ZONING BOARD OF APPEALS

MEETING – NOVEMBER 24, 2015

(Time Noted – 7:01 PM)

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

PRESENT ARE:

 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 Gerald Canfield

(Time Noted – 7:03 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 7:03 PM)

DRA FIDELCO NEWBURGH, LLC. 74 STEWART AVENUE, NBGH

 (97-1-48.2) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to allow an existing single family home to remain in its present location.

**THESE MINUTES WERE USED FOR THE FIRST PORTION OF ALL THREE APPLICATIONS UNTIL THE PUBLIC HEARING WAS CLOSED THEN VOTED ON SEPARATELY.**

Mr. Manley: The first application tonight is going to be DRA Fidelco Newburgh, LLC. they are seeking an area variance for the front yard setback to allow an existing single family home to remain in its present location. Mrs. Gennarelli…

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, November 13th and in the Mid-Hudson Times on Wednesday, November 18th. This applicant sent out fifty-eight letters. All the mailings, publications and postings are in order.

Mr. Manley: Is the applicant prepared? Good evening.

Mr. Wolinsky: Good evening Mr. Chairman, Members of the Board my name is Larry Wolinsky I am an attorney with the law firm of Jacobowitz and Gubitz and I’m here tonight on behalf of the applicant. As a point of order there are a…several requests before you tonight on this a…a…on this project you read just the first one. I am happy to address each one individually or them all together so you have the entire context of what’s going…going on there at your…at your pleasure.

Mr. Manley: They are two separate parcels, correct?

Mr. Wolinsky: A…they are…they are currently two separate parcels but they will be merged ultimately.

Mr. Manley: Okay.

Mr. Wolinsky: So the…the…what I…what I’d like to say at the outset here a…just to a…be clear there is an application pending before the planning board for the construction of a twenty a…nine a…for twenty-eight additional a…rental units at the Summit Lane project and a…the conversion of a twenty-ninth pre-existing residential structure into a residential unit and in addition to that there is also the proposal for a…a renovation of an existing a…structure into an accessory a…a…building that would be used solely for storage of a…of a…the rental units, for the residents of the rental units.

Mr. Donovan: If I may, I’m sorry to interrupt Larry. It’s up to the Board but my suggestion is basically you’ve got one unified application and I don’t think a…one…it doesn’t make sense to segment the Hearings because you’re going to repeat yourself. My suggestion to the Board or what it’s called my suggestion is that you hear everything at once.

Mr. Manley: What’s the pleasure of the Board?

Mr. McKelvey: That’s fine by me.

Mr. Maher: That’s fine.

Mr. Scalzo: Fine.

Mr. Wolinsky: I think that will be clearer for both you and the public if we do it that way. So really…

Ms. Gennarelli: Okay, one second so then in that case I’ll just say that they sent out fifty-eight letters for each of the applications and all of the mailings, publications and posting are in order for each individual one. Thank you.

Mr. Wolinsky: So I just want to…the focus of tonight’s Hearing is essentially on two structures. The first structure is the pre-existing a…home that is closest to Stewart Avenue. A…that was…that has been part of that parcel for many years and it has a pre-existing frontage of forty-one a…feet. The Code in this district requires fifty feet so at the planning board it was determined that because this is going to be a unified project and essentially this will be the twenty-ninth unit incorporated into the project as shown on the project plan that technically under the Code this should a…require an area variance a…for the a…nine feet. So the first request before you tonight is an area variance from fifty feet to nine (forty-one) feet under that section of the Code that was noticed for a…that front yard area variance. The second…the second aspect of the a…a…application before the ZBA is the a…existing building that a…it used to be the JCC building and is now the…it was a nursery school building and that is being proposed also to be incorporated into the project and used a…and renovated for purposes of storage for a…tenant use. That…that a… requires either one of two things, either an Interpretation from the Board that this is a pre…a…that’s a permitted accessory use in connection with the apartment complex or there’s a provision in the Code that if it’s not an accessory use and it remains a non-conforming use it is a non-conforming use of a lesser a…invasive nature than the current non-conforming use. And if you a…recall our application a…and the justifications we provided with respect to that one a… it was pointed out that there are a couple of buildings there, and you may want to just point those out, that already house a non-conforming landscaping a…a…business and that those structures will demolished and a…removed so a…the only thing that would be left a…would be this building that we are proposing to a…convert to a…the a…tenant storage facility and again that would be accessory to a principal use. With a…regard to the…with regard back with regard to the what we’re referring to as the twenty-ninth unit which is really the…the continued rental of that unit, it’s been rented a…all along a…a...there is no change whatsoever a…it’s a…forty-nine a feet…forty-one feet as it has been forever and it’s a…it’ll remain that way no real changes associated with…with that. Just by way of information the drive that extends out from what we’re proposing to be the a…accessory storage facility is an emergency access drive. It’s gated and a…will not be used for a…access. Other than that I think a…again we’ve submitted our application our applications contain a…a the legal reasoning and justifications for a…a…the variances. We consider these to be a…relatively minor from your end of things which is the…the aspect of the a…actual a…variances and the Interpretation for the…the permit that you can issue that says that it’s a…a lesser a…a less invasive non-conforming a…use. The main part of the project which is the twenty-eight units is still pending a…before the planning and it would have to complete planning board review in accordance with the a…Zoning Code and site plan…site plan regulations of the Town Code of Newburgh. Thank you very much.

Mr. McKelvey: The landscaping business that’s where the barn is?

Mr. Wolinsky: Correct.

Mr. McKelvey: Okay.

Mr. Maher: One question, on the letter from a…from a…Mike Donnelly it states that a residential building on site is claimed to have been used in the past for storage purposes a…as accessory to be claimed protected non-conforming landscape business so was the actual house used for the landscape business or the barn itself?

Mr. Wolinsky: The barn, the barn.

Mr. Maher: Okay.

Mr. Manley: Was that a permitted use by the Town?

Mr. Wolinsky: It was permitted non-…it was yes a lawful…a pre-existing non-conforming use as I understand it.

Mr. Manley: Mr. Canfield was the landscaping business something that was a…known by the Town?

Ms. Gennarelli: Can you take that microphone Jerry?

Mr. Canfield: Yeah, I don’t recollect for sure. I can’t testify with a degree of certainty that there was a Permit for the landscaping business. But I can say that I do know that the landscape business did exist there and that use in an R-3 Zone is non-conforming. The day care center was a conforming use but the landscape was not.

Mr. Manley: Would there be any way to check back to determine whether or not the landscaping was permitted or had received some sort of approvals?

Mr. Canfield: Yeah, we can just check our building records.

Mr. Donovan: The landscaping business is in one of the buildings that’s going to be demolished?

Mr. Wolinsky: Yes, it’s gone, it’s already…it’s out.

Mr. Donovan: So Mr. Chairman if I could? In taking a look at this and reading the planning board minutes and Jerry I may ask you for a…or I will ask you for some assistance here, so the day care center is what’s going to be your request is to use for storage?

Mr. Wolinsky: Correct.

Mr. Donovan: So day care is a permitted use I’m looking at or a nursery school, pre-school is a permitted use so that provision of the Code that I…that I think you’re asking us to construe says when you go non-conforming to non-conforming so long as your less intense that’s fine. So my…my issue then is if the a…pre-school was conforming does that section apply?

Mr. Wolinsky: Well yeah, my set up here was that I was not…unaware that it was conforming. The…the provision that was…it was applied under was the procedure for going from a…one non-conforming use to another non-conforming use now they may have considered…John who prepared the application may have considered the non-conforming use of the a…of the a…getting rid of the a…landscaping business as the non-conforming use and then applying that to a…a…to the accessory struct…the accessory storage which I also…in and of itself would be non-conforming unless you would make…unless it was interpreted that it was a…a legal accessory conforming use so that…that’s…

Mr. Donovan: The so…so…yeah…

Mr. Wolinsky: I know it’s a little confusing…

Mr. Donovan: …it is because the next question that…that I have is you know, Newburgh doesn’t do the ordinary I’ll say the ordinary which customarily a lot of other places that accessory whatever is customary incidental to its accessory. The Bulk Tables call out specific accessory uses as permitted accessory uses which storage is not called out as a specific accessory use in this Zone. So I…I don’t know, I can’t find a hole to put your peg in is my issue on the interpretation.

Mr. Wolinsky: Well I think that’s why there was also the request…it was coupled for the request for the a…the Permit and…and then the…the a…the hole on the peg, the peg in the hole where it was the…the change from the a…providing assume the landscaping pre-existing a…non-conforming use for the landscaping business to a…a pre-existing a…non…non-conforming use of a storage facility because if it’s not permitted it would be so…

Mr. Donovan: Alright but it’s in a different building though right?

Mr. Maher: Right.

Mr. Wolinsky: Well it…it is a different building but it’s if we’re talking that use not you know so…we’re on the same parcel so we’re going from use to use as opposed to…so I’m…I’m not sure the…the…the…the…the a…a…the building a, you know, cause I’m looking at use rather than structure so.

Mr. Maher: But if you…but if you’re not using a building once the building is gone the use is no longer valid. I mean that again, that’s…again that’s why I picked out the letter Mike…Mike that a…identified as being a landscape business used and also nursery schools so that’s what I wanted to clarify that it wasn’t actually in that building itself.

Mr. Wolinsky: Right.

Mr. Donovan: Just one more thing, day care or nursery school? If you know? I only say that because day care is not called out as a permitted use…

Mr. Maher: It identifies both in the letter so…

Mr. Donovan: But in…in the Bulk Table it just says pre-school or nursery school it doesn’t say day care which could be two different things. And I keep looking at Jerry so…I’m sorry Jerry.

Mr. Wolinsky: I…I…I personally don’t know, the last I know of this building it was used by the JCC. The JCC may have had a a day care aspect to it…a…

Mr. Canfield: I believe it was both. I’ve been in that building. I’ve inspected it. I did programs…

Mr. Donovan: Were you a student there Jerry?

Mr. Canfield: No, not…but it was both. But I think also to add something the non-conforming landscaper a…I believe was in the barn, renting the barn in the back prior to these folks purchasing it. I think that was an arrangement that was made with the previous owners. The question does still…it is still outstanding whether it was permitted or not by…by use of a Building Permit. The question here is and I was part and parcel to getting these folks before you because at the planning board application level I could not make a clear determination simply because this type of use, which doesn’t appear to be anything out of the ordinary, it’s storage for the folks that rent the units, it’s private in nature so that’s where I couldn’t fit it into our definition of public storage, self-storage units a…in 185-3 in the definitions it specifically says public use that doesn’t apply here. This is only for private use. So I think you have two options before you is if you consider the section of 185-19 that goes from non-conforming use to non-conforming use it allows the Zoning Board the ability to entertain a Special Use Permit that’s one avenue. The other avenue is if you look at the sections where if it is not listed it’s not permitted then it would be a use variance. So I think that the determination before you is to make one of those two. I don’t see…I don’t see where accessory use fits anywhere as Dave has explained in our Code it’s very specific in the Bulk Use Tables as what is accessory to what.

Mr. Wolinsky: Yeah, no I…I understand that. I…I completely understand that…and I understand that’s…and I know there’s…there is an application that is submitted for a a use variance as well but the you know, the standards for a use variance are very, very, very high and it seems…it…it…it seems the situation here, the practical situation here is because of the site conditions there’s no ability to create storage in a…in the building complex itself. Is that correct? (to audience member) So as I understood it so this was a perfect a…solution because as…all of us who have ever lived in a rental facility we’ve all had some experience or for the ability of some level of storage and it seems…it seems to get thrust into a use variance scenario over, you know, over a site condition like that it just…

Mr. Manley: Would each unit owner be given a actual amount of storage to utilize or would it be a situation where they would have to a…pay for additional storage to utilize that facility?

Mr. Wolinsky: I am going to have a…the principal of the project answer that. Just say who you are for the record.

Mr. Minoia: Sure, Nick Minoia, I’m the managing member of the DRA Fidelco enterprise. So the concept here is that again apartment dwelling everyone seems to have more personal belongings than they have room for so there is a unique circumstance that a a building that’s viable, that’s on the site that we thought could be utilized for a storage, not public but for the tenants on a first come, first serve basis. The building is not large enough to carve into what will be with the approval of the planning board if they so deem it that will have a hundred and eighty units of rental. We will not have a hundred and eight storage units. Roughly forty, fifty units, something like that of a five by five, five by ten, ten by ten type storage unit a…first come, first serve basis.

Mr. Manley: And that would be for a fee?

Mr. Minoia: We’re not sure if there will be a fee or not it may just be an incentive for rental that a…something that could be programmed into the incentive to rent here versus somewhere else. It’s a nice on-site amenity, the building already exists a…and it’s a shame to take…take the building down.

Mr. Manley: Has the a…corporation come up with any other possible ideas for use of the structure beyond the storage?

Mr. Minoia: None that would be private to the community.

Mr. Manley: Thank you.

Mr. Minoia: Sure.

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

Mr. McKelvey: This possibly could be a use variance though right?

Mr. Manley: Yes. At this point I’d open up questions to the public, is there anyone from the public that has any questions? Come on forward, if you could just give us your name and address for the record?

Ms. Hughes: Linda Hughes, 6 Benson Avenue, my property is along the property line of the new proposed units.

Mr. Manley: Okay.

Ms. Hughes: So a couple of concerns that I have a…one is the drainage…drainage issue because our homes are lower so they’re kind of on a hill, along with the privacy issue. We’ve been there for thirty years and I really don’t want to walk out my back door and look up to condos, apartments, whatever (inaudible). So that’s a big concern of ours. Another thing is looking at this scaling here, I am a little concerned, can I walk over to the…?

Mr. Manley: Certainly.

Ms. Hughes: Because looking at this, these homes over here, these are literally over here. These are more in their backyard. This is kind of a little deceiving. I walk this road every day with my dog…these are in their backyard. There is space, I’m not saying it’s right on their border of their property but these are behind them, this is making it like they’re back over so that concerns me as to how true this actually is going to be. My other question is before this was even built when I met in a meeting with you gentlemen you had mentioned the privacy fence was going up here. That has not been done yet. So I don’t know, has that been scratched or was that just to appease us at the meeting? Where do we stand with that?

Mr. Manley: Okay, I don’t mean to interrupt but the Zoning Board our scope of what we’re here today for is specifically the variances that the applicant is seeking which…

Ms. Hughes: Okay.

Mr. Manley: …unfortunately what you’re discussing are valid points but it’s actually a planning board issue so…

Ms. Hughes: Okay, I just wanted that brought up so that everyone is aware…

Mr. Manley: … and absolutely but what I would recommend what you do is there will potentially be…can’t guarantee that there will be a Public Hearing but potentially a…there will be a point in time where you can comment to the planning board and give them the information with respect to your concerns either in person or in writing and they will take those comments and put that as part of their decision when they you know, decide to move forward with the project.

Ms. Hughes: Okay, so right now then with the…what’s at the conversation now is so we are concerned again, people living here, that because we have been here for a while that we don’t want to walk outside our backyard and look up and have people looking down at us. The drainage situation and what that’s going to do, they’re bringing more units and what that’s going to do to traffic on Stewart Avenue. Okay? And that’s…that was my concern.

Mr. Manley: So my question to you is, are you okay with or are you opposed to the old Jewish Community Center building being used for a…storage? Do you have any issues with that particular building being utilized for storage?

Ms. Hughes: No. You’re leaving the building as is it sounds like? So no, that’s…I mean if you are going to be putting more units in here, again, I don’t know how the true scale is, what this is going to be a…we would want them as far back as possible if this is approved and I don’t know how that all falls into with the house.

Mr. Manley: Well right now the setbacks meet the requirements that the Town has and there are buffer requirements that they have to meet between…between the property lines.

Ms. Hughes: Right.

Mr. Manley: Between your property line and…and the building.

Ms. Hughes: I would just hope that the Board takes into consideration again, we’ve been here for many years and it’s been a very a…quaint neighborhood and we’re just not looking to look up and see apartments.

Mr. McKelvey: The planning board could make them put screening in too.

Mr. Manley: And there could potentially be additional screening based on comments…

Ms. Hughes: Screening meaning…?

Mr. Manley: All your trees, shrubs…

Ms. Hughes: Oh, okay.

Mr. Manley: …fences, berms, sometimes they put berms to create a separation. If you’d like you can see Mrs. Gennarelli after the meeting and she can give you the planning board’s website. You can go to their website it lists when they have their meetings and you can look at their agendas to see when they are on the agenda. And at that point it gives you an opportunity to the planning board meetings and make your comments known.

Ms. Hughes: Alright that’s all that I have, thank you.

Mr. Manley: Thank you. Yes, sir.

Mr. Cruz: Good evening gentlemen, Fernando Cruz 4 Benson, my house is right behind the Jewish Center. Is it…is it in…can it be in writing that they will not for whatever reason they started building there the storage units they find something and now we can go around and build more storage units…is there a loophole that exists that you guys can take care of that?

Mr. Manley: If the a…

Mr. Cruz: Because they do have a hundred and sixty units plus the twenty-nine units they want to build and…

Mr. Manley: If the Zoning Board were to grant…

Mr. Cruz: …that’s…it’s…he’s already said that it’s an eye catcher for people that rent with storage units.

Mr. Manley: My guess is I can’t speak for the entire Board but I would be inclined to, if we were to grant it, I would put a…I would put a condition that states how many…

Mr. Cruz: Right.

Mr. Manley: …that they could have inside of it and of course it would be limited to the size of the building. If they wished to expand that they’d have to come back for a further variance.

Mr. Cruz: Any expansion is definitely right behind my house. Okay? You know you’re dealing with lawyers they’re going to find a loophole somewhere to appease their…that’s what they do...

Mr. Manley: Understood.

Mr. Cruz: …that’s what they get paid for so just keep that in mind. For everybody back there, we all have families back there that we’re trying to protect. That’s it. Thank you.

Mr. Manley: Thank you. Any other comments from the public? Mr. Wolinsky.

Mr. Wolinsky: Thank you, so while…the public were…were we’re making their comments I looked back at the application and having listened to Jerry and I reread the application that John submitted just now it…it…the lightbulbs kind of gone off on what the…what the request was and maybe I can articulate it a little better. The application’s point was that we have an existing site that has a…a non-conforming element to it, a non-conforming use which was the landscaping business so the whole…the whole site has that element to it. Now the request is to be able to a…the request is to be able to continue to have a non-conforming element within that site except the…the…that non-conforming element is no longer a landscaping element but is now a a storage element because as you pointed out the…the storage would be non-conforming according to the strict Town of Newburgh Code on accessory uses a...and the argument is that that provision of law allows this Board, as Jerry pointed out, to issue a Permit to allow that, okay, but subject to whatever conditions and a…provided the Board feels that that is less of a non-conforming a…kind of use than the landscape business was and I think clearly since that is what we would all understand to be accessory but for it not being specifically designated out in the Code that that is less of a non-conformity use. So I just wanted to get that out and…and…and make sure that I personalize the argument.

Mr. Minoia: Mr. Chairman

Mr. Manley: Yes sir.

Mr. Minoia: If I may just to address the prior member of the public’s question or comment, we laid out conceptually the building for storage units and we were able to get no more than approximately sixty units inside the building for storage of various sizes and there are no plans to expand the building beyond its current footprint.

Mr. Manley: Thank you.

Mr. Minoia: Yes.

Mr. Manley: Do any of the Board Members have any questions or comments?

Mr. Scalzo: I have one, Jerry the landscaping business that keeps coming up, was it actually…was it advertised on the barn for or were they just utilizing the barn for storage or warehousing of their equipment?

