ZONING BOARD OF APPEALS

MEETING – DECEMBER 22, 2015

(Time Noted – 7:04 PM)

Mr. Manley: Good evening I’d like to call the meeting of the Zoning Board of Appeals 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 relief under the Code. 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 then consider the applications in the order heard and will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off. And when speaking, speak directly into the microphone as it is being recorded. Ms. Gennarelli could I have the Roll call please?

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Mr. Manley: Before we start this evening I would ask everyone to please stand and Richard Levin if you would lead us in the Pledge please.

Pledge of Allegiance to the Flag led by Richard Levin

(Time Noted – 7:06 PM)

ZBA MEETING – DECEMBER 22, 2015 (Time Noted – 7:06 PM)

ROSARIA PUZZILLO 14 BREEZY KNOLL DRIVE, NBGH

 (81-3-1.2) R-3 ZONE

Applicant is seeking area variances for the front yard setback (Breezy Knoll Drive) and increasing the degree of non-conformity of the front yard setback (I-84) to keep a prior built attached garage (24 x 26) on the residence (has two front yards).

Mr. Manley: The first application this evening to be heard by the Board is Rosaria Puzzillo requesting an area variance for the front yard setback and increasing the degree of non-conformity of the front yard setback to keep a prior built attached garage (24 x 26) on the residence (has two front yards). Ms. Gennarelli are the mailings in order?

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, December 11th and in the Mid-Hudson Times on Wednesday, December 16th. This applicant sent out sixty-one letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Ms. Velazquez: State my name?

Mr. Manley: Yes please.

Ms. Velazquez: Hi I’m Angelina Velazquez; I am the daughter of Rosaria Puzzillo.

Mr. Puzzillo: I am Frank Puzzillo I’m her brother.

Ms. Velazquez: We are here because we have an existing garage that we have no knowledge didn’t have a Permit.

Mr. Manley: Okay.

Ms. Velazquez: My father is deceased so we uncovered that a…he didn’t have any Permit for it so we’re here to see what we can rectify the issue for the a…garage that’s existing on my mom’s property.

Mr. Manley: Okay. Do you know, roughly, how long ago the garage was built?

Ms. Velazquez: 1980?

Mr. Puzzillo: 1980.

Mr. Scalzo: Yeah, I thought I saw on the documents Jim, it was 1979.

Ms. Velazquez: Wow.

Mr. Puzzillo: (Inaudible)

Mr. Manley: Do any of the Board Members have any questions for the applicant?

Mr. McKelvey: As far as the rear setbacks, you have no choice with Route 84 there.

Mr. Puzzillo: Yeah, that’s…

Mr. McKelvey: And the front yard is pretty similar to all the houses in the neighborhood on setbacks.

Mr. Levin: Would you know who the builder was?

Mr. Puzzillo: My father.

Mr. Levin: He built it himself?

Mr. Puzzillo: Right, he built that whole house pretty much.

Mr. Manley: I did notice quite a few of the a…houses in that development have one and two car garages. Would you concur with that?

Ms. Velazquez: Yes.

Mr. Puzzillo: Yeah.

Ms. Velazquez: Yeah, it’s pretty much all aligned with the same properties that surround in our block.

Mr. Manley: And I would say that most of the properties in that neighborhood are on about the same size lot. Would that be a true statement?

Mr. Puzzillo: Yeah. It would.

Ms. Velazquez: Yes.

Mr. Scalzo: I think with the…with the two car garage it seems pretty much in character with the rest of the neighborhood and you know it’s…it’s not a by all means is it an eyesore, it fits right in with the neighborhood. I a…you know they have an odd shaped parcel because of the right of way taking for I-84 a…and…and you know they have a very large piece of open land next to the garage heading to the west. Again I don’t think we’re looking at anything that’s out of the ordinary or out of character with…with the neighborhood.

Mr. Manley: Do any of the other Board Members have any other questions?

No response.

Mr. Manley: Okay at this point I’d like to open up the Public Hearing to anybody from the public that has any questions or comments? Are there any questions or comments from the public? Yes sir if you could come to the front and address the Board.

Audience Member: I just want to know if I’m in the right spot tonight.

Mr. Manley: Okay.

Audience Member: Is this concerning Rock Tavern?

Ms. Gennarelli: Yes, that’s one of the last ones on the agenda. Would you like an agenda?

Audience Member: Okay, (Inaudible) because I went to the other court house and it was closed.

Mr. Manley: Okay.

Audience Member: Thank you.

Mr. Manley: If there are no other questions from the Board or no questions from the public at this point…

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: At this point the Public Hearing is closed the Board will consider this after we’ve heard all applications.

Ms. Velazquez: Okay.

Mr. Manley: So there will be a decision probably later this evening.

Ms. Velazquez: Okay great, all right, thank you.

Mr. Manley: You’re welcome.

 (Time Noted - 7:10 PM)

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ZBA MEETING - DECEMBER 22, 2015 (Resumption for decision: 8:13 PM)

ROSARIA PUZZILLO 14 BREEZY KNOLL DRIVE, NBGH

 (81-3-1.2) R-3 ZONE

Applicant is seeking area variances for the front yard setback (Breezy Knoll Drive) and increasing the degree of non-conformity of the front yard setback (I-84) to keep a prior built attached garage (24 x 26) on the residence (has two front yards).

Mr. Manley: The Board has resumed its regular meeting. The Board will now go over each of the applications for this evening. The first application before the Board is Rosaria Puzzillo. It’s is a Type II Action under SEQR. The Board is going to go through the area variance criteria for discussion. The first item is, is the applicant achieve the benefit by any other means feasible to the applicant? Do we have discussion on that part of the criteria?

Mr. Scalzo: I believe the shape of the lot a…he’s constrained by the right of way for I-84 as well as the right of way for Breezy Knolls so I…I don’t believe there would have been any other way to do it.

Mr. Manley: Mike?

Mr. Maher: No, I…I’m going to agree with a…with Darrin there’s not really much you can do there.

Mr. Manley: Rich?

Mr. Levin: I concur with both of them I don’t think there was any way of doing it besides the way they did it.

Mr. McKelvey: I agree, I stated that in the beginning.

Mr. Masten: I agree too, yes.

Mr. Manley: Okay, I would…I would concur. The next item within the test is, does the request for the variance cause an undesirable change in the neighborhood or the character or detriment to any of the nearby properties?

Mr. Scalzo: Having visited the neighborhood, I do not think it causes any detriment a…I think it is in character with the neighborhood.

Mr. Maher: He’s on point.

Mr. Scalzo: I’m two for two.

Mr. Manley: I tell, you’re doing good.

Mr. Scalzo: Alright, you just keep looking left Jim, if start at the right it might be different.

Mr. Manley: Rich?

Mr. Levin: I feel the same way especially being that the…there’s a lot of land to the left of the a…of the garage so I feel it doesn’t change the character of the neighborhood at all.

Mr. McKelvey: I concur.

Mr. Masten: Same here Jim.

Mr. Manley: Okay, the third item that we look at is whether the request that the applicant has presented before us is substantial? Why don’t I start to the right?

Mr. Maher: There you go.

Mr. Masten: Which one are you on Jim?

Mr. Manley: Do you feel that the request that the applicant is asking for is substantial within the area variance?

Mr. Masten: For…?

Mr. Manley: For the first…

Mr. Masten: Oh, yeah, I agree a…

Mr. Donovan: So let me just kind of…because that…that can be an issue sometimes with the substantiality of the variance cause it’s not just…the Board is not limited to just the percentage. Sometimes you look at something and it says it’s eight thousand percent over you say, you know, that’s substantial because of the percentage basis. There’s many court cases that also say you look at the overall effect of the variance whether or not it’s substantial. So you have to evaluate the neighborhood that it’s in, in this case where…where it’s located a…you know, relative to the dwelling, relative to the road, is the overall effect of granting the variance substantial?

Mr. Manley: And are you comfortable with that?

Mr. Masten: Yes, I am, Jim.

Mr. McKelvey: Yes, I agree.

Mr. Levin: I do not believe it is substantial.

Mr. McKelvey: No it’s not substantial.

Mr. Manley: Mike?

Mr. Maher: Good deal, I’m good.

Mr. Scalzo: I concur; I don’t believe it’s substantial.

Mr. Manley: The next is whether the request will have any adverse physical or environmental effects on the area? Dave (John Masten) do you think that it’s going to have any physical or environmental effects?

Mr. Masten: I don’t believe so Jim. (Inaudible)

Mr. McKelvey: I don’t think it will.

Mr. Manley: Rich?

Mr. Levin: I don’t believe it will.

Mr. Manley: Mike?

Mr. Maher: No, I’m good with that, it’s fine.

Mr. Manley: Darrin?

Mr. Scalzo: I believe since it’s thirty years old it’s faded right along with the rest of the brick house and the rest of the neighborhood. You wouldn’t even know it was a…an addition.

Mr. Manley: And the last factor is something that’s relevant but it is not determinative on the part of the Board is whether or not the alleged difficulty is self-created? I’ll chime in on that one. Although it is self-created by the applicant it certainly isn’t something that in my opinion would be a…relevant or diminutive on our part to deny the variance.

Mr. Maher: No it is consistent with the neighborhood.

Mr. Levin: Yeah.

Mr. McKelvey: I agree.

Mr. Masten: Yeah, I a…Jim. Yes.

Mr. Manley: So based on that is anyone willing to make a motion either to approve or disapprove?

Mr. Levin: I make a motion to approve.

Mr. Scalzo: I’ll second it.

Mr. Manley: Okay, we have first and a second…Roll Call.

Ms. Gennarelli: Do you have a report from Orange County that you wanted to read?

Mr. Manley: Oh, we do. Local Determination.

Ms. Gennarelli: Okay, alright.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The next application…oh, your application was approved.

Mr. Puzzillo/Ms. Velazquez: Thank you. Have a Merry Christmas.

Ms. Gennarelli: Merry Christmas.

Ms. Velazquez: Can we leave?

Mr. Donovan: No you have to stay to the end or it’s not…sorry, just kidding, you can go, you can go.

Mr. Puzzillo: Thank you so much.

Mr. Donovan: Merry Christmas.

Ms. Velazquez: Thank you so much.

Mr. Manley: Happy New Year.

Mr. Puzzillo: Happy New Year, Merry Christmas to all.

