ZONING BOARD OF APPEALS

MEETING – FEBRUARY 23, 2017

(Time Noted – 7:05 PM)

Mr. McKelvey: I’d like to call the meeting of the Zoning Board of Appeals to open.

Ms. Gennarelli: The first order of business tonight 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. The Board will try to render a decision this evening; but may take up to 62 days to reach a determination. And I would ask if you have a cell phone to please put them on silent or shut them off and when speaking, speak directly into the microphone as it is being recorded. We will do a roll call.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPOLIANCE

Pledge of Allegiance to the Flag led by John Masten

(Time Noted – 7:08 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 7:08 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,

TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: Okay, Richard.

Mr. Levin: Our first…

Mr. McKelvey: Are you ready Betty?

Mr. Levin: The first case tonight is interpretation…

Ms. Gennarelli: Richard, can you pull your mic close? I gave you two of them.

Mr. Levin: Sorry. Interpretation, Interpretation if a site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Ms. Gennarelli: And the address on that was 2102 Route 300 and Plank Road North in Wallkill (3-1-21.31 and 21.61) and that would be the Town of Newburgh Code Compliance Department. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, February 15th and The Sentinel on Friday, February 17th. This applicant sent out thirty letters. The mailings and publications were in order and the posting were in order, I believe also, with much persistence.

Mr. McKelvey: Mr. Scully.

Mr. Scully: Thank you Mr. McKelvey. Board Members, Mr. Donovan my name is Jeffrey Scully I’m with the firm of Rider, Weiner, Frankel and I am here to present the Town’s request for an interpretation tonight. The Town requests this interpretation given that the “fuel tank lining business” is not defined within the resolution…the Decision and Resolution of March 11th 1982. There is a…brief citation to testimony that was taken during the original Hearings but with minor exception that testimony is not incorporated within the decision and resolution and certainly without exception none of the testimony is incorporated in the terms and conditions set forth in the Decision and Resolution a…furthermore the Decision and Resolution refers to business use of an accessory building but again provides no guidance, no definition and no parameters as to what is included within that business use of the accessory building. As such, in light of numerous complaints that have been levied with the Town regarding certain uses and activities that are alleged to be occurring on the premises the Town is requesting this interpretation to give definition, direction and established parameters as to what is or is not a fuel tank lining business that is permitted and what activities or uses are included within the parameters of the permitted use variance. The Town has made no determination as to what activities may or may not be occurring on the premises. We are waiting for interpretation and guidance from the ZBA as to the meaning and content of the use variance that’s been granted so that we can then make a determination and then take action if action is necessary based on the interpretation that’s requested tonight.

Mr. McKelvey: Do you know if the tank lining business is still there?

Mr. Scully: A…I…and the Town has made no determination it appears that a tank lining business or something that’s presenting itself as a tank lining business still operates on the premises.

Mr. McKelvey: Any questions from the Board?

Mr. Donovan: If I can just ask for a background, so one of the things that a…was presented with the application is a copy of the Decision which actually kind of forms the basis for your request for an interpretation as you just stated. The Decision makes reference to an application and a plot plan, I…I don’t know if you have those, I don’t…do you have a copy of the application from 1982 and the plot plan that was submitted with the…?

Mr. Scully: I would ask…I do not Mr. Donovan, I could…

Mr. Donovan: Well I have two eyes, I was kind of looking at you and…and at…

Mr. Scully: Right.

Mr. Donovan: …the table so.

Mr. Canfield: No.

Mr. Donovan: So Code Compliance indicating no that you don’t have those in your files Jerry?

Just…since you don’t have a microphone over there Jerry.

Mr. Canfield: I don’t have…

Mr. Scully: I’ll state that Mr. Canfield indicated we do not have the original 1982 application in the file or the minutes.

Mr. Donovan: Okay. Sorry, Darrin.

Mr. Scalzo: Well no, it also makes mention of a short form EAF a…am I…is it safe to assume that that’s not available either?

Mr. Scully: Again, Mr. Scalzo, I’ll look to Mr. Canfield to ask…because I’m not familiar with it.

Mr. Canfield: I’m not certain that the short form was a requirement in 1982 but even if it was we do not have it in our file.

Mr. Scully: Again, I’ll state for the record for the minutes that we do not have the short for assessment in the file from 1982.

Mr. Levin: There’s a question of another business being there Hydro a…excavating for I don’t really know what it is. When did that begin do you know?

Mr. Scully: We…we don’t know when that began. We do know that there are websites and Facebook postings that refer to a business called Hydro Excavation or Hydro Excavating that gives this address, the premises address as the address of the business. We do have numerous reports and photos have been provided to the Town a…of machinery mounted on trucks that are alleged to be a part of the hydro excavation business.

Mr. Levin: Are there any dates on there?

Mr. Scully: A…I don’t…I believe, I don’t want to guess Mr. Levin. I believe it is within the last few years a…it’s certainly not something that existed on the premises in 1982.

Mr. Levin: Okay.

Mr. McKelvey: Is it legal for them to come in and operate like that?

Mr. Scully: Well, Mr. McKelvey, that’s why we’re asking for interpretation.

Mr. Donovan: So…

Mr. McKelvey: That’s why I was…

Mr. Donovan: So I think the issue…

Mr. McKelvey: …that’s what I wanted to hear.

Mr. Donovan: …obviously, kind of the issue Code Compliance is kind of in their application set forth a…what I think is nine… number one has a…five sub-categories but nine questions as to whether or not the 1982 variance…use variance encompassed those nine items a…kind of like I assume you are looking a yes or no response, at…at some point in time either the Board is going to indicated yes they were encompassed by that variance or no they were not. Essentially I seek that’s what you’re looking for based upon whatever the Board decides in that regard will determine what if any future measures are taken by Code Compliance. I don’t mean to put words in your mouth but I assume that’s the direction we’re headed in.

Mr. Scully: Yes, that…that is the…in…a…interpretation we request, an answer to whether those nine with some subheadings uses or activities fall within the parameters of the use variance that’s been permitted. Placed on those answers then we will investigate, make determinations and then either proceed or not proceed with an enforcement action or actions accordingly.

Mr. Levin: You have received numerous complaints? Is there any on the lining business a…the original business that was there?

Mr. Scully: It…it’s difficult to…to sort them out I…I…because they…there may…there are…there are numbers of complaints a…both in terms of activities occurring on the premises and machinery, equipment, storage containers that are on the premises, we do not know at this point what machinery, what storage facilities, what operations are attendant to the tank lining business and what are attendant to the hydro excavating business.

Mr. Maher: Are the two businesses owned by the individual?

Mr. Scully: We don’t know that for sure. We don’t believe they are but we don’t know that for sure at this point. They are represented as two separate business entities in there a…statements that they hold out to the public on-line and on Facebook for example.

Mr. Levin: Do you know if there’s representatives here from that business?

Mr. Scully: I don’t know I have spoken to a representative an attorney representing the business…

Audience Members: We’re here. We’re here.

Mr. Scully: Okay, (Inaudible). They are present.

Mr. McKelvey: Any further questions?

No response.

Mr. McKelvey: Then we’ll open it up to the public.

Mr. Scully: Thank you.

Mr. McKelvey: Did you sign the sheet please?

Mr. Donovan: Yeah, Kevin if you could, I’m sorry to interrupt but there is a sign in sheet maybe you’ve done it already, just so that Betty can keep a…

Ms. Gennarelli: I’ve got him, I have his card.

Mr. Donovan: You have his card, okay.

Ms. Gennarelli: Thank you, thank you both.

Mr. Donovan: Just want to make sure you’re happy.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Good evening.

Mr. Bloom: Good evening Mr. Vice Chairman and Members of the Board, Counsel for the Board, my name is Kevin Bloom. I represent Susan Carroll, Lawrence VanDeMark and Claudia VanDeMark. In support of my presentation this evening if it’s with the Board’s permission may I approach? I have some exhibits that I’ll reference in my presentation if I may approach.

Mr. Donovan: Kevin just if you are going to speak since this is all recorded just the microphone comes off, if you’re going to speak while you approach just take the microphone with you.

Mr. Bloom approached the Board with materials.

Ms. Gennarelli: We’ll need one for the record too.

Mr. Bloom: I’d like to begin my presentation with what was the Board asked to do in 1982? And what did the applicant present to the Board in support of his application? I turn to begin on Exhibit 1; this is from the Decision and Resolution of the Board from 1982. Now you turn over to paragraph 3 that I’ve tabbed for your convenience. In paragraph 3 it states what the applicant sought and I quote “the applicants seeks a use variance to permit the operation of applicant’s fuel tank lining business from subject parcel which also contains applicant’s residence. Though the actual relining of fuel storage tanks is not done on the premises all equipment and supplies for such a service are kept or stored on the premises”. So we know that the applicant sought a use variance for a tank lining business. So what is a tank lining business? Well, the applicant told the Board in 1982 what a tank lining business is. If you turn over to Exhibit 2, which are from the minutes from 1982 presented to the Board, I call the attention to the Board approximately halfway down where member Raskin asked of the applicant “How much equipment do you plan on having?” Mr. Conklin: “There are two tractor trailers, a straight tractor and pick-ups, they’re traveling factories. We drive to a site or location to where a tank is leaking; we repair the leaks and put in a fiberglass lining.” Mr. Raskin: “The material that lines the tanks, do you plan on keeping that on-site?” Mr. Conklin “Yes.” “What does that consist of?” Mr. Conklin: “It’s a polyester material.” Mr. Raskin: “Is it in a granular form or is it in a liquid form?” Mr. Conklin: “It’s like a pudding.” Mr. Raskin: “Where do you store that?” Mr. Conklin: “On the property.” Mr. Raskin: “Where?” Mr. Conklin: “Outside.” Mr. Raskin: “How would you have…how many would you have at one given time?” Mr. Conklin: “Ten, fifty gallon drums.” Mr. Raskin: “Is that flammable or toxic?” Mr. Conklin: “No, it’s not toxic but you can’t eat it. It’s not toxic if you breathe it.” Mr. Raskin: “What is the chemical used?” Mr. Conklin: “It’s polyester TL380, these drums are already prepared and there’s no mixing.” Why is that significant? It’s telling the Board that the operation of the business is done offsite of the premises that’s where it’s geared to and the materials that are on the premises for the business are then transported by those trucks off the site in order to do the tank lining. That will be important when we go to the next exhibit after this. So the question then becomes is how do we know for sure that the work being performed as part of the tank lining business is off site? Well if you turn over to the next page and again go down, I’ve highlighted it, for Mr. Beck where he’s asking the applicant “The people that use…that you use in the conduct of your business is not done specifically on the site they go to another location?” Mr. Conklin: “Yes, they load the trucks and they go to the particular area in need of our services.” As you have seen or you will see from the video that will be presented and also from the information in your packets from the previous…from the residents that has been submitted this evening what the occupants are doing is actually is once these hydro evac…hydro evacuation…excavation trucks come back to the premises they discharge the dirt onto the premises and they use bobcats. You’re familiar with bobcats of the excavations the small ones and push the dirt all over the premises and have turned it into an effective dirt dump. That’s what it is a dirt dump. And respectfully a dirt dump is not a tank lining business. It’s an excavation business. And that was not permitted under the use variance. If you turn over to Exhibit 3, you know, Member Levin had a question concerning what…what is a hydrovac excavating business. This photograph Member Levin and Members of the Board is a picture of a picture and hydrovac excavating truck and my client Susan Carroll provided this along with her packet previously. And what is significant about the truck is A #1, the truck is not used for tank lining it's used for excavation. The large container that you see on the back is used in order to collect dirt off premises and then is taken to the premises and then discharged. And when you hear from the videos of the discharge you will hear the violent noise that is generated by these hydrovac… hydrovac excavating trucks that are not only disturbing for noise and for sleep purposes but it was also important there was a question is from the Vice Chairman McKelvey is when did this business start? The hydrovac excavating business did not start arrive onto the premises until the summer of 2015. The business itself became or was created in 2006 so we don't even have the question of whether it's the chicken or the egg. In 1982 hydrovac excavating business didn't exist so there was no way for the Board to even have contemplated in 1982 an excavation business. Turnover to Exhibit 4 that is a photograph an aerial photograph of the premises that was actually submitted as part of the Town’s application to the Board so I'm using their exhibit. So back in 2009 you can see prior to the hydrovac excavating business arriving there to peer…doesn't appear to be any type of disturbance that you will see in it Exhibit 6 so if you turnover to Exhibit 6 again this was then taken from the Town’s application. An aerial photograph from April 16, 2016 you can see the obvious dirt disturbance that now surrounds the premises that did not exist prior to the business of hydrovac excavating business operating. There is no question that that dirt and that fill that's now being pushed along the property has made it into a dirt dump and it is not a tank lining business anymore. I will end my presentation is my client has brought there are four short videos in less than a minute and 20 seconds on each and with the Board’s permission that I will play. In order for the Board to hear on the type of violent noise that's generated by these trucks when the discharging the dirt on the premises and after the viewing of the videos I would submit to the Members of the Board that the interpretation should be in the negative that the business that is operating on the property right now was never contemplated by the use variance granted by this Board. With that Susan may I ask you to play those videos? Is that with the permission of the board?

Mr. McKelvey: Yes.

Ms. Carroll approached and set up the videos and speakers for viewing by the Board Members who gathered together to observe them.

Mr. McKelvey: You have to get the mic.

Mr. Bloom: The Board can see that the driver has his ears (hands) above his…on his ears because of the noise of the vehicle is so loud.

Mr. Levin: This is that big machine you were talking about?

Mr. Bloom: That's correct Member Levin.

Mr. McKelvey: This was done after dark?

Mr. Bloom: It was done after dark.

Mr. Scalzo: This is saying 9:59 PM.

Mr. Bloom: Correct.

Mr. Levin: 9:59 PM?

Mr. Bloom: Correct.

The Board finished viewing the four videos.

Mr. Bloom: With that Mr. Vice Chairman I would ask that the video be made part of the record.

Mr. McKelvey: All right. Give it to the Secretary.

Mr. Bloom approached and gave the disc to Ms. Gennarelli

Mr. McKelvey: Now under the original 1982 variance, use variance, what were the hours of operation?

Mr. Bloom: The applicant had described in the testimony, if you bear with me one moment Mr. Vice Chairman, (Mr. Bloom looked for the testimony) If a…Mr. Vice Chairman, if I would direct your attention to Exhibit 2…and I would direct your attention to a page 2 at the bottom, when you’re there I’ll continue.

Mr. McKelvey: Go ahead.

Mr. Bloom: Indicates Mr. Raskin "when would the trucks go out approximately the same time every day?" Mr. Conklin "usually right now both of the trucks are out on site we don't return until the job is completed. They come back to the site fill up, load up and go to another location, they are a traveling factory. They do not run in and out at night." Well with that if the Board does not have any further questions I a…therefore (Inaudible) floor.

Mr. McKelvey: Anybody else have any questions for Mr. Bloom?

Mr. Levin: I'm okay.

Mr. McKelvey: Anybody else want to speak? Did you sign in?

Ms. Gennarelli: Can you just introduce yourself again?

Mr. VanDeMark: Lawrence VanDeMark, 17 Forest Road, Wallkill, New York I just like to read into the record:

Dear Members: I'm writing to you concerning the application requesting an interpretation of the original use variance granted to William Conklin and WCC Tank located next to my property. I own two parcels that border this business and have lived there in my home 59 years. I truly take exception that the Town of Newburgh is seeking an opinion to determine if this new business is part of the original decision and resolution of the ZBA in 1982. It is clear from reading this original decision that William Conklin only mentioned tank lining and that all work was done off premises. He also testified that it was a small family run business never was any hydrovac operation or excavation mentioned in this decision. This operation is completely different and unrelated and it is a new operation. My neighbors and I have been subject to a live next to a full-blown industrial commercial operation that has and continues to violate many sections of the Town Code. These violations have been brought to the attention of the Town of Newburgh Code Department on multiple occasions. In addition these violations would not have existed if this new business had not moved on to the property. This new business has significantly impacted our neighborhood with dumping all hours of the day and night, noises of commercial industrial activities on site at all hours and the ability to even sit outside in nice weather with the noise, dust and diesel fumes. This unapproved new business has significantly change the character of our neighborhood which is not acceptable to me and my neighbors. The only conclusion that the ZBA can make is that this new business is not part of the original decision of the ZBA in 1982. If the ZBA ruled otherwise it would set a precedent that would allow this business to expand unchecked without any review as was designed by the use variance process set in State Law. It is for this reason that myself and many of my neighbors will be in the February 23rd Hearing to provide support against granting any interpretation that allows this business…this new business to fall under the original use variance. Yours truly Lawrence S. VanDeMark. Thank you.

Mr. McKelvey: Thank you.

Mr. Levin: Can I ask you question sir?

Mr. VanDeMark: Yes.

Mr. Levin: Since you've been there from the original start would you have any complaints with the original business?

Mr. VanDeMark: At times we did, there was work being done that should not have been done. There was some outdoor sandblasting which caused a nuisance. I had a swimming pool…because I'm very close to the property constantly cleaning black beauty sand out of the pool, got rid of the pool. He’s just a nuisance.