Mr. Canfield: I don’t recollect that there was any signage there but the equipment that was there was well plaquered. You could tell it was a bright yellow landscaping outfit.

Mr. Scalzo: Okay. Do you know if they ran an office out of that barn as well?

Mr. Canfield: That I’m not sure. I was never there not in the landscape entity. I don’t know.

Mr. McKelvey: I think it was hard…that barn was hard to see from the road anyhow.

Mr. Canfield: Yeah, it’s kind of like over in the back.

Mr. McKelvey: In the back.

Mr. Manley: Would that have been subject to fire inspection by the Town?

Mr. Canfield: If…if we don’t have a Permit on it and we’re not sure it’s even there not…no, it wouldn’t come up. The community center was under inspection and this commodity would also subject to the Town of Newburgh’s Fire Protection Ordinance. There would be a sprinkler system required in this building which is already there which should you choose to approve it it just needs to be altered to protect this commodity.

Mr. Manley: Thank you.

Mr. Maher: (Inaudible) So when was the landscape occupancy discontinued?

Mr. Wolinsky: I don’t know I’ll defer it to the…the owner again. I have no personal knowledge of the dates.

Mr. Minoia: It…it was shortly after we took title they were…they were a holdover tenant as (Inaudible) it’s probably been three or four months since the last of their equipment was cleaned up and they had paper box and other landscape materials there. They had a lot of equipment. They did have a small office (Inaudible)

Mr. Maher: You acquired the property when?

Mr. Minoia: A…we acquired the property I guess a…about nine months, nine, ten months ago.

Mr. Scalzo: The drawing to my immediate left, the structures that are currently built is that an as built? Are they actually where they’re shown on the plan? I would assume so.

Mr. Minoia: That’s not actually an as built but that is the scale and that is essentially where they are built. None of the buildings were moved from the original approval.

Mr. Scalzo: Okay.

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

Mr. Levin: No.

Mr. Manley: Comments?

Mr. McKelvey: The only thing when I was there at the barn they were hauling a lot of lumber out of there, used lumber.

Mr. Manley: Do we have a motion to close the Public Hearing?

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Ms. Gennarelli: And that is to close the Public Hearing on all of them?

Mr. Manley: Yes.

Ms. Gennarelli: Okay. Thank you.

Mr. Manley: That doesn’t approve the project the Zoning Board will confer at the end of the meeting and decide whether or not we’re going to vote on the project.

 (Time Noted - 7:36 PM)

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ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:28 PM)

DRA FIDELCO NEWBURGH, LLC. 74 STEWART AVENUE, NBGH

 (97-1-48.2) R-3 ZONE

Applicant is seeking an area variance for the front yard setback to allow an existing single family home to remain in its present location.

Mr. Manley: The Zoning Board will resume its regular meeting. On the first application DRA Fidelco Newburgh, LLC. Do I have discussion on the request? It’s for an area variance for the front yard setback to allow an existing single family home to remain in its present location.

Mr. Scalzo: For that particular variance I…I think it’s very reasonable, it makes sense, an existing home.

Mr. McKelvey: And it’s rented, it’s been rented.

Mr. Scalzo: Yes.

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

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Mr. Manley: And we’ll make a note that that’s a Type II Action under SEQR.

PRESENT ARE:

 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 – 9:29 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 7:03 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

 (97-1-47.2) R-3 ZONE

Applicant is seeking an Interpretation and issuance of a Special Permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community.

Mr. Manley: Our next applicant DRA Fidelco Newburgh, LLC., 68 Stewart Avenue, seeking an Interpretation and issuance of a Special Permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community.

**THESE MINUTES WERE USED FOR THE FIRST PORTION OF ALL THREE APPLICATIONS UNTIL THE PUBLIC HEARING WAS CLOSED THEN VOTED ON SEPARATELY.**

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Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, November 13th and in the Mid-Hudson Times on Wednesday, November 18th. This applicant sent out fifty-eight letters. All the mailings, publications and postings are in order.

Mr. Manley: Is the applicant prepared? Good evening.

Mr. Wolinsky: Good evening Mr. Chairman, Members of the Board my name is Larry Wolinsky I am an attorney with the law firm of Jacobowitz and Gubitz and I’m here tonight on behalf of the applicant. As a point of order there are a…several requests before you tonight on this a…a…on this project you read just the first one. I am happy to address each one individually or them all together so you have the entire context of what’s going…going on there at your…at your pleasure.

Mr. Manley: They are two separate parcels, correct?

Mr. Wolinsky: A…they are…they are currently two separate parcels but they will be merged ultimately.

Mr. Manley: Okay.

Mr. Wolinsky: So the…the…what I…what I’d like to say at the outset here a…just to a…be clear there is an application pending before the planning board for the construction of a twenty a…nine a…for twenty-eight additional a…rental units at the Summit Lane project and a…the conversion of a twenty-ninth pre-existing residential structure into a residential unit and in addition to that there is also the proposal for a…a renovation of an existing a…structure into an accessory a…a…building that would be used solely for storage of a…of a…the rental units, for the residents of the rental units.

Mr. Donovan: If I may, I’m sorry to interrupt Larry. It’s up to the Board but my suggestion is basically you’ve got one unified application and I don’t think a…one…it doesn’t make sense to segment the Hearings because you’re going to repeat yourself. My suggestion to the Board or what it’s called my suggestion is that you hear everything at once.

Mr. Manley: What’s the pleasure of the Board?

Mr. McKelvey: That’s fine by me.

Mr. Maher: That’s fine.

Mr. Scalzo: Fine.

Mr. Wolinsky: I think that will be clearer for both you and the public if we do it that way. So really…

Ms. Gennarelli: Okay, one second so then in that case I’ll just say that they sent out fifty-eight letters for each of the applications and all of the mailings, publications and posting are in order for each individual one. Thank you.

Mr. Wolinsky: So I just want to…the focus of tonight’s Hearing is essentially on two structures. The first structure is the pre-existing a…home that is closest to Stewart Avenue. A…that was…that has been part of that parcel for many years and it has a pre-existing frontage of forty-one a…feet. The Code in this district requires fifty feet so at the planning board it was determined that because this is going to be a unified project and essentially this will be the twenty-ninth unit incorporated into the project as shown on the project plan that technically under the Code this should a…require an area variance a…for the a…nine feet. So the first request before you tonight is an area variance from fifty feet to nine (forty-one) feet under that section of the Code that was noticed for a…that front yard area variance. The second…the second aspect of the a…a…application before the ZBA is the a…existing building that a…it used to be the JCC building and is now the…it was a nursery school building and that is being proposed also to be incorporated into the project and used a…and renovated for purposes of storage for a…tenant use. That…that a… requires either one of two things, either an Interpretation from the Board that this is a pre…a…that’s a permitted accessory use in connection with the apartment complex or there’s a provision in the Code that if it’s not an accessory use and it remains a non-conforming use it is a non-conforming use of a lesser a…invasive nature than the current non-conforming use. And if you a…recall our application a…and the justifications we provided with respect to that one a… it was pointed out that there are a couple of buildings there, and you may want to just point those out, that already house a non-conforming landscaping a…a…business and that those structures will demolished and a…removed so a…the only thing that would be left a…would be this building that we are proposing to a…convert to a…the a…tenant storage facility and again that would be accessory to a principal use. With a…regard to the…with regard back with regard to the what we’re referring to as the twenty-ninth unit which is really the…the continued rental of that unit, it’s been rented a…all along a…a...there is no change whatsoever a…it’s a…forty-nine a feet…forty-one feet as it has been forever and it’s a…it’ll remain that way no real changes associated with…with that. Just by way of information the drive that extends out from what we’re proposing to be the a…accessory storage facility is an emergency access drive. It’s gated and a…will not be used for a…access. Other than that I think a…again we’ve submitted our application our applications contain a…a the legal reasoning and justifications for a…a…the variances. We consider these to be a…relatively minor from your end of things which is the…the aspect of the a…actual a…variances and the Interpretation for the…the permit that you can issue that says that it’s a…a lesser a…a less invasive non-conforming a…use. The main part of the project which is the twenty-eight units is still pending a…before the planning and it would have to complete planning board review in accordance with the a…Zoning Code and site plan…site plan regulations of the Town Code of Newburgh. Thank you very much.

Mr. McKelvey: The landscaping business that’s where the barn is?

Mr. Wolinsky: Correct.

Mr. McKelvey: Okay.

Mr. Maher: One question, on the letter from a…from a…Mike Donnelly it states that a residential building on site is claimed to have been used in the past for storage purposes a…as accessory to be claimed protected non-conforming landscape business so was the actual house used for the landscape business or the barn itself?

Mr. Wolinsky: The barn, the barn.

Mr. Maher: Okay.

Mr. Manley: Was that a permitted use by the Town?

Mr. Wolinsky: It was permitted non-…it was yes a lawful…a pre-existing non-conforming use as I understand it.

Mr. Manley: Mr. Canfield was the landscaping business something that was a…known by the Town?

Ms. Gennarelli: Can you take that microphone Jerry?

Mr. Canfield: Yeah, I don’t recollect for sure. I can’t testify with a degree of certainty that there was a Permit for the landscaping business. But I can say that I do know that the landscape business did exist there and that use in an R-3 Zone is non-conforming. The day care center was a conforming use but the landscape was not.

Mr. Manley: Would there be any way to check back to determine whether or not the landscaping was permitted or had received some sort of approvals?

Mr. Canfield: Yeah, we can just check our building records.

Mr. Donovan: The landscaping business is in one of the buildings that’s going to be demolished?

Mr. Wolinsky: Yes, it’s gone, it’s already…it’s out.

Mr. Donovan: So Mr. Chairman if I could? In taking a look at this and reading the planning board minutes and Jerry I may ask you for a…or I will ask you for some assistance here, so the day care center is what’s going to be your request is to use for storage?

Mr. Wolinsky: Correct.

Mr. Donovan: So day care is a permitted use I’m looking at or a nursery school, pre-school is a permitted use so that provision of the Code that I…that I think you’re asking us to construe says when you go non-conforming to non-conforming so long as your less intense that’s fine. So my…my issue then is if the a…pre-school was conforming does that section apply?

Mr. Wolinsky: Well yeah, my set up here was that I was not…unaware that it was conforming. The…the provision that was…it was applied under was the procedure for going from a…one non-conforming use to another non-conforming use now they may have considered…John who prepared the application may have considered the non-conforming use of the a…of the a…getting rid of the a…landscaping business as the non-conforming use and then applying that to a…a…to the accessory struct…the accessory storage which I also…in and of itself would be non-conforming unless you would make…unless it was interpreted that it was a…a legal accessory conforming use so that…that’s…

Mr. Donovan: The so…so…yeah…

Mr. Wolinsky: I know it’s a little confusing…

Mr. Donovan: …it is because the next question that…that I have is you know, Newburgh doesn’t do the ordinary I’ll say the ordinary which customarily a lot of other places that accessory whatever is customary incidental to its accessory. The Bulk Tables call out specific accessory uses as permitted accessory uses which storage is not called out as a specific accessory use in this Zone. So I…I don’t know, I can’t find a hole to put your peg in is my issue on the interpretation.

Mr. Wolinsky: Well I think that’s why there was also the request…it was coupled for the request for the a…the Permit and…and then the…the a…the hole on the peg, the peg in the hole where it was the…the change from the a…providing assume the landscaping pre-existing a…non-conforming use for the landscaping business to a…a pre-existing a…non…non-conforming use of a storage facility because if it’s not permitted it would be so…

Mr. Donovan: Alright but it’s in a different building though right?

Mr. Maher: Right.

Mr. Wolinsky: Well it…it is a different building but it’s if we’re talking that use not you know so…we’re on the same parcel so we’re going from use to use as opposed to…so I’m…I’m not sure the…the…the…the…the a…a…the building a, you know, cause I’m looking at use rather than structure so.

Mr. Maher: But if you…but if you’re not using a building once the building is gone the use is no longer valid. I mean that again, that’s…again that’s why I picked out the letter Mike…Mike that a…identified as being a landscape business used and also nursery schools so that’s what I wanted to clarify that it wasn’t actually in that building itself.

Mr. Wolinsky: Right.

Mr. Donovan: Just one more thing, day care or nursery school? If you know? I only say that because day care is not called out as a permitted use…

Mr. Maher: It identifies both in the letter so…

Mr. Donovan: But in…in the Bulk Table it just says pre-school or nursery school it doesn’t say day care which could be two different things. And I keep looking at Jerry so…I’m sorry Jerry.

Mr. Wolinsky: I…I…I personally don’t know, the last I know of this building it was used by the JCC. The JCC may have had a a day care aspect to it…a…

Mr. Canfield: I believe it was both. I’ve been in that building. I’ve inspected it. I did programs…

Mr. Donovan: Were you a student there Jerry?

Mr. Canfield: No, not…but it was both. But I think also to add something the non-conforming landscaper a…I believe was in the barn, renting the barn in the back prior to these folks purchasing it. I think that was an arrangement that was made with the previous owners. The question does still…it is still outstanding whether it was permitted or not by…by use of a Building Permit. The question here is and I was part and parcel to getting these folks before you because at the planning board application level I could not make a clear determination simply because this type of use, which doesn’t appear to be anything out of the ordinary, it’s storage for the folks that rent the units, it’s private in nature so that’s where I couldn’t fit it into our definition of public storage, self-storage units a…in 185-3 in the definitions it specifically says public use that doesn’t apply here. This is only for private use. So I think you have two options before you is if you consider the section of 185-19 that goes from non-conforming use to non-conforming use it allows the Zoning Board the ability to entertain a Special Use Permit that’s one avenue. The other avenue is if you look at the sections where if it is not listed it’s not permitted then it would be a use variance. So I think that the determination before you is to make one of those two. I don’t see…I don’t see where accessory use fits anywhere as Dave has explained in our Code it’s very specific in the Bulk Use Tables as what is accessory to what.

Mr. Wolinsky: Yeah, no I…I understand that. I…I completely understand that…and I understand that’s…and I know there’s…there is an application that is submitted for a a use variance as well but the you know, the standards for a use variance are very, very, very high and it seems…it…it…it seems the situation here, the practical situation here is because of the site conditions there’s no ability to create storage in a…in the building complex itself. Is that correct? (to audience member) So as I understood it so this was a perfect a…solution because as…all of us who have ever lived in a rental facility we’ve all had some experience or for the ability of some level of storage and it seems…it seems to get thrust into a use variance scenario over, you know, over a site condition like that it just…

Mr. Manley: Would each unit owner be given a actual amount of storage to utilize or would it be a situation where they would have to a…pay for additional storage to utilize that facility?

Mr. Wolinsky: I am going to have a…the principal of the project answer that. Just say who you are for the record.

Mr. Minoia: Sure, Nick Minoia, I’m the managing member of the DRA Fidelco enterprise. So the concept here is that again apartment dwelling everyone seems to have more personal belongings than they have room for so there is a unique circumstance that a a building that’s viable, that’s on the site that we thought could be utilized for a storage, not public but for the tenants on a first come, first serve basis. The building is not large enough to carve into what will be with the approval of the planning board if they so deem it that will have a hundred and eighty units of rental. We will not have a hundred and eight storage units. Roughly forty, fifty units, something like that of a five by five, five by ten, ten by ten type storage unit a…first come, first serve basis.

Mr. Manley: And that would be for a fee?

Mr. Minoia: We’re not sure if there will be a fee or not it may just be an incentive for rental that a…something that could be programmed into the incentive to rent here versus somewhere else. It’s a nice on-site amenity, the building already exists a…and it’s a shame to take…take the building down.

Mr. Manley: Has the a…corporation come up with any other possible ideas for use of the structure beyond the storage?

Mr. Minoia: None that would be private to the community.

Mr. Manley: Thank you.

Mr. Minoia: Sure.

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

Mr. McKelvey: This possibly could be a use variance though right?

Mr. Manley: Yes. At this point I’d open up questions to the public, is there anyone from the public that has any questions? Come on forward, if you could just give us your name and address for the record?

Ms. Hughes: Linda Hughes, 6 Benson Avenue, my property is along the property line of the new proposed units.

Mr. Manley: Okay.

Ms. Hughes: So a couple of concerns that I have a…one is the drainage…drainage issue because our homes are lower so they’re kind of on a hill, along with the privacy issue. We’ve been there for thirty years and I really don’t want to walk out my back door and look up to condos, apartments, whatever (inaudible). So that’s a big concern of ours. Another thing is looking at this scaling here, I am a little concerned, can I walk over to the…?

Mr. Manley: Certainly.

Ms. Hughes: Because looking at this, these homes over here, these are literally over here. These are more in their backyard. This is kind of a little deceiving. I walk this road every day with my dog…these are in their backyard. There is space, I’m not saying it’s right on their border of their property but these are behind them, this is making it like they’re back over so that concerns me as to how true this actually is going to be. My other question is before this was even built when I met in a meeting with you gentlemen you had mentioned the privacy fence was going up here. That has not been done yet. So I don’t know, has that been scratched or was that just to appease us at the meeting? Where do we stand with that?

Mr. Manley: Okay, I don’t mean to interrupt but the Zoning Board our scope of what we’re here today for is specifically the variances that the applicant is seeking which…

Ms. Hughes: Okay.

Mr. Manley: …unfortunately what you’re discussing are valid points but it’s actually a planning board issue so…

Ms. Hughes: Okay, I just wanted that brought up so that everyone is aware…

Mr. Manley: … and absolutely but what I would recommend what you do is there will potentially be…can’t guarantee that there will be a Public Hearing but potentially a…there will be a point in time where you can comment to the planning board and give them the information with respect to your concerns either in person or in writing and they will take those comments and put that as part of their decision when they you know, decide to move forward with the project.

Ms. Hughes: Okay, so right now then with the…what’s at the conversation now is so we are concerned again, people living here, that because we have been here for a while that we don’t want to walk outside our backyard and look up and have people looking down at us. The drainage situation and what that’s going to do, they’re bringing more units and what that’s going to do to traffic on Stewart Avenue. Okay? And that’s…that was my concern.

Mr. Manley: So my question to you is, are you okay with or are you opposed to the old Jewish Community Center building being used for a…storage? Do you have any issues with that particular building being utilized for storage?

Ms. Hughes: No. You’re leaving the building as is it sounds like? So no, that’s…I mean if you are going to be putting more units in here, again, I don’t know how the true scale is, what this is going to be a…we would want them as far back as possible if this is approved and I don’t know how that all falls into with the house.

Mr. Manley: Well right now the setbacks meet the requirements that the Town has and there are buffer requirements that they have to meet between…between the property lines.

Ms. Hughes: Right.

Mr. Manley: Between your property line and…and the building.

Ms. Hughes: I would just hope that the Board takes into consideration again, we’ve been here for many years and it’s been a very a…quaint neighborhood and we’re just not looking to look up and see apartments.

Mr. McKelvey: The planning board could make them put screening in too.

Mr. Manley: And there could potentially be additional screening based on comments…

Ms. Hughes: Screening meaning…?

Mr. Manley: All your trees, shrubs…

Ms. Hughes: Oh, okay.

Mr. Manley: …fences, berms, sometimes they put berms to create a separation. If you’d like you can see Mrs. Gennarelli after the meeting and she can give you the planning board’s website. You can go to their website it lists when they have their meetings and you can look at their agendas to see when they are on the agenda. And at that point it gives you an opportunity to the planning board meetings and make your comments known.

Ms. Hughes: Alright that’s all that I have, thank you.

