ZONING BOARD OF APPEALS

MEETING – AUGUST 22, 2013

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will consider the applications in the order heard and try to render a decision this evening; but may take up to 62 days to reach a determination. And I would ask if you have a cell phone to please put it on silent or turn it off so that we won’t be interrupted. And also when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 7:02 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 7:02 PM)

BALMVILLE CONSTRUCTION, INC. 122 ROCK CUT ROAD, NBGH

 (47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the minimum lot area to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: Our first applicant this evening Balmville Construction Inc.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, August 14th and The Sentinel on Friday, August 16th. This applicant sent out twenty-six letters. All the mailings, publications and postings are in order.

Mr. Lytle: Good evening, can you hear it?

Chairperson Cardone: Just identify yourself for the record.

Ms. Gennarelli: You have to get closer to that microphone.

Mr. Lytle: Ken Lytle, representing Balmville Construction.

Chairperson Cardone: Before you begin Ken, I am going to ask you if you have seen the Orange County Department of Planning…? You have not seen that, that’s unfortunate.

Ms. Gennarelli: I have a copy for you. I had it posted online.

Mr. Lytle: Oh, okay.

Chairperson Cardone: It’s rather lengthy but go ahead and you can mull over it if you like.

Mr. Lytle: I was a…before the planning board for a 4-Lot subdivision a…during the subdivision process we had come here one time for a zoning variance for Lot 1 and Lot #4 for distances off the County road which we were granted at a previous meeting. After that I went back to the planning board and at that time with the configurations you see here in pink to make Lot #1 conform to the 40,000 sq. ft. and the area here in green to make Lot #4 conform to the required area. It meets the requirements. The planning board asked that we come back one more time to the Zoning Board to see we could get or go for a variance for the area for Lot #4 and for Lot #1 and remove these additional sections of property so we don’t create a…a…a non-standard shaped lot.

Chairperson Cardone: Do we have questions from the Board? Maybe now would be a good time for me to read a part of the report from the County Department of Planning. The County Planning recommends that the Board fully evaluate the application against item No. 1, 4 and 5 of the balancing test. And if you remember 1 is whether an undesirable change will be produced to the character of the neighborhood. And 4 is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and 5 whether the alleged difficulty was self-created. And then they are going to step by step so I’ll start with #1.

1. The proposed layout of the subdivision is not consistent with the surrounding neighborhood. The proposed lot lines create inappropriately shaped lots, which will likely cause ownership disputes, other issues, and so on, in the future. Additionally there are existing constraints of the parcel, notably the wetlands and the 100 foot adjacent area, which may not have been adequately considered. The County Planning recommends the Applicant develop a subdivision plan that takes into account the constraints and the existing neighborhood without over utilizing the parent parcel. While the Applicant is concerned with maximizing the number of building lots, the subdivision plan should be sensitive to the environmental constraints of the parent parcel. In an effort to develop a plan that fits into a quality community, our office recommends the Applicant review the Orange County Design manual and they give a website you can go to get that. (http://www.orangecountygov.com/filestorage/124/1362/4663/Orange\_County\_Design\_Manual.pdf)

They also state that our office is concerned with “flag lots” and general layout of the proposed subdivision but we will fully comment on the subdivision layout when the application is referred by the planning board. Has that been done yet? Do you know?

Mr. Lytle: No, that will be the next step once we’re done with the Zoning variances we’ll go back to the planning board and then they’ll send out to the County for them.

Chairperson Cardone: Okay. Although the subdivision itself is not subject to the ZBA’s scrutiny, it plays into understanding the balancing test. Do you have a response to that?

Mr. Lytle: Well currently again as is configured it meets all the existing required a…zoning regulations. We’re only here again because the planning board asked us to be here. We don’t need to be here for the subdivision so I understand what they’re asking for but it meets all the current requirements and the planning board actually has that in their letter.

Chairperson Cardone: Okay and do you understand that the County recommendation if you look down towards the bottom is a Disapproval, which means that all the Members of the, in order for this to pass, all Members of the Board would have to agree?

Mr. Donovan: That’s all Members tonight Ken…

Chairperson Cardone: All Members tonight.

Mr. Donovan: …because it is a super majority of five and we only have five Members.

Mr. Lytle: Okay, thank you.

Mr. Donovan: Now, just for my own clarification, what you’re showing tonight is what you’ve shown to the planning board, correct?

Mr. Lytle: Exactly, correct.

Mr. Donovan: And the…the variance that you would ask for would take away the pink and green wedges, correct?

Mr. Lytle: That's correct, yes.

Mr. Donovan: So…

Mr. Lytle: It’s under water.

Mr. Donovan: …if I go to Mr. Donnelly's letter of July 22 which I think everyone has he indicates the planning board is not comfortable with the precedent of approving such an unusual lot layout just to achieve lot area which is that had the green wedge, the pink wedge and the little bowling alleys to get back there. Correct? Therefore the planning board has asked me to refer this matter to you for consideration of granting a lot area variance to avoid the need for this extremely unusual layout. So not…not withstanding what the County said, you could comply a…with this odd configuration there unless you could comply and receive approval. It just…it seems to me that the planning board has said it doesn't make a lot of sense to us to have these two wedges at the back of a long bowling alley so a…you end up with a little less lot area for the two lots in the front and for clarification remember this is for lots three new building lots because there is one house. Is that correct?

Mr. Lytle: That's correct.

Mr. Donovan: Okay.

Mr. Lytle: Yeah and again this would actually by doing this would create three a…standard…more standard lots.

Mr. Donovan: And…and if I could also just note for the Board that this report from the Planning Department comes back pursuant to General Municipal Section 239 which requires a referral because it's on a County road. The County's jurisdiction though is generally to comment on items of inter-municipal or county-wide concern.

