ZONING BOARD OF APPEALS

MEETING – MAY 23, 2013

(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 this evening; but may take up to 62 days to reach a determination. I would ask if you have a cell phone to please put it on silent or turn it off. And also when speaking, speak directly into the microphone because it is being recorded. And I'd also like to mention that the Board Members have visited each of the sites that we will be talking about this evening. Roll call please.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:05 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 7:05 PM)

DONNA WAKEFIELD 540 UPPER AVENUE, NBGH

 (37-5-1) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to remove a prior built 16 x 16 and install a new 8 x 16 deck on the residence (has two front yards - Upper Avenue & Garden Street).

Chairperson Cardone: Our first applicant this evening Donna Wakefield.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Tuesday, May 14th and the Mid-Hudson Times on Wednesday, May 15th. This applicant sent out sixty letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Okay would you please step up to the microphone and you can move that microphone up or down or even take it off of the stand.

Ms. Wakefield: Can you hear me?

Chairperson Cardone: Yes, just give your name for the record and…

Ms. Wakefield: Donna Wakefield.

Chairperson Cardone: …and state your request.

Ms. Wakefield: I’m seeking a variance on a deck in the back of home. The deck is in extreme disrepair. It is a danger to…to my…myself and it is very ugly and to have a new deck would only enhance the home and the safety of myself and my family and make it nicer for the community.

Chairperson Cardone: The deck that is there now was there a Building Permit for that deck?

Ms. Wakefield: No.

Chairperson Cardone: How long has that been there?

Ms. Wakefield: I bought the house four and a half years ago and there was no C. of O.

Chairperson Cardone: Okay.

Ms. Wakefield: That’s another reason I have to do this…

Chairperson Cardone: Right.

Ms. Wakefield: …so I can make a new deck. I’m afraid to go out there actually.

Chairperson Cardone: Right.

Ms. Wakefield: It’s that bad.

Chairperson Cardone: And I see you are decreasing the size of the deck.

Ms. Wakefield: Yes.

Chairperson Cardone: Do we have questions from the Board?

Ms. Drake: You are not going any closer to the side yard than what’s currently there, correct?

Ms. Wakefield: No, not at all, it’s the same width that it is or length but just not…

Ms. Drake: Shorter.

Ms. Wakefield: It will be 8 x 16 instead of 16 x 16 so it’s smaller, closer into the house.

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

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Ms. Wakefield: Do I go now?

Chairperson Cardone: No, you can stay, we haven’t made a decision yet we just closed the Public Hearing.

 (Time Noted - 7:07 PM)

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ZBA MEETING – MAY 23, 2013 (Resumption for decision: 8:10 PM)

DONNA WAKEFIELD 540 UPPER AVENUE, NBGH

 (37-5-1) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to remove a prior built 16 x 16 and install a new 8 x 16 deck on the residence (has two front yards - Upper Avenue & Garden Street).

Chairperson Cardone: The Board is resuming its regular meeting, on the first application Donna Wakefield at 540 Upper Avenue, looking for an area variance for the front yard setback to remove a prior built 16 x 16 deck and install a new 8 x 16 deck on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Masten: I’ll second it.

Mr. Manley: I’ll first it…Déjà vu all over again.

Ms. Drake: The deck definitely needs to be replaced. (Inaudible)

Chairperson Cardone: We had a motion for approval and a second.

Ms. Gennarelli: Okay, you were the first Jim?

Mr. Manley: You can put me as first sure.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:11 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 7:07 PM)

ROBERT WHITE 4 SOUTHEAST COURT, WALLKILL

 (2-3-28) R/R ZONE

Applicant is seeking a use variance to build a ground mounted solar array system on the property.

Chairperson Cardone: Our next applicant Robert White.

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

Chairperson Cardone: And if I may please identify yourself for the record

Mr. White: Robert White and my wife Cindy White.

Mr. Calardo: (Inaudible)

Ms. Gennarelli: And if you are all going to talk would you take the other microphone over.

Mr. White: No, it’s fine. It’s good.

Ms. Gennarelli: No, it’s not good, it’s being recorded.

Mr. Manley: Before the a…applicant a…moves forward a…I have a point of order for maybe Mr. Canfield. I’m a little confused it says the zone is RR Reservoir Residential. Is that area near the reservoir? It’s up…

Mr. Canfield: I just happen to have a map right here.

Mr. Manley: Yeah, a…I…I…I mean it’s seems like they’re up quite a ways.

Mr. Maher: Yes.

Mr. Manley: Is it?

Mr. Maher: Yes.

Mr. Canfield: Yes.

Mr. Manley: I didn’t realize it went up that far.

Mr. Canfield: It is RR.

Ms. Gennarelli: It goes all the way up.

Mr. Canfield: It goes all the way up to the Town line.

Mr. Manley: Oh, okay.

Chairperson Cardone: State your request.

Mr. White: My request is to a…I want to put solar in, on the property, to help offset the cost of our electricity.

Mr. Calardo: Yeah, (inaudible) I’d just like to add to that…

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

Mr. Calardo: …seeking a use variance to install a ground mounted solar array (Inaudible) side yard.

Mr. Donovan: Can I ask a question? This is intriguing Jerry. Is this a use? The solar…the installation of a solar array system is that a separate use? And, I guess I’m trying to a…make a comparison to if I had an above ground oil tank and I put it in a structure outside my house how is that different or is it different from having the solar array panel?

Mr. Canfield: The way that we viewed this and the reason why this application is here before the Zoning Board is simply put we don’t know what to do with it. This is the first application of this type that we’ve ever received. A…it’s test case material however being what it is in…in today’s technology a…it should be addressed because I’m sure we will see more of these. The way we viewed it is 185-7-F a…in the Zoning Code basically says if it’s not listed it’s not permitted. Solar panels and an array of solar panels are not listed anywhere in the Zoning.

Mr. Donovan: And it wouldn’t qualify under any circumstances as an accessory structure?

Mr. Canfield: It’s not listed anywhere a…to answer your question about the accessory structure yes it would be viewed as an accessory use a…but it’s still not listed however I must say, Joe Mattina of our office and I reviewed it with him as well and we really didn’t know to send it as a use or an interpretation…a…because the verbiage of 185-7 says use that’s why we sent it as a use. I am not opposed if the Board takes the position that they would like to view it as an interpretation, I’m not opposed to that either.

Mr. Manley: I…I would be thinking that this is more of an interpretation being that we never had anything like this.

Mr. Maher: I mean would…wouldn’t it fall in the same line as a satellite earth station in accordance with a…185-40? As…as in the Bulk Table, I mean it’s…it’s…I mean obviously there’s multiple panels out there…I don’t know…I’m grasping…

Mr. Canfield: That…the answer to that Mike is and I…I think Dave may agree with me that’s totally within your Board’s realm to make that determination however it is not within the scope of the Code Compliance, we do not have that ability to make that determination and that’s why this application is here because we feel that it’s the Zoning Board’s decision to make that determination.

Mr. Donovan: Yeah, this certainly isn’t the run of the mill deck that’s ten feet to close to the lot line.

