ZONING BOARD OF APPEALS

MEETING – OCTOBER 22, 2015

(Time Noted – 7:04 PM)

Mr. McKelvey: I’d like to call the meeting of the Zoning Board to order. The first order of business is Roll Call.

Ms. Gennarelli: The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicants 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 all the applications in the order heard and will try to render a decision on all applications this evening; but may take up to 62 days to reach a determination. I would ask if you have a cell phone to please put it on silent or turn it off. And when speaking, speak directly into the microphone as it is being recorded.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Richard Levin

(Time Noted – 7:06 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 7:06 PM)

MAHO BAY REALTY, LLC. 1 POWELTON ROAD, NBGH

 (80-6-7) B ZONE

Applicant is seeking area variances for the front yards setbacks on Powelton Road and North Plank Road (NYS Route 32), one side yard setback, the minimum lot area and the minimum lot width for additions and renovations to an existing building to build a two-story pediatric dental office.

Mr. McKelvey: Okay Betty.

Ms. Gennarelli: Okay, our first applicant is Maho Bay Realty. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, October 14th and in The Sentinel on Friday, October 16th. This applicant sent out twenty-four letters. All the mailings, publications and postings are in order. If you would just identify yourself for the record.

Mr. Whalen: My name is Steve Whalen; I am architect with Highlands Architecture…

Ms. Gennarelli: Could you turn that up a little bit higher? Sorry.

Mr. Whalen: Is that better?

Ms. Gennarelli: Or you could take it off if you like, that’s okay or you can make it higher.

Mr. Whalen: Can you hear me now?

Ms. Gennarelli: It’s got to go into the recorder.

Mr. Whalen: Now?

Ms. Gennarelli: Yes.

Mr. Whalen: Okay, again I am Steve Whalen I am architect with Highlands Architecture representing Maho Bay Realty and Dr. Payami. Our proposal is for a…to renovate the building that’s at One Powelton Road. The existing building, it’s a two-story building on approximately a quarter of an acre and there are approximately nineteen parking spaces there all of varying sizes. On the east side there are actually four parking spaces that come over the existing property line. Our proposal is to renovate the building and we have two proposed additions. A…the first addition is to remove the existing roof and put on a third story and a new roof. We have on the east side a proposal for a three hundred and twenty-six square foot elevator stair tower and lobby addition that would service all three levels and on the west side we have a approximately a hundred and fifty square foot addition which is a…a second means of egress stair tower. A…on the existing plan you can see there is nineteen parking spaces; we are going down to sixteen and the main reason for that is we want to get all the parking spaces within the property lines. We have sixteen a…serviced on the a…south end of the building and we have one handicap parking space on the east side. A…on the existing building there is currently a wood framed handicap accessible ramp on the west side. A…we’re going to remove that and the sidewalk that leads to it and handicap accessibility will be through a…the elevator. We’re looking for…we’re asking for four variances. One is for the lot area a…the existing lot is just over eleven thousand square feet, fifteen thousand square feet is required. We’re looking for a variance for both front yards since this is a corner lot. One is for twenty-four feet that is on the east side and on the north side we’re looking for twenty-five and a half feet. And the side yard on the west side we’re looking for a variance of a…one and a half feet.

Mr. McKelvey: A lot of these setbacks already exist, right?

Mr. Whalen: Right, I mean the building as it is right now is existing non-conforming; the only one that does conform a…as far as the setbacks is the rear yard.

Mr. Levin: When you’re finished how many tenants will you have?

Mr. Whalen: There will be just the two a…there’s existing one down the what we’re calling the basement level and then the second and third story will be it’s just one tenant.

Mr. Scalzo: I’ve read the planning board minutes there was an issue regarding the building height are you going to…?

Mr. Whalen: We already brought it down, that tower feature which is on the east side that originally was at the maximum, it was at thirty-five feet; we brought it down to thirty- three.

Mr. Donovan: Now the planning board application or the referral from the planning board also indicated (inaudible) a parking variance. Do you believe you need a parking variance or…?

Mr. Whalen: We thought at the time because we had an existing site plan from the Town which lacked a lot of detail we got an updated site plan here and we found out with the size of the additions that we’re looking to do we…we meet the requirements for the parking.

Mr. Donovan: And so you’re not requesting the parking variance?

Mr. Whalen: That’s correct.

Mr. Donovan: And I thought I had five variances. Do you need a lot width variance as well? The referral came for a lot width variance and your map calls out a lot width variance. It says a…you have seventy-five feet and you need a hundred feet. (Inaudible)

Mr. Whalen: That’s right, yes.

Mr. Donovan: Okay.

Mr. Scalzo: Is there an increase in impervious surfaces?

Ms. Gennarelli: Darrin, can you pull your microphone in please?

Mr. Scalzo: Yes. Is there an increase in impervious surfaces?

Mr. Whalen: Just a little bit, we’re going up to I believe…we’re increasing by…it’s about four percent.

Mr. Scalzo: Any storm water measures required for that?

Mr. Whalen: We could have our site engineer take a look at that but I don’t believe so because we do have on Powelton Road just outside the property line there are two catch basins. That’s what currently…that’s where the drainage is pitched to currently. We were just going to maintain that.

Mr. Donovan: Jerry not to put you on the spot though was there…do we have all the variances covered? Is there any other…?

Mr. Canfield: Yeah, the variances that the applicant’s representative has indicated are…are correct and accurate but it should be noted that this plan that’s submitted is perhaps more accurate than the concept plan that was sent to the planning board. The dimensions have somewhat changed but they are more accurate with the field conditions. I’d suggest that the applicant though that this information gets back to the planning board should this Board approve them. Just a cleanup note, the front yard setback on North Plank Road is sixty feet on the State Highway, not forty, just a cleanup note.

Mr. Whalen: Okay.

Mr. Canfield: Okay.

Mr. McKelvey: That…that exists right Jerry as it is?

Mr. Canfield: I’m sorry?

Mr. McKelvey: That does exist right now the way the building is?

Mr. Canfield: The tower will increase that degree of non-conformity.

Mr. McKelvey: Okay.

Mr. Maher: Can we just go through what…what’s existing on each of the variances requested? And what the final outcome is going to be?

Mr. Whalen: As far as the setbacks?

Mr. Maher: Correct. So the front yard setback twenty-three with forty and sixty is required correct Jerry on the front yard?

Mr. Canfield: Yes.

Mr. Maher: So the current setback…

Ms. Gennarelli: Jerry, do you want the other microphone? Do you want he other mic?

Mr. Canfield: Yes.

Mr. Maher: The first…I’m sorry, so we’ve have two front yards obviously it’s a corner lot so the twenty-three foot setback according to your drawing will…that would be off Powelton, correct?

Mr. Whalen: Twenty-three feet off of Powelton a…we’re looking at…you know his existing was twenty point eight and we’re going down to sixteen.

Mr. Maher: Twenty point eight going down to sixteen.

Mr. Scalzo: Pardon me it’s twenty point six actually on the northeast corner of the building.

Mr. Maher: So we’re going down from twenty point six to sixteen feet.

Mr. Whalen: Right.

Mr. Maher: And on the front yard…

Mr. Whalen: Of North Plank.

Mr. Maher: Of North Plank.

Mr. Whalen: Existing is seventeen and we’re going down to fourteen point five.

Mr. Maher: Alright, then we have a side yard setback…

Mr. Whalen: Existing is fourteen point five and we’re going to thirteen point five. The rear yard there is no…it’s remaining unchanged.

Mr. Maher: And the a…the lot area is still eleven two…correct? Eleven two fifty?

Mr. Whalen: Actually the updated site plan I…that’s a misprint there…that should be eleven o sixty-three that’s what the new site plan says.

Mr. Maher: And then obviously the lot area, I’m sorry, the lot width is seventy-five you can’t change that I guess.

Mr. Whalen: Correct. Same for the lot depth.

Mr. McKelvey: The County report is Local Determination.

Ms. Gennarelli: John, did you want me to read that into the record or…?

Mr. McKelvey: Yes.

Ms. Gennarelli: …has that been cleared up? Okay.

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. When the proposed appeal for variance was submitted to County Planning by the Town of Newburgh Planning Board, we advised the Planning Board that the handicapped parking space, as shown on the site plan at the front of the building directly off Powelton Avenue, is not connected by a continuous sidewalk to the handicapped-accessible ramp in the rear…at the rear of the building. We advise the ZBA to address this issue with the appellant. It may be necessary for the appellant to request an additional variance to the minimum number of parking spaces. And that was Local Determination.

Mr. McKelvey: But you’re doing away with the handicap ramp, right?

Mr. Whalen: Across the back, correct. Keeping the parking space still on the east side right off of Powelton Road but we are providing sidewalks from the main parking lot going across, it goes behind the handicapped-accessible parking lot and there will be a sidewalk leading into the main entrance lobby.

Mr. McKelvey: Any more questions from the Board?

No response.

Mr. McKelvey: Any questions from the public? Come to the microphone and identify yourself because it goes on record.

Mr. Scheiner: Thank you. Alan Scheiner property owner next door, ABS Realty. I have several questions on this. One is a…now there’s two front yards I understand?

Mr. Whalen: It’s a corner lot, correct.

Mr. Scheiner: That would mean there would be two backyards? And you don’t identify anything as a backyard.

Mr. Whalen: There’s two front yards, one side and one rear.

Mr. Scheiner: If you have two fronts it seems logical you’d have two backs. No?

Mr. McKelvey: No that’s because the streets…it’s on a corner lot.

Mr. Scheiner: Question on the…the parking, the handicap parking, it’s on the side of the building you pull in and you would pull out on the main road there?

Mr. Whalen: Yeah, that’s the only; yeah it’s right here on Powelton…that’s where it is right now.

Mr. Scheiner: So you would back out and you would be right on Powelton when you back out of that?

Mr. Whalen: You’ve got…you’ve got at least ten feet before you get out on to Powelton. Right now it’s actually further it’s…half of that parking space is actually on Powelton. We’re taking that parking space; we’re moving it closer to the building.

Mr. Scheiner: Right. Is that permissible in a commercial area to have parking that backs out to a road? Somebody...

Mr. Scalzo: Jerry was that something…you know that’s the first time I’ve heard a question like that.

Mr. Canfield: It’s an item that the a…planning board and the traffic consultant will look at when it goes back for their review that’s when they’ll review that.

Mr. Scalzo: You’ll also have a chance a…to stand at the planning board Public Hearing as well and they may…you can…they may address other questions that we don’t address here.

Mr. Scheiner: Okay. A…I think my last question at this point is the parking lot is going to be redone? And it’s going to be re-landscaped along the back and side?

Mr. Whalen: We were going to keep like whatever landscaping was there and not disturb it. If we have to add more we will a…but we’re…we’re expanding it just a little bit only because now that we have the actual property lines there’s a little bit more room on the south side just so we can get sixteen, nine by eighteen parking spaces in there.

Mr. Scheiner: How many square feet do you have in the building currently?

Mr. Whalen: Currently right now each floor is about fifteen hundred and we’re adding another story that’s fifteen hundred.

Mr. Scheiner: Okay, cause according to a…what I looked up in the property records it’s about sixteen fifty plus about six hundred downstairs finished square footage and if you were going by the…those dimensions you would be adding another sixteen hundred upstairs which would be over four thousand square feet in the building…(Inaudible)

Mr. Whalen: Right, we took the actual area, like the actual usable area…

Mr. Scheiner: Heated area.

Mr. Whalen: Yeah.

Mr. Scheiner: Office space would be about four thousand square…

Mr. Whalen: Yeah, viable area that’s how we calculate you know, the number of parking spaces.

Mr. Scheiner: It would be about four thousand square feet.

Mr. Whalen: It’s thirty…just over thirty-three hundred.

Mr. Scheiner: How would that work? Because if you have sixteen on each level that’s thirty-two plus you have six hundred downstairs that’s…

Mr. Whalen: No it’s like…

Mr. Scheiner: …thirty-eight and you’re adding four hundred…

Mr. Whalen: Most of downstairs is already basement that’s un-occupyable.

Mr. Scheiner: No, it’s…it’s rented out.

Mr. Whalen: No, there’s only about a third of downstairs that’s…

Mr. Scheiner: It’s rented out…

Mr. Whalen: …that’s occupied.

Mr. Scheiner: …right. It’s about six hundred and something square feet.

Mr. Whalen: It’s actually smaller.

Mr. Scheiner: The tax records say like six fifty.

Mr. Whalen: Okay. But yeah, we only have…like currently right now there’s only fifteen hundred about just under fifteen hundred square feet of usable area on the first floor. On the basement level there’s under but what we’re adding upstairs we actually have on the second floor we’re not taking over the entire second floor there’s going to be a 2-story waiting room in the proposed plans so we’re not going to actually have on the second floor we’re not going to have a total of fifteen hundred square feet it’s closer to like about a thousand.

Mr. Scheiner: In my calculations and what I read from the minutes of the last meeting that you were underestimating the square footage by…

Mr. Whalen: Inaudible.

Mr. Scheiner: …by about a thousand square feet.

Mr. Whalen: Well we were going by a site plan that we got from the Town which wasn’t accurate. Now that we have something that’s very accurate we’re able to…to dial in those numbers.

Mr. Scheiner: I think my last question for right now is I didn’t see a…a septic design or septic a…anything done with the septic system or do you plan on hooking in with Town sewer?

Mr. Whalen: We have a mechanical engineer who’s going to be taking a look at that if we have to increase it a…it’s an existing septic right now but a…we’re not a…there’s not going to be multiple tenants in there. It’s a dentist’s office that’s going to be going back in so we’re going…we’re going to address that issue if…if need be.

Mr. Scheiner: You would think that that would need to be addressed maybe at this stage? Cause it’s a…it’s a…it’s a pretty small lot there…

Mr. Whalen: It is.

Mr. Scheiner: …and you’re covering…you’re covering a lot of it with building and you have the septic system should be maybe at least identified on the…the maps.

Mr. Maher: That…that would be addressed by the planning board. Basically what he’s here tonight for variances if in fact they’re approved to go back to the planning board they would follow through on all the requirements as far as whether waste, parking such like that.

Mr. Scheiner: Thank you.

Mr. Levin: Where is…where is your property?

Mr. Scheiner: It’s right next door on 32, North Plank Road.

Mr. Levin: Its north…?

Mr. Scheiner: It is.

Mr. Levin: Oh, it’s on North…

Mr. Scheiner: Yes.

Mr. Levin: Yeah, okay thank you.

Ms. Gennarelli: It (mic) pops off.

Ms. Woodhull: Charlene Woodhull, I live behind the a…dentist’s office.

Mr. McKelvey: Identify yourself, please.

Ms. Gennarelli: He couldn’t hear you. Could you say your name again?

Mr. McKelvey: Couldn’t hear you, could you identify yourself?

Ms. Woodhull: Charlene Woodhull, I live at 1 Meadow Street, it’s directly behind the dentist’s office. A…I’d like to know what you’re adding to the north side of the building. You mentioned something about the north side which would be near the parking lot.

Mr. Whalen: Well across the entire first floor as it is right now we’re adding another level. A…but the additions that are going outside of the footprint that’s on the east side and the west side. The east side is the one that faces Powelton Road that’s the elevator stair and lobby addition and on the west side it’s just the stair addition.

Ms. Woodhull: Okay, a…my next question is about a…is the building expanding on North Plank Road? I’m concerned about being able to pull in and a…pull out of Powelton Road. It’s a very busy intersection to start with.

Mr. Whalen: We’re only coming out two feet at the most. We have a tower on the corner.

Ms. Woodhull: Are…are people going to be able to see around that tower?

Mr. Whalen: I mean it’s…we’re not…we’re not…

Ms. Woodhull: …enough to pull out?

Mr. Whalen: We’re not coming out beyond the…if you know…if you know the building right now there’s a sidewalk on the north side, I’m sorry, on the south side a…we’re not coming out past that sidewalk so you’ll still…we’re going to still maintain that visibility.

Ms. Woodhull: Okay, my other question is you a mentioned drainage during storms and things like that…there’s one a…a…I don’t know what you call it…

Mr. Whalen: Catch basin.

Ms. Woodhull: ...catch basin a…that usually floods during bad weather or heavy rainstorms so be aware that a…you may have problems and a…the parking lot is slanted so it drains towards my yard but that’s not your problem.

Mr. Whalen: Okay, well we can certainly address that I mean I’ll talk to the Highway Department about catch basin and you know if we have to we can certainly regrade the parking lot so that you know…it shouldn’t go on to your property. It should come back on to Powelton and go into the catch basin.

