ZONING BOARD OF APPEALS

MEETING – JUNE 27, 2013

(Time Noted – 7:01 PM)

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

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN - Join Meeting at 7:04PM

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:04 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 7:04 PM)

PATRICIA DOLAN 51 PROSPECT HILL ROAD, WALLKILL

(1-1-15.2) A / R ZONE

Applicant is seeking an area variance accessory buildings shall be located in a side or rear yard to keep two prior built accessory buildings (sheds (8x8 and 4x6) in a front yard. (Has two front yards Equestrian Drive and Prospect Hill Road).

Chairperson Cardone: Our first applicant Patricia Dolan.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, June 19th and in The Sentinel on Tuesday, I’m sorry, Friday, June 21st. For the area variance this applicant sent out twenty-nine letters. All the mailings, publications and postings are in order.

Chairperson Cardone: And the application that we’re considering right now is the area variance to keep an accessory structure(s) in a front yard.

Ms. Dolan: Hello, my name is Patricia Dolan I'm here to request…

Ms. Gennarelli: Can you get a little closer to the microphone and…?

Ms. Dolan: My name is Patricia Dolan I'm here to request two variances one is an area variance and one is a use variance. I'll begin with the area variance and my property is located a 51 Prospect Hill Rd. I'm requesting an area variance to have two sheds on my property of 1.4 acres. Simply put the Town regulations say that I have two front yards because Prospect Hill is on one side which I consider my front yard and the address by which I use the other borders Equestrian Drive which I consider my backyard. Both sheds are located in my backyard. One hereby known as the shed houses my lawnmower, the other hereby known as the outhouse holds some lawn tools, both the well-maintained, landscaped, neat and aesthetically appealing to the neighborhood. To put them anywhere else than in one of my front yards would require them to be in my side yard otherwise known as my driveway. Therefore due to the unique layout of my property I request both sheds be approved to reside in the front yard which borders Equestrian Drive otherwise known as my backyard.

Mr. McKelvey: No, they're both known as your front yards, we can’t change that.

Ms. Dolan: Well I call…I call one my front and one my back so I would like it in the one that borders Equestrian Drive.

Chairperson Cardone: Do we have any questions from the Board? Do we have any questions or comments from the public? Yes, please go to the microphone and state your name?

Mr. Tong: Tracey Tong, that’s for the two sheds you have now Patty?

Ms. Dolan: Yes.

Mr. Tong: I mean that's where they reside, right?

Ms. Dolan: Right.

Chairperson Cardone: Any other questions or comments from the public?

Mr. McKelvey: I'll make a motion we close this hearing.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The hearing is closed.

(Time Noted - 7:06 PM)

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ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:06 PM)

PATRICIA DOLAN 51 PROSPECT HILL ROAD, WALLKILL

(1-1-15.2) A / R ZONE

Applicant is seeking an area variance accessory buildings shall be located in a side or rear yard to keep two prior built accessory buildings (sheds (8x8 and 4x6) in a front yard. (Has two front yards Equestrian Drive and Prospect Hill Road).

Chairperson Cardone: The Board is resuming its regular meeting. On our first application Patricia Dolan, 51 Prospect Hill Road, seeking an area variance accessory building shall be located in a side or rear yard to keep two prior built accessory buildings. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I don’t see a problem this is two front yards. I’ll make a motion we approve that.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:07 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 7:06 PM)

PATRICIA DOLAN 51 PROSPECT HILL ROAD, WALLKILL

(1-1-15.2) A / R ZONE

Applicant is seeking a Use variance for Table of Use and Bulk Requirements - Schedule 2 - Column (A) Accessory Uses #5 - Allows keeping up to 5 (total) dogs or cats over 6 months of age to keep (24) twenty-four cats in the residence.

Chairperson Cardone: Now on the next application for the use variance.

Ms. Gennarelli: On this…the use variance the applicant sent out twenty-nine letters. All the mailings, publications postings are in order.

Chairperson Cardone: Okay, proceed.

Ms. Dolan: My second request is for a use variance with regard to the number of domestic animals at a residence. I house more than the allotted five. They are all cats. The cats residing at my home or all rescue cats. I was a volunteer and a foster home for a nonprofit organization called Furever Animals founded in 1998 and prior…and another prior to that from ‘94 until ’98. Although Furever Animals disbanded in 2009 the animals do not automatically disappear. We were a nonprofit, pro spay/neuter organization. My involvement with animal rescue and the housing of numerous cats is not new news to the Town Animal Control Department, the Town Board, the Zoning Department or my neighbors, including the complainant Mr. Zimmerman. When Furever Animals was active Animal Control routinely called upon us to handle feral and stray cat situations in the Town of Newburgh. 50% of the cats I care for have been rescued from the Town of Newburgh streets as ferals. Now this is a partial list of those cats over the years from the fifteen, twenty years that I could even think of that I…that I rescued. The Keefers which are on Prospect Hill Rd, they’re neighbors of mine, Karen and Tracey Tong they live on Equestrian Drive, they’re neighbors of mine. Lansbury they are over on First Street, Stewart Avenue, Route 300 and 17K, Target Plaza when it used to be the old Ames, Jamesway, Cosmo’s on Union before all the construction, Our Lady of the Lake Church on 52, Orange Lake resident over in the Orange Lake a…development off of 52, Olivia Dewer on Prospect Hill Rd she's another neighbor, Fostertown Road, Cronk Road which isn't too far for me, two cats that were just ferals over on Equestrian Drive, the Ethan Alan furniture store, Barclay Manor a…the Favino’s over on Hy Vue, the Steak & Stein on Route 300, the Wal-Mart someone was giving kittens away, Quaker Street a…lady by the name of Jackie lived there, the…the Festers over on Quaker Street and a…a house over on Quaker Street that's right across from Mr. Wade that recently burned down. A…the Clevelands I got a cat from them, another house Belters over On Quaker St., Angel the upholstery guy over on Quaker St., Lakeside Road, two other cats just at…at another house on Quaker St., Route 17 K the old Holiday Inn, a…one woman walked down my driveway and gave me a kitten that was about a day old…a…Shoprite there’s a…a gentleman back in there some cats back in there, Balmville a…there’s a rich lady that lived in Balmville I did a bunch of cats at her house, over on…two over on Route 32, the Thruway entrance that comes over on Mill Street a…a house over, Larry Kirkman over on Quaker and Mill, old Drury Lane farmhouse, the Art Foundry on Stone Castle Road, Woodland Drive a family over there, a brother and sister on Route 300, Greg Carol and his sister, Rose and John over on 300 a…couple on Forest Road, the Newburgh Transfer Station, I did a couple of cats for them that came out of some of the garbage…garbage trucks, the Newburgh Auto Auction both the main location and the old location, a…Fletcher Road by the vet a…over on 17K there’s a dead-end road back in there, Rock Cut Road there’s a couple of families over there, Newburgh Steel over on 9W, Mountainville Road there are two houses over there I did cats for, Brooker Lane (Drive) off of Leslie, a…Ginny Wood over on Lakeside Road, and a…Grace Kirby over on Lattintown Road. Those are just a handful of…of some of the cats that I rescued over the years.

Chairperson Cardone: Do we have questions from the Board?

Ms. Dolan: I’m not done yet.

Chairperson Cardone: Oh, okay.

Ms. Dolan: I'm not sure how many of you were living in the Town of Newburgh are involved in the community back in the 1990s but at the time the Town of Newburgh Animal Control Shelter was known as the Town of Newburgh Dog Shelter. They did not deal with cats except maybe in a rabid situation; nuisance cats, feral cats they referred to us particularly to me since I lived in the Town. The Town Board was fully aware of my involvement with animal rescue as I was solely responsible for the Town of Newburgh establishing the T-92 donation account by which anyone can donate monies to cover the costs of spaying and neutering of feral and stray cats in the Town of Newburgh thereby eliminating an expense residents and taxpayers of this community. As a matter of fact the first donation came from me for a cat that the Town of Newburgh Animal Control trapped at the old Holiday Inn and 17K. They did not know what to do with it as it could not go back. Where did it go? It became a Furever Animal cat and it was foster cared in my home until we found it a permanent home. Your department was also aware of the number of cats at my home because the Code Compliance Officer visited my home in the fall of 2009. He looked at my cats, at my garage where they’re kept and he stood in one of my front yards talking for more than 30 minutes. He never indicated that there was a problem. My neighbors many of whom have sought advice from me for 15 to 20 years have been fully aware of my compassion and involvement with animal rescue. As I stated several of them have given me cats for a variety of reasons. So yes, I have more than five cats and request a use variance to keep them. Everyone is spayed and neutered and I can proudly state that in 20 years no animal has ever reproduced purposely or accidentally. They are provided for daily, cleaned daily, vet checked as needed or as conditions arise. Actually they live better than some residents in the Town of Newburgh. I mentioned Mrs. Kirby, if anyone remembers Grace Kirby over on Lattintown road, she is a perfect example. My house is not littered in feces and vomit nor does it reek of urine. The animals have access to fresh air, sunshine, comfortable sleeping arrangements, toys, companionship and human affection, an air-conditioner in excessively hot weather and heat in the winter. They do not roam the neighborhood defecating on my neighbors properties are making a nuisance of themselves. I know where each cat came from and none of them came from the complainant Mr. Zimmerman. To address Mr. Zimmerman's portion of the complaint the cat he's referring to is Suzie and yes Suzie was at my house. When Mr. Zimmerman moved out of his house and left it abandoned she regularly came to my house because one she likes to eat and to she likes human companionship. She's an old lady and was exceptionally thin and covered in mats. Since she became a frequent visitor to my home she gained weight, removed all the mats and her hair grew back. At the time of Mr. Zimmerman's complaint Suzie came in my backyard or front yard severely limping with the cut to her hind leg and a chunk of skin hanging off. It was obvious she was in distress. With no way to contact Mr. Zimmerman, no one living in the home and knowing firsthand Mr. Zimmerman's poor track record for providing medical care to his animals I scooped Suzie up, put her in a carrier and called the vet. Upon consultation with the vet they strongly recommended she be given antibiotics, confined with no activity and see how she does. Then depending on her progress provide limited activity. They also recommended watching her cut to reduce and eliminate any infection. So that's what I did. To do otherwise would have been animal cruelty on my part. And would I do it again if I saw an animal in distress? Yes I would without question. Mr. Zimmerman's cats, all seven of them during the eight years he resided there and during the year and a half the house was vacant all of his cats would roam the neighborhood defecating on the neighbors yards and gardens, cause a commotion with the neighborhood dogs and just plain make a nuisance of themselves. All the other neighbors would get upset about it and I did not. I would rather have his cats wandering the neighborhood than Mr. Zimmerman himself. If he takes issue with me looking out for the welfare of the outside cats that roam the neighborhood then he should've kept his cats on his own property or taken them to his new residence and get himself a variance to house the more than two animals that he's allowed. And I have collected all the cats and all the dogs that are in all of the shelters in Orange County and none of these are duplicates so you can look at all the animals that are homeless.