Mr. Manley: And to all a good night.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:18 PM)

ZBA MEETING – DECEMBER 22, 2015 (Time Noted – 7:10 PM)

JAMES TURNER 340 LAKESIDE ROAD, NBGH

 (28-3-5) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo (12 x 12).

**SAME MINUTES USED FOR BOTH THE AREA AND USE VARIANCE APPLICATIONS.**

Mr. Manley: Our next applicant before the Board is James Turner, 340 Lakeside Road in Newburgh, requesting an area variance for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo (12 x 12). And also a Use variance for the allowed maximum of one dwelling unit per lot pursuant to Section 185-19-B non-conforming building shall not be modified in any way except as listed in 185-19-B-2 to keep the prior built barn and convert it into a third dwelling unit. Ms. Gennarelli.

Ms. Gennarelli: Yes, this applicant sent out forty-four letters for the area variance and forty-four letters for the use variance. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Is Mr. Turner here?

Mr. Turner: James Turner at 340 Lakeside Road.

Mr. Manley: Okay Mr. Turner if you could explain to the Board exactly what the request for your variances are and why the Board should grant those?

Mr. Turner: The a…is for a gazebo that we put at our pool a…just as a accent piece a…the problem that I guess we have with it is that we’re on a corner lot and because we’re on a corner lot we have two front yards. A…the pool, I call it the pool in the backyard but the pool because it was built thirty years ago a…didn’t conform back in the old days so by putting a gazebo there we’re…we have a gazebo in the front yard.

Mr. McKelvey: Did you have a Permit for the gazebo?

Mr. Turner: No.

Mr. Manley: You’re home had suffered a fire a number of years ago. Is that correct?

Mr. Turner: Yes sir.

Mr. Manley: When the suffered the a…fire did you repair it…

Mr. Turner: Yes.

Mr. Manley: …back to…

Mr. Turner: Yes.

Mr. Manley: …where it was?

Mr. Turner: Yes.

Mr. Manley: When you repaired it did you obtain a Permit from the Town?

Mr. Turner: Fifty of them.

Mr. Manley: Fifty Permits?

Mr. Turner: Yes.

Mr. Manley: Okay, so I guess the question would be if you knew that you had to get a Permit to repair the house, there were…there’s other work that’s been done why was there a failure to get a Permit for those items?

Mr. Turner: A…are we talking about the gazebo?

Mr. Manley: The gazebo and you know the other stuff that’s open that you’re requesting variances on.

Mr. Turner: Well, the…the house has been completed, we finally did get a C.O. for that and we’re continuing to work on the property to make it nice. As far as the gazebo I thought it was portable, I didn’t think it is more than a hundred square feet…I don’t…I didn’t think it needed a Permit to put a gazebo at the pool.

Mr. Manley: Okay.

Mr. Donovan: If I can, just for my clarification, because the map I have shows proposed gazebo, is it past the proposed stage?

Mr. Turner: It’s past.

Mr. McKelvey: Yes.

Mr. Turner: Yes.

Mr. Manley: Do any of the Board Members have any questions for the applicant? And at this point we’re specifically looking at the area variance…at this point.

Mr. Scalzo: I have a question, the a…the existing frame cabin not talking about the gazebo at this point shows an offset on the survey map of twenty feet. You wouldn’t happen to know what your offset from your gazebo to the right of way line on Rayland would you?

Mr. Turner: A…I…I think there’s a diagram there. It should have the exact dimensions on it. A…it…it’s probably not on that it’s probably on some other paperwork that was submitted. I want say from this road the fence is probably ten feet and from the fence to the gazebo is probably another fifteen feet. I want to say twenty-five off Rayland.

Mr. Scalzo: Now…

Mr. Turner: I’m just guessing, I mean, you…if you have the diagram there…

Mr. Scalzo: The diagram.

Mr. Turner: Yes.

Mr. Scalzo: The sketch that we’re looking at a…Rayland Road…Rayland Avenue you’re showing eleven feet off Rayland. Is that from the edge of the pavement or from the actual right of way line?

Mr. Turner: A…I believe it’s the edge of the pavement.

Mr. Maher: I see that a…it’s just that the difference based on the…on the survey shows…

Ms. Gennarelli: Mike, can you just pull your microphone in? Thank you, okay.

Mr. Maher: Based on the survey, the…the distance is much greater that’s why…I guess that’s the question, so…

Mr. Scalzo: Yeah, I ended up I went…a small little dog chased me off the property but a…

Mr. Turner: Nope…not mine.

Mr. Scalzo: …but a…

Mr. Donovan: It would have to be a big dog to chase you Darrin.

Mr. Turner: It chases me too but that’s…

Mr. Scalzo: What the…it appears a…actually it appeared closer to the right of way line than the gazebo did…perhaps your…your sketch here is…is more accurate I just a…with the red box on the survey a… I was…

Mr. Turner: If the red box is just hand done to show roughly where it was…it’s…it’s not to scale. The sketch…the hand sketch is closer to scale.

Mr. Maher: More accurate.

Mr. Scalzo: Right. You did…just confirming, you did say it is…should indeed be portable, the gazebo?

Mr. Turner: It…it’s prior built. I picked…I’m in the towing business…I picked up my tow truck, I backed it up on my grass and I dropped it.

Mr. Scalzo: Okay.

Mr. Turner: I can easily pick it up, take it away.

Mr. Scalzo: I understand. Thank you.

Mr. Manley: Are there any other questions from the Board at this point before we open it up to the public?

No response.

Mr. Manley: Does the public have any questions or comments with regard to the application for the area variance at this point?

No response.

Mr. Manley: I do have a couple of comments that were received in writing. I’ll read them into the record after we get to the use variance. At this point if there’s no other questions we’ll move on to the second application which is the use variance. Now before we get into the use variance and questions from the Board I just want to go over with the applicant: a use variance is one of the most difficult variances to obtain from the Zoning Board. We have certain statutory requirements that we are required to follow and State Law is very specific on how this Board can grant a use variance. So I just want to let you know the different thing we are going to be looking at. The Board has to look at four items and the applicant must achieve a burden of proof on each one of those items. So to allow a use not otherwise use allowed in zoning an applicant must demonstrate to this Board unnecessary hardship. That demonstration includes all of the following for each and every permitted use within the zone: that the property cannot realize a reasonable return, substantial as shown by competent financial evidence, the alleged hardship is unique and does not apply to a substantial portion of the district or the neighborhood, the requested variance will not alter the essential character of the neighborhood, and the fourth is that the alleged hardship has not been self-created. If the applicant does not meet all four of those test this…this Board by State Law is required to not grant the variance. So there is a significant test that has to be achieved. So at this point I am going to open it up to the Board Members for their questions with respect to the use variance.

Mr. Scalzo: Actually could we ask…

Mr. Manley: Sure.

Mr. Scalzo: …Mr. Turner to go ahead and present his a…

Mr. Manley: His case first.

Mr. Scalzo: …his case rather than us asking question first.

Mr. Turner: My…my case is pretty simple I don’t have a hardship. I’m not doing it to…to receive value out of the property. I don’t need the value out of the property. I was doing it, just like the gazebo, to make it aesthetically pleasing, acceptable and useful. That’s it. I…I…I don’t have a hardship. I just want to make it nice. I think the reason why we’re here is because in the process of trying to make it nice I ran into problems with the Building Department and the Building Department wanted me to come here to get direction from the Board on how to proceed from this point forward. What can we do? What can we not do? And you guys are gonna really dictate to me how to go forward.

Mr. Manley: And that’s where I think…we don’t dictate to you what you have to do, you present your case as to what you would like…

Mr. Turner: Okay.

Mr. Manley: …and you present to this Board certain items to make your case and then we determine whether or not you meet that threshold. If you meet the threshold then this Board can decide to grant the variance. If you don’t meet that threshold then you may not obtain, you know, the variance so…it’s really your…your presentation.

Mr. Turner: And again, I’m not looking for a dwelling. I’m not looking to make an apartment. I’m not looking for a dwelling. I just want to finish it, put a roof on it, side it, make it usable space. If you…if for lack of a better term you want to say…make it a man cave. If I want to put a TV in there and go there in my barn and work on my cars or…go upstairs and watch a football game on TV without being in…in the house. If I want to have some friends over, they want to walk in you know, without taking off their shoes it…it…it’s a barn. We just want to make it useful space.

Mr. Scalzo: Does it currently have plumbing?

Mr. Turner: A…it had…it had water going to the barn a…from a well a…it’s…it’s always had water to it and it’s always had electricity to it. It does not have the water currently hooked up nor does it have electricity a…currently hooked up but the…the electric meter has been there. It was taken out years ago but the electric meter was there and it did have electric to the barn, it did have water to the barn.

Mr. Scalzo: Sanitary facilities?

Mr. Turner: No sanitary facilities.

Mr. McKelvey: You are just going to use it for your own use?

Mr. Turner: Yes. And I mean according to the diagram I put…I did put bathroom in it so we could have sanitary facilities a…again because I was being told it’s a dwelling not just useful space I…I made a kitchen in it so if I want to go to the refrigerator take a beer out I have a refrigerator, I have a sink just…just to make it useful.

Mr. Levin: Why would you need a master bedroom?

Mr. Turner: Again, that is because the Town Building Department was calling it a dwelling. It…it…it’s not really a master bedroom that was just because the Town was calling it a…a dwelling so for the lack of a better term that’s what we put down.

Mr. Donovan: Now it doesn’t often take a lot but I’m a little confused because the EAF says in brief description proposed action and I assume you filled out the EAF…use variance to renovate and turn second floor of barn into usable space. The application which I assume you prepared you say use variance to non-conforming accessory building into a third dwelling unit.

Mr. Turner: Again that was from the Town Building Department. I’m calling it useful space; they’re calling it a dwelling unit. I don’t want a dwelling unit. I don’t need an apartment. I don’t want an apartment. I just want to make it useful space if we…if you know, we want to have a Christmas party we can have it in the barn. If, you know we want to have a Super Bowl party we can have it in the barn. That way my wife doesn’t kick everybody out of the living room and…and complain. It…it…it’s not to live in and I’m okay, I mean if we could do whatever and…and if there’s a restriction that says hey, you can’t make it a…a dwelling or an apartment I’m okay with that. That’s not what my intent was. My intent was to fix it up, make it compliment the house and make it useful space.

Mr. McKelvey: The barn has always been there.

Mr. Turner: The barn as been there since 1860, 1870.

