ZONING BOARD OF APPEALS

MEETING – JUNE 26, 2016

(Time Noted – 7:05 PM)

Mr. Manley: Good evening I’d like to call the meeting of the Zoning Board of Appeals 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 under the Code. 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 will try to render a decision on all applications this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off. And when speaking, speak directly into the microphone as it is being recorded. Ms. Gennarelli, roll call please.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE - Joined Meeting at 8:21 PM

Pledge of Allegiance to the Flag led by John Masten

(Time Noted – 7:07 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:07 PM)

A. DUIE PYLE, INC. 1000 CORPORATE BLVD, NBGH

(95-1-69.1) I/B ZONE

Applicant is requesting two use variances for 185-7-F - a use not specifically permitted shall be deemed to be prohibited (1) to install an electric fence around the property and (2) to erect pole mounted solar panels for the electric fence.

Mr. Manley: The first application this evening is A. Duie Pyle, Inc., 1000 Corporate Blvd in Newburgh. They’re seeking two use variances for 185-7-F - a use not specifically permitted shall be deemed to be prohibited (1) to install an electric fence around the property and (2) to erect pole mounted solar panels for the electric fence. It’s an Unlisted Action under SEQR. Ms. Gennarelli do you have the mailings in order?

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, May 18th and in The Sentinel on Friday, May 20th. This applicant sent out eight letters. The publications and postings were in order but one of the mailings came back Monday with an error in the address and the zip code was wrong so there is a problem with the mailings.

Mr. Manley: Has that piece that was returned was it resent?

Ms. Gennarelli: Well I re-sent it out Tuesday when I got into the office with a little note saying that there was a problem with it but that was three days ago.

Mr. Manley: Then Counselor will more than likely probably recommend that we a…

Mr. Donovan: Yeah, as you should you have to open the Hearing if there is anyone here they can speak otherwise I would adjourn it until next month.

Mr. Manley: Okay, also we have a letter from the applicant which I’ll read into the record. It is dated May 19, 2016 regarding the request for continuance of variance appeal for proposed security system for New Penn Motor Express, 1000 Corporate Blvd in Newburgh.

Ms. Gennarelli and Board of Zoning Appeals Members this is my formal petition to request a continuance of the scheduled variance appeal hearing on May 26 for the proposed security system for 1000 Corporate Blvd., Newburgh, NY 12550. I request it to be moved to the next available The BZA agenda post. May 26.

There are two valid reasons for this request:

(1) New Penn Motor Express has been concerned about the approval process and early indication of a likely denial, even before the case has been presented and heard before the ZBA. I am attempting to get a customer representative to attend the meeting but cannot confirm as of today.

(2) My attendance is required at a conflicting critical meeting in South Carolina that I cannot be rescheduled. Unlike the Board of Zoning Appeals, which meets monthly, the conflicting meeting is a one-time only meeting and thus my attendance cannot be rescheduled for subsequent meeting. I understand ads have been placed and notifications have been sent. I am happy to reimburse the Town of Newburgh for these expenses and pay for additional similar ads and notifications. Also, if you would like and upon your advice and instruction, I will send notifications out early next week informing recipients of the continuance. I find circumstances from both the applicant and/or the board are common occurrences in the hundreds of jurisdiction across the country that I have attended during the past eight years. I respectfully await your confirmation that my case will be continued to the June (or future) BZA meeting as neither customer nor applicant representation will be able to attend next week. If the continuance is not granted, please consider this a request to withdraw the application and we will immediately reapply for a future BZA agenda. Kindly, Cindy Williams, director of Business Development, Electric Guard Dog, LLC. located at 121 Executive Center Drive, Suite 230, Columbia, SC.

Do we have a representative here this evening for the Electric Guard Dog Company? How are you?

Audience Member: Inaudible.

Mr. Manley: Good, more than likely were going to open the Public Hearing. So if you could just wait until we, you know, open the Hearing and then poll the Board as to what they want to do with the application.

Ms. Gennarelli: Can you identify yourself for the record?

Ms. Johnson: Rebecca Johnson from the Blustein, Shapiro, Rich & Barone. We're here on behalf of Electric Card Dog attorney; they're located in New Jersey so they asked us to come tonight.

Mr. Donovan: So if I can just for clarification for the Board, counsel from Princeton, New Jersey for the Electric Guard Dog did give me a call. They wanted to know what the Board would to relative to their request for an adjournment. I indicated to them that I'm not a voting member of the Board. I can't say what's going to happen one way or another, they elected to have local counsel present this evening just if there's any questions to be answered that's what brings Ms. Johnson to us.

Ms. Gennarelli: Do we have proxies for them? Or is that…

Mr. Donovan: That I do not know.

Ms. Gennarelli: Do we have proxies for you?

Ms. Johnson: I…don't know. I don't believe so.

Mr. Manley: It may not be necessary only because the…

Ms. Gennarelli: Okay, right.

Mr. Manley: …more than likely the board is going to adjourn it anyway. Does the Board have any input with regard to the application?

No response.

Mr. Manley: Is there anybody here this evening for this particular applicant? And if so, do you wish to make any comments to the Board?

No response.

Mr. Manley: Okay, that being the case is it the Board's pleasure to hold this over?

Mr. Scalzo: I'll make that motion.

Mr. Donovan: Now, that would mean to continue the Public Hearing to June 23, 2016.

Ms. Gennarelli: Okay, we had a first, I'm sorry, did we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Okay? Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: So if you could communicate to the client that we will hold this over until our June 23 meeting, at which point they can present their case to the Board.

Ms. Johnson: Okay, thank you.

Mr. Manley: Okay, you're welcome.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 7:14 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:14 PM)

ANTHONY DETORO 70 PATTON ROAD, NBGH

(102-2-13) R-1 ZONE

Applicant is requesting an area variance for the rear yard setback to build a pool deck that connects to the existing house deck.

Mr. Manley: The next application before the Board this evening is Anthony Detoro, 70 Patton Road in Newburgh seeking requesting an area variance for the rear yard setback to build a pool deck that connects to the existing house deck. This is also a Type II Action under SEQR. Ms. Gennarelli the mailings?

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

Mr. Manley: Thank you. Mr. Detoro.

Ms. Gennarelli: And if you could just introduce yourself on the mic for the record.

Mr. Detoro: Hello, I'm Anthony Detoro, 70 Patton Rd., Newburgh, NY. I'm requesting a 3 foot variance of the rear yard setback that I have 37 feet on one corner of the pool. I'm looking to construct a deck would connect the existing house that to that deck to the pool. The reason that it should be granted is the lot is an odd shape and the existing footprint of the structures involved does not change. Nothing gets closer to the rear yard setback, the pool is already there. Like I said the the new deck is going to the existing deck and the existing.

Mr. Manley: Roughly how many square feet will the new deck be approximately?

Mr. Detoro: There’s two portions of the new deck the one that I need the variance on I believe it's 5 by 8 a… It's 18 feet by approximately 18'6" by about 5 foot eight inches.

Mr. Maher: But the deck itself doesn't need it, it's because you enter connecting the two?

Mr. Detoro: (inaudible) interconnecting the two I don't meet the 40 foot setback.

Mr. Maher: Right. The pool is not changing, the house is not changing?

Mr. Detoro: The pool is not changing; it’s not getting closer to the rear yard setback.

Mr. Manley: Does the Board have any other questions for the applicant?

No response.

Mr. Manley: At this point, I'd like to open the Public Hearing to anyone in the audience if they have any questions regarding this application or any comments.

No response.

Mr. Manley: There being none I would ask that the Board make a motion to close the Public Hearing.

Mr. Maher: I'll make a motion to close the hearing.

Mr. McKelvey: I'll second it

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed.

Mr. Detoro: Thank you.

(Time Noted - 7:16 PM)

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ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:09 PM)

ANTHONY DETORO 70 PATTON ROAD, NBGH

(102-2-13) R-1 ZONE

Applicant is requesting an area variance for the rear yard setback to build a pool deck that connects to the existing house deck.

Mr. Manley: The Board is resuming its meeting. The Board will hear each case in order it was received. The first variance request this evening that the Board is going to deliberate on is the request of Anthony Detoro, 70 Patton Road, for an area variance. The Board will go through each of the balancing tests for the area variance. First of all does the Board feel that the applicant can achieve the benefit by another means feasible?

Mr. Maher: Not likely.

Mr. Masten: No

Mr. Manley: Does the Board feel that granting of the variance will create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: No.

Mr. Masten: No.

Mr. McKelvey: No.

Mr. Masten: Is the applicant’s request substantial in nature?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: Will the request have any adverse physical or environmental effects?

Mr. Levin: I don’t believe so.

Mr. Masten: No, me either.

Mr. McKelvey: No.

Mr. Manley: Is the granting of the variance is there an alleged difficulty or is it self-created in nature? Which again is relative but it’s not determinative. It is self-created but the other factors outweigh the balancing test I believe.

Mr. McKelvey: Absolutely.

Mr. Manley: Does the Board have a motion on this application?

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

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is granted.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:11 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:16 PM)

WENDY AFFRON 14 WINDING LANE, NBGH

(80-2-10) R-1 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence.

Mr. Manley: The next application before the Board this evening is Wendy Affron, 14 Winding Lane, Newburgh seeking requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence. This is also a Type II Action under SEQR. Ms. Gennarelli the mailings?

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

Mr. Manley: Thank you.

Ms. Gennarelli: Thank you.

Mr. Manley: Good evening could you identify yourself for the record please?

Mr. Cella: Good evening I'm Jonathan Cella. I'm representing the applicant. The subject property is located in R-1district at the corner of Winding Lane and it's a…we're requesting an area variance for front yard setback due to increasing the degree of nonconformity. Apparently the property line lies in the middle of Winding Lane and we have a 50 foot front…front yard setback from the exist…from the property line from the street line we only have 42 feet so we’re requesting a…or require the additional 8 feet. The a…the proposed addition is 310 sq. ft. and it's a…the addition will be totally under the existing roofline. It will be a…enclosing the breezeway between the house and the garage and coming out several feet in the front but that will also be under the roofline all…all a…areas that we’re proposing for the addition are currently impervious.

Mr. Manley: Do any of the Board Members have any questions for the applicant's representative?

Mr. Levin: Are you going to make the breezeway any wider? Is it going to be any…?

Mr. Cella: We are not moving the garage.

Mr. Levin: No, no to…

Mr. Cella: I'm only kidding. I'm kidding. The a…the breezeway is right here in between and we’re just…we’re just going to finish it. We’re going to make it deeper. We’re not making it wider…

Mr. Levin: So you’re making it deeper both ways?

Mr. Cella: Yeah, slightly deeper both ways but in the front where we’re requesting the variance it will remain under the current roofline. We’ll be behind…you see the covered front porch? We’ll be underneath all of that so we’re actually going to the column line and that’s where we’re stopping.

Mr. McKelvey: The setback is over here then?

Mr. Cella: What’s that?

Mr. McKelvey: The setback is all on the other side then.

Mr. Cella: Yeah, we said on the application since we’re a corner lot we get to choose the a…front and the rear. I’m sorry, the rear and the side so a…

Ms. Gennarelli: Jonathan you could go and put up board there, so that way everybody could see. Thank you.

Mr. Cella: So we meet the a…we meet all the setback requirements just the front yard from Winding Lane. The front yard from Sunset Drive will not be increasing and we feel that it’s minor since it’s under...under the current roofline.

Mr. Manley: Are there any other questions from the Board?

No response.

Mr. Manley: At this time, I will ask the public do you have any questions regarding this application? Or any comments regarding this application tonight?

No response.

Mr. Manley: Hearing none, I’ll go back to the Board. Does the Board have any final comments? If not, I would look for a motion to close the Public Hearing.

