ZONING BOARD OF APPEALS

MEETING – JUNE 23, 2016

(Time Noted – 7:06 PM)

Mr. Manley: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted relief 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. The Board will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off and when speaking, speak directly into the microphone ae it is being recorded. Ms. Gennarelli the roll call please.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Darrell Bell

Mr. Manley: Thank you. I’d like to introduce our new Board Member this evening. He is making his debut appearance here at the Zoning Board. His name is Darrell Bell; he’s a resident of the Town of Newburgh which all Board Members are and he is starting with us for his first meeting this evening. Welcome Darrell.

Zoning Board Members: Welcome Darrell

(Time Noted – 7:08 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 7:08 PM)

KUNAL PATEL 11 COLD SPRING LANE, NBGH

 (117-4-26) R-2 ZONE

Applicant is requesting an area variance for the rear yard setback to construct a rear deck (16 x 20) on the residence.

Mr. Manley: The first order of business this evening is going to be the application of Kunal Patel, 11 Cold Spring Lane in Newburgh. Before I ask Ms. Gennarelli if all the items are in order, each month we have to submit any property that’s within five hundred feet of a County right-of-way or a State Highway to the Orange County Department of Planning for review. They have up to thirty days in order to respond with their comments and this Board can’t take action on that application until such information has been received by the County or a thirty day period has passed. With a number of applications this evening the County has still not responded to five of the items on the application that we have this evening so we may go ahead and do the Public Hearings. We can close the Public Hearings however the Board cannot vote on that until we have a determination from the County at which point we’ll be able to vote on them. That means that we will not be able to vote on those items until the July meeting. What I’d like to do is just let everybody know which ones those are because after this evening’s presentation, after it’s presented we’re not going to be voting on it so those people are free to leave but I would encourage you to come back next month when we vote on it. So those applications that are impacted this evening are Thomas and Merry Jean Kunkel Living Trust, Christine Dalton, the Estate of James A. Fischer, Ailin Barron, Stephanie Barron, Gianna & John Franco & Nicholas Monaco and Angel Rios & Kathleen Sileno-Rios. So we can go ahead and again hear those, we can close the Public Hearings however we just have to wait until the thirty days has elapsed or the County sends us the information and we’ll be able to vote on those applications at the next meeting. Unfortunately it’s a legal requirement and it’s one in which the Board, you know, unfortunately cannot waive or get around. So at this point, Ms. Gennarelli, are the mailings in order?

Ms. Gennarelli: I would just like to say the Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, June 15th and The Sentinel on Friday, June 17th. This applicant sent out fifty-three letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Doce: Good evening, I’m Darren Doce, representing Kunal Patel requesting an area variance to construct a 16’ x 20’ deck that will not meet the required rear yard setback. Mr. Patel had purchased his home in 2000 and at that time there was a four by eight foot landing on the rear of the house and the house is setback from the rear property line of forty six feet. When he recently went to apply for the Building Permit to construct his deck he was informed that the sixteen foot deck would cause the rear yard to be thirty feet rather than the required forty feet.

Audience Member: Speak louder please.

Mr. Doce: Louder? Okay. Since a…since rear decks are a staple of the American backyard and Mr. Patel desires to have a rear deck that drives us for the need for this variance. We don’t feel that there will be an undesirable change to the neighborhood or adverse impacts due the fact that the deck won’t be visible from the street or even easily visible from the a…side the houses to each side. There is also an existing row of mature trees and a fence along the rear of the property line that somewhat screens the deck from the rear of the adjacent parcel to the rear. I’ll also point out that a…that owner to the rear also has a deck along the rear of his house. With that I open it up to the questions from the Board.

Mr. Manley: Do any of the Board Members have any questions at all for the applicant?

No response.

Mr. Manley: Hearing none I’ll open it to the public, are there any comments with regard to this request or any concerns?

No response.

Mr. Manley: Hearing none I’d ask if the Board has a motion to close the Public Hearing?

Ms. Gennarelli: That was three motions.

Mr. Donovan: Richard moved and….

Ms. Gennarelli: Richard.

Mr. Donovan: …and Dave (John Masten) seconded.

Ms. Gennarelli: Okay.

Mr. Donovan: I have good ears Betty.

Ms. Gennarelli: Okay, thank you. We call him John Masten. Don’t confuse me. Okay, roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 7:13 PM)

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ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:41 PM)

KUNAL PATEL 11 COLD SPRING LANE, NBGH

 (117-4-26) R-2 ZONE

Applicant is requesting an area variance for the rear yard setback to construct a rear deck (16 x 20) on the residence.

Mr. Manley: The Board is resuming its regular meeting. The Board will hear the applications in the order that they were received. The first application that the Board will be entertaining this evening is the application of Kunal Patel, 11 Cold Spring Lane in Newburgh. Is there discussion from the Board with regard to this application? It’s a Type II Action under SEQR. Do we have discussion?

Mr. Scalzo: I think it will be in character with the neighborhood.

Mr. Levin: Yeah.

Mr. Scalzo: There was no…no comments from any of the a…adjoiners opposed.

Mr. Levin: I live in that neighborhood and it’s…it definitely will be in character.

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

Mr. Masten: I’ll make a motion.

Mr. Manley: For?

Ms. Gennarelli: For?

Mr. Masten: …approval.

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:42 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 7:13 PM)

RHONDA PAUL 7 ALGONQUIN DRIVE, NBGH

 (65-5-5) R-3 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the side yard setback to construct a rear addition (16 x 13) on the residence.

Mr. Manley: The next application this evening is the application of Rhonda Paul, 7 Algonquin Drive, Newburgh requesting an area variance for increasing the degree of non-conformity of the side yard setback to construct a rear addition (16 x 13) on the residence. Ms. Gennarelli are the postings and mailings in order?

Ms. Gennarelli: Yes and this applicant sent out forty-five letters and all the mailings, publications and postings are in order.

Mr. Manley: Thank you. Good evening, could you introduce yourself for the record please?

Ms. Paul: Sure, my name is Rhonda Paul.

Mr. Manley: Thank you. Could you explain to the Board what your intent is and what your need is for the variance?

Ms. Paul: I would just like to put an addition of a bedroom on the back corner of the house and it’s going to cause the non-conformity of about sixteen feet of an already existing area which is nine point two feet now so it’s three fifteen so it would just extend that nine point two feet of the house for another sixteen feet so…for a bedroom. Nothing fancy with this one.

Mr. Levin: Mrs. Paul you have a very unique house, the stone…

Ms. Paul: Yes.

Mr. Levin: …this addition you’re putting on is not going to be stone, is it?

Ms. Paul: No, no it’s going to be a pearl colored shake like cedar shake type exterior.

Mr. Scalzo: I actually have a question for Jerry. On the Town of Newburgh Code Compliance sheet a…does it have Town sewer or it does not?

Mr. Canfield: I think there’s water and sewer there.

Mr. Scalzo: Okay.

Ms. Paul: There is, I know, since I bought the house there’s been a little along the way about that but there’s definitely Town water and sewer.

Mr. Scalzo: Thank you.

Ms. Paul: Yes.

Mr. Canfield: (Inaudible)

Ms. Gennarelli: It was confirmed afterwards…

Mr. Maher: It was crossed out.

Ms. Gennarelli: …after everyone got it.

(Inaudible)

Mr. Manley: Do any Board Members have any additional questions for the applicant?

No response.

Mr. Manley: At this point I’ll open up the Public Hearing to members of the public. Is there anybody the public here with regard to this application that has any questions for the Board or any concerns? Any neighbors?

No response.

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

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

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed. (Time Noted - 7:17 PM)

ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:42 PM)

RHONDA PAUL 7 ALGONQUIN DRIVE, NBGH

 (65-5-5) R-3 ZONE

Applicant is requesting an area variance for increasing the degree of non-conformity of the side yard setback to construct a rear addition (16 x 13) on the residence.

Mr. Manley: The next application that the Board will be acting on this evening is the application of Rhonda Paul, 7 Algonquin Drive in Newburgh. This is a Type II Action under SEQR. Does the Board have comments on the application?

Mr. Scalzo: Again she is extending the house line, she’s looking for no additional a…variance so I think it’s pretty straight forward.

Mr. Manley: And it’s not a very substantial application at all. In fact, the house next door is fairly large. It’s a two-story home versus a one-story it’s…

Mr. Maher: And the fact that it’s got Town water and sewer so there’s not issue as far waste goes. I’ll make a motion for approval.

Mr. Scalzo: I'll second.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:44 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 7:17 PM)

MELISSA COSTA & JOHN TAYLOR 1 DISANO DRIVE, NBGH

 (34-1-1.2) R-1 ZONE

Applicant is requesting area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to construct an accessory building (24 x 50 x 23).

Mr. Manley: The next application before the Board this evening is Melissa Costa and John Taylor, 1 Disano Drive in Newburgh seeking an area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to construct an accessory building (24 x 50 x 23). Ms. Gennarelli are all the postings…?

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

Mr. Manley: At this time, I do have a conflict with this particular application and which I’m going to need to recuse myself. Standing in my fast I would ask to act as chair this evening for this particular application a…Mr. Maher.

Mr. Manley recused himself and left the meeting room.

Mr. Maher: Surely. Okay, if you could state your name…

Ms. Costa: Well it’s Melissa Costa but Melissa Taylor is my married name.

Mr. Maher: And the reason that you’re here this evening?

Ms. Costa: Well we’re looking to put up a garage which is going to be forty-two feet from the back of our property. Our property slopes so it actually with the height isn’t taller than our house as well. We’re looking to use it right now for cars. My husband has a couple of collectible vehicles that we’d like to put in there as well as some of like additional supplies like tires, outside things like that. A…we’re looking at some point in the next couple of years actually buy an RV and with that we researched the size of the garage that you would actually need in order to put an RV in and we didn’t want it sitting out in the driveway as an eyesore so we thought it’d be best to build the size that we would currently need because we really can’t go back and build it later so that’s really what we’re looking for and I mean, all of the things had said to really look to build between twenty feet wide and then fifty feet a…for that kind of RV either a bus and/or motor home which also ends up fifteen feet so…

Mr. Maher: Does the a…Board have any questions?

Mr. Scalzo: Part of the information that we were provided today was a…an easement for replacing defective poles and install anchors on your property and the easement actually shows to be twenty feet wide, twenty feet from your parallels your property twenty feet south which will be where you’re proposed garage will be.

Ms. Costa: Well we have on our deed no recorded easement for utility poles on our survey and…and so I…that was an exist…it was an old road prior to the house being built I think back in the day maybe it lead down to the Thruway but a…on our survey it clearly states that there is no recorded easement for the poles. We actually moved the poles over up at the top of the hill as well as down where the garage would be located so that way they were not in the path of the garage number one and number two based on the easement on our survey a…we didn’t…we didn’t have a worry about putting it there.

Mr. Scalzo: Okay, the portion of your survey that shows the date Gray, Railing & Heinsman is missing on my map…but the map that I have from Central Hudson states the map was prepared November 15th of 2011.

Ms. Costa: This is from 1991 (Building Dept copy dated 8/20/90) our survey a…when the house was actually built with recorded…no recorded easement for a…existing utilities.

Mr. Scalzo: Okay, I understand that completely.

Ms. Costa: Right.

Mr. Scalzo: However, there’s a recorded in Liber 13-328 page 1822 in the Orange County Clerk’s Office there’s a map indicating that there is an easement.

Ms. Costa: I’m not really sure…I’ve not ever seen that.

Mr. Scalzo: That’s…

Ms. Costa: And in 2011 they moved a pole up at the top of the road and they also moved the bottom pole because they were old and one of them was going to fall over so they actually moved them and offset them off the property so I didn’t…

Mr. Maher: So the poles shown here on…on…

Ms. Costa: On the original survey are not correct…

Mr. Maher: Okay, so these are incorrect.

Ms. Costa: …they’ve been moved over to the property line.

Mr. Donovan: I…I really can’t tell from the copy of the survey that I have the print is fairly light. The location of the poles wouldn’t be ordinarily wouldn’t be the limit of an easement though.

Ms. Costa: Right.

Mr. Donovan: You know, you would have ten, twenty, thirty feet, you know extending outward.

Mr. Scalzo: The information that Betty provided to us did call for a twenty foot…

Mr. Donovan: Right.

Mr. Scalzo: …right…I suppose I could dig through the…

Ms. Costa: This is the original here that we…

Mr. Donovan: Yeah, we have a photocopy of that it’s a little faint for me but I mean based as Darrin has indicated based on the information that’s been provided to the Board tonight there appears to be that easement that appears to be right over that area from 2011 now typically a...the Board may not get involved in a private issue however, in this circumstance a…you really ought to look into that to make sure you’re not doing anything…first of all this easement was properly recorded and second of all that you’re not doing anything that is going to cause you a problem.

Ms. Costa: Right.

Mr. Maher: Dave, what is generally allowed in easements to be built if anything?

Mr. Donovan: Let’s take a look at what it says.

Ms. Gennarelli: Mike is your mic on?

Mr. Maher: Yeah, I’m talking softly, sorry.

Mr. Donovan: Yeah so what we have here actually a…7/13/2011 purports to have your signature on it and it says a…and that of John Taylor and it says reserving unto you the right to only plant and cultivate lawn grass and grow ornamental shrubs within said easement shall not interfere with, obstruct or endanger any of the rights granted…no house, shed, garage, outbuilding, pool, road, driveway or other structures shall be constructed, installed or placed over the easement.

Ms. Costa: I’m not really sure I don’t know if he had to sign that when they moved the telephone poles or I’m not sure that he was…understood exactly what that was so we can follow up because we know the person that had him sign the paperwork.

Mr. Donovan: Okay.

Ms. Costa: It’s what the…they were moving the pole so every so many years they move the poles for free and the problem was is that they’re lined straight down into the driveway because…

Mr. Maher: Right, yeah.

Ms. Costa: …our driveway slopes…

Mr. Maher: Yeah it looks down there.

Ms. Costa: …so they had to be moved over so we could even just get a pickup truck down the driveway to our own garage. So that’s been like the issue so that’s why we had the poles moved so we would follow up on this.

Mr. Scalzo: Okay, understanding that when the poles do move the center of the utility not necessarily is just where the poles are and as you said the poles are moved. So the easement location may…it…the easement location has remained where it was just the poles may not be in the center of it. Moving forward to the information that you’re going to gather for the next meeting I saw your plot plan shows your general location of your sanitary leach field…

Ms. Costa: Correct.

Mr. Scalzo: …so should you have to a…relocate your garage you may want to have verification where you’re sanitary…

Ms. Costa: We do…

Mr. Scalzo: …laterals are.

Ms. Costa: …we do know the problem is like the reason why we picked the location honestly is we’re six feet off the property line and one foot off the curtain drain so we really don’t have any other place to put the garage because we would definitely be on top of the septic system…

Mr. Maher: Okay.

Ms. Costa: …so the only other possibility I mean, our property does drop back there was to set it back even further up the house but it would make it difficult to get antique cars from down…

Mr. Maher: Down the hill right.

Ms. Costa: …the hill up the drive…like out of there or even up the driveway a…so…

Mr. Levin: I was thinking it may be difficult to get an RV down there that’s a steep, steep driveway to get it over the curb…

Ms. Costa: Right.

Mr. Levin: Have you checked that?

Ms. Costa: We don’t own one but we can maybe…test one and bring it home. Yeah, I know, that’s for sure, well.

Mr. Maher: Yeah I would, I mean I think that we want to…you to look into that first before you decide if in fact you’re able to put it in a location or obviously contact Central Hudson that…to discuss the easement that’s…that was recorded.

Ms. Costa: Okay.

Mr. Maher: Does the…

Mr. Donovan: So then do you want to hold the Hearing open for that information or…

Mr. Maher: I was…

Mr. Donovan: Sorry.

Mr. Maher: …did the public…the public that’s here tonight…

Mr. Donovan: Good point Mike.

Mr. Maher: …so I was going to…

Mr. Donovan: I was going to hold it open for you and spoke then…I’m just testing you…

Mr. Maher: Yeah, I…I…just testing…go ahead.

Mr. Scalzo: The only other issue…or it’s not an issue but just a question more or less for Dave or Jerry. That address is registered as a business. Is there going to be any Code issues regarding that?

Mr. Canfield: Where is it registered as a business?

Mr. Scalzo: Well actually it shows up on Google Maps as a business.

Mr. Canfield: Well then perhaps I ask the applicant. Is there a business being run in the house?

Ms. Costa: Well my husband owns his own pest control company but he doesn’t work out of the house because of come there that’s his mailing address, we live there, so we don’t run it out of the house because we don’t really people you know how it is…

Mr. Scalzo: Yeah, I understand what type of business that it is and…

Ms. Costa: Yeah.

Mr. Scalzo: …I’m hoping you’re not doing it at home.

Ms. Costa: Yeah, they don’t come to the home I mean we don’t have anything at the house just the...

Mr. Canfield: Yeah, and also should the Board choose to move forward at a future date with this a…we must inform you that you cannot run the business out of this garage and also for the Board’s benefit I cannot issue a Building Permit in this easement if it is a recorded easement. I cannot issue a Permit so that item needs to be clarified.

Mr. Maher: Does any other Board Member have any questions?

No response.

Mr. Maher: Hearing none I’ll open it up to the public. Are there any members of the public that wish to comment, if so, you can come forward, state your name.

Ms. Lytle: Thank you sir. I’m hoping that I can maybe clear up some things about that pole I am a neighbor…

Mr. Maher: Can you…could you first say your name for the record please?

Ms. Lytle: Oh, I’m sorry, I’m Edith Lytle, my property is on the north side of their property and those poles have provided both power and a telephone for fifty years to the home and it also goes down and re…a…delivers utilities to the last house on Hickory Hill Road so they’ve been existing there for a long time.

Mr. Maher: Okay, thank you. Any other…any other comments from the public?

No response.

Mr. Maher: Now Dave, I’ll go for…with that I’ll entertain a motion from the Board.

Mr. Masten: I’ll make a motion.

Mr. Donovan: And do you want to hold the Hearing open?

Mr. Masten: Hold…hold it open.

Mr. Scalzo: I’ll second that motion to hold the Public Hearing open…

Ms. Gennarelli: To the July…

Mr. Scalzo: …to the July…

Ms. Gennarelli: …28th meeting. Okay. Roll call. Darrell Bell…

Mr. Bell: To hold…

Ms. Gennarelli: …to hold it open to July 28th.

 Darrell Bell: Yes

 Richard Levin: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Michael Maher: Yes

 James Manley: Recused

Mr. Maher: Just a notice to the public won’t be re-noticed. It’s held over until July…

Ms. Gennarelli: 28th.

Mr. Maher: …28th so it you have an interest coming back again it won’t be re-noticed.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY- RECUSED

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 7:30 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 7:30 PM)

CUMBERLAND FARMS, INC. 270 ROUTE 17K, NBGH

 (86-1-14 & 86-1-15)

Applicant is requesting area variances for the maximum canopy height, front yard setback(s) for the canopy on Rock Cut Road and Route 17K, one side yard setback for the canopy, the front yard landscape requirement, the signage setback requirements in a front yard, the maximum amount of allowed signage and the required number of parking spaces for a site plan application before the planning board to construct a new gas station/convenience store.

(Mr. Manley rejoined the meeting)

Mr. Manley: The next item on this evening’s agenda is Cumberland Farms, Inc., 270 Route 17K, Newburgh seeking area variances for the maximum canopy height, front yard setback(s) for the canopy on Rock Cut Road and Route 17K, one side yard setback for the canopy, the front yard landscape requirement, the signage setback requirements in a front yard, the maximum amount of allowed signage and the required number of parking spaces for a site plan application before the planning board to construct a new gas station/convenience store. Ms. Gennarelli are the posting and mailings in order?

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

Mr. Manley: Thank you. Good evening is the applicant…?