Mr. Manley: Well I don’t think there’s any question as to the barn actually being there. I think the big question is what’s the intent? What’s the use of the structure going to be? Because that dictates what you can and can’t do. Does anybody have any other…?

Mr. Maher: I guess my question would be so if in fact, you know, from whatever information you’ve garnered from the Building Department if that’s what you thought they were…they’re pushing you towards or…or…a…required to be a dwelling so the room configuration is because of what you…?

Mr. Turner: Yes.

Mr. Maher: …you…

Mr. Turner: Yes.

Mr. Maher: …thought they’re…

Mr. Turner: Yes.

Mr. Maher: …intention was?

Mr. Turner: Yes. When I…as soon as I said I wanted to put a bathroom in and…and a kitchen it was designated as a dwelling because of those two…those two things.

Mr. Maher: When you say kitchen I mean a sink and…and a refrigerator or a sink, stove and refrigerator, I mean what are you…?

Mr. Scalzo: Mike, we have architectural plans here prepared a…thirteen months ago that show a full kitchen.

Mr. Turner: Yes. Yes. This has probably been going on for two years.

Mr. Manley: So if I may ask Mr. Canfield a quick question…if you remove…if the applicant does not have a kitchen, if they do not have a bedroom, no sink, if they just have a refrigerator plugged in upstairs and just a big open room, are we here? Or is that something that if he wants to use it to have a party upstairs is that…is that still going to be an issue or…?

Mr. Canfield: No if…is this on Bet?

Ms. Gennarelli: Yes.

Mr. Canfield: The individual does have a right to put in habitable space such as a rec room. Okay? But just to clarify for the Board’s knowledge Mr. Turner’s statements are not totally accurate. He doesn’t have a problem with the Building Department. He’s not here because of the problem the Building Departments creating. He’s here because there was work being conducted on this barn with no Permit and when inquiring as to what work was taking place we received a set of plans that revealed a bedroom, a master bath, a living room and a kitchen. In our opinion that’s an apartment. We then received more detailed drawings including pretty much the same. So in our opinion that is an apartment which would be a third dwelling on the…on the property. I did have Mr. Turner in my office and we discussed what this potentially is and his description was it’s a man cave. Unfortunately in our Zoning description and/or in the Building Code there is no description of a man cave. It’s either habitable space or it meets the definition of a dwelling unit and in our opinion this floor plan and the application, once coached to get the application we received these sets of plans. This set of plans that actually reveal to us an apartment. So that’s why he’s here. The Building Department is not being problematic. Yes, you’re accurate in saying that this has been going on for quite some time now. Very fortunate that Mr. Turner has come forward and hopefully we can get this resolved and move forward but I would just like the chain of events to be accurate. I know Mr. Mattina has provided for the Board’s review a chronological order of events of all that’s taken place here but plain and simple what we’re looking at, in our opinion, is an apartment.

Mr. Manley: Thank you. At this point does the Board have any other questions?

Mr. Scalzo: What are you currently utilizing the upstairs space for? Just storage?

Mr. Turner: Nothing. It…it’s empty space. At one time I guess it was used for hay storage but a long time ago.

Mr. Maher: So if…Jerry, if the applicant was to remove or a…have a variance for the gazebo which is separate a…remove this application for consideration and apply for a Permit strictly on the finishing the upstairs into some type of open area or whatever have you then we’re not here at all, correct?

Mr. Canfield: That’s correct. If it were just to be…I’m not going to put the words into the applicant’s mouth but if it did not appear to be an apartment as it is now it’s a horse of another color.

Mr. Maher: Okay. Then it’s just…

Mr. Canfield: No pun intended being that it’s a barn.

Mr. Maher: …so I guess…so I guess if your intention isn’t really to complete it as a dwelling unit as…as it’s…it’s called with the bathroom, bedroom and such like that…if you’re intent isn’t that then obviously an option is to withdraw the application and just proceed with a regular application at the Building Department to finish the space.

Mr. Turner: Okay and…and I…I…I just want to make sure got this clear, that’s what the original intent was before and the Building Department…I hate to say it…directed me to you guys to say that you’re going to dictate to both of us what’s going to happen. Now if that’s not the case that’s fine. We’ll withdraw the application and in…I’ll just go to the Building Department to renovate it as…as big open space. But at the time they said they couldn’t do that we had to come here.

Mr. Scalzo: Well with big open space I…I think…I think once you can flush in there it becomes a different type of a…atmosphere…

Mr. Turner: Okay.

Mr. Scalzo: …you know so am…am I right with that Jim?

Mr. Turner: Right but can we not flush in there then? I mean through the Building Department if…if…if I want to put a bathroom in there are you saying that we do have to come here? I think that’s what…I think that’s what the problem is. That’s why we’re here because I wanted to put a bathroom in so I could flush and that’s where it became from a big rec room to a dwelling.

Mr. Scalzo: Inaudible

Mr. Turner: So again, someone has to dictate what we’re going to do.

Mr. Scalzo: Jerry, I always thought once…once you had indoor plumbing basically it became habitable space. Am I correct?

Mr. Canfield: Well there’s definitions in the Building Code and the Zoning Code of what a dwelling unit is. I mean the bottom line it comes down to the integrity and honesty. Okay? You tell this Board that it’s non-habitable space and it will be a rec room and you support that with a floor plan that indicates that then so be it. Then the Building Department will move forward on issuing the Permit and you do not need to be here. However, if we consistently look at a drawing that consists of a bedroom, a bathroom, a kitchen and whatnot, then it’s an apartment. It is what it is so it’s pretty straight forward. There is no chicanery or…you know there are definitions supporting what we are saying.

Mr. Turner: Okay.

Mr. Canfield: And I think what indicated to Mr. Mattina initially was what he seen originally looked like an apartment to him and that’s what raised the red flag.

Mr. Turner: Okay.

Mr. Manley: The other issue becomes too that if a Building Permit is issued under the auspices that it’s going to be a rec room and magically ten years from now you sell the house and all of a sudden it’s finished upstairs and it’s an apartment…

Mr. Turner: An apartment right.

Mr. Manley: …then there’s going to be a problem…

Mr. Turner: Yeah.

Mr. Manley: …because then at that point you’re probably going to have to rip everything out.

Mr. Turner: Yes, I understand that.

Mr. Manley: And on the flip side, if God forbid there is a fire and somebody is killed in there and there was never a permit or you never had…were granted the use of that then there…there’s a huge liability…

Mr. Turner: I understand that.

Mr. Manley: …on the part of…on the part of the applicant so. Would that be correct?

Mr. Canfield: That is one hundred percent accurate, that’s correct.

Mr. Turner: I understand that.

Mr. Manley: And one of the reasons why you know, this is all required is a lot of it is life/safety issues, you know, that’s what it really comes down to when you’re talking about an additional unit so…

Mr. McKelvey: You showed the plans, has any of the plans been fulfilled?

Mr. Turner: Excuse me?

Mr. McKelvey: Is the kitchen built?

Mr. Turner: No, no. Everything is framed but nothing is built. There’s no electric, there’s no insulation, there’s no sheetrock. It…it…everything is just…just framed.

Mr. Manley: So at this point what are you…

Mr. Turner: I would say at this point let’s withdraw the application for the use variance for the barn.

Mr. Manley: Okay.

Mr. Turner: I still would like to have the area variance for the gazebo at least considered and then I’ll go back to the Building Department and I’ll work with them to restructure everything to make it acceptable to them.

Mr. Manley: Very good.

Mr. Donovan: Just in terms of having the record complete if you could just confirm, after tonight obviously I’m not going to make you go home and…but it needs to be done in writing.

Mr. Turner: Okay.

Mr. Donovan: The withdrawal of the…of the use variance application.

Mr. Turner: So I make that to the Zoning…?

Mr. Donovan: To the Zoning Board, that’s correct.

Mr. Turner: …Board. Okay.

Mr. Donovan: Yes.

Mr. Turner: That’s fine.

Mr. Donovan: Okay, thanks.

Mr. Turner: Okay. And then I’ll go back to the Building Department and confer with them and see what we can get done. Okay.

Mr. Manley: At this point there is no reason to enter anything further into the record with respect to the letters. I’ll…

Mr. Donovan: Correct.

Mr. Manley: …keep them for the file, from the neighbors, but at this point…

Mr. Donovan: Just to be clear, when they’re submitted they are in the record. I know it’s common practice for them to be read. They don’t need to be read to be in the record, once submitted they are part of the record.

Mr. Scalzo: Well actually Jim, the letters addressed both the area and the use variance so there is a portion of those letters that probably should be…

Mr. Manley: Correct. Anything regarding the use variance though we’ll…

Mr. Scalzo: I understand.

Mr. Manley: At this point is there anybody from the public that is here for the use variance portion of this? Okay, at this point I’m just going to read into the record some letters that were received relative to the gazebo area variance. This first one, area variance to keep prior built gazebo, no objections from Ted and Dorothy Watts, 2 Leeland Road, Newburgh. To whom it may concern, my name is Caroline McDonald; I live at 4 Rayland Road, Newburgh, NY. I’m writing regarding the request for converting the barn…so that doesn’t apply. Let see if she says anything about the…does not have any comment with regard to the area variance for the gazebo. In reference to the area variances for the prior built gazebo, as is, we have no objection. Due to a prior commitment we’re not able to attend this meeting. Sincerely Robert J. Dougherty and Virginia Dougherty, 6 Rayland Road. And those were the only comments that we had received in writing. Is there anyone else here from the public to here…that are here to discuss the area variance at all before we make a motion to close the Public Hearing?

No response.

Mr. Manley: At this point, I’d ask the Board to make a motion to close the Public Hearing.

Mr. Levin: I’ll make the motion.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed. The Board will deliberate later on this evening and we’ll probably make a decision on the area variance.

Mr. Turner: Okay, thank you.

 (Time Noted - 7:36 PM)

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ZBA MEETING – DECEMBER 22, 2015 (Resumption for decision: 8:19 PM)

JAMES TURNER 340 LAKESIDE ROAD, NBGH

 (28-3-5) R-1 ZONE

Applicant is requesting area variances for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo (12 x 12).

Mr. Manley: The next application before the Board to consider this evening is the application of James Turner of 340 Lakeside Road in Newburgh requesting an area variance for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo. Again using the same balancing test for the area variance I will start with anybody that wants to; is the benefit able to be achieved by any other means feasible to the applicant?