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed.

(Time Noted - 7:20 PM)

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ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:11 PM)

WENDY AFFRON 14 WINDING LANE, NBGH

(80-2-10) R-1 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence.

Mr. Manley: The next application is Wendy Affron, 14 Winding Lane, Newburgh requesting an area variance for increasing the degree of non-conformity of the front yard setback to extend and enclose an existing breezeway between the dwelling and the garage on the residence. Type II Action under SEQR. Going through the balancing test with the Board, does the Board feel that the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Maher: No.

Mr. Scalzo: No.

Mr. Levin: No.

Mr. Manley: Does the granting of the variance create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: I don’t feel so.

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Scalzo: No.

Mr. Manley: Is the applicant’s request substantial?

Mr. Maher: No, I don’t believe so.

Mr. McKelvey: No.

Mr. Manley: I would just add it already exists it’s just closing up what’s already there. Will the request have any adverse physical or environmental effects?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: No.

Mr. Manley: And is the difficulty self-created?

Mr. Levin: In a way yes.

Mr. Manley: Again most of them are self-created but again when the Board makes their decision they have to balance out all of them. Do we have a motion in regard to this application?

Mr. Scalzo: I'll make a motion for approval.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Cella: Thank you.

Ms. Affron: Thank you.

Mr. Scalzo: I really liked your dog. It sitting out front chewing on something.

Ms. Affron: Okay, thanks again.

Mr. Manley: Good night.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:12 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:20 PM)

JAMES & JOAN FAIRBANKS 4 STILLWATER LANE, NBGH

(19-1-19.1) R-2 ZONE

Applicant is requesting area variances for (A) the front yard setback and no pool shall be located in a front yard to keep the prior built pool (24’) and pool deck (21’ x 17’) and (B) no shed shall be located in a front yard to keep the prior built shed (10’ x 20’). Has two front yards Stillwater Lane and Valley Forge Road.

Mr. Manley: The next application before the Board this evening is James and Joan Fairbanks, 4 Stillwater Lane in Newburgh. They’re requesting area variances for the front yard setback and no pool shall be located in a front yard to keep the prior built pool (24’) and pool deck (21’ x 17’) and (B) no shed shall be located in a front yard to keep the prior built shed (10’ x 20’). This applicant has two front yards both Stillwater Lane and Valley Forge Road to the rear. Type II Action under SEQR. Ms. Gennarelli the mailings?

Ms. Gennarelli: This applicant sent out forty-five letters. All the mailings and publications were in order and from what I understand the posting was taken down today.

Mr. Fairbanks: The posting was taken down at about 4:30. I’m James Fairbanks, 4 Stillwater Lane.

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

Mr. Fairbanks: They say I have two front yards for my shed. Okay? I have what they call, the Town of Newburgh, a paper road. It’s non-existing anymore.

Mr. McKelvey: But they own it.

Mr. Fairbanks: Pardon me?

Mr. McKelvey: The Town owns it doesn’t it?

Mr. Fairbanks: Yes, yes but what do I do with my shed? The sheds been up since 1982?

Mr. McKelvey: I agree with you…it’s like a jungle down there.

Mr. Fairbanks: I think two gentlemen came and looked at.

Mr. McKelvey: I think it was your wife who talked to us.

Mr. Fairbanks: Probably, yes, okay.

Mr. Manley: For the…for the record do you know what the Town abandoned…was that abandoned when you got there or later?

Mr. Fairbanks: No, no, probably twenty-five, twenty to twenty-five years ago that the Town road was abandoned. When Rieger put all of the new homes up there he run the road up straight so that’s was totally abandoned. A…and as for the pool a…I guess I needed a forty foot setback from the property line, I have thirty so I’m asking for a variance for that.

Mr. Manley: What year was the pool built?

Mr. Fairbanks: The original pool I put in? That I put in was thirty-five years ago and I’ve had two put in after.

Mr. Manley: And did the first one have a Permit?

Mr. Fairbanks: A…no.

Mr. Manley: And the second one when…

Mr. Fairbanks: No.

Mr. Manley: …it was built? No Permit? No?

Mr. Fairbanks: No.

Mr. Manley: And the shed? No Permit?

Mr. Fairbanks: No.

Mr. Manley: And the shed has been there since ’82?

Mr. Fairbanks: ’82.

Mr. Manley: What generated your coming before the Zoning Board?

Mr. Fairbanks: The Town of Newburgh a…sent me a letter stating that I needed a…a Building Permit for my shed, my deck for my pool and my swimming pool.

Mr. Manley: Okay.

Mr. Fairbanks: As we went through all the process of getting everything I had a surveyor come and survey the property, brought the plans to the Town that’s when they said the shed is facing two front yards which I’m still lost on. And I didn’t have the…the right amount of footage for edge of property for the pool so…

Mr. Manley: Does the Board have any other questions for the applicant?

Mr. McKelvey: Well they keep the property neat.

Mr. Fairbanks: Thank you.

Mr. Manley: Does the public have any questions with regard to this application or any comments on the application?

No response.

Mr. Manley: Hearing none I ask the Board to make a motion to close the Public Hearing.

Mr. Levin: I make a motion to close the Public Hearing.

Mr. Maher: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed.

Mr. Fairbanks: Thank you.

(Time Noted - 7:24 PM)

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ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:12 PM)

JAMES & JOAN FAIRBANKS 4 STILLWATER LANE, NBGH

(19-1-19.1) R-2 ZONE

Applicant is requesting area variances for (A) the front yard setback and no pool shall be located in a front yard to keep the prior built pool (24’) and pool deck (21’ x 17’) and (B) no shed shall be located in a front yard to keep the prior built shed (10’ x 20’). Has two front yards Stillwater Lane and Valley Forge Road.

Mr. Manley: The next application before the Board this evening for consideration is James and Joan Fairbanks, 4 Stillwater Lane in Newburgh requesting area variances for the front yard setback and no pool shall be located in a front yard to keep the prior built pool (24’) and pool deck (21’ x 17’) and no shed shall be located in a front yard to keep the prior built shed (10’ x 20’). Has two front yards Stillwater Lane and Valley Forge Road. Type II Action under SEQR.

At this point going through the balancing tests that the Board must look at can the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Scalzo: No, it’s a paper street.

Mr. Manley: The only way would be if you a…get rid of the paper road.

Mr. Masten: Yeah.

Mr. Levin: I’ve lived there for twelve years and I hadn’t known there was a paper road there, didn’t know it.

Mr. McKelvey: Actually it looked like a jungle.

Mr. Maher: Yes.

Mr. Manley: Would the granting of the variance create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: No. It’s existed for quite a few years.

Mr. Levin: No.

Mr. Manley: I would say between the two houses the applicant has…he’s in between two that are probably more of a detriment than his. Whether the request is substantial in nature?

Mr. Levin: I don’t believe so.

Mr. McKelvey: No.

Mr. Scalzo: I agree.

Mr. Manley: Will the request have any adverse physical or environmental effects?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Scalzo: No.

Mr. Maher: No (Inaudible).

Mr. Manley: Is the a difficulty self-created? I have to say in this particular case yes again. Also it was obtained without a Permit. Had the applicant had obtained a Permit to begin with he probably would have known about this earlier.

Mr. Maher: Well the two front yards were not self-created that’s obviously.

Mr. Manley: But they were always there.

Mr. Donovan: So the law has this crazy thing that you buy…you’re impugned with knowledge but…whether you have it or not…that’s what I have to say.

Mr. Maher: Self-created by not getting Permit earlier obviously but you can’t fix (Inaudible)

Mr. Manley: Right. Do we have a motion on this application?

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

Mr. McKelvey: Second.

Mr. Manley: I have a motion and a second, roll call…

Ms. Gennarelli: John McKelvey was the second?

Mr. Manley: Yes.

Mr. Scalzo: Yes.

Mr. Donovan: Yes.

Ms. Gennarelli: Okay, thank you. Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is granted.

Mr. Fairbanks: Thank you very much.

Ms. Gennarelli: Have a good trip.

Mr. Fairbanks: Thank you.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:15 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:24 PM)

DANIEL MEJIAS 193 LAKESIDE ROAD, NBGH

(52-12-6.2) R-1 ZONE

Applicant is requesting an area variance for pools shall be located at least 10 ft. from any lot line to install an above ground pool (12 x 24) at the residence.

Mr. Manley: The next item on this evening’s agenda is Daniel Mejias, 193 Lakeside Road in Newburgh, requesting an area variance for pools shall be located at least 10 ft. of a lot line to install an above ground pool (12 x 24) at the residence. Type II Action under SEQR. Ms. Gennarelli the mailings?

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

Mr. Manley: Thank you.

Mr. Mejias: Good evening, Daniel Mejias 193 Lakeside Road, Newburgh. I’m here to get a four foot variance for an above ground pool. It’s supposed to be ten feet from the property line. I’m actually six feet from the property line; I’m short four feet so that’s why I’m here for a variance.

Mr. Levin: Can I ask you a question? How long have you lived there?

Mr. Mejias: Two years now.

Mr. Levin: Two years?

Mr. Mejias: Yes.

Mr. Levin: Do you realize the houses aren’t built in a row, you’re way back as opposed to your neighbor on the right?

Mr. Mejias: I’m not sure what you’re talking about.

Mr. Levin: Your…your…you know, to the back of the property line than your neighbors…

Mr. McKelvey: You have a big front yard.

Mr. Mejias: Yes, I do I actually was looking to put a pool in the front but I was told that I couldn’t get one in the front so the only spot I have is in the back, big front yard, small back yard.

Mr. Manley: Are you having the pool professionally installed?

Mr. Mejias: Yes.

Mr. Manley: Did they discuss at all trying to reconfigure the pool in such a way that…to try to get a little further back somehow by maybe moving it a little bit closer to where the shed is or a little closer to the house or…?

Mr. Mejias: Well if I go to close to the shed then the shed is going to be kind of pointless because I got to get in and out to get lawnmowers and stuff like that. So I need the ac…the room for that. But the…the house is on an angle and the thing about this is that we’ll say twenty-seven point something feet from the property line. My house is going on a slight angle so the closer I go toward my shed…like the end of my house goes to the shed about thirty feet from the property line. On the other end it’s about twenty-seven, twenty-six feet from the property line so I’m trying to get it as close as I can toward the shed but without getting too close to the shed this way I need less of a variance. Right now it’s four foot variance I would need at that…at that edge of the deck.

Mr. Manley: Any other Board Members have questions?

Mr. McKelvey: Have you spoke to the neighbors?

Mr. Mejias: Excuse me?

Mr. McKelvey: Have you spoke to the neighbors about where you’re putting the…?

Mr. Mejias: Actually I have a home security system and I saw when you came over and I actually listened to the conversation. I haven’t spoken to her but I heard the conversation.

Mr. Levin: That’s interesting.

Mr. Mejias: I saw when you guys pulled up and the whole thing.

Mr. Levin: I hope I didn’t say anything bad.

Mr. Mejias: But a…actually her husband a…actually is the one that helped me to a…run the line from one end of my property line to the other end and he actually helped me measure everything out and I told him all about it and he had no problem with it. Seems like his wife may feel a little bit differently I don’t know she is not here though.

Mr. Levin: Do you have any objection to putting up a privacy fence on the back of your lot line?

Mr. Mejias: No I have no…I have no problem with that. Actually her…I mean, all because of the husband he actually comes over all the time and we chat that’s why I haven’t done anything. His wife just retired so I guess she’s…home more now she actually just retired a week ago. In two years this is about the second time I seen her.

Mr. Levin: It sounded like you’re good neighbors.

Mr. Mejias: She…they’re very nice.