Chairperson Cardone: If I may at this time I’m going to read the report from the Orange County Department of Planning. They have some advisory comments; the County Planning recommends the Board determine if the applicant needs to receive planning board approval related to the solar array. In the event planning board approval is not necessary and although the solar array is being proposed in the side yard, our office recommends that the Board determine if screening is warranted to minimize visual impacts to adjoining properties without impacting the collection of solar energy. And, I know that was a concern that I had that I believe that from the neighbor to yours, as you are facing the house to the left would be able to see, depending on the size, would be able to see this.

Mr. White: Well I talked to her and she had no objection to the…to solar.

Mr. Calardo: A…our company when designing the arrays we make a…a great effort we…and we pay attention to the appearance of the array is why we try to use neutral, non-shiny bright color. This array primarily would be black and should not be all that reflective at all.

Mr. Donovan: Do you have any a…visual representation of what this would look like?

Mr. Calardo: I do sir. I have one photograph I could share with you.

Chairperson Cardone: I did look online and I did see several but it, you know, it can be any size and different heights and...

(Mr. Calardo approached the Board with the photo)

Mr. Drake: Your property is also a little bit higher than the next driveway, correct? So it will actually be above where their driving in?

Mr. White: Correct, from their driveway you can’t even see…

Ms. Drake: The top of the hill.

Mr. White: Yeah, you can’t see it, no…because there is brush and some trees between the solar panel and their driveway and the rest of the house.

Ms. Drake: So obviously this will fit between your house and the edge of that bank?

Mr. White: Correct, yes. You know, I’m starting to see the solar panels up on top of roofs and, you know, I’ve done here by (Inaudible) there’s a whole roof full of solar panels so a…you know, I thought it would be a good idea to check into and for me, my house the way my…my roofline is I can’t put it on top of the roof and a…because my son is sick with allergies we have to run the air conditioner all summer long and it costs…you know, we’re paying a ton of money for electricity. So I’m just trying to offset the cost of electricity so we can, you know, a…I’m putting a lot of money out there, you know to satisfy the neighborhood and do good for…for the house and for my son so, you know, I’m just a trying to do the right thing.

Mr. Donovan: Jerry, not to put you on the spot but of course every time I say that I then put you on the spot. What if…what if he put it on his roof? I…I…I know that you can’t but if someone came in with…with this proposal and wanted to put it on their roof would you…would you view it in the same fashion?

Mr. Canfield: No, and that’s a very good question. The difference between this application is simply because these a…this array of panels is standalone a…panels on the roof is nothing new to the Town of Newburgh. In fact, several commercial buildings in the Town are going to some type of solar systems and you may see them on buildings such as Wal-Mart, the office building right up the road on 300 has a huge panel array but when they are on the roof of the structure they affixed to the structure and then become part of the structure. The uniqueness of this application is because it’s a separate field of…of panels so therefore I would think fall into some type of accessory structure classification.

Ms. Smith: This…this represents what the unit will look like? How high in the back off the ground will that be?

Mr. Calardo: Approximately ten to twelve feet with a variability in the height of the footing and the grading of the installation but Mr. White’s array (53) fifty-three feet long, (12) twelve feet deep…

Ms. Smith: And about…?

Mr. Calardo: (12) Twelve high.

Ms. Smith: (12) Twelve high?

Mr. Calardo: (12) Twelve high…at the back.

Mr. Maher: So this picture represents array how big? Do you have an idea here?

Mr. Calardo: That array will be (35) thirty-five feet long and the other dimension will be similar to Mr. White’s.

Mr. White: (Inaudible) …a little bit…

Chairperson Cardone: And his would be?

Mr. White: …I’m sorry…that one’s going to be a little bit different because you’re looking down at it where I am you’re looking up at it and the actual a…the angle of what you’re going to see is actually be less than if you’re looking up at it…

Mr. Maher: Right, you’re (inaudible)…

Mr. White: (Inaudible) saying.

Mr. Maher: …no I understand that. I’m just curious...I mean, this is a decent size to begin with, you know the additional (16) sixteen feet or (17) seventeen feet on this is a good size.

Mr. Calardo: Yeah, the additional width of Mr. White’s array would be (5) five more of those panels.

Mr. Maher: And how far off the house is it?

Mr. Calardo: It’s a (Inaudible) situated a…approximately (20) twenty feet from the foundation of the house…as close to the house we can get it so…

Chairperson Cardone: Again it was (53) fifty-three feet by…?

Mr. Calardo: By (12’8”) twelve feet, eight by to (10) ten to (12) twelve feet high and there’s a little bit of varied in there depending on the grading and how the balance of the lot, the foundation for the array layout and it will ultimately determine… (Inaudible)

Mr. Maher: Now if the neighbor, in fact, did have an issue once it was constructed would there be a willingness to put some type of shrubbery in front of it or something to hide it… (Inaudible)?

Mr. White: Oh sure but the neighbors and I we all are friends, you know… we all a…

Mr. Maher: Well until you…until you don’t pay for electric then you won’t be friends.

Mr. White: No, this is just going to offset the cost it won’t take care of the whole thing. I have the feeling that the neighbor is going to go out and get extension cords.

Chairperson Cardone: I have a question for you Jerry. Something like this there is no measurement of what I’m…what I’m seeing is that you’re saying this is a test case but the size of it can vary and there would be no saying that this would be okayed and the next one might come in and want something (100) one hundred feet by whatever but there are no limits set in the Code.

Mr. Canfield: That’s correct. There are no limitations because our Zoning Code does not address it a…if Dave may help me and chime in on this…I would a…suggest to the Board to exercise caution a…you may consider should you consider to approve this application, you may want to consider a couple of factors such as setbacks a…from property lines. If you agree with our thought process that this is some sort of accessory structure a…accessory structures do have a (10) ten foot setback from all property lines. In light of future considerations you may want to consider some type of a…a formulated setback. Another thing in listening to the applicant’s representative a…again it may be a consideration that the Board would…would think of is a…assuring that there is no glare. In some cases I’ve heard of scenarios where glare from these type of panels have created aviation problems or in some cases extreme in a closer proximity of buildings, excuse me, were a prismatic effect has been thus hitting…generating temperatures in the excess to melt siding on a house adjacent. So and that may be old technology that I’m speaking of but I think the Board would be a…may want to look at some type of guarantees or some type of documentation to the effect that co…glare would be limited and that it would not create any effects, any negative effects in that result.

Mr. Calardo: (Inaudible) I’d like to shed a little light on that a…the question regarding the glare a…the glass on the module is designed to be lower glare to eliminate that glare and the angle of these modules would be (35) thirty-five degree. So the angle hits this…the sunlight hitting it should minimize that glare and the reflectability of it. And the other thing regarding size in a you know, residential situation NYSERDA may a…sort of eliminate that for you because NYSERDA when they approve funding for this type of installation limits it the size to (110) a hundred and ten percent of the homeowner’s previous (12) twelve months of electrical usage. So with your typical residence you’re not going to be a…you’re not going to be finding homeowners that are using much more power than…than this type of array would generate. You’d need a very large home and a very large property to justify to NYSERDA doing something larger.

Mr. Maher: But if NYSERDA is not involved you’re able to do whatever you want to do.

Mr. Calardo: True.

Mr. Manley: Now also NYSERDA allows you to re-file multiple years so you can get a grant one year from NYSERDA and then (2) two years later you could turn around and file for another grant.