Mr. Maher: So Mr. Mr. VanDeMark… So a question so obviously the…the videos identified some of the issues there so is the question of the vehicles being stored there or the actual operation of the emptying of the trucks in and out? I mean can you elaborate what the… I guess my issue is the fact that the use was there for the…for the business that was approved in ‘82 a…identified by Mr. Bloom a…is the operation of vehicles late in the evening and such like that.

Mr. VanDeMark: Correct.

Mr. Maher: So is the dirt dumping the issue, I mean is the noise the issue, are the trucks being stored there the issue? I'm trying to identify the actual issue.

Mr. VanDeMark: The issue is those trucks, the hydro-backing trucks. Where did they appear all of a sudden, who… Can I start a business in my garage that I have next-door? We are zoned agricultural residential in that neighborhood. If I was to start a business, I'm sure somebody very quickly would be knocking on the door saying, Mr. VanDeMark you can’t have a business here. Why can they have two businesses? One which we don't even know where these hydro-vacing trucks…where they came from. How could they just show up on premises, running in and out? You know the original thing was in and Mr. Conklin approached neighbors he was… He was a nice neighbor "hey I want to put up a building to store my equipment, there won't be any work done premises". Why would you grant a guy that? What...what's the problem?

Mr. Maher: Did you… Did you live there an ‘82?

Mr. VanDeMark: Yes I did.

Mr. Maher: Were you in favor of it in 82 or against it in 82?

Mr. VanDeMark: I…I did not a… I did not know vote or say either way. My father did, my father was in favor of Mr. Conklin.

Mr. Maher: Thank you.

Mr. Scalzo: Actually you have witnessed the discharge, the trucks dumping?

Mr. VanDeMark: I've seen it.

Mr. Scalzo: Okay. Is it…is it mostly solid or is it liquids as well?

Mr. VanDeMark: Mostly there's…there's liquids mostly.

Mr. Scalzo: Okay. Thank you.

Mr. McKelvey: Can I ask you… Jerry (Canfield) can I ask you a question? They mention that there was complaints...they mention that there was complaints made was there anything ever done about them?

Mr. Scully: Jeff Scully on behalf of the Town again. The Town Code Compliance did make site in visits…site visits, a…did inspect from off the premises and did accept videotapes and photographs that were provided by the residents who made complaints.

Mr. McKelvey: Okay.

Mr. Maher: How far back does that date?

Mr. Scully: A… I'd have to defer to Jerry in terms of the investigation, in terms of how far back the complaints have gone.

Mr. Canfield: I don't know…the exact dates…

Mr. Scully: For the record…

Mr. Canfield: I don't want to appear being nonfactual I don't know the exact dates.

Mr. Scully: For the record Mr. Canfield stated he was…he doesn't know the exact dates and does not want to guess at the exact dates.

Mr. Maher: A…if the…if the business appeared in 2015 would it be safe to say that prior to that there were no complaints?

Mr. Scully: Mr. Canfield is indicating yes, that would be safe to assume.

Mr. Levin: I'm surprised Mr. Canfield...you couldn't go on the premises? Legally? For…to inspect something?

Mr. Scully: If I could, as it’s a…a legal…a legal question, Code Compliance can only go on a private a…private piece of property in either by invitation of the owner of the property or if they make an application to a justice or a judge and get what is called an administrative search warrant after showing probable cause they believe that a violation may be ongoing. So it's out of respect for the private property that we did not go on the property we observed from where we permitted we were permitted to be. Thank you.

Mr. Barry: Good evening, my name is Shawn Barry, I live it High Lonesome Terrace off of Forest Road. I've been a lifelong resident of the Town of Newburgh. I've grown up in Meadow Hill, own a residence in Colden Park and lived at the current address for over 14 years. I stand before you tonight in support of my neighbors. I had an opportunity to review the documents that the Town provided on its website as well as the 1982 decision and reading through the decision and seeing what was actually spoken about, what information was provided to the Zoning Board and what information the Zoning Board had to make a decision. In that document as which you have provided by Mr. Bloom I’ll be referring to certain statements and stuff as I read that. I stand before you and is in reference to the property had 2102 Route 300, tax map 3-1-21.61 and 3-1-21.31 it's actually two lots at that location sometimes also referred to as 300 Robles Lane in the Town of Newburgh. I did provide a FOIL request to the Town of Newburgh on January a… February 14, 2017 I hadn't receive a response but I did have an opportunity today to stop by the Building Department and speak with them and what was kind of ironic in my review of those documents is that there were no Building Permits. There were no site plans. There is mention of a 1989 subdivision that Mr. Conklin had applied for that was denied however if you look back at the original document from the 82 decision he made statements saying that the property that the original owner had and was trying to subdivide couldn't because the water issues there were stream and a lot of water there and so he looked to purchase that property because he lived adjacent to it and he wanted to purchase that because he had already built the building when he came to the Board. He had already built the building and installed tanks in 1981 and in 1982 he came before the Board for the proper Permits. So in going back and looking through that document you could obtain a lot of information of what was going on in the 81, 82 timeframe and when we speak about these documents. When I saw this come across I was kind of puzzled and perplexed at how…why do we need an interpretation on some of these things that were addressed in the 82 decision specifically on site use and activities permitted under the variance from 82 in support of following of above ground, underground fuel storage tank reconditioning including lining, underground, above ground fuel storage tank testing, above and underground fuel storage tank excavation and underground, above ground fuel storage tank appliance and hydro-excavation business. Now that was somehow thrown in there but that was never decided upon in 1982 in that decision that technology didn't even exist in 1982 to have it presented. Outdoor storage of heavy equipment including plows, land grading equipment etc. and deposition of slurry consisting of soil and related materials that have been liquefied on the premise, operation of a hydrovac device on the premise were depositing slurry material with resultant mechanical operational noise, outdoor parking of pickup trucks operated by the business, outdoor parking semi-trucks and trailers operated by the business, outdoor parking of a 2000 Freightliner truck on which a mount a hydrovac device, which I found kind of specific because why would you be asking for one specific vehicle and not in general, vehicles that operate in a hydrovac or operate with hydrovac device? Outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile and portable enclosures designed for storing items and materials; and outdoor work activities conducted by the employees and agents of the businesses in furtherance and uses identified in the application. In my comparison of the Building Department’s application the history, the location business operations, the Town of Newburgh Zoning laws I’d like to bring certain aspects to the Board’s attention and the following discrepancies in support of denying the application or the permitance of this additional non-conforming business that’s being operated there. And one, this is a letter that was provided to the Board I’m not sure if each of you have a copy of it that’s presented to you but I’ll read through it. The Town of Newburgh Building Department in its application identifies that in the 1982 Zoning Board decision, the applicant Mr. William C. Conklin sought “a use variance to permit the operation of a fuel tank lining business” from the premises. The decision directed the building department to issue a permit for the following: an in ground fuel storage tank of 6000 gal. capacity for diesel fuel; an in ground fuel storage tank of 3000 gal. capacity for unleaded gasoline; an in ground storage tank of 550 gal. capacity for Acetone; a 50’x60’ pole building; a 25’x25’ stockade enclosure; a chain-link fence enclosure which would have run along the Route 300 property line; and business use of the accessory building. It was subject to the following conditions, so the Board granted the Permit subject to the following conditions: that the fuel storage tanks shall be located according to the site plan. In review of the documents there is no site plan available that we can review. Again, the acetone tanks shall be located according to the site plan; the pole building shall be located according to the site plan; the stockade enclosure shall not be located at any point less than 150 feet set back from by property line and not to exceed more than twenty (20) drums; and that along the northerly line of the subject parcel, beginning at a point adjacent to the accessory building and continuing to a point 200 feet along the westerly line, applicant shall provide green belt buffer covering a depth of twenty-five feet from each said line planted with a screen of evergreen having uniform height of not less than five foot above ground level at the time planting and set in a double staggered row spaced eight foot apart on each row, said screening to be properly and effectively maintained. That’s quite specific about how they wanted that buffer and looking back at old files and speaking to some of the neighbors that was never properly installed and since then it’s been removed. And so in review of the 1982 testimony and decision, it is evident that the use variance was only granted for a “tank lining business” due in the fact that the location would only be used as just a storage location and as Mr. Bloom stated, the work would be performed was entirely off-site as stated by Mr. Conklin in his testimony.

Additionally the Board imposed terms & conditions to the approval. As of this date, the green belt buffer required as part of the approval was to be installed and maintained and it was never installed properly and the actions on the part of the property owner have cleared away the green belt buffer and it’s never been restored. If you look at the photos that you have that were part of the Building Department’s application you can see a time progression and you can see the continuance clearing of that buffer especially in the northern western piece of the property. In 2006 you can see its originally wood line on the western side of the parcel has been removed and fill brought in. Subsequently if you look at photos from 2016, you can see that more of the natural wood line buffer has been cleared and filled in. Since the original granting of the permit, there has been an addition to the accessory building, expanding the original size of the structure. However, there’s no Permits on file for the…for this addition to that building. The original building having been proposed for the storage of the two tractor trailers that Mr. Conklin said were used for the business.

In the application the Building Department states that the findings are consistent set forth in the Decision do not define the nature of Mr. Conklin’s fuel tank lining business. I think it was quite clear in his testimony in 1982 of what he was to be performing and the fact that that job and those specifics of which they do were off-site. Nowhere in his testimony does he provide information that his company performs excavation of any kind. Nor does he list that he will be depositing material excavating from a job site to the property listed in the application. Mr. Conklin further states in his testimony, “…they are traveling factories. We drive to a site to where a tank is leaking; we repair the leaks and put in a fiberglass lining”. Indicating that his work is done entirely off-site and that noise and truck traffic is kept to a minimum. “They (the truck) do not run in and out at night”. Based upon the information gathered from the original Zoning Board minutes and approval, the use variance was granted for the storage of hazardous materials in underground storage containers, a pole building to store the two (2) tractor-trailers used for the off-site work and the offices for his “tank lining” business. The fact that no description of excavation work, deposition of site-soil and operation of heavy equipment was identified in the original application or approval is that it wasn’t applicable to the application since none of that work was being performed at that time. The approval is quite clear, it was granted for a “tank lining business”. I happened to call the New York State Environmental Conservation a…they’re Bulk Petroleum Storage Unit and inquired as to whether or not this was still in operation. They lost several years ago that Certification for those tanks and my investigation found that those tanks have since been removed. So there’s no a…need for those tanks in there because that business doesn’t appear to be operating on the tank lining business any further.

The Building Department states that several town residents assert that the use is not in the scope of the Board intent and that they are unable to determine which uses and activities are not permitted. I found…I found complaints over ten years ago on file for this property. So this isn’t just something that’s current from 2015. This is something that’s been an on-going issue and just the fact that it’s been ramped up, this additional business coming in it just expounds the number of complaints coming in. The number of plaints (complaints) over a period of time exceeding ten-years, I do not understand the delay in any enforcement action regarding the property since being both the Town Code and the minutes from the original variance are quite clear. The site inspection of a property identifies many violations of the Town Code. Additionally you have, we have GPS imagery. This GPS imagery and that you all have copies of clearly shows the clearing of these…of the property, the fill being brought in and there’s no Permits for any of this. These are all violations of the Town Code. You need to have a Permit to clear the property and you need to have a Permit to bring the fill in…

Mr. McKelvey: How much land was cleared?

Mr. Barry: Well in my letter and I actually did some you know it’s kind of some rough mapping through GPS and using Google Earth a…and this is a 2016 photo and speaking with the neighbors the property has actually been cleared even more than that. But just on a…a very obscure and underestimate of the amount of fill brought in a…I have one area hundred and eleven cubic yards, two hundred and forty cubic yards on another area and two thousand, nine hundred and sixty-two cubic yards and that was using an estimation of that fill being brought in at a four foot depth. Now and speaking with the neighbors that’s a very underestimate for the depth of which that fill has been brought in.

Mr. Levin: How do you estimate the soil that was brought in?

Mr. Barry: Well I can do an overlay with Google Earth, I take a measurement, estimate an measurement and we can do the measurements of the boundaries of those areas coupled by a mathematical, you know, calculating the depth and then converting the square footage to cubic yards.

Mr. Levin: With Google Earth you can calculate the depth?

Mr. Barry: You can calculate the…you can calculate the area and then you can use the area multiplied times the depth of the soil or what you using and then you can come up with your square footage and then converted to cubic yards. The conversion with cubic yards is so that it conforms with the Statute under the Town Code which lists the cubic yards. Which if you look at it this exceeds the amount of cubic yardage that can be brought in without having a Permit.

Mr. McKelvey: Does it…do they use water on the property for this dirt too?

Mr. Barry: Well in the application said that there is for a slurry and so the process of hydrovac excavation is using water injection and then evac so this soil coming out isn't a dry intact soil. The other thing, you know, I'm kind of jumping ahead was the fact that whose testing this soil? You know, you see on their Facebook page and their website there is excavating soils from job sites in New York City, other areas, ruptured tanks, broken lines. Who's checking to make sure that the soil isn't contaminated? I think that, you know, if we learned anything from past history especially here in Newburgh with Washington Lake and the contaminants that went in is that we need to be more vigilant, we need to be ever more vigilant to protect our water sources and our environment. This area and…and looking in it appears to be within a point two percent floodplain area because of that low lying area that it sits in and it has, you know, and this is being to testified to in 1982 by William Conklin the property owner, there springs, there's water. That water runs along the backside and the westerly side of Rock Cut Road which falls down into wetlands area would then directly feeds into Orange Lake. If this is contaminated soil, hypothetically, I don't know I can't say for sure and that's being brought in for other areas, New York City, other areas and deposited in our community what's there to safeguard our drinking water, our ecosystem and our environment? So that that's one of the issues that I…I have that I just don't understand. You know a simple inspection, a site inspection or…or GPS inspection you see so many violations of the Town Code. This is…this is zoned A/R. We are not in an industrial or business zone. There is no use or permittence of a storage containers, you know, above ground storage tank. Large areas have been cleared, large amounts of fill deposited, graded on the property. There is no soil retention systems there. There's nothing to keep anything from the water or washing away soil or contaminants. There’s large storage containers, there's vehicles, there is non-conforming lighting, all these issues are easily visible. I'm coming down Forest Road tonight and I'm looking at a building in it looks like there's a vehicle in somebody's backyard, it’s the light shining off of this building shining down through the wood line and I can see it on Forest Road.

So the Building Department seeks further interpretation in defining underground/aboveground storage tanks, reconditioning including lining; underground/aboveground storage testing; this original approval was specific to the tank lining business in 1982 and that occurred off-site.

Underground/aboveground fuel tank excavation; the original application and approval was for tank lining business and approval was granted to the work being performed off-site. At no time did Mr. Conklin identify activities relating to excavation work or equipment.

The underground/aboveground fuel storage tank compliance and hydro-excavation business; the original application approval was for the pre-existing in ground storage tanks. At no time was the identification for approval granted for a secondary excavation or hydro-excavation business at this property.

Outdoor storage of heavy equipment including plows, land grading equipment, etc.; the original application testimony approval was granted for two semi-truck trailers as well pickup trucks used in the operation. At no time did Mr. Conklin indicated he would be using and/or storing excavating equipment in his application or testimony to the Board.

The deposition of slurry consisting of soil related materials that have been liquefied on the premise; at no time in the original application and testimony provided in the review process does Mr. Conklin indicated he would be depositing any material from a job site at the property listed in the application. Since his business was a tank lining company, there was no need to apply for such a variance and therefore none was granted.

Operation of a Hydrovac device on the premises for depositing the slurry material, with resultant mechanical operation noise; At no time in the original application and testimony provided in the review process does Mr. Conklin indicate that he would be depositing any excavated material from a job site on the property in question. Additionally, Mr. Conklin states in his testimony that the trucks used in his tank lining business load-up and leave the property during normal business hours and conduct all the work off-site. There was never any mention of an excavation company or hydro-excavation equipment in this application.

Outdoor parking of pick-up trucks operated by the business; This issue was addressed in the original 1982 granting of the variance.

Outdoor parking of semi-trucks and trailers operated by the business; Original application and testimony provides that the business operates two semi-trucks and the pole building for which the applicant had included in the original application was constructed to house those two trucks. Any additional trucks and storage of said trucks would not be included in original variance and therefore unauthorized.

Outdoor parking of a 2004 Freightliner truck on which is mounted Hydrovac device; This is outside of the two trucks originally listed in the application and does not fall within the criteria of the original application and approval.

Outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for the storing items and materials; This request is governed by current Town Code §185-15 Sub 1, which states that cargo containers are permitted in B, IBN, I, and LHI zones and are not permitted in AR zone which the property in question is located. Additionally the property has multiple cargo containers on site and a lean-to between two of the units, all violations of the Town Code.

Outdoor work activities conducted by employees and agents of the businesses in furtherance and the uses identified above; The original application and approval is quite clear. It’s granted for a tank lining business to be operated out of an accessory building which was located adjacent to Mr. Conklin’s residence. At no time did Mr. Conklin list, identify or make reference to any work other than the loading of equipment and supplies, storage of hazardous materials and office operations for his tank lining business in the original application and Board approval. Therefore, any business, activities and/or operations outside of the scope of the tank lining business have not been granted variance by the Board and therefore would not be permitted. That’s a non-conformance use. If you have a change in use you have to go back and apply for that Permit so that you can have that as the business was originally non-conformance. They granted it but now he has an additional non-conformance use business. He would need to come back, present to the Board so that he can get use of that location, that property for that other non-conforming use.

