ZONING BOARD OF APPEALS

MEETING – FEBRUARY 27, 2014

(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 and try to render a decision on all applications this evening; but the Board may take up to 62 days to reach a determination. And I would ask if you have a cell phone to please put it on silent or to turn it off and when speaking, speak directly into the microphone because it is being recorded. Roll call.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:02 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:05 PM)

JAMIE YANNONE 2 BLACK ANGUS COURT aka

728 GARDNERTOWN ROAD, NBGH (47-1-61.1) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, the maximum height and the maximum allowed storage for not more than (4) vehicles to build an accessory building (52x40x20).

Chairperson Cardone: Our first applicant Jamie Yannone.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, February 19th and The Sentinel on Friday, February 21st. This applicant sent out twenty-one letters. All the mailings, publications and postings are in order.

Chairperson Cardone: For the record, just identify yourself and state your request.

Mr. Yannone: Jaime Yannone, 2 Black Angus Court, I’m requesting to build a new pole barn.

Chairperson Cardone: And this pole barn will be replacing other structures, is that correct?

Mr. Yannone: Yeah there were previously two older ones; they were built in the 1800’s, the late 1800’s. They were too far gone to…to refurbish so I had them…I demo’d them and I just want to replace it with one.

Mr. Donovan: I’m sorry, they have been demolished or…?

Mr. Yannone: They have been demolished, yup.

Ms. Smith: Is this just primarily to store your own a…equipment?

Mr. Yannone: Yeah, cold storage, you know, just a couple of vehicles, some hand tools, nothing big.

Mr. Donovan: And how many vehicles do you intend to have on the property all together?

Mr. Yannone: Inside the building?

Mr. Donovan: Inside this building and all together.

Mr. Yannone: Three, three to four.

Chairperson Cardone: And the reason you need this size building?

Mr. Yannone: I have a couple of older cars and I just want to make sure I can get them in there, enough room so I’m not cluttered. I don’t want to be banging into them if I have to move stuff around or whatever.

Chairperson Cardone: Will there be a second level?

Mr. Yannone: No second level.

Chairperson Cardone: No?

Mr. Yannone: No.

Chairperson Cardone: Any questions from the Board?

No response.

Chairperson Cardone: Any questions or comments from the public?

No response.

Mr. Donovan: If I can just for clarification? If you want to have more than four cars (vehicles) on the property you need a variance.

Mr. Yannone: Okay.

Mr. Donovan: If you’re not going to have more than, you don’t need a variance but you’re not going to be allowed to have more than four cars (vehicles)…

Mr. Yannone: Okay.

Mr. Donovan: …total on the property.

Mr. Yannone: No problem.

Mr. Donovan: Okay.

Mr. Maher: Dave, clarify that.

Mr. Donovan: So I think what happens Mike, from Code Compliance’s point of view every time a structure is proposed that could house more than four vehicles we get a variance request for more than four vehicles. What we customarily do is ask if they want more than four vehicles. If they do then we have to consider whether or not to give them a variance. If they make an affirmative statement that they are not going to more than four vehicles then I treat that as that request has been withdrawn and they’re not permitted to have more than four on the property.

Mr. Maher: Do you currently have a garage on the property?

Mr. Yannone: No, I don’t.

Mr. Maher: No, not at all, so this is the only garage you have on the property?

Mr. Yannone: This is it.

Mr. Maher: Okay.

Chairperson Cardone: Anything else from the Board? Did you have anything to add Mr. Canfield?

Ms. Gennarelli: That was a negative from Mr. Canfield.

Mr. Donovan: And just for a frame of reference, the approximate square footage of the two barns you took down versus the square footage of the barn you proposed to build?

Mr. Yannone: It was probably double…double what I’m going to…I don’t know the exact square footage.

Mr. Donovan: What was there was double?

Mr. Yannone: Yeah, yup.

Mr. Donovan: So this structure will be smaller than the other two.

Mr. Yannone: Yeah, yeah.

Mr. Donovan: Thank you.

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

Mr. Donovan: Adjourn or close.

Chairperson Cardone: Close.

Mr. Donovan: Did you say adjourn or did I…I…

Ms. Smith: She said adjourn. I make a motion to close the Public Hearing.

Chairperson Cardone: Right. And we had a motion.

Mr. Maher: Second.

Ms. Gennarelli: Thank you. Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 7:10 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption for decision: 8:18 PM)

JAMIE YANNONE 2 BLACK ANGUS COURT aka

728 GARDNERTOWN ROAD, NBGH (47-1-61.1) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, the maximum height and the maximum allowed storage for not more than (4) vehicles to build an accessory building (52x40x20).

Chairperson Cardone: On the application of Jamie Yannone at 2 Black Angus Court aka 728 Gardnertown Road, seeking area variances for the maximum allowed square footage of accessory building, the maximum height and the maximum allowed storage for not more than (4) vehicles to build an accessory building (52x40x20). This is a Type II Action under SEQRA. Do we have discussion on this application?

No response.

Chairperson Cardone: I think as Counsel pointed out we are…the four…storing the four vehicles in the accessory building has been withdrawn, that part of it. Is that correct?

Mr. Donovan: Correct.

Chairperson Cardone: Do I have a motion for approval on this application?

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

Mr. Masten: And I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:19 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:10 PM)

RONALD BITTNER 186 FOREST ROAD, WALLKILL

(1-1-32.22) A / R ZONE

Applicant is seeking a Use variance for 185-7-F - Unspecified uses shall be deemed prohibited and 185-19-A-1 for extending or enlarging a non-conforming prohibited use to erect a ground mounted solar panel.

Chairperson Cardone: Our next applicant Ronald Bittner, 186 Forest Road.

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

Chairperson Cardone: For the record please identify yourself and state your request.

Mr. Bittner: Ronald Bittner and I’m requesting to extend my existing a…photovoltaic array by about ten or fifteen feet or so.

Chairperson Cardone: I have a report from the Orange County Department of Planning which is Local Determination. What is the size of the structure at the present time?

Mr. Bittner: A…well as far as power goes it’s a…ten kilowatt. I’m adding on about a…three more kilowatts.

Chairperson Cardone: And the height and the length?

Mr. Bittner: A…that should be in the paperwork that was a…that I submitted earlier. I don’t know that off the top of my head.

Chairperson Cardone: Does fifty-one feet sound correct?

Mr. Bittner: Again I don’t know off the top of my head.

Chairperson Cardone: No?

Mr. Bittner: This…this was…

Mr. Maher: I’m assuming…

Mr. Bittner: …not a…a…an issue back in 2008 when I originally put this up.

Mr. Maher: I’m assuming its fifty-one foot in length not height.

Chairperson Cardone: Right.

Mr. Bittner: Yeah, right.

Ms. Smith: Nine feet high it looks like on an angle.