Mr. Manley: Thank you. Yes, sir.

Mr. Cruz: Good evening gentlemen, Fernando Cruz 4 Benson, my house is right behind the Jewish Center. Is it…is it in…can it be in writing that they will not for whatever reason they started building there the storage units they find something and now we can go around and build more storage units…is there a loophole that exists that you guys can take care of that?

Mr. Manley: If the a…

Mr. Cruz: Because they do have a hundred and sixty units plus the twenty-nine units they want to build and…

Mr. Manley: If the Zoning Board were to grant…

Mr. Cruz: …that’s…it’s…he’s already said that it’s an eye catcher for people that rent with storage units.

Mr. Manley: My guess is I can’t speak for the entire Board but I would be inclined to, if we were to grant it, I would put a…I would put a condition that states how many…

Mr. Cruz: Right.

Mr. Manley: …that they could have inside of it and of course it would be limited to the size of the building. If they wished to expand that they’d have to come back for a further variance.

Mr. Cruz: Any expansion is definitely right behind my house. Okay? You know you’re dealing with lawyers they’re going to find a loophole somewhere to appease their…that’s what they do...

Mr. Manley: Understood.

Mr. Cruz: …that’s what they get paid for so just keep that in mind. For everybody back there, we all have families back there that we’re trying to protect. That’s it. Thank you.

Mr. Manley: Thank you. Any other comments from the public? Mr. Wolinsky.

Mr. Wolinsky: Thank you, so while…the public were…were we’re making their comments I looked back at the application and having listened to Jerry and I reread the application that John submitted just now it…it…the lightbulbs kind of gone off on what the…what the request was and maybe I can articulate it a little better. The application’s point was that we have an existing site that has a…a non-conforming element to it, a non-conforming use which was the landscaping business so the whole…the whole site has that element to it. Now the request is to be able to a…the request is to be able to continue to have a non-conforming element within that site except the…the…that non-conforming element is no longer a landscaping element but is now a a storage element because as you pointed out the…the storage would be non-conforming according to the strict Town of Newburgh Code on accessory uses a...and the argument is that that provision of law allows this Board, as Jerry pointed out, to issue a Permit to allow that, okay, but subject to whatever conditions and a…provided the Board feels that that is less of a non-conforming a…kind of use than the landscape business was and I think clearly since that is what we would all understand to be accessory but for it not being specifically designated out in the Code that that is less of a non-conformity use. So I just wanted to get that out and…and…and make sure that I personalize the argument.

Mr. Minoia: Mr. Chairman

Mr. Manley: Yes sir.

Mr. Minoia: If I may just to address the prior member of the public’s question or comment, we laid out conceptually the building for storage units and we were able to get no more than approximately sixty units inside the building for storage of various sizes and there are no plans to expand the building beyond its current footprint.

Mr. Manley: Thank you.

Mr. Minoia: Yes.

Mr. Manley: Do any of the Board Members have any questions or comments?

Mr. Scalzo: I have one, Jerry the landscaping business that keeps coming up, was it actually…was it advertised on the barn for or were they just utilizing the barn for storage or warehousing of their equipment?

Mr. Canfield: I don’t recollect that there was any signage there but the equipment that was there was well plaquered. You could tell it was a bright yellow landscaping outfit.

Mr. Scalzo: Okay. Do you know if they ran an office out of that barn as well?

Mr. Canfield: That I’m not sure. I was never there not in the landscape entity. I don’t know.

Mr. McKelvey: I think it was hard…that barn was hard to see from the road anyhow.

Mr. Canfield: Yeah, it’s kind of like over in the back.

Mr. McKelvey: In the back.

Mr. Manley: Would that have been subject to fire inspection by the Town?

Mr. Canfield: If…if we don’t have a Permit on it and we’re not sure it’s even there not…no, it wouldn’t come up. The community center was under inspection and this commodity would also subject to the Town of Newburgh’s Fire Protection Ordinance. There would be a sprinkler system required in this building which is already there which should you choose to approve it it just needs to be altered to protect this commodity.

Mr. Manley: Thank you.

Mr. Maher: (Inaudible) So when was the landscape occupancy discontinued?

Mr. Wolinsky: I don’t know I’ll defer it to the…the owner again. I have no personal knowledge of the dates.

Mr. Minoia: It…it was shortly after we took title they were…they were a holdover tenant as (Inaudible) it’s probably been three or four months since the last of their equipment was cleaned up and they had paper box and other landscape materials there. They had a lot of equipment. They did have a small office (Inaudible)

Mr. Maher: You acquired the property when?

Mr. Minoia: A…we acquired the property I guess a…about nine months, nine, ten months ago.

Mr. Scalzo: The drawing to my immediate left, the structures that are currently built is that an as built? Are they actually where they’re shown on the plan? I would assume so.

Mr. Minoia: That’s not actually an as built but that is the scale and that is essentially where they are built. None of the buildings were moved from the original approval.

Mr. Scalzo: Okay.

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

Mr. Levin: No.

Mr. Manley: Comments?

Mr. McKelvey: The only thing when I was there at the barn they were hauling a lot of lumber out of there, used lumber.

Mr. Manley: Do we have a motion to close the Public Hearing?

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Ms. Gennarelli: And that is to close the Public Hearing on all of them?

Mr. Manley: Yes.

Ms. Gennarelli: Okay. Thank you.

Mr. Manley: That doesn’t approve the project the Zoning Board will confer at the end of the meeting and decide whether or not we’re going to vote on the project.

 (Time Noted - 7:36 PM)

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ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:29 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

 (97-1-47.2) R-3 ZONE

Applicant is seeking an Interpretation and issuance of a Special Permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community.

Mr. Manley: The request for DRA Fidelco Newburgh, LLC., 68 Stewart Avenue, request an Interpretation and issuance of a Special Permit in accordance with Section 185-19-A-(3) to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. This is a Type II Action under SEQR. Do I have discussion on this application?

Mr. Scalzo: Jerry, when they proposed this to be a storage facility will it need to…a…it will be reviewed the…the way they split it up a…according to the Building Department?

Mr. Canfield: Yes, there will be a Building Permit required and a thorough plan review conducted.

Mr. Manley: I think the issue here that we really need to look is with respect to the Interpretation…the lesser of the use and whether or not the applicant provided sufficient testimony as to whether or not the use that existed prior to that was…was a listed that it was approved use which would be the a…the landscaping a…storage/business.

Mr. Maher: Yeah, I believe that the…the landscaping business obviously was not approved whether it was there or non-conforming use. I think the a…storage facility would be a lesser non-conformity than the actually landscape. Obviously there’ll be no (Inaudible) traffic, there’s no equipment moved in and out on a daily basis, there’s no employees going back and forth.

Mr. Scalzo: But general activity at the building would decrease compared to its previous uses.

Mr. Maher: I think I would be comfortable in making a motion to…approve the special permit for the storage facility providing it meets the requirements of the Building Department.

Mr. Manley: So you have no issue with how many storage units? Are you putting a limit on the number of storage units or how are you going to interpret you know, how many units you get out of that?

Mr. Maher: I believe the applicant said the maximum would be sixty in the property but again it would have to be coordinated with the Building Department to make sure it would actually hold sixty or the maximum the Building Department feels would be feasible for that property.

Mr. Manley: I believe that interpreting it an issuance of a special permit with respect to that opens up the door potentially in the future to the, you know, the Town having similar structures like this and I just think it opens up, you know, Pandora’s Box with respect to that. Do we have a motion from the Board?

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

Mr. Masten: I'll second.

Mr. Donovan: So and just so I’m clear, Mike the motion is to a…interpret the Code to the extent that the use proposed as storage in the location as indicated in the plans is permitted under Section 185-18-A-(3) and to issue a special permit for that purpose subject to compliance with Building Code requirements.

Mr. Maher: That’s correct.

Ms. Gennarelli: Mike, is your mic on?

Mr. Maher: It is now.

Mr. Manley: I would only add with the motion and the second that this certainly sets a a… what I consider a very dangerous precedent with respect to issuance of a special use permit.

Mr. McKelvey: I kind of go along with you.

Ms. Gennarelli: I’m sorry, are you ready…

Mr. Manley: Betty, roll call.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: No

 Darrin Scalzo: No

Jim Manley: No

Mr. Manley: That’s three yes and three no.

Mr. Donovan: That’s a denial.

PRESENT ARE:

 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 – NOVEMBER 24, 2015 (Time Noted – 7:03 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

 (97-1-47.2) R-3 ZONE

Applicant is seeking a use variance to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. The use variance is only required if the request for an Interpretation under Section 185-19-A-(3) is denied by the Zoning Board.

**THESE MINUTES WERE USED FOR THE FIRST PORTION OF ALL THREE APPLICATIONS UNTIL THE PUBLIC HEARING WAS CLOSED THEN VOTED ON SEPARATELY.**

Mr. Manley: The first application tonight is going to be DRA Fidelco Newburgh, LLC. they are seeking an area variance for the front yard setback to allow an existing single family home to remain in its present location. Mrs. Gennarelli…

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, November 13th and in the Mid-Hudson Times on Wednesday, November 18th. This applicant sent out fifty-eight letters. All the mailings, publications and postings are in order.

Mr. Manley: Is the applicant prepared? Good evening.

Mr. Wolinsky: Good evening Mr. Chairman, Members of the Board my name is Larry Wolinsky I am an attorney with the law firm of Jacobowitz and Gubitz and I’m here tonight on behalf of the applicant. As a point of order there are a…several requests before you tonight on this a…a…on this project you read just the first one. I am happy to address each one individually or them all together so you have the entire context of what’s going…going on there at your…at your pleasure.

Mr. Manley: They are two separate parcels, correct?

Mr. Wolinsky: A…they are…they are currently two separate parcels but they will be merged ultimately.

Mr. Manley: Okay.

Mr. Wolinsky: So the…the…what I…what I’d like to say at the outset here a…just to a…be clear there is an application pending before the planning board for the construction of a twenty a…nine a…for twenty-eight additional a…rental units at the Summit Lane project and a…the conversion of a twenty-ninth pre-existing residential structure into a residential unit and in addition to that there is also the proposal for a…a renovation of an existing a…structure into an accessory a…a…building that would be used solely for storage of a…of a…the rental units, for the residents of the rental units.

Mr. Donovan: If I may, I’m sorry to interrupt Larry. It’s up to the Board but my suggestion is basically you’ve got one unified application and I don’t think a…one…it doesn’t make sense to segment the Hearings because you’re going to repeat yourself. My suggestion to the Board or what it’s called my suggestion is that you hear everything at once.

Mr. Manley: What’s the pleasure of the Board?

Mr. McKelvey: That’s fine by me.

Mr. Maher: That’s fine.

Mr. Scalzo: Fine.

Mr. Wolinsky: I think that will be clearer for both you and the public if we do it that way. So really…

Ms. Gennarelli: Okay, one second so then in that case I’ll just say that they sent out fifty-eight letters for each of the applications and all of the mailings, publications and posting are in order for each individual one. Thank you.

Mr. Wolinsky: So I just want to…the focus of tonight’s Hearing is essentially on two structures. The first structure is the pre-existing a…home that is closest to Stewart Avenue. A…that was…that has been part of that parcel for many years and it has a pre-existing frontage of forty-one a…feet. The Code in this district requires fifty feet so at the planning board it was determined that because this is going to be a unified project and essentially this will be the twenty-ninth unit incorporated into the project as shown on the project plan that technically under the Code this should a…require an area variance a…for the a…nine feet. So the first request before you tonight is an area variance from fifty feet to nine (forty-one) feet under that section of the Code that was noticed for a…that front yard area variance. The second…the second aspect of the a…a…application before the ZBA is the a…existing building that a…it used to be the JCC building and is now the…it was a nursery school building and that is being proposed also to be incorporated into the project and used a…and renovated for purposes of storage for a…tenant use. That…that a… requires either one of two things, either an Interpretation from the Board that this is a pre…a…that’s a permitted accessory use in connection with the apartment complex or there’s a provision in the Code that if it’s not an accessory use and it remains a non-conforming use it is a non-conforming use of a lesser a…invasive nature than the current non-conforming use. And if you a…recall our application a…and the justifications we provided with respect to that one a… it was pointed out that there are a couple of buildings there, and you may want to just point those out, that already house a non-conforming landscaping a…a…business and that those structures will demolished and a…removed so a…the only thing that would be left a…would be this building that we are proposing to a…convert to a…the a…tenant storage facility and again that would be accessory to a principal use. With a…regard to the…with regard back with regard to the what we’re referring to as the twenty-ninth unit which is really the…the continued rental of that unit, it’s been rented a…all along a…a...there is no change whatsoever a…it’s a…forty-nine a feet…forty-one feet as it has been forever and it’s a…it’ll remain that way no real changes associated with…with that. Just by way of information the drive that extends out from what we’re proposing to be the a…accessory storage facility is an emergency access drive. It’s gated and a…will not be used for a…access. Other than that I think a…again we’ve submitted our application our applications contain a…a the legal reasoning and justifications for a…a…the variances. We consider these to be a…relatively minor from your end of things which is the…the aspect of the a…actual a…variances and the Interpretation for the…the permit that you can issue that says that it’s a…a lesser a…a less invasive non-conforming a…use. The main part of the project which is the twenty-eight units is still pending a…before the planning and it would have to complete planning board review in accordance with the a…Zoning Code and site plan…site plan regulations of the Town Code of Newburgh. Thank you very much.

Mr. McKelvey: The landscaping business that’s where the barn is?

Mr. Wolinsky: Correct.

Mr. McKelvey: Okay.

Mr. Maher: One question, on the letter from a…from a…Mike Donnelly it states that a residential building on site is claimed to have been used in the past for storage purposes a…as accessory to be claimed protected non-conforming landscape business so was the actual house used for the landscape business or the barn itself?

Mr. Wolinsky: The barn, the barn.

Mr. Maher: Okay.

Mr. Manley: Was that a permitted use by the Town?

Mr. Wolinsky: It was permitted non-…it was yes a lawful…a pre-existing non-conforming use as I understand it.

Mr. Manley: Mr. Canfield was the landscaping business something that was a…known by the Town?

Ms. Gennarelli: Can you take that microphone Jerry?

Mr. Canfield: Yeah, I don’t recollect for sure. I can’t testify with a degree of certainty that there was a Permit for the landscaping business. But I can say that I do know that the landscape business did exist there and that use in an R-3 Zone is non-conforming. The day care center was a conforming use but the landscape was not.

Mr. Manley: Would there be any way to check back to determine whether or not the landscaping was permitted or had received some sort of approvals?

Mr. Canfield: Yeah, we can just check our building records.

Mr. Donovan: The landscaping business is in one of the buildings that’s going to be demolished?

Mr. Wolinsky: Yes, it’s gone, it’s already…it’s out.

Mr. Donovan: So Mr. Chairman if I could? In taking a look at this and reading the planning board minutes and Jerry I may ask you for a…or I will ask you for some assistance here, so the day care center is what’s going to be your request is to use for storage?

Mr. Wolinsky: Correct.

Mr. Donovan: So day care is a permitted use I’m looking at or a nursery school, pre-school is a permitted use so that provision of the Code that I…that I think you’re asking us to construe says when you go non-conforming to non-conforming so long as your less intense that’s fine. So my…my issue then is if the a…pre-school was conforming does that section apply?

Mr. Wolinsky: Well yeah, my set up here was that I was not…unaware that it was conforming. The…the provision that was…it was applied under was the procedure for going from a…one non-conforming use to another non-conforming use now they may have considered…John who prepared the application may have considered the non-conforming use of the a…of the a…getting rid of the a…landscaping business as the non-conforming use and then applying that to a…a…to the accessory struct…the accessory storage which I also…in and of itself would be non-conforming unless you would make…unless it was interpreted that it was a…a legal accessory conforming use so that…that’s…

Mr. Donovan: The so…so…yeah…

Mr. Wolinsky: I know it’s a little confusing…

Mr. Donovan: …it is because the next question that…that I have is you know, Newburgh doesn’t do the ordinary I’ll say the ordinary which customarily a lot of other places that accessory whatever is customary incidental to its accessory. The Bulk Tables call out specific accessory uses as permitted accessory uses which storage is not called out as a specific accessory use in this Zone. So I…I don’t know, I can’t find a hole to put your peg in is my issue on the interpretation.

Mr. Wolinsky: Well I think that’s why there was also the request…it was coupled for the request for the a…the Permit and…and then the…the a…the hole on the peg, the peg in the hole where it was the…the change from the a…providing assume the landscaping pre-existing a…non-conforming use for the landscaping business to a…a pre-existing a…non…non-conforming use of a storage facility because if it’s not permitted it would be so…

Mr. Donovan: Alright but it’s in a different building though right?

Mr. Maher: Right.

Mr. Wolinsky: Well it…it is a different building but it’s if we’re talking that use not you know so…we’re on the same parcel so we’re going from use to use as opposed to…so I’m…I’m not sure the…the…the…the…the a…a…the building a, you know, cause I’m looking at use rather than structure so.

Mr. Maher: But if you…but if you’re not using a building once the building is gone the use is no longer valid. I mean that again, that’s…again that’s why I picked out the letter Mike…Mike that a…identified as being a landscape business used and also nursery schools so that’s what I wanted to clarify that it wasn’t actually in that building itself.

Mr. Wolinsky: Right.

Mr. Donovan: Just one more thing, day care or nursery school? If you know? I only say that because day care is not called out as a permitted use…

Mr. Maher: It identifies both in the letter so…

Mr. Donovan: But in…in the Bulk Table it just says pre-school or nursery school it doesn’t say day care which could be two different things. And I keep looking at Jerry so…I’m sorry Jerry.

Mr. Wolinsky: I…I…I personally don’t know, the last I know of this building it was used by the JCC. The JCC may have had a a day care aspect to it…a…

Mr. Canfield: I believe it was both. I’ve been in that building. I’ve inspected it. I did programs…

Mr. Donovan: Were you a student there Jerry?

Mr. Canfield: No, not…but it was both. But I think also to add something the non-conforming landscaper a…I believe was in the barn, renting the barn in the back prior to these folks purchasing it. I think that was an arrangement that was made with the previous owners. The question does still…it is still outstanding whether it was permitted or not by…by use of a Building Permit. The question here is and I was part and parcel to getting these folks before you because at the planning board application level I could not make a clear determination simply because this type of use, which doesn’t appear to be anything out of the ordinary, it’s storage for the folks that rent the units, it’s private in nature so that’s where I couldn’t fit it into our definition of public storage, self-storage units a…in 185-3 in the definitions it specifically says public use that doesn’t apply here. This is only for private use. So I think you have two options before you is if you consider the section of 185-19 that goes from non-conforming use to non-conforming use it allows the Zoning Board the ability to entertain a Special Use Permit that’s one avenue. The other avenue is if you look at the sections where if it is not listed it’s not permitted then it would be a use variance. So I think that the determination before you is to make one of those two. I don’t see…I don’t see where accessory use fits anywhere as Dave has explained in our Code it’s very specific in the Bulk Use Tables as what is accessory to what.

Mr. Wolinsky: Yeah, no I…I understand that. I…I completely understand that…and I understand that’s…and I know there’s…there is an application that is submitted for a a use variance as well but the you know, the standards for a use variance are very, very, very high and it seems…it…it…it seems the situation here, the practical situation here is because of the site conditions there’s no ability to create storage in a…in the building complex itself. Is that correct? (to audience member) So as I understood it so this was a perfect a…solution because as…all of us who have ever lived in a rental facility we’ve all had some experience or for the ability of some level of storage and it seems…it seems to get thrust into a use variance scenario over, you know, over a site condition like that it just…

Mr. Manley: Would each unit owner be given a actual amount of storage to utilize or would it be a situation where they would have to a…pay for additional storage to utilize that facility?

