ZONING BOARD OF APPEALS

MEETING – JULY 23, 2015

(Time Noted – 7:03 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision on all applications this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off. And also when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Mr. McKelvey

(Time Noted – 7:06 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 7:05 PM)

LEONARDO VILLACHICA 14 KNIGHTS CIRCLE, NBGH

 (108-4-13) R-1 ZONE

Applicant is seeking area variances for the minimum rear yard setback and the maximum lot surface coverage to keep a prior built pool and pool deck.

Chairperson Cardone: If anyone is here concerning the Villachica application I have a letter:

To the Zoning Board, due to not having a survey on my property I would appreciate if you would postpone the Zoning Board meeting to the August 27th meeting. I’ll have the survey by then, I’d really appreciate it.

And do I have a motion from the Board to postpone the Hearing until August 27th?

Mr. McKelvey: I’ll make the motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Now the people interested in that application you will not be re-noticed. The notification is coming right now that that meeting will be held on August the 27th.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

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 (Time Noted – 7:06 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 7:06 PM)

ROBERT & TEASHA VOLZ 489 LAKESIDE ROAD, NBGH

 (28-1-13.3) R-1 ZONE

Applicant is seeking an area variance for pools shall be located 10 feet from any lot line to keep an above ground pool (27 ft) not installed in approved location and area variances for the maximum allowed square footage of accessory structures, the maximum height of accessory structures and the maximum allowed storage for not more than (4) four vehicles to build an accessory structure (40 x 32 x 23’5”) two-story detached two-car garage.

Chairperson Cardone: Our first applicant this evening Robert and Teasha Volz.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, July 15th and in The Sentinel on Friday, July 17th. This applicant sent out thirteen letters. All the mailings, publications and postings are in order.

Chairperson Cardone: If you would identify yourself for the record.

Mr. Cella: Good evening I’m Jonathan Cella the applicant for…the engineer for the applicant. We’re here for a…area variances for an existing pool and a proposed detached garage at the address 489 Lakeside…Lakeside Road in the Town of Newburgh. It’s located in the R-1 district and it contains a…one existing single family residence. The variance for the pool they were requesting it for an existing pool. It was a…built with a Permit previously and it was located…it’s located on the north…northern property line, eight point five feet from the property line and it’s required ten feet and the pool was...was installed by a builder too close to the property line without the homeowner’s knowledge. And a…with this application we had a…submitted a new survey and it triggered the…the existing pool is too close to the property line so we’re going to request a variance so the homeowner can keep the existing pool. A…we feel that the…the pool is…since the pool is existing and shaded from the street that a…it fits into the character of the neighborhood and a…it has no impact on the neighborhood. The second area variances we’re here for is for a proposed detached garage on the southern property line. The garage a…the proposed garage has a footprint of thirty-two foot by thirty foot and the height is twenty-four foot and the variances we’re requesting are for the height a…the maximum permitted height for an accessory structure is fifteen feet and we’re proposing twenty-four feet. And we have a…total square footage of accessory structures on the property it’s determined by a…by a formula in the Town Zoning and we’re in excess of that. Based a…the formula is based upon a…lot area and size of the residence on the structure. But based upon the calculations we’re permitted to have seven hundred fifty-six square feet on this a…lot…on the subject lot and we’re proposing a total of eleven hundred forty-six square feet which would be a…nine hundred sixty for the proposed garage and an additional hundred sixty…a hundred eight-six feet for an existing a…shed in the back of the property. The proposed garage will be located at the end of the existing driveway. Again we feel that a…

Chairperson Cardone: You also have a shed back there…

Mr. Cella: Yeah it’s…

Chairperson Cardone: …are you planning to take that down or…?

Mr. Cella: A…we were…the homeowner would like to keep it.

Chairperson Cardone: And what is the reason for the twenty-four foot height?

Mr. Cella: A…they would like to have some additional storage on the upper…upper level of the garage. It would be unfinished storage space. We…I’ve driven around the…the neighborhood, there’s a an existing garage similar to this to the…to the north. It’s a red garage I believe it’s two or three houses to the north near the intersection of a…Lakeside Road and Union…Union Ave which is similar so we feel again that that would fit into the character with the neighborhood and…

Chairperson Cardone: And you’re saying that garage is twenty-four feet high?

Mr. Cella: A…it’s more than fifteen…maybe twenty…

Mr. McKelvey: The whole garage is not as big as this one to either.

Mr. Cella: Right but the…the height…the height is a…similar. We’re at a similar height.

Mr. Manley: I would definitely take exception though that one house doesn’t make up the character of a neighborhood…

Mr. Cella: No, that’s correct.

Mr. Manley: …multiple homes would say that it would fit into the character of the neighborhood but when you have a garage this size that’s almost the same size as a residence you know that’s…that’s fairly large. I mean that’s…you’re getting into commercial type size when you get into a garage that’s almost you know, eleven hundred square feet and the house is, you know, fourteen hundred square feet it’s definitely sizable.

Chairperson Cardone: Plus there’s an existing two-car garage in the house, in the back of the house.

Mr. Cella: But the proposed garage would be a two car garage and the existing garage would be used for the residence. It wouldn’t be a…be for storage of cars it would be more for storage of…of…

Mr. Manley: The issue that I…

Mr. Cella: ...possessions.

Mr. Manley: …the issue that I can see as a Board Member and you know, maybe completely honest is that this Board is here to grant relief you know, and relief is supposed to be the minimum amount necessary. In this particular case they are looking for beyond what relief would be and you’re basically looking at you know, the size of, you know, another house which is really what you know, that’s the purpose of why we have a Zoning Code is so that we don’t have, you know, the issue of sprawl and…and over building. And you know, that’s you know a concern that this Board, from my perspective is, you know we’re here to grant relief. If somebody needs eight, nine, ten feet but when you start looking for, you know, over a thousand square feet that’s…that’s significant.

Mr. Cella: We’re looking…we’re looking at a…variance of…approximately four hundred square feet is the relief that we’re looking for on footprint plus the height.

Mr. Manley: And also a second variance for the other…

Mr. Cella: But the…the a…the four hundred square feet that we’re…includes the existing…the existing shed in the back of the property. If we were to remove the existing shed…

Mr. Donovan: If I’d be interrupt just for clarification?

Mr. Cella: Sure.

Mr. Donovan: I…I believe Code Compliance has indicated the variance is for seven hundred and fifteen point six one square feet.

Mr. Cella: I’m sorry? Wha…we’re…? That’s what we’re permitted the seven hundred fifty six is what’s permitted per…per zoning and…

Mr. Donovan: And you’re looking for an additional seven hundred and fifteen.

Mr. Cella: No we’re…we’re…seven hundred fifty six is permitted and we’re proposing a total of eleven hundred forty six.

Chairperson Cardone: Actually fourteen seventy-two.

Mr. McKelvey: Fourteen seventy-two.

Mr. Cella: Sorry?

Chairperson Cardone: Fourteen seventy-two is what is being proposed.

Mr. Cella: Not…what we have a…I’m sorry, it’s thirty-two by thirty…it’s just approximately a little over nine hundred just under a thousand square feet plus the existing shed so if were a…

Mr. McKelvey: Plus the pool, the pool counts too.

Mr. Cella: This…this…the pool doesn’t count as an accessory structure. The pool is not an accessory structure and we are a…under a pool, the pool is permitted under pervious coverage it would include the pool. So we’re…we’re asking for a variance of four hundred square feet.

Mr. Donovan: But if I could just…again I don’t mean to…I just want clarification show…show…

Mr. Mattina: How are you doing? Good afternoon…

Ms. Gennarelli: Joe could you get closer. I’m sorry, get closer.

Mr. Mattina: Basically they have a hundred ninety-two square foot existing in the accessory building. The garage is thirty-two by thirty then you also have the overhang, the cantilever covered portion which is ten by thirty-two so that’s the three hundred and twenty square foot difference, is I count the overhang, you know, carport and I don’t know if you included that in your figure or not.

Mr. Cella: I…I included the a…overhang as a impervious coverage not as part of the structure… as the accessory structure.

Mr. Mattina: Right, we count as the accessory structure as part of.

Mr. Maher: So the question so…how do we…so the x factor that the maximum square footage allowed, how you got to that figure 756?

Mr. Cella: The a…756 is based on the zoning as shown on my…

Mr. Mattina: Seven fifty six thirty nine is based on formula, square footage on your setbacks…there’s a hundred and ninety two square foot existing…

Mr. Maher: Right.

Mr. Mattina: …he’s proposing fourteen seventy-two which would be the garage, the overhang and the existing structure and that would set the variance at seven fifteen sixty-one.

Mr. Donovan: And Joe the pool is not included in that?

Mr. Mattina: The pool is not included in the accessory portion of it. Correct.

Mr. Donovan: Thank you.

Mr. Manley: But it is included in the distance to the side yard?

Mr. Mattina: It doesn’t meet the ten feet.

Mr. Donovan: Correct.

Mr. Cella: That was a separate variance.

Mr. Mattina: Right. Surface coverage and everything he’s fine.

Chairperson Cardone: But you’re ninety-four point six percent over.

Mr. Cella: If I…if I…I…I had spoken to the homeowner a…if we were to uncover the overhang that wouldn’t be part of the a…the seven hundred fifty-six we could decrease that to a…that would be a… (Inaudible)

Ms. Gennarelli: Can you get closer to the mic?

Mr. Cella: Sorry, that would be three hundred twenty square feet less if we didn’t have a roof over the…over the patio which would be…rather than the seven fifteen and again if we had to…we would like to keep the shed but it’s another a…bargaining…not bargaining but a…to reduce that we could reduce that down another two hundred square feet. Sorry. So we’d be around two hundred square feet over which we feel would be…would be more minor but again we would like to keep the shed.

Chairperson Cardone: And you’re looking at storage of four vehicles?

Mr. Cella: No, it would be a two-car garage.

Chairperson Cardone: Right but there’s already an existing two-car garage in the house.

Mr. Cella: The a…that’s not used for storage of cars it’s for more of…he’s got maybe a lawnmower and such in there.

Mr. Maher: And obviously with the…with the construction of the addition it’s going to be inaccessible by car…

Mr. Cella: Yes.

Mr. Maher: …based on the drawing so…

Mr. Cella: Correct.

Mr. McKelvey: It’s still a garage in the house.

Mr. Manley: Could you please clarify you…you keep mentioning that the height is twenty-four feet…the application is for twenty-three feet five inches. So is it twenty four feet or twenty-three feet five inches?

Ms. Gennarelli: That’s what I Noticed for.

Mr. Cella: The exact height is twenty-three feet five inches but we would just say twenty-four.

Mr. Manley: I’d rather be precise for the record so that…

Mr. Cella: Twenty-four.

Ms. Gennarelli: I Noticed at twenty-three feet five but that’s…

Mr. McKelvey: The Notice is twenty-three five.

Mr. Cella: We’ll…we’ll keep it at that if that’s what we have to keep at we can…we can lower the pitch of the roof I mean twenty-three five.

Mr. Manley: Right, the thing is it’s been Noticed, the legal is twenty-three five.

Mr. Cella: Yeah that’s, it’s…we have it shown on the gara…on the plans as twenty-three five and then on my…on my map I just showed as twenty-four.

Chairperson Cardone: What is the ceiling height on the second floor?

Mr. Cella: It’s a…

Mr. Maher: Seven foot four.

Mr. Cella: Seven four in the middle…in the middle…I could show…would you like to see a…building plans? I have a couple of sets of building plans if a…anyone would like to see them. They’re…they’re not required for the application but I can show you it’s a…seven foot four which would be in the middle and then there’s a…a knee wall around the edge which would be approximately four feet. So…there’d be storage in the a…the stairs would be from…the…the proposed plans currently show that the stairs would be on the outside but a…after the homeowner…we talked to them and want to move it on the inside so this would definitely not be…I understand the…the question that you’re looking that we’re trying to make it into a living space and that’s…that’s not the goal. That’s not the goal we just want…the…the owner just wants to be able to stand up in the middle of the…the building.

Mr. McKelvey: As far as the building goes that’s pretty big building for just a two-car garage.

Mr. Cella: Yes, yes it is.

Chairperson Cardone: Is there a business that’s going to be run from this?

Mr. Cella: No these are a…they’re both a…employed by other people a…the a…garage width is a…proposed as thirty foot and the typical two-car garage is between twenty-four and thirty foot wide and that’s for…I mean to…for purposes of opening doors and…to go less than twenty-four foot width I believe a…you could support that but that’s a…twenty…thirty…thirty foot width on a two-car garage is not excessive.

Mr. Maher: I see the height of the…the garage is ten foot ceilings on the main floor?

Mr. Cella: I’m sorry?

Mr. Maher: Ten foot ceilings.