Chairperson Cardone: And I’ll go on to read the next part as to read it into the record:

The Town of Newburgh Code allows for the use of “flag lots”, which then…which when utilized in a large enough area that includes distance separation and buffering of homes there is a potential develop better…there’s a potential I think for better quality development lots. Although, as stated under comment No. 1, our office has determined the proposed subdivision is not in-line with the County Comprehensive Plan; the expansion of a quality community, nor consistent with the existing neighborhood. In this instance County Planning recommends that the Board fully evaluate the potential of granting a variance related to the minimum required buildable area associated with a self-created difficulty through the proposal of poor quality development lots that may be unsellable.

Do we have any questions or comments from the Board?

Mr. Lytle: Actually I have to say just one more thing regarding that. The reason again we made them as narrow as we did we do have some interest on these a…two back lots, Lot 2 and Lot 3 and their concern was again having a strip along the side of the property would allow people from the front lots to walk to back past them and could present a future problem which is why we were trying to actually get rid of these for that reason.

Mr. Donovan: But just so my…to make my point maybe a little more clearly there is no circumstance under which there will not be a four lot subdivision. So it's either a four lot subdivision with the wedges in the back if we deny the variance or a four lot subdivision without the wedges in the back if we grant the variance.

Chairperson Cardone: And it is the planning board's recommendation actually that those in the back be eliminated.

Mr. Lytle: That's the area that's mostly underwater also for that reason…

Chairperson Cardone: Right.

Mr. Lytle: …because it's unusable for anybody.

Chairperson Cardone: Right.

Mr. McKelvey: You meet the setbacks for the wetlands too, right?

Mr. Lytle: Yes, we do.

Chairperson Cardone: Do I have anything else from the Board? Do I have any comments or questions from the public?

No response.

Mr. Manley: My one question is how can the applicant advise the Board that by doing this and granting the variance it meets the character…the current character of the neighborhood? When I drive down Rock Cut Road and I look to the right and to the left most houses are, you know, basically flag lots. So this is actually deviating from what the character of that that neighborhood is and the request for the variance is also self-created it's not something that, you know, is coming to us because of a…a…an un…I mean, this obviously the property was purchased and then subsequent to the purchase someone decided they wanted to develop the property which is fine but at the same time now they want to deviate from the, you know, requirements of the Town for a particular purpose so, you know, there are a couple of things in my mind that I'm…I'm looking at is self-created isn't just one of the tests but, you know, it is something that, you know, I as a Board Member is going to be looking at and that that is self-created.

Mr. Lytle: And one of the things you had mentioned again as you do drive down Rock Cut what we did was we got a variance for the existing house being a certain distance off the County road which matches the houses to the south of this and for the one new proposed to be that close and again their smaller homes matching what's in the neighborhood of what subdivision is. And the two lots in the back are flag lots as you mentioned which is kind of consistent with what's in the neighborhood. So we have two flag lots in the middle and the two existing lots with frontage on the County road.

Mr. Manley: Could you mention why maybe that wasn't gone over before when you came the first time? Wasn’t it…why wasn't it suggested the first time that way when you came for the first variance you could have had everything packaged in one…in one shot versus two separate shots? Did the…did nobody pick up on the…on the wedges in the back?

Mr. Lytle: What we…what we had done before we actually had approximately 20 foot wide strips going back instead of having the wedges in the back and then during the planning board, going back to them we had some concern…some interest from neighbors a…and from a new person regarding Lot 2 and 3 to put a home and they were concerned with the width there so when we went back to the planning board the last time after our last Zoning variance we narrowed em up which is actually made the wide standout and that's why we’re here.

Mr. Manley: Okay.

Chairperson Cardone: Is there anything else from the Board? Do I have a motion to close the Public Hearing?

Mr. McKelvey: I'll make a motion.

Chairperson Cardone: Do we have a second?

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:25 PM)

ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:06 PM)

BALMVILLE CONSTRUCTION, INC. 122 ROCK CUT ROAD, NBGH

 (47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the minimum lot area to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: The Board is resuming its regular meeting. On our first application of Balmville Construction, 122 Rock Cut Road, this is a Type II Action under SEQRA. Do I have a motion for approval on this application?

No response.

Chairperson Cardone: Do I have a motion for disapproval on this application?

No response.

Chairperson Cardone: Do we have discussion on this application? Should I refresh your memories?

Ms. Smith: Okay.

Chairperson Cardone: Balmville Construction did go back to the planning board after they saw us the last time. They were requested to change the set-up of the lot lines which they did, which compelled them to come back to us. And now they’re seeking area variances for the minimum lot area to build a single family home on Lot #4 and for the existing single-family residence that’s on Lot #1 of the proposed 4-Lot subdivision.

Ms. Smith: I'll make a motion we approve.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:08 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 7:15 PM)

PADDINGTON ZWIGARD 4 CHRISTIE ROAD, NBGH

 (73-14-9) R-3 ZONE

Applicant is seeking area variance to keep prior builts: A) Rear addition (28’3x20’5) - increasing the degree of non-conformity of the rear yard setback; B) Swimming pool (16’ A/G) - maximum lot surface coverage; C) Side addition (7x18) - maximum lot surface coverage, maximum lot building coverage and minimum side yard setback; D) Rear addition (12x20’6) maximum lot surface coverage, maximum lot building coverage and increasing the degree of non-conformity of the rear yard setback.

Chairperson Cardone: Our next applicant Paddington Zwigard.

Ms. Gennarelli: This applicant sent out sixty-one letters. All the mailings, publications and postings are in order. You can use this second one (mic) here it will be a little clearer. Thank you.

Mr. Mohamed: Good evening my name is Kamalodin Mohamed I am here to represent Paddington Zwigard.

Ms. Gennarelli: Could you tilt that (mic) a little bit up more towards you and get a little closer? Thank you.