The Building Department’s application states they’re requesting interpretation does not intend to accompany any alleged violations; At the time of the filing the notice, I didn’t receive anything from the Building Department relative to my formal request but in review of it I did not find any violations on file currently at this time although it’s clearly visible in the GPS photos as well as any type of site visit is that you can clearly see that there are multiple violations of the Town Code. As previously stated, a…the simple calculation amount fill exceeds the amount permissible under Town Code §85-6 (§83-6), §83-7 and §83-8 without a Permit.

We oppose the granting of the applicants appeal in that:

The variance will produce an unreasonable change in the character of the neighborhood and be a detriment to nearby propertiesin that the proposed changes in the use variance would negatively impact the social wellbeing of the neighborhood and has been supported by the many complaints filed by the neighboring properties exceeding ten years. Additionally the variance and current activities of depositing fill or slurry could jeopardize the safety of the water table and surrounding ecosystems. This could potentially lead to contaminants entering wetland areas as well as leading into Orange Lake and the tributaries thereafter.

The benefit sought by the applicant can be achieved by the applicant pursuing other feasible methods; This matter is quite different than most. Here the applicant is actually the Town Building Department and the variance is granted…if the variance is granted would benefit the property owner. And on the…I’ll address this as it relates to the property owner as the beneficiary of the original property and business owner, Mr. Conklin moved his tank lining business from Stewart Avenue, in the Town of Newburgh. Stewart Avenue, and this is in ’81, Stewart Avenue is zoned for commercial establishment and 2102 Route 300 or 300 Robles Lane was adjacent to his residence and is zoned AR, Agricultural/Residential. One year after moving his business and installing in-ground storage tanks and a pole building, Mr. Conklin applied for a use-variance. The Zoning Board reviewed the application as well as testimony from Mr. Conklin in’82 a limited use-variance for his tank-lining business was granted. Since that time, Mr. Conklin has sold the company and the new owners have begun to operate a hydro-excavating business out of the property in question, which has been previously stated by other people offering testimony here tonight. This hydro-excavating business originally operated at a location on 9W in the Town of Newburgh which is zoned for commercial operations. Therefore, the benefit sought by the applicant can be achieved by pursuing other feasible and applicable locations to conduct an industrial type business from.

The requested area variance is substantialin that the specifics of the Building Departments request for interpretation if granted, would allow an industrial operation to operate in a residential area. Additionally, the clearing of the property and deposit of unregulated fill and that’s in line with §185.31 of the Town Code stripping and filling of land poses a clear and present danger to the surrounding residences as they secure drinking water from their wells.

The proposed variance will have an adverse effect on the impact of the physical and environmental conditions in the neighborhoodin that the business operations are already having a negative impact on the neighborhood as supported by the many noise complaints. You had video here tonight to show you the time and the documentation as to the level of noise, bright lights, operating outside of business hours and visible eye sores. Most concerning to me, are the acts of the clearing the property and depositing of this slurry from job sites on the property. The potential for contaminants entering our environment should raise some serious flags with this Board.

The hardship the applicant is seeking relief is self-created;The beneficiary in this application has created the hardship on his or her own record…or I’m sorry his or her own accord. They were originally housed at an appropriately zoned location in the Town of Newburgh and moved their operations into its current location which is zoned AR and primarily residential. The beneficiary then began conducting business, installing unauthorized storage containers, operating outside of normal business hours, creating excessive noise, lighting pollution as well as clearing and depositing fill without ever filing for a Permit. They did this all without ever coming to the Town and seeking to do it the right way. We adamantly oppose the granting of any variance for this property as it has already been provided a limited use-variance for a tank-lining business since 1982. Any uses outside of the tank lining business would fall outside of the ‘82 use variance and therefore not be permitted. Additionally, under §185-19 Non Conformity Buildings and Uses; This section of Town Code identifies that non-conforming use shall not be enlarged or extended, nor its use changed to another non-conforming use without a Special Permit. The original application and use Mr. Conklin applied was non-conforming to the zoned area. Any changes in the original granted use must be granted a Special Permit. The beneficiary in this applicant has never filed a zoning variance application nor applied for any Permits to make changes to the property in question. We request that the zoning variance be denied, the business of hydro-excavating no longer be permitted to operate it out of the said location and the that the Building Department along with the New York State Department of Environmental Conservation thoroughly inspect the property in question for Zoning and Building Violations as well Environmental Conservation Law Violations. Thank you.

Mr. McKelvey: Thank you.

Mr. Scully: A…Jeff Scully on behalf on the Town again just very briefly I want to be completely clear the Town takes no position on how this application should ultimately be decided and the Town is not as been…as stated several times seeking a variance here. We’re just seeking interpretation of what the current use variance encompasses. Thank you.

Mr. McKelvey: Thank you.

Mr. Wersebe: Hello everybody, my name is Bob Wersebe and, I live on Forest Road, I built my house there in 1988. I'm going to make this short and sweet. All of my neighbors and I are on well systems and like this gentleman said how do we know it's coming out of these hydrovac trucks? I've seen these hydrovac trucks on construction sites that I've worked on. God only knows what comes out of those trucks and he used that word slurry. How do we know what's in that slurry and how do we know it's not contaminating the groundwater? My well is 185 feet deep. I have no idea if it's leached into the groundwater there. I don't know. I'm concerned with that extremely concerned with that. Thank you.

Mr. Bell: A question for you, excuse me sir.

Mr. Wersebe: Yes sir.

Mr. Bell: Have you ever had your well water tested?

Mr. Wersebe: I haven't tested two years after I had the house built required by the Health…Health Board.

Mr. Bell: Okay.

Mr. Wersebe: And now that I found out what's going on there I'm going to have it tested again.

Mr. Bell: Has any of your neighbors had theirs done or do you know of…?

Mr. Wersebe: I have no idea.

Mr. Bell: …had theirs tested?

Mr. Wersebe: I have no idea.

Mr. Bell: Okay.

Mr. Wersebe: Thank you.

Mr. Donovan: If I could just clarify again from what Mr. Scully said and I don't mean to to lawyer this up or make it complicated but there is no request to use the property for a hydrovac business. Right? The request is an interpretation from Code Compliance whether or not 1982 variance allowed the use of the property for hydrovac among the other nine questions that were asked. So that that's the technical before that based upon what the Board decides Code Compliance may or may not have to do anything so I don't want to…I don't want to again I don't want to be overly technical…

Mr. Wersebe: Or muddy the waters.

Mr. Donovan: Correct but there's not a request for variance, there's not a request to run the hydrovac business. The request is whether or not hydrovac business was included in the 1982 variance decision.

Mr. Wersebe: Thank you.

Mr. McKelvey: I'd also like to say we received many letters and they will be entered in the records.

Ms. Carroll: My name is Susan Carroll, I reside at hand own 2122 Route 300 which is two lots away from the subject property of 2102. I am also the trustee for the Walter A. Carroll Irrevocable Trust which owns one half interest in 2116 Route 300 which borders 2102 along the entire westerly border. My family has owned 2116 Route 300 which would be 3-1-20 continuously for the last 70 years. This application is extremely important to me because a Board if the Board interprets the use variance to include the hydrovacing business our residential nice area won't be residential and nice anymore. For the reasons to follow the Board should hold that the current hydrovac excavation business that is being operated on the former premise of Conklin does not fall within the use variance that was granted in 1982. In my letter I attached and sent in two printouts that showed WCC Tank Technology and Hydrovac Excavation Inc. have two distinctly separate websites. WCC Tank Technology website shows that and I quote "Ira Conklin is third started Hydrovac Excavating in 2003” and its…it is a company he still owns and runs today. This clearly shows that it…it is a company that separate of WCC Tank and formed well after the granting of the original use variance for WCC Tank. This clearly shows that the hydrovac excavation business should not have been contemplated by the…could not have been contemplated, I'm sorry, by the ZBA in 1982 when it granted the use variance. I also wish… I also attached copies of information that I obtained that show this company’s prior address on Route 9W in Newburgh, New York. Sometime between July and August of 2015 Hydrovac showed up at WCC Tank and began operating its unapproved operation. This new business has nothing to do with tank lining rather it's an excavation business which dumps dirt it collects off-site on the subject premise. To be sure this new business is not small…is not a small family owned business like the original tank lining business that Mr. Conklin lived on the property and operated off of but a heavy commercial industrial business that operates at all hours and days. They also have created a retention pond on the West side of the subject property that borders my family's property. To the best of my knowledge this was made without approval or oversight of the Town of Newburgh Storm-water Management Regulations. They dumped thousands of yards of dirt and clear-cut the entire property along the westerly line. This has significantly changed the grade and rural appearance of the subject property. This grade prevents the natural runoff of water as natural springs run through the subject property as quoted in the original variance application. Water now backs up on my property and the Perry property during heavy rains and creates a flooding condition and on our properties that never previously existed. Complaints about the operation have been made by an in numerous residents about the many issues that are violating the Town Code by this new business with no action by the Town Code Compliance Office. I believe as many of my neighbors that this new business has nothing to do with tank lining and it does not fall under the original use variance. Websites for these businesses certainly show that they do completely different operations. It's for these reasons that I am asking the Zoning Board of Appeals after hearing all the testimony from the residents to find that these two businesses are separate and in 1982 use variance never intended to include anything else but tank lining. Thank you.

Mr. Maher: So let me ask you question…

Ms. Carroll: Sure.

Mr. Maher: …the…the…the barrier for the… The evergreens screen that was required to be installed and identified in the…in the ‘82 resolution was that ever installed to your memory or…?

Ms. Carroll: Not on the west side. We…we allowed the trees to grow up on our properties to screen it.

Mr. Maher: So to the best of your memory on the northerly line…well it runs 200 feet along the westerly line…

Ms. Carroll: The northerly line would be Perry’s property.

Mr. Maher: So was that buffer ever installed?

Ms. Carroll: There are pine trees. There never was a double row and at this point 35 years later very few of them still exist.

Mr. Maher: Oh I understand that I was just curious if there was an attempt in the beginning.

Ms. Carroll: In the beginning they…they attempted but it was never a double row 8 feet apart.

Mr. Maher: Okay, thank you.

Mr. McKelvey: This this pond was developed?

Ms. Carroll: I'm sorry?

Mr. McKelvey: The pond on the property was developed by them? Did they put the pond in?

Ms. Carroll: The retention pond is that…?

Mr. McKelvey: Yeah.

Ms. Carroll: …that I mentioned?

Mr. McKelvey: Yeah.

Ms. Carroll: They dug it so that the water would flow out of the slurry trucks in the direction they wanted it to go. Yes.

Mr. McKelvey: Okay.

Mr. Maher: So, no wait, a little further so the pond that you referring to from looking at…

Ms. Carroll: The holding pond that I that I referred to in my letter.

Mr. Maher: If you're looking at the building from 300 it would be to the left of the building you're referring to?

Mr. Scalzo: Left and rear?

Ms. Carroll: Left, rear a…just about even with the side of the building.

Mr. Maher: Close or approximately…

Ms. Carroll: Halfway between my property line in the building.

Mr. Maher: So it…it'll be behind the…the storage containers?

Ms. Carroll: Correct.

Mr. VanDeMark: Good evening, my name is Lawrence VanDeMark, Jr. and I am entering into the record a letter by my neighbor Joan Perry who is unable to attend tonight.

Joan L. Perry being duly sworn deposes and says the following to be true:

That I reside at and owned 25 Forest Road, Wallkill, NY 12589, which is located in the Town of Newburgh, County of Orange, State of New York. I have received a notice that a hearing will occur on February 23, 2017 that involves the interpretation of the use variance granted to William C Conklin in March 1982. I am currently in the state of Florida until April 2017 and this application is extremely important to me because of the Board interprets the use variance so as to permit the new hydro-excavation business to continue at 2102 Route 300, Wallkill New York it would affect my property adversely inasmuch as my property borders this new business. I am providing a sworn affidavit to the Board to be entered into the record as my testimony before the Zoning Board of Appeals. For the reasons to follow the Board should hold that the current hydro-excavation business that is being operated on the former premises of Conklin does not fall within the use variance. By way of background my property has been in my family since October 1951. This area has always been the most rural part of the Town of Newburgh. The character of the area has been and still is indicative of small farms and 1 acre parcels of properties in fact my property for many years was an active farm. In 1982 Conklin my then neighbor was operating a tank lining business from his property that was not allowed. The Town of Newburgh cited him for the operation of the running the business out of his house. Conklin was then forced to find a suitable location to operate his business. Conklin then approached the owners of a vacant parcel of land that was directly behind his home. He entered into a contract for the property and filed the use variance with the Town of Newburgh Zoning Board of Appeals. In support of his use variance application Mr. Conklin testified before the Town of Newburgh Zoning Board of Appeals. Specifically Mr. Conklin testified that one he operated a tank lining business from the subject premises, two it was a small operation with nine employees, three the subject premises would be used for parking of the vehicles and equipment only inasmuch as those vehicles would be taken off site to perform their work, four no work would be done on the subject premises and only an office would be located on the subject premises along with a building to park the equipment inside. A number of residents voiced concerns at that with the Board granting Conklin a use variance because it was self-created by Conklin. My neighbors and I attended every meeting before the Board until the final meeting when a vote was taken. To our dismay and surprise the Zoning Board in 1982 granted Conklin a use variance but it included conditions as a way to appease the neighbors. Subsequently Conklin sold his business and Robert Dietz became the principal in the business. Mr. Dietz operated WCC Tank Technology, the successor company to Conklin until sometime last year when suddenly another business showed up on the subject premises. This new business has nothing to do with tank lining rather it is an excavation business which dumps dirt on the premises taken from off-site. To be sure this new business is not a small business like the original tank lining business that Conklin operated but a heavy commercial industrial business that operates at all hours and days. Indeed I have heard and seen trucks on the premises as late as 10:30 PM and is earlier 6:30 AM discharging dirt which comes from off-site Monday through Friday and even some on Saturday and Sundays. Furthermore, large containers and excavation equipment have shown up on subject premises. Furthermore the occupants have clear-cut a huge area of trees and filled in a large area on the subject premises with at least 8 to 10 feet of fill. They have also created a retention pond on the west side of the property that drains to a non-known location. From my reading of the application submitted by the Town of Newburgh it is asking the Zoning Board to interpret whether the ZBA's original use variance included in this type of business. Respectfully the answer to that question is no. In support of that conclusion I direct the Board to Conklin's original testimony that he gave in support of the use variance wherein he summarized for his tank lining business involved. He stated that we drive to a site location, site or location to where a tank is leaking; we repair the leaks and then put in a fiberglass lining in the tanks. In other words Conklin's premises were…Conklin's premises would be where to be used to park his trucks and operate an office. On the other hand the Hydro excavating business does not perform tank lining rather it excavates dirt from off-site customers by using its hydro-excavating trucks which thereafter returned to the subject premises and discharge the excavated dirt onto the subject premises, the business than grades the dirt over the subject premises. In other words the business has turned the subject premises into a dirt dump. Also when the trucks discharge dirt onto the premises it is extremely loud because of the water that is used under force within the trucks to discharge the dirt from them. I know that none of the Members of the Zoning Board of Appeals were here in 1982. I was there and I listened carefully to exactly what was proposed. Never was this new business presented or talked about as being part of the original request. The addition of this new business has truly changed our quiet residential area. I would ask that Zoning Board to keep the residents in mind when deliberating. In short the hydro excavating business and that's being operated at the premises is not a tank lining business and the Board should hold that the use variance does not cover this new business. Thank you for allowing me to provide this affidavit in lieu of my appearance.

And there has been a notarized public.

Mr. McKelvey: You did send this letter to the Board right?

Mr. VanDeMark: Yes.

Mr. McKelvey: We do…we all have copies of it. We all have copies of the letters that were sent in.

Mr. Masten: Yes, Yes

Mr. McKelvey: And was starting to repeat yourself.