Ms. Dolan approached the Board with newspapers.

Ms. Gennarelli: You’ll have to take the microphone with you or it will not go in the record.

Ms. Dolan: 50% of the cats in my care are from the Town of Newburgh. At least 70% of the population is old, 20 years…12 years of more. 35% have behavioral issues and 25 have chronic medical issues that are timely…time consuming and costly. These cats in the animal rescue circles are considered hard to place. Many town and city shelters would not invest the time or expense nor do they have space for hard to place or unadoptable animals. They can’t even find homes for the ones that are adoptable. These animals if surrendered to a shelter would linger in small cages or be euthanized. That in itself is cruel and unnecessary. It would also come as an expense to the Town of Newburgh and its taxpaying residents. I'm requesting a use variance to allow them to live out their natural lives cage free and comfortable in my home at my expense, not the Town or the taxpayer. And the last thing if you'd like to see these are pictures of my cats and where they live.

Ms. Dolan approached the Board with the pictures.

Ms. Dolan: Thank you.

Chairperson Cardone: Do we have questions from the Board?

Ms. Smith: How many cats do you have now?

Ms. Dolan: 24.

Ms. Smith: And this is a continuous operation, you…if you find a home for one you take another one in?

Ms. Dolan: No.

Ms. Smith: No.

Ms. Dolan: Not…not anymore.

Ms. Smith: So what exactly…could you explain to me what exactly…you have 24 cats…

Ms. Dolan: I have 24 cats they were all…came from the rescue group…when we belonged to a rescue group…

Ms. Smith: Right.

Ms. Dolan: …and you know…in 2009 when we disbanded…I lost my husband in 2006 and the girl that I work with that did the rescue work she a…had some of the family issues so we…she shut the rescue group down and after that it's…it's just like take care of what's in my house and I don't…I don't do the rescue work that…that we used to because I can't I've got to take care of…I’ve got to work, I've got to take care of my house, I go to take care of my yard and I've got to take care what's in my house. I can't be trying to save the world anymore I mean we still educate and stuff but I…

Ms. Smith: Okay, I…I guess what I'm trying to get at here, you have 24 cats…

Ms. Dolan: Right.

Ms. Smith: You attempt to place them in acceptable homes?

Ms. Dolan: If somebody, yes, if somebody wanted one I would have no problem adopting it out. The problem is…is when you're a not a nonprofit which a group…

Ms. Smith: The group.

Ms. Dolan: The group no longer exists. It's very hard to you know, we can’t…we can’t go into say PetSmart or Petco and place them because we don't have the insurance we don't have all the credentials of a nonprofit so we can advertise for free and stuff but yes if somebody wanted to adopt one and it was a quality home yes I would adopt it out.

Mr. McKelvey: But you consider these your all your own pets then?

Ms. Dolan: No I would adopt them out. I have my favorites but yeah I would, there's a significant number that I would adopt out.

Ms. Smith: So you…

Ms. Dolan: They're not all adoptable, they have behavioral issues or medical issues and unless somebody is willing to…to address that a…but most people don't want a cat that’s…that doesn’t…you know that has behavioral issues…they don't…they don't want it and they're not kittens either. People…

Ms. Smith: So we have 24 cats if over the…I’m just throwing out figures here to get something clear in my head…you adopt out 18 of them over the next several months or years you…you attempt…

Ms. Dolan: I wish.

Ms. Smith: Well say you do, you not to replace those cats?

Ms. Dolan: No, no.

Ms. Smith: They are in the basement of your house?

Ms. Dolan: They…they are in the garage that is underneath my house.

Ms. Smith: That is your basement, basically.

Ms. Dolan: Okay, well there in the garage portion and there is a…a fence across the garage door so you can open the garage door and they can see out and they can get fresh air and whatnot and if it's either too hot or in the winter time I seal it up. I have a window that somebody made a frame around I can put in air conditioner in that window and a…you know, and then I have a heater. I was…I have a euro heater which a… keeps it around 65, 70 degrees in the winter time.

Ms. Smith: That's a single car garage?

Ms. Dolan: Yes, it is. And the roll cage free you know, they…they're not in cages and stuff like that.

Mr. Maher: You said for a while that the Town referred them to you?

Ms. Dolan: Yes. The Town really didn't deal with…with a…feral and stray cats and they would call…they would call Furever Animals and we would deal with the situation whether it would be just spay, neuter, return or whether it would be take the cat, I mean, you know…

Mr. Maher: At that…at that time would refer them to you, where were they housed during that period?

Ms. Dolan: A…some of them were at my house and other foster homes.

Ms. Smith: So Furever Animals didn't have one building?

Ms. Dolan: No we did not have a building. We didn't have a building like the Town Shelter or…or the Warwick Shelter or Walden and stuff. Back then in the early 1990s cats were not…not considered really…they weren't like dogs, they didn’t need to be licensed, you know, they weren't…they didn't even have a spay/neuter program. I mean they didn't even have a…a…a…a quote unquote a law or you didn't even have the education that you know, if you adopt out an animal cat or dog, you know, to have it spayed and neutered before it goes out to the public. You know, and…and that sometimes they had a program where you could even pay extra and then you had to bring the animal back but if you even did that the dogs or the cat could have two or three litters before it came back, you know, so now there's a lot of education taken place in the last 20 years. I don't think there's a shelter out there now that doesn't spay or neuter prior to adopting the animal out. And there's still plenty of unwanted animals you know.

Mr. Donovan: Do you ever receive any compensation?

Ms. Dolan: No.

Mr. Donovan: And would you characterize your use as a…as a shelter, you are sheltering these cats these or…or would you characterize them as your pets?

Ms. Dolan: That's a tough question, I mean, I would adopt them out a…but I…if they’re

hard to place they have behavioral issues or they have health issues. There's only about five maybe seven that are…that are considered…that I would consider to be a good animal to adopt out and…and that's because, you know, all the personalities, that they don't have a health issue but most people prefer something that's young and…and cute and…and mine are not that. Mine are…but the youngest one might be five, seven years old.

Mr. Donovan: Just so I understood what you said before, the majority of these cats were they delivered to you by someone else?

Ms. Dolan: As when we were part of…when I was part of the rescue group either…either another shelter or Animal Control whatever would refer them…would…would refer them to us.

Mr. Donovan: What is the last time you got a…what I'll call a “new” at your house?

Ms. Dolan: I don't…years ago, a couple years ago. I mean it's not I…I really prefer not…

Mr. Donovan: Now in reviewing some of the record before it seemed to indicate that there was at one point in time plus or minus 50 cats at the house? Is that accurate?

Ms. Dolan: I…I…I…

Mr. Donovan: Was there a time that you had more than 24 cats?

Ms. Dolan: Yes, oh yes.

Mr. Donovan: And what's happened to those cats?

Ms. Dolan: They have either been adopted out or passed away or…or whatever, I mean they’re…I mean we did try…we did adopt a lot of them out but...

Mr. Donovan: To the best of your…and to the best of your knowledge in the past year how many cats have either passed away or been adopted out?

Ms. Dolan: In the past year?

Mr. Donovan: Approximately.

Ms. Dolan: Two, maybe a year ago passed away.

Mr. Donovan: Okay.

Mr. McKelvey: You haven't adopted out any in the last year?

Ms. Dolan: No, it's…like I said it's very hard for us to adopt out. We can advertise a…it’s all word-of-mouth, it's all Internet, it's all word-of-mouth. So, no I have not adopted any out, it's very difficult and we’re competing with all the other animals too.

Mr. McKelvey: But the Town referred…they referred it to the rescue organization not to you directly?

Ms. Dolan: A…they had my home phone number and my cell number so yeah they could call me directly but they came in as…as a Furever Animal cats. They were listed as Furever Animal cats. They were not listed as my pets, no.

Chairperson Cardone: And what was last year that that took place?

Ms. Dolan: Oh gosh, I don't…I don’t remember, 2009, prior to 2009. I mean 2009 we disbanded as a rescue group so it would've had to been prior to that but since then to the Town of Newburgh Animal Shelter has…has accepted cats. I mean, the rules have changed for them so they do accept cats so a…there’s not the need, you know, to call…to call us but also they right now there's other groups that have stepped up to the plate SCATS being one of them. A…and you know, since we are no longer a…a…an organization they call SCATS and stuff so a…other groups have stepped in to…to pick up where we left off.

Chairperson Cardone: Is there any way you could refer some of those cats to these other groups?

Ms. Dolan: What do you mean by refer?

Chairperson Cardone: Well you talking about adopting them out…if you have other groups…right if other groups are willing to take in the cats.

Ms. Dolan: A…there’s no space they have…they’re…they have too many themselves. The shelters are overloaded with unwanted animals that's why…that’s this, these are all the animals that don't have a place, don’t have a home and you know, nobody wants. And, and mine, you know that are in my house have a harder time because they're not young and they have issues. They have behavioral issues. They have medical issues.

Chairperson Cardone: Well one of their issues is not getting along with other cats obviously. If you have 24 cats altogether I would think if they had behavioral issues they would have a problem being together.

Ms. Dolan: They don't.

Chairperson Cardone: They don't?

Ms. Dolan: They get along…they get along very well. I mean, I mean nothing…nothing is perfect but there is very…very few, you know, cat fights if you want to call it and stuff but you know they get along very well.

Ms. Smith: How do you…how do you dispose of all the cleanup of 24 cats?

Ms. Dolan: I go to the dump a lot.

Ms. Smith: The dump? But I mean initially how do you dispose of it? What, what containers is everything put into, how?

Ms. Dolan: I put them in garbage bags and I have a truck and I go to the dump it's on my way to work.

Ms. Smith: Okay.

Ms. Dolan: They open at eight o'clock and I have to be at work at 8:30.

Ms. Smith: Just curious.

Mr. McKelvey: So if you don't belong to a rescue group that I would consider these your pets, your cats.