Mr. Calardo: That’s not my understanding of their process, once you install one array and one subject property then you have accessed that funding and…and you no longer will be eligible for additional funding on something similar but I (Inaudible)…

Mr. Canfield: If I could ask a question perhaps for the benefit of all the Board Members if you could explain what NYSERDA is?

Mr. Calardo: Yes, NYSERDA is the New York State a…renewable energy division and they’re the department within the State whose tasked with promoting renewable energy so with a solar electric array like this one NYSERDA is going to provide a…a (1.40) dollar forty per watt of the installed cost of the solar array. So they’re subsidizing homeowners and business owners who are early adopters of this technology.

Mr. Canfield: Thank you.

Mr. McKelvey: Just…just another question, you say it’s going to be (10) ten feet from the house, did you say that? How about…how far from the property line?

Mr. Calardo: Our property line setback as designed right now is a minimum of (35) thirty five feet.

Mr. McKelvey: Okay.

Chairperson Cardone: Now Jerry, this would count as building coverage for a lot? Would it figure…?

Mr. Canfield: Yes.

Chairperson Cardone: …in the formula?

Mr. Canfield: I would say yes. And my thought process is a…if you look at…if you remember last month we had this same question, I believe Mike had a question as far as a…deck coverage and how that fitted into the formula of figuring lot coverage. The Code does mention impervious soil a…but again something like this is elevated and of course, it is not going to affect the soil underneath but it still covered or calculated as lot coverage.

Chairperson Cardone: Okay.

Mr. Donovan: Now I want to echo something that Jerry said before about being cautious because a...let’s…let’s take a look at the application in front of the Board is for a use variance not for an interpretation. Without getting into all the details although I can if necessary you’re not going to qualify for a use variance under the Law. You do not meet the legal standards not by a long shot. So if the Board is interested in…in interpreting as to whether or not this array is…is an accessory structure that’s permitted just recognize that that interpretation is going to carry forward for future applications. I don’t know whether the Town Board had any interest at all in regulating these types of things especially when we’ve only had one in Town but the way they seem to happen is when one comes others follow and that, you know, whatever we do is going to establish a precedent for those other ones that…that come into Town at some future date.

Mr. McKelvey: Wouldn’t the Board have to…the Town Board should look at the Code then?

Mr. Donovan: Well, I mean they have a lot of stuff on their plate so I mean it’s certainly something that…that would be more appropriate if they had the opportunity to regulate it certainly and to…and to provide a Use Table obviously because, you know solar energy is one of those things that…that’s encouraged. I do think that co-counsel at the end did have a good point with the a…satellite earth stations because if you…if you look at…especially if you the conditions that are imposed a…and there’s five different conditions under 185-40 a…proposed location for the satellite earth station is in the least obstructive location on the lot that is technically feasible for satellite reception. Number two the proposed structure is screened to the maximum extent practical from neighboring uses and public streets. Number three the proposed structure does not constitute a hazard to traffic or other structure. Number four is about color it doesn’t really apply. Number five the proposed structure does not adversely affect the character of the neighborhood. I think if the Board is interested in some interpretation that it may be permitted those are conditions and Jerry may think of others a…that I would suggest because certainly you want to impose some reasonable conditions on the use because they have a substantial benefit but there is also a potential for detriment to the neighborhood with these types of things.

Mr. White: Can I just a…add that a…we’re a…we are situating the…a solar array a…you can’t see it from the front of the house or driving down the road. It’s only when you go around to a traffic circle when you look up you can see it because the way the…the house is situated a little bit of a angle when you drive down it’s going to be tucked behind the corner of the house. So even if you drive down if you look in front of my house you probably only barely see a little tip of the actual solar array. So we tried to put it in a spot where it was, you know a most inconspicuous for a, you know building it.

Chairperson Cardone: Right, I did drive down around because I wanted to see if you could see it from that end.

Mr. White: And standing where that array would be now I tried, today I was doing it, I looked over at my neighbor’s house I could barely see my neighbor’s house from the vegetation, you know, from springtime, summertime.

Mr. Manley: I think the concern that…that I have is certainly not against what the applicant is trying to do, I think my biggest concern is not necessarily with this applicant but as Counsel indicated setting some sort of precedent and making sure that it’s well thought out as best as possible before we…we render a decision to make sure that we cover our bases.

Mr. Donovan: The other base I want to make sure that’s covered…Betty I assume the Legal Notice is just for a use variance?

Ms. Gennarelli: That’s correct.

Mr. Donovan: And you know, frequently you will find me…I’m a pretty expansive on, you know, the ability if it’s a side yard variance and we need to add a…a front yard variance that we discover that maybe I don’t have an objection and…and we have a legal basis to do that. I would suggest though if we are going to go to the use variance to interpretation when the Legal Notice didn’t include interpretation that if the Board wants to consider that that we should re-notice this and continue the Public Hearing. I don’t mean to cost you extra time but I do want to make sure we do it the right way.

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

No response.

Mr. Manley: If this is going to take another meeting to hash out is it possible that we can reach out to via a letter or memo to the Town Board and the planning board for any of their input with respect to the…the application to see if they have any suggestions or concerns or anything that they want to add as an interested party to the applicant?

Mr. Donovan: Absolutely sure.

Mr. McKelvey: I would have thought that the planning board should have looked at this anyhow.

Mr. Donovan: Well it’s not a site plan…it’s not a…

Mr. McKelvey: No, I know that because it’s going to happen with some of these.

Mr. Masten: It’s an up and coming thing.

Mr. Canfield: I think, just one thing John, the planning board would not have looked at this unless either our department or your department referred it to them.

Mr. McKelvey: No, I understand that.

Mr. Canfield: Because it started with a Building Permit Application, it’s not something that they would normally, procedurally look at.

Mr. McKelvey: But there’s going to be more and more of these.

Mr. Masten: Yeah.

Mr. Canfield: I agree with you…I agree. Just one other question, for Dave, procedurally it appears that the Board may be inclined to hold this over a…is there any, does the public need to be re-noticed?

Mr. Donovan: Yes. And I don’t know how many Notices you had to send out and I don’t mean to put a burden on you but you know it does.

Ms. Gennarelli: Twenty-nine and it goes out regular mail now…

Mr. Donovan: It’s unfortunate but…

Ms. Gennarelli: …since they changed the Law.

Mr. Calardo: Okay.

Mr. Donovan: Well they raised the price of postage.

Ms. Gennarelli: It’s (46) forty-six cents…its forty-six cent.

Mr. McKelvey: It’s cheaper than the other way though.

Mr. Donovan: We do that’s the bottom line, we do.

Ms. Gennarelli: It’s not (6.11) six dollars and eleven cents.

Chairperson Cardone: Are you…are you suggesting then that we move on this tonight for the current application which they do not meet the criteria for a use variance.

Mr. Donovan: I would suggest, it’s up…it’s up to the applicant…

Chairperson Cardone: Right.

Mr. Donovan: …to re-notice for a use variance or in the alternative or I’m sorry, an interpretation or in the alternative a use variance then we wouldn’t have to deny this this evening a…

Mr. Calardo: That’s why we went this way. That’s what we were told to do get a use variance.