Mr. Wolinsky: I am going to have a…the principal of the project answer that. Just say who you are for the record.

Mr. Minoia: Sure, Nick Minoia, I’m the managing member of the DRA Fidelco enterprise. So the concept here is that again apartment dwelling everyone seems to have more personal belongings than they have room for so there is a unique circumstance that a a building that’s viable, that’s on the site that we thought could be utilized for a storage, not public but for the tenants on a first come, first serve basis. The building is not large enough to carve into what will be with the approval of the planning board if they so deem it that will have a hundred and eighty units of rental. We will not have a hundred and eight storage units. Roughly forty, fifty units, something like that of a five by five, five by ten, ten by ten type storage unit a…first come, first serve basis.

Mr. Manley: And that would be for a fee?

Mr. Minoia: We’re not sure if there will be a fee or not it may just be an incentive for rental that a…something that could be programmed into the incentive to rent here versus somewhere else. It’s a nice on-site amenity, the building already exists a…and it’s a shame to take…take the building down.

Mr. Manley: Has the a…corporation come up with any other possible ideas for use of the structure beyond the storage?

Mr. Minoia: None that would be private to the community.

Mr. Manley: Thank you.

Mr. Minoia: Sure.

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

Mr. McKelvey: This possibly could be a use variance though right?

Mr. Manley: Yes. At this point I’d open up questions to the public, is there anyone from the public that has any questions? Come on forward, if you could just give us your name and address for the record?

Ms. Hughes: Linda Hughes, 6 Benson Avenue, my property is along the property line of the new proposed units.

Mr. Manley: Okay.

Ms. Hughes: So a couple of concerns that I have a…one is the drainage…drainage issue because our homes are lower so they’re kind of on a hill, along with the privacy issue. We’ve been there for thirty years and I really don’t want to walk out my back door and look up to condos, apartments, whatever (inaudible). So that’s a big concern of ours. Another thing is looking at this scaling here, I am a little concerned, can I walk over to the…?

Mr. Manley: Certainly.

Ms. Hughes: Because looking at this, these homes over here, these are literally over here. These are more in their backyard. This is kind of a little deceiving. I walk this road every day with my dog…these are in their backyard. There is space, I’m not saying it’s right on their border of their property but these are behind them, this is making it like they’re back over so that concerns me as to how true this actually is going to be. My other question is before this was even built when I met in a meeting with you gentlemen you had mentioned the privacy fence was going up here. That has not been done yet. So I don’t know, has that been scratched or was that just to appease us at the meeting? Where do we stand with that?

Mr. Manley: Okay, I don’t mean to interrupt but the Zoning Board our scope of what we’re here today for is specifically the variances that the applicant is seeking which…

Ms. Hughes: Okay.

Mr. Manley: …unfortunately what you’re discussing are valid points but it’s actually a planning board issue so…

Ms. Hughes: Okay, I just wanted that brought up so that everyone is aware…

Mr. Manley: … and absolutely but what I would recommend what you do is there will potentially be…can’t guarantee that there will be a Public Hearing but potentially a…there will be a point in time where you can comment to the planning board and give them the information with respect to your concerns either in person or in writing and they will take those comments and put that as part of their decision when they you know, decide to move forward with the project.

Ms. Hughes: Okay, so right now then with the…what’s at the conversation now is so we are concerned again, people living here, that because we have been here for a while that we don’t want to walk outside our backyard and look up and have people looking down at us. The drainage situation and what that’s going to do, they’re bringing more units and what that’s going to do to traffic on Stewart Avenue. Okay? And that’s…that was my concern.

Mr. Manley: So my question to you is, are you okay with or are you opposed to the old Jewish Community Center building being used for a…storage? Do you have any issues with that particular building being utilized for storage?

Ms. Hughes: No. You’re leaving the building as is it sounds like? So no, that’s…I mean if you are going to be putting more units in here, again, I don’t know how the true scale is, what this is going to be a…we would want them as far back as possible if this is approved and I don’t know how that all falls into with the house.

Mr. Manley: Well right now the setbacks meet the requirements that the Town has and there are buffer requirements that they have to meet between…between the property lines.

Ms. Hughes: Right.

Mr. Manley: Between your property line and…and the building.

Ms. Hughes: I would just hope that the Board takes into consideration again, we’ve been here for many years and it’s been a very a…quaint neighborhood and we’re just not looking to look up and see apartments.

Mr. McKelvey: The planning board could make them put screening in too.

Mr. Manley: And there could potentially be additional screening based on comments…

Ms. Hughes: Screening meaning…?

Mr. Manley: All your trees, shrubs…

Ms. Hughes: Oh, okay.

Mr. Manley: …fences, berms, sometimes they put berms to create a separation. If you’d like you can see Mrs. Gennarelli after the meeting and she can give you the planning board’s website. You can go to their website it lists when they have their meetings and you can look at their agendas to see when they are on the agenda. And at that point it gives you an opportunity to the planning board meetings and make your comments known.

Ms. Hughes: Alright that’s all that I have, thank you.

Mr. Manley: Thank you. Yes, sir.

Mr. Cruz: Good evening gentlemen, Fernando Cruz 4 Benson, my house is right behind the Jewish Center. Is it…is it in…can it be in writing that they will not for whatever reason they started building there the storage units they find something and now we can go around and build more storage units…is there a loophole that exists that you guys can take care of that?

Mr. Manley: If the a…

Mr. Cruz: Because they do have a hundred and sixty units plus the twenty-nine units they want to build and…

Mr. Manley: If the Zoning Board were to grant…

Mr. Cruz: …that’s…it’s…he’s already said that it’s an eye catcher for people that rent with storage units.

Mr. Manley: My guess is I can’t speak for the entire Board but I would be inclined to, if we were to grant it, I would put a…I would put a condition that states how many…

Mr. Cruz: Right.

Mr. Manley: …that they could have inside of it and of course it would be limited to the size of the building. If they wished to expand that they’d have to come back for a further variance.

Mr. Cruz: Any expansion is definitely right behind my house. Okay? You know you’re dealing with lawyers they’re going to find a loophole somewhere to appease their…that’s what they do...

Mr. Manley: Understood.

Mr. Cruz: …that’s what they get paid for so just keep that in mind. For everybody back there, we all have families back there that we’re trying to protect. That’s it. Thank you.

Mr. Manley: Thank you. Any other comments from the public? Mr. Wolinsky.

Mr. Wolinsky: Thank you, so while…the public were…were we’re making their comments I looked back at the application and having listened to Jerry and I reread the application that John submitted just now it…it…the lightbulbs kind of gone off on what the…what the request was and maybe I can articulate it a little better. The application’s point was that we have an existing site that has a…a non-conforming element to it, a non-conforming use which was the landscaping business so the whole…the whole site has that element to it. Now the request is to be able to a…the request is to be able to continue to have a non-conforming element within that site except the…the…that non-conforming element is no longer a landscaping element but is now a a storage element because as you pointed out the…the storage would be non-conforming according to the strict Town of Newburgh Code on accessory uses a...and the argument is that that provision of law allows this Board, as Jerry pointed out, to issue a Permit to allow that, okay, but subject to whatever conditions and a…provided the Board feels that that is less of a non-conforming a…kind of use than the landscape business was and I think clearly since that is what we would all understand to be accessory but for it not being specifically designated out in the Code that that is less of a non-conformity use. So I just wanted to get that out and…and…and make sure that I personalize the argument.

Mr. Minoia: Mr. Chairman

Mr. Manley: Yes sir.

Mr. Minoia: If I may just to address the prior member of the public’s question or comment, we laid out conceptually the building for storage units and we were able to get no more than approximately sixty units inside the building for storage of various sizes and there are no plans to expand the building beyond its current footprint.

Mr. Manley: Thank you.

Mr. Minoia: Yes.

Mr. Manley: Do any of the Board Members have any questions or comments?

Mr. Scalzo: I have one, Jerry the landscaping business that keeps coming up, was it actually…was it advertised on the barn for or were they just utilizing the barn for storage or warehousing of their equipment?

Mr. Canfield: I don’t recollect that there was any signage there but the equipment that was there was well plaquered. You could tell it was a bright yellow landscaping outfit.

Mr. Scalzo: Okay. Do you know if they ran an office out of that barn as well?

Mr. Canfield: That I’m not sure. I was never there not in the landscape entity. I don’t know.

Mr. McKelvey: I think it was hard…that barn was hard to see from the road anyhow.

Mr. Canfield: Yeah, it’s kind of like over in the back.

Mr. McKelvey: In the back.

Mr. Manley: Would that have been subject to fire inspection by the Town?

Mr. Canfield: If…if we don’t have a Permit on it and we’re not sure it’s even there not…no, it wouldn’t come up. The community center was under inspection and this commodity would also subject to the Town of Newburgh’s Fire Protection Ordinance. There would be a sprinkler system required in this building which is already there which should you choose to approve it it just needs to be altered to protect this commodity.

Mr. Manley: Thank you.

Mr. Maher: (Inaudible) So when was the landscape occupancy discontinued?

Mr. Wolinsky: I don’t know I’ll defer it to the…the owner again. I have no personal knowledge of the dates.

Mr. Minoia: It…it was shortly after we took title they were…they were a holdover tenant as (Inaudible) It’s probably been three or four months since the last of their equipment was cleaned up and they had paper box and other landscape materials there. They had a lot of equipment. They did have a small office (Inaudible)

Mr. Maher: You acquired the property when?

Mr. Minoia: A…we acquired the property I guess a…about nine months, nine, ten months ago.

Mr. Scalzo: The drawing to my immediate left, the structures that are currently built is that an as built? Are they actually where they’re shown on the plan? I would assume so.

Mr. Minoia: That’s not actually an as built but that is the scale and that is essentially where they are built. None of the buildings were moved from the original approval.

Mr. Scalzo: Okay.

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

Mr. Levin: No.

Mr. Manley: Comments?

Mr. McKelvey: The only thing when I was there at the barn they were hauling a lot of lumber out of there, used lumber.

Mr. Manley: Do we have a motion to close the Public Hearing?

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 James Manley: Yes

Ms. Gennarelli: And that is to close the Public Hearing on all of them?

Mr. Manley: Yes.

Ms. Gennarelli: Okay. Thank you.

Mr. Manley: That doesn’t approve the project the Zoning Board will confer at the end of the meeting and decide whether or not we’re going to vote on the project.

 (Time Noted - 7:36 PM)

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ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:35 PM)

DRA FIDELCO NEWBURGH, LLC. 68 STEWART AVENUE, NBGH

 (97-1-47.2) R-3 ZONE

Applicant is seeking a use variance to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. The use variance is only required if the request for an Interpretation under Section 185-19-A-(3) is denied by the Zoning Board.

Mr. Manley: At this point the Board needs to take up the request for DRA Fidelco Newburgh, LLC. to request a use variance to permit the conversion of an existing building to an accessory storage facility for the sole use of the rental community tenants residing in the Summit Lane at Newburgh rental community. The use variance is only required if the request for an Interpretation under Section 185-19-A-(3) is denied by the Zoning Board. First of all, this is an Unlisted Action under SEQR and requires a Neg Dec.

Mr. McKelvey: I’ll make a motion to Neg Dec.

Mr. Donovan: Well let me ask this Board this question relative to the use variance. Are…are you satisfied or do you think you have enough information in front of you to make a decision? Or you are you going to go with what you have here?

Mr. Manley: What is the Board’s pleasure?

No response.

Mr. Manley: The Public Hearing is closed. We have up to sixty-two days to issue a decision if the Board wishes additional time to go through the documents that we have if you feel that you need additional time to make a decision.

Mr. Scalzo: I would like a little more time to review the four criteria for a use variance.

Mr. Manley: Is that the pleasure of the Board?

Mr. McKelvey: I’ll go along with that.

Mr. Masten: I will to.

Mr. Manley: At this point the Board wishes to Reserve Decision? Can I have a motion?

Mr. Scalzo: Yes.

Mr. Maher: Yes.

Mr. McKelvey: I’ll make a motion to Reserve Decision.

Ms. Gennarelli: Who was the second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

Mr. Manley: At this point the Board will Reserve Decision on that application. The Board has up to sixty-two days to issue a decision. We’ll bring it up for next month’s meeting to discuss.

Mr. McKelvey: What’s the date of the meeting?

Ms. Gennarelli: December…

Mr. Donovan: December 22nd.

Mr. Manley: December 22nd.

Ms. Gennarelli: Thank you.

PRESENT ARE:

 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 – 9:38 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 7:36 PM)

CLAUDIO BORGUETA 34 SLOANE ROAD, NBGH

 (43-5-47) R-1 ZONE

Applicant is seeking an area variance for the maximum allowed height of accessory structures to keep a prior built accessory building (pool house).

Mr. Manley: The next application before the Board tonight is Claudio Borgueta.

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

Mr. Manley: Good evening.

Mr. Pasiut: Good evening Chairman and Board Members, ladies and gentlemen, my name is Richard Pasiut. Mr. Borgueta is a baby doctor and unfortunately is delivering babies this evening. And at the eleventh hour he asked me to come down here and plead his case for him. He is respectfully asking the Board for a variance on a height restriction on an existing pool house that is on his property at 34 Sloane Road now. The house was built in 1987. The pool house was built by the same builder and designed by the same architect in 1988 approximately and it’s existed there for twenty-eight or twenty-nine years and unbeknownst to them they never had a Permit for doing it. Consequently they had just done some renovations to the inside and the exterior of the house; they brought in a contractor to give them estimates on replacing the awning and re-staining the pool house also and in the process of doing this they found out that there was a violation of height restriction when they applied for a Building Permit. The restrictions are fifteen feet, the pool house is approximately eighteen feet just a little less than eighteen feet so it’s a three foot variance. The Borguettas are a…lifelong residents of the area, they are professional people and they take this matter serious and they want to do whatever is needed to be done to be in compliance, get the Building Permit and have the Building Department do all the necessary inspections. So again there is no complaints from any of the neighbors, the house…the pool house has been there for twenty-eight years, it restricts nobody’s views a…it…there’s pictures that should be there available you can see how it fits into nature. They are very concerned because the architect who designed the house and the pool house and the decks, driveway, garage has it all that’s all so it kind of matches, it really fits into their desires. So again, respectfully they ask that we be granted a variance to allow them to continue with it the way it exists now and to have the Building Department come out and inspect all electrical and plumbing and everything else that’s in it.

Mr. McKelvey: Just to make it known, all Board Members have inspected these properties.

Mr. Pasiut: Okay, thank you. Not too much more than that other than it’s a little less than three feet over what’s required there at the time and now again they respectfully request that they be granted a variance so that they can continue with the Building Permit process.

Mr. McKelvey: They built it…it was built without a Permit.

Mr. Pasiut: Yes. The builder, again unbeknownst to them, the builder who did the house completed the house at the end of the year came back and did the pool house in the spring of the next year and they never knew he didn’t have a Permit. You know they’re not builders they’re doctors and a nurse. So that’s what they’re stuck with.

Mr. McKelvey: Problem is the builder should have known he’d have to have a Permit.

Mr. Pasiut: Yeah, twenty-eight years ago, the builder is not in the area they looked for him.

Mr. McKelvey: Yeah.

Mr. Pasiut: We don’t even know if he is alive quite frankly. I’ll do my best to answer any questions anybody has again on their behalf.

Mr. Scalzo: I understand you’re a last minute entry to the game.

Mr. Pasiut: Boom, here I am.

Mr. Scalzo: I see on the, and Jerry help me, there’s the Town of Newburgh Code Compliance sheet states that the height is twenty feet and…and we’re hearing that it’s less than twenty.

Mr. Pasiut: I believe it’s eighteen, I think the Code calls for fifteen…

Mr. Scalzo: That’s correct.

Mr. Pasiut: …and I believe the house is…let’s call it eighteen.

Mr. Scalzo: Jerry was the existing twenty foot determination by your group or was it just the information that was supplied.

Mr. Canfield: I don’t have this application in my packet can I see that sheet Darrin? Just hold it up and I’ll know exactly where it came from. Yeah, that’s a Joe Mattina sheet my plans reviewer, he must have had a set of drawings submitted and that’s probably where he received that.

Ms. Gennarelli: I have the Building Permit Application back at the office. I didn’t bring it along if you need we can get it.

Mr. Canfield: Were there drawings affixed with it? So that’s…that’s where the twenty feet came from. If the dimensions are not there and it’s drawn to scale he would have scaled it out so…my suggestion is is that if there is a suspicion that it’s twenty feet then that’s perhaps the request for the variance should be for.

Mr. Pasiut: I’d be happy to go along with that.

Mr. Scalzo: That…that was my only concern; the percentage variance that was requested will change with the height being eighteen as opposed to twenty.

Mr. Pasiut: I don’t know if you saw pictures of it there but it’s a lovely home, well maintained, they are good neighbors, they’re good family people and again he has his business and his residence in the Town of Newburgh.

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

Mr. Scalzo: I’ve seen the lot but I don’t have the pictures that…does anyone else have any pictures in their packet?

Mr. Pasiut: I have pictures that I could bring to you with your permission.

Mr. Scalzo: Certainly.

Mr. Pasiut approached the Board.

Mr. Pasiut: This is the home and this is the pool house.

Mr. Manley: The slope of the roof appears to be very steep in the back a…there’s no way to alter that at all to bring down that peak a little bit?

Mr. Pasiut: They could but they don’t want to…what they’re trying to do is keep the…

Ms. Gennarelli: You have to use the microphone it is being recorded.

Mr. Pasiut: They’re desire would be, you know, they had an architect design the pool house to match the house if you look at the pictures you can see the roofs are very, very similar. They want to keep that appearance they love it. And again there’s been no issues with any neighbors ever.

Mr. Manley: Would you mind stepping forward so I can show you something real quick?

Mr. Pasiut: Sure.

Mr. Pasiut approached.

Mr. Manley: Do you see how this piece is up a little bit higher? You know, the thought is if that came slightly down here you could knock off a couple of feet without really changing the overall…what they’re trying to do here? That’s just a…just a suggestion.

Mr. Pasiut: I guess they look at it as kind of a basic (Inaudible) …it’s a good suggestion I understand what you’re saying but they just love the appearance of it the way that it is. They want to update, re-stain it, replace the awnings…

Ms. Gennarelli: Do you have the microphone with you? No. If you come up again it pops off, it travels.

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

Mr. Scalzo: Just one more, I a…on the County website, the Imagemate they show on the inventory, the property inventory there is a machine shed of hundred and sixty-eight square feet and unless…

Mr. Pasiut: That was taken down ten years, I think there was a fire in it ten years ago it was leveled and taken down.

Mr. Maher: You’re still getting taxed for it though.

Mr. Pasiut: I’ll be sure to tell them that.

Mr. Manley: If the Board doesn’t have any other questions I’ll open it for questions from the public, comments.

No response.

Mr. Manley: With no comments I’ll look for a motion from the Board.

Mr. Masten: I’ll make a motion.

Mr. Manley: To close the Public Hearing.

Mr. Maher: I’ll second.

Ms. Gennarelli: Mike you were the second?

Mr. Maher: Yes.

Ms. Gennarelli: Thank you. Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 John McKelvey: Yes

 Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: We’re done. Thank you.

Mr. Donovan: We’re done with the Public Hearing.