Mr. Maher: Yeah, I think the panels are nine by…

Ms. Smith: Nine by…?

Mr. Maher: …nine by twelve.

Ms. Smith: Yeah. You’re extending it to the rear of your property? That’s where you are requesting to put on the addition, to the rear?

Mr. Bittner: Right. It’s a…there was some photos, it was marked off…

Ms. Smith: Yeah.

Mr. Bittner: …there was two stakes there with a…red flags on them. That’s where the new end would be.

Chairperson Cardone: Okay, the Permit that you originally received was for a structure that was ten by twelve and when did the fifty-one feet in length happen? Did it…was it added to the original or…?

Mr. Bittner: I’m sorry…what? The Permit that…

Chairperson Cardone: In 2007.

Mr. Bittner: Yes, okay.

Chairperson Cardone: The Permit was issued for a ten by twelve ground mounted solar panel.

Mr. Bittner: I don’t have that paperwork available. I don’t recall it and quite frankly that was taken care of by the company that a…put the system in but it was always set to be a ten kilowatt system.

Mr. Maher: So when it was installed in 2007 was it ever extended between that…that date to today?

Mr. Bittner: No.

Mr. Maher: Okay, so it’s existing…the size existing currently was the size that was installed.

Mr. Bittner: Right, this is…this is the only addition to it.

Mr. Maher: Jerry just a question, I know…I know you got it there. On…on when you said the…

Mr. Canfield: I’m ready for you.

Mr. Maher: …the Permit was issued for a ten by twelve ground mounted panel, the actual size is nine by twelve by fifty-one foot in length. That…the fifty-one foot length was found in ’07? I’m assuming, correct?

Mr. Canfield: Yes, that’s correct. Actually a…just to clarify, the Code Compliance Department is somewhat responsible here a…to explain their accountability. In 2007, the applicant did receive a Building Permit. There was some confusion on our part and an error on our part, the original permit as…it may be in your packet from 2007 was for a ten by twelve a…which the plans review person at the time thought that’s what he was issuing a…issuing a Permit for. At the time of the final inspection the inspector that went into the field observed that these panels were fifty-one feet long, fifty-seven feet I believe it was. He come back to the office and researched the paperwork and found that the original Permit was for fifty-one feet long. So I think there may have been an error on the Code Compliance Department’s part at that time that the panel was issued for that big. I think if their plans review actually realized how large the panels would have been, like other applications, probably would have been revered…referred to the ZBA because as you’re aware of our Code does not address these panels.

Chairperson Cardone: Right.

Mr. Canfield: So, again to speak on behalf of the Code Compliance Department’s accountability a…what the applicant does have is an approved Building Permit and an approved Certificate of Compliance for the installation of the original panels which were fifty-seven feet. I believe now they’re asking for just an addition of six or seven feet just for...

Chairperson Cardone: Seventeen feet.

Ms. Smith: Seventeen feet.

Mr. Canfield: Seventeen feet so that’s just for clarification for the Board’s a...benefit.

Mr. Donovan: And obviously to complicate matters further we had a application before the Board this past summer, the application of Robert White in which we determined that these types of panels were not allowed a…and that would…would require a Use variance. And so Mr. White’s application was denied. So I think the situation that we have tonight is to attempt to determine whether or not a…this is either not allowed at all or a…since our decision in the White matter, just from this past August, whether this can be viewed as a pre-existing non-conforming condition and therefore the…the variance in front of the Board is to enlarge a pre-existing non-conforming.

Mr. Bittner: Excuse me, can you explain this not allowed because according to the State of New York which is actually the Governor is promoting this, they expanded the ability for residential and people to have more than ten K ‘cause back in 2007-2008 when the first system was put up I basically maxed out what was allowed at that time. And now it’s been extended so what’s this not allowed?

Mr. Donovan: Well, New York is municipal…it’s a Home Rule State which means that the municipalities can adopt their own Zoning requirements.

Mr. Bittner: Okay.

Mr. Donovan: And I don’t…I don’t think what you’re referring to is…is Zoning a…it’s rather the use of the solar panel…

Mr. Bittner: Yes.

Mr. Donovan: …not the Zoning itself.

Mr. Bittner: Right.

Mr. Donovan: So unless the State preempts the field which they haven’t done in Zoning a…at all, the Town of Newburgh has the ability to regulate and establish our…our own Zoning. Now what the Code says is if it’s not specifically permitted it’s prohibited. And we wrestled with that issue a…with the application of Mr. White this past summer and we determined that this a…basically the same thing was not specifically permitted by the Code and therefore was prohibited and therefore Mr. White had to ask for a Use variance. He didn’t meet his burden of proof which is…which is rather stringent and his application was denied. We have a situation now for reasons that Mr. Canfield has explained a…you were…you did follow the rules in 2007, you did the right thing, you got a Permit and your solar panel was up so that…that’s the issue that confronts the Board tonight.

Mr. Bittner: I am…a…a…apologize, it’s just I…I know nothing about your procedure, I don’t do this for a living so…

Mr. Donovan: There is no need to apologize.

Mr. Bittner: Okay.

Mr. Donovan: There really isn’t.

Mr. Manley: Is there any way that the additional panels could be located on the structure itself as opposed to on the…on the ground as an alternate site?

Mr. Bittner: The structure you’re talking about my house?

Mr. Manley: Your residence, yes.

Mr. Bittner: My house is in a east west exposure orientation and you need the southern exposure for…for solar systems whether it photovoltaic or…or solar heat (inaudible) heat treatment to be.

Mr. Manley: So you’re saying there’s no way to…

Mr. Bittner: If I move my house.

Mr. Manley: Right.

Ms. Smith: Do you know approximately how far off your side yard you are? I…I couldn’t tell. The solar panel to your side yard…

Mr. Bittner: The side yard.

Ms. Smith: Yeah, the side of your property, where…where the solar panel runs parallel.

Mr. Bittner: Okay, I don’t know, I think it’s ten or fifteen feet or so…or something like that.

Ms. Smith: I’m sorry.

Mr. Bittner: Ten, fifteen feet or so I guess.

Mr. Maher: Twenty-two foot side yard setback.

Mr. Bittner: That is of the existing?

Mr. Maher: Yeah, well actually the other…the other side is actually larger but the smallest point is twenty-two foot where the a…closest to the house right now.

Chairperson Cardone: Do we have any other questions from the Board? Do we have any questions or comments from the public? And the Board is aware that there are two ways of looking at this? As a use variance or extending a non-conforming prohibited use.

(No response)

Chairperson Cardone: Nothing else to add?

Mr. Manley: Not from me.

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

Mr. Masten: I’ll make a motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 7:24 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption for decision: 8:19 PM)

RONALD BITTNER 186 FOREST ROAD, WALLKILL

(1-1-32.22) A / R ZONE

Applicant is seeking a Use variance for 185-7-F - Unspecified uses shall be deemed prohibited and 185-19-A-1 for extending or enlarging a non-conforming prohibited use to erect a ground mounted solar panel.

