ZONING BOARD OF APPEALS

MEETING – AUGUST 25, 2016

(Time Noted – 7:02 PM)

Mr. Manley: I’d like to call the meeting of the Zoning Board of Appeals to order. The first order of business this evening is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted relief under the Code. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off and when speaking, speak directly into the microphone ae it is being recorded. Ms. Gennarelli could I have the roll call please?

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

JOSEPH MATTINA, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Darrin Scalzo

(Time Noted – 7:04 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:04 PM)

LINDSEY TIBBETTS 59 EAST ROAD, WALLKILL

(2-2-46) R/R ZONE

Applicant is requesting area variances for increasing the degree of non-conformity of the rear yard setback and one side yard setback to build a second story addition on the residence.

Mr. Manley: The first item on this evening’s Agenda is the application of Lindsey Tibbetts, 59 East Road in Wallkill requesting area variances for increasing the degree of non-conformity of the rear yard setback and one side yard setback to build a second story addition on the residence. Ms. Gennarelli have the mailings been done?

Ms. Gennarelli: Yes. The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, August 17th and The Sentinel on Friday, August 19th. This applicant sent out thirty-four letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Mr. Cella could you just give us your name and address for the record please?

Mr. Cella: Jonathan Cella, 51 Hunt Road, Wallkill, NY 12589.

Mr. Manley: Thank you and if you would you can proceed.

Mr. Cella We’re here for a…there’s an existing residence located on a 59 East Road and the owner’s wish to build a 2nd story addition of approximately six hundred square feet on top of the west side of the residence. And in doing so would encroach on the rear yard setback where a hundred foot is required, the setback would be ninety-six feet and on the side yard forty-six foot would be the proposed and a fifty foot is required. The…as stated it…the addition would not increase any of the footprint of the building so there would be no new impervious areas and a the…the yards would remain the same as they are in current conditions. The addition would meet the…would…would stay under the height requirements for the…zoning district which is the RR district and there…based upon the lot geometry there’s a very little…little building envelope for the residence and there would be no…no way to increase the…the footprint of the residence without getting a…any other area variances. So the…the variances we…that we’re requesting we feel are…not substantial.

Mr. McKelvey: I just want to clear up one thing a…

Mr. Cella: Sure.

Mr. McKelvey: …in 2014 they came before the Board for an addition to go up on the garage…

Mr. Cella: Correct.

Mr. McKelvey: …when I visited the property there was a trailer that said entertainment on it. Is somebody running a business out of there?

Mr. Scalzo: There’s also a placard on the door leading to the upstairs of the garage that has the same business name (Inaudible) was there.

Mr. Manley: I believe one of the conditions of the original variance…

Mr. McKelvey: That there would be no business.

Mr. Manley: …I did a take a look, there’s also an air conditioner that’s out of the second story window which would be indicative of it being used for some sort of space, business office…

Mr. Cella: I was not aware of any a…business being run through there I’d have to defer to the…to the owner on that. The…the upstairs was finished space per the…per the Building Permit on the…on the garage that they have a C of O for the…

Mr. Scalzo: It was proposed to be a den. There’s also supposed to be a…a bathroom in there as well.

Mr. Cella: Correct, a bathroom and a den

Mr. McKelvey: (Inaudible) I wasn’t at…that meeting but I went back and read the minutes from that year.

Mr. Donovan: Well I think we have a copy of the decision that the Board issued in February of 2014 which indicated that the addition may not be utilized as a business nor may it be utilized as an apartment. It was approved for the stated purpose only to provide additional living space to the owners of the property.

Mr. Cella: It’s…it’s definitely not a…an apartment.

Mr. McKelvey: Would that have to be cleared up that if they run the business before we do anything? Dave?

Mr. Donovan: The…the Board could certainly seek within…it’s within your purview to seek information in that regard certainly because it was a condition of your prior variance.

Mr. McKelvey: And they would need a Permit to run a business.

Mr. Cella: From planning board?

Mr. McKelvey: You need a Permit from the Town.

Mr. McGann: I’m the a…one of the owner’s here at the property. There is no business being run. The trailers are there for storage. I do own a DJ’ing business…

Ms. Gennarelli: Excuse me, could you just say your name?

Mr. McGann: Oh, I’m sorry, Brian McGann.

Ms. Gennarelli: Thank you.

Mr. McGann: The trailers are there for storage that’s where I keep them in my driveway. The plaque that you did see was actually a gift from a former bride that I did a wedding for. She owns All Kinds of Signs, excuse me on 17…on 208 I believe by Stewart Airport and as a gift for doing our wedding. She…they provided me a sign for my door that’s why the sign is there. It’s not attached it’s literally just shoved in the side. It was a gift so that’s why I put it there.

Mr. McKelvey: But do you take phone calls for the business?

Mr. McGann: No, I go up there and do my paperwork. My children go up there and do homework. My wife uses it.

Mr. McKelvey: I just wanted to make sure we clear it up.

Mr. McGann: Understood, understood, yes. Any other questions?

Mr. Scalzo: It didn’t appear to be a fixed…

Mr. McGann: Yeah, it’s not affixed.

Mr. Scalzo: …it…it matches the description you just gave.

Mr. McGann: Yeah, it’s literally shoved in there…

Mr. Scalzo: Yeah, yeah.

Mr. McGann: …in the side not fixed in there.

Mr. Scalzo: Yeah.

Mr. McGann: (Inaudible) it was just a…I thought it was a nice gift I got that…

Mr. Scalzo: Okay.

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

Mr. Bell: No.

Mr. Manley: …architect at all?

Mr. Maher: So there…there’s no other bedroom being added?

Mr. McGann: Correct.

Mr. Maher: No additional bedrooms?

Mr. Cella: No that is correct.

Mr. Maher: So…

Mr. Cella: The a…the existing residence is three bedrooms on the first floor and they’re going to…

Ms. Gennarelli: Jonathan can you get closer to that microphone? Thanks.

Mr. Cella: The existing residence is a three bedrooms on the first floor and they are going to abandon the bedroom and change it into a a dining room and then the…they’ll build a…second…the second story will gain a new bedroom so the…the total count remains at three. That’s why no a…percolation test data or septic testing data was provided.

Mr. Manley: The property is in the Reservoir Residential zone, the R-2…the R/R zone. I do have a response from the County of Orange. They were required to comment, it’s within five hundred feet of the Orange/Ulster County border. The Department of Planning notes that the setbacks are large in the R/R zone resulting in quite a small building envelope for this property. If this is the case with properties in the R/R zone the Town may wish to consider revising the Bulk Requirements. The County recommendation is Local Determination. The Town was also required to notify the Town of Plattekill as a bordering Municipality and they did respond on July 20th. Town of Newburgh Zoning Board, we received a copy of the variance request for the above mentioned address and have no comments or concerns regarding the variance. Very truly yours, Susan Bolde, Zoning Board Clerk. There are no other correspondence received to the Zoning Board. At this point, if the Board has no further questions I would open it up to any questions or comments from the public with regard to this application. If you do, step forward, state your name and your question or comment.

No response

Mr. Manley: Seeing none I’ll return back to the Board for any final comments.   
  
No response

Mr. Manley: If not I would look for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

(Time Noted - 7:12 PM)

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ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 8:58 PM)

LINDSEY TIBBETTS 59 EAST ROAD, WALLKILL

(2-2-46) R/R ZONE

Applicant is requesting area variances for increasing the degree of non-conformity of the rear yard setback and one side yard setback to build a second story addition on the residence.

Mr. Manley: The Board is resuming its regular meeting. The first application that the Board heard this evening was the application of Lindsey Tibbetts, 59 East Road, Wallkill seeking an area variance for increasing the degree of non-conformity of the rear yard setback and one side yard setback to build a second story addition on the residence. This is a Type II Action under SEQR. The Board is going to go through its area variance criteria. First of all, do the Board Members wish to comment on whether the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Levin: Not without increasing the variances.

Mr. Manley: Does the Board feel that there is going to be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: I don’t think so.

Mr. Scalzo: (Inaudible) it from the road.

Mr. Bell: Yeah.

Mr. McKelvey: Yeah.

Mr. Manley: Whether the request before the Board is substantial?

Mr. Scalzo: (Inaudible)

Mr. McKelvey: No.

Ms. Gennarelli: Is it (mic) on?

Mr. Scalzo: It is now.

Ms. Gennarelli: Oh, thank you, it seemed a little low.

Mr. Manley: Does the Board feel whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. McKelvey: No and…and Plattekill agrees too.

Mr. Manley: And the last test that the Board must review is whether or not the alleged difficulty is self-created? It is relevant factor but not one that’s completely determinative.

Mr. Maher: Well it’s obvious it’s self-created but again it’s a minimal request.

Mr. Manley: At this point do we have a motion from the Board?

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

Mr. Manley: We have a motion from Mr. McKelvey for approval. Do we have a second?

Mr. Scalzo: I'll second.

Mr. Manley: We have a second from Mr. Scalzo. Could I have the roll call please?

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried. The variance is granted.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:01 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:12 PM)

AMELIA J. PRATO 603 SOUTH PLANK ROAD, WALDEN

(48-3-16) R-1 ZONE

Applicant is requesting an area variance for the combined side yards setback to build a rear/side addition (20 x 24) on the residence.

Mr. Manley: The next item before the Zoning Board this evening is the application of Amelia J. Prato, 603 South Plank Road, Newburgh (Walden) seeking an area variance for the combined side yards setback to build a rear yard…a rear side addition (20 x 24) on the residence. At this point I am going to recuse myself as I do have a conflict with regard to this application. I’d like to ask Mr. McKelvey, our Vice Chairman, to step in on my behalf.

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

Mr. McKelvey: Could you state your name first please?

Ms. Prato: Amelia Prato

Mr. McKelvey: Tell the Board what you’re looking for.

Ms. Prato: I’m looking to put a family room on my house. My house was originally a summer bungalow. People previously added on to it so now it’s the size of a doll-house and I would like to put a family room on so I can have all my family over at the same time. The issue is the property is fifty feet wide and I need thirty feet on each side in order to build which can’t be possible.

Mr. McKelvey: Other properties in the area are narrow too, right?

Ms. Prato: Yes, all of us, none of us have that kind of space.

Mr. McKelvey: Any questions from the Board?

Mr. Levin: There was a stake in the ground which was further back are you removing some of the house to put this thing…?

Ms. Prato: We’re taking the back porch off and then putting the room on.

Mr. McKelvey: Any other questions from the Board?

No response

Mr. McKelvey: If not, does anyone from the public want to speak?

Ms. Gennarelli: I do have a letter from one of the neighbors. Irene and Bill O’Malley of 603 (605) South Plank Road, they sent an email that says ‘we have no objection to Amelia Prato’s area variance’. Sincerely, Bill O’Malley and I also have the report from the Orange County Department of Planning and I’ll read that into the record. 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. The existing parcel is fifty feet wide, less width than the required combined yard setback. The Town may wish to consider adjusted setback requirements in order to deal with the problems posed by pre-existing lots. For instance, side and rear setbacks could perhaps be expressed as the percentage of lot width or depth as opposed to a minimum linear dimension. And the County recommendation was Local Determination.

Mr. McKelvey: Hearing no more questions I look for a motion.

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

Mr. Bell: I second that motion.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

James Manley: Recused

(Time Noted - 7:16 PM)

ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:04 PM)

AMELIA J. PRATO 603 SOUTH PLANK ROAD, WALDEN

(48-3-16) R-1 ZONE

Applicant is requesting an area variance for the combined side yards setback to build a rear/side addition (20 x 24) on the residence.

Mr. Manley: The next item before the Board this evening is the application of Amelia J. Prato, 603 South Plank Road in Newburgh (Walden) requesting an area variance for the combined side yards setback to build a rear/side addition (20 x 24) on the residence. This is a Type II Action under SEQR. Do we have discussion with regard to the criteria? The first one being whether the benefit can be achieved by other means…

Ms. Gennarelli: I thought you were recused from this.

Mr. Manley: I am.

Ms. Gennarelli: Okay.

Mr. Manley: I can still read it. Right?

Ms. Gennarelli: Not really.

Mr. Donovan: No, you need to go.

Ms. Gennarelli: Co-counsel said not really.

Mr. Manley: Go ahead, pick up John.

Mr. McKelvey: Go ahead Betty.

Ms. Gennarelli: Go ahead Betty? I didn’t bring the list with me John. Can I have the blue card? Could I have your blue card Jim?

Mr. Manley: No but I’ll give you my other card. Here you go, just pass that down to Betty?

Ms. Gennarelli: Thank you very much. Okay we’re going through the balancing test that whether the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: I’d say no because of the size of the property.

Mr. Scalzo: It’s so narrow there’s no way to do it.

Mr. McKelvey: Narrow.

Ms. Gennarelli: Okay, will it create an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Levin: I don’t believe so.

Ms. Gennarelli: Whether the request is substantial?

Mr. Maher: (Inaudible) percentage yes but obviously based on the shape of the property not many choices.

Ms. Gennarelli: Whether the request will have adverse physical or environmental effects?

Mr. Maher: It doesn’t appear as such.

Mr. McKelvey: No.

Ms. Gennarelli: And then lastly whether the alleged difficulty is self-created? Which is relative but not determinative.

Mr. Bell: (Inaudible)

Mr. Levin: Self-created.

Mr. McKelvey: Do we have a motion for approval?

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Ms. Gennarelli: The motion is carried, approved.

Mr. Manley: Thank you. You can keep that.

Ms. Gennarelli: I have one. Do you have one?