Mr. VanDeMark: Good evening gentlemen, ladies, my name is Charles VanDeMark, I reside at 26 Forest Road and I'm 54 years old and for my entire life I've lived either at 17 Forest Road which is directly between this business and Forest Road or directly across the street at 26 Forest Road. And I would like to stand in support of the neighbors in asking that you deny this application and without repeating what has been said before I would like to offer and request that you consider doing a slightly larger Google Earth observation and you will note that not more than 700 to 1000 feet to the east of this property is a large Federally protected wetland which goes from Forest Road on the West side to Quaker Street on the on the East side, from Route 32 on the North side and exceeds all the way down past 52 into Orange Lake and that's on the East side of the business. On the same side of the road to the north of the business there is also wetlands and springs which flow through the subject property and down the West side of Rock Cut Road into a pond on Kings Hill Road and down into the Federally protected wetlands along 52 and into the Stewart Field I would say. Now I'm not a geologist or hydrologist or anything like that however, in observing a topography graph I noticed that the elevation of this property and the elevation of the Federally protected wetlands which are separated by a mound of…are relatively the same they're very close. Now I would like to offer you direct knowledge of a practice that I observed and the reason that it's direct knowledge is because I've witnessed it. I've actually worked for Conklin Tank back in the ‘80s between college over the summer just for a couple weeks. But I observed they would go and cut into the top of 20,000 gallons tanks at gas stations and we would go in there with a full apparatus suit with oxygen and so forth and they would sandblast the inside of the tank and they would first of all going in it would be sludge and residual fuel oil or or gasoline and so they would sandblast the inside of the tank and then remove maybe a yard of sandblast sand which sopped up that material. They would also excavate the site digging down to the tank and remove yards of contaminated material at that time. They would put it on a truck bring it back and they would use it is fill right over the springs, right over the wetlands. I know when I was a child I would go down there hunt, fish, trap and if you went down there you would come back your pants would be went up to your knees. My grandfather owned that property prior to Conklin and so I have direct knowledge of the situation with the initial application and I also had gone over there and observed firsthand at night, I was visiting Joan Perry was testimony was just recently read because I drove her to Florida for the winter excursion. And while I was at her house I heard the noise and we actually went, I walked out to the back of the property there’s two rows of stonewall fences and I visually observed this truck unloading. Unlike what the…? What's going on here? It was loud and their unloading in the cover of darkness, it must have been between eight and nine o'clock at night. So my question is, to you, did they…do they catalog where all this material comes from? Do we know where each yard of this material comes from? Did it come from a contam…are they moving it from one contaminated site creating another one in our backyard? We all have…I have the best drinking water of…of the Hudson Valley…great, great drinking water. If it were to become contaminated that would…I can't tell you how…how bad that would be. And regarding your question a…sir, regarding testing wells before…we did a…there was five…five properties around the property we did get with the EnviroTech people on Gidney Avenue and they allowed us to a (Inaudible) to combine five well samples. They were each collected individually, I collected them and I brought them to EnviroTech in chain of custody compliance as best I could which was accepted by them the time, temperature and so forth. The results were everything was in…in range so, thank God. However, we have a reference point to start from…from what I'm concerned about is everything that has been put in there in the past and everything that's being put in their presently is this affects our wells. I'll leave it at that. Telepathically it would be an act of terrorism. Thank you so I asked that you deny this application. Thank you.

Mr. Maher: One…one question…

Mr. VanDeMark: Yes?

Mr. Maher: So your…the…the tests…the tests for well was done recently or…or…?

Mr. VanDeMark: Yes it was…it was done several months ago and what I did was I went down to EnviroTech and I said, hey listen I'm wondering what kind of test you can do and I explained the situation that we have a business in a…in a petroleum you know, lining tanks and bringing…what tests would you recommend? They recommended two tests a…one was…would cover basically a lot of the…the things regarding…that would come out of gas tanks, okay? (Inaudible)…

Mr. Maher: (Inaudible)

Mr. VanDeMark: So…

Mr. Maher: I guess my question was…this was done recently?

Mr. VanDeMark: Yes.

Mr. Maher: You say you have direct knowledge of what was done back in maybe the ‘80s?

Mr. VanDeMark: Yes.

Mr. Maher: So, wouldn’t that have been a concern to you prior to this?

Mr. VanDeMark: It most certainly would. At the time I was in my early twenties. I was going to college a…as far as the…I was aware they…they collected it, brought it back to site. I wasn’t part of the dumping it. I went home after that but I am aware that they used as fill.

Mr. Maher: No, I understand that.

Mr. VanDeMark: It bothered me yeah it bothered me and yes, and so I’m here today to…to ask that we can stop this from continuing. It’s a concern.

Mr. Maher: Okay, thank you.

Mr. VanDeMark: Alright. I already signed in.

Ms. Gennarelli: Yes, thank you.

Mr. McKelvey: Does anyone else want to speak? I will say if Mr. Conklin is here if he wants to speak he can. He doesn’t have to.

Mr. Presutti: Sir, my name is Vince Presutti, I live not a far distance from where this is and I appreciate your time, you know, today. I’m going to be extraordinarily brief. The predecessors were obviously able to enunciate, articulate all the concerns we have. My concern also is that a…the liquids that are being dumped, the a…maybe the contaminated water in cleaning out those things would affect our wells and our a…aquifer. My other concern is a…the noise and the a…the odor that emanate from there will affect not only our quality of life but the wildlife that is there. We moved out there because it was rural, because it was quiet and peaceful, we sure would like it to remain that way. One thing that wasn’t mentioned was the increase in commercial and employee traffic barely a quarter of a mile from a…a very busy intersection. And it would certainly detract from the rural quality by the people in close proximity there. And finally a…I hope that a…that it will not be granted and that we won’t set a precedent for other commercial variances in that area. We enjoy being there. Thank you, sir.

Mr. McKelvey: Thank you.

Ms. Gennarelli: Vincent…Vincent, excuse me, did you sign in?

Mr. Presutti: Yes.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Anyone else?

Mr. Larkin: Good evening, my name is Bill Larkin; I’m here on behalf of 2102. So there’s been a lot of comments here today about what we’re here for, what the purpose is of this…this is not an application for a variance as Mr. Donovan indicated. It’s not an application to amend a variance or a use variance and with all due respect I don’t think that this Board has jurisdiction to even hear this issue. The application is for an interpretation a…it’s pretty clear that the Zoning Board of Appeals is an Appellate Review Board and that Board is to review applications initiated by the Enforcement Officer. The Board cannot give out an advisory opinion so this…this issue has been addressed a number of times. The…the chief in…the first in charge with enforcement of any Ordinance or local order pursuant to the Town law is Mr. Canfield. Mr. Canfield has not filed alleging that there’s a violation of any use variance. The a…the appellate powers of this Board cannot be exercised unless an appeal is taken from an enforcement decision. So if Mr. Canfield or anyone else from that Board…from the Enforcement Office were to file a violation and there is…a determination is made then this Board can hear that. This…this has been addressed numerous times and so Mr. Donovan it’s a case called Kaufman v. City of Glen Cove, 266 AD 870, a 2nd Department case and again there is no decision by Code Enforcement, Code Compliance by Mr. Canfield, anyone on his behalf as to a violation on the premises. Mr. Canfield's application plainly states that the request is "not intended to encompass any alleged violations of New York State Law or the Town Code”. Since there is no determination that a violation exists the ZBA lacks jurisdiction to hear and decide any appeal. I refer Mr. Donovan to (Inaudible case citation) in addition to the…and according to Mr. Canfield's application he’s seeking the advice and direction of the ZBA to determine "whether an enforcement action is appropriate, necessary, required". The foregoing is outside of the scope of the ZBA's powers and authority to give an opinion. The ZBA has no authority to render advisory opinions to a Building Inspector or to any other entity. And this such the court lacks all the respect the jurisdictional ability to do that. The a…the case really right on point is a case called Gaylord v. Zoning Board of Appeals of Town of Kinderhook, 175 AD2d, 543 you…you can’t give an advisory opinion that's interesting for you can enforce a violation. If Mr. Canfield felt there was a violation he’d be filing a violation. There is no violation here that's been filed to be challenged and be asking the court for an advisory opinion. This is a...this is a variance was use variance that was granted 35 years ago next week so there's been a lot of statements about the Zoning Law applies, the Town Law applies, the bottom line is there's a variance that was granted and there's been no violation filed whatsoever with regard to those matters. Thank you.

Mr. Scully: Jeff Scully on behalf of the Town of Newburgh, with respect I'd have to disagree with Mr. Larkin Town Law does provide is he stated that the ZBA's jurisdiction is appellate only from decisions of the Building Department or Code Compliance and I quote unless otherwise provided by local law or Ordinance in Town of Newburgh Code Section 185-54 (A) entitled Interpretation-authorizes the ZBA quote to determine on a request by any Official Board or Agency of the Town meaning of any condition or requirement specified or made under the provisions of this chapter, that being the Zoning Code. Because the decision and resolution here imposes conditions for a use variance under the Zoning chapter of the Town of Newburgh Code it's our position that you may hear this request for an interpretation and reach a decision. I would also like to correct that we are not asking for direction or an advisory opinion as to whether enforcement proceeding should begin. A quote from our application is “the Department requires the requested interpretation in order to decide whether the alleged use and/or activities are permitted and if not, whether enforcement action appropriate, necessary, required”. We seek simply an interpretation as to what use variance means, what the parameters are, the Town will then make a decision independently in exercise of its discretion what if any enforcement action should commence. Thank you.

Mr. Donovan: And again I said before I don't want to lawyer this up too much but I…I do want to just address the issue that have been raised by Mr. Larkin and Mr. Scully in response the Law is clear as stated by Mr. Larkin that the ZBA is not authorized to issue advisory opinions. That's clear. The Town of Newburgh Code is however kind of unique, I do this in other places there is a provision in the Code that allows and Code Compliance to request an interpretation, request by any Official Board or Agency of the Town on the following matters and I again, as Mr. Scully quoted, 185-54 (A)-1 the meaning of any portion of the text of this Chapter or any condition or requirement specified or made under the provisions of this Chapter which I read to include a use variance. So the issue was obviously a threshold issue when the application was submitted. My analysis of it is that the Board can act; the law cited by Mr. Larkin is...is good law. I mean there is just so you know a…there’s a lot of cases out there that say the ZBA can't give an advisory opinion. I think that in my view…the language, the specific language of the Town Code overrides that. Well I'm not looking for anyone to applaud I mean you should be grateful you have three lawyers and only two opinions. Right?

Mr. McKelvey: Go ahead.

Mr. Conklin: The name is Ira Conklin, III; I own WCC Tank Technology and also own Hydrovac Excavating. The two companies are very much entwined together. WCC Tank Technology does the same thing it does…did…does the same thing today that it did 35 years ago. We line tanks, there's no work done on our property. We line tanks, we test tanks, we do site assessments and as folks would say here that there's, you know look at the website. Yes look at the website cause Hydrovac does the same thing. We just did a job and Branchville, New Jersey where we vacuumed out the sand from the inside of the tank into our vacuum trucks and it gets put in drums on site and left on-site. Hydrovac was developed in the early 90s, I was the fifth Hydrovac truck in the United States. WCC Tank Technology is a family business, it's always been in the Conklin family business. My dad who's here and his brother Bill started the business. I worked there and for them for two years and ‘76 and ‘77 and some of the guys that work for me here tonight and have been doing that for 30 years. We don't do any work on site. All the workers off-site, Hydrovac does have other customers, the utility companies. Some of that material goes to their own facility that they have and some of the material goes to Taylor Recycling. I've cleaned up thousands…done this since I’m… 77 full-time but I've cleaned up thousands of homes and I would not bring contaminated soil onto my own property. It's been intimated here I wouldn't do that bring it on to myself or anybody else. I've help more people in this community cleanup residences let alone bring anything in. Any of the dirt that dumped on our property will be leveled out in 3 or 4 inch areas. We’re going to have grass growing a…there. We're going to have a…pumps in the ponds to get that…to the ponds back to life again. And a…we, you know, we cut brush and trees, there's more chance of contamination from neighbors that removed the tanks that were full of holes and never got a permit in the town, never call the DEC, with the holes in the tanks, and this of the neighbors that had over 30 cars with gasoline tanks, oil leaking out of them and in all of this come here to a Public Hearing not one neighbor came to me and said the noise is too much, there's a little light too much, there's this, there's that. Nothing. You got a problem you know, in our other business on Stewart Avenue, my grandfather started the business in ‘38 and we had a…probably around 25 neighbors and we got along great. Some of those houses were within 30 feet of our building and if anybody had an issue somebody was working too early or too late or doing something we would take care of it and we were great neighbors. And then to come to…and listen to this stuff I mean, it's…it’s absolutely disgraceful. But the…we don’t do we don't do any work on our own property, we do it all off-site, the imported material just like you put topsoil on your lawn and you spread it out. Anything that we brought in will be spread out and will have grass on it. Jerry Canfield was on our property twice and he...he looked around on our properties when I was doing some work there and he said everything looked okay to him. So I ask you to take into consideration we’re doing the same thing today that we did 35 years ago. We test tanks, we line tanks, we uncover em, the hydrovac trucks which were developed recently is another…it's just a shovel of a different color. You don't damage double walled piping, you don't damage fiberglass pipe and any time we work on a on a service station for tank work the material stays on site. We don't have DEC Permits to move it. It stays on site. We do some…we of the other work the material that we imported in there on the site is going to be leveled out and will have grass growing there. Thank you.

Mr. Maher: I have a couple questions if I could? So prior to…from 2006 to 2015 the business was located somewhere else?

Mr. Conklin: Yes.

Mr. Maher: And that as according to the testimony tonight 9W somewhere?

Mr. Conklin: No it wasn't on 9W; it was in a…Marlboro.

Mr. Maher: Okay. So prior to 2015 was the fill or the slurry as…as it's been called tonight, was that dumped somewhere else or was it always dumped on…?

Mr. Conklin: No it's dumped on, you know, wherever you need fill or at the…at the utility company’s dump sites.

Mr. Maher: Okay so it's only recently that the fill started appearing at the…at the…

Mr. Conklin: Yeah because I wanted to…I want to grow grass. I want to be able to use my entire property and grow grass on it and I'm gonna…it’s going to be spread out and it’s gonna be grass there.

Mr. Scalzo: Sir, this additional slurry that that comes back to your site that you distribute there…you’re…it is not regulated by the DEC? There's no manifests required for any of that?

Mr. Conklin: No and I had a…a conversation with Ed Moore of the New York State DEC and a…there is no issue with any of that.

Mr. Scalzo: Thank you.

Mr. McKelvey: Are there any other questions for him?

(No response)

Mr. Quiles: My name is John Quiles; I live near Forest Road or off of Forest Road. Mr. Conklin, a question everyone here is concerned about contaminated soil because you said dirt and I don't know if it's regulated or not, would he object to anyone…his soil being tested on that property? Because I think that's a biggest concern here, right? Is that our soil and our drinking water being contaminated?

Mr. McKelvey: Speak into the mic, please.

Mr. Quiles: (Inaudible) Mr. Conklin wants to do the right thing…

Ms. Gennarelli: John, John you have to speak into the microphone.

Mr. McKelvey: Speak into the mic so…because that's being recorded.

Mr. Quiles: Oh, I’m sorry. You know, listening to Mr. Conklin it seems like he wants to do the right thing, grow nice grass on his property a…and…and I don't object businesses, I really don't because I…I am a local business owner. Okay? A…I do object my drinking water being contaminated am not saying that that's the case because no one here has, you know, Mr. VanDeMark said he did some testing of his water, his water a…I was just telling my girlfriend, Denise before I thought you had the best drinking water in Town. Apparently he does. But I…I want that to continue. Would Mr. a…Conklin you know, show us testing of his soil on his property that he's spreading out nicely to grow grass is my question? Mr. Conklin are you still here?

Mr. Conklin: Yes.

Mr. Quiles: Would you…would you test your soil you know, object to your soil on that property being tested? You know so that we can all have peace of mind.

Mr. Conklin: It's gonna grow grass (Inaudible)…

Mr. Quiles: I…I know.

Mr. Conklin: (Inaudible)

Mr. Quiles: I can grow grass on a brick, on a Chia pet. But can we…you know can your property be tested so that we have peace of mind? And support your business…

Mr. McKelvey: You are here…don’t…don’t go back and forth in the audience. You would direct…

Mr. Quiles: No, no I’m sorry, I’m not…(Inaudible)

Mr. McKelvey: You have to direct all your questions to us.

Mr. Quiles: Can we ask Mr. Conklin to have his soil tested?

Mr. Donovan: Well I think the answer to that is you can ask Mr. Conklin whatever you think is appropriate…

Mr. Quiles: (Inaudible)

Mr. Donovan: …but in the context of this meeting, the authority of the Board we don't have any jurisdiction or authority in any regard with respect to that issue.

Mr. Quiles: Would you be able to direct me in the right direction so I can ask the right people to do that?

Mr. Donovan: Well I, you know, there’s…no, I don’t mean to be…but I’m the attorney for the ZBA.

Mr. Quiles: Exactly.

Mr. Donovan: Understand I can’t give you advice so…I can just say what the…what the role is in what’s transpiring this evening.

Mr. Quiles: Okay. And no disrespect to Mr. Conklin is trying to do the right thing like I said I'm a business owner here, I'm pro-business, but at the same time I'm pro my a…you know, my neighborhood and my drinking water. Thank you.

Ms. Gennarelli: Can you come to the microphone? Thank you.

Mr. Conklin: I wouldn't object to that if he wants to come over and together we'll go and take a sample of the soil together and then I'll…and then I'll pay for that soil sample for…for that.

Mr. Quiles: Thank you.

Mr. McKelvey: Anyone else?

No response.

Mr. McKelvey: Any further questions from the Board?

No response.

Mr. Studtmann: Good evening everyone my name is Philip Studtmann, I live at 16 Forest Rd. right across the street from a lot of the people here who was spoken and I drive by the property every single day and I understand that the question is if this falls within the variance, the original variance that was permitted and I do as a neighbor a...I do personally feel that it does a...because they do go hand-in-hand a…as far as the truck that's being parked there it's not much different than the trucks that were parked originally. It's not a…there’s not a 20 extra trucks. It kind of seems like that's what's being presented here a…and is a neighbor I don't see that a...but what I will say I've seen the land cleared, I've seen a...within it here a relatively small operation it does look a lot bigger right now. So I just want to know in terms of you know what this gentleman just said a he said that they’re just spreading the dirt. Would that mean it's going to stop? Because if…if that's all it is that's a whole…another topic. A…but just that one truck being there the extra excavation truck being there…a it…it does go hand-in-hand. I…I do have to say that in good conscious as much as I don't like seeing the land cleared as much as I'm concerned about the wa...the drinking water all of that stuff they do go hand-in-hand and…and whether it's, you know, an extra truck that's another topic as well. In my opinion I don't know you gentlemen can handle that so I just wanted to voice that so...that's all.