Ms. Dolan: Yes, you can say that but I would not have a problem adopting…adopting those…those that are adoptable out. I would not have a problem, you know, finding a home you know, giving them to somebody who wanted that particular animal if it was a good fit. So, you know…

Ms. Smith: Have you tried? I mean I looked into your back...since 2012…have you been attempting to place some of these animals?

Ms. Dolan: Yeah, well Craigslist is not a good place to do it but there’s two…there’s two web pages that don't require you to be of 501(c)(3) so I've been working with them and there's other…there’s other groups that you know, it's all word-of-mouth but there's other different groups that deal with animals. They might not, you know, either house them or what not but it's all word-of-mouth.

Ms. Smith: Those newspapers you passed around that showed pictures of dogs and cats were any of you or cats in any of those pictures?

Ms. Dolan: No.

Ms. Smith: Oh.

Ms. Dolan: Because I can’t advertise for free. Those are all from…from...

Ms. Smith: Shelters?

Ms. Dolan: Shelters and whatnot and you know, we don't have the…I don't have the ability to advertise for free and I…I spend $6-$8000 a year on food and vet bills. So you know to advertise, you know…

Chairperson Cardone: Is there anyone from the public that has to make a comment or would like to make a comment or ask a question? Yes would you please step up to the microphone and state your name for the record.

Ms. Tong: Hi my name is Karen Tong and I reside at…

Ms. Gennarelli: Could you just tilt a little bit up toward you?

Ms. Tong: Certainly. Better?

Ms. Gennarelli: Good. Thank you.

Ms. Tong: My name is Karen Tong and I reside directly adjacent to Patty, No one can deny Patty’s passion…compassion for animals and try to save them. She actually tried to help us out at one point in time when my daughter brought home a stray cat. I did not understand the whole a…the pets thing she was going through I thought she was going to bring it to a shelter. So I was unaware of that. I…I do have some concerns with Patty housing 24 cats. A…because we are adjacent to her, as Patty mentioned some of these cats have medical issues, I'm concerned about what kind of germs or what kind of disease these cats may have. They're running freely in her garage because she said they're not caged that is a concern for…for me. I have two grandchildren, they went out in the yard, I don't know whether the cats have been outside are not I…I can imagine why you would want to keep cats in the basement constantly without any kind of sunlight or you know, fresh air. However, I do also have a concern with the fact that and probably in the next year or so we're going to be putting our house up for sale and it does concern me with the fact that I would feel obligated to disclose the fact that a…I have a neighbor who is housing basically 24 cats, which equates to a shelter in my understanding, and I would have to disclose that to a potential buyer and I think that would put me in a very awkward position. I think that we have, you know, facilities, you know unfortunately, you know Patty the has told you that they don't really want to accept these readily however, I think that we have facilities to house these animals and we should take advantage of that not in a residential area.

Chairperson Cardone: Thank you. Do we have anyone else who would like to make a…yes, please step up to the microphone and state your name.

Mr. Zimmerman: Good evening my name is Michael Zimmerman…

Chairperson Cardone: Just move the microphone up a little. Okay, great.

Mr. Zimmerman: Okay I was not aware until now that a…I don't know how I was addressed as plaintiff or whatever a I guess it all started just because one of my cats disappeared and I'm not here to defend myself a…I’m still the owner of the home, I'm still taking care of the three cats that are there which are also taken care of by my friend who lives in my residence when I'm not there a hundred percent. At all given times there are three litter boxes running for five which are now down to three cats because we adopt a…gave two away to a good friend, which we had also rescued way back when. My bottom line is a…I guess that's how the whole thing started because one of my cats did disappear and I had the feeling, I said, I bet you she got a hold of Susie and sure enough I went over and I'm also sure the pictures that I took that day are different than that picture that they are showing right now a…the conditions etc. which again that's not up to me to decide and like my neighbor just said there are facilities for that. Bottom line is there is probably double the amount of cats there than 24 at any given time. The what she calls her back yard is our front yard is if you dig around there it's like a deviant battleground of…of dead cats that whoever when a cat passes away. And it wasn't even said, Patty and my wife used to go for walks together and Patty would point out ‘oh look at that cat there I've got to catch that cat’. My wife would say ‘leave that cat alone it belongs to somebody’. And she has the obsession anytime she sees a cat…‘that cat needs to be rescued’. There is a difference between cat rescue and a cat hoarding. And the conditions like I said that's not up to me to decide but the conditions are in my eyes fairly poor. As far as air-conditioning, I've never seen an air conditioner the whole time. In the winter, it’s hot is will I can be I mean in the summer and in the winter it's as cold as cold can be. So the cats are shoved in there. That's all I have to say I mean it's not…

Mr. Maher: Are you suggesting…?

Mr. Zimmerman: There is a difference between a shelter and rescue and a hoarder, I’m sorry.

Mr. Maher: We need to discuss the conditions so are you saying the conditions are not what…?

Mr. Zimmerman: Not as…not as just described a few minutes ago, no.

Mr. Maher: So they're…so far are there odors emanating from the house, is that what you're saying?

Mr. Zimmerman: A…they’re odors, they're a sick animals there, there were animals there that…that didn't eat because they have no teeth.

Mr. Maher: So are…are they kept in the garage or are they running free?

Mr. Zimmerman: No they're all…they're all cramped in the garage.

Mr. Maher: Have you been in the garage?

Mr. Zimmerman: Yes, I have been in the house and I've been in the garage.

Ms. Dolan: (Inaudible)

Chairperson Cardone: One…only one person can talk any time. You can respond after he's finished.

Mr. Zimmerman: So and that's basically like I said I’m not here to…I just cared about my cat at the time which describe the condition of my cat is not accurate either. Excuse me. So and she just said no, I was not in the house, yes I had in the past worked on a vehicle numerous times and therefore I was in the home...

Mr. Maher: How long ago was that?

Mr. Zimmerman: Pardon?

Mr. Maher: How long ago was that?

Mr. Zimmerman: A…the last time I would have to say is two years ago when I...

Mr. Maher: So you...you are not really familiar with the recent conditions?

Mr. Zimmerman: The recent conditions as far as inside the house, no. But every time I have been in the house prior to that a…I would consider that not pleasant odor. A very strong ammonia smell and like I said those…there is a gate from the garage like a fence so that the cats, I mean they can lookout or you can look in but that's where is…a…

Chairperson Cardone: Thank you.

Ms. Dolan: (Inaudible)

Ms. Gennarelli: Can you turn that down towards you?

Ms. Dolan: The cats do have fresh air...

Chairperson Cardone: Please address all remarks to the Board.

Ms. Dolan: The…the cats do have fresh air, there's a gate across it and then there is a screen across the so that bugs can’t get in. They have fresh air, they have sunshine, they can see the birds a…you know, so the cats are well taken care of and when she did give me her cat, the cat, because she doesn't like cats and her daughter brought it home and was keeping it hidden in the daughter's bedroom she gave it to me and she knew, she knew it wasn't going to go to a shelter. She knew it was going to stay with me and we found it a home. Okay? As far as Mr. Zimmerman he has never stepped foot in my house, even when we had block parties at my house he never stepped foot in my house, not in my garage and not in the…my house, not once, not twice, not ever. Okay? He worked on...he worked on my cars, yes. The problem is is I paid him for the work; he just didn't always do the work so there's a whole issue there that's got nothing to do with this Board. Okay? He didn't, he didn't give two of his cats of seven cats away. He gave one them away and one of them died because he neglected to do what the vet required which was give it an antibiotic and…and soak the infection out of the leg. Another cat simply disappeared. What happened to Suzie is a good question because ask him, he had last he told me he was going to take it to his new residence but now he's saying that his cats are still over at the house so they’re still roaming the neighborhood and still causing…my cats don't leave. There's nothing wrong with my house, you know, I keep the…the pictures showed that there's nothing on the floor. The cats are not unhealthy. Want to see pictures of the cats?

Ms. Dolan approached the Board

Ms. Dolan: Do they look unhealthy? Do they look unhappy? Is there…is there feces on the floor? No. You must have the other picture up there.

Mr. McKelvey: When these cats die what do you…how do you dispose of them?

Ms. Dolan: I either cremate them or bury them.

Mr. McKelvey: On the property?

Ms. Dolan: Sometimes on my property or sometimes on another property.

Mr. Donovan: If I can, to try to give a little focus to the discussion. The Law in New York is clear that there is specific criteria that has to be demonstrated in order for the Board to grant a use variance. In this situation it's a use variance because I think we all agree that this is a shelter that's being operated. These are not just, you know, your personal pets. It's a shelter that you're operating for cats. You can’t have more than five cats. You can’t have a shelter in this zone. So, what I'm going to do is just asking couple questions they were on the form that you submitted and these are things that you are required to prove before this Board can grant a use variance. And the first thing you have to do is show that the applicable zoning regulations have caused an unnecessary hardship to you. In order to prove that you have to demonstrate that you can't realize a reasonable economic return and you have to support that by competent financial evidence, reasonable economic return on your house. Do you have any…any evidence for that this evening?

Ms. Dolan: I don't even know what that means. I don't even know what you just said even means.

Mr. Donovan: Well it was on the application that you filled out. That…that question was answered or asked, I don't know if it was answered I know was certainly asked.

Ms. Dolan: Well I said when I filled it out I really didn't understand it and nobody gave me a good explanation but I… What do you mean…do I have an economic return like to make a profit off of this?

Mr. Donovan: No, if you…if were not… Let me ask this question, if the cats weren't there would it cause you an economic hardship?

Ms. Dolan: If they were not there?

Mr. Donovan: If they were not there. If you could not have the cats there or you could not have more than five cats there would it cause you an economic hardship?

Ms. Dolan: No.

Mr. Donovan: Okay. Is this situation unique to your specific property and…

Ms. Dolan: Yes.

Mr. Donovan: Why?

Ms. Dolan: Because I have them.

Mr. Donovan: Okay, but what makes your house different from other houses in the neighborhood relative to the number of cats that you have? In other words, was your house built specifically in some point in time when 24 cats were allowed and was built specifically to accommodate 24 cats?

Ms. Dolan: No.

Mr. Donovan: If the Board were to grant the use variance in your opinion would alter the essential character of the neighborhood?

Ms. Dolan: No, it would not alter the neighborhood.

Mr. Donovan: Why not?

Ms. Dolan: Because nobody...you can't…you know, you can look at my house and you don't know that they're there. They don’t roam the neighborhood.