Mr. Woodhull: I’m Tom Woodhull; I live at 1 Meadow Street also. A…I’m real concerned about that septic system because it’s buried in the middle of the parking lot which means it has no leech field at all. We smell the sewer when it rains and we have for years a…we’ve made complaints, nothing has been done. I don’t know how they got it in in the first place by doing a septic system without, you know, a drainage field to it. Also you’ve got sixteen park…sixteen or eighteen parking places how many doctors, you don’t have to be exact because I don’t ask you to go forward with information that’s not a…allowed but…how many doctors do you figure to have working there at any given time?

Mr. Whalen: It will start with probably just one dentist maybe one or two hygienists a…if they are going to expand…

Mr. Woodhull: Well if you’re putting on a second floor I would expand…expect you to be expanding.

Mr. Whalen: You’re probably expecting it, yeah a…but right now the plan is for one…

Mr. Woodhull: Where are you going to park the people that are coming in? Where are they going to park? Because you don’t have enough room now. I’ve lived there for thirty-four years, I can tell you flat out when doctor...there were two dentists in there I never had room. They were always parking anywhere they could…oh you’re really…(inaudible)… Now you’re also talking you’re going up to a second story? A…that’s really going to block everything from my backyard completely a...plus it’s going to increase the amount of runoff that I get in these storms. And I have pictures that’ll show you four feet of water in…on Powelton Road. Cars stuck in four feet of water. The Town has nothing they can do to fix this except tie in all the way down on 9W. There’s a sixty inch pipe and there’s a eighty eight inch pipe right behind my house and you might as well come take a look and they both are running water all the way from the upper Meadow Street. These pipes run full bore when it’s raining and it still floods so you’ve…you’ve got more problems than a…what you’re looking at but going up a second story is just going add more water. I don’t think you have enough parking to even come close to what you’re looking for.

Mr. Whalen: As far as the…as far as the drainage goes we’re I mean we’re only increasing the footprint of the roof only by about five hundred square feet. Now the way it is right now there’s just a…a…little gable on the south end and there’s just a flat roof which pitches right towards the existing parking lot. We’re planning on coming back in with a hip roof so that we’re getting drainage on all four sides and then possibly going subterranean so if we can go below ground…I mean I got to check with the Highway Department because the other neighbor’s concern about the catch basin, you know, underground drainage if they can’t take it, you know, we might have to put, you know, dry wells out on the site just to address that issue.

Mr. Woodhull: If you go down more than five feet you are going to hit water. That was a pond at one time, it still exists.

Mr. McKelvey: These…these are problems that are going to have to be addressed by the planning board, you know, we’re here just for variances.

Mr. Scalzo: Yes sir, the a…the planning board has a…consultants that will review architecturally, they’ll review a…engineering for the subsurface sanitation as well as they have traffic consultants that will a…look at traffic information. Really your concerns, Mr. Scheiner’s concerns a…they are more appropriately addressed by the planning board and you will be noticed a…when a Public Hearing is a…for that project.

Mr. Woodhull: Thank you, I appreciate it.

Mr. McKelvey: Have you been…you’ve been before the planning board, right?

Mr. Whalen: Correct and they referred us back to here…to ZBA.

Mr. Yozzo: My name is Tony Yozzo and I live at 4 Powelton Road and the…my…my main concern is just like the other lady said that lives on Meadow Street Mrs. Woodhull that the driving out of the road there I…I…I don’t like increased traffic and all the rest because it’s already a nightmare to get out on to that and is…is there any way that, you know like…I know that might not be for this but the…like they could put a…a sign up that says that you can’t, you know, block the…the way there when someone wants to try to turn there. I mean the…the best thing would have been to reroute Powelton Road out to that light and then do it the right way the first way…the first time when the other building was put up. And…and I…I know you…you said before that it’s got to be addressed by the planning board…

Mr. Scalzo: Well the…the…keep in mind sir that…

Mr. Yozzo: Yes?

Mr. Scalzo: …unless you’re at that planning board Public Hearing they will not hear that…well it’ll be part of our meeting minutes…

Mr. Yozzo: Right.

Mr. Scalzo: …but if you were to show up at that Public Hearing they will hear it directly.

Mr. Yozzo: Okay, when…when is the Public…?

Mr. Donovan: So…so let me just kind of interrupt for a second if I may?

Mr. Yozzo: Sure.

Mr. Donovan: Taking a step back, what we kind of have here is…is these folks prepared a sketch…

Mr. Yozzo: Okay.

Mr. Donovan: …it wasn’t a really detailed plan. They go to the planning board, the planning board says; hey listen, if you want to go forward you’re going to need some variances…

Mr. Yozzo: Okay.

Mr. Donovan: …so they come to us for these dimensional variances. Try to get a little bit closer to the front yard and their…their lot is undersized because if they don’t get these variances they can’t go forward. Let me just, if I can, because I’m…

Mr. Yozzo: Sure.

Mr. Donovan: …getting older I’ll lose my train of thought. So if they don’t get these variances they can’t build this building but they don’t really engineer the site and complete the design till they know that they’ve got these variances…

Mr. Yozzo: Okay.

Mr. Donovan: …so that they go back to the planning board. Now the planning board has to verify…I mean they’re going to…they have a traffic consultant, they have an engineer that’s got to make sure the traffic is okay, he’s got to make sure the septic works but I do want to be clear that the planning board is not obligated to have a Public Hearing. Now often times we…we do get here at the Zoning Board where people do come because they don’t feel…and this is not an editorial comment but they don’t necessarily feel they get to have their say at the planning board. So a…cause they’re not required, the planning board can waive the Public Hearing required for a site plan approval in certain circumstances.

Mr. Yozzo: So…so what’s our…what’s our avenue of grievance if that happens? What’s our…what’s our way of…you know like do we have to write letters or…?

Mr. Donovan: Well I…

Mr. Yozzo: …what do we have to do?

Mr. Donovan: …I represent the ZBA so I can’t give you advice but generically speaking, hypothetically speaking a…you follow the agendas of the planning board or you write a letter and you follow the agendas and you find out when it’s going to be on a…and maybe you encourage the Public Hearing to…I’m sorry, encourage the planning board to have a Public Hearing so you have a forum to express your concerns.

Mr. Yozzo: Is it in Goshen or…?

Mr. Donovan: No, it’s right here.

Mr. Yozzo: It’s right here still, okay.

Mr. Scalzo: Dave, could we…when we send this back to the planning board a…could we recommend based on the amount of testimony that we’re hearing here that they include a Public Hearing?

Mr. Donovan: Well what…what we’ve done in the past Darrin, is we have asked the planning board to take into consideration certain concerns. We try not to tell them what to do because we wouldn’t like it if they told us what to do. But we have identified to them certain concerns that were developed during the course of the Public Hearing and we ask that they take those concerns into consideration a…in their deliberations. Fair enough?

Mr. Yozzo: Also is…is there a variance requirement for the height of the building?

Mr. Donovan: No, no it meets…so far as I know, it meets the height…it meets the height requirement and also the…

Mr. Yozzo: What is…what is the height…what is the proposed height of the building on the specs now? The other thing is also that the stuff that’s on the website doesn’t show this. It only shows and it states the…a…an actual elevator increasing the square footage by three hundred and sixty square feet and then another hundred and twenty square feet of something else from what I saw on the…your guy’s website that shows all the paperwork that goes to some other website and you can download the PDFs.

Mr. McKelvey: Legally they can go to thirty-five feet and I think you stated that you were going to thirty-three…

Mr. Whalen: (Inaudible) The highest point of it is on…is on the corner, it is the tower on the corner that’s at thirty-three feet.

Mr. Maher: Based on the average.

Mr. Whalen: On the corner based on the average grade.

Mr. Yozzo: On what corner?

Mr. Whalen: It’s actually right on the corner, the corner Powelton and North Plank.

Mr. Yozzo: Yeah, no…no I know where the building is but I mean the…the actual…the building that sits there now I…I mean I know it, I know the four spots or three spots right on…

Mr. Whalen: Right here, so Powelton would be here, excuse me, Powelton is here…

Mr. Yozzo: Yes.

Mr. Whalen: …North Plank is here…

Mr. Yozzo: Okay so the tower is right where that sign…

Mr. Whalen: Right now there’s an…there’s an exterior stair right here…

Mr. Yozzo: Yes.

Mr. Whalen: …the elevator is that’s what the tower is.

Mr. Yozzo: Okay so it’s going to be on the side of North Plank and it…the tower is going to go to North Plank. I thought it was going be over in the back or the side by the parking lot. How…how are you going to get to that? Is there going to be a ramp? Because there’s stairs there…(Inaudible)…

Mr. Whalen: They’re all coming out. The stairs are coming out.

Mr. Yozzo: That whole…that whole thing is…

Mr. Whalen: Yep.

Mr. Yozzo: …coming out? And what about the difference the…

Mr. Whalen: We’re going to regrade.

Mr. Yozzo: …the grade difference…it would…

Mr. Whalen: From North Plank down we’re going to regrade all that.

Mr. Yozzo: But North Plank…cause the grade is from Powelton, right the…? North Plank goes this way, right? North Plank come this way then there’s all the…the parking spots there and it’s way above the lower lot. I mean it’s…it’s considerable right? Like they were saying the drainage and everything it’s all going to go down to Mr. Woodhull’s lot…

Mr. Whalen: Yeah, cause this…that picture right there…

Mr. Yozzo: Yeah.

Mr. Whalen: That picture right there…that’s taken from the…

Mr. Yozzo: North Plank Road.

Mr. Whalen: …the northern corner of North Plank…

Mr. Yozzo: Yeah and Powelton it’s…

Mr. Whalen: …that’s the Powelton Road side of the building?

Mr. Yozzo: Yes, yes.

Mr. Whalen: Yeah, so we’re going to regrade from that corner coming down. That elevator and that tower is going right here…

Mr. Yozzo: Okay…

Mr. Whalen: …where that bank of windows is.

Mr. Yozzo: …and when you say…when you say regrade, I mean you’re going to take the dirt out and everything and then that…that whole a…sidewalk is going?

Mr. Whalen: Yeah, this sidewalks gone.

Mr. Yozzo: Okay.

Mr. Whalen: …the stairs, that…that vestibule, this parking lot is getting all reconfigured cause half of that parking space right now…

Mr. Yozzo: Is on…

Mr. Whalen: …is on the road.

Mr. Yozzo: …Powelton, right. Alright but then once…once all that’s done that…is that piece going to adjoin to the other parking lot in the back? My…my whole thing is how are people going to get to that elevator? That’s what I’m asking basically. You know like is…when…when you say regrade you’re going to take that wall down to the same level as the other?

Mr. Whalen: Nobody will ever walk through there. You don’t have to walk on that ever again cause like…let’s say if you park out here…

Mr. Yozzo: Yeah.

Mr. Whalen: …there’s a sidewalk.

Mr. Yozzo: Can I walk up and see? So that I…I can’t see from this far away.

Mr. Whalen: Absolutely. If you’re in this back parking lot…

Mr. Yozzo: Yeah.

Mr. Whalen: …there’s a sidewalk adjacent to it.

Mr. Yozzo: This is…this is the back parking lot.

Mr. Whalen: Correct.

Mr. Yozzo: This is the really low level.

Mr. Whalen: Yup.

Mr. Yozzo: This is much higher up here?

Mr. Whalen: There’s going to be a…a sidewalk right here.

Mr. Yozzo: That’s what this is right here five foot?

Mr. Whalen: Yup. So there’s a five foot sidewalk here.

Mr. Yozzo: What is this? This is just…

Mr. Whalen: That’s like a landscape area.

Mr. Yozzo: Okay but this is a…what do you call these things?

Mr. Whalen: That’s a curb right there.

Mr. Yozzo: Curb, yes.

Mr. Whalen: Because you’re currently…there isn’t one there right now.

Mr. Yozzo: Right, right, right.

Mr. Whalen: And there’s…you walk behind the handicap parking space…

Mr. Yozzo: And there’s only going to be one handicap parking space? Cause…cause…

Mr. Whalen: Correct.

Mr. Yozzo: …right now there are…

Mr. Whalen: There’s just one.

Mr. Yozzo: Well there’s more than one there…that…

Mr. Whalen: There’s one handicap space but there’s several…

Mr. Yozzo: It’s like spots.

Mr. Whalen: There…

Mr. Yozzo: Yeah.

Mr. Whalen: There’s just that one handicap spot and there’s three more spaces here.

Mr. Yozzo: Right. Okay.

Mr. Whalen: But you can see they’re halfway over the property line.

Mr. Yozzo: Okay. They can get away with one handicap spot for almost twenty spots?

Mr. Whalen: That’s what’s required. Yeah. One per fifty.

Mr. Yozzo: And I’m still not understanding the grading how you’re going to do it where you know like it’s…it’s still going to be all that the area up top is going to be much higher than where the parking lot is now where the septic is …

Mr. Whalen: Cause…

Mr. Yozzo: …and all the rest.

Mr. Whalen: …this…this is the sidewalk that leads right into the main entry right down here so that’s your low point right there. So it’s going to be regraded from here coming up. It’s only a few feet.

Mr. Yozzo: But you’re going to…right here existing is like it…it goes down. Right there were…there were shrubs there whatever and you’re going to put a tree there or shrubs or whatever…

Mr. Whalen: Yeah, we’re going to landscape that area.

Mr. Yozzo: Okay. I still don’t understand how it…you said that this is the low point but this is the…

Mr. Whalen: Right in there, right in here…

Mr. Yozzo: …low point all the way down here.

Mr. Whalen: …well we’re going to make this the low point so we can get in.

Mr. Yozzo: That means you’re going to leave everything…? I mean all this stuff is basically going to get ripped out. There were stairs here and an entrance to the back and then the underneath here is where the boiler is and everything else…

Mr. Whalen: Right.

Mr. Yozzo: …and there’s usable space behind here where there was a therapist or whatever…

Mr. Whalen: Right. He’s still there.

Mr. McKelvey: We’re totally getting away from…

Mr. Yozzo: Well I’m just trying to understand.

Mr. McKelvey: …what we’re here for tonight. We’re only here for variances for setbacks.

Mr. Yozzo: Okay, alright, thank you very much. Sorry, I just…I just wanted to understand cause also just like I stated before that the stuff on the website does not show this. Alright, that’s…that’s all I wanted to say. Thank you very much.

Ms. Gennarelli: And anybody that wants to can come to the office and you can take a look at what we have a…that was submitted by the applicant. I’m not sure if he’s given us everything that he has here tonight but we do have it available for viewing just call me.

Mr. Yozzo: These things should have it on the website.

Ms. Gennarelli: No, I know, we try to put…we try to put everything on the website.

Mr. Yozzo: Okay.

Ms. Gennarelli: Thank you.

Mr. McKelvey: Anyone else want to speak?

Mr. Scheiner: Just one other thing, I looked at the…I did look at the plans online and where you measured the…for the variance on the plans it showed thirty-five feet I guess you reduced it to thirty-three feet. But the back section that actually faces the residential homes that’s going to be from the bottom to the top is going to be way over thirty-five feet.

Mr. Whalen: If you’re measuring it from that but that’s not where it’s measured from. It’s measured from the average grade.

Mr. Scheiner: Okay but that’s what the residential homes have to look at behind is something that’s quite a bit higher than…than…than the thirty-five feet that’s…

Mr. Whalen: I mean we’re coming up by putting a second story on it or third story. You know we’re coming up like an additional twelve feet.

Mr. Scheiner: Right, so you’re probably thirty-three, thirty-five, forty-five feet from…

Mr. Whalen: Not forty-five but that’s not…again that’s not where it’s measured from. It’s measured from the average grade.

Mr. Scheiner: Okay, I don’t want to belabor the point but it…it doesn’t seem like there’s a hardship here for a variance and it doesn’t seem like it’s in the public interest but…

Mr. Whalen: Well if you want…I mean like if anybody else has concerns about this, I mean I can meet with you guys outside you know, so this meeting can keep going cause it sounds like there’s a lot of concerns so I’ll…I’ll meet with anybody that wants to discuss this further cause I know the new tenants or the new owners they definitely don’t want any issues with the…with the neighbors.

Mr. Scheiner: Good luck, thank you.