Mr. Olson: Good evening Mr. Chairman, my name is Richard Olson, I am attorney with the law firm of McCabe & Mack, we’re counsel for Cumberland Farms in the area. With me is Mr. James Gillespie, he’s the professional engineer from Bohler

Mr. Donovan: So, I’m sorry if you could just do us a favor because Betty is going to get real upset because it is being recorded so none of it gets into the verbatim minutes.

Ms. Gennarelli: Thank you Dave.

Mr. Donovan: That was good practice, thank you.

Mr. Olson: (Inaudible)

Mr. Donovan: Betty tells me I’m not even though I think I am.

Ms. Gennarelli: No Dave you are the only one.

Mr. Olson: Again Richard Olson, McCabe & Mack, counsel for the Cumberland Farms and James Gillespie who is our professional engineer. I was just wondering if we had a copy of those County comments which I didn’t get a copy of yet just so I know if they have any concerns that I might need to address.

Mr. Manley: Well, let’s...

Ms. Gennarelli: Can anyone give them their copy I only have the original.

Mr. Maher: Here you go.

Ms. Gennarelli: Thank you.

Mr. Manley: If you’d like and I’ll go ahead and at this point, read it into the record.

Mr. Olson: That’d be great.

Mr. Manley: The County reply which is a mandatory review of the local planning action was received by this Board. The applicant Cumberland Farms, the reason for county review within 500 ft. of NYS 17K and CR 23, Rock Cut Road, date of full statement is June 2, 2016. Comments: The Planning Department has reviewed the submitted materials regarding the appeal for an area variance while the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area. It does not appear that inter-municipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We note that the proposed project is substantially larger than the existing development on site while the proposed lot consolidation and development configuration will assist with the current development crowding conditions at this intersection crowding will still occur. We advise the ZBA to review the application to determine whether the variances can be decreased in magnitude. If for instance, the canopy can be lowered or moved further back from the intersection or if the on-site signage can be decreased in size given all the area variances needed perhaps the scale of the project is too large for the intended site. We look forward to reviewing this project upon its referral from the planning board. County recommendation: Local Determination. Dated June 15, 2016

Mr. Olson: Thank you Mr. Chairman. Jim the Cumberland Farms Company has an existing facility at Rock Cut Road and Route 17K it’s pictured at the bottom of this easel it’s a facility that’s a convenience and gasoline station from 1980. At this point, Cumberland Farms has acquired the rights, they are a contract vendee. The parcel immediately behind on the Rock Cut Road aerial is depicted down on this lower level here. Cumberland is proposing to do a raze and rebuild of both sites. The building meets all setback requirements by obtaining the additional land we now meet the bulk acreage requirements of the Town Code. The building cannot be setback further because there’s topography issues here so we have set the building back as far as we possibly can. The canopy is being set to the front in order to meet the requirements for parking and for truck maneuvering. The variances that are required we have four of them that are necessary for the canopy because we have two front yards, we have an eighty foot variance or requirement on the Rock Cut Road, a fifty foot requirement on 17K so we are seeking relief on those two variances. The side yard...

Ms. Gennarelli: Excuse me Richard; can you just hold that mic up? Thanks.

Mr. Olson: …the side yard also has a fifty foot requirement and we’re seeking relief from that. As far as the height of the canopy, the bottom of the canopy is fourteen and a half feet high, the fascia is another two feet and what Cumberland has done is they are proposing to have a Mansard style roof to match the building for the canopy which is the reason that it is seeking relief to twenty-one feet. It is a roof that matches into the building design and that is really the extra height that we’re looking for there. The front landscape…the front landscape is required under your Code at forty-five feet and in discussing this with the planning board we had of course said, that we do not have the ability to have a forty-five foot landscape variance there. They suggested a stone wall. The client is going to be giving a stone wall and of course work it into the landscape area in here. They haven’t finalized the landscape plans yet. The front sign setback again you require fifteen feet; this would be approximately five and a half feet off the property line. The ID signs we were told to get a variance for the maximum square footage of signs. According to our calculations we would be allowed two hundred and twenty eight. You’ve got a hundred and seventy-seven square feet. I…I leave that to the Board to determine whether there’s some additional calculation that we missed. And then the reduction of parking is from thirty-four to thirty-one spaces provided on the site. And if you have any specific technical questions Mr. Gillespie can answer those.

Mr. Gillespie: I would just like to add one more thing. The canopy not only does it blend in nicely with the…with the roof but another reason for the height in this canopy and to add that additional Mansard type roof is to shield the fire suppression. I don’t know I’m sure you all looked up at the canopies and seen those big red tanks, they’re kind of an eyesore. So this not only is aesthetically pleasing but also shields those fire suppression tanks so that’s another reason.

Mr. Manley: Does the Board have any questions for the applicant in regard to the requested variances?

Mr. Scalzo: This evening was the first time you’ve heard the comments from the County?

(Inaudible)

Ms. Gennarelli: Jim, could you just give him back the microphone? We have two of them. There’s one on the other stand there.

Mr. Olson: Yes.

Ms. Gennarelli: Thank you. If you’d like to…just pop it off.

Mr. Manley: Do you know roughly the size of the square footage of the Cumberland Farms in the Town of New Windsor the corner of Caesars Lane and Route 94?

Mr. Gillespie: I don’t. Typically their new prototypes are pretty much the same. They are all around the forty eight hundred to forty nine hundred square foot range so it’s probably very similar to this one.

Mr. Maher: Is there…is there a standard for the space in between the gas pumps?

Mr. Gillespie: Yes, fifty eight feet… Oh, you mean between the islands…

Mr. Maher: Between the islands (inaudible)...

Mr. Gillespie: Well, thirty is about the minimum, they…they prefer thirty-five a…they really don’t want to go any less than that you get a...the doors starting to hit each other.

Mr. Donovan: When you say they, do you mean Cumberland Farms or…

Mr. Gillespie: Cumberland Farms yes.

Mr. Donovan: …is there some standard that dictates the location of the islands at all?

Mr. Gillespie: A…I don’t know of a standard that is cast in stone, I mean, if anybody is going to set a standard these guys would probably be the guys you would want to ask so a…

Mr. Maher: Would there be a case that they would be narrower than thirty feet?

Mr. Gillespie: There would a…but that would cause a lot of problems.

Mr. Scalzo: If…if you would think about typical traffic movements though, a typical parking space is twenty by ten, so it would allow patent movement through the island if there were cars on both sides gassing up.

Mr. Gillespie: They’ve…they’ve learned from their mistakes. I’ve worked on…for other clients who’ve learned from their mistakes. I’ve seen what happens when you…they get too close and it’s…it’s not a good thing.

Mr. Maher: Well so I guess, well Darrin’s point, if in fact there is room for movement between is that where you’re planning to have cars going between the?

Mr. Gillespie: No, this is…this is really for just to avoid a…just to allow maneuverability and to avoid a…maybe you could squeeze…that’s really not the intent is to squeeze cars between. It’s more for to stop, to allow room for circulation to stop a…any, you know, dings on doors, any, any type of problems like that. And if you think about it this is a ten...I mean you could potentially but most people are giving themselves some space from that island on each side…

Mr. Maher: (Inaudible) …basic math three foot away from the island…

Mr. Gillespie: Yeah.

Mr. Maher: …six foot car, three foot…

Mr. Gillespie: Well I mean think about a parking spot is about ten feet wide so you know, ten, ten and ten…you could have a ten foot lane in there but they’re usually further out so now you’re squeaking it down to nine or eight or seven I mean, it would be tight to…to squeeze a car through there. It’s more really for just allowing circulation to and from the…and around the…the canopies, around the fuel islands.

Mr. Manley: And there’s going to be eight fill up locations?

Mr. Gillespie: Yes, yup.

Mr. Manley: Two for each…

Mr. Gillespie: That’s right, one on each side of the islands, yup, two, four, six, eight.

Mr. Scalzo: Would it be possible to reduce the amount of dispensers to six?

Mr. Gillespie: That would a…be very difficult from a…a return on investment. I know, you know, they…they look at numbers, numbers, numbers constantly and a…you know, this is a significant investment for them to…to buy this lot and the demolition and the a…the construction so they’re…they’re really looking to get, you know, to be able to provide…to improve the…the services here a…with the larger building and you know, to go down, you know, usually they don’t really…this is kind of small for them actually so I mean a…you know, a lot of times they’re looking at double of this. They’re looking at eight islands or six, you know four is…for an investment of this size and a…and a…this is a pretty ideal location to go any less than four is probably…the numbers are probably not going to work for them. So that’s…that’s kind of why, you know, that’s why we’re here. And we think it…you know, we think it can work at…I realize you’re looking to reduce the variances but there’s…there’s plenty of circulation here if you look at, you know, the existing conditions as far as green space and a…you know, there is no…there is zero setback a…on that existing survey. I guess you can see it here. I mean if you look at the property line and a…this is act…you know this building is actually closer than the canopy that we’re proposing. There is no green space a…from the property line back. So a lot of these variances, the sign…the sign is actually right on the property line in fact, it might even be encroaching a little bit. So to a lot of these variances we’re asking for, yes, they’re variances but they’re actually improvements from the existing condition and I mean, talk about improvements a…you know the building, the aesthetics, the site…you’re going to get a brand new site, beautiful services and actually improving some of the variances that we’re asking for. Access, you know one of the things we’ve been working with the planning board. We had a proposed access in here, we got rid of that, we increased some landscaping on the side. This is going to be a beautiful stone wall along here it’s going to match the…the stone veneer. It’s going to be all along the building, all along here and all along the canopy columns. So I mean it’s gonna…it’s gonna be an impressive site and a…just to make it…you know, to make it work we…we’re gonna need a little help. So that’s why we’re here.

Mr. Scalzo: Is the farther canopy in alignment with the metal building to the west?

Mr. Gillespie: It is.

Mr. Scalzo: I mean it appears to be.

Mr. Gillespie: It is very close if not a…exact, yeah.

Mr. Scalzo: And, pardon me, I know you said it the height to the bottom of the canopy?

Mr. Olson: It’s fourteen and a half feet to the bottom of the canopy.

Mr. Scalzo: Okay.

Mr. Gillespie: Yeah, that’s to allow…

Mr. Scalzo: Trucks.

Mr. Gillespie: …truck circulation and…

Mr. Scalzo: Yeah.

Mr. Maher: The existing pumps that are there now about how far off the roadway are they?

Mr. Gillespie: The existing pumps are right on the property line pretty much if you look at this aerial they are…they’re pretty close.

Mr. Scalzo: Would you happen to know were there any State takings after the original site was developed?

Mr. Gillespie: No, I don’t know but I’m…I’m thinking there was because of the sign…the sign location is right on the…is almost encroaching a little bit and a…but I…I’d have to double check that but probably.

Mr. Olson: And again, the building could be set back further at least under the Code however, this topography on the…on the land wouldn’t allow us to do it.

Mr. Gillespie: Yeah, this drops…this drops down significantly back here. There’s a drainage channel that runs along here so we got to maintain that buffer.

Mr. Maher: Maintain the buffer or…it’s a question of maintaining the buffer or a question…?

Mr. Gillespie: Well mainly we want to protect that slope so a…we’ve got to, you know, we can’t be filling in and…and impacting that…that drainage channel so that…that’s the buffer I’m talking about.

Mr. Scalzo: But as far as the setback from 17K a…moving the building back you don’t…you’re…there’s no requirement for that? You currently meet or your proposal meets the setbacks, correct?

Mr. Olson: The building proposal meets the setbacks but if we were talking about moving the canopy back we’d have to move the building back.

Mr. Gillespie: Yeah, and this…this is the fifty-eight foot dimension I was talking about. This is critical to allow sufficient backup and then circulation between the canopy and…and the parking.

Mr. Scalzo: Jim, I don’t have it in front of me, can you read the concerns of the County one more time please?

Mr. Manley: Sure. We note that the proposed project is substantially larger than the existing development on site while the proposed lot consolidation and development configuration will assist with the current development and crowding conditions at this intersection crowding will still occur. We advise the ZBA to review the application to determine whether the variances can be decreased in magnitude. If for instance, the canopy can be lowered or moved further back from the intersection or if the on-site signage can be decreased in size given all the area variances needed perhaps the scale of the project is too large for the intended site. We look forward to reviewing this project upon its referral from the planning board.

Mr. Scalzo: Thank you. Jerry the fire suppression system typic…well I don’t want to say typically…Mr. Gillespie actually, the…the fire suppression system how far over the canopy would that be? You have the false roof that’s protecting it from sight but if that false roof was not there the (inaudible) portion how much would you say in height?

Mr. Gillespie: Well the a…there was a good six feet of protection it…it’s less than that so it would be four maybe, I don’t know. I…I’d have to…I don’t know exactly off the top of my head but I’m just guessing from seeing it…

Mr. Scalzo: Just trying to find something.

Mr. Gillespie: Yeah.

Mr. Olson: And I’m not sure I really understand what crowding conditions mean and what that has to do with the height of the canopy…the traffic is there, the site is being configured to handle the traffic, being configured to handle the tanker truck movements, it does meet the bulk requirements as far as the acreage.

Mr. Donovan: Just bear in mind those…these are advisory comments. It’s Local Determination and none of these comments are binding comments.

Mr. Olson: Again, we have two front yards so that adds to our variance requests.

Mr. Scalzo: The plan that I’m looking at here that’s the landscape plan?

Mr. Olson: Well, we haven’t finalized the landscape plan with the planning board.

Mr. Gillespie: But that’s the general…

Mr. Scalzo: And that’s fine. The plan I have in front of me has two entrances on the 17K?

Mr. Gillespie: Yes, this…

Mr. Scalzo: But that’s now showing…

Mr. Gillespie: …this is the current plan.

Mr. Olson: This is what’s being modified with discussions with the planning board they had raised concerns about this additional entrance and they had also discussed a stone wall so if we come through with the variances this would be the next submission to the planning board to address some of the items that they raised. The location of the canopy has not changed from that drawing.

Mr. Manley: Well I think part of what my two hang-ups are that I’m really trying to get a handle on is number one, you know, if the benefit that you’re trying to reach can be achieved by another method because obviously from a Zoning Board standpoint the granting of a variance is supposed to be the least that’s needed so that…that’s one thing that I’m looking at. The other is whether or not the granting the variances in their totality are going to be substantial in nature. Those are the two that…that I’m really looking at. As far as undesirable change in the character of the neighborhood I think you’ve met that burden with respect to the fact that you’re tearing down an old structure, you’re improving, you know, what you have there but at the same time I…I really want to make sure that you know, the granting of the variance isn’t that…it’s not going above what would be normally done for others.

Mr. Olson: The significance of the alternative that we have looked at essentially is the acquisition of the property behind this a…the investment is substantial. I don’t know what they’re paying for the property but the assessor’s records list the property to the rear two hundred and fifty-five thousand dollars I believe, that plus demolition costs, design costs, obviously the client needs to get a return on investment. These buildings are all prototypical buildings. They have them designed, they have them laid out architecturally, they’ve already got the building plans are ready for submission. Any significant reduction of that building affects the return on investment in which they’re, you know, they’re attempting to acquire that land as the alternative. Other than that we’d be working with a substantially downsized sight and we really wouldn’t be able to put much of any improvement onto that property.

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

No response.

Mr. Manley: Then at this point I am going to open the comments and questions from the public. If there’s anybody here with regard to this application if you would just please raise your hand, we’ll have you step forward, state your name for the record, your address and then address the Board with your comments.

No response.

Mr. Manley: Okay. At this point do any of the other Board Members have questions for the applicant?

Mr. Maher: Yeah, just to clarify, so Jerry do you have Joe’s calcs on the signage. I don’t see it in the package here.

Mr. Canfield: Yeah, that was one of my comments Mike and I don’t have any calculations on the sign, how they derived at that. At the planning board meeting back in April that was an open item and it was left up to the applicant to come up with a comprehensive sign so we could then speak about a…allowable square footages. If they anticipated going over to add that in their variance package but I see the calculations on the sheet but I don’t see anything to support that so at some point in time, either the planning board will need to see a comprehensive plan. While I got the mic another question that I had is at the planning board meeting we had discussed the parking, the number of parking spaces and originally you folks had not taken credit for the island parking which you do now. So I think now that you’re looking for is only two spaces, you’re coming up two spaces so the Board is aware of that. Originally I believe it was like ten.

Mr. Maher: Well with the new configuration and the one entrances is there the ability to add those parking places on-site to meet the requirements?

Mr. Olson: (Inaudible) all this taken out.

Mr. Manley: So what you’re saying is there was a tradeoff for parking spaces for green space?

Mr. Olson: Well you wouldn’t (Inaudible)

Ms. Gennarelli: Sorry Richard, what happened to your mic?

Mr. Olson: You would not have had parking spaces here anyway this was an entrance.

Mr. Maher: But I…I asked you that but…but how do we go from needing ten to two?

Mr. Olson: When we were talking when we were discussing with the board (planning) they said we could take credit for the parking spaces under the canopy…

(Inaudible)

Mr. Olson: …originally we did not take credit for those but we were advised we could do so.

Mr. Maher: Right.

Mr. Canfield: Also the Board should note that the…what the design is a…ten by twenty on the parking spaces. Our Code requires nine by eighteen so they’re a little bit larger however what they did not show was the double striped detail that we require so it may be somewhat of a mathematical wash. And one other note, you were talking about the fire suppression system a…did you look at the 2015 new Fire Code? Did you design to the 2010 or the 2015?

Mr. Gillespie: I’m not sure.

Mr. Canfield: Okay, currently there is a new Building and Fire Code that is being proposed in New York State a…in October it will be mandatory. Currently you can use either or. I say this because I believe fire suppression systems for canopies may be coming out of the 2015 Code. I’m not happy about that but I have to tell you that.

Mr. Olson: They…they may want to…they probably are going to want to install it anyway I would think for liability purposes but… And we did actually this new plan Jerry when you see that has those double stripes on it so…

Mr. Canfield: Okay.

Mr. Manley: Do any of the other Board Members have any other questions for the applicant?

Mr. Maher: Was there a letter submitted?

Mr. Manley: There was.

Mr. Donovan: In act there were two.

Mr. Maher: If you could please.

Mr. Manley: I would. Okay the first letter is dated June 19th; it’s from Michael A. Pomarico, 34 Colden Hill Road, Newburgh. Town of Newburgh Zoning Board of Appeals regarding the Public Hearing, Cumberland Farms variances described in Notice of Hearing dated 31st May, 2016.

Mr. Chairman, Members of the Board: As I am out of town on business I’m writing to confirm that I am not opposed to the variances the applicant seeks for the above referenced action. I am very concerned with the appearance of the portion of 17K in the vicinity of Rock Cut and Colden Hill Roads and have for many years have wanted to see appropriately planned improvements made to the properties in this corridor. I understand that Cumberland Farms Inc. has constraints that create hardships in the improvement of their site. Cumberland Farms Inc. provides a needed service for the residents of our neighborhood and I often frequent this facility. For as long as I can remember I do not ever recall an instance where I was unable to find a place to park my car while at this establishment and usually there are at least three to five vacant spaces at most times. I believe the benefit of replacing the existing aged structure with a new facility far outweighs any negative impact realized by granting the requested variances. The only request I would make whatever shortfall in the front yard landscape requirement experienced an appeal be made to the applicant to substantially improve the disposition of whatever other available site area there may be to create a landscape plan as well executed and in good taste. I would request the inclusion of at least one fieldstone wall to reinforce the rural character of East Coldenham. Respectfully, Michael A. Pomarico, Architect.

The second letter is dated June 20, 2016, Town of Newburgh, Zoning Board of Appeals, Town of Newburgh Planning Board re: the Cumberland Farms Inc., 270 Route 17K, Town of Newburgh, New York.

