ZONING BOARD OF APPEALS

MEETING – SEPTEMBER 27, 2012

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision this evening; but the Board 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. Roll call please.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

ABSENT:

CODE COMPLIANCE

(Time Noted – 7:01 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 7:01 PM)

CELESTE RIJO-PENA 16 WANDERING DRIVE, NBGH

(102-2-20) R-1 ZONE

Applicant is seeking a use variance for an unspecified use. (Any use not specifically permitted shall be deemed to be prohibited) to keep the pigeons in the 10 x 8 prior built pigeon coop (shed).

Chairperson Cardone: Our first applicant Celeste Rijo-Pena.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Tuesday, September 18th and in the Mid-Hudson Times on Wednesday, September 19th. This applicant sent out twenty-six registered letters, thirteen were returned. All the mailings and publications are in order.

Chairperson Cardone: Please state your name for the record.

Mr. Pena: Okay, my name is John Pena and I’m Celeste Rijo-Pena’s husband. She was sick a…she’s sick so she wouldn’t…has difficulties.

Chairperson Cardone: Okay, if you would state your request.

Mr. Pena: My request is to…to keep the pigeons that I’ve had in my backyard for twelve years and I would like to keep them because they are an asset to our a…foster care, we do foster care. We have kids that have a lot of trouble and a…on medications and stuff and…and we use the pigeons as therapy for them and we’ve been doing it for twelve years. And my wife is not here at this moment because she a…a…a…they told her she had cancer last year and she’s a year survivor and a…so there’s been a lot of grief since we a…we got this letter a…from…from the county (Town) here a…about the pigeons because like I said a…I’ve had pigeons all my life, in the city, I’ve had them everywhere I lived. I never knew that there was an ordinance against pigeons. It wasn’t something that we did a…to break laws or anything a…they just, you know we had them and we use them as a tool. We have a letter from the program that we work for a…Astor Therapy-peutical Family program and they acknowledge that we are a therapeutical house that we use the pigeons for that purpose and…and we’re pleading with you…with the Board here so some mercy and some grace that you would put it together and…and have some mercy because a…also its stated that if a…that there would have to be some type of a need to keep the pigeons or the monies that we do get from boarding the kids a…and we feel that you know a the wife just a retired because she had cancer and she retired with half of her salary. I’m looking to retire next year and so you know, there is…there a…what I read was that you know that there…there…there is a need and that’s why we want to keep the pigeons also besides the therapyal actions that they…they a...we get paid for having the kids and helping them and…and a we use that also to prefer our a…to supply, you know, our needs and…and a like I said the wife just a she went on a disability from the cancer and she had to leave her job and…and she’s making half of her salary. So I can…can I plead with you that…that you would a…a I sat on one of the meetings a couple of months ago and I saw the way that you guys operate and…and a…I saw that you were a…fair, you know in your decisions and I know that a…a I don’t know how…how you get to that place and it’s a place of authority and a…I don’t know if there you’re voted in or you just get accepted.

Chairperson Cardone: We not voted, we’re appointed.

Mr. Pena: Appointed, you know so you know, I don’t know the whole, you know what…what how it goes but like I said, I…I…I’m here, like I said and a…and I have great a…faith in your decisions and as you look at a…a the decision making that…that you would make a decision a…that would a…help us in this a need that we have, to help the kids and also help us in…in our future endeavors.

Chairperson Cardone: I don’t know if the meeting you attended had anyone that was looking for a use variance or if they were only looking for area variances. In the case of a use variance you must meet all four of the criteria.

Mr. Pena: Okay. I think where I sat in think they were…they had a…a…a they had built in the back of the house and it was screens and then…

Chairperson Cardone: Probably and area variance.

Mr. Pena: Yeah.

Chairperson Cardone: With an area variance we look at five different areas and we don’t necessarily have to meet all five but with a use variance there are four and we…if you…if you do not meet any one of them then it has to be denied.

Mr. Pena: Okay I’m, like I said, I’m…I’m…

Mr. Donovan: If I can just interrupt for a second because I wish Code Compliance was here this evening because I trying because I’m trying to figure out where this kind of fits in and I see what…Code Compliance sent this to us as saying since the use isn’t specifically permitted its prohibited and therefore requires a use variance. So I go to the a…R-1, right this is in the R-1 District as I understand it, and accessory uses in the R-1 does include keeping up to five total dogs or cats or keeping up to two horses on two acres but I think the difference here in the AR Zone, you could have two domestic animals excepting cats and dogs, up to twenty-five fowl on lots of two acres or more. So if you’re in the AR Zone, you might fall under the parameters of a…an area variance. I just wanted to confirm that with Code Compliance but I think that’s since the provisions in regard to domestic animals, up to twenty-five fowl are specifically not included in the R-1 but they are in the AR, this makes it fall into the use category.

Mr. Pena: Can I…can I say something about a…you said fowl and I’ve looked into pigeons are not fowl. They’re birds, there not a…if you look in any…they’re…they’re just birds.

Mr. Donovan: Okay, I was trying to help you out.

Mr. Pena: No I’m…I’m glad…I’m…I’m just saying that you know that a lot of people they hear fowl and they fowl against it. You know, they don’t know that a…there not animals that do harm a… I brought two of my neighbors, right next door to each other and they’re here and also they want to give a word.

Mr. McKelvey: How…how did this get sent to us?

Mr. Pena: I believe…I think it happened that both homes on either side of me were getting sold and they’ve been on a…for selling for two years or so and I believe that a real estate looked over, probably casually picked up the phone and said well you know, a…a…I’m calling in reference to…can people have pigeons in this area whatever, that’s what I believe. And then a…you know a…the Town picked it up a…that’s the only reason because my neighbors, I’ve had them twelve years, the birds are well kept a…the birds go off for a fly, they fly for half hour, they go away from the neighborhood, they come back, I shake the can they go inside. They’re not on trees, they’re not on nobodies properties, you know a…I have a…a flock of pigeons that…that are well trained, yeah.

Mr. McKelvey: I was just wondering who complained.

Mr. Maher: Mr. Pena I read in there you had four coops to begin with.

Mr. Pena: Okay, here’s how it started, I…we…we…I had four small coops with screen cages and stuff and a…by this time, when this came in I was in the process…of buying a shed that I have bought, an eight by twelve shed a…and…and I was…the day the…the inspector came we were pulling those three sheds, old sheds out and I paid money to get it towed away. I spent almost fifteen hundred dollars to the junk guys, they came and towed all the old stuff out, cleaned up the place and I have the shed. I don’t know if you have the pictures I sent pictures…

Mr. McKelvey: We’ve been to the property.

Chairperson Cardone: Right.

Mr. Pena: You’ve been there?

Mr. Maher: So again…so how many pigeons did you have at that time with four sheds?

Mr. Pena: Oh, I…I…seventy pigeons.

Mr. Maher: Seventy?

Mr. Pena: Seventy birds and they’re not all let out at the same time.

Mr. Maher: And how many do you have now?

Mr. Pena: And now I have maybe fifty.

Mr. Maher: Oh, fifty?

Mr. Pena: Yeah. I’m looking…you know, even if you…you guys would a…award me with at least twenty pigeons. I’m not looking, you know, because with the pigeons like I said I do therapy with the kids and there’s three family of pigeons that I deal with and my best counseling has been in the pigeon coop with the kids, taking the birds for training, you know a…it…it’s awesome, you know and I…I…I really we…we…since this came down I was three months…we’ve been very depressed.

Ms. Drake: Did you reduce the number of pigeons because of the…the size of the coop or the number of coops?

Mr. Pena: No, I think financially, you know, the feeding and everything…everything, you know has to fall into place and like I said I…I’m hoping that you know, you would let me keep twenty pigeons. I think that’s fair and a…I can do the work that I do with the kids with the twenty pigeons, they have plenty of room now and you probably have been on the property so you’ve seen that you know a…things have been kept up.

Mr. McKelvey: I saw them in the coop.

Mr. Pena: Okay, the coop is not bad I…I brought pictures. I…I took pictures of the neighborhood, the neighbors, you know the properties and everything and the two neighbors that, one that just bought the house right next to me that I think that the real estate owner was the one that called, he bought it, he’s here to speak and the other one next door that’s still trying to sell his house almost over two years. He came also. So I…I was going to go to the twenty-six neighbors but these are the closest neighbors that I have and I figured a…if the pigeons bothered anybody it would be bothering them, you know, and…and a…so like I said I’m pleading that a…that you would look at the whole picture and hopefully this would a…you know, when we first got the letter and stuff, my wife just went, you know, bananas and I told her look well we’re not thieves and we haven’t done anything wrong. We’re not robbers. We…we have jobs and we pay our taxes and…and we do the right thing and some compliances came up and I…I…I’ve been on it trying to meet the compliances that the…the board has or the Building Inspector has said I…I’m on it. You know, it’s not that I just add you know…

Chairperson Cardone: Are you referring to the deck and the pool? Is that…?

Mr. Pena: Yes?

Chairperson Cardone: Are you referring to the deck and the pool when you said…?

Mr. Pena: Yeah. The deck we looked at a…the letter that came and that was another whammy you know because of pressure and a…it stated that a…the way they made it and if they stated a…that there was a post missing but then I looked and there’s the post there. My wife, fifteen years ago so she a…a guy that built the…but he never came back and you know, reported that he had put the deck so if…and we’re waiting a…this next week when everything gets done with call the Town and let them look at that post that…that…that the Town said that I need to put in, it’s in. A…the pool a…I moved the…the electricity and it was supposed to be six feet…a…it was four and a half feet from the whole a…Codes, now they want six feet from the enter of the pool to the outside electricity. I…I did move that a…a…they said a…a…cause we got a fella, a fella, a company to do it but I haven’t spoken to him. I called him over the phone, the secretary and kept on getting a little bits and pieces, said well the cord has got to be three feet so I went and bought the actual plug that you needed the cord and now he comes back and he tells me well you know a…now you’ve got to have another a…a…receptor that you need under that one, you know so I’m working on that. I bought all the pieces. I’m working on that. I…I am complying with everything that you know, the Town has asked me to do I…I you know, and I’ll continue you know and I’m just a…I said, by faith, I’m hoping that you guys would take it in consideration the…the whole matter you know, that we haven’t broke any rules and we’re not about breaking rules or going up against the…the Board, you know.

Mr. McKelvey: That would have to have an electric inspection too, right?

Chairperson Cardone: Oh, yes.

Mr. Pena: Well…well that’s the guy that I have. I got a guy, he came and inspect and he’s telling me what to do.

Ms. Gennarelli: The Town’s list of inspectors.

Mr. McKelvey: Yeah, I just wanted to make sure that he knew that.

Ms. Gennarelli: He should have been given the list.

Mr. Pena: Well no I called the next day, right away because I knew this was…

Ms. Gennarelli: Did they give you a list of the electrical inspectors for them?

Mr. Pena: Yeah, they did and I picked one. I think his name is a…Bello or something, somehow, somewhere I think he’s connected with the Board, maybe not this Board but some Board in the Town. Yeah. So anyway I, you know, I…I…I…I’ve called his secretary and she’s told me bits and pieces and I’ve been, you know, they haven’t gave me an actual list but the last thing was that the cord, I went to the pool place and got a three a…feet cord that that’s what they wanted, you know…

Mr. Manley: How long has the pool not had a Permit? How long has that been like that?

Mr. Pena: Well I…I think the pool, the…the…there was a Permit I mean, for you to put a pool in you…you got to, you know, she put in and the…

Mr. Manley: But you don’t have a Certificate of Occupancy?

Mr. Pena: The person never went back. As a matter of fact the person that did…

Mr. Manley: But how long has that been?

Mr. Pena: A…fifteen years.

Mr. Manley: Okay, so the concern would be and the concern that I have is that you’ve had a situation for fifteen years that potentially could have been hazardous. If that electric had never been inspected and you say that you have a lot of children that come over…

Mr. Pena: Yes.