Chairperson Cardone: On the application of Ronald Bittner, 186 Forest Road, seeking either a Use variance for unspecified uses or extending or enlarging a non-conforming prohibited use to erect a ground mounted solar panel. This is…

Mr. Donovan: I’m sorry, during the course of the Public Hearing I stated that there was perhaps a a different avenue for you to take that you would be able to treat it as a…an expansion of a pre-existing non-conforming use…in the nature of an area variance that was a…I misspoke on that because you are not able to do that. This is the use is not allowed, now the use, the ZBA had not made that determination when the a…application was originally made in 2007. You had made that determination now. The reference that I made related to applications for area variances where it would increase the degree of non-conformity. That doesn’t apply to this situation so based upon our decision in the White matter a use variance would be required to allow the addition to be a…constructed to the existing solar array panel.

Mr. Manley: And the one issue with the use variance or the use variance is going to be pretty much impossible to overcome is the area of self-creation and if…if we were even going to consider it as a use variance is…is it self-created and it is, something that is self-created, unfortunately.

Mr. Donovan: Well in addition to the other criteria that are required for a use variance a…those being that the applicant wouldn’t be able to receive any reasonable return on his property without the requested variance being granted. We don’t have any proof on that and I also don’t think that that standard could be met and whether this is a unique hardship. I don’t know that that standard can be met. Self-created, a…I mean he did get a Permit for the original one so he could perhaps overcome that standard but I…I don’t see where there’s any proof or there would be any proof or be able to be any proof on the lack of reasonable return.

Chairperson Cardone: Any further discussion on this application? Do I have a motion for approval?

No response.

Chairperson Cardone: Do I have a motion for disapproval?

Mr. Maher: Well based on the current Zoning language unfortunately it is not an allowed use. It is not listed in the Code. So based on that reason solely I will make a motion to deny it.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Mr. Bittner: Excuse me.

Chairperson Cardone: Yes?

Mr. Bittner: How is this different than an accessory building? Accessory structure.

Chairperson Cardone: It’s not listed in the a…Zoning Code.

Mr. Bittner: Is accessory structure listed in the Zoning Code?

Mr. Donovan: Well I can tell you with respect to that a…argument that was considered in the application of Mr. White. We actually had extensive conversations over a couple of meetings as to whether or not it qualified as an accessory structure. The determination was that it was a use and that it wasn’t allowed. That’s the determination that was made in that application and the Board is…is duty bound to follow its prior decision.

Mr. Bittner: If I built a barn next to the existing structure and put solar panels on top of it, would that pass?

Mr. Donovan: Unfortunately I…I can’t answer and the Board can’t answer those type of hypothetical questions. We can deal with the application that’s before us in light of the virtual identical application that was submitted this past summer and was ruled on.

Mr. Bittner: Where’s the words that are going to…that I’ve got to go follow with regards to getting this to happen?

Mr. Donovan: Well I can’t give you any words. I can…I can tell you that what the…what the Zoning Board interprets and what the Zoning Board rules on are the regulations set forth in the Zoning Ordinance which say that any use specifically…not specifically listed is prohibited. The Board wrestled with this issue this past summer and made an interpretation that the solar array panels a…not affixed to a building are not an allowed use and therefore a use variance is required.

Mr. Bittner: So…if the Zoning Board came up with a Code that was…

Chairperson Cardone: We don’t come up with the Code. The Town Board gives us the Code.

Mr. Bittner: The Town Board?

Chairperson Cardone: Yes.

Mr. Donovan: They are the legislative body.

Mr. Bittner: So I have to go to the Town Board to get them to create a Code to address this?

Mr. Donovan: I think they were actually…

Mr. Masten: They were working on it.

Mr. Donovan: …they were working on it after the White application. Where that stands I don’t know.

Mr. Bittner: Will somebody put me in touch with the people the people that are working on it?

Chairperson Cardone: You would have to contact someone from the Town Board, contact the Supervisor’s office.

Mr. Bittner: This thing has been in existence for quite a while. I don’t know why something hasn’t been done before now.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:26 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:25 PM)

PAUL & DEBBIE FRITZ 5 PETER AVENUE, NBGH

(17-1-116) R-2 ZONE

Applicant is seeking an area variance for the front yard setback to build an addition on the residence. (Has two front yards Peter Avenue and Centurian Court)

Chairperson Cardone: Our next applicant next applicant Lindsey McGann, 59 East Road.

Ms. Gennarelli: A…Fritz.

Chairperson Cardone: I skipped right over Fritz…Paul and Debbie Fritz.

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

Chairperson Cardone: It’s all that red ink Betty.

Ms. Gennarelli: I’m sor...

Chairperson Cardone: Okay. Please identify yourself for the record.

Mr. Fritz: My name is Paul Fritz, 5 Peter Avenue.

Chairperson Cardone: And state your request.

Mr. Fritz: We’d like to build an addition…a that exceeds the front yard setback.

Chairperson Cardone: It’s my understanding that at the time the house was built you did not have two front yards and now you do? Is that…?

Mr. Fritz: A…when we moved in it had two front yards so I don’t know when the house was built I don’t believe it had two front yards so the one front yard is a mostly paved private road, Centurian Court.

Chairperson Cardone: Right. And the reason for building on that side of the house?

Mr. Fritz: So we don’t really have any other options. We’re trying to build a…we’re trying to extend our bedrooms and we don’t have any storage space in the house. We don’t have a basement or an attic. Our garage is built with shelves and a…so we’re trying to build…extend the bedrooms and build a little bit of storage. The backyard is a…has our septic so we can’t build there and there’s really nowhere else to go.

Chairperson Cardone: Any questions from the Board?

No response.

Chairperson Cardone: Any questions or comments from the public?

No response.

Mr. Fritz: Can I just for the…to make it really clear, I mean our biggest argument is that we are fifty feet from that side road because there’s a thirty foot right of way in between our yard and that road, so…

Chairperson Cardone: Right.

Mr. Fritz: …visually I don’t think it will exceed the requirements of that.

Chairperson Cardone: I should mention that the Board Members have visited the properties that we are discussing this evening.

Mr. Maher: Just…just one note on the…on the a…plot plan submitted. It says it was revised recently I’m assuming, last month or so? The only issue is that the setback line obviously based on the fact that you have two front yards is incorrectly listed on the…on the plot plan.

Mr. Fritz: Yes, at the time we didn’t even think of it as a front yard. I think until we submitted the paperwork and then we realized it was worse than we expected.

Chairperson Cardone: Right.

Mr. Fritz: It went from thirty feet to fifty feet.

Chairperson Cardone: Right because it did look like a side yard.

Mr. Fritz: Yes.

Chairperson Cardone: Anything else from the Board?