Ms. Gennarelli: The Public Hearing is closed.

Mr. Donovan: They haven’t voted yet.

Mr. Pasiut: Inaudible.

Ms. Gennarelli: They haven’t voted on the variance yet.

Mr. Pasiut: Are you going to do that this evening or…?

Mr. Manley: Yes.

 (Time Noted - 7:44 PM)

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ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:38 PM)

CLAUDIO BORGUETA 34 SLOANE ROAD, NBGH

 (43-5-47) R-1 ZONE

Applicant is seeking an area variance for the maximum allowed height of accessory structures to keep a prior built accessory building (pool house).

Mr. Manley: On the matter of the application for Claudio Borgueta, 34 Sloane Road, Newburgh the applicant which requests an area variance for the maximum allowed height of accessory structures to keep a prior built accessory building (pool house). This is a Type II Action under SEQR. Do we have discussion on the application?

Mr. McKelvey: It’s been there quite a while and the neighbors don’t complain.

Mr. Scalzo: I agree with Mr. McKelvey but I would really like to know the real height of the building.

Mr. McKelvey: Yes.

Mr. Maher: Well I mean, Mr. Mattina seems to say it’s twenty so I would…would trust his judgement on the a…

Mr. Manley: The Board could vote to issue the height variance at twenty feet which would then prevent the applicant having to come back if there is a slight discrepancy.

Mr. Maher: And if in fact it is nineteen feet then the variance becomes nineteen?

Mr. Manley: It’s twenty but I doubt that the applicant is…(Inaudible)

Mr. Donovan: Going to put a one foot addition on it.

Mr. Scalzo: A cupola on the top of it.

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

Mr. Levin: I’ll second that.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

Mr. Manley: The motion is carried.

PRESENT ARE:

 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 – 9:39 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 7:44 PM)

MICHAEL & PATRICIA FALCETANO 2 WHITE BIRCH DRIVE, NBGH

 (6-3-12) A/R ZONE

Applicant is seeking an area variance for the front yard setback to build a covered front porch (4 x 8) and add a reversed gabled front roof on the residence.

Mr. Manley: The next applicant before the Board this evening is Michael Falcetano.

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

Mr. Manley: Good evening.

Mr. Capella: Good evening my name is Alfred Capella the architect representing Michael and Patti Falcetano. We have a split level residence that is supposed to be fifty feet back from the front property line according to zoning. The existing house has been there for many years is currently thirty point five feet on this front property line. Not included in that thirty point five feet is a two foot cantilever of the bedroom…the upper bedroom area that encroaches further into that setback, if you will. If you’ve visited the house or if you look at the photographs there’s currently a small stoop in the front that’s four feet by eight feet of paver blocks. All we’re looking to do is mirror that and there’s a small preliminary elevation near that four by eight stoop if you will with small gable roof just to protect the front entrance a…the front entering door. So in essence we’re only encroaching two feet because there’s already a two foot projection into that setback if you will…if that makes sense.

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

Mr. Maher: Let me just clarify, so the proposed setback is twenty-six when completed?

Mr. Capella: Twenty-six feet to the edge of the roof when completed, that’s correct. Twenty-six, yes, well I mean I think it’s probably twenty-six point five but twenty-six foot…

Mr. Maher: No, I got you, because maybe they were reversed on the paper here because it says on the...on the…on Joe’s copy it says twenty-four proposed and twenty-six is the variance so it should be twenty-six is proposed, twenty-four is the variance.

Mr. Capella: Correct.

Mr. Maher: Okay.

Mr. Canfield: And fifty is the total needed.

Mr. Maher: Yes.

Mr. Capella: We’re in the process of putting a small addition in the back, they want to re-boot the house…they want to re-side the house so and they want to basically improve the front façade that’s part and parcel of the reasoning plus the benefit of having some rain cover, weather cover over the front door.

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

No response.

Mr. Manley: At this point I’d like to open up the Public Hearing to the public. Is there anybody from the public that has any comments or questions?

No response.

Mr. Manley: I will read into the record a letter:

To Whom It May Concern: This is in regard for Michael Falcetano who resides at 2 White Birch Drive, Newburgh in reference to the roof addition to the front of his house. My husband and I approve. We reside at 7 White Birch Drive, Newburgh. Sincerely Ralph and Linda Hurlburt

Any other comments from the public?

No response.

Mr. Manley: At this time I’ll look for a motion to close the Public Hearing.

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 John McKelvey: Yes

 Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Okay, the Public Hearing is closed.

Mr. Capella: Thank you very much. (Time Noted - 7:49 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:39 PM)

MICHAEL & PATRICIA FALCETANO 2 WHITE BIRCH DRIVE, NBGH

 (6-3-12) A/R ZONE

Applicant is seeking an area variance for the front yard setback to build a covered front porch (4 x 8) and add a reversed gabled front roof on the residence.

Mr. Manley: On the application for Michael (and Patricia) Falcetano, 2 White Birch Drive, Newburgh requests an area variance for the front yard setback to build a covered front porch (4 x 8) and add a reversed gabled front roof on the residence. This is a Type II Action under SEQR. Do we have discussion on the application?

Mr. McKelvey: I think because of the hill in front of the house you know it’s not going to have any problem with the road. I think it would improve the looks of the house.

Mr. Scalzo: I agree plus we also saw information from an adjoining or a very near neighbor supporting the application.

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

Mr. Levin: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

Mr. Manley: The motion is carried.

PRESENT ARE:

 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 – 9:40 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 9:49 PM)

DELORES WRIGHT 128 NORTH DIX AVENUE, NBGH

 (73-7-22.1) R-3 ZONE

Applicant is seeking area variance variances for the minimum lot area, the minimum square footage of one of the dwelling units and area variances for the front yards setbacks for a prior built pool in a front yard and an accessory building (prior built shed) shall be in a side or rear yard (has two front yards North Dix Avenue & Wilson Avenue) to enlarge the structure and add a second floor addition to construct a 2-story family home - for an application before the planning board.

Mr. Manley: The next applicant Delores Wright 128 North Dix Avenue in Newburgh.

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

Mr. Manley: Thank you Betty. Good evening.

Ms. Wright: Hi, my name is Delores Wright I reside at 128 North Dix Avenue. I own the property since 2001. I had a accessory apartment which I built though the ZBA in 2003. I’m looking to extend my accessory apartment into a second floor to have four bedrooms and a full bath. My mother resides on the original property as well.

Mr. Manley: Okay, it looks like the variance is for multiple variances…

Ms. Wright: Yes.

Mr. Manley: …for the property a…

Ms. Wright: Yes, I was about four percent under the square footage it’s supposed to fifty thousand square feet and I’m at forty…just over forty-eight thousand square feet about a four percent difference.

Mr. Manley: And also the minimum square footage for the apartment.

Ms. Wright: That is correct.

Mr. Manley: There’s also a prior built pool?

Ms. Wright: Yes, there is a…the pool was put up without a Permit a…and the shed was there when I purchased the home but I am trying to clear that up and get the proper a…Permits and variances for those.

Mr. McKelvey: Have you applied for Permits for them?

Ms. Wright: Yes. Everything is being done through the planning board so everything is a…we’re just waiting for the variances.

Mr. Manley: There are two unregistered vehicles on the property. What is the status of the vehicles?

Ms. Wright: One is my deceased father and one is just a friend that had just put it there for storage at this moment it is going to be removed.

Mr. Manley: Okay, in the Town the Code a…only allows for one unregistered vehicle.

Ms. Wright: I thought it was two so I do apologize. I’ll have my friend take his vehicle away.

Mr. Manley: Okay.

Mr. McKelvey: Are you going to raise the roof on that?

Ms. Wright: Yes, I am…

Mr. McKelvey: Okay.

Ms. Wright: …I have a diagram here. Do you want me to put it up there?

Mr. McKelvey: You can.

Ms. Wright put diagrams on the board.

Ms. Wright: Okay, so this is my existing roof line right here it’s a finished attic right now that my teenage son uses this…the house has three bedrooms in this home. And we’re looking to raise it I think it’s a hundred and seventy eight something up high so I’m going to raise it, put four bedrooms up in here and a full bath and then a walk-up attic.

Mr. Manley: Now that space that’s currently in attic presently that’s being used as habitable space is…?

Ms. Wright: I’m using it as habitable space it’s not as bedrooms, there’s no closets it’s just the finished attic with sheetrock.

Mr. Manley: Okay were there Permits that were granted for that?

Ms. Wright: In 2003 I went through the ZBA to build this structure here and it was…it’s not being used as bedrooms…it’s just a finished attic.

Mr. Manley: Right but you just indicated that it’s being used as a bedroom.

Ms. Wright: My…my son uses it up there. I have no bedrooms though.

Mr. Manley: Is that the window when you’re at the front and you’re looking at it it’s the far left it would be?

Ms. Wright: In the front I have two small windows…

Mr. Manley: Okay.

Ms. Wright: …and then there’s a window on the side of the building which would be this one here.

Mr. Manley: That’s the one with the air conditioner in it?

Ms. Wright: The air condition is in the front.

Mr. Manley: Okay.

Ms. Wright: A…this is…there’s another window here on the side.

Mr. Manley: Okay.

Ms. Wright: And then there’s another addition which is here, which I had built I believe in 2003 or 2004 as well and I use that as my bedroom. I have two children so I am completely out of space so I would like to raise this and if you would…what I originally to do and have the bedrooms and stuff. On this side is where my mother…this is the original dwelling a…she has three bedrooms on her side. There’s a bedroom here, two bedrooms here a…small cape, there’re small bedrooms back in the time capes are small.

Mr. McKelvey: Are you on water and sewer?

Ms. Wright: Yes I am.

Mr. Manley: Is the second floor of the one on the right hand side…?

Ms. Wright: This here?

Mr. Manley: No, the other one on the right hand side the pre-existing one. Is that presently habitable space that’s being used as bedrooms?

Ms. Wright: Yes, it is. My mother uses this one, I have a deaf nephew that lives with my mother so we have him on this lower bedroom a…just for safety reasons and this one she kind of just uses for miscellaneous stuff. It’s a bedroom though.

Mr. Manley: So apartment number one is going to be your apartment? And apartment number two is going to remain your mother’s apartment?

Ms. Wright: I’m not sure how you guys have apartment one and apartment two, the original dwelling will be my mothers and the addition part which however you have it will be apartment one or apartment two will be mine which is where I reside now.

Mr. Scalzo: Bring your finger up on the drawing…

Ms. Wright: Yes. This is my floor plan.

Mr. Scalzo: …okay, that’s how…that’s how we’re determining apartments one and two.

Ms. Wright: Oh…oh okay, I see it. Yes, I’m apartment one. Thank you.

Mr. Scalzo: Thank you.

Ms. Wright: Didn’t notice that.

Mr. McKelvey: Also you say you didn’t have a Permit for the shed? There’s more than one shed back there.

Ms. Wright: There’s two sheds, one is grandfather claused in from back…I have a survey from 1916 which shows the shed on the property…it has not changed and if you got a close look at it you would know it’s pretty old. A…or 1961 I’m not sure exactly the year on it. And the other one was there when I purchased the home and when I purchased the…I didn’t know it didn’t have a Permit but I’ve been aware of it and we are trying to make sure we take care of that.

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

No response.

Mr. Manley: At this point I’ll open the Public Hearing to the public. Is there anybody from the public here for this applicant?

No response.

Mr. Manley: And one last time, does the Board have any other questions?

No response.

Mr. Manley: At this point I’ll look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make a motion.

Ms. Gennarelli: Who was the second, I’m sorry.

Mr. Levin: Second.

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

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 John McKelvey: Yes

 Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

 (Time Noted - 7:58 PM)

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ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:40 PM)

DELORES WRIGHT 128 NORTH DIX AVENUE, NBGH

 (73-7-22.1) R-3 ZONE

Applicant is seeking area variance variances for the minimum lot area, the minimum square footage of one of the dwelling units and area variances for the front yards setbacks for a prior built pool in a front yard and an accessory building (prior built shed) shall be in a side or rear yard (has two front yards North Dix Avenue & Wilson Avenue) to enlarge the structure and add a second floor addition to construct a 2-story family home - for an application before the planning board.

Mr. Manley: On the application of Delores Wright, 128 North Dix Avenue, Newburgh seeks area variance variances for the minimum lot area, the minimum square footage of one of the dwelling units and area variances for the front yards setbacks for a prior built pool in the front yard and an accessory building (prior built shed) shall be in a side or rear yard (has two front yards North Dix Avenue & Wilson Avenue) to enlarge the structure and add a second floor addition to construct a 2-story family home - for an application that is currently before the planning board. This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. McKelvey: Do you know Jerry if she has applied for Permits for all this stuff that’s illegal?

Mr. Canfield: I’m sorry John, I didn’t hear you?

Mr. McKelvey: She has applied for Permits for the pool and the shed, has she done that?

Mr. Canfield: Yes.

Mr. Scalzo: Regarding the two front yards Wilson Avenue is a paper street. Although it is still a right of way, it is a paper street, it’s not…it doesn’t appear if you look at the lay…the layout of the area it’s I doubt if it will ever be developed so that’s really not an issue.

Mr. Manley: There are some issues that I think that need to be cleared up on the property. Obviously the unregistered vehicles are an issue. Also the…the other shed that I believe we need to look to insure that that has a proper Permit and there is an oil tank, I think, in the back that I had noticed on my site visit. It’s an oil tank that’s just sitting back there. That needs to be addressed.

Mr. McKelvey: That old tractor along the front where the car is too. That doesn’t belong there.

Mr. Manley: One of the things that the Board has to weigh is the request of the applicant substantial, is going to have any adverse effects on the neighborhood at all. There weren’t any neighbors here to…to dispute the application.

Mr. McKelvey: I’ll make a motion we approve as long as she clears up all this stuff.

Mr. Manley: Do you want to make that a condition of the approval?

Mr. McKelvey: I’ll make that a condition of the approval.

Mr. Donovan: Can I make a suggestion? Can we substitute complies with all a…Code requirements as opposed to clears up stuff?

Mr. McKelvey: Yes, okay. Do you have that Betty?

Ms. Gennarelli: Yes.

Mr. Manley: So we have a motion from John McKelvey, do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Okay, roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

PRESENT ARE:

 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 – 9:44 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 7:58 PM)

MATRIX NEWBURGH I LLC. ROUTE 17K & CORPORATE BLVD, NBGH

 (95-1-4.12, 69.25, 54.1, 49.12) I/B ZONE

Applicant is seeking area variances for the maximum building height, the maximum allowed square footage of signage and the maximum allowed square footage of a second free-standing (directional) sign for the development of a 565,320 sq. ft. multi-tenant warehouse building for an application being reviewed by the planning board for site plan approval.

Mr. Manley: The next application this evening is Matrix Newburgh I LLC, Route 17K and Corporate Boulevard in Newburgh.

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

Mr. Manley: Good evening.

Mr. Everett: Good evening Mr. Chairman, Members of the Board, my name is Dave Everett, I’m counsel for Matrix. I have with us tonight Chuck Utschig from Langan Engineering a…he’ll be here to assist in answering any of the Board’s questions related to technical issues. We also have Ken Griffin who is a principal of Matrix and Ray Aquino who is the director of development for the project. Would it be helpful to the Board if we just ran over quickly over the project and the site plan with you? Alright so Matrix is proposing, as we said in our application materials a…proposing a warehouse distribution facility a…containing about five hundred and sixty-five thousand of square feet of space. Here’s the site plan here, just to give you guys an orientation, Route 17K is down here a…to the south, to the north is a…Route 84, on this side is Route 87 a…so basically three sides of the property are surrounded a…by State Highways or Interstate Highways. On this particular side down here is a warehouse distribution center a…containing a variety of buildings that are already a…warehouse. You can see here that project contains about for this five hundred and sixty-five thousand square feet. A…one of the proposed tenants a…is AmerisourceBergen who is a Fortune 50 a…they deal primarily in the distribution of pharmaceuticals. So they will basically bring in a…pharmaceutical boxes, the boxes get a…kind of taken off the trucks and rearranged and put on other trucks and sent out. So it’s basically boxes in, boxes out a…there’s no manufacturing or processing or anything like that related to the…to the facility. There’s one access drive that basically comes off of 17K, it comes up here and there’s parking around the facility a…for a variety of trucks a…at the access bays. A…seventy-one acres of land a…it’s in the IB Zoning District where a warehouses are a permitted use. We applied to the planning board for two approvals, a Clearing & Grading Permit and a Site Plan approval. A…the a…planning board designated itself as the lead agency under SEQR at its last meeting a…and they also adopted a Negative Declaration a…for this project indicating that there weren’t any significant adverse environmental impacts and that Neg Dec was done after a coordinated review with all involved agencies. A…they’ve scheduled a Public Hearing for the 17th of December and they have referred a…us to you folks a…to basically seek a…three variances a…one variance is related to the building height a…the…the required building height a…in this zoning district is at forty feet. We a…need to raise the building an extra five feet a…for tenant purposes and I can go over some more of those details with you a…a little bit later. And the other two variances related to signage a…one is relating to we want to put in an oversized directional sign in the middle of the site a…and a…we also want to place a variety of other signs a…on…on the site. Those signs will exceed a…the maximum signage area of square footage that’s allowed under your Code. So with that I’d be happy to kind of run through each of the variances if the Board wants me to do that. We have provided a…all the details of our position in our application materials a…but I’d be happy to run through each one if that makes sense to you.

Mr. Manley: Why don’t we go ahead and run through a…the variances?

Mr. Everett: Okay.

Mr. Manley: It is something that I think the a…Board should hear your position directly from you.