Mr. Donovan: Are…are there any other houses in the neighborhood that have a substantial number of cats?

Ms. Dolan: I don't know.

Mr. Donovan: Okay. When did you buy the house?

Ms. Dolan: ‘92.

Mr. Donovan: And were you aware of the zoning requirements in the Town of Newburgh when you bought the house?

Ms. Dolan: No.

Mr. Donovan: You…you did look into them at all?

Ms. Dolan: To have more than five cats? No.

Mr. Donovan: That's…that’s the criteria you need to satisfy, those four factors.

Chairperson Cardone: Do we have any other questions from the Board? Or do we have any other questions or comments? Yes, would you please state your name and go to the microphone and state your name.

Ms. Perry: Susan Perry. When if she's allowed a variance what does that entail for everybody else the neighborhood? What does it change? For the zoning laws, what do they mean?

Chairperson Cardone: I don't understand your question. It won't change; you're saying it will change the zoning law?

Ms. Perry: If she's allowed a variance, what does it mean for everybody else? If now to I…am I still living in a certain zone where this is a variance of a one-time? I guess I'm confused by what…

Mr. Donovan: Okay, well should the…should the Board elected grant the variance it would be that she's allowed to keep more than five cats at some number set by the Board. I don't know what that number would be but it would be more than five.

Ms. Perry: And, it would be forever so that if I live in a neighborhood and I want to sell my house does that harm me now because my neighbor now has a variance for 24 cats and whatnot?

Mr. Donovan: But we can't…

Ms. Perry: Whatever the amount would be...

Mr. Donovan: We can’t offer any opinion as to whether or not that would harm you.

Ms. Perry: Would I have to disclose it; I guess is that part of it now?

Mr. Donovan: I can't…I can't answer that question for you, sorry.

Ms. Perry: But you have the variances, right? And…right…

Mr. Donovan: But I can't, but I advise the Board on the legal requirements of the variance for…

Ms. Perry: So okay, Board…?

Chairperson Cardone: As our attorney has said, there are requirements in order to grant a variance and in the case of the use variance you have to meet all four criteria and a later point this evening the Board will discuss whether or not those four criteria have been met. If they have been met then the Board could grant a variance. If they have not been met, if any one of them is not met then the Board cannot grant a variance.

Ms. Perry: So you have been, explain that again, if there is four questions that have been asked, how many?

Chairperson Cardone: All four have to be met.

Ms. Perry: Oh, all right.

Mr. Donovan: And most significantly is the last one is that whether or not a variance is self-created. We have two different variances, types of variance for this Board to consider, we have an area variance which we consider most often and if the hardship is self-created that's just a fact to be considered. The Board can still grant an area variance. If a use variance is self-created the Board cannot, I'm sorry if the variance condition was created by…was self-created rather the Board cannot issue variance. So if the zoning regulations in effect at the time the house was acquired and the use commenced prohibited more than five cats then it's a self-created hardship and the variance cannot be issued.

Ms. Perry: Thank you.

Chairperson Cardone: Do we have any other questions or comments? Do we have a motion to close the public hearing?

Ms. Smith: I’ll make a motion.

Mr. Maher: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The hearing is closed.

(Time Noted - 7:47 PM)

ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:07 PM)

PATRICIA DOLAN 51 PROSPECT HILL ROAD, WALLKILL

(1-1-15.2) A / R ZONE

Applicant is seeking a Use variance for Table of Use and Bulk Requirements - Schedule 2 - Column (A) Accessory Uses #5 - Allows keeping up to 5 (total) dogs or cats over 6 months of age to keep (24) twenty-four cats in the residence.

Chairperson Cardone: On the application of Patricia Dolan, 51 Prospect Hill Road, seeking a Use variance to allow a total of more than 5 (total) dogs or cats to keep (24) twenty-four cats in the residence. And someone asked to speak that didn’t get a chance during the Public Hearing and I granted permission for that so if you would come up and identify yourself.

Mr. Favino: Good evening and thank you, my name is Marty Favino. My wife and I, Mrs. Favino live in the Town of Newburgh on Hy Vue Drive and we have known Patty Dolan for more than twenty years. What I have to say is I…what we have here is someone who is providing public service which is highly touted by people like President Obama and every President that I can remember back to Richard Nixon yet it appears to me that she may be being punished for that public service. All I ask is the Town keep in mind that Patty Dolan took these animals and took care of them many times at the request and behest of the Town of Newburgh when no one else…Town of Newburgh Animal Control officials when no one else would do it. That she’s done an exemplary job of it. These animals are well cared for. So as you make your decision this evening what I ask is that you look at possible compromises rather than simply looking at the four criteria of the application. And what I would suggest is something along the lines of a time sensitive variance that would allow the natural life terms of these cats to come to an end, some of them and allow her to adopt out the others that are adoptable. That would satisfy some of the concerns of her neighbors as they try to sell their homes they could certainly say, yes, she has a number of cats now but she is under an obligation for…to…a…reduce the number over a limited time…by a specific time. In addition to that…well that’s it…that’s the end of my speech. Please consider this and thank you once again for allowing me to address you.

Chairperson Cardone: Thank you. Okay, do we have discussion on this application? I think everyone knows what the criteria are for the use variance and that all four of these must be met. And this is the New York State Law which we must follow. Looking at the first criteria, cannot realize a reasonable return, substantial, as shown by competent physical evidence. Is it the opinion of the Board that that criteria has been met?

No Response.

Chairperson Cardone: I’ll go on to the second, alleged hardship is unique and does not apply to substantial district or neighborhood. The third, the requested variance will not alter the essential character of the neighborhood and the fourth, the alleged hardship has not been self-created.

Mr. McKelvey: I don’t think she meets the criteria.

Mr. Maher: Well, while I applaud her efforts to assist the cat population out there I have to concur with a…with John as far as meeting the requirements. It’s quite strict requirements that have to be met on all four of them before a use variance is granted and it doesn’t appear as if that’s the case currently.

Chairperson Cardone: Do we have any other comments?

Ms. Smith: How I…I understand her heart is in the right place and I understand she cares for the animals but it’s very specific as to the use variance criteria and it is not met here.

Chairperson Cardone: Do we have a motion to approve this application?

Mr. Masten: I’ll make a motion.

Chairperson Cardone: Do we have a second?

No response.

Chairperson Cardone: Do we have a motion for disapproval of this application?

Mr. McKelvey: I'll make a motion for a disapproval.

Chairperson Cardone: Do we have a second?

Ms. Smith: Based in the criteria I second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:14 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 7:47 PM)

BALMVILLE CONSTRUCTION, INC. 122 ROCK CUT ROAD, NBGH

(47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: The next applicant Balmville Construction.

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

Mr. Lytle: Good evening I’m Ken Lytle (owner of Balmville Construction) representing Balmville Construction a…we’re representing a…122 Rock Cut Road, this 6-acre parcel located in the Town of Newburgh. We’re here tonight for two area variances. There’s an existing home on there and we were before the planning board proposing a subdivision of this property. The existing home is approximately 71 feet from the centerline of the road where we need the area variance for that because currently it requires 80 feet and off from the property line its 47 feet where, you know, the County road requires 60 feet. The new home on Lot #4 we're proposing the same numbers and why want to do that is to keep with the aesthetics of the neighborhood. The properties to the south of this, I have some aerial photos here, they are very similar distance off the road. I'll pass these out.

(Mr. Lytle approached the Board)

Mr. Lytle: We figure by keeping the a…new proposed home lining up the existing homes in the area would actually match the streetscape with the road currently.

Mr. McKelvey: This a…property goes back through the wooded area in the back?

Mr. Lytle: That's correct, it extends all the way back as you get to the DEC wetlands in the back. You can see on there we have the tree buffer, the existing tree line which is currently there, yeah that's about halfway back of the property.

Mr. Donovan: And Ken, Lots 2 and 3 are…have nothing to do with this application, correct?

Mr. Lytle: That is correct.

Mr. Donovan: And the only reason I mention that is, I don't know if you’ve seen the County Planning Department referral and the Chair will read that but they have questions about the flag lots of Lots 2 and 3, I just want to make the point that those have nothing to do with the variance application before the Board this evening.

Mr. Lytle: I have not seen the letter; I know these two have nothing...

Chairperson Cardone: Okay, I'll read it at this time then. County Planning is concerned with the use of flag lots related to the application but we will comment on the subdivision layout when the application is referred by the planning board. That's something to keep in mind.

Mr. Lytle: Yes, okay.

Mr. Donovan: And, also Ken just to be clear the variance on the existing house, I mean, that's a permitted pre-existing condition that...that protection is lost because of the subdivision application so a…that’s why that needs a variance otherwise the house as it stands now is not…is not going to look any different before the variances granted then after.

Mr. Lytle: That's correct.

Mr. Maher: Okay, on Lot #1 the existing…

Ms. Gennarelli: Mike can you pull your mic in?

Mr. Maher: I'm sorry.

Ms. Gennarelli: Thank you.

Mr. Maher: The plan shows a rectangular house but on the pictures submitted there's a…a front porch is that taken into consideration as far as the setbacks go?

Mr. Lytle: A…yes, it was.

Mr. Maher: I take that back, it's on the side, my mistake.

Mr. Lytle: Yeah, the front has a little concrete stairway.

Mr. Maher: Yeah I'm sorry, I'm looking at…I'm looking at the picture I thought that was the road frontage driveway.

Mr. Lytle: Thanks.

Mr. McKelvey: It's true all these houses are close together there too.

Mr. Lytle: Yeah, we figured actually the proposal for Lot #4 setting it back another 20 some feet would actually look kind of funny driving down the road that's why were actually going for this at the same time.

Chairperson Cardone: You say the house on Lot #4 is directly on line with the house on Lot #1?

Mr. Lytle: That is correct. And you'll see actually during the subdivision with the County right-of-way we’re actually giving them the first 25 feet of our property to make it consistent with the County.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public? Yes, please step up to the microphone and identify yourself for the record.

Mr. Weikel: Jeff Weikel, I live at 152 Rock Cut Road, just north of your parcels. Can I ask how is it determined who the letters are sent to? Because my neighbor, just north, right next to me said that they didn't receive one.

Mr. Lytle: Betty, do you want to address that?

Ms. Gennarelli: Okay. Yes, the assessor's office makes up the list and it was 500 feet from the edges of the property lines. Whatever the property lines are its 500 feet from that and they make up the list and give it to us to give to the applicant.

