ZONING BOARD OF APPEALS

MEETING – AUGUST 27, 2015

(Time Noted – 7:01 PM)

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

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by James Manley

(Time Noted – 7:03 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 7:03 PM)

JR & RAY LLC. - 1413 ROUTE 300, NBGH

 RHINEBECK REALTY LLC. (MAVIS) (60-3-40.2) I/B ZONE

Applicant is seeking an area variance for the maximum allowed amount of signage for construction of a tire center facility, retail facility and restaurant on the premises.

Chairperson Cardone: Our first applicant JR & Ray LLC.-Rhinebeck Realty LLC. (Mavis).

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

Chairperson Cardone: Yes, please identify yourself for the record.

Mr. Osterhaudt: Good evening, my name is Rob Osterhaudt with Bohler Engineering here tonight the applicant with their application for some area variances related to signage. I also have with me Mr. Michael Manes from Rhinebeck Realty sitting over to our left here…my left. So we appreciate the opportunity to be in front of the Board tonight to present this application. Our project site is located at 1413 Route 300 - Union Avenue. We’re directly adjacent to the Newburgh Mall on the north side of the mall and I have an aerial a…photograph exhibit here that show the project site so you can see the mall to our south of Route 300 running up to the middle of the page here a…and our project site immediately to the north. This is the existing…or former truck terminal facility I should say former, it’s been vacant and a…underutilized for decades a…and I know that as a resident a…growing up in the Town. So we’re…we’re trying to redevelop the site with a…a mixed use project that includes several buildings. We’ve got three buildings proposed on the project site. What we’re proposing to do is locate a Mavis Tire Center up towards the front of the site here a…on the southeast corner of the site. We’ve got some a…smaller building at thirty-two hundred square feet proposed on the northerly side of the site here a…that’s identified to be retail or a…professional office space at this point and then we’ve got the restaurant located towards the back of the site. The restaurant is slated to be a Buffalo Wild Wings. So what a…we’re proposing as part of the redevelopment is to reconfigure the access into the site. Right now there are two curb cuts, one on the north end and one on the south end of the site a…we’re working with the planning board and with New York State Department of Transportation to a…reduce the amount of curb cut that exists on the site today and realign the access into the site so that it aligns with Newburgh Commons across the street so that there is a better flow and symmetry between the access points. We’re also introducing off the back side of the site a one-way egress drive a…for vehicles to exit the site, head out to the mall road and then out to Meadow Hill Road a…and access you know, Meadow Hill or everything further north. So as part of the application we’re before the planning board for site plan review. We’ve been before them for several months a…and we’re progressing with that part of the approval process a…we feel we’re getting close to hopefully securing a decision on site plan approvals in the near future. We were before the Zoning Board on a previous occasion as I’m sure you all recall seeking a….a variance for the access road in the back that required a twenty-five minimum width whereas we were proposing eighteen because of the one-way access. So with that we’re back before the Board this evening looking for some relief on the signage for the project. So we presented an application with building elevations that show the signage proposed and I have those here. I’ll flip through them and since this is a Public Hearing I flip through those to show a…what we’re proposing for the signage. All right so the first exhibit I have here would be for the Buffalo Wild Wings these are the color rendered building elevations that we submitted with the application. We’ve got the four elevations for the building on this plan and I’ll run through them from top to bottom. The south elevation or the…the a…portion of the building that faces the Newburgh Mall we’ve got two signs proposed a…on that side. Over on the east side which is the side that faces Union Avenue (Route 300) we’ve got two signs proposed there to have some visibility to Union Avenue (Route 300) and then on the west and the north elevations a…we have no signage proposed on those two sides of the building. Also on this exhibit you’ll see down in the lower left corner here our free-standing sign detail that would be the identifier for the shopping center and I’ll move on to the next exhibit which is the Mavis facility. So the Mavis would be in that upper a…corner of the site as I showed on the site plan it would be the southeast corner of the site. Again working from top to bottom we’ve got the northerly elevation with a Mavis Discount Tire sign on that side, east elevation that faces Union Avenue (Route 300) a…the same sign and then going down to the bottom or the south elevation the side that faces the mall again the same sign. So we’ve got three of the…three identical signs on the Mavis facility and nothing on the back side that faces the rear access that I mentioned. The third building would be the building that’s located on the northeast corner of the site that is a tenant to be identified at this point a…we’re, I should say Rhinebeck Realty is working with a tenant, the details of that have not been a…inked, I’ll say at this point but they are very close to that and we’re here tonight seeking relief for signage on that building as well. We’ve got, again starting at the top working our way down, on the south elevation or the side that faces the mall we’ve got a sign along the side there, on the east elevation that faces Union Avenue (Route 300) another sign and on the north elevation another sign. No signage proposed on the back side. What you see here is a…a…intended to be a panoramic view if you were standing in the main access drive panning from your left looking at the Mavis and then towards the back of the site the Buffalo Wild Wings and then looking to the north at the retail/office space that’s what you would see. We also have prepared an exhibit that shows a 3D perspective rendering looking at the site from Union Avenue (Route 300) so that here would be the main access drive into the site, the Mavis Tire off to the left, the office retail space off to the north and then Buffalo Wild Wings in the back. With the landscaping we’ve done a considerable planting plan here and landscaping scheme. We’ve got, it’s a little bit difficult to see in these a…exhibits, but there’s a stone wall that’s a…run across both sides of the front access so that will screen parking and provide a nice enhancement to the site. I’ll show you where that is on the site plan here. So that stone wall would be running here and here across the front of the site with plantings in front as you see in the exhibit. So as you can see we’ve got a a…a very aesthetically, in my mind, an aesthetically pleasing project lots of landscaping spread throughout. We’ve introduced planting throughout the parking space areas and that’s all in an attempt to you know, redevelop this site in a very a…updated fashion from what it is and has been for many, many years. As far as the signage is concerned we know we’re seeking a large variance for signage a…and the reason for that is when you look at our project site, this site is very long and slender in nature so the frontage is very limited but it goes back very far and the signage calculation, allowable signage is obviously based on linear footage of street frontage a…so our frontage is very limited although we do have area to develop these three buildings we don’t have street frontage that would allow larger signage hence we’re before the Board tonight seeking some relief a…from that requirement. When we calculated our frontage we took into account the frontage on Union Avenue (Route 300) here and we also took into account the fact that we have fifty feet of frontage back on the mall road here. When you read the Town Code it defines frontage as frontage on a street and when you look at the definition of a street, a street is a public or a private roadway a…so we included the fifty feet from back here. One thing we did not include is the frontage along the mall road over here on the south side of the site. And what we…we were trying to present a reasonable application and a realistic application, a…this particular access point we have rights to access the road, over here we have frontage on this, I’ll call it a street a…from our perspective but we’re not showing and access on that so we’re not you know, in here you know, proclaiming to have that as part of our calculation in order to bump up the allowable signage. Again we’re trying to present a realistic and reasonable approach to our application for everyone. So with that I would open it up to any questions that you may have.

Chairperson Cardone: Do we have questions from the Board?

No response.

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

No response.

Mr. Maher: I just have one thing. Jerry the calculations for the…the monument sign, is it done by the overall square footage of the sign itself or…?

Mr. Canfield: Inaudible.

Mr. Maher: …I got you there, no I understand. I just want to make sure that if in fact they’re going for a variance we don’t do this twice. So the way I calculate it is its roughly about nine foot two by six foot is the sign, is the size of the monument sign. So roughly fifty-four, fifty-five square feet times two…

Mr. Canfield: Inaudible.

Ms. Gennarelli: Could you use the mic Jerry?

Mr. Canfield: The way its calculated Mike is the applicant has done it correctly. It’s not the overall surface area of all three signs, its each individual. There is some type of a gap in between each sign and then of course not counting the edge post so…

Mr. Maher: Okay.

Mr. Canfield: …I just double checked the math, the way they have it calculated is correct.

Mr. Maher: I just wanted to…so I wanted to make sure that we were...looking at different numbers.

Mr. Donovan: If I could ask, just relative to the…talk about the Mavis sign what area do you use to calculate the total square footage of the Mavis sign?

Mr. Osterhaudt: So looking at the elevations for the Mavis facility what we’re looking at here is a rectangle around the Mavis Discount Tire signage that you see here.

Mr. Donovan: And are we okay with that Jerry?

Mr. Canfield: Yes.

Mr. Donovan: Okay, so we don’t…we don’t spread it out because we have these…the bands and the color extending the whole way? I just want to make sure we have the…?

Mr. Canfield: Inaudible.

Mr. Donovan: And that’s really my question, do we just put a rectangle around the letters or do we look at the whole area because it does have an identification relative to Mavis.

Mr. Canfield: It’s a good question Dave, in this scenario the way the band is completely down the building it’s not considered although anyone that knows Mavis Tires that is a corporate color but that in this case is not considered as a backdrop included in the calculation. If it were like a TGI Friday’s that graphic that they have…

Mr. Donovan: Or an Applebee’s?

Mr. Canfield: …that multi-color thing, that whole thing was counted as signage because that is their corporate signage.

Mr. Donovan: Okay.

Mr. Canfield: So but in this case we allowed to block it and it’s typical how we do that.

Mr. Donovan: Okay.

Chairperson Cardone: Do we have anything else from the Board?

No response.

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

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

Mr. Masten: Second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Osterhaudt: Thank you.

 (Time Noted - 7:18 PM)

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ZBA MEETING – AUGUST 27, 2015 (Resumption for decision: 9:31 PM)

JR & RAY LLC. - 1413 ROUTE 300, NBGH

 RHINEBECK REALTY LLC. (MAVIS) (60-3-40.2) I/B ZONE

Applicant is seeking an area variance for the maximum allowed amount of signage for construction of a tire center facility, retail facility and restaurant on the premises.

Chairperson Cardone: The Board is resuming its regular meeting. On the first application JR & RAY LLC. the report from the Orange County Department of Planning was Local Determination on that. This is An Unlisted Action under SEQRA do I have a motion for a Negative Declaration?

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, do we have discussion on this application?

No response.

Chairperson Cardone: This was for signage for the tire facility and the retail facility and restaurant.

Mr. Levin: Grace, I had a question I’d just like to ask. They’re building it sections aren’t you? You’re not going to put everything up you’re waiting till everything is…is leased out?

Ms. Gennarelli: I’m going to ask you to go to the mic, I’m sorry.

Mr. Levin: You’re only putting up the Mavis part?

Mr. Osterhaudt: So again, Rob Osterhaudt, Bohler Engineering, to answer that question we are seeking approvals for the entire project as a single phase from a permitting perspective however, from a construction sequencing perspective the Mavis will be constructed first with the restaurant and the other space following.

Mr. Levin: Thank you.

Mr. McKelvey: That’s a pretty busy corridor you are going to need signage. I’ll make a motion we approve.

Mr. Levin: I'll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: No

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

Mr. Osterhaudt: Thank you very much for your time this evening we appreciate it.

Mr. Donovan: Would you not appreciate it if the vote went the other way?

Mr. Osterhaudt: I would still appreciate it. Thank you.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:34 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 7:18 PM)

FRANK PERUGINO 22 TRAVIS LANE, NBGH

 (14-22-9.2) A/R ZONE

Applicant is seeking an area variance for the rear yard setback to keep a prior built above ground pool (24 Ft.).

Chairperson Cardone: Our next applicant Frank Perugino.

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

Mr. Perugino: Good evening, I’m here…my name is Frank Perugino and I live at 22 Travis Lane. I’m here tonight to ask the Board to consider my application for an area variance considering a prior built pool and a fifty foot rear yard setback. I provided you with a updated survey and photographs and I’m asking you to consider my application. If there is any questions I’d be happy to answer them.

Mr. Levin: Does the road become private when you go past your house?

Mr. Perugino: Excuse me?

Mr. Levin: The road does that become a private road?

Mr. Perugino: It’s a private road right at the…right where you enter off of Mountain View Avenue.

Mr. Levin: It’s all private road?

Mr. Perugino: It’s a private road, correct.

Mr. Manley: I noticed you applied for the Permit a…May of 2015.

Mr. Perugino: Yes.

Mr. Manley: What year was the pool actually built?

Mr. Perugino: The pool was actually installed 2002.

Mr. Manley: Okay. What prompted you to actually obtain a Permit this May as opposed to not back in ’02?

Mr. Perugino: When I installed the pool I…it was self-installed and I did not do my homework, did not know it needed a Permit. I recently applied to re-finance for my home and it came up that this was an issue and as soon as I found out I came to try to fix it.

Chairperson Cardone: At the time you installed the pool was the deck there already?

Mr. Perugino: No. They were installed at the same time.

Chairperson Cardone: So they weren’t connected at that time then?

Mr. Perugino: Originally, no. The pool went in first; the deck went in basically right after that.

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

No response.

Chairperson Cardone: Any questions or comments from the public?

No response.

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

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Perugino: Thank you.

 (Time Noted - 7:22 PM)

ZBA MEETING – AUGUST 27, 2015 (Resumption for decision: 9:34 PM)

FRANK PERUGINO 22 TRAVIS LANE, NBGH

 (14-22-9.2) A/R ZONE

Applicant is seeking an area variance for the rear yard setback to keep a prior built above ground pool (24 Ft.).