Mr. Bell: No, I have one now.

Ms. Gennarelli: There you go.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:06 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:16 PM)

MICHAEL TISKOWITZ 16 SARATOGA ROAD, NBGH

(19-5-9) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a (14 x 16) open rear deck on the residence.

Mr. Manley: The next item on this evening’s agenda is an application before the Board for Michael Tiskowitz, 16 Saratoga Road, Newburgh seeking an area variance for the rear yard setback to build a (14 x 16) open rear deck on the residence.

Mr. Tiskowitz: Good evening.

Mr. Manley: One moment please.

Mr. Tiskowitz: Oh, I’m sorry.

Mr. Manley: Ms. Gennarelli.

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

Mr. Manley: Thank you, could name and address for the record please?

Mr. Tiskowitz: Michael Tiskowitz, 16 Saratoga Road in Newburgh.

Mr. Manley: Okay, if you could explain to the Board what you are proposing?

Mr. Tiskowitz: Yeah, we’d like to put a deck on to the house. Right now there is approximately a two by four deck-fire escape off the back double doors and we’d like to put a fourteen by sixteen deck off of that…to remove the existing and to make a fourteen by sixteen. There’s currently a patio there, the footprint of the deck would actually be smaller than the existing patio.

Mr. Manley: Okay and it looks like you’re short by about…you need forty feet and you’re proposing twenty-four so you need sixteen a…a sixteen foot variance.

Mr. Tiskowitz: Right.

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

No response.

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

No response.

Mr. Manley: Hearing none I’ll return back to the a…the Board for any questions, concerns or comments.

No response.

Mr. Manley: Hearing none do I have a motion to close the Public Hearing?

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed and just so the applicants that are here the Board Members do make site visits. That often times alleviates some questions that we may have or it may generate some questions that the Board may or may not have and once the Public Hearing is closed it does have to be voted on at the end of the meeting. So if you stay to the end you’ll often times find out whether or not the variance is approved.

(Time Noted - 7:19 PM)

ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:04 PM)

MICHAEL TISKOWITZ 16 SARATOGA ROAD, NBGH

(19-5-9) R-2 ZONE

Applicant is seeking an area variance for the rear yard setback to build a (14 x 16) open rear deck on the residence.

Mr. Manley: The next application before the Board this evening is application of Michael Tiskowitz, 16 Saratoga Road, Newburgh requesting an area variance for the rear yard setback to build a (14 x 16) open rear deck on the residence. Type II Action under SEQR, do we have discussion with regard to the area variance criteria? The first one being whether the benefit can be achieved by other means feasible to the applicant.

Mr. Levin: I don’t believe so.

Mr. Manley: They can’t change the roads that are there.

Mr. McKelvey: No.

Mr. Bell: No. (Inaudible)

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

Mr. Bell: No.

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Scalzo: No.

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

Mr. Bell: No.

Mr. Levin: No.

Mr. Scalzo: It is not.

Mr. Manley: Whether the request will have adverse physical or environmental effects?

Mr. Scalzo: I don’t believe so.

Mr. Bell: No.

Mr. McKelvey: No I don’t think so.

Mr. Manley: And whether or not the alleged difficulty is self-created? In this particular case I would say it’s self-created because he wants to put a pool (deck) in but the fact that there’s two…

Mr. Maher: Deck.

Mr. Levin: Deck.

Mr. Bell: Deck.

Mr. Manley: I’m sorry.

Mr. Bell: You jumping in?

Ms. Gennarelli: No pool.

Mr. Manley: Deck.

Mr. Maher: Yes, they’re all self-created (Inaudible) this (Inaudible)…so but again it’s consistent with the neighborhood.

Mr. Scalzo: Yeah, we actually…I can’t recall if it was last month or the prior month a…same neighborhood a…applicant was Patel. Very similar application a…and we all also voted a…positive to…

Mr. Bell: Yeah.

Mr. Scalzo: …grant the variances there.

Mr. Manley: At this point, how would the Board like to proceed?

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

Mr. Bell: I’ll second…I’ll second that motion.

Mr. Manley: So we have a motion by Mr. Maher, a second by Mr. Bell, roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The requested variance has passed. The variance is approved.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:06 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:19 PM)

JOSE ROJAS 13 LINDA DRIVE, NBGH

(25-7-6) R-1 ZONE

Applicant is requesting an area variance for no pool shall be located in a front yard to install a 16’ x 32’ in-ground swimming pool at the residence (has two front yards Linda Drive and River Road).

Mr. Manley: The next item that we have this evening for the applicant is Jose Rojas; 13 Linda Drive in Newburgh seeking an area variance for no pool shall be located in a front yard to install a 16’ x 32’ in-ground swimming pool at the residence. This applicant has two front yards Linda Drive and River Road. Ms. Gennarelli, do you have the mailings?

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

Mr. Manley: Okay, this particular premises is not on a State road so…

Ms. Gennarelli: It is not.

Mr. Manley: …we don’t need any…

Ms. Gennarelli: We did not.

Mr. Manley: …County approval, right?

Ms. Gennarelli: That’s correct.

Mr. Manley: Okay, could you state your name and address for the record please?

Mr. Rojas: Good evening, my name is Jose Rojas. I live in 13 Linda Drive, 12550 New York.

Mr. Manley: Okay, could you just explain to the Board what you are proposing and what it is that you need as far as a variance from the Board.

Mr. Rojas: I’m requesting a variance to build an in-ground pool on my property. My property is zoned as a two front yard property. So one of the front is…it goes to River Road which is a panhandle of the property but it’s a little deceiving because there’s no practical connection to the house. There is like a ten foot drop here like a cliff into River Road. I cannot even see the house from River Road. So…and the swimming pool is going to be in a secluded area of the property where nobody can see it. So I…that’s what I’m requesting.

Mr. McKelvey: You don’t own the land to…to River Road?

Mr. Rojas: I own this…this piece of land and this is my neighbor so the swimming pool is going to be next to my two neighbors. And this part that goes to River Road that is like a drop of ten, twenty feet like a cliff but I cannot access to River Road actually.

Mr. McKelvey: But you own the property?

Mr. Rojas: Yes.

Mr. McKelvey: That’s…that’s what I’m questioning.

Mr. Rojas: Yes.

Mr. Levin: What neighbor is…looks like it’s going to River Road…?

Mr. Rojas: Yeah, the neighbor is here.

Mr. Levin: And their home is on River Road?

Mr. Rojas: Yes.

Mr. Levin: I didn’t see any other houses so you can’t really see that then.

Mr. Rojas: It’s very hard to…so to put the sign here I had to stand with a GPS and actually I used the GPS to view the property line and I stood in the middle according to the GPS and I put the sign so it’s very hard to see where the property is…is very hard.

Mr. Manley: That’s definitely property that you can’t utilize.

Mr. Rojas: No.

Mr. Manley: It’s…it’s just adding to your acreage, that’s it.

Mr. Rojas: Yes.

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

No response.

Mr. Manley: If not at this point…

Mr. Bell: Can I speak?

Mr. Manley: Go ahead.

Mr. Bell: It’s a very nice view you have there off the back.

Mr. Rojas: Yeah. The pool is going to be next to the views.

Mr. Bell: Really nice view.

Mr. Scalzo: Mr. Rojas, the second sketch, the one that is closest to you…

Mr. Rojas: Yes.

Mr. Scalzo: …the pool that’s placed on there is that too scale?

Mr. Rojas: Yes, more or less.

Mr. Scalzo: Okay.

Mr. Rojas: It’s not perfect but it’s a…at the scale. We already measured where it’s going to be and a…yeah.

Mr. Manley: I think the one question that everybody here has that probably nobody really wants to ask is if you’re approved does everybody here get an invite for the pool party?

Mr. Rojas: The big opening.

Mr. Manley: Does anyone from the public this evening have any questions for the applicant? Yes sir?

Mr. Callister: My name is Jeff Callister, I live at 15 Linda Drive which is just north of…of where…where they’re talking about to put the pool. I’m probably the only person that probably the only person that could see the pool and I’d love to see it. So I am in support of the variance. That…that wedge of land going down there right is just silly a…it’s just a wasted piece of property and that’s a…but I’m totally in support of them putting their pool there. Hoping that I can use it too but… thank you.

Mr. Manley: Thank you. If that piece didn’t touch River road you wouldn’t even be before us.

Mr. Rojas: I didn’t know that I have two front yards.

Mr. Maher: It’s always a surprise.

Mr. Manley: Is there anyone else from the public that has any questions for the applicant or any concerns?

No response.

Mr. Manley: If not I would a…come back to the Board for any final comments. If not, I look for a motion to close the Public Hearing.

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

(Time Noted - 7:25 PM)

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ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:06 PM)

JOSE ROJAS 13 LINDA DRIVE, NBGH

(25-7-6) R-1 ZONE

Applicant is requesting an area variance for no pool shall be located in a front yard to install a 16’ x 32’ in-ground swimming pool at the residence (has two front yards Linda Drive and River Road).

Mr. Manley: The next application before the Board this evening is the application of Jose Rojas, 13 Linda Drive in Newburgh requesting an area variance for no pool shall be located in a front yard to install a 16 x 32 in-ground swimming pool at the residence, has two front yards Linda Drive and River Road. Type II Action under SEQR, the first criteria before the Board to consider is whether the benefit can be achieved by other means feasible to the applicant.

Mr. Scalzo: It’s quite a precipitous slope down to River Road; I don’t believe he can move it anywhere else, so no.

Mr. Manley: Wow that was very good.

Mr. Scalzo: You like that?

Mr. Donovan: I liked that.

(Inaudible)

Mr. Scalzo: I could have said slippery but I said precipitous.

Mr. Maher: So if he’s (Inaudible)

(Inaudible)

Mr. Manley: With the addition of this requested variance create any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Bell: No.

Mr. Levin: The only person in the neighborhood that can see it is here and said it’s fine.

Mr. Bell: He agrees with it, yes.

Mr. Maher: Provided he uses it.

Mr. Manley: Would the Board feel that the request before it is substantial in nature?

Mr. McKelvey: No.

Mr. Bell: No.

Mr. Levin: No.

Mr. Manley: The next criteria for the Board to consider is whether the request will have any adverse physical or environmental effects?

Mr. Scalzo: No.

Mr. Bell: No.

Mr. Manley: And finally whether or not the alleged difficulty is self-created? It is relevant but not determinative in nature.

Mr. Bell: Yes.

Mr. McKelvey: (Inaudible)

Mr. Manley: It is and it isn’t self-created, I mean, he didn’t create the property lines which resulted in the…

Mr. Bell: Right.

Mr. Donovan: In theory he…he’s charged with the knowledge in when buying the property of the configuration. So in theory it’s self-created but that consideration is relevant but not determinative.

Ms. Gennarelli: Very good Dave.

Mr. Maher: In lawyer he should know more than he knows.

Mr. Donovan: I got that from Betty.

Mr. Manley: At this point, does the Board have a motion with regard to this application?

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

Mr. Manley: We have a motion from Mr. McKelvey to approve do we have…

Mr. Levin: Second.

Mr. Manley: …a second? We have a second from Mr. Levin. Roll call.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion has passed. The variance is granted.

Mr. Bell: You’ll have a nice pool with a nice view there, sir.

Ms. Gennarelli: Yes, very nice.

Mr. Bell: And a nice view for that pool.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:09 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:25 PM)

RONALD A. WILSON 7 HILL RUN ROAD, NBGH

(73-11-11) R-3 ZONE

Applicant is requesting an area variance for no pool shall be located in a front yard to install a 19’ x 31’ above ground pool with a built in deck at the residence (has two front yards Hill Run Road and Wall Street).

Mr. Manley: The next application before the Zoning Board this evening is the application for Ronald A. Wilson of 7 Hill Run Road in Newburgh, seeking an area variance for no pool shall be located in a front yard to install a 19’ x 31’ above ground pool with a built in deck at the residence has two front yards Hill Run Road and Wall Street. If you could, Ms. Gennarelli, let us know if all the mailings are in order?

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

Mr. Manley: Thank you, good evening. Could you state your name and address for the record please?

Mr. Wilson: Ron Wilson, 7 Hill Run Road, Newburgh.

Mr. Manley: Okay and we kind of have an idea what you’re here for. Could you let us know a specifically what a the need for the variance is and you know, if the a…variance could be achieved any other way, if you could just share with us what your…what your plans are for the…for the pool?

Mr. Wilson: The need for the variance much like the last applicant is I was surprised that I had two front yards. The back of the house to any reasonable and prudent person appears to be a backyard with woods and rocks and everything else that’s back there so according to the Town of Newburgh you can’t have a pool in your front yard so I’m seeking a variance to have a pool in what should be my backyard.

Mr. Manley: Okay and it is what they call a paper street.

Mr. Wilson: Right.

Mr. Manley: So you’re another one caught in that a…

Mr. Maher: Quagmire.

Mr. Manley: …quagmire.

Mr. McKelvey: Nobody is going to drive down it.

Mr. Wilson: No, they’re not.

Mr. McKelvey: For sure, it’s all grown in.

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

Mr. Levin: I have one question that is really…is not bearing on our decision but how come these come up now? Why wouldn’t you do this in the spring?

Mr. Wilson: Well I started the process back in June and didn’t realize that there was the front yard in the back yard so that’s been the hold up.

Mr. Levin: So you’re going to use the swimming pool next year?

Mr. Wilson: Absolutely, I just wanted to get some exercise in closing the pool.