Mr. Manley: …and that you take care of…

Mr. Pena: Right.

Mr. Manley: …if they happen to be using the pool or they happen to be and it wasn’t properly grounded…

Mr. Pena: Well it’s grounded, yeah.

Mr. Manley: Especially if…

Mr. Pena: We grounded the pool.

Mr. Manley: …have a situation…

Mr. Pena: Yeah.

Mr. Manley: If you could just give me a minute…

Mr. Pena: Yeah, go ahead.

Mr. Manley: …especially if you have a situation where a…you’re saying that you have a contractor that kind of abandoned or didn’t follow through…

Mr. Pena: Yeah.

Mr. Manley: …that to me would be a concern that you’d want to make sure that it was built properly or that was done properly and you potentially expose you know, not just those children but yourself and anybody that comes over to electrocution if something isn’t correct.

Mr. Pena: Okay, that is (inaudible) correct.

Mr. Manley: That’s the reason why, you know, you have to…you have Permits…

Mr. Pena: Right.

Mr. Manley: …you have to close your Permits out and then you have to have it inspected by the, you know, electrical inspector.

Mr. Pena: See the wife was ignorant of that.

Mr. Manley: …to insure proper, you know, proper grounding and proper insulation.

Mr. Pena: Ignorance was…was part of it, you know, she…she was alone and a…but like I said the compliance has been taken care of. The grounding of the pool three months ago or something I think the insurance wanted to make sure, they came over. They told exactly and we grounded the pool, the pool is grounded and now like I said we…we…we got a company and a…little by bits he’s been telling me what to do and we’ve been complying, you know and I think by next week everything will be like it should be. So that you know the compliance is…is there. Very ignorant of…of the way that things operate a…at one point I looked at it and I said well you know the Town should have…even with the deck, should have sent a letter that we never got a C.O. for this here, you applied for it. There was not letter. The pool also I would…that me, I’m saying you know looking at it…I don’t know how things operate. But I said, you know they could have wrote you a letter and said well, you know, you set up this pool you…you…you had a Permit for it but you never had a C.O. You know nobody so she…we…you know, we thought everything was fine you know, but now a…the worms have been let out of the can you know, somewhat, you know but we’re taking care of it. It’s not that we’re saying well everything is fine. Now we understand that you know, things were…were neglected, you know. A lot of our neglect and also you know, nobody ever followed up but a…once we…we were told we’re taking care of it, you know, we’re not refusing.

Chairperson Cardone: Do we have any questions or comments from the public? If so, please use the microphone and state your name.

Mr. Strife: My name is Gary Strife I just bought the house next door to John three months ago. A…the pigeons in the shed didn’t bother us when we first looked at the house, there’s no problem now. There’s no a…you know mess, no noise. He takes care of them, they’re well trained.

Chairperson Cardone: Okay thank you.

Mr. Greek: Hi, my name is Walter Greek; I’m the next door neighbor. I’ve been trying to sell the house for two years and the birds have never bothered me or my house, nothing.

Chairperson Cardone: Okay thank you. Do we have anything else from the Board?

Mr. Manley: I just have one in reference to the applicant’s statement that the Town never notified him about the issue. I’ll make reference to a letter dated April 9, 2003, Order To Remedy Violation to the applicant. Please take notice that there is a Violation at the location described did commit or allow exist the following pool Permit expired which is in Violation of the Town of Newburgh Municipal Code. Permit expired with no inspections and it directs the applicant to comply with the law and to remedy the condition before May 12, 2003.

Mr. Pena: (Inaudible)

Ms. Gennarelli: Excuse me; you have to go to the microphone.

Mr. Pena: You know we’ve been dealing with a lot of stuff but I believe we got that letter and that’s the person that came, checked it out and told the wife that it needed to be grounded, that’s all. And we did it. I don’t know if we maybe read right that we had to get back to them to to come and…but we didn’t but the grounding is done as soon as we got the letter of the pool.

Mr. McKelvey: I think the close out would be the inspection.

Mr. Manley: It just says closed out in violation.

Mr. McKelvey: Yeah.

Mr. Manley: And it never was…it never received a final inspection.

Mr. Pena: I think that’s…that’s what probably happened. We might not have read between the lines. We did what we had to do. I…I remember him, he came I wasn’t home and told the wife exactly we had to ground it. We had to ground the pool through the motor and the places where it need to be grounded, right away I got wire and stuff and it’s been done. Getting back to the Town and stuff, we probably missed out on that one and I…I’m…

Mr. Manley: I appreciate your hardship and I appreciate everything you’ve gone through and you know, if this was an emotional decision I’d have no problem going ahead and saying absolutely, let’s give it to you. The issue is that this Board has to look at because it is a quasi-judicial Board we have to look at how the Law applies to the situation and we have to rule within the Law.

Mr. Pena: Right.

Mr. Manley: Unfortunately when you are ruling on Law you can’t take emotion into it and that’s obviously a very difficult thing because there’s a lot of cases that are emotional cases.

Mr. Pena: Right.

Mr. Manley: And I completely appreciate, you know, what you’re going through and I sympathize but I think the Chair expressed it. You know, we’re dealing with an issue of a use variance which is a very, very high level variance to achieve and you have to meet every one of those four conditions. If one condition is…is not something that…

Mr. Pena: Okay.

Mr. Manley: …applies then the Board has no choice. It’s not…we don’t even have any wiggle room. It’s you have…

Mr. Pena: Right.

Mr. Manley: …you have to deny the variance. That’s the…that’s the tough spot that this Board is in.

Mr. Pena: Okay, I’m complying I’m you know…

Mr. Manley: It’s not a matter of complying it’s a matter of you meeting each one of those…those factors that are involved in the use variance.

Mr. Pena: Okay.

Mr. Manley: And you know, that’s one of the things that you know, your case may not meet all of those four requirements and that’s…that’s the thing that, you know makes it very difficult. If it was an area variance, a much easier variance that we have a little bit of wiggle room with…

Mr. Pena: Okay.

Mr. Manley: …but with a use variance unfortunately we don’t and you know I’m sure our counsel Mr. Donovan would probably expand on that if…if you know, you needed a little bit more…

Mr. Pena: Well I would like to know…I would like to know what are the…I…I stated my case and I pleaded my case and you know, I…I understand your, you guys are…

Mr. Donovan: Well if I may ask? How long have you had pigeons at the house?

Mr. Pena: Twelve years.

Mr. Donovan: Twelve years and when you first started twelve years ago how many pigeons did you…did you bring in then?

Mr. Pena: I always had twenty, thirty birds you know, that’s usually a…a formal flock.

Mr. Donovan: And did you check with anyone in the…in the Town to determine if that was…?

Mr. Pena: No, I never did because I’ve had them everywhere. Everywhere I’ve lived I set up a little pigeon coop and I’ve never had no trouble. I never knew. If I would have known, you know, I might not have been here at this point of the game and you wouldn’t have to make this decision that you have to make.

Mr. Donovan: Well one of the issues that’s critical to the Board is whether or not the hardship that you confront is self-created.

Mr. Pena: Yes.

Mr. Donovan: And what the Law says is that can either be a constructive notice, you should have known or actual notice, you actually did know.

Mr. Pena: We didn’t know.

Mr. Donovan: In this situation you actually may not have known but people are charged with constructive notice of the Town’s Zoning Ordinance. And since the Town Zoning Ordinance doesn’t permit this type of accessory use unfortunately you have a problem.

Mr. Pena: I understand that.

Mr. Donovan: I can’t sugar coat it any other way than that.

Mr. Pena: But I…

Mr. Donovan: There are…there are four factors to consider in this but the nature of the hardship that you confront is self-created the Board cannot give you a use variance.

Mr. Pena: Well…

Mr. Donovan: The Law doesn’t allow that. Even if they wanted to…

Mr. Pena: Right.

Mr. Donovan: …they couldn’t.

Mr. Pena: Okay. But it does state on that letter that the hardship, there has to be a hardship and like I told you what it is. The hardship is that the wife has lost half of her salary. I believe that’s a hardship in these days that we live in, you know, that we use some of these monies that we get from the a…helping the kids you know, and like I said the pigeons are a tool. It’s not a hobby now, you know, it’s not having them for pleasure and stuff. These pigeons are part of our therapeutical a…endeavors with these kids. You know, and I…I…I believe that you know, I’m talking truth, you know, it’s not I’m wiggling or…this is a real thing that’s happening and we’ve had em twelve years. You know, it’s not that all of a sudden we set up camp and all yup you got pigeons now in this backyard here and this neighborhood is full of pigeons. They’ve been there you know and…you know not that you know I’m saying I never knew that we had to have a Permit or anything. I really…I’m telling you guys the truth. It wasn’t that I was hiding or…I’ve had pigeons everywhere and you know and pigeons to me it’s like going to the park. What would happen in a park if you go to the park, there’s no pigeons, a dead park. You can see all the animals in cages but when you walk around you see a pigeon fly, give him a little food, you know it’s, it’s…it’s…it’s…it’s, it’s part of life you know, I mean, I…it with me like I’ve had em everywhere and I never had known about any variances or any Codes against pigeons. After this letter I got sure I went on the computer…I just…wait a minute you know, what’s this happening here. It says fowl. Pigeons are not fowl. They’re not in the fowl family. They are birds so it’s almost like if you had a parakeet, parakeet caged in the house. You got a pigeon coop in the back, birds, to me. I don’t know how you guys look at it.

Mr. Donovan: Well the way the Law looks at it is is what you have rises to the level of what’s called an accessory use. And the Code lists certain specific permitted accessory uses, cats, dogs and in the A/R 1 (AR) fowl and I was trying to draw an analogy…

Mr. Pena: They are not fowl.

Mr. Donovan: …that may…that may have…

Mr. Pena: They’re not.

Mr. Donovan: …helped you out.

Mr. Pena: Okay.

Mr. Donovan: You indicated that your pigeons are not fowl so…

Mr. Pena: Yeah, they’re birds.

Mr. Donovan: …we…we can’t help you out by that analogy so unfortunately the bottom line is the Board is constrained from issuing the use variance from…from the way the Law impacts your particular situation.

Mr. Pena: I would have, you know I would have like that you guys that…that would use a little more wisdom and understanding because I know Laws are made, you know, so people keep em contained and everything but in my…in our situation a…a you know, it’s…you’re containing a privilege that the kids would have also that we’ve had all these years. Neighbors, all my neighbors I tell em hey come and see the pigeons and stuff. A lot bring their kids and stuff, you know. It’s not something contrary a…hiding stuff, you know we’re…we’re open you know and I said I…I truly believe that we a…should keep our birds. You know, I…I never fought for anything in my whole life but I come here pleading because I see that there is a need and like I said I…the kids that come to our house, they use em in the Warwick school they’re use em therapeutically, out in the west they’re…they’re…they’re using em as a scientifically with kids that have all disorders and stuff you know, so… A…Foxhill in Warwick uses them, you know so it’s not something out of the ordinary to use these birds that we use in the Army. They…they…they you know in armed forces, they a…Israel still has them in their forces, you know, I mean, these are birds not like a fowl, like a chicken or a rooster, very intelligent a…family orientated you know, and I use that, like I said in my counseling with the kids, you know. And the kids, in these twelve years I’ve found that it works, you know, the pigeons, you know. A…you can have guinea pig, you know we’ve had guinea pigs in a tank, you can have fish and stuff but nothing like having you know, actual on hands with the pigeons, the kids you know. There…there’s something that…that evolves in them, you can see a change. When we’ve had kids a…the last one we had for three years, sixteen and nineteen. He used to come all combobulated down the road from issues that he had in school and stuff and he would come down the road a…John, they did or get confrontational with me and I would take them towards the pigeons and he had his own you know give names to the pigeons and he would clean the pigeons. He would help train the pigeons right away it would cease and then actually he would be opened up, he would open up and share the…the real problem that he was having. And I was able to counsel him. So you know that’s why I’m saying this is a tool. It…it’s not you know hobby, it’s not because I want to have them there. We’ve had them twelve years and they actually have helped kids with all these dysfunctional problems. I’m talking about kids with medication, you know, one day they’re up and one day they’re down and the pigeons are, you know we…we engrave them in the treatment and like I…the program has gave the letter stating that we are a family a…therapeutical based program and…and they share in the letter there that we use the pigeons for therapy. So…so I’m just…I’m looking beyond the Law, you know, I’m a little bit beyond the Law and may be the conscious, I’m trying to …to raise the consciousness of, you know, we have a lot of things happening in this world. The good things and now saying that they’re bad you know. The bad is good now and I’m telling you that this is good. And you would be able to you know…

Mr. McKelvey: Unfortunately we got, we have Laws we have to abide by.