Mr. Weikel: Okay. A…I…I noticed the parcel…what you're doing is up against the parcel it is basically next to me, it's a vacant lot a…

Ms. Gennarelli: Could you just get a little closer to the mic?

Mr. Weikel: Sorry. And there's a wetlands there, are you affecting that…is that the…I think that that's declared a buffer zone or something?

Mr. Lytle: Yup, you see actually if you walk into the woods there are some orange flags that are hung there by the DEC. The DEC was out there and there is a buffer that extends actually from that property actually a little ways into our property and that's already been approved by the DEC for that house.

Mr. Weikel: A…one other thing I was going to…all right so you’re also clearing property to the back…?

Mr. Lytle: No, we’re not…I’m not clearing anything past the existing tree line that's already been disturbed. We're not touching anything into that. After that it almost actually turns into water where the wetlands are so there's nothing happening down there at all. And you see we have 100 foot buffer and our houses and septics and everything else are proposed to be in front of the 100 foot buffer. Okay?

Mr. Weikel: The only other question I had is…are you bringing in any fill? Just concerned about it disturbing the water table and things.

Mr. Lytle: We’re not proposing any fill at this time, I mean, there might be a little regrading around the house as you dig out for foundation but besides that no fill will be brought it, no.

Mr. Weikel: That's all I have. Thank you.

Chairperson Cardone: Okay. Do you know if there will be a Public Hearing with the planning board?

Mr. Lytle: I'm assuming so yes. There usually is yes.

Chairperson Cardone: Oh, these are…these are issues that could be addressed at the planning board level.

Mr. Weikel: How will I find out when that happens? Is there a way...

Mr. Lytle: You'll be notified about that also. Same (inaudible)…

Chairperson Cardone: Right.

Mr. Weikel: Thank you.

Chairperson Cardone: Okay, you're welcome. Do we have any other questions or comments from the public?

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

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:59 PM)

ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:14 PM)

BALMVILLE CONSTRUCTION, INC. 122 ROCK CUT ROAD, NBGH

(47-1-28.2) R-1 ZONE

Applicant is seeking area variances for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision.

Chairperson Cardone: On the application Balmville Construction, 122 Rock Cut Road, seeking an area variance for the front yard setbacks and the 80-foot setback from the centerline of a County roadway to build a new single family on Lot #4 and for the existing single-family residence on Lot #1 of a proposed 4-Lot subdivision. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I think what they're looking for with that house is to keep it in line with the rest of the houses on Rock Cut Road. I'll make a motion we approve.

Ms. Smith: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT:

JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:15 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 8:00 PM)

THOMAS & BRIE MURPHY 13 FLAMINGO DRIVE, NBGH

(90-5-12) R-1 ZONE

Applicant is seeking an area variance for a pool shall be located at least (10) ten feet from any lot line to keep a prior built 24 ft. round above ground pool.

Chairperson Cardone: Our next applicant Thomas and Brie Murphy.

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

Mr. McKelvey: I just like to refer that I am…I live in the mailing zone. I've seen you around the neighborhood but I really have never met you.

Chairperson Cardone: Could you identify yourself for the record?

Mr. Murphy: My name is Thomas Murphy, I live it 13 Flamingo Drive, Newburgh, NY 12550, my wife Brie. We are requesting a variance on a pre-existing pool for the house that we closed on in June of last year. We look to use this (inaudible) permit going through the proper permit system after we receive a variance that says we’re allowed to a…keep the pool in its existing location.

Mr. McKelvey: I will say at one time it would have been hard to find that pool…you struggled, I know, with the lawn.

Mr. Murphy: It took me two days to weed whack it to knock that down. (Inaudible)

Mr. Maher: Is the…is the fence yours?

Mr. Murphy: Yes, and I believe my property line is another, depending upon the location along the fence line its 12 inches to 8 inches away from on the other side, the opposite side of the fence.

Ms. Smith: Your property goes beyond the fence?

Mr. Murphy: Yes.

Mr. McKelvey: I wouldn’t be sure of that.

Chairperson Cardone: And this was done without a Permit?

Mr. Murphy: (Inaudible)…prior to my purchase without a Permit.

Mr. McKelvey: I understand the real estate woman whoever it was told you you didn’t need a variance. Is that true?

Ms. Murphy: They didn’t…they did not know that we would need a variance? We didn’t find out until we got the a…survey done.

Mr. McKelvey: Okay, I just know what my neighbor had mentioned. I guess he called the…

Mr. Murphy: Yes and the Town asked us to cover it or tear it down so no one would get hurt or (Inaudible).

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

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:03 PM)

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ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:15 PM)

THOMAS & BRIE MURPHY 13 FLAMINGO DRIVE, NBGH

(90-5-12) R-1 ZONE

Applicant is seeking an area variance for a pool shall be located at least (10) ten feet from any lot line to keep a prior built 24 ft. round above ground pool.

Chairperson Cardone: On the next application Thomas and Brie Murphy, 13 Flamingo Dr., seeking an area variance for a pool which is located closer than 10 feet from the lot line to keep a prior built 24 foot round above ground pool. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I think it's just going for the variance to correct what's should be corrected, that the pool was there when he bought the house.

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

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:16 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 8:03 PM)

BALLINCURRY BUILDERS INC. 10 KINGS HILL TERRACE, WALLKILL

(3-2-13.2) A/R ZONE

Applicant is seeking an Interpretation of 185-54-A-1 rear yard requirements and/or an area variance for the rear yard setback to build a single family residence.

Chairperson Cardone: Our next applicant Ballincurry Builders Inc.

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

Mr. Yanosh: Good evening.

Chairperson Cardone: Yes please identify yourself for the record.

Mr. Yanosh: My name is Daniel Yanosh. (Inaudible)

Ms. Gennarelli: Can we just switch back to the other microphone?

Mr. Yanosh: How’s that? Is that better? Okay.

Ms. Gennarelli: That’s good.

Mr. Yanosh: This is Walt Heenan the (inaudible) of Ballincurry Builders. A…he bought this lot in April of 2013 in the spring a…from Ray Williams a…put a house on spec house a…the survey for him and the proposed house location that shows on the a…proposed subdivision…a filed subdivision map with a side yard of 46.9 and 60.7. The house being situated in the middle of the lot…a…when we went to build the house he approached me and said he’d like to move the house a little bit to the left a…a little to the north toward the Aviles lot and put the driveway on the other side of the prop…of the…of the house. I looked at it and said there are 30 and 50 foot side yards, can only be…can only be switched around, one side the 30 or the 50 doesn’t matter which side of the lot they’d be on because (inaudible) the frontage will be on Kings Hill Terrace not off of 300. We do have more footage on 300; on the filed map it shows we have no access to 300. We will not get access off of that in the first place so we figured our front…I figured our frontage was off of Kings Hill Terrace. So the 30 and the 50 both were 80 and the backyard would be 50 behind the house. A…we put the foundation up and the foundation turned out to be 34.8 feet from the side yard which is in my mind is okay with the zoning because it is 30 feet from the side yard in my opinion not thinking that…not knowing that the Building Department says that it is…that this is definitely the backyard since it fronts off of 300, the backyard off of Route 300. A…looking at it is it a corner lot? Not necessarily even though there’s two frontages, Kings Hill Terrace and 300, it’s on the corner a…what they’re looking at…they’re saying is we should have 50 foot on that side there. What I’m looking at to say is hopefully the zoning will give us a variance to say off of Kings Hill Terrace, one side is 30, the other side is 50 and we’ll be okay with what the zoning would be.

Chairperson Cardone: Well that’s considered a front yard actually, considered as two front yards.

Mr. Yanosh: Correct, but if you look at the zoning…

Chairperson Cardone: But the original plans…Jerry, I think you could answer this; the original plans did have it? The 50 feet…the original plans?

Mr. Canfield: I think Mr. Yanosh indicated that the original plan did comply. However, I should add that the original building envelope a…that was on the subdivision and the subdivision was approved a…appearing to show just one front yard on Kings Hill Terrace. Thank you Bet. A…as Mr. Yanosh also indicated it does have two front yards because of the flag lot situation. There’s only a 70 feet, what did you say 104 feet…on 300 which does not permit access to the property but by definition of 185-3 of a front yard, that’s where Mr. Mattina has…has come up with this interpretation a…a Building Permit was issued complying a…but now they had site conditions that warranted moving the house a…now they’re…they’re 16 feet short so that’s why also we referred it as an Interpretation and/or variance for the Board’s decision is on…on this scenario.

Mr. Donovan: Now Jerry, when I look at the a…the definitions in terms of a front yard it doesn’t make any reference to access.

Mr. Canfield: That’s correct.

Mr. Donovan: So…does that…but it also doesn’t…an unoccupied ground area fully opened to the sky between the street line and a line drawn parallel thereto…that means any street line?

Mr. Canfield: That’s correct. I think the phrase or the utilization of access, I don’t want to speak for Mr. Yanosh, but a…is just to reiterate to the Board that it’s not as if they’re using two points of access to the lot. I don’t want to speak for Mr. Yanosh but I thought…I’m assuming you meant…

Mr. Yanosh: Right, yeah you’re correct and in fact our frontage is off of Kings Hill Terrace and that’s what we’re looking at in the beginning all the way through not even looking at 300. Even though my subdivision plan does show, which is surprisingly, the 50 foot is on the…what would be a rear yard off of 300 which is something that I drew, back you know when a the subdivision plan, I think was just keeping the driveways on the same side with Aviles lot to the north of us, keeping them separate that way a…to make it…to make it look better that way. That was the only reason it was done that way. I mean, I could have had them switched like in the subdivision plan. I really don't think anybody caught it back then. Nobody really asked me whether that was a front yard or rear yard a….just so they caught it now we were going through with the…after the foundation was poured.

Mr. Donovan: And Jerry, just a point of clarification for me I'm looking at the a…the notes from Code Compliance. It indicates that the lot has two front yards and two rear yards. Somewhere in my brain it's rattling around that if you have two front yards the Building Department is then…with the other two yards designates one to be one to be a rear and one to be a side. So this is the first time that I've seen two rear yards. Do I get to learn something new tonight?

Mr. Canfield: You're so intuitive, I'll tell you. That's why you're the attorney.

Mr. Yanosh: And you are true in the definition of the corner lot you can deem one of them as a side and one as a rear if you do have a true corner lot.