Mr. Donovan: Well I understand that but what happens sometimes especially you know, like it or not, you present a unique situation to us and until we actually get here and are able to hash it around with everyone at the Board we don’t really know a…which direction we need to take. So I understand that, I’m not saying you did anything wrong. I want to make if the Board…whatever action the Board takes it’s my job to make sure they do it correctly.

Mr. Calardo: So what happens now? Do we get contact with us to tell us which way to go or just…or well…

Mr. Donovan: Well it’s not…I’m making suggestions to the Board. It’s up to the Board if…I…I would again suggest that this be held over, that it be re-noticed for next month for an interpretation or in the alternative a use variance.

Mr. McKelvey: Then they’d have to re-send out…

Mr. Donovan: That’s correct.

Mr. Manley: And within the interim do you think that we can maybe get something to the a…both the Town Board and the planning board and let them know that we have received a request for a variance…

Chairperson Cardone: For an interpretation.

Mr. Manley: …for an interpretation a…to the Code because this particular thing is not covered by the Code and the Zoning Board is in the process of reviewing it for potentially granting a variance for it. Do they have any input? I mean, obviously it is some that I think they are going to need to address...

Mr. McKelvey: Yeah.

Mr. Manley: …legislatively.

Mr. Donovan: Absolutely Jim, we can certainly do that. And I don’t know whether there is any additional information that…that you have that you want to submit to help the Board make their determination.

Mr. Calardo: Yeah, I would seek the guidance of the Board Members that you’re requesting or requiring to help me clarify the situation for you and happy to do so a…

Mr. Donovan: Well I mean, one of the things that has been suggested tonight is some proposed screening if you have any ideas about that and…and I don’t know if you have the ability to take a…obviously you know, we are concerned about the precedential effect for the next application but…but a…if you can do some sort of pictorial rendering or exactly what it’s going to be and if you have the ability to…to show it on the property what it would look like from neighboring properties. If you can’t do that, fine but I think it would be helpful to the Board.

Chairperson Cardone: It would be helpful.

Mr. Calardo: I have engineering drawings…drawings which have already been submitted to the Town Building Department that show scale models of the…of the a…proposed solar array and let me just address screening quickly. We’re talking about a solar array here, it’s very important that it has good solar access to it...

Mr. Donovan: Yeah, I understand that. (Inaudible)…up to the sun.

Chairperson Cardone: Right.

Mr. Calardo: (Inaudible)…we’re looking at facing this thing directly south as Mr. White’s is so it would be impractical to screen it any way on the southern aspect of it to the northern aspect you could but in Mr. White’s situation that’s his house so…if you know (Inaudible) vegetation to the west and he has some vegetation in his front yard which…which would currently screen it.

Mr. Manley: How about screening the property along the area that borders the neighbors just so that…that…

Mr. Calardo: If you do something with it it would have to be very low, okay then we are going to get into the situation where if you’re now specifying that I have to have a (4) four foot screen in front of my ground mounted solar array then I am going to suggest my ground mounted solar arrays goes higher. So I have to have the solar access.

Mr. Maher: (Inaudible) But in fact, if you’re (inaudible) the house you have (76) seventy-six foot side yardage, you’re (inaudible) house (12) twelve…(12) twelve foot wide…

Ms. Smith: High?

Mr. Maher: (12) Twelve foot wide array…

Ms. Smith: Oh.

Mr. Maher: …if you have (22) twenty-two feet, you’ve got (56) fifty-six feet, (54) fifty-four feet between the solar array and the property line so there is significant area that something could be put there. In fact, obviously with the…with the angle of the hill there on top of it something along those borders close to the property line would in fact shield the entire thing and not deter any…any solar gain from it.

Mr. Calardo: Yeah, I understand, I…I think vegetation would work but something like a hard (Inaudible) fence or something…

Mr. Maher: I don’t think that…I don’t even look for something like that just something that’s going to be you know, not deter from what you’re trying to accomplish but be also not have that view there that the neighbors (Inaudible) crop whatever obviously (Inaudible) you are the test case. This is brand new as being on the ground.

Mr. Calardo: I understand the Board’s position and you know this isn’t…we…we do pay attention to the aesthetics of these arrays. We realize they are being placed in residential neighborhoods so we try to minimize the industrial appearance of these arrays and use, you know dark (Inaudible)…

Ms. Smith: So…so the lower end of the panels will be facing south...?

Mr. Calardo: Yes, (180) one hundred and eighty…

Ms. Smith: …the slant, for lack of a…

Mr. Calardo: …degrees dead…

Ms. Smith: …better word…

Mr. Calardo: south.

Ms. Smith: …going south?

Mr. Calardo: And then that’s at a (35) thirty-five degree angle…

Ms. Smith: Okay.

Mr. Calardo: …which gives…(Inaudible).

Mr. Smith: And the higher end is facing your home?

Mr. White: Right so when you’re looking down at the circle you’re looking up at it, you’re looking at the table (Inaudible) from your angle this high.

Ms. Drake: I have a question for the attorney…our attorney. If we’re asking for them to re-advertise as an interpretation then we determine that it would need a area variance shouldn’t they also advertise as an area variance, so…?

Mr. Donovan: Well it won’t need an area variance because it meets all the Bulk Requirements. Am I right, Jerry? It’s not in…it’s in…?

Mr. Canfield: I think in this case, the Bulk Requirements…

Mr. Donovan: Well we don’t know.

Mr. Canfield: …will be what you set. There are no Bulk Requirements.

Mr. Donovan: Yeah.

Mr. Canfield: Because it’s not listed.

Mr. Donovan: Right.

Ms. Drake: I’m just afraid if we go through the interpretation then are they going to need to advertise for something a month later…?

Mr. Donovan: No.

Ms. Drake: Okay.

Mr. Donovan: No.

Chairperson Cardone: I think that you were referring to if there are other structures on the site, you know, such as, you know, garages or anything of that sort which then you’d have to add the square footage to it?

Mr. Canfield: Yes, how big is this?

Chairperson Cardone: You looked…you looked at…

Mr. Donovan: Inaudible …(2.1) Two point one acres…I’m only so smart because I have your survey in front of me.

Mr. White/Mr. Calardo: (Inaudible)

Mr. Calardo: Okay.

Mr. Maher: And there are no other out buildings on the property currently?

Mr. White: Just a…a…a small shed a…(8 x 12) eight by twelve.

Mr. Maher: (Inaudible) nothing else as far as?

Mr. White: (Inaudible) No.

Mr. Maher: So basically as far as coverage goes you’ve got (636) six hundred and a thirty six, thirty-six…a…(40) forty feet, (640) six hundred and forty feet for a solar array so…there is nothing else on the property.

Ms. Drake: What are these other things in the back? Are they vehicles?

Mr. White: Well I have vehicles, yeah.

Chairperson Cardone: You have a couple of big trucks there?

Mr. White: One’s a bull dozer a…

Mr. Calardo: The solar array would a…serve as a screen against the equipment in Mr. White’s yard.

Chairperson Cardone: Do I have a motion to hold the Public Hearing open so that the applicant may re-notice and also to include a request for an interpretation in that re-noticing?