Mr. Manley: Okay if the Board doesn’t have any other questions is there anyone from the public that has any questions, comments or concerns for the applicant?

No response.

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

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

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

(Time Noted - 7:28 PM)

ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:09 PM)

RONALD A. WILSON 7 HILL RUN ROAD, NBGH

(73-11-11) R-3 ZONE

Applicant is requesting an area variance for no pool shall be located in a front yard to install a 19’ x 31’ above ground pool with a built in deck at the residence (has two front yards Hill Run Road and Wall Street).

Mr. Manley: The next application before the Board this evening is the application of

Ronald A. Wilson, 7 Hill Run Road in Newburgh, seeking an area variance for no pool shall be located in a front yard to install a 19’ x 31’ above ground pool with a built in deck at the residence (has two front yards Hill Run Road and Wall Street). This is a Type II Action under SEQR. The Board again needs to consider the area variance criteria. The first being whether the benefit can be achieved by other means feasible to the applicant? Do we have discussion on that?

Mr. Levin: I don’t believe so.

Mr. McKelvey: It’s the case of two front yards again.

Mr. Manley: And will the request create any undesirable change in the neighborhood character or detriment to any of the nearby properties?

Mr. Scalzo: No.

Mr. McKelvey: No.

Mr. Manley: Whether or not the request that the applicant is before the Board is substantial in nature?

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: Whether the request will have adverse physical or environmental effects?

Mr. Bell: No.

Mr. Maher: No.

Mr. Levin: I don’t believe so.

Mr. Manley: And finally whether or not the alleged difficulty is self-created? Again relative…relevant but not determinative?

Mr. Maher: Dave he should have known…

Mr. Bell: (Inaudible)

Mr. Maher: …he should have known there was a road behind him in the woods, right?

Mr. Donovan: That’s right. He should have. Well he’s charged with the knowledge (inaudible).

Mr. Manley: With that being the case and the Board considering all of the criteria for the variance, do we have a motion?

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

Mr. Manley: We have a motion for approval from Mr. Scalzo. Do we have a second?

Mr. Maher: Second.

Mr. Manley: We have a second from Mr. Maher, roll call vote.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion has passed and the variance is granted. I will be closing my pool soon if you need a little instruction, I can show you. Come on over.

Mr. Wilson: My birthday is Tuesday so…

Ms. Gennarelli: Happy Birthday.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:11 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 7:28 PM)

NICHOLAS CHRISTIANO 1 GREINER ROAD, NBGH

(7-1-22.21) A/R ZONE

Applicant is seeking area variances for 185-81-D-3-ii - All ground mounted solar panels shall have a 250 ft. front yard setback, a minimum 30 ft. side yard setback and a minimum 50 ft. rear yard setback to erect ground mounted solar panels at the residence.

Mr. Manley: The next item before the Board this evening is applicant of Nicholas Christiano, 1 Greiner Road, Newburgh, seeking for area variances for Section 185-81-D-3-ii - All ground mounted solar panels shall have a 250 ft. front yard setback, a minimum 30 ft. side yard setback and a minimum 50 ft. rear yard setback to erect ground mounted solar panels at the residence. Ms. Gennarelli are all the mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening, if you could state your name and address for the record please.

Mr. Mitchell: My name is Corey Mitchell representing Mr. Christiano at 1 Greiner Road.

Mr. Manley: Okay and are you with a solar company or are you architect, engineer?

Mr. Mitchell: Yes, so I’m with Solar Providers of Vanguard Energy out of Fishkill, NY. We are the contractor doing the construction.

Mr. Manley: Okay and could you just explain to the Board a…the purpose of the variance, the selection of the site and just kind of give the…the Board a brief overview of what you’re proposing?

Mr. Mitchell: So, so firstly typically a…you know, we would try to put it on the roof but with the…with the shape of the rooftops and the amount of energy necessary for…for the household a roof mount would simply turn into a bit of a mess with panels all over the place. So this site was chosen on the property to kind of maximize where we’re going to get our solar production as well as trying to essentially screen it from every other property in the area a…so a…on that property it is…it’s not flat it’s a bit of a hill which we plan to utilize a…by building it using the…the slope of that hill to help with the slope of the array which will essentially make it not appear to stand so far off the ground a…as well as screening with a…some nice fencing around the array to…to essentially shield from all the roads and…and neighboring properties. There are a few renderings in there for what…what is proposed and this was a…deemed to be the best site rather than in front of the house right by the roads a…that’s what we’re looking to do.

Mr. Manley: Are you going to need to cut down any trees?

Mr. Mitchell: We are attempting to not cut down any existing trees…that way where it is shouldn’t be impacted too much from shading a…the only shading will essentially be in the winter a little bit but we want to trees as is to kind of preserve the look of the neighborhood and…and also again help us screen.

Mr. Manley: I just…I know it’s going to be hard for you to see but you have the solar arrays, I mean it takes up quite a bit of space up here in the a…upper corner, the right hand corner of the photo here. Why can’t it be moved closer to the house to decrease the amount of the variance that would be required?

Mr. Mitchell: So, so that…that would be a…kind of along the question you were asking about the trees. If we move it closer to the house the…the house is essentially a very hard object that would cause a lot of shading in the afternoon and kind of cut the…the open air in half. The…the a…the sun that it would have for…for the afternoon (inaudible).

Mr. Levin: Mr. Mitchell I have a question here. Of course I am not an architect or I’m not a builder but I don’t see a scale on this and it’s probably there but I don’t see it.

Mr. Mitchell: So a…most…most times these drawings are done to scale because the property then forms the picture of…of where the solar is going to be. We’ve put in a…on the…the site plan we have the distances that we…we have to each property line.

Mr. Levin: But this isn’t drawn to any scale that you have here (Inaudible)?

Mr. Mitchell: It’s…it’s not a…to complete scale, no but if you…there are a…subsequent pages where we show exact measurements for the size of the array.

Mr. Levin: I see that but that doesn’t show here. Am I correct?

Mr. Mitchell: Yup, sorry, yes you are correct it’s not exactly to scale.

Mr. Levin: I wish you would have put stakes in or something to show how much it took up. It seems like you’re asking for us to vote on something that we never…when we went there we didn’t know exactly where it was.

Mr. McKelvey: I don’t know if the neighbors are going to like to see all that fencing.

Mr. Scalzo: Have you ever done a split system? Partial ground, partial roof…?

Mr. Mitchell: Yes.

Mr. Scalzo: Would the roof that faces the south be able to handle half of the array?

Mr. Mitchell: It would not.

Mr. Maher: What’s the area that would be fenced in that you’re proposing?

Mr. Mitchell: A…so the…the area of the fencing is essentially going to be setback around the array. I don’t know the exact a…square footage.

Mr. Maher: So what is…what is the length of the array?

Mr. Mitchell: The length of the a…again I’m not exactly sure how many panels are there, I don’t have the (Inaudible) in front of me but a…each panel itself is going to be a maximum of five feet in length…

Mr. Maher: So if there’s seven panels it would be safe to say about thirty-five foot wide?

Mr. Mitchell: About thirty-five feet for the array and then there’ll be spacing between that and the fence. So the fencing is going to be put there to a…shield it from…from view while not shading the panels.

Mr. Scalzo: Well unfortunately when I was out there I…could orient myself pretty well where I’m pretty sure the panels were going to be, the neighbor to the north was out on his deck looking straight down on me and I’m a six foot guy even if you had a six foot fence he’s looking right down on these panels.

Mr. Mitchell: The…the fence in the back would be quite a bit higher than six feet so typically the back of the array if it was on flat ground would be about nine feet off the ground. With it built into the hill it’s going to be a bit lower than that but the fencing will come above the back view…right…

Mr. Manley: That’s going to be a problem because we do have a height limitation for fences in the Town so, you know, if you’re saying you know, they put up a ten or a twelve foot fence that probably is not going to be…

Mr. Mitchell: (Inaudible)

Mr. Manley: …right. Is that…is it six feet? So…

Ms. Gennarelli: Joe, can you go to the microphone please?

Mr. Manley: …the maximum that we’re going to…that you’d be able to put up would be six feet so if you’re saying you’d put up a ten foot fence it…it’s not permitted in the Town so again that’s another variance. And I believe our Building Department Code Compliance has some input for the Zoning Board. Good evening Mr. Mattina how are you?

Mr. Mattina: With your fence issue six foot is only in side or front yards, in the rear yards have at it.

Mr. Manley: Okay.

Mr. Mattina: As far as the solars, you have two rows each row is twelve foot two by thirty-six four and their eight foot eleven high and there’s two rows, that’s the total square footage somebody was asking for it.

Mr. Maher: Joe, what was…was the size of it?

Mr. Mattina: There’s two rows, each row is twelve foot two inches by thirty-six foot four inches by eight foot eleven inch max height.

Mr. Manley: With the two with their stagger would be twenty-four feet roughly…

Mr. Mattina: Plus the spacing in the middle.

Mr. Manley: …plus the space plus then thirty-six wide.

Mr. Mattina: Yes, correct.

Mr. Maher: Alright, so…so my question is…is we had a similar thing I believe last year so that’s based on the array on the diagonal…

Mr. Mattina: Full extension would be eight…eight eleven.

Mr. Maher: No, but on the diagonal but as far as the flat…as far as the area covered it’s showing here as thirteen foot, ten inches. If you go to the A-3.1 there…the…the array shows a twelve foot two actually the size of the array itself but based on the angle and if you look at the actual diagram to the right of the array it shows a…

Mr. Mattina: The drawings that I have don’t so…

Mr. Maher: Do you want to see what I’m…talking about…maybe I’m...I just want to make sure I’m correct here. So there…there at…dimensions are at three foot three seven six and then three one.

Mr. Mattina: Well to the tip of the angle I’m taking the flat…

Mr. Maher: No, this is…this is…this is the flat though that’s what I’m saying.

Mr. Mattina: Right but if you just go area, the area is twelve two and thirty six four.

Mr. Maher: Okay, I just wanted to make sure we’re calculating the right numbers that’s all.

Mr. Mattina: Yes.

Mr. Canfield: (Inaudible)

Ms. Gennarelli: Can you get them to the microphone?

Mr. Mitchell: I think he’s referring to the…the square footage on…on the ground.

Mr. Maher: It should be smaller but it’s not so…that’s why I’m confused here.

Mr. Scalzo: You’re looking at slope distance as opposed to horizontal distances, correct?

No, no I understand.

(Inaudible)

Mr. Manley: Now, solar panel ground mounted solar are permitted in the Town however, this particular application doesn’t meet the requirements that the Town has set so you’re here to get basically an exception to those requirements. One of the things that we have to look at in granting any type of relief is number one is the request that the Board has before it substantial in nature. So that’s one of the things that right now I’m battling with is a size of the…of the request in comparison to what our Code is within the Town. The second thing that we have to look at and that I look at obviously very carefully is whether or not is going to result in an undesirable change in the neighborhood, the character of the neighborhood or will it create any detriment to any nearby properties. So that’s going to be, you know, the balancing act that we’re going to have that…that I look at.

Mr. Mitchell: So…so the size of the array is purely based on…on the need of the homeowner so this is based on how much electricity is needed by the house.

Mr. Manley: And one of the things that the Zoning Board doesn’t look at one hundred percent is need because there’s things that you need and there’s things that you want and sometimes you know what you want and need aren’t going to be in…in the same manner. For example, a…a smaller array perhaps if they were to put it on the roof might only do fifty percent or thirty percent of their energy needs. Okay? But you know unfortunately that might be you know what is available. So that’s why you know when we grant…when the Board grants relief and I don’t know how the Board is going to…we’re you know six people here that have six different thoughts. You know, we’re going to look at are those…those factors whether it’s substantial, whether or not it creates a detriment, we also have to look at you know the input from the…the people that live in the neighborhood. So those will all be things that you know, we’re going to look at. Was there anything else that you wanted to add with respect to a…you know, if you could make a case that it isn’t substantial that the request isn’t substantial what it is that a…it may or may not have any adverse physical impact on the…on the neighborhood. If you want to maybe speak about that.

Mr. Mitchell: The…the adverse…I mean the adverse effects for ground mounted arrays tare typically people don’t want to see them. So we’re doing everything within our power to make it as…as seamless as possible again using (Inaudible), using screening, using existing landscaping and trees so…so the main objection is to put always not to see them and we’re going…we’re doing everything that’s possible a…also avoiding putting them on the roof for that very reason so the…the impact on…on the surrounding properties is going to be very minimal.

Mr. Christiano: Nick Christiano, 1 Greiner Road. So there’s several reasons why we don’t want it on the roof. First off from the structural integrity standpoint we don’t want to change the lines of the roof. The roof is fourteen years old. We don’t want to mount it on the roof. From a needs versus wants from the statistical analysis that was done on the consumption of that property over the last fourteen years this meets the needs of the property. It doesn’t meet the maximum, it doesn’t meet the minimum, it meets the average of what…what is there so we’re now going to put a…a…a…a venue of…of producing to make money on…on this. This is basically to offset a…using it…a economically friendly and environmentally friendly a…a alternative. In terms of view a…if you want to see solar panels put them on the roof. So what we’re trying to do here is construct on a part of the property which actually has the least amount of use and it sits in a situated where each property member and my neighbors are right behind me and they can have their own point of view on…on this and I respect it but it’s the least intrusive into all those areas. If we want a maximum production I would put at the bottom of the property where it gets the most sunlight. So part of what we’re looking for in terms of consideration, in terms of environmentally friendly solution is to mount where it is not an integral part of the house. For a whole host of reasons some of which are personal, some of which we think makes sense and from a property value standpoint we’re not sure whether putting them…solar panels on a roof enhances a…decreases or has no effect on…on the property value. Thank you very much for your consideration. I appreciate it.