Chairperson Cardone: On the next application Frank Perugino. This is a Type II Action under SEQR, seeking an area variance for the rear yard setback to keep a prior built above ground pool. Do we have discussion on this application?

Mr. Manley: It’s a very small variance eleven feet. There hasn’t been any issues with the neighbor’s complaints. I would make a motion for approval.

Mr. Scalzo: I'll second that.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:35 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 7:22 PM)

ERIN EMMETT STINSON 19 VERMONT DRIVE, NBGH

 (105-10-1) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck on the residence (12 x 20).

Chairperson Cardone: Our next applicant Erin Emmett Stinson.

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

Ms. Stinson: Hi, I’m Erin Emmett Stinson, I live at 19 Vermont Drive and we’re looking for an area variance for the rear yard setback for placing a new deck up twelve foot by twenty foot. If you have any questions I’d be happy to answer them?

Mr. Levin: There was a deck there wasn’t there?

Ms. Stinson: There…there was a deck. There was a deck that we actually filed a Demolition Permit for and then the upper deck could actually basically collapse. They never put cement in the ground when they put the deck up so it was beyond unsafe.

Mr. McKelvey: You’re fairly close to that drainage ditch in the back too.

Ms. Stinson: We are.

Mr. McKelvey: Plus you are well screened from the neighbor on your back end.

Ms. Stinson: We are well…very well screened from our neighbors they have a deck and pool and you can’t even see them back there.

Mr. Levin: It seemed like all your neighbors had decks going all the way down.

Ms. Stinson: They do.

Chairperson Cardone: Okay, Do we have any questions from the public?

No response.

Chairperson Cardone: Do we have anything else from the Board?

No response.

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

Mr. McKelvey: I’ll second.

Ms. Stinson: Thank you.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

 (Time Noted - 7:24 PM)

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ZBA MEETING – AUGUST 27, 2015 (Resumption for decision: 9:35 PM)

ERIN EMMETT STINSON 19 VERMONT DRIVE, NBGH

 (105-10-1) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a rear deck on the residence (12 x 20).

Chairperson Cardone: On the next application Erin Emmett Stinson seeking an area variance for the rear yard setback to build a rear deck on the residence. This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. McKelvey: I think since all the houses there have decks on the back of them and it’s a lot of close property lines there plus you got the ditch in the back you can’t do anything else there. I’ll make a motion we approve.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:36 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 7:24 PM)

ROBERT & TEASHA VOLZ 489 LAKESIDE ROAD, NBGH

 (28-1-13.3) R-1 ZONE

Applicant is seeking an area variance for pools shall be located 10 feet from any lot line to keep an above ground pool (27 ft) not installed in approved location and area variances for the maximum allowed square footage of accessory structures, the maximum height of accessory structures and the maximum allowed storage for not more than (4) four vehicles to build an accessory structure (40 x 32 x 23’5”) two-story detached two-car garage.

Chairperson Cardone: Held over from our July meeting Robert and Teasha Volz.

Ms. Gennarelli: There’s two mics if you need one, you can grab the other one in case you want to talk too.

Mr. Cella: Good evening, we were here in the a…July 2015 meeting and we a…resubmitted plans…

Ms. Gennarelli: Could you just introduce yourself for the record?

Mr. Cella: Oh, I’m sorry.

Ms. Gennarelli: That’s okay and you can tilt that up a little bit.

Mr. Cella: I’m the a…engineer…engineer for the applicant, my name is Jonathan Cella. The owner is with me tonight.

Mr. Volz: I’m Robert Volz.

Mr. Cella: We were here at the July 2015 meeting requesting area variances for an existing pool and a proposed detached garage. Since then we submitted a revised plan dated August 2015 where we decreased the size of the proposed garage to thirty foot by thirty foot with a maximum height of eighteen feet. The property is an existing a…one thousand four hundred square foot property (house) in the R-1 zoning district consisting of one single family residence serviced by well and septic and it’s a…owner occupied building and we’re requesting an area variance for the height of the proposed garage and the total footprint of accessory buildings and also for an existing pool along the northern property line.

Chairperson Cardone: And are you still planning to keep the shed there?

Mr. Cella: We would like to but…

Mr. Volz: I would…I would like to but if it has to go, it can go.

Mr. Cella: We would prefer the garage.

Chairperson Cardone: Okay, do we have questions from the Board?

Mr. McKelvey: That would…that would cut down on the overage…

Mr. Cella: Correct.

Mr. McKelvey: …if you took the shed down.

Mr. Cella: Yeah. If we removed the shed we’d be requesting a…hundred forty-four foot footprint rather than…I think it was three hundred thirty…we’d be requesting about a hundred square feet less.

Mr. Manley: Well the shed is one sixty three point six, correct?

Mr. Cella: One six…I have a…the shed is…I have the existing shed as a hundred eighty-six, the proposed garage is nine eighty…nine hundred that’s a total of eleven eighty-six and there’s seven hundred fifty-six allowed so…we’re asking for three thirty total which we reduced by if we went just went with the proposed garage we’d be asking for the…the nine hundred minus the seven fifty-six is a hundred forty-four…square feet.

Mr. Maher: So where so…where do we start off at…the original request was for how many square feet?

Mr. Cella: A lot. A lot more we had…

Mr. Maher: I understand that.

Chairperson Cardone: It was forty by thirty-two by twenty-three.

Mr. Cella: Yes, we had a…a…a patio with a…a…a covered patio adjacent to the garage which we totally removed. We had a second story which we were closer to thirty feet (twenty-three and a half feet) in height. A…we…a…we notice that the Board was not going to no-way go for that and we feel we’ve reduced the request a…considerably.

Mr. Donovan: So Mike what I have is the original request was one thousand four hundred and seventy-two square feet. The little discrepancy I have with the information provided by Code Compliance indicates the proposal is now one thousand ninety-two square feet. I believe you indicated a different number when you spoke before. I know you are kind of doing that on the fly there…

Mr. Cella: No I have a little…

Mr. Donovan: …but I thought all you engineers could do that.

Mr. Cella: I had a…maybe not. I guess not. But a…I…Dave my numbers are a little bit more than yours so…

Mr. Donovan: But just so we have a…an element of precision in terms of what the modification would be so if we’re…the proposal now is for a thousand ninety-two square feet and you removed the shed I just want to make sure the…the Board has a number that we can identify.

Mr. Cella: We’d be asking for nine hundred square feet if we removed the shed, thirty by thirty on the garage that would be total…total footprint of the accessory structure.

Mr. Maher: Right, in essence right now you…you reduced it roughly three-hundred and eighty square feet basically twelve hundred and eighty down to nine hundred square feet for the garage so a three hundred and eighty square foot reduction from last month.

Mr. Cella: From last month.

Mr. Maher: Okay, then and then again the height went from twenty-three and a half to eighteen.

Mr. Cella: Eighteen correct and we revised the applications to request that as well. And we’re also here for the pool which we kind of glazed over last meeting. The pool is existing its eight and a half from the northern property line where there is ten foot is required. The pool is a…not visible from the road or the other properties based upon a existing screen, there’s an existing fence along the front…frontage which a…and the property slopes so you can’t see the pool from the road and the…there’s existing a…vegetation on the both northern and southern property lines which shields it from neighbors.

Mr. McKelvey: Could you do without the shed?

Mr. Volz: I can do without the shed.

Mr. Scalzo: Regarding the height variance I have a visual. Jerry, if you wouldn’t mind grabbing that rod there. Tied up at the top of that if fifteen feet, the variance they are requesting is three feet higher than that.

Ms. Gennarelli: Could you go a little more to the right Jerry I don’t the Board can see it. Can you see it now?

Mr. McKelvey: Yeah.

Mr. Scalzo: Just for perspective.

Mr. Cella: It…it’s minor. And as stated at the last meeting a…we’re not in the a…we are in the viewshed of the a…we’re in the viewshed district of Orange Lake but we’re not…it’s not visible from where we are.

Mr. McKelvey: That’s all woods behind you.

Mr. Cella: Correct, it’s all…it’s all densely wooded.

Chairperson Cardone: Do we have any questions or comments from the public? Mr. Hughes. If you could…

Mr. Hughes: Do I need a microphone?

Ms. Gennarelli: Yes.

Chairperson Cardone: I’m afraid so.

Mr. Hughes: Okay. I hope Mr. Donovan is right maybe they could do these calculations on the fly. You say it’s minor. It’s twenty percent isn’t it?

Mr. Cella: A…

Mr. Hughes: Fifteen to eighteen is three fifteenths is twenty percent from where I count but I got a bunch of toes and stuff, I’m not an engineer.

Mr. Maher: Does the height of the garage now exceed the height of the residency?

Mr. Cella: No.

Mr. Hughes: While he’s trying to count his fingers and toes we’ll go on with another portion of this that nobody knew about the viewshed apparently somebody has been doing some reading and realizes there’s a viewshed there and right now it’s not a situation but that three feet on top of eighteen feet, twenty percent over when they do all of the rest of the development that’s supposed to come around Orange Lake you’re going to put everybody else up and down the road out of business and if you allow this to go on what’s to prevent everybody else up & down the road in the viewshed from carrying on so I’ll bet it’s twenty percent by the time he figures it out and that’s substantial.

Mr. Cella: So nineteen percent.

Mr. Hughes: Would you take a twenty percent reduction in your bill? It’s substantial.

Chairperson Cardone: Do we have any other comments?

Mr. Scalzo: Jonathan, do you know…the lot behind it, that the reputed owner is the Town of Newburgh Little League, is there wetlands back there? I mean that…that feeds Orange Lake, correct?

Mr. Cella: Yes that’s all part of the a…the wetland for Orange Lake a…no, it’s not going to show on there (the zoning map on the wall) but the…

Mr. McKelvey: There is a stream that flows through there.

Mr. Cella: Yeah.

Mr. McKelvey: I talked to the President of the Little League as far as the pool goes, when we get to the pool, they have no complaints.

Mr. Cella: No, no complaints? Thank you.

Mr. Scalzo: Mike where I was leading is…well I didn’t know if perhaps a buffer would have impacted what you’re trying to do as well…the hundred foot buffer.

Mr. Cella: Oh, no that wouldn’t.

Mr. Scalzo: No, we’re way away?

Mr. Cella: Yeah. The a…property is on a plateau and then it slopes…slopes down to the…to the stream where a…you see we’re a hundred…hundred foot from the back of the property to the shed and the…the wetlands would start well beyond the property.

Mr. Scalzo: Okay.

Mr. Cella: So it would be outside any one hundred foot buffer.

Mr. Levin: What utility would you lose if you lowered it three feet?

Mr. Cella: Just visual. It just would look like almost a flat roof and it would be a…less aesthetically pleasing.

Mr. Manley: So just so I get this correct as it stands right now you are requesting a height variance from instead of fifteen feet you want eighteen feet, correct?

Mr. Cella: Correct.

Mr. Manley: The area variance was three thirty five point sixty-one; it’s now down to a hundred and forty-four with the removal of the shed?

Mr. Cella: That’s correct.

Mr. Manley: And then the third variance would be for the a…distance of the pool to the lot line…

Mr. Cella: That’s correct.

Mr. Manley: …the side…side yard?

Mr. Cella: That’s correct. The a…pool and the garage are under two separate applications.

Mr. Canfield: Is the size correct on that shed? I thought you had said one forty-four but on here you had…

Mr. Cella: Oh no he said that the a…the difference between the nine hundred and the permitted seven fifty-six is one forty four…

Mr. Canfield: Okay.

Mr. Cella: Correct? That’s what you stated though right?

Mr. Manley: Right, you need the…the garage is nine hundred…

Mr. Cella: Right.

Mr. Manley: …and we’re taking the a…shed out so that’s losing a hundred and eighty-six that you had and that leaves one forty-four…

Mr. Cella: Correct.

Mr. Manley: …that you need.

Mr. Cella: Over, over the square footage permitted.

Mr. Maher: I believe the shed was discussed, I don’t think that was affirmed, removing it.

Mr. McKelvey: No, that’s why I asked him if he would…

Mr. Maher: He’d be willing to that wasn’t a question of I don’t think there was a…was that you are going to remove it or you discuss it…I mean I don’t want to…

Chairperson Cardone: He said he’d be willing to if he had to.

Mr. Cella: Yes.

Mr. Volz: Yes, yes.

Mr. Maher: If he had to, okay.

Mr. Volz: If I had to, of course.

Mr. Maher: Okay, I want to clarify it. Right now it’s still on the board as far as the current reduction is from twelve eighty to nine hundred as far as the garage goes.

Chairperson Cardone: And they came down I believe five and a half feet in the height.

Mr. Maher: Five and a half right, correct, reduction from twenty-three and a half to eighteen.

Mr. Cella: We stated at…at the last meeting a…one of the problems with the a…with the total permitted square footage of the accessory structures on this…on this property is that the existing residence is only eleven hundred square feet. So if we were a…it was a bigger residence we probably not be having this problem.

Mr. Donovan: Is that your point because the way the formula is calculated?

Mr. Cella: That’s correct story building on this property that was two thousand square feet we might not even…we’d only be here for the height.

Mr. Maher: And if the garage was attached to the building?