Mr. Manley: Does anyone else have any questions for the applicant?

No response.

Mr. Manley: At this point, I’ll open it up to the public if there is anybody that has any questions or comments with regard to this application please step forward and state your name for the record.

No response.

Mr. Manley: There being none I’ll look for a motion at this point to close the Public Hearing.

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

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

Mr. Mejias: Thank you.

(Time Noted - 7:29 PM)

ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:15 PM)

DANIEL MEJIAS 193 LAKESIDE ROAD, NBGH

(52-12-6.2) R-1 ZONE

Applicant is requesting an area variance for pools shall be located at least 10 ft. from any lot line to install an above ground pool (12 x 24) at the residence.

Mr. Manley: The next application before the Zoning Board this evening is Daniel Mejias, 193 Lakeside Road, in Newburgh, seeking an area variance for pool to be located within 10 ft. of property line and to install an above ground pool (12 x 24) at the residence. Type II Action under SEQR. At this point going through the area variance criteria and the balancing test does the Board believe that the benefit can be achieved by other means feasible to the applicant?

Mr. Maher: Based on the layout of the property it’s difficult.

Mr. Manley: The next is whether or not the granting of the applicant will result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: I don’t think so.

Mr. Levin: I don’t believe so.

Mr. Manley: Is the applicant’s request substantial?

Mr. Maher: No.

Mr. McKelvey: No.

Mr. Manley: Will the request have any adverse physical or environmental effects?

Mr. Scalzo: None were noted by the public.

Mr. Manley: And whether or not the difficulty is self-created?

Mr. McKelvey: Yes.

Mr. Manley: So with the Board reviewing and balancing these tests and the information heard from the Public Hearing this evening does the Board wish to make a motion on the application?

Mr. Levin: I’ll make a motion to approve.

Mr. Masten: I'll second it.

Mr. Manley: Motion and a second, do we have roll call vote please?

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is granted.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:17 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:29 PM)

DAVID LOY SONG 18 STORI ROAD, NBGH

(101-8-9) R-2 ZONE

Applicant is requesting an area variance the front yard setback to construct a front deck (6’6” x 4’) on the residence.

Mr. Manley: The next applicant this evening is Daniel or David Loy Song, 18 Stori Road in Newburgh, requesting an area variance the front yard setback to construct a front deck (6’6” x 4’) on the residence. This is a Type II Action under SEQR. Ms. Gennarelli are the mailings in order?

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

Mr. Manley: Thank you. Good evening.

Mr. Loy Song: Good evening, sir. David Loy Song, 18 Stori Road, I really looking to replace the concrete steps on the front of my house with a pressure treated frame and Trex decking stairs. I’m requesting a variance because…it, we’re merely replacing what’s already there. We’re not changing the size and that’s not adding to it any distance or anything so...

Mr. Manley: Are you removing the existing concrete?

Mr. Loy Song: Yes.

Mr. Manley: So you’re going to build right over it?

Mr. Loy Song: No, no removing it.

Mr. Manley: The whole thing is coming out?

Mr. Loy Song: Yes.

Mr. McKelvey: I think it will improve the look of the house too.

Mr. Loy Song: Agreed and adding a railing of course.

Mr. Manley: Any of the other Board Members have any questions?

No response.

Mr. Manley: At this point, I’ll open it up to the public. Is there anybody from the public that has any comments or questions regarding this application?

No response.

Mr. Manley: There being none I would look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley:

Mr. McKelvey: How about me?

Ms. Gennarelli: I’m sorry did I skip you?

John McKelvey: Yes

Darrin Scalzo: Yes, again

James Manley: Yes

Ms. Gennarelli: Just keeping you in order.

Mr. Manley: The Public Hearing is closed.

(Time Noted - 7:31 PM)

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ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:17 PM)

DAVID LOY SONG 18 STORI ROAD, NBGH

(101-8-9) R-2 ZONE

Applicant is requesting an area variance the front yard setback to construct a front deck (6’6” x 4’) on the residence.

Mr. Manley: The next and final application for the evening is David Loy Song, 18 Stori Road in Newburgh, seeking a variance for the front yard setback to construct a front deck (6’6” x 4’) on the residence. This is a Type II Action under SEQR. It would be in the area variance criteria in weighing the balancing tests. Does the Board feel that the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Manley: Does the Board feel that in granting the variance it would result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: I think that it would be a positive to the neighborhood.

Mr. Manley: Does the Board feel that the request is substantial in nature?

Mr. McKelvey: No.

Mr. Manley: Does the Board feel that the request will result in adverse physical or environmental effects?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Manley: And is the alleged difficulty self-created?

Mr. Maher: Technically yes but (Inaudible).

Mr. Manley: Well his stairs are crumbling. So it may be self-created but…

Mr. Maher: It needs a replacement though.

Mr. Manley: Has to be replaced. Does the Board at this point wish to make a motion on this application?

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

Mr. Masten: I'll second.

Mr. Manley: Motion and second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is approved.

Mr. Loy Song: Thank you.

Mr. Manley: Thank you.

Ms. Gennarelli: Good night.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:19 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 7:31 PM)

DANIEL & ELISSA DICKINSON STILL HOLLOW ROAD, NBGH

(6-1-12) R-1 ZONE

Applicant is requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.

Mr. Manley: The next item before the Board this evening is Daniel and Elissa Dickinson, Still Hollow Road in Newburgh, requesting an area variance for N. Y. Town Law 280-A - No permit for the erection of any building shall be issued unless a street or highway giving access to such proposed structure has been duly placed on the official map or plans.

Mr. Brown: Thank you.

Ms. Gennarelli: And…

Mr. Brown: Thank you. Sorry…

Ms. Gennarelli: And…and this applicant sent out ten letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you Ms. Gennarelli.

Ms. Gennarelli: You’re welcome.

Mr. Manley: You’re all set now sir if you would just introduce yourself.

Mr. Brown: Thank you. Charles Brown; I’m the engineer for the applicant. This is a twelve acre lot a…the easement which is depicted here was actually shown on subdivisions and plans dating a…several a…way back but a…in the deeds it’s classified as a right-of-way and it first goes up in 1984 where it was first granted a…it’s reaffirmed in 1989 a…at the subdivision that created the lots for Still Hollow Road all those lots shown here on the location map a…it again shows up in 2003 in the deed transfer, again in 2009 and again in 2015. The lot has been in the family since 2006 a…again it’s a twelve acre lot the proposal is just for one house a…based upon the chronology…this is obviously not a self-created situation a…a… it actually pre-dates the a…Mike Donnelly’s a…a…he did a report I guess for the American Bar Association, which Dave would know more about, that…that a…I guess brings this thing into…into where we are here today which is that you have to have the access to…to a a road to have access for a lot. The home is only proposed to be a single family home a…therefore it’s not going to be a major impact on the environment or the neighborhood. The lot is much larger than all the adjoining lots on Still Hollow Road. So again it’s not going to change the character of the neighborhood. It’s not self-created because a… this lot is land locked. There is no other access to it so there is no other alternative either. The only way to get access to the lot is through this…this a right-of-way a...and a there’s will be no adverse impacts to the environment because again we’re only doing one single family house. Thank you.

Mr. Manley: Do any of the Board Members at this point have any questions for the applicant’s representative?

Mr. Levin: You didn’t show the (Inaudible)

Ms. Gennarelli: Excuse me Richard can you just get a little closer to your mic? Thanks.

Mr. Levin: I just wondering where the other two homes that were up there. I think your driveway is in the middle between two driveways?

Mr. Brown: There…there’s a house…shown.

Mr. Levin: There’s no driveway yet.

Mr. Brown: No driveway yet. There’s a house shown here a…the lot behind this is still vacant. Correct? Is still vacant a…so I…I don’t know which lot you referred to a…

Mr. Levin: The sign was in the middle of two roads.

Mr. Brown: Well that’s…yeah, that’s at a…at the entrance to the a…right-of-way is where that is. There are houses on all these lots on Still Hollow Road. This…this lot is…about two hundred and seventy-five feet beyond that in the back and again it’s twelve acres. It’s a large piece.

Mr. Donovan: Charlie, I…I have a couple of questions.

Mr. Brown: Okay.

Mr. Donovan: Still Hollow Road is a…

Mr. Brown: Private.

Mr. Donovan: …a private road.

Mr. Brown: Yep.

Mr. Donovan: On your plot plan you make reference to R&K Real Estate Management Inc., filed map 9463?

Mr. Brown: That was subdivision that created the Still Hollow Road and all the lots on Still Hollow Road.

Mr. Donovan: Does…does this property on that filed map, does the driveway to this property show?

Mr. Brown: The right-of-way shows. The right-of-way shows. The right-of-way existed before the subdivision. The road for the subdivision actually follows the right-of-way that was originally created for this lot. That right-of-way went all the way down to North Fostertown Road. And when they did the subdivision for K & K they followed the right-of-way through this property for Still Hollow Road.

Mr. Donovan: Do you have any knowledge if there is any Road Maintenance Agreement and whether this property contributes or doesn’t contribute to that?

Mr. Brown: A…this…at this point the property does not contribute. He’s willing to contribute a…as…as a user of the road. A…I don’t know if there’s an agreement in place at this time. (to Mr. Dickinson) Do you? Is there? No, there is not.

Mr. Donovan: So it could actually…any road maintenance agreement does not include this lot or exclude this lot? To your knowledge if you know.

Mr. Brown: There is no maintenance agreement in place I was just informed.

Mr. Donovan: For…for Still Hollow Road.

Mr. Brown: Still Hollow Road, right.

Mr. Donovan: And how many lots are on Still Hollow Road?

Mr. Brown: Two…four…seven? Seven or eight…seven…eight…this would be the ninth lot.

Mr. Donovan: And the R&K Real Estate Management subdivision did that create Still Hollow Road?

Mr. Brown: Yes it did and that was in 1989.

Mr. Donovan: Do you have a copy of that map I just…for my own…?

Mr. Brown: We do. We do have it here with us.

Mr. Brown approached with map

Ms. Gennarelli: Charlie, you might want to grab that mic just in case you decide to talk.

Mr. Brown: The history of the deed was all… Can you hear me? The history of the deed…the history of the deed was all submitted with the package but I do have a copy of that with me.

Mr. Donovan: So…so Charlie what I’m looking at here is…the filed map indicates there is supposed to be a Road Maintenance Agreement was to be filed in the County Clerk’s office. You don’t think that that was done?

Mr. Brown: To the best of my knowledge and to that of my client’s there is no a…filed Maintenance Agreement for Still Hollow Road.

Mr. Donovan: The a…this map seems to show that that road is short of this lot though.

Mr. Brown: The road itself, yes.

Mr. Donovan: Yeah. Okay.

Mr. Brown: The…the right-of-way again, we submitted all the deeds with the application and they…they describe the right-of-way a…through this property. And again that right-of-way went all the way down to North Fostertown Road. Still Hollow Road actually followed that right-of-way when…when they did that subdivision map and they built the road.

Mr. Donovan: And you may not know the answer to this but a…let me just ask you if…if you do. Was there any requirement by the planning board at the time that the road be improved to any…any kind of specification or standard?

Mr. Brown: A…that…that I don’t know a…I wasn’t doing subdivisions at this time back in ’89 but I would assume there would be some design standards. I started working in ’92.

Mr. Donovan: I mean there’s the typical section shown on the map…

Mr. Brown: Right.

Mr. Donovan: …on the Eustace & Horowitz map.

Mr. Manley: Well I think the first question that the Board is going to have to first determine is the road itself and the right-of-way. That’s going to be our first hurdle to overcome then once we overcome that hurdle the second question is going to be is the road going to be acceptable to be able to be used for the applicant. And I’m going to probably need to defer that to our Town engineer and ask the Town engineer to take a look at it and provide a report back to the Board.