Mr. Maher: Just one…one further question I know you said the parking does meet the requirements and you said they’re going to start with only one dentist but based on the information you submitted tonight it shows on the…on the only…on the only floor plan that was provided with any detail it showed…it showed a total of five a…treatment rooms on the one floor, fifteen chairs in the…in the waiting room so obviously we’ve all been to the dentist we know how it works. We stack em and get them in when we can. So if this the single floor with again five treatment rooms, fifteen chairs and we have an additional floor on top of that I think you’d agree that there’s a good chance that in fact that while you may meet the requirements on the parking aspect of it for two hundred…one for two hundred square feet realistically speaking based on what you said tonight it’s going to be hard pressed to have that not full at all times and overflowing.

Mr. Whalen: Well there’s only going to be one waiting room.

Mr. Maher: Well I understand that but even that said you have fifteen there so you have to have employees also so you know, while you don’t need a variance it’s not on the…on the request this evening a…as some of the homeowners have stated it’s issue…you know it becomes an issue once and a while now but in that area it’s kind of tough to begin with so…

Mr. Whalen: I mean what we could do, I mean it’s… it’ll increase the impervious so we can take that out and max it out but…

Mr. Maher: Well it’s not under my purview but…

Mr. Whalen: Okay.

Mr. Maher: …just looking at the plan, you know, and understanding some of the concerns the residents have it does come up…it does stand to a…look at it a little further because obviously you know I don’t think the full plan is in place yet with how many employees there’s...there going to be. You know a three thousand foot dentist office is quite large so…

Mr. Whalen: I mean we could, you know, I’ll address this at the planning board we could add additional spaces next to the handicap spot.

Mr. Maher: This is just, you know, my thoughts…

Mr. Whalen: Okay.

Mr. Maher: Again there’s no variance in front of me but it’s in my thoughts from looking at the plans and what’s been filed tonight.

Mr. McKelvey: Any more questions from the Board?

Mr. Canfield: John.

Mr. McKelvey: Go ahead Jerry.

Mr. Canfield: I have one question for the applicant; you had mentioned three stories if this would be deemed three stories?

Ms. Gennarelli: We need two microphones Steve do you want to grab the other one? Or you can just switch back and forth.

Mr. Whalen: We’re calling it like two and a half only because two thirds of the lower level is basement and it’s unoccupyable but if I…I think I know where you’re going with this we’re going to change the construction type that we’re going back in so we can comply with the Building Code. We’re going with “V” A Type construction.

Mr. Canfield: So even at “V” A it’s still combustible construction with some type of masonries façade. My point is though it’s probably going to be subject to some kind of sprinkler system.

Mr. Whalen: (Inaudible)

Ms. Gennarelli: Jerry, can you give him back that…thanks.

Mr. Whalen: “V” A I believe allows you…it’s definitely three-stories and I think it’s a…I want to say nine thousand square feet per floor. Like we have to…with the…it’s a one hour rating on everything.

Mr. Canfield: Once we see the architecturals we can review that. Okay? But you are considering three stories so that’s a start. Okay, thank you.

Mr. McKelvey: Any other questions?

No response.

Mr. McKelvey: Any more questions from the public? Go ahead, Ron.

Mr. Hughes: I gather a lot of information listening to what the residents in the close proximity…

Mr. McKelvey: Identify yourself Ron.

Mr. Hughes: My name is Hughes, I live in Middle Hope. I can’t imagine that they’re trying to…an attempt to put another floor on something that’s running off a septic system that’s right in the bottom of a pond underneath a parking lot. And up until now I haven’t heard anything about the stream that’s less than fifteen feet from the edge of the parking lot. But I agree with what the Woodhulls say that the water is going in the wrong direction and I agree with what Mr. Yozzo has to say it’s ten pounds of dung in a two pound bag because you’ve got a forty-five foot structure in somebody’s backyard. Now there’s a stream that runs their all the time. It’s not intermittent. It’s a huge part of the water recharging system that we have in the Town of Newburgh and it runs all through Meadow Street and down behind this property which we’re talking about which was a lake at one time not too long ago. There’s a lot of bad stuff going on here and I agree with Mr. Donovan’s suggestion that the planning board doesn’t always see it their minds eye that it’s beneficial for everybody to have a participation in this thing and that’s why we wind up with so many lousy plans. Their arbitrary and capricious attempt at waiving the Public Hearing depending upon the sun or the moon or the wind because I can’t tell any formula that they base it on could put these people out the door without having anything to say if they choose to do so at the planning board. So I urge this Board through its attorney or process whatever you choose or you deem fit and necessary to point out all of these terrible things that are going on here. You can’t put another nine thousand feet on a building on a septic system and if you’re going to have a sprinkler system you got to be on the water and sewer and it’s available there but that all costs money and these guys don’t want to spend any money. Let’s take a good look at this and not make a lousy piece of junk on the corner.

Mr. Scalzo: I have one more question actually. As…as I’m looking at the grading a…proposed grading on the plan it appears a…elevation contour two twenty-eight, two twenty-seven come into your tower. Elevation two twenty-three is the parking lot in the back that’s plus or minus a five foot elevation change from one side of the building to the other side of the building. So with the towers maximum height is thirty-three, the maximum height potentially to the people on the back would see would be thirty-eight and that would be to the tower. Correct? Now is the other portion of the roof lower than the tower?

Mr. Whalen: The remainder of the roof…that elevation right there, the bulk of the roof is below the tower, yes.

Mr. Maher: Is the…is the peak equal to the tower though?

Mr. Whalen: No the peak, that’s where that thirty-three feet comes from right to the peak.

Mr. Maher: Of the tower or roof.

Mr. Whalen: Of the tower. The main roof is about four feet lower.

Mr. Scalzo: Jerry is it an accurate statement that it is the average a…grade or is it from one street or another street that they’re measuring building heights from?

Mr. Canfield: I just read it because I knew you would ask it but I can’t remember it. The building height is defined in our Zoning Code 185-3 as the vertical distance measured from the average elevation of the finished grade along the side of the structure fronting the nearest street to the highest point of such structure.

Mr. Scalzo: Fronting the nearest street?

Mr. Canfield: Correct.

Mr. Scalzo: So the nearest street in this case is Powelton Road.

Mr. Canfield: That’s correct.

Mr. Scalzo: Okay, so as I look at the tower the two twenty-seven contour comes right into the tower from Powelton Road. The back side of the parking lot two twenty-three that’s a four foot so we’re looking at two twenty-five a…so the highest you would be thirty-three feet higher than two twenty-five, correct?

Mr. Whalen: Correct.

Mr. Scalzo: Okay.

Mr. Maher: Was there…was there a request from the planning board to lower the height of the roof or change the pitch on the roof?

Mr. Whalen: They requested that since we were maxing, we were at thirty-five…

Mr. Maher: Right.

Mr. Whalen: ...they suggested that it would be a good idea to lower it so we lowered it by two feet.

Mr. Maher: So then what was the pitch originally on it?

Mr. Whalen: It was like seven twelve.

Mr. Maher: And dropped to?

Mr. Whalen: Four.

Mr. Maher: Four.

Mr. Whalen: We also brought the plate height down.

Mr. Scalzo: Also looking at your plan it says your second floor elevation is two forty-three two plus or minus. What are you giving for a floor eight to ten feet?

Mr. Whalen: About ten, ten feet.

Mr. Scalzo: Okay, so that would bring you up to two fifty-three and your max should be two fifty-eight so from the top of your ceiling you only have five feet of roof to play with. Does that…will your roof fit?

Mr. Whalen: I’ll have to check that.

Mr. Maher: What’s your height?

Mr. Scalzo: Oh.

Mr. Maher: What do you got five foot?

Mr. Scalzo: Yeah.

Mr. Maher: Because you got…what…twenty-four…twenty-four foot wide building, twelve foots half, forty-eight inches, four twelve plus the depth of your rafter there so…you’re right about five foot or so as far as height goes. (Inaudible)

Mr. McKelvey: Do we have any other questions?

No response.

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

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

Mr. McKelvey: Second, anybody?

Mr. Masten: I’ll second it.

Mr. McKelvey: Roll call.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

 (Time Noted - 7:53 PM)

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ZBA MEETING – OCTOBER 22, 2015 (Resumption for decision: 9:36 PM)

MAHO BAY REALTY, LLC. 1 POWELTON ROAD, NBGH

 (80-6-7) B ZONE

Applicant is seeking area variances for the front yards setbacks on Powelton Road and North Plank Road (NYS Route 32), one side yard setback, the minimum lot area and the minimum lot width for additions and renovations to an existing building to build a two-story pediatric dental office.

Ms. Gennarelli: Are we going to resume our regular meeting John?

Mr. McKelvey: We are going to resume our regular meeting now. Do you want to read the first part?

Ms. Gennarelli: The first applicant is Maho Bay Realty.

Mr. McKelvey: And what they’re looking for.

Ms. Gennarelli: Oh, okay. Sorry a…it’s One Powelton Road, area variances for the front yards setbacks on Powelton Road and North Plank Road, one side yard setback, the minimum lot area, the minimum lot width for additions and renovations to an existing building to build a two-story pediatric dental center…office, sorry.

Mr. McKelvey: Do we have any comments from the Board?

Mr. Scalzo: That’s a pretty tight lot as it is right now…a…I’m having a tough time with the a…I know he’s not here for a building height variance but I’m…I’m not quite sure that the height that you’re going to see from the parking lot behind it a…is…we’ve heard testimony from the adjoining neighbors that they’re not in…not in favor of…of that. We heard issues, drainage although that’s a very common theme at our meetings a…there will be other issues that could be addressed at the planning board with…with regards to the engineering. It’s…it’s a tight lot. They’re looking for an area variance as well but that’s a preexisting condition. It’s a tough a…tough lot to sustain what’s trying to be developed.

Mr. Maher: I…I’d have to say I concur Mr. Scalzo. The height obviously the neighbors are pretty close by there it is a seventy-five by a hundred fifty foot lot a…to go a full three stories on that lot and then obviously further encroach on the setbacks on both front yards well front and the a…the side yard. I just think…I think based on the size of the building that they could…and the size of the lot there, there is room to move some of those facilities into the existing footprint and not further encroach on the a…on the lot. Obviously the drainage, waste disposal, parking aren’t our purview but I think they do come into play in this application.

Mr. McKelvey: Any other comments?

No response.

Mr. McKelvey: Do we have a motion to approve?

Ms. Gennarelli: John, what Type of a...?

Mr. McKelvey: Oh, it’s a Type II under SEQR. Do we have a motion to approve?

No response:

Mr. McKelvey: Do we have a motion to disapprove?

Mr. Maher: I'll make a motion we disapprove.

Mr. McKelvey: Do we have a second.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: That was disapproved 5, 0.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:39 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 7:53 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 pre area (8503 sq. ft.) to the existing auto dealership (Sunshine Ford Lincoln).

Ms. Gennarelli: Our next applicant is Cosimo Colandrea. This applicant sent out fifty-one letters. All the mailings, publications and postings are in order.

Mr. McKelvey: Identify yourself.

Mr. Gaba: Good evening, Steve Gaba I’m the attorney for the applicant Cosimo Colandrea…

Mr. Levin: Excuse me one second, Mr. Chairman I’d like to recuse myself.

Mr. McKelvey: Okay. Steve hold on a minute until...

Mr. Donovan: So before you get going let me just say as I’m sure…go ahead Rich you can leave I wasn’t directing at you, sorry. Steve as you know, because I know you can count pretty well this is a seven Member board, we have four Members remaining. Just so you now as presently constituted even though we are a seven Member board there’s only six Members who are appointed. What that means and that’s for everyone else here tonight because we only have a five Members here, Steve you…your application would need all four Members to vote in favor in order for this to pass. Anybody else would also need four out of the five votes as a…typically as a courtesy offers the opportunity for you to make a determination to defer a vote because even Members who are not here are entitled to vote at a future date. So that’s something you can decide as you deem appropriate before the Board if they would decide to vote tonight, I have no idea if they would or not, but we do afford you the opportunity to ask the Board to defer until there’s more Members if not a full complement of seven.

Mr. Gaba: Yeah, I…I think we’re going to be asking we’ll see how…how things pan out but I believe what we’re going to be doing is asking the Board to hold the Public Hearing open until next month. We’ll come back and make a brief presentation to recap for any Members who are absent and if another Member has been appointed to the Board before then. I don’t know if they’d be able to vote or not but they’ll...they’ll certainly a…

Mr. Donovan: They would legally be entitled; some people don’t feel it’s appropriate so I don’t know.

Mr. Gaba: I understand they may want to recuse themselves. The other thing day a…did the planning board make the 239-m referral on this? Do you know?

Mr. Donovan: Did the planning board? I don’t know if.

Ms. Gennarelli: I don’t know.

Mr. Gaba: Oh, okay.

Ms. Gennarelli: I know we made ours.

Mr. Gaba: And have we heard back from the Planning.

Ms. Gennarelli: Yeah.

Mr. McKelvey: Yeah.

Mr. Gaba: Okay, good that’s all that matters then. I didn’t know whether the…

Ms. Gennarelli: I don’t know what the planning board did.

Mr. McKelvey: Do you want to read that and get it out of the way?

Ms. Gennarelli: Do you want me to read it into the record?

Mr. Gaba: Please.

Ms. Gennarelli: Okay. This is from the Orange County Department of Planning.

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. And it’s Local Determination.

Mr. Gaba: Well as I’m sure the Board is aware the property at issue is on 17K. It’s the Sunshine Ford a…dealership and a…what’s being proposed is that a…some additions be made to the building a…particularly this is the existing a…frontline of the building. It’s fifty feet in off of Route 17K. What we’re going to be doing is adding a a second story in a portion of it here in the corner. It’s going to be three thousand four hundred and thirty-four square feet that’s going to hold the fifty foot line and then here it says concrete walk, you can see it’s a little bit darker there, this is going to be a new entranceway. The new entranceway is pretty much what triggers the front yard variance need. It’s only going to project about a foot further from the existing front line toward Route 17K. So instead of being fifty feet back it’s going to be forty nine feet back. In the rear what we’re going to do is add a a new service and new car preparation area back here. It’s kind of this irregularly shaded addition. Now this would meet the required sixty foot setback for the I/B district except as you can see there’s a jog from a…the a…the rear property line here, the lands of Granado and the far corner, this…this far western corner down here of the addition is a…forty…a…forty feet from the nearest property line. It’s not that the whole building, mind you, is going to be forty feet from this property line just this small corner, if you will, this little triangle at the end of this tip here is what it is that doesn’t meet the required setback. So those are the variances just by way of background a…what’s driving this is that this is of course a car dealership. Car dealerships are franchises. Franchisors have requirements if you want to remain the franchisee owner. And every now and then the come down with these dictates you need to have how many square feet of floor space you need to have whatever amenities as far as a repair area and you know it costs a lot of money to keep up but that’s what you have to do if you want to keep your car dealership open. And that’s exactly what’s happened here. So because of the need to have more floor space what we’re doing is we’re taking the downstairs offices and we’re moving them upstairs into the second floor area so that we can meet the requirements of a franchise a…to maintain this dealership. And the same thing with the bays here a…we have some internal plans with us a…there’s…pardon me, a Ken Seibertson as well as Greg and what we’re going to do if it’s alright with the Board is I’ll have Greg explain to you a…the…the plans for the development of the building and Ken can answer any questions that you have as far as the actual specifics of the a…proposed improvements.

Mr. Shaw: Steve covered a lot of the aspects…

Mr. McKelvey: Identify yourself please.

Mr. Shaw: Oh, I’m sorry, Greg Shaw from Shaw Engineering. Steve covered a lot of aspects of the project but I’d like to just touch on a few. A…an important component is that with the development of this project we are now up against a a residential zone and with that the buffer and setback requirements now come into play. A…if you take a look in the upper left-hand corner you will see that I have a removals plan. Presently on Boulder Drive which is now under the ownership of Mr. Colandrea there’s a home on each side of it. Both those homes are going to be demolished in accordance with your buffer requirements and they…they are going to be replaced with lawns, shrubs and trees. We’re going to create a seventy-five foot diameter buffer within that area to protect all those homes that are within a…that residential area. So that’s one important aspect of it. Another component that I’d like to bring up is that with respect to the encroachment of the sixty foot setback to Mr. Granado again, we’re obligated to provide sixty feet and we’re only providing a forty foot setback as Mr. Gaba said a…that is really only a six hundred and two square feet encroachment when you take a look at that portion of the building that is within this area that is encroaching. But what we’ve tried to do in addition to minimizing it is also to mitigate it. What we’ve indicated on the plan is a six foot high beige PVC fence very similar to the fence that was installed along Putnam Street which is six foot high and the eight foot high fence which was installed along the lands of Fayo. We’re going to install that along the lands of Granado’s property on two sides of it so that he has a visual buffer a…from a…Mr. Colandrea’s property. So again, a…we tried to minimize it and then on top of that we’ve tried to mitigate a…the impact on Mr. Granado’s property. A…and with that that’s a quick overview a…I’d like to turn the microphone over to Ken Seibertson who’s the project architect who can explain a little bit of the architecture of the project and with that…

Mr. Seibertson: So we just prepared, everybody should be familiar with Sunshine…

Mr. McKelvey: Identify yourself please.