Mr. Mohamed: I am here to acquire a variance for a swimming pool and a side shed, and a…rear enclosed porch.

Chairperson Cardone: Could you tell me when each of these items was constructed? Let's start with the pool.

Mr. Mohamed: A…the pools was put up a…like three months ago.

Mr. McKelvey: No Permit?

Mr. Mohamed: No, I applied for the Permit but I have to get a variance first.

Chairperson Cardone: Well each of these was done without a Permit that's my understanding.

Mr. Mohamed: Yes.

Chairperson Cardone: The addition in the back when was that constructed? Oh, that's in the process?

Mr. Mohamed: The addition in the back that was a…it was actually built

a…a long time ago before she purchased this house because a…a screened in porch

and she want to replace it with windows, take out the screen and put windows because a lot of rain is coming in the back.

Chairperson Cardone: And the covered patio on the side?

Mr. Mohamed: Yeah that was built like three years ago.

Chairperson Cardone: And the… I don't know what you would call it the kind of the lean-to on the side.

Mr. Mohamed: Yeah the same time.

Chairperson Cardone: The same time.

Mr. McKelvey: Who owns the house?

Mr. Mohamed: Paddington Zwigard, Paddington Zwigard.

Mr. Manley: Is she aware of the additions and everything that was…

Mr. Mohamed: Yes, yes she gave me a letter to submit to the a…authorizing the work done.

Mr. Manley: Okay and she's the owner is aware that all of these items, these…

Mr. Mohamed: Yes.

Mr. Manley: …these four structures were erected…

Mr. Mohamed: Yes.

Mr. Manley: …without a Permit?

Mr. Mohamed: Yes.

Mr. Manley: Okay.

Mr. Donovan: Just so the record is clear there is a proxy signed by the property owner allowing Mr. Mohamed to appear on her behalf dated August 1, 2013. At least you're consistent but is there a reason why no Permits were applied for…for anything?

Mr. Mohamed: A…yes, I didn’t think it was that serious, sorry about that.

Mr. McKelvey: The fence posts on the one side where the open shed is…

Mr. Mohamed: Excuse me?

Mr. McKelvey: …who is putting the fence up on that one side?

Mr. Mohamed: That's the neighbor.

Chairperson Cardone: And what is the purpose of that open storage area, it stores what?

Mr. Mohamed: It’s just like a…like recreation area like when you know the sun is hot. We sit in back there; we put a hammock, barbecue, whatever.

Chairperson Cardone: And the addition in the back is for what purpose?

Mr. Mohamed: Basically it's just a recreation area, mostly what she put in the windows for is because every time the rain falls it goes because it's a screened porch and it just floods inside.

Chairperson Cardone: Right.

Ms. Smith: Oh it's a screened porch? It has…

Mr. Mohamed: Was a screened porch.

Ms. Smith: Oh I see it was a screened porch.

Mr. Mohamed: It was, yes.

Ms. Smith: And you converted it?

Mr. Mohamed: Yeah. Yeah but actually I put back the screen until I get the variance to put the windows because right now it's screen.

Ms. Smith: Something changed? Because I see windows.

Mr. Mohamed: Yes that's when a…when the first time I get the letter I called…called the Building and asked them if I could put it back to way it was and if…if I still have to go through with the variance and he said yes but so I took out the windows and put back the screen but he still said I had to get a variance so and as I get a variance she decided to get the variance and put the windows.

Ms. Smith: So if you get the variance is it going to be living space?

Mr. Mohamed: No.

Ms. Smith: No?

Mr. Mohamed: No, there is no heat there is nothing there.

Ms. Smith: I'm sorry?

Mr. Mohamed: There is no heat, there's nothing just a (inaudible).

Chairperson Cardone: In the building coverage, you know one of the things we look at is the percentage over the amount allowed and were looking at 71.75% over which is considerable. I mean they could be reduced by I would think by taking down the lean-to on the side and the covering for the patio. It's just my opinion that what you're asking for is really quite excessive.

Mr. Mohamed: The a…if I removed the…the shed on the side of the house, I think it's on the…

Mr. Manley: The north side.

Mr. Mohamed: …the north side, if I removed that one and I reduce the one that’s on the right side, on the…south side half way, you know, just because of the rain just keep if that's going to be okay.

Chairperson Cardone: Do we have any questions or comments from the Board?

Mr. Manley: One of the reasons why the Town has the…the requirement for lot coverage area is for impervious surface. When you have too much surface area covered it creates drainage issues for neighbors. When there's too much water running off of an individual's property it has a tendency to flood Town roads, flood neighbor’s property when you have when you have surface that’s permeable it allows the groundwater to absorb into the persons property so when you're at 70 something percent you're going to be draining off a lot more water and creating a lot more surface water. That's one of the reasons why the Town limits surface coverage unless you have a very large lot. The larger the lot the more you can cover the lot with…with building coverage. In your particular case those lots are very small, so it creates…that’s why, you know, the Code has a limitation on how big, you know, a house can be and you also have to make sure that a house remains within the character of the neighborhood so that you don't have a mansion on a small piece of property and then your poor neighbor has a small house and you know it…it impacts the neighbors. So that's kind of what the Zoning Board has to kind of weigh all of those…those factors, you know, when we render a decision. And that's what I think Ms. Cardone was inquiring as to whether or not you could shrink that a little bit, you know and would you know, if the Zoning Board approved the pool let's say and the…the larger addition you know and compromise on that, you know, versus you know including everything.

Mr. Mohamed: Okay.

Chairperson Cardone: Do we have any questions or comments from the public? Any other questions or comments from the Board?

Mr. McKelvey: I think why the neighbors is putting up the fence is because of that open shed too.

Chairperson Cardone: I think maybe one of the concerns also is that you seem to want some storage space but I think that storage space has to be out of sight and the way it is right now, you know, there's…there's an awful lot of articles around that are not out of sight. You know perhaps think of using that addition to build some kind of storage into it to put things.