Chairperson Cardone: And that brings up what the County…

Mr. Donovan: But I want Jerry to answer my question. Especially if he's still going to say I'm right because that...

Chairperson Cardone: That would be the second time? In how many years?

Mr. Canfield: Actually, what we’re looking for again that's the reason for the interpretation is basically to set a precedent because we always have this question. A…generally we're faced with two front yards and if the structure is in the front yard that's the issue at hand. But then what’s still on the table and is…is not seen a…is what is a rear yard, what is a side yard? I've seen it both ways. So actually we are looking for some guidance with this the kind to give us an interpretation and we can move forward from this point.

Chairperson Cardone: But I think we've had other cases where it has been what obviously looks like a side yard and it was counted as two front yards. We had one recently.

Mr. Maher: But did the…the a…you say the planning board or the applicant said the planning board designated one...the Kings Hill side as the front yard? That was designated by the planning board?

Mr. Canfield: The planning board doesn't have the authority nor do they designate the yard a…designations, that’s strictly a zoning a…requirement.

Chairperson Cardone: Okay. Because the comment from the Orange County Department of Planning a…suggests…they recommend that we confirm that was deemed a rear yard at the time of subdivision but you're saying that that could not be because…

Mr. Canfield: At the time of subdivision it was a moot point because it complied. The generic building footprints that’s were…were depicted complied whether it was a rear, a side a…the 50 feet was there so it wasn’t an issue. The only thing that a real sharp person would pick up is the building envelope that was depicted on the plan which would be the dotted line that indicates a…the buildable…I shouldn’t say buildable area because that means something else. But that depicts the building setback lines. Okay? So when they apply for a Building Permit structure must fit within that dotted line somewhere on that site. But going back to the County’s comment, at the time back in 2003 I believe it was of the subdivision, the building footprints complied with two front yards and if you called a rear yard it complied. So there was no reason for zoning variance or interpretation at that time.

Chairperson Cardone Right.

Mr. Canfield: It's now because the foundation has been moved and now we encroach that 50 foot requirement and now we’re down to 34.8, 34 feet 8 inches.

Mr. Maher: Let me ask you a question, Jerry. On…on…on the map that was a…submitted with the application obviously it shows a 50 foot to the a…to the north and 30 foot to the south as far as the setbacks go, correct?

Mr. Canfield: You lost me Mike.

Mr. Maher: On the…on the map itself…on the what was with the Building Permit, it shows the setback, the envelope a 50 foot setback on the north side and 30 foot on the south, 50 and 30 is the requirement for the area.

Mr. Canfield: Right.

Mr. Maher: If that was…say that this wasn’t in the play of on Route 300 there, that piece didn’t exist there. With the applicant be able to flip-flop the house if he still meets the 30 and 50?

Mr. Canfield: Yes, that's correct. If…

Mr. Maher: So in essence…

Mr. Canfield: Let me just clarify, if 300 it wasn't a flag lot…

Mr. Maher: Right.

Mr. Canfield: …it would be a moot point.

Mr. Maher: Right but my question is…

Mr. Canfield: It complies.

Mr. Maher: …that if this was submitted as again with the 50 foot on the north and 30 foot on the south if he wanted to flip it as he…as he basically did, would it be an issue because it…technically outside the envelope that was submitted?

Mr. Canfield: No, because it would still comply, again, keeping with the understanding that 300 is not an issue anymore.

Mr. Maher: Okay. No, I just wanted to make sure that you…that you…that it wasn’t an issue because as long as you meet the requirements how the envelope is set up should make a difference from side to side based on the…on the a…where you choose, okay.

Mr. Yanosh: In the final subdivision map we do show a rear yard setback for a lot for a proposed of 267 feet on the…on the chart itself. A…the one side being a…46.89, both sides being 107 which is probably what it is right now it's just shifted back and forth. A…so again the…the plan did show a rear yard of 267 which would've been a rear yard, you know, fronting off of Kings Hill Terrace back that way.

Chairperson Cardone: Okay.

Mr. Maher: So let me ask you one question then. Because it shows currently on a…well…that’s on the existing…that’s on the existing survey? The 267?

Mr. Yanosh: No, no, the proposed on the sub division.

Mr. Maher: Because the proposed on the application is 202.

Mr. Yanosh: Right. We moved the house back.

Mr. Maher: Okay.

Mr. Yanosh: Yeah.

Mr. Maher: Just wanted to know.

Mr. Yanosh: Further off the road.

Mr. Donovan: Jerry, when you say interpretation what specifically are you seeking an interpretation of?

Mr. Canfield: With two front yards what is the rear, what is a side?

Mr. Donovan: And, you're looking for the Board to set a precedent?

Mr. Canfield: I think if the Board should choose to approve this application a…you set a precedent.

Mr. Donovan: Well…

Mr. Canfield: Because then we’re…we’re looking at both…both front yards and you would be viewing it that it is a rear yard. Okay, so that would give us a sense of direction. If by chance you say, well, we're not considering that a front yard than it's…that's your interpretation and it becomes a moot point.

Mr. Donovan: Right but that would if we…if the Board would be inclined to do that it would be kind of these limited to…to these special facts which is not a…as opposed to, you know, a house that has road in front of it and a road behind it and it's a square because that...that in my mind anyway would be…would be different. This is kind of unique in that we have a flag lot with no access on the pole.

Mr. Canfield: That's correct, there's that word again access.

Mr. Yanosh: Again, it’s something I never looked at when we…when we through the subdivision, never really looked at when we…we were plotting the house out. I said okay, we have a front yard; the yard goes off of a…Kings Hill Terrace never really looking at 300 as access or any kind of front yard at all. A…really probably…you know to…it’s true if you did have access off of 300 and that was your only access, flag lot, you’re a 100% correct. That backyard there would be a backyard but a…it wasn’t…our access is off Kings Hill Terrace that’s where our front yard comes in, front, back, two sides. That’s what we looked at.

Mr. Canfield: I have a question for Mr. Yanosh. What is the purpose of that? Is that just to make up the square footage requirements for the lot or…?

Mr. Yanosh: What was that, what do you mean?

Mr. Canfield: The flag.

Mr. Yanosh: The what?

Mr. Canfield: What is the purpose of it?

Mr. Yanosh: The purpose of the….?

Mr. Canfield: Yeah. Why couldn’t have we originally have just squared this line up? You know what I mean? What’s the purpose of that?

Mr. Yanosh: A…the property has been that way for years a…right now what he’s looking at doing hopefully is talking to one of the neighbors, we’ll bust that piece of property on 300, do a little lot line change and selling it to him. That was part of the Williams’ property for years.

Mr. Donovan: Then he wouldn’t need a variance. You should have done that first.

Mr. Yanosh: We should have done that first. We should have asked that question before I figured it was just…you know, I think to my...my mind it was a front yard off of Kings Hill Terrace and 300 really didn’t have anything…issue with our lot because we don’t have access from there, we have no frontage on there, we can’t get out to 300 from that piece of property and we figured this was the…probably the cleanest way to go right now.

Mr. Canfield: I agree.

Chairperson Cardone: Do we have any other questions from the Board? Any questions or comments from the public? Yes, please step up to the microphone and identify yourself for the record.

Ms. Velez: I’m Jennifer Velez and my property is the north. I just want a clarification, how many feet is the setback? And are there surveyor marks? Because I haven’t seen any stakes or anything.

Chairperson Cardone: Do you have…if you have the plan you can show her.

Mr. Yanosh explained the site plan to Ms. Velez.

Ms. Velez: Thank you.

Chairperson Cardone: Any other questions or comments?

No response.

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

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

Ms. Smith: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 8:19 PM)

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ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:16 PM)

BALLINCURRY BUILDERS INC. 10 KINGS HILL TERRACE, WALLKILL

(3-2-13.2) A/R ZONE

Applicant is seeking an Interpretation of 185-54-A-1 rear yard requirements and/or an area variance for the rear yard setback to build a single family residence.

Chairperson Cardone: On the application Ballincurry Builders Inc., 10 Kings Hill Terrace, looking for an Interpretation or variance for the rear yard requirements for the area variance rear yard setback to build a single family residence. And the interpretation there was simply that these were two front yards, is that not correct?

Mr. Donovan: As I understand it.

Chairperson Cardone: And it is my interpretation that it is two front yards. Do we have any other comments on that from the Board?

Mr. Maher: If the interpretation is for two front yards than the variance is not needed, correct?

Chairperson Cardone: The variance is needed, yes.

Mr. Maher: So we’re going to view it as...

Chairperson Cardone: As we have with many other things that have come before us in the past, if there is and it doesn't matter if there is an access to the road or not. If the property is…the property line is where the road is then it is a front yard.

Mr. Donovan: Then we’re viewing it as two front yards this…making this where that house got shifted to if you will a rear yard, with a violation of the rear yard setback.

Chairperson Cardone: Right. All right then we will have discussion on the variance and do I have a motion for approval on the variance? Or do I have any discussion on the variance? This is a Type II Action under SEQRA.

Mr. Maher: I'll make…I'll make…

Chairperson Cardone: Mike, is there something disturbing you?

Mr. Maher: I'll make a motion just…just…it's a…I'll make a motion to approve the a…variance for the a…rear yard setback based on the two front yards.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:18 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 8:19 PM)

JOHN BARRY 19 LENA LANE, NBGH

(17-3-19) A/R ZONE

Applicant is seeking area variances for maximum allowed square footage of accessory structures, the maximum allowed storage of (4) four vehicles and the maximum allowed height of accessory structures to build a detached garage.

Chairperson Cardone: Our next applicant John Barry.

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

Chairperson Cardone: Please identify yourself for the record.

Mr. Barry: Yes, good evening everybody, my name is John Barry. I reside at 19 Lena Lane in the Town of Newburgh. And I would like to build a detached garage on my two-acre property and I’m requesting an area variance for the square footage and also the height. Now the Notice of Disapproval of the Building Permit Application and the Notice of Hearing also include excessive vehicle storage capacity but it is not my intent to store more than four vehicles in the garage. I a…do, however, I do understand that the…that determination is based on, simply based on the calculation of square footage divided by the size of a typical a…parking space. A…if I may like to hand out a depiction of the garage and how I plan to set it up?

Chairperson Cardone: Yes.