Mr. Cella: We wouldn’t be here at all.

Mr. Maher: And what size could you make the garage now?

Mr. Cella: A…well I could…

Mr. Maher: If it was attached to the building?

Mr. Cella: I could put it right behind the prop…right behind the house and it would be unlimited, it could be a thirty foot height that we could be at…

Mr. Maher: So the only difference is because it’s considered an accessory building…

Mr. Cella: Correct.

Mr. Maher: …that limits your ability to construct a larger…

Mr. Cella: Correct.

Mr. Maher: …a larger garage?

Mr. Cella: Put it directly behind the a...the residence, on top of the existing back here we could recon…reconfigure…we just think that this would be a…most cost effective for the…for the owner.

Mr. Scalzo: Go ahead; thirty by thirty you can only fit two cars in there, correct?

Mr. Cella: Correct, two cars.

Chairperson Cardone: Do we have anything else from the Board?

No response.

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Cella: Thank you.

Chairperson Cardone: Thank you.

Mr. Volz: Thank you.

 (Time Noted - 7:40 PM)

ZBA MEETING – AUGUST 27, 2015 (Resumption for decision: 9:36 PM)

ROBERT & TEASHA VOLZ 489 LAKESIDE ROAD, NBGH

 (28-1-13.3) R-1 ZONE

Applicant is seeking an area variance for pools shall be located 10 feet from any lot line to keep an above ground pool (27 ft.) not installed in approved location and area variances for the maximum allowed square footage of accessory structures, the maximum height of accessory structures and the maximum allowed storage for not more than (4) four vehicles to build an accessory structure (40 x 32 x 23’5”) two-story detached two-car garage.

Chairperson Cardone: On the first application Robert and Teasha Volz seeking an area variance for the pool and also for an accessory structure that is 30 x 30 x 18.

Mr. Maher: I…I think the applicant demonstrated his willingness to work with the Board by a reduction of about three hundred and eight square feet from the original proposal and in addition a…I think the twenty-three foot down to eighteen foot is also a substantial reduction from what he originally asked for.

Mr. McKelvey: He said he would remove the shed.

Mr. Maher: I’d be willing to put a motion that just the a…garage reduction alone and based on the information that was supplied by a…Joe.

Mr. Scalzo: The topography of the site as well it does come the driveway and goes down the hill so the substantial a…you know, the three feet that they are looking a wouldn’t seem as substantial as if say it were on top of a hill so a…I don’t…I don’t think plus I didn’t hear any resistance from any of the a…community surrounding him.

Mr. Maher: I make a motion for…

Mr. Manley: I would be…

Mr. Maher: Go ahead, sorry.

Mr. Manley: I would be amicable to that however, you know, the law does stipulate that the Zoning Board is to provide the least necessary to obtain the objective for the a…for the applicant so I would certainly a…say that the least amount is if they want the garage, the garage, the garage but that’s up to the Board. We have a motion and a second I believe.

Mr. Scalzo: No.

Mr. Donovan: No we don’t.

Chairperson Cardone: I agree with you Jim by taking down the shed I think that a…that would be the least…

Mr. Scalzo: Are we handling this all as one application or…or one variance required or…are we voting on both.

Mr. Donovan: Well, I…it’s up to you. I mean you can vote on them separately. If you want to vote on the pool and then the accessory structure…it’s the Board’s pleasure.

Mr. Manley: It probably would be best to handle them separately.

Mr. Cella: It’s two applications. Correct?

Chairperson Cardone: Right.

Mr. Donovan: Well they’re noticed for one Hearing, we didn’t close and start up again so again the Board has the discretion to act on them separately or collectively.

Mr. Scalzo: I think the pool, the pool is…is…is the easiest one to handle. I would make a motion to that the variance be granted for the pool setback.

Mr. McKelvey: I’ll second that.

Chairperson Cardone: This is a Type II Action under SEQR.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, now we are back to the accessory structure. I agree that the applicant worked with the Board to reduce the size but I…I still think with the pool there and the garage it just seems like it would be awfully crowded with the…with the shed.

Mr. McKelvey: I have to agree with you.

Mr. Maher: I have to disagree. I think the…I think the lot…the lot is more than large enough to accommodate an additional a hundred and ninety-two square foot shed that’s preexisting that the occupants already paid for and has utilized over the years. I think it would be unfair to make them remove it. Again the Board requested a…a…a reduction or come back with a secondary plan. I believe a…a twenty-five percent reduction was…was considerable and in addition…

Chairperson Cardone: I agree with that.

Mr. Maher: …the a…the reduction of, you know, an additional five and a half foot height to become closer to the requirements. I don’t think it’s substantial. I…I think we’ve granted variances in the past that have been much greater on similar size lots.

Chairperson Cardone: Okay and again I will ask for a motion.

Mr. Maher: I am going to make a motion to approve the application as it stands.

Mr. Cella: If you deny that are you going to vote on it…can you make a motion to disapprove the accessory structure…or… is there only going to be…?

Mr. Donovan: Well right now there’s…there’s a motion to approve…

Mr. Cella: Right.

Mr. Donovan: …the application, as Mike says, as it stands…

Mr. Cella: As it stands.

Mr. Donovan: …as amended…which would include the shed.

Mr. Cella: Right.

Mr. Donovan: There is not a second so. There’s no…

Mr. Cella: Right.

Mr. Donovan: …one way or another until there’s a…

Mr. Cella: Right.

Mr. Maher: Well it’s not amended it’s as it…as it stands.

Mr. Volz: As it stands.

Chairperson Cardone: As it stands.

Mr. Donovan: When I say as amended from the original application. When you’re as, I’ll translate, as it stands what is in front of us which is amended from the original.

Mr. Maher: I understand your concern.

Mr. Cella: Yes, you understand my question, correct. Everybody?

Mr. Maher: I guess prior to a second I would defer to…if you have any other further comments.

Mr. Manley: Well I mean I…I’ll just reiterate that you know, I’ll be willing to make a second but that doesn’t necessarily mean I’m going to vote in favor of it but for the purposes of being able to bring it to a vote if we need a second to the motion I’ll make the second.

Mr. Donovan: You could or it could fail for the lack of a second.

Mr. Cella: And then you do a…

Mr. Donovan: Or I’ll put a time limit on it (inaudible)

Chairperson Cardone: Thirty seconds.

Mr. Cella: You (to Mr. Volz) are willing to give up the shed?

Mr. Volz: If I had to.

Mr. Cella: If we had to.

Mr. Maher: Okay, I’ll…I’ll amend, with prejudice, my motion to a…

Mr. Cella: We’d prefer to keep it.

Mr. Maher: …to a…show a proposed nine hundred and square foot which would reduce the a…I’m not doing the math. It’s going to be a…two hundred, a hundred and fifty…I’m sorry, it would be a hundred and fifty, a hundred and forty-three…

Mr. Cella: Whatever it is.

Mr. Maher: …foot, square foot variance, square foot over the a…required, the maximum allowed…

Mr. Cella: And the height.

Mr. Maher: …and the height again being eighteen. I’ll make that as a motion.

Mr. Scalzo: I’ll second that.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Cella: Thank you.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:45 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 7:40 PM)

SALLY N. POLHAMUS 65 BALMVILLE ROAD, NBGH

 (43-3-34.2) R-1 ZONE

Applicant is seeking area variances for the lot area, lot width, one side yard setback, combined side yards setback, maximum lot building coverage and maximum lot surface coverage to keep the existing dwelling on Lot #1 and area variances for the lot area, lot width and lot surface coverage and Section 185-43 (E) tennis court screening and (F) no tennis court shall be located in the front yard to keep the prior built tennis court and also accessory structures (gazebo) must be in a side or rear yard to keep both the prior built gazebo and tennis court as an accessory use contingent on the building of a two-story single-family dwelling on Lot #2 of a proposed two-lot subdivision before the planning board.

Chairperson Cardone: Our next applicant held over from July 23rd Sally Polhamus.

Mr. Dates: Good evening my name is Justin Dates with Maser Consulting. We were before here your Board last month and there were some items that the Board requested that we a…look into and provide responses to. A…that was provided to the Board in our August 13th response memo and what I want to do is just take everyone through those items and the boards and a…see if you have any questions on that.

Chairperson Cardone: Okay.

Mr. Dates: So the first comment that the a…Board had brought up a…by Mr. Scalzo was the requirement for a…right-of-way dedication along Chestnut Lane and a…Balmville Road. Even though these are existing roads, existing lots a…we did a…reach out to the a…the planning board engineer a…Pat Hines and he said the a…the Town would require twenty-five feet from the centerline of each of those roads into the property and that area would be a…dedicated to the Town for a right-of-way. So the revised plan that we’ve provided takes into account a…twenty-five feet into each of the a…lots, Lot 1 and Lot 2. A…and what that did in effect is it reduced the lot area further for each of them. So Lot 1 we were initially at point five three acres with the right-of-way dedication that brought us to point four six acres. A…Lot 2 was previously point seven eight acres and is now point seven three acres so it did reduce a…the total square footage and…and acreage of those lots. In doing that Lot 1 actually now requires a front yard variance pushing that lot line in a…the front yard setback here in the R-1 district is fifty feet, adjusting that lot line now the existing home…Lot 1 again is the…the lot with the existing house; Lot 2 is the proposed dwelling. So the existing house is now forty-six feet from that proposed lot line so there is a four foot variance that we would need for that. Also with the reduction in lot area, the building coverage went up 2% so we were previously seeking a variance for the building coverage on Lot 1 because of the reduction that did go up 2% and we still require the variance. One thing that did occur on both of these lots is that the overall coverage went down because we had accounted for all the pavement area within that twenty-five feet on Lot 1 and Lot 2 so our variances for the overall lot coverage was lowered on both the lots. The next item that was requested by the Board was to look at some of the adjacent lots and the sizes of those and what we did is we went to the tax maps, looked at Chestnut Road (Lane) and Balmville Road and Chestnut Lane, I’m sorry, and Balmville right around the a…the project site. We also went just north of that up to Lester Road, Atwood Lane to see what we had there and a…sampling seventeen lots from those two areas, fifteen of them were less than proposed lot areas that we have in our subdivision. Next piece that was requested was the question came about what the a…the original tax lots looked like and where the a…property line was between a…the lots. We submitted a a original surveys that called out the a…the two separate tax lots. 43-3-31 is the area with the a…the tennis court on it and then 43-3-34 was the lot with the existing home on it. So Lot 1 the existing house was point five five acres. Again we are at point four six acres and then Lot 2 a…was point seven five acres and we’re at point seven three acres so they’re relatively similar in size to the original a…tax parcels. You can see the division line essentially is…it runs as an extension of this lot line right to the rear. Our proposed lot line is…is slightly shifted to the east just so that the a…the existing patio area is part of Lot 2 so that’s why there is the adjustment in that part of it. And then lastly we provided some additional photos of the a…the tennis court, the gazebo, the a…the patio area just to give the Board a sense of the relationship how they all work and also the a…the aesthetics a…you know, the a…the applicant takes good care of…of the property. It’s well maintained. Visually it’s…it’s quite pleasing, the gazebo and the seating area so we just wanted to give that extra a…emphasis on why they want to save the tennis court and these amenities a…through the a…through the application. Oh, one last item, it wasn’t in the letter though there was a comment about a…parking. Town Code requires two parking spaces per dwelling unit a…so we have parking areas for the existing as well as the a…proposed residence on Lot 2 that sums up the a…the initial application materials.

Mr. Manley: Mr. Donovan I have a a legal question if I may? The issue of now that we’ve been notified that the Board has been notified that there was a variance that was left out. The issue that I want to ask you is based on the fact that when the variance was Noticed to the public and Notice to the public did not include that variance is being requested. Is it incumbent upon the Board that we would be required to re-Notice for legal purposes?

Mr. Donovan: So, let me just summarize because I did speak to a…to Betty about this today. What the requirements are for a…for a legal notice. And just…there’s no hard and fast rule that if a…the front yard variance is left out automatically you have to re-Notice. Basically what the law provides is that the…and I’ll quote from a relatively recent court case. To satisfy the Public Notice requirement of the Town Law or a corresponding Local Law the Notice should not mislead. The example there is that if the application if for an area variance and it is noticed for a use variance that’s misleading so therefore you would have to re-notice. The law requires that the notice must be clear and unambiguous. What I take a look at and I had Betty send me the Notice of Hearing today, it talks about area variances for lot area and we have lot variances for lot area. They are moderately more now in the magnitude of ten percent I guess but they are for lot area so this was noticed for lot area. Also in my view key language is in the notice to keep the existing dwelling on Lot #1. Now Lot #1 is where the front yard variance is now identified. So if someone were to look in the paper and they would see that hey, they want to keep that house where it is they would know if they had an objection or wanted to have any issues they would come to tonight’s meeting so in…in my view the notice is…is sufficient even with the changes that we have. Now I don’t know if the applicant and their team feel any differently. Obviously you have a…you have a stake in this process.

Mr. Gaba: No, no when we a…we found out there would be a…

Chairperson Cardone: Just for the record identify yourself.