Mr. Mohamed: You know like I could do it that I'll reduce that I'll do it without the two sheds if that's if that will resolve the issue.

Mr. McKelvey: I just don't think it's a good idea to have that shed in the front of the house like that either. It's an eyesore to me when I walked on the property.

Chairperson Cardone: Do we have anything else? Nothing from the public? Okay. Do we have a motion to close the Public Hearing?

Mr. Manley: So moved.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:25 PM)

ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:08 PM)

PADDINGTON ZWIGARD 4 CHRISTIE ROAD, NBGH

 (73-14-9) R-3 ZONE

Applicant is seeking area variance to keep prior builts: A) Rear addition (28’3x20’5) - increasing the degree of non-conformity of the rear yard setback; B) Swimming pool (16’ A/G) - maximum lot surface coverage; C) Side addition (7x18) - maximum lot surface coverage, maximum lot building coverage and minimum side yard setback; D) Rear addition (12x20’6) maximum lot surface coverage, maximum lot building coverage and increasing the degree of non-conformity of the rear yard setback.

Chairperson Cardone: On the application of Paddington Zwigard, this is a Type II Action under SEQRA. I’m going to go through these one by one. On the application for (A) on the drawing, seeking a variance for a prior built enclosure, this is a rear addition. This is a Type II Action under SEQRA. Do I have a motion for approval on this application?

Mr. Manley: I would make a motion to approve (A) the rear addition (28’3x20’5) - increasing the degree of non-conformity to the rear prior built room (rear yard setback).

Ms. Smith: I would second that motion.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: That motion is carried. On the application of Paddington Zwigard, this is (B) on the drawing, for a prior built swimming pool.

Mr. McKelvey: (Inaudible) I’ll make a motion we approve.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried. On the application of Paddington Zwigard, this is (C) on the drawing this is a prior built side addition (7x18). This is a Type II Action under SEQRA. Do I have a motion to approve this application?

No response.

Chairperson Cardone: Do I have a motion for disapproval on this application?

Mr. Manley: So moved.

Mr. Masten: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: That motion for disapproval is carried. On the application of Paddington Zwigard, this is (D) on the drawing for a prior built addition (12x20’6). This is a Type II Action under SEQRA. Do I have a motion to approve this application?

No response.

Chairperson Cardone: Do I have a motion to disapprove?

Ms. Smith: I’ll make a motion.

Mr. McKelvey: I’ll second.

Mr. Donovan: And the motion is for disapproval of the request for number or, I’m sorry, letter (D).

Chairperson Cardone: Letter (D), yes.

Ms. Smith: Letter D.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:13 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 7:25 PM)

PAUL SWEETMAN 509 CENTER STREET, NBGH

 (38-3-7) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to construct a front porch on the residence.

Chairperson Cardone: Our next applicant Paul Sweetman.

Ms. Gennarelli: This applicant sent out seventy letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. Sweetman: Good evening I'm Paul Sweetman from, 509 Center Street, Town of Newburgh. Thank you for your time.

Chairperson Cardone: And state your request.

Mr. Sweetman: I am trying to put up a 4' x 12' front porch over an existing concrete porch and in addition there will be two 8' x 8' planters to make it look aesthetically correct. The porch will a…I presently don't have steps on the front of the house I had taken them down because the concrete was swollen, the former owner apparently used a lot of rock salt on it.

Chairperson Cardone: Right.

Mr. McKelvey: That's what I was going to ask, how do you use the front door?

Chairperson Cardone: Right.

Mr. Sweetman: I…I don't as a matter of fact they had some other work done with a Permit a generator and your Building Inspector said what happened to the front stairs? I said I had to take them down because they were so…so poorly pitted and he said you have to get a Permit. So that's what I'm doing now.

Chairperson Cardone: Right.

Mr. Sweetman: And in addition my a…I just changed insurance companies and the new insurer said you have to get it, they wanted it done…I got the new policy May 22nd and they gave me 60 days to have it done but they extended it because of the variance request.

Chairperson Cardone: Right. So the porch would be the same width as the house, it would extend?

Mr. Sweetman: Yes, it won't come out towards the road anymore. It's presently about 8 feet and I think it's about either 28 or 30 feet long.

Chairperson Cardone: Any questions from the Board? Any questions or comments from the public?

Mr. McKelvey: Just one, the porch is not going to go completely across the front of the house, right?

Mr. Sweetman: No, no it's going to be 4 feet from that front door towards the road, 12 feet wide.

Mr. McKelvey: I was looking at the drawing.

Mr. Sweetman: I do have my contractor here in case you have any questions about his plans that were submitted.

Chairperson Cardone: Any other questions? Do we have a motion to close the Public Hearing?

Mr. McKelvey: I’ll make a motion to close the Hearing.

Chairperson Cardone: Do we have a second?

Ms. Smith: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Sweetman: Thank you for your time.

 (Time Noted - 7:29 PM)

ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:13 PM)

PAUL SWEETMAN 509 CENTER STREET, NBGH

 (38-3-7) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to construct a front porch on the residence.

Chairperson Cardone: On the next application Paul Sweetman, 509 Center Street.

Mr. McKelvey: I think this is a matter of getting out of your front door.

Chairperson Cardone: Right. This is a Type II Action under SEQRA.

Mr. McKelvey: I'll make a motion we approve.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:14 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 7:29 PM)

RICHARD & LAURA CAMPORA 1 EVANS COURT, NBGH

 (91-2-13) R-1 ZONE

Applicant is seeking area variances for the maximum lot building coverage and increasing the degree of non-conformity of the front yard setback to build an addition (8 x 19’10”) on the residence.

Chairperson Cardone: Our next applicant Richard and Laura Campora.

Ms. Gennarelli: This applicant sent out sixty-one letters. All the mailings, publications and postings are in order.