Mr. Everett: Yep, sure, be happy to do that. Okay, so we’ll start off with the building height issue and a…under your Zoning Code a…building height is measured from the frontage of the building a…that fronts on the closest street. So in this particular situation a…the street that we’re going to obtain access from is Route 17K a…so the building height really is measured from, you know, the southerly part of the building a…as I said before we want to go up an extra five feet a…from forty feet to forty-five feet. The extra a…height is really dictated by the tenant operations a…the internal operations to the building. The industry standard for these types of warehouses is around forty-five feet a…Matrix has developed a whole variety of these types of warehouses in New Jersey and Pennsylvania and other places so they can certainly speak to those operational issues a…but it is standard in the industry to have a forty-five foot height requirement. If the building itself a…is going to be setback significantly from the surrounding roadways a…it’s about nine hundred feet from Corporate Boulevard, which is down here. So from nine hundred feet from here to there a…I think it’s about twelve hundred feet a…from Route 17K a…and then a…three hundred feet from I-84 and a…you know, so it’s fairly significantly setback a…and at those kind of distances you know five foot a…difference is really is not discernable to the human eyes. I don’t think that you’re really not going to be able to see all that much. A…there are a…once the site gets developed there’s going to be kind of a periphery of trees. I don’t know if we have that board. We’ve got a board that shows a…tree cover here that will also help the board a…the Zoning Board get a better sense as to how the…the building will be screened from some of the surrounding roads and surrounding property. A…so here’s a project site overlaid on a Google Earth image and you can see down here a…you know, there was a variety of tree cover down here along Route a…Route 17K which will for the most part screen and soften the views to the building. There’s going to be a tree cover all along this side along 87 as well as along 84 and then down in this particular area a…there’s some additional trees. I mean there are some areas where there are not trees. For example down in here that’s right here next to an existing you know, warehouse distribution a…facility. As I had mentioned before a…the project is consistent with the existing neighborhood a…you know this is actually a good image because it shows down here the other warehouse the distribution facilities that are going to be you know in close proximity to that and it is located in the IB Zoning District as a permitted use. The other thing that I would note a…to the Board which I am sure you’re aware of is that a…what your Zoning Code allows other buildings in the Zoning District actually be higher than forty-five feet. It allows hotels to be at fifty feet so this variance is actually being proposed a…for you know about five feet less than what your Zoning Code allows for the…the highest building in…in that particular Zoning District. A…the other thing that I would mention a…quickly is that there are going be a…some rooftop mechanical units on the building. They’re generally going to be, you know, setback and kind of the interior of…of the roof a…it’s our understanding from reading your Code a…that those would be exempt from the height requirement providing that they don’t exceed ten percent of the roof area and in this particular situation it’s only going to be about one percent. So those are you know some of our thoughts a…in a relating to the…the height variance a…the directional sign variance that we’re looking for a…I’ll go to this map because I think it would be easier a…we want to put a directional sign right here in the middle of the site a…and we want to make it significantly larger than what’s permitted in your Code now. A…your Code now a…provides that directional signs a…can’t exceed three square feet a…we’re looking to do a directional sign there that’s going to be a two hundred and fourteen square feet basically a hundred and seven square feet per side. A…it’s going to be a…and…and the schematics and design of that sign are in the materials that we had previously provided to you. But the issue with this is that you know we’re going to have a lot of large trucks kind of coming in and out of the facility a…you need to have a much larger sign than you know three square feet for the trucks to be able to see at a distance and to be able to stop safely a...so that was really the reason for that. We also want to combine the directional signs for all the tenants onto one sign as opposed to having multiple signs you know that maybe in this particular location are down here. You know, the thought was to eliminate that kind of clutter, it’s better just to put all the tenants a…in the directional for those on one sign so that’s another, you know, reason why we would like to do that. A…this sign because it’s in the middle of the site again like the rest of the building is going be set back significantly from, you know, roads and property lines and a…it’s…it’s really not expected to be highly visible at all a…to anybody off site. I mean, it’s expected to be highly visible to the truckers because that’s the whole point of…of doing a larger sign. So the next thing we wanted to do is a…you know, what we’re seeking a signage variance for the a…total amount of a…sign area a…as you know your Code provides that the sign area shall not exceed one half of the total length of the street frontage a…we have combined street frontage on Route 17K here and along Corporate Boulevard here. It totals about four hundred and twenty one a…feet so under your Code we’re only allowed two hundred and ten square feet of total signage. That basically would really only cover one sign right down on 17K that would be visible enough for people to…to see the facility so a…it’s really not a…enough you know, for the project. We were conservative in the analysis a…we did not take into account potential road frontage along a…you know 87 or 84. I mean we kind of read your Code to indicate that those may not be…a…roads that would be counted towards the signage but you know, that’s obviously a decision for the Board to make. If the Board did include both of those frontages then we wouldn’t need…we wouldn’t need the variance a...but…but something that we wanted to just make you aware of. So we’re asking for a…six hundred and fourteen square feet of a…business signage a…so that’s a…we’re asking for basically four…five signs so we’re looking for a…at the road we’re looking for a sign for the business park that’s going to be about two hundred and fourteen square feet a…the schematic of that a…and the rendering of that is in…in your packet of your materials for you to consider. And then we’re looking to put on a…a handful of a…wall mounted signs for the tenant. It would basically be two one hundred foot wall mounted signs a…a…for AmerisourceBergen in this particular location here and then we would have also two more signs in this particular location here a…for the tenant on this side. And I should note that a…there is no tenant at this point a…identified for this space a…but you know Matrix is…is…is basically going to be working on…on that a…and they’re confident that they’ll be able to attract a good high quality tenant in short order. And one of the ways that you are able to attract a high quality tenant is for to let the tenant know that you have signage of a sufficient size to identify their facilities and so having you know a hundred square foot wall mounted signs will certainly help a…attracting the tenant in that regard. The one…other couple of things I’d like to know for the Board is that the wall signs are going to cover probably less than one percent of the building façade. A…so when you look at the entire you know, side of the building it’s going to be very small even though it’s…it’s going to be a hundred and…a hundred square feet. Similar to the other issues that we discussed a…again the signage is going to be softened and blocked in a number of different locations by the…the perimeter tree cover that’s going to remain a…in place. A…the wall signage that we’re proposing is similar to other wall signs that exist already a…in…in the community and along the a…the Route 84 corridor a…and a…I think that’s about it as far as you know, our presentation so, if the Board has any questions we’d be happy to answer them. And I’ve got a…some technical folks who can answer any technical questions.

Mr. McKelvey: Is the other tenant going to require a sign at the road?

Mr. Everett: So, what we’re doing is we’re combining, we’re having one sign and all the tenants are going to be basically put on that sign. So that once we get a new tenant the likelihood that they’re going to ask for their own sign a…is…is really not going to be, you know, present because we’re going to combine them onto one sign.

Mr. McKelvey: Well if they did they’d have to come back before us anyhow.

Mr. Everett: They…you’re absolutely right.

Mr. Maher: This a…regarding the height so I’m assuming you’re in possession of the letter from the…from the a…FAA?

Mr. Everett: Yes.

Mr. Maher: Okay so why don’t we a…how do we address the issues that they’ve identified? If in fact I mean they show on two different points that it exceeds their recommendation by seventeen foot in one area and ten foot by the…in the other so obviously that’s an issue to them so far on the preliminary review so if they’re not in favor of the application with the height issues it creates a little bit of a problem.

Mr. Everett: Well they’re…they’re two issues on is FAA jurisdiction and your counsel can…can speak to this. FAA jurisdiction under Federal Law and then Zoning Code jurisdiction under your…under your local Code. So we’re basically seeking a…a variance for your…your height a…a…not…not asking you to deal with anything relating to the FAA. A…I would note a couple of things for you guys though a…you have an Airport Overlay District and that district requires buildings to be below a certain height and this building is actually below a…the height requirements in your Code so it complies with your Airport Overlay District. We are currently in the process with the FAA a…and Chuck can speak to, you know the status of that. They are…they are looking at the…the project a…they did issue a Public Notice and a…I want to just read to you a couple of things out of the Public Notice just bear with me here a second.

Mr. Manley: And the Board may…the Board may potentially not use that as a determinative reason in our deliberation but certainly it…it is something that is relative to the Board.

Mr. Everett: Sure, sure I mean it…

Mr. Manley: Would you agree?

Mr. Everett: …you can certainly make your variance conditioned upon us receiving you know any FAA approvals that are…that are necessary.

Mr. Manley: So it is something that…you would agree that the Board has to take into consideration and consider relevant and germane to the application, yes?

Mr. Everett: Yeah, that’s a…I think that’s fair statement.

Mr. Manley: Okay.

Mr. Everett: If they issued a…a Public Hearing notice and the FAA actually rendered some preliminary conclusions with respect to this building and those a…I want to read them to you. They basically are a…the structure will have no effect on any existing or proposed arrival, departure or end route instrument flight rules, operations or procedures. The building will have no effect on any existing or proposed arrival, departure or in route instrument/visual flight rules, IFR or VFR a…minimum flight altitudes a…the building will not exceed traffic pattern airspace. The building will have no physical or electromagnetic effect on the operation of air navigation or communications facilities and the building will have no effect on any airspace or routes used by the military. So this is the FAA’s preliminary assessment of this building a…you know, those are all fairly positive statements about their…their position on this. We’re going through the process a…having them evaluate everything and you know we hope to get a final determination from them a…sometime hopefully within the next month or so.

Mr. Donovan: So as I understand it the planning board gave you a Neg Dec the other night?

Mr. Everett: That is correct.

Mr. Donovan: And what if anything was done relative to this issue which I have to confess I am not familiar. The first time I saw this is when I walked in tonight. So did…did the planning board deal with this issue in any fashion at all? Dave says I look at Chuck so something Chuck knows?

Mr. Everett: Chuck was dealing with Pat…Pat Hines on the issue so let him speak to it.

Mr. Utschig: Good evening, for the record my name is Charles Utschig with the firm of Langan Engineering. We did discuss this issue at the planning board a…and at the time we had just made our revised submission to them a…and they had asked for some supplemental information. They being the Port Authority and we submitted that and this is the response that we got. We indicated to the planning board that based with our discussions with the Port Authority that the issue would come down most likely to lighting the building. I…requiring you the kind of…kind of red lights you see on the top the water tank towers as any mitigation if we’re required. We’ve also talked to them about the public statement the Public Notice that they’ve issued and we’re not even sure at this point that they are going to require us to put the red lights up because we only have two points on the building that exceed the minimum elevation so they identify those a…yet they conclude that as…as Dave read that there’s no apparent impact on any airport related activity.

Mr. Donovan: In our calculation for the Town of Newburgh purposes that it’s forty-five feet versus FAA calculation is forty-nine feet is that just a definitional difference?

Mr. Utschig: No we…we’re obligated under the…the regulations to identify the highest point in the structures so before we mentioned that we do have rooftop equipment so we have to give the Port Authority and the FAA the…

Mr. Donovan: Okay.

Mr. Utschig: …coordinates for every rooftop unit separately and those are at the forty-eight foot height.

Mr. Donovan: Okay.

Mr. Manley: It is my understanding that the building is going to be set down slightly below grade, is that correct?

Mr. Utschig: Yes, it’s a substantial amount…it depends what corner you measure it from…

Mr. Manley: Right.

Mr. Utschig: …but say from the front facing 17K it’s probably about ten feet below the current grade and in the back corner it could be as…as much as twenty-five feet.

Mr. Manley: With that being said, why wouldn’t it be possible to lower the…the building a little bit more and therefore need less of a variance?

Mr. Utschig: Well because you measure the grade from the…the relationship between the front of the building and the building height so whether we…what…if we moved the building we have to move the parking in the front grade the same and so it all goes up and down relative. So by dropping the…the site further down keeps the relationship between all the adjacent features and the point of measurement from the front.

Mr. Manley: How about lowering the hill?

Mr. Utschig: So you’re just changing…you’re changing the topography as it related to the features. You’re not changing the point of measurement. The only way you could accomplish what you’re saying is in essence to put (inaudible) of the building below ground.

Mr. Manley: On the front only?

Mr. Utschig: And leave it…leave that grade so we’d have to bury four foot of the front of the building that accomplishes what you’re describing however because of access issues into the front of this building that wasn’t a practical solution. The other thing that I think looking at as Dave described you know, that the distances that we’re talking about here, the adjacent uses being highways and the perception of the difference between a forty and forty-five foot building is probably undiscernible from any of the adjacent properties. So there is very little impact as it relates to this four foot request for the variance.

Mr. Everett: I…I just wanted to point on that a…and but Ken you can correct me if misstating this but the office that’s proposed for AmerisourceBergen is in this particular area here so if you, you know, that’s what was suggested is that you sort of build this grade up and kind of a bury that side of the building, you know, you’re now burying all the windows here for people in their offices a…and eliminating that essentially a…which is really not a conducive thing. AmerisourceBergen doesn’t want to do that, neither does Matrix a…you know for obvious reasons when you’re in an office you want to have a window.

Mr. Manley: The other thing that we look at as a Board is naturally giving the least amount of variance necessary for you to achieve your objectives. My concern is that the…although it seems like it’s five feet, we’re actually talking about five multiplied by…coming out with a cubic foot number. How many cubic feet of additional space will they have and if you figure it out by cubic feet it’s almost two point eight million cubic feet that you gain by having the five feet…adding the five feet to the building. So in relation to, and this Board has granted variances in the past, a…five feet, three feet here but not to the significance of this particular building with that many square feet. So how do you address a…the impacts that environmentally it will have for viewsheds to the people that live in the neighborhood of Meadow Hill? I took a ride over to Meadow Hill and you can see that Meadow Hill is further down, this particular building is higher up and you know, that does create you know a visual issue for the…for the neighborhood.

Mr. Everett: Sure we…we…we fully understand that…I just want to make sure I understand is Meadow Hill on this particular area over here or on the other side of 84?

Mr. Manley: The other side of 84, yes.

Mr. Everett: Cause I…okay, a…we have actually put together for the Board’s consideration a…some line of site drawings so you can get a sense a…for a…what people around the site might be able to see with the additional five foot a…on the building a…so here is a…on the top view a…here is 84 a…here are the residents over on Coach Lane I guess is where you were referring to a…and you’re right it is up…up higher when you kind of…not higher but it is up at a…a…higher elevation. When you look at the a…the Google Earth map and you look at the topography you can see that there are a variety of trees that are on that a…kind of I guess the south side of that residential area. And so anybody who is over there is basically going to be looking through those trees, you know, across a…and…and maybe looking through some of the trees over here and kind of looking over across the building so you know our position is that a…you know that is quite a distance a…and it’s going to be screened by a variety of intervening vegetation. We’ve also a…done that for a…you know Route 87 here a…if you’re down here and you kind of look up a…you can kind of see that you know you’re going to be looking over it a…and the same thing with Corporate Boulevard is going to be you know some intervening vegetation and whatnot. So we’re not saying that you won’t see it, we’re just saying that you know the views are going to be filtered a…and are going to be a…screened in…in many places. A…the other thing to think about is that there are other warehouse distribution facilities you know right next to this so it is consistent with that…with that character a...so…

Mr. Manley: And that is correct that particular a…complex is much lower than the proposal of this particular building that’s much higher.

Mr. Everett: Yup, no, we agree with that yeah.

Mr. Manley: Could you address the issue of the additional…the additional square footage relative to the cubic feet that the five feet creates and the potential impacts or effects on the safety and welfare of firefighting operations should there be some sort of catastrophe where you know the firemen have to get in there? Certainly our…our local fire departments are very capable however, you know you’re talking a very large building and by adding another five feet the potential for…for life safety issues.

Mr. Everett: Chuck do you want to address that issue or…I mean it’s a fire operational issue? We’ll let Chuck take a crack at that one too.

Mr. Utschig: So from a site…a site fire protection perspective a…the type of protection provided would not change and you’re Building Inspector can confirm this, whether we had a forty foot high building or a forty-five foot high building. But I will kind of describe this the materials that are stored in here are very sensitive so there’s a very sophisticated fire protection, sprinkler system included in the building. In addition, we’ve provided a water main that circles the building entirely with appropriate spaced a…fire hydrants. We are aware of the concern about access a…we’ve been asked by the planning board to…to…to look at a potential alternate access and that’s currently in investigation and being researched a…however, as it relates to the building height I don’t believe that anything changes in terms of the type or level of fire protection required. So whether it’s a forty or forty-five foot, excuse me forty or forty-five foot high building the ability for a ladder truck to access the roof is the same. We have those clear zones provided so a ladder truck can come in and get to it. It doesn’t change the type of equipment that they would use if it were a forty or a forty-five foot building a…so relative to the height variance I don’t believe that there’s any change in the required or provided site fire safety protection. There’s a secondary issue about access and we understand that and it is being investigated from our end. Just to go back to one other a…comment about the neighbors and the site lines again you’re talking about a substantial distance and we also have a significant amount of grade. So before I mentioned that if you measure the cut, how far this building is lower in the grade it’s, you know, ten feet at the front but it’s significantly greater at the back so a majority of this building probably greater than fifty percent probably two thirds of it is actually recessed below the grade. So the potential of being able to see across here is very limited.

Mr. McKelvey: Who’s fire district is it, Jerry?

Mr. Canfield: That’s the Orange Lake Fire District, Winona Lake.

Mr. McKelvey: Okay, they have the equipment?

Mr. Canfield: Sorry?

Mr. McKelvey: They have the equipment to handle that, right?

Mr. Canfield: Yes, they do have a hundred and five foot aerial device.

Mr. McKelvey: Okay.

Mr. Canfield: There’s several other devices in the Town of Newburgh a…one thing I can comment on the fire protection and the respect of your question Jim, the five feet essentially in a fire fighting a…world doesn’t really matter. A…interiorly the largest ground ladder that anyone carries is a thirty-six foot so obviously we’re beyond this whether we’re forty foot, forty-five or forty-nine feet a…to access the roof it’s definitely an aerial operation so that wouldn’t mind that much. There will be requirements as far as the driving lanes and the width of the driving lanes and also collapse zones so the aerial devices can be adequately parked and set up around the perimeter of the building as needed. As for the sprinkler system typically with these type of structures and commodities which are generally will be…commodities are rated in three different classes: high, moderate and low or light and this would probably be a moderate a…insurance companies protecting these type of operations generally exceed the National Fire Protection Association’s requirements. In this particular occupancy they will what’s called a high rack system. There will probably be in rack sprinkler systems. The overhead sprinkler heads will be ESFR large drop not to get too technical and too but basically your common head is a half inch orifice something like this would be probably five eighths, seven eighths meaning that it would deluge large volumes of water a…because of the area a…that…that’s involved here. Also the Town’s water system cannot provide a…enough pressure to support this keeping in mind there’s seventy to eighty foot elevation difference from 17K to finished floor elevation of the building. This particular project is going to require a booster pump which the applicant is working on submitting those calculations for us. Also as the applicant’s representative has discussed at the planning board level a…we had asked for an addition emergency exit onto Corporate Boulevard. The planning board had requested that the applicant go back and thoroughly research that a…as a second means of ingress and egress for emergency only. The reason for that being is pretty much two fold again as I had indicated the elevation difference, inclement weather, Corporate Boulevard provides somewhat of a more a leveler exit and entranceway in there a…should there be a catastrophic event with one way in, one way out it’s a potential for limiting the movement of vehicles. Inclement weather again should there be a catastrophic event you have several ambulances, Police cars, that type thing a…mobility in and out is paramount so…

Mr. Manley: Should the Board consider granting the variance it may a condition that potentially a…they have access to that, that they get access to that as a condition of the variance.

Mr. Canfield: That could be the a…Board’s decision but it has been my position and suggestion to the planning board a…that we would very much like to see that secondary access as emergency access. I’m waiting comments from the jurisdictional fire department, the Orange Lake Fire District a…the project has been brought before them a…we’ve asked, we meaning the Code Compliance Department and the planning board have both asked for written comments back from the fire department a…on their concerns as well.

Mr. Everett: One thing I want the Board to consider with respect to the emergency access is that while there is frontage here on Corporate Boulevard a…Corporate Boulevard is a private road that is controlled by the association of property owner’s that own the various warehouses and other commercial businesses in this area a…we need to get permission from them a…to basically access that road a…and you know Ken can speak to these issues in more detail if you have questions about them. A…we asked in the past a…to obtain access to this road and it was denied by the association. The planning board wanted us to go back and ask again with respect just to emergency access and you know, we’re…we’re happy to go and…and ask a…but we have no way to kind of mandate that emergency access be provided here. It’s really up to the association so we’re going to go and try to obtain that a…but it’s not something that we have a right to a…access.

Mr. Maher: So how is that…how is that property subdivided with the frontage on the cul-de-sac without allowing access to that property.

Mr. Everett: A…there is access allowed to a portion of the property but it’s not allowed to the whole rest of the property. So a…that’s just the way that…that’s just the way that it was set up so a…you know, the have…the owner is here and again Ken can speak to it in more detail. The owners have refused to provide access based upon that legal argument. We provided the legal arguments to the planning board so they were able to evaluate it. But we’re going to give it another shot and see.

Mr. Maher: So which parcel…which parcel is in fact, where…where’s the lot line on that particular parcel there on the one that has access to it?

Mr. Everett: Ken do you know where that is? Ken can speak to that issue. I believe this map has a pretty good drawing of the lines on it and you can kind of see…

Mr. Griffin: But the lines are not based at this point on the subdivided lines.