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

Chairperson Cardone: Do we have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Thank you. Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 7:29 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption for decision: 8:26 PM)

PAUL & DEBBIE FRITZ 5 PETER AVENUE, NBGH

(17-1-116) R-2 ZONE

Applicant is seeking an area variance for the front yard setback to build an addition on the residence. (Has two front yards Peter Avenue and Centurian Court)

Chairperson Cardone: Our next applicant Paul and Debbie Fritz, 5 Peter Avenue, seeking an area variance for the two front yard setbacks to build an addition on the residence. And this as you remember had two front yards and this is a Type II Action under SEQRA. Do we have discussion on this application?

No response.

Chairperson Cardone: Do we have a motion for approval on this application?

Mr. Masten: I'll make a motion.

Chairperson Cardone: Do we have a second?

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: No

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion to approve is carried.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:27 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:29 PM)

LINDSEY McGANN 59 EAST ROAD, WALLKILL

(2-2-46) R / R ZONE

Applicant is seeking an area variance for the maximum height of an accessory building (garage) to build a second story addition on the existing garage.

Chairperson Cardone: Our next applicant Lindsey McGann.

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

Chairperson Cardone: And the report from the Orange County Department of Planning is Local Determination. For the record identify yourself.

Mr. Lytle: Ken Lytle, I’m representing the McGann family for a small addition on top of their existing garage. We, in doing so, we looked at a couple of different options. One was connecting the house a…to the existing garage a…that would actually require a variance for that also. Again the existing structure of the (inaudible) house to close to the property line. Also some things we took into consideration looking at that option the utilities for the house are currently in the existing garage and it would be substantial cost to relocate those to footings in between so this is the option we come up with again it’s a cost factor when it comes down to it. A…putting an additional second floor on the existing garage a…and that’s what we’re proposing tonight.

Chairperson Cardone: I also have a report from the Town of Plattekill Zoning Board of Appeals.

The Zoning Department is receipt of the above information regarding the area variance for the maximum height in order to construct an addition over an existing garage. The Plattekill Zoning Board of Appeals has no issue with the area variance. Very truly your, Susan Bolde, Zoning Board Clerk

And that’s because it’s close to the line (Town of Newburgh/Plattekill border). Any questions from the Board?

Mr. Manley: I notice you indicated a possible bathroom. Is there going to be or is there not going to be a bathroom?

Mr. Lytle: It is going to come down to cost when it’s all said and done a…we have it on there and during the Building Department’s review a…if they do decide to put that in there we have to give them a plumbing schematic and show how to tie into the existing septic.

Mr. Manley: Okay but…

Mr. Lytle: We’re not sure but it comes down to pricing.

Mr. Manley: …right but for the purposes of this Board to determine whether or not we are going to approve or disapprove the application one of the factors is would there be or would there not be a bathroom.

Mr. Lytle: I am going to say worse case there could poss…there will be a bathroom then, worse case. I don’t know if they are going to build it but we’ll plan for that just in case.

Mr. Manley: You do realize the Board’s approval has to be based on what the applicant is actually putting into the…?

Mr. Lytle: Correct, they are going to plan to actually put the bathroom in there.

Mr. Manley: Okay.

Mr. Lytle: And the only reason they were thinking about doing that is again because they are not attaching it to the house. While he’s up there working on his computer he didn’t want to run back and forth, cold, extreme cold back and forth while he’s doing it.

Mr. Manley: So then beyond the…beyond the bathroom there is going to be electric, plumbing and heating?

Mr. Lytle: Yes.

Mr. Manley: Okay.

Mr. Lytle: It’s a…it’s a small area he is going to use like for his den. We did a small addition on the existing house about a year ago and now he has no room for his a…his computer and his little den so now he’s actually looking at doing this on top of the garage is why he’s doing this.

Mr. Manley: So it is also going to be used for habitational purposes? He is going to be using it to…to stay there, I mean not necessarily sleep but it’s going to be used as…as residential space?

Mr. Lytle: For…yeah, for his den, yes absolutely.

Chairperson Cardone: And a business is not going to be conducted from that…?

Mr. Lytle: No.

Chairperson Cardone: …location?

Mr. Lytle: (Inaudible)

Ms. Gennarelli: Was there an answer to that question, I’m sorry?

Mr. Lytle: No.

Ms. Gennarelli: A nod doesn’t pick up on the…

Mr. Lytle: I understand.

Chairperson Cardone: It doesn’t record it.

Ms. Gennarelli: It doesn’t record nods.

Mr. Lytle: We try.

Ms. Gennarelli: So that was a no, Ken?

Mr. Lytle: Yes.

Chairperson Cardone: So this is not being used as any sort of living area as far as an apartment or something of that sort?

Mr. Lytle: Again, just a den, he has no space in his existing house. We did a small addition about a year ago and he still is very limited on space. This is the next alternative and the only space available to do it in the budget.

Mr. Manley: Is there going to be any requirement to increase the a…septic at all based on the additional bathroom.

Mr. Lytle: Well the septic actually isn’t (is) based on the number of bedrooms, there’s no increase, there’s no change in bedrooms it’s just actually adding a bathroom so there is no change…that would be required.

Mr. Manley: And that’ll have to then be hooked up into the septic though?

Mr. Lytle: That’s correct if they do that yes…yup.

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

No response.

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

Ms. Smith: I’ll make a motion to close it.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:36 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption for decision: 8:27 PM)

LINDSEY McGANN 59 EAST ROAD, WALLKILL

(2-2-46) R / R ZONE

Applicant is seeking an area variance for the maximum height of an accessory building (garage) to build a second story addition on the existing garage.

Chairperson Cardone: On the application of Lindsey McGann, 59 East Road, seeking an area variance for the maximum height of an accessory building, a garage, to build a second story addition on the existing garage. This is a Type II Action under SEQRA. Do we have discussion on this application?

No response.

Chairperson Cardone: And it was stated that this would not be used as living quarters and a business would not be conducted at the site. Do we have a motion for approval on this application?

Ms. Smith: I'll make a motion to approve based on the fact that it will not be used for living quarters and a business will not be conducted on the property.

Chairperson Cardone: Do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion to approve is carried.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:29 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:36 PM)

LAKE CREEK PROPERTIES, LLC / 65 NORTH PLANK ROAD, NBGH

LINGO ASSOCIATES, LLC. (76-1-1.1) B ZONE

(McDONALD’S)

Applicant is seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment.

Chairperson Cardone: Our next applicant Lake Creek Properties (, LLC./Lingo Associates, LLC.)

Ms. Gennarelli: This applicant sent out thirty-eight letters. All the mailings and postings are in order. The Sentinel published the ad unfortunately the Mid-Hudson Times omitted the Legal Notice for this applicant.

Chairperson Cardone: Since one of the papers did not publish it we will hear this this evening but then it will be held over until next month so that it can be re-published in the paper that neglected to publish it.