Mr. Cella: Yes, on the…on the ground floor it’s ten foot. The a…the homeowner has a pickup truck.

Mr. Scalzo: Jonathan some questions, the plan shows a dashed line…

Mr. Cella: Yes.

Mr. Scalzo: Is that your building envelope?

Mr. Cella: That’s my building envelope.

Mr. Scalzo: It doesn’t appear that it could be a…I’m looking at…

Mr. Cella: That’s a…

Mr. Scalzo: …one side yard of thirty and then thirty and eight…well I suppose it could be so you got…

Ms. Gennarelli: Jonathan, take the mic with you please.

Mr. Cella: It’s a…the side yard is a…

Mr. Scalzo: Thirty.

Mr. Cella: Thirty and eighty.

Mr. Scalzo: Thirty and eighty total.

Mr. Cella: So it’s a fifty and a thirty, we have the…the fifty would be off the northern property line and the thirty is off the southern property line. And again the a…the accessory structure doesn’t have to fit in the…in the envelope.

Mr. Scalzo: No, I get that but if you were to use forty and forty which would still meet the criteria. It just looks as though the house would actually require a variance for a pre-existing non-conforming as well as the front yard a…right now it’s showing forty-five but the minimum requirement is fifty.

Mr. Cella: We’re not touching the proposed house so the Building Department didn’t ask if we are…

Mr. Scalzo: Okay.

Mr. Cella: …ask for a variance on that and the…yeah, we could have showed it as forty and forty, the side yard...forty and forty.

Chairperson Cardone: Joe you can take the other microphone.

Mr. Mattina: Yeah, this part of Lakeside Road, this was affected in ’09 when we were all R-3’s over there and they decided to make us R-1 so we’re all non-conforming now.

Mr. Scalzo: Okay, yup, no problem.

Mr. Mattina: That’s where that came from back then.

Chairperson Cardone: Do we have any comments from the public? Mr. Hughes.

Mr. Hughes: Good evening Chairman, thank you for recognizing me. Can you hear?

Ms. Gennarelli: Can we hear? I think so.

Mr. Donovan: You’re nothing if not recognizable.

Mr. Hughes: Yes, I am as big as the barn he’s trying to build. If you can’t see me you need to go to the eye doctor. I want to do some homework here for some clean ups maybe I’m reading this wrong or maybe I need some more magnification on these glasses but on the paper it says forty by thirty by twenty-three five and if that’s incorrect that needs to be tightened up now or you’re asking for something that they can’t give you because of the way that it’s written. Right out…right out of the bag…see what’s going on here?

Mr. Cella: Which…

Mr. Hughes: On…on the agenda, I don’t know if has the same request on your application but here it’s listed as forty by thirty by twenty-three five. You said in your narrative that it’s thirty-two by thirty, let’s look at that and we’ll go from there I think there’s a few things going on here. Have you had a recommendation from the Orange Lake Homeowner’s Association about the view sheds that might be affected by the height and the width and the size of this thing? Because that’s part of the zoning that was incorporated and when the new zoning was put into place that was supposed to be referred to as we went so look at those numbers and look at that view shed situation and I agree with Mr. Manley that the footprint of the pool and the shed and the barn and everything else has to be. And where are we with the total footage? Thank you for allowing me to speak.

Mr. Maher: Jon does this…does this garage location sit lower than the existing residence?

Mr. Cella: Yes, it…it sits in the back if you can a…but if you look at the photos of the rear of the house has a walk out garage which would be approximately a…total height of the house is probably similar to what is proposed for the residence…for the garage. You can see a…on the back of the house you have a…two stories exposed plus a roof and that’s similar to what we’re proposing to this.

Mr. Maher: So in essence it’s not going to be overbearing on their existing residence, correct?

Mr. Cella: That’s correct. It would be a…no higher than the existing residence or…

Mr. Maher: And is there a…is there a view of the lake from the road or the a…front yard?

Mr. Cella: Behind the…behind the parcel is wooded. I believe a…the lake would be further to the a…south as this property is more than the a…behind this would be more of the wetland of the lake.

Mr. Maher: So it is your opinion it doesn’t affect the view at all in the area.

Mr. Cella: That’s my opinion; we have no impact on the view or Orange Lake. This property is approximately a…I’d like to say it’s the third house a…south…south of the intersection of Union Avenue and Lakeside Road so there...the...the...lake is much further south.

Chairperson Cardone: Could we clean up the measurements because on the…this form from the building permit says forty by thirty-two by twenty-three five?

Mr. Scalzo: Does that take into consideration that ten foot patio…?

Mr. Cella: As the Building…as the Building Inspector mentioned that does a…correct me if I’m wrong that does include the ten foot for the patio.

Mr. Mattina: Yes. The correct measurements; the garage itself is thirty by thirty-two and the overhang carport is ten by thirty-two so technically the footprint is forty by thirty-two.

Mr. Cella: If I could the a…the overhang would not be a carport it would be a…a patio. The patio…the patio the homeowner may use for entertaining or barbequing…

Chairperson Cardone: As you’re looking at the garage, the overhang is…is it on the left-hand side, is it in the…?

Mr. Cella: If you’re looking at the garage it would be on house side which would be on the right side of the garage towards…towards the primary residence.

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

Mr. Scalzo: Jonathan, you say they are going to move the staircase inside? Is it going to be a pull down or is it a full permanent stairs?

Mr. Cella: Oh, you know yeah permanent stairs.

Mr. Scalzo: Towards the front, towards the back?

Mr. Cella: It would be in the rear…it would be in the rear of the garage against the back wall, you know, it would be on the inside.

Mr. Maher: Is there any option to possibly reduce the overall height of the building by either reducing the first floor height or the second floor height or a combination of both to get it down a little bit below the requested twenty-three four…twenty-three five?

Mr. Cella: What would be…if you gave me a goal…I mean if you’re looking for…?

Mr. Donovan: Fifteen. Fifteen.

Mr. Cella: Fifteen, I wouldn’t be here then.

Mr. Maher: Again, it’s a question of you know, is there…is there some room to move there, what would you propose to do that?

Mr. Cella: I can lower the pitch of the roof. The homeowner’s goal is to have the a…storage on the second floor and again that is strictly storage. It’s not…there is no intent for a…living space if that’s of any concern.

Mr. Manley: But overall when you look at a two-story building if you’re looking at nine hundred square feet on the bottom and nine hundred square feet on the top that’s eighteen hundred square feet of total space because you have two floors. That’s huge, you know in comparison to what you know that area is normally used to as far as size of…of square footage. So you know when you say what…what size? I think really, my opinion is, it’s not really up to this Board. This Board just grants the variance but we have certain parameters that we have to look at and one of the parameters is the State Law say that we just grant any large variance that somebody wants. It has to be reasonable and it has to be the minimum amount necessary to achieve what the applicant needs and you know, the Board has to weigh is eighteen hundred square feet really something that somebody needs for storage when it’s almost twice the size of what most houses have as far as storage space.

Mr. Cella: The…the…the a…ground floor would strictly be for cars and the second floor would be the storage. A…the existing residence is…is small. It’s approximately twelve hundred square feet and that would be part of the reason that the homeowner would like the storage on the second floor. They are in a small house and since purchasing the…the residence they’ve grown and they would like to stay where they are a…that was a…if…if you’ve driven by the house you can see that it’s…it’s not a large house and that was the a…one of the primary reasons for the second floor storage. They have a…in the small house I believe, they have two children, I believe and…the adults so…

Mr. Donovan: Now I should point out to you that the Board is constrained to follow…

Mr. Cella: I understand.

Mr. Donovan: …precedent also in the past now. Obviously you’ve been to a number of meetings…

Mr. Cella: Yes.

Mr. Donovan: …and there’s been a number of variances over the years, a number of requests for height variances for accessory structures. I don’t recall one of this magnitude a…being granted. The…the, you know, so I don’t know…the Board can’t tell you, you know, seventeen feet two inches is the max but you may want to consider that…that I don’t recall granting a magnitude of this variance and…and you might need to develop some alternate.

Mr. Cella: If the planning board…I’m sorry, if the Zoning Board could tell us if they would give us maybe a five foot variance…?

Mr. Donovan: That’s what I…we really can’t do that, you need to…you need to make a proposal to us. There’s not a hard and fast rule but you know, I mean this is fairly substantial height variance.

Mr. Cella: Could we a…?

Mr. Manley: You know, the…the thing is the Code in the Town is fifteen feet and you know…

Mr. Cella: Right.

Mr. Manley: …for whatever the reason the Town Board when they enacted the Zoning Law said fifteen feet is the most that they want any accessory structure to be in the Town of Newburgh. So this Board is constrained with having that limitation of fifteen feet. If somebody comes to the Board and says hey, I want to put thirty feet you know, I want to put thirty-two feet where do you…where does this Board supposed to draw the line and that’s what makes it a very difficult, you know, when you’re looking at twenty-four feet you’re almost looking at twice the height that the Town allows. You know it’s really a tough hurdle to overcome and...

Mr. Cella: I understand. I understand it’s a large variance but a…we…we felt that the…there is…if anyone that’s driven by the property, to the north there is a red detached structure which is…has…which has a similar height a…again I believe it’s…I believe it’s…it’s right at the intersection of Union and a…Lakeside Road. Right across…

Chairperson Cardone: We’ve been there.

Mr. McKelvey: We went by it.

Mr. Cella: Yeah, I’m sure you have. If you saw that building I think we’re going to be similar in height to that and then across the street there is…a…

Chairperson Cardone: An old barn that needs to be torn down.

Mr. Cella: …a…several…right? There’s more than one old barn over there and they are all in excess of the…I understand those are existing and they predate zoning.

Mr. McKelvey: They are pre-zoning though.

Mr. Cella: I understand that. I understand that they’re…the red building might not as that looks fairly new and I have seen other…other buildings in the Town a...if we were able to maybe reach an agreement tonight with a…maybe twenty…twenty foot…

Mr. Donovan: But…

Mr. Cella: …we could make that work.

Mr. Donovan: …let me just say, I don’t think we want to get in a position where…I mean…the inference that I draw is that you can make it any height that you want. If you can make it any height that you want then make it fifteen feet.

Mr. Cella: Well…

Mr. Donovan: So if you are trying to achieve some objective then you may want to go back to the drawing board a little bit and make…

Mr. Cella: The…the fifteen foot wouldn’t suit…they would…they would definitely like to have the…the storage on the second floor and that was part of height is the a…the clearance for the head room and everything would be twenty-four feet to get the staircase up there.

Mr. McKelvey: But if we start granting you the twenty-three five everybody that comes in is going to want it.

Mr. Maher: I mean again, you’re looking at the first floor at ten foot…

Mr. Cella: We could…we could shave it down.

Mr. Maher: …obviously there’s some area there that you might be able to you know…

Mr. Cella: Could shave it down and a…

Mr. Maher: …there’s two of them, you know, obviously the pitch of the roof will also add to the…aid to the reduction. I mean, if you confer with your client obviously…

Chairperson Cardone: We could hold it open and…

Mr. Cella: If you could…

Chairperson Cardone: …then come back with a more modified plan.

Mr. Cella: If you gave me a…I understand you don’t want to give me a number but if you could maybe…a…like if I came…a goal maybe around twenty feet would that…be something that would be more considerable as it is smaller variance…?

Mr. Donovan: I…you know, I am not going to let the Board answer that…

Mr. Cella: Fine, I understand.

Mr. McKelvey: We’re not here to suggest. I understand.

Chairperson Cardone: He keeps us honest.

Mr. Cella: Thank you. Sorry about asking the question.

Mr. McKelvey: I think you have to come back with something more reasonable though.

Mr. Cella: Okay, we’ll a…we’ll request to leave the application…the application open until next month.

Chairperson Cardone: Do we have a motion to keep the Public Hearing open?

Mr. Scalzo: I’ll make a motion we keep the Public Hearing open.

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Cella: Okay, thank you.

Chairperson Cardone: If anyone is here interested in that application you will not be re-noticed, the notification is being given tonight. It’s August the 27th. Thank you.

Mr. Cella: Thank you.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 7:36 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 7:36 PM)

SALLY N. POLHAMUS 65 BALMVILLE ROAD, NBGH

 (43-3-34.2) R-1 ZONE

Applicant is seeking area variances for the lot area, lot width, one side yard setback, combined side yards setback, maximum lot building coverage and maximum lot surface coverage to keep the existing dwelling on Lot - 1 and area variances for the lot area, lot width and lot surface coverage and Section 185-43 (E) tennis court screening and (F) no tennis court shall be located in the front yard to keep the prior built tennis court and also accessory structures (gazebo) must be in a side or rear yard to keep both the prior built gazebo and tennis court as an accessory use contingent on the building of a two-story single-family dwelling on Lot - 2 of a proposed two-lot subdivision before the planning board.