Ms. Smith: Yes I’ll make that motion.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Donovan: So you are clear on what you need to do?

Ms. Gennarelli: He needs to contact me to get the new Notices and you’ll have to do up the envelopes again.

Mr. Calardo: Okay (Inaudible).

Ms. Gennarelli: Okay.

Chairperson Cardone: Thank you.

Mr. White: Thank you guys.

Ms. Drake: Grace, can I, also I don’t know it’s too late a…we may want to refer this to the architectural review board so that maybe they can give us some idea on screening or something?

Chairperson Cardone: Well the request that a…we’re going to make to the Town Board and the planning board it can also go to the review board.

Ms. Drake: That’s okay; I think you may want to just include them for some ideas on screening.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:36 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 7:36 PM)

ROBERT & MAUREEN COHEN 1 PETER AVENUE, NBGH

 (17-1-107) R-2 ZONE

Applicant is seeking an area variance for an accessory building shall be located in a side or rear yard to build an accessory building (10 x 14) shed in a front yard. (has two front yards Peter Avenue & Hemlock Lane).

Chairperson Cardone: The next applicant Robert and Maureen Cohen.

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

Mr. Cohen: I’m Bob Cohen, this is my wife Maureen, we reside at 1 Peter Avenue. We’re here to request a variance to locate an auxiliary building not behind our house. We live in what I found out is a corner lot; we have a small private road borders one side of our property. We have an existing shed its 12 x 8 approximately (230) two hundred and...two hundred and thirty feet from the Town road, eighty-five feet from the property line. We’d like to replace that with a 10 x 14 shed in the same basic location.

Chairperson Cardone: And you’re going to be tearing down that shed that is there right now?

Mr. Cohen: Yes. It’s kind of seen better days, yes.

Chairperson Cardone: And that’s obviously not your front yard but you are in one of those situations where you have two front yards but that shed is obviously behind your house.

Mr. Cohen: I have two front yards and if you had a chance to a…so much as you can tell from this Google shot here, this Google earth shot. Yet going by the requirements for the, you know, front lot, side lot, corner lot you got me down to about (20) twenty percent of my yard in which to place the shed. And then I’ve got an issue where my driveway is nowhere close to that location. So it would take some work to get it in there, cutting trees, filling, you know, doing something to get the…the vehicle over there.

Mr. McKelvey: Where you’re at now is you’re not going to see it from Peter Avenue anyhow.

Chairperson Cardone: From anywhere.

Mr. Cohen: You really have to look to see it now and if anything the profile from the Town road will be less because currently the long dimension of the existing shed is facing the Town road, the (12) twelve foot long dimension. So I’m going to spin that and have the (10) ten foot dimension facing the Town road. Again, if you’ve seen it it’s pretty far back in there, it’s going to be color coordinated the same shape and color of the house, stained to match, you know, the trim on the house.

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

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:40 PM)

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ZBA MEETING – MAY 23, 2013 (Resumption for decision: 8:11 PM)

ROBERT & MAUREEN COHEN 1 PETER AVENUE, NBGH

 (17-1-107) R-2 ZONE

Applicant is seeking an area variance for an accessory building shall be located in a side or rear yard to build an accessory building (10 x 14) shed in a front yard. (has two front yards Peter Avenue & Hemlock Lane).

Chairperson Cardone: On the application of Robert and Maureen Cohen at 1 Peter Avenue seeking an area variance for an accessory building to be located in a front yard, the lot has two front yards. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I don’t see a problem; it won’t be seen by anybody. I'll make a motion we approve.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:13 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 7:40 PM)

LOUIS & JULIA SANCHEZ 205 FOREST ROAD, WALLKILL

 (1-1-33.22) A / R ZONE

Applicant is seeking an area variance for the maximum height and the maximum square footage slowed for accessory buildings to build a (32 x 32 x 23’ 7 ½”) accessory building.

Chairperson Cardone: Our next applicant Louis and Julia Sanchez.

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

Mr. Sanchez: I’m Louis Sanchez, Julia Sanchez; put a (32 x 32) thirty-two by thirty-two pole barn garage on my property.

Mr. Donovan: How tall is the garage proposed to be?

Ms. Sanchez: (23’ 7 ½”) Twenty-three and seven and a half feet.

Ms. Gennarelli: You can tilt that microphone down a little bit and get a little closer.

Mr. Donovan: Yeah, I just think…there’s a typo, from the Building Department which indicates (32’ 7 ½”) thirty-two, seven and a half which you can tell by the percentage that that was a typo. I just wanted that clarified.

Chairperson Cardone: I have some comments from the Orange County Department of Planning.

Our office has identified potential local concerns and we offer the following advisory comments: The information provided does not go into detail regarding vehicular access to the new pole barn/garage. In the event access to the new structure is planned from Forest Road, the Applicant will need to submit to the County DPW in order to obtain a highway work permit and approval of a new access point. Additionally, the new roof and any additional pavement will increase the amount of storm water runoff attributed to the natural system, including the pond located at rear of the property which flows into a significant NYSDEC wetland complex to the north. County Planning recommends that the Applicant consider directing any additional storm water flow to a rain garden, cistern or other green infrastructure storm water practice, which would remove any potential pollutants and sediment collected in the storm water.

Mr. Sanchez: (Inaudible) engineer.

Ms. Gennarelli: Could you get a little closer to that microphone? It’s not picking up.

Mr. Sanchez: Is this something that needs to be designed by an engineer?

Chairperson Cardone: The…

Mr. Maher: I’m sorry. Jerry, wouldn’t just a drywall be a…consistent with what the County recommends?

Mr. Canfield: Sorry I was…I was calculating. I wasn’t paying attention.

Mr. Maher: (50) Fifty percent his rate. A…the County concern was over the gravel, the run off of the additional roof area so wouldn’t a…just a drywall system away from his currently leech field system be consistent with what they recommend?

Mr. Canfield: Yeah, it could…it could work a…although I must say, I…I question the County’s comments a…without calculating the surface area of the roof and actually calculating what kind of runoff they are talking about I think it’s just an open ended statement to say that it’s going to be a problem. I mean not to exercise the applicant and…and have an engineering full drainage report needed. I don’t think that’s warranted at all.

Mr. Maher: Right, right. I mean their…their concern is the…the wet area in the rear of the…of the…the property but we’re looking at roughly what six or a thousand square foot of area it’s not…

Mr. Canfield: It’s not excessive, right. I mean I’m not a drainage engineer however what I’ve seen of this a…there’s far greater areas that should be and are required to be calculated not this much surface area.

Ms. Drake: You can almost do to…a gravel edge in the ground right below the drip line on each either end and just let it go into gravel there and not even have…

Mr. Canfield: French drain type set up.

Ms. Drake: Yeah.

Mr. Canfield: Yes, and it would suffice.

Ms. Drake: Right, and then you don’t even have to do piping to anything.

Mr. Maher: So the answer to your question do you get a engineer? It doesn’t appear that way right now.

Mr. Sanchez: (Inaudible)

Chairperson Cardone: What would be the purpose of this structure…this (32 x 32) thirty-two by thirty-two because it is nowhere near you’re paved driveway?