Mr. McKelvey: Have you had any input from the neighbors?

Mr. Christiano: Several have come and approached me over the last week and basically indicated that they were supportive. Those that were not supportive have not approached me so I don’t know if there is or is not support in that regard. But those that have spoken to me directly have been supportive.

Mr. Manley: One question that I have is in the rear portion of the yard that is going to be twenty feet from the property line, the rear and also the side yard a…would you a…have any objection if the Zoning Board were to a…ask our planning board a…consultant that does the landscaping take a look at it and make recommendations or suggestions for a…pine trees or things on…in the back there that would further screen the back part of the a…

Mr. Christiano: Yeah, we wouldn’t want to do anything that would detract from the value or…or the aesthetic beauty of…of the neighborhood. Absolutely.

Mr. Levin: Jim, I thought, perhaps an idea is to bury it down a little bit so those fences wouldn’t be so high. I don’t know if you would lose a…the energy from the sun by doing that but if you drop that area with a backhoe about five feet or six feet it certainly would take a lot away a…from the sight lines who got to see it for the neighbors. Was that done?

Mr. Mitchell: Yes, so…so again it would be…there’s a little bit of a disconnect between engineering firms and actual construction companies so a…the plans they show eight foot six…eight foot six inch, excuse me, we’re going to try to build it into the hill for the exact reason so I try to relay the point a…there but because we don’t have exact, you know, measurements of…of grade and topography I couldn’t say exactly what the slope of the hill is to get an exact measurement of how high it will be. But in the past what we’ve done a…is when there is a slope, we use the slope to our advantage rather than have it stick farther off the ground we’ll…we use the slope to try and bring it as close a…to the ground as possible.

Mr. Levin: But you never do dig down just to drop everything?

Mr. Mitchell: But digging…right, so digging down in the ground that’s quite a different operation. You…you’re talking about excavating out the hill and…

Mr. Levin: Coming down…down the hill, just coming straight down.

Mr. Maher: So it could be leveled off and basically…

Mr. Levin: Not leveled but…

Mr. Maher: …no but basically reducing the overall height by…

Mr. Christiano: Right…

Mr. Mitchell: So we can come down…we try to come down within reason, we still want it to stay…keep the front of the array, you know, high enough to where it’s not going to be you know, say we get another crazy winter and we get two feet of snow, we don’t want it buried. We…we still need to have the high enough to where the snow can clear off of it and…and have space in front. But like…like I have said we…we try everything we can to…to mitigate the visual impact, mitigate its presence.

Mr. Bell: So what is the normal height since you say that you want to make sure that you keep it at a level where the snow more or less drains…

Mr. Mitchell: So the front…

Mr. Bell: …drains away? What’s the normal height?

Mr. Mitchell: …the front of the array we try to keep it about two feet a…one and a half…

Mr. Bell: From the base…two feet from ground?

Mr. Mitchell: …two and a half feet from the ground and that’s dependent on the angle of the array. Typically the angles of the array are going to be between thirty to twenty degrees and then again, using that hill it will change slightly (Inaudible)

Mr. Maher: So you say that the array doesn’t currently meet the energy required to run the house?

Mr. Christiano: What’s that?

Mr. Maher: You said…I’m sorry…you said the array currently as designed doesn’t meet the requirements to supply the house a hundred percent, correct?

Mr. Mitchell: It…it meets basically the last couple of years average usage. This should meet that production.

Mr. Maher: And did you…were you able to provide any documentation as far as the net calcs from the energy usage versus…

Mr. Mitchell: That’s not something that we provided in plans but it’s…it’s part of the process of doing it regardless of who we’re…

Mr. Maher: No, I understand but I understand that you know there’s all kinds of array so if there is documentation to…to…to prove in fact a…that it does…

Mr. Mitchell: Right.

Mr. Maher: …does closely meet the needs not going above and beyond.

Mr. Mitchell: Right, yeah, we’re not trying to install a solar farm or…

Mr. Maher: No, I understand that but…

Mr. Mitchell: (Inaudible)

Mr. Maher: …again what…what you…

Mr. Mitchell: (Inaudible)

Mr. Maher: …present to us is what we look at though.

Mr. Mitchell: Right.

Mr. Christiano: To their (Inaudible) they have the output of each array. They looked at the average (Inaudible) of the last three years, they averaged that out, looked at the production…

Ms. Gennarelli: Excuse me, can you just get a little closer? Thank you.

Mr. Christiano: …and said look this is what your average production would be, this is what your solar panels were, they actually had a more efficient solar panel manufacturer than most that are out there today so we are using less…I think somewhere between two to four giving some of the other competitors are out there a…just giving a higher volume of output that each of their arrays produces which was another…another a…reason why we went with their…their firm. They were not the least expensive, in fact, they were probably on the more expensive side but they cut down of the areas usage because of the higher output per…per array panel.

Mr. Scalzo: As…as I look at the plan I see two sets of arrays on two structures to support them…each array being approximately being thirty-seven feet across. If you were to go with three sets of arrays that would knock you down to close to twenty-four, twenty-five feet you would potentially eliminate one variance on your side yard. I…I just my consideration and I don’t even live there but the fellow that lives behind you up hill looking down at a very big structure if you were to split it in three and I know now you’re incurring an additional third of the cost for the foundation so you’re going to be pouring or perhaps even four. I think you may minimize the impact, the eye-sore impact to your neighbor behind you. Is that a consideration? You’re just looking for square footage of a PV area, correct?

Mr. Mitchell: It…it basically comes down to…to number of panels, right?

Mr. Scalzo: Right.

Mr. Mitchell: The…the impact there is, of course, more and more construction on the hill. I…I mean, just in my opinion I don’t know that that would mitigate the view because now it’s just longer down the hill.

Mr. Bell: Longer, yes.

Mr. Scalzo: But it’s a longer away from him.

Mr. Mitchell: (Inaudible) to the other one…

Mr. Scalzo: Yeah, that’s it…it…it trails away. I’m not sure if it would work either. Now I understand that you want to face south as south you can a…I’m not sure where you know, at different seasons how the house would cast a shadow on the (Inaudible) but is it something that you could investigate?

Mr. Mitchell: A…we could…we could look at that.

Mr. Christiano: And…and in terms of additional landscaping because I already put all the trees back there I would be willing to put more trees because it’s north of the array and so it doesn’t have any impact on…on the production on the solar panels so a...that’s part of the intent because when he’s looking at those solar panels he also looks down at my rear deck so I understand exactly what…what would that produce in terms of benefit for…for both parties.

Mr. Scalzo: Jim, I thought we received correspondence. Didn’t we receive correspondence from one of the a…?

Mr. Manley: I was going to get to that.

Mr. Scalzo: Thank you.

Mr. Manley: Are we a…done with the questions from the Board at this time? If we are, I am going to go ahead and a…read the correspondence that I received into the record and then I’ll open it up to questions from the public or concerns from the public. This letter was received on August 18th…August 23rd 2016 from Joanna Beatty, 7 Greiner Road, Newburgh. Regarding the application of Nicholas Christiano for area variances, all ground mounted solar panels, premises located 1 Greiner Road.

To whom it may concern: I Joanna Beatty live at 7 Greiner Road, Newburgh, NY. I received a letter asking for the above mentioned variances to be granted to Nicholas Christiano for the installation of an all ground solar panel system. I oppose this variance for two reasons, one it will be unsightly as the unit will be large and permanently mounted on the ground, I also believe it will devalue my property as well as the other properties in the neighborhood. I do not give my personal approval for the variance. Please accept this signed document as my vote of opposition. I will be out of the country on the day of the Hearing Thursday the 25th day of August, 2016 at 7PM thus will not be able to attend the meeting in person. Sincerely, Joanna Beatty

At this time I would open the Public Hearing up to members of the public. If you would come forward, just state your name and address for the record.

Mr. Benninger: George Benninger, my address is at 5 Greiner Road, Newburgh, NY and I am as I said a resident on Greiner Road and thank you for reading the letter for Joanne Beatty because she did ask me as a neighbor to make sure the letter was read at the Board. Briefly, in the interest of time, speaking for myself and my wife and I strongly also oppose this variance. This large ground solar panel would be inappropriate in any yard especially where Mr. Christiano plans to place it and especially since his property is right at the entrance to Greiner Road and I think, you know, it would be good if the Board would review…would view this and I think it would be easy to understand our concern. It will be very unsightly no matter how it is constructed and it would certainly devalue my property as well as the other properties on Greiner Road. And I therefore along with Mrs. Joanne Beatty will not give approval for the variance.

Mr. Maher: So is…is your concern the unsightly panels themselves? Is that the concern?

Mr. Benninger: Absolutely yes, yes. You have to see the site to appreciate that it is the entrance…

Mr. Maher: No well we…right, we’ve all been there that…we understand that part there.

Mr. Benninger: Yeah.

Mr. Levin: Where’s your home in reference to their home?

Mr. Benninger: Two homes down.

Mr. Levin: Two homes down?

Mr. Benninger: Yeah.

Mr. Manley: So it’s…

Mr. Benninger: It’s Christiano is the first home on a hill, you go down the corner and Neumann’s are the next home. He may or may not speak this evening. I am the next home and the last one at the end of the cul-de-sac is Joanne Beatty…

Mr. Bell: Okay.

Mr. Benninger: …you’ve heard from in the letter.

Mr. Manley: So there’s the…when you make the left on Greiner Road there you have one, two and three. You would be the second one in on the left.

Mr. Benninger: I would be the third.

Mr. Levin: Third.

Mr. Benninger: If you’re counting…if you’re counting Mr. Christiano’s house as one I would be three. If you’re counting that as…

Mr. Bell: That is “D”. I think it’s “D”.

Mr. Manley: Okay that’s “D” then on the map, okay.

Mr. Bell: Yeah on the picture part.

Mr. Maher: So, let me ask you a question so if…if the panels are your concern if in fact that were completely hidden by a fence what would your thoughts be then?

Mr. Benninger: You haven’t given me enough information to show me how that’s going be hidden by a fence.

Mr. Maher: You want…I mean you want…if you want to take a look at it…

Mr. McKelvey: If you want to take a look, yeah.

Mr. Benninger approached the Board.

Mr. Manley: Just watch your step.

(Inaudible)

Mr. Maher: So this, well this actually would be a view I believe from your side, the slope of the land so your house is actually back here so that would be the view from…from your residence.

(Inaudible)

Mr. Maher: Well understandably so but if there was a fence up there would be a…we would be here if it was just for a fence though. Understand, you know, the fence is allowed.

Mr. McKelvey: That’s going to be on the side of him.

Mr. Manley: My question is a…

Ms. Gennarelli: Can you go back to the mic?

Mr. Manley: You might have to go back to the mic there. Would you a…would you be able to tell the Board if there’s any other a…solar panels similar to this in your neighborhood or outside of your…your near neighborhood that you’re aware of?

Mr. Benninger: No, I’m not…I’m not aware of any.

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

No response.

Mr. Manley: Mr. Benninger, do you have any more input or comments for the Board?

Mr. Benninger: No, not from what I know now, really. Thank you.

Mr. Manley: Okay, well at this point if there’s anyone else that would like to provide any other input…good evening.

Mr. Neumann: Good evening, I’m Fred Neumann, 3 Greiner Road, the very next house. I don’t know if you guys have all seen the property in question it’s kind of like a stadium where you look at it and it kind of terraces up and it goes back. And if I go to a football stadium and imagine putting a fence up to block the faces of people in the stands it would take a thirty foot fence I would think. I haven’t seen the pictures yet but if they’re up on a hill an angle, it’s not a field you’re building on this is a hill you’re building on. That changes the dynamics of everything. That’s a hill and you’re going to block it that’s a…that’s a large fence or you’re going to see the fans, it’s one or the other. When I was a kid I remember the big satellite dishes, the six foot or eight foot satellite dishes and people had them in their yard and then fifteen years later it became a fifteen inch dish and I’m an engineering teacher and I really believe in about ten years it will be integrated into the shingle. It might not be cheap but you’ll put up shingles and you’re neighbors will have to do a double-take up and look at it and I think these solar panels will become the six or eight foot satellite dishes. People will stop using them, people will move and no one will take them down and the Town of Newburgh will be filled with…not filled with them but there will be some around and they’re going to be there so… I…I give them credit for where they put it, I think it was the best place on that property a…but I still think it’s unsightly. I think it, you know, overtime will shade. There’s someone who bought panels in the early days and then I’ll come in in fifteen years, come to my house and my roof, which I would love to do but mine will be integrated in the shingle and it will be seen less and it will look really nice. And I think, you know, we might want to as a Town hold up until it really looks good.

Mr. Manley: Thank you. I think that’s one of the reasons why the Town back in a…2015, they…they conducted a moratorium where they wouldn’t allow any until they could craft a law that kind of addressed the size of the solar arrays on the ground. And that’s why they’ve kind of set these standards and a…you know, we as a Board have to take exactly what you said into consideration, technology changing, how it affects the neighborhood.

Mr. Neumann: Here (inaudible) You didn’t spell it out but two hundred and fifty feet from the front, fifty from the back, thirty from the side…was he in violation of all three or was it like…how many? Like we’re talking there was three different distances there. There were more than two fifty, fifty and thirty…

Mr. Manley: Right, there was a…I can read it off to you what the percentages were.

Mr. Donovan: But I think in answer to your question, yes, he wants the three variances.