Mr. Pena: Yeah, but I…I…I really at this point of the game, you know, at this time, I know you guys are huddled up and a…but I know you guys have the power to do it. Because you…you are and I have this little platform here, a very small little platform, you have a big platform and I’m relating to the big platform. And there’s seven of you, there’s supposed to be nine of you’s. I’m almost…I’m thinking that I’m seven well there’s some seats missing there. And I’m missing one fellow that big fellow there. You know, but I’m saying it you know it’s…I’m pleading for the higher court. You know, I’m not pleading to…to a small court I’m pleading to the people that have the power to say okay John, keep so many pigeons, you haven’t you know, the Law states this and this but we see your side of it and there is proof that what I’m saying is true. I’m not lying or anything. There is proof that you know, the neighbors, I have two neighbors here that have come on my behalf here. I didn’t pay them or anything. I told them the situation, said we’ll be there. And I probably could have had a half a dozen more if I would have knocked on every door and they would have because they know the kids that we work with, you know. They…they know the actual realities that goes on our backyard and our house but…but I said okay we’ll…we’ll…I’ll just get nearest fellows because you know, whoever calls said the pigeons were in…were in violating. And you know I’m trying to sort things out and I’m hoping that you guys would consider it. You know, I really, I really, you know, I really plead that you would consider it because like I said we’re not doing any harm. We’re doing good. You know, we…we are in our house we try to help these kids that are, I mean, upside down when they come to us. And they stay to a year, six months, this young man that…matter of fact, he called me a couple of days ago. He’s living with his a…uncle and he…you know, the…the…the line is still open. You know, I say call me at any time, at any hour John I’ll be here for you. And he calls me and I counsel him over the phone. He still remembers the times that we, when I told him about the pigeons you know and oh man, all the times that we had with the pigeons. He remembers all the counseling that I did while we were with the pigeons and he was involved you know, with the pigeons and stuff so. You know I a…I’m just pleading that this is a good thing; it’s not a bad thing. You know, it’s not like having a dog. If you have a dog and all of a sudden the Town says well you can’t have…you have em for twelve years and all of a sudden the Town says well you can’t have this type of dog. How…you know, how…you know, this type of dog now you know, they…you know, you have a dog in the house you don’t go get a Permit or nothing, you get whatever you want. All of a sudden the Town says no, this type of dog you can’t have. You have to have a smaller dog after twelve years of being with em. And that’s my plead, you know it’s a little different you know, its…it’s not just cut and dry that the Law you know. The Law is good and the Law was as stated so as we can the reflection you know...our…our…ourselves that’s what the Law was given. The Old Testament talks about the Law was given so man would know his sin and understand his ways and straighten out his way and then we go into the New Testament and then Jesus Christ came on the scene and he fulfilled the Law and…and…the love thy neighbors as thyself, do unto others as you would like them do unto you and you know so...

Mr. Donovan: Is this like a filibuster? I don’t…

Mr. Pena: Well I’m just telling you the truth.

Mr. Donovan: …know where we’re going here.

Mr. Pena: I’m giving you truth, you know and I’m…I’m hoping, like I’m saying, I’m pleading to the higher…the higher, higher of consciousness, the higher of…of truth, a...you know, I’m…I’m pleading with a…with knowingly that you have the power to let me have the pigeons. I know it in my heart.

Chairperson Cardone: We don’t have the power to break the Law though.

Mr. Pena: But you have the power to…because that Law was made without, you know, and…and…and they condemned pigeons and like I said, pigeons are birds. And birds you can keep in the house in a cage and everything is all right. But then you bring em to the backyard and then you break the Law. So how that…that’s what I’m trying to understand. Who made this Law? And, you know, it’s there but somewhere along the line there’s…there’s got to be some leeway in this Law, you know…a…pertaining to this type of case. I’m not saying everybody can have pigeons in their backyard. In Europe almost everybody has pigeons in their backyard, you know... (Inaudible)

Ms. Drake: You need to use…you need to use the microphone.

Ms. Gennarelli: Thank you Brenda.

Mr. Pena: You know, so that’s…that’s what I’m pleading, you know, I’m pleading that this is a good thing. These pigeons perform a good act. A…we joined together and I’m pleading with you guys to get on board and…and for a good thing, you know, commit yourself. You’re not going to break the Law. You’re…you’re basically going to look at the Law and say well in this case, this Law you know, there’s no sense in this Law like I said, you know they’re not fowl...

Mr. McKelvey: It’s not that easy.

Mr. Pena: …they’re not pigeons, they’re not horses, they’re birds.

Mr. McKelvey: It’s still not that easy to…to change the Law.

Mr. Pena: Well I don’t think about changing, I think that you have the power, I really do because like I said, I’m standing before seven people here that somehow that you got here. I don’t know how, like I said, someone who appoints it or whatever but you’re you’re here and you’re at a place and I’m just pleading with you guys that…could you do the right thing? You know, like I said schools are using em now, you know, it’s not something farfetched that schools will implement them in their scientific program or whatever for trouble kids and stuff so you know. You know, like I said the neighborhood is…says if you…if you change the nature of the neighborhood…if you’ve been around the neighborhood you see it hasn’t changed and the…the coop is in the back, you can’t even see it. There’s people in there right now don’t even know they exist there. You know, so…so that’s…that’s my heart plead you know and when I came before I came I said, Lord you know a…I have faith in the Lord a…I don’t know if you guys are Christians or not, you know, that has no…no…I’m not trying to pull you in or whatever but I’m saying, that you know, before I came I said Lord if…if this is a good thing that we’re doing and you permit, you know I’ll…I’ll take whatever a…these men and women are going to a…the decision that they are going to make. I kind of put it in the Lord’s hand because like I said, we’ve been in depression for all these months. I’ve been fighting all kind of issues, everything has just been like eh, pounding us, pounding us, pounding us and…and you know that…this is a…you know decision making and I…I really employ that you know a… I spoke to the…your man here, Hughes. I met him on day by coincidence. I work in the school district, in the Cornwall school district as a maintenance mechanic. I do boiler work and a…electrical work and stuff and I met him by coincidence one day in the…in the plumbing shop. And I was grieved, I was bleeding a…you ever bled, you know when somebody, something comes on you and you kinda, you bleed and you tell people your…your woes and I was telling the plumber that was in charge. I said, you know, the Town has come against me after twelve years. All of a sudden he comes in, this big beard guy a farmer, you know I would never know that he sits on this… He comes in, rolling in and he’s listening to me and my woes with the plumber, you know. He’s ‘oh, what Board, I sit on this Board’…you know and it was almost like seeing an angel, you know. When I say, he says, ‘I’m no angel I got three horns on me’ and I kinda hugged him. I said you look like an angel of the Lord to sooth my pain and my grief, you know because of these pigeons, you know. He’s ‘aw John don’t feel that way’, he says, you know…‘fight for your cause’, you know he says, ‘there’s always a way as long as you stand on truth and you don’t waiver and you’re not lying and you’re not conniving, truth always wins out’. You know so that’s why I’m here because I’m…I’m sorry that he’s not here and maybe he wasn’t needed to be here at this day, you know. I believe in ordained days and it wasn’t his day to be here but a…that’s how I met a…Hughes and he inspired me and he said ‘the Board Members that sit in the old days, it was legalism full’, you know, it’s like, you know dogmatic. They wouldn’t…they wouldn’t think about nothing. They were scared to come out of the box but he said these people here that…that are sitting here, they’ve been educated, they’ve been to seminars, they’ve been here and he kind of opened a new, you know a new awareness of...of…of a…of people that are in judgment. You know, he…I…you know everybody is against…

Ms. Gennarelli: Please speak into the microphone. Thank you.

Mr. Pena: …everybody is against, you know, everybody was negative all through. Saying John, a…these people, they’re not going to do it. You know, they’re not going to vote a…on a positive note, they’re not going to stand on foundation of truth. You know even if they hear it. But this man here, I wish he was here, this man here spoke highly of you guys and highly of the…a…the Town Board. Where all the…I heard all negativities all over the place and I was like wow, you know, I’m going to be facing a monster here that…that chops people’s heads off and doesn’t have no conscience and doesn’t want to come out of the box and this man here in his farm suit, ha ha, he opened up, you know, he spoke and it was like wisdom and understanding that never before I heard and that’s why I plead and I…and I say that, you know you guys have the power, you know because this man here spoke truth like never I heard before. I was down trodden, depressed and everything but he…he…he showed wisdom and like I said, he knows you guys and he spoke highly of you guys, you know. Very highly, he said ‘you know we have a good Board and we…we hang together, we look at things, you know with a broader mind, we look at things in truth and foundational that…that, you know, we just don’t look at it like in the past. In the past it was like, cut his head off, they owe that much money and they…they…they got to you know dole it and there was not if so’. But he said that this Board here was different.

Mr. McKelvey: He might not have realized it was a use variance.

Mr. Pena: Well…

Mr. Donovan: Respectfully, there’s seven more applications to go.

Mr. Pena: Okay. Now cut and dry right? Just gonna…okay like I said, the decision is today or you’ll send it by letter or how does this work?

Chairperson Cardone: Well after we go through all of the Public Hearings then we go through the decision making process a…which will be later after we’ve heard all of the Public Hearings and...

Mr. Pena: Okay do we all have to stay here and wait?

Chairperson Cardone: You…you don’t have to stay and wait. You can, if you choose to, if you do not choose to you can call the office in the morning and find out the decision.

Mr. Pena: Okay, I’m…like I said before I came in I…a…you know, I’m ready to…to…to receive your decision and I…you know I just pleaded truth. That’s…that’s…that’s…that’s what I’m about, truth, you know…

Chairperson Cardone: Okay, well thank you.

Mr. Pena: …and a…I thank you very much.

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

Chairperson Cardone: Do I have a second?

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The Public Hearing is closed.

(Time Noted – 7:41 PM)

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ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for decision: 9:05 PM)

CELESTE RIJO-PENA 16 WANDERING DRIVE, NBGH

(102-2-20) R-1 ZONE

Applicant is seeking a use variance for an unspecified use. (Any use not specifically permitted shall be deemed to be prohibited) to keep the pigeons in the 10 x 8 prior built pigeon coop (shed).

Chairperson Cardone: The Board is resuming its regular meeting. On the first application of Celeste Rijo-Pena, 16 Wandering Drive, seeking a use variance for an unspecified use to keep the pigeons in the 10 x 8 Prior Built pigeon coop (shed). Do we have discussion on this application?

Mr. Maher: I’ll make a motion to Reserve Decision on this application.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion to Reserve Decision is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:06 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 7:41 PM)

DANIELLE DeBELLA 55 WINTERGREEN AVENUE, NBGH

(67-5-10) R-3 ZONE

Applicant is seeking area variances for the front yard setback, the minimum one side yard setback and the combined side yards setback and increasing the degree of non-conformity of the right side yard setback to build a 2nd floor addition with side roofed porch and an area variance for accessory building shall be at least five feet from any side lot line to keep a prior built (7x7) accessory building (shed).

Chairperson Cardone: The next applicant Danielle DeBella, 55 Wintergreen Avenue. Just for the record identify yourself.

Ms. Gennarelli: One second, this applicant sent out thirty-three registered letters, fifteen were returned. All the mailings and publications are in order.