Chairperson Cardone: Our next applicant Sally Polhamus.

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

Mr. Cordisco: Good evening everyone, Dominic Cordisco from the law firm of Drake, Loeb representing Sally Polhamus. I’m here tonight as well with Justin Dates from Maser Consulting and a…we are before you on this application and a…I am aware that this matter…a related matter was before you in 2007 and I think that it’s important to understand the nature of the current request with having an overview of the prior request because it…it all a…relates to each other so if I may summarize the 2007 request I think that will help explain where we are today and why we’re before you today. So in 2007 the Polhamus’s a…have two lots and I’m going to turn this over to a…Mr. Dates in a moment to explain the current variances that are before you but they had two lots in 2007, one with frontage on Balmville Road and the other one with frontage on Chestnut Lane. Their house was on the lot on Balmville and they owned a separate a…vacant lot that had a tennis court on it and a pool on it that was a separate…entirely separate lot. A…in 2007 the a…Polhamus’s wanted to build an addition onto their residence, a twelve foot addition on the back that would have extended their home and that triggered the need for variances before this Board. A number of variances in relation to the setbacks but it also triggered the need for variances for the tennis court and the pool and a gazebo and a shed as well at the time. So there was a number of variances that were needed. And I believe that there were several appearances before this Board and one way to eliminate some of the variances that they needed was to combine the two lots together and so that’s exactly what they did. The issue is however, they combined the lots before this Board had a chance to deliberate and vote on the variances and so they combined the lots, it was one lot and then before this Board there was a three to two vote which as you all know was not a…a…a…a vote in favor of because it failed by one vote. In order to grant the initial motion on variances it was considered in two parts so the initial vote failed and then the second vote was in a…also a…failed so the variances for the addition were not granted at that time. Now the…obviously the a…addition was never built but what has happened is that a second lot that could be a second residential lot was combined into one overall L-shaped lot larger than any of the other lots in the surrounding neighborhood. The Polhamus’s now wish to seek to undo what was done in…in attempting to get that variance. So they now seek to re-subdivide that property and they’ve appeared before the planning board. They’ve been using Maser Consulting. They have also eliminated the shed and the pool which have both been removed from the property. They would like to keep the tennis courts and they would like to re-subdivide so that there would be a new residential lot replacing the old residential lot on Chestnut Lane. And so I think that’s…that’s a rough summary of the background. I’m happy to answer any questions you have but I’d like to turn it over at this point to Mr. Dates so that he can walk you through the variances that are needed today as a result of what occurred in 2007.

Mr. Dates: Good evening, my name is Justin Dates with Maser Consulting. As Dominic stated I’ll take you through the…the current proposal for the project. A…the parcel itself is L-shaped right now a…has frontage to the south on Chestnut Lane. The Powelton Club Golf Course is just across the street and then the existing home fronts on a…Balmville Road. The site itself a…is one point three one acres in size and it’s in the R-1 residential a…zoning district which permits single-family homes with a minimum lot area of forty thousand square feet. So by way of the a…proposed subdivision a…what we’re looking at is Lot - 1 a…which would be the existing home a…down on the a…the eastern side a…there are variances required for the minimum lot area. As I stated forty thousand square feet is the minimum a…we are proposed at twenty-two thousand, nine hundred twenty-three point seven square feet a…which is about point five three acres. Then a…lot width within the R-1 Zone is a hundred and fifty feet a…minimum and that’s measured along the…measured along the a…the frontage of the site at the required front yard setback which in this zone is fifty feet. A…this is a…this measures at a hundred and ten point three feet so that would require a variance from the one fifty. I would consider that a pre-existing condition so that’s a…the existing lot width a…that we can’t adjust. Then moving down the side yards, currently the existing home to the north here is only eight point seven feet off of the side yard a…lot line and the a…on the southern side they’re only twenty-nine a…point eight feet off the side yard. So in the zone the minimum side yard setback a single side yard setback is thirty feet so again I said we…the lesser of ours is eight point seven and then two lots or the two side a…yard measurements are to equal a minimum of eighty feet in the zone where our total is thirty-eight point five feet. Again those are dimensions established off the existing home a…to the lot line so I would consider those a pre-existing condition as well. Then moving down to the…the lot building coverage, within the R-1 district it’s a maximum of ten percent a…and again this is just the building footprint itself a…the proposal is at fourteen point eight or four point eight percent above the max. Then lastly for Lot - 1 the lot surface coverage or impervious surfaces, the patio, the…the building footprint, the driveway a…maximum is twenty percent and the proposal a…we have at forty eight…is at thirty two point three percent so twelve point three percent above the max. Now moving on to a Lot - 2, this is the lot a…that has frontage on Chestnut Lane and we’re…have indicated a proposed dwelling a…again here lot area minimum forty thousand a…we’re proposed at thirty-four thousand two hundred seventy-five point six a…so again a variance request is proposed for that. Lot width again a hundred and fifty feet minimum a…again this is a…a…based on the existing lot width itself we’re at a hundred and twenty-seven feet a…so we are shy a…there. I would also consider that a pre-existing condition again because it is the a…lot dimensions themselves. A…then lastly on Lot - 2 we are at a lot surface coverage again maximum twenty percent a…and we are at a thirty-four percent for this lot. Now Lot - 2 has the proposed dwelling, that also has the existing tennis court a…which they would like to keep a…there is this brick patio here which looks like a kidney shape because that’s where the former pool was, that’s become a patio and then also there is the a…a gazebo on site which they would also a…like to keep as well on that lot. A…again the setbacks for the a…the tennis courts, minimum for a tennis court is fifteen feet we are in excess of twenty-one feet a…twenty-five and twenty-six feet a…to the adjacent property lines for the tennis court and the gazebo is also sixteen point one feet off the property line where accessory structures are to be at least (inaudible) and it’s the side yard a…

Chairperson Cardone: I see that Lot - 1 has a private well but I believe that Town water is available.

Mr. Dates: Yes, that’s…that’s correct. As…as part of the proposal that…the well would be abandoned and Lot - 1 would look to tie into the a…Municipal water….the Municipal water service.

Chairperson Cardone: So your…your calculations are based on it being Town water.

Mr. Dates: Correct.

Mr. Manley: In an effort to try to reduce your a…lot surface coverage you know obviously, you know like we said before we want to try to minimize the amount of variances that are required. By removal of some of those items that are causing lot surface issues you can eliminate your variances. So, for example, the shed or the gazebo a…the tennis courts they are all adding to your lot surface coverage area.

Mr. Dates: The shed was recently removed.

Chairperson Cardone: It wasn’t there I would have seen it.

Mr. Dates: Yeah, that…that was removed. I mean the driving force really on…on the Lot - 2 where we’re having the proposed dwelling a…is the tennis court. I mean…it is considered an impervious surface, it’s a clay tennis court so it gets water…it gets water you know, to maintain that surface, water does percolate through it however it still based considered to be impervious so the tennis court alone is…is a…you know, six thousand, six hundred and ninety square feet so by nature I would say since water does perc through I would not necessarily consider that impervious but it…it does fall underneath that a…per the Code. I mean that would be a substantial reduction in the coverage…

Mr. Manley: Right.

Mr. Dates: …calculation if it…if it were seen that way. The gazebo itself is only seventy-five square feet so very a…minimal amount of coverage.

Mr. Scalzo: Help me understand…I’m not seeing any right-of-way dedication on this at all and if that hasn’t been considered all of your variances change.

Mr. Dates: Like I said we have been before the planning board a…originally before coming to this Board and a…a requirement of any right-of-way dedication was not requested.

(Inaudible)

Ms. Gennarelli: Excuse me, can you just take the other microphone then or switch back and forth? Thanks.

Mr. Scalzo: Typically in subdivisions if a deed goes to…into the pavement area that’s maintained by the Town the applicant will dedicate that portion, typically its twenty-five feet from the centerline of the actual pavement a…if it’s not defined (inaudible). I’m looking at property lines that run on Chestnut Lane to the edge of pavement and (inaudible) appears to be in the center of the pavement. A…once you give that dedication to the Town and oh, I’m sorry, but dedication to the Town I believe a lot of your chart is going to change.

Mr. Cordisco: That would be true if these were new lots and a new road that was being constructed. In these cases before the planning board where you have both Balmville Road and Chestnut Lane as existing public rights of way we don’t have to dedicate anything to them in order for them to be used. They are already being used. So in…in…you’re right the property line along Chestnut Lane goes to the edge of the pavement but the public has the right to use Chestnut Lane as well as using Balmville Road.

Mr. Scalzo: Dave, is this making sense to you?

Mr. Donovan: Well I…let me make sure, in terms of Chestnut Lane where is the pavement edge? It looks to me like two different places.

Mr. Scalzo: Yeah, if you look at the proposed…I’m looking at where the proposed driveway radius is turned…

Mr. Dates: If you look to the a…the very top left corner a…you’ll see it says pavement edge along that…

Mr. Scalzo: Yes.

Mr. Dates: …that line.

Mr. Donovan: So but I’m looking at the bottom line the pavement edge seems to be on the other side.

Inaudible Conversation with Mr. Maser

Mr. Donovan: So Darrin I’m actually seeing the a…

Mr. Scalzo: The property lines run through the pavement.

Mr. Donovan: I…you know I don’t know what the custom of the Town of Newburgh is terms of a…I don’t know what we own and I don’t know what we take. Certainly I will give you a rural town such as the Town of Hamptonburgh frequently we do take additional a…property if we need it in…inside the pavement not beyond the pavement we take it inside the pavement to widen the road if we don’t own it. This is going up to the pavement edge. So I don’t know that we…we would take any additional property. We wouldn’t want to go…we don’t need to go to the middle of the road. If we’re going to widen the road we go inside the road. Follow me?

Mr. Scalzo: I…I am thinking of perhaps a…if you could consider a brand new subdivision and you’re building a new road in that subdivision your typical right-of-way widths are a fifty feet minimum.

Mr. Donovan: Correct.

Mr. Scalzo: That’s you know and that’s how the establishment of twenty-five feet off the improved right of way…

Mr. Donovan: Yeah, okay, so I don’t know, again I don’t know what the planning board’s custom is in terms of taking additional property. I don’t know. I don’t know the answer to your question.

Mr. Cordisco: I’ve…I’ve never been involved in a planning board action for the Town of Newburgh where they required a dedication of property on an existing Town Road. You’re absolutely correct. In a new subdivision it would be…if it was proposed to be a public road and they’re not all public roads some of them are private but you’re absolutely correct. It would be a public road that would be a fifty foot wide dedication for it. What I’m…what I’m suggesting here is is that the Town…first of all, I mean, first of all it hasn’t been raised to answer your question and it was reviewed by the Town’s consulting engineer a…Patrick Hines before it a…it was sent over here so it wasn’t flagged as…as an issue but the public certainly has the right to pass over Chestnut Lane and the Town if it…if there was a pothole along the edge of pavement in front of this but you know that would be the Town responsibility to fix and they would have the ability to do that.

Mr. Scalzo: Right, well I mean and the hydrant that’s on Balmville Road in this case would actually be private property if that’s you’re…you’re claiming.

Mr. Cordisco: It’s on private property but the Town has an easement by use at a minimum if they don’t have anything more now I…

Mr. Scalzo: So even if the Town has an easement by use shouldn’t that be considered as part of this you know, it’s unusable to your client.

Mr. Cordisco: It’s an easement along Balmville Road to get to the fire hydrant but right, we’re not proposing any improvements or any changes. And that actually leads into an important point if…if I may because a…Mr. Dates was explaining that a lot of these conditions are pre-existing that aren’t being changed. If we could step back in time and I know we can’t but if you could step back in time and if these lots had never been consolidated into one, bear with me for a moment, and then the owner wanted to put a home on this lot which was vacant at that time they would have come before this Board because that lot would not have been enough to get a Building Permit without variances because the lot is a little bit too small. But you wouldn’t have had to come before this Board for anything in associated with this lot so consequence to the Polhamus of consolidating those two lots is that in order to put a building, a residence on this lot which they could have done before by obtaining variances they now made it worse because they need variances for the new home and they also need variances for the existing home which is not going to change.

Mr. Manley: Well the other issue too before was and I think one of the reasons they combined the lots was in the process when they went through it it was determined that they had accessory structures…

Mr. Cordisco: Yes.

Mr. Manley: …on vacant land.

Mr. Cordisco: Yes. Yes, you’re absolutely correct.

Mr. Manley: In order to have an accessory structure it has to be accessory to something…to a residence so they combined it so that that would remove that violation and then the issue came about that there were certain things that they didn’t follow through with the Town which resulted in complicating their issue more which you know that became a problem so and in fact we have some documentation of where you know, they were sent a letter…hey, your…your time is going to expire you need to take care of this…

Mr. Cordisco: Yes.