Mr. Neumann: It’s…it’s three variances, yeah so…so there wasn’t a single direction of…that it was okay with, okay…okay.

Mr. Manley: Correct. The front yard requires two hundred and fifty feet only has a hundred and eighty-seven point nine two so that’s a variance of sixty-two feet which is a twenty-four point eight-three percent variance. The one side yard you need thirty feet, proposed is twenty needs ten foot variance which is a thirty-three and a third percent variance. And then the rear yard requires fifty feet and there was only twenty feet that’s a a thirty foot variance which is sixty percent.

Mr. Neumann: So all three sides, yeah so you know, as the nearest neighbor his house does kind of set up the street for four nice houses in a row and I think it would be hard to hide them and it would be something that it would, you know, that we would regret later on. It may not immediately but down the road ten or fifteen years I think that it’s something that…

Mr. Levin: Is your house above him…?

Mr. Neumann: No.

Mr. Levin: …or on the side?

Mr. Neumann: If you’ve been on the road, the road bends to the left, I’m on the inside corner so got a…Greiner wraps around my house so I kind of road frontage on two sides.

Mr. Maher: So I’ll ask you the same question.

Mr. Neumann: No, no, can I come up…?

Mr. Neumann approached

Mr. Neumann: So this is…that’s Greiner…that’s Benninger…

Mr. Manley: You’re “E” right?

Mr. Bell: Yeah “E”.

Mr. Neumann: That’s “E” yup, yup “E”.

Mr. Maher: So I’m going…I’m going to ask you the same question I asked Mr. Benninger there. So your…your issue is obviously the array itself…unsightly?

Mr. Neumann: Yes, just…just the appearance of it. I am for solar. My house is all LED. I have you know, reasonably good electric bills, you know I use Central Hudson like everybody else. So I think there’s things we can do to cut our electric without you know, taking up three variances and installing a (Inaudible)…

Mr. Maher: No, I understand.

Mr. Neumann: …high fence

Mr. Maher: The…the issue well…obviously doesn’t…the…the issue really is the unsightness so again I’m going to ask you the same question. So if it’s covered with a fence and you can’t see it does that change anything?

Mr. Neumann: I…I don’t believe you can do it. That’s when I said the stadium analogy where it gets in front of a stadium and you’re in the middle like the fifth yard line looking back at the stand I can’t see a fence that would block the people. How big is that fence that blocks a stadium? Because that that property is a stadium property that goes up in elevation about twenty-five, thirty feet.

Mr. Maher: It does but being there today looking at the…you know the elevation but the back corner is quite, it’s not exactly a huge pitch there. The rest of it from…from the house coming down is…

Mr. Neumann: Okay, okay.

Mr. Maher: …(Inaudible) but being the fact that it’s a back corner…

Mr. Neumann: Okay.

Mr. Maher: …it’s a lot…a lot flatter area. But my point is you know, if…if the…if the concern is the unsightly of the panels themselves and it’s shielded by a fence and you can’t see them I mean I would imagine…I’m asking if that changes your opinion of it then?

Mr. Neumann: I…I’m not…you know the fence is still something that people…it’s going to draw attention and I don’ think you’re going to hide the panels now you got two things to look at. Like what’s going on back there, what’s the fence, you know, has it been painted, is it vinyl you know, how’s it holding up? So I think it’s just another thing that could wear out in time and that would be another…another eye-sore and so then you got two things back there, old solar panels and a fence that’s falling down or something like that.

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

No response.

Mr. Manley: At this point I’ll continue, is there anyone else that has any comments or questions with regard to the application or input for the Board?

No response.

Mr. Manley: At this point do any of the other Board Members have any further questions or comments with regard to the application?

No response.

Mr. Manley: Hearing none, do I have a motion to close the Public Hearing?

Mr. Bell: I motion to close.

Mr. Manley: I have a motion to close from Mr. Bell.

Mr. Maher: I’ll second.

Mr. Manley: Second from Mr. Maher.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed.

(Time Noted - 8:02 PM)

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ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:11 PM)

NICHOLAS CHRISTIANO 1 GREINER ROAD, NBGH

(7-1-22.21) A/R ZONE

Applicant is seeking area variances for 185-81-D-3-ii - All ground mounted solar panels shall have a 250 ft. front yard setback, a minimum 30 ft. side yard setback and a minimum 50 ft. rear yard setback to erect ground mounted solar panels at the residence.

Mr. Manley: The next application before the Board this evening is the application of Nicholas Christiano, 1 Greiner Road in Newburgh seeking area variances for Section 185-81-D-3-ii - All ground mounted solar panels shall have a 250 ft. front yard setback, a minimum 30 ft. yard side yard setback and a minimum 50 ft. yard rear setback to erect ground mounted solar panels at the residence. This is a Type II Action under SEQR. Does the Board have discussion for the first criteria of the area variance as to whether or not the Board feels that the benefit can be achieved by other means feasible to the applicant?

Mr. Scalzo: I’m not sure the layout is a well I think the layout could be different and would minimize the impact as I had mentioned during the earlier portion of the meeting if he were to go with three or four a foundations that would decrease the requirement of one side yard a…perhaps if he could move it a little forward it wouldn’t be as visible from his a the neighbor that’s uphill a topography wise from him.

Mr. Manley: You know the…the split idea also was something that was brought up by somebody in the Board I’m not sure who brought that up…

Mr. Levin: Jim this is a large home. Wasn’t there the first floor square footage had some determination on how large the array could be on the last time we did it out on a…?

Mr. Manley: Joe is saying…Joe Mattina is saying yes so I will defer to…

Mr. Mattina: Yeah, the total square footage of panels can’t be greater than the footprint of the first floor of all habitable space minus garages, porches, decks.

Mr. Levin: How does that fit here on this…?

Mr. Donovan: That doesn’t apply here.

Mr. Mattina: That was under; total square footage was under the square footage of the footprint of the house.

Mr. Manley: Square footage wise, correct?

Mr. Mattina: Yes.

Mr. Maher: It’s purely on location is the issue.

Mr. Manley: The next criteria that the Board was charged with looking at was whether or not there would be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: Well without weighing in on my own opinion we’ve heard testimony from multiple neighbors that do believe it would be a change in the character of the neighborhood.

Mr. Manley: Right, I think the other thing too that we have to look at is are there…if there was a neighbor that already had solar panels or had ground array next door or neighboring property it might make things a little easier for the Board. The next criteria is whether or not the request is substantial in nature. Does the Board have any weigh in on whether or not the size of the…?

Mr. Maher: I think the issue is that it…it’s not a question of one but it’s actually three variances needed so on all avenues it’s…it’s a…it’s a concern.

Mr. McKelvey: I have to agree with Mike.

Mr. Manley: And then of course, the next criteria to weigh in on that the Board needs to review is whether or not the request will have adverse physical or environmental effects?

Mr. Maher: I don’t believe any…any physical or environmental effects it’s more an issue as far as changing the neighborhood as demonstrated by the neighbors have opinions.

Mr. Scalzo: Well…well honestly if we look at it from power consumption it would be a positive.

Mr. Maher: Correct.

Mr. Scalzo: It would actually be a benefit.

Mr. Bell: A positive yes.

Mr. Scalzo: Green energy.

Mr. Manley: And of course, the last is whether or not the alleged difficulty is self-created? Which again is relevant but not completely determinative as part of that test. So with the Board taking into account these five items, at this point, do I have a motion from the Board?

Mr. Scalzo: I think there’s possibly another solution here that…that’s not being explored. I would make a motion for disapproval.

Mr. Manley: We have a motion for disapproval…

Mr. Levin: I'll second that.

Mr. Manley: …from Mr. Scalzo, we have a second from Mr. Levin. Could we have a roll call please?

Ms. Gennarelli: Roll…

Mr. Donovan: Just to…just to be clear so a yes vote would be to deny the variance request.

Ms. Gennarelli: Okay? Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion to grant the variance has been denied.

Mr. Donovan: The motion to deny the variance has been granted. Ultimately the same thing the variance wasn’t…

Mr. Manley: That’s why you get the big bucks.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:16 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 8:02 PM)

RAM HOTELS, INC. / AUTO PARK PLACE/UNITY PLACE, NBGH

NEWBURGH AUTO PARK LLC. (97-2-37) I/B ZONE

Applicant is seeking area variances for 185-27-C-1 - The site must have principal frontage on a State or County highway and the maximum 50 ft. building height to construct a 5-story, 112 room hotel.

Mr. Manley: The next application the Board will be Hearing this evening is Ram Hotels, Inc./Newburgh Auto Park LLC., located at Auto Park Place/Unity Place, Newburgh, seeking area variances for 185-27-C-1 - the site must have principal frontage on a State or County highway and the maximum 50 ft. building height to construct a 5-story, 112 room hotel. Ms. Gennarelli are all the mailings and posting in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening. Could you state your name and address for the record please?

Mr. Marshall: Yes, my name is Larry Marshall and I’m a…the applicant’s representative from Mercurio, Norton, Tarolli and Marshall. My office is located at 45 Main Street in Pine Bush. With me this evening is the representatives of the application, of Grand Hotels Manish and Nimit Patel and a…also the…the current land owner who is contract to sell the property and that is Ron Barton. The application before you this evening is…is for two variances for a a…the construction of a five-story, one hundred and twelve room hotel off of Unity Place. The first variance that a…depending on which order that you want to look at it, the first variance that we are…we are requesting from the Board is a height variance. The…the hotel use in the I/B zone is restricted to a fifty foot overall height. We are seeking a variance to permit a…construction of a sixty-nine foot, four inch a…hotel on the property. This is a consistent with other hotels in the area as far as overall height specifically recently ones under construction a…and a…so we are…we are requesting that variance. The secondary variance we are requesting is a…in regard to Section 185-27-C-1 a…which is a restriction for principal str…that the parcel must have principal frontage on a State highway. A…Unity Place is a Town road a…loc…this particular parcel is located approximately one thousand feet away from NYS Route 17K a…and we would be seeking a variance to allow the…the construction of hotel on a Town road. As I stated the…the variance that we were…we are seeking for the overall height is consistent in nature a little bit greater than the a…the variance that a…the Hampton Inn received a…and the…the variance that we’re requesting for frontage on Unity Place itself a…is…is similar in nature to other hotels in a…in the Town. I don’t know if they are grandfathered…they were…they predated this zoning regulation. One in particular is…is the Comfort Inn a…or the…is it still the Comfort Inn or the Four Point Sheridan…?

Mr. Manley: Four Point Sheraton.

Mr. Marshall: …Four Point Sheraton on…

Mr. Manley: Lakeside Road.

Mr. Marshall: Lakeside Road which is a Town road itself a…that…that hotel is obviously located on a Town road a…similar in nature a…to…to what we propose in this instance. We believe that the regulation regarding the restriction on…on no hotels on a Town road would be to prevent a…hotels being constructed on a sub-standard road or being a potentially a…you know, a back road or a…through a residential area. Unity Place is constructed a…in a manner that exceeds most county roads a…it’s approximately thirty feet wide with curbs on both sides a…and it has direct access to 17K. We don’t…this parcel does not go through any residential areas a…and a…it…it sits up on top of the hill a little bit behind Morehead Honda. I’m sure you’ve all visited the site. It’s well-manicured by…by Mr. Barton. Those are the two variances that we seek. We did outline a…each of the a…each of the conditions in the ZBA addendum that was part of the packet submitted.

Mr. Manley: You a…mentioned the specifically that a…it conforms height wise to other…hotels in the Town. Can you in your…in your research could you tell me specifically how tall the property that you compared it to the new Hampton Inn a…versus this particular hotel because this is almost seventy feet…sixty-nine feet?

Mr. Marshall: Yes, a the Hampton Inn a received a variance for construction of sixty-two foot nine inches overall height and this is sixty-nine foot four inches so a difference of a…a little less than seven feet.

Mr. Manley: The one thing that a…you know, part of what we look at here is obviously health, safety, welfare of the residents. Nothing in my packet, did I notice that was provided from your firm with regard to the local fire jurisdiction indicating that your request for comments from with regard to the height. I didn’t see anything.

Mr. Marshall: We did not seek response from them. We certainly can do that.

Mr. Manley: I would think that would be something that would be you know, important that if this Board were to entertain granting a variance for height a…the biggest thing that we would be concerned with is, you know, the ability of the local fire department to be able to service a building that high. You know, I do know that…that’s the Goodwill Fire District, they do not have aerial so that would mean that they would probably need mutual aid from one of the local area fire departments, Cronomer Valley, Winona Lake…

Mr. Marshall: We…we will…we can certainly reach out to them and…and a sit down with them and see if we can get comments from them.

Mr. Manley: The other thing that I a…was concerned about especially on a Town road is access with respect to…one of the reasons why I think that Ordinance is in place for county and State roads is ease of access to that and also a…you know, the increase in traffic on a particular roadway. So, if you could just share with the Board what things that you’re going to be discussing probably with the planning board with regard to any type of traffic mitigation to you know insure that there is not going to be an overburden of traffic?

Mr. Marshall: Well regarding that a…regarding traffic increase any new…any…any proposed development on a site would increase traffic a…for the…for the commercial project to be viable. This a hotel use a has significantly lower traffic rates a…than some of the other permitted uses in the zone. Specifically as it relates to restaurants or auto dealerships a…this is a…we can provide the traffic counts. We will certainly work with the traffic engineer from a the planning board and work on any mitigation measures that they a see necessary a not only on Unity Place but also at the intersection of Unity Place and 17K which was under review for a previous application for a on Auto Park Place. I…I cannot answer the question directly as far what mitigation measures a would be necessary. We would obviously have to work with them. I can tell you that a Unity Place is a essentially a three lane road a there’s two lanes and then a center a striped area that’s a significantly wider…a…significantly wide enough to allow a for a third lane if a turning lane was necessary but if a…a hotel use is typically a relatively low traffic impact a because of the transient nature of…of people coming and going.