Chairperson Cardone: Okay, go ahead.

Ms. DeBella: My name is Danielle DeBella and I live at 55 Wintergreen Avenue. We’re asking for a series of variances which were all prompted by our desire to stay in the neighborhood. And in order to stay in the neighborhood and raise a family we need to do a second floor addition on our home. So in applying for the Building Permit for the second floor addition it surfaced that we needed a variance for the front porch and side porch as well as a shed that was on the property before I purchased the home two and a half years ago. As far as the two porches, when I went to the Assessor’s Office they’re both placed on the documents that show the…well basically it shows that the porches and the same…at the same dimensions were on the home when I purchased the home so we just want something saying that we can keep the porches. As far as the shed, I was under the impression that it was okay to keep it.

Chairperson Cardone: It was there when you bought the house?

Ms. DeBella: Yes. And people in the neighborhood have verified that it’s been there for years. It’s just a plastic 7 x 7 shed. But the most important variance is the second floor addition and I guess because of a degree of…we’re getting the variance for a degree of non-conformity that we’re…

Chairperson Cardone: Right, increasing the degree of non-conformity.

Ms. DeBella: …increasing the degree of non-conformity.

Mr. Donovan: You’re making the building on the same footprint that’s already non-conforming so that’s an increase in the degree of the existing non-conformity.

Ms. DeBella: Okay, and according to the 2007 Design Plan for Newburgh, it seems that the one problem with adding to homes or adding to properties is that they defy the historical and rural standards set by the Town. I live in a Cape Cod and Cape Cods are notorious for second floor additions. In adding our addition we would be transforming the Cape Cod into a smaller Colonial home which brings the house further towards the standards set by Newburgh. There are at least three other homes that have done exactly the same addition on…in the neighborhood from what I’ve gathered from talking to people. I don’t have documents saying that they did the same exact thing. So it seems that in order to bring our home to the standards of the neighborhood the best thing to do would be this.

Chairperson Cardone: And you are on Town water and sewer?

Ms. DeBella: Yes.

Ms. Drake: When did you purchase the property?

Ms. DeBella: In 2008, May 3, 2008.

Mr. Manley: So is it your testimony to the Board that there are a number of homes within the Wintergreen subdivision that are two-story already or have been converted to two story?

Ms. DeBella: Yes and I think…

Mr. Manley: Okay.

Ms. DeBella: …my home as far as square footage is the smallest in the neighborhood a…so by increasing the value of the home we would be helping rather than hurting the neighborhood.

Mr. McKelvey: The shed couldn’t be moved?

Ms. DeBella: Its…at the moment it can’t be moved.

Mr. Maher: When you say at this moment…

(Inaudible)

Mr. Maher: Other than that?

Ms. DeBella: It’s just that, there’s a lot going on in life right now.

Mr. Maher: No, I understand but ultimately you could be able to move the shed a couple of feet to comply with the setbacks?

Ms. DeBella: We could, yes.

Mr. Maher: Okay.

Ms. DeBella: But not this month it may not…

Mr. Maher: Not necessarily today but before the…

Ms. DeBella: Yes.

Mr. Maher: …before you finish you’re project that could be done.

Ms. DeBella: That would be something we were willing to do. That’s the least important of our…

Mr. McKelvey: You’re aware it’s supposed to be five-feet from the line.

Ms. DeBella: Yes.

Mr. Maher: It may be your least important but it’s your largest issue.

Ms. DeBella: Yes. And that we’re will to…what I mean is we can do something about it. We can’t do anything about the others.

Ms. Drake: Will it fit between there and the deck? Is there enough room to move it five feet from the property line?

Ms. DeBella: If there’s not enough room we would be willing to move it up the hill which...but I think there is enough room.

Chairperson Cardone: Just use the microphone because it is being recorded and you can take that off the stand if you want.

Mr. Durham: We could actually turn the shed and move it…move it over so that it would be fine.

Ms. Drake: Okay. Could you state who you are?

Mr. Durham: Oh, my name is Brian Durham. I’m her boyfriend.

Ms. Drake: Thank you.

Ms. DeBella: I don’t really have much more to say unless you have questions.

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

Mr. Donovan: Thank you.

Ms. DeBella: Thank you.

Chairperson Cardone: 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

Grace Cardone: Yes

Chairperson Cardone: The Hearing is closed.

(Time Noted – 7:46 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for decision: 9:06 PM)

DANIELLE DeBELLA 55 WINTERGREEN AVENUE, NBGH

(67-5-10) R-3 ZONE

Applicant is seeking area variances for the front yard setback, the minimum one side yard setback and the combined side yards setback and increasing the degree of non-conformity of the right side yard setback to build a 2nd floor addition with side roofed porch and an area variance for accessory building shall be at least five feet from any side lot line to keep a prior built (7x7) accessory building (shed).

Chairperson Cardone: On the application of Danielle DeBella, 55 Wintergreen Avenue, seeking area variances for the front yard setback, the minimum one side yard setback and the combined side yards setback and increasing the degree of non-conformity of the right side yard setback to build a 2nd floor addition with side roofed porch and an area variance for accessory building shall be at least five feet from any side lot line to keep a prior built (7x7) accessory building (shed). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: I think the applicant demonstrated that there are other properties within the neighborhood that are two floors; it’s not going to detract from the neighborhood at all. It’s actually going to increase property values within the neighborhood.

Mr. McKelvey: They also said that they would move the shed at some time or other.

Ms. Drake: I’ll make a motion to…

Chairperson Cardone: Would you say that within a year you would move the shed? Within a year?

Ms. DeBella: Yes, I will do that.

Ms. Drake: I’ll make a motion to approve the application with the condition that the shed is moved within a year.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:07 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 7:46 PM)

FAY E. CIACCI 57 EAST ROAD, WALLKILL

(2-2-29) R / R ZONE

Applicant is seeking an area variance for the rear yard setback to build a pool deck.

Chairperson Cardone: The next applicant Fay Ciacci.

Ms. Gennarelli: This applicant sent out seventeen registered letters, fourteen were returned. All the mailings and publications are in order.

Chairperson Cardone: Just for the record please state your name.

Ms. Ciacci: Yes, Fay Ciacci, 57 East Road.

Chairperson Cardone: Okay and state your request please.

Ms. Ciacci: Well it’s an area variance for a deck at the rear of the property going from the house to the pool.

Ms. Drake: Do you have an existing deck on the house?

Ms. Ciacci: There was an existing deck which has now been removed. I had Permits for the previous deck. The pool was there since 1993. I had a Permit for the pool. The pool has not been moved. I had Permits for the old deck from ’93. It’s just that the new deck is larger than the old deck and I was told that if I made the new deck exactly the same size I would not need any kind of variance.

Ms. Drake: Right but because you’re connecting the pool to the house you then have to follow the rear yard setback for that.

Mr. Donovan: That’s correct. The…

Ms. Drake: Thank you.

Mr. Donovan: …pool is not any closer to the rear yard but once the ankle bone is connected to the knee bone then it becomes part of the house and you measure from the pool to the backyard, instead of the back of the house…the end of the deck number one.

Ms. Ciacci: Except that the old deck was connected to the house too.

Mr. McKelvey: But not to the pool?

Ms. Ciacci: Yes it was.

Mr. McKelvey: Oh, it was.

Mr. Maher: I think that the issue here is that the zoning changed in the past years and I think it was a sixty foot setback originally?

Ms. Ciacci: It was twenty-five.

Mr. Maher: Okay, then it went to a hundred and you have a right of way in the backyard, I believe? Isn’t there a right of way back there?

Ms. Ciacci: No, there is no right of way. But they’re saying that now its eighty two feet…

Mr. Maher: Right, you need a hundred feet.

Ms. Ciacci: …setback and it’s supposed to be a hundred.

Mr. Maher: Right, so basically the deck was, if I’m not mistaken, the deck was the same size…the deck was the same size and still kept to the pool it wouldn’t be a problem. Because you’re not enlarging it or changing it, you’re just reconstructing it but the issue was the fact that she made it a little bit bigger so increased…

Mr. Manley: Increased its non-conformity, got you.

Mr. Maher: Yeah.

Ms. Drake: Okay.

Chairperson Cardone: We have the report from the Orange County Department of Planning which is Local Determination. Any other questions from the Board? Any questions or comments from the public?

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

Grace Cardone: Yes

Chairperson Cardone: The Public Hearing is closed.

(Time Noted – 7:49 PM)

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ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for decision: 9:07 PM)

FAY E. CIACCI 57 EAST ROAD, WALLKILL

(2-2-29) R / R ZONE

Applicant is seeking an area variance for the rear yard setback to build a pool deck.

Chairperson Cardone: On the next application Fay Ciacci, 57 East Road, Wallkill, seeking an area variance for the rear yard setback to build a pool deck. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Drake: The fact that the pool is not moving but is now connected to the house or it was connected to the house but the deck is getting a little bit larger it’s not changing the environment or the area, impacting the area. I'll make a motion we approve the application.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:08 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 7:49 PM)

WILLIAM L. MEHR 21 WINTERGREEN AVENUE, NBGH

(67-3-11) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity (side yard setback) to raise the roof for an addition to the residence (Prior Built).

Chairperson Cardone: Our next applicant is William Mehr.

Ms. Gennarelli: This applicant sent out twenty-seven registered letters, twenty-three were returned. All the mailings and publications are in order.

Mr. Mehr: Hi I’m William Mehr. We’re applying for a variance to put a dormer on a…on a a Cape Cod. We’re in the same neighborhood as our previous applicant. A…I believe the reason we are here is because of increasing non-conformity on the setback on the left side of the house. It’s…it’s not a…it doesn’t have the fifteen foot setback it’s supposed to and a…the a…dormer we wanting to put up faces the lake can’t see it from the road. All the other houses in the neighborhood, there’s a whole bunch with similar dormers and a…the a neighbor whose property we’re touching is actually the Town of Newburgh’s easement. It’s the driveway for them to get to the sewer pump so it’s…there’s not really another house there that we’re that close to. A…it doesn’t…the dormer wouldn’t be looking down on anything but the lake. You don’t really even see it from the road and I don’t think it would disturb any of the neighbors. There’s Town sewer and water there, I don’t think would be overloading the system and a…pretty straight forward it’s…

Chairperson Cardone: And you started this work without the Permit though?

Mr. Mehr: We applied for the Permit and my contractor is right here and a…I guess a…his previous experience had been that you apply for the Permit and start to work and it didn’t occur to…to us that we were going to need a…a Zoning Board approval. I didn’t know anything about it but yes we did.

Chairperson Cardone: It says a…demolishing the rear part of the house without a Building Permit.

Mr. Mehr: I started demolishing myself but I didn’t know that there was any Permits involved in demoing the house.

Chairperson Cardone: And, obviously there was a complaint issue that must have been a neighbor, perhaps?

Mr. Mehr: A Water Department, the Town of Newburgh Water Department supposedly filed a complaint but I think its cause they saw the...the a dumpsters out front. That was after we had applied for a Permit, they didn’t know.

Mr. Maher: But the dumpsters were on your property, correct?

Mr. Mehr: Yeah, they were on the driveway but I never heard that I needed a Permit to demo the house. It never even occurred to me. We were just tearing out the old…we were tearing out the old kitchens and stuff that had nothing to do with the roof.

Mr. Maher: There is a fee involved in everything nowadays.

Chairperson Cardone: Right.

Mr. Mehr: Yeah, well we had applied for Permits. We just didn’t know that a…we needed it for the demo so we just started demoing.

Mr. Manley: Is the home occupied presently or no?

Mr. Mehr: No. Will be soon hopefully. And there’s currently Permits on the electrical and the interior…interior renovations, that already has Permits.

Mr. Maher: (Inaudible) not going any further than the sides of the house, you’re actually less of a…of an intrusion on the side yard setbacks to begin with.