Mr. Barry approached the Board

Mr. Barry: So the a…purpose of the garage is a…simply additional storage and a…and a work area. I would like to get my…my truck and…and my excavator out of the weather plus I need a…more storage for my lawn and a…and…and pool…and pool stuff. A…I really don't like the look of clutter in the yard a...and things covered in tarps over the winter. So I’m looking for the initial storage to put everything a…inside. A…I also show in there storage for a…for a boat or a camper but at this time I have…I have neither. So that would be for a…future purposes. A…there will be no plumbing a…there’s no living area, I’m not running a business a…there will be no storage, no access to the attic. It will have full a…trusses up above a…that's…that’s my intention. As far as the a…the square footage, I originally had plans drawn…drawn up for a 1200 sq. ft. garage which was a thirty-five, forty garage but then when I learned of the thousand square foot a requirement I reduced it to 994 to a…comply with that. What I failed to realize was that you would also consider the fact that I have a 10 x 14 shed. I…I really can’t knock it down to the 860 sq. ft. a…that would be almost a 30% reduction from what I had originally planned for and a…as far as the height is concerned I'm just trying to match the look of my attached garages on my house a…with the same wall height and the same a…roof pitch a…plus I need the a…12 foot high a…ceilings for a…to be able to fit the excavator a…plus to put a…a vehicle lift in there to do a…vehicle maintenance. A…so that’s a…that’s the…the details on what I’m looking to a…to a…to build and requesting your a…your acceptance of a variance.

Chairperson Cardone: And you stated you would have no plumbing?

Mr. Barry: Correct, no plumbing.

Chairperson Cardone: Electric?

Mr. Barry: It will have electric and I…I probably will have some heat so I can work in there over the winter but a…but no plumbing.

Chairperson Cardone: Are you going to have a door in the back?

Mr. Barry: There will be two garage doors in the front and there will be a…a side access door as well.

Chairperson Cardone: Oh, because I was wondering how you were going to get that excavator out.

Mr. Barry: A…I wasn't planning on a side garage door just a side a…what do you call it…access door a…but a…it…its fairly maneuverable.

Chairperson Cardone: And you will not be conducting a business from this location?

Mr. Barry: No, I will not be conducting a business from at that location.

Chairperson Cardone: Do we have questions from the Board?

Mr. McKelvey: I think if we did approve it with the size and he's not going to have the boat or the camper we have to specify no more than four vehicles.

Mr. Barry: Yeah, I do not plan on more than four vehicles obviously but if you want to specify that as a stipulation that would be fine.

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

Mr. Donovan: And I'm sorry Jerry, can I just ask you a question? The information from Code Compliance indicates garage height is 22 feet and grade could cause 24 foot from the road and I'm just trying to reconcile that with the definition of building height which is a vertical defined as the vertical business measured from the average elevation the finish grade along the side of the structure, fronting on the nearest street to the highest point of such structure. If you know is that 22 feet or 24 feet according to…according to the definition?

Mr. Canfield: I don't know.

Chairperson Cardone: Wouldn't that be down below…where you're planning to put the garage is below the street level?

Mr. Barry: Yes it is below the street level.

Mr. Maher: And…and it slowly…it slopes away from the street as goes to the back?

Chairperson Cardone: Yes it does.

Mr. Barry: Yes it does.

Chairperson Cardone: Nice location.

Mr. Barry: Oh, thank you.

Ms. Smith: It is, nice and private.

Mr. Barry: I'm going to be keeping many of the trees that are there, simply clear what I need for the…for the building so it’ll be hardly noticeable from the street.

Mr. McKelvey: Yeah, that's just what I was going to say.

Chairperson Cardone: Right.

Mr. Donovan: Now Mr. Barry, tell the truth did you research all the decisions of the Board regarding accessory buildings?

Mr. Barry: Yes I have.

Mr. Donovan: I could tell the way you answered the questions before they were asked.

Chairperson Cardone: He did his homework.

Mr. Barry: I tried to.

Chairperson Cardone: We did send this to the County but they did not send back a recommendation because it really didn't need to be referred to them. Anything else from the Board or the public?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 8:27 PM)

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ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:18 PM)

JOHN BARRY 19 LENA LANE, NBGH

(17-3-19) A/R ZONE

Applicant is seeking area variances for maximum allowed square footage of accessory structures, the maximum allowed storage of (4) four vehicles and the maximum allowed height of accessory structures to build a detached garage.

Chairperson Cardone: On the application of John Barry, 19 Lena Lane, seeking area variances for the maximum allowed square footage of accessory structures, the maximum allowed storage of four vehicles and the maximum allowed height of accessory structures to build a detached garage. This is a Type II Action under SEQRA. Do we have discussion on this application? I think one of the things that was mentioned is that there would be no more than storage of four vehicles on this.

Mr. Donovan: And no business will be conducted.

Mr. McKelvey: And no business right.

Chairperson Cardone: Right. Do we have a motion with those conditions?

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

Ms. Smith: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:19 PM)

ZBA MEETING – JUNE 27, 2013 (Time Noted – 8:27 PM)

ROBERT WHITE 4 SOUTHEAST COURT, WALLKILL

(2-3-28) R/R ZONE

Applicant is seeking an Interpretation and/or a Use variance to build a ground mounted solar array system on the property.

Chairperson Cardone: Our next applicant Robert White and this was held over from May 25th.

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

Chairperson Cardone: State your request please.

Mr. White: Good evening, I'm Robert White, I'm here for a variance for a…to construct a ground mounted solar array.

Mr. Donovan: Well let me ask are you here for a…

Mr. Calardo: You know I'm Matt Calardo; I am with Lighthouse Solar, the contractor. We are seeking a use variance or an interpretation to install a ground mounted solar array in Mr. White's side yard. I hope everyone has the documents I submitted as requested during our last meeting.

Ms. Gennarelli: Matt could you stand closer to the, that's good, thanks.

Mr. Calardo: As you'll see here a…I specified the overall a…footprint of the array for you, I'm giving you a cross-section view of it which shows you the overall height of the array and the back being 12 foot, 7 inches, 7 7/16 inches. I have shown the array to be…the back side of the array to be parallel to the south side of Mr. White's home and to be 25'6" from the home. I've shown you a…graphic example of what a…some vegetative screening might look like and I've shown you have the array is laid out in Mr. White's side yard. If you visited the site you would've seen this…these markings on the ground there and I also in on a…document number four show you Mr. White's house from the street and what the curb view of the home and the proposed array would look like and then a…page number five shows you a similar array and a…similar equipment to the one we're proposing to construct in Mr. White's side yard. This example is in Saugerties, New York it's the same a…racking structure and ballasted ground mount.

Mr. Donovan: And as I recall the issue from the last meeting was whether or not the a…construction of this solar array was a…an accessory structure a…so that's a request for the interpretation as to whether or not this is a permitted accessory structure or if in fact the solar array is a use, the use not being a specifically listed use that would require a use variance. I believe that was the issue that we…and your opinion as to whether or not it's an accessory structure or a separate use requiring a use variance is…?

Mr. Calardo: Well I believe that as discussed in the last meeting a…your opinion was that you could not rule on a use variance that you needed interpretation and that you were going to consult with the Town Board and the planning board and see if they had an opinion regarding this matter so I'd like to know if that has occurred and if they have comments.

Mr. Donovan: Well just…just for clarification I think what we indicated to you is there was a…perhaps another avenue that perhaps you should try to pursue or that you may wish to pursue which would be an interpretation that this is an accessory structure and therefore if it was in the permitted side yard and far enough from your neighbor’s property would be allowed, whereas if it was a use variance there are specific criteria that that a…you would need to prove in order to receive a use variance from this Board. The Board then decided to reach out to the Town Board and the planning board to see if they could offer any comments or wish to offer any comments a…and I…I…we may have something from the planning board. I don't know that we have anything from the Town Board.

Ms. Gennarelli: I have not received anything myself.

Chairperson Cardone: I have not received anything although I had understood that we would receive something from the planning board.

Mr. Donovan: My understanding is that the planning board did undertake a discussion about this specific issue and their opinion was going to be that this is required some legislative input as opposed to planning board input. Jerry, I don't know if you are at that meeting or not at that meeting.

Mr. Canfield: Yes, I was at that meeting.

Mr. Donovan: And, is that an accurate summary of what transpired?

Mr. Canfield: I have a copy of a…the correspondence to the Zoning Board from the planning board attorney. I don't know if all the Board Members have that.

Chairperson Cardone: I do not have it, no.

Ms. Gennarelli: We did not receive it.

Mr. Canfield: I'm sorry?

Chairperson Cardone: I do not have it, no.

Ms. Gennarelli: We did not receive it.

Chairperson Cardone: And I checked my e-mail before I left tonight.

Mr. Canfield: June 25th it's dated. If you'd like me to read it, or…?

Chairperson Cardone: Please.

Mr. Canfield: Okay. It's from a…the planning board attorney, Mike Donnelly, Dickover, Donnelly, Donovan & Biaggi, attorneys. It's dated June 25, 2013. A…Town of Newburgh Zoning Board of Appeals: regarding the White solar panel application. Members of the Board I write to you at the direction of the Town of Newburgh planning board in order to respond to the letter of David A. Donovan, Esq., dated June 11, 2013. The planning board took up your request for comment and report on the White solar panel application now pending before you during its meaning of June 20, 2013. The planning board has authorized me to for to you as follows. The planning board notes that this matter is not within the jurisdiction of the planning board and therefore the planning board has no comment on the specifics of the application before you. However, giving the likelihood that an application of this sort will be seen again the planning board recommends that the Town Board consider regulating large-side…large-size side yard solar panel arrays such as the one proposed here. The Town Board can decide as, its…is its legislative prerogative where such equipment may be located and what specific requirements-buffering and otherwise-should apply to the installation and operation of such equipment. At the same time, the Town Board may wish to consider regulating other forms of alternative energy production equipment such as wind turbines. The planning…the planning board wishes to thank you for referring this matter a…to it for comment. Very truly yours, Michael H. Donnelly

Chairperson Cardone: Thank you Jerry. Do we have any comments from any of the Board Members?

Mr. McKelvey: I think I have to agree that it's got to be a Town Board matter because it's not included in the zoning.