Mr. Cordisco: Good evening Mrs. Cardone, Members of the Board, Mr. Donovan, I'm Dominic Cordisco from the law firm of Drake, Loeb and a…I always tell you it's a pleasure to be before you and a pleasure to see you but tonight it really is a pleasure to be before you because the Campora's are…are close friends of mine and I'm trying to help them build an addition onto their kitchen…

Mr. Donovan: Are you sure that's going to work for you Dominic?

Mr. Cordisco: …well no, well you know, it…it might not, you know, so we'll see…we’ll see how that goes. But a…I have with me here tonight a…Richard and Laura Campora as well as a…a…Laura's mother Sharon Zeltmann. The Campora's live at 1 Evans Court, a… Richard Campora bought that house in about 1996 and so he's been there ever since and he's a policeman in the a Town of Woodbury and he lived next door to the Zeltmann's who have been there a…practically all of Laura's life except for the first two months of her life. They moved there about 40 years ago…well no a…a…that would make you too old. A…I’m sorry a…but they have lived there for a very long time a…and a…you know it’s a…it’s almost like a storybook tale because a…they used to meet out at the mailbox and eventually Laura Zeltmann became Laura Campora and Laura Zeltmann moved next door with her husband Richard Campora so they moved into 1 Evans Court and Sharon Zeltmann, the mother, lives next door at 2 Evans Court and a…the a… Campora's have a child, her name is Callie she's a…just turned three and a…they're looking to increase their kitchen because right now on their existing house they have a galley kitchen a…that is very narrow, it doesn't fit a table, it's not in eat-in kitchen and they were looking to make an expansion by building out a…the a…wall from the kitchen about 8 feet so they can have and eat-in kitchen in their house. This is part of Colden Park; Evans Court is in Colden Park. While it met the zoning that was in place at the time at Colden Park it was…was built the zoning has since changed and it's much more restrictive and a…this addition would require two variances, one because the house is on a cul-de-sac a…the cul-de-sac is…is deemed to be the front yard variance, excuse me the front…the measurement of the front yard a…and the existing zoning requires a 50 foot setback, there's only 29 feet to the house right now so the house is already non-conforming and with the addition of the…of the a kitchen they’ll be increasing that non-conforming by 2 feet so dropping it down from 29 feet to 27 feet approximately. There's also a restriction on lot building coverage in this zone right now only have 10% building coverage is allowed and with the addition we calculated it at being 11% or 11 and change. So we're…we're just off by one percentage point but nevertheless it was denied by the Building Department for that reason. We have here the elevations you can see that this is the proposed kitchen here and there some details interior.

Chairperson Cardone: I have a question, are you aware that there is a letter from Mr. Mattina about two outstanding issues?

Mr. Cordisco: Yes Mrs. Cardone.

Chairperson Cardone: And one of them was that a…the survey showed a roof over concrete slab and there was not a Building Permit for that.

Mr. Cordisco: Yes a…that…that is a…this area back here it's shown on the site plan. It's…it's a cabana, it's been in the back, it's been there as long as the Zeltmanns have been there for nearly 40 years. A…I saw Mr. Mattina's letter, it says they have no record of the Building Permit. It was built before Mr. Campora purchased this house and it's been there for quite some time.

Chairperson Cardone: But they would still need a Building Permit for it.

Mr. Cordisco: Yes, they'll have to either apply for that or work through that through the Building Department.

Chairperson Cardone: And also are they planning to include a front porch because according to his letter if they do they need a variance for that?

Mr. Cordisco: Right, we’re not pursuing that, no.

Chairperson Cardone: Okay.

Mr. Cordisco: This is a…I submitted some color photographs, you see one of them is from the front, this is taken from Evans Court and the a…tree here is significant, evergreen tree, actually covers a…the view from the street of what the addition would be. The addition of course is to the side of the house and 2 Evans Court, Mrs. Zeltmann's home is the one that's immediately close by. So the variance and the increase or the decrease in the setback, I should say, affects a Mrs. Zeltmann and a she's here to tell you tonight that she absolutely opposes it. Just kidding…just kidding for the record just so that we're clear she is a…here in support of, obviously her…her daughter and her son-in-law. And I submitted some other color photographs from various different vantage points a…and we're here to answer any questions that you may have. Thank you.

Chairperson Cardone: Do we have any questions from the Board?

Mr. Donovan: If I may ask you just a couple questions for clarification? Dominic, on the chart that we get from Code Compliance they indicate the front yard of 29 feet where I'm seeing 27.6 to the existing dwelling, I mean it's not a world of difference but just…what's the right dimension?

Mr. Cordisco: We included 27.6, you know, and it…it seems on our site plan which was based on the survey of Steve Drabik's was 27.6 to the existing dwelling.

Mr. Donovan: But that is an existing condition, that's not being…?

Mr. Cordisco: Correct, correct it…it's difficult because the a…the addition actually doesn't extend off the front it extends off the side and we weren't entirely sure how the Code Compliance Officer was measuring that. They did list as…as a…as a requirement for a variance, we were scratching our heads on that but we applied for it.

Mr. Donovan: Code Compliance. Do you recall what the side yard requirement is?

Mr. Cordisco: Not off the top of my head, I have no idea. This would be the…the R-1 district

Mr. Donovan: And while I look into that, the percentage…again on the chart we got from Code Compliance indicates that you're allowed 1415.7 square feet, you have 1532, you're looking for 1692, which is actually 276 square feet which is 19.5% over. I just want to make sure that the number is right. Is that accurate?

Mr. Cordisco: That is accurate. Yes, yes.

Mr. Manley: The number that you are giving kind of conflicts would something that was submitted and that was Thomas J. Fiola, the architect, provided the zoning variances required as a submission it says front yard setback required 50, providing 29.