Mr. Mehr: Exactly, that’s kind of why we never thought this was going to happen but we didn’t understand that a…interpretation of noncompliance…of increasing non-conformity. It never occurred to us because we were not increasing footprint in any way that we would be creating more of a problem.

Chairperson Cardone: And the…when you finish the height of the house will be the same or…?

Mr. Mehr: It’s not changed, just that roof is raised in the back but we didn’t go above the current roofline.

Chairperson Cardone: Any other questions from the Board?

Mr. Mehr: Also the house, by the way, has a center staircase as soon as you open the front door. It’s made for a second story…it’s made for a second floor a…

Mr. Maher: Was the second floor occupied to begin with? Was there bedrooms up there or…?

Mr. Mehr: It was when I bought the house but I was told by the Building Inspector that it wasn’t supposed to be. There was a bedroom up there but we removed it and that’s what the demo was we were taking all the…you know, it had heat, it had a closet, it had ceilings. We took it all out.

Mr. Maher: Did you take the back roof of the house first before…is that what prompted the a…?

Mr. Mehr: No the back roof was the last thing that we did was…

Mr. Maher: But what was that before the Permit, obviously (Inaudible)…

Mr. Mehr: We had no…we…to this day have no Permit for the upstairs.

Mr. Maher: So there were…there were structural changes made prior to the Permit being issued that’s the…?

Mr. Mehr: Absolutely, yeah we...

Mr. Maher: So that was the issue, right?

Mr. Mehr: Yeah, we had…

Mr. Maher: As far as far as the demo work, you know, interior modifications really don’t warrant it but once you start with the structural I think that’s what creates the issue.

Mr. Mehr: Well when we went into the Building Inspector and told him what we were doing and we asked them what we were required and they said give us a sketch of what you’re doing and layout everything you plan to do and we had the draft…a draft actually, we had a draftsman draft what we were doing and we sent all that stuff to them.

And we’d already…at that point we started work, we had done the interior stuff and the demo was all going on way be…you know, before that for months. A…but when we applied for that other Permit and we put…we put in the sketch and everything they needed we had started work and it wasn’t till about, you know, four or five days later that we got a letter saying that we got an architect’s drawing, a…an engineer and you know, the whole nine yards. And we had no idea were going to come in to play. So at that point we called everybody and started that process but we didn’t a…stop what we were doing right away. I went in and talked to the Building Inspector about four or five days later after we put a hole in the roof and started framing and told him in discussion what we were doing and he said, you’re not supposed to be doing that and that’s when we stopped. You know, we didn’t know.

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

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

Grace Cardone: Yes

(Time Noted – 7:56 PM)

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ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for decision: 9:08 PM)

WILLIAM L. MEHR 21 WINTERGREEN AVENUE, NBGH

(67-3-11) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity (side yard setback) to raise the roof for an addition to the residence (Prior Built).

Chairperson Cardone: On the application of William L. Mehr at 21 Wintergreen Avenue, seeking an area variance for increasing the degree of non-conformity of side yard setback to raise the roof for an addition to the residence (Prior Built). This is a Type II Action under SEQRA. And also the report from the Orange County Department of Planning is Local Determination. Do we have discussion on this application?

Mr. McKelvey: I think now that he’s got a Permit and he’s got it started it looked fine to me. I'll make a motion we approve.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:09 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 7:56 PM)

ANTHONY F. JOYCE JR. 6 LAURIE LANE, NBGH

(40-5-3) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed accessory buildings to build a detached garage (26 x 24).

Chairperson Cardone: Our next applicant Anthony Joyce.

Ms. Gennarelli: This applicant sent out nineteen registered letters, ten were returned. All the mailings and publications are in order.

Mr. Joyce: Hi, Anthony Joyce, 6 Laurie Lane, Newburgh, NY. I’m here to ask for an area variance for permission to build a two-car garage on my property, that’s a detached building 24 x 26. The reasons would be it’s just a great convenience for my wife and myself to have the garage, you know, for parking the cars indoors for the cold winter months and a…much needed storage space. I have a small ranch house that a…has limited closet space so it’s gonna put some stuff out there and store it as well. I plan on landscaping the property around the building to give it an exceptionally nice look and a…hopefully raise the property values for me and my neighbors as well.

Ms. Drake: You’re looking for a ninety...a ninety-two percent variance over what you’re allowed.

Mr. Joyce: That’s correct.

Chairperson Cardone: But he’s only allowed three hundred and sixty-six square feet…

Ms. Drake: Which isn’t too much.

Chairperson Cardone: …which isn’t a lot.

Mr. Donovan: One of the issues as I understand the formula if you actually had a bigger house you’d be okay.

Chairperson Cardone: Right.

Mr. Joyce: Well…

Mr. Donovan: So if you put an addition on your house you wouldn’t need a variance.

Mr. Joyce: Well fortunately my wife is not here to hear you say that because I think my bedroom may end up in the garage at this point. This is something I’ve always wanted to do and I’m hopeful I can see it all the way through.

Ms. Drake: And it’s not for a business or anything? It’s to store…?

Mr. Joyce. Certainly not, I’m in the shadow of the Town Hall over here so I have watchful eyes, many, many watchful eyes and…

Mr. Manley: It’s under the thousand square feet. Are there other neighbors a…I didn’t notice if there were any other neighbors that had detached two-car garages in your neighborhood.

Mr. Joyce: My neighbor to my right has a detached two-car garage.

Mr. Manley: Okay, was there anyone else on Laurie Lane that you know of?

Mr. Joyce: Well, let’s see, I didn’t…I didn’t go around and actually observe all the properties in my…I can say within three hundred feet I can tell you, my neighbor to my right has a detached garage. And my neighbor to my left has a…an attached garage which is part of their…their residential structure. Two houses down I would say there is an attached garage with an addition above it. Detached garage, I mean beyond that I’d have to go down the street. I didn’t know that was a requirement…I didn’t know I was…I should have done that.

Mr. Donovan: One of the things we analyze is whether or not this would change the character of the neighborhood so that’s…

Mr. Joyce: Understood, but my neighbor next door does have one, it’s been there for many years and most of the houses on my block have garages in them just not all of them are detached, I guess, would be a good answer for that.

Chairperson Cardone: I have the report from the Orange County Department of Planning and which is Local Determination.

Mr. Manley: Do you have any plumbing in the garage at all?

Mr. Joyce: No, no plumbing necessary.

Mr. Manley: Just electric?

Mr. Joyce: Yes, I was going to give it electric, you know, per the Building Code specifications just for a little bit of lighting and maybe, you know, security, you know, the motion detector I guess lights on the outside of the building. A…I did a great deal of design sketches and worked with contractors to give it a residential look. It’s…it’s not going just to be a garage. It’s really going to be a showpiece of my property is really my intention. Landscaped and Uni-lock walks around the building to give it that you know, the soft look.

Ms. Drake: And the area that’s showing where your septic area is a…there’s no chance that’s underneath the gravel so driving back there to park cars in your garage or anything won’t be damaging the septic area.

Mr. Joyce: Certainly not that’s the last thing I’d want to do.

Ms. Drake: It is.

Mr. Joyce: Really, I’m the construction business so I’m well aware of what it cost to get something like that repaired.

Mr. McKelvey: It’s going to be a straight run right in from the road.

Mr. Joyce: Yeah that was me…with the five foot setback I’ve got to be, I’ve got to be five feet off so yeah, that was my intention.

Mr. McKelvey: I can see where the area you had marked off.

Mr. Joyce: Oh, you did? Were you the gentleman that stopped by to see the property?

Mr. McKelvey: We’ve all been.

Chairperson Cardone: We’ve all been there.

Mr. McKelvey: We all go to the property.

Mr. Joyce: Oh you have, is that so?

Chairperson Cardone: Not at the same time.

Mr. Joyce: Okay.

Chairperson Cardone: That would constitute a meeting.

Mr. Joyce: Some of you got in an out of there and undetected, apparently.

Ms. Drake: Yes.

Mr. McKelvey: I think your wife was there when I was there.

Mr. Joyce: Okay, I told her to be nice to the people as they come by. I hope everything is in order. I try to do my best to make sure I dotted all the “I’s” and crossed the “T’s” on this one.

Mr. McKelvey: She told me she put the dog in.

Mr. Joyce: Yes.

Chairperson Cardone: Any questions or comments from the public?

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

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The Public Hearing is closed.

(Time Noted – 8:02 PM)

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ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for decision: 9:09 PM)

ANTHONY F. JOYCE JR. 6 LAURIE LANE, NBGH

(40-5-3) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed accessory buildings to build a detached garage (26 x 24).

Chairperson Cardone: On the application of Anthony Joyce, 6 Laurie Lane, seeking an area variance for the maximum allowed accessory buildings to build a detached garage (26 x 24). This is a Type II Action under SEQRA. Any discussion on this application?

Mr. McKelvey: Well I think the location where he put it would be fine; they’re going to come right in off the road.

Ms. Drake: 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

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:10 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 8:02 PM)

NELLA’S NEST NORTH CORP. 1430 ROUTE 300, NBGH

(60-3-24) I / B ZONE

Applicant is seeking area variances for the maximum allowed total signage, no structure shall be located within 80 feet of the center line of Union Avenue and signs shall not be located closer than 15 feet from the center line to keep a Prior Built free-standing sign.

Chairperson Cardone: Okay held over from last month from August 23 was Nella’s Nest North Corporation.

Mr. Roberts: Good evening all.

Ms. Gennarelli: Can you get a little closer to that Kevin?

Mr. Roberts: Of course.

Ms. Gennarelli: You could tip it up towards you more and just for the record if you could identify yourself.

Mr. Roberts: Kevin Roberts, president of Nella’s Nest.

Ms. Gennarelli: Thank you.

Ms. Drake: I’ve noticed some of the signs have been removed since last month.

Mr. Roberts: All the ones you’ve asked me to take down I’ve taken down.

Ms. Drake: Okay that’s the one on the window?

Mr. Roberts: No, it was actually the one on the wall.

Ms. Drake: Right.

Mr. Roberts: And there was two smaller signs leaning against the a sign post they have been removed.

Chairperson Cardone: The signs on the truck are still an issue though. Every time I’ve gone past there I have seen at least two trucks there with signs on them.

Mr. Roberts: Yeah, I do understand that but a…I have never heard of that issue before I’ve come to the Board. The Code Enforcement agent didn’t violate me for that. He didn’t include that as the overage. I’ve talked to Town officials and they’re you know, they haven’t said it was an issue to me a, you know.

Mr. McKelvey: I think we’ve pointed out last month though that we felt it was an issue.

Mr. Roberts: And also too I’d like to point out last month I was here I said I had three hundred and twenty-two feet of a…road frontage. The Code Enforcement agent said on the a survey it was a two eighty-two and then there’s also a thirty-eight to the right of that that you add that up and it comes to three twenty-two. I also measured it myself and it does come up to three twenty-two.

Chairperson Cardone: And you a…Code Enforcement Officer was here last month…

Mr. Roberts: That’s correct.

Chairperson Cardone: …and did not tell us that it wasn’t an issue and the pictures that I have that he took point to the signs on the truck. So I believe it is an issue.

Ms. Drake: Yeah, we talked about the trucks quite a bit last time and he didn’t correct us during the discussion.

Mr. Maher: But we…we discussed the fact that if you take into account Verizon next door that has fifty trucks into the parking lot with signs on them that would constitute a significant overage also.

Mr. Donovan: And I think what Mr. Mattina said and unfortunately he is not here tonight is that a…a…because he was asked that question specifically. He said the Town Board is already looking at the point right now with the lettering of vehicles. The Town Board is working on definitions; they’re trying to alter the definitions. I believe he went on to say a…that they were not included the…the a…vehicles, the lettering, the advertising if you will was not included in his calculation; I can’t find it right now, because it changed on a relatively frequent basis. So I think…he also went on to say that a…I believe there is a Court proceeding. At least he, Mr. Mattina referenced that in his remarks. A…because we talked about removing certain signs which would then put him within the one hundred and forty-two square feet that’s a…permissible and Mr. Mattina then said as far as the additional signage, there is a legal…goes on to say…it is the Court sign system with the signs so after tonight’s meeting decisions, things will be addressed in the Court system.