Mr. Maher: Obviously anything that he would put around the pool for cover a…would be over the square footage you know, so other than coming before this Board there is no way to...for him to achieve his goal there.

Mr. Manley: Besides not putting it up.

Mr. Maher: Well, yeah that is an option yes.

Mr. Manley: Anybody else have any other input on that?

Mr. Masten: No.

Mr. McKelvey: No, I agree with that.

Mr. Manley: Does the a…gazebo create any undesirable change in the neighborhood or character or detriment to any of the other nearby properties?

Mr. Scalzo: Pretty difficult to see behind that tall fence.

Mr. McKelvey: Yeah, the only thing you can see is the top of it.

Mr. Masten: I seen the top.

Mr. Manley: Right.

Mr. Levin: I don’t believe it does.

Mr. Manley: And is the request for the variance substantial?

Mr. Levin: I don’t feel it’s substantial at all.

Mr. McKelvey: No.

Mr. Maher: No, I think while…while it does exceed the a…the (Inaudible) is the lot size a…it’s large enough to accommodate with no problem.

Mr. Manley: The next test that the Board should consider is whether the request will have any adverse physical or environmental effects…

Mr. McKelvey: I don’t think it does.

Mr. Levin: I don’t believe it does.

Mr. Scalzo: I concur.

Mr. Manley: The last that the Board should consider is whether or not the alleged difficulty is self-created. And again, it is something that is self-created by the applicant.

Mr. Levin: Yes.

Mr. Manley: Although on its face is not enough to not grant the variance. Based on the information that has been submitted by the applicant do we have either a motion to approve or disapprove the…?

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

Mr. Manley: We have a motion from John (McKelvey) and a second from Dave (John Masten). Roll Call please.

Ms. Gennarelli:

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Levin: Not for the record, this is the second year I’ve been here and the meeting before Christmas this is the second a gazebo has been approved. Last year we had a gazebo...

Mr. Scalzo: Oh, next to the Meadow Hill School.

Mr. Levin: Yes.

Mr. McKelvey: Oh yeah, that’s right.

Mr. Manley: Good memory.

Mr. Maher: That’s a very good memory.

Mr. Donovan: Actually that could be totally made up but we wouldn’t know.

Mr. Maher: And by the way, it is on the record.

Mr. Levin: Oh, it is?

Mr. Maher: Yes.

Mr. Levin: Okay.

 (Time Noted – 8:22 PM)

Mr. Manley: The next applicant James Turner for a Use variance. The applicant requested that it be a…removed and he is going to send a letter requesting such to the Zoning Board so we will skip to the next item.

 (Time Noted – 8:22 PM)

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:22 PM)

ZBA MEETING – DECEMBER 22, 2015 (Time Noted – 7:10 PM)

JAMES TURNER 340 LAKESIDE ROAD, NBGH

 (28-3-5) R-1 ZONE

Applicant is seeking a use variance for the allowed maximum of one dwelling unit per lot and 185-19-B, non-conforming buildings shall not be modified in any way except as listed in 185-19-B-2 to keep the prior built barn and convert into a third dwelling unit.

**SAME MINUTES USED FOR BOTH THE AREA AND USE VARIANCE APPLICATIONS.**

Mr. Manley: Our next applicant before the Board is James Turner, 340 Lakeside Road in Newburgh, requesting an area variance for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo (12 x 12). And also a Use variance for the allowed maximum of one dwelling unit per lot pursuant to Section 185-19-B non-conforming building shall not be modified in any way except as listed in 185-19-B-2 to keep the prior built barn and convert it into a third dwelling unit. Ms. Gennarelli.

Ms. Gennarelli: Yes, this applicant sent out forty-four letters for the area variance and forty-four letters for the use variance. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Is Mr. Turner here?

Mr. Turner: James Turner at 340 Lakeside Road.

Mr. Manley: Okay Mr. Turner if you could explain to the Board exactly what the request for your variances are and why the Board should grant those?

Mr. Turner: The a…is for a gazebo that we put at our pool a…just as a accent piece a…the problem that I guess we have with it is that we’re on a corner lot and because we’re on a corner lot we have two front yards. A…the pool, I call it the pool in the backyard but the pool because it was built thirty years ago a…didn’t conform back in the old days so by putting a gazebo there we’re…we have a gazebo in the front yard.

Mr. McKelvey: Did you have a Permit for the gazebo?

Mr. Turner: No.

Mr. Manley: You’re home had suffered a fire a number of years ago. Is that correct?

Mr. Turner: Yes sir.

Mr. Manley: When the suffered the a…fire did you repair it…

Mr. Turner: Yes.

Mr. Manley: …back to…

Mr. Turner: Yes.

Mr. Manley: …where it was?

Mr. Turner: Yes.

Mr. Manley: When you repaired it did you obtain a Permit from the Town?

Mr. Turner: Fifty of them.

Mr. Manley: Fifty Permits?

Mr. Turner: Yes.

Mr. Manley: Okay, so I guess the question would be if you knew that you had to get a Permit to repair the house, there were…there’s other work that’s been done why was there a failure to get a Permit for those items?

Mr. Turner: A…are we talking about the gazebo?

Mr. Manley: The gazebo and you know the other stuff that’s open that you’re requesting variances on.

Mr. Turner: Well, the…the house has been completed, we finally did get a C.O. for that and we’re continuing to work on the property to make it nice. As far as the gazebo I thought it was portable, I didn’t think it is more than a hundred square feet…I don’t…I didn’t think it needed a Permit to put a gazebo at the pool.

Mr. Manley: Okay.

Mr. Donovan: If I can, just for my clarification, because the map I have shows proposed gazebo, is it past the proposed stage?

Mr. Turner: It’s past.

Mr. McKelvey: Yes.

Mr. Turner: Yes.

Mr. Manley: Do any of the Board Members have any questions for the applicant? And at this point we’re specifically looking at the area variance…at this point.

Mr. Scalzo: I have a question, the a…the existing frame cabin not talking about the gazebo at this point shows an offset on the survey map of twenty feet. You wouldn’t happen to know what your offset from your gazebo to the right of way line on Rayland would you?

Mr. Turner: A…I…I think there’s a diagram there. It should have the exact dimensions on it. A…it…it’s probably not on that it’s probably on some other paperwork that was submitted. I want say from this road the fence is probably ten feet and from the fence to the gazebo is probably another fifteen feet. I want to say twenty-five off Rayland.

Mr. Scalzo: Now…

Mr. Turner: I’m just guessing, I mean, you…if you have the diagram there…

Mr. Scalzo: The diagram.

Mr. Turner: Yes.

Mr. Scalzo: The sketch that we’re looking at a…Rayland Road…Rayland Avenue you’re showing eleven feet off Rayland. Is that from the edge of the pavement or from the actual right of way line?

Mr. Turner: A…I believe it’s the edge of the pavement.

Mr. Maher: I see that a…it’s just that the difference based on the…on the survey shows…

Ms. Gennarelli: Mike, can you just pull your microphone in? Thank you, okay.

Mr. Maher: Based on the survey, the…the distance is much greater that’s why…I guess that’s the question, so…

Mr. Scalzo: Yeah, I ended up I went…a small little dog chased me off the property but a…

Mr. Turner: Nope…not mine.

Mr. Scalzo: …but a…

Mr. Donovan: It would have to be a big dog to chase you Darrin.

Mr. Turner: It chases me too but that’s…

Mr. Scalzo: What the…it appears a…actually it appeared closer to the right of way line than the gazebo did…perhaps your…your sketch here is…is more accurate I just a…with the red box on the survey a… I was…

Mr. Turner: If the red box is just hand done to show roughly where it was…it’s…it’s not to scale. The sketch…the hand sketch is closer to scale.

Mr. Maher: More accurate.

Mr. Scalzo: Right. You did…just confirming, you did say it is…should indeed be portable, the gazebo?

Mr. Turner: It…it’s prior built. I picked…I’m in the towing business…I picked up my tow truck, I backed it up on my grass and I dropped it.

Mr. Scalzo: Okay.

Mr. Turner: I can easily pick it up, take it away.

Mr. Scalzo: I understand. Thank you.

Mr. Manley: Are there any other questions from the Board at this point before we open it up to the public?

No response.

Mr. Manley: Does the public have any questions or comments with regard to the application for the area variance at this point?

No response.

Mr. Manley: I do have a couple of comments that were received in writing. I’ll read them into the record after we get to the use variance. At this point if there’s no other questions we’ll move on to the second application which is the use variance. Now before we get into the use variance and questions from the Board I just want to go over with the applicant: a use variance is one of the most difficult variances to obtain from the Zoning Board. We have certain statutory requirements that we are required to follow and State Law is very specific on how this Board can grant a use variance. So I just want to let you know the different thing we are going to be looking at. The Board has to look at four items and the applicant must achieve a burden of proof on each one of those items. So to allow a use not otherwise use allowed in zoning an applicant must demonstrate to this Board unnecessary hardship. That demonstration includes all of the following for each and every permitted use within the zone: that the property cannot realize a reasonable return, substantial as shown by competent financial evidence, the alleged hardship is unique and does not apply to a substantial portion of the district or the neighborhood, the requested variance will not alter the essential character of the neighborhood, and the fourth is that the alleged hardship has not been self-created. If the applicant does not meet all four of those test this…this Board by State Law is required to not grant the variance. So there is a significant test that has to be achieved. So at this point I am going to open it up to the Board Members for their questions with respect to the use variance.

Mr. Scalzo: Actually could we ask…

Mr. Manley: Sure.

Mr. Scalzo: …Mr. Turner to go ahead and present his a…

Mr. Manley: His case first.

Mr. Scalzo: …his case rather than us asking question first.

Mr. Turner: My…my case is pretty simple I don’t have a hardship. I’m not doing it to…to receive value out of the property. I don’t need the value out of the property. I was doing it, just like the gazebo, to make it aesthetically pleasing, acceptable and useful. That’s it. I…I…I don’t have a hardship. I just want to make it nice. I think the reason why we’re here is because in the process of trying to make it nice I ran into problems with the Building Department and the Building Department wanted me to come here to get direction from the Board on how to proceed from this point forward. What can we do? What can we not do? And you guys are gonna really dictate to me how to go forward.

Mr. Manley: And that’s where I think…we don’t dictate to you what you have to do, you present your case as to what you would like…

Mr. Turner: Okay.

