 CHAIRMAN STUTO: Joe Grasso, do you have  
17 any expertise on that? Could you share that  
18 with us?

19 MR. GRASSO: Most of the dark green  
20 arborvitaes that you can find will be five  
21 feet.

22 CHAIRMAN STUTO: And what's currently  
23 there is five feet? Is that what you're  
24 saying?

25 MR. ROSANO: Five to six feet; that's all

1           they are.

2           MR. LEACH: Yes, they're currently five  
3           to six feet. The ones on the other side - to  
4           the west side are probably close to 20 feet at  
5           this point, but they're also eight years old.

6           CHAIRMAN STUTO: Are you going to replace  
7           the broken stuff and the fencing? I don't  
8           understand why that missing tree wasn't  
9           replaced. Can you go over that with me?

10          MR. LEACH: Frankly, I wasn't in an  
11          amiable state of mind after an individual  
12          walked into my building in the middle of  
13          lunchtime and starting taking swings at me.  
14          So, I wasn't exactly excited to do anything  
15          for that gentleman; to be perfectly honest.

16          CHAIRMAN STUTO: So, if we vote  
17          affirmatively on this, are you going to do all  
18          the repairs and conform this back to the  
19          original approval?

20          MR. LEACH: Yes.

21          MR. MION: I'm going to second that  
22          motion that was made by Kathy.

23          CHAIRMAN STUTO: Any further discussion?

24          MR. DITONNO: So, arborvitaes are going  
25          to stop through traffic?

1           MR. WILLIAMS: Not only that, but you  
2           have all those hotels down there with the  
3           sexual predators up and down Central Avenue.  
4           You can walk through the parking lots and  
5           those bushes -- I mean, those bushes were  
6           planted years ago. They didn't grow anywhere.  
7           I don't know if you're talking right next to  
8           my house or not, but if that's not going to be  
9           replaced - that fencing - I don't know. The  
10          fences were supposed to be replaced. That's a  
11          safety concern. He's saying that he wasn't  
12          told about that.

13          CHAIRMAN STUTO: Okay, we have a motion  
14          before us. Any further comment from the Board?

15                                ***(There was no response.)***

16          CHAIRMAN STUTO: All those in favor?

17                                ***(Ayes were recited.)***

18          CHAIRMAN STUTO: All those opposed?

19                                (There were none opposed.)

20          CHAIRMAN STUTO: The ayes have it.

21                                We'd appreciate it if you'd repair

22          everything - top notch.

23          MR. LEACH: Thank you all, very much.

24          CHAIRMAN STUTO: You're not required to  
25          put the fence back and you have to put another

1 layer of arborvitaes.

2 MR. LEACH: Thank you very much.

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*(Whereas the proceeding concerning the above*

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*entitled matter was concluded at*

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*8:25 p.m.)*

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**CERTIFICATION**

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4            **I, NANCY STRANG-VANDEBOGART, Shorthand**  
5            **Reporter, New York State Approved Transcriber**  
6            **and Notary Public in and for the State of New**  
7            **York, hereby CERTIFY that the record taken by**  
8            **me at the time and place noted in the heading**  
9            **hereof is a true and accurate transcript of**  
10           **same, to the best of my ability and belief.**

11  
12  
13  
14            -----  
15            **NANCY STRANG-VANDEBOGART**

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17  
18            **Dated October 13, 2011**