Mr. Seibertson: Ken Seibertson …that’s…that’s the new look of what it’s going to look like from the street which is the Ford branding. It’s going to be a dual dealership with Ford and Lincoln so it’s meeting their two requirements for their marquis signs which is why we need that one setback and we did do as everybody else has alluded to already, you know, we have the enlarged showroom a…for the display of the vehicles a…the tool room, the service bays and then the thirty thousand pound lifts in the back for their high bays. The existing structure is too short to accommodate the high lifts of the bigger trucks and that’s why we need to put those on there and then the new…required new car delivery. So everything that we’re doing is going to bring the dealership up to the new specs of the Ford and Lincoln program.

Mr. Maher: So the new…the new service area in the rear…

Mr. Seibertson: Yeah…

Mr. Maher: …that’s it’s about (Inaudible) that’s that section there...

Mr. Seibertson: …it wraps around here.

Mr. Maher: So those bays are the ones that are accessible from the rear?

Mr. Seibertson: That’s right cause these existing bays you can’t get a big truck…big lift in there.

Mr. Maher: So those…the new doors would face the rear of the building?

Mr. Seibertson: The rear, correct. It’s just the property line is real tight on this side…with a big truck you can’t make that turn.

Mr. Scalzo: Mr. Shaw had mentioned there’s going to be plantings in the buffer area and I see there’s going to be an eight foot high PVC vinyl fence. If vehicles are pulling out of the service a…the high bay areas a…would these shrubs provide screening from headlights shining on the Fayo property?

Mr. Shaw: Well that eight foot high PVC fence presently exists. Okay? And as vehicles pull out I think that eight foot high fence provides a…protection for the Fayo property right now. Okay? And whatever shrubs and plantings we put in that buffer area will only help but I think an eight foot high fence at a hundred foot distance away a…from the building a…is gonna…it…it’s more than enough to shield Fayo for any lights.

Mr. Scalzo: Thank you.

Mr. Shaw: You’re welcome.

Mr. Maher: So, I guess my question would be so if we’re gonna…if we’re putting a eight foot fence there why would you only do a six foot fence around the house that’s closer to it that’s that there that you’re obviously requesting a variance a…

Ms. Gennarelli: Can you give him the microphone Ken? Thank you.

Mr. Shaw: A…I just felt a six foot high fence would be appropriate only because it’s closer. We can make it eight foot.

Mr. Maher: No I’m just wondering what the reason was behind it because I read some…some notes from the minutes and it stated originally there were some berms involved and then obviously a fence on top of the berms which give you almost a ten foot overall height.

Mr. Shaw: Correct. And that was for the neighbors across the street on the other side of Putnam which were further away and were at a higher elevation. If…if the Board felt that six foot was not appropriate and an eight foot would be appropriate Mr. Colandrea wouldn’t be opposed to that. I also didn’t want to have Mr. Granado feel the he was closed in either.

Mr. Maher: No, no I want to make sure the option is there if in fact the…obviously a six foot fence you know you stand fifty feet away from you can look over the top obviously the…behind the building is probably an area of twenty…what twenty some feet?

Mr. Seibertson: Twenty-six feet.

Mr. Maher: Twenty-six feet so I mean, obviously it’s you know…

Mr. Shaw: If the Board feels it’s appropriate Mr. Colandrea would be more than happy to provide it.

Mr. McKelvey: There’s also some other houses now along Putnam on your side.

Mr. Shaw: There are…on our side? Alright we have Mr. Granado and then continuing in a westerly direction there’s a house, there is Boulder Road and another house.

Mr. McKelvey: Going towards Stewart Avenue I’m talking about.

Mr. Shaw: Going towards Stewart Avenue…

Mr. McKelvey: On Putnam.

Mr. Scalzo: Where you have the east end by the detention basin.

Mr. Shaw: Alright you…

Mr. McKelvey: Isn’t there…there’s a couple of houses up on the hill there too isn’t there?

Mr. Shaw: A…on…on this side of Putnam or are we talkin on the same side of Putnam…

Mr. McKelvey: On the same side as…

Mr. Shaw: Right, right you have…you have Breitenbach okay? Which is pretty far well removed from…from where we are a…yeah there are some other resident…residential lots as you start moving down a…you know towards Stewart. But they’re…but they’re far well removed from you know where we are up here.

Mr. McKelvey: Okay that’s all I wanted to hear.

Mr. Shaw: Okay, thank you.

Mr. Scalzo: Mr. Shaw, would there be any increase in car storage or all the parking area remain the same?

Mr. Shaw: No, no, no pretty much there’s going to be a reduction in impervious area because with removal of these two buildings and their driveways a…and we’re replacing them with lawn a…and vegetative cover. That’s…that’s our reduction and where the a…new buildings are going to be we’re basically taking out Macadam pavement and putting in the structures themselves. So it’s really a benefit as there’s going to be less storm water runoff a…than what’s presently being generated today.

Mr. McKelvey: Is there any questions from the public?

Mr. Wild: William Wild, 6 Boulder Road, how much closer is the new building going to be from the existing building?

Mr. Shaw: From the existing building.

Mr. Wild: How much further than the existing building?

Mr. Shaw: The depth of the building is going to be fifty-nine feet.

Mr. Wild: No, I mean in back of the existing building, you’re putting a new building on.

Mr. Shaw: Right.

Mr. Wild: How much are you adding to the back of the building?

Mr. Shaw: Fifty-nine feet.

Mr. Wild: Fifty-nine feet?

Mr. Shaw: Yes.

Mr. Wild: And you’re still going to be within the seventy-five foot buffer?

Mr. Shaw: We will be…we will be outside the seventy-five foot buffer and outside the one hundred foot rear yard setback.

Mr. Wild: The Town Ordinances that are in place are in place to correct the residents, correct?

Mr. Gaba: Well really it’s appropriate for him to address the comments to the Board.

Mr. Wild: That’s…that’s what I’m asking. Okay. So when this Board is considering these variances are you going to take into consideration the effect on the homeowners in the area?

Mr. Donovan: The answer to that is yes, I mean, if…if you’ll allow me just briefly. The Board has to engage…this is an area variance, the Board has to engage in what the law calls a balancing test and you have to…the Board has balance five factors. They have to balance the benefit to the applicant if they got their variances versus the detriment to the surrounding community. Right?

So the five factors number one whether or not this will produce an undesirable change in the character of the neighborhood. Number two is whether or not a…the applicant can achieve this…the relief they seek by some other method that’s feasible to pursue. You look at the nature or the substantiality of the variance. How substantial is the variance relative to the requirement? You look and see whether or not there’s going to be adverse physical or environmental impacts and you have to balance whether or not the hardship…alleged hardship is self-created. Those are the five factors that this Board has to…has to weigh. Okay?

Mr. Wild: So expanding the dealership into a residential neighborhood will that affect my property value? And is that a consideration? What it’s going to do to our property values?

Mr. Donovan: I don’t know the answer to that.

Mr. Shaw: We’re not expanding it into a residential neighborhood. We’re expanding it into an I/B zone.

Mr. Wild: And any noise associated with it...right now you have the door to the service area on the east side of the building, you’re putting new doors on the back of the building, you’re bringing any noise associated with that dealership closer, fifty-nine feet closer and you’re talking about trucks going in and out, making a turn that’s going to be less than the seventy-five feet where the trucks make the turn. Okay? So, you’re going to affect our property values, you’re bringing noise into our neighborhood, you’re putting in a PVC fence and what I can tell you is that PVC fence that I have in my backyard from Target the noise bounces off the fence. Okay? It doesn’t absorb the noise, it enhances the noise. Okay? Another concern I have is light…lighting in the parking lot. When they expanded the parking lot into our neighborhood they put new lights up. The lights on the 17K side shine on our properties. Okay? I’ve had to call Code Compliance several times to have them adjust the lights. So is there going to be new lighting in the parking lot?

Mr. Shaw: Yes, there are. There’s gonna be a…two new lights which are going to be approximately seventy-five feet a…from Mr. Colandrea’s property line.

Mr. Wild: The second story, is it going to have any windows on the back side of the building?

Mr. Shaw: It’s too premature to ask that question.

Mr. Wild: Well I have issues with noise, I mean closer to our residences, my property value and my privacy and I think those big, three big concerns that a…me and my neighbors have.

Mr. Shaw: So with all due respect that is…is…as they said in the previous application those are all planning board issues.

Mr. Wild: Yeah but in granting variances they need to a…take these into consideration. They already said they take into consideration the effect on the property owners. Has anybody from the Board made a site visit out there?

Mr. McKelvey: We all have.

Mr. Wild: You did, okay.

Mr. Masten: We all have.

Mr. Wild: Okay, have you been on Boulder Road to look at it from our perspective? Have you gone up to Boulder Road and looked at it from the other direction?

Mr. Maher: Yes.

Mr. McKelvey: Yes.

Mr. Wild: Okay, so you’re bringing that building closer, you’re bringing all the noise closer. They already did it with the parking lot when they changed it from residential to commercial. They did it with Target when they bought Target, built their building closer put the entrance on the end so you’re squeezing the side of our neighborhood and your affecting our property values so he’s saying that the franchise is…they’re requiring him to expand, well three years from now if they require him to expand again how much farther are you going to come closer to my house before I have to give up my house?

Mr. McKelvey: I don’t think you’ll be allowed to expand again.

Mr. Shaw: I was just thinking the same thing. This is it…we’re out of room, there is no more expansion.

Mr. Wild: We were told when they moved the parking lot that that’s all that they were going to do and now here you are a year later and expanding the building. Why can’t you expand it towards the east? You got plenty of property there.

Mr. Shaw: A…a…it’s the side yard setback that comes into play.

Mr. Wild: I mean the current fence that they put up by the new parking lot, the PVC fence, only a couple of dead shrubs that are there right now. Okay? There’s no seventy-five foot there from the center of the road.

Mr. Maher: A question…a question, the…you advised that the larger vehicles would be serviced in the rear…obviously the concern the neighbors have obviously the noise but a question, further question it shows only a twenty-five foot area of…of a…a macadam…

Mr. Shaw: Yes.

Mr. Maher: …realistically is a large vehicle going to be able to make a…with the turning radius of a large vehicle going to make it on a twenty-five foot…twenty-five foot wide a…piece of asphalt into the building and could be able to come and not hit the door?

Mr. Shaw: Well, if you take a look at where the doors are a…first of all that twenty-five feet is at the most narrowest point. Okay? If you take a look at the opposite end of the building it’s thirty-seven feet.

Mr. Maher: No I understand…I understand that.

Mr. Shaw: Right and where the overhead doors are they’re more…they’re closer to the thirty-seven foot dimension. Alright? And you’re absolutely right if you’re expect to come in…in turn into an overhead door close to the twenty-five foot dimension you’re not going to make it. But with the doors being closer to the thirty-seven foot dimension… Alright? …yes, they will make it.

Mr. Maher: There are…there are two service bays in the rear?

Mr. Shaw: Yes and they’re indicated on the plan and the…

Mr. Maher: No I see those two there…I thought…

Mr. Shaw: …overhead doors are there.

Mr. Maher: No, I thought on the original…on the original plan there was three opening doors on the rear…

Audience Member Inaudible

Mr. Maher: …was that a mistake on there?

Mr. Shaw: You changed it on me?

Mr. Maher: …so there are three service bays in the rear?

Mr. Scalzo: When you refer to the larger vehicles what is the largest vehicle that would be serviced in there?

Audience Member Inaudible

Ms. Gennarelli: You have to speak into the microphone. It’s being recorded. Sorry.

Mr. Colandrea: Jerry Colandrea five fifties, big dump trucks and high top vans right now.

Mr. Scalzo: When you say big dump trucks are you talking triaxle dumps, twenty-five tonners or…

Mr. Colandrea: Not, there’s five fifties, there’s double axel.

Mr. Scalzo: Okay.

Mr. Colandrea: Yeah. Is that it?

Mr. Wild: So you’re talking dump trucks, diesel engines a…more noise. Okay? These trucks are going to be higher than a ten foot fence. I would ask the Board to consider the impact on the local residents.

Mr. Scalzo: Would it be possible to a…this is for Mr. Shaw and the architect…

Mr. Shaw: Yes.

Mr. Scalzo: …the…well since you say there are three bay doors, the plan I’m looking at shows two…

Mr. Shaw: I know. That’s new to me.

Mr. Scalzo: …I understand, on the…that would be the east side of the new addition at the forty-five, seventy-five dimension would it be possible to actually put those access doors there therefore not…in essence when a bay door is open you’re going to hear a…things out that way towards Putnam and Boulder Road. If they were move around to the east side of that…I’m just asking if it’s a possibility.

Mr. Shaw: No, one thing that and again it’s premature, one thing that may come up with the planning board cause we have to submit a landscape plan to them is within this buffer area, line this whole area with some evergreen trees. Okay? Maybe that would help buffer any noise that’s coming out from the work area. Alright? You know it’s something.

Mr. Maher: You can’t see it, you can’t hear it.

Mr. Shaw: You said it I didn’t.

Mr. Scalzo: The studies have shown those trees really don’t work.

Mr. Shaw: I can tell you that’s not true.

Mr. Maher: So let me ask a question.

Mr. Shaw: Yes.

Mr. Maher: So you’re required to submit a full landscaped plan or was it…?

Mr. Shaw: Yes, I am.

Mr. Maher: No that wasn’t the question…you are required to or you’re going to?

Mr. Shaw: Oh, I have to.

Mr. Maher: Because in the minutes I believe there was comments by the planning board that if in fact you had to because of the fact that…let me just find it for a second here…

Mr. Shaw: There was a discussion to it.

Mr. Maher: There was a discussion actually by the planning board if in fact you had to…

Mr. Shaw: Well the point that came up was because we are creating a wall along the zone line and we are buffering the neighbors… Okay? …with this new wall did we in fact have to submit a landscape plan or could this wall replace the landscape plan…and the board basically said no, we want a landscape plan. So I said fine, we’ll give you a landscape plan. I think that was the essence of it.

Mr. Maher: I…I just want to make sure that we’re on the same page and if in fact there’s…there will be some obvious landscaping to…to assist in…

Mr. Shaw: There will be a land…

Mr. Maher: …in a…

Mr. Shaw: …there will be a landscape plan submitted to the board period…they did offer me the opportunity if I wanted to to come before this Board for a variance…

Mr. Maher: Right…no I understand. Actually it was Donnelly’s suggestion or recommendation.

Mr. Shaw: …and I didn’t think that was very viable.

Mr. McKelvey: Anybody else from the public want to speak?

No response.

Mr. McKelvey: Do you want to make a motion to hold it over?

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

Inaudible Audience Member

Mr. McKelvey: Go ahead Steve.

Mr. Gaba: Since you’ve heard from us and you heard from the public a…I believe that anyone who wasn’t here could just read the minutes and then proceed to vote on them. A…what I’d suggest is that you close the Public Hearing, we’ll stipulate to extend the time if necessary and then at your next meeting just have additional Member review the minutes, we’d be happy to answer any questions informally that they might have and proceed from there but I mean if there’s no further comment why not close the Public Hearing?

Mr. McKelvey: That’s up to the Board Members.

Mr. Gaba: Oh yeah, of course.

Mr. Maher: And I’m going to…I’d still like to keep the Public Hearing open. So I’ll make a motion to keep the Hearing open.

Mr. McKelvey: Is there a second?

Mr. Scalzo: I will second that.

Mr. McKelvey: Okay, roll call.

Ms. Gennarelli: Okay, roll call. Richard Levin, oh, I’m sorry he’s Recused

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: And that will Tuesday, November 24th, the Tuesday before Thanksgiving.

Mr. Donovan: And just to be clear no one, you will not get a…there is no other Notice, you’re notification is tonight. There are no mailings, there’s nothing in the newspaper.