Mr. Sanchez: Well my ultimate plan is to…is to move the driveway or circle it in front of my house. Right now currently we have no garage at all and all our cars are on the…are on the driveway now.

Ms. Sanchez: We have a…we have two children that are of driving age and we have four cars plus an older car that my husband is working on and right now they’re all out. They’re all registered but they’re all parked out there. And it’s an older house; it has no storage and then a…and no garage at all right now. And it’s…it’s going to be a…it will be roofed and sided same as the house so it, you know, it will have a nice window, it’s going to be very nice to look at and there’s plenty of room on that side of the house. The other side is…it actually would look odd if you tried to put it on the other side where the driveway is because it would be tight to the other house and on this side we have a huge side yard a…that’s part of our property.

Mr. Manley: Will there be any breezeway between the garage and the house at all?

Mr. Sanchez: Yes, we’re going to set it a…no, there will be no breezeway but there will be a gap of (12) twelve feet between the building and…and the house.

Mr. Manley: Okay.

Ms. Smith: This is just a garage with storage, no living space?

Mr. Sanchez: No.

Ms. Smith: Is there plans for a living space…?

Mr. Sanchez: No.

Ms. Smith: …in the future?

Mr. Sanchez: No.

Chairperson Cardone: Will it have plumbing?

Mr. Sanchez: No.

Chairperson Cardone: Electric?

Mr. Sanchez: Yes.

Ms. Drake: Heat.

Mr. Sanchez: A…right now no, if we did something I would probably do like a radiant propane style heat.

Mr. Maher: Now you had stated you’re…you’re looking to move the driveway, reconfigure the driveway?

Mr. Sanchez: Yes, circular in front of the house or more go out…go out that way.

Ms. Maher: Okay, and you…the notes from the County did discuss the…the driveway Permit needed on a County road such like that.

Mr. Sanchez: Yes. Right now currently we’re not going to do anything with the driveway it’s just not…the cost would be astronomical right now to handle that.

Ms. Smith: So your access right now would be across the lawn or are you going to put down a gravel base?

Mr. Sanchez: Currently I wouldn’t plan on putting anything…I…we would just use it as a garage move my…once the garage is done move my…my classic car into the garage. Basically keep it as…it’ll be a garage with like a shed and my son’s car while he’s in school.

Mr. Maher: What’s your ceiling height in the garage is…what (12) twelve feet?

Mr. Sanchez: Yes.

Chairperson Cardone: And you would not be conducting a business from that site?

Mr. Sanchez: No.

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

Ms. Drake: Do you know where your septic is located?

Mr. Sanchez: Behind my house.

Ms. Drake: Okay.

Mr. Maher: I guess…so the…the…the variance needed is for height obviously…

Mr. Sanchez: And for square footage.

Mr. Maher: And square footage. Now the current shed that you have out there the (10x20) ten by twenty would that be remaining or were you looking to take that down and utilize the garage for storage?

Mr. Sanchez: I would like to keep it if I could but if I have to take it down I would take it down hopefully after the garage is completed.

Chairperson Cardone: Jerry, do you know if that was figured into the calculation?

Mr. Canfield: Yes it was. Yes it was. It was (200) two hundred square feet figured for the existing shed.

Chairperson Cardone: Right, okay.

Mr. Canfield: So those are in the calculations. Also on that sheet a…the scaled drawings are (23’7 ½”) twenty-three feet, seven and a half inches in height not as we have depicted as (32) thirty-two. It is (23) twenty-three feet on the height.

Ms. Sanchez: This document says the (23) twenty-three.

Chairperson Cardone: Right.

Mr. Donovan: Can you explain to the Board why you need (23) twenty-three feet, why does it need to be that high?

Mr. Sanchez: I need the (12) twelve feet on the inside (Inaudible)…

Ms. Gennarelli: Excuse me; can you get a little closer to the mic?

Mr. Sanchez: …storage on the second floor which would be (12x32) twelve by thirty-two with a (7) seven foot clear walk for storage and on the…on…on the first floor would be (12) twelve foot to the ceilings.

Ms. Drake: Why do you need the (12) twelve foot?

Mr. Sanchez: (12) Twelve is my ultimate plan was to put a…was to put a lift in so I work on my car.

Mr. Maher: So these are what (10x10) ten by ten doors then…that you have there?

Mr. Sanchez: Yes.

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

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Sanchez: Thank you.

 (Time Noted - 7:50 PM)

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ZBA MEETING – MAY 23, 2013 (Resumption for decision: 8:13 PM)

LOUIS & JULIA SANCHEZ 205 FOREST ROAD, WALLKILL

 (1-1-33.22) A / R ZONE

Applicant is seeking an area variance for the maximum height and the maximum square footage slowed for accessory buildings to build a (32 x 32 x 23’ 7 ½”) accessory building.

Chairperson Cardone: On the next application Louis and Julia Sanchez, 205 Forest Road, seeking area variances for the maximum height and the maximum square footage slowed for accessory buildings to build an accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: To take into consideration the a…Orange County Health…Planning Board comment in reference to storm water I would suggest to maybe we could add a condition that they do something like curtain draining or a…putting drains or something at the edge of the…the drip edge of the garage on both sides to help the storm water feed out to the sides and instead of running down into the pond (Inaudible) and the wetlands.

Chairperson Cardone: And also it not be used for business or for living.

Ms. Drake: Correct and if and when they move the driveway they need to go to the County DPW for a highway…driveway Permit.

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

Ms. Drake: Second.

Mr. Donovan: Now let me make sure I’m clear that now in terms of requiring a curtain drain or drainage satisfactory to the Building Department? I just want to make sure that a

Ms. Drake: That sounds good.

Ms. Gennarelli: Okay, roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:15 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 7:50 PM)

CESAR & MERCEDES FLORES 222 FOREST ROAD, WALLKILL

 (1-1-30) A / R ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the combined side yards setback to build a rear deck on the residence.

Chairperson Cardone: Our next applicant Cesar & Mercedes Flores.

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

Chairperson Cardone: If you would state your name for the record and your request.

Mr. Flores: Cesar Flores, applying for a variance for a (12x24) twelve by twenty-four deck in the rear of the property.

Ms. Drake: Was there a deck there before?

Mr. Flores: There’s a small landing from the back porch going down (Inaudible).

Ms. Drake: It looks like you started construction already.

Mr. Flores: Yes, I applied for a Permit a…I was under the assumption that that was the permit to go ahead and do the deck that was my first time applying for it and a…I went back to the Town Hall to get some more information and they told me that it was just an application to (Inaudible) so that was my mistake.

Ms. Drake: Jerry, was there anything that there was constructed that would need to verify for inspection or anything?

Mr. Canfield: Yeah, the work was started a…I believe our office was alerted by the Assessor’s Office. The Assessor’s has field personnel that go around and do site inspections and they questioned…because they didn’t have a Permit on file so the applicant was notified and…and stopped work. He complied. A…and then there was also a pool, I believe on there a…that we had noticed that there wasn’t a Permit for which they did get a Permit for.

Mr. Flores: Yes, the pool.