Mr. Cahill: Okay and this is…Keith Cahill from Boehler Engineering in…on behalf of McDonald’s a…and for the Zoning interpretation it needed to be published in that newspaper?

Mr. Donovan: We have two official newspapers…

Mr. Cahill: Right.

Mr. Donovan: …and one of the newspapers didn’t publish it so we have…we don’t have compliance with the legal requirements of the Public Hearing.

Mr. Cahill: Okay.

Mr. Donovan: So, I mean, when we talked about it internally we could have said come back in March. We thought it was, given the agenda tonight, it was better to have you in, open the Public Hearing, continue it so there’d be publication in the other paper so we’re all legally compliant and then hopefully be in a position to take action in March.

Mr. Cahill: Okay, okay. Then I’ll give you an understanding of what we’re requesting this evening and essentially in this case we're asking for an interpretation…a…on behalf of McDonald’s. The existing McDonald’s is located on North Plank Road and just to the South of Gideon (Gidney) Avenue a…and we’re on the corner of Gardnertown Road and North Plank Road. McDonald's has been there for in excess of 30+ years a…they’ve done numerous internal renovations over the time…over the period of time a…that they’ve been in business there and what they’re looking to do now is essentially the building itself has gotten to the point where they’re looking to rebuild it. They’ve done internal stuff but now they’re looking to rebuild it and at this time of putting this type of investment into rebuilding it a…they’re going to a…looking to make some site plan modifications to…to fit the new footprint. Under the initial review understanding that restaurant uses a…food and eating establishments are all permitted. The fast food component is not permitted in the B 1 (B) Zone. Just want to point out a couple of this just to make sure everyone is familiar with the…the existing location. The size of this facility as well as shown on this exhibit in the center of the plan is five thousand six hundred and fifty-seven square feet. It has a play area in the front, has a hundred and fifteen seats in it. In regards to the location of the building it’s approximately thirty-six feet off of the North Plank Road frontage a…in essence the…the building does not comply with the existing requirements from a setback standpoint or a…a…relative to some other existing non-conformances in regards to the driveway location on the south side of the site a…in proximity to the Gardnertown Road intersection, it is setback one hundred and eighteen feet. So under existing conditions, there’s some existing non-conformances. What McDonald’s is looking to do is rebuild this a…and looked at doing a concept plan…a site plan, excuse me, of further what was proposed a…rebuilding, knocking down the existing building and rebuilding it entirely brand new building, foundation, walls, etc. Essentially the building itself would slide approximately forty feet to the south so further away from the existing Citgo a…and we would realign the driveways around it. A…in terms of the proposal we’re not intending to expand the existing use in any way, shape or form. The building is going to be in…smaller, it will be five thousand two hundred and six square feet. It would only have a hundred and seven seats. The number of parking stalls would be reduced a…down to sixty-four parking stalls a…the impervious coverage would be reduced by about fifty-two hundred square feet. Also the improvements of this site besides having the latest and greatest building in terms of a new structure internally it would be a more efficient layout for a…actual service of its customers. The site layout would be much improved as well in regards to access, the driveway entrances which currently, again you only have an entrance point off of North Plank Road, a one-way in and circulation in and around the building in a counter-clockwise direction being all one-way flow. Under current conditions, for that, you can actually have a couple of situations especially in the rear of the site towards Gidney Avenue where this location at the rear of the building depending where cars come in if you come off of a Gidney Avenue trying to get to the drive-thru, cars can actually go against traffic. I’ve been out there numerous times, I’ve witnessed this a…the flow isn’t as…as safe or as efficient. A…the proposal as I mentioned looks to have…or is proposing to have completely one-way circulation. The access point off of Gidney would be moved slightly to the North a…so that any car utilizing the drive-thru at the rear of the building wouldn’t be tempted to circulate in the wrong direction. In addition to that we’re adding what we call a recirculation lane in the front of the site which would allow cars as they came through coming off of Gidney and they couldn’t find a parking stall they could recirculate through a…getting to the ADA stalls, etc. Under the existing conditions, you have to go back out on to North Plank Road and recirculate to the site. You’d make a left and then a left back in to our driveway. So this just improves the site circulation significantly a…we’re improving the operations of the facility. We’re putting their latest and greatest, as I mentioned, internal building itself to operate more efficiently in terms of providing service to its customers. Also the modification in the rear of the site is what they call a…a side-by-side drive-thru which essentially creates two ordering point so that the stacking in the site is reduced as well for the use of the drive-thru. All of these items are the reasoning of the redevelopment of the site. It’s improving site circulation under the existing conditions, it’s reconstructing a structure that’s beyond its…a…what they would like to keep as its existing life a…reconfiguring the parking scenario to again circulate more efficiently, realigning the driveway to allow the on-site circulation for the drive-thru to the (Inaudible) or the rear more efficiently. Also we’re relocating the trash enclosure within our site circulation; I forgot to point that out. One other point, just the trash enclosure is actually on the North side of the building outside of the parking lot area so the trash truck comes off of Gidney into an area that’s really just a gravel area to pick it up and goes on to…to Gidney Avenue. The proposal is just to keep everything within its paved parking lot and operate efficiently on site a…in a brand new structure that enclose the trash enclosure look aesthetically pleasing to match the building. So the application is to have significant improvements but the question that came up in terms of the a…the Zoning aspect was…the fast food component was determined or was asked to come to this Board to say is it a non-conforming use and is the reconstruction of it required the use variance in a sense that we are reducing the intensity of the use by reducing the size of the building, the number of parking stalls, the number of seats and the modifications that we’re doing are only improving the safety of the operation of the parking lot. So in terms of that we’ve a reviewed your Zoning Ordinance for the non-conforming buildings and uses, Section 185-19 and under alterations 1) indicates that non-conforming uses shall not be enlarged, extended, reconstructed or restored a…except for the…in accordance with sub-section B-2 and when you refer to that…it refers to an area when a building is damaged that it can be reconstructed within one year to continue that use. And again, the restrictions would prevent it from being expanded or requesting additional variances. The redevelopment of the site does have a…a…would bring the site in more compliance because we’re bringing the building further away from the frontage out of the existing non-conformance front yard setback a…so in that sense again we’re not asking for any intensification. The long story short we’re moving the footprint of the building a…approximately forty feet to the South, we’re moving the existing driveways approximately thirty-two feet to the South as well so that the circulation isn’t blocked and not intensifying it. So we’re looking for the interpretation to say, this is an existing non-conformance and under your Code could be interpreted to say we are reconstructing a…a…the existing non-conformance use within that one year period of time which we’d be doing a…as if we demo’d it…damaged….demo’d the site, rebuilt it within that one year time frame and we’re not intensifying any variances or the use.

Chairperson Cardone: Do we have questions from the Board?

No response.