Mr. Cordisco: Correct. But then on the site plan itself it shows and this was taken, as I said, from Steve Drabik's a…survey it shows a distance of 27.6 feet.

Ms. Gennarelli: It's different than what you submitted to the Building Department that's where the difference is.

Mr. Cordisco: The a…chart that we added here for zoning variances as required was based on the Building Permit denial. So we only did this after we submitted and a…and were denied so we based it on what the Code Compliance Officer’s.

Mr. Manley: Okay because this this…

Mr. Donovan: I just want…I just want…if the Board is so inclined to issue the variance, I want to make sure it's…it will be the right variance.

Mr. Manley: And we have to…we have to use the correct amount because we go by what we have here 29 and you need 27 then that's going to be a big problem.

Mr. Donovan: It seems to me and we don't have Joe or Gerry here tonight, it seems to me that you…you need a side yard variance not a front yard variance. It seems to me that the 27.6 is pre-existing and we’re not increasing the degree of that non-conformity because we don't have anything going into the front yard. We're at…the requirement now in the R-1 zone is 30 and 80, 30 each combined of 80. You're obviously a pre-existing lot from the R-3 so we're going, and we only…you have 15.3 on the one side because I don't see an arrow so I'm going to call it the left side and you're going from 34 to 27 on the…on the right side.

Mr. Cordisco: Correct, that is correct.

Mr. Donovan: I think those are…those are the variances.

Mr. Cordisco: To be perfectly honest that's what we anticipated as being the variances but then when we received Code Compliance’s letter…

Mr. Donovan: Well Code Compliance is pretty smart but…so I could be wrong but they're not here to correct me…

Mr. Cordisco: Right.

Mr. Donovan: … so forget that.

Mr. Manley: The other question and that would be for you is, the lot surface area, if we’re not including something that there is no Permit on for example that (inaudible) in the back is going to affect or potentially impact the lot coverage area. Right?

Chairperson Cardone: Code Compliance has called it this.

Mr. Donovan: Yeah I don't…I think it's a side yard, right? Looks like a side yard to me. Unless they’re drawing the line this way.

Mr. Cordisco: It wasn't clear to me where the line was being drawn from the cul-de-sac…

Mr. Donovan: Yeah it's…it's yeah, yeah…

Mr. Cordisco: …you know and…and you know, we went with what we had or what we were given.

Mr. Donovan: But even if that were the case, it would be 27.6 not 29 because that's the…the shortest distance to the cul-de-sac.

Mr. Cordisco: Which is actually the existing structure and may not be the distance from the addition, just to make a little more confusing.

Mr. Donovan: On that issue I would recommend if the Board was so inclined a 27 foot variance because it'll…it could never be less than that.

Mr. Cordisco: Right, right.

Mr. Donovan: In terms of the building coverage do have you any idea what…and I looked briefly before because I was curious in the last application if a roof over an open area is included in the definition of building coverage. I don’t…I don’t see the definition of building coverage. To assume that it is Dominic, you have any idea how the size of that a…?

Mr. Campora: (Inaudible) octagonal being about 9 foot in diameter. (Inaudible)

Mr. Donovan: Well again if the Board…

Chairperson Cardone: I think they included it.

Mr. Donovan: You think they may have?

Chairperson Cardone: That's what I’m thinking.

Mr. Donovan: Our other alternative is to have Code Compliance confirm that. The name escapes me but we had one from last month where we actually sent Mr. Mattina out to reconfirm the amount and then that became the amount granted a variance. So we could ask that he confirm if it's included and if it's not and if it's not to give us those figures.

Mr. Manley: Yeah, because if we don't have the right lot coverage area when we grant the variance you going to end up coming back.

Mr. Cordisco: Would…would that be a…an…an action that could be taken subject to, in other words could the…the Board if you're inclined to grant the variance, to grant the variance subject to the actual number being confirmed by Code Compliance and that being the one that's used in your decision. But what we're talking about is a gazebo here that's been there for over 40 years.

Mr. Donovan: In order of terms of the order of magnitude, I mean nine by…I don't know what’s its…octagon but what…it's not a million square feet. Correct? It’s a small structure.

Mr. Cordisco: Correct, approximately.

Mr. Donovan: So we…we have done this as recently as last month, something of the order of the magnitude of this where we asked Code Compliance to confirm the amount and we granted the variance subject to their final figures. So if the Board is inclined you have the power to do that.

Mr. Cordisco: I appreciate your courtesies in that regard.

Chairperson Cardone: Do we have any questions or comments from the public? Do we have anything else from the Board? Do I have a motion to close the Public Hearing?

Mr. Masten: I’ll make a motion.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cordisco: Thank you all very much.

 (Time Noted - 8:43 PM)

ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:15 PM)

RICHARD & LAURA CAMPORA 1 EVANS COURT, NBGH

 (91-2-13) R-1 ZONE

Applicant is seeking area variances for the maximum lot building coverage and increasing the degree of non-conformity of the front yard setback to build an addition (8 x 19’10”) on the residence.

Chairperson Cardone: On the application Richard and Laura Campora, 1 Evans Court. This is a Type II Action under SEQRA. Do I have a motion for approval on this application?

Mr. Masten: I'll make a motion.

Chairperson Cardone: And this would be subject to confirmation…

Mr. Donovan: Confirmation by Code Compliance…

Chairperson Cardone: …by Code Compliance.

Mr. Donovan: …on that building coverage issue.

Chairperson Cardone: Right.

Mr. McKelvey: And the setback would be 27 feet.

Mr. Donovan: 27 feet, that’s correct.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:16 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 7:44 PM)

DOROTHY ESTES 43 FLETCHER DRIVE, NBGH

 (93-1-2.21) R-1 ZONE

Applicant is seeking area variances for one side yard setback and the combined side yards setback to keep the Prior Built carport.