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

Mr. McKelvey: Joe, on the property of that motel on a Lakeside Road, that hill in front for it facing 17K is that owned by the motel?

Ms. Gennarelli: Can you go to the mic please?

Mr. Mattina: I imagine it would because that’s where there free-standing sign is. We wouldn’t have issued a Permit for a sign if it wasn’t on their property.

Mr. McKelvey: So does that…that tells us that that tells us that motel is on the State highway?

Mr. Mattina: No because you would have the diner in between the hill and…

Mr. McKelvey: Yeah, no I’m just curious…

Mr. Mattina: …17K.

Mr. McKelvey: …you know, and make sure we cover it.

Mr. Mattina: Right.

Mr. Canfield: Mr. Chairman, if I may comment?

Mr. Manley: Yes, Mr. Canfield.

Mr. Canfield: There were a few motels in the Town that were built prior to Joe’s and my tenure in the Building Department a that do not have access on to State highways. The one you are speaking of is one of those very hotels that was constructed back in the ‘80’s. With respect to the fire protection, as the Board Members are aware of a project of this size and type typically would go to the planning board then if there are any non-compliances with zoning get referred to this Board. In light of the nature of the potential sale of this property the applicant has chosen to go the route of file for a Building Permit which they are permitted to do and it was disapproved by our department and then referred to this Board. So I say that to bring to your attention that you do not have the benefit of what would typically would be done for you beforehand for you such as traffic mitigation, a the fire local jurisdictional fire department which you are correct is the Goodwill Fire district. Typically at the planning board they would get their input weighed in. The overall height is a concern however, in the Town of Newburgh there are seven volunteer fire departments, four of which have aerial devices not every department has a ladder truck or an aerial device. In the vicinity of this project is Coldenham and Winona Lake which both have a hundred and five foot aerial platforms, and of course, Winona Lake and the City of Newburgh of course. But the jurisdictional departments worked out mutual agreements and automatic responses to cover these type occupancies. But again those comments would be forthcoming at the planning board level and a whole gamut of other reviews as well.

Mr. Manley: So then Mr. Canfield or Mr. Mattina if this were to be approved by this Board this would of course be the largest structure that we have in the Town of Newburgh height wise? Sixty-nine feet, do we have anything larger than that? I’m trying to think.

Mr. Canfield: Yeah, I’m not certain Jim factually but I believe the Time Warner building is very close a maybe even taller, I don’t know.

Mr. Manley: The old Fleet Bank building or…?

Mr. Canfield: Yes, on Route 300. Okay? And then other buildings if you’re in comparison with other buildings a there’s other buildings constructed in the Town that may not be higher on ground level but when you put them on top of plateaus that they sit on such as the Matrix building that sits pretty high up in the air as well. I mean just for your comparison.

Mr. Manley: If the Board does not have any other questions I will a at this point in the Hearing open it up to the members of the public? Is there anybody else that has any questions for the applicant?

No response.

Mr. Manley: At this point I would open the Public Hearing to the members of the public if you have any questions with regard to this application please come forward and state your name and address for the record. Yes sir? Good evening.

Mr. Bazydlo: Good evening, my name is Charlie Bazydlo, I’m an attorney up in Pine Bush, New York, actually the same town that Larry’s from but that’s just a coincidence. Anyway I’m here representing two entities tonight a Crossroads Court Real Estate LLC. and also Route 17K Real Estate LLC. They’re both commercial properties in the general area of this a…of this application. Crossroads Court is the location of the Hampton Inn currently under construction. Route 17K Real Estate LLC. is a a office building that’s located near the intersection of Auto Plaza Road, I believe it’s called and Route 17K. Basically I’ve looked over the application and a as I understand it’s the one variance a for siting the hotel not on a State of County Road. In the applicant’s presentation and I see in the…in the application material the applicant is defining that variance as a area variance and I think that’s factually and legally incorrect. I think that variance is a use variance and as this Board knows that if it is a use variance there is a different set of criteria that this Board has to judge the application by. As a matter of fact, this Board back in I think it was 2013, 2014 when the old Hampton was looking to separate off the diner from the front into two separate lots if that subdivision had gone through the Hampton Inn, the old Hampton Inn now, would have lost it’s road frontage and that was considered by this Board to be a use variance as opposed to an area variance. So I’m sure the Board is aware of the criteria but let me go over them again. If it’s a use variance we have four very strict criteria. One is that there’s no other use allowed in the Code that could be put on this property and that typically requires an applicant to go through the Code as onerous as it is and go through each one of those uses and prove to this Board that that can’t be sited on this…on this property. The second thing being that there’s no change to the character a of the neighborhood. Here again you know we have a…we have a an area here were there’s...yes, there’s an auto business here, there’s an office building but there isn’t a hotel. There…there’s hotels near it but not on this street and I guess for whatever reason you know, the Town Board, the Town fathers of Newburgh passed that section of the Zoning Code that says they want the hotels, all new hotels to be on a State or county road. So that’s a I think it would be a change in the neighborhood. Third criteria which again is very important to this Board is the idea about whether this is a self-created a a situation and I don’t know how you could say that it’s not. The a applicant is under purchase yeah I guess has a purchase contract a for the property. They have entered into that contract with this criteria in the zoning being in effect a so they have to be aware of it and the point I’ll make to the Board about that and I’m sure you’re aware of it. I know your Counsel is aware of it too. Unlike a area variance that self-created hardship is not something that the Board can write it off or balance against the other criteria. It’s…it’s a fatal flaw and that if the Board finds that this…this is a self-created hardship you’re legally prevented from granting the variance. So I think that’s something the Board has to a…pretty strongly consider in…in looking at the…looking at this application. Turning to the…the height variance again yes, you know, the Hampton Inn was granted a height variance for a height that, you know, substantially less than this seven feet, eight feet less however, whether judging that or whether this application has merit or not I think that the application doesn’t have anywhere near the kind of information this Board needs in order to arrive at a decision about the height variance. In…in the…in the Hampton Inn application which I was the attorney on at the time we came before this Board there were building architectural designs, there were renderings, there was a review of the application by the FAA at that time so there was a quite a substantial amount of information in front of the Board when you made your decision about that. So a…I think that pretty much covers a…oh, excuse me, I got the fourth criteria. Forgot about the forth I got so excited. The fourth criteria under…under the use variance and a…that…that’s the idea about is this property somehow unique within the zone. I think very clearly it’s not there’s other lots on Unity Place, Auto Park Place that are…are suited for office development and so. There are other lots in the I/B zone a…that are not on a County or a State highway so I don’t think the applicant can really make the position or this Board should be able to find that somehow this property is unique in this location within the I/B zone so…thank you.

Mr. Manley: Thank you. Mr. Donovan the a…attorney has brought up some questions with regard to you know, law and use variance versus area variance. Is it possible that a…you…and the Board may have to a…hold the Public Hearing open till you could have an opportunity to conduct some research in case law.

Mr. Donovan: I think that would be appropriate. You have…you have the easy area variance. Right the…you need a thirty yard…thirty foot side yard, there’s only twenty, it’s an area variance, it’s easy. You have a use variance you want to put a pizza place in a residential zone that’s easy it’s…it’s a use variance. This situation is a little bit a…a round peg in a square hole in that on the one hand the area, the variance is not dimensional, right? So it wouldn’t be…that would mean it would be a use variance but on the other hand hotels are permitted in the I/B zone which would mean that it would be an area variance so I’m not prepared at this time to say definitely one way or another whether it should be an area variance or a use variance. I’d be interested if Larry and Charlie can provide any additional information that I could take a look so I could be able to give an intelligent answer to the Board, which is what I always try to do of course.

(Inaudible)

Mr. Manley: So at this point a…you know, would the Board like to hold the Public Hearing open until our September meeting so that a…both sides can provide additional information to our Counsel and Counsel can prepare a document to distribute to the Board with regard to his opinion on whether or not we proceed as a a area variance or whether we proceed as a use variance. What is the pleasure of the Board?

Mr. Levin: I make a motion to hold it open.

Mr. McKelvey: I think we should hold it open.

Mr. Levin: Hold it open.

Mr. Manley: We have a motion from Mr. Levin to hold the Public Hearing open.

Mr. McKelvey: I’ll second it.

Mr. Manley: We have a second from Mr. McKelvey to hold the Public Hearing open.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is going to be held open until the September meeting. Would you be able to get the information to Mr. Donovan prior to the a…let’s say the 10th the 10th of September?

Mr. Marshall: Yes.

Mr. Manley: Would you be able to get something…?

Mr. Bazydlo: Not a problem.

Mr. Manley: Okay, this way he can do what he needs to do and then distribute it to the Board for our review prior to the meeting.

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

Ms. Gennarelli: September 22nd.

Mr. Maher: Oh, I won’t be there.

Mr. Manley: I see we’re going to have an absence aren’t we? They do have a new law that they passed where you show up virtually now so…

Mr. Scalzo: We’ll Skype…we’ll Skype him in.

Ms. Gennarelli: You won’t be here Mike?

No response.

Ms. Gennarelli: Mike won’t be here?

Mr. Manley: He’s going to be here by Facetime he said.

Ms. Gennarelli: Oh, okay.

Mr. Marshall: Regarding that a in the…in the next couple of weeks we’re going to attempt to provide the Board with some feedback from the fire department. We’ll reach out to them. I don’t know if they will a…entertain us with not having an application before the planning board but we’ll seek to do that a…to seek…to get their input on this. Is there any other information that the Board would want a…or feels that would assist in your determination?

Mr. Manley: Well that all depend on what Mr. Donovan comes back at us with.

Mr. Marshall: I know but aside from the use versus area…

Mr. Manley: Right.

Mr. Marshall: …is there any other information that would help…would assist the Board in…?

Mr. Manley: Definitely from the jurisdictional fire department you might want to explain that you’re before the Board for you know, an area variance and they’re seeking…the Board is seeking input with regard to their…their thoughts. Is there anything else that the other Board Members feel that they may need with regard to that?

Mr. Levin: We’re not going to get traffic counts or anything like that are we?

Mr. Marshall: Well we can provide a…an anticipated traffic and…a traffic…a trip generation. We can provide that to the Board.

Mr. Scalzo: I’m not sure that’s our…

Mr. McKelvey: No.

Mr. Scalzo: …area of expertise.

Mr. McKelvey: That would be planning board.

Mr. Maher: (Inaudible) take into account not on a State highway.

Mr. Levin: Are there wetlands behind the property?

Mr. Marshall: There’s…there’s a stream that runs through the property.

Mr. Levin: No, directly behind it…

Mr. Marshall: Right here?

Mr. Levin: There.

Mr. Marshall: There…there’s…there’s a small amount of Federal Wetlands that shows up on the Federal Wetland Mapper that’s a…

Mr. Levin: I assume the hotel will not be in there.

Mr. Marshall: No. Our intention is not to be in there. A…those will be field delineated a…you know, as part of the application to the planning board.

Mr. Manley: You know, the other disadvantage that you have is if there’s any other variances that you end up needing that could create a problem down the road for you because…and that’s one of the dangers of not going to the planning board because we…if let’s say the Board does…let’s say that it’s not a use variance and let’s say the Board goes ahead and grants the two variances that you need and you go to the planning board and all of a sudden, you know, they do their review and they do their site review and the building has to be reconfigured. And all of a sudden boom you need two more variances now you’re back here again. And what happens at that time let’s say for whatever reason the variances aren’t granted now you’ve just purchased, you know, property has been purchased, you know, so there are other considerations. I know the applicant is going this particular route for one reason but you know, there’s a detriment to doing it…obviously there’s a detriment to doing it the other way. It…it really you know it really creates a you know, an issue by not going the route of the planning board first.

Mr. Marshall: There…there certainly is an inherent risk in the…in the means at which we are before you this evening. The applicant is aware of those risks.

Mr. Manley: Okay.

Mr. Marshall: A…and…and has chosen to proceed in this manner.

Mr. Manley: One thing I did forget is before we a…move on was there anyone from the public a beyond the attorney that was here that had any other questions, comments for the a Board to consider?

No response.

Mr. Manley: Okay, that being the case then we’ll see you next month.

Mr. Marshall: Thank you very much.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 8:28 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 8:28 PM)

DANIEL HESIDENCE 28 WARING ROAD, NBGH

(65-3-13) R-3 ZONE

Applicant is requesting area variances for the rear yard setback, one side yard setback, the combined side yards setback and the maximum lot building coverage to convert a garage to a 1-family residence.

Mr. Manley: The next item before the Board this evening is the application of Daniel Hesidence of 28 Waring Road, Newburgh, asking for area variances for the rear yard setback, one side yard setback, the combined side yards setback and the maximum lot (building) coverage to convert a garage to a 1-family residence. Ms. Gennarelli are all the mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening and I know exactly who you are. You are Mr. Daniel Hesidence this is your…your third time before the Board.

Mr. Hesidence: Feel like I have been here before, yeah.

Mr. Manley: You’re like a…you’re like a pro here right?