Mr. Brown: You…you are talking about the…the condition of the road or…or as far as zoning? Because the Town of Newburgh Zoning doesn’t limit the number of lots on a private road.

Mr. Manley: Correct but in order…if the Board is going to grant a variance to that section of the Town Law, the State Town Law this Board has to determine that that is not going to negatively impact the health, safety and welfare of the residents.

Mr. Brown: Understood. Okay.

Mr. Manley: Ambulance, fire trucks…I think Counsel makes a good point that you know the a…maint…Road Maintenance…

Mr. Donovan: Betty did you get that?

Ms. Gennarelli: What…I’m sorry…?

Mr. Donovan: That Counsel made a good point.

Ms. Gennarelli: Yes.

Mr. Manley: …the a fact that there’s apparently no Road Maintenance Agreement what about the wintertime if there’s ten inches of snow, twelve inches of snow emergency vehicles have to get in, access is going to be a…I think at least in my mind, is going to play a big part in whether or not you know, I would be willing to approve something like that. I don’t know how the rest of the Board feels but I think that the engineer being the professional needs to take a look at it and opine to the Board his concerns or non-concerns.

Mr. Brown: Alright, should…should I…should I make the effort on that to contact Jim and make an appointment with him out there or…?

Mr. Manley: I think that I’ll probably have either our Counsel or our Zoning Board Secretary reach out to the Town engineer and ask him to go out there I may even go out there with him to discuss specifically what his concerns are and ask him to put it in a…form of a letter.

Mr. Brown: I’d like to be kept in the loop on that.

Mr. Donovan: Yeah, just one of the issues in 280-A is whether or not the road is suitably improved so you generally do analyze things like fire, access for fire, emergency vehicles, that type of thing.

Mr. Brown: Suitably improved.

Mr. Donovan: Suitably improved…

Mr. Brown: Okay.

Mr. Donovan: Suitably improved. And before we…let me just if I…I’m sorry, did you need a moment? You can…

Mr. Fucheck: Yeah, I just want to tell Charlie he should mention, alright I’ll talk. My name is Ray Fucheck I a…my name is Ray Fucheck I sold the building lot to a…Dan Dickinson and Elissa Dickinson. The a…road that is there’s a Maintenance Agreement with the existing homes that were on that road. The first piece of property that was sold on that road at the end of Still Hollow Road to the left of where you saw the posting for the variance… Alright? ...was not on that Maintenance Agreement. Okay? So the road which was upgraded probably four years…four or five years ago for access for safety, fire vehicles to access that area was a…I’ll say it was repaved and is accessing for the existing eight homes or seven homes on that driveway. Alright? I just wanted to give you that information.

Mr. Donovan: And Charlie, do you know when your clients purchased did they get Title Insurance insuring access out to (North) Fostertown?

Mr. Brown: A…yes.

Mr. Donovan: The reason why I’m asking a…it’s just a little odd that the…the deed from 2015 says together with and subject to a fifty foot right-of-way as shown on filed Map 9463 but that doesn’t seem to go up to this lot. On the filed map it seems to stop short of the lot.

Mr. Fucheck: When I sold the a…building lot the a…I’m not sure here when I sold building lot 6-1-26.1 I had a right-of-way agreed upon with the owner that I sold the property, Mr. Leroy, I had agreed upon the…the right-of-way through his building lot to that building lot.

Mr. Donovan: Okay.

Mr. Fucheck: And the only contingency on that is I would not connect that to a through road to make it a through path through Still Hollow.

Mr. Donovan: Understood. I’m just trying to figure out if…when the Dickinsons purchased the property if they got Title…on the deed there’s a reference that looks like a title company reference this RCAW253150 is generally a reference from whatever the title company is that recorded the deed. And I just have a question whether or not they insured access from this property out to (North) Fostertown if you know…if you don’t know…it would be…

Mr. Fucheck: Yeah, I don’t know…I had Title Insurance…

Ms. Gennarelli: Could you just get to the microphone please this is being recorded. Thank you.

Mr. Fucheck: I purchased the property; I had Title Insurance which gave me access to all three building lots cause I bought three building lots with that property. I bought 26 or 6-1-26-1 or dot one and I bought a…6-11…6-1-11 and 6-1-12 and the Title Insurance gave access the addendum A to all three building lots.

Mr. Donovan: Right, if…if you have the ability to provide that cause that…I need to advise the Board whether or not there is legal access and that would be helpful to me. That’s just the deed so you…

Mr. Scalzo: How does…? Since you just mentioned tax lot eleven…

Ms. Gennarelli: Excuse me Darrin…also pull your microphones in, please everybody pull your microphones in. Thank you.

Mr. Donovan: Or talk really loud like me.

Mr. Scalzo: It’s a really big map I had to push it away.

Ms. Gennarelli: Yeah, I know.

Mr. Scalzo: Tax lot eleven if you look at our…what came out later. Sir, you were saying your deed gave access to twenty-six, one, twelve and eleven. How do you access to eleven? Would it be through lot twelve?

Mr. Fucheck: Here…it could be through lot twelve but I’m not going to go that route now but a…it’s a…

Ms. Gennarelli: Can you take the microphone? Thank you.

Mr. Fucheck: Sorry, yeah. It’s laid out in Schedule A in the package, if you look at the package. It says a…it’s stated in there in the bottom I’ll say paragraph…it says together with right-of-way of Buhl, Buhl and Glas across lands formerly go to Chadwick which Chadwick was the owner of Still Hollow Road. Okay? Said right-of-way from Chadwick being reserved by Buhl, Buhl and Glas which was the owners of those three building lots. Alright? For all ordinary purpose of egress…ingress and egress of the adjoining properties and I state adjoining properties in Liber 2299 as described on subdivision map a…lands now or formerly of R&K Realty a…Real Estate Management Inc. as resolved in Town Board, planning board meeting December 10, 1987.

Mr. Donovan: Now what…

Mr. Scalzo: Alright now help me understand a little bit, a few minutes ago you had said you came to an agreement with the lot #12 the property that you wouldn’t continue through it.

Mr. Fucheck: Right. No I wouldn’t continue through it to connect it to an existing road. Alright? When I…when I agreed it was just to get access to that middle lot…

Mr. Scalzo: To be able to go through that middle lot…

Mr. Fucheck: No to…well to the middle lot…I only agreed to the middle lot.

Mr. Scalzo: Okay.

Mr. Fucheck: And that’s what the a…right-of-way that was approved by a…Mr. Leroy on the sale of the property.

Mr. Scalzo: So we’re not considering any access to lot eleven at this point in time as well.

Mr. Fucheck: No.

Mr. Manley: At this point does the Board have any more questions at this point? Or if not, I’ll open it up to the public to get comments and then we can go back and go around if you need.

Mr. Scalzo: Sir, pardon me, just one more question. In you quoted Liber 2299 page 233, the right-of-way. Is it described in metes and bounds a…courses and distances, is that described that way in that particular deed? Or is it just a generalized fifty foot right-of-way?

Mr. Fucheck: I think it’s a generalized fifty foot right-of-way and then what I did was on the sale of the property on the recommendation from Michelle Anderson my lawyer, that when I sell the first lot because there was several right-of-ways, there’s a horse trail right-of-way that comes from Fostertown Road that’s a twelve and a half foot wide horse path so I just had based on the recommendations from my lawyer was to have the right-of-way on the right hand side of his property. Alright? A fifty foot right-of-way for the additional home.

Mr. Scalzo: Charlie, I just have a housekeeping item for you. The schedule B description your total distance for the north ten, thirty, nineteen west one ninety-three fifty-three is correct but as…as you follow the schedule B I see one o six ninety (Inaudible) eighty-six sixty-two so they do equal one ninety-three fifty-three but there’s a three tenths…

Mr. Brown: (Inaudible) Okay.

Mr. Manley: Don’t worry; we won’t bill you later for that Charlie. It’s a little free…

Mr. Brown: Thank you.

Mr. Scalzo: That’s why I called it housekeeping.

Mr. Manley: There is a charge for housekeeping. At this point we’d like to open this up to the members of the public if they have any questions, comments, concerns for the Board. Just if you would when you step forward please state your name and address for the record.

Mr. Specht: Henry Specht, 24 Still Hollow Road. I guess we’ll start out on the right-of-way. This is the original right-of-way…

Ms. Gennarelli: Can you just…?

Mr. Donovan: Please use the mic it’s being recorded so just…

Ms. Gennarelli: Take the mic with you it pops off.

Mr. Specht: This is the original right-of-way given to a…Stephen Buhl and Aneta Buhl in 1982 to the first lot which is the one that Mr. Leroy now owns. Do you have the Still Hollow subdivision map?

Mr. Maher: Yeah, it’s down here.

Mr. Specht approached the Board

Mr. Specht: Should I take that down to him?

Mr. Donovan: They are just as important as I am so you…

Mr. Specht: Well this is the right-of-way issue.

Mr. Donovan: It might be easier to put it up on the board and explain it to everybody that way Darrin won’t be left out.

Mr. Specht: So that’s the right-of-way that you see going in to this first lot right here and it ends there that is a…originally on this twenty-five feet wide…sorry, twenty-five feet wide…

Ms. Gennarelli: Thank you.

Mr. Specht: …which was a…I am not a public speaker.

Ms. Gennarelli: That’s okay.

Mr. Specht: Twenty-five feet wide and then when the R&K Real Estate subdivision was done it was apparently increased to fifty feet wide. That right-of-way is an only…was tried to extend from Mr. Glas to themselves, they were co-owners and that’s why they use…they keep using the term reference reserved right-of-way a…reserve of right-of-way on Still Hollow Road. So they gave themselves a right-of-way from here to here but that did not…they did not have the right to give themselves a right-of-way over all this other private property hence trying to piggyback the right-of-way. We’ve had this a…exhaustively researched by a Mr. John Wood of Hill-N-Dale Abstract. There is no right of way. Also their title insurance company River City Abstract has told us and told them there’s no right-of-way. We were informed this week that their title insurance, Mr. Dickinson’s title insurance company who has spoke to me directly the a actual insurance attorney I suppose a…you know wanted to know the situation. A few months went by, we were informed this week that he was a…compensated for the lack of right-of-way on Still Hollow Road.

Mr. Dickinson: That’s not true.

Mr. Specht: Well that’s what we were told so…that was from…from a…the River City Abstract. So whether that’s true or not but our attorney has researched it as well. The right-of-way ends at Mr. Leroy’s lot and that has tried to be piggybacked on…on top of that.

Mr. Manley: The question I have is do you have anything from either of those two sources that you’re referencing to back up the a…is there anything in writing that states…from the title insurance company?

Mr. Specht: We have a… (Mr. Specht approached the Board)

Mr. Manley: Just give us a second for us to review this.

Mr. Specht: This is one of the first letters submitted from all the neighbors with the pertinent clauses highlighted.

Mr. Manley: Did you want to enter this into the record?

Mr. Specht: Sure can.

Mr. Manley: Would you like to enter this into the record as well?

Mr. Specht: Sure you can.

Mr. Manley: Okay the first thing I’ll read into the record is an email from John M. Wood, President, Hill-N-Dale Abstracters, Inc. out of Scotchtown Avenue in Goshen. This is Dave, from what I understand you insured or are about to insure a parcel situated in the Town of Newburgh, 6-1-12. There seems to be an issue with the access that the owner is trying to assert over adjoining lands belonging to David Leroy, 12-1-26.1. You insured Leroy under your file RCAST44458. He by the way is my nephew when you insured Leroy the seller at the time reserved an easement over Leroy’s property. This seems to be an issue at hand, he certainly had the right to reserve an easement however, he does not have the right to utilize the two easements that Leroy has for ingress and egress. I’m only bringing this to your attention to alleviate a potential claim you…you may receive. If you do in fact insure access over Leroy’s property over the other two easements and his neighbors utilize. Attached is a letter from the adjoining owners which I feel is self-explanatory. I also believe this letter was delivered to you. Let me know if I can help. John. John M. Wood, President Hill-N-Dale Abstracters

The next…

Mr. Specht: That’s the letter that was attached.