Mr. Donovan: But for our purposes this evening, our…our…we need to make a determination on the application before us and that is whether or not this is an accessory structure or whether it's a separate use. Now if I…if I can, I'll just read the definition of accessory and then the definition of structure maybe that'll give us some guidance at least as to where we are right now. A structure (Accessory) is defined as a term applied to or use was structure clearly incidental to or subordinate to the principal building or permitted use on the same lot. The definition of the structure is a little more lengthy and that is as follows, anything which is constructed or erected which requires a location on the land or attachment to something having such location including but not limited to the following: signs or billboards, fences, walls other than those less than 4 feet, radio and television antennas except for such antennas installed on the roof of the building…Jerry, number five, you’re going to have to help me…pergolas? Jerry and I could've pretended I knew that, right? Pergolas, porches, outdoor bins, tool sheds, carports, equipment and storage buildings or sheds, swimming pools, swimming pool filter pads, tennis courts, dog houses or sheds and children's tree houses, clubhouses, dollhouses, and playhouses and structures all of which are over 10 feet in height which I believe this is proposed to be, right?

Mr. Calardo: Yes sir.

Mr. Donovan: And that it also goes on tents, lunch wagons, trailers, dining cars or similar structures on wheels or other supports used for business or living purposes.

Chairperson Cardone: Well I think in the past if it was not listed then we have ruled that then it is not permitted.

Mr. Donovan: Well I think the question is whether or not it's a use. I raise the issue last meeting if I heated…if I heated my house by oil and I had an above ground oil tank in a shed in my side yard is that…is that a use?

Chairperson Cardone: I'm thinking back to the…the wood burning structures…

Mr. Donovan: Which were actually a…we never decided that because it was a moratorium adopted by the Town Board before we had the opportunity to…

Chairperson Cardone: Because the…

Mr. Donovan: …to decide that and then they never came back to us.

Chairperson Cardone: Because the Town…right, because the Town Board really had to make a decision on that. As I think they do on this also.

Mr. Calardo: If I may? A…I would classify it as a satellite dish, you're getting…you’re using, you know, your area we received signal from wherever they're…they’re putting the TV in your house. It's almost the same thing but using sunlight instead of radio waves or TV waves.

Chairperson Cardone: I understand that but I feel there have to be guidelines. If something like this that we don't have listed a…and in this case it's 52 feet, that's a very large area. And I would think that then we would have to have a…some kind of limits which is not up to this Board to make that ruling or to make those laws to say it would have to be a certain size in a certain location, a certain height.

Mr. Calardo: We would argue that this is a structure. I didn't recall hearing whether or not a green house is listed as a structure but this may be very similar to that. A…also during the last meeting you referred to the zoning for the satellite Earth stations, 85 – 40 and a…the satellite Earth stations shall be subject to all regulations pertaining to accessory buildings. In cases where the only technically feasible location for the structure is a front yard or mounted on a building a Special Permit shall be required from the ZBA after the Board determines your five criteria. So this structure will not be located in a front yard, it's in a side yard.

Mr. Maher: Jerry, if…if the applicant wanted to install geothermal in a side yard do we require a Permit?

Mr. Canfield: He wanted to install what again?

Mr. Maher: Geothermal heat.

Mr. Canfield: Yes.

Mr. Maher: So he'd be required to get a Permit to drill the wells and install the…?

Mr. Canfield: Yes, it's an alternative heat source, yes.

Mr. Maher: Is it allowed in the side yard?

Mr. Canfield: It’s a well; I wouldn't consider it a structure it's not above ground. It's subgrade.

Mr. Maher: Now if there is a pump on the side of the structure to facilitate that, is that…do you have any control over where that's placed?

Mr. Canfield: Manufacturer’s guidelines would dictate where it's placed, however, if it's affixed to the structure VSA conduit then it becomes part of the structure, follow me?

Mr. Maher: Is this affixed to the structure? In any way?

Mr. Calardo: There would be an underground conduit with electrical conductors in it and that would be the only physical connection to Mr. White's home the structure that would be underground. Not visible and there’s no moving parts on the ground mounted solar array just glass solar panels and aluminum racking.

Mr. Canfield: I…I got a question. A…just to jump ahead a little bit but I’m curious on photo number three that you submitted with the green of…that screening that you are proposing…

Mr. Calardo: Yes sir?

Mr. Canfield: What would that be made of?

Mr. Calardo: A…to facilitate the graphic design a…this could be any manner of vegetation, it could be conifer or deciduous a…so it's really up to I guess, your Board to make a recommendation of what you would like to see regarding vegetative screening or give us some more guidelines on what sort of screening you would…would require. The purpose of this illustration as discussed during the last meeting was to indicate that the screening could not exceed certain heights on certain aspects of the array in particular the South side which will see is the low side of the array. It wouldn’t be feasible for the array to function if that vegetation were higher than the bottom of those modules. It would affect the performance and therefore create a greater economic hardship for Mr. White because it would degrade the production of the solar array so...

Mr. Canfield: What's here though is…is generic in nature then and your open for…

Mr. Calardo: Then, well yes...

Mr. Canfield: ...your open for discussion, you have nothing in mind specifically?

Mr. Calardo: A…yeah, I mean our proposal would be to use a vegetative screening and if you went to Mr. White's home you would see that he does have some deciduous trees and plantings coming off of the South side of the house along that that aspect of the South. You can see that's…

Mr. Canfield: My real concern was how you get 12 foot high trees in this shape and where do you get them?

Mr. Calardo: A…they’re probably pretty expensive but they sell them somewhere.

Mr. Canfield: Good answer, I was just curious.

Mr. Calardo: And you'll…you’ll…you’ll notice on page 4 a…the JPEG indicated is number 103, you'll see you there already is a deciduous tree growing there and that would a…you know, we could just continue that line of vegetation to the South and expand upon that and begin the screening process.

Mr. Canfield: And that would limit though the…the functionality of the panels up?

Mr. Calardo: No, because if you go back to image 4 you'll see that I specified that on that eastern side of the array that the…the box hedge is contoured to match the contours of the solar array but then on the backside, you know, it could be as high as you like. As…as that box hedge a…travels to the South and North it will get higher.

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

No response.

Chairperson Cardone: Any other questions or comments from the Board?

Mr. Calardo: I'd also like to state that our company Lighthouse Solar since 2010 has a…successfully installed in the Town of Newburgh six solar projects, four of those commercial two of those residential.

Mr. McKelvey: They are on the buildings though, right?

Mr. Calardo: Yes, sir.

Mr. Maher: Were variances required for any of those applications?

Mr. Calardo: They were not.

Mr. Maher: Were they larger or smaller than this application?

Mr. Calardo: Larger, most of them, the two residential ones were smaller.

Ms. Smith: Roof mounted.

Chairperson Cardone: Yes.

Mr. Calardo: Roof mounted, yes.

Mr. Maher: Were they visible from the road or the neighbors residences on the roof mounted ones?

Mr. Calardo: A…yes they are. A…1662 Route 300 you can see the a…it’s a flat roof building. You can see the solar modules and the aluminum racking on the roof of the building.

Chairperson Cardone: What was that address again?

Mr. Calardo: 1662 Route 300.

Mr. Maher: That's next to a…Tommy Kavanagh's. What about the residential applications?

Mr. Calardo: The residential one a…Mr. Eidels you cannot see it on the backside of the house and the new Patel I believe is also on the backside of the house but I’m…I have not personally visited that site.

Mr. Maher: Were Permits required for those installations?

Mr. Calardo: Permits were required and granted for all these installations, they all complied with a…Code Compliance.

Chairperson Cardone: Do we have anything else from the Board? Do we have a motion to close the Public Hearing?

Mr. McKelvey: I’ll make a motion.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

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

(Time Noted - 8:47 PM)

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ZBA MEETING – JUNE 27, 2013 (Resumption for decision: 9:19 PM)

ROBERT WHITE 4 SOUTHEAST COURT, WALLKILL

(2-3-28) R/R ZONE

Applicant is seeking an Interpretation and/or a use variance to build a ground mounted solar array system on the property.

Chairperson Cardone: On the application of Robert White seeking an interpretation. I think first we need to discuss the interpretation which is, is this a use variance or is this an accessory structure? Okay.

Mr. Maher: A…it’s my opinion based on what read 185 – 40 and the fact that a…I don't believe it's a use variance at all. I consider it an accessory structure and a…a use variance is not required in my opinion.

Chairperson Cardone: It is my opinion that a use variance is required because it is not listed and if it is not listed I do not see it as an accessory structure.

Mr. McKelvey: I have to agree with you.

Mr. Donovan: I was going to say procedurally I would suggest that you a…vote or if there's not a motion or second but you take up in any event as you are doing now the issue of the interpretation.

Chairperson Cardone: Right.

Mr. Donovan: And read some sort of resolution of that issue before moving on should you have to.

Chairperson Cardone: So I think that the applicant is at a disadvantage this evening because we have five Board Members only tonight instead of our usual seven. And we would need four…

Mr. Donovan: You need…you need four out of five…

Chairperson Cardone: …four out of five a…

Mr. Maher: The odds don't appear to be in your favor.

Mr. Donovan: The Board as up until 62 days from the close of the Public Hearing to reach a determination so you do not need to vote tonight if you do not wish to. In the past we have extended the courtesy to any applicant to have a full Board present before it was a…a vote taken.

Chairperson Cardone: It is my feeling that we should not vote on this tonight but make our determination next month and I would ask the applicant if he sees that the same way.

Mr. McKelvey: I think it's only fair.

Mr. White/Mr. Calardo: That’s fine, yes.

Mr. Maher: So I'd make a motion to hold over until the a…July meeting.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Michael Maher: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: So this will be…

Ms. Gennarelli: July 25th.

Chairperson Cardone: …yes, the Public Hearing is closed but the Decision will be held over.

Ms. Gennarelli: You have (62) sixty- two days.

Mr. Maher: Do we fall in the right timeframe of (62) sixty-two days?

Chairperson Cardone: We’re fine. We’re fine because we didn’t close the Public Hearing until tonight.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

MICHAEL MAHER

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:23 PM)

ZBA MEETING – JUNE 27, 2013

END OF MEETING (Time Noted – 9:23 PM)

Chairperson Cardone: Okay. Is there any other business to come before the Board? Everyone has the minutes from the last month? Has everyone had a chance to look at them and any corrections?

No response.

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

Chairperson Cardone: Do I have a second?

Mr. Masten: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Also I know that you have not had a chance to comment on this but we have a communication from the Town Board and it’s a proposed Town of Newburgh Local Law. And I just received this tonight but I would appreciate everyone going over this and please e-mail me any comments you have. I think there are some issues in there that you may wish to comment on. Is there any other business? If not do I have a motion to adjourn?

Mr. Masten: So moved.

Ms. Smith: 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

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JAMES MANLEY

BRENDA DRAKE

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:26 PM)