Mr. Hesidence: Déjà vu. Right, yeah, my name is Daniel Hesidence and I’m here to convert that garage on 28 Waring Road into a…into our home. We’re not changing the existing footprint and we’re seeking the same variances that were approved previously and we’re excited to be a part of the Town.

Mr. Manley: The question is is this really this is the third time is the charm or…? If you’re granted…

Mr. Hesidence: That sounds beautiful. I…I certainly hope so. Our fingers are crossed, yes.

Mr. Manley: Okay, I’m pretty familiar with the application so I don’t have any questions for the applicant. The only thing I will add there are a number of new Board Members that are the Board that weren’t here for your last two appearances a…Mr. Hesidence was before the Board twice before. The Board at the time had granted both of those variances…they’re the variances that he requested on both those occasions. His variance ran out and that’s why he’s back before us again because once your variance runs out you have to come back and request the variance again. So he’s had some difficulties with getting things moving to get the a…the a…property converted so at this point does anybody have any questions for the applicant?

Mr. Maher: No issues with tanks or encroachments currently, right?

Mr. Hesidence: No, thank goodness everything has been remedied so…

Mr. Manley: And a…just in the last application you had testified before the Board that it was not going to be used as a professional studio, there wasn’t going to be any work done on the premises, none of that has changed?

Mr. Hesidence: That’s exactly right. No commercial activity, anything along those lines, no classes, no signage, no semi-trucks, this is our home.

Mr. Manley: Okay.

Mr. Levin: I have a statement to make and I’d like to say with a little bit of levity it’s not going to affect my vote one way or another or anybody on this Board but is that your wife…?

Mr. Hesidence: Yeah, yeah.

Mr. Levin: When we went there she was very kind and showed us the side yard and put some shrubbery back about could we see the rear? And we were walking around the rear and I then said, ‘is there poison ivy here’ and she said ‘no’. You can’t say that again.

Inaudible

Mr. Hesidence: There it goes.

Ms. Gennarelli: Three leaves, Daniel, anything with three leaves.

Mr. McKelvey: I will say, she was working very hard she was mowing the lawn.

Mr. Hesidence: Well I got to tell you she came home and she said that someone made a comment about this could be on a TV show like Better Homes & Gardens or something like that and she is…she is obsessed with gardening and she’s been flying high for the last week so it’s a…I appreciate the comments.

Mr. Manley: If there are no questions for the Board at this point in the Hearing I’ll turn it over to the public. Is there any questions, comments, concerns for the Board?

No response.

Mr. Manley: Hearing none I’ll come back to the Board one last time before I ask for a motion to close.

No response.

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

Mr. Levin: I’ll second.

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

Mr. Manley: That would be Mr. Levin.

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

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is now closed

(Time Noted - 8:33PM)

ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:16 PM)

DANIEL HESIDENCE 28 WARING ROAD, NBGH

(65-3-13) R-3 ZONE

Applicant is requesting area variances for the rear yard setback, one side yard setback, the combined side yards setback and the maximum lot building coverage to convert a garage to a 1-family residence.

Mr. Manley: The next item before the Board this evening is the application of Daniel Hesidence, 28 Waring Road, Newburgh seeking area variances for the rear yard setback, one side yard setback, the combined side yards setback and the maximum lot building coverage to convert a garage to a 1-family residence. This is a Type II Action under SEQR. At this point the Board will deliberate with regarding the area variance criteria.

First of all whether the benefit can be achieved by other means feasible to the applicant?

Mr. Scalzo: The building is where the building is.

Mr. Manley: It is an existing structure.

Mr. Scalzo: Yes.

Mr. Manley: Previously it had been used for a commercial window company that had operated out of there and they’ve since moved and now…illegally…and Mr. Hesidence wishes to a convert it into a residence. Does the Board feel that by doing such and granting the variance it will result in an undesirable change in the neighborhood character or detriment to any of the nearby properties?

Mr. Levin: It is a desirable change.

Mr. Scalzo: Yes.

Mr. Levin: Improvement.

Mr. McKelvey: A big improvement.

Mr. Scalzo: The other two previous, you know, they…they had been granted before so I can’t imagine that we would find anything other than that.

Mr. Manley: Whether or not the request before us is substantial in nature?

Mr. McKelvey: No.

Mr. Levin: They’re improving the building that’s already there.

Mr. Manley: Whether the request will have adverse physical or environmental effects?

Mr. Maher: No.

Mr. Manley: The oil tank is gone so…

Mr. Maher: So is the encroachment…all the encroachments are gone.

Mr. Levin: I was going to say get rid of the…

Mr. Bell: Poison ivy.

Mr. Manley: Poison ivy, a little Round Up in the back you’ll be good.

Mr. Scalzo: I did get stung by a mosquito today when I was there.

Mr. Manley: Whether the alleged difficulty is self-created? Relevant but not determinative. At this point do we have a motion by the Board?

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

Mr. Manley: We…

Mr. Maher: (Inaudible)

Mr. Manley: We have a motion by Mr. McKelvey and we have a second by, I believe, Mr. Maher?

Mr. Maher: Correct.

Mr. Manley: Roll call vote.

Ms. Gennarelli: okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is passed. The variance is granted.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:19 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 8:33 PM)

RONALD COLANDREA 5344 ROUTE 9W, NBGH

(9-3-31) B ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures and the maximum allowed (4) vehicle storage to construct an accessory building (60 x 42 x 24’4”).

Mr. Manley: At this point we now move to items from our hold over list from last month. The is the held open Hearing for Ronald Colandrea, 5344 Route 9W, Newburgh seeking an area variance for the maximum height of an accessory buildings, the maximum allowed square footage of accessory built structure and the maximum allowed (4) four vehicle storage to construct an accessory building 60 x 42 x 24 (24’4”). And this was referred to the County and we had received a Local Determination.

Mr. Brown: Thank you. I’m Charles Brown; I’m the engineer for the applicant. We were here a month ago, the only change is a…my client a has notified the a tenant on site in the existing residence that he cannot be operating a business there. The tenant has agreed to that a so that resolves that issue. A…I can go through the whole presentation again because there was a couple of Members missing last month or a…just leave it the way I left it last month. Mike?

Mr. Manley: I had an opportunity to review. Has anybody else?

Mr. Maher: Yeah, I’m fine.

Mr. Brown: Okay. Again we’re looking to put up a twenty-five hundred and twenty square foot accessory garage a it’s not…not purposed for four vehicles. The size of it is due to it’s going to be used to store an RV and the RV is forty-five foot long. My client presently has the RV on a site that he has sold to Pat’s Towing and a they want that vehicle off that site. He would like to put it inside a structure and be able to work on it, maintain it and keep it, you know, safe from the weather. A…as far as whether or not it’s substantial we…we’re not in the setbacks a…so any impact on on the neighborhood a or adjoining properties is minimal. This is in an area, the B zone, the adjoining properties are all heavily developed. A…this property is a is not. Obviously it’s got just a single family residence on it. The a…height is…is twenty-four feet, four inches versus the fifteen that is permitted for an accessory structure. Again that’s minimal when you look at the size of the site. The…the maximum I mean the minimum lot area in this zone is seventeen thousand five hundred square foot we have under over two hundred and eighty thousand square feet so the lot is is six point two times as big as minimum lot size. So as far as impacts of whatnot I…I don’t see that we have a any impacts to the vicinity neighborhood.

Mr. Manley: The a size of the structure, the accessory structure is going to be larger than the actual residential structure that’s on the property. Is that correct?

Mr. Brown: That’s correct a and again this is a…this lots in a B zone a most of the adjoining lots are be used as businesses already. If this lot was used as a business we wouldn’t even be here before this Board because it wouldn’t be considered an accessory structure in a business zone…

Mr. Manley: But that’s not something that, in my opinion that we should take into account because it is being used as residential.

Mr. Brown: Right.

Mr. Manley: So it needs to meet the residential requirements not the business requirements. So it’s apples and oranges.

Mr. Brown: All I’m saying is that’s why we’re here for variances.

Mr. Manley: So it’s your testimony that this building is not going to be used for business purposes. Is that correct?

Mr. Brown: That’s correct. It’s going to be used by the lot owner Mr. Colandrea to store his RV and maintain it.

Mr. Manley: Now if I recall, correct me I’m wrong maybe I misread it but there were two bathrooms that were noted on the plans if…

Mr. Brown: Just one, I’m sorry, just one.

Mr. Manley: I thought I had seen two.

Mr. Brown: No just one bathroom.

Mr. Maher: It shows one here.

Mr. Brown: And it’s actually a half bath.

Mr. Manley: If it’s an accessory structure the need for…if it’s just for storage?

Mr. Brown: Well a again, he’s going to you know, he wants to be able to maintain it if he has to change tires, changes well whatever is there so…a you know, to have a bathroom a when you need it. I mean he can’t go and use the bathroom at the residence if the tenants not home and you know, he doesn’t have permission.

Mr. Manley: The utilities that are going to be there is it going to be heated?

Mr. Brown: No, it’s not proposed to be heated.

Mr. Manley: So it’s not going to be heated at all?

Mr. Brown: Correct.

Mr. Colandrea: Inaudible

Ms. Gennarelli: Excuse me; get to the microphone if you are going to speak.

Mr. Brown: I just conferred with my client he…he is going to heat it.

Mr. Manley: And it will have obviously full electric?

Mr. Brown: Yes.

Mr. Manley: And it will have plumbing as well? Because it’s going to have obviously water and sewer.

Mr. Brown: Yes it has water a…the water service is from the Town, yeah Town water out front so he’ll be using the Town water service for it. The a septic there’s an existing septic that used for the Lobster Shack years ago a…I did go out there pulled the lid on that, do a dye test on it. It was the septic system that was servicing a restaurant and it never failed so a and it’s still functioning now. I…I did submit a letter to the Building Department stating that a that we tested it and it’s adequate for this use.

Mr. Manley: So the…the septic that is going to service that particular building is going to be separate from the septic that services the residence?

Mr. Brown: That’s correct.

Mr. Manley: And your utilizing an older septic from another a business that previously existed.

Mr. Brown: That’s correct.

Mr. Manley: Okay, that’s all the questions I have. Anyone else from the Board?

Mr. Maher: The…the location of the current septic for the current residence…

Mr. Brown: It’s behind the residence a this general area of the woodshed over here. The lot slopes from 9W you guys have been there right? It slopes from 9W all the way down towards the back.

Mr. Scalzo: In the back, I didn’t walk back there the poison ivy frightens me but it appears there might be a vegetation that would…anything on the property that is on the national wetlands inventory or DEC?

Mr. Brown: I looked at the a…and I always do I look at the GIS and there was nothing on there that showed a Federal wetlands or State wetlands for that matter. The stream is fairly defined it runs right down the property line between this and the property north of us.

Mr. Manley: At this point, is there questions from any members of the public with regard to this application?

No response.

Mr. Manley: Hearing none does the Board have any further questions?

No response.

Mr. Manley: At this point, if there’s no further questions I would look for a motion to close the Public Hearing.

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

Mr. Levin: I’ll second that.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

Mr. Brown: Thank you.

(Time Noted - 8:42 PM)

ZBA MEETING – AUGUST 25, 2016 (Resumption for decision: 9:19 PM)

RONALD COLANDREA 5344 ROUTE 9W, NBGH

(9-3-31) B ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures and the maximum allowed (4) vehicle storage to construct an accessory building (60 x 42 x 24’4”).

Mr. Manley: The next item before the Board this evening applicant is and the last item before the Board this evening is the application of Ronald Colandrea, 5344 Route 9W, Newburgh seeking area variances for the maximum height of an accessory building, the maximum allowed square footage of accessory structures and the maximum allowed (4) car storage…vehicle storage to construct an accessory building 60 x 42 x 24 (24’4”). Type II Action under SEQR and at this point we’ll go through the area variance criteria. The first of course being whether the benefit can be achieved by other means feasible to the applicant?

Mr. Levin: I don’t believe so (Inaudible)…

Mr. Bell: No.

Mr. Manley: I don’t believe there’s any testimony that was the case.

Mr. Levin: No.

Mr. Bell: No.

Mr. Scalzo: No, he’s selling property and he needs to…

Mr. McKelvey: Move…

Mr. Scalzo: …move his vehicle.

Mr. McKelvey: Yeah.

Mr. Manley: Whether or not this would result in an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Maher: (Inaudible) …but there’s much bigger buildings close by there.

Mr. Manley: Whether the request before the Board is substantial in nature?

Mr. Scalzo: I don’t believe so I think even when they build that it’s still going to be shorter than the buildings to the left or the right.

Mr. Donovan: And just to bear in mind that the substantiality of a variance is always a purely mathematical calculation. You have to look at the overall effect so if you have a large building but on a large lot it may be different than a…than a large building on a small lot obviously. So the overall effect or impact a…of granting the variance needs to be considered relative to substantiality not simply a mathematical calculation.

Mr. Manley: And if the Board is inclined to grant the variance the Board may want to consider putting some conditions in the variance itself to insure that a…the applicant that no business is conducted in that so that that gives the Building Department a little bit more teeth when it comes to that…if it should happen. Because the issue is and we find that this happens a lot, today you grant it to this particular applicant to build a structure, the applicant sells the…the building five, six, seven, ten years from now and the person buys it and then the person that buys it decides that they’re not going to abide by what was originally granted and now all of a sudden we have a big mess. So not necessarily that this particular applicant would cause an issue but I think what we have to look at is down…down the road because, you know, there’s quite often you know, we run into this that the next thing you know somebody is running a business and the Building Department needs teeth in order be able to enforce things. So the next is whether the request would have adverse physical or environmental effects?