Mr. Manley: …letter that I’ll read into the record is to the Town of Newburgh Building Department, 1496 Route 300, Newburgh, NY regarding Still Hollow Road, private road August 24, 2015, Dear Sirs: it has come to our attention that a Building Permit is being considered for SBL #6-1-12. We have been informed that the owner of said lot would like to access his land through Still Hollow Road. As you know, a Road Maintenance Agreement was approved by the Town of Newburgh Planning Department when R&K Real Estate Management received its Final Plan of subdivision and filed with Orange County Clerk April 27, 1989, Map # 9463. This Road Maintenance Agreement is attached to all lots within the subdivision and has been part of all the deeds filed with the Orange County Clerk. Whereas this agreement clearly states Liber 3294, page 168, line #9 “and will not be extended for the benefit of any adjoining lands not part of said subdivision. This particular sub…this particular provision relating to the dedication of the said fifty foot wide roadway as a public road and the location of the same not to be subject to amendment”. Whereas this agreement also states Liber 3294, page 169, line #10, “no owner of any lot set forth on the aforesaid subdivision shall permit any sixteen foot private roadway to be extended or any portion of any such lot to be used to provide access to any lands other than those lands set forth on the subdivision”. Therefore no owner of any lot can grant access to any lands not part of the subdivision and the owner of section, block and lot 6-1-12 would need to travel on private land for approximately seventy-five feet in order to gain access to Still Hollow Road a private road permission is not granted and is considered trespassing. Whereas the owner of lot…SBL #6-1-12 does have access to his property across the separate right-of-way granted and approved by the Town of Newburgh planning board from Tarben Way which is currently paved and awaiting dedication as a public road. Therefore we must ask that his request for an easement onto private lands to access his property through Still Hollow Road be denied. We the undersigned specifically ask you to not assume SBL #6-1-12 has right-of-way privileges through our private lands when there is already a separate right-of-way approved and available for this lot from a soon to be dedicated paved Town road, Tarben Way. And it’s signed, Lori Fakler, 11 Still Hollow Road, Thomas Gabriele, 14 Still Hollow Road, Tamara Hoffner, 6 Still Hollow Road, Joaquin Bagtas, 20 Still Hollow Road, Henry Specht, 24 Still Hollow Road and Andrew Hennessy, 5 Still Hollow Road. And a CC was sent to the Town of Newburgh planning board, River City Abstract and Ray and Dawn Fucheck.

Mr. Brown: A…regarding…I would like to comment regarding the a…Tarben subdivision and the alleged access. A…that map has not been filed. Yes the road was constructed however, it’s my understanding that they have to go back to the planning board because they made modifications to the map a…in addition to that a party of that subdivision, Gus Gekakis has since deceased a…so now they have to negotiate with a Paul Gekakis his heir. In addition to that the engineer that stamped that drawing John Trumbol died in 2012 so there is no guarantee that the Tarben Subdivision is ever going to be filed. It’s a…it was approved years ago; they did put in a road however it’s not a filed map. This…this a…fee access to this lot does not exist a…they can’t dedicate the road until they file the map so you know, all of that is…is not true.

Mr. Specht: It is my understanding though that there’s a right-of-way from Lot 11 and 12 that goes all the way to Revere Road through that property.

Mr. Brown: It doesn’t exist until the map is filed. In addition to that…

Mr. Specht: But the right-of-way existed prior to building that road.

Mr. Brown: In addition to that that right-of-way goes right…and is actually not the right-of-way it’s fee access goes right in to a Federal wetland and a…we don’t know if we’d even be able to cross that Federal wetland in the event that the map was filed and that access did exist. At this point it does not exist.

Mr. Manley: Has your applicant explored that option and do you have anything that you have explored that route?

Mr. Brown: We have no control over when they file that map a…we do have documentation from the engineer a…that did that did that subdivision that shows that this proposed fee access a…dead ends into a Federal wetland. I can find that kind of documentation but again the map hasn’t been filed. We don’t know whether that’s going to change a…I know that a Mr. Gekakis is re-negotiating his fee access a…through this subdivision a…I…I’m actually shocked that they built the road before they filed the map. I mean, that’s essentially unheard of because the developer is at risk but that access does not exist at this time. It is not an option that is on the table.

Mr. Manley: But part of this Board’s deliberation process has to be whether or not there is another option for the applicant and that’s part of what we have to weigh in our deliberating process.

Mr. Brown: I understand that. What I’m saying is is that it’s not an option at this time and we have no idea whether it’s going ever be an option or not. It’s not an option at this time. The map has not been filed.

Mr. Specht: If I may ask does this Board have the power to grant an easement over someone else’s private property that doesn’t exist?

Mr. Donovan: Does this Board have that power?

Mr. Specht: Yes.

Mr. Donovan: No.

Mr. Specht: Thank you. Do you have any questions that I might be able to answer?

Mr. Manley: Nothing more at this time. Is there any other residents regarding this application that have a question of comment?

Mr. Dickinson: I’d like…

Mr. Manley: Yes sir.

Mr. Dickinson: …Mr. Specht to clarify how…

Ms. Gennarelli: Excuse me; can you come to the microphone?

Mr. Dickinson: I’d like to ask Mr….

Mr. Manley: Keep in mind that you direct your question to the Board and then if we need any…you know, direct your comment to us and then if the Board wishes to follow up with the a…public we’ll do that.

Mr. Dickinson: Sure. I’m Dan Dickinson; I bought the lot in question. I’d like to have Mr. Specht clarify how the Buhls the original owners gave the easement to themselves. That’s not clear and I think that a…provide documentation of that I have not seen that. I’ve also done an exhaustive research myself.

Mr. Manley: Okay. You can certainly provide this Board any documentation that you have but we’re not going to cross-examine the…the public. If he wishes to comment on you know what your question is he can certainly come back to the microphone and clarify it but I’m not going to have cross.

Mr. Donovan: And just for clarification on a 280-A variance there’s a couple things that are important to the Board and the Board has to consider before granting a variance. One is the condition of the road we talked about that before. The other thing that’s important for the Board to consider is whether or not you have legal access to use the private road. You say you do. They say you don’t. We’re going to have to…we’re going to have to figure that out in some fashion either by title insurance, an opinion of title, an independent I don’t know how the Board wants to handle that but that…that issue needs to be resolved.

Mr. Dickinson: I…I do…you have the document the easement was insured. I’m not sure where the confusion is with that also.

Mr. Donovan: I don’t have a title insurance policy in the packet. I have a series of deeds; I don’t have any title insurance. Title insurance would have to specifically say that it’s insuring access to (North) Fostertown Road because you can get insurance, title insurance with exceptions. So I don’t have…I don’t have clarity whether there’s a legal right to use this.

Mr. Dickinson: It’s my understanding on my deed it’s mentioned on my deed that’s what they insured and that was my understanding and that again is in front of you.

Mr. Donovan: What I am saying is that that’s insufficient proof.

Mr. Dickinson: Okay.

Mr. Donovan: Relative to that issue.

Mr. Dickinson: Thank you.

Mr. Specht: You asked me a question this is the a…

Mr. Manley: Actually what I need you to do is to address the Board if you want to respond to...

Mr. Specht: This is the a…document in question about how they gave it to themselves. This was from Buhl…

Mr. Specht approached the Board.

Ms. Gennarelli: Could you just take that mic? I’m sorry I know no one is used to doing this thing.

Mr. Specht: …they were co-owners of the properties apparently at one time but here is this document from Buhl to Glas.

Mr. Donovan: And all of that important but it stands for what it stands for what it says on the deed and let me tell what I’m talking about by way of example. I represented a young couple once that bought a house and there was a shed in the back of the house. Well you search the title you come to found out that this smart lawyer next door gave himself an easement to the shed because he built the shed on the wrong property. So he gave himself an easement but you can’t do that. I can’t give myself an easement on your property.

Mr. Specht: Right.

Mr. Donovan: So the fact that it’s reflected in a filed instrument doesn’t necessarily make…make it so.

Mr. Specht: Right.

Mr. Donovan: That’s why I’m looking for some independent verification whether title insurance was granted or whether the Board wants an independent opinion of title whether or not this property has the right to use this right-of-way. You may want to consider that to have someone that doesn’t have any stake in the outcome to just give an opinion because the legal access is...is a valid issue and an important issue for the Board to consider in…in determining whether or not to issue a 280-A variance.

Mr. Specht: Can further documentation be submitted to this Board at a later date?

Mr. Manley: As long as the Public Hearing is open we can certainly consider anything you provide the Board but again it’s going to be needed to be reviewed by Counsel which that takes time so we do have certain deadlines to submit stuff. Ms. Gennarelli can give you that timeline at the end of the meeting and let you know so if you want to submit something by our next meeting more than likely this probably will be held open because we’ll be waiting for some information.

Mr. Specht: Okay, thank you.

Mr. Manley: And it’s going to be up to the Board to decide as a group whether or not they want to require you know, independent a…you know, an independent opinion for title.

Mr. Specht: Okay, thank you.

Mr. Manley: Yes, sir.

Mr. Leroy: Mike Leroy, 36 South Dix Avenue, my son owns at 19 Still Hollow he had to leave so I would like to say a few things. Everybody on that road have been taken care of, they do pitch in when they got washed out during that last hurricane Mr. Specht got that road fixed in what maybe a week and nobody called the Town to say what can you do for us, they did it themselves. They all chipped in and fixed that culvert. That was a hole that was twenty feet wide by fifteen feet deep by the length of the road and then some. No problem they fixed that in a week, they did that themselves as you saw the blacktop beautiful street. In other words, this is one of the few Town’s private roads that everybody gets along and they are taken care of it. Somebody stole the street sign they bought a new street sign. They did it not the Town. They…they paid for it themselves so what I’m saying is don’t ruin that. If you start adding people on to this what if they decide no, no now you’ve made the road…there’s too much traffic, they’re tearing it up I’m not paying for it anymore. I’d hate it to ruin what it has going for it. Thank you.

Mr. Specht: I just want it noted that this access issue has gone all the way back to when R&K Real Estate, Richard Lang had to have his attorney send letters to Buhl telling them to stop using Still Hollow Road to access the back lots in which there was a letter I believe from in the Town of Newburgh’s attorney, I believe I have a copy of that that’s why I wanted to ask if I could further submit documents that a stated telling him to do not continue to use the road for logging. They were getting some wood out of there. Because you do not have access the access is only to the first lot only. This is an ongoing issue. This isn’t something that was sprung on anybody. When the land was for sale many people came to look at it, previous to their ownership and all these issues always came up. Even Mr. Leroy when he purchased the land his land surveyor told him, you know you’ve got a lot of right-of-way issues here. (to Mr. Leroy) And did he not? You know, so it’s been an ongoing thing, it’s not a new thing and now it is…it appears they’re just trying to be able to take something that’s not theirs. They don’t have the right-of-way over it. It’s a road that we’ve all…private property that we all bought and paid for by purchasing our lots, have a substantial amount of money invested in repairing it, keeping it up to date, major culvert washing out in Irene and now someone just wants to come in and be able to use it whether they want to be part of the road maintenance or not, it’s private property and I guess it does come down to the right-of-way, you know. We believe it doesn’t exist and that’s…that’s where it stands. Thank you.