Mr. Conklin: As soon as the grass gets planted there will be no dumping on the property but I'm not going to stop dumping until I get and I’m a…and I’m a importing material I’m not dumpin’ it. When I get the grass growin we’re not going to be dumping on to the property but I'm not gonna buy topsoil when I can get myself and put it there and use my own property and use 100% on my property instead of letting it get grown up and have buildings that are…should be condemned. It’ll…it’ll be done with.

Mr. McKelvey: You don't estimate how long that would take, do you?

Mr. Conklin: At four yards a truck come in maybe another year…something like that?

Mr. McKelvey: Thank you. Anyone else?

No response.

Mr. McKelvey: Any questions, more questions from the Board?

Mr. VanDeMark: Another bite at the apple but I’m must wondering if there ever any issues in Marlboro where the business had prior been situated? Whether they had any zoning issues or non-compliance issues and maybe that’s why they moved to our backyard?

Mr. Scalzo: I'm not sure if we could answer that.

Mr. McKelvey: No we couldn't answer it.

Ms. Gennarelli: Was that Charles?

Mr. VanDeMark: Yes. (Inaudible)

Mr. McKelvey: Do you want to close the Hearing?

Mr. Scalzo: I'll make a motion we close the Public Hearing.

Mr. Masten: I'll second it.

Mr. McKelvey: Roll call.

Ms. Gennarelli: One second, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: We may not be able to make a decision tonight because we got other stuff on the item and it’s getting late. Do you want...do you want to wait till next month to make the decision?

Mr. Levin: We will see what how long it takes to get there.

Mr. Scalzo: Can we do that?

Mr. McKelvey: Can we do that?

Ms. Gennarelli: John, you closed the Hearing.

Mr. Donovan: Well you have sixty-two days…

Mr. McKelvey: Yeah, we have sixty-two days.

Mr. Scalzo: Can we release these folks letting them know we won't make a determination tonight? I know I've got a ton of legal questions for you Dave.

Mr. Donovan: All I said is in fairness if the Board is not going to decide then maybe you want to let people know but if you think you might decide then…

Mr. McKelvey: Yeah…that's up to the Board whether you want to or…

Ms. Gennarelli: You have time.

Mr. McKelvey: …to make a decision tonight or carry right on.

Ms. Gennarelli: John do you have to decide right now?

Mr. Donovan: No, no it's just for the benefit of the people the typical practice of the Board is to conduct the Public Hearings either continue to close the Public Hearings then when all the Hearings are over for this evening there is an attorney-client privilege session which generally lasts ten minutes or so and then the Board makes a determination if they are going to decide. Someone would make a motion to approve, deny as indicated at the beginning of the meeting has sixty-two days to decide. The conversation that was going on up here since there so many folks interested if…if the Board was like they wanted some extra time to decide we would indicate to you that we’re not going make a decision that the Board is not going to make a decision tonight. I don't know I don't know that there's that any decision to that regard so my point of my story is you may, if you want to know tonight, you may have to sit around for a while and then the Board may or may not decide because they are not legally required to decide tonight.

Mr. McKelvey: Because we have other items on the agenda.

Ms. Gennarelli: Okay, Darrell left for minute.

Mr. Levin: Next on the Agenda…

Ms. Gennarelli: Darrell left for minute.

Mr. McKelvey: Pardon?

Ms. Gennarelli: Darrell left for minute.

Mr. McKelvey: Okay, hold on.

Mr. Scalzo: Mike won’t be here next month.

Mr. McKelvey: Okay, we’re going to continue on with the meeting. We’ll try and make the decision tonight.

(Time Noted - 8:55 PM)

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ZBA MEETING – FEBRUARY 23, 2017 (Resumption for decision: 10:35 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,

TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: We’re going to resume the Hearing.

Ms. Gennarelli: Okay John I’m ready.

Mr. Levin: The interpretation...interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals’ March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. McKelvey: Do we have any comments from the Board?

Mr. Scalzo: I think we have an awful lot of information to digest here and...

Mr. Maher: And basically nine different questions.

Mr. Masten: Yes.

Mr. Scalzo: ...yes, and although we have had them in our possession for a little bit I would...I would like Dave to perhaps prepare a summary with some guidance for us.

Mr. Donovan: Okay.

Mr. McKelvey: Anyone have a motion?

Mr. Levin: (Inaudible)...open for thirty days.

Mr. Donovan: So...so, the Hearing is closed. Right? You have sixty-two days to decide so if you want to...or the practice has been, you make a motion to just put it on the agenda for March...what day is that?

Ms. Gennarelli: 23rd.

Mr. Donovan: March 23rd if that’s what you’d like to do.

Mr. Scalzo: I would, I make a motion we defer decision to the March 23rd meeting.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: March 23rd.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 10:38 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 8:55 PM)

ROBERT G. CELENTANO 1 ROCKWOOD DRIVE, NBGH

(77-9-5) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to construct a front porch (8’ x 20’) on the residence.

Mr. McKelvey: Go ahead.

Ms. Gennarelli: Okay, here comes Darrell.

Mr. Levin: The next on the agenda is Robert G. Celentano, 1 Rockwood Drive, Newburgh. He’s seeking a variance an area variance for the front yard setback to construct a front porch eight by twelve…twenty, sorry on the residence.

Ms. Gennarelli: And this applicant sent out sixty-three letters. All…all mailings, publications and postings are in order.

Mr. McKelvey: Take the mic with you. State your name and what you’re looking for.

Mr. Minuta: Hi, good evening, my name is a…my name is Joseph Minuta with Minuta Architecture. I’m here representing Mr. W…Mr. Celentano for his property…

Mr. McKelvey: Excuse me, if you want…if you want to use the board to you can take the mic with you.

Mr. Minuta: Is this on?

Ms. Gennarelli: Yes.

Mr. Minuta: Okay, so I think we have a pretty simple application, to be frank a…at least. So Mr. Celentano has a house that he's occupied, it's been there for a very long time a…it…it is…it is situated on a…a…sort of difficult lot a…as far as his configuration is concerned. The road is…is in this direction and the house is actually slight…when it was originally set it’s slightly angled. Had it been set parallel to the road we wouldn’t even be here. A…the house has a small cut out in it so a…

Mr. McKelvey: I’d just like to say we didn’t say before…the Board Members have visited the property.

Mr. Minuta: Oh you have visited the property, great, okay so you understand what it is. We're simply completing the square of the house by placing the front porch to the end of it and covering it. We have a very small a…variance which really just is at the corner of this. It's about three feet. And that's why we're here tonight.

Mr. McKelvey: It did look like the porch needed replacement anyhow.

Mr. Minuta: Correct.

Mr. Maher: So just for clarification you're calling for a thirty six foot ten inches is what consider the setback at?

Mr. Minuta: Yes, forty foot is…is what’s required. We need…we’re at thirty-six ten when this is complete and so, yes.

Mr. Maher: Joe, you indicate thirty nine, thirty foot, nine inches, a nine foot variance.

Mr. Minuta: Where is this?

Mr. Maher: No, I’m talking to Mr. Mattina.

Mr. Minuta: Oh.

Mr. Maher: I just want to clarify what…

Mr. Minuta: Can I…?

Ms. Gennarelli: Can you give him the mic, thanks.

Mr. Mattina: Yeah, I’m just going through the files. I did this three years ago so…I’m trying to refresh my memory here. Okay the original survey that we got from Valdina it showed thirty point nine. In the two years since I’ve done this they’ve submitted a new survey with different numbers so I don’t have the updated survey in my numbers.

Mr. Donovan: Yeah, so the a…survey indicates the last revised date of January 2017. Code Compliance information is dated October 28, 2015 so obviously…

Mr. Mattina: Correct. So he has new numbers.

Mr. Donovan: Yeah.

Mr. Minuta: Okay, so there’s a clarification.

Mr. Maher: So in essence we’re going for a three foot two variance?

Mr. Minuta: That is correct.

Mr. Maher: Okay.

Mr. Levin: Did the front porch fall off of there? It looks like nothing was...it wasn’t there.

Mr. Minuta: There’s sort of a front stoop. It was probably not constructed in that...in that way but it does need to be replaced and at this point we’re just trying to complete the square of the house so it looks whole.

Mr. McKelvey: You’re going right acrossed?

Mr. Minuta: Correct. You know it complies with all the other houses in the neighborhood. You know, it’s not offensive, intrusive or anything in that nature.

Mr. McKelvey: Any other questions?

No response.

Mr. McKelvey: Anybody from the public?

Ms. Gennarelli: Can you come up to the microphone?

Ms. Knapp: Thank you, I’m Joann Knapp, I’ve been a neighbor of his since he was six years old. His mother owned that house originally and I can’t see why you wouldn’t grant the beautification of the house for some wonderful neighbors. Thank you.

Mr. McKelvey: Thank you. Anyone else?

No response.

Mr. McKelvey: Any more questions from the Board?

No response.

Mr. McKelvey: If not I’ll look for a motion to close the Hearing. Hold on, I’m sorry, go ahead. You don’t have to sign in.

Ms. Gennarelli: Just tell me what your name is.

Mr. Muthig: Thank you, my name is Frank Muthig unfortunately we have fewer people than we wanted concerned people about regarding this project that aren’t here tonight. Bob Scott is in Florida and James Beretta, he had other obligations tonight. Unfortunately you know, the meeting with a...was postponed several times so a...a...didn’t really know...

Mr. Donovan: Sir, are you talking on the Celentano front porch...?

Mr. McKelvey: Are you talking about the front porch?

Mr. Donovan: You’re a little previous...you’re ahead of yourself.

Ms. Gennarelli: Are you here for Troon? Troon? The solar farm?

Mr. Muthig: Yes, the solar farm.

Mr. McKelvey: We’re not on that yet. We’re not there yet.

Mr. Scalzo: We’re getting there.

Ms. Gennarelli: This is Celentano.

Mr. Donovan: You are making them awful nervous.

Mr. Muthig: Sorry, Board Members, I apologize.

Mr. McKelvey: That’s alright.

Ms. Gennarelli: We’re not ready for you yet.

Mr. Muthig: I thought there was only two on the agenda.

Ms. Gennarelli: Okay, we’ll have you sign in later. Sorry.

Mr. McKelvey: Does the Board have any more questions?

No response.

Mr. Levin: I’ll make a...

Mr. McKelvey: Do we have a motion to close the Hearing.

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

Mr. Maher: Second.

Ms. Gennarelli: Who was the second? Mike, okay.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

(Time Noted - 9:01 PM)

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ZBA MEETING – FEBRUARY 23, 2017 (Resumption for decision: 10:38 PM)

ROBERT G. CELENTANO 1 ROCKWOOD DRIVE, NBGH

(77-9-5) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to construct a front porch (8’ x 20’) on the residence.

Mr. Levin: Robert Celentano variance, area variance for the front yard setback to construct a front porch (8’ x 20’) on the residence.

Mr. McKelvey: Go ahead Betty.

Ms. Gennarelli: Okay, we would like to go through the questions, the area variance questions. The first is whether the benefit sought can be achieved by any means...other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Scalzo: I don’t think so, unless he didn’t do it so, no.

Ms. Gennarelli: Okay. Is there an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: I don’t believe so.

Mr. Maher: No, it’s consistent.

Mr. McKelvey: No.

Mr. Levin: No.

Ms. Gennarelli: Is the request substantial?

Mr. Maher: No.

Mr. Levin: No.

Mr. Bell: No.

Ms. Gennarelli: And whether the request will have adverse physical or environmental effects?

Mr. McKelvey: No.

Ms. Gennarelli: And then is the alleged difficulty self-created? Which is relevant but not determinative.

Mr. Maher: It is but it’s not pertinent to this case.

Mr. Scalzo: Right.

Mr. McKelvey: Do we have a motion for approval?

Mr. Scalzo: I’ll make a motion for approval.

Mr. Maher: Second.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 10:40 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 9:01 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

(8-1-97) A/R ZONE

**USE VARIANCE**

Applicant is seeking a Use variance for 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

Mr. Levin: The next is Troon Properties, Bessie Lane and Old Post Road, Newburgh, they are seeking a variance, a use variance for the use for 185-83 Solar Farms shall be permitted in in I (Industrial) District to create two solar electric generating farms in a residential district, for a two-lot subdivision before the planning Board. Held over Troon Properties a variance...an area variances should...

Mr. McKelvey: No, no were just doing the use variance.

Mr. Levin: Okay, okay.

Ms. Chiocchio: Good evening, Vice Chairman and Members of the Zoning Board of Appeals, my name is Lucia Chiocchio. I’m a partner with Cuddy and Feder and we represent Green Street Solar Partners, in connection with the use and variance applications a...for their proposal to build a community solar facility at the premises. They were here before you in December, on December 22 a...and at the time had requested an adjournment to provide some additional information in support of their applications. A...we came on board a...probably a couple of weeks after that in mid-January to work with the team to put together some a...supplemental information which we provided. What I'd like to do tonight is briefly summarize that supplemental information and I promise to be brief and obviously answer any questions for the Board and address any concerns that are raised. Before I start, I just wanted to quickly go over what the proposal is since it's been a couple of months so I’ll just come over to the drawing here. So the parcel is approximately twenty-eight acres, the proposal includes a...two community solar facilities each about two megawatts in capacity and two megawatts powers approximately three hundred to three hundred and fifty homes. A...they’re proposing to also subdivide the property so that each of the facilities can be considered two megawatts and sep...and separate in order to take advantage of a...financial incentives a...for each of the facilities. Community solar facilities a...are a new...new thing. They were enabled by the Public Service Commission last year a...and basically what happens is Green Street Solar builds the solar facility, maintains it, operates it, the clean energy that’s a...generated by that facility a...is sent back to the grid so that anyone who’s a utility customer, a local utility customer, can participate in this program and choose to have their electricity sourced from the community solar facility. And the whole intent behind this is allow people who may not necessarily have the room a...to install solar panels to be able to have the opportunity to source their electricity from a clean renewable source. So since they were the last a...Green Street also hosted a community meeting on February 8. They sent invitations to everybody that received notice of the Hearing a...and the...the meeting was basically to just to review the facility, answer questions and address concerns. So with respect to our application a...if it pleases the Board I can separate out the presentation between us and area variance a...but whatever...whatever the...the Board prefers.

Mr. McKelvey: We have to finish the use variance first.

Mr. Donovan: Right, typically we would do that. We would go through the use variance in and then...

Ms. Chiocchio: And then go back.

Mr. McKelvey: Well yeah.

Mr. Donovan: Yeah, yeah.

Ms. Chiocchio: That's fine.

Mr. Donovan: Correct.