Mr. Gaba: Oh, I’m sorry. Steve Gaba I’m the attorney for the applicant Sally Polhamus. When we found out that there would be a possibility of a required additional variance we too looked into Town Code requirements and did request law search as far the requirements for giving reasonable notice and it’s exactly as Dave says. Reasonable notice of what the nature of the application is all that’s required. There’s no legal requirement which lists specifically by chapter and verse every single thing that you’re looking for. So if a person went out and looked at the Notice published or read the Notice that’s posted in the hallway they could say it’s a two lot subdivision and want to maintain Lot 1 as is. They would have notice to come out and speak to any issues that they might want to bring to the Board’s attention regarding that. So I…I don’t think that it’s a technical default or a technical defect rather with the notice at all.

Chairperson Cardone: And Jim did that answer your question?

Mr. Manley: Absolutely.

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

Mr. Scalzo: Justin, I appreciate the chart that you went over with all the surrounding tax lots but you neglected to include the lots that are contiguous with the lot itself. You told us about what’s over on Lester, you told us what’s on Balmville but there’s a two point seven acre lot, a one point eight acre lot, another two point seven acre lot right behind it.

Mr. Dates: Yes, and I’m not a…I wasn’t dismissing that a…we put together a list of lots similar…

Mr. Scalzo: Similar.

Mr. Dates: …similar to this size, yes. I mean you’re…you’re absolutely really right that there are a couple of large lots that abut the a…applicant’s parcel but the a…what we submitted was to show the a…a…smaller of the lots that are within close proximity to the a…the applicant’s parcel.

Mr. Manley: Darrin, just to add on what you just indicated I did some research as well during the last month and I did a sampling within about a mile of that particular parcel and there’s approximately thirty-seven, roughly, properties that more than one acre that are within a mile of that particular property which would be considered a…in the Master Plan, part of the Hamlet of Balmville. So if you are familiar with the Town’s Master Plan they’ve identified hamlets within the Town that, you know, have a particular character to it that, you know, the Town has identified as areas that they kind of want to keep within the…the scope and character that you know that area has…has grown to become. So I…I just wanted for the record point out and add to Darrin’s notation to that.

Chairperson Cardone: Do we have any questions or comments from the public? Yes, please identify yourself for the record.

Mr. Romero: Good evening to the Board. I’m Edward Romero; I live at 2 Glen Lane. I was here last month and a…I came back on this issue. I’ve done a little more research myself I didn’t know the issue has changed in terms of a…coverage on the lot but I have obtained a petition from fourteen neighbors within the area that do live in most of the houses that are an acre or more. Lester Lane is actually almost a quarter of a mile. We all live directly across this home or adjacent to this home. I don’t know if you would like to put this into the record? I don’t know how that works.

Chairperson Cardone: You can bring it up.

Mr. Romero approached the Board.

Mr. Romero: I also brought with me one of my neighbors Ben Schwartz who lives on Glen Lane. He won’t speak but he just wanted to have his presence here tonight in support of the neighborhood. A…I also looked up the a…the area variances and in making the decision for the Board the individual benefit against the community, detriment considerations a…when I drive down Balmville Road right now there’s seven houses for sale on Balmville Road. With this one and one on Chestnut Lane the house that is adjacent to them a…I say adjacent because they share a common driveway but it’s actually 60…69 Balmville, that’s been for sale for over a year. To put a house on Chestnut Lane for sale, the house that the Polhamus’ live in 65 Balmville there would be in that area nine houses for sale right now. That would devalue the value…the value of my home, the homes on Glen Lane and the other homes that are of the stature and in this hamlet that Mr. Manley had spoke about. We are looking to keep the integrity and the value of our area going a…to drop a small home in this neighborhood seems detrimental to all of us. A…there’s also multiple variances that are being requested which are part of this area variance appeals definitely overtly substantial. There’s not enough room to build these homes on this lot. I don’t know how else I could say it. This is not the neighborhood to just put these little homes here, you know, the purpose of joining the two lots was that you couldn’t do it the first time that’s why we’re here. It’s not supposed to be done, it’s Balmville. We live in an area that is meant to have large homes. There’s mansions in this area. Right across the street there’s a…there’s a five thousand square foot home; my home is four thousand square feet. These are large homes, this part of our community. I’d also like to know if they use well water, Town water and if…how the septic is going to be put in to this area and what is the leeching requirements for a septic tank on a property like that. I have someone on Balmville that’s trying to build a home; you guys have denied him several times because he can’t put a septic tank on an acre of land. How is it that you can put a septic tank in this small piece of land next to other people that have septic tanks or well water? I’d like to know how that is going to be handled. A…it seems like, I looked up the R-1 regulations and they…they seem to not meet almost all of these in this first category here. They’re below lot level (area), width, front yard, rear yard, side, everything seems to need a variance. I don’t know how easily on gentleman comes for one variance and it seems like we go over it and these people want to subdivide a lot with multiple variances and a…I think that’s an issue. I think that’s an issue for the Board. In terms of parking, I know they’re saying parking but if there is a problem with the spacing in the front are people going to park on Chestnut? Chestnut is small enough as it is. Are people going to put their cars? We already have the people on a…63 Balmville using the side of Chestnut as a parking lot, you know. I come down that road and you can’t even make the turn because you can’t see sometimes. So that’s another issue I’d like to address. A…this issue of twenty percent a…well like the square footage on that I can’t imagine the…the tennis court and the house with the lack of footage is something that is going to be pleasant to view in my neighborhood. My neighborhood, because I live there, my family lives there, Schwartz lives there and the people that signed that petition live there and are in disagreement with this taking place. I also went around I looked there aren’t many…he says a…he stated that there’s seventy two houses, fifteen of them…that’s only fifteen let’s not make it seventeen. Seventeen houses that don’t meet the requirements to live in Balmville, you know. I don’t know what else to say. I’m not very versed in this but I know this is not right that’s what I do know. These people want to subdivide their land, they had ten years of playing tennis on that land, they got their variance to do that and joined the two lots. Now they want to leave the neighborhood and maximize their own profit while diminishing ours. That’s part of the Board’s power is to look at that. I beseech to you please really take into consideration that this is changing our neighborhood. This is definitely putting a change in our neighborhood and that’s part of the Board’s responsibility. Thank you.

Chairperson Cardone: Thank you. If I’m not mistaken Jerry, there is Town water but private septic?

Mr. Canfield: That’s correct.

Chairperson Cardone: Mr. Hughes.

Mr. Hughes: My name is Hughes, I live in Middlehope. I’d like to back up a little bit and do a little bit of housekeeping and some historical values of what we’re supposed to be following for guidelines here. The consistency with the Master Plan of the County and the subservient Master Plan of the Town says that hamlets will be treated accordingly on their own merits and in the individual pockets of the hamlet. Not word for word but that’s the summation of where we’re supposed to be guiding these things in unique neighborhood, hamlets, villages and things that possess a special character. I’d like to go to the financial end of it first. We have a very nice spread around that part of the world and most of the houses that are there are on at least minimum one point something acres and they’re rather large dwelling units. To take a cottage type building and put it on a substandard lot, which I don’t believe you’re allowed to do by the process to create a substandard lot is against some part of State Law hidden in the weeds besides what we’re doing here. But having said that, to take a cottage type building and put it in the middle of Broadway and 42nd Street of mansion row is going to knock a hundred and fifty thousand dollars off the value of every one of those houses in the immediate surrounding area and do what? Create a detriment for the Town by the loss of tax base of assessed value and to also diminish the values of the immediate property owners in that particular area. So it compounds into a triple headed monster by the way it goes and it snowballs and gathers effect of a negative income for the tax base of the Town by approving a substandard installation in a very unique hamlet in the middle of mansion row. So if you take those thirty houses around there in a very high bracket of tax assessment and you throw something in the blend to knock them all down, what do you do about that couple of million dollars you lose in tax assessment for the sake of what? Giving somebody a way to exit out the door and get a little bit more for having two lots? If you compare to keeping the lot the way it is and sold it as a compound rather than subdividing it and getting twenty-five thousand dollars more for the total aggregate money that you might be able to accrue by making the two lots? What are you really doing? I agree with Mr. Manley’s assessment of the Master Plan and what you’re supposed to look at and be consistent with your own Town’s Master Plan and look at the pocketbook and what you’re really doing and look at what you’re doing to the neighborhood and the people that have invested a lot of money in their homes and make the right decision.

Mr. Romero: Ed Romero, 2 Glen Lane again, I also a…on the General City (Municipal) Law it states a…whether the alleged difficulty was self-created…I think this is a self-created problem from the very beginning. You want a tennis court, you make a tennis court and then we don’t…we have to address as to why we have it so instead of addressing it in the appropriate way ten years ago now we…we join the two lots and circumvent the…the variances and now we have to deal with it in this manner. So yes it is a self-created problem that the Board should take into account. Thank you.

Chairperson Cardone: Mr. Gaba.

Mr. Gaba: Anytime you have an applicant looking to subdivide a lot into two undersized lots you’re going to run into exactly these types of problems and these types of complaints. It’s generally not what you want to do but what you have to keep in mind is that this property owner is different from property owner that takes a historically size lot and subdivides it into two. These were historically two separate lots. This neighborhood consisted of two separate lots configured almost exactly like these until 2007 when the applicant came in and sought a variance from this Board and perhaps mistakenly but was under the impression that if she combined the two lots, she merged them she would be able to get the variance to put an addition on the house. Now that didn’t work out and I’m not going to revisit history as to why it didn’t but the fact is that this applicant is different than someone who comes in with a lot that has been one size for ages past and seeks to subdivide it into two small lots, this applicants looking not to change the neighborhood but to change the neighborhood back into the way that it has been for years and years and years. Now coming in with clean hands, as she does, because like I say the merger of her only seven years ago well eight years ago getting older under circumstances where it wasn’t really for her benefit. Yes, she got to keep the tennis courts but I mean how much of a benefit is that really? So she comes in and she wants to move these a…go back to what it was and yes, it requires a number of variances but when you look at the test that you have to go through to make a decision on this application you’ll see it’s a balancing test. It’s not a checklist. You don’t have to hit every one of the five factors in order to get a variance. Instead what happens is is this Board looks at those five factors and weighs whether the benefit sought by the applicant outweighs the detriment to the community of the neighborhood. But what’s the benefit sought by the applicant here? She’s looking to put the property back as it was so that she can have a home built here with the tennis courts and use this second lot. It’s a substantial, substantial benefit that’s being sought here. It’s not nothing, building (Inaudible) some like that but some small shed that’s by the side of the…the property or something along those lines. This is as far as property use goes just about as major as it gets use of an entire separate building lot. What’s the detriment? Well how do measure the detriment? The way you measure the detriment is you look at the five factors prescribed by Town Law for this Board to weigh in making that determination. What’s the first factor? Undesirable change in the neighborhood, well you’ve heard a lot about how my gosh if there’s a house built here it’s going to change the neighborhood. But up until 2007 that’s exactly what would have occurred and this is not…not in keeping with the lot problems in the neighborhood. There’s many, many lots that are about this size. Now I’m not going to stand here and tell you there’s no detriment. Yes, if this lot is built upon it’s going to be different than having the vacant lot there. The question is how do you weigh that? Does that outweigh the benefit to the applicant here? Because of speculation that well gee if the house is built maybe…maybe the property values will go down. Well do you know what maybe they won’t? That’s…that’s pure speculation on their part whereas there’s an…an obvious tangible benefit to the property owner here. Now I’d suggest that there’s just not…not a substantial undesirable change to the neighborhood and a…really a…give that much weight to that factor. The second factor whether the benefit could be obtained by means feasible other than a variance. Well clearly it can’t, I mean, if you don’t have a variance you can’t build on that second lot. Next one is a…well it’s a big one, how substantial is the variance. A…there are a number of variances and some of them are pretty large. They are but what’s the significance of having a number of variances and the size of them? Well I think you have to go back to what the impact of having that many variances and the size of them will be. When you look at the fact that most of the things that require a variance are already there the house, the tennis courts, etc. there’s not really that much detriment of granting those variances. The lot coverage, the lot is already covered. Surface area coverage, surface area coverage is already there. The only additional we’re talking about is the house here and that’s not going to make any big difference as far as drainage or anything else. So again, yes that’s a factor that maybe weighs against granting it but in weighing it how much, you know, weight should you give to it? I would suggest not very much. The facts that we asked for a large variance doesn’t in and of itself require a denial. The impact on physical environmental conditions a…in the neighborhood? Nominal at best, I mean what environmental factors are we talking about here? There’s not going to be drainage impacts. Yes, a house will be built so there is some change but I don’t think that it’s a particularly detrimental change. So you say, oh my gosh, the fact that there is going to be a house there requires denial of the variances. And lastly is it self-created? It’s self-created. You can’t get around that. The a…merged lots yeah, maybe there were mitigating circumstances but as I’m sure Counsel will tell you the mere fact that a…a…a hardship is self-created at least in the terms of an area variance does not require the denial of the application. So I think when you sit back at the end of the day and weigh the benefit to the applicant which is very substantial here against the detriment to the neighborhood which is…might there be some? Yes, but it’s sketchy at best. I mean, perhaps there’s going to be some problems, perhaps there isn’t. I…I think that the right decision for the Board to make is to grant the variance and allow them to return the property to the condition that it was in just a few years ago.