Mr. Everett: Is that the property here? Right here?

Mr. Griffin: I think it comes up into the middle of the building basically. There was a previous lot that existed that was part of the association of…of the business park and there potential covenants in the business park that a…that deal with that. That…that…that lot at one point was…was roughly the lower side of this building and this piece. So…so this area which is a small part of our lot was…was and is a part of the association but the association covenants do not allow for access from this larger lot. So it’s really it’s a…it’s a legal issue relating to the association a…we have requested from the association again permission to access a…Corporate Boulevard purely for emergency access and a…we have yet to receive a response. They may be okay with that I just can’t say. But the issue is if we don’t the right then they need to have a vote to amend the covenants of the park (inaudible).

Mr. Maher: But if…but if the new structure lies partially on that parcel how can they deny you? I…a fail to see how they can deny you access to it. If the structure is on the parcel.

Mr. Griffin: A…I can say that we spent a lot of money on lawyers figuring that out and their conclusion is we don’t have the right because you can come from this side of the parcel, it’s outside of the park and get access, you know around the building a...you know…

Mr. Everett: I actually have the property lines here if you wanted to take a look at them.

Mr. Manley: Okay.

Mr. Everett: It’s black and white so I apologize for that but…

Mr. Griffin: We…we worked really hard, we…we originally wanted access to…to Corporate Boulevard and we tried really hard for a long time to get access and we were denied. Fortunately this tenant doesn’t want access to Corporate Boulevard frankly it’s a mess down there. I don’t know if you’ve been in but…but it’s…there…there’s trucks parked all over the place, it’s not a very attractive entrance. This…this entrance is what…what the tenant wants so we’re fortunate that they’re our lead tenant did not want the access that we did not control however, we may be able to get it for emergency access. We’ve requested it and a…we’re hopeful that…that the a…controlling owners in there will be reasonable on that. And again, there was a…there was a detailed memo submitted to the planning board a…with the a…the legal basis for that issue.

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

No response.

Mr. Manley: I’d like to read a letter into the minutes of the Orange County Department of Planning referencing the Matrix Newburgh I LLC. The comments of the Orange County Department of Planning state that:

The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the Board finds that granting relief is warranted in this matter. We note that we have reviewed at least three area variances recently that have addressed the issue of onsite directional signage. If the Town wishes to review their signage regulations as part of a zoning code update, the County would be happy to provide resources and assistance. We further note that the proposed warehouses are located close to the Stewart Airport runway. We have previously advised the Town and the applicant to contact the Port Authority of New York and New Jersey, the airport operators, to ensure that the proposed warehouse location and height do not pose a safety hazard for airport operations. County recommendation is Local Determination. Dated November 17, 2005 correction 2015.

Are there any comments from the public?

No response.

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

No response.

Mr. Manley: I do have a…just a couple of other things I’d like to if I could address with the applicant and that is that in your application you cite that the advantages of approving the variance relates to the economic benefits that the project would have a…in…in the Town with respect to a…employees, new employees and also a…that by granting the variance it would have an impact with regard to tax a…additional property taxes for the Town. Could you just let the Board know, do you have any documentation of the amount of jobs that you’re projecting that will bring in and if you could share a…it’s my understanding that this is a very automated facility so I guess my question is what type of jobs are they bringing in and what are the…the income levels of the…of the jobs that you’re bringing in?

Mr. Griffin: Well there are several parts to that equation, one is obviously the construction jobs a…you know it’s a major a…project that will create substantial a…construction jobs for about you know a year or so of the construction phase. But as far as permanent jobs go AmerisourceBergen is…is very high end pharmaceutical company I think the Fortune 16 a…this is not a warehouse, this is a high end distribution facility with…with a fair amount of office and a…there I think I believe there are several hundred employees between the office and…and the warehouse. The future a…expansion is…we do not yet have a tenant for that so I can’t say how many employees would be in that facility but if I were to guess it would be between fifty and a hundred.

Mr. Manley: For the portion that is not…that is going to be occupied those fifty and a hundred are they all high level jobs or are we speaking distribution packers or…?

Mr. Griffin: It…it’s a mixed bag, I mean there…there definitely be management jobs a…there…there’s supervisory jobs and there are some, you know, forklift operators but a…but the majority would be fairly high…high paid a…you know management, management jobs and supervisory jobs. These are…these are not buildings that are…that are your old warehouses. They’re…they’re highly mechanized, extremely sophisticated a…buildings. AmerisourceBergen is gonna spend a lot of money on the interior of the building. It’s…it’s not a big empty box. There’s a lot of conveyors, there…there’s a…a…extremely sophisticated air conditioning system, all that has to be maintained by skilled technicians and so it…it’s, you know, it’s fairly a high end a…jobs for the most part.

Mr. Manley: Do you have anything from them that indicates that the…what you just testified to as far as the volume of jobs and the…?

Mr. Griffin: I don’t have anything, you know, in writing with me but I’ve had a number of discussions with them and…and a lot of the numbers are in our…our reports and our traffic reports that we submitted to the planning board.

Mr. Manley: Okay. The last thing I’d just like to ask you is you answered the questions about the a…the fire department what…what can you say as far as the hardship is…is obviously is self-created and although that’s not something that the Board can use as a determinative factor it’s obviously one of the factors that you know that we consider in our deliberations as being relative to you being here today. Can you share with us what other options that you as an organization have taken to determine a…what other alternatives you may have to not have to request such a, you know, large height variance?

Mr. Griffin: Well the height variance is interesting because these buildings have become commodities. Matrix and other…other development companies who build these high quality distribution facilities not only in New York State but around the country have evolved…it’s…it’s basically a science and these buildings are very similar. If you go to southern California, Chicago, you know, anywhere in the country, they’re thirty-six foot clear, they’re forty-five feet high. Once in a while you get…you get a customer that might need a especially high racking system and their higher. We would never build a building at this point that’s less than thirty-six foot clear which is what this is. Just because that’s what the market is and that’s…that’s the way these tenants not just AmerisourceBergen but high end distribution operators in general. The way they operate, the way they need to rack, thirty-six is…is the number and a…so, you know, the fact is that we cannot build a building that was lower than that unless there was the odd tenant who required a lower building. But we’re just not seeing those types of tenants. You know it’s…it’s a…around in many of the markets that we’ve dealt with in the…in the last ten years the Town has been changing the Code to increase the heights of the…of the buildings because these are not the old warehouses that we’re used to from twenty years ago.

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

Mr. Scalzo: I just had one regarding the variance for the larger directional sign, interior to the site. What we had heard was a…it would be easier for trucks as they entered the site to figure the direction that they need to go a…I don’t see a stop bar. So is the intent for trucks, trailers coming from 17K to not stop as they approach the building and to continue into the site? Because if…if, you know unless I’m missing it I didn’t see but if a…perhaps if there were a stop sign there the sign could be smaller therefore would give them time to read it.

Mr. Utschig: So the intent is…

Ms. Gennarelli: Could you take that mic, please?

Mr. Utschig: I’m sorry.

Ms. Gennarelli: Thank you.

Mr. Utschig: The intent is really no need to stop traffic at this location so you’re…you’re reading the plan correctly. There is a stop bar here in this direction. They do have to slow to see this directional sign so they know which way to go but this is not a stop condition here. The entrance to the employee lot is up in here a…and in essence those trucks will…most of them will come around this way and make that turn because this is where the loading spots are so it’s not a stop control.

Mr. Scalzo: Okay, thank you.

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

No response.

Mr. Manley: If there’s no further questions from the Board I would look for a motion to close the Public Hearing.

Mr. Masten: I make a motion.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 John McKelvey: Yes

 Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Thank you. (Time Noted - 8:44 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:44 PM)

MATRIX NEWBURGH I LLC. ROUTE 17K & CORPORATE BLVD, NBGH

 (95-1-4.12, 69.25, 54.1, 49.12) I/B ZONE

Applicant is seeking area variances for the maximum building height, the maximum allowed square footage of signage and the maximum allowed square footage of a second free-standing (directional) sign for the development of a 565,320 sq. ft. multi-tenant warehouse building for an application being reviewed by the planning board for site plan approval.

Mr. Manley: The next application before the Board is Matrix Newburgh I LLC., Route 17K and Corporate Boulevard in Newburgh. They seek an area variance for the maximum building height, the maximum allowed square footage of signage and the maximum allowed square footage of a second free-standing (directional) sign for the development of a 565,320 sq. ft. multi-tenant warehouse building for an application being reviewed before the planning board for site plan approval. This is an Unlisted Action under SEQR. Do we have discussion?

Mr. Donovan: Just relative to SEQR as you heard before the planning board concluded their review they issued a Negative Declaration. This is referred to us to proceed on an Uncoordinated Review Basis which means a…the Board would have to issue a Negative Declaration if they are going to grant an approval of the variances requested.

Mr. Maher: Is this a package or are we doing it individual? What are we doing here?

Mr. Manley: That is up to you. If you’d like to look at each one individually, we can look at each one and approve each of the variances individually, the sign variance versus the height variance.

Mr. Manley: Would you like to do the sign variance first?

Mr. Maher: (Inaudible) Yeah (Inaudible) break up yeah.

Mr. Manley: So what feels comfortable? Handle the sign variance first?

Mr. Maher: Yeah.

Mr. Manley: With the sign variance does the Board have any discussion on that?

Mr. Scalzo: Jim there’s…there’s…if I’m looking at this correctly there’s two different variances for signs, correct?

Mr. Manley: Yes.

Mr. Scalzo: And we’re handling each separately?

Mr. Manley: Mike do you want to handle each one separately or does the sign variances…?

Mr. Maher: (Inaudible) No I’m comfortable to just I’d like to separate the signs versus the building height, yeah.

Mr. Manley: Okay.

Mr. Maher: Yeah, but I’m comfortable doing them at the same time, that’s fine. My opinion is that obviously the fact the with respect to the directional sign while it does seem excessive obviously it’s so far off the…off the a… Route 17K it really won’t be visible from the roadway at all and it will better assist the a…trucks in and out from having problems or having to back up or congest the top, I’m fine with that one. And the a…again my opinion for the a…the signs a…for the building and the…and the road sign I don’t, based on the size of the building and the limited frontage I think they’re…is somewhat consistent, I’m fine with that. I’d be willing to make a motion for approval on the sign variance.

Mr. Donovan: So let me just, I need you to act on SEQR before that because this is referred to us…the planning board I know they closed out SEQR but a…Mr. Donnelly’s letter indicates that review of this matter is a Type II Action and I don’t believe the height and the sign variances fall within the…the definition of a Type II Action that we need to proceed on an Uncoordinated Review Basis. So that means you need to act on SEQR before you issue any decision on the variance.

Mr. Manley: And we’re talking a total six hundred and fourteen square feet of signage.

Mr. Scalzo: Yeah this is…I mean at a hundred and seven square feet you’re looking at a sign that’s…that’s eight by fourteen. It’s a big sign. Although, you know, I agree with Mike it’s a…you know it is deep into the lot, it’s a substantial sign. It’s the size of a highway sign.

Mr. Manley: Well I mean we don’t have anything like that currently in the Town to really compare it to, you know, as far as other commercial lots. It would be very unique...very unique to the granting of this variance for that particular sign would be unique to…

Mr. Scalzo: Well considering that it’s that…you know, over seven hundred feet into the lot, you know, that…that’s certainly…would add to the unique a…uniqueness of the sign.

Mr. Maher: Let me ask a question, is the applicant still here?

Mr. Everett: Yeah, we are.

Mr. Maher: On…on the sign, on the directional sign would there be a reason to have signage on the back side of it?

Mr. Scalzo: Well it says here that there is.

Mr. Maher: No, no I understand that.

Mr. Scalzo: Oh.

Mr. Maher: I’m just curious obviously it’s directional going into the property is there a reason to have anything on the back of it? I mean it cuts it in half.

(Inaudible)

Mr. Maher: I mean put have a nice day if you like, I mean.

Mr. Scalzo: Drive safe.

Mr. Manley: Have a nice day…

Mr. Scalzo: Buckle up.

Mr. Maher: Something, you know, I’m just not sure what the purpose of the rear…the back side of the sign would be that’s all.

Mr. Everett: If the concern of the Board is that the size is just too large…

Ms. Gennarelli: Dave, just make sure that microphone is still on.

Mr. Everett: I’m sorry.

Ms. Gennarelli: That’s okay, I don’t think it’s on, hit power. Okay.

Mr. Everett: If the size of the sign is a concern for the Board I mean, the applicant is willing you know to reduce the size a…if that helps you at all. As far as the…

Mr. Maher: Do you got a number? I mean…

Mr. Everett: …the back side?

(Inaudible)

Ms. Gennarelli: Can you come to the mic?

Mr. Utschig: Purely for the benefit of the people leaving the site we want to make sure they turn the right direction but a…you know if the Board objects to that it’s not the end of the world but I would prefer to be able to write something on the inside of the sign as well.

Mr. Maher: Again, it’s your…it’s your prerogative I’m just…I’m just…

Mr. Utschig: It would be our preference.

Mr. Maher: But as far as the size goes if…if there’s a reduction of size, I mean that’s an option too.

Mr. Utschig: We are.

Mr. Maher: Do you have a number in mind or…?

Mr. Utschig: Seventy-five per side, you know.

Mr. Scalzo: I could work with that sure.

Mr. Everett: Is that better for the Board?

Mr. Donovan: What did you guys just say?

Mr. Scalzo: Seventy-five square feet.

Mr. McKelvey: Seventy-five per side.

Mr. Scalzo: Per side, per side.

Mr. McKelvey: Are you satisfied with the directional signs?

Mr. Maher: I think Dave was on the…Dave, are you on SEQR or what are you on?

Mr. Donovan: Correct.

Mr. Manley: Counsel is going to determine whether or not we want to handle this when we actually go to vote.

Mr. McKelvey: Okay.

Mr. Manley: Whether we’ll Neg Dec first and then…

Mr. Donovan: Well here’s the…I mean you need to do that; you need to issue a Negative Declaration. You need to do that.

Mr. Manley: In order to vote?

Mr. Donovan: In order to grant an approval. If you’re not going to approve it you don’t need to but if you are going to…if you’re motion is going to be for approval someone needs to make a motion for a Negative Declaration because you’ve got to close out SEQR before you can vote for an approval.

Mr. McKelvey: I’ll make the motion for a Negative Dec.

No response.

Mr. McKelvey: I made a motion for a Negative Dec.

Mr. Maher: Second.

Ms. Gennarelli: Was that Mike? Okay. Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

Mr. Maher: Alright then I’ll…I will make a motion for the sign variances a…with the reduction from the two hundred and fourteen square foot directional to a hundred and fifty total square footage on that, seventy-five each side and the a…the six hundred and fourteen square foot allowed for the…for the project.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Okay, roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

Mr. Manley: At this point the Board will entertain discussion on the height variance. The applicant is requesting a five foot height variance. The Code allows for a forty foot height of the building. They are requesting the building to be at forty-five feet. Do we have discussion?

Mr. Scalzo: I’m to understand that we’re still waiting for verification from FAA as well as the Port Authority, is that correct?

Mr. Manley: Correct. And if the Board decides to move for approval at that point, that could be conditioned in the a…in the request, in the approval. We’re also awaiting…Mr. Canfield advised us earlier that we’re waiting to hear back from the fire departments with respect to the a…letter from the district. Do we have any discussion from the Board?

Mr. McKelvey: If…if we approve we can approve with these a…what we’re looking for.

Mr. Donovan: What’s the timeframe that you’d get any feedback positive of negative or a final resolution from the FAA and/or the Port Authority? Any idea at all?

Mr. Everett: I don’t even handle that. Chuck do you have any idea?

Mr. Donovan: Sir, you’ve got to come up to the microphone. If you learn nothing in Newburgh you learn to come up to the microphone.

Mr. Utschig: So the Public Notice that they have issued a…which indicates that there is no impact is out until December 12th. So we would expect to hear soon thereafter.

Mr. Donovan: Okay.

Mr. Utschig: Just to remind the Board their letter that they sent to the public says there’s no impact at the height we proposed.

Mr. Manley: My feeling is although the FAA has you know, may or may not have an issue I just…I have concerns with the…with the overall height, you know, the applicant indicated that the height shouldn’t really cause an issue with the neighboring development of Meadow Hill a…I have concerns with…with the site, the size of the structure being very large in nature. The cubic square footage is just tremendous. You know it does create a lot of issues with the topography and I don’t know how the other Members feel.

Mr. Scalzo: Now when we’re talking about building height gentlemen, we’re talking about the actual building not the units that are on top, are they included as well?

Mr. Utschig: The rooftop units are not included because it was our understanding, you know, from your Code that if the total square footage of those units was below ten percent a…then it was basically not going to be, not part of the height a…exempt from the height. The rooftop units for this building are one percent. I mean your Code Compliance Officer can confirm that.

Mr. Manley: Do we have a…a…?

Mr. Donovan: I was going to start saying you know Thursday is Thanksgiving so…

Mr. Manley: Do we have a motion from the Board?

Mr. Masten: I’ll make a motion.

Mr. Manley: A motion for…?

Mr. Masten: To a…approve it…whatever.

Mr. Manley: Okay, we have a motion to approve from Mr. Masten. Do we have a second?

Mr. Levin: I’ll second it.

Mr. Manley: Second from Mr. Levin.

Ms. Gennarelli: Okay, roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: No

Jim Manley: No

Ms. Gennarelli: That’s four, two.

Mr. Donovan: Four, two the variance is granted.

PRESENT ARE:

 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 – 9:59 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Time Noted – 8:44 PM)

COSIMO J. COLANDREA 40 ROUTE 17K, NBGH

 (99-4-23.22) I/B ZONE

Applicant is seeking area variances for the minimum front yard setback and the minimum rear yard setback to construct a second story office addition (3434 sq. ft.) and a new car service prep area (8503 sq. ft.) to the existing auto dealership (Sunshine Ford Lincoln).

Mr. Manley: The next applicant on the agenda which is a holdover from the October 22, 2015 meeting is Cosimo J. Colandrea, 40 Route 17K, Newburgh. Good evening Mr. Cordisco. How are you?

Mr. Cordisco: I am very well, thank you Mr. Chairman. How are you?

Mr. Manley: Good.

Mr. Cordisco: And we’ll keep it brief, I’m here tonight a…I’ve a…given Mr. Gaba the night off, he appeared last month on behalf of Mr. Colandrea and Colandrea Ford. I’m also here with Mr. Colandrea who is with me tonight as well as Mr. Shaw and Kandar Architect, Ken Sibertson. Last month we gave a full presentation to the Board a…we are prepared to go through anything you may have questions on the Board that you noted held open the Public Hearing for tonight and a…

Ms. Gennarelli: Excuse me Dominic is…is that microphone on? Can you just check?

Mr. Cordisco: It does say on.

Ms. Gennarelli: Does it say mute?

Mr. Donovan: It says Dominic is a low talker that’s what it says.

Ms. Gennarelli: Okay, can you then lift it up higher because I’m not hearing you.

Mr. Cordisco: Sorry. I haven’t said anything of substance yet. And we’re here to answer any questions regarding the Board that the Board may have. And at this point, to move it along to turn it over to Mr. Shaw to walk you through the two variances that we need for the front yard and rear yard setback.

Mr. McKelvey: Our main problem was we only had four members here last month.

Mr. Cordisco: (Inaudible)

Mr. Manley: Just for the record, we probably should indicate that Mr. Levin has recused himself again.