Mr. Manley: Does the Board have any further questions at all for the applicant?

Mr. Levin: I think we should hold the meeting open.

Mr. Manley: And are there specific things that you’re going to want to see from th…

Mr. Levin: (Inaudible)…papers they want to supply.

Ms. Gennarelli: Richard, can you…? Where is my sign?

Mr. Scalzo: Where’s your sign, Betty?

Mr. Levin: I apologize.

Ms. Gennarelli: Thank you.

Mr. Brown: We’d like to have the applicant submit some information also we have no problem with it being kept open.

Mr. Scalzo: I…I do have one additional question. It was mentioned before that access to Lot 11 which is not the lot that we’re discussing here this evening. But access to Lot 11 was going to be a different direct…coming in from a different way. Perhaps getting into Lot 11 can be extended to 12 which would eliminate this completely.

Mr. Brown: There’s a timeline, you know, issue with that the a…owner of Lot 11 Mr. Fucheck has you know no urgency to build a house. Where it is his son-in-law a…he wants to build a house now I mean a…they need a place to live so that…so that’s the situation it just…

Mr. Scalzo: Just putting it out there.

Mr. Brown: I appreciate that.

Mr. Manley: Charlie, the Board may decide and they might want to request a…a independent opinion from a title company. If that is the case, is the applicant willing to escrow that? So that we can request that and have that for our next meeting.

Mr. Brown: We’re talking about somewhere less than a thousand dollars, right?

Mr. Manley: I…I…we would have to…

Mr. Donovan: I would think so Charlie but I…I’d have to get a quote before I could. I can’t commit and I mean being that you know, I see Hill-N-Dale, I see River City, it would have to be someone you know, not…preferably not in the area.

Mr. Brown: Okay.

Mr. Donovan: You know and I would have to get a quote from them. I mean typically what the Code provides if you’ve been through the planning board process before this you’ve reimbursed for consultant’s fees but I…I don’t…I don’t want you to get hit with a fifteen thousand dollar fee. That’s not fair so I…I would try to get an estimate beforehand but you know it’s up to the Board if that’s what they want. But since…since we have a disparity of viewpoints here I do think it is important.

Mr. Brown: That’s a reasonable request. Yes we’re okay with that.

Mr. Maher: Charlie…Charlie one thing too. On the map that you gave us the original subdivision…

Mr. Brown: Right.

Mr. Maher: …and…and your layout here if you could be a little more clear on the…on the cul-de-sac there the…the one lot in the rear on…23.21 isn’t show on…well it is to a point but the lines aren’t clear on…on the cul-de-sac where the line is.

Mr. Brown: You’re right. I could have that and a…

Mr. Maher: Yeah, just a…we need a little more information on cul-de-sac to see where all the lines are based on…does it match up to this and then the Town map too would be helpful.

Mr. Scalzo: I’d like to see the…the existing driveway that comes off the paved portion of Still Hollow and that would at least orient me a little better.

Mr. Brown: Okay.

Mr. Maher: And if possible the…the…the issue of where the sign was placed currently on the cul-de-sac it seemed to be the right of where your…it’s to the right of your location that’s on the map here of the right-of-way.

Mr. Brown: You’re talking about the Notice sign?

Mr. Maher: Where the Notice sign is currently so it looks like it’s almost on another parcel. So I wasn’t clear…looking at the map here…it…what appears to follow the driveway…a driveway…versus where the sign it’s almost to the right of that.

Mr. Brown: Well if we put it all the way back on the lawn nobody would even see it.

Mr. Maher: No, I…I understand that I’m just trying to…just trying to get some clarity as far as where the actual access point is.

Mr. Brown: I can…I can actually locate the sign on the map.

Mr. Maher: Well either that or just locate…yeah that would work. Whatever…whatever it makes it a little easier to see.

Mr. Scalzo: Just a…let say the driveway that…that…

Mr. Brown: Some…give you some…some reference points out there.

Mr. Scalzo: Yeah that would help.

Mr. Brown: Right, right. Okay.

Mr. Manley: What is the Board’s position on requesting an independent individual from a title company to provide us with an opinion with whether or not right-of-way does or does not exist?

Mr. McKelvey: I think we should hold it open to get that.

Mr. Levin: I would suggest we should too.

Mr. Manley: Darrin?

Mr. Scalzo: Dave, this appears…I mean we’re here for certain purposes but this, in my opinion, should be something that’s resolved before it even gets to us or that’s…that’s what I’m having a problem with.

Mr. Donovan: Well…in a perfect world, you’re…you’re correct. I will tell you, you know, there’s a court case from about five years ago where…where the court sustained the denial of a 280-A variance finding that the Zoning Board may properly consider in the context of a variance application pursuant to Town Law Section 280-A whether an applicant has shown that he or she has shown a lawful right to use proposed access road. So it’s within our purview to do that. Should…should it have been resolved? Yeah, because then we would just talk about whether or not the road is suitably improved which is the typical. You…you don’t have legal…you don’t have legal frontage on a Town road so the issue is whether or not it is suitably improved. And generally the legal right to use is pretty easy but it’s not here obviously. People are raising issues that need to be resolved and it’s in our purview to resolve those.

Mr. Brown: Can…can we refer this to the Town engineer at the same time so we can run both things concurrent?

Mr. Manley: That would be our plan.

Mr. Brown: Okay.

Mr. Scalzo: That and my other concern is if…if we were to vote to look for a third party independent interpretation of what’s going on both parties would have to agree that…that’s the end of it.

Mr. Donovan: Well I think they’re going to do that. Right? I mean and that’s…that’s the…that’s…

Mr. Scalzo: Someone is not going to be happy.

Mr. Donovan: But that’s…yeah that’s life. Right?

Mr. Specht: I won’t agree that’s the end of it.

Ms. Fakler: Absolutely not.

Mr. Specht: Just because somebody that one person’s independent opinion…

Ms. Gennarelli: Henry, Henry, I’m sorry…I’m sorry…if anybody talks just please…

Mr. Scalzo: Well if it goes your way that would be the end of it.

Mr. Specht: Well then that’s the way it works.

Ms. Gennarelli: You can tilt that mic down or take it off and just give us your name.

Ms. Fakler: My name is Lori Fakler, I own the property at 11 Still Hollow Road and I am also in opposition to Mr. Dickinson’s request.

Mr. Maher: Let me ask a question, is it…? So with Mr. Specht there is a Road Maintenance Agreement in place currently?

Ms. Fakler: Yes.

Mr. Maher: And it encompasses each and every parcel on the property…on…on the road? So, 26.1 and 24 are part of that?

Mr. Specht: 26.1 is not. They had an existing right-of-way from 1982 and then in 1987 or ‘89 when the subdivision was done that right-of-way was already through Chadwick’s property so I guess, you know, it was existing before the subdivision was done so that lot was not subject to our Road Maintenance Agreement. The other six lots created by R&K Real Estate Management obviously were subject to the a…Road Maintenance Agreement.

Mr. Maher: So the 26.1 has their own…their own access above and beyond that of the Road Maintenance Agreement?

Mr. Specht: Yes. 26.1 is Mr. Leroy I believe. Just making sure I’m getting the numbers correct, five point six acre lot the first one.

Mr. Scalzo: Five point six acres, correct.

Mr. Specht: We have no…you know, we have no legal recourse to make Mr. Leroy a part of that however, he is a gentleman and contributes in every way, shape and form.

Mr. Manley: It’s going to be the Board’s determination as to what course of action they want to a…take with respect to determining whether there is or is not a right-of-way but we can’t get to the next test which is whether or not the road meets the standard in order to grant the variance without knowing the answer to the other question. So if anybody on the Board a better suggestion on how to get there I’m all ears.

Mr. Specht: Just for the record our attorney is Marsha Jacobowitz, Jacobowitz & Gubitz and they have researched it as well and a…so, that’s why we feel that we’re on a firm footing.

Mr. Manley: They did not provide you with any opinion or…in writing?

Mr. Specht: We discussed that this week she felt it wasn’t necessary at this point for this meeting. That’s why I asked the question, she said it’s not…it’s not in your authority a…easements over private property. Hence, the reason, I guess, you have to get the answer of whether the right-of-way does exist and so she felt it wasn’t necessary at this point to a…provide anything. But if the Board feels that it is we can have something provided.

Ms. Fakler: So back to your earlier comment about would this be done if you got an independent person to give and somebody wouldn’t be happy, you know, our group of homeowners is prepared to retain, you know, we’ve retained Jacobowitz and we’re prepared to proceed with whatever monies that needed to be contributed to make sure that our…our properties were protected.

Mr. Manley: Does the Board based on the fact that there’s nothing that we have in our packet to substantially show us whether or not there is a legal right-of-way if we make that determination if we close the Public Hearing and we deny the variance based on the fact that we do not have sufficient evidence at this point to make a decision could the applicant at that point when they have the necessary…? If they do get something they could re-apply to the Board again when they have the necessary or once it’s denied, it’s denied. I’m looking for another option that that…

Mr. Donovan: No, understood.

Mr. Manley: …the Members could consider.

Mr. Donovan: In terms of whether or not this property has legal access over the right-of-way to get out to (North) Fostertown Road…I mean I don’t know the answer to that question. So we have one side saying definitively yes, we have one side saying definitively no. Do I…the proof that’s in front of us, you know I’m not prepared to say one way or another…I think that the…

Mr. Specht: May I…may I interrupt?

Mr. Donovan: No, no. That the better course of action would be more information. Now it’s up to the chairs…I’m getting old I don’t want to forget what I want to say.

Mr. Specht: Me too that’s why I tried to…

Mr. Manley: Yes, do you have a statement?

Mr. Specht: Now I forgot what I was going to say already a...yes…a…I forgot what I was going to say for a minute.

Mr. Manley: It will come back to you. Don’t worry.

Mr. Specht: It will.

Mr. Manley: Alright, I’ll just ask, is there anyone else from the public that has any other comments or questions with regard to this application? If not I will then defer back to you for your…

Mr. Specht: I just wanted to say, is there any document there that even…there’s no document there that states that here is a legal access that has been granted over Still Hollow Road to that lot. There’s not one document there that states that.

Mr. Manley: And what the Counsel has advised the Board is that whether it’s written or not in the deed what we would need to see to show that there is definitively a right-of-way would be in a title policy. We don’t have it from either side. We don’t have from Hill-N-Dale which would have been the people that gave you the advice that it did not exist but yet the applicant is stating his title policy it does exist. We don’t have any of those documents to look at tonight so you know that’s why the Board coming up with an idea to kind of establish whether or not it exists or not is to ask an independent party that’s independent of this, is there or isn’t there but we need something in order to rule on and right now we don’t have a…in our advice of Counsel, sufficient evidence there to rule either way.

Mr. Specht: Thank you.

Mr. Manley: Anyone else have any comments at all? If not I’ll come back to the Board and ask the Board at this point what is their pleasure with respect to the application? We’ve discussed with Mr. Brown some of the items that we’re going to need.

Mr. McKelvey: We’re going to need more…more items.

Mr. Levin: (Inaudible)

Ms. Gennarelli: Please come closer to your microphones because it’s not picking up…

Mr. Levin: I would hold the meeting open.

Ms. Gennarelli: Thank you, thank you.

Mr. Levin: …till we get those documents.

Mr. Manley: Okay, the other question is are we going to ask the applicant to escrow funds in order for the Board to go out and request an independent opinion from a title company.

Mr. Maher: Well I think we need it obviously we have two different sides here we need something that’s independent so that we…I’d agree with that.