Mr. Romero: Just to cap off, Ed Romero 2 Glen Lane, a…just so you know we have another member of our community that just entered to support this issue. To state that we’re going back to what it was seven or eight years ago is not true. We’re asking for a house now. There was no house seven or eight years ago. That was the problem so it’s not a just flip it back to, you know, back to the future when we’re saying we’re building a home there among these huge home so that’s not the same. It diminishes the value of our homes and that’s the viewpoint that the neighborhood has. A…he admitted himself that there’d be a detriment to the neighborhood. He just said that. Will there be a detriment? Yes, there probably will. So he admitted it. There is a detriment to the neighborhood. In terms of a…the effect to the neighborhood in terms of a…environmental we don’t know. We have a problem on Glen Lane we’ve complained it many times to the Town. There’s a flooding on Balmville Road every time it rains. Every time it rains it comes down Glenville…a Glen Lane and it’s destroying our private road. We have to pay for that. So what happens when you put another structure? Where does that water run off to? We…we already determined that the…with Joe at the last meeting that the tennis court although is not permeable. It…it has runoff. That runoff it starts from the hill at the top of 65 and…and 67 Balmville and it goes right down to Glen Lane. It comes through my house and every time I have a problem with the flood so that…there is a problem with that. Where is all that water going to go when another structure goes up on that road? And a…in terms of whether there’s another option, sell the land. It’s one lot, the reason it’s one lot is because they wanted it to be one lot. Let’s stop going back to it was two lots because they didn’t want that. They wanted this now they don’t want it because they want to sell two lots and it’s more advantageous for them to do that. But while they lived there, they lived under the grace of having one lot so they could have a tennis court and reaped the benefit of that and…and that’s where we’re at now. Now we’re talking about two lots for the benefit of them, not the neighborhood. Just don’t build, sell the land; it’s Balmville they’ll make money there.

Mr. Maher: Okay, I have two questions for you.

Mr. Romero: Yes.

Mr. Maher: Is the new…would the new residence be visible from your house or your road?

Mr. Romero: It would be visible from my house, my property, yes it will.

Mr. Maher: Okay.

Mr. Romero: Yes, it will. That is true.

Chairperson Cardone: (to audience member) Excuse me, only one person can be talking at a time.

Mr. Romero: (Inaudible) My lot goes all the way to the other side and there’s a wall, I can see all of Chestnut from my backyard.

Mr. Maher: Okay. And, so you…you feel there’s going to be a…a diminishing value of your residence?

Mr. Romero: That’s true.

Mr. Maher: How…how do you…can you justify that?

Mr. Romero: We have so many houses for sale in that area right now. These are huge homes. There’s a certain criteria that when you buy a house, it’s a FHA loan and then the people that buy houses in Balmville. When you’re selling smaller homes you bring different people to the area. It’s not that neighborhood. These are not tiny houses. These are large homes in that neighborhood. Yes, I feel like that would be a detriment to my neighborhood to put a little cottage like he says in at the shadow of all these mansions. The house behind them is a mansion up on a great big hill. The house behind that house is a mansion. All of these houses are gigantic homes and then we’re going to have two little shacks on the side of the road over here.

Mr. Maher: So the other homes that were identified as far as being substandard lots currently that they all have residences on?

Mr. Romero: I’m sorry?

Mr. Maher: The…the lots that were identified on Atwood, Balmville and Chestnut…?

Mr. Romero: I…I did not get that paper I know where…

Mr. Maher: No, I understand but I’m saying…well you’re familiar with the area?

Mr. Romero: Actually if you want to drive down the road go make a left and go up Lester and go off our path and look at the houses up there then go up into that area. Yeah, those few houses there. He said there was seventy-two of them and only fifteen of them are within the realm of what he is talking about. The rest of them are all an acre or more.

Mr. Dates: It’s the, excuse me, I said there were a…there’s seventeen that we looked at and fifteen were (inaudible) below…

Mr. Romero: I thought you said seventy-two homes.

Mr. Dates: No, no.

Mr. Romero: So you’ve only looked at seventeen? And then he identified…

Mr. Dates: Seventeen directly adjacent to...there’s fifteen.

Mr. Romero: …identified that you didn’t even address the houses that were adjacent to the house that you are talking about that are all over an acre. The houses right next to them are all that size.

Mr. Maher: Well you…you…

Mr. Dates: That’s not accurate.

Mr. Maher: …you discussed the…

Mr. Romero: I’m sorry I don’t have the…the access to this stuff that you have. I’ve got Google maps so I’m trying my hardest to fight for my neighborhood right here.

Chairperson Cardone: If you’d like to look at this. You can take this (tax maps) I have two of them.

Mr. Romero approached the Board.

Mr. Maher: Based on…based on Mr. Hughes’ testimony and Mr. Manley, if it’s in fact it’s a hamlet then you have to encompass a larger area and look at a larger view of…of the homes in the area. So if in fact that’s the case then…then there would be multiple smaller homes in the same are.

Mr. Romero: But there are larger as well there.

Mr. Maher: I understand.

Mr. Romero: Good, on the same street…

Mr. Maher: You’ve identified. No you’ve identified that but my point is that if it in fact is a hamlet you’re looking at a larger area.

Mr. Romero: I’m not saying that those houses don’t exist. This house does not exist. We’re trying to prevent it from existing. So even those…those exist let’s not add to it. We’re trying to preserve the integrity and the character of this neighborhood. It’s right…right across the street from the Powelton Club. That’s what this neighborhood is. It’s well known everywhere. Everybody knows Balmville tree, they know the Balmville neighborhood, they know the houses and this is not indicative of that neighborhood and we all know that. We know that we can say as much as we want about little homes that sit off on the side but that area right there has mansions across the street. This gentleman right here owns a mansion across the street, seven thousand square feet, that’s a huge home to put a small little…I don’t even know what the square footage of the house proposed what’s the square footage…

Mr. Dates: It’s about two thousand square feet.

Mr. Romero: About two, for a two home? One level?

Mr. Dates: Two story. There’s two.

Mr. Romero: Two story?

Mr. Dates: Yeah.

Mr. Manley: I’d like to maybe just if I could, for the Board’s benefit, as well as the people in the public, I’d like to read just a section of the Comprehensive Plan that identifies specifically Town Centers, Hamlets and the Community Character Conditions. It shouldn’t take too long to read but I’d just like to read it into the record.

Unlike many other communities in the Hudson Valley, the Town of Newburgh, in part, lacks a defined town center. For many years, the City of Newburgh served as the real “downtown” for the local area. In recent years, however, economic conditions and other factors have led to the decline of the City’s urban core, while at the same time surrounding communities like the Town of Newburgh have grown. Today, with a population of over 27,000 people, the Town is a sizeable community, but it is still a community without the defined center or downtown. Instead of a town center, the Town of Newburgh has developed around specific Hamlet areas such as Balmville, Middle Hope, Fostertown, Cronomer Valley, Gardnertown, Orange Lake, Leptondale, East Coldenham and others. The Town’s hamlets are more than just the locations of particular neighborhoods or commercial centers. Like traditional hamlets in the Hudson Valley and New England, they have formed around some kind of distinguishing characteristic - a crossroads, an important geographical feature such as Orange Lake, or the location of a school or firehouse. Research and discussions during the Plan process indicate that at least 14 hamlets existed or still exist within the Town of Newburgh. Many residents in the Town strongly identify with the areas in which they live. For example, with its classic old homes and views of the Hudson River, Balmville is a part of Town with a clear sense of place. During the last decade however, an influx of new residents have made the Town their home and may have little knowledge that they live in one of the many hamlets that are important to the Town’s character. In some areas, time and development have eaten away at the identity of the Town’s hamlets, but in many cases, the basic hamlet elements remain, and within the planning and careful design and should be strengthened.

And that’s out of Section III - page 32 of the Town of Newburgh Master Plan.

Mr. Romero: And I agree with that if it’s…if I’m hearing that correctly it’s to keep what’s going on going and not to add more little homes to this wonderful place that I sought out and live. You know if we had one of the smallest State…Federal farms in the country there…I was very proud of it. When I go someplace that’s what the story of where I’m from. And I as I look at this map the surrounding homes are…the properties are huge…they’re huge. So thank you for showing this to me it just confirms what I’m saying. The surrounding area…if you want to drive down the road and make a left on Lester and see normal homes yeah, but, the whole surrounding area here is all an acre or more - one point nine, they’re huge. Please do the right thing. Thank you.

Mr. Gaba: Inaudible.

Chairperson Cardone: Yes, and then the gentleman in the back and then the lady over here.

Mr. Gaba: I just wanted (inaudible) with this gentleman’s comments.

Ms. Gennarelli: Can you get a little bit closer (to the mic) Steve?

Mr. Gaba: Yes. A…the size of a lot may be one issue but as we’ve discussed at some length there are other lots that are similar in size to this in the area quite few of them. The size of the building appears to be the other issue and frankly the applicant takes issue with the characterization of the house being built there as two little shacks. Whoever might wind up (inaudible) building these eventually houses and subdivisions in the Town of Newburgh are subject to architectural review in front of the planning board. Nobody is going to be running in there and building a house that’s not in keeping with what’s in Balmville already. Any house that we build will be in keeping. Perhaps not in you know, dimension wise size but certainly in appearance and certainly in worth. So the idea that is being used as some sort of dodge to…to build a small subpar building there simply has no foundation. Whatever is built there eventually will be in keeping with the property that’s across from the Powelton Club and in that neighborhood.

Chairperson Cardone: And now that gentleman in the back. You have to come up to the microphone or…

Mr. Puello: Yes, what I was going to say I have…I can’t be standing up front…

Chairperson Cardone: Someone will bring you the microphone. Thank you.

Ms. Gennarelli: It pops off, thank you.

Chairperson Cardone: And just identify yourself for the record please.

Mr. Puello: Hi, my name is Manny Puello I live at 56 Balmville Road. Part of my problem is is that unfortunately, you people did your job, I happened to be injured during the time frame that the…that these meetings were supposed to have taken place and I did not follow up. That’s my fault. Okay? But there’s a couple of things that concern me about this; number one that road is constantly flooded in the wintertime and cars, when cars were out there they would just jut out of the driveways, etc. I don’t know what the actual problem or the actual zoning is where there not…the land usage is permissible and or not. Like I said I did not do my homework I was at the Hospital for Special Surgery. Okay? I was told today. Now I know one thing, the Village of Monroe has a lot of hamlets and it started out with one group of people just turning around and creating a hamlet and all of a sudden Kiryas Joel is a big problem in Orange County. All right? When you start changing the culture of a community it allows other people to do the same, I mean, my home is…I forget how much acreage I have it’s like one and a half, two acres whatever but it’s certainly more than enough with that driveway to just turn around and create another structure back there. The taxes that we pay in this Town, I mean, my taxes went up like ten thousand dollars in a year and a half. I called up the Town they explained to me what happened and I said, fine. This is the cost that we bear for living in Balmville and in the City of Newburgh...in the Town of Newburgh. Part of that what we accept is to what the status quo. I knew moving in here, having had a lot of friends in Tuxedo, and so, the house that I was buying had a lot of little carriage…what we call carriage houses back there that were done for workman of the people who owned these homes. So they may not have been standard but they were built for different families, etc. That’s part of the culture of the…of Balmville. You weren’t going to rip those houses down when people started selling off. It’s that they took…the workman’s home and they let people live in it or sell it, etc. whichever. I wasn’t here for that but I a…live next to very nice doctors and they constantly try to explain the history to me. So as far as I’m concerned when I…and I’ll…I’ll have to start looking into it there are certainly things that disturb me. I usually don’t a…interfere with what my neighbors want to do as long as it doesn’t affect other neighbors, leeching fields, water tables, that sort of stuff. I haven’t looked into it like I said. I expect that you guys are professional enough to do that but these are concerns that I have. And if you start saying oh well, you know, it’s only like a little two thousand square foot house and this, that, etc. Hell then what’s to keep me from buying the property next door, ripping that house, my house and turning the whole thing into a development? Because seriously once you start leaving…leaving cracks I guarantee you somebody will find a loophole. I’m not a very bright man but I hire very bright people. And all I can say is is that it’s my fault I did not keep up on this. You know, I have to depend upon your judgement to do this. Okay? But I am going to say one thing I will…that…to say that that won’t change the culture of Balmville, that’s absurd. What did you…you know, I had problems with…I had times when I first moved here with the people who lived across the street because as a banker I had a lot of a…people who would come up. You know what, some of those same bankers who are as snobbish as hell, they live in Saddle River, Franklin Lakes, all these areas you know what, they used to stop and talk to this nice little Mexican man on the corner. Okay? And they thought it was charming that, you know, even with his arm cut off and everything else, he would still try to clean up his property. They respected that. I respected it. Okay? So it’s not a question of, you know, I don’t like something or anything else…you have to learn as a community to change but I don’t think that this really approves, I think it opens the floodgates to a lot of different things. I ran (inaudible) for Leman Brothers for twelve years, trust me if there’s a loophole people will find it. And that’s all I have to say and since I don’t know anything I better find you folks to do what you got to do.

Chairperson Cardone: Do we have anything else? Okay, the lady in the back please use the microphone.