Mr. Manley: …and you present to this Board certain items to make your case and then we determine whether or not you meet that threshold. If you meet the threshold then this Board can decide to grant the variance. If you don’t meet that threshold then you may not obtain, you know, the variance so…it’s really your…your presentation.

Mr. Turner: And again, I’m not looking for a dwelling. I’m not looking to make an apartment. I’m not looking for a dwelling. I just want to finish it, put a roof on it, side it, make it usable space. If you…if for lack of a better term you want to say…make it a man cave. If I want to put a TV in there and go there in my barn and work on my cars or…go upstairs and watch a football game on TV without being in…in the house. If I want to have some friends over, they want to walk in you know, without taking off their shoes it…it…it’s a barn. We just want to make it useful space.

Mr. Scalzo: Does it currently have plumbing?

Mr. Turner: A…it had…it had water going to the barn a…from a well a…it’s…it’s always had water to it and it’s always had electricity to it. It does not have the water currently hooked up nor does it have electricity a…currently hooked up but the…the electric meter has been there. It was taken out years ago but the electric meter was there and it did have electric to the barn, it did have water to the barn.

Mr. Scalzo: Sanitary facilities?

Mr. Turner: No sanitary facilities.

Mr. McKelvey: You are just going to use it for your own use?

Mr. Turner: Yes. And I mean according to the diagram I put…I did put bathroom in it so we could have sanitary facilities a…again because I was being told it’s a dwelling not just useful space I…I made a kitchen in it so if I want to go to the refrigerator take a beer out I have a refrigerator, I have a sink just…just to make it useful.

Mr. Levin: Why would you need a master bedroom?

Mr. Turner: Again, that is because the Town Building Department was calling it a dwelling. It…it…it’s not really a master bedroom that was just because the Town was calling it a…a dwelling so for the lack of a better term that’s what we put down.

Mr. Donovan: Now it doesn’t often take a lot but I’m a little confused because the EAF says in brief description proposed action and I assume you filled out the EAF…use variance to renovate and turn second floor of barn into usable space. The application which I assume you prepared you say use variance to non-conforming accessory building into a third dwelling unit.

Mr. Turner: Again that was from the Town Building Department. I’m calling it useful space; they’re calling it a dwelling unit. I don’t want a dwelling unit. I don’t need an apartment. I don’t want an apartment. I just want to make it useful space if we…if you know, we want to have a Christmas party we can have it in the barn. If, you know we want to have a Super Bowl party we can have it in the barn. That way my wife doesn’t kick everybody out of the living room and…and complain. It…it…it’s not to live in and I’m okay, I mean if we could do whatever and…and if there’s a restriction that says hey, you can’t make it a…a dwelling or an apartment I’m okay with that. That’s not what my intent was. My intent was to fix it up, make it compliment the house and make it useful space.

Mr. McKelvey: The barn has always been there.

Mr. Turner: The barn as been there since 1860, 1870.

Mr. Manley: Well I don’t think there’s any question as to the barn actually being there. I think the big question is what’s the intent? What’s the use of the structure going to be? Because that dictates what you can and can’t do. Does anybody have any other…?

Mr. Maher: I guess my question would be so if in fact, you know, from whatever information you’ve garnered from the Building Department if that’s what you thought they were…they’re pushing you towards or…or…a…required to be a dwelling so the room configuration is because of what you…?

Mr. Turner: Yes.

Mr. Maher: …you…

Mr. Turner: Yes.

Mr. Maher: …thought they’re…

Mr. Turner: Yes.

Mr. Maher: …intention was?

Mr. Turner: Yes. When I…as soon as I said I wanted to put a bathroom in and…and a kitchen it was designated as a dwelling because of those two…those two things.

Mr. Maher: When you say kitchen I mean a sink and…and a refrigerator or a sink, stove and refrigerator, I mean what are you…?

Mr. Scalzo: Mike, we have architectural plans here prepared a…thirteen months ago that show a full kitchen.

Mr. Turner: Yes. Yes. This has probably been going on for two years.

Mr. Manley: So if I may ask Mr. Canfield a quick question…if you remove…if the applicant does not have a kitchen, if they do not have a bedroom, no sink, if they just have a refrigerator plugged in upstairs and just a big open room, are we here? Or is that something that if he wants to use it to have a party upstairs is that…is that still going to be an issue or…?

Mr. Canfield: No if…is this on Bet?

Ms. Gennarelli: Yes.

Mr. Canfield: The individual does have a right to put in habitable space such as a rec room. Okay? But just to clarify for the Board’s knowledge Mr. Turner’s statements are not totally accurate. He doesn’t have a problem with the Building Department. He’s not here because of the problem the Building Departments creating. He’s here because there was work being conducted on this barn with no Permit and when inquiring as to what work was taking place we received a set of plans that revealed a bedroom, a master bath, a living room and a kitchen. In our opinion that’s an apartment. We then received more detailed drawings including pretty much the same. So in our opinion that is an apartment which would be a third dwelling on the…on the property. I did have Mr. Turner in my office and we discussed what this potentially is and his description was it’s a man cave. Unfortunately in our Zoning description and/or in the Building Code there is no description of a man cave. It’s either habitable space or it meets the definition of a dwelling unit and in our opinion this floor plan and the application, once coached to get the application we received these sets of plans. This set of plans that actually reveal to us an apartment. So that’s why he’s here. The Building Department is not being problematic. Yes, you’re accurate in saying that this has been going on for quite some time now. Very fortunate that Mr. Turner has come forward and hopefully we can get this resolved and move forward but I would just like the chain of events to be accurate. I know Mr. Mattina has provided for the Board’s review a chronological order of events of all that’s taken place here but plain and simple what we’re looking at, in our opinion, is an apartment.

Mr. Manley: Thank you. At this point does the Board have any other questions?

Mr. Scalzo: What are you currently utilizing the upstairs space for? Just storage?

Mr. Turner: Nothing. It…it’s empty space. At one time I guess it was used for hay storage but a long time ago.

Mr. Maher: So if…Jerry, if the applicant was to remove or a…have a variance for the gazebo which is separate a…remove this application for consideration and apply for a Permit strictly on the finishing the upstairs into some type of open area or whatever have you then we’re not here at all, correct?

Mr. Canfield: That’s correct. If it were just to be…I’m not going to put the words into the applicant’s mouth but if it did not appear to be an apartment as it is now it’s a horse of another color.

Mr. Maher: Okay. Then it’s just…

Mr. Canfield: No pun intended being that it’s a barn.

Mr. Maher: …so I guess…so I guess if your intention isn’t really to complete it as a dwelling unit as…as it’s…it’s called with the bathroom, bedroom and such like that…if you’re intent isn’t that then obviously an option is to withdraw the application and just proceed with a regular application at the Building Department to finish the space.

Mr. Turner: Okay and…and I…I…I just want to make sure got this clear, that’s what the original intent was before and the Building Department…I hate to say it…directed me to you guys to say that you’re going to dictate to both of us what’s going to happen. Now if that’s not the case that’s fine. We’ll withdraw the application and in…I’ll just go to the Building Department to renovate it as…as big open space. But at the time they said they couldn’t do that we had to come here.

Mr. Scalzo: Well with big open space I…I think…I think once you can flush in there it becomes a different type of a…atmosphere…

Mr. Turner: Okay.

Mr. Scalzo: …you know so am…am I right with that Jim?

Mr. Turner: Right but can we not flush in there then? I mean through the Building Department if…if…if I want to put a bathroom in there are you saying that we do have to come here? I think that’s what…I think that’s what the problem is. That’s why we’re here because I wanted to put a bathroom in so I could flush and that’s where it became from a big rec room to a dwelling.

Mr. Scalzo: Inaudible

Mr. Turner: So again, someone has to dictate what we’re going to do.

Mr. Scalzo: Jerry, I always thought once…once you had indoor plumbing basically it became habitable space. Am I correct?

Mr. Canfield: Well there’s definitions in the Building Code and the Zoning Code of what a dwelling unit is. I mean the bottom line it comes down to the integrity and honesty. Okay? You tell this Board that it’s non-habitable space and it will be a rec room and you support that with a floor plan that indicates that then so be it. Then the Building Department will move forward on issuing the Permit and you do not need to be here. However, if we consistently look at a drawing that consists of a bedroom, a bathroom, a kitchen and whatnot, then it’s an apartment. It is what it is so it’s pretty straight forward. There is no chicanery or…you know there are definitions supporting what we are saying.

Mr. Turner: Okay.

Mr. Canfield: And I think what indicated to Mr. Mattina initially was what he seen originally looked like an apartment to him and that’s what raised the red flag.

Mr. Turner: Okay.

Mr. Manley: The other issue becomes too that if a Building Permit is issued under the auspices that it’s going to be a rec room and magically ten years from now you sell the house and all of a sudden it’s finished upstairs and it’s an apartment…

Mr. Turner: An apartment right.

Mr. Manley: …then there’s going to be a problem…

Mr. Turner: Yeah.

Mr. Manley: …because then at that point you’re probably going to have to rip everything out.

Mr. Turner: Yes, I understand that.

Mr. Manley: And on the flip side, if God forbid there is a fire and somebody is killed in there and there was never a permit or you never had…were granted the use of that then there…there’s a huge liability…

Mr. Turner: I understand that.

Mr. Manley: …on the part of…on the part of the applicant so. Would that be correct?

Mr. Canfield: That is one hundred percent accurate, that’s correct.

Mr. Turner: I understand that.

Mr. Manley: And one of the reasons why you know, this is all required is a lot of it is life/safety issues, you know, that’s what it really comes down to when you’re talking about an additional unit so…

Mr. McKelvey: You showed the plans, has any of the plans been fulfilled?

Mr. Turner: Excuse me?

Mr. McKelvey: Is the kitchen built?

Mr. Turner: No, no. Everything is framed but nothing is built. There’s no electric, there’s no insulation, there’s no sheetrock. It…it…everything is just…just framed.

Mr. Manley: So at this point what are you…

Mr. Turner: I would say at this point let’s withdraw the application for the use variance for the barn.

Mr. Manley: Okay.

Mr. Turner: I still would like to have the area variance for the gazebo at least considered and then I’ll go back to the Building Department and I’ll work with them to restructure everything to make it acceptable to them.

Mr. Manley: Very good.