Mr. Chairman, Members of the Board: I would first like to show my support for this project and also confirm that I am not opposed to any of the variances being requested. This location surrounding area would benefit from a much needed renovation. I’m as well…I am well as many other patrons shop and get gas here on a daily basis. I do have concern with the existing storm drainage that the proposed project ties into. Attached is a sketch for reference. From what I can see on the site plan the project proposes it’s discharge point at the northwesterly corner of their site. Storm water then appears to flow west under the Ace Rustproofing property where it discharges into a drainage course. This drainage course flows towards NYS Route 17K, then into the State drainage system where it enters a pipe system. This storm water is piped through the 17K cleaner’s property to a manhole and then to an end section that discharges at the northwest corner of my property. As you can see the attached photos the storm system which is intended to discharge has a few issues. Even during normal rain event I witnessed the storm manhole overtopping and draining onto my lawn. See attached photo of erosion at storm structure. The end section where the storm water is discharged is also half buried. This causes erosion on my property due to the structure overtopping and scour from the constant high flow discharge. I believe the storm system on the 17K cleaner’s property lies within a NYS DOT drainage easement as they’re connected to and accept storm drainage from NYS 17K. I do not want to see this issue get worse and feel something should be done. I respectfully request that the receiving drainage systems be inspected and that the system be analyzed from the point of connection to the point of free discharge on my property. This is to prove all the existing storm pipes structures and discharge points have specif…sufficient capacity to handle the proposed volumes at peak flows for all storm events that the proposed system is designed for. In addition, the discharge point should have enough structural integrity to handle the constant high volumes and flows of storm water. This drainage should also be brought to light of the NYS Department of Transportation during their review of the proposed highway improvements as it is in part their storm system. I would hope this issue can be fully investigated and resolved during the planning board, NYS DOT approval process. Thank you for attention to this matter and please feel to contact me if you have any questions. Sincerely, George D. Vega, 1 Arbor Drive, Newburgh, NY 12550.

And he has attached a number of pictures and plans. I’d be happy to make this available to you as well as this Board should forward a copy to the planning board for their review.

Mr. Canfield: Inaudible

Mr. Manley: Okay, thank you. Are there any other comments or questions from the Board for the applicant?

No response.

Mr. Manley: At this point, would anybody from the Board like to make a motion?

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

Mr. Manley: We have a motion to close, do we have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 8:03 PM)

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ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:44 PM)

CUMBERLAND FARMS, INC. 270 ROUTE 17K, NBGH

 (86-1-14 & 86-1-15)

Applicant is requesting area variances for the maximum canopy height, front yard setback(s) for the canopy on Rock Cut Road and Route 17K, one side yard setback for the canopy, the front yard landscape requirement, the signage setback requirements in a front yard, the maximum amount of allowed signage and the required number of parking spaces for a site plan application before the planning board to construct a new gas station/convenience store.

Mr. Manley: The next application Elisa Costa and John Taylor that was July 28th, correct?

Mr. Maher: July, correct.

Mr. Maher: The next application that the Board will hear this evening and vote on is the application of Cumberland Farms, Inc., 270 Route 17K in Newburgh. It is an Unlisted Action under SEQR, which means that if the Board should choose to approve they would require a Negative Declaration first. If the Board decides that they were going to make a motion to deny then there would be no need for the Negative Declaration just a motion to deny. Do we have discussion on the Cumberland Farm’s application? Now keeping in mind the balancing tests has the applicant demonstrated whether or not the benefit can be achieved by other means feasible? Are there other means feasible for the applicant? There may be some in…in some of the areas of the variances that are requested but some of them they are constrained by the property.

Mr. Levin: I think that’s (Inaudible)

Ms. Gennarelli: Excuse me, Richard; can you just talk a little louder?

Mr. Scalzo: Where is your sign Betty?

Ms. Gennarelli: The sign is back at the office, thank you. I know it’s late.

Mr. Levin: I think they demonstrated they’re a…did their best.

Mr. Scalzo: Certainly it will be an improvement but that’s a…

Mr. Masten: Yes.

Mr. Scalzo: …I’m not sure how else they could have approached while still meeting the criteria of the corporate of Cumberland Farms.

Mr. Maher: It had to be financially viable for the investment.

Mr. Manley: Well certainly it’s not going to create an undesirable change, I don’t believe.

Mr. Scalzo: I don’t believe so.

Mr. Maher: No, looking at the overall a…aerial view obviously the current building is going in the same location that the gas pumps will be in as far as line of sight goes so that would be moved to the back. There would be no visual obstructions at ground level anyway with the canopy there.

Mr. Scalzo: The canopy is going to be in alignment with the building that’s next door. It’s not going to…

Mr. Levin: (Inaudible)

Mr. Scalzo: …I don’t think it’s going to look out of character. I’ll make a motion for approval.

Mr. Levin: I'll second that.

Mr. Donovan: So because it’s an Unlisted Action you first need to take action on SEQR by issuing a Negative Declaration. But that was your motion, right Darrin?

Mr. Scalzo: That was my motion Dave.

Ms. Gennarelli: Neg Dec, okay and Richard that was your second on the Neg Dec?

Mr. Levin: Yes.

Ms. Gennarelli: Thank you. Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The…

Mr. Scalzo: And for my next trick.

Mr. Manley: …the Board has declared that there is a Negative Declaration at this point is there a motion for approval?

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

Mr. Levin: I’ll second that too.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:47 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 8:03 PM)

THOMAS & MERRY KUNKEL 69 WESTWOOD DRIVE, NBGH

 LIVING TRUST (91-2-16) R-1 ZONE

Applicant is requesting an area variance for the front yard setback to build a front deck (10 x 12) on the residence.

Mr. Manley: The next applicant before the Zoning Board this evening is the application of Thomas and Merry Kunkel Living Trust, 69 Westwood Drive, Newburgh, New York seeking an area variance for the front yard setback to build a front deck (10 x 12) on the residence. Ms. Gennarelli are all the mailings and posting in order.

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

Mr. Manley: Just for the record, I also have a conflict with this particular application so I’m going to turn the meeting over to Mr. Maher who will act as the Chair for this application.

Mr. Maher: It’s too convenient Jim.

Mr. Manley recused himself and left the meeting room.

Mr. Kunkel: My name is Thomas Kunkel, I’m here with my wife Merry, we live at 69 Westwood Drive, Newburgh. I’m here to request a 10 x 12 deck; we’re here because of the fifty yard…fifty foot front yard setback. We live in Colden Park a development of older homes dating back to the late 50’s. Very few homes if any have a fifty foot setback. Many of the homes have front decks, some decks and covered porches run along the entire front of the house and I have some photos available, some samples of them.

Mr. Kunkel approached.

Mr. Kunkel: In 1987 we moved in and were given a survey that was dated 1981 and that survey it shows the 8 x 12 deck that is still there with lumber that’s been replaced over the years. Now our house…our house is located on one of the steeper slopes in the neighborhood so there’s very little usable space in the front of our home. There are eleven steps up to the front door. The contractor to have the old deck removed and a new 10 x 12 composite deck with railings installed in its place have to get approval. The deck will provide room for a couple of chairs and maybe a cocktail table without blocking the pathway for the steps and the front door. The deck platform is about two inches lower than the doorway this allows us to easily get out to the front without using any steps. That’s very important to us because we’ve both had problems in the recent past that made stairs difficult to handle at times. The deck will be built by a professional. Shrubbery surrounds most of the existing deck and shrubs will be added and replaced. This will have a positive effect on the value of the property and you have the photos there.

Mr. Maher: Thank you sir. Any questions from the Board?

Mr. Bell: I have one. Could you repeat that portion again about the shrubbery again?

Mr. Kunkel: The shrubbery surrounds most of the existing deck and some shrubs will be added and replaced with the new deck.

Mr. Bell: Okay, so the current shrubberies will not be disturbed but you’re going to add to those that are currently there?

Mr. Kunkel: Correct.

Mr. Bell: Okay.

Mr. Kunkel: When we lost a few right in front of our existing deck from deer and I would like to just go that extra two. It’s actually going to angle out the final two feet so I’ll have forty five going the eight feet out…I mean eight feet across.

Mr. Bell: I got you.

Mr. Kunkel: So it will be ten feet, twelve feet…the ten feet.

Mr. Maher: Any other questions from the Board?

Mr. Levin: Can I make a comment that I drove by that house with John McKelvey, he’s not here tonight, and he pointed out the porches across the street from you that were quite large and a bunch in the neighborhood and he…I think it looks good.

Mr. Kunkel: Yeah, it will be a good looking deck.

Mr. Levin: Yeah.

Mr. Kunkel: What I have right now doesn’t have a railing at the front. The railing takes up some of that space when I put the railing on so that’s why I wanted that extra two feet that I have the room for it. It’s not much of a change from what’s existing right now.

Mr. Maher: Okay, if there are no further comments from the Board I’ll open up for any public comments. If you would just state your name for the record please.

Ms. Montag: Yes, my name is Elizabeth Montag; I live at 67 Westwood Drive directly next door. I have a few questions about the a…proposed deck. Will there be a roof? And in the event that this is granted at a later time if it needs…if there’s a request to enclose it would that have to be another application for something like that?

Mr. Maher: Well at this time the only application is for just a deck itself.

Ms. Montag: I understand.

Mr. Maher: With no roof on it.

Ms. Montag: That doesn’t open it up for something in the future or does it?

Mr. Maher: Well in essence if in fact there was something else proposed there would be the need for a variance in addition to the one that may or may not be granted this evening. So...

Ms. Montag: At that time.

Mr. Maher: …right now basically the application before us is strictly for that of a deck with nothing else as far as a roof or any enclosure at all.

Ms. Montag: I understand.

Mr. Maher: That’s the only thing we’re actually…we’re looking at this evening.

Ms. Montag: And the areas of ingress and egress?

Mr. Maher: For?

Ms. Montag: Where…where would the stairways be?

Mr. Maher: It appears as if it’s in the same location…

Ms. Montag: Will it be one or more?

Mr. Maher: …of the…would you like to come up? Did you see the plans at all?

Mr. Kunkel: (Inaudible)

Mr. Maher: If you could come up and use the mic so we could it recorded that would be great.

Mr. Kunkel: There would be a stairway also on the other side of the deck just to provide access to the side yard instead of having to walk around the front of the deck on the hill, got the side yard.

Ms. Montag: So it would be on my side then? A…to the left?

Mr. Kunkel: A utility step just to…just to come out there.

Ms. Montag: Right. Do I understand that this is being wider than your current one?

Mr. Kunkel: (Inaudible)

Ms. Montag: …two feet towards me.

Mr. Kunkel: No, no, no.

Mr. Maher: What, no if you…if you…

Mr. Kunkel: No, towards the road.

Ms. Montag: Towards the road?

Mr. Kunkel: Believe me with the bushes it’s going to look the same as it was…

Mr. Maher: Right.

Mr. Kunkel: …there’s going to be a railing on it now, you’ll see the railing.

Mr. Maher: Right, basically it’s coming…a little closer…the reason for the variance it’s coming closer to the road, not closer to the side yard.

Ms. Montag: Right. Okay, there’s an eight, there’s an eight by twelve, now it’s a ten by twelve. So that’s ten feet wide, am I correct…?

Mr. Maher: Well the…

Ms. Montag: …the depth is twelve?

Mr. Maher: …the depth is eight feet currently and the proposed on the application here is…it’s some of it’s going to ten feet deep. So basically again two foot closer to the road.

Ms. Montag: It’s twelve wide…I get it.

Mr. Maher: Correct.

Ms. Montag: I get it. Okay.

Mr. Kunkel: It’s twelve feet wide now.

Ms. Montag: Okay, okay, it’s…it’s not an addition it’s just a deck?

Mr. Maher: That’s the application before us, yes.

Ms. Montag: Okay, okay, that’s fine. Thank you.

Mr. Maher: Are there any other comments from the public?

No response.

Mr. Maher: Hearing none I’ll entertain a motion.

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

 Darrin Scalzo: Yes

 Michael Maher: Yes

 James Manley: Recused

Mr. Donovan: Just as a reminder, as Chairman Manley pointed out at the beginning of the meeting relative to this application there has not been a report back from the Orange County Department of Planning so the Zoning Board will not be able to take any action this evening.

Mr. Kunkel: (Inaudible)

Mr. Donovan: Well they have thirty days to respond and that thirty day period has not expired so this will be on the agenda in July at which time that thirty day period will have expired.

Mr. Kunkel: (Inaudible)

Ms. Gennarelli: That’s July 28th.

Mr. Donovan: I would never tell you not to come to a meeting.

Mr. Maher: It’s your choice.

Mr. Kunkel: It’s not necessary though?

Mr. Donovan: I can’t tell you that. I’m not trying to be, you know, factious but it’s your application should a question come up from the Board I don’t want you know, this is an enjoyable experience I’m sure and I…I’m surprised that you wouldn’t want to come back next month to visit with us again.

(Inaudible)

(Mr. Manley rejoined the meeting)

Mr. Scalzo: Jim what County road are we within five hundred feet of for this?

Mr. Manley: It’s going to be a…I’d have to pull the application.

(Inaudible)

Mr. Donovan: Well it’s five hundred feet from a State or County Highway or Municipal boundary.

Mr. Scalzo: Well perhaps it’s a 17K.

Mr. Manley: It’s got to be 17K.

Mr. Maher: It’s barely.

Mr. Scalzo: Boy, it’s gotta just…just be meeting that.

Mr. Levin: It seems like it’s more than five hundred feet.

Ms. Gennarelli: Jim, I don’t think this one went to the County, I’m sorry.

Mr. Donovan: Well you told me, Betty.

Ms. Gennarelli: That will be my mistake for the night. Then you don’t have to hold them up then. Okay, no, it did not go to the County. I apologize for that.

Mr. Donovan: Alright. Ignore everything I just said.

Ms. Gennarelli: They may vote tonight in other words is what they’re saying.

Mr. Canfield: You do have the County referral? Or do not?

Ms. Gennarelli: No, it was not referred to the County.

Mr. Canfield: Oh, it was not referred, okay.

Ms. Gennarelli: Yeah.

Mr. Manley: Are we ready to move on?

Mr. Donovan: I’m ready if you are.

 (Time Noted - 8:12 PM)

ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:47 PM)

THOMAS & MERRY KUNKEL 69 WESTWOOD DRIVE, NBGH

 LIVING TRUST (91-2-16) R-1 ZONE

Applicant is requesting an area variance for the front yard setback to build a front deck (10 x 12) on the residence.

Mr. Manley: The next application that the Board is going to take action on this evening is Thomas and Merry Kunkel Living Trust, 69 Westwood Drive, Newburgh. It’s a Type II Action under SEQR. Do we have discussion on the application?

Mr. Scalzo: I think it was very beneficial to see the photographs of the other properties with the porches out in front.

Mr. Maher: It shows that there is a consistency in the neighborhood.

Mr. Manley: Does the Board wish to make a motion at this point?

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

Mr. Levin: I'll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Abstain

Ms. Gennarelli: Oh, I’m sorry, Michael Maher you’re last.

Mr. Maher: Yes.

Michael Maher: Yes

Ms. Gennarelli: Well you should have been last you were the Chair on that one. I’m sorry.

Mr. Manley: I’m sorry, Betty. It’s getting late.

Ms. Gennarelli: It’s almost early now.

Mr. Donovan: Oh it is late.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY - Recused

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:49 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 8:12 PM)

CHRISTINE DALTON 16 SUNNY LANE, WALLKILL

 (107-1-20.1) A/R ZONE

Applicant is requesting an area variance for no pool shall be located in a front yard to install an above ground pool (21’). (Corner lot-two front yards)

Mr. Manley: The next application before the Board this evening is Christine Dalton, 16 Sunny Lane, Wallkill seeking an area variance for no pool shall be located in a front yard to install an above ground pool (21’). The applicant has a corner lot with two front yards. This application is also one of the ones that was referred to the County that we’re waiting on. Ms. Gennarelli do you have the mailings and posting?

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

Mr. Manley: Excellent. Good evening.

Ms. Dalton: Hi, I’m Christine Dalton. I’m here with my mother Patricia Betanzos and I’m here to…for a twenty-one foot round pool and the problem where I have to put it is I have all frontage. I’m on a corner lot and everything is considered the front of my property.

Mr. Manley: Okay. The Board has had a chance to review the information do any of the members have any questions for the applicant?

Mr. Bell: Yes, I do have one. When we came by to look at the property the pool is already in place…

Ms. Dalton: Yes.

Mr. Bell: …before it’s even been approved.

Ms. Betanzos: Yes, it came early and I was a little anxious. We put it up ourselves.

Mr. Scalzo: Mr. Bell that won’t be the first time that happens nor the last.

Mr. Bell: I’m quite sure, I just had to bring that up that it was.

Mr. Maher: So you installed the pool.

Ms. Dalton: Yes.

Mr. Levin: This is showing the pool almost on top of the septic system.

Ms. Dalton: It…it was all measured. Where the…where the leech field and everything is. She has all the dimensions.

(Inaudible)

Ms. Gennarelli: Excuse me. You have to get to the microphone and just say who you are.

Ms. Betanzos: I’m sorry, I’m Patricia Betanzos, I’m Christine’s mother. When we…there was a flat spot to begin with which I don’t know if anyone ever had a pool however when we came in to level the land bringing that pool further towards the driveway picked up some of the leech field so we moved the pool so that we wouldn’t pick up any of the gravel from the leech field so it was clearly not anywhere near the leech field. Also I’d like to say that the neighbors behind her a…I don’t remember the name of the road but there are two…she lives on a private road so the impact is minimal to anyone. We live on a private road a cul-de-sac. Her neighbors directly behind her also have a pool so they would have had to gotten a variance and the people down on Pisces also have a pool so I would assume they also would have requested a variance. So it seems that they are granted to people who only front yards. It’s kind of a hardship cause when you have kids you want something for them to do in the summer. You want them to play. You want them to be home. You want them to be happy.

Mr. Manley: So is it your testimony that the…other pools in the neighborhood by putting yours in fits within the character of the neighborhood that’s already existing?

Ms. Betanzos: Absolutely.

Mr. Manley: Okay.

Ms. Betanzos: It’s an above the ground pool it’s not a permanent structure. It’s a residential area with kids and pools and…

Mr. Manley: And you also stated that a…there was two…two current houses that have above ground pools very near to you?

Ms. Betanzos: Well there’s more than that but they’re same situation where they are the corner lot of a…of a cul-de-sac so there are two. There’s one on Pisces which I believe are two or three cul-de-sacs towards the Hamlet of Wallkill and the people directly behind her house and what is that Gracey (Grace Court)…?

Ms. Dalton: I don’t’ know if it’s Gracey…don’t know the name of it.

Ms. Betanzos: …don’t remember the name of it but the people directly behind her have the same situation and they have a pool, they have an in the ground pool.

Mr. Manley: Okay, thank you. If the Board doesn’t have any further questions I’ll open it up to the public. Is there anybody here from the public that has any questions on this application before the Board this evening?

No response.

Mr. Manley: If not I’ll open it up to any of the Board Members.

No response.

Mr. Manley: Going once, going twice…do we have a motion to close the Public Hearing?

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

Mr. Scalzo: I’ll second that.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is closed. The Board will not be able to vote until next month when the County comes back with their comments.

Ms. Betanzos: July the 28th, correct?

Mr. Manley: That is correct.

Ms. Dalton: Okay, thank you.

Mr. Manley: You’re welcome.

Ms. Dalton: Have a nice evening.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 8:19 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 8:19 PM)

ESTATE OF JAMES A. FISCHER 2 FLETCHER DRIVE, NBGH

 (JENNIFER FISCHER) (94-1-13.2) B ZONE

Applicant is requesting area variances for the minimum lot width, the minimum lot area and one side yard setback for a site plan application before the planning board to allow a pet boarding facility to operate on a separate non-conforming lot.

Mr. Manley: The next item before the Board this evening is the Estate of James A. Fischer, Jennifer Fischer, 2 Fletcher Drive, Newburgh. The applicant is seeking area variances for the minimum lot width, the minimum lot area and one side yard setback for a site plan application before the planning board to allow a pet boarding facility to operate on a separate non-conforming lot. This is also one of the ones that went before the County that we are waiting their response to. Ms. Gennarelli do you have the postings and mailings.