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

Mr. Manley: The only question that I have is could you maybe explain to the Board how you feel that this particular change a…with respect to your interpretation that you feel that it fits…that what you’re doing fits within our Code? Could you explain to the Board how you feel that what you are doing fits and…and why this Board should render an opinion of the Code in your favor, if you could explain that?

Mr. Cahill: Sure. In regards to Section 185-19 a…for non-conforming buildings and uses. A…it refers to the first A-1 non-conforming uses, non-conforming use may continue indefinitely subject to the following provisions. In alterations a non-conforming use should not be enlarged or extended, reconstructed or restored except in accordance with sub section B-2 of herein. A…and I’ll go to B-2, it also indicates that a…the nor shall any a…replacement of it…occupied by such use a…external evidence of such use may be a…no a…intensification of deviations of the Code currently. So as I mentioned that is the first section and it refers you to B-2. B-2 under Restoration after damage a non-conforming building shall not be restored other than a conforming use after damage of more than 50% of any cause unless a prior non-conforming is reinstated with one year of such damage. Now, if I take and damage…demolish…demolish the existing use and I put it back within one year’s period of time and I am not intensifying the use, I’m reducing the square footage of building, I’m reducing the number of seats, I’m reducing the number of parking stalls, I’m reducing the…a…the amount of the amount of impervious coverage. I’m not increasing the amount of access, the same number of access points are still there. They are just being relocated in an area we feel is more a…it will function safer and more efficiently a…and the use itself in terms of relaying out the site when you reconstruct the building you can make many improvements under the existing non-conformances. As a point, I’m relocating the building further away from North Plank Road. I’m able to reconstruct the drive isles in a fashion that will operate safely and efficiently so they’re the items in my mind, the modification of it a…isn’t being intensified a…by that definition of adding more. I am relocating it in a fashion but not intensifying any deviations from the setback Code.

Chairperson Cardone: But also 185-19 A-1 states; or placed on a different portion of the lot or parcel of land occupied by such use.

Mr. Cahill: The non-conforming use shall not be enlarged, extended, reconstructed or restored except in accordance with subsection B-2 herein. Right?

Ms. Smith: So…

Mr. Donovan: And we know why you want to stop there but unfortunately there is another…

Ms. Smith: Yeah.

Mr. Donovan: …which is…

Chairperson Cardone: Right, it continues.

Mr. Donovan: Yeah.

Chairperson Cardone: Or placed on a different portion or parcel of land occupied by such use on the effective date of the Chapter.

Mr. Manley: Has the building sustained any damage whatsoever?

Mr. Cahill: Currently? Internally just over a long period of use is it’s been repaired and things of that nature. I’m also taking the approach of saying, you’re saying if it’s damaged and it can be replaced within that one year period of time you can do that. In theory, I’d be knocking it down.

Mr. Maher: I don’t…intentional damage in other words?

Mr. Cahill: Correct, it would be intentional damage because it does say damage in any cause…from any cause.

Ms. Smith: Demolition.

Mr. Cahill: Well it doesn’t say and again….

Ms. Smith: No, but what you would…

Mr. Cahill: I understand…I understand…

Ms. Smith: Excuse me.

Mr. Cahill: …but it doesn’t say by natural causes only.

Ms. Smith: Okay.

Mr. Cahill: …or a fire or something. It just says for any cause so…

Ms. Smith: My question…my statement I guess to you is, you’re calling it damage but by taking the building down, it’s a demolition.

Mr. Cahill: Yes. Yes. So that would be the cause of that.

Ms. Smith: Okay.

Mr. Cahill: Now I understand that a decision wouldn’t be rendered this evening, the other aspect of that, of making the decision I’d also want to be clear on if a decision was, if you knock it down, you are rebuilding it and the way I read this…meaning the Board, the way the Board reads this is you would need a use variance for this. I would understanding the legal hurdle of obtaining a use variance with that I would also want to understand if I go to refurbish the existing building in place. There’s other fast food uses within the Zone, right down the street from us that rebuilt, I just want to be clear what can be done because as I mentioned there…there’s reason…age reasons why the structure would want to be rebuilt so an alteration of knocking down the building itself a…can I rebuild it in the exact same footprint? Knock down a wall and rebuild it. Foundation would still be in the same location but I put a new foundation in. They’re the types of things in terms of the decision and not…if a decisions made in favor of what I’m asking for would be, it’s not a use variance and I would move forward with an application to the Planning Board. If it is, if it is a use variance and the limit of what you can do to avoid the use variance is X that’s what I’d like to be clear on so I can advise my client what level, you know, where I fall into that picture.

Mr. Manley: I don’t think this Board would really be in a position to advise you on how you would have to build it in order to stay within the Zoning. This Board would only rule on the interpretation that you’re asking on. That would probably be a question you’d have to, you know, speak with the Building Department and discuss with them as to what…what your options would be. I wouldn’t feel comfortable on giving you…

Mr. Cahill: If the Building…just so I understand that…the Building Department then would make the decision on saying I’m going to rebuild within the same footprint or would I say if I could demo the entire building but leave it in the same location?

Mr. Manley: If you gave the Building Department what your thoughts are as far as what you wanted to do, they would let you know whether it was in the letter of the Code or not and if not what you would need to do to…to achieve that. For example, if something needs a variance they would tell you you could do this but it’s going to require this versus this Board just rules on what, you know, what we have before us which is an interpretation.

Mr. Cahill: Okay.

Mr. Maher: Does the existing building footprint overlap the new footprint?

Mr. Cahill: Is there an overlap? Yes, the existing building is approximately fifty feet in width in the widest point and as I mentioned I moving it about forty feet. So there’s a…there’s about five foot overlap if I overlaid the existing building on this site. If I tried to for instance, I want to rebuild in the same location a…and I wouldn’t modify per say the driveway locations and the building it would have to stay within it I would still look to make site improvements which I think I want to make sure is not considered any type of an expansion in terms of I’m not adding additional parking stalls, I’m not adding impervious coverage a…but I’m making site improvements that would either way try to mimic what I’ve showed on the proposal with a brand new building footprint and try to mimic it within this footprint if that was the determination. I can’t knock the entire building down.

Chairperson Cardone: But if you were going for a smaller building you wouldn’t have to use the same exact footprint if you are decreasing the size. No it would be within the footprint…

Mr. Cahill: No, right.

Chairperson Cardone: …but it wouldn’t be as large as the original footprint.

Mr. Cahill: Correct, with the exception that this building is about a hundred and fifty feet wide and at its widest point fifty and the building that I’m proposing is about a hundred and eighteen feet so it definitely fits in this direction but if you notice the fifty foot section is under a shorter period of time. The newer footprint obviously there’s you’d call the a…

Chairperson Cardone: It’s more of a rectangle.