Chairperson Cardone: Did that happen?

Mr. Roberts: I don’t know if he was referring to my a…Court case but I haven’t been back to Court yet. I thought he was referring to a general basis.

Mr. Donovan: No, he was referring to you.

Mr. Roberts: Okay, no that hasn’t been a…a…a…I haven’t been back to Court since a the last meeting.

Mr. McKelvey: I talked to Joe today and Joe says that they’re waiting for our decision.

Mr. Donovan: Well what we talked about last month, is if he removed certain signs he would be under the hundred and forty-two square feet a…and that, because what he wrote him up for did not include the vehicles. I think Joe said that that it didn’t include the vehicles. So if he wasn’t referred here based upon the signage on the vehicles then we don’t really have jurisdiction. I…I mean I don’t want to drag this on forever but it seems to me if they’re not here the appropriate course is for us to get some sort of letter from Code Compliance whether they find him in compliance or not.

Chairperson Cardone: Right.

Mr. Roberts: You know, I’d also do a…

Chairperson Cardone: Well even if they have the correct amount of footage, they still have the problem with the number of feet from the road. So they need…they need a variance anyway. I believe, let me find that…

Mr. McKelvey: Eighty.

Chairperson Cardone: …eighty…within eighty feet of the centerline of Union Avenue, closer than fifteen feet from the street line.

Mr. Roberts: The sign is forty-four feet from the center of Route 300 a…if I were to move it another thirty-six feet it would literally be inside my building.

Chairperson Cardone: Right.

Mr. Roberts: A…there is historical evidence as a…the…the Code Enforcement agent had a picture of that sign being there in some shape in 1987.

Mr. Manley: However, I don’t believe the sign was as big in 1987. It’s kind of…

Mr. Roberts: That may be true but again the sign was there when I purchased the building in ’08 and there when I moved at…in ’05.

Ms. Drake: Okay, then he would still need the two variances, one for the centerline to Union Avenue and the other for the lot line should be fifteen and that’s nine…

Chairperson Cardone: Right, so those variances are needed, yes.

Ms. Drake: Right.

Mr. McKelvey: But we still need a…

Mr. Donovan: Well if the…I don’t…I don’t know if the Board is comfortable that there is compliance in terms of the hundred and forty-two square foot issue.

Mr. Manley: Well and it’s not really our job to determine which ones stay and which ones go. We grant the variance and then it’s up to Code Compliance to…

Mr. Donovan: Correct, right.

Mr. Manley: …work with the applicant.

Mr. Donovan: And…and we can only deal with what’s been a…the violation that’s being appealed from that…that specific violation. The idea is for certain signs were taken down that…that the a…allowable signage requirement would have been met. I would suggest that you need confirmation.

Mr. McKelvey: Yeah, I think that we do.

Mr. Maher: That…need confirmation on what?

Mr. Donovan: That…that he’s now, in terms of the allowable square footage of signs that he is in compliance. That was the…as I recall Mike, that was the idea last month.

Mr. Maher: Right, but it is obvious the sign in the front of the building is currently missing.

Mr. Roberts: Yeah, the signs were taken down within days after you requested.

Mr. McKelvey: I saw you taken them…I went by when you were taken it down.

Mr. Donovan: Then if the Board is comfortable with that then I don’t have any…I don’t have any problem.

Mr. Maher: The signage…

Mr. Roberts: I’d also…

Mr. Maher: …I’m sorry, the signage was seventy-one foot over according to Joe, according to his worksheet and the sign you took down was…

Mr. Roberts: Approximately fourteen by six feet.

Mr. Maher: So basically…

Mr. Roberts: Forty-two, eight-four square feet.

Mr. Maher: Eighty-four square feet a...

Mr. Manley: I have Joe’s calculations if you’d like. He has a hundred and twenty feet for the pole sign, nine for Nella’s, thirteen and a half for the phone number for a total of a hundred and forty-two and a half. So they’re a half over.

Mr. Roberts: I’d also like to point out as I stated before I have three hundred and twenty-two feet of road frontage not two eighty-four.

Mr. Manley: Code Compliance is saying two eighty-four.

Mr. Roberts: The…the survey is there you can add it up, its two eight-four plus thirty-eight.

Mr. McKelvey: Do we have to get a correction on that then?

Mr. Maher: Yeah, I did see that, yeah.

Mr. Roberts: I don’t know why my survey was printed like that it does make it confusing even for myself. I had to measure it several times and come…

Ms. Drake: That’s because there’s a different northing and easting…

Mr. Roberts: Yeah.

Ms. Drake: …for that one…

Mr. Roberts: I would assume he did it for some reason…

Ms. Drake: …part.

Mr. Roberts: …that I don’t understand.

Mr. Maher: So if that was the case, a hundred and sixty-one feet would be the allowable signage for that.

Mr. Roberts: And I also have…I’m…I’m not sure how the ruling is on this…I also have a right of way onto 52. Am I credited for a…road frontage there?

Mr. Maher: Do you own that?

Mr. Roberts: No.

Mr. Maher: No. So if the remaining signage is one hundred and a half and the allowable is one sixty-one then there’s…there’s no variance needed for that.

Mr. Donovan: If the Board is comfortable then that’s fine. It would just seem to me it would be nice to have some sort of communication if Code Compliance was here or if they gave us some communication indicating.

Mr. Maher: Well what we have that from his original worksheet what (inaudible) was.

Chairperson Cardone: We could Reserve…

Mr. Donovan: It’s up to the…

Chairperson Cardone: Decision and a…

Mr. Donovan: …it’s up to if you’re comfortable with the…

Ms. Drake: (inaudible)

Chairperson Cardone: We could close the Public Hearing and then Reserve Decision.

Mr. McKelvey: Reserve Decision.

Mr. Donovan: I think the Public Hearing is closed. Isn’t it?

Chairperson Cardone: No.

Mr. McKelvey: No, no.

Mr. Donovan: Oh okay.

Ms. Drake: Is there a way that we could actually make a ruling on the other two items, leaving the third one and saying that we believe that it’s in compliance and if it’s not that we could unanimously open it up and look at it again at a later date, without making him go through all the mailings again, if it’s not in compliance?

Mr. Donovan: I’m sorry Brenda, do you mean rule on the…the two and not on the one?

Ms. Drake: Correct.

Mr. Donovan: No, I would…its all part of one application so I would…

Ms. Drake: Okay.

Mr. Donovan: …suggest that you rule on it all at one time. Now if you’re comfortable that he’s now in compliance based upon the Violation, if you will, issued by the Code Compliance then that’s fine with me. I…I like to have a little bit of a clearer record that indicates that there’s no issues but if the Board is comfortable with the…your visual inspection, you’ve been out there an the sign is down and Mike’s giving us the numbers and he appears to be well under then…then if that’s your inclination that’s certainly supportable.

Mr. Manley: My only concern is if there is something that creeps up and a…it’s not to the applicant’s favor he’s going to have to come back again and re-file.

Chairperson Cardone: That’s why I say to reserve the decision.

Mr. McKelvey: That’s why if we close it and Reserve Decision, get the information.

Ms. Drake: Therefore it’s not at any expense…

Mr. Donovan: I think you have the authority to proceed in either direction it’s…its how the Board feels. I, my own advice to you is having you’re better off having a clearer record.

Chairperson Cardone: I would agree with that.

Ms. Drake: We should also ask Code Compliance to confirm the one sixty-one square footage based on the...the additional thirty-eight foot so that it’s all clear on the record.

Chairperson Cardone: Again I would suggest that we close the Public Hearing and then reserve the decision until we have that information from Code Compliance.

Mr. Maher: Just one comment.

Chairperson Cardone: Go ahead.

Mr. Maher: Jim on your…on your calculations there, on the worksheet Joe had submitted so we’re all on the same page here…the window phone sign thirteen and a half square feet. Twelve dash twenty-nine at…

Mr. Manley: Okay go ahead.

Mr. Maher: So nine by one point five is thirteen and a half square feet?

Mr. Manley: For the phone number?

Mr. Maher: Yep, the wall sign was…was taken down. The Nella pole sign twenty…twenty-five times two is fifty…

Mr. Manley: It’s a hundred and twenty.

Mr. Maher: Twenty-five times two.

Ms. Gennarelli: There are two signs on there.

Mr. Maher: I’m just looking at one of them. So it says Nella’s pole sign five by five. Is that two sided?

Mr. Manley: Yes.

Mr. Maher: Okay that…that’s fifty square feet there, right? And then the…the RCI pole…

Mr. Manley: The way…the way that he has this calculated, he just wrote down the numbers for each one. Is this the applicant’s or Joe’s?

Ms. Gennarelli: That was Joe’s.

Mr. Maher: (Inaudible) Okay, I agree with this.

Mr. McKelvey: If we close the Hearing and reserve it if something comes up, you know, you wouldn’t have to apply again.

Mr. Roberts: Okay, so at this time…

Mr. McKelvey: It’s going to cost to re-apply.

Mr. Roberts: So at this time we’re going to close it, Reserve Decision, I won’t have to wait around tonight to…to get the final verdict?

Mr. McKelvey: No.

Mr. Roberts: I can take off?

Mr. Donovan: Unless you want to see how everybody else does?

Mr. Roberts: I wish everybody well. Thank you all.

Chairperson Cardone: Do I have a motion?

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

Grace Cardone: Yes

Mr. McKelvey: And I’ll make a motion we Reserve Decision.

Ms. Drake: Second.

Mr. Roberts: Thank you all.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Ms. Gennarelli: That will be October 25th that will be on the agenda.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:18 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 8:18 PM)

**OTHER BOARD BUSINESS**

GE COMMERCIAL FINANCE BUSINESS 14 CROSSROADS COURT, NBGH

PROPERTY CORPORATION (95-1-74) I / B ZONE

(ORANGE COUNTY CHOPPERS CONSTRUCTION, LLC)

Applicant is seeking an area variance for the maximum allowed total signage to keep two prior built signs and to erect a new sign.

Chairperson Cardone: Okay and we had Reserved Decision on the GE Commercial Finance Business Property Corporation.

Mr. Daly: Good evening, I’m Robert Daly here representing GE and Orange County Choppers a…we had closed the Public Hearing…

Mr. Donovan: Rob if I can before you start? Just for the Board’s edification, I know that I…I guess that Betty delivered the a…minutes of the Planning Board meeting when this was before the Planning Board a number of years ago. Because we had the issue whether or not, if we were inclined to grant the variance, that this matter may need to go back to the Planning Board. I know Mr. Manley raised that issue. And there is some language in the meeting that was held on November 2, 2006 from my partner, Mr. Donnelly, indicated that there are no signs. I’ll quote from what he said at that meeting, ‘There are no signs shown on the plan and none are granted by this approval. Before any signs may be erected the applicant should be required to return for amended ARB approval’. So I asked Mike today what he…what if he recalled what he meant by that and he said he did. And what he said that he meant and what the Board meant is if there was going to be a freestanding sign that would have to be shown on the site plan that the matter would need to come back to the Planning Board. But that a sign affixed to the building would not have not have to come back because it didn’t have any impact on the site plan and that the sign that is…is now on that building would not need to go back to the Planning Board because it would not have any impact on the site.

Chairperson Cardone: Right.

Mr. Manley: Well I’m glad you cleared that up because I had all sorts of notes here tagged.

Mr. Donovan: Sorry, do you want to go first?

Mr. Manley: No, no, not at all.