Mr. Manley: …they probably wouldn’t be back here if that was all done right. They’d be here for variances but not for the issues that they have with the gazebo, the a…well they had an issue with the pool, the pool is filled in now but there were some things that weren't completed so…that’s part of the problem. But so that they weren’t in violation anymore was one of the reasons why I understand they combined the lots regardless of how their variances went they combined it to keep…so that they didn’t have that issue anymore.

Mr. Cordisco: That’s correct. And…and one of the reasons that they’re here before you now is because they have applied for Building Permits for the tennis court as well as the gazebo which were turned down, rightfully so because they require variances so we’ve applied for them. And the other thing regarding the consolidation of the lot and it’s actually in the minutes of the meeting a…Mr. Hughes was on the Board at that time said they consolidated the lots to improve their position of the application before the Board. So they did it. And so now what we’re dealing with is a consequence of that because it was a decision that they made thinking that they were going to do…the consolidate the lots, reduce the number of variances that they needed at that time which would have satisfied hopefully the Board’s concern to reduce as much as possible the number of variances and also be able to build their addition. They weren’t able to do that so now here we are.

Mr. Donovan: If…if I may just go back to Darrin’s questions so I could try to provide a little clearer answer than I think I provided the last time? So if…if the Town is going to take…would require an easement twenty-five feet in from the edge of pavement then that would not effect because the ownership remains the same so that would not affect lot size. If they would take ownership then that would affect lot size and…and I do come back to I don’t know what the planning board’s policy is in that regard.

Chairperson Cardone: Maybe Joe could help us with that? My understanding was the twenty-five feet is from the center of the road.

Mr. Scalzo: From the center of the improvement.

Ms. Gennarelli: Can you give Joe one of those microphones? Thanks.

Mr. Mattina: Yes, that’s generally custom the twenty-five from the centerline of road. Correct.

Mr. Maher: But the possession is not taken by the Town? It’s a right-of- way?

Mr. Mattina: Right.

Mr. Maher: So the actual property owner’s lot line does not change, correct?

Mr. Mattina: The lot line will always stay the same, right, as long as the owner…

Mr. Maher: And the setbacks are from the actual property line?

Mr. Mattina: Well that’s a different story. Because our definitions are setbacks from the property or a street line for the front yard setback so I would measure…

Mr. Scalzo: Okay.

Mr. Mattina: …on Chestnut I would measure from the street line, not the property line when that permit came around.

Mr. Scalzo: And the street line is the edge of pavement?

Mr. Mattina: Yes.

Mr. Donovan: Okay. Are you good Darrin? Are you good with that?

Mr. Scalzo: I am, I don’t necessarily…a…you know what…I’d have to do a little more research on it myself so…

Mr. Donovan: Okay.

Mr. Dates: If I could…? A…a…the a…the lot size a…the variances that we’re looking for again Lot - 1 is point five three acres, Lot - 2 is point seven nine. We did…we did a…pull a…tax map…close…close to the project area just to…to see what a…other lot sizes were. Directly adjacent to our site there’s two small lots a…they are point three two acres in size and…and…

Mr. Donovan: Same owner…same owner owns the corner lots?

Mr. Dates: Yes. And a little further a…to the west here there is a very small lot with a house on it that’s about point two two acres and again that’s about half of the smallest lot that we’re looking at. A…we also looked up a little further north along Lester Road and again there’s point three four, point three six, point three five so smaller than the lot areas that we’re seeking for our proposed Lot - 1 and Lot - 2. (Inaudible)

Mr. Scalzo: Have you done your soil testing yet?

Mr. Dates: Yes, we did.

Mr. Scalzo: An (Inaudible) or something?

Mr. Dates: Right now we have it designed as a…a conventional pipe and gravel.

Mr. Scalzo: Okay. (Inaudible) …narrow… (Inaudible)

Ms. Gennarelli: Darrin, Darrin…I can’t hear you. I don’t think anybody can.

Mr. Scalzo: I’ll speak into the microphone. I just asked if…

Ms. Gennarelli: Pull it closer, a little closer.

Mr. Scalzo: I just asked if the soils testing had been completed to see if the septic could be placed where they are showing it on the map.

Ms. Gennarelli: Okay.

Mr. Dates: Yeah, that was actually required for us to have the application accepted by the…the Zoning Board so...we did that. One other point I just want to make out a…there…there is an exists screening along the tennis court which faces towards a…Chestnut Lane a…it’s been there for a…seven to eight years or so and ranges from about fourteen to about nine feet. It’s some arborvitae a pretty dense screen. I have a picture a…if no one visited the site I can just show you what’s currently out there.

Mr. Cordisco: The interesting thing about the a…tennis court a…from a legal perspective, it’s the kind of stuff that excites me, is…is that the tennis court right now because of the L-shape of the lot is actually considered to be in the front yard you know, because the lot has two frontages, one along Balmville, another one along Chestnut. But as soon as you put a home here it’s now in the rear yard. So it actually doesn’t physically change a…where it’s located but it would then be conforming because it would be in the rear yard at that time and as Justin had mentioned before it meets the setbacks for being in the rear yard if that is what is allowed by the Board.

Mr. Maher: How long has the tennis board been there?

Mr. Cordisco: Since the early ‘80’s, Mrs. Polhamus is here.

Mr. Manley: So I have a question for Joe, maybe I’m just not reading something right. But do you have a copy of the…

Mr. Donovan: If I recall this comes to us as a referral from the planning board not the Building Department.

Mr. Mattina: Yeah, I’ll do my best.

Mr. Donovan: Okay.

Mr. Manley: You said you measure from the pavement edge to the front of the house to determine the…you know how far the setback is?

Mr. Mattina: Right, for required front yard setback, in the definitions it says, from a street line. So even though the property line extends into the street by definition a street line would be the edge of the street.

Mr. Manley: So let’s say that the property line went ten feet, just for purposes of making it easy, ten feet into the street but you’re measuring from the pavement edge?

Mr. Mattina: Correct.

Mr. Manley: So then if it was fifty feet from the front of the house to wherever the property line ended in the…in the road…okay…but it was only forty feet to the pavement edge then you’re going to use the forty feet?

Mr. Mattina: Correct.

Mr. Manley: Okay, because on the plans here and that’s where it’s a little confusing and I think that’s going back to maybe what Darrin caught…was catching…is that they’re measuring the front of the house all the way to the property edge which goes into Chestnut Lane which is fifty-one feet.

Mr. Mattina: Correct. If this application came in for this house I would have them back it up six or seven feet that it’s shown off the pavement.

Mr. Manley: So then if there is going to be a variance or if there is a need for a variance we’ve got to take that…we’ve got to use that number.

Mr. Mattina: Well there wouldn’t be because you’ve got plenty of room to back it up.

Mr. Manley: Right but in some cases that could impact whether or not you needed a variance with…having that incorrect number on there.

Mr. Maher: Well if there is room in the…in the…in the building envelope then it’s really not…not an issue because you’re required…you’re required to plot out your foundation prior anyway so it’s… (Inaudible)

Mr. Mattina: I wouldn’t see that as a problem because you have plenty of room to back the house up another forty feet if you wanted to.

Mr. Scalzo: (Inaudible) …at forty you’d be in that tree line.

Mr. Mattina: Yeah. I’m saying setback wise you’ve got plenty of room to move it back.

Mr. Donovan: Is it possible for you to show us how this compares to the old configuration in terms of how the two lots layout now and how they did before? Is this the same? Or is it different?

Mr. Dates: I don’t actually I have that map with me.

Mr. Cordisco: It…it’s very similar in terms of the configuration but the lot may have been adjusted a little bit a…to a…accommodate as much as possible the…obviously the a…a…pool on…on that on Lot #2 as well as increasing lot area for Lot #2 as much as possible so I…I think that it’s very close but whether or not it tracks it exactly is not the case. Believe me if we could have gone back to the Assessor’s Office and said please undo what…what we did, we would have but we were not able to do that.

Chairperson Cardone: Do we have any comments from the public? Yes? This gentleman then Mr. Hughes.

Mr. Romero: Members of the Board, thank you for letting me speak tonight. My name is Ed Romero, I live at 2 Glen Lane, which is on the other side of Balmville Road and I have a couple of points I want to bring up. One is…what I don’t understand a lot about this stuff but bear with me please but whenever we’re talking about variances the gentlemen go from two lots to one lot depending upon what the variances they’re looking for so when they’re referring to the old way it was then it was two different lots and then when they want to talk about it now they talk about it as being one lot so it confuses me as to what we’re…what we’re saying here. The reason it became one lot was that they wanted to put a tennis court and other details to their home to live there a…

Mr. McKelvey: No.

Chairperson Cardone: No, the tennis court was already there.

Mr. Romero: Okay, when I spoke to them today earlier a…the purpose of making it two lots now is to sell both lots and leave. The other reason I’m here to speak is I live in Balmville and I would like to keep the integrity of Balmville going, part of that integrity is the spaciousness of the houses. The details that they’re giving on the lots that are around right around the house and on Lester, up on Lester don’t include all of Glen…Glen Lane a…the rest of Balmville, the house adjacent to theirs which is also a huge piece of property a…the other thing is there are a lot of houses right now for sale in that area. Adding two more houses for sale, the house to the right on Balmville is for sale and the house to the left of the vacant lot is for sale. Both those houses have been for sale for over a year or two now a…my concern is that it drops the property value when you add more houses just to sell them. Also it seems like there’s a lot variances that need to be a…changed to accommodate this. I’m also concerned that since it’s one lot now and that first lot was grandfathered in with its variances does that mean that when it breaks into two separate lots now that second…that first lot needs to now comply to the R-1 variances that the Town seems to have set up to keep the integrity of the neighborhood.

Chairperson Cardone: That is correct.

Mr. Romero: Okay. And I would hope that that would be taken into serious consideration. I live in that area, I…I worked very hard in my life to get to an area like that I’m not looking to live in a neighborhood where the houses are all on top of each other. That’s not the integrity of Balmville on a day when the Balmville tree is being cut down it would be nice to keep the integrity of the Balmville area. Thank you for listening to me.

Chairperson Cardone: Thank you. Mr. Hughes.

Mr. Hughes: (Inaudible) map will satisfy my curiosity but...

Ms. Gennarelli: Ron, can you get to the mic first please…

Chairperson Cardone: Please pick up the microphone it’s over there.

Ms. Gennarelli: …thank you.

Mr. Hughes: The way I counted there’s a dozen variances that are requested with this application and if you’ll read along with it and count them up, twelve. I haven’t heard anything about off street parking. I haven’t heard anything about compulsion of connections to the Municipal water. I haven’t heard a lot of things that are determining factors like this gentleman said, this is Balmville. Anybody have any answers about off street parking?

Mr. Dates: Each…each a…the existing house has a garage and a substantial driveway a…and then we’re also proposing a garage and driveway on the a…the proposed lot, Lot #2.

Mr. Hughes: For how many cars and for how many bedrooms and what’s your calculations on your sewer? That’s a third of an acre the way you described it a hundred and twenty-five by a hundred?

Mr. Dates: Point yeah…

Mr. Hughes: That’s point three three.

Mr. Dates: Point five three for proposed Lot #2.

Mr. Hughes: So you have more than a hundred twenty-five feet in depth?

Mr. Dates: Yes, absolutely.

Mr. Hughes: What’s the number?

Mr. Dates: A hundred and fifty-nine feet in depth.

Mr. Hughes: And the width is substandard and…?

Mr. Dates: Correct.

Mr. Hughes: …like I said eleven other things there that are substandard.

Mr. Dates: There are actually nine...I…nine proposed variances.

Mr. Hughes: Maybe I got extra thing, count them up again. I’m not satisfied with your answers about the sewer. I know that area right there and there’s not good perc, not good calculations and you got the road issue too.

Mr. Dates: As I stated, we were required to do our soil testing and perc testing at the site before the Zoning Board would even accept our application so we did do that and provided a design for an in-ground septic system.

Mr. Hughes: So I don’t think you answered my question about how many off street parking spaces.

Mr. Dates: Which…for each lot?

Mr. Hughes: Yes, if you’re going to make it two you’ve got to have the provision to both of them.

Mr. Dates: Sure, there’s a driveway and a garage on…on each of those. The existing lot has a two car garage and you can at least fit two cars in the…in the driveway, that’s four. And then the proposed lot we’re looking at three to four cars in that driveway.

Mr. Hughes: And the bedrooms count.

Mr. Dates: A…the proposed bedroom count is at a…two bedrooms on the…the Chestnut Lane lot and then the existing house…four bedrooms.

Mr. Hughes: Thank you.