Mr. Canfield: So but the question that I do have with this is we seem to have (2) two different sets of numbers as far as the setbacks a…the pool application where I believe Mr. Mattina got his numbers and is actually the numbers that were calculated and submitted to the Board for the variance were somewhat different than the hand drawn plot that was submitted (to the ZBA) a...our…our numbers…

Chairperson Cardone: Was there a Permit for the pool deck? You said there was a Permit for the pool.

Mr. Canfield: Pool.

Chairperson Cardone: But there was not for the pool deck?

Mr. Canfield: Yes, the pool deck also, yes, yes. The question that I have…which are the accurate numbers for the two side yards a…one a…one piece of documentation that we received and I don’t have it in front of me. I think Betty just made the copies. Here it is.

And it displays (34) thirty-four feet setback on one side and (6) six feet on the other and that the hand calculation that I believe went out in everyone’s packet shows (40) forty feet on one side and the other side is (30) thirty feet from the deck but not (6) six feet. So maybe you can enlighten us on what are the accurate numbers?

Mr. Flores: Well from the actual deck from the (24) twenty-four, (12x24) twelve by twenty-four deck on the…on…if you’re facing the back of my house on the right side of the deck a…from that point is (30) thirty feet to the neighbor’s yard…a…his fence.

Mr. Donovan: What’s the distance from the house to that side yard lot line?

Mr. Flores: A…I believe it’s the (6) six feet that he’s…he’s talking about.

Mr. Donovan: So this is not to scale then.

Mr. Canfield: Correct. So then the actual numbers of what Mr. Mattina has on the sheet (34) thirty-four on the side…one side yard and (6) six feet on the other.

Mr. Flores: Yeah, he’s saying from the corner of my house to his fence, I believe he said it was (6) six feet.

Mr. Canfield: Okay.

Mr. Flores: Which I…I believe that fence is…I don’t think it’s properly put there…placed there which the way I had an agreement with the homeowner that is there which hasn’t been there for over (5) five years a…(Inaudible) to put the fence there.

Mr. Canfield: The significance of this is as the Board is well aware is we need accurate numbers if the Board chooses to give you a variance. It needs to be accurate what they are giving you a variance for. Okay?

Mr. Flores: A…the…the scale that I have here drawn to size which I…I believe I gave it to Betty a…that’s the actual numbers that are there.

Mr. Maher: So…let…so I’m…

Ms. Gennarelli: That would be in the packet and then the other one is from the pool permit that was submitted.

Mr. Canfield: Correct. So…

Mr. Maher: So…

Mr. Canfield: Go ahead, I’m sorry.

Mr. Maher: From the corner of the house to the property line is (6) six feet, is that what you are saying?

Mr. Flores: From the edge of the house, yes.

Mr. Maher: To the property line, six feet?

Mr. Flores: Yes. He’s saying it’s (6) six feet.

Mr. Donovan: That’s why I’m saying it’s not to scale because…

Mr. Maher: Well not, yeah, that’s obvious. But I mean the math does work because the house is (48) forty-eight feet, (24) twenty-four…the math works that way as far as the calcs go…but (6) six feet, huh? It seems…

Mr. Canfield: Significant.

Mr. Maher: A…yeah. And at (40) forty foot is the other side?

Mr. Donovan: No, that’s (34) thirty-four.

Mr. Canfield: (34) Thirty-four on the other.

Mr. Maher: Oh, so it’s…?

Mr. Flores: Well I got (40) forty on mine…it’s…it’s from the edge of that deck to…to the property line is (40) forty.

Mr. Donovan: But it’s (34) thirty-four on the other…on the other…that’s the…that’s what Mr. Canfield is asking is the discrepancy. It shows (34) thirty-four on the pool application.

Mr. Maher: Oh.

Mr. Flores: On the pool application? I’m sorry.

Chairperson Cardone: Do you want to look at this?

Mr. Flores approached

Chairperson Cardone: This is the pool application right here and this is what they’re talking about, this (34) thirty-four feet here that they’re talking about. They are not talking about this where the (6) six foot is.

Mr. Flores: Yeah, you know what, I…I did (Inaudible) because he told me this was the correct so when I redid the scale size it was actually (40) forty.

Ms. Drake: This plan shows the driveway on another parcel.

Ms. Smith: Does it look like the (34) thirty-four feet just goes to the end of the driveway…

Ms. Gennarelli: Can you get to the microphone, Cesar?

Ms. Smith: …it arrows over…it looks on the…this the pool permit plan, Jerry? This one? Yeah, correct me if I’m wrong but it looks like it is just going to the edge of the driveway for the (34) thirty-four feet that’s marked here.

Mr. Flores: Yes.

Ms. Smith: Do you own beyond…?

Mr. Flores: Yes. It’s…

Ms. Smith: …that, you do?

Mr. Flores: …two separate lots.

Mr. Maher: So do you own to the center of the road or to the other side?

Mr. Flores: The other side.

Mr. Maher: The entire road?

Mr. Flores: Yes.

Mr. Maher: Okay.

Ms. Smith: Okay.

Ms. Drake: But when you’re talking about property line you’re taking from the existing current property where the house is on not all the property that he owns.

Mr. Canfield: That’s correct.

Ms. Drake: So it’s…it’s…I don’t know if it’s (40) forty foot or (34) thirty-four because…

Mr. Maher: What was the question?

Chairperson Cardone: This dotted line here you’re saying is the property line? Correct Jerry?

Mr. Canfield: That’s where the setbacks are measured from, the property line.

Chairperson Cardone: The driveway was not on that parcel.

Ms. Drake: Not on that parcel.

Mr. Maher: Okay it did show that.

Chairperson Cardone: But he owns the other parcel where the driveway is, correct?

Mr. Flores: Yes.

Ms. Drake: I don’t know…that driveway is not on that…that parcel.

Mr. Canfield: That can’t be counted in your setbacks that’s a separate parcel.

Mr. Maher: Okay…that…on the pool application he didn’t show that…

Ms. Smith: No.

Mr. Maher: I understand now, I got you.

Ms. Smith: So this one is the accurate.

Ms. Drake: Well I don’t know if it’s (40) forty foot or (34) thirty-four.

Mr. Flores: It’s (40) forty, forty.

Mr. Maher: Well hang on…hang on because we have a problem then because…so if it’s (40) forty it’s (88) eight-eight, (6) six is (92) ninety-two, the lot is (100) a hundred foot on the road…

Ms. Drake: Draw on an angle so…

Mr. Maher: …yeah, okay…(34) thirty-four is probably closer.

Mr. Canfield: So it is (34) thirty-four and (6) six then.

Mr. Maher: Yeah, that would make sense.

Ms. Smith: Yeah, okay.

Mr. Canfield: Not the (40) forty.

Mr. Maher: How did that…how did that come to be? Six foot from the property line.

Mr. Canfield: Because the house was built, I believe, in the late 50’s, early 60’s which was prior to Zoning so that’s how but now it becomes existing non-conforming.

Mr. Maher: So in essence the…the variance…well it’s just a continuation of the non-conformity it doesn’t…

Mr. Canfield: That’s correct…

Mr. Maher: …go any further so it doesn’t really make a difference.

Mr. Canfield: …increasing the degree of non-conformity.

Mr. Maher: Right.

Mr. Canfield: But the significance is the numbers need to be accurate. If it’s (34) thirty-four and (6) six then that’s what it needs to be.