PRESENT ARE:

 RICHARD LEVIN - RECUSED

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:24 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 8:24 PM)

ROBON REALTY LLC. 341 LAKESIDE ROAD, NBGH

 (47-1-59.1) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity by increasing the floor area of second dwelling unit where only one dwelling unit is permitted per lot; an area variance for each dwelling unit requires a 1500 sq. ft. minimum habitable floor space; area variances for minimum one side yard and minimum combined side yards setback and increasing the degree of the non-conformity of the side yard by increasing the height to 22’9” and an area variance for the maximum lot building coverage to reconstruct a second dwelling unit on an existing lot.

Ms. Gennarelli: Our next applicant is Robon Realty.

Mr. Rones: Good evening my name is Joe Rones representing Robon Realty. I understand that a…the Public Hearing on the variance applications had…had…was held previously but was held open for the purpose of reviewing the record a…and history of Robon’s efforts to acquire and develop the property in order to satisfy the a…time constraints of the ordinance regarding non-conforming uses. So in that regard, having been informed about that on October 1st I sent the Chairman and the Board Members and Mr. Donovan copies of not everything in the file because that would have been a little bit too burdensome but some of the highlights from this file dating from 2009 when the a…first efforts of Robon Realty to acquire the property via a so-called short sale were undertaken. An attorney in the city of Newburgh by the name of John Paggioli was representing at the time a Patrick Devito who owned the property. It was about to go into foreclosure and we were attempting to have an interest in the property attempting to negotiate the short sale. As some of you may have experienced or have heard about a…a…some of the efforts of folks who are underwater so to speak with respect to there’s too much owed on their mortgage and not enough value in the property make these attempts to negotiate with their lenders in that fashion and that’s what occurred here. Unfortunately over and over and over again a…as Wells Fargo which was the primary lender here kept losing track of the paperwork that was sent to them a…and a…since 2009 right up until several months ago it was just impossible to make a deal. We thought we had one in 2011and at that time Robon Realty ordered a title report and survey which we’ve included in you package just to show how serious the effort was to purchase the property at that time a…but it never took place. Finally, as I said, several months ago the a…a…property appeared on the tax…on the foreclosure…mortgage foreclosure sale calendar in the a…County…Orange County courthouse and at that time Robon Realty was the successful bidder. They…Robon Realty very shortly after the closing of that title demolished a building, the one that was closest to the lake with the intention of redeveloping that…that building and that’s the plan that was presented to you at the last meeting. So I’m hopeful that the planning (Zoning) Board and Mr. Donovan found that material persuasive as to the efforts that Robon Realty has made there being no intention to abandon a…that use and a…a…we believe that that takes it out of any prohibition and…and after all the Zoning Board to grant variances from the a…statute from the Ordinance and that’s what will ask for. I think the more pertinent portion of the Zoning Ordinance is that a non-conforming building…this isn’t really a non-conforming use in the classic sense of the word that is…we don’t have, we’re not trying to expand or rebuild a used car dealership not that there’s anything wrong with that a…but we’re not a…putting a non-residential use in a residential area. This is just continuing the existing residential use that was there and a…the Ordinance provides that a non-conforming building which is what this was, there being two residential buildings on the lot, shall not be restored for other than a conforming use after damage of more than fifty percent from any cause a…unless a…the use is reestablished within one year. And certainly this property fulfills that requirement so…

Mr. Donovan: So…I’m sorry, so that raises and interesting question that kind of gets us to where we are. Because originally this comes to the Board…just going to step back and reorient ourselves, for a series of area variances to allow the reconstruction of the house. So the issue that comes up well, is this an area variance or a use variance because only one principal dwelling per lot is allowed. This would be two. And the conversation then became is that a use variance or an area variance. We then went to the conversation well, is there any kind of pre-existing, non-conforming protection and even though it’s lapsed for more than a year we explored the possibility of doctorate of impossibility of performance. That is no one could use this because of the unfortunate never never land that this property was as a result of the short sale, the mortgage foreclosure. Anyone who has lived through that process knows how frustrating and downright ridiculous it is especially if you are dealing with an institution like Wells Fargo so if in fact if someone wanted to within that year period, whether it falls in 185-19-A or 185-19-B that is a non-conforming use or a non-conforming building no one was going to be able to do anything unfortunately, that…that’s the reality of the situation. So the question now for the Board and what we’d asked the applicant to…to provide and what Mr. Rones has given and spoken to this evening is their attempts to try to do something with the property. They’re attempts to try to purchase the property, rehabilitate the building and…and use it as it was previously used. So I think the question for the Board whether unless Jerry disagrees whether you want to go on to 185-19-A-(4) or 185-19-B-(2) is whether or not that period of time within which it was impossible for anyone to perform should not be held against the applicant but they should get the benefit because I understand the building is going to be built on the same footprint. If I…same foundation, same footprint that what was indicated at the last meeting. Correct? That’s what somebody said cause I read it.

Mr. Minuta: Joseph Minuta with Minuta Architecture right now the existing building a…we will be constructing essentially over the exact same area starting from the corner of the building however, because this is a modular home a…it will extend out past a few other areas. So in size it’s essentially the same but we’re using the main portion of where the concrete foundation pre-existed.

Mr. Donovan: So substantially in the same footprint?

Mr. Minuta: Correct. I would also like to include the…this property a…predates any requirements. The original house was built in 1800; the second home was built in 1920.

Mr. Canfield: Just if I may, John, in response to a…Dave’s comments if the Board recalls at the last meeting when we last discussed this there was a great lengthy discussion with respect to the timeframe and whether the twelve month period did or did not apply. If I’m understanding this correctly that the applicant’s attorney has presented information for the Board to review that puts that twelve month period in question or presents, I don’t know if it’s convincible evidence to you but that’s for you to make that decision but that’s what’s before you. If the Board chooses to allow that then I agree with Dave’s interpretation that the one year period does fall into play and then the 185-19 Section does apply here and it would no longer be a use variance. It would just be the area variances that are sought.

Mr. Rones: I’m not sure if it was included in your package or not but just to document that we’re within that one year period I have a copy of the referee in foreclosure’s deed a…dated May 1, 2015.

Mr. Donovan: Joe if that’s an extra copy if you could hand it up to Betty.

Ms. Gennarelli: Thank you.

Mr. Rones: And as far as the quality of the work that Robon Realty is going to be doing is well illustrated by another project Robon did two doors away. I believe the address is 345 or 347 Lakeside Road. A…a…a really, in my opinion although I’m no critic, a very, very fine single family dwelling on the lake and that’s just as I said two doors away. So a…a…the quality of the work is just going to be an enhancement to the a…to the Orange Lake community and as I understand the last session there were a number of people from the community who spoke in favor of it I believe. There are a number of folks here tonight who are also in favor of a…of a Robon’s project and so it does not appear that granting this variance is going to be a detriment to the neighborhood but rather an enhancement. Thanks.

Mr. McKelvey: Any questions from the Board?

Mr. Levin: Mr. Minuta the building that extends over to the old property line I believe that only goes to the north, it doesn’t go to the south?

Mr. Minuta: You have to illustrate that to me. The one story building here?

Mr. Levin: No, no on the new building that’s going up.

Mr. Minuta: The new building here.

Mr. Levin: You’re slightly over the original foundation, right?

Mr. Minuta: Correct.

Mr. Levin: And that is going to the north where it is the property of the same owner of the…

Mr. Minuta: That is correct.

Mr. Levin: Okay.

Mr. McKelvey: You’re not going to block any view of the neighbors…?

Mr. Minuta: No.

Mr. McKelvey: …of the lake, right?

Mr. Minuta: No sir.

Ms. Farrow: Roseann Farrow, I used to own 345 and it’s just so beautiful what he’s done with it. It’s just amazing. But I own 351 and my view will be blocked. But you know what? Even though it will be somewhat blocked because he’s going two-stories because I’m at 351 just to the north of the restaurant property so two over and up. And I stood on the deck just to see where you know, that two-story would now, you know, sit and it doesn’t even matter to me that he’s blocking my view a little bit because I know what he is going to build will be so beautiful that it will just enhance everybody’s…everybody’s property and so I’m all in favor even though I’m a bit obscured so…

Mr. McKelvey: Thank you.

Ms. Farrow: You’re welcome.

Mr. McKelvey: Anyone else want to speak?

Mr. Esposito: Mike Esposito, 38 O’Dell Circle, I too totally agree. I live on Orange Lake and it’s only going to make the lake look much nicer based on what was previously there. Thank you.

Mr. McKelvey: Thank you.

Mr. Esposito: Anthony Esposito, 40 O’Dell Circle, I lived on Orange Lake all my life. I…my wife has been on the board, our homeowner’s board for many years and I test the lake for the State every two weeks for many years. Do we want the lake kept safe and beautiful? The money Bob has spent on the Lake View House, you guys got to see it; he’ll never get his return on it. What he did with his house it’s just absolutely magnificent and what he’s going to do with this is going to be incredible. Take a look. Thank you very much and you guys need a raise. This is my first and last meeting.

Mr. McKelvey: Thank you.

Mr. Hildreth: My name is William Hildreth; I live almost directly across the street from this. I’m the first house south on the opposite side of the road. I’ve lived there since 1977 and since I’ve lived there a…from my front porch I can throw a baseball and hit three lots that have two houses on there. So the use there just so the Board can feel comfortable with it in terms of being compatible with the neighborhood is in my opinion a non-issue to have the two houses. It’s the way the neighborhood is and I’ll just echo what other people have said. I know what’s going in there is going to be far better than what was there. In the past, I’ve lived there for many years there were motorcycle riding drug dealers on that lot so I think it’s an enhancement. Thank you.

Mr. Bochemuhl: Good evening my name is Al Bochemuhl I’m president of the Orange Lake Homeowner’s Association and a…last month I had sent some correspondence addressed to the Board. A…Greg Langer brought back to our board meeting that we had earlier this week the concerns that were brought up at last month’s meeting. We discussed it at length and I’m here to a…to assure the Board that we still support the applicant and the improvement that they have planned and we think it would be a great improvement to the lake and the community.

Mr. Mazzarelli: My name is Gene Mazzarelli, I live at 381 Lakeside. When I moved to Lakeside I was next to an old cottage full of vermin and etcetera and a…I was fortunate that somebody moved in after ten years and there was one neighbor who didn’t like it. I know what these people have done, I’m not that close to the property but I’ve seen the house and I’m going to repeat a lot of what Mr. Esposito said they don’t do anything shabby and it would be much better if somebody decided they could put a Winnebago there and put a pipe into the lake. So I would encourage you to take a look at the improvement that these people will put into it. Thank you.

Mr. McKelvey: Thank you. Any Board Members have any questions?

No response.

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

Mr. Levin: Motion to close the Hearing.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Rones: Thank you.

 (Time Noted - 8:42 PM)

ZBA MEETING – OCTOBER 22, 2015 (Resumption for decision: 9:39 PM)

ROBON REALTY LLC. 341 LAKESIDE ROAD, NBGH

 (47-1-59.1) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity by increasing the floor area of second dwelling unit where only one dwelling unit is permitted per lot; an area variance for each dwelling unit requires a 1500 sq. ft. minimum habitable floor space; area variances for minimum one side yard and minimum combined side yards setback and increasing the degree of the non-conformity of the side yard by increasing the height to 22’9” and an area variance for the maximum lot building coverage to reconstruct a second dwelling unit on an existing lot.

Ms. Gennarelli: The next applicant Robon Realty, 341 Lakeside, area variances for increasing the degree of non-conformity by increasing the floor area of second dwelling unit where only one dwelling unit is permitted per lot; an area variance for each dwelling unit requires a 1500 sq. ft. minimum habitable floor space; area variances for minimum one side yard and minimum combined side yards and increasing the degree of the non-conformity of the side yard by increasing the height to 22’9” and an area variance for the maximum lot building coverage to reconstruct a second dwelling unit on an existing lot.

Mr. McKelvey: Do we have any comments?

Mr. Scalzo: I thought Mr. Rones painted a pretty good picture of the attempts that have been made from when the house went into distress and we certainly heard a plethora of testimony from a...the neighbors, in support of…support of that project.

Mr. McKelvey: Plus the Homeowner’s Association.

Mr. Scalzo: Yes.

Mr. Maher: I guess the question we have is whether in fact it’s lost its use from being a residence that it’s more than twelve months but based on the a…tree Mr. Rones provided a…there is documentation that they have been on this since…for the last five or six years and also the fact that it was in fact rented a…in 2011 when they were continued to purchase so I think the variance that we’re looking for is the area variances requested. I’d be willing to make the motion to approve.

Mr. Levin: I’ll second.

Ms. Gennarelli: Roll Call. Richard Levin…oh, I’m sorry, John was this a Type II?

Mr. McKelvey: Type II under SEQR.

Ms. Gennarelli: Okay.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Approved.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:41 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 8:42 PM)

WESTPORT MANAGEMENT, LLC. 640 GARDNERTOWN ROAD, NBGH

 (47-1-70) R-1 ZONE

Applicant is seeking an area variance for a front yard setback on Lot #1 for an existing single family dwelling for a proposed four-lot subdivision.

Ms. Gennarelli: Our next applicant is Westport Management. This applicant sent out one hundred and twenty-nine letters. All the mailings, publications and postings are in order. If you could just…

Mr. McKelvey: Identify yourself please.

Mr. Norton: My name is Bill Norton from Mercurio, Norton, Tarolli, Marshall. We were present last month and had a Public Hearing however the address on the mailing I guess was slightly off so that’s why we’re back again. Just to review the project we’re…we’ve been before the planning board to do a…a four lot subdivision on about a ten acre parcel which a…borders Gardnertown Road and also borders State Route 52. There will be three new building lots and the fourth lot which is Lot 1 of this subdivision has an existing old house on it which is a…very close to Gardnertown Road. With the development of a subdivision a…we have fee title in the roadbed of Gardnertown Road and the planning board has asked us and we have responded by a…creating a dedication strip of fifty foot wide a…to give to the township for the ownership of Gardnertown Road. With that we’ve created a front yard on the existing farmhouse on Lot 1 that is only two feet from the front corner of the house so we’re here requesting an area variance of forty-eight feet a…because the requirement of fifty feet for the front yard a…will not be met so we need a area variance of forty-eight feet to satisfy that and there’s no other way to a…satisfy it without moving the house. Thank you.

Mr. McKelvey: How long has that house been there?

Mr. Norton: I personally don’t know but it…it looks like it’s a…it’s not a new house, it looks like it’s fifty years old I would guess.

Mr. McKelvey: And the barn is coming down?

Mr. Norton: Yes it is.

Mr. Levin: This is the only lot you’re asking for a variance on?

Mr. Norton: Yes, it’s the only variance that we need.

Mr. Levin: Okay.

Mr. McKelvey: I think the main thing was the address was wrong.

Mr. Scalzo: It was a County issue I believe it wasn’t a…

Mr. McKelvey: It was a 911…

Mr. Norton: A 911 address problem.

Mr. McKelvey: Anybody from the public want to speak?

Mr. Curry: My name is Daniel Curry, I live at 614 Gardnertown Road. Could I have the neighbors on both sides please? Do you have the names?

Mr. Norton: Let’s see we have Lachance, Gisell Lachance, we have Lance Muro, Gil Rosario, a…Kerriann Guneratne I guess it is and Robert, Susanne Barr and Robert and Linda Curiale and lastly we have a Gordon Weiss.

Mr. Curry: Thank you very much. But you have no date on the house though how…how old that it really is?

Mr. Norton: No I think if you look at the assessment roll they maybe have an approximate time the house was built.

Mr. Curry: It is an old farmhouse though right?

Mr. Norton: It appears to be yes.

Mr. Curry: Have you done any research on the gravesites that might be on their land?

Mr. Norton: No we haven’t.

Mr. Curry: In the day that’s what they did, they buried their family on the…on the farmhouse. Have you made any provisions in case you came upon a grave? What would you do with it?

Mr. Norton: Generally speaking a…two things happen, we’re required to show any kind of a gravesite if…if in fact we see it a…

Mr. Curry: Don’t…don’t look for any gravestones or anything. In the day they didn’t do that.

Mr. Norton: Well two things happen, the only way we know whether something is there is if there is a history of through the Town or someone tells us.

Mr. Curry: Have you been to Goshen and checked it out to see if there’s any gravesites?

Mr. Norton: Well a…unless it’s listed somewhere we wouldn’t know or sometimes…

Mr. Curry: If it’s listed it would be listed in Goshen. I take it you didn’t…I’m not…I’m not saying there is but have you checked it out?

Mr. Norton: No, we don’t typically do that. If it shows up in a title report of shows up in a deed or we see it, or we trip over a gravestone while we’re doing a survey we are obligated to show it and we have not seen anything of that nature.