Mr. Scalzo: I’m sorry Jim can I back up a little? Wouldn’t that require a site plan approval if they were to run a business out of there anyway?

Mr. Manley: Well, it would but that doesn’t stop people from…

Mr. Scalzo: Illegally doing it.

Mr. Manley: …correct and you know there’s been quite often recently a number of issues where you know you have a residential...a residence and you know, this happens to be in a B Zone but if you grant it in a residential zone and the next thing you know somebody sells the property and there operating a body shop out of the…out of the backyard cause you have these huge buildings. And it makes it very difficult for the Building Department you know, and the more they have in writing from us the…the more teeth it gives them especially when you go to court.

Mr. Canfield: Yeah, I…I appreciate your support and concern a…I think what would be prudent here is that a condition of approval, if the Board would consider, would be just citing the section of the a zoning code…Dave, if you may check I think it’s 185-56, 57 that that indicates that a change of use requires a site plan. A this is a B zone as we all know there’s a degree of approved businesses that are permitted in a B zone so I think it’s within your purview to restrict what happens with this application but I don’t think it’s appropriate to limit what happens in the future. I think the Codes are in place already to allow us to enforce that. Perhaps if you just cite that section of the code then it will apply that a change of use will require a site plan and or a visit to the planning board. Make sense?

Mr. Bell: Yup.

Mr. Donovan: So I…if appropriate to the Board I mean you could impose a condition there’s no…A no business and B any change of use would require compliance with Article IX of the code site plan review. Is that consistent Jerry?

Mr. Canfield: Yes, yes, that’s 185-56…site plan review.

Mr. Manley: The other question that I have is is just a…you know it’s just something to bring up to the Board is…can an individual build something on a residential piece of property with the…with the testimony to the Board that it’s going to be used for personal purposes, build what they want because they don’t need…without going for site plan approval, getting the size of the building that they want, getting what they want and then after it’s all done now filing for a site plan saying well now we want to put in a auto body shop or now we want to put in a…a a…you know so now they’ve already got what they wanted without having to go to the planning board and then turn around and and do kind of a shuffle. Is that something that can happen?

Mr. Canfield: Yes, exactly my intent of my suggestion that you’re not penalizing this applicant before you, you’re limiting to him to do as he testified to you that he would do. I believe there was mention of storage of his recreational vehicle and then we also had discussion about what appeared to be some sort of business being run there. I did see correspondence from the property owner to the tenant. I believe all your Board Members also. It appears what I observed today, I was up there for a fire call in that area, that a lot of the stuff has been removed, the tractors and whatnot. I don’t know if they went into the tent that tent that’s there but you know so…I guess you have take the applicants’ at his word and his design professional that they’re going to adhere to what they testified that they are going to do. My intent for citing this section of the code was cover what you had said Jim, if the property is sold down the road and or even in this applicant and this owner a…somebody…he don’t want to store his RV there now, somebody wants to make it a body shop. Well we’re reminding you that, yes; there are provisions in the code that if that does happen you must go before the planning board.

Mr. Bell: Right.

Mr. Scalzo: Yes, I understand exactly what you’re saying but it’s reminding people to read the code before they purchase a piece of property. I…I don’t quite why we’re imposing that portion of the code as part of this variance that that we may grant if the rules are already there.

Mr. Bell: Yup, agree. I agree.

Mr. Scalzo: I…I…I understand why…why we’re headed that way.

Mr. Bell: Yes.

Mr. Canfield: It appears it’s a belt and suspender to help us…

Mr. Scalzo: Right.

Mr. Canfield: …make our job easier…

Mr. Scalzo: No I…I understand.

Mr. Canfield: …and I appreciate that…we really do. As we know in the past, I’m talking many years ago, a we did have some decisions and resolutions that are written that were not very clear and of course when it come to enforce what was written we had a difficult time so I really appreciate your you know efforts in…in trying to make things clearer for us. I’m just suggesting that may be a way to accomplish that.

Mr. Scalzo: I understand. I…I understand you have a difficult job sometimes.

Mr. Canfield: Joe does. I fly a desk.

Mr. Manley: And then of course the last item for the Board to consider is whether the alleged difficulty is self-created? Again relevant but not determinative. Now if the Board has had the opportunity to review the criteria do we a have a motion from the Board?

Mr. Levin: Which way do you want to make a motion? With the a stipulation that he has to go before the planning board?

Mr. Manley: That’s up to the Board. I don’t craft the motions. I just ask for them.

Mr. Levin: Okay, I would…I would make a motion for approval with the a…

Mr. Maher: What Dave said.

Mr. McKelvey: What Jerry said.

Mr. Levin: …what Jerry said…

Mr. Maher: There you go.

Mr. Levin: …that the…they must go before the a…

Mr. Bell: Go before the board to get it.

Mr. Levin: …the a planning board…

Mr. Donovan: So so the suggestion would be that and I’m sorry, but that not business is allowed on the property, that any change of use would have to require with the site plan approval requirements of Article IX, Section 185 and following of the Zoning Ordinance of the Town of Newburgh.

Mr. Canfield: Nicely said Counsel.

Mr. Manley: Is that what you would like?

Mr. Donovan: That’s what I would like.

Mr. Manley: So we have a motion to…

Mr. Donovan: In fact I thought that is exactly what you did say.

Mr. Manley: We have a motion from Mr. Levin for the approval based on citing Article IX of the Town Code and also indicating that no business is to be conducted in that building or on the premises.

Mr. Levin: Correct.

Mr. Manley: Is there a second to Mr. Levin?

Mr. Bell: Yes, I second that motion.

Mr. Manley: We have a second from Mr. Bell. Do we have the roll call vote please?

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

Michael Maher: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: No

Mr. Manley: The motion is passed. The variance is granted. That concludes the portion of our meeting for the applicants that were before us this evening.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:30 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 8:42 PM)

ESTATE OF JAMES A. FISCHER 2 FLETCHER DRIVE, NBGH

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

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

Mr. Manley: Our next application that was held open from the June 23 and July 28 meetings is the Estate of James Fischer, 2 Fletcher Drive, Newburgh requesting area variances for the minimum lot width, the minimum lot area and one side yard setback, a site plan application before the planning board to allow a pet boarding facility to operate on a separate non-conforming lot. We have received communication from the attorney for the applicant that

Dear Town of Newburgh Zoning Board; a request is made for the above application before the ZBA to be adjourned until further notice. At this time it is unclear as to whether the requested review and relief…available relief from this Board is required. At such time a more definitive determination is made as to the ownership and use of the property the applicant will contact this Board if relief is required to continue to get back on the agenda. Thanking the Board for this time and attention. Very truly yours, Marsha A. Jacobowitz, Jacobowitz & Gubitz

As a result of that letter I contacted our attorney and our attorney corresponded with the office.

Mr. Donovan: Right,

Mr. Manley: And did you receive a response?

Mr. Donovan: I did not. And if…if I can just let me read the last paragraph of the letter that was addressed to Marsha Jacobowitz

Unless you advise the Board that you wish to proceed on August 25th your correspondence will be treated as a withdrawal of the application. Your client’s application of course may be resubmitted if, as and when it becomes appropriate subject to adherence to the proper protocols and procedures and payment of all required fees.

That letter was dated August 17, 2016.

Mr. Canfield: Does that mean that the application is also withdrawn from the planning board as well?

Mr. Donovan: It does not. It just means it is withdrawn from the Zoning Board.

Mr. Canfield: Should this Board decide to withdraw the appl…or the applicant is going to withdraw the application then the planning board cannot move forward with their portion of the application, correct?

Mr. Donovan: Well we can’t do…we can’t tell the planning board what to do. So we can only deal with what’s in front of this Board and a…the request from the applicant’s attorney was basically for an open ended adjournment as in they’ll let us know as if and when they’re…they’re coming back. And our response to that is that’s a withdrawal of your application. Now if…

Mr. Canfield: (Inaudible)

Mr. Donovan: …whatever the planning board may decide to do as a result of that got to be up to the planning board.

Mr. Canfield: Okay but would it be appropriate to share that correspondence with the planning board.

Mr. Donovan: It’s an absolute matter of public record. Absolutely, yeah sure.

Mr. Canfield: Do you follow me? My concern is as you know I go to the planning board meetings as well and on many occasions they’ll ask me what took place at the Zoning Board. Obviously they will not get a response from your Board as to the variance being granted so they’re going to look for some type of, you know, reference as to what happened.

Ms. Gennarelli: They always get the minutes though.

Mr. Canfield: What I’m asking in this case, would the Board consider sending separate correspondence or a copying that to alert them of this status quo?

Mr. Donovan: I can even take the extraordinary measure of going upstairs and giving a copy of the letter to Mike.

Mr. Canfield: Well I hoped you would send it. But of course, with the Board’s approval.

Mr. Manley: I would say give them both, right?

Ms. Gennarelli: Yeah, yeah, John always gets the minutes.

Mr. Manley: So at this point, we’re ready to move on.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 8:45 PM)

ZBA MEETING – AUGUST 25, 2016 (Time Noted – 8:45 PM)

MELISSA COSTA & JOHN TAYLOR 1 DISANO DRIVE, NBGH

(34-1-1.2) R-1 ZONE

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

Mr. Manley: The next application before the Zoning Board that was also held over is the application of Melissa Costa and John Taylor, 1 Disano Drive, Newburgh requesting area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures and the maximum allowed (4) four vehicle storage to construct an accessory building (24 x 50 x 23). That had been adjourned pending the applicant trying to solve some issues with regard to a Central Hudson right-of-way. It was adjourned, the applicant was written a letter again by our Counsel because we had not had them appear at the July 28th meeting so a letter was drafted. Correct? Asking them to…

Mr. Donovan: That’s correct, yeah. And…and again just to…that letter…

Please be advised that if you fail to appear at the August 25th meeting the Board will proceed to take such action as they deem appropriate regarding your application.

Meaning that you could either vote on the application or it would be deemed withdrawn, whatever the Board’s pleasure is.

Mr. Manley: So at this point, the Board needs to determine whether or not they wish to move forward when we get to our deliberation stage, close the Public Hearing based on the information we have and then render a decision or a…vote to withdraw the application based on the failure of the applicant to come to the meeting. What is the consensus of the Board?

Mr. Levin: Withdraw the application.

Mr. Masten: Withdraw.

Mr. Bell: Withdraw.

Mr. Levin: For failure to come.

Mr. Bell: Yeah, withdrawn.

Mr. Manley: Okay, so at this point, it’s the a by polling of the Board, the Board wishes to move forward and withdraw the application without voting on it based on the failure of the applicant to appear twice to our Hearing. Your letter I think said that it would that you know; it would be either withdrawn or voted on…

Mr. Donovan: That’s right.

Mr. Manley: …so I don’t think there’s any need to even notify the applicant.

Mr. Donovan: The Board’s pleasure whatever you would like me to do. May I suggest this? Let me write to them just so there is finality, there’s no question in the future. I’ll just write to them indicating they didn’t appear so in accordance with my letter of August 2nd their application has been deemed withdrawn.

Mr. Manley: Very good. At this point, the Board has reached the end of its Agenda and at this point in time what I would like is before we proceed with the evening’s vote. We would like to take a short adjournment so that we can confer with our Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait in the hallway and we will call you in very shortly when we’re ready to resume. Thank you.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 8:48 PM)

ZBA MEETING – AUGUST 25, 2016

END OF MEETING (Time Noted – 9:30 PM)

Mr. Manley: The Board will continue with some housekeeping items. The next item that the Board needs to go over is our minutes. Has everyone had a chance to review the minutes?

Mr. McKelvey: I’ll make a motion to approve the minutes.

Mr. Manley: We have a motion from Mr. McKelvey to approve the minutes. Do we have a second?

Mr. Scalzo: I’ll second.

Mr. Manley: All in favor?

Aye - All

Mr. Manley: Opposed?

No response

Mr. Manley: Okay that is passed. The next item I just want to bring to the Board’s attention is just an email from the Supervisor’s Secretary Cindy Martinez. It’s in your packets just an informational memo about invitation that the Board has for End of Summer BBQ. So that’s in your packets. The next item is the Board of Directors of the Orange County Municipal Planning Federation is having an Annual Dinner, Thursday evening, September 29th at Coldenham Manor. Board Members are invited, it’s seventy-five dollars per person and if you wish to attend, see Betty, get her a check and you’ll be all set.

Mr. Maher: You’re not buying?

Mr. Manley: I wasn’t buying, sorry, it’s not in the budget.

Mr. Scalzo: Not that I was planning on attending the picnic but aren’t there ethical issues based on the monetary value of it? Would we a as…as…?

Mr. Manley: Just don’t eat the chicken.

Mr. Scalzo: Oh, okay.

Mr. Manley: We have one other item and that was a good and welfare. John McKelvey is on our good and welfare committee and he let us know that Dave (John) Masten had surgery and that’s why he’s not here this evening. Would everyone be into putting in a couple of dollars to save the…to save…to save him from his surgery…it’s getting late, to send him a little get well basket or something. Does everybody feel …? Whatever your heart desires…

Mr. Donovan: You know what I’m going to give for John and also for Dave, how’s that?

Mr. Manley: Okay.

Mr. Donovan: John and Dave.

Ms. Gennarelli: Okay for JD from me, here you go.

Mr. Manley: Even Jerry and Joe too are in on it too.

Mr. Manley: At this point do we have a motion to adjourn?

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

Mr. Bell: Second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The motion is carried. The meeting is adjourned.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JOHN MASTEN

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 9:40 PM)