Ms. Chiocchio: Okay, that’s fine and that’s fine. So with respect to the use variance going to start with the fourth criteria, the self-created because that’s the easiest we can get that out of the way. The determination was made at the December meeting that that criteria, the self-created hardship was satisfied given that the current property owner, Troon Properties acquired the property in May of 2010 and the local solar law was not adopted until March 2015. So it was adopted after the acquired property. A...so going back to the first criteria a...whether the applicant can realize a reasonable return. We provided information in supplemental submission that includes case law that indicates that this criteria can be met by us showing that efforts to sell the property had proved unsuccessful. Now these efforts in this showing has to be more than just a statement. It can’t be just a statement by me or by the property owner. So to support that we’ve provided an affidavit from Troon Properties with exhibits that indicates their efforts and in summary their efforts were right after they acquired the property in a Referee Sale they put a for sale sign at the property. The for sale sign had all the pertinent information for anyone who is interested in the property to contact them regarding the a...regarding the property. They also hired two real estate brokers at two different times a...in order to sell the property and they placed ads a...on real estate websites in order to try and gain some interest. A...and there was definitely interest, they did get interest from folks but none of that interest turned into an offer. The only offer they received was from Green Street Solar so we’ve demonstrated that they worked very diligently to sell the property but all of those efforts were unsuccessful until Green Street came along. We also provided a letter from Al DeKrey, he’s an appraiser he’s got thirty experience and he supports the fact that there is no market here for the permitted uses under the A/R zone. So given

the information we provided we respectfully submit that we met that criteria. With respect to the uniqueness criteria and case law has held that uniqueness does not require that the subject property be the only property that suffers from the hardship. Well we submit that there are several that make this property unique. As I said earlier the way these facilities work there’s the solar energy or solar electricity that's a...generated is sent back to the grid. So because of that you need to be located where there is an available interconnection to the local utility and that's very limited. A...we did provide in a supplemental submission a map where we took the Central Hudson, they call it the DER map, it shows areas of potentially available interconnections and on that map we overlaid the I Zoning district. And there's two sections of Town that have an I Zoning district. In the northeast section of Town there are no potentially available interconnections a...for Central Hudson. On the southwest side of Town there are some but that’s also where the airport is and typically these types of solar facilities are not sited near airports a...because of the concern about glare for a...a...flight aviation. So considering that we find that that's very unique for this a...piece of property in this project. This property is also unique in that it's a sufficient size a...to install this type of facility and it's also mostly vacant so this area and room a...in order to install the facility but also leave some buffer areas. Whether it will alter the character of the essential character of the neighborhood, the area...the neighborhood is already characterized by utility infrastructure a...so...we’re saying that it’s...it’s in character as far as being an electric generating a...facility. However, the solar farm unlike your traditional electric generating utility is a very passive use of the premises. A...no noise, no odor, no vibrations, no emissions, very little disturbance a...the solar away...arrays are installed on footings a...so the area under the arrays remains grass or whatever is there. With respect to visibility we’ve provided a...part of like a photo simulation almost to show right now, winter conditions, what the views are from the homes closest to the proposed solar arrays. A...the views are very limited and the...Green Street is more than willing to supplement those views...those areas with evergreen plantings so that solar arra...arrays will not be visible surrounding properties. So we respectfully submit that we have satisfied the criteria. I’d also like to talk a little bit about a...the fact that Green Street Solar Partners facility in the community solar facility is a public utility and we respectfully submit that as a public utility the variance standard is actually the standard of public necessity and not the criteria that you would typically have for a use variance. So the highest court in NY has determined that because of the essential services that public utilities provide when it comes to evaluating a variance there should be a different standard and they call that standard the public necessity standard. The case law also gave some guidance as to okay so what’s a public utility? They provided some characteristics of what a public utility would be. One is the nature of the services a...we respectfully submit that solar generation will...is an essential service. You may be aware of the state’s clean energy standard and basically that’s a mandate that fifty percent of the electricity generated in NYS come from renewable sources by the year 2030. That's not very far away and that's a lot of electricity to generate from renewable sources. So solar will definitely have to play in that providing that elec...electricity in coming up with that. A...the other characteristic is whether there is some sort of regulation well as I said earlier these community solar facilities were enabled by PSC the Public Service Commission and they’re also highly regulated by the PSC. The PSC sets the standards, they set the...a...governing rules a...there’s also oversight by NYSERTA so there’s definitely a lots of regulation here. And the other characteristic is logistics as far as the placement or the siting so as I said earlier it’d be nice to be able to put these community solar facilities on a nice vacant piece of property out in the middle of nowhere but you really can’t do that because of...you have to have a connection to the local utility. The other a...item or (Inaudible) with respect to utilities is the fact that the zoning code classified this facility as an electric generating facility and it meets the definition of a public utility plant right in the zoning code. So what’s this public necessity standard? So the courts have said you definitely have to do a balancing. You have to balance the zoning interests of the local community with the need to provide service so it’s a less restrictive standard than the five factors or the four factors for a use variance but it still requires the applicant...or the public utility to indicate that its facility would not have an adverse impact on the community. And for several of the reasons I that just talked about we respectfully submit that this facility will not have an adverse impact. So given all the materials we submitted a...in support of the traditional four factors and the fact that we believe this is a public utility subject to the public necessity standard we respectfully submit and respectfully request that you grant the use variance. Happy to answer any questions...

Mr. McKelvey: Any questions from the Board?

Mr. Maher: So the...the proposal for two megawatts...for each of the parcels...

Ms. Chiocchio: Right.

Mr. Maher: ...are there an equal number of arrays on both parcels?

Ms. Chiocchio: I don't believe so. Charlie do you know offhand?

Mr. Brown: It...it’s comparable...

Mr. McKelvey: State your name Charlie.

Mr. Brown: Charles (Inaudible) Brown, professional engineer, Newburgh, NY. They’re comparable...the a...the number of arrays. They’re both set up to each generate just right about the two megawatt. That’s the cutoff from the state.

Mr. Maher: Cutoff in what manner? I mean that’s the minimum they’re allowed to...?

Mr. Brown: Big...bigger than that you don’t get the a...a...the credits or the benefits from the state.

Mr. Maher: Bigger than...

Mr. Brown: That’s the maximize size per the state.

Mr. Maher: So you can go smaller then?

Mr. Brown: Yeah.

Mr. Scalzo: The proposed screening wall a...prevent or...yeah, obviously these operate on sun how tall is the screening that you’re proposing and will it impede the ability of the sun to reach the arrays?

Mr. Brown: It may...I...I don’t it’s...

Mr. Scalzo: In time?

Mr. Brown: Yeah. It’s not a big a...it’s not a big factor on this because the majority of the arrays are central to the property a...and really the screening would be to the two houses a...to the right there because those are the only ones that can actually see into the site. Due to the topography none of the other houses in the vicinity can actually see into the site. This is a plateau. You guys have been up there.

Mr. Scalzo: At least on one side.

Mr. McKelvey: You...you said you met with...you said you had a meeting with the neighbors?

Ms. Chiocchio: Correct.

Mr. McKelvey: How many neighbors were there?

Ms. Chiocchio: There were about two or three neighbors that showed.

Mr. Maher: And the purpose of the meeting?

Ms. Chiocchio: It really was just an informational meeting a...to talk about the facility a...and to talk about the benefits, clean energy and so forth and to offer a...the other thing that...that another benefit or advantage here is that there’s significant savings on the electric bill a...if you become...if you participate in this program. So Green Street...

Mr. Maher: How many neighbors were invited?

Ms. Chiocchio: Everyone who receive Notice of the Hearing, that was a little over fifty...I believe it was fifty-two.

Mr. Maher: And the show...you said two or three showed up?

Ms. Chiocchio: Correct.

Mr. Maher: And they’re...not that I want a hearsay but how did that conversation go, I guess?

Ms. Chiocchio: It went...it was actually very...it was...it went very well. There were a lot of questions you know like I said earlier this is a new thing so a lot of the questions are how does this work? If I wanted to take advantage of this what do I need to do? Like logistically and it’s really just...just sign up a... How does...you know, what kind of savings can I a...realize from this? A...Green Street agreed to a a fifty percent discount on the a...electric bill a...for folks that came to the meeting and participated and so forth. And they’re willing to do that for the folks that are part of that Notice area.

Mr. McKelvey: And was as long as they own the house.

Ms. Chiocchio: For...right, for as long as they’re in the house. That’s correct.

Mr. Maher: So can you...can you identify the neighbors that attended based on the plan there?

Ms. Chiocchio: I believe (Ms. Chiocchio walked over to the easel) a...let’s see, I believe we had the gentleman who owns this property which I think actually fronts on 9 a...I don’t recall the women’s last name; her first name was Joan...

Mr. Canfield: Moriello.

Ms. Chiocchio: I’m sorry?

Mr. Canfield: Moriello.

Ms. Chiocchio: Moriello, thank you.

Mr. Canfield: They reside on Post Road.

Ms. Chiocchio: Right so...

Mr. Maher: Are the closest to the...to the array or...?

Ms. Chiocchio: A...not that I know of.

Mr. McKelvey: Then the one in the house right next store to the property wasn't there?

Ms. Chiocchio: No.

Mr. Levin: But they can take part in this a...

Ms. Chiocchio: That...that is correct yeah. Like I said the purpose of the meeting was really just information. Folks to come and talk and...learn about it.

Mr. McKelvey: Any more questions from the Board?

No response.

Mr. McKelvey: So I'll open it up to the public, if anybody wants to speak.

Ms. Gennarelli: You can take that right off of there.

Mr. McKelvey: You can take the mic right off of there.

Mr. Donovan: You can take it off.

Mr. Muthig: I think they broke it. Okay.

Mr. McKelvey: State your name please.

Mr. Muthig: Good evening Board Members tonight I just wanted to present, you know...

Mr. McKelvey: State your name first, please.

Mr. Muthig: Frank, my name is Frank Muthig and I live on a...19 Cedar Court, Newburgh, NY and what I wanted to present it is that a...we have a...some of the neighbors that wanted to be here tonight, they weren’t sure about as far as the meeting...the meeting was a...you know, postponed, you know for the a...tonight and then we thought it was going to be, you know, in March. But some of the reasons, I, you know I talked to the neighbors and I followed up with a petition for Bob Scott who is in Florida. He started the petition, you know, about a month ago and a...I followed up on it and a...I was surprised that we had a...and I presented it to Betty. She has it on public file.

Ms. Gennarelli: They should all have a copy of it.

Mr. Muthig: Yeah, everybody has a copy and if now twenty-seven neighbors in the area that are opposed to the project, one of the main things are...is that they’re concerned is that a changing from agricultural to industrial. A lot of the people bought the property within about the last five years and their concern is that when they bought it was zoned agricultural and now if everybody comes in front of the Town Board...you’re seeing a lot of that, come in front of the Town Board and want to go from agricultural to industrial a...to begin to set a precedence here and then continue doing this because a...property values have been known to go down and a...one of the concerns are we’ve seen in the a...the map here is that limited you know tree shelter and you can actually see on the a...our side, on the south side where there’s little if any vegetation and the neighbors are concerned about you know within a hundred and fifty feet the Gogerty residence, the Meyer’s residence and these are...I’d like to present...these are the homes on the south side.

Mr. Muthig approached the Board

Mr. McKelvey: You’ve got to take the mic with you.

Ms. Gennarelli: Sorry.

Mr. Muthig: And...and you can see that’s within the hundred and twenty feet. Now there’s pictures taken from the inside of that facilities out and there’s people’s homes that are there, both south side and north side and we’ve approached people on both sides and all the people, twenty-seven signatures that I’ve presented to the Board tonight are opposed mainly because of the change in zoning agricultural to industrial. The other concern was that a...the environmental impact. When Scaturro had the property originally they wanted to put homes on the property and one of the main problems was erosion...runoff, groundwater runoff and even when Scaturro had some loggers come in and remove some of the white oak what happened is that we had substantial erosion and runoff that impacted people on Post Road...Old Post Road and especially a...Levington Heights. That whole area is known as a...a rock, outcrops, a lot of limestone and bedrock very little room for vegetation and growth except by the farm if you go back further there’s slopes that go like a...twenty feet or so. And most of the slopes and the water the only thing that’s protecting it is the vegetation, if that’s removed, you know, completely clear cutting what the developers plan on doing a...most of the residents are concerned about the impact. We really didn’t have a chance to look at the a...engineering but then what we seen there’s not really much room for retention ponds and water collection. One person even stated that they were concerned about the Scaturro Farm a...back in the ‘60’s or whatever they had used a...pesticides, chemicals and so on and concerned about the runoff and pesticides getting in the a...rural wells that was a concern. The...the area itself has a lot of unique different species on it, you know, we’re talking deer, protected species, we have pictures of American bald eagles nesting on that property a...brown bats, (inaudible), things that are protected. One of the main things is that the visual impact I don’t think that any Board Member would want to look out 24/7 and see a solar farm in the backyard. Other concerns that they had were there’s been studies looking at, you know, the health effects of electromagnetic activity in the area and health effects and...and the reduced on the property values, concerns about fire hazard and complete...and a...fire protection in the area. And a we also are concerned about just changing the character of the land, putting up a requirement of a hundred acres of hardware on thirty acres, the encroachment on that property that’s a...there’s a lot of other people that wrote in...Jim Beretta, myself and like I said I have twenty-seven people that oppose it and these are people that on the south side for the homes and three of the homes on the other side. On the north side there’s an issue that when water runs down that hill on that side it’s the slope comes from Scaturro’s property and it goes into the wetland so...I’d like to suggest to the Board that they also look out a complete Environmental Assessment before any...any decision is made. Thank you.

Mr. McKelvey: Anyone else?

Mr. Diaz: I'm Ralph Diaz, 38 Cedar Court, that map doesn't show my property, I'm Frank's neighbor. My biggest concern, I bought my house seven years ago, it was all residential and that farming question was agricultural. My biggest concern is turning it to industrial and I don't know much about, you know, laws and such but I'm afraid that what if this doesn't happen what happens if...if it's permitted to become industrial, right? And the solar farm doesn't pan out then that...that area is still industrial and what else can go there if this doesn't work? I think I heard something last month that it's about a year and after a year he goes back to agricultural, I'm not sure about that? But that's my main concern and my other concern is property value, you know, the want my property to appreciate not depreciate. Thank you.

Mr. Donovan: Just...just to be clear on your first issue the application is for a use variance so if the Board, and the Board has got to deliberate and vote, but if they were to issue the use variance it simply for the use as proposed which then becomes a permitted use. But it would not; it would be limited to that use...

Mr. Diaz: Right.

Mr. Donovan: ...it wouldn’t be...this is not a zone change so any other use allowed in an industrial zone would not be permitted here will be limited to the...the solar array that is proposed.

Mr. Diaz: Just to the solar.

Mr. Donovan: Just for clarification.

Mr. Diaz: Okay. Thank you.

Mr. McKelvey: Anyone else?

No response.

Mr. McKelvey: Anybody questions from the Board?

Ms. Chiocchio: I'd like to just address the concerns with respect to drainage and runoff, the other item we did provide with our supplemental submission is a preliminary review a of the drainage and the impacts of this project which indicates that they could be sufficiently a...handled. There shouldn't be an issue with drainage or runoff it can be designed so that it's not a problem and it won't be an impact and as I indicated earlier the reason opportunity to provide additional plantings to help mitigate the visual impacts particularly for the houses closest there. The solar arrays stand about 10 to 12 feet from grade level so there is definitely an opportunity to mitigate visual impacts.

Mr. Maher: Question for you...

Ms. Chiocchio: Sure.

Mr. Maher: The fence lines that are proposed in the...in the...in the drawing, what type of fence is proposed there?

Ms. Chiocchio: Right now I believe it's chain-link, is that correct, Charlie?

Mr. Brown: Chain-link with privacy slats but you know we’re open to suggestions on that.

Mr. Donovan: Charlie and I don't recall do you need to go to the planning board if...?

Mr. Brown: Go, yeah.

Mr. Donovan: ...if these variance is granted me that a go for site plan approval, right?

Mr. Brown: Yes, yes.

Mr. Donovan: So issues drainage, screening, landscaping?

Mr. Brown: Will be addressed at planning board level.

Mr. Donovan: Will be required to be addressed, okay.

Mr. Brown: Yeah we have a subdivision application and to site plan application before them right now and they're the ones that referred us to you a...with the Building Department.

Mr. Scalzo: Charlie you said you had worked on a subdivision, a residential subdivision on this very lot before?

Mr. Brown: Yes I did an eight lot subdivision on this property a...for the original owner Vinnie Scaturro, he had a builder lined up a...the market crashed, the builder pulled out a...and a he had a note on there and they foreclosed on the property (inaudible) I didn’t get paid for the project a...

Mr. Scalzo: Did...did you make it to the Public Hearing portion...?

Mr. Brown: We had final...

Mr. Scalzo: Oh, really.

Mr. Brown: ...final approval. I never filed the map.

Mr. Scalzo: And in your Public Hearing portion what was the a...did anybody come out in support or lack of support for your project?

Mr. Brown: Quite some time ago...I don't remember any negative a...input at the Public Hearing for the project a...we had a private road going up the hill a...I think it was about eight hundred feet, a...we had a retention pond down at the base of that, right where it's Old Post Road and then we had to ponds in the back for each of the a...two rear watersheds...a...thought it was fully engineered.

Mr. Scalzo: Thank you.

Mr. McKelvey: There...there was some questions too about tree clearing a...and removing stumps. Were you going to remove all the stumps?

Mr. Brown: A...removing stumps has a cost and they don't really affect the way a...performance of the panels. They may have to remove one or two fewer there to put in...these are going on like a screw...screw pile...

Mr. Scalzo: (Inaudible)

Mr. Brown: ...pretty much, yeah, but much longer than what you use on a...for a building, yes, same, same principal. A...there is, as one of the people said, there is bedrock that’s at the front, near the road. We're not showing any panels there, the old back area we...we did (Inaudible) swells testing for the septic systems and we had, (Inaudible) know, six foot of...of good soil in there. These are all B type soils which a...if you know anything about swells they’re pretty...pretty good at absorbing rainwater. A...and again we...we tested this for septics all over and we really had no problem getting in ground septics on the majority of the site.

Mr. Maher: So the...the...the fact that two megawatts is the largest...well, we’re doing the use variance now, right? Area is after this?

Mr. Donovan: That’s correct. That’s...

Mr. Maher: I’ll hold.

Mr. McKelvey: Do we have any more questions?

No response.

Mr. McKelvey: Do we have a motion to close the Hearing?

Mr. Scalzo: And that's just for the use variance portion?

Mr. McKelvey: That's just for the use variance.

Mr. Scalzo: I make a motion with close the Public Hearing for the use variance.

Mr. Bell: I'll second that.

Ms. Gennarelli: Darrell's the second, okay. Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

James McKelvey: Yes

(Time Noted - 9:36 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Resumption for decision: 10:40 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

(8-1-97) A/R ZONE

Applicant is seeking a Use variance for 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

Mr. Levin: Troon Properties, two variances, a use variance for a use for a 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

Ms. Gennarelli: Okay, this is...this is for the what, the use variance?

Mr. Donovan: This is on the use variance.

Mr. McKelvey: Use variance.

Mr. Scalzo: We have discussion, correct?

Mr. McKelvey: Any discussion?