Mr. Donovan: Just in terms of having the record complete if you could just confirm, after tonight obviously I’m not going to make you go home and…but it needs to be done in writing.

Mr. Turner: Okay.

Mr. Donovan: The withdrawal of the…of the use variance application.

Mr. Turner: So I make that to the Zoning…?

Mr. Donovan: To the Zoning Board, that’s correct.

Mr. Turner: …Board. Okay.

Mr. Donovan: Yes.

Mr. Turner: That’s fine.

Mr. Donovan: Okay, thanks.

Mr. Turner: Okay. And then I’ll go back to the Building Department and confer with them and see what we can get done. Okay.

Mr. Manley: At this point there is no reason to enter anything further into the record with respect to the letters. I’ll…

Mr. Donovan: Correct.

Mr. Manley: …keep them for the file, from the neighbors, but at this point…

Mr. Donovan: Just to be clear, when they’re submitted they are in the record. I know it’s common practice for them to be read. They don’t need to be read to be in the record, once submitted they are part of the record.

Mr. Scalzo: Well actually Jim, the letters addressed both the area and the use variance so there is a portion of those letters that probably should be…

Mr. Manley: Correct. Anything regarding the use variance though we’ll…

Mr. Scalzo: I understand.

Mr. Manley: At this point is there anybody from the public that is here for the use variance portion of this? Okay, at this point I’m just going to read into the record some letters that were received relative to the gazebo area variance. This first one, area variance to keep prior built gazebo, no objections from Ted and Dorothy Watts, 2 Leeland Road, Newburgh. To whom it may concern, my name is Caroline McDonald, I live at 4 Rayland Road, Newburgh, NY. I’m writing regarding the request for converting the barn…so that doesn’t apply. Let see if she says anything about the…does not have any comment with regard to the area variance for the gazebo. In reference to the area variances for the prior built gazebo, as is, we have no objection. Due to a prior commitment we’re not able to attend this meeting. Sincerely Robert J. Dougherty and Virginia Dougherty, 6 Rayland Road. And those were the only comments that we had received in writing. Is there anyone else here from the public to here…that are here to discuss the area variance at all before we make a motion to close the Public Hearing?

No response.

Mr. Manley: At this point, I’d ask the Board to make a motion to close the Public Hearing.

Mr. Levin: I’ll make the motion.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed. The Board will deliberate later on this evening and we’ll probably make a decision on the area variance.

Mr. Turner: Okay, thank you.

 (Time Noted - 7:36 PM)

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ZBA MEETING – DECEMBER 22, 2015 (Resumption for decision: 8:19 PM)

JAMES TURNER 340 LAKESIDE ROAD, NBGH

 (28-3-5) R-1 ZONE

Applicant is requesting area variances for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo (12 x 12).

Mr. Manley: The next application before the Board to consider this evening is the application of James Turner of 340 Lakeside Road in Newburgh requesting an area variance for the maximum allowed square footage of accessory structures and accessory structures shall be located in a side or rear yard to keep a prior built gazebo. Again using the same balancing test for the area variance I will start with anybody that wants to; is the benefit able to be achieved by any other means feasible to the applicant?

Mr. Maher: Obviously anything that he would put around the pool for cover a…would be over the square footage you know, so other than coming before this Board there is no way to...for him to achieve his goal there.

Mr. Manley: Besides not putting it up.

Mr. Maher: Well, yeah that is an option yes.

Mr. Manley: Anybody else have any other input on that?

Mr. Masten: No.

Mr. McKelvey: No, I agree with that.

Mr. Manley: Does the a…gazebo create any undesirable change in the neighborhood or character or detriment to any of the other nearby properties?

Mr. Scalzo: Pretty difficult to see behind that tall fence.

Mr. McKelvey: Yeah, the only thing you can see is the top of it.

Mr. Masten: I seen the top.

Mr. Manley: Right.

Mr. Levin: I don’t believe it does.

Mr. Manley: And is the request for the variance substantial?

Mr. Levin: I don’t feel it’s substantial at all.

Mr. McKelvey: No.

Mr. Maher: No, I think while…while it does exceed the a…the (Inaudible) is the lot size a…it’s large enough to accommodate with no problem.

Mr. Manley: The next test that the Board should consider is whether the request will have any adverse physical or environmental effects…

Mr. McKelvey: I don’t think it does.

Mr. Levin: I don’t believe it does.

Mr. Scalzo: I concur.

Mr. Manley: The last that the Board should consider is whether or not the alleged difficulty is self-created. And again, it is something that is self-created by the applicant.

Mr. Levin: Yes.

Mr. Manley: Although on its face is not enough to not grant the variance. Based on the information that has been submitted by the applicant do we have either a motion to approve or disapprove the…?

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

Mr. Manley: We have a motion from John (McKelvey) and a second from Dave (John Masten). Roll Call please.

Ms. Gennarelli:

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Levin: Not for the record, this is the second year I’ve been here and the meeting before Christmas this is the second a gazebo has been approved. Last year we had a gazebo...

Mr. Scalzo: Oh, next to the Meadow Hill School.

Mr. Levin: Yes.

Mr. McKelvey: Oh yeah, that’s right.

Mr. Manley: Good memory.

Mr. Maher: That’s a very good memory.

Mr. Donovan: Actually that could be totally made up but we wouldn’t know.

Mr. Maher: And by the way, it is on the record.

Mr. Levin: Oh, it is?

Mr. Maher: Yes.

Mr. Levin: Okay.

 (Time Noted – 8:22 PM)

Mr. Manley: The next applicant James Turner for a Use variance. The applicant requested that it be a…removed and he is going to send a letter requesting such to the Zoning Board so we will skip to the next item.

 (Time Noted – 8:22 PM)

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:22 PM)

ZBA MEETING – DECEMBER 22, 2015 (Time Noted – 7:36 PM)

BOB HOLMES/WTF NY 979 & 983 ROUTE 32, NBGH

 (2-1-42 & 2-1-46) R/R ZONE

Applicant is requesting an area variance for the lot width of a proposed lot for a lot line change application before the planning board.

Mr. Manley: Our next applicant before the Board this evening is Bob Holmes/WTF NY, 979 & 983 Route 32 in Newburgh, request for an area variance for the lot width of a proposed lot (2-1-42) for a lot line change application before the planning board. Ms. Gennarelli…

Ms. Gennarelli: This applicant sent out seventeen letters and the mailings and the publications are in order but I believe there was a problem with the posting.

Mr. Manley: Yes, we were out to do a site inspection specifically yesterday at about 3:00, the posting is not there at all for the a…notification of Public Hearing. It is completely…

Mr. Brown: Gone.

Mr. Manley: …gone.

Mr. Brown: Okay.

Mr. Manley: Myself and Mr. McKelvey were out there. Mr. Scalzo was there as well he was there on Sunday didn’t quite see anything. Mr. Levin was there…was that Saturday or Sunday that you were there?

Mr. Levin: Sunday.

Mr. Manley: Sunday and he couldn’t…he couldn’t find it. I don’t know if the other Board Members… Did anybody else?

Mr. Maher: I didn’t…I didn’t see it there. I saw the picture in the photograph, the picture in the packet but I didn’t see it there actually so...

Mr. McKelvey: Plus…plus the road was chained off.

Mr. Brown: Yeah, that road is…is actually not on our property a…a…we did do it. We did it early in the month, I mean, we did submit the photo to the Board that shows that it was posted. A…if somebody takes it down…you know that’s…we have no control of that.

Mr. Manley: Right but you do have to monitor that and make sure that stays up because that is one of the requirements within the…within the Law. So what we can do is we can hear it this evening…

Mr. Brown: Okay.

Mr. Manley: …but it’s going to have to be re-posted up there and it has to stay until the next Public Hearing at which point we can then vote on it once we know that…we verify that it’s been up. So you’ll just have to re-file the Affidavit of Posting with Betty again.

Mr. Brown: Alright, so does it even pay to make a presentation tonight I…?

Mr. Manley: I would because there may be people from the public…

Mr. Brown: Okay.

Mr. Manley: …here this evening that are here to hear the application.

Mr. Brown: Okay, first of all I’m the engineer for the applicant Charles Brown. This is an application before the planning board. It’s two existing lots Lot 46 and Lot 42. Lot 46 is landlocked, it’s three acres. Lot 42 has frontage on Route 32 it’s one point eight acres. The parcels are in the R/R zone which requires two acres of minimum lot area. The application before the planning board is for a lot line a…to add area to the front lot, Lot 42 to make it comply with the minimum two acre zoning and then to give a twenty…fifteen foot strip along a…Lot 42 that would become part of Lot 46 for access that it’s serviced by a common driveway. In doing this, you know, we provide access for the back lot a…the only variance we would need would be for the width of the front lot again because in the R/R dist…a…zone you need a hundred…sorry, two hundred foot minimum width. A…we’re showing on there a hundred and forty-seven a…the reason that that…that dimension is at that location is because that gives us the minimum building area that’s required for the Building Code for that lot that’s everything within the setbacks here. You’re required to have fifteen thousand square with that line a where it’s shown we got fifteen thousand, one hundred and thirty seven so a…if we move that line getting closer to the dwelling a…the lot width does increase however we a…won’t meet the minimum building…buildable area so we would need two variances. A…nowhere on that lot do we make the lot width of two hundred feet and a…a…this is surrounded a…mostly by a farm and vacant property. There’s a couple of houses on small lots along Route 32 on both sides of this property. It would really not be out of character in the neighborhood. It’s not self-created because these lots were created a long time ago and the a…geometry a…is…is what it is. I don’t see it being out of character with the neighborhood again a…the lots are also heavily wooded a…where we’re showing the a…proposed dwelling units are essentially in the center lots so they leave a pretty big area that would maintain…would stay with it so that the houses probably wouldn’t even be visible from any of the adjoining properties.

Mr. Manley: Thank you Mr. Brown.

Mr. Brown: You’re welcome.

Mr. Manley: Do any of the Board Members have any questions for the applicant?

Mr. Scalzo: Charlie has the planning board asked to any site distance studies there?

Mr. Brown: It’s…it’s actually shown on the plan we’ve got nine hundred feet each way.

Mr. Scalzo: Oh geez, I’m sorry I didn’t get that…

Mr. Brown: It’s right on the edge there a…and it’s…that’s the jurisdiction of the DOT. We have had Siby Zachariah out there and a…we’re going to have to modify that a little bit so that a…in the event this other a…driveway that services the huge piece in the back is ever used they can come up the same apron but other than that she’s okay with it.