Mr. Scalzo: I’m still staying with my belief this is a legal question and not a zoning or code question. I don’t know that we’re…we should be rendering an opinion on whose right-of-way it is.

Mr. Masten: Yeah.

Mr. Donovan: Well…the…the issue that we need to resolve that I would suggest is proper for the Board to resolve is whether or not the lot in question has the right to use this private road to get to the public road and you know I’d just cite in support of that this case from the Town of Carmel Zoning Board of Appeals from 2011. And I can see I have not persuaded you one bit.

Mr. Brown: Unfortunately Darrin, we can’t get a Building Permit from the Building Department unless this Board renders a decision in our favor so you know, we’re…we’re kind of stuck here.

Mr. Manley: The next question would be and…welcome Mr. Canfield.

Mr. Canfield: Thank you. I’m sorry I’m late.

Mr. Manley: That’s okay. Do you have anything that you can share from the Town’s perspective with respect to anything that the Town found with respect to the right-of-way perhaps through the Town attorney or through the engineer? Have any of them shared with you a…an opinion as to whether there is or is not a legal right-of-way?

Mr. Canfield: I think Darrin best described our department’s opinion exactly even though we have not had this conversation before. The applicant on many occasions has produced many documents claiming that they did have rights of ingress and egress over the easement inclusive of using the private road. All of those documents have been reviewed by our Counsel simply because I didn’t see enough that made me feel warm and fuzzy enough to okay and issue a Building Permit. That coupled with the neighbor’s concerns and the information that they provided us left us totally undecided and that was what made our decision to go to Counsel for the Town. Counsel for the Town advised the Building Department that the documents that were produced was not enough evidence to display that they did have legal access. So we did not issue the Building Permit and referred it to your Board a...for the a…for the variance which is an area variance. I agree with Darrin totally. I think it’s a legal question a…whether they do or do not have access. I can say also I don’t know when a Zoning Board in this Town, not only this Board, has ever seeked legal or a title company advice going out for a third party in that sense. It’s always been up to the applicant to provide that information to the Board. That’s all I have to add. I mean I totally don’t know. I haven’t been convinced that the documents that we’ve seen provide legal access and I’m very concerned about issuing the Permit at this point.

Mr. Manley: Another question for you, if we were to hold open the Public Hearing and transmit a request to the Town attorney to opine as to whether or not the Town believes whether or not there is or is not the legal right-of-way and if he returns back a decision in either way could that be used as this Board’s determination that this is our advice from the Town. If he says yes there is then we can then proceed to make a decision. If he says no there’s not we could proceed to make a decision.

Mr. Donovan: But…just…his determination would not be binding on us, I mean, if the Board elects to go in that fashion in terms of this issue I…I you know I would want a…what I’m not satisfied with is the level of proof that we received. There’s a couple of copies of deeds, a couple if an email, each people have said this and that, you know, there’s no…there’s no…and not that anyone knew they needed this tonight. There’s no proof by affidavit, there’s copy of the title insurance policy where someone says whatever the cost of the lot, we’re putting our title insurance premium on the…on the line here is to say the cost of the lot is seventy-five thousand dollars. If we’re wrong it cost us seventy-five thousand dollars that…that title insurance policy would show that. An affidavit as opposed to an email from the…from the title company would be helpful cause I’m just not seeing enough evidence one way or another to give my opinion.

Mr. Scalzo: Notice me nodding; now you…I agree Dave.

Mr. Brown: We would appreciate the opportunity to…to a…provide the title insurance policy and additional documentation from the title a…company. So, you know, relative to the Town attorney at this point I think is a little premature because again we…we have additional documentation that we didn’t…again…know that we were going to need tonight that we’re willing to provide.

Mr. Donovan: So then if the Board has considered to hold it over for submission of whatever proof either side is going to submit to make their case to the ZBA? Would you like to do that? I still would suggest, you know at some point in time, you should go to the…the Town engineer relative to the condition of the road just so we have something in the record on that.

Mr. Specht: As far as proof on our side it’s kind of hard to prove a negative. If something doesn’t exist we can only put forward the documents that are available and you know, either a determination is made that it exists or not is kind of hard for us to prove any further is something…

Mr. Manley: Well if…like Counsel said if there was an affidavit that was available from Hill-N-Dale Abstract…

Mr. Specht: Okay.

Mr. Manley: …that said, you know, an affidavit is a sworn statement…

Mr. Specht: Yeah.

Mr. Manley: …that this…that…that…there does not exist a right-of-way in a sworn affidavit that it does not exist that’s something that this Board could use because it’s a sworn affidavit. Just like if you were able to provide a title policy that you showed if you somehow able to show that there was no right-of-way that you know, that’s evidence that we can use.

Mr. Specht: Even if it’s…if a title company insured a right-of-way but if they made a mistake and the right-of-way didn’t exist that still doesn’t prove that the right-of-way exists just because they insured it.

Ms. Fakler: At all…at all.

Mr. Donovan: Well my…my point is the evidence that is submitted is insufficient for me to render a determination and the Board is looking for a legal determination from me on this issue.

Mr. Specht: Yeah.

Mr. Donovan: Because Darrin is right it is a legal issue.

Mr. Specht: Yeah, we can get the affidavit no problem.

Mr. Dickinson: You mentioned a family member working for that law firm can you clarify that?

Mr. Specht: No family members work for the law firm.

Mr. Dickenson: Whose…

Ms. Gennarelli: Excuse me, excuse me…

Mr. Manley: This isn’t the venue for cross-examination. At this point, does the Board wish to hold over to allow the applicant and if the public wishes to submit some additional documents for review next month?

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

Mr. Levin: I’ll second that.

Mr. Donovan: And that’s the June 23, 2016 correct?

Mr. Scalzo: Correct.

Ms. Gennarelli: Okay, Richard is the second. Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is held open.

Mr. Brown: Thank you.

Ms. Gennarelli: To June 23rd.

Mr. Manley: And just so the public that’s here for this application this evening if you want to listen up? The Public Hearing is going to be held over until June 23rd. There will not be a re-notice so this is your notice that you need to be here to bring your case back before the Board on the 23rd at 7 PM wherever it falls on the agenda, more than likely it will be at the end of the agenda. In addition to that make sure that you get anything to our Zoning Board Secretary ten days before the meeting. That will be by the 13th of June.

Mr. McKelvey: As a reminder, the agenda would be on the website, to remind you of when the meeting is.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:35 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 8:35 PM)

DANIEL & CHRISTY MANN 37 EAST ROAD, WALLKILL

(2-2-22.1) R/R ZONE

Applicant is requesting an area variance for Lot #2 for the front yard setback of an existing single-family dwelling for a proposed two-lot subdivision before the planning board.

Mr. Manley: The next item on the agenda for this evening is an item held open from our April 28, 2016 meeting, Daniel and Christy Mann, 37 East Road in Wallkill. They are in a reservoir residential zone seeking an area variance for the second lot for the front yard setback of an existing single-family dwelling for a proposed two-lot subdivision before the planning board. This is a Type II Action under SEQR. Is the applicant here by any chance?

Mr. Donovan: He already…he’s a little anxious.

Ms. Gennarelli: And this application had Notices that were taken down and the Notices were re-posted and they were in order.

Mr. Manley: That is correct and I do have a copy of the Affidavit of Posting and also for the record I was there on Tuesday, this past Tuesday...I’m sorry Sunday and it was posted on Sunday. I believe somebody else was out just the other day and…

Mr. McKelvey: I was out to see it.

Mr. Scalzo: Wednesday I saw them.

Mr. Levin: I was there Tuesday.

Mr. Manley: So at this point you had made the presentation.

Ms. Gennarelli: And if you could just introduce yourself again for the record.

Mr. Stridiron: My name is Darren Stridiron and I’m a professional land surveyor for my client the Mann family at 37 East Road.

Mr. Manley: Does the Board have any other questions with regard to the application? I know we went over it in detail last meeting.

No response.

Mr. Manley: I’ll ask if there’s anybody from the public here for that particular application?

No response.

Mr. Manley: Hearing nobody here for that application does the Board wish to make a motion to close that Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

Mr. Stridiron: Thank you.

(Time Noted - 8:38 PM)

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ZBA MEETING – MAY 26, 2016 (Resumption for decision: 9:19 PM)

DANIEL & CHRISTY MANN 37 EAST ROAD, WALLKILL

(2-2-22.1) R/R ZONE

Applicant is requesting an area variance for Lot #2 for the front yard setback of an existing single-family dwelling for a proposed two-lot subdivision before the planning board.

Mr. Manley: The last item this evening is the application that was held over from April 28, 2016 meeting Daniel and Christy Mann, 37 East Road in Wallkill seeking an area variance for Lot #2 for the front yard setback of an existing single-family dwelling for a proposed two-lot subdivision before the planning board. It’s a Type II Action under SEQR. The Board reviewing the area variance criteria and the balancing test does the Board feel that the benefit can be achieved by other means feasible to the applicant?

Mr. Scalzo: No, it’s an existing non-conforming.

Mr. Manley: Would the granting of the variance result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: No.

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Manley: Does the Board feel the request if granted would be substantial?

Mr. McKelvey: No.

Mr. Maher: No.

Mr. Levin: No.

Mr. Manley: Would the request result in any adverse physical or environmental effects?

Mr. Maher: No.

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Manley: And is the difficulty self-created?

Mr. Scalzo: No, the Town created the issue by Zoning setbacks.

Mr. Manley: Based on the information and testimony received on this application does the Board wish to make a motion?

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

Mr. Manley: We have a motion for approval.

Mr. Scalzo: I'll second.

Mr. Manley: And we have a second, roll call vote.

Ms. Gennarelli:

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The variance is granted.

Mr. Stridiron: Thank you, have a very wonderful weekend.

Mr. Scalzo: That dwelling pre-dated zoning. That’s what I meant but it didn’t sound like that. When I read the minutes and note it didn’t come out very well.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:21 PM)

ZBA MEETING – MAY 26, 2016 (Time Noted – 8:38 PM)

DON & TAMMY MURPHY 299 LAKESIDE ROAD, NBGH

(50-1-22) R-1 ZONE

Applicant is requesting area variances for the maximum allowed height, the maximum lot building coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to add on to the second floor, expand the existing first floor and add front and rear covered porches on the residence.

Mr. Manley: The last application before the Zoning Board this evening is a holdover from our January 28, 2016 meeting Don and Tammy Murphy, 299 Lakeside Road in Newburgh, seeking area variances for the maximum allowed height, the maximum lot building coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to add on to the second floor, expand the existing first floor and add front and rear covered porches on the residence. This is a Type II Action under SEQR. And before we open everything up I just want to thank the public for their patience this evening I know it’s been a long night for you sitting in the audience so thank you. Mr. Murphy, how are you?

Mr. Murphy: Good, and you?

Mr. Manley: Do you have anything for the Board this evening?

Mr. Murphy: Yes, so since the last hearing we went back to the drawing board to really take into consideration everything that has been expressed by the neighbors and the Orange Lake committee regarding anything that they didn’t want the feedback that they had given. So we took that upon ourselves to go back to the plans and we also met a couple of weeks ago…I personally sat down and met with the Orange Lake committee to make sure we understood clearly what it was that they would like to see changed so that approval could be hopefully granted. And we took that information into consideration and went back to the architect and removed any and all existing structure or permanent structure that was proposed over the existing deck. And so with those changes it’s our hope that this would meet the approval of the Board.

Mr. Manley: Did you…did you present that to the Building Department for review?

Mr. Murphy: Yes, yes the plans were submitted earlier this week.

Mr. Manley: And did you follow up with the other information that they had requested?