Mr. Curry: Okay, but it would be listed in Goshen. If there was a death, even in those days it was listed in the County seat. The burial you…the family would normally would bury the family on their own property. And never look for a…that doesn’t mean there could be…just because there’s no headstone there that doesn’t mean there’s not a gravestone there. But I think research should have been made to see if there’s a gravestone…if there’s people that are buried there. That’s all I have to say.

Mr. Donovan: So the County records indicate the house was built plus or minus 1820.

Mr. Norton: That’s more than fifty years.

Mr. Donovan: That’s more than fifty years.

Ms. Gennarelli: Oh John, I have the Orange County…

Mr. McKelvey: Okay.

Ms. Gennarelli: Do you want me to read that…into the record?

Mr. McKelvey: Yes, please.

Ms. Gennarelli: This is the Orange County Department of Planning:

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 of 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. Upon reviewing our files, County Planning does not appear to have received the subdivision application from the planning board at this time. When appropriate, we would appreciate the opportunity to review the subdivision. This was dated August 14, 2015 and it was a Local Determination.

Mr. McKelvey: Any questions?

No response.

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

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

Mr. Levin: I’ll second it.

Mr. McKelvey: Roll Call.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

 (Time Noted - 8:49 PM)

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ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 9:41 PM)

WESTPORT MANAGEMENT, LLC. 640 GARDNERTOWN ROAD, NBGH

 (47-1-70) R-1 ZONE

Applicant is seeking an area variance for a front yard setback on Lot #1 for an existing single family dwelling for a proposed four-lot subdivision.

Ms. Gennarelli: And our next applicant is Westport Management an area variance for a front yard setback on Lot #1 for an existing single family dwelling for a proposed four-lot subdivision.

Mr. McKelvey: Well this was a case of a missed a…

Mr. Scalzo: Yeah, that was just the 911 address but as far as discussion on the actual application even if this were here not for a subdivision just for an addition on the house they would require a variance but it’s a pre-existing, non-conforming.

Mr. McKelvey: Right.

Mr. Scalzo: So I really don’t think there’s much to talk about. I’d make a motion to…you have to Type II…

Mr. McKelvey: Type II Action under SEQR.

Mr. Scalzo: Thank you. I make a motion for approval.

Mr. Levin: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: That’s approved.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:42 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 8:49 PM)

CHRISTOPHER CAGNA 19 COLDEN HILL ROAD, NBGH

 (86-1-5.22) R-1 ZONE

Applicant is seeking an area variance for ground mounted solar panels shall not exceed the area of ground covered by the largest building (habitable space) on the lot to install eighty ground mounted (1417 sq. ft.) solar panels on the premises.

Ms. Gennarelli: Our next applicant would be Christopher Cagna.

Mr. Hofstadter: Hello my name is Lloyd Hofstadter; I’m representing the solar contractor in this application and the applicant as well. I’m going to provide slides prepared by the applicant showing the situation that he asked for a zoning variance as to the area of a solar...a ground mounted solar array to be installed in the backyard of their residential property. On the diagram a…we see the actual layout of the solar modules themselves a total of eighty modules covering approximately as listed in the application it’s fourteen hundred an seventeen square feet. That happens to be the area of the modules themselves because the modules are a…installed at a slant the actual ground coverage is approximately thirteen hundred point seven square feet. That brings down the a… (Inaudible) area of the variance as required or requested I should say by about eight percent. I was not able to obtain on short notice a figure for the actual square footage footprint of the house itself. By measuring the roof areas I came up with approximately one thousand square feet of roof area. So in the…in the event in…in measurement of the actual ground area from the solar arrays that represents about more than twenty percent than the a…projected a…roof area of the building. Again what the a…the applicant is asking for is a…is a change to that rule so that they can put in the entire solar array. The size of the array itself is based on the applicant’s load. The applicant has a…a home that uses mainly electrical loads for various energy uses and rather than of fuel or other types of a…energy and their energy usage…is illustrated in the a…where from the Central Hudson account they illustrated that over the last year they used approximately thirty-three thousand and eight hundred kilowatt hours. The a…smallest usage during that year were in the two months basically in…in spring and fall when we see those numbers are approximately fifty-six hundred kilowatt hours for a two month period and about fifty-two hundred kilowatt hours for a two month period. So those two area…those two lowest numbers we see a…a smaller number…slightly smaller number here at forty-six sixty seven as well. If we take the advantage of…of our average out at five twenty, twenty-one a…number over the course of the year that results in about thirty-one thousand kilowatt hours per usage per year. And what the applicant is trying to do and would like to do is to be able to create as much of their energy through…from their clean solar power as they can over the course of a year. Net metering a…through Central Hudson, through the utility allows them to do that. A…they’re also the a…the size of a…the incentives granted by the State of New York through NYSERDA, through New York Sun program allows them to an incentive based on the size of the solar system. By reducing…by keeping the amount of solar system as it is they’ll meet almost their entire electrical load and also maximize the…the availability from the State for this particular system. Any questions or comments?

Mr. Levin: If he has to make it smaller what happens to the incentives?

Mr. Hofstadter: Well if it was to be made smaller…if the system was to be made smaller obviously to reduce the footprint a…the size of the system, the energy production and the incentive all go down correspondingly. So if it were reduced by the twenty percent it would…their incentive would go down by about…it would by twenty-percent and also the production that they would make so they’d make eighty…more like eighty percent of their electrical load rather than more like a hundred or close to a hundred I should say.

Mr. McKelvey: Part of the local law though the…you’re about twice the size of what’s allowed.

Mr. Hofstadter: I’m sorry, my hear…

Mr. McKelvey: You’re about twice the size of what’s allowed.

Mr. Hofstadter: Twice the size…

Mr. Donovan: See…yeah, see the issue that we have here is…is…Jerry, how long ago was the solar local legislation adopted?

Mr. Canfield: (Inaudible)

Mr. Donovan: So that and Jerry can give the calculation we’re looking at a maximum allowed of seven hundred and fifty-two square feet and this is you know, with your calculations but let’s just call it fourteen hundred square feet so it’s almost double. So the Board has to really…and this is the first one that’s come to this Board…

Mr. Hofstadter: Understood.

Mr. Donovan: …so we have a brand new application and then all of a sudden right out of the box and I don’t know how many, Jerry if you even know, how many other applications there have been for a…these types of uses in the Town.

Mr. Canfield: This is the first one of this size.

Mr. Donovan: And so…so what the Board is struggling with is you know, how do we grant a magni…a variance of this magnitude. I mean there are other things that we struggle with and I’ll give you an example of signs and the Board pretty well knows that well maybe that the ordinance doesn’t really accommodate the signs today for shopping centers so variances, sometimes substantial variances, are given. But in terms of granting a variance for the…for ground mounted solar panel it’s kind of difficult for the Board to kind of fit that in when it’s a brand new law and all of a sudden, hey wait a second, is there something wrong with the law or is there something wrong with this application? Because I think you’re saying you really can’t effectively provide power to the house unless you…you have a solar mounted panel array that’s going to be twice what we allow.

Mr. Hofstadter: I’m not exactly sure of the number that …that this is compared to and I apologize for not having that information on a short notice a…but again the…the actual amount of variance is like thirteen hundred square feet rather than fourteen hundred square feet. That’s the actual projected area over the ground a…so to the degree that reduces it somewhat. So to the degree that reduces it somewhat. A…understood that the…this is a…a new issue a…I’ve dealt with a…you know, various a planning issues etc. on ground mounted systems but realize, fully realize that the Board is taking on some new…new…new territory here in terms of how this effects the neighbors, the…the need from the applicant themselves a…visual impacts, neighborhood impacts and certainly a…setting a precedent if you will in terms of what…what comes in…ahead in the future. A…as far as some of the impacts, the potential negative impacts of a system this size realizing that there is a substantial impact in the amount of…of from…from what the regulations exist a…the a…applicant has contacted both neighbors…adjacent neighbors. They’ve agreed to a…put in a…as was showed earlier a…plantings to reduce the visual impact and kind of potential glare impacts from the…from the viewshed of both neighbors and they can do that by planting trees, arborvitaes to…to screen these areas visually so the neighbors are not affected by the a…by the sight of the solar system. My understanding is that there’s a commercial building through a layer of trees in the background so…while it’s a substantial increase in the size versus the…the current regulations the…the relative environmental impact and the relative negative impacts for the surrounding properties appear to be minimal.

Mr. Donovan: So, if I can, let me ask you this question?

Mr. Hofstadter: Sure.

Mr. Donovan: Why could you not get the desired result with a solar panel array of seven hundred and fifty-two square feet?

Mr. Hofstadter: Because the…the production of the solar panels is literally tied to the size of the array, the size of the solar array. So as I reduce it…if I reduce it twenty percent say I will reduce the amount of electricity we can make by twenty percent.

Mr. Maher: Is…is there only one…the panels that you’re using, the square footage that you’re…you’re proposing, there’s not another panel that may or may not be available to you that produces more electric in a smaller area?

Mr. Hofstadter: These happen to be the highest…the highest available efficiency panels on the market so that…that is certainly a valid question.

Mr. McKelvey: See the problem is that the local law if we grant this we’re setting a precedent.

Mr. Hofstadter: Understood. I realize the gravity of the…of the issue you know as it is, the potentially precedent setting.

Mr. Scalzo: Last month I also recall there was an issue with the height as you said they’re on a… on a slant. I see the rear strut would be seven feet six inches tall a…I recall we were coming close to what the maximum height would be allowed at that point a…or…or we couldn’t get verification of what the a…the array at its highest point would be.

Mr. Hofstadter: (Inaudible) again an illustration of the…the maximum height is…is give or take an inch or two about eight foot eight inches.

Mr. Scalzo: Okay that’s different from the original submission that we had. You dropped the struts each a foot.

Mr. Hofstadter: Right, well right, the strut…you’re probably looking at the strut area here.

Mr. Scalzo: Yes.

Mr. Hofstadter: A…and a as I understand it the maximum height for a solar array, a ground mounted solar array in general in the…in the Town regulations is twelve feet (inaudible).

Mr. Scalzo: Jerry, I don’t…you know I could dig through the Code but I figured Jerry would know this off the top of his head.

Mr. Canfield: I don’t.

Mr. Scalzo: Okay. We can all look that out later.

Mr. Canfield: (Inaudible)

Mr. Levin: There was a question; was the swimming pool on the array?

Mr. Hofstadter: Pardon me?

Mr. Levin: Is the swimming pool heated by the electric?

Mr. Hofstadter: Not to my knowledge I believe the swimming pool is heated by the propane.

Mr. Cagna: Chris Cagna I’m actually the homeowner a…the swimming pool isn’t heated. The swimming pool is not heated.

Mr. Maher: And you said the…the actual footprint is thirteen hundred and seven square feet?

Mr. Hofstadter: About thirteen hundred point seven square feet, the projected area over the ground is this fifteen foot ten inches versus the actual area of the panels themselves, yes.

Mr. Donovan: So Darrin just so you know, I’m…I’m looking at the law so the height of the solar defector in any amount shall not exceed twenty feet when oriented at maximum tilt.

Mr. Scalzo: Then that’s not an issue at all, very good.

Mr. Canfield: Inaudible.

Mr. Donovan: You’re going home now, thank you.

Mr. Scalzo: Have you explored the possibility of a combination of ground mount and roof mount a…to take it away from…to reduce the size on the ground?

Mr. Hofstadter: The contractor, to my knowledge, has not a…the building is not ideally situated for a roof a…a roof mount because of the east west orientation of the main roof. And while it’s possible to put on that…on those sections of roof…

Mr. Scalzo: You lose efficiency by having them no direct.

Mr. Hofstadter: …you lose efficiency by pointing them to the west or to the east as well. A…and as an instructor for the New York Sun program and talking about firefighting etc. the Codes that are not yet in place in New York but are coming in actually are looking for access areas both at the peaks of the roof and…and up the eves of…of the sides for firefighter access. So that would…if it were to be built by the upcoming, I’ll say, Codes, Fire Codes and Building Codes it would reduce that area even more.

Mr. McKelvey: I think there’s provisions in our code that allows you have to leave space. Is that right Jerry?

Mr. Canfield: The local law was modeled around the 2015 ICC Building Code which does require the spacing around the edge, the three foot spacing. We also have a section of the ICC Code that allows the local Code Enforcement Official to require a more stringent law…by a local law which we have done so the new Code is applicable to rooftop applications.

Mr. Levin: Jerry how did they a…come to the seven hundred fifty-two square feet and not anything larger than that?

Mr. Canfield: The Local Law provides for a calculation to come up with what’s permissible and I’ll read it to you. The total surface area of all ground mounted and free standing solar collectors on a lot shall not exceed the area of ground covered by the building structure of the largest building on the lot measured from the exterior walls excluding patios, decks, balconies, screened and open porches and attached garages providing that non-residential placements exceeding this size may be approved by the planning board subject to site plan review pursuant to Article IX of this Chapter. That they’re referring to commercial installations that would go before the planning board. So the formula is dictated by the largest structure on…on the property.

Mr. Donovan: So if he put an addition on his house he could get a larger solar array?

Mr. Canfield: That’s correct providing he didn’t exceed the allowable building coverage area.

Mr. Donovan: I’m being facetious.

Mr. Maher: Just for the record, based on the information tonight with the ground…active ground coverage it’s actually a…the original application was a eighty-two percent or eighty-eight percent…eighty-eight point four seven…in essence based on the information tonight that would make the calculation about…about a seventy-three percent variance a...if we count the actual ground coverage based on the a…the pitch of the panels themselves. Just curious if in fact the a…the D-8 does say it’s the surface area of the all ground mounted and free-standing solar collectors so…it’s not completely clear if it’s the ground coverage or the surface coverage, in my opinion.

Mr. Scalzo: Well help me out if I’m…if I understood what a…was just read 185-D-8 if the house is fourteen hundred square feet we wouldn’t be having this conversation.

Mr. Maher: That’s correct. It was a single story ranch it would be fine.

Mr. Hofstadter: And one of the qualifiers is that we have…we are surrounded by houses that are…that meet that criteria that could put in this big a system.

Mr. Cagna: May I speak?

Mr. McKelvey: Yes?

Mr. Cagna: Again Chris Cagna, I’m the homeowner. A couple of reasons we are looking into this a…the last couple of years we budgeted our electric bill with Central Hudson a…during the twelve month so our electric usage during the twelve month we had to come up with an eleven hundred dollar payment and a fourteen hundred dollar payment a…I’m…I’m providing for my house, my wife is disabled, we have a young toddler, I’m just trying to cut corners where we can with whatever is provided for us. I understand your cautiousness of a Board to, you know, right out of the gate give a variance off of a Law that you just created a...so I do understand that so I don’t take…I do appreciate you taking this under consideration. A…I have spoken with my neighbors, I’m…I do have one neighbor here and they also wrote me a letter Jose and Sharon Serpa a…so they are a…they can speak for themselves as far as that. My other neighbors that are not here a…have not been opposed to us. We’ve spoken to our neighbors to the north, obviously the Serpas in the south as well as across the street a…so we…we have gained a…information from them a…that they are not opposed to this so I just wanted to put that out there. I don’t know if that comes into consideration or not but I at least wanted to let you know that information as well.

Mr. Donovan: Well in fact let me just not to…again it’s my job to give advice to the Board, but are you saying that surrounding this property are houses of fifteen hundred square feet or greater?

Mr. Cagna: I’m not aware of the houses. All I can speak to is the back of my lot is Coldenham Elementary School so that’s the commercial property that that is a…so I don’t know a…what permission I would need from them but it is surrounded by trees…

Mr. Donovan: Well I’m not for…understand what we’re saying is one of the inquiries that the Board has to make is whether or not it’s going to cause an adverse…

Mr. Cagna: Sure to the surrounding.

Mr. Donovan: …adverse impact on the surrounding impact on the surrounding neighborhood. So if in fact, I think what you said before was that, a solar panel array of this size could be constructed as an accessory structure on other properties surrounding this property.

Mr. Hofstadter: As the…the ordinance is placed yes since we’re going on the a…a larger system could be placed because of the ground area of the various other houses here it’s larger just because of the different layout of the houses…

Mr. Maher: Limited because it’s a two-story house compared to a ranch house…

Mr. Hofstadter: Yeah, exactly.

Mr. Maher: …so the house directly to the south of it appears to be I would imagine in the area of about twelve to fifteen hundred square feet based on the…based on the picture there and then one to the north of it would be at least that if not larger.