Mr. Manley: Now you say there’s issues with the topography? Can you just discuss again or actually show me on the map where it…because I couldn’t get into the property a…does it drop off or in the back or…?

Mr. Brown: No, we have no issues with topography.

Mr. Manley: Okay. Is there a stream or anything that goes through the back part of the property or wetlands?

Mr. Brown: Not on this a…once you get behind this property it drops down substantially and there is a stream down there on this a…this large piece owned by a…Tucciarone a…but it’s a couple of hundred feet down the hill.

Mr. Manley: Okay.

Mr. Scalzo: DEC or Federal?

Mr. Brown: I don’t know.

Mr. Scalzo: Okay. Are you…would you estimate that you’re more than two hundred feet it with any of your sanitary design?

Mr. Brown: Oh yeah, definitely.

Mr. Manley: So it will be serviced by one driveway?

Mr. Brown: A common driveway to this point right here and then it splits off to service this dwelling and this one shifts over to the fifty foot wide flag pole which we’re adding to this lot…from this lot then to come into the back house, the rear.

Mr. Manley: And if we were to do back out there to try to access that the best place to park would be? Because you can’t park there’s that chain that goes across there, you had stated that you can’t access the property from there or…?

Mr. Brown: You can. I would a…my client Bob Holmes who is a realtor with…with a…with John Lease a…I think he does have a key to that lock and I can get you in there. A…also Gillespie next door has been pretty accommodating and you can get from his piece all the way back into here…

Mr. Manley: Okay.

Mr. Brown: And then come you know down the (inaudible) road in reverse but a…I could get a hold of Bob if you let me know when you want to go out a…and I’ll get you back there.

Mr. Manley: Okay. Are there any other questions from any of the Board Members?

No response.

Mr. Manley: At this point, I open it up for the public comment. Is there any questions or comments from the public?

No response.

Mr. Manley: Alright. Do I have a motion from the Board to hold the Public Hearing open?

Mr. McKelvey: I’ll make a motion to hold the Public Hearing open.

Mr. Masten: Second.

Mr. Donovan: Just to be clear that’s the January meeting.

Mr. Manley: January, yes.

Mr. Donovan: The fourth Thursday in January.

Ms. Gennarelli: January 28th.

Mr. Donovan: We can all tell by the calendars that we have…

Ms. Gennarelli: Yes, we have calendars from Andy (Zarutskie).

Mr. Brown: Thank you.

Ms. Gennarelli: Do we want to vote on that?

Mr. McKelvey: If anybody is interested it won’t be re noticed.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

 (Time Noted – 7:46 PM)

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 (Time Noted – 8:22 PM)

Mr. Manley: The next item which also is going to be on the next meeting Bob Holmes, WTF NY. will be on our January meeting.

 (Time Noted – 8:23 PM)

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:46 PM)

ZBA MEETING – DECEMBER 22, 2015 (Time Noted – 7:46 PM)

THOMAS C. WEDDELL 6 HERITAGE LANE, ROCK TAVERN

 (89-1-10.1) R-1 ZONE

Applicant is seeking area variances for the minimum lot area and the minimum front yard setback for an existing single-family dwelling on parcel 89-1-10.1 on an application before the planning board for lot line changes among four lots at 6, 7, 12 and 14 Heritage Lane, Rock Tavern (89-1-10.1, 10.2, 77.1 and 77.2).

Mr. Manley: The next item on this evening’s agenda is an application for Thomas C. Weddell, 6 Heritage Lane, Rock Tavern, it is an area variances for the minimum lot area and the minimum front yard setback for an existing single-family dwelling on parcel 89-1-10.1 on an application before the planning board for lot line changes among four lots at 6, 7, 12 and 14 Heritage Lane, Rock Tavern. Ms. Gennarelli…

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Would the applicant state your name please for the Board?

Mr. Doce: My name is Darren Doce I’m the engineer for the applicant Tom Weddell. We currently have a…a lot line change application before the planning board that involves the four shaded lots shown on this plan. There are two a…existing non-conforming lots one of which is 77.2, the other is 10.1. Doing a lot line change with 77.2 to make it conforming as to area and lot width it also a…doing a lot line change between 10.1, 10.2 and 77.1 to provide a connection between 10.2 a…and 9.12. In doing so 10.1 is currently a…a non-conforming lot with respect to lot area and a front yard setback. The house was built in a…1900 prior to zoning and also the boundary of this lot was created by a sub-division in 1980 which at the time the parcel was zoned R-3 and you’re allowed twenty thousand square feet and the lot is thirty-one thousand square feet. There’s no a…physical way to increase the area of this lot so the area we’re taking away to provide this connection we’re going to add to the south so that it stays what it presently is at thirty-one thousand square feet thereby not making the a…the non-conformity any larger and a…there’s no area really to a…the house is set off the line twenty-three feet and we can’t really change that. So we’re asking for the area variance for this lot 10.1 and the area variance for the setback of twenty-three feet.

Mr. Manley: What is the purpose of making all these changes?

Mr. Doce: Well his daughter lives here, she just wanted to make her lot a little larger and make it conforming. Mr. Weddell was in this lot, his son with grandchildren live in 9.12. Mr. Weddell previously did not own this lot. His grandchildren would run back and forth and that caused a little bit of a conflict with the owner of this lot. Since he’s purchased it but in the event he ever resells it he does not want that problem to reoccur so he’d like this connection with his son’s lot so his grandchildren can go back and forth without crossing someone else’s property.

Mr. Maher: So in essence you’re not…you’re not actually increasing or decreasing the lot size?

Mr. Doce: No, we’re just reconfiguring the shaded (inaudible) lot size. Like I said at the time that lot was created that conformed to the zoning. The Town has since rezoned.

Mr. Donovan: So it’s pretty much a… Well let me ask; is it exactly the same in terms of...?

Mr. Doce: It’s exactly the same size. Yes.

Mr. Donovan: And the front…front yard setback is…?

Mr. Doce: Unchanged because that’s what…

Mr. Donovan: Because you’re not making any modifications to the front…

Mr. Doce: No.

Mr. Donovan: …lot line.

Mr. Maher: And the only reason you’re here is because it’s pre-existing…?

Mr. Doce: Yes.

Mr. Maher: …non-conforming?

Mr. Doce: Yes.

Mr. Maher: Otherwise you wouldn’t be here at all.

Mr. Doce: Right.

Mr. Manley: Do any of the other Board Members have any questions before I open it to the public?

Mr. Scalzo: I think it’s a great layout, the way you handled what you had to do here and I…I’ve been through the site it’s a…it’s a nice little family comp….

Mr. Doce: Yeah, yeah right now it’s all family.

Mr. Manley: At this point I’d like to open up the meeting to anyone from the public if you have any comments with regard to this application, if you could please step forward, state your name and address for the record please.

Mr. Mulholland: My name is Pat Mulholland I sold them the property and I’m in support of what he wants to do because there’s nobody to disturb back there cause it’s on the other side of the aqueduct and the only property it border is his so I just want to let you know I’m in support of it.

Mr. Manley: Thank you Mr. Mulholland. Yes sir?

Mr. Cush: My name is Mr. Cush I own the adjoining property. Are they going to build on this property or just subdivide it?

Mr. Manley: Well from what the applicant has state they’re just moving lines on the property not for building purposes from they’ve testified this evening. They’re actually doing it so that the property abuts the son’s property. Is that correct?

Mr. Doce: Correct. It’s four lots now with four houses and it’s going to remain four lots with four houses. It’s just a…

Mr. Cush: Inaudible.

Mr. Manley: Sure, you might want to just bring that microphone with you.

Mr. Cush: Oh, okay. This…this is my property line right here, I believe.

Mr. Doce: No, you’re back there sir.

Mr. Cush: It looks reversed to me.

Mr. Doce: This is the aqueduct.

Mr. Cush: Where’s 747? Okay, now I…I’m turned around here, okay. Well anyway, like I said this…this is my property line here and what I’m concerned about is you know, if they’re going to build. How many houses are they going to put in?

Ms. Gennarelli: Can you just hold that microphone up a little bit?

Mr. Cush: I’m sorry.

Ms. Gennarelli: It’s all going on the record.

Mr. Cush: If they’re going to build, how many houses are they going to build and you know…how big are these lots going to be, per say…?

Mr. Manley: Well the applicant hasn’t testified that they’re building any lots before this Board. We can certainly ask Mr. Doce if the applicant has any plans to subdivide the property in the back but they’re just changing lines on the…on the property which doesn’t really have any impact on that vacant property that’s in the back.

Mr. Donovan: Just so you’re clear, this proposal does not create any building lot.

Mr. Cush: Just so you understand something else, there’s also a stream that runs through here so...I don’t know what that…if they did do any building what would that do?

Mr. Scalzo: If they did any…any proposed further development we would…they would have to apply to the planning board. They would need to meet all the criteria for that particular zone that they’re in and you would also be noticed a…potentially be noticed for a Public Hearing that you would be able to come and speak exactly as you are this evening a…in support or lack of support for any other actions that are going on. So this isn’t…as…as they said there’s four lots, four houses today and if this is approved there will be four lots, four houses tomorrow. Anything…any future development of this lot would be subject to planning board review and (Inaudible)

Mr. Cush: Let me ask you one other question then. How big are these lots going to be in footage? Per say? Is it a quarter acre, a half-acre…?

Ms. Gennarelli: Could you give Darren the other microphone? Yeah, thanks.

Mr. Doce: The smallest is an existing thirty-one thousand square foot lot that will remain at thirty-one thousand square foot lot and the largest is a five acre lot. The other lots are roughly…this is an acre and a…two acres. All the houses are existing. No new houses are proposed.

Mr. Cush: Well I don’t mind them building the houses if they do. That’s not the problem. I just want to know what the size of the acreage was going to be for each house.

Mr. Manley: There’s no houses that are being proposed at this point to be built.

Mr. Cush: Okay.

Mr. Manley: Mr. Doce, is there any plans before the planning board at this time to subdivide the property further or…?

Mr. Doce: There are no plans as a…Mr. Cush said there’s a stream running through here. This is wet and appears not to even be buildable…you couldn’t get a septic in…in that area they’re in. There are no plans, it’s…it is what it is, four existing lots. They just want to reconfigure them a little to increase the sizes of some of them.