Mr. Murphy: A…I had gotten an email from Joe Mattina I believe and I responded to his email kind of unsure of what he was asking simply stating that we had submitted everything that had already been submitted in the prior months and nothing more was changing other than the fact that we were removing what was requested by the Board in the prior hearing so I’m not sure what it…what else he was asking for.

Mr. McKelvey: I was under the understanding he asked for a survey.

Mr. Murphy: So they want us to go back and do a survey…

Mr. Scalzo: Or revise the site plan.

Mr. McKelvey: Revise it.

Mr. Scalzo: Or revise the survey to show the footprint as the plan that we just received tonight.

Mr. Murphy: Okay.

Mr. Manley: He has to recalculate if there’s any…what the changes are.

Mr. Murphy: Even if those changes are minus changes from what the Board already had? Like we have…we’re taking away from what was already submitted.

Mr. Manley: Right, but can you tell me exactly what it is that you need as far as sizes? I know it’s less but we don’t know how much less. We have to be able to articulate in our decision how much we’re granting.

Mr. Murphy: So is that not shown on the plans that the architect that we submitted showing the exact details, the elevation and all of that I mean, we basically took what we already submitted and took away what was on the prior plans.

Mr. McKelvey: It’s not even signed.

Mr. Murphy: Okay, so whatever need we’ll get it to you, keep it open.

Mr. Maher: So just for my clarity, so the…the building facing the lake…

Mr. Murphy: Right.

Mr. Maher: …basically everything is moved back…the existing…

Mr. Murphy: Correct.

Mr. Maher: …the existing a…back wall (inaudible)…

Mr. Murphy: That’s right.

Mr. Maher: And the front of the house facing the road a…would anything change there?

Mr. Murphy: Not from our last submission, no.

Mr. Maher: So the…the overhang remains consistent…

Mr. Murphy: Correct.

Mr. Maher: …the small porch remains consistent…

Mr. Murphy: Yeah.

Mr. Maher: …the elevation, the height of the roof has it changed at all since the last submission?

Mr. Murphy: Nope.

Mr. Scalzo: Is the existing deck on the left elevation that I’m looking at here where your deck or the deck is that where the existing deck is now?

Mr. Murphy: Yes.

Mr. Manley: While the Board is reviewing there a…plans before I’m going to open it up and see if there’s any comments from the public or any questions from the public with regard to this application. Yes, sir.

Mr. Steele: Yes, my name is B.J. Steele, 301 Lakeside Road, I guess I’m just wondering, I don’t know if the public has a chance to even take a look at the documentation that…that’s submitted any changes. I haven’t seen anything that’s been published or…or been privy to take a look at anything that they’ve changed or…or…

Mr. Manley: Right.

Mr. Steele: …I’m just curious.

Mr. Manley: Unfortunately we received information but there were still some issues with respect to the Building Department as far as sizes and…

Mr. Steele: And that still hasn’t been resolved.

Mr. Manley: Correct, because we don’t know specifically how much of a variance is needed, has anything changed.

Mr. Steele: Okay.

Mr. Manley: As soon as…

Mr. Steele: So you’re in the same boat that I am, thank you.

Mr. Manley: Correct.

Mr. Levin: Were you part of the a…committee that met with him…the gentleman?

Mr. Steele: No.

Mr. Levin: You weren’t? Okay.

Mr. Manley: Is there anybody here from the committee that reviewed or…?

Mr. Bochemuhl: Good evening, Alfie Bochemuhl, president of the Orange Lake Homeowner’s Association. It sounded like you might of had a question for me?

Mr. Levin: Well, I wondered were you at the meeting…?

Mr. Bochemuhl: Yes.

Mr. Levin: …that he was describing?

Mr. Bochemuhl: Yes. We met and a…our board felt that anything built above the surface of the deck would be a visual a…deterrent to the neighbors and as I have seen basically I think the same thing you have a…I’m presuming a…it’s…it’s a elevation that shows nothing on the deck.

Mr. Maher: And that…and that…

Mr. Bochemuhl: And that conforms to what we discussed with him.

Mr. Maher: So the committee was in agreement to this current design that was submitted?

Mr. Bochemuhl: Correct. And I shared that with our board and collectively everybody got back to me and they all agree.

Mr. Manley: Are any of the neighbors on that board? Directly on either side or…?

Mr. Bochemuhl: Immediately? No, a…three houses away.

Mr. Manley: Are there any of the neighbors on either side that are here that wish to comment on the applicant’s removal of the second level of the deck?

No response.

Mr. Manley: Okay, at this point, so what is the Board’s…?

Mr. Maher: Well, my…so was a full set of plans submitted to the Building Department?

Mr. Murphy: A…

Mr. Manley: You’ll just need to come up to the microphone.

Mr. Murphy: Yeah, and I apologize for my ignorance, the full set of plans was submitted to the Zoning Board is my understanding it not to the Building Department.

Mr. Maher: So…

Mr. Murphy: We haven’t submitted them for a Building Permit…

Mr. Maher: No, I know but up for a review (inaudible)…is what I’m saying so did they…did they get a…this is just a elevation…was more than this submitted or…?

Mr. Murphy: To my knowledge it was that and also interior design but that the exterior design that was submitted.

Ms. Gennarelli: This is all that they (Building Department) received.

Mr. Murphy: It should have been a two page document and in that…that PDF.

Ms. Gennarelli: Jerry, do you…do you know if Joe received anything else?

Mr. Canfield: I don’t know what Mr. Mattina has received but I caution the Board that…that if Mr. Mattina has asked for a plot plan or a survey so he could create the sheet that you generally see which has the dimensions and the percentages of the variances that are or are not needed. I caution you to make a decision without that. That would not be acting prudent and consistent with how we’ve done it in the past. I don’t know, Mr. Murphy, if you are unclear I believe Mr. Mattina is just asking for a survey that depicts this footprint so he can make this determination of what variances are needed. I don’t know if you are aware that our department provides for the Zoning Board a sheet which spells out what variances the application or the applicant is looking for.

Mr. Murphy: Okay.

Mr. Canfield: And then those numbers are carried through the whole process and when the decision and resolution is rendered and filed it is a legal document that those numbers are reflected of that.

Mr. Murphy: Yeah, so…

Mr. Canfield: …is here.

Mr. Murphy: …I apologize for my ignorance because I…I was under the impression that that had already been submitted with…

Mr. Scalzo: You’re correct, we have a survey.

Mr. Murphy: Yeah.

Mr. Scalzo: I think what Jerry is…means to say is a site plan…update the site plan because the survey is the survey, the boundary lines will not change. What we’re looking for…

Mr. Canfield: Yes, I stand corrected a survey is existing conditions. We need to see a site plan with the proposed structure and footprints.

Mr. Murphy: So he had not submitted that information with the prior submissions for this?

Mr. Scalzo: Well you’ve made change…you made changes several times.

Mr. McKelvey: You made changes.

Mr. Maher: So basically what we need is a site plan that reflects this…this final plan that you…that apparently you’ve met with the committee and they agreed upon.

Mr. Murphy: So, this is where I’m thrown off, the site plan then will be exactly what it is now minus the roof over the deck. So what is changing with the site plan? That’s what I don’t understand.

Mr. Maher: It just needs to be…it needs to reflect everything on here and be dated based like on the last submission and then once…once Joe can review that and compile the information it may stay the same, it may change. We don’t know that’s your problem…

Mr. Murphy: Sure.

Mr. Maher: …is that changes were made we can’t go on the word that it’s the same thing.

Mr. Canfield: Just a if I may…I thought I heard before a…that there were changes made in the minus which would indicate to me that what was originally sought is now being asked for in a lesser degree.

Mr. Murphy: Correct.

Mr. Manley: Correct.

Mr. Canfield: If that’s the case, we definitely see…we need to see what it is that you’re looking for, what you’re asking for…

Mr. Murphy: Okay.

Mr. Canfield: …so those numbers that I spoke of all reflect accurately. And if I may suggest you may also have a note on there of the date which relates to the meeting with the Orange Lake Homeowner’s Association.

Mr. Murphy: Sure.

Mr. Manley: And the other issue is we had the original submission back in January, the you came back with revised plans and now we have a third set of plans. So I think what the Board wants to insure is out of all three of those what is the end product going to be because there may be some things in the second plan that you’re keeping or that or the first plan, we need to have something concrete that’s final that is…that everybody can live with and then we…

Mr. Murphy: That’s…

Mr. Manley: …can make our decision from there.

Mr. Murphy: That is the final so I guess it just needs to be formalized is what we’re saying. Okay. So just I’m clear what is I getting for the next time to make sure…

Mr. Scalzo: Will you be representing yourself or your architect be here?

Mr. Murphy: I’ll be representing, he cost us enough.

Mr. McKelvey: Because we have to have it ten days before the meeting.

Mr. Murphy: Yeah.

Mr. Maher: Now obviously it.

Ms. Gennarelli: It has to go to Joe too.

Mr. Donovan: Well, you may want to make a phone call or appointment to sit down with Mr. Mattina so there is no miscommunication. He tells you exactly what he needs…

Mr. Murphy: Tells exactly what he needs…

Mr. Donovan: …you provide exactly what he wants…

Mr. Murphy: Right.

Mr. Donovan: …we get exactly what and hopefully we give you exactly what you wanted.

Mr. Murphy: And then the neighbors have a chance to see…

Mr. Donovan: Sure because…

Mr. Murphy: …what exactly…

Mr. Donovan: …it’s got to be posted on the website.

Mr. Murphy: Yeah, yeah.

Mr. Donovan: And then so they have an opportunity to comment.

Mr. Murphy: Okay, fair enough, understood. I’ll just email…I’ll email him directly just to set up a time to make sure when.

Mr. Donovan: Okay.

Mr. Manley: So at this point, if the Board wishes to adjourn till the June 23rd meeting this Public Hearing and keep it open.

Mr. McKelvey: I’ll make that motion.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: So again for the benefit of the public that’s here for this particular application the Board is going to wait for what is hopefully the final communication with respect to exactly what the applicant wants as far as size with the removal of the second on the floor porch. That information will go to our Building Department which will tell us exactly how much in variances are needed. It will be posted to our website and available for the public for the June 23rd meeting at which point you can come again and make your comments as to whether or not you’re in agreement with it, against it, whatever your concerns are and the Board will hear those concerns and then hopefully on the June 23rd meeting make a ruling with respect to the variances.

Mr. Murphy: Thanks guys.

Mr. Manley: Thank you. At this point, the Board is going to take a short recess so that we can confer with Counsel. In the interest of time, I would ask if the public would step out into the hallway at which point we’re done we’ll call you back in.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:52 PM)

ZBA MEETING – MAY 26, 2016

END OF MEETING (Time Noted – 9:21PM)

Mr. Manley: Okay, at this point we have a…

Ms. Gennarelli: The minutes?

Mr. Manley: The minutes. Has everyone had an opportunity to peruse the Board minutes?

Mr. McKelvey: I'll make a motion.

Mr. Manley: We have a motion…

Mr. Masten: I’ll second.

Mr. Manley: …and a second to approve the minutes. All in favor…

Aye - All

Mr. Manley: Anyone opposed?

No response.

Mr. Manley: Okay, there’s nothing else to report unless you have anything to report.

Ms. Gennarelli: I don’t think I do.

Mr. Manley: Counsel?

Mr. Donovan: I do not.

Mr. Manley: Mr. Canfield?

Mr. Canfield: What?

Mr. Manley: Good to go?

Mr. Canfield: Very good.

Ms. Gennarelli: Would you like to close the meeting?

Mr. Manley: So do we have a motion to adjourn?

Mr. McKelvey: So moved.

Mr. Manley: Do we have a second?

Mr. Masten: Second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is adjourned.

PRESENT ARE:

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

DARRELL W. BELL

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:25 PM)