Chairperson Cardone: Our next applicant Dorothy Estes.

Ms. Gennarelli: This applicant sent out thirty letters. All the mailings, publications and postings are in order.

Ms. Estes: Hi my Dorothy Estes, I’m at 43 Fletcher Drive, Newburgh. I’m here for a prior built variance for a carport. I just want to go over some of these a…questions that you had for the application. A…the carport fits nicely with the layout of the neighborhood and complements the house. It does not obstruct anyone's view as the closest neighbor is more than 50 feet from the carport. It is received favorably by all of the neighbors and there are already three existing carports in the neighborhood that are attached to the house. The carport is (inaudible) that it was a…constructed to serve. A…I have a…a…partner of mine, he's in his 70s and he fell a couple of years ago on the driveway, slipped on ice getting out of the car and a…fell and fractured his leg and I have well it's not…excuses but I do have osteopenia, I do have documents on these things and that's something that I don't want have happened to me. And I have also served…a…stored my son's car, he's a…in the military and while he was overseas, deployed overseas I kept his car there. So there's a few purposes that I've used a carport for. A…this…the carport is constructed of quality materials, it sound and sturdy. There's no major changes to the house or the property. It matches and looks natural. The physical and environment conditions of the neighborhood it should not affect it at all. A…it’s a very attractive addition to the house, it fits in. I've lived there for over 30 years and hopefully I can live there another 30 years and enjoy it a…unfortunately it was created, you know, self-created by due to honest ignorance. I was not aware of any requirements to obtain a variance for it so…

Chairperson Cardone: That's why it's always good to get a Building Permit first.

Ms. Estes: Right. Believe me I've learned a lot over the past few years, I've learned a lot. But I do have some a…neighbors here that are here to support me. I do have a letter from one neighbor that couldn’t make it and they do have the documents of the things that I stated. I have a signed letter by all the neighbors a…supporting it. And I do have my immediate neighbor which is on the property line. She's here and she…they’re all willing to speak.

Chairperson Cardone: And that's the one that a…

Ms. Estes: Sabillon, Jessica.

Chairperson Cardone: …that is two point…

Ms. Estes: Yes.

Chairperson Cardone: …two feet from the line.

Ms. Estes: Jessie.

(Inaudible audience member)

Chairperson Cardone: Okay and just a moment. You have to speak and give your name for the record.

Mr. Donovan: At the microphone.

Mr. McKelvey: At the microphone.

Chairperson Cardone: At the microphone.

Ms. Sabillon: Good evening, my name is Jessica Sabillon and I live on 102 Fletcher and a…you know I'm next to her. It doesn't bother me it looks nice. You know it doesn't do any damage to my property and nobody else so…

Chairperson Cardone: Okay, thank you. Okay, do we have any questions from the Board first?

Mr. McKelvey: What do you use the garage for?

Ms. Estes: I do have a car in there…

Ms. Gennarelli: Please step closer to the…

Ms. Estes: …oh, my…my other sons car is in that garage.

Mr. McKelvey: Because I was just wondering because I know there is a garage there.

Mr. Manley: How many vehicles do you have registered to yourself currently?

Ms. Estes: One.

Mr. Manley: So you have one vehicle that’s your own and you store two other vehicles?

Ms. Estes: No and my…the person that lives with me has a car.

Mr. Manley: Okay. And then you have one that you store?

Ms. Estes: Well it's not stored there now he’s…he's not over in Kosovo right now but my other son has a car there in the garage.

Mr. Manley: Okay, so it one time you had four cars on the property is that…

Ms. Estes: No, because he didn't have this other car, my other son, that lives in Cornwall. He didn't…he didn't have that car then. But now he has a sports car and…

Mr. Manley: Okay, so you have one car that's stored there, one car is yours and one car is someone else that lives there?

Ms. Estes: Yes.

Mr. Manley: For a total of three?

Ms. Estes: Yes.

Mr. Manley: Okay, thank you.

Ms. Foose: We have backyards together…

Chairperson Cardone: Excuse me; just give your name first.

Ms. Foose: Bernadette Foose and I have the carport and she liked my carport and came up and took, you know got all the information from me about my carport. So it…

Chairperson Cardone: But you had a Building Permit?

Ms. Foose: Yes, I did. Yeah, you remembered.

Ms. Barrack: Hello my name is Gail Barrack I live at 111 Fletcher Drive, I’m about half a block from Dorothy a…I lived there about 25 years and I've known Dorothy the whole time. A…she keeps an immaculate house and…and yard. We've both been in each other's homes and actually I did notice on the way coming here today on our same block a…aside from Mrs. Foose there are two other homes that have the almost exact attached carport. So when you were making references before about things looking similar in the neighborhood a…the…you know, they do look similar so…

Chairperson Cardone: Thank you.

Ms. Blain: My name is Myriam Blain, I live across the street, I’m Ms. Estes neighbor and the carport looks beautiful. It's natural, it's blending in with the house and it doesn't block my view.

Chairperson Cardone: Thank you.

Ms. Blain: Okay, thank you.

Chairperson Cardone: Do we have anything else from the Board?

Mr. Cole: My name is Robert Cole and I live on Fletcher Drive North. It's a real asset actually to the house. I don't know if you seen it…

Chairperson Cardone: We have, we make site visits, we've been to all of the properties we're discussing.

Mr. Cole: Oh, I mean things were unfortunate in the past year but a…Jessica keeps a beautiful home, her pool is on the other side of the fence. It certainly doesn't a…distract from her place nor the rest of us and we’re pleased with it.

Chairperson Cardone: Okay, thank you. Do we have any other comments? Okay, go ahead.

Mr. Nunez: I received a letter from a…

Chairperson Cardone: Please give your name first for the record.