Mr. Manley: And the applicant has testified that the sole purpose is to create a strip of property that borders his son’s property so that in the future if they sell the house that they own, that’s a rental presently, or that they are going to rent out whatever they are doing with it…if they do sell it…

Mr. Doce: It’s vacant right now but the son did live in it…right now it’s vacant. I’ve asked and he’d rent it at some time.

Mr. Manley: If they did sell it in the future that they maintain that piece of property that borders the son’s property so that they can freely go between properties without trespassing. Is that a…(Inaudible)?

Mr. Cush: I have no objection about changing the a…zoning like he wants so…I just was concerned, you know, what…what the size of the lots were going to be because…I have two acres myself and I was just concerned that they…they’re going to make them shorter and shorter. Like I was told I couldn’t build on mine because I have just under two acres. I got like one point eight acres and I was told I couldn’t put a second house on it. I was just concerned that, you know what the size was going to be. Thank you.

Mr. Manley: You’re welcome. Are there any other questions from the public?

No response.

Mr. Manley: There being no further questions any questions from the Board?

Mr. Scalzo: One Darren, I…I just happened to pick up that it’s behind a…actually that’s Mr. Cush’s adjoin…is it an improved right of way? Is there actual pavement?

Mr. Doce: Yes.

Mr. Scalzo: How far is that off the a…not that it…?

Mr. Cush: All the way up the road.

Mr. Doce: It’s about a ten, twelve foot wide state road a…right on…I mean, five feet maybe off of that rear line.

Mr. Manley: In addition the Board received correspondence from the Orange County Department of Planning and their recommendation is Local Determination.

Mr. Manley: There being no further questions from the Board or the public I would ask that the Public Hearing be closed. Do we have a motion?

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

Mr. Levin: I’ll second it.

Mr. Manley: Roll call please.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: At this point, I’d like to ask before proceeding the Board is going to take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. We’d like to ask that in the interest of time if you could wait in the hallway and we’ll call everybody back in shortly.

 (Time Noted - 7:58 PM)

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ZBA MEETING – DECEMBER 22, 2015 (Resumption for decision: 8:23 PM)

THOMAS C. WEDDELL 6 HERITAGE LANE, ROCK TAVERN

 (89-1-10.1) R-1 ZONE

Applicant is requesting area variances for the minimum lot area and the minimum front yard setback for an existing single-family dwelling on parcel 89-1-10.1 on an application before the planning board for lot line changes among four lots at 6, 7, 12 and 14 Heritage Lane, Rock Tavern (89-1-10.1, 10.2, 77.1 and 77.2).

Mr. Manley: The next applicant for consideration before the Board is Thomas C. Weddell of 6 Heritage Lane in Rock Tavern, requesting an area variance for the minimum lot area and the minimum front yard setback for the existing single-family dwelling on parcel 89-1-10.1 on an application before the planning board for lot line changes among four lots at 6, 7, 12 and 14 Heritage Lane, Rock Tavern. At this point, it is a Type II Action under SEQR…at this point do we have discussion with regard to the balancing tests that the Board would employ for the area variance. The first being whether or not the benefit can be achieved by any other means feasible to the applicant?

Mr. Scalzo: As it is a pre-existing, non-conforming I do not believe any other actions could be taken.

Mr. Manley: I don’t believe that there was either any property that the applicant had available to himself to purchase either to increase the size of the lots.

Mr. McKelvey: It’s all family owned.

Mr. Manley: Anybody have anything else to add to that particular test?

No response.

Mr. Manley: The next would be whether or not the granting of the variance would create any undesirable change in the neighborhood, character or detriment to any of the nearby properties?

Mr. McKelvey: Nothing is going to be changed.

Mr. Maher: Yeah, it’s remained the same (Inaudible) setbacks; nothing is actually changing at all.

Mr. McKelvey: Remain the same.

Mr. Scalzo: However, the new lot configuration actually would help for the condition should it remain a family compound a…so actually I…I believe it’s…it’s helpful.

Mr. Maher: (Inaudible).

Mr. Scalzo: (Inaudible).

Mr. Manley: You know the other thing too is what you just said is it is family owned so you know, it’s an issue of family isn’t going to have an issue with an undesirable change. There is none. How about the next test which is whether the request is substantial in nature?

Mr. Maher: I don’t feel (Inaudible)…

Mr. McKelvey: I don’t feel so.

Mr. Maher: …there’s no…there’s no substantial request at all. Again as you said it’s…it’s…(Inaudible) any potential conflict in the future.

Mr. Manley: Whether the request that the applicant has before us will have any adverse physical or environmental effects?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Maher: No.

Mr. Scalzo: No.

Mr. Manley: And the last is whether or not the alleged difficulty is self-created? And again, that would be a self-created however, not on its face would be enough to bar the applicant from…

Mr. Maher: While in essence why is it be self-created? It’s remaining exactly the same as it is.

Mr. Manley: But they’re…but they’re…but the request is creating the variance.

Mr. Donovan: Because it’s a pre-existing non-conforming condition the request for a new approval, even though it’s going to end up essentially the same, is…is self-created but you know, take that for what it’s worth under the facts and circumstances.

Mr. Manley: So at this point…

Mr. Donovan: Mike does not like my hyper technical answer.

Mr. Manley: So at this point with the evidence presented before the Board this evening with regard to the application do we have a motion for either approval or denial of the application?

Mr. Maher: I'll make a motion for approval.

Mr. Masten: I’ll second it.

Mr. Manley: We have a motion and a second can we have the roll call?

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:26 PM)

ZBA MEETING – DECEMBER 22, 2015 (Resumption for decision: 8:26 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

 (97-1-47.2) R-3 ZONE

Applicant is seeking a use variance to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. The use variance is only required if the request for an Interpretation under Section 185-19-A-(3) is denied by the Zoning Board.

Mr. Manley: The last item this evening that we have is a Reserved Decision from our November 24, 2015 meeting. I have a letter to read into the record for the Board with regard to a request… Ms. Gennarelli, do you have a copy of the original there that I could just read?

Ms. Gennarelli: Yes. Could you pass this down? Thank you.

Mr. Manley: Thank you. This letter is addressed to the Zoning Board of Appeal Members from Jacobowitz & Gubitz, from John C. Cappello, representing DRA Fidelco request for use variance for Summit Lane Newburgh expansion, Town of Newburgh.

I’m writing this letter requesting that the Board delay consideration of the above referenced use variance at this evening’s meeting. On behalf of my client, I hereby grant the Board an extension from the time limit to make its consideration. It is our intention to amend and resubmit the request for Interpretation and Special Use Permit based upon their new evidence submitted in my December 9, 2015 letter and any evidence we can adduce when and if the Town responds to our Freedom of Information Law request on this matter. This amended application will be submitted within the next week to ten days and the extension would run until such time the Board has been able to place this matter on its agenda and hear the request. I thank you for time and attention to this matter, happy holidays. Yours very truly, John C. Cappello (dated December 22, 2015)

At this point, is it the Board’s pleasure to go ahead and move this particular application to our January meeting at which point we can then make a decision?

Mr. McKelvey: Do we have room on the agenda, Betty?

Ms. Gennarelli: Well…do we have room?

Mr. McKelvey: Do we have room?

Ms. Gennarelli: For this one, yes.

Mr. McKelvey: Okay.

Ms. Gennarelli: Not for…not for the new one, John.

Mr. Manley: And this one should be fairly simple because at this point we all have heard the testimony, we all have the information it’s just a matter of discussing it…

Mr. McKelvey: Yeah.

Mr. Manley: …and then rendering our decision. In addition to that the applicant did supply some additional information for the Board which you may want to review also before the January meeting that was germane to that application. Is there any other business that the Board has?

Mr. Levin: On…on what basis are we re-voting on that?

Mr. Donovan: You are not.

Mr. Manley: There is none.

Mr. McKelvey: It is not a re-vote.

Mr. Donovan: So there’s two requests, so do you mean re-voting on the Interpretation? This is…this is the use variance that we did not vote on. They’ve asked that to be deferred. They want to…they want to put more information and have a…and we are saying a new Public Hearing on the Interpretation request. You don’t…you don’t have to do anything different certainly.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:30 PM)

ZBA MEETING – DECEMBER 22, 2015

END OF MEETING (Time Noted – 8:30 PM)

Ms. Gennarelli: Anyone has the…everyone has the information on the Planning Federation please get back to me whether you plan on attending or not. We need to make reservations.

Mr. Manley: If you can’t make that you can also go to the Association of Towns if you want but again you need to let Betty know.

Ms. Gennarelli: That…that you have to let Charlene know immediately because that’s…

Mr. Manley: That’s at the end of February and they have to book the…the hotels now.

Mr. McKelvey: They won’t…they wouldn’t let us…when we went they wouldn’t let us stay overnight.

Mr. Manley: No?

Ms. Gennarelli: They used the bus…the transport.

Mr. Manley: Oh.

Mr. McKelvey: The small bus took us back and forth. It was a pain in the neck.

Mr. Maher: Who did?

Ms. Gennarelli: The Town.

Mr. Manley: The Rec bus.

Mr. McKelvey: The Rec bus to go to the Association of Towns down in New York.

Mr. Masten: Where’s that Betty?

Ms. Gennarelli: What’s that?

Mr. Masten: Where is that one at?

Ms. Gennarelli: The Association of Towns?

Mr. Masten: Yes.

Ms. Gennarelli: It is in Manhattan.

Mr. Masten: Oh.

Ms. Gennarelli: This one is in Saratoga.

Mr. Masten: Yeah, I see that.

Mr. Manley: The last thing this evening is just to approve the minutes from our last meeting. Everyone has had an opportunity to review the minutes? I look for a motion for approval of our minutes.

Mr. Maher: I'll make a motion to approve.

Mr. Scalzo/Mr. Levin/Mr. McKelvey: Second.

Mr. Manley: All those in favor?

Aye - All

Mr. Manley: Opposed?

No response.

Mr. Manley: And I would look for a motion to adjourn this evening’s meeting?

Mr. McKelvey: I’ll make that motion.

Mr. Manley: Do we have a second?

Mr. Levin: I’ll second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. McKelvey: Everybody have a Merry Christmas and a Happy New Year.

Mr. Manley: Have a Merry Christmas and a Happy New Year.

Mr. Donovan: Merry Christmas, Happy New Year.

All: Merry Christmas, Happy New Year.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:35 PM)