Ms. Gennarelli: Okay.

Mr. Manley: And a…I was not here for last month’s meeting however I had an opportunity to review the minutes and I feel comfortable ruling tonight.

Ms. Gennarelli: Okay, thank you.

Mr. Shaw: Thank you, good evening, is this on?

Mr. Cordisco: I think I hear, it should be green.

Ms. Gennarelli: Is there a green light?

Mr. Shaw: I don’t see…

Ms. Gennarelli: Any light?

Mr. Shaw: …any light.

Mr. Manley: The battery is dead.

Ms. Gennarelli: Either that or they shut it off to be nice. The power…

Mr. Manley: What we do without you?

Ms. Gennarelli: I don’t know.

Mr. Donovan: Now we have the attorney and the engineer and they couldn’t figure out the microphone without Betty.

Ms. Gennarelli: There you go.

Mr. Shaw: For the record, my name Greg Shaw from Shaw Engineering representing Mr. Colandrea tonight. What we’re proposing are four additions to his Sunshine Ford and Lincoln dealership of which two are going to require a variance. Of the four additions, two are for a…entry towers which are going to be located on the southeastern part of the building. They’re relatively small; they’re about thirty-five, thirty-seven square feet each. Another addition which is going to be a second story for offices is going to be three thousand, four hundred and thirty-four square feet and that’s going be located in the a…southwestern corner and then finally we’re going to have another addition which is going to be in the north…in the northeastern section of the building and that’s going to be eight thousand five hundred and three square feet and that’s going to be for a service and new car preparation area. The variances that we’re requesting are for one of the service entries; one which is closest to Route 17K we are obligated to provide a front yard setback of sixty a…feet. Presently the existing building is fifty. We have a deficiency of ten feet and I think that was probably due to the Town changing the zoning over the years. But with respect to adding the new entry we are now going to be additionally deficient of one foot. So we are asking for a total variance of eleven feet; one for the new foot deficiency and ten feet to make up for the existing deficiency. The other setback that we are looking for is in the northeast corner of the building adjacent to the lands of Granado. We are obligated to provide a sixty foot rear yard setback to his property and we are presently providing a forty foot rear yard setback. I’d like to bring to the Board’s attention that in laying out of the building a…we’ve tried to minimize the amount of the variance required. You’ll note on the drawing in this particular area I noted that we only have six hundred and two square feet of building area that is within that encroachment. The rest of the building…okay…is outside or actually the rest of the building meets a…the rear setback so a…I think that is worth pointing out. One of the things that is unique with this project is that going back to December of 2013 the Town changed the zoning with respect to the zoning line of the IB and the R-3 line and they moved it over to Putnam Street or at least the majority of Putnam Street and that in conjunction with the Town’s a…buffer requirements obligates Mr. Colandrea to do some demolition of some existing buildings specifically on each side of former Boulder Road. And I use the word former Bolder Road because part of the developer’s agreement that was executed a…between the Town and Mr. Colandrea is that he took title to Boulder Road so that is now his property. So what’s going to happen is the homes, the macadam, the stone drives, the pavement will remain the same because that’s going to be his emergency drive in. Alright? And plus any macadam a…pavement a…decks and such are all going to be removed and when we return to the planning board we are going to have to prepare a landscaping plan and submit it to them for their review and their approval to make sure it complies with the Town’s buffer requirements. Alright? So, that is…that’s a brief overview of proposal. Again we’re looking for two variances one for one foot, another for twenty feet a…and with that there’s you know…to be honest with you there’s a tradeoff in that we’re asking for the two variances and in…in conjunction the Town will get… Oh, one other point I forgot to make, I’m sorry, I was too busy holding up the sign…one of our other mitigation measures when Mr. Colandrea developed a…this parking area is that an eight foot high PVC a…vinyl fence was installed along the lands of Fayo. What will happen also in conjunction with this new development with this buffer area is that a new six foot high fence will be installed along Putnam, along the lands of Granado as indicated on the plan by my finger. Okay? And then also along the lands of Granado that again will also be used as a buffer. Okay?

To protect his property visually from a…from Mr. Colandrea’s property so between the…the a…the vegetation and also the PVC fence a detail of which is indicated above and pictures of which have been submitted to the Board we feel the applicant has done a pretty fair job of trying to minimize and to mitigate his impact on the adjacent properties.

Mr. Donovan: Can I just get clarification on the front yard?

Mr. Shaw: Sure.

Mr. Donovan: The referral from the planning board indicates a requirement of sixty feet.

Mr. Shaw: Okay.

Mr. Cordisco: Which is correct.

Mr. Donovan: Didn’t Greg say fifty?

Mr. Shaw: No, I said the…the existing building is presently fifty.

Mr. Maher: Right but you asked for a one foot variance for that. Obviously eleven feet the total is what he needs.

Mr. Shaw: Eleven feet total, correct.

Mr. Donovan: Okay but Mike letter says you have forty-four where you need sixty.

Ms. Gennarelli: Can you take…take the other mic? Is there another mic or did they take it?

Mr. Donovan: No we only have one Mike…Donnelly…

Ms. Gennarelli: Oh, you’ve got it. Okay.

Mr. Cordisco: Far…far…far be it from me to take any issue whatsoever with Mr. Donnelly but there was a typo in his referral letter over and that should have been forty-nine feet rather than forty-four as it’s shown on the plan. And unfortunately, and of course, since I rely entirely on Mr. Donnelly the application that I put together carried over that…that a…error as well. So that indicated…

Mr. Donovan: I just want to be right. Well actually I just want be able to go to the office tomorrow and tell Mike he made a mistake.

Mr. Cordisco: Rather you than me but a…but in any event a…the amount of the variance that is required is eleven feet. It’s a sixty foot setback a…we need an eleven foot variance a…Greg’s point is well taken that the existing building is at the fifty a…foot line so it’s already ten feet into the area of the setback that’s now required but was not at the time that it was constructed.

Mr. Donovan: Thank you.

Mr. Manley: Mr. Shaw, the question for you, the lands of Granado there…

Mr. Shaw: Yes.

Mr. Manley: …obviously it’s that odd piece of property that kind of juts in there.

Mr. Shaw: Correct.

Mr. Manley: Was there any discussion between the applicant and the owner of the property to attempt to a…perhaps purchase that parcel so that a variance would not be needed in this particular case?

Mr. Shaw: Many times on many occasions. As you can see Mr. Colandrea has purchased all the property all along Putnam other than Mr. Granado. Mr. Granado and his wife are quite old, they don’t want to sell a… the just want to pass away in that house very simply. Alright? And as I said he approached them many…Mr. Colandrea is here if you want to talk to him directly but they don’t want to sell they just want to…

Mr. Manley: I’m going to take your word for it. The next question I have is, the fence that is currently there I believe is a wood stockade fence is that correct? On Granado’s property there is…?

Mr. Shaw: There is an existing wood picket fence in this location a…in this location.

Mr. Manley: And that is going to be replaced by a PVC fence.

Mr. Shaw: That is going to be replaced…oh, let me back up, it’s going to be replaced in this location and this location by a fence similar to what is here which is…

Mr. Manley: But it is only going to be six feet versus eight?

Mr. Shaw: Well we talked about that last month and I told the Board that if it was your preference to go to eight feet Mr. Colandrea would have no objection to it.

Mr. Manley: Okay.

Mr. Shaw: It really came down to whether you felt that eight feet was too imposing. Alright? But if you felt eight feet was appropriate, you know, eight feet is the number…

Mr. Manley: I’m just thinking if…if…you know, that was my…my particular house there and I understand they’re elderly and who knows how much, you know, longer they’ll be there ten, fifteen, twenty years maybe at that point you have the opportunity to purchase the property but being that they have the long term residence perhaps you know some additional screening there to kind of…alleviate the fact that the building is going to be a little bit closer might, you know, I don’t…is there a good relationship? Is the property have a pretty decent relationship with the…with the applicant?

Mr. Shaw: I can’t speak to that.

Mr. Colandrea: We’ll do whatever they want.

Mr. Manley: So if they have a good relationship with the applicant…obviously they haven’t been to object to the application but you know, I always look at if…if there is something that we can do for the…the neighbor to kind of alleviate any noise or dust or whatever…

Mr. Shaw: My personal thoughts on it are is I think they would be better off with a six foot high fence and some planting on their sides…on their side of the property a…as opposed to eight foot. I mean, they don’t own a very big piece of property. It’s only seventy-five feet wide. I think an eight foot tall fence would be just to imposing but that’s just my opinion. You may have a different opinion.

Mr. McKelvey: Have they spoken to them about going to eight feet?

Mr. Shaw: No, no we haven’t spoken to anybody since the last meeting. We wanted to come back to this Board and continue our discussion. Presently on the plan it’s called out for a six foot high fence with...with no plantings on the property.

Mr. Manley: Has the planning board mentioned any plantings on the property or…?

Mr. Shaw: No because our first meeting to them was just a…a referral over to you. We did have a quick discussion about it and this is interesting, and we did touch very briefly on it last month is that I brought up to them the fact that we were encapsulating the property in a…in a nice fence that it was my opinion…mine…that maybe the plantings that we should do on Mr. Colandrea’s property should be something of a picnic setting for his employees and maybe that would satisfy the buffer requirements of the Town and the board’s opinion was jokingly well, that sounds great just go to the ZBA and get a variance for it. And at that point I told them well I think I’m going to pass. Alright? So yes, we’re going to have to prepare a landscaping plan and go to the planning board and get approval for it. They are going to require it.

Mr. Donovan: But what goes on the other side of the fence is not on Colandrea’s property.

Mr. Shaw: Correct.

Mr. Donovan: So that’s just for the…for the…the Board you can’t just compel…

Mr. Manley: The property owner to put plantings.

Mr. Donovan: Right. They can go to Home Depot and buy them.

Mr. Maher: But we’re discussing the buffer zone behind the garage area.

Mr. Donovan: I’m just talking specifically about the fence.

Mr. Maher: No, no I understand that.

Mr. Scalzo: In the area that’s former…or the houses that are going to be demolished, that’s where your planting schedule is going to appear?

Mr. Shaw: Correct. Our…our buffer area is going to be in this area right here. If you look up here it’s these dashed areas which consist of the drives and the buildings a…and the paths, they’re all going to be demolished.

Mr. Maher: As…as I spoke last in reference to the number if bays in the back of the building, is that still consistent with the…obviously you show two on the plan and the actual number was…was…

Mr. Shaw: Was three, right now there…there…it is intended to be three. Now I do want to point out one thing the word last month was trucks. Okay? Let’s forget the word trucks what they’re going to be used for okay are vans with an extended roof. Okay? They’re not trucks. Alright? I also want to point out that we are compliant with the separation distances between the (Inaudible) and the difference between and IB Zone and a Residential Zone. So the impact on the neighbors are going to be minimal.

Mr. Scalzo: We had a neighbors, I believe his name was Mr. Wild, the last time who had concerns about noise a…the hours of operation are they going to change from what they are now…?

Mr. Shaw: No.

Mr. Scalzo: Or are there Sunday hours at the shop, you know, is the shop perhaps air conditioned so the doors can be closed when they’re…when they’re working on vehicles in the summer?

Mr. Shaw: Joe, is…? Excuse me, wait…this Joe Colandrea who is the manager at Sunshine Ford Lincoln.

Mr. Colandrea: We won’t have hours on Sundays, just for sales. So 11 to 4 for sales and for service on Saturdays it’s from 8 to 4.

Mr. Scalzo: Okay.

Mr. Maher: And are the doors normally opened or closed when service is being done.

Mr. Colandrea: In the summer they are open.

Mr. Manley: Jerry, I am going to put you on the spot. In the last year or so, any complaints from the neighbors about noise issues with respect to the applicant’s business.

Mr. Canfield: No, nothing, nothing.

Mr. Scalzo: Mr. Wild, last month, I believe he had stated he had the lights re-directed a…there was some lighting issues that…and I’m not sure if that actually came to Code Compliance but I re-read the meeting minutes from the last time and I do believe that was one of his comments. He had complaints about the light that’s existing.

Mr. Shaw: That’s existing? I…

Mr. Scalzo: I’m only going by what were…what last’s months meeting were.

Mr. Canfield: Was he referring to the Colandrea’s lighting or the Target lighting?

Mr. Scalzo: I don’t recall if he was specific.

Mr. Canfield: Mr. Wild was very vocal and made several complaints with respect to Target…

Mr. Scalzo: Okay.

Mr. Canfield: …for many years.

Mr. McKelvey: How far down does he live to him, Jerry?

Mr. Canfield: I’m sorry, John?

Mr. McKelvey: How far away does he live?

Mr. Scalzo: I believe he is three removed from the…actually property line… the old Putnam Street.

Mr. McKelvey: Okay.

Mr. Scalzo: I believe he is directly across from the Boulder…on Boulder, not shown Greg.

Mr. Shaw: I mean our new lights, okay, are barely into the…are barely into the buffer area. So you have a full seventy-five…let’s say seventy feet of land of distance before you leave Mr. Colandrea’s property. So I don’t think you have to worry about any back throw of lighting onto any adjacent property because you have seventy feet behind the pole.

Mr. McKelvey: You’re supposed to keep them on your property anyhow.

Mr. Shaw: Pardon?

Mr. McKelvey: You’re supposed to keep them on your property.

Mr. Scalzo: It wasn’t the actual placement of the…of the poles it was the illumination…

Mr. McKelvey: Yeah.

Mr. Scalzo: …that was dispensed from the luminaires.

Mr. Shaw: But if the throw is forward he still owns seventy feet behind them so there should be no illumination, you know, going behind onto an adjacent parcel when he owns seventy feet behind him.

Mr. Scalzo: Perhaps Mr. Wild was referring to Target.

Mr. Shaw: Perhaps. Actually he had…he had a lot on his mind last month.

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

No response.

Mr. Manley: At this point are there any other questions from the public?

No response.

Mr. Manley: With no further questions I would look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: Second it.

Ms. Gennarelli: Roll call.

 Richard Levin: I’m sorry, he’s Recused.

 Michael Maher: Yes

 John Masten: Yes

 John McKelvey: Yes

 Darrin Scalzo: Yes

James Manley: Yes

Mr. Shaw: Thank you.

Mr. Manley: At this point in the meeting before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait out in the hallway and then we’ll call you in very shortly. Mr. Canfield can you remain?

 (Time Noted - 9:06 PM)

ZBA MEETING – NOVEMBER 24, 2015 (Resumption for decision: 9:59 PM)

COSIMO J. COLANDREA 40 ROUTE 17K, NBGH

 (99-4-23.22) I/B ZONE

Applicant is seeking area variances for the minimum front yard setback and the minimum rear yard setback to construct a second story office addition (3434 sq. ft.) and a new car service prep area (8503 sq. ft.) to the existing auto dealership (Sunshine Ford Lincoln).

Mr. Manley: Okay on the next application, the application of Cosimo J. Colandrea, 40 Route 17K, Newburgh requesting an area variance for the minimum front yard setback and the minimum rear yard setback to construct a second story office addition (3434 sq. ft.) and a new car service prep area (8503 sq. ft.) to the existing auto dealership (Sunshine Ford Lincoln). This is a Type II Action under SEQR. Do we have discussion on this application?

No response.

Mr. Manley: I will say that I’m impressed with how much the applicant has done to really mitigate with the neighbors and in fact he’s indicated that he has a very good relationship with the property owner Mr. Granado who still has that small piece of property and…

Mr. McKelvey: I like the idea of putting the six foot fence.

Mr. Manley: So you’re good with the six foot fence as opposed to the eight?

Mr. McKelvey: Yeah.

Mr. Scalzo: Well at the planning board…I’m sorry, no please John continue.

Mr. McKelvey: I think six feet is alright unless…unless Granado wanted an eight foot fence.

Mr. Scalzo: I agree perhaps the applicant can work with the adjoiner to supply whatever he wants in that case. I’ve been to the site twice myself and I’m impressed with what I’ll call the housekeeping, a very neat site.

Mr. McKelvey: Yes.

Mr. Scalzo: If it’s a sign of things to come that’s great.

Mr. Donovan: You can’t really do that. You can’t…you can’t…you’ve got to give me something objective to work with. It can’t be just whatever the neighbor decides. He may decide that’s great I want a million dollars.

Mr. Maher: I think that if in fact the…the neighbor would like an up to an eight foot high fence and some type of reasonable shrubbery or and/or…

Mr. Donovan: Okay.

Mr. Maher: …I think that would be acceptable.

Mr. Manley: And at this point probably it would be best to defer to the planning board with…with whatever required screening and not really require any other screening. I think the applicant you know, has shown based on what he’s already done with the property and if you go to the other side which is Boulder you can see how you know they’ve screened the other side of the fence and they’ve really made an effort to…even with the detention basin that’s there, that’s well kept. The property is really well kept and if everybody did everything like this we wouldn’t have an issue in the Town.

Mr. Donovan: So as a suggestion and it’s just appropriate screening as to be determined by the planning board in their approval of the overall landscape plan. Is that okay?

Mr. McKelvey: Sounds good to me.

Mr. Donovan: No Darrin?

Mr. Scalzo: I concur, no, it sounds great Dave, you know.

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

Mr. McKelvey: I make a motion we approve.

Mr. Maher/Mr. Scalzo: Second.

Ms. Gennarelli: Dueling seconds.

Mr. Maher: I defer to Darrin.

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

 Richard Levin: Recused

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

Jim Manley: Yes

PRESENT ARE:

 RICHARD LEVIN - RECUSED

 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 – 10:02 PM)

ZBA MEETING – NOVEMBER 24, 2015

END OF MEETING (Time Noted – 10:02 PM)

Mr. Manley: At this point I just have a couple of housekeeping items. One is to wish the remaining people that are here a very Happy Thanksgiving.

Ms. Gennarelli: Happy Thanksgiving.

Mr. Manley: In addition, I did include…I had Betty include in the packets include the information with regard to the Use variance. I do have another piece of that coming as well. I’ll see if Betty can get it in your packets for next month.

Ms. Gennarelli: And the SEQR review…

Mr. Manley: The SEQR review, the Cookbook.

Ms. Gennarelli: Yes, the SEQR review the Cookbooks and stuff.

Mr. Manley: November 30th, there is a meeting that’s going to be held out at the Training Center, the 911 Center. John Masten and I are going to go out. It has to do with solar panels and a…

Mr. McKelvey: When is it?

Mr. Manley: November 30th.

Mr. Scalzo: Monday.

Mr. Manley: Monday night. So if anybody else is interested just let Betty know and we can car pool out, John and I are going.

Mr. McKelvey: Yeah, I’ll go with you, I’ll go.

Ms. Gennarelli: It’s free; there is no charge for it.

Mr. Manley: It’s free. I’ll drive, I’ll pick you up. Okay so with that we have the minutes, did everyone have a chance to review the minutes? Do we have a motion to approve the minutes?

Mr. Scalzo: I’ll make a motion.

Mr. Levin: Second.

Mr. Manley: All in favor?

Aye all.

Mr. Manley: Opposed?

No response.

Mr. Manley: Carried. Do we have a motion to adjourn?

Mr. McKelvey: I’ll make a motion to adjourn.

Mr. Masten: Second.

Mr. Manley: All in favor?

Aye all.

Mr. Manley: Opposed?

No response.

Mr. Manley: The motion is carried. Have a Happy Thanksgiving. The meeting is adjourned.

Ms. Gennarelli: Have a Happy Thanksgiving. And have a safe trip Jerry.

PRESENT ARE:

 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 – 10:06 PM)