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

Mr. Manley: So the accessory structures that are there…there’s no a…the applicant wants to keep everything and wants everything as is with the accessory structures?

Mr. Cordisco: There’s only two accessory structures and that would be the gazebo and the tennis court both of which are…are positive accessory structures which would enhance future Lot 2.

Chairperson Cardone: The pool and the shed have been removed?

Mr. Cordisco: That’s correct, since 2007.

Mr. Maher: Do you have a definition of lot coverage or lot surface coverage?

Mr. Donovan: Lot surface coverage, Mike, the percentage of the area of a lot covered by buildings, parking areas, accessory structures and any other impervious materials or surfaces.

Mr. Maher: So if in fact it states impervious and in fact the…the tennis court is a clay tennis court and not impervious…?

Mr. Cordisco: We counted it anyway to be conservative.

Mr. Maher: I understand, I understand, but obviously the variances that are minimized as much as possible so…I guess I’m…if in fact it is pervious why we have to count it as impervious.

Mr. Manley: Because it is considered an accessory structure, yes?

Mr. Maher: Kind of but again it’s not…the…the does state impervious areas.

Mr. Manley: Impervious would be, and correct me if I’m wrong Joe, impervious would be more like a gravel driveway or a…a…patio blocks impervious…?

Mr. Mattina: I wouldn’t even count patio blocks but the driveway would be. I mean as far as impervious this Board over the year even included swimming pools which is water to begin with.

Mr. Maher: Well but obviously you have no…there’s no ability for anything to soak in.

Mr. Mattina: Right. But I’m saying you…

Mr. Maher: I understand that.

Mr. Mattina: …you don’t have to go by a hard surface per say because like I said pools are counted in. The clay court it wouldn’t absorb as fast as it would run off so I think in that aspect it should be counted in as impervious surface.

Mr. Maher: Okay then, if it was a grass court would that change it?

Mr. Mattina: Yes, it would. As long as the water would absorb, you know, immediately then it would not be an issue.

(Inaudible-Audience Member)

Ms. Gennarelli: Sorry, you are going to have to use the microphone if you are going to speak.

Mr. Cordisco: She’s indicating that the a…the tennis court does absorb quickly. But once again we were being conservative to include it.

Mr. Maher: No, I understand that but again like Mr. Manley states, you know, the minimum variances grantable is what we’re looking at.

Mr. Cordisco: And quite honestly I mean the ability to market the lot because this is a lot that would be built on with a…with a residence with an existing tennis court could very well be a determining factor for someone and would certainly improve the value of the lot as well as its assessed value because it already has a tennis court. If you are a buyer that wants a home with a tennis court you already have that in place.

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

No response.

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

No response.

Mr. Scalzo: I…I’d just like some more clarification on whether or not a road that…

Chairperson Cardone: Do we have a motion to keep the Public Hearing open?

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

Chairperson Cardone: Do we have a second?

Mr. Maher: I’ll second it.

Mr. Donovan: Now that motion is to hold it to the August meeting, correct?

Chairperson Cardone: That is correct. That was the motion.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Donovan: Now if I…I’m sorry, for purposes of clarification if I might? What other information would you like to have?

Mr. Scalzo: I would like a definitive answer on whether or not road…right-of-way dedication is required. Having done subdivisions in the Town of Newburgh myself I have been required to do it.

Mr. Cordisco: On an existing road?

Mr. Scalzo: Yes.

Mr. Cordisco: We’ll seek that clarification and come back before you in August. Thank you very much for your time and I do appreciate your indulgence in letting me go back through the history. I know many of you were here in 2007, some of you weren’t but I think it was helpful to go back and explain how we got to this point where we are now.

Chairperson Cardone: Mr. Hughes, did you have something to say?

Mr. Hughes: Yeah, I would like to…use the microphone before Betty calls me out. I…I don’t see a calculation in there for the parking area which is impervious, no matter how you cut it, and I agree with Mr. Manley whether it’s impervious or pervious it’s still a structure and therefore considered a part of the building footprint coverage of the lot.

Chairperson Cardone: The hearing will be held open to August the 27th any that is here concerning that application you will not be re-noticed, the notice is being given this evening.

Mr. Cordisco: Thank you all very much.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted - 8:17 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 8:17 PM)

JESUS B. & ANDROMIDA PACQUING 9 SUMMIT RIDGE ROAD, NBGH

 (104-1-5) R-2 ZONE

Applicant is seeking area variances for one side yard setback and the combined side yards setback to build an attached garage (24 x 26) and a covered front porch on the residence.

Chairperson Cardone: Our next applicant Jesus Pacquing.

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

Mr. Havilland: My name is Terry Havilland from J.T. McManus Inc. a local building contractor. I’d like to start this off for Dr. and Mrs. Pacquing but they’re here to answer questions. I’d like to start by perhaps handing out a copy of the front elevation of what we’re proposing it might help clarify the explanation and it’ll make clear our solution. Can I hand them out to the…?

Chairperson Cardone: Yes. And I should mention again that the Board Members make site visits.

Mr. Havilland approached the Board

Mr. Havilland: What instigated this proposal in the first place was the homeowner’s desire to have easier access to their main entrance. There is an existing garage but it’s at the lower level it’s in the basement. It’s actually a little story below and the…the difficulty in access through the house and up around the front and up the stairs requires them lately to park in an area along the driveway about where the new garage is proposed. It’s easier to walk from there to the stairs and up to the main entrance. What they wanted to do is to build a garage there that took into consideration future access, ease the…took into consideration the future need for perhaps wheelchair access for the construction of ramps. So we offset the garage door, we made a 24 x 26 structure to the south of the building, the residence and where that window is is a platform with area inside that we could ramp in the future to get wheelchair access to this covered porch that we’re going to extend on the existing house and a bridge to the front door. So that was the initial reason for this proposal. The problem is in order to put this on the south end we violate the side yard requirement by almost fifteen feet and it’s exacerbated by and I’ll just point this out, you can see it on the plot plan, the structure itself although it’s attached by the roof is about six feet away from the building proper. That was to allow daylight to enter the dining room windows in the existing house so we…we wouldn’t lose that feature. It just made a six foot alley way between the new building and the old building even though it’s attached but exacerbated the side yard by six feet. I think what we end up needing, in round numbers, is a fifteen foot side yard variance and a twenty-five foot combined side yard variance to fit it in comfortably. I guess that’s about it a…any objections, questions?

Chairperson Cardone: I have the report from the Orange County Department of Planning which is Local Determination. Do we have any questions from the Board?

No response.

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

No response.

Mr. Havilland: Just one note on…on the application, it mentions what variances you…you were in need of I’m not sure how clear I marked that. I might have been giving exact numbers rather than giving me a little cushion, fifteen feet and twenty-five. I’m not sure how important that is.

Chairperson Cardone: We’re going by what Code Compliance…has proposed the one side yard is seventeen point nine…

Mr. Havilland: Right.

Chairperson Cardone: …and combined fifty-six point two. Is that what you…?

Mr. Havilland: Right, well that’s what the exact survey shows it would be.

Mr. Maher: So you feel that’s going to be an issue?

Mr. Havilland: Well, in laying out a building that’s…may or may not be square to the existing…I…you know, things happen, it would be nice to have a couple of inches extra in case we have a final survey done and it shows I’m over three quarters of an inch, you know, it’s an issue.

Chairperson Cardone: You’ll have to come back to us.

Mr. Scalzo: Is this serviced by Municipal sewer or septic?

Mr. Havilland: No, I believe there’s a…there’s a…I can’t…there’s a septic tank I believe at the end of this porch and the waste line runs up the driveway to the front door.

Mr. Scalzo: Inside the horseshoe area?

Mr. Havilland: Yes, I believe it is.

Mr. Scalzo: Dave, help me out, because this is connected it is not considered an accessory structure?

Mr. Donovan: Yeah, that’s correct, that’s one of the…I mean there’s really two things here, the configuration of the house, the existing house on the lot if it was…if it was square you wouldn’t need this extent of a variance and the other thing, yeah, Darrin if they just had a…an accessory structure it would be fine if it wasn’t connected or anything it would be fine, if it wasn’t connected.

Mr. Maher: Right, if you had that one inch gap there you’d be five foot…(Inaudible)

Mr. Donovan: That’s right.

Mr. Havilland: I think it looks pretty good because it doesn’t show it the drawing but this matches this, it kind of completes the picture. With all the discussion about imperviability and such and lot coverage, I’m a little nervous about the existing driveway and everything else that’s there that I didn’t consider.

Mr. Mattina: I did.

Mr. Manley: Joe is on it.

Mr. Donovan: You know, I’m not your attorney but you’re doing pretty well so far so just be careful what you say.

Mr. McKelvey: It’s actually a tough driveway.

Mr. Havilland: Yes.

Chairperson Cardone: Anything else from the Board?

No response.

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

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

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Havilland: Thank you.

 (Time Noted - 8:26 PM)

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ZBA MEETING – JULY 23, 2015 (Resumption for decision: 9:36 PM)

JESUS B. & ANDROMIDA PACQUING 9 SUMMIT RIDGE ROAD, NBGH

 (104-1-5) R-2 ZONE

Applicant is seeking area variances for one side yard setback and the combined side yards setback to build an attached garage (24 x 26) and a covered front porch on the residence.

Chairperson Cardone: The Board is resuming its regular meeting. On the application of Jesus Pacquing at 9 Summit Ridge Drive (Road) seeking an area for the combined side yards setback and one side yard setback to build an attached garage and a covered front porch on the residence. This is a Type II Action under SEQR. Do we have discussion on this application?

No response.

Chairperson Cardone: Do we have a motion to approve?

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

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 9:37 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 8:26 PM)

LORRAINE WEINBERGER 37 CRONOMER HEIGHTS DRIVE

 (75-1-32.11) R-3 ZONE

Applicant is seeking an area variance for pools shall not be located in a front yard to install an above ground (24 Ft.) pool (has two front yards).

Chairperson Cardone: Our next applicant Lorraine Weinberger.

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

Ms. Weinberger: Good evening I’m Lorraine Weinberger and I’m asking for a variance to build an above ground pool on what is considered a front yard because a road runs in front of it. The road is screened by a twenty to thirty foot barrier of trees and bushes. You can’t see the pool certainly in the winter…summer you can’t see anything from the road and the road curves around and then comes around to what must be considered a front yard so in this instance I have two front yards, two side yards and no other place to build an above ground pool. And I’ve always really considered where we wanted to build it as my backyard and I didn’t know until recently it was actually a front yard. But it’s a twenty-four foot above ground pool a…it doesn’t connect to anything except to the electric line for the pump and it’s filled by pool water not my well.

Chairperson Cardone: Beautiful view.

Mr. McKelvey: Yeah, very.

Mr. Manley: You know they used to land airplanes up there, right?

Ms. Weinberger: When the C-130’s come in when I first moved in I ducked, I swear to God, I ducked.

Mr. Manley: I…I have just one other question, I noticed you have a generator. Since you got the generator how much has it run?

Ms. Weinberger: A…for practice or we needed it?

Mr. Manley: You needed it.

Ms. Weinberger: We haven’t needed it. But I…we put this in we were caught Hurricane Sandy, I lived two weeks without anything and I said I hope I never need it but I’m putting it in. It was horrible. We were in the City, in Great Neck on Long Island and all the power went out and I didn’t get it back up for two weeks. We had no heat, no electricity, we stayed in the house and it was like the third thing that we put in in the house. (Inaudible) I made…I hope I never need it but I want it there. I don’t know if you saw the pictures, if you got this picture, we got an aerial shot of the house a…and my husband filled where the pool is going to be but I don’t know if you got that picture.

Mr. McKelvey: That’s why I wanted to see where the pool is going to be.

Mr. Manley: We got this.

Ms. Gennarelli: Yeah, they get everything.

Mr. Scalzo: In the package is also the model of the pool is that the unit…

Ms. Weinberger: Yes, the pool that’s everything, everything we could possibly need.

Chairperson Cardone: Do we have any comments from the public?

No response.

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

No response.

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

Mr. Maher: I’ll second it.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Ms. Weinberger: Thank you very much.

Ms. Gennarelli: Lorraine, excuse me, they didn’t vote on the variance yet. They just closed the Hearing.

Chairperson Cardone: We didn’t vote yet. We vote later.

Ms. Gennarelli: If you want to wait, they closed the Public Hearing but didn’t vote on the variance. If you want you can call me tomorrow that’s up to you unless you want to find out tonight.

Ms. Weinberger: Thank you, we’ll stay.

 (Time Noted - 8:31 PM)

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ZBA MEETING – JULY 23, 2015 (Resumption for decision: 9:37 PM)

LORRAINE WEINBERGER 37 CRONOMER HEIGHTS DRIVE

 (75-1-32.11) R-3 ZONE

Applicant is seeking an area variance for pools shall not be located in a front yard to install an above ground (24 Ft.) pool (has two front yards).