Mr. Daly: All right so the way we had left it after the closing the Public Hearing is that if we felt we had any additional information which would change the application being brought before the Board we would submit it a…prior to this meeting and a…we reviewed it and we felt that the issues which we had raised which were primarily a…concerns with the treatment of the calculation of the Code gave us…we really didn’t have a reason to pursue a change, you know, and I’ll just refresh our memories quickly. The frontage on this lot is a hundred and fifty-one feet a…which would then allow a sign of seventy-five plus square feet and we recognize that this…the logo that is on the building is a…both down in elevation from the road. The one on the north wall a…four hundred feet from Route 17K and the one on the east wall eight hundred feet from the New York State Thruway and when looked at in terms of size and scale we felt that they were well within the a…design standard for a building of this size. You’re dealing with ninety-two thousand square feet and they’re visible, they’re not lighted a…and they were affixed to the glass and the glass…they’re transparent and we were being under the Code, the calculation was drawing a line around them but that’s like a…we said, how can you…that be an application when you’re looking through the glass there’s nothing there. The only thing you actually see is the translucent part of that a…overlay and yet the a…the essence of the Code was that this a, you know, a much greater a…numerical problem in terms of a...not meeting the…the record of the Code. So what we here and saying to the Board was that we felt this is exactly the kind of reason why a applicant comes before the Zoning Board of Appeals when you’re existing a…needs in an I / B Zone where you’re having businesses that have to address their presence to the public at large a…when that sign need is there and exceeds the parameters of the Code, it’s something that we felt the Zoning Board of Appeals could provide us for relief in this measure and you know, we wanted to make sure that we pointed out that a…certainly, you know, this was done as part of an overall building design and done in such a manner that a…it’s not back lighted, it’s not a…it was done architecturally to provide an overall ambience for the building and to provide for a…the necessity of being identified at this location. We recognize that there is no a…part of the Code that addresses properties that are distant from the highway. Everything is concerned about people who have frontage on the highway. And in this case here you have a Planning Board and a community approved a…court which puts this building in a different character than the Ordinance had conceived and so we felt again a…this was an opportunity for the Zoning Board of Appeals to provide relief a…to a situation where the Code didn’t address changes that had taken place a…in terms of how the land use was arranged and might need to be provided for.

Ms. Drake: I have a question in those same minutes, that we’re referring to the November 2, 2006, there is a reference to a…a very unique sign. It’s the shape of the OCC logo; it’s more of a sculptural sign…

Mr. Daly: Yes.

Ms. Drake: …and it was described to be on a…a three foot thick steel a…two and a half foot by three foot thick and it sits on a concrete granite slab?

Mr. Daly: Yes, that…that was never erected.

Ms. Drake: Okay, so that is not referring to those signs…those signs you were talking about?

Mr. Daly: No it is not. No.

Ms. Drake: Okay.

Mr. Donovan: Let me put you on the spot a little bit. How a…how large is building or that side of the building where the specific signs are and what percentage of the building size is taken up by the signs?

Mr. Daly: One, on the north side…David I would be guessing at numbers if I tried to give you a demonstration of that at this point. I…I’d really have to sit down and calculate it out for you a…

Mr. Donovan: Then don’t guess.

Mr. Daly: Okay. I did bring the photographs again if you’d like to take a look at them. I…I know certainly everybody had indicated they’ve been by the site and they had seen it a…both in evening hours and day hours and a…I can certainly…I know I…I think there were a…photographs in your package but I could bring this closer if that…

Mr. McKelvey: No, we have pictures.

Mr. Manley: I think the…I think the issue to that as a matter of precedence I think we have to determine whether or not we’re going to include or not include that logo as part of the signage and as part of the variance. And it…it seems to me that the discussion of Code Compliance that would be something that logos are included as part of signage. Just so that we have something that’s on the record down the road if another business comes and wants to put in…incorporate a logo into their…into their building that we have addressed it in the past.

Mr. Donovan: Well…

Ms. Drake: I believe that’s what we did do for Applebee’s also…

Mr. Donovan: Right, yeah. Chairperson Cardone: Right.

Ms. Drake: …recently is included the logo on the…

Mr. Donovan: But only the logo.

Mr. Manley: Right.

Mr. McKelvey: Only the lot, only the apple.

Ms. Drake: Right, right. But on the awnings, on the side windows and everything, every…everywhere that the apple was it was included.

Mr. Donovan: But only the area of the apple.

Mr. Maher: Right. Well…

Ms. Drake: Right.

Mr. Maher: But a square, rectangle or a circle was constructed around that to identify the area of the signage.

Ms. Drake: Right.

Mr. McKelvey: They’ve finished it already.

Ms. Drake: Yeah.

Mr. Maher: You had stated last time that it was extremely expensive to replace one of those signs and you had thrown a number out, I believe it was forty thousand dollars or so. Do you have any…any documentation to…to show the cost it would be to replace the sign?

Mr. Daly: A…I…you know I do have the a…the cost from I believe it was Laef Signs that a…or Leaf Signs that had a prepared those a…and I…I could certainly get those for you.   
  
Mr. Maher: I believe that was the discussion last time, you know, that was part of the information we may need to make a determination.

Mr. Daly: Okay, I, you know, if that’s…if you’d like, you know, we’ll certainly make a point of getting it to you.

Mr. Maher: Just for the record, it was discussed on the…in the Planning Board on April 20, 2006 by Mr. Garling the fact that the diagram shown on the plans with an etching of the Orange County logo that they were going to need determination for the Building Inspector asked whether or not it was going to count as signage and also know that what the total signage is based on linear footage and they highlighted the fact that it was limited. So it was discussed in the Planning Board meetings it would be with the applicant, again on April 20th.

Mr. Daly: That’s correct.

Mr. McKelvey: But no decision was made.

Mr. Maher: Correct. Nothing was presented prior to the C.O. being issued.

Chairperson Cardone: And I believe, as I’m looking through the minutes, that Mr. Hughes had suggested that one sign could be a lot smaller.

Mr. Daly: He was a…you know, I…I think at that point, you know, just thinking of…of ways that it might a…decrease the level of non-conformity and in essence what we said was a…you know, this is a sign that we have there. I mean, we couldn’t cut a little piece of it off, you know and you know we went back and again addressed that same issue a…the…the valuation of what is the area of the sign was based upon a hypothetical line drawn around the boundaries of the letters but taking no account that you could see right through it and the only portion of the sign or logo what you could see was only those translucent outlines of the letters and we indicated at that point in time that a…you know, the issue of the calculation of a…a of an area of a sign as defined in the Code was inadequate in a case like this where you’re looking through a window, why would we calculate the area as the area of the window saying that that is what you’re looking at when in reality you’re looking right through it...is all…the only portion of it that affects eye is that translucent part which is a…the etching area of the logo area itself. And that’s why we were asking for relief from the Code as it was so written a…because it didn’t really address that issue a...

Chairperson Cardone: I think we’ve…we’ve already moved from where we originally were which was the whole entire window, anything that had any kind of a logo on it we use that whole box but what we moved to was just to draw a box around the…the figure.

Mr. Daly: Right.

Chairperson Cardone: Which decreases the a…

Mr. Daly: Significantly, yes.

Chairperson Cardone: …and that was done.

Mr. Daly: And…and we had shown that a…and it was a fraction of what…

Mr. Donovan: Well I think it’s…that’s the discussion we had last month where a…and it goes back to the Applebee’s discussion what we had with Code Compliance where Mr. Mattina did indicate that he calculated this at eleven thirty-four point twenty-one, based upon the definition of sign area. Definition number two, when such sign consists only of letters, designs or figures, engraved painted or projected or in any manner affixed on a wall, the total area of such signs shall be considered to be that area of the smallest basic geometric shape, rectangle, circle or triangle which encompasses all the letters or symbols of the sign. And that’s what Mr. Mattina indicated that he did. He used a rectangle and he came up with the eleven thirty-four point twenty-one. Mr. Daly indicated that he only used the outline of the opaque portion of the logo and came up with six hundred and eighty. You know, I…I think for purposes of the variance before us the Code Compliance calculation is what we have to go with.

Mr. Daly: Well...

Mr. Donovan: Because that’s…that’s been calculated in accordance with our Code.

Mr. Daly: And but I…I would draw a…just a note to you because as you did read the Code, when I read it it said a sign affixed to a wall and in this case it’s a window and there was no allowance in the defining language for a situation where a logo would be placed upon glass. It’s using it as a logo placed upon a wall and the fact that you can see through this window is a unique situation and really redefines a…how you’re looking at this sign. You’re not seeing a…you know, an entire sign area as it would be bounded by a trapezoid…

Mr. Donovan: We don’t have the ability to reform our Code…

Mr. Daly: I…I…

Mr. Donovan: …or…it says what it says…

Mr. Daly: I…I understand.

Mr. Donovan: …and I think you could have a wall made of glass; you could have a wall made of sticks…

Mr. Daly: Yes, sir.

Mr. Donovan: …you can have a wall made of mud…

Mr. Maher: Well hypothetically (inaudible) created into a design and put…placed in…on a pedestal at the…at the entrance to the property, would you then consider the hollowed out area not signage?

Mr. Daly: I’m not following you. You mean if we had a free-standing sign…?

Mr. Maher: If you had a free-standing sign and that was a…some type of metal, created out of metal or whatever and the areas between the “C’s” were actually hollowed out where you’d actually see through it, you’re telling me you would not consider that part of the sign?

Mr. Daly: Well I think there would be question in terms of how you figure or how you calculate that sign which leaves us with a situation where the…the calculation is not adequately described in your current Code and that is why we said this is certainly the place. That’s why you come to a Zoning Board of Appeals to deal with those situations in a community where changes in use, materials and planning a…design have moved beyond what the…perhaps the original intention of a Code is and so we came here seeking the relief that a Board could provide.

Mr. Maher: Well I understand that but I think the Code specifies that you know, a square, circle, rectangle or triangle around the logo, design or name of the business to give the square footage. I think that Joe has applied that quite well in this case.

Mr. Daly: Well, we…we did the exact same calculation and came up with three hundred and five feet by only staying very close to the outline of the sign. So, I mean that to would be a qualified way of going about it but a…the recognizable form is not a square or a rectangle but it is still certainly a shape which would a…give a much a…more accurate reflection of what is there and a…give you a much significantly less of an impact in terms of a the degree of non-conformance.

Mr. Manley: Well it sounds like you’re interpreting it based on your interpretation of how you interpret it and if you’re interpretation is in the minority and a majority of individuals presented with that same case came out with the determination that we came out with that would be a majority opinion. So I think you have to kind of look at what the Code says and then what does a majority opinion feel that that Code represents which is how do you measure the letters? Do you follow the outline or does the Code say you follow based on what Mr. Mattina did? And I…I’m getting a read that this Board feels that Mr. Mattina’s interpretation of the Code is a interpretation that we tend to agree with. So I think that’s kind of where we’re at and I…I think I’ve moved past how we determine how many, I think I need to determine now is how many square feet do we want to allow over the area variance. How much of an area variance do we want to allow that will achieve the applicant to have the benefit that he or she needs for their business? So that’s where I’m at. I’ve moved past how we calculate it and how we figure it out. What I need to come up with now is what’s a fair and reasonable amount to give the applicant. So that’s kind of where I’m at. I don’t know where the rest of the Board is at but I…I think it’s fair that I let you know where I’m at because I’ve move past all that. I…I need to figure out what’s a fair amount including the sign that you need for the restaurant and kind of giving you that balance. And…and right now the biggest thing that I need to know is what are some of the costs involved with, which Mr. Maher pointed out, if some of that lettering had to be removed or if you had to reconfigure that what is the cost involved? So that we can determine is it cost prohibitive or you know, what do we do and that’s kind of where I’m at.

Mr. Daly: Okay.

Ms. Drake: I would agree with you Jim or Mr. Manley. And what I was looking at is the Code Compliance write up where it’s saying the proposed was one thousand two hundred and ten feet but if you take the smaller rectangle you’ve got three hundred and five and three hundred and five again for the two windows then seventy square foot you’re coming up with six-o-four square foot versus the twelve hundred square foot. So I’m just trying to figure out which number is correct, the six-o-four or the twelve hundred and therefore maybe the variance isn’t fifteen hundred percent over. So I don’t know how that twelve hundred was calculated to begin with.