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Doce: Good evening, I’m Darren Doce, engineer representing the Estate of Dr. Fischer and Jen Fischer. Prior to Dr. Fischer’s passing I’d been working, going through planning board review. They have a pet boarding a…building to an existing veterinary practice. At that time there were two parcels, those parcels were proposed to be combined and it would have a…eliminated any need for variances but a…since that time Mrs. Fischer has been a…settling her husband’s estate and she’s found a prospective purchaser for the practice but this a...this purchaser is…doesn’t wish to own or operate the pet boarding component. So Mrs. Fischer has agreed with some associates to a…operate that facility under a common scheme with the rest of the veterinarian site but since that’s going to be owned and operated by a different party it drives the need for them to remain on separate parcels thereby creating a variance requirement for side yards, lot width and the lot area. It’s a similar to the Shoppes at Union Square where Cosimo’s was remaining on a separate parcel and they also required certain variances to do so as part of the common shopping center scheme that they a…proposed. Also would like to point out that a…we are on a lot, an existing lot that’s ninety feet, approximately ninety feet wide so any proposed a…commercial use of that property is going to require the need for one or more variances just because the width of the lot is narrow. It’d be difficult to get any building on that lot without a variance. Don’t believe it’s going to produce any adverse effects or undesirable change to the neighborhood. It’s gonna blend in with existing practice and operate as a unit. It’s just gonna be that the a…there’s going to be two separate sites under two separate owners. One other thing I’d like to point out is it was brought to my attention when I was making the a…application that the a…existing site Lot 12 where the existing veterinarian office is there’s a few violations on that property at the Building a…at Code Compliance. I’ve been working a…I’ve met with Joe Mattina a…it’s…to discuss the issues with him. I’ve presented them to a…our attorney who is Marsha Jacobowitz. We’re working to resolve those but at the same time they’re not related to Lot 13.2 and that Joe Mattina has also acknowledged they’re only related to Lot 12 and I’m hopeful that as they’re working to resolve these issues that we continue on with getting the variance for the Lot 13.2 since none of the Violations actually apply to that parcel. I’d be happy to answer any questions now.

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

Mr. Scalzo: Will the existing stone building for pet grooming continue to operate as a pet grooming service?

Mr. Doce: That…we’ll…we were…we’ll attempt to better to question if whether that is planning board approval or not so we…we will attempt keep that in operation and proceed with (Inaudible) receiving the planning board approval for that building.

Mr. Levin: The pet boarding building doesn’t look that large. How many dogs or cats are going to be in there?

Mr. Doce: I believe they have the board…the board building or the grooming (Inaudible)?

Mr. Levin: It’ll be on this side…the proposed…proposed pet…

Mr. Doce: Pet boarding? Twenty-five.

Mr. Levin: Twenty-five? That would be the maximum?

Mr. Doce: Yes.

Mr. Manley: The…the issue is that normal zoning requires forty thousand square feet for this type of building to be…to fit on this particular piece of property. And the proposed amount of usable land that you have here is twenty-six thousand, seven twenty. So give or take, I mean, you’re…you’re looking at, I mean that’s almost a fifty percent variance. You’re probably looking at like a forty two, forty three percent variance. That is significant and you know the lot being a substandard lot, initially it was part of the other lot and they want to…they’re making a lot line change in order to create this new substandard lot.

Mr. Doce: No, it’s two separate parcels now.

Mr. Manley: Was it one parcel at one particular point in time?

Mr. Doce: No.

Mr. Manley: Were they ever joined together?

Mr. Doce: No, they were not, no a...we were prior to Dr. Fischer’s passing we were going to combine those parcels to eliminate the need for variances but now the situation is the a…prospective buyer of this parcel does not wish to operate the pet boarding facility. She’s happy it’s there but she at this time is unable to operate the entire facility so Mrs. Fischer will operate the pet boarding so that’s why it has to stay on its own separate parcel and the parcels can no longer be combined. The entire site is over an acre if you look at it as a unit but this is going to be less than an acre, the site of the pet boarding facility.

Mr. Maher: The…the parcels behind the existing veterinarian offices, the three parcels I believe they are 18, 19 and 20…

Mr. Doce: Correct.

Mr. Maher: …are they? Obviously they are under ownership of the same…the same person?

Mr. Doce: They are. Yeah, there are three separate parcels also under the ownership of the estate.

Mr. Scalzo: Are they landlocked?

Mr. Doce: They…there’s a paper street there but there’s no physical…

Mr. Maher: So what would prevent a lot line change there to acquire the…some square footage needed to meet that minimum requirement?

Mr. Doce: A…this time since this was a separate parcel we…and it…it…it housed everything that’s required there’s no a…space constraints. I mean we have everything that we need on that parcel. We just didn’t consider adding those parcels to it. We didn’t feel they really provided any…any benefit that we don’t already have.

Mr. Manley: The benefit they provide though is they reduce the required variances that are needed which is obviously what this Board has to provide the least amount of variances necessary to achieve it and if there’s another way and I think that’s where their line of questioning is if there’s a way to reduce the variances requested by joining the parcels that in itself would eliminate probably your largest variance which is the required forty thousand square feet.

Mr. Doce (Vincent): Jim, (inaudible)

Mr. Manley: Certainly.

Mr. Doce (Vincent): One of the reasons they weren’t combined…

Mr. Manley: If you could just for the record just…

Mr. Doce (Vincent): Vince Doce, one of the reasons they weren’t combined is that we didn’t feel that they really offered anything in so far as they were not really part of this existing separate parcel. That was one reason they were not combined and the other thing is it is perhaps subtle but it’s the most important thing this is being treated as one common site very much the way that we did a…the Newburgh Towne Center a…with what was then Warwick Savings Banks. They needed almost identical variances but since they were going to be developed as a common scheme, Warwick Savings Bank being on one parcel and the rest of the center being on another parcel a…the planning board found it efficacious to do it that way but it still required the variances because the bank was too close to the property line. This is very much the same as that and also the same as what was done at Cosimo’s for the a…Shoppes at Union Square. Cosimo’s was allowed to expand their building, put additions on when it…didn’t…did not meet the bulk area, did not meet the rear yard setbacks or the side yard setbacks nor the parking in that case, a much bigger variance were necessary then but since it was going to be a common scheme and developed as one parcel everything was approved on that site as it was on the Warwick Savings Bank, Newburgh Towne Center site. Now this will be governed by all the regulations as if this was combined. There will be nothing that will be different then…it won’t look different, it won’t be constricted differently a…you’ll have the same obligations to maintain everything. The only thing that’s happened is that where there was going to be this property line removed it’s going to remain there because of constraints that a…the applicant or…or it…or is facing in that one party will operate this facility, another oper…party will operate that facility and they’ll be under the same governance as if it was one party. It’s just the vehicle by which to do this. It is not…the variances are only necessitated because of the method we’re doing it as was Cosimo’s and a…and the facility at Shoppes at Union Square and as was done with Warwick Savings Bank in the New...Newburgh Towne Center when we did that several years ago. I don’t want to keep on going over the same thing but nothing there will look differently, nothing will operate differently.

Mr. Manley: It would operate differently in that the Shoppes at Union Square, they’re…they shared that driveway. There’s no shared…is there a shared driveway here?

Mr. Doce (Vincent): Well to facilitate it this driveway that’s in the planning board…the existing driveway for a…the veterinary facility will remain and because the board felt…the planning board felt comfortable that this to egress from there might be removed or less traffic would be impacted they’re going to exit through this site. So they’re combined there. That’s another reasoning for it having been done so that we can make this, instead of coming into this facility and just coming into that facility, there’s going to be cross traffic here just to facilitate…make it safer, it’s going to be much safer. So then again therein it’s the same as Union…as the Shoppes at Union Square.

Mr. Levin: There’s no wall…between the sites?

Mr. Doce (Vincent): No…

Mr. Levin: (Inaudible)

Mr. Doce (Vincent): …that the wall is going to be removed.

Mr. Levin: You can park in one site and walk to the other?

Mr. Doce (Vincent): You could do that if it were necessary. And…and the fact is that these businesses are going to act in concert that’s the reason for doing that because very often when you have the veterinary facility you need a…a…to board the animals instead of taking them off site into another boarding area and they’ll be boarded there. And it’s all inside, I mean, it’s all sound attenuated it’s…there’s nobody, I mean no dogs are going go…outside of there anyway. They’re not going to sleep in kennels or anything. They’re going to be in sound attenuated building but not to be redundant I have to say nothing…nothing is different than it was originally proposed except now it will be a what the planning board calls a common scheme as opposed to a combined parcel…

Mr. Maher: So would…would…

Mr. Doce (Vincent): …everything has to stay the same.

Mr. Maher: …would the planning board approval put a requirement that the existing veterinary office remain a vet office?

Mr. Doce (Vincent): Oh, yeah this…this is done in concert. Once one of those goes away then they’re going to be facing coming…just like any…any of these other ones would be facing coming back to this Board. It is as a common scheme it’s just like they’re joined at the hip a…they…they have to act in concert with one another, this cross traffic. There is cross facilities. So just like Warwick Savings Bank has to remain a bank, Cosimo’s has to remain the shops they have there or they have to come back here too.

Mr. Manley: Can you just refresh my memory where Warwick Savings Bank is because I’m…?

Mr. Doce (Vincent): That’s Providence.

Mr. Scalzo: Sterling…Sterling Bank now.

Mr. Doce (Vincent): Oh Providence…Sterling now.

Mr. Maher: At Stop & Shop.

Mr. Manley: Okay, all right.

Mr. Doce (Vincent): Yeah.

Mr. Manley: Yeah I just wasn’t familiar with a…

Mr. Doce (Vincent): Right, yeah.

Mr. Manley: …Warwick Savings Bank in Newburgh.

Mr. Doce (Vincent): It’s rather a minor thing because nothing is going to look any differently, nothing will be built any differently, nothing will be impacted any differently.

Mr. Manley: Well I mean it’s not minor in that the variances requested…they are substantial variances being requested and I understand that you’re saying that both lots are going to be remaining in concert and I understand all that but the project doesn’t stand on its own merits. It doesn’t…it doesn’t fit our Code so…

Mr. Doce (Vincent): Neither did the other two that I referred to.

Mr. Manley: But each application stands on its own merits so...

Mr. Doce (Vincent): Yes but I’m just saying they’re very much…very much the case.

Mr. Manley: …so you know, the amount of variances that are need for this particular project could have…could be quite substantially more than the other one I don’t have the information on the other projects in front of me. Did you happen to bring those with you as to what variances…?

Mr. Doce (Vincent): No, but Darren is familiar with them. These are less of an impact are they not?

Mr. Doce (Darren): A…I…I…don’t recall.

Mr. Donovan: We’d have to…we’d have to take a look at it and I don’t recall the Warwick Savings Bank. I do recall the Shoppes at Union Plaza. The thinking at that time was that was a shopping center. And what drove that was financing requirements of different a…of…of the building people that wanted to be able to finance independently of each other and they needed to be on their own lot. That’s what…that’s what drove the Shoppes at Union Plaza.

Mr. Doce (Vincent): This is somewhat analogous to that insofar as the people operating this will be financing and building on their own as this will be mortgaged on its own. So there is…it is somewhat analogous. It’s just a vehicle to allow an attractive project to go forward and removing one obstacle, common scheme. Now if you needed more area I’m sure our applicant would certainly do that. They didn’t just…no one saw that it was any benefit, I can understand what Jim is saying, it reduces it…that could be done or one lot could be combined or two, I don’t know. But that if it were necessary that I’m sure our client would be cooperative there. They’re just not seeing that it was particularly necessary.

Mr. Scalzo: The one thing I’m noticing sir, the one side yard proposed at ten feet where a thirty is required, is that what I’m looking? If you were to push that building away from Route 17K to the wider portion of the lot you could actually gain eight feet of a side yard while maintaining your forty.

Mr. Doce (Vincent): I’m not following you with that.

Mr. Scalzo: If you were to push it back where the property line comes out you would actually gain eight additional feet instead of looking for a twenty foot side yard requirement variance you would only have a twelve foot.

Mr. Doce (Vincent): But I would somewhat destroy the fluidity of the project how it’s tied together.

Mr. Scalzo: (Inaudible) …parking and…and a…paved areas could remain the same. You actually may pick up parking if you did that.

Mr. Doce (Vincent): Yeah but the traffic flow was…I mean, it would…it would not be I think as handsome as…a project if you had that building set back I…you know, I’m…I’m…we’re willing to work out anything that would help but to do something you know, for…for a blow…shall we say a blow seems sometimes, you know, not the sensible thing. If there’s a good reason certainly I don’t see where that would help that much.

Mr. Maher: Well again, the…cause the side yard setback requirement on the Fletcher Drive side you said the front yard, I’m assuming?

Mr. Doce (Vincent): What was that?

Mr. Maher: Are you going with the front yard setback on Fletcher Drive?

Mr. Doce (Vincent): No. The only…

Mr. Maher: (Inaudible)

Mr. Doce (Vincent): …the only setbacks that require a variance…everything else meets Code.

Mr. Maher: No, I…I understand I’m just trying to get an idea here. On the Fletcher…on the Fletcher Drive side what is the requirement for the setback? Is it forty?

Mr. Doce (Darren): It’s forty feet front yard, yes.

Mr. Maher: (Inaudible) So it’s forty foot there with the building and the ten foot basic… (Inaudible)…

Mr. Doce (Darren): Correct.

Mr. Manley: Mr. Canfield, do you have any information or anything to add? Anything from the planning board or anything that you’re familiar with from the applicant’s testimony that you could share…

Mr. Canfield: Yes.

Mr. Manley: …from a Town perspective?

Mr. Canfield: Yes, the applicant did appear before the planning board back in May and at that time, which I did attend, this project was ruled on its own merits. There’s a section of the zone that 185-45 deals specifically with this type of occupancy. Our Bulk Use Tables for a B Zone, which this is located, permits veterinary and related sites. Pet grooming being related to veterinary our…our department advised the planning board that it is a permitted use on this site. But what should be clarified is that it’s being viewed as a separate parcel. Okay, so…the three variances that are sought is what’s accurate for this parcel. There is no language that I’m aware of, in our Municipal Code about two sites sharing whatever. As David pointed out the other sites that Mr. Doce (Vincent) referred to were shopping centers which is a totally different section of the Zoning. It’s a five acre minimum parcel and there’s several other rules that apply. That’s not the case here. This is a B Zone, this use is permitted and one of the primary factors that we look at initially when we see a project is determining the use and is it permitted. And in this case it is. But we need to be clear that it’s a standalone project. Two separate owners, two separate responsibilities and again the applicant should be aware of the requirements of 185-45 which are specific to sound attenuation, parking, screening and all of that just like the other site. Also Darren did indicate that currently there are some Violations on a separate parcel which is something that’s not before you tonight but however I back up what he’s saying is true. There are some issues there that they are working towards compliance with. But again just for clarity for the Board’s benefit these are two separate sites.

Mr. Manley: Okay, thank you. Before I open it up to the public does the Board Members have any further questions?

No response.

Mr. Manley: At this point, I’ll open the Public Hearing to the public. If there’s anybody here that has questions with regard to this application or comments on regard to this application if you would step forward and state your name for the record. Yes, sir?

Mr. Clue: Baxter Clue, 12 Fletcher Drive, I…I’m kind I guess, I’m kind of concerned about the noise for one. I…they say there’s going to be some a…sound deadening within the structure. There’s also the issue with the traffic. That corner already I come to and from that corner daily and it’s a…it’s troublesome getting out on that road if we have people pulling out on the Fletcher at the same location how much of issue is that going to be? Primarily with the noise it’s a residential neighborhood how much of this boarding? Is everything going to be inside? Or are we going to have some out…outdoor facilities for some of these areas a…you know, is there an outdoor play areas or anything for the dogs?

Mr. Manley: There…there appears to be on the application of the…on the map here, the site plan it is showing there is going to be a eighty-one by…can’t see with the…it’s eighty-one feet long. How long is the chain link fence with the privacy slats there?

Mr. Maher: I don’t see it. Is it approximately sixty or so?

Mr. Manley: Cause I don’t see the…

Mr. Doce (Darren): Sixty, sixty foot line.

Mr. Manley: So it’s about sixty by eighty so that’s four hundred and eight square feet roughly will be outdoor play area probably for the…for the dogs. This Board is charged with looking at the variances which are the distances that the Town Code requires for the placement of the building and that’s what we have to rule on tonight. If this does pass it goes back to the planning board and the planning board at that level is charged with sound, traffic and all of those concerns that you just mentioned a…we normally pass along comments that the public makes to the planning board but I would recommend that if it gets back to the planning board if this should be approved that you should definitely make your comments known to the planning board. They are valid concerns and…and questions that you have regarding sound and a…traffic.

Mr. Clue: Thank you for your time.

Mr. Manley: Thank you. Are there any other members of the public that wish to make comments or questions or concerns regarding the application this evening?

No response.

Mr. Manley: At this point, I will ask the Board if there is any further questions?

Mr. Maher: Is the applicant willing to potentially combine some property to lessen the…the overall variances needed?

Ms. Gennarelli: You’re going to have to…

(Inaudible)

Ms. Gennarelli: …you have to use the microphone.

(Inaudible)

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

Ms. Fischer: Me too, yes, I am Jenny Fischer and the back lots could be combined with the Fletcher Drive lots and have it that L shape to make it more…more space.

Mr. Maher: Okay, do we have a…the size of the…of the a…91…94-1-18 by chance?

Mr. Doce (Darren): To meet the acre requirement you would have to use 18 and 19.

Mr. Maher: Okay.

Mr. Donovan: If I can suggest this since you have to…you can’t act tonight anyway because the Orange County Planning you may want to consider holding the Public Hearing open? You reconfigure, whatever you are going to do, make whatever modification, you resubmit. You don’t have to re-notice but then you’ll…that will be available for public review and comment to the extent there is going to be any a…next month.

Mr. Doce (Vincent): (Inaudible)

Ms. Gennarelli: Excuse me, Vince…

Mr. Donovan: You still have got to use the microphone.

Mr. Doce (Vincent): One thing I’d like to mention is that we understand a…different boards a…in Orange County having to react. We do have a response from Orange County a…because we sent it to them when we went to the planning board and we had a response back for them. We can make that response available to the Board so they know what the County said at one time…

Mr. Donovan: Yeah, I’m not in charge of common sense or any stuff like that just what’s in…what’s in the book and the book says you can’t grant unless the thirty days goes by.

Mr. Doce (Vincent): We realize we accept that, we’re just offering that we do have a comment…

Mr. Donovan: I don’t expect any (Inaudible) comments…

Mr. Doce (Vincent): …if you’d like to see…

Mr. Donovan: …to come back from the Planning Board quite frankly but we can’t act until they receive the comments.

Mr. Doce (Vincent): And the other thing is can we close the Public Hearing and just come back again for your decision?

Mr. Manley: Well the problem is if we close the Public Hearing and there’s additional material that is needed after next month then we’re kind of locked in to making a decision so my recommendation and I think Counsel’s recommendation is to keep the Public Hearing open.

Mr. Donovan: Yeah, if you’re going…if…because you have to come back anyway. If you are going to make some amendments to the map to add some property and maybe you don’t need the Bulk variance or maybe it’s lesser than it is then that should be available for public review and comment to the extent there is going to be any. You’re coming back anyway.

Mr. Doce (Vincent): Yes.

Mr. Manley: And we did have one member of the public that made a comment so, you know, they should have the ability to see what the re-proposal is and if they wish to comment and get it on the record.

Mr. Doce (Vincent): Okay, thank you.

Ms. Gennarelli: (Inaudible)

Mr. Donovan: So Co-Counsel has raised an excellent point. Since the five hundred feet was measured from the boundary of this lot if we’re going to add additional lots it’s probably the safer course of action to re-notice, sorry. But you’re right. If that’s…if that’s what you are going to do. If that’s your going to do because you haven’t…you haven’t gone five hundred feet, I assume, from those lots. Right?