Chairperson Cardone: On the next application Lorraine Weinberger at 37 Cronomer Heights Drive seeking an area variance for a pool which shall not be located in a front yard to an install an above the ground pool and this has two front yards. This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. McKelvey: It’s the same old type for two front yards. I'll make a motion we approve.

Mr. Manley: I’d also add that the part where they are proposing the pool is screened very well with a…you know, the trees and the shrubbery so even though it is going to be what could considered a front yard it’s…it’s really not going to be seen that much from the road especially in the summer months. In addition to that the applicant provided a good aerial view of how the pool would be placed. I don’t see any real issue with it. I’d be willing to make a motion for approval.

Chairperson Cardone: I think John did.

Mr. Maher: John did already, you could second though if you like.

Mr. Manley: I could do that.

Ms. Gennarelli: You’re going to second that, okay. Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 9:38 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 8:31 PM)

JORG UWE FRISCHKNECHT 2 CHEVY STREET, NBGH

 (70-3-1) R-3 ZONE

Applicant is seeking area variances for the front yards setbacks for an existing house on Lot #2 of a proposed two-lot sub-division (proposed Lot #2 would have two front yards Chevy Street and East View Road).

Chairperson Cardone: Our next item on the agenda is Jorg Frischknecht, 2 Chevy Street. We do have a problem there because when I went to look at the property I saw that it was not properly posted and because it was not properly posted we would not really be able to make any decision on it this evening. However, they could be people here that want to speak to that application so in that case if anyone needs to speak to it we will listen, we will hear them but I think that we have to hold it over until next month.

Mr. Donovan: And if I could just read from the Code is the posted Notice must be maintained and updated with any information if there is any change to the information contained in the original Notice until after the Public Hearing was closed. So I guess there was people at the site, the posting wasn’t there so that is going to have to be done between…as soon as you can.

Mr. Cella: We’ll get a sign up there.

Mr. Donovan: Okay.

Ms. Gennarelli: I have signs for you.

Mr. Cella: Good, I can take them home with me tonight? Thank you.

Mr. Donovan: You can post them on your way home and you don’t have to worry about it…

Ms. Gennarelli: The still have to be laminated…

Mr. Donovan: …that was a joke.

Ms. Gennarelli: Okay.

Mr. Cella: I’ll leave that to the homeowner.

Chairperson Cardone: Is there anyone here that came here specifically to speak to that application? Yes, please step to the microphone; state your name for the record.

Mr. Coleman: Yeah, I’m Ron Coleman; I was actually here at the last meeting a…9 Chevy Street right at the end of the road. I don’t have any real further questions being that nobody is really here to answer them and as you noticed obviously the posting wasn’t up so I guess I’ll be here next month.

Chairperson Cardone: Are you the person I asked if that was the correct house? Were you out in your driveway?

Mr. Coleman: No, no it wasn’t me.

Mr. Scalzo: Actually if you could stay there for just a second? I visited the site Wednesday and the photos that you provided showed a bunch of cars…I didn’t see…I saw one.

Mr. Coleman: Well basically getting to that, he’s been there for about six years now and that’s…those pictures have been over the last couple of years a…when he’s had numerous tenants in there up to, like I said last time, twelve people living in the one house. It’s a single family home. Now over the last thirty or so days, since we’re…we’re trying to get something approved they’re cleaning the property, there’s no cars…it’s great. But you know, it’s only been over the last thirty or so days so, you know, what’s going to happen if the approval goes through I don’t know but...

Mr. Scalzo: The cars are…but how about activity?

Mr. Coleman: There…there is one family in the home now so they’re not renting out as far as I know the upstairs and the cars haven’t been near, you know, what they were before. Once in a while there’s a few cars but they’ve been keeping them, you know, in the driveway down below or parking up top there off of Chevy Street.

Mr. Scalzo: Thank you.

Chairperson Cardone: Joe do you have comments from the Building Department?

Mr. Mattina: Yes, I was out there with a…zoning enforcement Barry Lapierre and the upstairs kitchen was removed so as far as people living there if they are there is no kitchen so…you know…it should be back to being vacant again.

Chairperson Cardone: (Inaudible)

Mr. Coleman: Just one more thing, I don’t know if code enforcement does this. He changed from oil to propane a few years ago and the oil tank is just still laying on the side of the house so I don’t know, you know, usually that has to be cleaned up properly. So I don’t know if that’s what you guys follow up on or not but there’s an empty oil tank when he switched over and he just kind of threw it on the side of the house and it’s been laying there for a couple of years.

Mr. Mattina: All right, yeah, I think we were just there for an illegal apartment but we can follow up on the oil tank. All right.

Mr. Coleman: (Inaudible)

Mr. Mattina: (Inaudible)

Mr. Manley: Has there been any further information yet on the right-of-ways and the ability for the applicant to utilize the roadways for the proposed second lot, the new lot that’s being created?

Mr. Cella: The new lot will have direct access to Fifth Avenue.

Mr. Manley: But I guess the question that we had before was was that access allowable?

Mr. Cella: Fifth Avenue? Fifth Avenue is a Town road. The a…planning board issue then they had no objection to that.

Mr. Donovan: Well actually the question was whether the existing house…

Mr. Manley: Had access to Chevy Street, right?

Mr. Donovan: Chevy Street or East View Road, either or both of those because the…the deed indicated that there was access over a private road to the public right-of-way and the question was whether that included Chevy Street and East View Road or was limited to Fifth Avenue because the Fifth Avenue access would be foreclosed if the subdivision was granted. If you don’t know, you don’t know but the Board is going to need to.

Mr. Cella: Yes sir, okay.

Chairperson Cardone: The original access I believe was on Fifth Avenue because then…I know that Mr. Hughes would probably know the answer to this.

Mr. Cella: Could you…you… (Inaudible) ?

Mr. Hughes: (Inaudible)

Mr. Scalzo: I have a copy of the deed of the previous owner Komondorea and at the bottom of the deed it states ‘together with and subject to the rights of the grantors and other title holders of premises adjoining on the above designated East View Road and which said road is designated on the aforementioned map…” and I happen to have a copy of the filed map that they mention… ‘as a twenty foot right of way to use the said East View Road for the purpose of ingress and egress for all purposes to the above described premises’.

Mr. Hughes: You take the words right out of my mouth.

Mr. Scalzo: And I have a copy of the filed map from 1959.

Mr. Hughes: Okay and the one before that says the same. In essence by doing this other subdivision you are going to cut off anything to Fifth Avenue and you have to use that twenty foot right-of-way for ingress and egress only. These guys are parking on Chevy Street. Chevy Street is for ingress and egress only; it’s a twenty foot wider that was provided for two houses up at the top, it wasn’t for parking. You got thirty cars parking out on Chevy Street, they can’t plow, they can’t get in and out. God forbid you ever had to have an ambulance or a fire truck the thing would burn to the ground before you could get them to move the car. So what he brought up is exactly what the original Komondorea house (Inaudible) had built had their access to Fifth Avenue. You’ll also notice as I mentioned in the last meeting the planning boards looking for that twenty-five foot dedication from the center of the road that we spoke about on another project. You’ll see the homework is done for that project but this project because it’s a right-of-way by use not by ownership or deed. So they’re looking for that twenty-five foot dedication for the new lot and that twenty-five feet or the balance thereof of the twenty-five feet doesn’t reflect nor was deducted on this proposal. So we’re going to cut down the amount of total square feet when they dedicate that twenty-five feet and it’s not in the formula. Let’s take a real good look at this thing. There’s no water and sewer there that I know of for the original house. I think everybody there is on Town water but no sewer.

Mr. Cella: May I…may I speak?

Chairperson Cardone: Yes.

Mr. Cella: A…the existing house is serviced by Town water and sewer a…we are…East View Road is considered a private road so there is no required dedication along East View Road a…I…I…designed private road in the Town of Newburgh and when you do a subdivision with a private road they’re…they’re permitted property are permitted to go to the center line of the road which this does not do this is off East View Road and a…for the proposed lot, Lot #1 there will…it’s fronting along Fifth Avenue. We are making a dedication of land to the Town a…currently.

Mr. Scalzo: They both say Lot - 1, Lot - 2… facing…

Mr. Cella: Oh, boy. All right anyway…the a…western lot is the lot that’s fronting on a…on Fifth Avenue currently the property line is…is in the…is not twenty-five foot from the centerline of the road and we are making a dedication to the…to the Town for that so that there...the Town will have ownership of twenty-five foot from the centerline of Fifth….Fifth Avenue at...that’s part of the subdivision application. This application is solely for a pre-existing non-conforming a…residence that’s…has a frontage on Chevy Street and East View Road.

Chairperson Cardone: As I said this will have to be held open until…

Mr. Cella: (Inaudible)

Chairperson Cardone: …this will have to be held open until next month on the proper posting and it must be there until the Board makes a decision on the application.

Mr. Cella: Okay. If there’s any other questions I can answer tonight a…please? And there’s a…

Chairperson Cardone: Anything else from the Board?

Mr. Cella: And…and as he stated we do have legal access to East View Road for the existing residence.

Mr. Scalzo: That’s…that’s as stated on the old Komondorea deed and it says East View but not Chevy.

Mr. Cella: Right, I understand that and the a…that will…that is enforceable a…and I met with the homeowner who…not the homeowner but the a…tenant that is renting the…the residence and they are making attempts…they are making a attempts to park on the existing driveway. A…I was there yesterday they were parked on the a…on the pads on Chevy Street but a…I’m going to a…talk to the owner again and ask if takes them out so that whoever is using the residence is…

Chairperson Cardone: Why was the original driveway closed off?

Mr. Cella: I have no…there’s…there’s a…a…there’s a stone decorative…

Chairperson Cardone: Right.

Mr. Cella: I would imagine because it was a long driveway and possibly steep and as everyone has been up there this a…the existing driveway to East View Road is pretty elaborate, decorative, it’s part of the house, it fits with the house, it’s got the a…the decorative stonework. I…I can’t say how old. I’m sure it’s older than me I’m…you know born in 1977 I’m sure that’s been there longer than that. You know I took these pictures yesterday and it shows that the homeowner has made a…quite a substantial attempt to…to clean up the parcel a…the a…the neighbor…the neighboring homeowner did mention that there is a…there is an existing oil tank, abandoned oil tank that’s here and he is aware that he’s got to get rid of that.

Mr. Maher: Jonathan, were the original lots combined?

Mr. Cella: Sorry?

Mr. Maher: Were the original lots combined?

Mr. Cella: Oh, I’m sorry, at one point this was, I believe, three parcels and now it is…it is combined a...

Mr. Scalzo: Jonathan, the actual original file lot map lot lines do appear on your map but just not labeled.

Mr. Cella: Yes, they are here. I have a…you know I have a…as part of…as part of the subdivision application I provided a more detailed survey. If you’d like I can…I can make that…I can make that part of the submission. We have…there is one of the original…this is one of the original property lines that goes through a…through the middle of the house a…there’s another one in here that would go through the middle so it’s not even broken into thirds it’s maybe broken into a quarter, a half and…

Mr. Maher: (Inaudible) work, that’s okay. So again, my question is why were…so they combined at one time? Or…?

Mr. Cella: A…that…it’s…it’s currently considered one lot.

Mr. Maher: (Inaudible)

Mr. Cella: Currently and…and previously it was multiple lots.

Mr. Maher: Yeah, but based on the deed that’s here there’s…there’s three different lots.

Mr. Scalzo: And in the 1959 deed of Komondorea it’s described as one lot.

Mr. Cella: So at that point it was…

Mr. Scalzo: In 1959 it was considered one lot.

Mr. Maher: Yeah.

Mr. Cella: And the a…again the existing residence is serviced by water and sewer so is the proposed, we are not asking for any variances on the lot…areas…it’s the only variances we’re asking for is for the existing residence…a…the frontage on East View and Chevy Street. And the…the homeowner has to, you know, respect that he has only use to East View Road. There is a…you know, if I was to go through the…the requirements for an area variance is there is no way that we can…even if we didn’t do this subdivision the variances…the house is where it is, it’s not…it can’t be moved.

Chairperson Cardone: Well we will be hearing this next month so…

Mr. Cella: Okay.

Chairperson Cardone: If anyone has any questions?

Mr. Cella: Thank you.

Mr. Hughes: Again, I didn’t hear anything about off street parking for both of these parcels?

Mr. Manley: I would make a motion that we hold the Public Hearing for this applicant open till next month and remind the public that they will not be re-noticed so they make sure they are here next month if they wish to follow this and comment.

Mr. Scalzo: I second that.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, thank you.