Mr. Cagna: Right.

Mr. Maher: So all of those residences based on the law the way it is written would allow them to have twelve hundred square feet without a problem (inaudible) square feet footprint, two-story building.

Mr. Cagna: And the reason I didn’t take into consideration a half system or that sort of a size to meet your qualifications right out of the gate is because this is going to end up being a twenty year lease, I’m locking in a twenty year payment for twenty years who knows what’s going to happen with the electric rate? I also have an all electric house that’s the other thing that just popped into my mind…

(Inaudible)

Mr. Cagna: …and I remember reading it from the minutes so with the toddler the first winter season I used the baseboard heating that’s when I paid eleven hundred dollars and the second season I put in a heater in there that’s why I paid fourteen hundred dollars in July. Why it worked out that way, I figured it would work out the other way, it didn’t. So I have ten different heating zones within the house so it’s needless to say, you know, very difficult to heat the house…so expensive.

(Inaudible)

Mr. Cagna: I said ten zones, yes.

Mr. Maher: You have electric heat though, correct?

Mr. Cagna: Yes.

Mr. Donovan: Three in the kitchen, two in the bathroom….

Mr. Cagna: We also do have a pellet stove in the house which offsets it a little bit but not a hundred percent, obviously so...and then we have a…a right off the back of the house that was an addition from the original building in ’82 there is no heat in that room so we do have to keep an on the floor heater in that room which is basically the kids playroom so...

Mr. McKelvey: Unfortunately we don’t write the laws.

Mr. Serpa: May I approach?

Mr. McKelvey: Yes.

Mr. Serpa: Good evening, my name is Jose Serpa; my wife is in the back, Sharon. We’re neighbors to Chris Cagna. We live in our house at 21 Colden Hill Road a…almost twenty-two years. Our house is also fully electric. When we bought the house from a previous owner Bill Pomarico had a coal stove so they didn’t really rely much on their electric, they…they used coal. Coal is not very clean. We got rid of it after a year because there was soot every place. The owner…the previous owner of…of Chris’s house heated the home primarily with a wood stove. Again that’s not a clean type of energy a…I’m also Central Hudson, I’m fully electric. At the end of each year we end up putting up you know, another thousand dollars. It seems like everything goes up and last year was an especially harsh winter so I imagine this years…at the end of the year when we sort of kind a…kind of square up I’m going to pay about another twelve hundred I’m…I’m sure. A…it’s not always that you have a…nice neighbors that you live next to. Craig and Nicole they were nice enough to sit with us, go over the plans. We don’t see any problem with the…I understand the law, I understand it’s a…it’s a new law but we don’t have any problem with them putting this size of an array in their backyard, just wanted to share that with the...with the Board.

Mr. Donovan: And if you do have correspondence from the other neighbor if you want to make it part of the record, you should submit to the…

Ms. Gennarelli: Thanks. This is from Mr. Serpa.

Mr. McKelvey: Do you have any other questions?

Mr. Maher: No.

Mr. McKelvey: Do you want to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: The Public Hearing is closed, there is no vote yet.

 (Time Noted - 9:14 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 9:42 PM)

CHRISTOPHER CAGNA 19 COLDEN HILL ROAD, NBGH

 (86-1-5.22) R-1 ZONE

Applicant is seeking an area variance for ground mounted solar panels shall not exceed the area of ground covered by the largest building (habitable space) on the lot to install eighty ground mounted (1417 sq. ft.) solar panels on the premises.

Ms. Gennarelli: Our next applicant Christopher Cagna an area variance for ground mounted solar panels shall not exceed the area of ground covered by the largest building (habitable space) on the lot to install eighty ground mounted (1417 sq. ft.) solar panels on the premises.

Mr. McKelvey: This is a Type II Action under SEQR also. Any comments?

Mr. Maher: One question for Jerry. Jerry, just to confirm are you comfortable with the a…the calculations of the coverage being seventy-three percent over?

Mr. Canfield: Yes.

Mr. Maher: Alright.

Mr. McKelvey: Do we have a motion?

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

Mr. Masten: I'll second.

Mr. Maher: Comment before…

Mr. McKelvey: Pardon?

Mr. Maher: Just a comment prior…

Mr. McKelvey: Oh, you want to make a comment?

Mr. Maher: Just to put it in the record, based on the testimony from the applicant, from his a…

Mr. Scalzo: Contiguous adjoiner.

Mr. Maher: …alright his a…the property, his neighbors there and also his representative, it’s documented that we discussed as far as the usage goes why he needed such a large array. I think the evidence…evidence does document that a…to my satisfaction and in addition, as we identified based on the new law the way it’s written if in fact his neighbors wanted to install an array of similar size it wouldn’t be a problem based on the fact that the ranch houses have a bigger footprint but his headache was the fact that he had a two-story house and limited his footprint so…just for the record, my comments.

Ms. Gennarelli: Okay, so we had a first and a second. Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Approved.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:44 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 9:14 PM)

JORG UWE FRISCHKNECHT 2 CHEVY STREET, NBGH

 (70-3-1) R-3 ZONE

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

Ms. Gennarelli: The next applicant is Jorg Frischknecht.

Mr. McKelvey: Go ahead and identify yourself.

Mr. Cella: Good evening I’m Jonathan Cella. I’m the engineer’s applicant or I’m the applicant’s engineer, I’m sorry. A…we’re here for a area variance for an existing building located at 2 Chevy Street. The building was constructed a…prior to the owner purchasing the property and it’s pre-existing, non-conforming and we’re not proposing any changes to the building. The reason that we’re here is because the proposed subdivision request to the planning board would trigger the required variances to the existing building. At the last meeting it was suggested that the Building Department go to the property which was done. Mr. Canfield visited and another representative as well and I also spoke with the owner a little bit more. Based upon the building, the first floor is totally occupied by the existing resident…by the resident as well as part of the second floor that’s part of the main…the main building and the vacated apartment is only a portion of the top…top floor which is on the a…on the south end of the building. So…

Mr. Scalzo: The now vacant apartment is on the south end of the building.

Mr. Cella: On the south end…

Mr. Scalzo: So the north end of the building is the people that are downstairs are also utilizing part of the upstairs floor?

Mr. Cella: That’s what I’m trying to say, yes. It’s not…it’s not split in half up and down. It’s split more say approximately two thirds of the building is occupied by the…the tenant with the other portion…vacant.

Mr. Maher: So then the apartment that was in question is vacant?

Mr. Cella: Correct.

Mr. Maher: Or the other (inaudible)…

Mr. Cella: The other part of the building, yeah, is…

Mr. Donovan: So that part of the meeting last month where Mr. Frischknecht, I apologize if I am mispronounce your name, he said the second floor right now and I challenge anyone who wants to go up there and see what there is…it’s absolutely empty, it’s uninhabitable, uninhabitable, can not be lived in, it’s destroyed, the bathroom is destroyed, everything is gone. That…that part is not true?

Mr. Cella: Well so he…he was referring to the apartment that’s on the second floor not the whole second floor, sorry, to clarify the issue.

Mr. Donovan: I’m just…that’s…

Mr. Cella: The…the apartment part of the second floor is un…uninhabitable, there’s no bathroom, there’s no kitchen, there’s no…it’s a…it’s not habitable.

Mr. McKelvey: He’s going to leave it that way?

Mr. Cella: Yes.

Mr. Scalzo: Jerry. Jon could you hand him the microphone please?

Mr. Cella: Yes.

Mr. Scalzo: You’ve had access to the building and there is a way to get from downstairs to upstairs inside the building?

Mr. Canfield: That’s correct. There is.

Mr. Scalzo: Okay, to the...

Mr. Cella: It’s on the south side.

Mr. Scalzo: To the north side? But you can get from the downstairs to the north side of the upstairs? Well you can get to both apparently.

Mr. Canfield: Yeah you can. But as the applicant’s representative explained that is the way that the building is laid out. The part…part of the 2nd story I believe there was one…one bedroom and a bathroom that is part of the first floor tenancy. There’s an interior stairwell that’s accessible to that end of the building only from that interior stairwell from the first floor apartment. There is an apartment of the second floor to the other side of the building which has its own separate exterior entrance to the rear of the building. If you’re looking at the back of the building there’s two doors side by side. One is the stairwell that goes up to this apartment which was unoccupied at the time I was there. The stove has been removed a…and it was unoccupied so also for information this is listed as a Property Class 210 which is a single family dwelling. It is to only be a single-family dwelling.

Mr. Scalzo: Thank you Jerry. Jon I have the pleasure of driving down Fifth Avenue very frequently…

Mr. Cella: Okay.

Mr. Scalzo: …so I stop there geez, it must have been ten times in last two weeks and I saw lights on, different lights on in the upper northern portion of the house and not that that is a…deciding factor in what we do it just, as Dave said, you know the information that we were provided at the last meeting I was very surprised to see lights on and activity. I think I even saw bunk beds through one of the windows from my truck. I wasn’t out looking around. Anyway so that…now that you’ve clarified that I see Mr. Cote is in the back…can you, you know, do you see activity on the…?

(Inaudible)

Mr. Scalzo: …activity on the south side of the house?

Ms. Gennarelli: Mr. Cote, sorry, Mr. Cote, I’m sorry.

Mr. Scalzo: Sorry I called you up here too.

Mr. Cote: Yes, I’m Alan Cote, yes you’re correct the lights are on but no other occupancy have been in the house other than people on the main floor.

Mr. Scalzo: Thank you.

Mr. McKelvey: Has the property been cleaned up?

Mr. Cote: To an extent, yes sir, the front of the property.

Mr. McKelvey: That’s still an item.

Mr. Cella: The front of the property being along…?

Mr. Cote: Fifth Avenue.

Mr. Cella: …which would be part of the sub-division.

Mr. Scalzo: The vacant portion.

Mr. Cella: The vacant portion.

Mr. Scalzo: Well that’s just trees and there’s an old spoils pile in there but that’s…that’s all going to change if…if the subdivision moves forward.

(Inaudible)

Mr. Scalzo: You have to stop throwing them there.

(Inaudible)

Mr. McKelvey: You’re…you’re satisfied now with what goes on inside the building. Do you want to close the Public Hearing?

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

Mr. Masten: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Cella: Thank you.

Ms. Gennarelli: 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 would wait out in the hallway and then we’ll call you in shortly.

 (Time Noted - 9:22 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 9:44 PM)

JORG UWE FRISCHKNECHT 2 CHEVY STREET, NBGH

 (70-3-1) R-3 ZONE

Applicant is seeking area variances for the front yards setbacks for an existing house on Lot #2 of a proposed two-lot sub-division.

Ms. Gennarelli: And the next applicant was Jorg Frischknecht, 2 Chevy Street, area variances for the front yards setbacks for an existing house on Lot #2 of a proposed two-lot sub-division (proposed Lot #2 would have two front yards Chevy Street and East View Road).

Mr. McKelvey: This is a Type II Action under SEQR. Any comments?

Mr. Scalzo: I think we’ve heard everything we could possibly hear about this one. I think in this case I would make a motion to approve.

Mr. McKelvey: Yeah, I think the neighbor across the street is happy now.

Mr. Scalzo: Yeah.

Mr. McKelvey: Do we have a second?

Mr. Levin: I agree with you, it was nice to hear it.

Mr. McKelvey: Do we have a second?

Mr. Levin: I'll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Approved.

Mr. Cella: Thank you.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 9:45 PM)

ZBA MEETING – OCTOBER 22, 2015 (Time Noted – 9:45 PM)

LAWRENCE LUBKERT 13 WINDWOOD DRIVE, NBGH

 (90-6-14) R-1 ZONE

Applicant is seeking area variances for the minimum rear yard setback, the maximum lot building coverage, the maximum lot surface coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a rear addition (20’6” x 42’6” ) with a covered front patio (10 x 26) on the residence.

Ms. Gennarelli: And our next application was a Reserved Decision from September 24th Lawrence Lubkert, 13 Windwood Drive, area variances for the minimum rear yard setback, the maximum lot building coverage, the maximum lot surface coverage and increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a rear addition with a covered patio on the residence.

Mr. McKelvey: This is a Type II under SEQR. Do we have any comments?

Mr. Scalzo: The applicant sent in, we’re all in receipt of the letter received by the ZBA Secretary on the 19th a…that the extended roofline to be built seemed excessive. These were comments from our previous meeting a…perhaps removing this from the building plans would be more appealing to the Board. The applicant has taken the initiative to remove that portion of the building plans to compromise with the Board in hopes of an approval of his Building Permit. He had submitted it in time, we all have. I have it. I’m sure you folks have it. Yeah.

Mr. McKelvey: Everybody has it.

Mr. Scalzo: We also are in receipt of comparable properties in the same subdivision which at a glance you know, it supports the…I’ll call it in lack of a better word…excessiveness of the a…of the variance required. So I have some questions for you Mr. Lubkert if you could? It’s a nice looking set of plans as you know it’s a ranch a…are you set on that footprint? If you were to a Cape Cod you wouldn’t be looking for as much surface coverage and I’m just asking…

Mr. Lubkert: Sure and I understand that a…the idea is for an open floor plan to accommodate both of our families during holiday seasons a…we are centrally located between our two families and a…to be honest my wife would love to take that tradition over so our reasoning for doing that is really accommodating family a…for family events. A…we also enjoy an open floor plan so with a ranch as opposed to a Cape Cod which there is one Cape Cod in…in the park a…you don’t have the ability of having a a…a large footprint like that. I would also like to just for the record state that it does look excessive on paper a…but in my opinion because the zoning was changed just several years from R-3 to R-1 and under R-3, the sides that backs the rear, the overall percentages were much less. So that’s why you have so many homes that I have presented to you that are incom…comparable as far as either they had side additions, rear additions and of course, they didn’t have to go for as many variances as I am…a…because there were no setbacks for what they did. Now that the zoning has changed it looks excessive on paper but for what the character of the neighborhood it’s really par for the course. If it was under zone 3 most of this…it wouldn’t look nearly as excessive as it looks on paper a…and again it’s in the back of the house so it’s not something that would really change the character of the neighborhood as I stated last time my a…my neighbor just a few houses down has a very similar addition on his back of his home which goes the entire length of his ranch. From the road and for years since I’ve been there I never really paid much attention to it. It still looks like a ranch from the side…from…from the road but it’s not until you actually go into his home is when you realize how much space he actually has and that’s because you don’t have a good perception as to how big the home is when a large majority of the space is on the back of the home. So I understand it is a…a decent size room a…but for the overall space that many other homes have in the park like I said I…I feel like because of the zoning law change on paper, in my opinion, I feel it looks excessive but to the park it is not out of character.

Mr. McKelvey: The problem is R-1calls for forty thousand square feet.

Mr. Lubkert: What’s that?

Mr. McKelvey: R-1calls for forty thousand square foot lot.

Mr. Lubkert: Forty thousand square foot lot.

Mr. Maher: Current zoning…current, correct.

Mr. McKelvey: Current zoning.

Mr. Lubkert: Current, right. So as of now I would imagine my home…

Mr. McKelvey: So a lot of these ranch may have a little porch on the back or an added room. There’s not too many big houses in there. I mean I live in there.

Mr. Lubkert: Right and I went around and gave…

Mr. McKelvey: I am your neighbor.

Mr. Lubkert: Absolutely yes, you live right across the street a couple of houses down. There are a number of homes, I mean if you walk around the neighborhood again when in regards to especially additions off the back of homes in passing the homes don’t look very excessive and you wouldn’t really even notice it until we…my wife and I walked around the park and started taking pictures of everything did we realize that there’s a number of homes that have considerable size additions very similar to what we have and I can almost guarantee I…I…obviously I didn’t go to each house and ask them what their square footage of their home was but I could clearly see that these homes were of the same size if not close to the size plus and I know that the covered patio was in question and there’s many homes that have additions on their house as well as decks, especially on a…Westwood Drive and Linden Drive where the properties slope down and I didn’t get pictures of all those but again it…it pertains to the overall a…footprint of a home. If a…if the covered patio is in question, obviously decks would that are attached to a home are considered part of an overall footprint of a home. So those homes easily are bigger, you know.

Mr. Scalzo: Okay so…thank you.

Mr. Lubkert: You’re welcome.

Mr. Scalzo: The a…with your…your offer to a…remove the extended roof line…

Mr. Lubkert: Yes.

Mr. Scalzo: …and I thought I saw conceptuals that showed that you were going to have like a triple sliding glass door to the back or…?

Mr. Lubkert: Double, yes.