Mr. Doce (Darren): Only from the one, yeah.

Mr. Donovan: Right but if you’re going to add to the application I…I don’t know how many other properties you pick up but to do it correctly you’re going to need to do that.

Mr. Manley: And this should be the other caveat that we probably should tell you if…

Mr. Doce: If this is what we’re looking at but as far as our…our proposal to add these that’s not part of it yet we have to still re-notice or as part of our…like I don’t know…like approval before the requirement to add those to that parcel that’s after the fact though is it not or…?

Mr. Donovan: Well to be part of this application.

Mr. Maher: You’re proposal would be including those lots and the maps re…resubmitted.

Mr. Manley: And do they have to combine before they actually come before the Board?

Mr. Donovan: No, we could make it a condition of the approval because…

Mr. Manley: Because in the event it doesn’t pass…

Mr. Donovan: Correct, yeah.

Mr. Manley: …they didn’t want to combine something and then…

Mr. Donovan: Right, so…I mean, the Chairman’s question is do you have to do that now? And the answer is no, you don’t have to combine it now. It would be a condition of any approval that the Board issued. But since this has got to be part of the application that’s what would require the re-notice requirement; if you decide you’re not going to do that… You don’t like my answer Darrin. I can tell by looking at your face.

Mr. Scalzo: I’m…I’m not a fan of the combination of the lots. It’s going to…if you were to look at a tax map section of this…by asking the consolidation of those lots look at what we’re asking them to make. It’s…it’s a ridiculous shaped lot.

Mr. Donovan: And…I’m just…saying that if they’re going to consider or they’re going to propose in response to what they heard tonight to combine those lots to this parcel then they would need to re-notice. I don’t get to say whether it’s a good idea or not.

Mr. Doce (Darren): But we can’t get any direction one way or another other than…?

Mr. Donovan: Well you got…actually you got direction, one way and the other.

Mr. Doce (Darren): Yeah, right. One combine, one don’t combine.

Mr. Scalzo: Well going back to my other comment before as far as pushing the building back you would gain eight feet on a…on one of your variance requirements. I know it may not be as handsome as it is now but it would alleviate some of the required variances that you’re seeking.

Mr. Doce (Vincent): Can we make a deal we’ll do that?

Mr. Scalzo: And I’m just saying you may want to explore that.

Mr. Manley: You know and also by doing that though creates obviously issues back at the planning board because now that you’ve moved that around when you go back to the planning board they may or may not like how you’ve changed things around and you have issues to deal with there so you know, unfortunately like Darrin is saying we’re charged with you know, giving you a variance that’s the least that’s allowable to achieve what you want to do. And in the same token making sure that we stay consistent with the Town Zoning and not, as a former Board Member used to say putting so much in one bag that doesn’t fit.

Mr. Doce (Vincent): Well, we’re dealing with several things. The first thing combining the rear lot I…as I stated before I don’t think it really does anything. It may make things worse from…from…from a…a tax map looking thing. It would be one bazaar looking lot and it doesn’t really accomplish it…anything except it makes the variance less. But should that be done do we have to notify everybody again or only the people since the Hearing is open do we…can we just notify the people that would be impacted by that?

Mr. Manley: You would have to get the list from the Assessor.

Mr. Doce (Vincent): Yeah, but what I’m saying is we notified everybody, now we’re coming back in…instead of re-notifying now perhaps three more people become involved. Can we not get…

Mr. Donovan: Yeah, I understand what you’re saying. The problem is it’s a little bit of a different application so the better course of action…the better course of action is to re-notice everyone. What you don’t want to have happen is you go to the planning board and someone says, ‘Hey, I never got…I didn’t realize when I got my ZBA notice that these other three lots were going to be included and I would have objected’ and they send you back. You never get penalized for doing it the right way the first time.

Mr. Doce (Vincent): Okay and the other thing is is Darrin’s recommendation also on the table here? I mean…

Mr. Manley: Which Darrin? This Darrin or that Darren.

Mr. Doce (Vincent): That Darrin, the handsome Darrin.

Mr. Doce (Darren): My own Dad.

Mr. Scalzo: That’s three times we used that word tonight. I don’t know that it would be a recommendation. I just saw it as option to…a…reduce one of the variances required. I’m not by any means telling you that’s what you should do.

Mr. Doce (Vincent): Yes.

Mr. Manley: You know, the other issue too is we don’t have the comments back from the County that is specific to the Zoning Board’s submittal so we don’t what the County is going to recommend or what they’re going to say so fast to July there may be things that come up from the County that we haven’t thought of that all of a sudden becomes an issue that now we’re having to ask questions or clarification on so you know, keep in mind the County might point something out that this Board is not…hasn’t thought of and that’s why things go to the County or how it impacts potentially the County and then we have to respond to that and that may change this whole picture again so…

Mr. Maher: You know, by all means don’t…I mean don’t take my suggestion you know, and follow through just because I said that. You know, obviously it’s just something to reduce the overall variances that are needed. That’s…obviously that’s what Mr. Manley said what the Board’s, you know, charged with so you know, if there’s a method to do that that you can review with them and maybe that’s what you’re going to come up with and present your options that you know, that you’re obligated to leave you’re…you’re a…the applicant is willing to agree to but again it’s this is strictly up to you and the applicant.

Mr. Scalzo: And of course the option of leaving it as is and taking your chances is always there.

Mr. Manley: Yeah, I mean this Board, you know…

Mr. Doce (Vincent): And coming back again.

Mr. Maher: You could.

Mr. Manley: You know the Board; you know there may be enough votes here today to…to have it pass. Obviously we can’t vote it today but you know, when we are able to who knows maybe it will go through just the way it is. You don’t know until it comes time to vote. But, you know, I think that from my perspective it’s it’s…we’re putting a lot in a very, very small area, I mean. And it is on a corner a…it is…it is substantial, you know, the coverage area the lot coverage you know, it’s just…

Mr. Doce (Vincent): And again we’re, you know, risking the engagement of redundancy here. The fact still remains that if weren’t a common scheme it would have been approved. The planning board was in favor of it, I mean, they found no problems with it a…it was reviewed by the County. It’s the fact that it’s a common scheme that requires the variances. If…

Mr. Donovan: No, no it’s not. It’s the fact that it’s you’re building on the one lot that’s not up to Code.

Mr. Doce (Vincent): Well yeah…

Mr. Manley: It’s a sub-standard lot.

Mr. Doce (Vincent): …but if we…but if we did not a…ask for a common scheme and made it one lot there would be no variances.

Mr. Donovan: If you made it one lot, sure.

Mr. Doce (Vincent): Sure. But we’re…we’re encumbering it just like it was one lot and putting all the constrictions, all the governance just like it was one lot as we’ve done before and a...

Mr. Maher: But…but…but you’re putting a common you say that but the common drive is just a benefit to both parties. It’s not a requirement.

Mr. Doce (Vincent): As it was on our other one.

Mr. Maher: No, no, what again that was one…one parcel so in essence it would be one parcel at the end.

Mr. Doce (Vincent): No, no I’m saying when we did Newburgh (Inaudible) we had drives going all over the place and when (Inaudible) Union Shoppes.

Mr. Maher: I understand that but there’s a…there’s a…but there…you have to take into consideration The Towne Center and this there is a slight variance there…there’s a difference there so you know, this while it’s a vet center tomorrow it might be an office building down the road. You don’t know, I mean, you don’t know so you can’t say that it’s always going to act in unison because it may not be a vet office down the road, ten years down the road. There’s a good chance that the Towne Center is going to remain a supermarket area or…or a retail environment whereas this may not. It may change so you can’t say it’s going to stay consistent. If it was all one parcel then…then it wouldn’t make a difference. But the application before us, again, the substandard lot is…is the issue and the variances required so again whatever you can come up with to lessen the degree of non-conformity is going to benefit the applicant.

Mr. Donovan: And to Mike’s point the variances run with the land. So once you…once you get the variance for this building on this lot, I mean, whatever you know conditions the planning board may put on it that lot can be sold.

Mr. Maher: And you say, you know, it runs consistent with the parcel next door. Mr. Canfield was very clear it is by itself that it really isn’t in the consideration as far as what we’re looking at.

Mr. Canfield: Just one question also or a comment if it would help the Board you may want to consider to have the applicant re-think this consolidation concept because something you did not talk about is additional drainage requirements with the new MS4 regulations a…it will change the drainage calculations for this site so I don’t know if you’re prepared to address it right now but perhaps to give everyone enough time to re-think what we’re asking or what we’re all thinking and then perhaps come back to the Board with a decision on how you propose to handle what you’re proposing to do. I think its decision time on the applicants but I don’t think they’re prepared at this time to give any answers.

Mr. Scalzo: Jerry wouldn’t that had been evaluated at the planning board as far as drainage issues? They have not reviewed it to that extent yet?

Mr. Canfield: No, I don’t believe a drainage report was submitted because I just reviewed Mr. Hines’ comments from the planning board and there was no mention of the drainage and…and while we were discussing this I noticed a pipe that appears to discharge to the rear a…which is near that lot so again if we add the size of this lot to this half acre plus or minus parcel now they may be encroaching the one acre which could change their requirements and that’s my point. That’s my point so yeah, to give yourself some time to address that and re-think it. You may come up with an engineering reason why it’s not feasible to do that and again you may find out a reason that it is feasible to do it. But as I’m hearing it we’re only talking about a gross number of complying with the forty thousand square feet requirement. There may be deeper issues preventing that from happening. So I think everyone should re-think this and perhaps re-present it as to your covering all the issues that we’re discussing tonight.

Mr. Manley: Well I mean just to…just to give you an idea of the size of the variance you’re requesting in an R-1 Zone you need forty thousand square feet to build a single family home. And here we’re looking to put a business that operates you know, on, you know, half of that where you know forty thousand is required for…for a business. So you know that’s why, you know, the significance of the variance is…is there and that’s why I think you’re hearing some of the concerns of the…of the Board Members.

Mr. Doce (Vincent): Here’s two…one last comment to put it further in perspective then. If and this is a vehicle we’ve used in other places, if this were done by combining the lots and then the arrangements by my client to their perspective purchaser…purchaser of the stone cottage which is the original parcel and their continual operation there could all be done by lease agreements and that would obviate the necessity of getting any…any a…variances. Alls I’m saying is you can accomplish this in different ways and if you can accomplish it in different ways why not make it the cleanest way by granting the variances. Now you may disagree with me that that’s the cleanest way but again this can be done by combining the parcels, this can be done by combining the parcels and having separate lease arrangements with (Inaudible) instead of selling one parcel you have a ninety-nine lease…year lease that’s renewable. You would accomplish the exact same thing that we’re trying to accomplish by a cleaner vehicle. So, you know again, a…I understand you’re problems but I would like to at least think about what I said about the efficacy of doing it our way and see if that benefits. If the benefits derived therein far a…overshadow any questions about granting variances that may be…

Mr. Maher: So…

Mr. Doce (Vincent): …appear to be…

Mr. Maher: …so in essence if in fact it was combined and you had a lease agreement arrangement you wouldn’t need any variances at all, correct?

Mr. Doce (Vincent): That’s right.

Mr. Maher: So wouldn’t that be the easiest way to do it?

Mr. Doce (Vincent): Well no, that would create problems to the applicant they would always be in the situation where they own something, leasing it instead of selling it.

Mr. Maher: But it is a potential solution.

Mr. Doce (Vincent): It’s a vehicle but it’s a long winding vehicle and it incurs certain liabilities for the lifetime of the lease. It’s the same thing we had…we had again…considered that exact same thing with Warwick Savings Bank. At any rate, we understand…

Mr. Donovan: I don’t know whether it’s the air or it’s you Vince I don’t really know.

Mr. Doce (Vincent): Come on, you told me a good job the other day. A…we understand where we are. I think we understand where we are and a…we’ll be back next month but I would ask is it…would it be alright if our attorney a…corresponds with the ZBA attorney to clarify things that I might not be able to have clarified between her and I.

Mr. Manley: Certainly, if there is something that you need to…to add I would request that you put it in writing and we’ll forward it to Mr. Donovan for review.

Mr. Doce (Vincent): Or she can…and take me out of it.

Mr. Manley: She can send it to the ZBA office and then we’ll forward it on to Mr. Donovan for review.

Mr. Doce (Vincent): Okay. And it could be a simple something maybe we have your permission to discuss it directly with Mr. …this issue with Mr.?

Mr. Manley: Sure, but normally if you put it in writing, this way I can get a copy of it and that way I can disseminate it to the rest of the Board and then we can get it to Mr. Donovan and then he can respond as necessary.

Mr. Doce (Vincent): Thank you.

Mr. Levin: Thank you.

Mr. Doce (Vincent): Thank you Jim.

Mr. Canfield: Jim, procedurally was it mentioned and a vote to hold the hearing open?

Mr. Manley: There was not yet. Would you like to add something or…before we…?

Mr. Canfield: No, no.

Mr. Manley: Okay. Anybody else have anything?

No response.

Mr. Manley: Does anything else from any members of the public?

No response

Mr. Manley: At this point, I would look for a motion to hold the Public Hearing open until July 28th.

Mr. Scalzo: I would make that motion.

Mr. Masten: I’ll second it.

Mr. Manley: Let’s just clarify one thing while we’re here, are we or are we not re-noticing? Because I think that…if there’s anybody here from the public they should know to be here July 28th in the event you don’t get a Hearing Notice but at this point we don’t know whether or not they’re going to (Inaudible)…

Mr. Donovan: Well if they include that extra property…if you’re going to include the extra property you’re going to need to.

Mr. Doce (Darren): Okay.

Mr. Manley: (Inaudible) Correct.

(Inaudible)

Ms. Gennarelli: Please go to the microphone…when you decide what you’re going to do.

Mr. Doce (Vincent): Yes, we understand.

Mr. Manley: Okay, very good. So do we have a motion to hold the Public Hearing open?

Ms. Gennarelli: And a second.

Mr. Manley: Roll call.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:07 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 9:07 PM)

AILIN BARRON, STEPHANIE BARRON, GIANNA 416 ROCK CUT ROAD, WALDEN

 & JOHN FRANCO & NICHOLAS MONACO (28-1-25) R-1 ZONE

Applicants are requesting area variances for the minimum lot area, the minimum lot width and one side yard setback for 416 Rock Cut Road, Walden (28-1-25) with a pre-existing single family dwelling for an application before the planning board for a lot-line change with 26 Copper Rock Road, Walden (125-1-13).

Mr. Manley: The next item on this evening’s agenda is Alie Barron, Stephanie Barron, Gianna and John Franco and Nicholas Monaco 416 Rock Cut Road, Walden, seeking area variances for the minimum lot area, the minimum lot width and one side yard setback for 416 Rock Cut Road, Walden (28-1-25) with a pre-existing single family dwelling for an application before the planning board for a lot-line change with 26 Copper Rock Road, Walden (125-1-13). Ms. Gennarelli are the mailings and postings in order.

Ms. Gennarelli: Yes, this applicant sent out fifteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Good evening. Could you introduce yourself for the record please?

Mr. Babcock: My name is Brian Babcock; I’m an engineer and surveying PC with Engineering and Land Surveying Properties PC in Montgomery, NY. My client was actually began with Mrs. Barron we a…we did a survey and layout of her house and everything. She purchased this plot from the land owner of the site which is the Mountain…Mountain Lake subdivision it’s a cul-e-sac, a large loop road a…it’s called Copper Rock Road, it’s off of Rock Cut Road in your Town. At the time of the survey we discovered that the Franco Monaco lands actually encroached somewhat onto Mrs. Barron’s parcel with a lawn and a fence and we’re currently before the planning board for a lot line change. It would let the Monaco’s and Barron’s have come to an agreement that the Monaco’s could take possession of this land that’s…that’s currently on Mrs. Barron’s piece and Mrs. Barron would take title to this portion of land which is currently owned by the Monaco’s. The…the planning board basically said that it all looks good, makes sense but unfortunately we’re caught by the pre-existing non-conformity. The…the Franco lot was originally approved under a different zoning and a…as such with us coming in for a lot line change we no longer have the protection of the pre-existing non-conformities so all of the…all of the variances that I’m seeking relief for are a result of the pre-existing non-conformity. The a…the lot…the side yard requirement is actually thirty under the new zoning and it was original fifteen when this lot was originally approved, we had twenty-six point one. The lot width was a hundred feet under the previous zoning, I believe now it is a hundred and fifty and a…the lot area which is now forty thousand square foot was only twenty at the time that the subdivision was originally approved…this lot was originally approved. So all our…our relief that we were asking for is…it’s we have not created this imposed. We have not created this hardship it’s…it’s simply because of the pre-existing non-conformity of the new zoning so the…the whether or not we go through with this lot line change or not the fact that she doesn’t have the side yard, the area or the a…yeah, the lot area…the a…the side yard or the lot width it doesn’t matter. We’re not going to propose anything. It’s not going to…it’s not going to change the character of the neighborhood. It’s all, you know, it’s going to be the same whether or not we…we go through with this lot line change or not. In essence by creating this lot change the Franco/Monaco lot actually gets larger so we do…we do substantially decrease the non-conformity to lot area. But as such the lot width and the lot side yard will stay the same.

Mr. Manley: Do any of the Board Members have any questions regarding this application?

Mr. Levin: Yeah, I’d like to know how you find two neighbors that are that friendly with each other to do something like that.

Mr. Babcock: Actually I think they…they both have a common interest. The Monaco’s would to keep their lawn where it’s at right now without having to remove it and everything else. And a fortunately Mrs. Barron her mother is Mrs. Nickolan down there on the south side of Monaco and so this actually facilitates the two lots being contiguous to one another which is an added benefit to her so it…it kind of worked out that they were able to come together and come up with an agreement. The planning board like I said was you know like this is great, makes sense but got to go to ZBA so…

Mr. Manley: Well at this point I’ll open it up to the public. Is there anybody here from the public regarding this application questions, comments or concerns?

No response.

Mr. Manley: Hearing none back to the Board for a final…

Mr. Scalzo: My only…Dave, my question has a…the variances that we’re looking at, the conservation easement the area that’s been maintained in there, we have no influence on anything that has to do with that, correct?

Mr. Donovan: That’s correct.

Mr. Scalzo: Good enough.

Mr. Manley: If there aren’t any other questions from the Board I would look for a motion to close the Public Hearing?

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: And this is another one of the County referrals that we’re waiting for a response from the County so unfortunately this will have to be held over until our July 28th meeting for an official vote.

Mr. Babcock: What I’d like to do is I’d like to be able to just submit another plan or two to the…to the Board because a…I did notice today when I was doing some final revisions on the plan that the…the actual area that’s listed on your copy in the Bulk Table the…for the area and the lot width is incorrect and I’ve made that…that correction.

Mr. Manley: Okay.

Mr. Babcock: It’s insignificant…

Mr. Manley: Okay.

Mr. Babcock: …but I just wanted to let you know.

Mr. Manley: Okay, you can just get that to our Zoning Board Secretary…

Mr. Babcock: Sure.

Mr. Manley: …and she’ll make sure…

Mr. Babcock: Great.

Mr. Manley: …that it gets into the record for next month.

Mr. Babcock: Great, thank you.

Mr. Manley: Thank you.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:14 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 9:14 PM)

ROBERT & DONNA HOAG 150 MOUNTAINVIEW AVENUE, WALLKILL

 (4-1-53.6) RR ZONE

Applicant is seeking area variances for one side yard setback, the combined side yards setback and for increasing the degree of non-conformity of the front yards setback to keep a prior built covered side deck (14 x 22) and a deck (20 x 20) off of that deck on the residence.

Mr. Manley: The next application before the Board this evening is Robert and Donna Hoag, 150 Mountainview Avenue in Wallkill, seeking area variances for one side yard setback, the combined side yards setback and for increasing the degree of non-conformity of the front yards setback to keep a prior built covered side deck (14 x 22) and a deck (20 x 20) off of that deck on the residence. Ms. Gennarelli are the mailings and postings in order?