Ms. Carlstrom: Hi I’m Sue Carlstrom…

Ms. Gennarelli: Could you just tilt that down towards you. Yes, thank you.

Ms. Carlstrom: I’m Sue Carlstrom, my dad bought the property in 1962 so we’re not new to the area and in nineteen about sixty four he bought the other lot. And in 1980 he built the tennis court and it was a separate lot. So we’re not new to the area and we’re not trying to change the area at all. And as far as just throwing up a shack so we can sell it we’re considering living there. So I’m not…and I use the court so that’s all I have to say. And as far as runoff from the court…it doesn’t do that, it absorbs. We don’t…we don’t get it in our yard so how did he get runoff from…from this court if it doesn’t even go in our yard. How could he get runoff way across the street on the other side of the road? He acts like he’s a person who lives right across the street from…from Chestnut Lane and he doesn’t. He lives across the street from Balmville and we’re not going to break it up and put two little shacks there. We’re going to put a nice house. So that’s all I have to say. We’re not changing the neighborhood.

Chairperson Cardone: Thank you. I have to say if you have something new to say, okay, Mr. Hughes.

Mr. Hughes: Hughes, Middle Hope. I don’t know if we got a clear report from reviewing the minutes of what went on for the five or six swipes at this project and property has been through. There were three different opinions that there is water, there isn’t water, there is sewer, there isn’t sewer. To my knowledge everything in that area is off of well and septic and that nobody in this soup is connected to the Town water. Is that so Jerry?

Chairperson Cardone: I asked Jerry at the beginning and he said that there was Town water and a private septic system. That was my understanding all along.

Mr. Hughes: Okay so there’s never going to be anything there but septic as far as we know it is now and I’d like to know if there is going to be development that the new places would be commanded to become part of the Town’s water system both the existing house and the new house. And what do you do about, you’re worried about parking and driveway and lot coverage where do you put the septic on the new one and what do you do about stopping the pissing in everybody else’s well?

Mr. Dates: May I?

Chairperson Cardone: Yes.

Mr. Dates: Just to point out a couple of things, both of the lots will be serviced by Town water a…the proposed lot does have a…a on-site septic system that we’ve done our soil testing and percolation testing and provided the design to this Board a…for the application to be accepted. I’d also just like to point out this R-1 zone; the minimum required square footage for a lot is 40,000 square feet. 40,000 sq. ft. which is below one acre technically a…and that the…also the requirements in R-1 zoning is a habitable floor area per unit is fifteen hundred square feet so the zone itself is setting up smaller standards. And when I think about hamlet I think about smaller lots and I think we’ve indicated there are some of these small lots around it and it’s also mixed in with some larger lots so I…I don’t think that that a…it’s…it’s detrimental to a…to the character. So I think there’s pieces of the…of the zoning I just wanted to a…a…to clarify for the lot area and the size of the structure that’s, you know, the minimum size of the structure that’s permitted in the zone.

Mr. Manley: So I guess my question…my question to you would be if that’s the case a…why wouldn’t the Town rezoned it to R-2 instead of R-1 and make smaller lots sizes? If it’s served by Town water and what you’re saying is true that, you know, in…in hamlets the…the size is much smaller then why wouldn’t the Town, in the Master Plan, identify this as being an R-2 zone and then we wouldn’t be here and then that way you could have lots of small lots throughout the whole community? Why did they maintain it as an R-1? That would be my question back to you.

Mr. Dates: Well why wouldn’t they make it minimum two acre lots? I don’t know…I don’t know the mindset when they…they set the Public Hearing at that time but they…they seem to be going towards a smaller lot for this area. A…like you said when you have a…municipal a…facilities like water then you can get away from this septic, well separation, you know, it’s…it’s conducive to smaller lot areas. So a…I think in my opinion I think they were looking to go towards smaller lots for this…for this area.

Mr. Manley: But that’s actually contradictory to the Master Plan because the Master Plan has identified this as an area where they want to maintain the integrity of the lot. That’s exactly what, you know, I received from the Master…when I read the Master Plan that’s what I interpret from, you know the Master Plan and from a lot of the design professionals that I…I speak with and that seems to be consistent so I think you and I are on two separate pages when it comes to…you seem to think that the Town’s theory behind that is to…to grow that area versus you know, restrict growth and keep…keep it at a minimum in order to preserve that particular hamlet.

Mr. Dates: I don’t think the…I didn’t mean a…it would look to grow that area but it’s also not looking to create sprawl in that area with large lots and things like that. I know you mentioned a…don’t quote me but I think you talked about a…the larger parcels with views from the river… Is that what…is that what the phrasing was…the Balmville…?

Mr. Manley: That is how they identified Balmville as having Hudson River views and you know the larger…the larger lots.

Mr. Dates: Larger lots which around this area as we’ve shown is not indicative of that statement a…I think…I think that we…we’ve provided a…the…the collective a…number of lots in this…in this area. And like we could have gone farther out with out with our study a…for small lots, I think we would have picked up some more for this area as well so…it’s…it’s a mixture. You know, I don’t think that there’s…there’s any one particular lot size that’s a…the average I would say for this whole area.

Audience Member Inaudible

Mr. Dates: I think we’re down to point two two acres on…

Chairperson Cardone: Excuse me, only one person may speak at a time and you have to wait to be called on.

Mr. Dates: Some are as small as point two two acres with a home on it.

Mr. Manley: And you’d have to look at specifically when that was constructed and you know, when the…you know the zoning changes a lot of them took place in 2005 when they made, you know significant changes. For example, Coldenham, 17K, Rock Cut Road that entire area that was re-zoned from R-2 more dense zoning to R-1. So there is an area of the Town in which they saw that they had R-2 and because it was identified as a hamlet they changed the zoning from R-2 to R-1. So again, that’s an indication to me that the Town was trying to maintain an integrity and that, you know, they were concerned build out. So that’s one of the reasons why I, you know, I did identify that you know, Lot 1and Lot 2 are going to be like R-2 lots in the Town versus R-1 lots based on their size.

Mr. McKelvey: Some of those lots of the area were R-3 too.

Mr. Manley: Correct.

Chairperson Cardone: Okay, there are two people with their hands raised in the back. First the lady and then the gentleman.

Ms. Polhamus: I’m Sally Polhamus I’m the applicant. I just want to talk a little bit about the character of area where we live. The reason that there are mansions and then there are smaller houses which, I don’t think I would call them mansions but they are larger houses, is this was an area that had large estates and back in the ‘50’s probably they were subdivided. So directly behind our house on Balmville Road there’s a larger house that was the original house and then they subdivided and made tiny lots all around them. This was done in the ‘50’s. And the house that’s adjacent to us is a similar one. It was a large house and then it…put a subdivision next to it which was the carriage house and then another subdivision which is a raised ranch right in front of the big house. That’s the character of the neighborhood. It’s a mixture. There are big houses and there are tiny lots. All at Beech Street and Downing Avenue the same thing, they were very large estates that were turned into smaller areas. All we’re trying to do is put it back the way it was and instead of having a strange L-shape lot with two front yards we’d like to have the lot on Chestnut Lane become a legitimate lot. The house next to it, which is the Drake’s house, is a small house. The houses on Chestnut Lane in that area are not large houses. The house on the corner is not a large house. There’s a tiny lot wedged in between there that probably will never have a house on it because it’s too small. To…to us it makes more sense to have a lot with a front and a back than to have this big L-shape with an empty space up there where all kinds of mischief could take place. We don’t like having that empty lot back there and I think whoever eventually buys what was my mother and father’s house wouldn’t like having that big empty space plus there’s a tennis court there. Everybody seems to be forgetting this. This is a beautiful piece of property that overlooks the eighth fairway of the Powelton Club. Whoever puts a house there is going to put a beautiful house. Houses don’t have to be huge to be beautiful and they’ll have a tennis court in their backyard. This is not going to be a place where I don’t know who they are worried about is going to move in here but they’re going to be people that are normal Balmville residents. Somebody that wants to play tennis and overlook the eighth fairway and that’s the character of Balmville, we’re not changing it.

Chairperson Cardone: Thank you. The gentleman back there.

Mr. Shaw: Good evening, my name is Gregory Shaw; I live at 81 Balmville Road a…I practice at Shaw Engineering for about thirty-five years just to give you a little background. Just some odds and ends a…Balmville Road and Chestnut Lane does have public water a…but does not have sewer a…and one of the reasons why they probably zoned it R-1is that while we’re blessed to have Town water not that many streets in that area does have Town water and if you don’t fully need a builder’s acre or forty thousand square feet to put in a well and a septic system. All right? So when took a…take a look at the eastern side of the Town you pretty much have to lay out a lot at forty thousand square feet just to provide the separation distances between the wells and the septics therefore probably the R-1 zoning. Okay?

Chairperson Cardone: Thank you. Yes, do you have something new? Okay.

Mr. Romero: These are clarifications because we the two women that spoke and the one sister said she was going to live there. The second woman just spoke and said whoever builds on the…the open lot will be in…in line with Balmville and whoever buys the other house. So who is living there? The purpose…and they told me themselves that they were selling for the purpose of making a profit. Also the lawyer described the house as being a...in line with…with Balmville but the size. You know, so you can’t have it both ways. You can’t be in line with Balmville and not be so it’s either one or the other, where you are making a home and you’re doing something that’s in line with Balmville or you’re not. You’re going with the Master Plan or you’re not. You’re R-1 or your Master Plan it’s…it’s obvious that’s there is an issue here. (Inaudible)

Chairperson Cardone: Do we have anything else from the Board?

No response.

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

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

Chairperson Cardone: I’ll second it.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 8:42 PM)

ZBA MEETING – AUGUST 27, 2015 (Resumption for decision: 9:45 PM)

SALLY N. POLHAMUS 65 BALMVILLE ROAD, NBGH

 (43-3-34.2) R-1 ZONE

Applicant is seeking area variances for the lot area, lot width, one side yard setback, combined side yards setback, maximum lot building coverage and maximum lot surface coverage to keep the existing dwelling on Lot #1 and area variances for the lot area, lot width and lot surface coverage and Section 185-43 (E) tennis court screening and (F) no tennis court shall be located in the front yard to keep the prior built tennis court and also accessory structures (gazebo) must be in a side or rear yard to keep both the prior built gazebo and tennis court as an accessory use contingent on the building of a two-story single-family dwelling on Lot #2 of a proposed two-lot subdivision before the planning board.

Chairperson Cardone: On the application of Sally Polhamus, 65 Balmville Road, seeking area variances for the lot area, lot width, one side yard setback, combined side yards setback, maximum lot building coverage and maximum lot surface coverage to keep the existing dwelling on Lot #1 and area variances for the lot area, lot width and lot surface coverage and tennis court screening on Lot #2. This is a Type II Action under SEQR. Do we have discussion on this application?

No response.

Chairperson Cardone: And I know we already have had an awful lot of discussion on it. Do I have a motion for either approval or disapproval?

No response.

Mr. Donovan: I would just remind the Board, you already know this but you have up to sixty-two days from the close of the Public Hearing to render a decision so if you feel like more time to deliberate you can do that. Alternatively you certainly not required to do that if you are ready to move tonight one way or another you are certainly able to do that.

Chairperson Cardone: What is the Board’s wish on that? Are you ready to make a decision this evening or…do you need more time?

Mr. Scalzo: I’ll make a motion to defer decision for one month.

Mr. Donovan: Well you could do that Darrin, you don’t…you don’t need to do that. I don’t want to be in a position where you…you say one month and then you have to…decide next month. You have sixty-two days.

Mr. Scalzo: Okay.

Mr. Donovan: So if it’s…it’s the pleasure of the Board to put it over to next month then you could just do that. Okay? You’re not holding the Hearing open, the Hearing is closed a…you could just…if that’s the consensus of the Board you could just defer it to next month’s agenda and then make a determination whether you want to decide then or not because you still have the total of sixty-two days.

Mr. Scalzo: So I need to revise my motion to hold it open or…close?

Mr. Donovan: I…I don’t know…it’s not a motion to make a decision so it’s not really a motion.

Mr. Scalzo: Okay, what he said.

Mr. Donovan: But if you want to say a motion to place this on the September agenda for further consideration I think that would be appropriate if that’s what you want to do. I don’t mean to put words in your mouth.

Mr. Scalzo: I’m only at one end of the table so let’s a…

Mr. Manley: He also has the option of making a motion for Reserved Decision, correct? Which would give us…

Mr. Donovan: My point is you don’t have to do that. I mean don’t have to…you’re not…you’re not compelled to decide so you don’t need a move to do that but it would, I think, to move to put it on the agenda if that’s what the consensus of the Board is.

Chairperson Cardone: So Darrin you did make that motion?

Mr. Scalzo: Yes, Grace.

Chairperson Cardone: And do we have a second?

Mr. Donovan: And just to be clear Betty, the motion is to…

Ms. Gennarelli: Reserve…

Mr. Donovan: …we’ll place this matter on the agenda for September…

Ms. Gennarelli: …September 24th…

Mr. Donovan: …for further consideration.

Ms. Gennarelli: …for further consideration.

Mr. Donovan: Is that all right, Darrin?

Mr. Scalzo: Sounds perfect Dave, thank you.