Chairperson Cardone: And you have re-measured that and those are the accurate numbers?

Mr. Flores: Yes.

Mr. Manley: Can he combine the one parcel.

Mr. Flores: Yes. I can. Well at least I was told I can.

Mr. Maher: Well you wouldn’t actually need it because it’s just a…it’s an increasing the degree the house is existing, the setback is already there.

Mr. Manley: Right.

Mr. Maher: So there’s no need to...to incur a subdivision technically it’s a lot line change with the fact that it’s increasing the degree of non-conformity. If you’re going beyond the house then that would make sense.

Mr. Canfield: Just one question for the applicant also. This parcel doesn’t appear to be a buildable parcel a…

Mr. Flores: That’s correct.

Mr. Canfield: I think Mr. Manley’s comments are…are very accurate. I think it would be more beneficial to you to incorporate that into your parcel.

Mr. Flores: That’s what I want to…that’s what I intend to do is remove that line.

Mr. Canfield: Okay. Because if and when you go to sell now the driveway is on a separate parcel and it may create further problems for you. It would be advantageous, I think, to consolidate it now.

Mr. Flores: Yes.

Mr. Manley: That’s just a paperwork issue at the…at the Assessor’s Office, I believe.

Mr. Canfield: I think the deeds (parcels) can be consolidated through the Assessor’s Office.

Mr. McKelvey: That would be the smart thing to do.

Ms. Drake: So then would we be able to, if the Board is so inclined, to approve this with a condition that the lots need to be combined within like a timeframe from…?

Chairperson Cardone: I don’t think it really matters because it’s not on the same side as the (6) six feet, it’s on the complete opposite side of the property.

Mr. Manley: The only think we need to do is just set the correct amount of feet.

Chairperson Cardone: Right.

Mr. Donovan: I…I think if the deck was encroaching into that side yard there would be a reason for it but…

Mr. Maher: (Inaudible)

Mr. Donovan: …we’re going to have the same setbacks when we’re done as when we started, (34) thirty-four and (6) six.

Ms. Drake: I know but if Jim and Jerry felt that he should do that I’m just saying instead of just saying he’s going to do it do we need to put in a condition to ensure it is going to get done?

Mr. Manley: The other thing you may want to look at is you know, what tax implications it would be for you to combine them because you know you have two separate... Do you have two separate tax bills?

Mr. Flores: Yes.

Mr. Manley: So, you know, it may or may not be advantageous to combine them but it may reduce a little bit. I don’t know. You can check with the Assessor.

Mr. Flores: Will do.

Mr. Manley: But we’re certain about the amount, that the number of feet?

Mr. Donovan: As certain as we can be but we don’t have a certified survey, so…

Mr. Manley: And if we’re off…

Mr. Maher: But we’re not giving him a…

Mr. Donovan: We’re not giving him a side yard setback variance so if we’re off it won’t make a difference. All we’re doing is the deck is increasing…we’ll assume (34) thirty-four and (6) six but if those were different numbers we’re still…it is still is the same variance, we’re increasing the degree of the non-conformity. The deck is not extending any further into any side yard and it’s permitted in, you know, the distance in the rear yard so we wouldn’t need to do that.

Chairperson Cardone: Right.

Ms. Drake: I’ll make a motion to close the Public Hearing.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you. Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait out in the hallway and then we’ll call you in very shortly.

 (Time Noted - 8:03 PM)

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ZBA MEETING – MAY 23, 2013 (Resumption for decision: 8:15 PM)

CESAR & MERCEDES FLORES 222 FOREST ROAD, WALLKILL

 (1-1-30) A / R ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the combined side yards setback to build a rear deck on the residence.

Chairperson Cardone: On the next application Cesar & Mercedes Flores, 222 Forest Road, seeking an area variance for increasing the degree of non-conformity of the combined side yards setback to build a rear deck on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application? And at this time I will read the report from the Orange County Department of Planning, which is Local Determination. Any discussion on this application?

Ms. Drake: Given the proposed deck will not be any closer to the side yards it increases the degree of non-conformity I’ll make a motion we approve the application.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:16 PM)

ZBA MEETING – MAY 23, 2013 (Time Noted – 8:16 PM)

**OTHER BOARD BUSINESS**

BRIAN R. MOREHEAD 137 POWELTON CIRCLE, NBGH

 (80-4-1.22) R-1 ZONE

Chairperson Cardone: Under Other Board Business I have a letter here from Brian Morehead.

Dear Grace, As per my conversation yesterday March 22, 2013, with Betty Gennarelli, I am asking for a six (6) six month extension on the variance granted by the Zoning Board of Appeals on October 25, 2012 for my residence at 137 Powelton Circle in the Town of Newburgh. Unfortunately I had to change contractors and will be downsizing the plan which was approved on October 25, 2012. According to the new contractor, Michael Pomarico, the new plan will not encroach on the setback which was approved. Engineer, Bill Hildreth is preparing a new survey/plot plan showing the new design and this will not impact what was approved on October 25, 2012. If there are any questions, comments or concerns please feel free to contact me. Respectfully, Brian Morehead

Do I have a motion to approve the six month extension?

Mr. McKelvey: I'll move it.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Brenda Drake: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:18 PM)

ZBA MEETING – MAY 23, 2013

END OF MEETING (Time Noted – 8:18 PM)

Chairperson Cardone: O.K. Everyone should have in their possession a memo from the…from the Town concerning a proposed Comprehensive Plan Amendment and Local Law Amending Chapter 185 entitled Zoning of the Code of the Town of Newburgh and the Zoning Map of the Town of Newburgh to Rezone an area of land on Putnam Street and Boulder Road. If everyone has had a chance to look at that, they want to know if we have any comments or suggestions on this. And if anyone has any comments or suggestions you may email them to me and I will send them on to Town Hall.

Ms. Drake: I haven’t had a chance to go over into that area but are there houses there where they’re looking to re-zone that?

Mr. Manley: In the back, Boulder, yeah.

Mr. Maher: There are a couple of houses there.

Ms. Drake: (Inaudible)

Mr. Maher: They, yeah, I’m not sure. They are…they are suggesting putting a mound, I believe, and shrubs…

Mr. McKelvey: Yeah.

Mr. Maher: …to block that area. Might be better to (Inaudible)

Mr. Manley: When everybody read that they mentioned a paper road that’s in the back, were they going to utilize that paper…I was trying to understand whether they were going to utilize that paper road at all. Did anybody get that feeling from the…?

Ms. Drake: I didn’t get that.

Mr. Maher: (Inaudible) I don’t believe they were going to use the road at all just take it over.

Mr. Manley: They want to take it so that…

Mr. Maher: And make it part of their parking and you know, their berm area…

Mr. Manley: Okay.

Mr. Mayer: I believe…I believe that’s my interpretation of it.

Mr. Manley: Okay.

Chairperson Cardone: Everyone has a copy of the minutes? Are there any corrections? If not, do we have a motion to approve the minutes?

Ms. Smith: I'll make a motion.

Ms. Drake: 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 put in front of the Board?

No Response.

Chairperson Cardone: If not, do we have a motion to adjourn?

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

Mr. McKelvey: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

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

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 BRENDA DRAKE

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:20 PM)