Ms. Gennarelli: Yes, this applicant sent out sixteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Good evening sir.

Mr. Hoag: How are you?

Mr. Manley: Could you introduce yourself to the Board please?

Mr. Hoag: Yeah, my name is Robert Hoag, 150 Mountainview Avenue and a…Mr. Bell remember what Mr. Scalzo said it’s not the first time? A…a…I made some enhancements to my house (Inaudible) by adding a pool, a pool deck and a side porch and I failed to get the right Building Permit. So I was going through the process to make up for my evil ways and what happened was it came back and said there was a problem with a variance. I guess the distance between my neighbor’s a…property line and mine. So what I wanted to do originally was take the pool down, get a Demolition Permit take the pool down, square off the deck that second level deck that went to the pool at one time and I think there’s an issue of that being too close to my…my neighbor’s property and I still need to go forward and get the Permits for the…that deck and the…and the side porch. So I think the need for the variance is there. I think the overall appeal of the house is enhanced by both the…the side porch and the deck which would be a regular second level deck. In the event that the variance is not issued I still would…I would remove that deck and I would still go for a Building Permit for the side porch and removal of the pool and the removal of that second deck. From a…from a…overall look of the neighborhood and the feel of the house it doesn’t a…look…it’s…it’s a good looking way a…way a…that it put together on the land that should come down the hill and it’s even with the house all across. So we’re requesting a variance for a…the side going my neighbors, a…I think I got one when he put his a…garage up. He had to go to the meeting and get a variance cause he was too close but I don’t think he has an issue with it. I don’t know of any neighbors that would have an issue with it but then I would still have to knock on the door of the Building…Building Code folks build it a…if I’m going to get the right…right Permits and the right Inspections.

Mr. Manley: Okay, do any of the Board Members have any questions on the applicants submittal?

Mr. Levin: Do you intend to remove the pool?

Mr. Hoag: I want the pool out, yes.

Mr. Levin: And then you’re going all the way back up to the top of the steps, okay.

Mr. Hoag: And then I would square…have that deck squared off and rails put on because it does…flows nicely from the…the porch and somebody can put a little tent out there and have cocktails or whatever they want to do.

Mr. Maher: Well, let me…I’m sorry, let me clarify. So you’re…you’re…you’re removing the pool because it’s old and you want to or because of the variances requested or…?

Mr. Hoag: I…I definitely got to say that my evil ways I shouldn’t have put it up in the first place without going through the proper channels so…I (Inaudible)…

Mr. Maher: No, I understand that I’m just…I’m trying to clarify…

Mr. Hoag: I just don’t want it there anymore. It’s not old. It wasn’t falling down. Right now I just drained it and I’m waiting for approval so I can go through the right…the right process to have it demolished.

Mr. Levin: I don’t see that the right way. If you take this fencing and fill it all in aren’t you increasing your…?

Mr. Hoag: I’m sorry?

Mr. Levin: You’re increasing your degree of non-compliance.

Mr. Hoag: No, this thing back here. Take the pool out and square this half off and put rails across to make it square. Does that make sense to you? The…the side against the pool would be squared off because the contour…the contour of the pool that oval pool brings it into the deck so I would have it squared off to where it was, you know, rectangle and put rails up where the pool was at one time just to box it in.

Mr. Levin: Okay.

Mr. Maher: Jerry, just to clarify, the reason for the deck being the side yard issue obviously is the stairs connecting the two decks together. So if the stairs weren’t there and the deck was there would be no discussion at all?

Mr. Canfield: Correct.

Mr. Hoag: Sorry to take too long.

Mr. Maher: No, I’m just a…pointing it out, I mean…

Mr. Hoag: I’ll do whatever you tell me…you want me to take the deck down?

Mr. Maher: No, no, no we’re not going to tell you to do anything. I…I’m just trying to point out the reason. The…the deck is…is…is…it’s not the issue with the deck. It’s the fact that it’s connected to the house…

Mr. Hoag: Yeah, it makes all one.

Mr. Maher: …that’s increasing the problem. At the end of the day if, again the stairs weren’t there…it wouldn’t really be an issue. Not that I’m telling you to take the stairs down.

Mr. Hoag: Okay, well they’ve come down for years.

Mr. Manley: At this point, does anybody here from the public have any questions regarding this application before us this evening? If you do step up to the microphone and introduce yourself.

No response.

Mr. Manley: At this point, I’ll come back to the Board. Does anybody else have any further questions for the applicant?

No response.

Mr. Manley: Oh, thank God, I was waiting for that. (The air conditioner was turned on)

Ms. Gennarelli: We won’t be able to hear anything on the microphones. I don’t know if you can talk to the Town Board about that.

Mr. Manley: We’ll just talk a little louder.

Ms. Gennarelli: Yes, everybody pull your microphones closer now.

Mr. Manley: At this point do we have a motion to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Thank you.

Mr. Hoag: Can I ask one question?

Mr. Manley: You can.

Mr. Hoag: Should I leave now or…?

Mr. Manley: Before I rolled your piece…

Mr. Hoag: …when do I find out what the…what the…?

Mr. Manley: Well, I would recommend staying…

Mr. Hoag: Okay.

Mr. Manley: …if you want to find out what…happens.

Mr. Hoag: Okay, thank you.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Ms. Gennarelli: And when you ask them, can I get a mic for myself so we can do this like we used to?

Mr. Scalzo: Well keep in mind when John McKelvey is not here. We could shift those mics down.

Ms. Gennarelli: I tried. I tried. It doesn’t work. He only has this much cord. I tried.

Mr. Levin: Yes, a short cord.

 (Time Noted - 9:21 PM)

ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:49 PM)

ROBERT & DONNA HOAG 150 MOUNTAINVIEW AVENUE, WALLKILL

 (4-1-53.6) RR ZONE

Applicant is requesting an area variance for one side yard setback, the combined side yards setback and for increasing the degree of non-conformity of the front yards setback to keep a prior built covered side deck (14 x 22) and a deck (20 x 20) off of that deck on the residence.

Mr. Manley: The next application Christine Dalton, 16 Sunny Lane in Wallkill that one has been moved to July 28th, as is the application for the Estate of James A Fischer, 2 Fletcher Drive has been moved to July 28th, as is the application of Alin Barron, Stephanie Barron, Gianna and John Franco and Nicholas Monaco that has also been moved to July 28th. The next application that we will be voting on this evening is Robert and Donna Hoag, 150 Mountainview Avenue in Wallkill. That is a Type II Action under SEQR. Do we have discussion on the application?

Mr. Maher: The applicant demonstrated he’s working to bring it into compliance with those issues with the a…Building Department.

Mr. Manley: His variance would be less substantial if removed the stairs as you said so it really, I mean, just putting the stairs just kind of makes it a better flow for the owners. And the neighbors didn’t seem to object to it changing the character of the neighborhood. In fact, the neighbors to the one side had a pool. Do we have a motion on the application?

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: I’m sorry who was first?

Mr. Manley: Richard.

Ms. Gennarelli: Richard, okay, and Darrin you were second.

Mr. Scalzo: Correct. Roll call.

 Darrell Bell: Yes

Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:54 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 9:25 PM)

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

 (95-1-69.1) I/B ZONE

Applicant is 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.

Mr. Manley: The next application that was held over from our May 26, 2016 meeting is the application of A. Duie Pyle, Inc., 1000 Corporate Blvd in Newburgh, 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. Ms. Gennarelli were all the applications and postings in order?

Ms. Gennarelli: Yes.

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

Mr. Goldberg: Sure, good evening Mr. Chair, Members of the Board representing the applicant.

And I’m hoping this is going to be a very quick application because I don’t think we need the variances. The Ordinance talks about a…fences shall include electrical and or not invisible fences so clearly electrical fences are included within the definition of a fence under Section 185-3.

Mr. Manley: Correct.

Mr. Goldberg: And then, if you go to 185-16 it talks about basically how fences are allowed in non-residential zones such as this in the I/B. So I think you have a situation where I believe the interpretation is the fence is allowed. And I’ll certainly, you know, have yourself or the solicitor weigh in.

Mr. Manley: Right and I don’t believe it’ll even be an interpretation by this Board. I think that we’ll just ask Mr. Canfield to interject. He’s our Code Compliance Supervisor.

Mr. Goldberg: Sure.

Mr. Manley: And we’ll also have Counsel interject and it may be that we may not even need to proceed a…beyond just referring you back to the Building Department if we deem that to be the case, which I believe you…you brought some information to light to us that brings that to light. Mr. Canfield?

Mr. Canfield: Thank you. I concur with the applicant’s representative’s interpretation 185-16-E does permit the fence in the I/B Zone which is assumed here is non-residential. In 185-3 which is the definitions section of the Zoning Code it does define fences and it does include electrified fences. So I agree, I don’t see any need for any variance here at all. A…I would suggest that the Board refer the applicant back to the plan…or the Code Compliance Department, the Building Department to continue with his Permit process.

Mr. Goldberg: Thank you.

Mr. Manley: And Mr. Canfield there is no prohibition in there for any other types of electrical fences it just…which I read it said electrical fence and your belief is that that covers all electrical fences, yes?

Mr. Canfield: Yes, there is some reference to underground fences which again as we know it and there’s an assumption here of what it’s relating to, it’s generally animal type fences, buried fences a…which are typically in residential areas.

Mr. Manley: Okay.

Mr. Maher: Jerry, one…one question. Jim, sorry. The pole mounted solar panels is there a requirement for size, shape, location, height.

Mr. Canfield: Keep in mind this is an I/B Zone the requirements of the solar section of the Code are very relaxed a…and we don’t see any non-compliance issue.

Mr. Levin: Jerry, razor wire, I thought that was illegal out side of prisons.

Mr. Canfield: We don’t have an prohibition on it.

Mr. Donovan: So let me ask this question Jerry are you withdrawing the original decision because if you are withdrawing the decision there is no action for this Board to take.

Mr. Canfield: That’s correct. That’s correct. We are.

Mr. Donovan: Just for the Board’s edification this is all consistent with my reading of the Code and multiple conversations today and I’m sure Mr. Goldberg is thrilled for making the trip from Princeton, New Jersey up to beautiful Newburgh, New York and from South Carolina because there’s…there’s no place like Newburgh.

Mr. Canfield: Let the record reflect that Counsel and I agree.

Mr. Manley: So at this point, with the application withdrawn this Board has no action…

Mr. Donovan: The determination by the Code Compliance withdrawal.

Mr. Manley: …right, based on the interpretation of Code Compliance withdrawing…

Mr. Donovan: Right.

Mr. Manley: …the requirement.

Mr. Goldberg: Terrific. Thank, thank you very much.

Mr. Donovan: Well done, well done.

Mr. Goldberg: Thank you. Have a good evening everyone.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:30 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 9:30 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 a proposed structure has been duly placed on the official map or plans.

Mr. Manley: The next item which was held open from our May 26, 2016 meeting is the application of Daniel and Elissa Dickinson, Still Hollow Road, Newburgh, seeking 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. All of the postings and mailings were in order, correct?

Ms. Gennarelli: Last month, yes.

Mr. Manley: Good evening.

Mr. Brown: Good evening, I’m Charles Brown the engineer for the applicant. We were here last month and a…I went through the various items required for a variance a…I can recap that if the Board feels it’s necessary but in general to paraphrase it’s not going to be out of character of the neighborhood. This is a very big lot, it’s a…roughly a…twelve times, thirteen times the required minimum lot size. A…we’re asking for a single family house so it’s not going to be out of character with the neighborhood. At the last meeting, a lot of questions came up from the neighbors regarding the ability or right of this lot to access Still Hollow Road. Since that meeting there’s been a substantial amount of research through the deeds and the filed maps a…and other a…other documents that are on file with the Town and the County. In 1984 a right-of-way was…was created over vacant land that was to become the Still Hollow Road Subdivision and a…(inaudible) created Still Hollow Road. That right-of-way was…was not clearly defined as far as a legal description. In 1989 the subdivision creating Still Hollow Road was…was filed. That right-of-way and that map show a fifty foot right-of-way to the lot 6-1-26.1 which I’m going to call the Leroy lot. That lot was not part of the subdivision. In 2002 a…at that time the Leroy lot a…the lot that’s under review by this Board and the lot behind it up here all under the same ownership. The owners of those lots granted a right-of-way, a fifty foot right-of-way a…to the back two lots and it’s clearly a…clearly labeled Liber 5847 page 329 which I do have copies of all this. I’d like to present a full package to this Board if…if there’s a need to do that. After that Fucheck purchased all three lots, subsequently in 2009 they sold the lot 26.1 to Leroy. He hired Anthony Valdina to create a…a survey map for his Building Permit Application. That survey map clearly shows the fifty foot right-of-way that we have here on this map. I do have a copy of that map with us also. A…we went…a Fucheck then sold this lot to their son-in-law and he’s proposing to build. The other thing that the a…adjoining homeowners brought up was about a maintenance agreement a…until today I hadn’t seen it. I do have copies of it and have paraphrased a couple of sections out of it. Those sections actually have exceptions that allow exactly this. So I do have multiple copies of that and I prepared to submit those to…to this Board.

Mr. Manley: Do any of the Board Members have any questions, comments on any additional materials that have been received by the Board since the May 26th meeting? We do have some additional submittals by the neighbors which are actually it’s actually from…one is from Mr. Leroy and one is submitted by Mr. Specht it looks like. There were two items which I will enter. There’s also a letter from a resident which I’ll read into the record. The first item that was received was from Hill N Dale Abstractors Inc., dated June 13, 2016. This is addressed to the Town of Newburgh Planning Board, 1496 Route 300, Newburgh, NY 12550.

To whom it may concern: Please be advised that I have examined Title to premises known as section six, block one, lot twelve situated in the Town of Newburgh, County of Orange and owned by Daniel and Elissa Dickinson. My search was conducted for the sole purpose of determining if the above referenced property has a legal recorded right-of-way/easement over private roadway known as Still Hollow Road, a private right-of-way leading to North Fostertown Road. After conducting a thorough examination of Title, I find no right-of-way easement of record recorded in the Orange County Clerk’s Office in favor of tax lot 12 to utilize Still Hollow Road. Please call should you have any questions. Very truly yours, John M. Wood, Hill N Dale Abstractors Inc.

The other item that was submitted which I’m not going to read it in its entirety but it’s a letter submitted by Mr. Specht from Scott and Hoyt Attorneys and Counselors at Law, dated August 25, 1997. It’s addressed to Mr. Donald Glan, 84 Summer Avenue, Yonkers, NY 10704. Town of Newburgh, Orange County Logging Project:

Dear Sir, This office represents Richard Lang who is the owner of lands off North Fostertown Road through which runs a private road designated as Still Hollow Road. Title searches indicate that there is a right-of-way over Still Hollow Road to a certain 5 acre lot to the northwest. We are advised that there is a logging operation you are involved with which is logging from substantial additional acreage beyond the 5 acre lot and that access thereto is over Still Hollow Road. Since the right-of-way granted to the 5 acre lot over Still Hollow Road benefits the 5 acre lot only, the right-of-way cannot be enlarged or enhanced to go beyond the 5 acre lot to the other premises. Use of Still Hollow Road is confined for the benefit of the 5 acre lot only and not to any additional or adjoining lands. Therefore this letter is to advise that use of Still Hollow Road for the benefit of the back land beyond the 5 acre lot must be discontinued immediately. This matter has been reviewed and discussed with the Town of Newburgh municipal offices and they are in accord with Mr. Lang’s position. Very truly yours, Julius Larkin Hoyt

And there is a second letter to Mr. Lang, that letter to Mr. Lang is from Mr. Scott (Mr. Hoyt), dated September 22, 1997 and in the letter it states that ‘the Title Report makes no mention of the 25 foot right-of-way from Chadwick as benefiting Lots 11 and 12. The report’s conclusion was that rights of ingress/egress could not be insured. And that letter was signed by Julius Larkin Hoyt back on September 22, 1997. The third item that was sent to the Zoning Board Office to be entered into the record is from Dr. Joquin Bagtas, MD, 20 Still Hollow Road, dated 5/31/2016 to the Town of Newburgh Zoning Board of Appeals:

Dear Members, On May 26, 2016 a petition was presented to the board on behalf of several land owners on Still Hollow Road, including myself, in opposition to the Dickinson variance request, a case which is still open. I would like to all parties involved in this case to know that I hereby abolish my stance on the matter as well as rescind my signature as it appears on that petition. After having the chance to research the matter on my own accord, it appears the Dickinson’s lot does benefit from a long-standing and historical easement through Still Hollow Road to his property, SBL 6-1-12. I must admit that at the time of signing that petition, I was both, acting on emotion as well as limited and misleading information from another land owner, Henry Sphect. It is my intention that this request be added to the record and considered as the case moves forward on June 23rd, 2016. Furthermore, I can attest to Mr. Dickinson’s sound moral character as I believe his family would be a valuable addition to the Still Hollow community. Thank you for the opportunity to present these facts.

And it’s signed, Dr. Joaquin Bagtas, MD. And those are all the submittals that we had since the last meeting. Do any Board Members have any other question for the applicant?

No response.

Mr. Manley: Anybody from the public here wish to be recognized if you would…yes sir, in the back, if you would come up to the microphone and state your name and address for the record.

Mr. Hoffner: My name is Paul Hoffner I live at 7 Still Hollow Road. I’ve lived at Still Hollow Road and purchased the property twenty-five years ago, predates the 1992 easement that the engineer referenced. I have the original deed from my property. I’d like to read two excerpts from it.

Mr. Manley: Certainly.

Mr. Hoffner: I’ll paraphrase. It says, lots hereby agree to cooperate and promptly execute such deeds of conveyance, releases, covenants or other documents as may be required in order to dedicate the said 50’ wide road-way for the Town; provided, of the location of the said roadway so dedication conform to the location of the same on the filed subdivision map and will not be extended for the benefit of any adjoining lands not part of the said subdivision…

Mr. Donovan: I’m sorry to interrupt sir. Could you just tell me again what document is?

Mr. Hoffner: This is…this is my deed.

Mr. Donovan: Okay.

Mr. Hoffner: If you’d like I could present it to you?

Mr. Donovan: No, I take your word for it; I just want to make sure.

Mr. Hoffner: This…this deed was…was filed June 19, 1989 that’s on page 3, paragraph 1. Page 4, it says, again and in any such event and all future owners of said lots hereby agree to cooperate and promptly execute such deeds of conveyance, covenants and whatever a…to effect such extension, this particular provision relating to such extension not to be subject to amendment as herein provided in paragraph 10 and…and survive the delivery of the declarant. Again speaks to no lot owner can extend their easement to any other lots. If you’d like to see that I’ll show you.

Mr. Manley: Would you allow us to just have that at least just to the end of the meeting? And perhaps…

Mr. Hoffner: Sure.

Mr. Manley: …our Zoning Board Secretary when we adjourn for a bit we can have her make a copy.

Mr. Hoffner: (Inaudible)

Mr. Donovan: If you want to submit it we’ll make a copy of the whole thing.

Mr. Hoffner: And I also have the original site plan when I bought the property it lists six lots on our subdivision, two of those lots were further sub-divided by the original developer and that was within his rights. It does show a proposed easement to this one lot. If you’d like I’ll bring it up and show to you.

Mr. Manley: Yes, please.

Mr. Hoffner: It does show…it does show the proposed easement to the land of Glas…it says proposed easement, right here to this one lot. It is my understanding from Mr. Lang this is the lot that they’re referring to and it goes to here. It was my understanding from Mr. Lang that there were no further lots allowed to access this road. This road is somewhat of a hazard, it has the valley and…and crowns. It has limited sight vision on to North Fostertown Road.

Mr. Manley: May we make a copy of this also?

Mr. Hoffner: Yes.

Mr. Manley: Thank you. Thank you.