Mr. Cahill: Yeah, it’s more of a rectangle so I could do that but in this area, in theory, would be outside of…it wouldn’t be completely enclosed in all locations of that footprint. But obviously if I had to stay in within that footprint then all of the benefits of the new building in terms of efficiencies of layout internally, the types of equipment that you can do that are more energy efficient, the types of coolers that you would use, the size of the coolers that are more energy efficient all doesn’t fit within this footprint. Because the building geometry just doesn’t work. The back house of a McDonald’s is very similar to an assembly line of building a car. They can foot…they found the Henry Ford way of putting a burger together and they want to use that geometry because where they store it, how much space they store it, the heights of the shelves and how they do the assembly line fits in that footprint but they want that geometry to fit that in. That’s essentially why they needed the…the modified footprint. A…they can rebuild within it but they would want to basically take it down and bring it back up and the question really becomes and a…and I understand what saying, I get an interpretation from the Building Department that I can leave the footprint in place, can I leave the slab in place or not. And then I can understand I’d have to stay entirely within that footprint to rebuild it…that…the internals of the building the way we wanted. So, so a point as I mentioned, from a site standpoint I look to make some modifications, keep the exact use, it’s still going to be the same use, there’s still a drive through, I’m modifying the drive-thru, there’s two ordering points there because it becomes more efficient, the cars are in line for less period of time, running and idle. So they’re the types of things I would still come back. If it was viewed that making that modification or sliding a driveway from this location to this is an expansion of a non-conforming use I would then be coming back here again to ask for that interpretation. That’s why I kind of went a little bit further into the detail of the differences of the existing and proposed so that we could get hopefully one interpretation versus okay, we got this step accomplished, I’m doing other site improvements and so we have to come back here for the Board to say well then it’s not an expansion of the use for that reason.

Chairperson Cardone: Jerry, I have a question for you. If the square footage…if the square footage is less would it matter that you’re not following the exact same footprint? If the majority of the structure is within the footprint but you have a different configuration and it’s less square footage?

Mr. Canfield: I think you’re looking for a response a…on this particular application, without seeing the actual physical dimensions and a submittal a…at that point we could make this determination but I can tell you this, consistency that the Code Compliance Department has exercised with this particular section of the Code is that when we say utilizing the existing footprint we mean exactly that.

Chairperson Cardone: Okay.

Mr. Canfield: We have voted on…or past decision on applications whereas we required the builder or developer to put the new structure on the same foundation or if for some reason the new foundation was a…in disrepair and needed to be replaced then the actual dimensions of the foundation would be identical. We would require a prior survey and then of course, an after survey and that the overlay is exact. That has been our determination on going in the same footprint.

Chairperson Cardone: Right. Thank you. Do we have anything else from the Board? Anything from the public?

No response.

Chairperson Cardone: If there is anyone here that is here with interest in this application you will not be re-noticed but we will continue next month, which is March the 27th, but you would not be re-noticed.

Mr. Manley: With that I would make a motion that we hold the Public Hearing open until March’s meeting.

Ms. Smith: I’ll second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

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

Ms. Gennarelli: I’ll go right now.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:00 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:03 PM)

MARTIN MILANO 1292 ROUTE 300, NBGH

(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking Use variances for Section 185-27 - Hotels, motels and accessory restaurant. C - Site Planning Standards. (1) That the site have its principal frontage on a State or County Highway; And also for 185-27 D-3 (b) Hotels or motels with more than 100 rooms are permitted a restaurant with bar facilities, which may be located either in the principal building or in an accessory building to allow the restaurant as a principal use on as stand-alone lot of a proposed subdivision in the IB Zone.

Chairperson Cardone: If there is anyone here tonight concerning the Martin Milano variance, I have a communication.

I write with respect to the above referenced matter which is scheduled for a Public Hearing Thursday, February the 27th, 2014 at 7PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on March the 27th, 2014. Thank you for your courtesies with respect to this matter. Very truly yours, Joseph Mackay.

Mr. Donovan: There is a subsequent letter.

Chairperson Cardone: This one is dated February 21st that’s the last letter I have.

Mr. Donovan: I got one by e-mail late this afternoon.

Ms. Gennarelli: I didn’t get it.

Chairperson Cardone: Well, it must have been after I shut the computer off.

Mr. Donovan: They indicated they wanted to withdraw the applications.

Ms. Gennarelli: I didn’t get that.

Chairperson Cardone: I didn’t get it either.

Mr. Donovan: I can get it off of my phone.

Ms. Gennarelli: I can go back to the office and check during the break or…

Mr. Donovan: Okay.

Ms. Gennarelli: …if you like?

Mr. Donovan: I suggest, yeah.

Ms. Gennarelli: Yes.

Chairperson Cardone: Okay then, I’ll hold off on this.

Mr. Lally: Is that adjournment granted then?

Chairperson Cardone: No, what the a…our attorney is saying that he received notification that they wanted to withdraw the application but we would have to see that and Mrs. Gennarelli is going to check on her computer a little later to see if it’s on her computer.

Mr. Lally: Thank you.

Ms. Gennarelli: What is your name, sir?

Mr. Lally: My name is James R. Lally, L-A-L-L-Y.

Ms. Gennarelli: Thank you.

(Time Noted – 7:05 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption of Meeting: 8:16 PM)

Chairperson Cardone: The Board is resuming its regular meeting. I have the communication regarding the Martin Milano area and use variances.

Dear Mrs. Cardone and Zoning Board Members, I write with respect to the above referenced matter which was scheduled for a Public Hearing this evening at 7PM. Please be advised that the applicant hereby withdraws the pending variance applications. Thank you for your courtesy. Very truly yours, Joseph Mackay

So that application has been withdrawn.

Ms. Gennarelli: That was the two applications?

Chairperson Cardone: Yes.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:17 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 7:03 PM)

MARTIN MILANO 1292 ROUTE 300, NBGH

(97-2-30.1, 30.22, 33) I / B ZONE

Applicant is seeking area variances for the rear yard setback of Lot #1 and also the rear yard setback of Lot #2 to have the restaurant as a principal use on a stand-alone lot of a proposed subdivision.

Chairperson Cardone: If there is anyone here tonight concerning the Martin Milano variance, I have a communication.

I write with respect to the above referenced matter which is scheduled for a Public Hearing Thursday, February the 27th, 2014 at 7PM. I hereby respectfully request an adjournment of the matter until the next Zoning Board of Appeals meeting on March the 27th, 2014. Thank you for your courtesies with respect to this matter. Very truly yours, Joseph Mackay.

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Chairperson Cardone: Well, it must have been after I shut the computer off.

Mr. Donovan: They indicated they wanted to withdraw the applications.

Ms. Gennarelli: I didn’t get that.

Chairperson Cardone: I didn’t get it either.

Mr. Donovan: I can get it off of my phone.

Ms. Gennarelli: I can go back to the office and check during the break or…

Mr. Donovan: Okay.