Mr. Scalzo: And that would just go to what a…

Mr. Lubkert: Yes.

Mr. Scalzo: Gravel patio or…?

Mr. Lubkert: Grass. That’s what’s been there now we’ll wind up just keeping that. Originally we were going to do French doors, just regular French door opening a…but my wife found a much more desirable door that she enjoyed so that’s what went into the plan.

Mr. Scalzo: And more expensive.

Mr. Lubkert: Absolutely.

Mr. Scalzo: So the plan shows also a…as I…if I’m reading it right…

Mr. Lubkert: Sure.

Mr. Scalzo: …so now the rear of the recreation room existing…you just extending that line over?

Mr. Lubkert: The rear of the…? Yes, over to where…

Mr. Scalzo: Hold on, you’re actually...it’s…it’s a…I’m looking at the…you’re adding fourteen six to the back of your walk in closet…

Mr. Lubkert: Yes.

Mr. Scalzo: …and then coming over.

Mr. Lubkert: And then coming over, right. So there’s a six by sixteen section that’s part of a closet. Yup.

Mr. Scalzo: And bedroom number three which is next to the stairs that is now eliminated…

Mr. Lubkert: It has been eliminated a…when we went into the house they had taken out…which is also a common thing…they…they made a window kind of like, I guess you could call it, where they took the top section of that wall out so it was technically a room but we never used it as a room. We used it as a dining room. What will happen now is our current living room in the front of the house will be our dining room and then that back section will be our living room space.

Mr. Maher: So the…the…the proposed basically is removing the roof structure from the rear of the building, correct? Is that what I’m reading here?

Mr. Lubkert: For the old patio you’re saying? The old…we used to…we had a…a…a screened in patio which is what actually got compromised which is why we are going forward with that solution.

Mr. McKelvey: I have a question to ask you on that. Did you have a Demolition Permit when you took that porch off?

Mr. Lubkert: I didn’t know that I was…had to have it.

Mr. McKelvey: The only reason…the only reason I’m asking because if that porch is still on the assessment rolls if you didn’t.

Mr. Lubkert: A…it was recommended to us by the a…State Farm our insurance company because it was a hazard a…because the roof was caving in and I actually had to put a support system in there a…at the end of the winter to keep it from caving in. That it was recommended that we take it down as soon as possible and I agreed and I did so.

Mr. McKelvey: But I’m just telling you it’s probably still on the assessment rolls. You’re probably still paying taxes on it.

Mr. Lubkert: Oh, I am sure I am.

Mr. McKelvey: I’m just…I’m just giving you a warning.

Mr. Lubkert: Yup.

Mr. McKelvey: Until you take the…get it off of there it’s going be on there.

Mr. Maher: So in your…in your letter it says may be removing this then the building plans would be more appealing to the Board…

Mr. Lubkert: Right.

Mr. Maher: …so was that the, on your original submission, the covered patio was that the roof you are removing?

Mr. Lubkert: Right, we were just going to extend it was going a gable end off the end and I….

Mr. Maher: Right.

Mr. Lubkert: …was just going to extend that by ten feet and that came out twenty-four so that was going to be the extended…

Mr. Maher: That was going to be…so that’s what you’re removing?

Mr. Lubkert: Correct.

Mr. Maher: So basically in essence if in fact that’s the case then your rear yard setback would no longer be needed as far as the variance goes…

Mr. Lubkert: Correct.

Mr. Maher: …because you meet the requirements okay so…forty-one…forty-one two would be the rear yard setback so that eliminates that variance, based on this plan.

Mr. Lubkert: And it drops the overall percentage.

Mr. Maher: Correct. So basically you drop it from twelve hundred and nine square feet it was ten by twenty-two…I believe it was…

Mr. Lubkert: Ten by twenty-two, yes.

Mr. Maher: So, two hundred and twenty…you’re down to nine hundred and eighty nine square feet… I’m sorry.

Mr. Lubkert: Actually at the end of the day it was ten by twenty-four was what we were going to do.

Mr. Maher: Let’s go by the plans.

Mr. Lubkert: (Inaudible)

Mr. Maher: That’s what Joe gets his calcs from…I’m assuming he…

Mr. Lubkert: No problem.

Mr. Maher: A…well let me just check and make sure…make sure I do the right thing.

Ms. Gennarelli: You have the revised calculations from Joe.

Mr. Maher: Actually…I’m sorry, you’re right cause it…I’m sorry.

Ms. Gennarelli: I think you have revised calculations from when he brought in the new plans.

Mr. Maher: Yes, I got the red ones, yes. Yeah, so although…yes, right so mine is two hundred and sixty feet, my mistake. So we’re down nine hundred and forty square feet…nine hundred and forty-nine square feet of…of overage which figuring…

Mr. McKelvey: That’s about the size of the old house…the original house that a…

Mr. Maher: Well the original house is thirteen hundred and twelve, so…

Mr. McKelvey: Yeah.

Mr. Maher: …or the coverage is thirteen twelve, I’m sorry, ten percent allows thirteen twelve, my mistake…so if we drop that down to nine forty-nine overage. So that drops that down to around eighty…ten…twenty…a…

Mr. Lubkert: I’m sorry, the square footage that you’re coming up with would nine something…?

Mr. Maher: Well you have…according to Joe’s calcs 1209, 1209 was the square footage overage from the allowable, minus the two sixty for what’s on the original submission a…brings it down to nine hundred and forty-nine square feet…

Mr. Lubkert: Okay cause the actual room if you put the two areas together, it’s kind of like an L-shaped room almost…

Mr. Maher: No I’m doing total according to Joe’s calcs we’re doing total square footage of the entire…entire property.

Mr. Lubkert: Right got you.

Mr. Maher: So basically Joe…Joe come in at…at twenty-five, twenty-two complete.

Mr. Lubkert: Right.

Mr. Maher: 1209 was the overage now we’re going to take rear roof off which bring it down to nine forty nine…

Mr. Lubkert: Right… nine forty-nine though is not the square footage of…

Mr. Maher: No, no, no…

Mr. Lubkert: …the addition.

Mr. Maher: No, that’s the overage based on the…the variance request.

Mr. Lubkert: Overage, okay.

Mr. Maher: So that being said, the math in my head is not working today…so according to my math it’s a seventy-two percent overage versus a ninety-two…seventy-two point three to be exact. And the surface coverage…the surface coverage doesn’t…does that change Jerry at all?

Mr. Canfield: (Inaudible)

Mr. Maher: He took the roof off the rear a…covered porch so that reduced the surface coverage overage that he has…? If he just has grass there now instead of the patio?

Mr. Lubkert: No, no patio.

Mr. Maher: Just grass...so that that would also take that off, right?

Mr. Canfield: (Inaudible)

Mr. Maher: So that would bring that down to two hundred and twenty-two feet…so that would bring it down to about an eight point five percent variance. Are you good with that?

Mr. Scalzo: When I was looking at that at home I must have left that at home because I don’t have that with me.

Mr. Maher: So for the record, basically the rear yard setback would be eliminated…the requirement for a variance would be eliminated based on the re…removal of the covered patio, the building coverage would drop from 1209 to nine forty-nine that would be a seventy-two point three percent variance and the surface coverage removing the overhead, the roof and also any patio and hard surface area would drop from four eight-two overage to two twenty-two which would now be an eight point five percent variance.

Mr. McKelvey: Plus there would be nothing on the other side of the wall there’s the woods. There’d be nothing built directly there because the sewer line runs through there into the City.

Mr. Lubkert: On the other side of the wall? No, yeah, no.

Mr. McKelvey: Yeah, in the woods.

Mr. Lubkert: Correct.

Mr. McKelvey: That’s all when they took…

Mr. Lubkert: Right of way, sewer.

Mr. McKelvey: …sewer, the hooked into the Town or the City…

Mr. Lubkert: From on that back path, correct. Yup.

Mr. Maher: So as you…as you said, basically this…this addition in the rear of the residence there’s really no further…

Mr. Scalzo: You really can’t see much except for that you know, your…your bar area.

Mr. Lubkert: The side, basically, yeah.

Mr. Maher: I got no further questions.

Ms. Gennarelli: John is it a Type II?

Mr. McKelvey: Type II under SEQR, do we have a motion?

Mr. Levin: Motion to approve.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Okay, roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: Okay, it’s been approved.

Mr. McKelvey: That’s the vote you know…

Mr. Scalzo: Now you can go.

Mr. McKelvey: …last month you could have settled it. We can’t stop you from leaving that’s the whole problem.

Mr. Scalzo: If we were to stop everybody from walking out, oh no, we had to go to the bathroom.

Mr. McKelvey: You were here…you were here two years ago for the…the other part of it and you stayed till the end and it…you know they read it right in the beginning.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:01 PM)

ZBA MEETING – OCTOBER 22, 2015

END OF MEETING (Time Noted – 10:01 PM)

**OTHER BOARD BUSINESS**

Mr. Donovan: So I know it’s late but one more item I’d like to bring to the Board’s attention if that’s okay? This relates to a woman by the name of Nancy Munoz regarding a property at 3 Dusty Drive, Wallkill, NY. And just for the Board’s edification back in June of 2014 Code Compliance, Jim Campbell from Code Compliance wrote to Ms. Munoz in response to some inquiry he had had from her stating in my opinion the use and the work you are proposing are not considered agricultural. If you want to proceed the minimum hurdles you will face and he lists those out. He concludes the letter by saying let me know which way you plan on continuing so I may assist you with getting your proper applications and such. The next communication from Ms. Munoz was in February of 2015 where she wrote Mr. Campbell asking for clarification of the Code requirements and then her email went on to say the barn will consist of a relatively small footprint, ultimately she wants to build a barn, there will be two to three stalls but only two horses would be boarded at any one time. There’d also be a feed room and a wash room, there would be equipment such as wheel chairs, walkers and gurneys to support the rehabilitation and training needs. A very rough sketch of the plan and footprint of her property is attached but is obviously not to scale and she goes on to ask him to revisit the issue or explain how you arrived at your conclusion. Mr. Campbell responded February 23rd saying, ‘Nancy basically what you previously submitted are still suggesting is for a business or commercial enterprise, boarding of horses is not a listed use and which would require a use variance. If you own the horses and are pets per the Bulk Table,’ I’m sorry ‘then the Bulk Table allows up to two horses to go along with your single family residence, Jim’. Thereafter Ms. Munoz submitted an application a…looking to have an Interpretation of Mr. Campbell’s “determination” from February 23rd. That application was returned by Betty with a letter indicating that the ZBA does not have a Notice of Disapproval of any Building Permit or any paperwork from Code Compliance and goes on to say after speaking with Mr. Campbell a determination has not been made because a Building Permit Application with the details of the project must first be submitted. Ms. Munoz attorney, Robert Feller, then contact me by letter May 8th, actually he contacted Betty and he indicated his opinion that Mr. Campbell’s letter a…was appealable. He quoted Section 267-B-1 of the Town Law which says the Board of Appeals may reverse or affirm wholly or partly, or may modify the Order, Requirement, Decision, Interpretation or Determination appealed from. I looked into this at that time. I then wrote Mr. Feller on May 12th and stated to him that the email correspondence from Mr. Campbell was not a Determination and was not written in response to any specific proposal and I’ll quote from my letter ‘but rather was included in a series of email communications in which your client sought general clarification of Code requirements’. Ms. Munoz has contacted the Town and has asked for further response to this a…since it didn’t come to the ZBA it was handled through the manner I just recited and Mr. Canfield from Code Compliance is here this evening and I’ll you, from Code Compliance’s perspective is Mr. Campbell’s email communication with Ms. Munoz a Determination by the Code Compliance Department.

Mr. Canfield: No it is not a determination.

Mr. Donovan: Typically…not typically, uniformly before we’ve entertained an Application for a variance or an Interpretation we have had either communication from Code Compliance denying the Application or a Referral from the planning board. I indicated because I was asked to that I would bring this to the Board, ask Code Compliance their opinion and I don’t know if the Board wants to take it any further, have the instructions for me to communicate with the attorney or…or how you would like to handle the matter.

Mr. Maher: So based on the…on the information on the case cited from the Village of Monroe, the fact that it wasn’t Mr. Campbell’s determination then in fact this becomes null and void, correct?

Mr. Donovan: That’s correct, in my opinion.

Mr. McKelvey: We’ve always…we’ve always had when we go for an Interpretation they always apply, right?

Mr. Donovan: Well it’s generally a formal determination by Code Compliance…

Mr. McKelvey: And then they send it to us.

Mr. Donovan: …as a result of some sort of application. To my knowledge, Jerry, all you’ve had is verbal communication with Ms. Munoz.

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

Mr. Levin: You couldn’t go by that step, there’s no turn down, there’s nothing, how do we…I don’t understand how we get to that point where we’re going by each step and she’s claiming…that we’re going to make a ruling on something.

Mr. Donovan: Well I don’t know exactly what you would be interpreting. I don’t, I don’t view it as a determination by Code Compliance personally I don’t view it as has a determination. It seems to me there was conversation and it seems to me that Code Compliance was endeavoring to be helpful a…but without something more formal or some sort of plan to look at I’m not sure how you could reach a determination.

Mr. Canfield: Yeah, just to elaborate a little bit. We received this call originally inquiring about what could they do. This individual has hopes and…and dreams of creating this therapeutic horse farm in this area. I think Jim Campbell in trying to assist said I’ll come and look at the property and see what you have there and he went there and what he found was a barn that was converted to studios and what not and at that time, he said stop, you need a Building Permit for what you have done. That started the barrage of emails back and forth and it was twenty questions. What if…what can we do…what about this…what about that…? I think Jim did a very good job in explaining thoroughly what must be done here but it’s all predicated on an Application being submitted which we can disapprove and then send them to this Board. The applicant and their attorney in my opinion, just off the record, I think they are trying to short circuit the whole system and they don’t want to come to this Board for a use variance so they’re looking to challenge something that officially hasn’t even been done yet. If they should make an application and then we disapprove it based on what Dave had cited then so be it. It’s their right to come before you and…and refute a determination that we made. But at this point we haven’t made any determination because we haven’t had any official Application so I…I think by you taking an action or allowing Dave to respond again perhaps you may help her get off dead center and come forward and make an application officially like everyone does and then we can precede.

Mr. Levin: I think that is the proper procedure.

Mr. Scalzo: Like everyone else does.

Mr. Levin: Like everybody else.

Mr. Canfield: Key words.

Mr. Scalzo: Yes.

Ms. Gennarelli: Jerry, this is on the record by the way.

Mr. Canfield: Okay, that was Jerry Canfield speaking.

Mr. Levin: I know you talked about the cost if she can afford horses if it is costly because then she can afford the application.

Mr. Scalzo: You can’t put a price on another man’s pleasure.

Mr. Levin: Well you’re right.

Mr. Donovan: I’ve heard that Darrin.

Mr. Maher: It’s a little more involved than…than just a boarding a couple of horses obviously but…Dave what would you cite as far as a reason behind a denial?

Mr. Donovan: Well I…I would, if the Board concurs, repeat what I said in my letter of this past May which is there has not been a determination. There has been communication but it does not rise to the level of a determination, that’s what I said in my letter of May 12th to Ms. Munoz’ attorney.

Mr. Maher: And you feel that’s the only response necessary, correct?

Mr. Donovan: Unless the Board feels differently. I feel, I feel that’s the appropriate response.

Mr. McKelvey: I think it is.

Mr. Scalzo: I agree.

Mr. Levin: I agree.

Mr. Maher: I agree.

Mr. McKelvey: Do you want a motion from the Board?

Mr. Maher: Do we need one?

Mr. Donovan: Do you need one? No, you don’t.

Mr. McKelvey: No we don’t that’s right. I guess that settles that then.

Mr. Maher: I’m comfortable with it.

Mr. McKelvey: Alright, everybody has a copy of the minutes. Any corrections or…? Do I have a motion to approve the minutes?

Mr. Maher: I'll make a motion to approve the minutes.

Mr. Scalzo: Second.

Mr. McKelvey: All those in favor say Aye?

Aye - All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: Do we have a motion to adjourn?

Mr. Levin: I’ll make a motion.

Mr. Donovan: Grace’s meetings never end this late John. I don’t know.

Ms. Gennarelli: Is there a second?

Mr. Scalzo: Yeah, second.

Mr. McKelvey: All in favor say Aye?

Aye All

Mr. McKelvey: Opposed?

No response.

Mr. McKelvey: The meeting is adjourned.

PRESENT ARE:

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:18 PM)