Mr. Brown: Again, Charles Brown, engineer for the applicant a…that language in his deed is somewhat mirrored in a maintenance agreement a…it’s specifically it tied to if the road is ever turned into a Town road a…that restriction doesn’t apply as long as Still Hollow Road is a private road. A…and again all three of these lots were owned by the same owner and they granted this additional easement prior to selling this lot and that was done in 2002. I do have a copy of the road maintenance agreement and I do have a copy of a survey done by Tony Valdina for Mr. Leroy that shows that and all the references to that right-of-way, I have a copy.

Mr. Manley: Yes, sir.

Mr. Hoffner: A few more comments if you don’t mind.

Mr. Manley: Certainly.

Mr. Hoffner: Dr. Bagtas is no longer a homeowner on Still Hollow Road.

Mr. Manley: Okay.

Mr. Hoffner: He’s since moved so I don’t know that his testimony has any bearing. Number two, the homeowners generally believe that this is a civil matter and that you don’t have any jurisdiction in determining whether they can cross private road or not. There’s multiple interpretations, he has an interpretation, six of us have our original deeds it clearly says that there are no further subdivisions, there’s no further extensions. If they want to challenge that I don’t believe that…that zoning has the…has the authority to make that decision.

Mr. Manley: Right, and that’s the purpose of why we’ve been requesting all this documentation…

Mr. Hoffner: That’s fine.

Mr. Manley: …because we at that point we will compile everything and you know, the Board will make a determination as to whether or not there’s sufficient evidence for us to be able to make a decision.

Mr. Hoffner: That’s fine, I understand.

Mr. Maher: Just one question. You said Dr. Bagtas is not a resident of the road?

Mr. Hoffner: Correct.

Mr. Maher: When did he…did he move, sell his house or…?

Mr. Hoffner: He moved about six weeks ago, eight weeks ago and Henry is his neighbor.

Mr. Specht: Henry Specht, Mr. Bagtas had informed me he closed on his house prior to the previous meeting in May so it’s a little surprising to see a letter dated from him after that date. I called him to remind him of the previous meeting and he said I am no longer an owner on Still Hollow Road therefore the matter does not pertain to me. We had a nice conversation that was that and then this letter pops up which he’s listing his address. So something also interesting was that per the Town website that letter was mailed by Dan Dickinson. So that seems a bit odd. Also in the documents that I submitted you didn’t mention a Title report. Do you have that? It was on the website, from 1987 to Steven Buhl, Aneta Buhl and Donald Glas. Schedule B…

Mr. Manley: Yes. I have that here. We have that as a Schedule. It wasn’t a letter or something that we normally would read in because it’s a…

Mr. Specht: Right, so this is their own Title report that they had done that says ‘however, we find no right of way over tax lot 24;’ which presumably was the one lot…one piece before Lang subdivided it, ‘consequently rights of ingress and egress to and from the premises are not insured’.

Mr. Maher: Excuse me, do we know if tax lot 24 was in fact that or is that your assumption?

Mr. Specht: That’s my assumption. And in the road maintenance agreement I don’t see where it states what a…Mr. Brown said about whether it’s a private road or a public road. It clearly states in our road maintenance agreement that no one on the road shall extend any sixteen foot wide 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. No determination about whether it was a public or private road at that point. Thank you.

Mr. Manley: Thank you. Does anyone else have any comments, concerns or anything further with regard to the additional information that’s been submitted in regard to this application?

Mr. Maher: Did you submit that stuff to Betty, Charlie?

Mr. Brown: No, again I just got the road maintenance agreement today a…the…the…the survey from Tony Valdina actually we pulled from the Town it’s with a…Leroy’s a…Building Permit Application and the Leroy lot was not part of the subdivision so if Dickinson is excluded then so is Leroy…with that said, I’m a little confused about the logic here but a…I do have that with me. I can submit again I can submit a full submission, I can do the chronology; I have all libers and pages, I provide all the copies of all those that you described the fifty foot a…the description gets more and more defined as you go through, you know, go through the a…chronology, time line…

Mr. Manley: When…when did you obtain those documents? Just today?

Mr. Brown: I got the maintenance agreement today. I got the copy of the survey; we had to FOIL the Town we got that a…on Leroy’s lot, we got that last week so…a…again this is a…this is a…only about a quarter of my file on this and a…I don’t typically have files this…this a…large for a Zoning Board Application so…but I you know, I don’t have a problem submitting those a…and defer this for another month a…my client wants this to be settled the right way so a…

Mr. Manley: My concern Charlie is, you know, I put a lot of weight in what the Title Company lists and the letter from the Title Company from June pretty clearly…

Mr. Brown: I have the Title report from when Fuchek bought the lots and that clearly says that they…they have the right.

Mr. Manley: And when was that done?

Mr. Brown: 2000…2006.

Mr. Manley: But this is 2016.

Mr. Brown: Well I did talk to an attorney about it he said once the right-of-ways there it can’t be retracted without the beneficiary a…retracting it.

Mr. Donovan: I think the bottom line is we’re no further ahead than we were last month.

Mr. Brown: Okay.

Mr. Donovan: You say black, they say white so I mean I don’t what the ZBA, you know, I don’t know what we’re going to do for you to be honest with you. We don’t have any…anything different than what we had last month. Your research shows X, their research shows Y.

Mr. Scalzo: Charlie, I do see in one of the Schedule A’s in the Title Insurance report there was a right-of-way recorded on Liber a…Liber 260, page 403 and no one is talking about that.

Mr. Brown: That’s the one I mentioned early on a…it’s from 1874 a…restricted strip a…I have a copy of that also a…again that’s…that’s one I said existed prior to the subdivision a…it did not define metes and bounds, it said it followed a…a quote, unquote logging trail. Again that was…that was before the subdivision was…was done.

Mr. Scalzo: Mr. George Smith.

Mr. Brown: Yeah, do you want to see it?

Mr. Scalzo: (Inaudible).

Mr. Brown: Now I think holds the most weight is Tony Valdina’s map. He’s a licensed surveyor; and he shows on Leroy’s lot the access to a…6-1-12, the lot that is in question right now. And I can give you this right here and now.

Mr. Manley: You’re welcome to submit if you’d like.

Mr. Brown: Now? Or do you want me to bring…?

Mr. Manley: I’ll pass it along everybody.

Mr. Leroy: Dave Leroy, I live at 19 Still Hollow Road, I’ve spoken to River City a number of times and he’s told me numerous times that they originally they don’t have a right-of-way to through Still Hollow Road, that he made a mistake and insured something that never existed so…I mean, that’s pretty much…pretty much it.

Mr. Manley: And you submitted the information from Hill N Dale, yes?

Mr. Leroy: Yes.

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

No response.

Mr. Manley: Is there anything else that you would like to advise the Board?

Mr. Leroy: Not that I can think of at this time.

Mr. Manley: Okay, thank you. Are there any other individuals that have any comments or questions regarding this application?

Mr. Gabrielle: Thomas Gabrielle, I live at 14 Still Hollow Road.

Mr. Manley: Yes sir.

Mr. Gabrielle: I bought my house from Richard Lang who was very particular. He took thirty-five acres and made six lots out of it that other people were making thirty a…thirty plots out of. He allowed no…he put a lot of restrictions in a…there for example no vinyl siding, you can only have wood, stone or brick. No signs, clotheslines, no conversion of the garage into another unit and one of the things he told me was that the road would be extended for one more lot. There were other lots after that but they would not be part of the deal. So, I’m sorry, I have Parkinson’s and it’s hard to get it…

Mr. Manley: That’s okay.

Mr. Gabrielle: …but Richard Lang was adamant about that that the lot…the road would only extend for one more lot and not go past that. Anybody have any questions?

No response.

Mr. Manley: Any other questions?

No response.

Mr. Manley: Thank you. Are there any other questions or comments from the public regarding the application?

No response.

Mr. Manley: And does the Board have any final…?

Mr. Scalzo: I’m with Dave; I don’t think we’re any further along this month than last month.

Mr. Manley: At this point, do we have a motion to close the Public Hearing?

No response.

Mr. Donovan: So at five o’clock tomorrow afternoon my son is got to walk across the stage to get his diploma from High School so hopefully someone makes a motion before then so I can be there…of some sort or another.

Mr. Scalzo: I’d like to say to leave it open but I don’t know what I’m looking for.

Ms. Fakler: I’m sorry, I’m Lori Fakler and I live at 11 Still Hollow Road and when we were here last month Mr. Scalzo you were perfectly clear in stating that this is really more of a judicial matter and you very clear about that…

Mr. Scalzo: And I still am.

Ms. Fakler: …and you…and you thought that this was a legal matter because there was really no clear proof of a right-of-way and a…as a community and a road and a group of neighbors that’s our position that there is not a clear cut right-of-way for this matter. And as a community we said last month that we’ve already retained an attorney, we’re prepared to take this to court if necessary a…and then you said we could close this and we could mandate a…you know, potentially a third opinion and we got the abstract a…the Title company to give an opinion. So as you close the Public Hearing I don’t know where that leaves us as a road and a community but we’re still in this kind of feeling that there is no right-of-way so therefore there is no variance to be granted.

Mr. Manley: Well this is what the Board would do. If the Board chooses to close the Public Hearing at that point we go to deliberation, okay, at the end of the meeting and the Board Members will make a decision whether or not A) they feel that there’s adequate proof that there is or is not a right, you know, a right to use that based on what was submitted and at that point that’s how…how the chips would fall. If the Board votes that we don’t see that there’s adequate proof therefore we can’t, because of that grant the variance to the applicant then it’s denied. If the Board feels that there was enough evidence then at that point it would be granted. So that…that’s where it’s kind of left off. The Board has to decide something. They, they can’t leave this up in the air. So that’s kind of where we’re at right now.

Ms. Fakler: Where the chips fall.

Mr. Manley: Correct.

Mr. Maher: (Inaudible) But to clarify Jim, a vote either way, the only proposal before us is is there a right-of-way or is there access as a parcel.

Mr. Manley: And we have to determine whether or not there’s access.

Mr. Maher: Right.

(Inaudible)

Mr. Donovan: Well the 280-A variance has multiple permutations to it. The paramount one here which was in our purview to determine is whether or not there’s a legal right to use the road. There’s court cases that say that clearly that’s within the purview of the ZBA to determine whether or not there’s a legal right to use the road. I would closet if the Board determines either there is not or there’s insufficient evidence to make a determination one way or another…

Mr. Maher: That’s what I’m leaning towards, right.

Mr. Donovan: …that’s…

Mr. Maher: It’s not necessarily a case that the Board feels there is no right-of-way, it’s that we can’t determine if one exists…

Mr. Manley: Correct.

Mr. Maher: …or not.

Mr. Manley: Based on…based on what has been presented we can’t make that determination therefore it only leaves one option which is…

Mr. Maher: No, I understand that.

Mr. Manley: …denial.

Mr. Maher: I understand that.

Mr. Manley: Potentially that’s again there’s six of us here so you know, I can’t speak for how the Board is weighing. You know, I can tell you know and I’ll certainly give you my opinion. My opinion right now is the burden of proof hasn’t been met to the point for me to be able to say yes, there’s access and I don’t feel comfortable making a decision, you know, you know and putting the Town on the…on the hook potentially granting a Permit and you know, and you know, the other thing to…the secondary thing is there is the potential for other access to the property so it’s not like it’s not possible to go somewhere else. The other option may be more costly, there may be other approvals that may be needed, maps that need to be…things that have to be done but that’s…you know, that’s an option so…

Ms. Fakler: There’s definitely a right-of-way out the other side.

Mr. Manley: Correct.

Ms. Fakler: Okay, thank you for clarifying.

Mr. Brown: I did submit a map her from a licensed surveyor that shows that right-of-way so you’re saying that that’s not valid, a surveyor’s map?

Mr. Scalzo: I, well I personally didn’t say that but Dave you do a lot of real estate transactions typically aren’t those survey maps when they are submitted, they are subject to any easements recorded…?

Mr. Donovan: Absolutely.

Mr. Scalzo: …and…and although there are recorded easements on here, it may not be all of them, it may be more but there’s…land surveying is a professional opinion.

Mr. Brown: I understand that but if there’s a…if it’s shown on that map then it exists, no?

Mr. Donovan: That I…potentially, yes so...so…so how…how does this Board weigh that versus the opinion of the Title Company that says it’s not there.

Mr. Brown: Okay, well Tony’s been a surveyor for…

Mr. Scalzo: A long time.

Mr. Brown: …and he’s still around and he’s still surveying.

Mr. Donovan: Yeah, well Hill N Dale has been around probably I’ve seen…about ’94.

Mr. Brown: Okay.

Mr. Donovan: So a long time, long before I was practicing law they’ve been around.

Mr. Brown: Okay. So bringing Tony in here wouldn’t help?

Mr. Donovan: We’re going to…well it’s the same thing…

Mr. Brown: Yeah.

Mr. Donovan: When we’re done you know it’s…

Mr. Brown: Understood.

Mr. Donovan: Yeah.

Mr. Brown: Understood, thank you.

Mr. Specht: The first day that I met Mr. Dickinson was out in the a…end of the cul-de-sac and I had asked him who he was and what was going on and a…informed him of our position and a…he called that land surveyor on the phone and handed the phone to me. I spoke to him directly that day. That gentleman said I never said there was a right-of-way and he told Mr…he said, I told Mr. Dickinson, and he was on speaker phone, that Mr. Fuchek…he said, you’re father-in-law said he had been working it out with the neighbors. And I asked him directly, so is there a right-of-way? And he wouldn’t answer that question, he just kept saying that he said he was going to work it out with the neighbors, figured you might want to know that…that he would not directly say to me that a right-of-way existed. And I’m just curious, what’s the document? What’s the one document that you’re seeing that gives you any pause to say that there may be a right-of-way? I just…I’m not seeing the document that even says that there’s a right-of-way over Still Hollow Road.

Mr. Scalzo: We haven’t rendered an opinion. We may not have anything. I…

Mr. Specht: Okay.

Mr. Scalzo: …I personally haven’t myself.

Mr. Specht: Okay, thank you.

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

No response.

Mr. Manley: At this point, does the Board have a motion to make of some sort?

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

Mr. Manley: We have a motion from Mr. Levin to close the Public Hearing. Do we have a second to that motion?

No response.

Mr. Manley: Well Mr. Levin’s motion is going to die.

Mr. Scalzo: I’ll second it.

Ms. Gennarelli: Thank you. Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing at this point is closed.

 (Time Noted - 10:04 PM)

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ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:51 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 application is Angel Rios and Kathleen Sileno-Rios, 446 Strawridge Road, Wallkill that one has been moved to July 28th as well. The next application A. Duie Pyle, Inc. that has been referred back to the Building. The next application that we will be voting on this evening is the application of Daniel and Elissa Dickinson, Still Hollow Road, Newburgh. It’s an Unlisted Action under SEQRA. If the Boar were to approve it we would require a Negative Declaration otherwise if it was to be deemed to be voted no, you would not need a Negative Declaration. Do we have discussion on the application?

Mr. Scalzo: Jim, I think you said it best, I don’t believe the burden of proof has been established.

Mr. Levin: I agree with that.

Mr. Manley: I mean, I really think the Board is really encumbered with err on the side of caution and if the applicant were to develop new information at a later date…

Mr. Scalzo: They can always come back but I will sit on my first statement in the last meeting I believe this is a matter for the court not a matter for the ZBA.

Mr. Maher: There…there just seems to be as much information that it does exist and that says it doesn’t exist so as you said the you know, whether or it the burden is a method it does exist…that’s the difficulty.

Mr. Levin: Motion for denial.

Mr. Manley: Do you wish to make motion Mr. Levin?

Mr. Levin: For denial.

Mr. Manley: We have a motion of denial from Mr. Levin. Is there a second to his motion?

Mr. Bell: I’ll second.

Mr. Manley: We have a second from Mr. Bell.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: No

Mr. Donovan: Just to clarify, so the motion is for denial. So a yes vote would be to deny the application.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion is carried and the request for the variance has been denied.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:54 PM)

ZBA MEETING – JUNE 23, 2016 (Time Noted – 10:04 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 Board has one more item to go over tonight before it speaks with Counsel regarding tonight’s actions at which point we’ll come back and we will vote on those items this evening that we’re able to. The next item on the agenda which was held open from our January 28, 2016 meeting is the application of 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. All notices and publications were in order. Good evening, just introduce yourself for the record, please.

Mr. Murphy: Don Murphy, 299 Lakeside Road.

Mr. Manley: Thank you Mr. Murphy, have you had an opportunity to submit everything that you needed and could you share with the Board what your proposals are at this point.

Mr. Murphy: I believe we have submitted all the necessary documents since the last meeting a…we immediately submitted per the Board’s request the revised a…an update site plan showing what the house would be with all the setbacks and height variances and so on and so forth so at this point we would seek approval based on what has been submitted.

Mr. Manley: Have you had an opportunity to go over the changes with the neighborhood group and the community that, I guess, originally had concerns?

Mr. Murphy: No I have not. We basically just made it clear that those plans were going to be put up once they were submitted. We did that as quickly as possible. And it basically just followed along the lines of what was previously discussed with the Orange Lake a…Homeowner’s Association at that meeting a…expressing that we would remove any and all structure over the existing deck. So all that was done and…and met with their approval and that’s what the plans are now showing.

Mr. Manley: Now, just for the record, the one major change that did occur…initially when, I guess, everything was submitted your original plans had the garage at five hundred and seventy six square feet and they recalculated the building coverage area because apparently the garage is larger than what was shown on the plan so the actual garage square footage is a thousand eighty square feet which changes the building coverage area so instead of…the allowable is one thousand eight hundred and eighty and you’re proposing two thousand nine hundred and four based on all of the calculations, so that’s a thousand twenty-four variance which is at fifty-four point forty-six percent on the building coverage. And then of course there’s the other variances which are the side yards nineteen point two feet, combined side yard and side yard the variance minimum is thirty feet, the existing is four point four feet…four point eight three feet.

Mr. Murphy: I’m not too clear on where that additional square footage is coming from. All we did was go up with the house and then back toward the road side but not on lower level.

Mr. Manley: Right, on the original plan the garage.

Mr. Murphy: The garage we’re not touching.

Mr. Manley: I understand but in the original plans that were submitted…

Mr. Murphy: Okay.

Mr. Manley: …the garage is much bigger than what is on the plans so when they reviewed that the garage is like twice the size of what was shown so it throws off the calculation of your building coverage area so end up needing more of a variance for your building coverage because you have more coverage than originally was submitted. So nothing changed just stuff was omitted.

Mr. Maher: It…it just appears that on the survey, the original survey dated 1989 it appears that the garage is a square building on the…on the plans…on the survey…

Mr. Murphy: Right.

Mr. Maher: …in actuality it’s rectangular building, double the size basically.

Mr. Murphy: Okay, I wasn’t…this is new to me.

Mr. Manley: So Mr. Canfield was there anything else that the Building Department had for the a…the Board at all?

Mr. Canfield: No. Based on the drawing you had submitted Mr. Mattina did his recalculations a…I believe on June 3rd or 4th something like that and they resubmitted, I believe you have that, those were consistent with the numbers you cited tonight for the variances sought.

Mr. Manley: Thank you. At this point I would open it up to the members of the public that are here regarding this application this evening. If you could, step up to the mic and state your name and address for the record, if there is anything that anybody has to add.