Ms. Gennarelli: Do you want to go through the questions?

Mr. Scalzo: Nope, not yet.

Ms. Gennarelli: Okay.

Mr. McKelvey: Not yet.

Mr. Levin: No.

Mr. Scalzo: To the groans of the few remaining a...I’m not comfortable putting forth an opinion on this this evening. So my own opinion is I would also like to defer this to the March meeting.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Okay, roll call:

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten:

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Okay, March 23rd.

Mr. Maher: Would there also be some comments from Counsel?

Mr. Scalzo: I would hope so.

Mr. Donovan: Your wish is my command.

Mr. Scalzo: Dave, can you do that for us? Thank you.

Ms. Gennarelli: Busy, busy. So that means that the area variance which is contingent on it is also held over to March 23rd.

Mr. Scalzo: That’s correct.

Mr. McKelvey: Right.

Mr. Maher: Yes.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:40 PM)

ZBA MEETING – FEBUARY 23, 2016 (Time Noted – 9:36 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

(8-1-97) A/R ZONE

**AREA VARIANCE**

Applicant is seeking area variances (should a Use variance be granted by the ZBA) - Lot #1 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback; Lot #2 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback of a two-lot subdivision to create two solar “electric generating” farms for a Two-lot subdivision application before planning board.

Mr. Levin: Area variances should a Use variance be granted by the ZBA - Lot #1 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setbacks; Lot #2 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setbacks of lot...two-lot subdivision to create two solar “electric generating” farms for a Two-lot subdivision application before planning board.

Ms. Chiocchio: Thank you. For the record again, Lucia Chiocchio with Cuddy and Feder. Yes you're right a lot of setbacks a...and with respect to the...to the area variances and the...and the need for a...so many the I zoning district, those setbacks that were established were designed to mitigate impacts from your traditional electric generating utilities which would...could have included large buildings, buildings that has turbines, large electric generators a...potentially tall distribution towers or transmission towers so a...those are appropriate for those types of facilities a...as I indicated earlier this solar law was devel...adopted two years ago a...so when the I Zoning District area and bulk regulations were designed and developed and adopted by the Town a...these types of community solar facilities weren’t around and they probably weren’t contemplated a...so that...that really is a function of why so many variances are needed in this case. With respect to the a...factors, a...for balancing for area variances a...whether there be an undesirable change or...in the neighborhood or detriment to nearby properties a...don’t want to repeat myself too much but we respectfully submit that it...it doesn’t a...result in a significant adverse impact. There are impacts yes, there might be some visibility but that can be mitigated. Concerns about drainage once again can be designed to be mitigated a...these are very passive facilities as I said earlier there is no noise, there's no vibration, there's no emissions a...the area under the solar panels remains in its natural state a...the property does allow a...because of its size to a...to place the solar...solar panels in the middle to have as much buffering around the edge as possible. A...the applicant is willing to upgrade the fence to a nicer fence so they’re really willing to work with the community to keep this a...as low impact as possible. Whether there are alternatives a...that the applicant can seek to achieve these benefits a...and as I said earlier there’s a requirement here to be a...near interconnections for the local utility and that really limits the available properties a...for these types of facilities so a...with that in mind there really isn't an alternative. As I indicated earlier there's really nothing within the I zoning district a...that allows this interconnection with the local utility. Whether the variances are substantial and...and yes, there is quite a few variances and they are substantial but a...I respectfully submit that the Board consider that with the other factors and balance it. And consider what I said earlier with respect to the I zoning district area and bulk requirements that were really not designed for these types of facilities and whether there’s a...a negative or an adverse impact to the environmental or physical conditions a...once again for all the reasons I stated earlier any impacts can be mitigated. This is a passive facility, a lot less impervious surface than if you had an eight lot subdivision on that piece of property. And it actually provides a benefit to the community by a...providing a source of clean renewable energy a...and finally whether it’s self-created a...and we talked about that earlier with respect to the self-created criteria being met and once again we submit the community solar facilities are public utilities and as such should be subject to the public necessity standard a...and considering that standard we believe we’ve met the standard for issuance of the variances. Thank you.

Mr. Levin: You probably said it, I...I may have missed it, the fencing how high is that going to be?

Ms. Chiocchio: It's eight and a half feet.

Mr. Levin: Eight and a half feet, okay.

Mr. Maher: So so if in fact the maximum allowable would be two megawatts to be financially viable then there is the ability to lessen the degree of certain areas in proximity to the resident’s homes, correct?

Ms. Chiocchio: A...we could take a look at that. I don't know if that's something that we...I mean we could certainly take a look at that.

Mr. Maher: Well there's a want and there is a need, right?

Ms. Chiocchio: Well yeah, yeah, I mean, just...just to give you a sense of...

Mr. Donovan: There’s a lot (Inaudible), right...?

Ms. Chiocchio: Yeah there is. Well just to give you a sense of like the importance of solar a...I talked a little bit about the clean energy standard, right? So we have to get fifty percent of our electricity has got to come from a renewable source a...

Mr. Maher: And nothing the government ever says doesn’t occur, right?

Ms. Chiocchio: Well, he...he backed that up with a billion dollars in incentives...

Mr. Maher: We have...we found out in Buffalo that worked good.

Ms. Chiocchio: Yeah. So you know I mean it...it’s serious you know they...

Mr. Maher: No, I...I understand but by the same...

Ms. Chiocchio: Yeah.

Mr. Maher: ...token though the variances as...as you stated are substantial.

Ms. Chiocchio: Right, right.

Mr. Maher: So and I think...I think the residents have some you know concerns and they've obviously a...voiced their opinions over the last couple of meetings so that's why I'm saying if you have you know if you said I'm required to have so much X number of...of panels to get the incentives but that's not the case. Here the case is you can only go up so far so there is a there is an area that you can lessen the degree in proximity to the resident’s homes to allay some of their fears.

Ms. Chiocchio: Well we can certainly look at that.

Mr. McKelvey: Any other questions from the Board?

Mr. Maher: Charlie are these...?

Mr. Scalzo: We got one more coming up.

Mr. McKelvey: Go ahead, go ahead.

Mr. Diaz: Are there any safety concerns or issues, is it safe, an eight and a half foot fence is nothing for a teenager to climb over and a...you know, is there any danger to these panels at all?

Ms. Chiocchio: They are as I said earlier highly, highly regulated a...so typically what happens is a...they have to work with the local fire department to make sure there’s maintenance protocols in place a...the fence is actually...they have to comply with the National Electric Code which has a lot of requirements with respect to solar facilities a...so you know, there’s quite a bit of regulation to make sure that these are safe passive facilities.

Mr. Levin: I think they’re subject to vandalism you know, right there.

Ms. Chiocchio: Well that...that's the purpose of the fence I mean, you know if...

Mr. Levin: It’s not high enough.

Ms. Chiocchio: I mean, I guess we could go higher if the Board so you know if desired or the planning board desired a...

Audience member inaudible.

Ms. Gennarelli: Sir you have to go the microphone.

Mr. Muthig: Yeah, the plans a...you can see the plans itself a...calls for an eight foot fence and that's not much protection at all, I have a lot of experience and I’ve seen deer actually clear you know, a ten foot fence and the problem with this is that if anything gets into that solar farm and causes any kind of havoc a...it’s not a good thing. If you actually go on any websites and look at problems and concerns about solar farms there are issues. It’s not a soft path technology. If it’s ran right and they maintain it it might be a good thing but there are...there are issues. Like I said there’s health concerns, if you go on the website and you’ll see different people how they’re affect neurologically health wise and so on. I’d like them to address them but one the concerns are is that a...like you were saying you had maybe a few people show up at your meeting, I had twenty-seven people on this petition that have definite...definite concerns versus the three that showed up. And a...we’re just wondering how you can go ahead and put a...you know a requirement which requires a hundred acres and put...utilize thirty acres and have the same efficiency.

Mr. Kuflik: Hi, Jason Kuflik from Green Street just wanted to say that there is no...we don’t...no...you don’t need a hundred acres to build a...the two megawatt systems a...I’m not sure you know, where that hundred acre calculation came from but I think also to your point, you know, Mr...

Mr. McKelvey: It’s the Local Law.

Mr. Kuflik: ...that we would be willing to work with you to provide some additional setbacks if, you know, that appeases everyone and you know it’s not...you know, we want to get as close to two megawatts as...as we can but if there is some compromise that we’re able to create that allows for some visual buffer right we are...we are happy to you know look at that.

Mr. Muthig: Especially down by Bob Scott he’s very concerned with this.

Mr. Kuflik: We will...this is going to have full drainage, you know, full plans a...all...all...all the necessary studies that are required to, you know, get this system approved.

Mr. Muthig: Because you’re kind of like right in somebody’s backyard like the Gogertys who are very concerned on the south side.

Mr. Kuflik: Whatever we can do to a...

Inaudible.

Mr. Maher: Mr. Muthig, if you could address the Board if you would, the microphone this is recorded there.

Mr. Muthig: Yes, the...if you look back at the engineering printout that...that was downloaded with Betty on the 14th some of the a...tree line (inaudible) to begin with...they have pictures you know from the inside...from the proposed line to the house...to six homes, there’s some places that it’s less than a hundred-fifty feet and you can visually see in there right now from the back of their yards and that property line is not flat. If you know that property it’s not flat at all.

Mr. Maher: Right (Inaudible)

Mr. Muthig: I mean, there’s like twenty percent slopes, it’s all you know, rock a...our understanding is that developer went in there and they were talking about drainage and they were talking up to having four retention ponds so...if it’s clear cutted and we’ve had issues with them going in there and selective cutting the trees. Water coming in to our side of the street on Levington Height just with a few trees removed, now we’re talking about clear cutting twenty-eight acres right down to the bedrock, stumps, everything else removed a...we had a torrential downpour, that water was coming down from Scaturros down that hill and impacting people down in Roseton and on Old Post Road. So there’s going to have to be some serious a...drainage a...remediation as far as the controls as far as flooding, erosion and runoff because there’s very little area for percolation where the water will go into the ground. Since it’s all rock where is that water going to go? It’s going to go straight down either on the south side on Cedar Court, Old Post Road or down by the golf course down into the wetland. That’s our concern. Thank you.

Mr. McKelvey: Jerry is there any height limit on fences for this project?

Mr. Canfield: Eight and a half.

Mr. McKelvey: Eight and a half. Thank you.

Mr. Levin: That’s with no barb wire on top? Or anything like that right?

Mr. Canfield: (Inaudible)

Mr. Levin: No barb wire on top is allowed, right?

Mr. Canfield: (Inaudible)

Ms. Gennarelli: You need the microphone.

Mr. Canfield: That would be...

Mr. Donovan: Code Compliance is indicating that the maximum height is eight and a half feet.

Ms. Gennarelli: Thank you. I did get the rest of it.

Mr. Mattina: Minimum.

Mr. Donovan: Minimum? I thought it was the maximum.

Mr. Mattina: (Inaudible) ...eight and a half feet so...

Mr. Maher: I think the question is what does the Town Code say as far as what is the...what is the height?

Mr. Donovan: What is the maximum height allowed in the Town? I don’t remember. I could look it up myself Joe but I thought you would have the answer.

Mr. Mattina: (Inaudible)

Mr. McKelvey: Yeah but just look if they had to go higher...

(Inaudible)

Mr. Brown: If I remember right the height...fences are only limited in height if they’re within five feet of the property line or something like that.

Mr. Mattina: 185-16-E, no restrictions on height in non-residential district. If you a use variance it’s no long a residential district, no height limit.

Mr. McKelvey: Okay.

Mr. Donovan: A hundred and forty-two feet would be okay? I made that up.

Code Compliance: (Inaudible)

Mr. McKelvey: I just wanted to clear that up.

Mr. Maher: Charlie, the...on the plan itself, the areas that have no arrays is that done for...for the fact of putting the numbers or the wording in there of is that...such as where Lot #1 is that...is that arrays across that entire area.

Mr. Brown: The...the rear rows are the dark lines, the spots where they’re not shown is due to you know topog...topography and what not a...we’re pretty much limited to a...fifteen percent max terrain to mount these panels so you know, again the areas that don’t show the dark lines that’s where it slopes or over the fifteen percent.

Mr. Maher: Okay.

Mr. Brown: A...you know, we do have flexibility in...in the lot line if we wanted to increase the setback from the visible homes on this side. We can certainly shift that lot line over and balance it out a little bit better a...

Mr. Maher: Well I think that’s I mean, the concerns of the homeowners evident by the testimony is that, you know, it is close to some of the homes there and I think that would, you know, if this was to go through I think that would be part of the conversation that you have to to you know, make them more comfortable with the...with the a...(Inaudible)

Mr. Brown: I think, you know, I think it would throw the a...through the zoning too...

Mr. Maher: ...farm.

Mr. Brown: ...and the setbacks and most references were to...to a building, these are clearly not buildings but then there is another reference in there in definitions it’s buildings or...or a structures so you know, we’re walking a fine line there too. It’s certainly, they’re certainly not a building a...you know, when and if they decommission these after twenty years they just go and you know, pull it and screw piles and they’re out and they’re done. A...but yeah, we can a...provide a different a...additional setback from the panels to the visible residences that’s not a problem.

Mr. Scalzo: Charlie, you did mention anything over fifteen percent you would not be installing any of the panels.

Mr. Brown: Right.

Mr. Scalzo: Will there be any manipulation or grading to make areas fifteen percent?

Mr. Brown: This plan does not show that, no. There is no change to the topography a...proposed based upon this plan right here.

Mr. McKelvey: Any other questions from the Board?

No response.

Mr. McKelvey: Any more questions from the public?

Mr. Muthig: Especially since the...you know, the property is hilly all rock and very little vegetation and its area been known as far as you know, putting homes in and so in, running into problems with the foundations and use ram hole hammers and perhaps (Inaudible), if they can’t get the gradient then need I’m just concerned about really going to work the way it is, what it is a...and a not involve any kind of a...blasting?

Mr. Scalzo: You know that you just made me think of something that I hadn’t considered before. Charlie, when you did your original eight lot subdivision, as an engineer you look for the most suitable areas for your septic. You’re going to have some areas in here, if you’re going to have these arrays in many different spots what is the plan or what would the plan be for shallow rock?

Mr. Brown: A...again, we tested all over this site, the shallow rock is right in here which is part of the problem we had with the original subdivision is this road would have been very difficult to build because it was cutting into rock. We tested all over back here we hit nothing within six feet so a...you know, again you can’t grow big trees on rock. The...the a...you know, the majority of the site is...is a field right now, about two thirds of it is field that’s where the a...I guess it were grape...grow grapes in there at one point. A...so a...I’m sure they got a, you know an alternate way to...to put these in. Maybe they a...hammer a...hammer them, pipe right into the rock. I don’t know. I mean...

Mr. Maher: So what...

Mr. McKelvey: Use the mic please.

Mr. Maher: Drill into the ground?

Mr. Kuflik: Yeah, just drill, just pile drive them but a...most of the...most of the soil here as...as Charlie mentioned is is you know, there is no rock and we’re only going a maximum six feet deep so that you know there’s very, very little permanent change to the land overall if any because of that.

Mr. Maher: Now the twenty acre parcel currently what...what’s cleared do you feel? I mean, ballpark estimate, on the acreage.

Mr. Brown: A...a...eyeballin it, I’d say between a half and two thirds.

Mr. Maher: So the...roughly fourteen acres you would say at a minimum was already cleared.

Mr. Brown: Yeah, yeah. I mean it’s...it’s got some saplings and whatnot in there you know and probably gets neglected...

Mr. Maher: No, based on the...

Mr. Brown: ... or something...

Mr. Maher: ...I just...

Mr. Brown: ...bush hugged.

Mr. Maher: ...based on the Google maps you know from the...

Mr. Brown: Yeah, yeah.

Mr. Maher: ...last couple of years... (Inaudible) that’s what I wondering just based on the fourteen acre area ballpark, okay.

Mr. Brown: Right.

Mr. McKelvey: Any more questions?

Mr. Muthig: I just had one more.

Mr. Donovan: You said that already so you...

Mr. Muthig: Now if the Town considers and can create, you know, grants the variance for industrial and there’s parcels around there that are, you know, residential and agricultural can this epidemic spread and they can come to you and say listen I want industrial also and then get approval?

Mr. Donovan: Well that said the application is for a solar array, this not for a...this is not a zone change, this is a use variance application.

Mr. Muthig: Yeah, because it was from agricultural.

Mr. Maher: But it is not being rezoned.

Mr. McKelvey: It’s not going to be rezoned, no it won’t be rezoned.

Mr. Muthig: So you actually put sort of a...to me it’s a commercial project that’s going to be going on agricultural?

Mr. Donovan: I’m not sure I understand your question.

Mr. Muthig: No I mean it...if the...we’re under the impression that it’s a variance change to industrial because...

Mr. Donovan: No, no, it’s to a solar array what’s shown on that plan.

Mr. Maher: Just that. It’s not, there’s no industrial use.

Mr. Muthig: Okay.

Mr. Donovan: If...if they wanted a different industrial use they would need to come back here for a different use variance. The application is for what’s shown on that map.

Mr. Muthig: Okay but it was a...they’re looking for a change from agricultural though?

Mr. Donovan: What whatever it is I have...