Mr. Donovan: Well Mr. Mattina indicated he used a…by using a rectangle but a rectangle...

Ms. Drake: But if you go to the sheet before that and it shows that the rectangle 305 and you have two of those because they’re both on both walls about the same size.

Mr. Maher: If you look here, Joe did a rectangle, (inaudible) it’s going to be five hundred and…about five hundred seventy square feet.

Ms. Drake: So that there…  
  
Mr. Maher: That number is their depiction of the…of what it should be versus what Joe’s was actually.

Mr. Daly: No ours was an actual. I think Joe’s was an estimate.

Mr. Maher: Joe’s was a rectangle around the perimeter. Yours was trying to follow and create whatever shape it came out to be.

Mr. Daly: That’s…that’s correct.

Mr. Donovan: See I think a more important discussion would be the road frontage which limits the amount of the square footage of the sign so you…you…so you start with the fact that you’re limited to begin with and then if you knew the percentage of the wall that was occupied by the sign. For example, if ninety percent of the…of the wall is logo well I think that’s an issue is to maybe you can build a bigger…a smaller sign. However if only ten percent is covered by the sign well then maybe that…that would be a reason to…to grant a variance. Do you understand what I’m saying? You know, if we’re looking at the magnitude of the variance well how much of the wall is being occupied by the proposed sign? I don’t if we have that information in front of us.

Mr. Maher: Right, but I believe what Mr. Hughes suggestion reference to the smaller sign was discussed. I thought it was pretty clear when you had indicated forty thousand dollars we all thought that that was quite high but you seemed sure of that. So I would have thought at this meeting as we’re rehashing again that you would have provided some documentation to substantiate your claim was forty thousand dollars for the signs. That didn’t occur. So, you know, here we are thirty days later and we no more information than we had thirty days ago. Not one bit. And I believe that was the only thing that was asked for, was some type of documentation that could provide us with some information.

Chairperson Cardone: Right the other thing that was asked for was the minutes from the Planning Board meeting which we have, which he didn’t have to provide.

Mr. Maher: Which does highlight the discussion.

Chairperson Cardone: And you’re right the only thing he had to provide was the proof of the cost.

Ms. Drake: And maybe now we should ask for as Mr. Donnelly (Donovan) stated the percentage of the walls that have the logo on it.

Mr. Donovan: Well I don’t know if it would be helpful to you, it seems to me it’s an important factor to look at though.

Chairperson Cardone: It is but I…at this point, do we…we have sixty-two days to make a decision.

Mr. Donovan: Correct.

Chairperson Cardone: If we go into next month are we going to go over the sixty-two days? I believe we are.

Ms. Gennarelli: Does it start counting on the day of the meeting?

Mr. Donovan: The day after.

Ms. Gennarelli: The day after?

Chairperson Cardone: The day after.

Mr. Donovan: Unless we’re in China.

Ms. Gennarelli: All right so that would…well that would be the 24th and the meeting is on the 25th.

Chairperson Cardone: Of August.

Ms. Gennarelli: No, October.

Chairperson Cardone: Oh, I’m going back to August.

Ms. Gennarelli: August.

Chairperson Cardone: Because the meeting where it was closed…

Mr. Maher: It was actually late.

Chairperson Cardone: …was in August.

Ms. Gennarelli: …in August, right.

Mr. Maher: Late August.

Ms. Gennarelli: August 23rd.

Chairperson Cardone: How many days till the October meeting?

Ms. Gennarelli: Sixty-two days would be the 24th.

Chairperson Cardone: And the meeting is the 25th?

Ms. Gennarelli: The 25th.

Chairperson Cardone: So we would have to make a decision before that or have a Special Meeting a…or re-open the Public Hearing. Am I correct?

Mr. Manley: Or make a decision.

Mr. Donovan: Or make a decision.

Chairperson Cardone: Or make a decision, correct.

Mr. Donovan: Well, if you’re going to…the issue with re-opening the Public Hearing you have to have a unanimous decision of the Board to re-open the Public Hearing then the Public Hearing has to be re-noticed.

Chairperson Cardone: Right. So I think at that point, we really have to make a decision. Which we don’t have to do right at this moment but…

Mr. Donovan: Before we go home.

Chairperson Cardone: Before we go home, right. Okay, you have nothing further for us at this point? Correct?

Mr. Daly: No, that’s…that’s all.

Chairperson Cardone: Okay, thank you.

Mr. Daly: Thank you.

Chairperson Cardone: 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 we’ll call you back in in a couple of minutes and at that time we’ll make our decisions.

(Time Noted – 8:46 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Resumption for Decision – 9:10 PM)

GE COMMERCIAL FINANCE BUSINESS 14 CROSSROADS COURT, NBGH

PROPERTY CORPORATION (95-1-74) I / B ZONE

(ORANGE COUNTY CHOPPERS CONSTRUCTION, LLC)

Applicant is seeking an area variance for the maximum allowed total signage to keep two prior built signs and to erect a new sign.

Chairperson Cardone: On the application of GE Commercial Finance Business Property Corporation, 14 Crossroads Court, seeking area variances for the maximum allowed total signage to keep two prior built signs and to erect a new sign. This is a Type II Action under SEQRA.

Mr. Donovan: Actually this is an Unlisted…

Chairperson Cardone: Unlisted Action, sorry.

Mr. Donovan: Unlisted Action we issued a Negative Declaration last month.

Chairperson Cardone: Okay.

Mr. McKelvey: I’ll make a motion for a Negative Dec.

Chairperson Cardone: We did last month.

Mr. Donovan: We did it.

Mr. McKelvey: Oh, that’s right, I’m sorry.

Chairperson Cardone: Right, because we had closed the Public Hearing on that. Okay. Do we have discussion on this application?

Mr. Maher: I think we discussed it at length and unfortunately got no additional information this evening. And I believe if we hold decision it would be past the sixty days, I believe.

Ms. Gennarelli: Sixty-two, yes.

Chairperson Cardone: Yes.

Mr. Manley: Unfortunately it’s an issue of timing for me which I explained to the applicant might be just the factors to kind of weigh out how many square feet we need to allow and it’s really hard to determine that without getting some additional information which Mr. Maher had requested which was the cost of actually taking down what was there and putting up something smaller and we have nothing to weigh that with.

Ms. Drake: They didn’t offer to remove one of the signs, such as the sign facing the Thruway a…people going to that location are going to go there whether they see it driving by the Thruway or not. They didn’t offer to do that as a…to reduce the degree of the variance requested.

Mr. Maher: Well the fact that we can’t hold it open because it will pass the sixty-two days and we don’t have the information currently, I’ll make a motion to disapprove.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion to disapprove is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:12 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 9:13 PM)

END OF MEETING

Chairperson Cardone: O.K. first everyone has the minutes from last month; everyone had a chance to read them? Do we have any additions, deletions, corrections?

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

Ms. Drake: Second.

Chairperson Cardone: All in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. Okay and everyone now has in their possession the information from the Town attorney. And I believe they are looking for some type of feedback from us. Is that correct?

Mr. Donovan: That’s the Public Hearing is scheduled for October 15th and according to Mr. Taylor’s letter, the Town Board would appreciate your review and report prior to that. As relates to this Board there is a specific provision that relates to Board of Appeal’s jurisdiction.

The Board then went on into a discussion over their response to the proposed Local Law on Adult Oriented Businesses that the Town Board submitted to them for comments. The Board was very concerned with the language and many details of the proposed Local Law. The Board decided that they needed more time to really read, review and study the paperwork on the Local Law and evaluate how they would like to respond to the Town Board. They would then submit their comments in writing to Chairperson Cardone and Mr. Donovan would compose the letter to the Town Board.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

BRENDA DRAKE

MICHAEL MAHER

JAMES MANLEY

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:47 PM)

ZBA MEETING – SEPTEMBER 27, 2012 (Time Noted – 9:12 PM)

**OTHER BOARD BUSINESS**

NYC DEPARTMENT OF LATTINTOWN ROAD, NBGH ENVIRONMENTAL PROTECTION (7-1-7) A / R ZONE

Chairperson Cardone: Under Other Board Business we have a letter from the NYC Department of Environmental Protection and I think everyone has been given a…we have to wait a moment because Brenda has to be recused.

Ms. Drake: Can we vote on the minutes first?

Chairperson Cardone: And we can discuss the moratorium and we’ll do this last so that then she can go home.

(Time Noted – 9:12 PM)

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**OTHER BOARD BUSINESS**

(Time Noted – 9:47 PM)

Brenda Drake: (Recused herself from the meeting)

Chairperson Cardone: Okay, we have one more thing. The next thing that we will be discussing is the New York City DEP.

Mr. Donovan: Now they’ve come to us because they believe that they need a variance from our noise requirements. When I first took a look at this my first thought is why does New York City DEP think they need or think the Town of Newburgh regulations even apply to them. And I guess the answer is they want to…they kind of want to be good neighbors and then I found out that there is some sort of discussion going on with the Town Board. The Town Board has indicated that they’re not going to…they have an opt out agreement in terms of the Building Code. So they’re not a…Code Compliance is not going to be reviewing any of the work and I guess they’ve entered a Planning Board for some…for some issues as well. I fully believe that they have immunity from our Zoning and I would recommend that the Board indicate, I wouldn’t sign the letter that they’ve sent, but there’s a test that’s a balancing of the public interest and I mean this is a…this is New York City’s water supply. So you know, the question I put to their representative who called me, well what if we deny your request for the variance from our noise requirements. They didn’t have an answer to that but it seems to me they’re going to say, well you can’t do that because we’re immune from your requirements.

Chairperson Cardone: Right.

Mr. Maher: Right.

Mr. Donovan: So why not cut out the middleman and cut to the chase and tell them that they’re immune and not go through the process? Which is my suggestion to the Board.

Chairperson Cardone: I would agree.

Mr. Maher: I mean Municipalities don’t have requirements to go before…

Mr. Donovan: Right.

Mr. Maher: …any Municipality at all.

Mr. Manley: I mean, this is a matter of public, you know, obviously…

Mr. Donovan: Right.

Mr. Manley: …necessity…

Mr. Donovan: Yes.

Mr. Manley: …you have to have water, you have to live…

Mr. Donovan: Right.

Mr. Manley: …and we’re talking about what eight million people in New York City?

Mr. Donovan: Right.

Mr. Manley: And thirty thousand, thirty-five thousand people in the Town of Newburgh that rely on that water.

Mr. Donovan: Yes.

Mr. McKelvey: Absolutely.

Mr. Manley: So it’s not only a matter of necessity for the City of New York so it’s a matter of necessity for the residents of the Town of Newburgh.

Mr. Donovan: So if you’re in agreement I would suggest that you adopt a resolution indicating that they are immune from our requirements after a balancing of the public interest. I’ll prepare a resolution to that effect and we’ll get it to the DEP and be done with it.

Chairperson Cardone: Sounds good to me.

Mr. McKelvey: (Inaudible)

Mr. Maher: I concur.

Mr. Donovan: Somebody needs to make a motion.

Chairperson Cardone: We need a motion.

Mr. Manley: I will make a motion that mirrors your recommendation that they are immune based on their being a public utility and servicing a City of eight million people and the residents of the Town of Newburgh that they be exempt from our Noise Ordinance.

Mr. McKelvey: I’ll second.

Chairperson Cardone: Okay, we need a vote.

Mr. Donovan: Yes, please.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Brenda Drake: Recused and had left the meeting

Mr. Donovan: And the record should reflect that Brenda Drake had recused herself and in fact, had left the building.

Ms. Gennarelli: Did we have a motion to close?

Chairperson Cardone: Do we have a motion to adjourn?

Mr. Maher: I’ll make a motion.

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

MICHAEL MAHER

JAMES MANLEY

BRENDA DRAKE – RECUSED

ABSENT:

RONALD HUGHES

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:54 PM)