Mr. Cella: Thank you.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 8:47 PM)

ZBA MEETING – JULY 23, 2015 (Time Noted – 8:47 PM)

JOHN & CAROL HUDELSON 200 OAK STREET, NBGH

 (9-3-50.11) R-3 ZONE

Applicant is seeking an Interpretation of 185-15-A-1 and/or an area variance for the maximum allowed height of accessory structures to build a two-story garage (40 x 30 x 19’6”).

Chairperson Cardone: Our next applicant John & Carol Hudelson.

Ms. Hudelson: I think I can do it this way so, good evening again, thank you for your time. In March we were here asking for a height variance for an accessory building in our backyard. The Public Hearing was closed but then it was reopened because of utility lines that cross over the construction, the proposed site, they’re here. Sorry, I’ve just put up the survey here; you can see the line in question here that goes across sort of that northern end of the building. I understood at that hearing that the presence of that line raised two questions. First, a public safety question because some electrical wires carry high voltage and have to be like ten feet away from the nearest combustible surface a…there was a question as to whether our poles were high enough to keep that line high enough a…for a nineteen and a half foot structure which was the variance we were asking for four and a half foot variance from the fifteen. There was also the question of whether the presence of these utility poles indicated that there would also be an easement by the utility company to come out and service the poles. I called Central Hudson, they made three visits to our property; one by a workman who said we would need an estimator, the next by the estimator and then by the estimator and a couple of field crew members, I think there was a foreman as well. They tell me several things, one the line that you see going over the house that’s not a primary line, not one of the high voltage seven thousand volt lines that needs the ten foot clearance. It’s a secondary line that serves only our house and you can see it on the survey. That’s consistent with the survey it comes right to our house only from the pole and then the house. A…Jason Puckett who is the…who is the estimating supervisor, estimator supervisor I think at Central Hudson has written a letter. I got a hard copy of it today with his original signature to bring to you. I had it via email earlier as an email attachment and it was…it was suggested to me that I should have something more, you know, substantial than that so I was able to get one from him today to bring in. What Central Hudson said when they came out was this really doesn’t pose a big problem for them because what they can do is to take this secondary wire, move it temporarily while construction is happening and then once the building is finished they’ll put the meter at the accessory building. So that will end Central Hudson’s responsibility and then the accessory building can feed the house. So this…this was not a problem and they said, you know, in…in Jason Puckett’s letter the emailed version that I sent.

Chairperson Cardone: (Inaudible)

Ms. Hudelson: I brought it in this morning I think to Betty and then I brought the hardcopy tonight but with the original signature on it.

Chairperson Cardone: You really…you really need to get any items ten days before the meeting so we have a chance to go over them.

Ms. Hudelson: It’s been hard to get some of these things and I brought them to you when I could.

Chairperson Cardone: And Mrs. Gennarelli has them I guess we could….we could have them this evening but I think we need time to go over it. If you could finish, please.

Mr. Hudelson: Okay, his letter says that the wire then will not pose a problem because it will not be over the structure either during construction or after construction. It will never be in that position. He also said that there is no easement that this interferes with for Central Hudson to manage these poles. I’ve also asked Verizon to do a…you know, a similar thing. There are two people who work for Verizon who do…have different responsibilities. Tom Voch is the field engineer and he came out and looked and said that this was a drop wire that is it goes only to our house and again that’s what we see on the survey here. So it didn’t really pose a problem in terms of safety and he says they just follow what Central Hudson does with the line. A…the, I’m trying to remember his name, Tim Andrews who does not come out to the property but does look up records said that he found no right-of-way by Verizon either onto this land. I have an email that I also gave to Betty I think this morning which was Tim writing to Tom and copying me saying that he found no easement and also acknowledging that Tom had reported to him that this was a wire that served only us. So those things are indicated there I tried to get in touch with both of them today to see I could get something more substantial. I just got that email yesterday afternoon it arrived. So that’s what I’ve been able to find. I hope that that answers both of the questions with regard to public safety from those wires and also with respect to easements. There doesn’t seem to be one there.

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

Mr. Maher: Did we receive the letter?

Chairperson Cardone: The letter was received.

Ms. Gennarelli: I have a letter but the other one was an email between two other people, I don’t have a letter for that. Do you want to pass these down? I have an original copy of the letter from Central Hudson that Ms. Pauli Hudelson just gave me this evening.

Ms. Hudelson: And I think that that email refers to me by my maiden name which I generally use so if you see Pauli that…that’s still me.

Chairperson Cardone: Does anyone in the public care to respond to this applicant? Yes, please go to the microphone and state your name.

Ms. Reed: Hi, my name is Clare Reed; I am the next door neighbor to the Hudelsons. I know this was kind of a…the meeting needed to be re-opened because of the power lines and that was an impediment that potentially could you know, negate everything else. However, just because those have been taken care of to me the issues still remain. As certainly with the cases earlier tonight, before you the first case a…the…when you talk about area variances the Hudelsons have already received and area variance twelve hundred square feet. The building even at a lower height now from the twenty-three I think it was or whatever is now nineteen and a half is still obviously they need a variance. It’s still a two-story building. Despite the fact that the architect said there would be no livable space I think I mentioned at the last meeting that…before the delays, I guess March, that there was a stated height on the plans of seven ten for the first floor. There’s plenty of room for a second story and then you’re talking as I think that Mr. Manley he mentioned the first case is a nine hundred square foot footprint, there’s a second story there’s that much more. So they did get the area variance for the twelve hundred square feet but there is…it is still a two-story building and that’s…that’s the biggest problem for me. There is the potential for it to be and as somebody on the Board mentioned earlier a…things morph into other things that potential is there. Nothing I had heard has…has given me any a…assurance that that won’t happen. The fact that they would need to go for more variances or more a permissions to change it I understand that but first of all things can be done, once a structure, an external structure is there it’s difficult to know what’s going on on the inside. Secondly, once you get one step then you get next step, then you get the next step. And I feel that in looking again I don’t want to reiterate everything I read to you at the last meeting a…so I’ll keep it shorter but the criteria I use to judge this I don’t think anything has changed since your original decision. The…the need for the variance nothing has really changed in that regard when they did not get the…the height variance. When you talk about the substantial nature it’s still thirty percent a…overage which is substantial. The self-created difficulty that hasn’t changed, it is. The two remaining factors undesirable change and detriment to nearby properties and adverse physical, environmental effects, there has been a change and it also speaks to potential use. Along with I believe, in May there were…there were four requests for postponements I believe along with the May request for postponement there was documentation for the Hudelsons looking to be included in the Ag District so that was posted on your website. A…they did get approval to be in the Ag District which I understand is different than Ag Zoning however it does open the door for a lot more things. It opens the door for agribusiness a…it opens the door for a lot of things that will kind of fall in no man’s land, out of your jurisdiction maybe to prescribe, I hope I used the right word there and the County doesn’t want to hear…really when the County makes their decision is one of the representatives a…legislatures spoke to me, she said all we…it’s a very low bar to meet all we have to look at is it viable agricultural land, that’s it. They don’t want to know what you are going to do with it and as a matter of fact the parcel is such a small parcel it’s really an outlier in terms of what they usually allow. But she said hardly anybody hardly ever gets turned down because the County wants to say that we have more agricultural land. However, because of that the County doesn’t really follow…follow it up so you have the potential for the Town saying you know we’re not going to have this use, the County saying well we’re going to use agricultural designation and then it leaves a bigger, wider crack for somebody to stick their foot in and do some other things with the building. And that is a big concern of mine. Because one of the most obvious things about this whole process to me has been the extent, the incredible extent to which the Hudelsons are willing to go to get what has just been described as just a storage building. We’re going to get a tractor. We need this. They had the orchards for…their application said twenty-seven years now we need twelve hundred square foot on the ground level, two story building where the decision has said they haven’t show them need for that much space for the space they got, yes. Make it a one-story building, be done with it, stick to the Codes, do the one-story building, I’ll be happy, they’ll have twelve hundred square feet of storage they didn’t have before. My concern is why is somebody who said in their July meeting that they weren’t going to include windows in the building to save money, the windows that were on their plans, willing to relocate power lines, willing to have to get surveys, there is just…things don’t line up. And I think you have to look at when things don’t line up…why? Why is it so important this building be on its existing foundation which doesn’t show up even on the original map from when their property was subdivided from mine? There’s…it shows the poles, the power lines, it shows an outhouse, and it shows the remains of what later became their house that rebuilt but it doesn’t show any foundation. But it has to be this spot; it has to be two-stories even when you have all these incredible hurdles to jump over…something doesn’t make sense and I think there’ve been so many inconsistencies in the application.

Chairperson Cardone: But the foundation is there.

Ms. Reed: It is now. Nobody said existing from when…if…if you look back anything that’s says its existing…I know John has been working on it for the last couple of years, I can hear a cement mixer going. As a matter of fact, in the July meeting when John was asked or the Hudelsons were asked it seems like an inaccessible place to put a garage a…he said oh, we got things up there…we got a cement truck up there. Why was a cement truck up there? There’s nothing else up there but whatever, the point is, you know what there have been many, many issues that just don’t line up. Speaking of…of getting to this building in one of the meetings and I do have notations for myself from minutes so these are drawn from minutes a…okay, in July Mr. (Mrs.) Cardone asked if they were planning to build a driveway to it and Carol responded, there is a driveway that goes out to it. There isn’t. Aerial photos, the survey they just had done a…street level pictures recently show that there is no driveway. There’s a little gravel patch on the hill part. It does not connect to their driveway. It does not connect to the street. There is no driveway. This is tiny inconsistencies but there have been so many. The biggest of which and I’ll just give you two biggest but like I said there are many…or maybe the three biggest but the height the amount that the building was in the ground. In July Carol said the building was three feet in the ground. In January it was four to five feet. I challenged those measurements and they also supplied a picture with really high grass I felt…sorry my mouth is dry…very misleading. So I challenged it and brought in a different picture and in the March meeting Carol said she was more comfortable with thirty inches and that’s from the minutes. The orientation of the building and this is probably the biggest thing, July in July of 2014 a site map with the correct accessory building orientation was submitted with the original application. December 14, 2014 a site map was submitted showing a completely different orientation which is incorrect. The drawing just happened to accompany their request for an interpretation that would work in their favor only if the building was oriented as shown on that site map. I again…I questioned the different orientation and a subsequent survey was required which showed that the original orientation was correct and therefore the interpretation point was moot or it…it didn’t work in their favor. The last one I’ll bore you with is July 2014 Mr. Hudelson said there is a drain and possibility of plumbing later. January 2015 the architect mentions there is water. When I question him, he backs away from it and says there isn’t any plumbing, there is no plumbing permit. The level of either they miss, inconsistency, mistakes is amazing and especially since Mrs. Hudelson is an attorney who teaches legal writing. There are her courses is what legal analysis, research and writing at Texas A&M. I don’t think that somebody with that background would be so lax with detail. And it’s a real problem for me. I want them to have their storage. They’ve got their area variance that’s great. Please keep the building to what the Town says it should be for the reason the Town set up that criterion. I think it’s important and like I said there many things which I don’t think I have to go into with you, I can read it if you want me to but that the ag designation can make easier to get your foot in the door to do something else with that building. I think that’s it. Thank you.

Chairperson Cardone: Thank you. Do we have any other comments? Mr. Hughes.

Mr. Hughes: Yes, maybe I clarify a few things.

Chairperson Cardone: I thought you might.

Mr. Hughes: I know a little bit about ag.

Chairperson Cardone: I know that.

Mr. Hughes: The ram is a lamb and donkey is an ass, is a ram in the ass a goose? That’s what we have here. We’ve got Ags and Markets over here, we have Central Hudson over here, we have the piggy back of utility companies, we have a right-of-way road that nobody has mentioned through any of this and it’s quite a circus. I’ll try to walk you through what’s really here and then maybe you can see why everybody in the room has a different opinion about what’s really going on here. Let’s start with the right-of-way, there’s a twenty foot right of way that basically bisects the Hudelson’s property right in half and goes back to Reginald Young’s estate and several other parcels back in there. That area can’t be deducted or used in footages, platforms, setbacks or anything. It’s no man’s land, it’s a demilitarized zone. I’m retired IBEW, I’ve done electrical work and I understand what goes on with Central Hudson and all the utility companies in the Valley and what happens traditionally and especially site specifically to this project. Central Hudson has poles that both high voltage and secondary voltages on the poles that they service the properties with. I don’t know who told you seven thousand volts, it’s a nice story but there’s thirty-one hundred and forty volts on each one of those lines together they may thirteen thousand two. You have one only. That thirty-one, forty line comes in there and goes into a transformer and it knocks it down to a house level. There were letters floating around all over with the (Inaudible) and the utility companies and Verizon and everybody else that has an entitled right to piggyback on Central Hudson’s poles that pay a fee to be able to run their wires out on. This Board and anybody, it’s State Law, cannot consider anything to be built on the right-of-way nor can they use those right-of-ways perimeters for setbacks or add it to the property that it runs through. They go way back, I think it was in the forties, I’m not a hundred percent sure I wouldn’t be any money on that one. But you’ve got the power lines, you’ve got the utility poles that has a right of way and access to go over those properties and do it and I believe there’s some customer poles on the property too which put it in a different league of play, both legally and physically to work on them. Is it correct for me to understand you’re going to feed your new building and then feed the house through that?