Mr. Muthig: Yeah, because it’s been a farm forever.

Mr. Donovan: Well they’re looking for a change from where are we A/R?

Mr. Muthig: Agricultural...

Mr. Maher: Yeah, A/R.

Mr. Donovan: A/R where the...where the solar array is not allowed so that they need a use variance to construct the solar array.

Mr. Muthig: Okay.

Mr. Scalzo: Just as I look and you’re the guy I want to ask this question to a...Charlie, I’m looking...there are no arrays any closer than fifty feet to a property line, correct? I...I...I think I can scale it. But sir, if...

Mr. Muthig: Yeah, you can actually see I think I showed it, you know as far as a hundred and fifty feet or so. There’s actually these pictures from the inside of the a...

Mr. Scalzo: Yes, those are.

Mr. Muthig: ...property looking and you can see Wells house, you can see these people’s houses and there’s that’s the fence, eight foot fence and there’s a limited amount as far as the tree buffer line.

Mr. Scalzo: Okay. So...

Mr. Muthig: We’ll see it, you know.

Mr. Scalzo: ...if the applicant were to offer that no array would be closer than seventy-five feet to the property line would that relieve some of your...

Mr. Muthig: Well you know the thing about it we have is the concern because there’s not an actual virtual reality picture of how it would look because we have no idea because like you mention, I mean, it’s going to be put on the way the property is. They’re not going to take any you know, rocks down. They’re going to just kind of follow the contours of the land so you really wouldn’t know that unless you have some kind of a site (Inaudible) map or an engineering firm to draw that up to show you how that look...that’s the concern.

Mr. Scalzo: Right, and I wasn’t making an offer for these guys to make, you know...

Mr. Muthig: Right.

Mr. Scalzo: ...I’m just asking if there were something that...that you as looking at this plan that you might be able to live with.

Mr. Muthig: Well Gogherty, you see these are the people that are really impacted because they’re within, you know, a hundred feet, you know, from that project and there’s other people on the other side. There’s four other homes on the south side...I mean a...the north side. We’re...you know we’re on the south side and they’re four people and these are relatively new people that moved in that area within the last five years and they bought...they bought the home you know, with the intention that hopefully it was going to be agricultural forever you know and now there concern is too that they’ve done studies, if you go online that, you know, out west and so on when solar farms are put in property values come down because they’re no more creating a tax base because usually they’re tax exempt, something to think about.

Mr. Scalzo: Thank you.

Mr. Brown: Yeah Darrin, we maintained a fifty foot minimum setback all the way around and we’d be willing to expand that on the sides...

Mr. Scalzo: I wasn’t making an offer you I was just looking to see if there was a compromising...

Mr. Brown: Yeah, we did maintain a fifty foot minimum...

Mr. Scalzo: Right.

Mr. Brown: ...panels to the property line.

Mr. Maher: So, (Inaudible) just...just to clarify, on the north side of the property on the...on the plan does show Central Hudson being the...the...the property owner, correct? Is that because of the...the...the lines are going through there.

Mr. Brown: Yeah, that...that’s the high power lines that come from the power plant down on the river.

Mr. Maher: So the residences to the actual the direct north off MacDonald Drive and (Inaudible) are actually between them and the property, subject property are the power lines, correct?

Mr. Brown: Yes, Gogherty he’s talking about is over here. Okay? A...we got a ridge that runs right through there. I could certainly pull the panels back off the ridge so they wouldn’t be visible at all a...and the other two houses are over here to the east.

Mr. Maher: Okay, I just wanted to clarify because the north...the houses to the north of it actually are the power lines between those and the property there. So...

Mr. Muthig: This is not, this is not Cedar Court.

Mr. Maher: Right. No, I understand I...you had said to the north there so I wanted to make sure we’re clear. (Inaudible)

Mr. Muthig: (Inaudible) That’s the Central Hudson right-of-way.

Mr. Maher: Right. (Inaudible)

Mr. Muthig: (Inaudible) right down there to Marlboro (Inaudible)

Mr. McKelvey: Was Central Hudson notified on this variance?

Mr. Brown: Yeah, they were notified along with all the other property owners. Yes.

Mr. McKelvey: Yeah, okay.

Mr. Brown: But they do know about the project. Part of the process is a deal between a...Green Street and...and Central Hudson has to be made before they can even make this application. That’s true? Yes.

Mr. Kuflik: There is a study that...that is being done now by Central Hudson called the Caesar study and we will have...that is, you know, full blown study as to the impact of...of the...of the interconnection as stated before and we cannot do anything without the approval of Central Hudson.

Mr. McKelvey: I figured that.

Mr. Diaz: Can I get a little clarification? You said fifty yard...a fifty feet?

Mr. Brown: Fifty feet.

Mr. Diaz: From?

Mr. Donovan: From the property line.

Mr. Diaz: From the...from that property line?

Mr. Maher: Yes.

Mr. Diaz: Well what I was here...go ahead.

Mr. Maher: I’m sorry, in...in...in...and again you’re on Cedar Court, correct?

Mr. Diaz: Yes. (Inaudible)

Mr. Maher: Right, so basically based on the current plan it’s considerably much greater than that. (Inaudible)

Mr. Diaz: May I see that?

Mr. Maher: Sure.

Mr. Diaz approached the Board

Mr. Diaz: And the fence is here?

Mr. Maher: This is the fence over here.

Mr. Diaz: And that’s fifty feet of my lot?

Mr. Maher: No, what they were saying was they wouldn’t be closer than fifty from the property line. So basically over here...

Mr. Scalzo: It was...it was really over here that...

Mr. Maher: Here...it’s roughly probably closer to three hundred feet, two hundred and fifty feet from your particular house and probably the one seventy-five, two hundred range to these other houses if they were to...if someone agreed to to move..

Mr. Scalzo: To scale that back that’s a...and that’s something you can ask. We can’t.

Mr. Diaz: Also another clarification when we were here in January they were proposing twelve acres? You were proposing twelve acres. This is what? How many acres it? The whole thing or no?

Mr. Brown: The proposal is...the...they need twelve acres minimum to get the a...two hundred megawatt array. This site is twenty-eight acres, the proposal is to cut it roughly in half so that we’re going to have two, two megawatt arrays, solar farms.

Mr. Diaz: Okay, I...

Mr. Brown: This hasn’t...this hasn’t changed. This application is exactly the same as it was...

Mr. Diaz: (Inaudible)

Mr. Brown: Well the total site is twenty-eight.

Mr. Diaz: So you’re going to have twenty-eight acres of solar panels?

Mr. Brown: Well not the whole twenty-eight acres.

Mr. Diaz: (Inaudible) as much as possible.

Mr. Brown: You know, we get to a point where a...we don’t want to go over the two megawatts so once we get to that and that’s roughly ten to twelve acres so there’s going to be a couple of acres around the perimeter obviously the fifty foot offset that’s not going to be solar arrays. There’s a area along the common driveway that’s going in there that’s not going to have any arrays and then there’s the steep sloped areas where you got the bare spots that there’s not going to be any arrays.

Mr. Diaz: I’m just trying to get clarification, once again in January, last month I could have sworn that looked a lot different and a lot smaller and you had a long...you know you had like a Google map picture and I could have sworn it was just like twelve acres you were proposing and maybe I’m misunderstood.

Mr. Brown: Nothing changed.

Mr. McKelvey: This is the same plan that they were here with in January...or December. January. Any other questions?

Mr. Muthig: Yes sir, my concern is that...you know, what...

Mr. McKelvey: Use the microphone.

Mr. Muthig: ...like Ralph over here concerned is that what you actually see in the drawings you know, and now they’re talking about twenty acres or you know they got to match twenty-eight acres which seems pretty small. We’re concerned about the encroachment. That the area is too small to begin with but the thing about it is that it’s right on the property line. There, there’s a slight amount of trees and you mentioned about planting pines it would take another thirty years to create some kind of a...a buffer, a tree lined buffer through there and a...the thing about it is that from all those areas what we’re seeing, those pictures from the inside of the woods out you’re limited especially Bob Scott, he’s not here, he’s very concerned about the tree-line and so on. The trees were supposed to be marked. There some trees that were tagged from the...the first project that were going to put homes there. They were supposed to be tagged and so on and now it looks like these trees are all going to be clear cutted. Now the project actually calls for clear cutting and it’s almost, it looks like the whole twenty-eight acres that are involved and we’re limited that they’re property line runs right even with the stone wall, behind your house Ralph the stone wall, and the picture of that Ralph’s house and further down there by Gogerty’s it looks like a...it’s right in your backyard. So if they paid a premium for their house when the market was good and we paid...they paid for you know, agricultural zoning now all of a sudden...would you guys like to look in your backyard and see solar panels 24/7 instead of seeing wildlife and something that was a beautiful view? I don’t think you would. And I urge you really to consider this because this project is unique in the Town of Newburgh or in the State of New York; I’ve really seen anywhere as far as in New York and so on these projects have been beneficial. I mean the payback in solar panels, as you know, is...it’s years, you know and how many people came forth to this meeting regarding they’ll supply five hundred homes? Two residents? Out of twenty-seven that are against and I want you to really consider it, because like I said the project is unique and it’s in the Town of Newburgh or elsewhere a...you might see it you know, in...in the desert, Arizona, you know but they have big mega plants that don’t impact anybody. Thank you.

Mr. McKelvey: Charlie, you...you’ve been...have you been before the planning board?

Mr. Brown: Yeah, this was submitted to the planning board.

Mr. McKelvey: Have they required any screening?

Mr. Brown: A...they sent us here for the variances first...

Mr. Donovan: I don’t think you got that far, right? It was initial and...and...

Mr. Brown: And they...we really haven’t started the environmental review, that...that’s still to come.

Mr. McKelvey: Okay.

Mr. Brown: Which by the way a...to the neighbors if we do...if this Board does grant the variances then there will be another Public Hearing with all the engineering laid out showing how we mitigate the drainage and visual impacts and all the other stuff.

Mr. Muthig: (Inaudible) kind of limited.

Mr. Brown: The planning board is going to require a lot more than that.

Mr. Muthig: Okay, thank you.

Mr. Scalzo: Well also here they’re asking for variances for certain setbacks, we can limit their setbacks as well.

Mr. Muthig: Okay.

Mr. Diaz: Please limit the setbacks, thank you.

Mr. McKelvey: Any other questions? If not, we can look for a motion to close the Public Hearing.

No response.

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

Mr. Bell: Second.

Ms. Gennarelli: Darrell, is this on both of them?

Mr. Donovan: The use variance Public Hearing is closed.

Mr. McKelvey: That was closed.

Ms. Gennarelli: Okay then Darrell was the second.

Mr. Donovan: Now there’s a motion on the floor to close the area variance Hearing as I understand.

Mr. Muthig: I was just wondering the public comments that were submitted by James Beretta were the looked at by the Town Board?

Ms. Gennarelli: By the Zoning Board, they all got them, I don’t know if they had a chance to read them yet.

Mr. Muthig: Because he had quite a few different concerns...

Mr. McKelvey: We all get them.

Mr. Muthig: ...as far as environmental and agricultural use.

Ms. Gennarelli: Everybody got a copy of all the letters that came in, okay. So we have a first and a second, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

(Time Noted - 10:12 PM)

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ZBA MEETING – FEBRUARY 23, 2016 (Resumption for decision: 10:40 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

(8-1-97) A/R ZONE

Applicant is seeking area variances (should a Use variance be granted by the ZBA) - Lot #1 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback; Lot #2 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback of a two-lot subdivision to create two solar “electric generating” farms for a Two-lot subdivision application before planning board.

Ms. Gennarelli: ... So that means that the area variance which is contingent on it is also held over to March 23rd.

Mr. Scalzo: That’s correct.

Mr. McKelvey: Right.

Mr. Maher: Yes.

Mr. Donovan: But let’s go through the formality of a motion if you don’t mind?

Mr. Maher: I’ll make a motion to hold over the application (decision) for the area variance.

Ms. Gennarelli: The area variance.

Mr. Bell: Second.

Ms. Gennarelli: Second is Darrell, okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: March 23rd.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:41 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 10:12 PM)

THOMAS AMODEO, JR. 516 LAKESIDE ROAD, NBGH

(14-3-2.1) R-1 ZONE

Applicant is seeking an Use variance for Bulk Table-Schedule 3 - Only 1 dwelling unit per lot is permitted; the 2001 ZBA variance for this structure required the second floor of the garage to be used for storage only and applicant seeks a variance to keep the Prior Built 1400 sq. ft. dwelling unit over this garage.

Mr. Donovan: Charlie you’re not done.

Mr. McKelvey: You’re not done, Charlie.

Mr. Levin: Thomas Amodeo.

Mr. Brown: Mr. Amodeo did not a...give me any additional information so you know whatever is the decision of this Board he’s going to have to live with.

Ms. Gennarelli: We still have to close the Public Hearing then because there is nobody here.

Mr. McKelvey: Can we have a motion to close the Public Hearing?

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

Mr. Bell: Second.

Ms. Gennarelli: Did you say you were second? Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. McKelvey: We would ask you to...we have to a...talk to our lawyer to see if there’s any legal questions. We’d ask you to go out in the hall to speed up time and wait out in the hall please.

(Time Noted - 10:15 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Resumption for decision: 10:41 PM)

THOMAS AMODEO, JR. 516 LAKESIDE ROAD, NBGH

(14-3-2.1) R-1 ZONE

Applicant is seeking an Use variance for Bulk Table-Schedule 3 - Only 1 dwelling unit per lot is permitted; the 2001 ZBA variance for this structure required the second floor of the garage to be used for storage only and applicant seeks a variance to keep the Prior Built 1400 sq. ft. dwelling unit over this garage.

Mr. Donovan: Thomas Amodeo.

Mr. Levin: Thomas Amodeo Jr., a use variance for Bulk Table-Schedule 3 - Only 1 dwelling unit per lot is permitted; the 2001 ZBA variance for this structure required the second floor of the garage to be used for storage only and applicant seeks a variance to keep the Prior Built 1400 sq. ft. dwelling under...unit over the garage...dwelling unit over the garage.

Mr. McKelvey: This was another case we held it over and we also notified him that we were going to make a...either he was going to be here tonight or we were going to make a decision tonight.

Mr. Donovan: There are four factors that need to be reviewed.

Mr. McKelvey: Yes, Betty the questions.

Mr. Donovan: That’s your que Betty.

Ms. Gennarelli: I’m sorry, alright, that’s okay. We’ll go through the questions test for the use variance. The first is whether the applicant cannot realize a reasonable turn...return...substantial as shown by competent financial evidence.

Mr. Scalzo: We have not received any so the answer would be no in my opinion.

Ms. Gennarelli: Alright, second whether the alleged hardship is unique and does not apply to substantial portion of district or neighborhood?

Mr. Donovan: Well you can continue to go through all the factors the answer with respect to use variances, just so you know, if you answer no...to any one question...

Mr. McKelvey: Yes.

Mr. Scalzo: Which we already have.

Mr. Donovan: You’re done.

Mr. McKelvey: We already have.

Mr. Donovan: As opposed to an area variance where it’s a balancing test. If you, I believe with respect to each factor there was some information in the application, I don’t know whether the Board felt that for any factor, factors two or three that there was sufficient information for you to make a determination to grant the use variance and then you have the self-created issue so I don’t mean to speak for you but...

Mr. McKelvey: Well it was self-created.

Mr. Maher: In lieu of the fact that it was self-created I make a motion to deny it.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Roll call. This is a disapproval so a...

Mr. Donovan: A yes vote is the denial.

Ms. Gennarelli: ...yes vote is to deny, okay.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: That motion is carried.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:43 PM)

ZBA MEETING – FEBRUARY 23, 2017 (Time Noted – 10:43 PM)

**OTHER BOARD BUSINESS**

AMELIA PRATO 603 SOUTH PLANK ROAD, NBGH

(48-3-16) R-1 ZONE

Ms. Gennarelli: Then we have one other under Other Board Business John for Prato, an extension. We received a letter from Amy Prato, my variance was granted August 25, 2016, our Building Permit was issued on November 17, 2016 which made it too late to break ground. I’m requesting a variance extension so we can break ground in April. Thank you. Amelia Prato at 603 South Plank Road.

Mr. McKelvey: Can we have a motion?

Mr. Scalzo: I don’t see an issue with that. I’ll make a motion to approve that.

Mr. Maher: Second.

Ms. Gennarelli: Extension.

Mr. McKelvey: Extension, yeah.

Mr. Scalzo: Yeah, extend that.

Ms. Gennarelli: Okay.

Mr. McKelvey: It’s within the time.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 10:45 PM)

ZBA MEETING – FEBRUARY 23, 2017

END OF MEETING (Time Noted – 10:45 PM)

Mr. McKelvey: Okay, has everyone had a copy of the minutes from the last month?

Do I have a motion for approval?

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

Mr. McKelvey: Do I have a second?

Mr. Masten: Second.

Mr. Donovan: It’s good to hear from this side of the table.

Mr. McKelvey: All in favor?

Aye - All

Mr. McKelvey: Now we a motion...

Mr. Scalzo: Motion to adjourn.

Mr. Bell: Second.

Mr. McKelvey: All in favor say Aye?

Aye All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: The meeting is adjourned.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 10:47 PM)