Ms. Gennarelli: I think I had two or three seconds.

Mr. Maher: Chose whoever you like.

Ms. Gennarelli: I’ll choose one, Mr. Levin. Okay. Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: No

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:49 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 8:42 PM)

JORG UWE FRISCHKNECHT 2 CHEVY STREET, NBGH

 (70-3-1) R-3 ZONE

Applicant is seeking area variances for the front yards setbacks for an existing house on Lot #2 of a proposed two-lot sub-division (proposed Lot #2 would have two front yards Chevy Street and East View Road).

Chairperson Cardone: Our next applicant held over from the June meeting Jorg Frischknecht.

Mr. Cella: Good evening, as stated this is a…I’m Jonathan Cella the engineer for the applicant who is the owner of the property, Mr. Frischknecht. He is unable to be here tonight. This is a proposed two lot subdivision that’s before the Town of Newburgh Zoning Board…a…planning board, I’m sorry and there’s one existing residence on the property which fronts on both Chevy Street and East View Road which is a pre-existing building and we’re requesting a front yard set…front yard setback for both Chevy Street and East View Road. Chevy Street there is a thirty-two foot existing and forty foot required and on East View Road there is a twenty-eight foot existing and forty…the same forty foot is required. The existing residence is on a…Lot #2 of the subdivision and a…Lot #1 of the subdivision is in conformance with all zoning regulations of the R C…the R-3 district. Both the existing residence and the proposed residence a…are…would be serviced by Town water and sewer. We are aware…we are aware of the history of the property as there been complaints of the…the neighbors of a…excessive cars on Chevy Street. A…we believe that this has…has been alleviate…a…has been addressed by the owner and the current tenant is using the…the existing driveway on East View Road. A…the house is existing and we’re not proposing any changes to the house. The subdivision a…includes a small dedication to the…to the Town of Newburgh as required for along Fifth Avenue of a property to…to give the a…currently the property goes to the center of Fifth Avenue and with the…with the subdivision we’d a…dedicate the required twenty-five foot from the centerline. Sure…I’m sure all of the Board Members have been up to the property…the existing residence a…quite attractive. The building a…is interesting and again the building is existing. And that’s the only…only variances we’re…we’re requesting is for the existing structure.

Chairperson Cardone: Actually the reason it was held open was that it wasn’t properly posted.

Mr. Cella: Correct and I…the a…owner put the new signs up.

Chairperson Cardone: Right, I saw that they were there.

Mr. Cella: Correct, this application was actually carried over from the June…

Chairperson Cardone: Right.

Mr. Cella: …meeting and we’ve been here the June, July and now August.

Mr. Scalzo: Jonathan, at the last a…meeting you mentioned your client was going to remove the concrete pad parking support that he can access off of Chevy Street, is that still in the plans or…?

Mr. Cella: It’s still there a…he would…he will remove them though…that would be…that would be a condition of the subdivision.

Mr. Scalzo: Dave, was it…is there, not that we have the authority to but is there a Title issue now for the rights of Lot 1, it mentions nothing about Chevy Street in the…

Mr. Donovan: Well that’s one of the…one of the issues that we originally identified because I guess physically they were gaining access on Chevy Street and then driving around East View out to Fifth and I think Darrin with your good homework we were able to figure out they legal access to East View but it was silent as to Chevy which would indicate that they don’t have the right to use Chevy but they do have the right to use East View. That was the concern that if they didn’t then how would the existing people get out to Fifth but I think the information you provided indicates that they do have the ability to get out to East View.

Mr. Scalzo: Okay. Jonathan I see the proposed driveway is coming out between the two stone pillars?

Mr. Cella: Yeah, the existing, existing stone pillars.

Mr. Scalzo: Has the planning board asked for any sight distance study for that? Because that’s forty-two inches high and the nose of a car sticking out it does…it’s not a precipitous slope but it does drop as you head a…towards…towards Route 52.

Mr. Cella: I actually did a…some sight distance, I might have not…yes, I did a…I did some sight distance measurements I believe they are on the plans I submitted to you? Are they?

Mr. Scalzo: And they meet the Green Book standards?

Mr. Cella: A…the existing a…Chevy…I’m sorry a…Fifth Avenue is a thirty mile per hour speed limit…it…they’re…they’re sufficient. We have a five hundred foot sight distance to the a…to the north and two hundred fifty south. And that was the original driveway of the…the property.

Chairperson Cardone: Do we have any comments from the public? Okay, please state your name.

Mr. Cote: I’m Alan Cote; I live at 12 East View, across the street from this gentleman. I’ve got a lot of questions for this guy. First, as I addressed last time about a fuel oil tank that he disconnected from his house and dumped it on his property and you people guaranteed there’s no fuel in it. I run off of well water at my house and a…I want to see where somebody has got it in writing that I’m not going to get diesel fuel in my well in the near future. A…nobody has made him clean it up, it’s an R-1 residence, he’s still renting it out as a 2-family house. There’s still beer bottles in my front yard which I don’t appreciate, garbage all over his place yet that he refuses to clean up and he’s asking for this? No. And you’re a hundred or two hundred foot sight one way; let me tell you buddy, what plane are you driving down Fifth Avenue because you got maybe a hundred feet if that? I’m six foot and I drive a 4x4 truck and I come out high on Fifth Avenue and I can’t see down the street. I’ve got to nose my vehicle into that before I can actually see down the street. So you must be in a plane that I’m not in seeing down Fifth Avenue. Thank you.

Chairperson Cardone: Do we have any other comments from the Board?

Mr. Cella: To my knowledge the applicant had addressed the a…the issue of having multiple families in the building and that there is only one family. Again a…that was to my knowledge. We went through the process, with the Town Building Department, to remove the…the second kitchen on the second floor.

Mr. McKelvey: It has been removed?

Mr. Canfield: I don’t know. I’d have to verify that.

Mr. Scalzo: I believe Joe Mattina at the last meeting confirmed that it had been removed.

Mr. Cella: Yes.

Mr. Canfield: At the last meeting I wasn’t here, Joe covered it.

Mr. Cella: You’re weren’t here but the Building Department had clarified that, that…that the kitchen was removed.

Mr. Canfield: Easily verified.

Mr. Cella: If the applicant had…did convert this to a 2-Family residence he would have to come back before you for additional variances. We are not requesting those variances at this time and there is no plans to do…do so either. There would be additional lot variances, for lot area you’d have to have approximately a hundred…I think it’s a hundred thousand square feet in the…in the a…R-3 zoning for a 2-family so that would be a substantial variance that I told him he would never get and if he did want the 2-family that would be a…again another application.

Mr. McKelvey: Well the gentleman stated that there’s two families living there now.

Mr. Cote: Sir, as I stated there was two families. He’s using the upstairs right now as like a boarding house. The rooms, he rents out the rooms upstairs because as I do live across the street and do look out on to this man’s house and for a while when we first started this mess back in June he emptied out the top floor. But now the top floor is being reoccupied again and what they’re saying they’re parking in their driveway well they are still parking out on Chevy Street and in front of Chevy Street and I notice the lights are on upstairs with different people coming and going. And besides the family downstairs because the family downstairs is quite polite, they are very nice. And I see other people going through the center door, upstairs, lights coming on and staying on all night and I mean two and three o’clock in the morning because as I said I drive a truck and there’s a lot of people still up there. So I know it’s not the family downstairs going upstairs because you’d have to go through one door outside and into another door to go upstairs.

Mr. McKelvey: Thank you.

Mr. Cella: I met the…the family that was occupying the…the first floor in…a…in June and they did seem to be nice people. I was not aware of anyone living upstairs but…

Mr. McKelvey: Can that be checked, Jerry?

Mr. Canfield: Yes, it can.

Chairperson Cardone: And the oil tank he was referring to was checked?

Mr. Canfield: I’ll verify that as well.

Chairperson Cardone: Do we have anything else from the Board?

No response.

Chairperson Cardone: Oh, Mr. Hughes? Or…?

Mr. Hughes: I’ll defer to the guy who lives across the street.

Mr. Coleman: I’m Ron Coleman, 9 Chevy Street and as my other neighbor had stated they are still using Chevy Street to ingress and egress out on a regular basis and also a…they did have the posting signs up however the date on all those signs say June twenty something which was the first meeting. So I don’t know if that’s correct and what needs to be there for the public to know when the date is but I did have a couple of neighbors and we were actually here last Thursday because I mixed up dates and they were unable to make it tonight.

Chairperson Cardone: Well once…once it’s posted for that date which was in June then it was held open, we then do not re-notify because the notice is given at the meeting. So the fact that he has the original Notice which would have been the June date and then also in July people were informed that it would be continued until August.

Mr. McKelvey: We did have it open because one sign was removed.

Mr. Coleman: Right, well I know the last one there was a sign up for a week and then that was it.

Mr. Hughes: My name is Hughes, I live in Middle Hope. Just some housekeeping, the twenty-five foot dedication is required by the Town planning board because they don’t really own the road there on Fifth Avenue. Were those dimensions deducted from the front lot pertinent to this application and if not, those dimensions need to be corrected. The other part of it is and the question has come up but I don’t think it’s been answered or resolved is Chevy Street was an ingress and egress, right-of-way for two parcels at the top at the end of the road. This parcel has no legal right to it but yet they continue to use it for parking, it prevents snowplowing, it prevents emergency vehicle access and it needs to be memorialized at this time that that parcel with the existing house has no entitlement or right to block that Chevy Street. That Chevy Street is twenty feet wide and it’s there for ingress and egress for two properties in the back only. So the housekeeping on all those dimensions needs to be looked over and if it hasn’t been deducted from the twenty-five feet from Fifth Avenue it needs to be done now and it needs to be memorialized that Chevy Street is an attachment to a property for those properties only and not to be enjoyed by this subdivision.

Chairperson Cardone: Well I think that was stated very clearly at the past meetings that they are not to be parking on that street.

Mr. Hughes: They are not even supposed to use it.

Chairperson Cardone: Right.

Mr. Cella: The a…the bulk requirement for the a…lot area do reflect the a dedication…along Fifth Ave…as well as the setbacks at all…all bulk requirements a…reflect the dedication. And at one point this…this parcel was also a…three…three past parcels.

Mr. Scalzo: Jonathan, I’m looking at the survey and the dedicated parcel from the center of Fifth Avenue on the north side says twenty-five point zero three in the a…c, which stands for calculated. And then twenty-five, eleven on the south side and then c, again for calculated. But it also shows the double yellow lines and there is a substantial distance between the double yellow lines and what the twenty-five…a…if the dedication is from the centerline I would…it would lead me to believe that line should be further back. It’s twenty-five feet off what the center of the traveled way would be which is the double yellow lines. Do you follow me?

Mr. Cella: I do. A…

Mr. Scalzo: I…I don’t believe that would be a substantial a…decrease in the lot area but…

Mr. Cella: It…it would not decrease it with our dedication there would be a total of fifty foot right-of-way for Fifth Avenue and whether the road is the existing road is not in the…

Mr. Scalzo: It’s in the center…

Mr. Cella: …center of the…

Mr. Scalzo: …center of the improvement, I understand.

Mr. Cella: …all right. It’s not perfectly centered.

Chairperson Cardone: Do we have anything else? Okay, the lady on the end.

Ms. Coleman: Hi, I’m Dawn Coleman, I also live right there by him. I’m really short. And a…my problem is that like there is other people always living there and I’m right at the end so I have to like, you know, ask them can you please move and stuff. But I realize people have company and friends and you know, like I said the people downstairs they’ve been the nicest people over the last I’d say how ever many years it’s been, years since we’ve had this problem. But you know I’ll come out and I’ll ask and they are rude, they’ve confronted me, you know, and to the point where I’m home alone I don’t even want to confront them, you know, because they are really fresh. I have grandchildren that I used to let ride their bikes back and forth because it was fine at one time. Now I can’t do that. I maintain a beautiful yard. My husband is a landscaper. I have flowers, you can see it’s beautiful and the garbage is all over the place. Just recently, I mean, they…you know, we went down, they take our garbage I have to clean it all again, it’s all yucky from people just…you know, there’s so many people there that the garbage is like overflowing and so, okay I take it I rinse it out, I wash it and the next week my garbage can is gone. I have to call, you know, I don’t know what they did, it’s gone, you know, they obviously took it. There’s only, you know, the few people there and then most of them are empty so it was them. And so I always have these conflicting problems and I, you know, I have to back out all the time to get out sometimes and there’s just so many people and you know, in the wintertime it makes it even more difficult. My husband maintains the road, he plows, you know, it’s a private road, we do it. And then they’ll just shovel it all back out. He’s gone for hours and hours, if I have to get out for emergency…I have a ninety-three year old grandmother that raised me, I have to take care of. If I have to go out and get her now I can’t get out because these people have disrespected, just throwing it in the road, to clear out their spot which they say that they’re…they’re not even supposed to be on, they’re not supposed to use and now I’m trapped, you know, and there’s these things that are just not right, you know and just unfair. And like I said, you know, my grandchildren those are my biggest thing. You know they’re little and they…they come up that hill and they come around there, you can’t see them, I can’t let them play there no more. You know, and it’s not fair for me, you know, I’m the one that gets the worst of the blunt because I’m at the end of the road. And so, like I said you know, I don’t even want to confront these people anymore because they argue with me you know, and it…I don’t want to be put in that position, you know, so that’s all I have to say. Thank you.