Mr. Nunez: My name is Juan Nunez over at 16 Anita Lane, I'm on the other side and a…I went by her house a couple times and I said why she sending me a letter, I'm all the way over. But she's got a nice house and that's all I can say, it's nice and she's not asking for much.

Chairperson Cardone: Okay, thank you.

Mr. Donovan: Thanks for coming.

Mr. McKelvey: She had to send…she had to send out a letter within 500 feet of her house so…

Chairperson Cardone: Do you have anything else? Do we have a motion to close the Public Hearing?

Ms. Smith: So moved.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Before proceeding the Board is going to take a short adjournment to confer with Counsel. And if I could ask you in the interest of time if you would step out into the hallway and we'll call you back in very shortly.

(Time Noted - 7:54 PM)

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ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:16 PM)

DOROTHY ESTES 43 FLETCHER DRIVE, NBGH

 (93-1-2.21) R-1 ZONE

Applicant is seeking area variances for one side yard setback and the combined side yards setback to keep the Prior Built carport.

Chairperson Cardone: On the application Dorothy Estes, 43 Fletcher Drive. This is a Type II Action under SEQRA. Do I have a motion for approval on this application?

Mr. Masten: I make…I make a motion.

Chairperson Cardone: Do I have a second?

Ms. Smith: Well based on the testimony of the neighbors and they stated it meets with the character of the neighborhood. I'll second that motion.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:17 PM)

ZBA MEETING – AUGUST 22, 2013 (Resumption for decision: 8:17 PM)

ROBERT WHITE 4 SOUTHEAST COURT, WALLKILL

 (2-3-28) R/R ZONE

Applicant is seeking an Interpretation and/or a use variance to build a ground mounted solar array system on the property.

Chairperson Cardone: And we have the application of Robert White which we had closed the Public Hearing but we had Reserved Decision from the June meeting and we were anticipating more information from the Town Board. We have not received that at this time. So our decision will be based on what we have heard so far.

Mr. McKelvey: And this is a use variance Dave, correct?

Mr. Donovan: That’s correct.

Chairperson Cardone: That’s correct. This is a use variance for a ground mounted solar array system on the property. Do I have a motion for approval on this application?

Mr. Masten: I’ll make it, I’ll make a motion.

Chairperson Cardone: Do I have a second?

No Response.

Chairperson Cardone: I…in my opinion it does not meet the criteria for the use variance.

Mr. Manley: Mr. Donovan, in order for the Board to consider a use variance the applicant must meet all of the tests required.

Mr. Donovan: That’s correct. There’s four tests with regard to a use variance that the applicant couldn’t get…well let’s start with last which is is the nature of the hardship self-created. Because in the context of a use variance it’s just a factor to be considered and if the hardship is self-created in a…a…I’m sorry an area variance if it is self-created that’s just a factor to be considered. It doesn’t bar you from giving relief. In the context of a use variance if the hardship is self-created which is did the applicant either know or should have known when he purchased the property that he couldn’t put the solar panels in the side yard then he’s…has no relief. We cannot give him any. So you can...you can stop the analysis there. He also has to demonstrate by dollars and cents proof that he can’t realize any reasonable economic return from his property without the issuance of a use variance for which there is no dollars and cents proof submitted and…and I think for the likely reason that that could not have…a…he could not have sustained his burden. He did submit proof or evidence that he would realize and an economic savings by the use of solar power. But that’s not…that’s not the factor that’s required by State Law in terms of not being able to realize and economic return from your…from your investment. So those two factors alone, in my view, he does not meet those factors and if the Board is inclined to deny the use variance application you are on solid ground.

Mr. Manley: In any event, if the Board were to not do that and go ahead and grant it arbitrarily without you know taking into account those four factors obviously our…our decision could obviously easily be challenged but not only that it sets a very, very difficult precedent for the Board.

Mr. Donovan: Yeah, if…if the question for me is has he sustained his burden of proof to receive a use variance, the answer to that is no and the issuance of a use variance based upon the proof that we had would be arbitrary and capricious.

Chairperson Cardone: Okay, we had a motion for approval; we did not have a second to that motion.

No Response.

Chairperson Cardone: At this time do I have a motion for disapproval?

Mr. McKelvey: I think under those grounds, they don’t meet all of the criteria I’ll make a motion to disapprove.

Chairperson Cardone: Do I have a second?

Mr. Manley: I’ll second the motion.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:20 PM)

ZBA MEETING – AUGUST 22, 2013 (Time Noted – 8:20 PM)

**OTHER BOARD BUSINESS**

DANIEL HESIDENCE 28 WARING ROAD, NBGH

 (65-3-13) R-3 ZONE

Chairperson Cardone: Under Other Board Business if you remember Daniel Hesidence had come before us that 28 Waring Road and he was granted a variance. He is now looking for an extension for that variance.

I am writing to seek an extension on the ZBA approval to convert 28 Waring Road (65-3-13) into a single family residence. The water and sewer are now tied in to the building and I am in the process of securing the proper finances to move forward. Many thanks for your help. Sincerely, Daniel Hesidence.

He was approved February 28th so he’s certainly in time with his request.

Mr. McKelvey: I'll make a motion we grant the six months.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Mr. McKelvey: This is the last time he can get one.

Chairperson Cardone: Right, they are only allowed one six month extension.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:22 PM)

ZBA MEETING – AUGUST 22, 2013

END OF MEETING (Time Noted – 8:22 PM)

Chairperson Cardone: O.K. Has everyone had a chance to read the minutes from last month? Are there any additions or deletions?

Mr. McKelvey: I'll make a motion we approve the minutes.

Mr. Masten: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Do we have a motion to adjourn?

Ms. Smith: I’ll make a motion to adjourn the meeting.

Mr. McKelvey: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The meeting is adjourned. See you next month.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ABSENT:

 BRENDA DRAKE

 MICHAEL MAHER

 CODE COMPLIANCE

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 (Time Noted – 8:24 PM)