Ms. Hudelson: That’s right.

Mr. Hughes: Okay, I was wondering how they were going to let you run the line over to the top of the new building but that question is answered so that’s the only mystery that has been resolved. What this Board has to wrap its head around is to get a real letter from Central Hudson. There was a an inference that Central Hudson said oh, go ahead and do what you want that doesn’t happen no matter what the power utility is they do not disregard rights-of-ways for utility easements to be able to repair their stuff. So whoever told you that I think would get into a lot of trouble back home at the barn. The reason they do that is there’s one carrier, there’s one pole owner then everybody else piggybacks on that but the utility easement of the twenty foot right-of-way is not for the utility easement. They are two separate independent entities. The right-of-way is to service ingress and egress to other properties. The utility easements are to be able to repair the lines, cable TV, computer and such like that. Now we’ll try to unravel the Ag’s & Market’s deal. Because it’s not in an Ag’s & Market’s District and it was granted ags and utilities unto itself it still has to comply with what the Town zoning is in that area. They just can’t trump with Ag’s & Market’s and say we can do whatever we want under the Ag’s & Market’s Laws. It’s a farce. So if you’d like to be groomed further or if you’d like to stick your nose in the book you can call lots of places or go on-line to find out what the real deal is but to clarify it for what you need to do here for rulings I figured I’d add that into the record. Thank you.

Chairperson Cardone: Thank you.

Ms. Hudelson: I’m not sure if the Board would like a response to any of those concerns?

Chairperson Cardone: Go right ahead.

Ms. Hudelson: Okay. A…I guess I’ll start with these latest ones I have no impression that Central Hudson is saying to anybody to do what you want. They have a plan and it’s… there’s a map there, they’ve identified the poles and they’ve shown what they will do to re-route those lines and they said they do not have a right of way that interferes here. There’s no right of way that is troubled or if involved in this project so that’s…that’s one thing. Let’s see, I think there was some other concern that he brought up…I think…

Chairperson Cardone: The agricultural district.

Ms. Hudelson: Yeah, I have no illusion that being in the agricultural district trumps questions of safety or you know, the…the ability of the Town to respond to things that we ask and we are here asking for a variance so that’s…that’s what we’re doing and…and we have been here repeatedly as you know. A…as for the inconsistencies or what…what my neighbor sees as inconsistencies I’ll address first that first one. I think well…our architect when we began this process I think he thought of that building because it’s an accessory building in…in not extremely precise terms and he drew a sketch, his initial sketch of the building that when I saw it I thought no we can do a better job and I went out and measured and with that first application I gave you the measurements and the plot plan as I saw it, citing down the side of the house, using a measuring tape, etc. I never mentioned to him that I had given you my own plot plan a…but I was signing this paper for the application and said this was the best I could do so I made it the best I could do. We went back to the architect when in you denied the variance to twenty-three and a half feet in July of last year. When you denied that we came back again with another plan for the nineteen and a half foot building. I went back to the architect, I picked up the papers, I brought them over here…oops, sorry, not realizing that his sketch was rolled up in there as well. So that’s why the second one you got was this looser sort of sketch that he had done. It just didn’t register with me when we opened it up and looked at it that I was looking at the wrong sketch. It was a mistake and I can see why it would…why it would concern my neighbor but that is what happened. I’ve tried to be reassuring to my neighbor that we are not planning to do anything on Oak Street that would hurt the rustic, bucolic, quiet character of that neighborhood. We’d like to think that we have helped we have helped to promote that over these last years a…over these last twenty-nine years. I’ve heard a lot of concerns coming up that are not based in fact and sometimes they’re counter to facts. Things that we plan to subdivide because my husband spoke against the ability to subdivide into small parcels for example they’re…they’re kind of counterfactual worries that have come up. A…I can offer you the last twenty-nine years of the way we have treated the land that we live on and we’ve put in a vineyard and what we want now as we said last July, a year ago, is a place to store all those things that go with wine making and vineyard running and you know, an acres worth of bird netting and tractors and all those…those kinds of things, that’s what we want. My neighbor is also concerned that we seem to want so much space; we must be up to something. Right? And yet when I do the math I come up with this being ten percent more space than is contemplated by the Town Code. Right? Fifteen thousand cubic feet of space would be what you get with a one thousand foot footprint going straight up fifteen feet. This comes out to about sixteen thousand, five hundred, a little less than that…that’s a ten percent bigger building. It’s not the Taj Mahal here. It’s a bigger building, we have needs for more stuff a…to be stored than just the Christmas decorations. We…we have an acre in grapes and no building out there to put things in. We have things under tarps. I’ve been surprised at the response that we’ve gotten a…back last June, six weeks before we came to the first hearing I sent an email to my neighbor and said, we’re planning to do this I just want to give you a heads up, I can show you pictures of what’s planned. I didn’t hear any response. So I came to that first meeting expecting no problem at all. When we brought down the building I came to that meeting expecting that that would be seen as a compromise and that would be seen…you know welcomed by my neighbors. A…getting in the ag district seems to me to be another testament to the fact that we are not trying to subdivide and make some kind of metropolis here. We’re growing grapes. As for why we would do all of this, go through all of these hoops…we had this building in mind back when we were in our thirties and we started work on that burned out structure which is now a stone house. We had no idea mercifully then that we would be well into our sixties before we would finally finish this project in the backyard and make that second building that would look pretty and store things. It’s just taken a while to pay the mortgage and come up with the money and the time and so that’s what we’re about. We’re trying finish a project while we still can and is it worth all of this? Yes. And we hope that you will say the same thing and vote for a variance.

Chairperson Cardone: Yes?

Ms. Reed: Clare Reed again, I did want to address a couple of concerns. One is, as far as subdivision. That came up because I made, which I now regret, an offhanded comment at the end of one of these meetings where I said like throwing out a hypothetical, I was concerned about you know a…living space there. I said do I have to be concerned about subdivision. That was not…and I didn’t…we did have this conversation outside this room where I…I wasn’t necessarily saying they were going to subdivide but knowing what the zoning is certainly with the size of their lot it was a possibility. And I said do I have to be concerned about that? Quite frankly I’m more concerned about ag business…but…whatever. So that was not…I just wanted to clarify that. As far as getting an email with a…saying we are going to be building a building I thought it was a personal conversation whatever we’re still going to be building…we want a storage building. I’m thinking a shed. I’m thinking you know, the most it could be whatever we’re allowed to have. Fine, do it. It never even occurred to me. Carol and I have had this conversation also where I said to her and I said when I spoke at that meeting that very first meeting in July that I really only looked at the plans that day. As Carol well knows my Mom is suffering from Alzheimer’s. I’m out there a good part of…on Long Island…a good part of every week and at that time she was…she had fallen and broken her hip and she was living with me for six weeks and I was the caretaker twenty-four/seven. I wasn’t worrying about sheds looking at plans. I said, oh my God the meeting is tonight I’d better look at it. I looked at it and I did explain this all to you but that’s why. It wasn’t that I ignored it or was okay with it and then just popped up to make a problem at the meeting. A…like I said, I assumed, you know you’re going do whatever you’re allowed to do you do it. Live and let live, that’s fine, happy building, great. It was as everybody has agreed at twelve hundred square foot on the bottom and twenty-three, eight five inches initially…massive a…and it has gotten smaller, it is still large and still over what the Town has said, it is already allowed to be over in one dimension but is still looking to be over in another dimension. The Town set up those rules, not me, there was a reason for it and as far as, you came up with ten percent, I was just taking from the minutes that it was said to be thirty percent over a...

Ms. Hudelson: That’s just the height not the capacity.

Ms. Reed: …well we’re looking at a height variance now. So yes that is. And as far as the space like I said it’s a full second story, I mean, I should…let me correct that. It is a second story, high enough for a second story, that’s my main issue. I think I pretty much covered everything a…thank you very much.

Mr. Hudelson: Excuse me, may I?

Chairperson Cardone: Sure.

Mr. Hudelson: My name is John Hudelson. A couple of points here a…the height if you…one were to put in an eight a…floor, the height up to within that peaked roof would allow you to move approximately four feet one direction and four feet the other direction before hitting your head on the roof. This is not intended to be a second story building but we do need room. We will be stacking things. Stuff that has to do with farming and this is one of the things you do, you…you…you efficiently put things away in the winter. You efficiently store things. Now I’m proud to be a farmer, a part time farmer, very part time but I also teach viticulture and enology out west in Washington State and I learned everything from what I do. My PhD’s in cultural anthropology and (inaudible) and viticulture or agriculture but I learned it all and I got a job teaching these things. Because I’m a fairly good farmer I learn, I stay a…I keep my attention on this all the time and I only want to farm and I’ve farmed for twenty-seven years at this plot and I have some of the best grapes in the county. And it’s not a small plot, one acre, one acre is actually large compared with other small a…gardens and locations that have been given ag a…district acknowledgement. So the reason we went to do this unfortunately was because we’re worried about being kept from farming and I know all must appreciate, being New Yorkers, being…having farms around you it’s an important thing. So that’s all I have to say.

Chairperson Cardone: Thank you.

Ms. Reed: This just brings up a question a…he’d been farming a long time, I don’t know why he’d be worried, his farm came after the property and nobody has ever had a problem, nobody is encroaching on it a…that ag law was designed to prevent a…to protect existing farms from encroachment of developing not the other way around which is…it’s kind of a twist on it. But that’s a question I have for the Board, at this point maybe just hypothetical but in the application which again was posted on the…your website a…for this…for this proceeding it gave the application, the application for ag designation and it was business description and as John said he’s a farmer, he wants…at what point does this become a use variance? Is this a farm? This makes it sound like we’re a productive farm a…I don’t know. I don’t know…I…I think there is some ambiguity there and I think…I think we need to keep it simple. Let them have accessory building at the height that they’re allowed to have it and have their area variance.

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

Ms. Hudelson: May I just sum up that we’re asking for a four and a half foot height variance on a two and a half acre parcel that borders a five acre parcel, that we’re setback more than forty-nine feet from the property line and approximately two hundred feet from the other house. We think this is a reasonable variance and we have in good faith answered all the questions that you have brought to us and tried to do everything that you have required of us. We don’t think that’s an extraordinary effort. We have just done what we have been asked to do.

Chairperson Cardone: Thank you. Does the Board want to hold this open to study the materials you’ve been given tonight or are you ready to make a decision this evening? Are you ready to…yes certainly make a decision but close the Public Hearing?

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

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The Public Hearing is closed. Okay, before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I would ask in the interest of time if you would wait out in the hallway and then we’ll call you in very shortly.

 (Time Noted - 9:22 PM)

ZBA MEETING – JULY 23, 2015 (Resumption for decision: 9:38 PM)

JOHN & CAROL HUDELSON 200 OAK STREET, NBGH

 (9-3-50.11) R-3 ZONE

Applicant is seeking an Interpretation of 185-15-A-1 and/or an area variance for the maximum allowed height of accessory structures to build a two-story garage (40 x 30 x 19’6”).

Chairperson Cardone: On the application of John & Carol Hudelson at 200 Oak Street seeking an Interpretation of 185-15-A-1 and/or an area variance for the maximum allowed height of accessory structures to build a two-story garage (40 x 30 x 19’6”). This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. Maher: Well I think the applicant has brought us the information that we requested a…obviously it was reduced from the original height that was requested. The issue with Central Hudson was addressed and I’m comfortable with the information we were provided with. A…Verizon does not appear to be a concern. I would make a motion for approval.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: No

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 9:40 PM)

ZBA MEETING – JULY 23, 2015

END OF MEETING (Time Noted – 9:40 PM)

Chairperson Cardone: Okay, you have the minutes from the last month. Do we have any corrections, additions or deletions for the minutes? If not do we have a motion for approval?

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

Mr. Maher: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Do we have any other business to be brought before the Board? If not do we have a motion to adjourn?

Mr. McKelvey: I’ll make a motion.

Chairperson Cardone: Do we have a second?

Mr. Manley: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. The meeting is adjourned.

PRESENT ARE:

 GRACE CARDONE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 RICHARD LEVIN

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 9:42 PM)