Mr. Scalzo: Dave, deed restrictions or deed conditions, are they enforceable by the Building Department or is it the Police…?

Mr. Donovan: They are not, they are not.

Mr. Scalzo: So it would be a Police matter?

Mr. Donovan: Not even enforcement, it’s a civil matter. For the Police to enforce it it would need to be of some Code, the same for the…for the Town, the Building Code Compliance to enforce it would need to be a violation of some either a Code requirement or a requirement of the planning board. But otherwise it’s a private issue.

Mr. Scalzo: But it can be addressed by the planning board?

Mr. Donovan: Well if the planning board makes it a…and I’m just talking generically Darrin, so if they make X a condition, and X is violated then Code Compliance could bring an enforcement action.

Mr. Cella: So the subdivision would help to clarify this issue by…by getting a subdivision we’d have to file a new deed and that would create restrictions to Chevy…Chevy Street for the existing residence.

Mr. Donovan: Well I think…I think the issue now is what appears to be they are not allowed to use it they’re using it. Right? So I’m…I’m not aware of any…of any Town of Newburgh requirement that’s being violated and I don’t know that there would be any a…I don’t know what the planning board could do. I’m not going to advise the planning board. I’m not sure that, you know, one of the unfortunate things here is you can’t put a requirement or restriction or a condition on an approval that only decent human beings can live there.

Mr. Cella: The variance that we are here for is for the placement of the building that has nothing to do with the access. For a pre-existing building…

Chairperson Cardone: What steps though has the owner of the property taken to alleviate this problem?

Mr. Cella: As I stated before a…he has removed the kitchen on the second floor and I…to my knowledge he had a…vacated all…he…he kept it as a single family residence as a single family residence again. That’s to my knowledge again and a…I had heard a…stories as the residents are stating that there was a…multiple people living, a…subletting, etc. on the…on the second floor but when I was there in a…last month it was just the one tenant on the first floor that was in the building and he has cleaned up the property. The…the issue there are some other…he is continuously cleaning but a…and for a while the tenant on the first floor was using the driveway on a…East View Road but again I don’t…know what’s going on…on the second floor.

Mr. Levin: You keep on mentioning the tenant of the first floor; does that mean that she has access to the second floor? Is she the tenant for the building or just the first floor?

Mr. Cella: It’s renting, it’s a rented as a single family residence.

Mr. Levin: So she has the whole house? The person?

Mr. Cella: Yes, yes.

Mr. McKelvey: But you have to…we had people state they see other people go in there?

Mr. Cella: I’m not there all the time I…they do live there so they…they are seeing what’s going on.

Audience Member Inaudible

Ms. Gennarelli: I’m sorry; it’s not going to get into the record.

Chairperson Cardone: You have to take the microphone.

Mr. Cote: The people on the first floor don’t have access to the second floor without leaving their floor, coming out of the building, re-entering the building through another door. They…they don’t have access from inside there house to the second floor.

Mr. Levin: There’s no steps going to the second floor inside?

Mr. Cote: Not inside, no. That’s why we refer to it as a 2-family house. And he’s not renting the whole top floor out as of what I see; he’s like renting the rooms out over the weekends to…never mind, he’s just he’s renting rooms upstairs.

Mr. McKelvey: He’s doing it now?

Mr. Cote: Yes, sir. They come and go and like I see different people all the time, all the time, I see different cars in the driveway, I see different people upstairs coming and going and like I said, I come and go all hours of the day and night because I drive a truck and it’s just not the one family on the bottom floor. It’s different guys, different women upstairs and it’s a boarding house. That’s why I call the upstairs a boarding house, it’s that many people. Thank you.

Chairperson Cardone: Was it the…Mr. Hughes you had your hand up?

Mr. Hughes: Yeah, I’d like to just add a little bit more with housekeeping and the discussion. I agree with Mr. Donovan’s opinion about it being a civil matter. This is something that’s unenforceable with no teeth awarded to the Building Department to go out there and do something about it unless we get ahead of the monster. And in order to get ahead of the monster this subdivision needs more tweaking to prescribe off street parking on the property of the said subject separate parcels that they wish to create and that all parking would take place for either respective lot, on the lot, not on East View, not on Chevy, nothing else. Your ingress and egress is on your new driveways according to the plan. The sight distances, I agree, are not lengthy enough as the truck driver announced; I can’t imagine what he measured that with. However, I might be wrong it doesn’t look like the footages that were described. So you got a sight distance that’s off, you’ve got access, you’ve got off street parking that need to be memorialized including the memorialization that Chevy Street belongs to someone else and it’s the DMZ, they are not entitled. The next thing that’s going to happen is they’ll be parking out on East View Drive because they can’t park on Chevy. You need to tune this up with some conditions and some advisements so that you don’t end up with a three-ring circus out there because if Jerry’s office is called they have no teeth to do anything with it if it’s not a part of the condition of the approval and the approval has been scrutinized to provide the off street parking for what may go on there in the future.

Chairperson Cardone: Yes.

Ms. Coleman: Sorry, I just remembered something. About them…him cleaning it up, there’s…there’s still that oil tank over there. If you look to the side, cause when I sit on my porch I can see and it’s like they’ve got a whole bunch of junk back there. The cleaning up but they’re putting it in the back there and my other concern is like if they were to put this other place there my…my concern because I just know because I’ve been living there and I see what…what it has become a…I’m afraid if that house becomes also not only are they not supposed to park there and they disrespect and all that… Okay? So then we got the abundance of people and the abundance of cars if they’re not like if they hope hope don’t park there no more yes, they’ll park there on the other street. Where else are they going to park if they partially follow the rules? But then if there’s another existing home there or whatever and it also is turned into a boarding house then those people are going to come up. They’re going to come up because you know they’re not sure of where it is. They’re going come, you know their friends and everybody’s going to come up and then they got turn and they turn around in my yard. They turn around in my…my thing, you know. In the past I mean, my car has been hit before from turn arounds. Not actually these people but (inaudible) a couple of times. But a…you know, it just because you know, I have my car, I have my daughter’s car, I have a brand new car that I just bought. My husband has a couple of junks. So there’s already you know and then when my husband has his worker come and there’s the car, there’s already no room to turn around. So now we got all these more people that I’m more concerned about. I don’t…I know in my heart it’s not going to be a 1-family person. It’s going to be a money maker for him that only brings more people up to the road, more people to turn around in my driveway and more people to harm my grandchildren. You know if I would let them out but I don’t do that anymore. So that is the things that I have got stolen from me from living in this private road.

Chairperson Cardone: Thank you.

Mr. Levin: Did I ask you is the owner of the property here?

Mr. Cella: No.

Mr. Levin: Has he been here?

Mr. Cella: No.

Mr. Levin: He wasn’t here last month?

Mr. Cella: No.

Mr. Levin: And he wasn’t here the first? Okay.

Mr. Cella: No. I have a proxy statement signed.

Mr. Levin: What?

Mr. Cella: I have…there’s a proxy statement signed for me to represent him.

Mr. Levin: Okay, where does he live?

Mr. Cella: A…New Windsor.

Mr. Manley: You know, the unfortunate thing is that the, you know, the applicant himself isn’t here. Perhaps maybe if he heard some of the concerns of the residents that live there…

Mr. Cella: Okay.

Mr. Manley: …perhaps he’d understand that you know there is a problem with you know the amount of vehicles and the people that are here but without him here you know, unless you’re communicating this to him, but if, you know…

Mr. Cella: I’m…I am relaying it to him but if you’d like to leave this open I can insist that he comes.

Mr. Donovan: You don’t want to be the only one getting yelled at?

Mr. Cella: No, I’m ready to walk away.

Chairperson Cardone: Don’t take it personally.

Mr. Scalzo: You can provide him with the meeting minutes once they are published.

Mr. McKelvey: There’s no way we can force him to come, right?

Mr. Donovan: No.

Chairperson Cardone: No.

Mr. Manley: No.

Chairperson Cardone: Okay, anything else from the Board?

No response.

Chairperson Cardone: Well do I have a motion to close the Public Hearing or a motion keep it open, what…?

Mr. Manley: I’ll make a motion that the Public Hearing be closed.

Chairperson Cardone: Do I have a second?

No response.

Chairperson Cardone: We have a motion to close the Public Hearing, do we have a second?

No response.

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

Mr. Maher: Second.

Chairperson Cardone: For what further information?

Mr. Scalzo: To see if we can get the property owner here to discuss his intentions, for clarification on the Building Departments a…acceptance that it’s not being used a…currently as a flop house.

Chairperson Cardone: Okay, we have a motion and a second.

Ms. Gennarelli: Roll call.

Mr. Levin: I’m voting for the keeping it open, right?

Mr. Donovan: That’s correct, the yes…

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: No

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: No

Ms. Gennarelli: It’s five - two.

Mr. Donovan: And again just to be clear that’s adjourned to the September meeting.

Chairperson Cardone: That is correct.

Ms. Gennarelli: September 24th.

Mr. Cella: Thank you.

Chairperson Cardone: And you will try to have…

Mr. Cella: Yeah, very hard.

Mr. McKelvey: Good luck.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 9:17 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 9:17 PM)

LEONARDO VILLACHICA 14 KNIGHTS CIRCLE, NBGH

 (108-4-13) R-1 ZONE

Applicant is seeking area variances for the minimum rear yard setback and the maximum lot surface coverage to keep a prior built pool and pool deck.

Chairperson Cardone: Our next applicant Leonardo Villachica. Is Leonardo Villachica here?

No response.

Chairperson Cardone: Okay.

Mr. Donovan: So the last time we were in this situation you had me write a letter indicating if they didn’t come to the meeting we would consider the application withdrawn. So I wrote the letter and then they wrote a letter asking for additional time because apparently there was a death in the family and you continued it until tonight.

Ms. Gennarelli: They were going to get the survey and they didn’t have time to get the survey.

Mr. Donovan: But there’s no letter for tonight, correct?

Ms. Gennarelli: No letter tonight. Last time we got a letter saying they didn’t get the survey in time.

Chairperson Cardone: Right, the last time, it said ‘Due to not having a survey on my property I’d appreciate if you would postpone the meeting to August 27th I’ll have the survey by then’. And we did not get a letter.

Mr. Donovan: Maybe it’s being finished up now, we should wait till later?

Chairperson Cardone: Right, the 27th is later...

Mr. Donovan: My point is you could continue it or you could instruct me to write another letter indicating that if they don’t come back in September that the application will be deemed withdrawn. It’s up to you.

Mr. Manley: Or we could take a vote based on the information we have.

Mr. Donovan: That’s…yeah, I mean, yes you could do that. We haven’t done that in the past. You know, you’ve given applicants every benefit. You are not required to do that certainly you could…you could take a vote based on the information that you have. It’s up to you.

Mr. Manley: I would say that if we don’t have a letter asking us to postpone it with a reason just have them refile when they’re…when they get all their ducks in a row.

Mr. Donovan: Well if it’s…if the vote is to deny it though, if you want to if they’re going to come back for the same relief you are going to need a unanimous vote to re-open the Hearing.

Mr. Maher: And then they are going to incur expenses again?

Mr. Donovan: That’s correct.

Chairperson Cardone: That’s correct.

Mr. McKelvey: Well they did ask to hold it open till for tonight’s meeting.

Chairperson Cardone: Well we could send them a letter saying that if they do not appear we will make a decision based on the information we have.

Mr. Donovan: That’s fine. If the Board would like to do that that’s absolutely fine.

Mr. McKelvey: I’ll make a motion to that effect.

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I would ask in the interest of time to wait in the hallway, we’ll call you in very shortly.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 9:22 PM)

ZBA MEETING – AUGUST 27, 2015 (Time Noted – 9:49 PM)

**OTHER BOARD BUSINESS**

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

Chairperson Cardone: Okay, we have under Other Board Business, if you remember Grabek that was at 349 Meadow Avenue and they were before the planning board. They completed everything with the planning board in March and so they are now requesting an extension. I have a letter from them; they’re seeking a six month extension of the ZBA’s determination. After the ZBA’s determination the applicant obtained site plan approval from the planning board and the applicants now working with the Town’s Building Department and the contractor in order to finalize the plans which reflect the necessary modifications to convert the structure from a single-family dwelling to a hair salon. And the applicant plans to submit these plans shortly and therefore the applicant is requesting a six month extension of its area variances so that they now expire in February of 2016.

Mr. McKelvey: I’ll make that motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:51 PM)

ZBA MEETING – AUGUST 27, 2015

END OF MEETING (Time Noted – 9:51 PM)

Chairperson Cardone: Everyone has the minutes from the last meeting? Any corrections?

Chairperson Cardone: Do I have a motion to approve the minutes?

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

Mr. Masten: I’ll second it.

Chairperson Cardone: Everyone in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response

Chairperson Cardone: Do we have a motion to adjourn the meeting?

Mr. Maher: So moved.

Chairperson Cardone: Second?

Mr. Levin: Yes.

Chairperson Cardone: All in favor?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. The meeting is adjourned.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:53 PM)