Ms. Gennarelli: …if you like?

Mr. Donovan: I suggest, yeah.

Ms. Gennarelli: Yes.

Chairperson Cardone: Okay then, I’ll hold off on this.

Mr. Lally: Is that adjournment granted then?

Chairperson Cardone: No, what the a…our attorney is saying that he received notification that they wanted to withdraw the application but we would have to see that and Mrs. Gennarelli is going to check on her computer a little later to see if it’s on her computer.

Mr. Lally: Thank you.

Ms. Gennarelli: What is your name, sir?

Mr. Lally: My name is James R. Lally, L-A-L-L-Y.

Ms. Gennarelli: Thank you.

(Time Noted – 7:05 PM)

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ZBA MEETING – FEBRUARY 27, 2014 (Resumption of Meeting: 8:16 PM)

Chairperson Cardone: The Board is resuming its regular meeting. I have the communication regarding the Martin Milano area and use variances.

Dear Mrs. Cardone and Zoning Board Members, I write with respect to the above referenced matter which was scheduled for a Public Hearing this evening at 7PM. Please be advised that the applicant hereby withdraws the pending variance applications. Thank you for your courtesy. Very truly yours, Joseph Mackay

So that application has been withdrawn.

Ms. Gennarelli: That was the two applications?

Chairperson Cardone: Yes.

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:17 PM)

ZBA MEETING – FEBRUARY 27, 2014 (Time Noted – 8:17 PM)

C D & SONS CONSTRUCTION CORP. 12 BANNERMAN VIEW DRIVE, NBGH

(22-4-6) R-3 ZONE

Applicant is seeking area variances for Lot #1 (Building Permit #13-0428) for one side yard setback and the minimum lot width and for Lot #2 for the minimum lot width for a proposed Two-lot subdivision.

Chairperson Cardone: And we had Reserved Decision on the application of 12 Bannerman View Drive, (C D & Sons Construction) waiting for further information from the applicant.

With respect to the Reserved Decision for 12 Bannerman View Drive for the above referenced applicant, I am at this time still in the process of putting together the information required for the Orange County Health Department to approve the water line extension. Therefore, I am respectfully requesting that the Decision on this application be reserved for another month. Thank you for your attention to this request, Charles T. Brown, PE

PRESENT ARE:

GRACE CARDONE

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:18 PM)

ZBA MEETING – FEBRUARY 27, 2014

END OF MEETING (Time Noted – 8:29 PM)

Chairperson Cardone: Also I have two items to read into the record from last month’s applications. One is the GEJ Newburgh, LLC. and that was the report from the County which was Local Determination and also Santa Monica Holdings, LLC. the report from the County is Local Determination. Okay, we have two other items. Everyone has had a copy of the minutes from last month. Do we have any additions, corrections, deletions?

Ms. Gennarelli: I do.

Chairperson Cardone: Okay.

Ms. Gennarelli: On GEJ Newburgh on page 2 about half way down, Mr. Mattina was answering Mr. Manley’s question about the amount of signage. And he said, that there were previously granted 2714 and he misspoke. I had discussed it with him and it was 2682 that they had been previously granted in their site plan so it would only need a 32.5, would be a total of 2714 after…after this variance was granted, not before.

Chairperson Cardone: Okay, do we have a motion to approve the minutes as corrected?

Mr. Manley: So moved.

Chairperson Cardone: Second?

Ms. Smith: I’ll second.

Mr. Canfield: Chairman, if I can request that a…that last request of Mr. Mattina, if there’s any a…requests of Code Compliance Department can I be copied on it so I’m in the loop as far as…

Chairperson Cardone: Right, actually I’ll give you a little history of that how that came about. I was going over the decision and I saw a discrepancy between what was stated in the minutes and the a…the chart that we had been given. So I called in to the office to see what was correct because there was a discrepancy…

Mr. Canfield: Okay.

Chairperson Cardone: And then later I guess Joe came in and Betty asked him about it.

Mr. Canfield: Which application was it for?

Chairperson Cardone: That was a…

Ms. Gennarelli: GEJ which is over at the Target Plaza.

Chairperson Cardone: And he had just misspoke because the information he had given to us on the chart was correct.

Mr. Canfield: Right, okay.

Chairperson Cardone: But then he used the wrong figure but I wanted…

Mr. Canfield: Could we perhaps…?

Chairperson Cardone: …I just wanted to clear it up because I wanted it to be correct in the decision.

Mr. Canfield: Right, understood, understood.

Chairperson Cardone: Right.

Mr. Canfield: And I don’t have a problem with that. I would just like to be informed though so if we could…

Chairperson Cardone: Okay.

Mr. Canfield: …perhaps devise an internal mechanism whether it be through Betty or however…

Chairperson Cardone: Okay.

Mr. Canfield: …just so I’m informed so, you know, I don’t get blindsided.

Chairperson Cardone: Okay, I’ll make (inaudible)

Mr. Canfield: (Inaudible)

Mr. Donovan: And not to be hyper-technical but actually that’s not the way to do it because you’re supposed to say in the minutes. The minutes are supposed to reflect what was said at the meeting.

Chairperson Cardone: Correct.

Ms. Gennarelli: Okay.

Mr. Donovan: So…

Ms. Gennarelli: Would you like me to read that whole paragraph then?

Mr. Donovan: No…

Ms. Gennarelli: I’m sorry, I don’t understand.

Mr. Donovan: So…so if I say, if he gave the wrong numbers at the meeting…

Ms. Gennarelli: Right.

Mr. Donovan: …that’s what’s supposed to be in the minutes.

Ms. Gennarelli: It is.

Mr. Donovan: Right but I thought we were just correcting the minutes. We can’t correct the minutes.

Ms. Gennarelli: Wait, no you can’t correct the minutes but it can be noted in the next minutes.

Ms. Smith: Today’s minutes.

Ms. Gennarelli: Right.

Mr. Donovan: Right. Yeah.

Chairperson Cardone: Okay.

Ms. Gennarelli: That was the correction.

Chairperson Cardone: And also, we neglected to do our reorganization last month so we need to do that this month.

Mr. Manley: Do you want to make it really easy? I make a motion that the Chairman…Chairwomen for the Zoning Board of Appeals be Grace Cardone.

Ms. Smith: I’ll second that motion.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Abstain

Chairperson Cardone: And the motion for a Vice Chairman.

Mr. Manley: We also need a nomination for a Vice Chair. I’d be happy to make a motion to nominate John McKelvey as Vice Chairman of the Zoning Board.

Mr. Masten: Second.

Ms. Gennarelli: Roll call.

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried. Is there any further business for the Board?

No Response.

Chairperson Cardone: Do we have a motion to adjourn until March 27th?

Mr. Masten: I’ll make a motion.

Chairperson Cardone: Second?

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

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: JOHN MC KELVEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:35 PM)