Mr. Steele: Good evening, my name is B.J. Steele and I live at 301 Lakeside Road; I’m on…I’m here on behalf of the neighbors that are most effective by the changes of this proposed project and one of the things that we feel is that this is a…a…this particular project if it was to go forward would create an undesirable change and character of the…of the area that a…directly next to where this project is to happen. The reason why that we feel this is that the requested area variance is so substantial that a…it’s a lot more than…than the lot allows. We a…we’ll take a look at the…that it’s a fifty-four percent change in the lot size or the variance that’s being requested. Not only that is that is that it’s a three-story occupied home and it’s approximate…the approximate size we really can’t tell what the a…the footprint is because the documentation that we’re looking at is not all inclusive. It doesn’t necessarily show all of the floorplan layouts and in the thing. So a lot of these things are…are just based upon assumptions but we feel that it’s…that this project would cause an undesirable change in the character of the area. It’s also going to increase from a two-story…or from a two bedroom home to a four or five bedroom home. Again three-stories high a…and you know it’s because of the substantial variance that we feel that this is an undesirable change in character of the neighborhood. And we feel that…that we are probably in the best position to make that determination of an undesirable change in character is that most of the residents…I’m actually been there the youngest…I have been there for twenty-five years and most of the residents have been…been there up to forty-five years so we really know what the…the, you know the character of our particular neighborhood is. I’d also like to mention that we’ve also had other neighbors that have gone through the Zoning Board process and we’ve been able to support and approve and provide, you know, assistance and then going through the Zoning Board process where they’ve been able to not change the character of the neighborhood.

Mr. Manley: Thank you. Do we have any other individuals? Yes maam.

Ms. Nugent: Sheila Nugent, 305 Lakeside Road in close proximity to the property owned by Don. My husband and I submitted a letter in April outlining our feelings about the property. Our main concern would be the a…view protection of the neighbors and since…if there’s nothing being built on the house out to the lake that would probably meet that requirement. We are also concerned as BJ is, about preserving the character of our neighborhood and I think probably the main concern is the three stories. All of our homes are two stories and this is just kind of out of character. And you’re talking about a major increase in square footage maybe that’s where we could address it. Thank you.

Mr. Manley: Thank you. The Board does have you’re January 27, 2016 letter and it was entered into our records so thank you.

Ms. Nugent: There was another one. I sent two letters.

Mr. Manley: Are there any other questions, concerns? If not at this point, does the Board have any further questions for the applicant?

Mr. Murphy: Can I say something further? Can I say…?

Mr. Manley: Certainly.

Mr. Murphy: So, I mean the purpose for meeting with the Orange Lake Homeowner’s Association was to make sure that we were preserving the neighborhood. I don’t know what they are defining as the neighborhood but when we look at the Orange Lake Community and the variety of homes and houses that are on that lake it’s quite substantial. It’s a big variety and…and you’ll notice that if you look to the left or right a few houses down on either side it’s just a very diverse community with respect the different types of homes, the different sizes. We’re basically taking our existing home and if…if there was…I mean we bought the house as is two years ago and we’re basically trying to preserve and maintain the integrity of the neighborhood, make it a much more beautiful home within the variances that are allowed a…we’re not adding any further square footage to and…and I respect what you’re saying with the miscalculation that had been done in the past but we inherited what is there and we’re not making anything bigger. We’re not even increasing the size of our existing house footprint. We’re just going up and back towards the road on a second floor. It’s a two-story home a…designed to be a four bedroom home. We’re planning on having another child hopefully that will give us two kids, we want four bedrooms and an unfinished attic well below the height variances allowed. So I…I don’t know what their…their gripe is with that but that’s why we met with the Orange Lake Homeowner’s Association to make sure that this was going to meet what they felt was acceptable to the homeowners on the lake and they all basically said yes, we welcome this home. So I think we’re talking about three neighbors on one side of me that are here. Not the entire lake community that is looking upon this and saying that this is a favorable home. Thank you.

Ms. Nugent: I think…

Mr. Manley: Yes, maam.

Ms. Nugent: I think we need to clarify. I’m also on the board of directors of the Orange Lake Homeowner’s Association. And the Association only deals with views of the lake. We’re not dealing with the character or anything else just the lake views. And so when we met with Don and we told him that if he didn’t extend out towards the lake and block views that we would support that part of the proposal but not the other parts of it…we do not get involved in that. Thank you.

Mr. Manley: Thank you.

Mr. Levin: Wasn’t it last meeting…excuse me…wasn’t it last meeting that you came…the people on the Board that you’re talking about came and said they approved of everything?

Ms. Nugent: They approved of taking back the covered porch so that…that it wouldn’t block anyone’s views. That’s all the Association deals with.

Mr. Maher: Well I have to…I have to… (Inaudible)

Mr. Levin: (Inaudible)

Mr. Maher: …it was stated that the height was a major issue also in…in and the chairperson of the committee that was here last couple of meetings.

Ms. Nugent: I wasn’t here. I was away so I don’t know who that was.

Mr. Maher: (Inaudible) …the case was obviously you know extending out to the lake blocking some views…

Ms. Nugent: Right.

Mr. Maher: …that was the biggest concern as was the height variance that was requested originally and that those…those…those items were changed on the plans and at the last meeting that was discussed again so they were reviewed as far as the…the…removing the…the any intrusion on the…the lake, on the view or…or the side view of these houses…

Ms. Nugent: Right.

Mr. Maher: …and those were…those were addressed at that time I thought.

Ms. Nugent: Right but the Association only dealt with the views.

Mr. Maher: Well I…

Ms. Nugent. Not the height.

Mr. Maher: Well I…

Ms. Nugent: We don’t feel that that’s our role to deal with other characteristics of the building.

Mr. Maher: Well I mean…right, I understand, if that’s the case then then the view is not impacted so I’m kind of curious as to what the problem is.

Ms. Nugent: I guess the problem is the disturbing the character of the a…neighborhood as far as it’s still three-stories. I mean they may have…others may have other concerns that’s just…

Mr. Maher: (Inaudible) what I saying…

Ms. Nugent: …my concerns.

Mr. Maher: …you’re representing the Board right now so…

Ms. Nugent: I’m…no I’m I…I just wanted to explain…go ahead.

Mr. Maher: Well I mean you said…you said…I thought you were representing the Board with that view. So if you’re only concern on the Board is that of the view…

Ms. Nugent: Right.

Mr. Maher: …and that has been taken care of so what would be the concern of the Board?

Ms. Nugent: The Board doesn’t have any other concerns. The concerns are from the neighborhood. Now, the neighborhood…

Mr. Murphy: Who?

Ms. Nugent: …your immediate neighbors. So, no, the board…the board gave their approval.

Mr. Maher: Okay so that’s…that’s a…

Ms. Nugent: Right.

Mr. Maher: …so I’m assuming if there was an issue with the board they would be here tonight representing.

Ms. Nugent: Right, right, right. But they don’t address that other issue. I think it was unclear at the last meeting when they left. Sorry.

Mr. Manley: Thank you. Are there any other questions from the Board with regard to the application? At this point, does the Board wish to make a motion with regard to the Public Hearing?

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

Mr. Masten: I’ll second it.

Mr. Manley: We have a motion and a second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The Public Hearing is currently closed. At this time I would like to ask before we proceed any further the Board will take a short adjournment so that we can confer with our Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait in the hallway and then we’ll call you in very shortly.

 (Time Noted - 10:19 PM)

ZBA MEETING – JUNE 23, 2016 (Resumption for decision: 10:54 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 next application before the Zoning Board this evening is the application of Don and Tammy Murphy, 299 Lakeside Road in Newburgh. This is a Type II Action under SEQR. Do we have discussion on the application? Keeping in mind the balancing test that the Board has to consider. Does the Board have any discussion on this specifically the five factors in the balancing test? I’ll certainly go first, one of the ones that we have to consider is whether the request is…is substantial in nature and there has been demonstration that although it’s pre-existing, non-conforming and they’re going up it is a significant addition of height and…

Mr. Maher: But the variance, just as a note the variance for the building coverage is consistent with what’s there now, while the variances required based on the application being submitted the garage area and floor area remain consistent.

Mr. Manley: Correct, square footage of the home is going to increase.

Mr. Maher: But the building coverage which is the largest variance shown on the…

Mr. Manley: Right.

Mr. Maher: …on the submission is consistent with what’s there now.

Mr. Manley: The other factor that the Board has to consider is whether the benefit can be achieved by other means by the applicant and the other consideration that we have to look at is whether or not there is going to be an undesirable change in the neighborhood character or detriment to nearby properties. There has been significant public comment with regard to this application that the Board Members need to consider on whether the request will have any adverse physical or environmental effects.

Mr. Maher: Well regarding the…the benefit can be achieved by other means feasible if the applicant were to go out instead of up he’d be increasing the building lot coverage versus the increasing the degree of non-conformity so either way there’s a restriction on…on any, you know, type of work to the…the current structure.

Mr. Manley: And that’s where I go to the public comment I guess you…if you look at the public comment, the public comment was more they’d rather see it go out towards the road, toward Lakeside Road versus up and obstruct their…their views…

Mr. Maher: Right.

Mr. Manley: …and…

Mr. Maher: On that same, I’d like to read into the minute from the meeting that Mr. Fogameal was that his name? I may be trashing his name but according to the minutes, sorry about that, a…there was a question Mr. Levin says he was wondering if…if in fact there was a meeting. Mr. Fogameal says yes, Mr. Levin says a…that he was describing referring to a conversation Mr. Fogameal says yes, we met and…and a…our Board felt that anything built above the surface of the deck would be visual, a deterrent to the neighbors and I have ba…seen basically I think the same thing you have presuming it…it’s an elevation that shows nothing on the deck. My comment, Mr. Maher and that Mr. Fogameal, that…and that conforms to what we discussed with him, referring to Mr. Murphy. Mr. Maher said the committee was in agreement to this current design that was submitted. Mr. Fogameal correct and I share that with our board collectively and collectively everybody got back to me and they all agree. Mr. Manley, are any of the neighbors on the…on that board directly on either side or? Mr. Fogameal immediately no three houses away. Mr. Manley are there any neighbors on either side that are here that wish to comment on the applicant’s removal on the second level of the deck. At that point there was no response. So based on the minutes that were there the chairman of the board did in fact confirm that it was shared based on the revisions that the applicant made and that the board at the time was in agreement.

Mr. Levin: It was different tonight.

Mr. Manley: And the people that are here tonight are definitely different than the people that were on the board.

Mr. Levin: Yes.

Mr. Manley: I…I you know I also had the opportunity to…I visited the property on about three different occasions. One of the concerns that I have is specifically with regard to the height if you look at the…if you look at the buildings height wise and in our packets there was the balloon that went up and how they you know, the neighbors really took the time… Mr. Steele did provide a very, very thick packet of information to the Board with color photographs a…probably one of the most a…well put together submittals with regard to showing…trying to show what it would look like. That certainly a…there aren’t many houses within probably ten, five to ten on each side that would be consistent with this particular home. So that’s, the only one is 317, I believe it’s 317 Lakeside Road, it’s a grey house. I went up and down Lakeside on the lake side and that was built just recently probably within the last five years and it’s about almost as high, maybe a little bit lower than what this one is going to be and it significantly encroaches on the other two houses on either side. I mean, I don’t know if anybody else had an opportunity to see it or did the inspections but…

Mr. Maher: Well I believe…isn’t there a…isn’t the generally the lake area considered one general area around the lake? The homes around the lake is considered a…a…there was a term that you used, I believe, a few meetings back a…whether it be the Orange Lake area, what have you around the lake those…those houses that do sit on the shoreline while those to either side many not be consistent there are homes in the area that are consistent as you move further a…west on…north on a…Lakeside past…the restaurant and then again as you come around into a…where the…off of a…52 side there are quite a few larger houses that are constructed over the years. So it’s…it’s not…while it may not be consistent with those house directly proportion to it…or…or directly

Mr. Manley: Right.

Mr. Maher: …on the side of him there are quite a few houses around the lake that have been a…built over the years or renovated over the years that have a…

Mr. Manley: I guess part of what we have to decide individually and a Board is how…how we weight that. Do you weigh the…do you weigh the concerns of immediate neighbors more so than further away neighbors? Do you weigh consistency of houses just because there’s some other on other parts of the lake as…as an influence? I think that’s one of the things that each of us have to weigh when we make our decisions.

Mr. Bell: It does look like when you drive down Lakeside on the…on the lake side it seems like all those houses are in…actually conform to one another except for the grey one that you mentioned is really tall that…that does obstruct the view from both sides of the smaller homes and not able to see you know, to look out towards the side…look out towards the water, look opposite of each other. It seems like that…that kind of blocks their overall view. I’m trying to picture what big houses on Lakeside, other tall houses, other than the one that’s all the way around the corner on 52 side because I live…I live off of Lakeside so that’s why I drive there every day and I…I might have seen bigger houses on the right side that’s not on the water side but we’re more talking about the effect it’s going to have on the left side where the water is on the Orange Lake side so.

Mr. Manley: Do we have any further discussion on the application?

No response.

Mr. Manley: Does anyone wish to make a motion on the application?

Mr. Bell: I make a motion to deny.

Mr. Scalzo: I’ll second that.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: No

 John Masten: No

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: The motion to deny has passed the application of Don and Tammy Murphy has been denied.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 11:05 PM)

ZBA MEETING – JUNE 23, 2016

END OF MEETING (Time Noted – 11:05 PM)

Mr. Manley: At this point we have no further business before the Board. I do have a memo from the Town Board which I just want to bring before the Board. Did everybody have an opportunity to peruse the minutes? If you haven’t we can always hold over the minutes for approval for next month if you need a little extra time? Anybody need a little more time with the minutes?

Mr. Scalzo: I thought it was great we got the one in advance of the rest that made it a little easier.

Ms. Gennarelli: Yes, it was rough.

Mr. Levin: I can imagine.

Ms. Gennarelli: It was a rough month.

Mr. Manley: So do we have an all in favor of approving the minutes?

Aye - All

Mr. Manley: Opposed?

No response.

Mr. Manley: Motion carried, minutes are approved.

Mr. Manley: The next item is the memo from Mark Taylor on the Town wishes to amend the Zoning Code of the Town of Newburgh to allow multi-family dwellings and townhouses linked with regional shopping centers in the Interchange Business (I/B) Zoning District. Does anyone wish to discuss that or does everybody have to review it?

Mr. Scalzo: What would the ownership be? Would it be a corporate ownership with renting? Or is that something we would find out if we dug in?

Mr. Manley: I think they’re probably looking at single family homes I…I believe to allow mixed use.

Mr. Scalzo: Let’s say for example that this were to be around the shopping center that’s on a large parcel would that in turn end up requiring a large subdivision to accommodate all those single family lots, they could?

Mr. Manley: And you know, we can certainly have input if the…the thing is we have to get this back to them fairly quickly cause this was dated June 1st and it should a…Betty, you did copy everybody, right?

Ms. Gennarelli: Yeah.

Mr. Manley: Okay.

Mr. Maher: I’d be curious to see how many parcels meet this requirement.

Mr. Scalzo: Well I can think of one on a...84 and 300 intersection.

Mr. Maher: Really.

Mr. Manley: I can think of another that probably would have worked but it’s being used for a pharmaceutical warehouse.

Mr. Scalzo: Yeah.

Mr. Manley: But, you know, there’s other property too out a…by like Pilot, I think, oh that might be a B Zone but anywhere there’s I, you know any place that there’s I/B they could potentially… And, you know, the Board could come up with a joint opinion that if you’re not in favor of this type of…or if you’re in favor of it we can send…a letter through Counsel to Mark’s office to just offer the Zoning Board’s joint opinion if it’s something that you’re in favor of or opposed to and…

Mr. Levin: Is that what they would like is a…a…?

Mr. Manley: Yeah, they’re just a…they asked the planning board and the Zoning Board if they wish to comment on the…the Local Law. It doesn’t mean it’s going to change but…

Mr. Donovan: The Town Code provides that whenever there is a Zoning Amendment proposed it gets circulated to the planning board and the Zoning Board. Newburgh is kind of unique in that way most places just send it to the planning board but to report back any a…areas of support or concern they may have.

Mr. Manley: I’m not really opposed to having something like this but I look at it more like a…you have retail on the bottom and maybe second or third floor you have condos or townhouses above it.

Mr. Levin: I don’t believe it’s like that. I think it’s condos (Inaudible) around the outside.

Mr. Manley: I think that’s what they’re looking at.

Mr. Levin: Yeah.

Mr. Masten: Is this down by the Loop or down area?

Mr. Manley: I don’t know if they have an exact place in mind.

Mr. Masten: I know down there they…they want to do down by the (Inaudible) but they want to put commercial…

Mr. Manley: In the front and then...

Mr. Masten: …residential in the back and...

Mr. Maher: And so let me ask you a question, my only comment would E 5…last page. The buffer strip and screening requirements of 185-21 which would be…will be applicable to the shopping center shall instead of adjacent municipal dwellings in the townhouses use.

Mr. Manley: I think the…is it a hundred and fifty foot buffer? I don’t…

Mr. Levin: Don’t remember.

Mr. Manley: …recall but if an I/B abuts to residential they must have a much larger buffer.

Mr. Masten: Yeah.

Mr. Maher: Well you’re putting the onus on those of the dwelling unit owners to maintain that.

Mr. Manley: Right.

Mr. Maher: I don’t find that to be feasible because if one can afford it and one can’t it becomes a lousy…a…a visual issue to me so the screening responsibility should be that of the commercial… (Inaudible) …instead of the individual homeowners.

Mr. Manley: Right. So…

Mr. Maher: That’s my only concern.

Mr. Manley: Does everybody share that concern with having the homeowner’s responsible for the buffer or the associations? I mean I would…I would agree with you in that respect but also how does everybody feel about intermixing and having dwellings so close to a shopping mall or a…?

Mr. Maher: I’d have to defer to the experience of the planning board to provide it’s done in a correct manner so if it just says you can do it there’s no…there’s no design…so…there’s no, you know, requirements as far as this. You got site plan review so…

Mr. Manley: I think what it does do which is negative to the Town is you’re taking good I/B commercial property…

Mr. Maher: Off the Tax Roll.

Mr. Manley: …exactly and you’re putting it towards residential.

Mr. Maher: And the…the…the I/B zone is limited to the amount we have available too.

Mr. Manley: Correct. And our I/B is our cash…you know, for the Town is the “Cash Cow”. You know the other thing it does is it also by allowing all sorts of up to three hundred residences to become households there’s six hundred more kids in the school district which again causes tax issues. It uses property taxes.

Mr. Scalzo: How would they add…? And I’m only going to use the a…Loop as an example.

Mr. Donovan: How can you guys do this? I’m so friggen shot right now…how can you have this conversation?

Mr. Scalzo: To use the Loop as an example with the downscaled a…project if they were to surround that to homes don’t homes need to be on a public road?

Mr. Manley: I think these are all good questions. I…

Mr. Maher: Well I mean if they are going to take these roads over we…then we ultimately end up maintaining them.

Mr. Scalzo: So we end up maintaining the Loop road inside the Loop.

Mr. Maher: So at least…at least get to the area where the…where the houses are you’re (Inaudible) multiple dwelling and…and…cause it says here multiple dwellings and townhouses so I’m telling you there’s no single family here. Alright, in my opinion, I don’t think there is. My point is though there will be an association more than likely to take ownership of the…of the lots and things infrastructure of those areas but the road now going to this particular area will have to be maintained by the Town.

Mr. Scalzo: So how do we address this Jim? Dave stopped taking notes he’s ready to go.

Mr. Donovan: No, so…

Mr. Manley: Dave wants you to email him.

Mr. Donovan: No, I want you to email Betty because then Betty can…just jot some thoughts down, in all seriousness, email them to Betty and Betty can forward them to me and I’ll put a letter together.

Mr. Maher: (Inaudible)

Mr. Donovan: No Betty was cleaning up. I was yawning and Betty was cleaning up.

Mr. Manley: Oh well so now…

Ms. Gennarelli: Alright, are we going to close the meeting or just go on…?

Mr. Manley: Well we have to wait for Rich, he had to…so.

Mr. Donovan: Darrell is never coming back.

(Inaudible)

Mr. Manley: Do we have a motion to adjourn?

Mr. Scalzo: I’ll make a motion to adjourn.

Mr. Manley: We have a motion to adjourn, do we have a second?

Mr. Bell: I’ll second.

Mr. Manley: We have a second.

Ms. Gennarelli: John David. Look he is ignoring us. John David Masten, we have a motion on the floor, a motion and a second to close the Hearing.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is adjourned.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

JOHN MC KELVEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 11:35 PM)