ZONING BOARD OF APPEALS

MEETING – AUGUST 28, 2014

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. Then the Board will then consider the applications in the order heard. The Board will try to render a decision on all applications this evening; but may take up to 62 days to reach a determination. And I would ask you if you have a cell phone to please turn the cell phone off. Roll call please.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:01 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 7:01 PM)

LOWITT VENTURES LLC. 444 QUAKER STREET, WALLKILL

(11-1-12.1) A / R ZONE

Applicant is seeking an area variance for the side yard setback to keep the prior built (5’9”x4’9”) side foyer addition; area variances for the maximum allowed square footage of accessory structures and the required 10 foot separation from dwelling to keep the prior built (8x20) garage side extension; and area variances for the maximum allowed square footage of accessory structures and the maximum allowed storage for not more than (4) four vehicles to keep the prior built (30x60) accessory building.

Chairperson Cardone: First I’d like to welcome our new Member Richard Levin to the Board, welcome Richard.

Mr. Levin: Thank you.

Chairperson Cardone: Our first applicant this evening Lowitt Ventures, LLC.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, August 20th and in The Sentinel on Friday, August 22nd and. This applicant sent out twenty letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. Tarone: My name is Gregory Tarone. I’m an attorney, my office is located at 5020 Route 9W, suite 104, Newburgh, here to represent Lowitt Ventures, LLC. in an application for the variances of a…on three different a…provisions of the Code, all for a Building Permit and essentially each one of them has different reasons but for all intent and purposes I think we could pretty much say that this application is a…a…clearly based on empirical evidence that shows where these structures are and why they are in violation or that is why they are technical in violation and also a…if I could just comment that a…the a…the biggest problem of course, is going to be the last one, which is the accessory building. But the two others which is a porch and then a…an overhang both were pre-existing structures that my client was totally unaware that he needed a Building Permit to repair or change in slight ways. This is his a…lack for a better term, ignorance of just how technical the law is on Building Codes. He’s now been counseled about that. He wants to go forward with getting a Building Permit being in complete compliance that he can be issued a C. O. I’m happy to just take your questions for each of the specific area variances if that would be appropriate to proceed.

Chairperson Cardone: I should mention that all the Members of the Board have made site visits. We’ve all been to the site.

Mr. Tarone: Good. Thank you.

Mr. Manley: My first question would be, we have a chronology of events that occurred with regard to the applicant. A…back on September 13th of 2002 (2012) it appears as if the Assessor’s Office for the Town made a visit to the property to do a a…this is an assessment check on the property and it was determined that there were no Permits for the front porch, the side porch or the garage extension. So at that point it appears as if the a…there was communication between the Town and the applicant with respect to those items and that there were no Permits and that there was a course of action that the applicant had to take. Knowing that, why would the applicant move forward and build an accessory structure after being put on notice that the other items, you know, had to be rectified and there were outstanding issues with that and that they needed Building Permits?

Mr. Tarone: I…I can’t address that because I wasn’t involved then. I don’t even know about it. I’m totally unaware of that happening but...

Mr. Manley: Okay. Can the applicant address that then?

Mr. Tarone: Well I…I think so but I…I think that a…a…the one thing that I…that I can say if you want him to personally stand up and address it, if that’s necessary I’ll have him do that a…I think that the a…the way that some people sometimes unfortunately look at Building Codes is a…with a little bit of laxity and lack of respect that a…other people don’t look at it that way. A…anything that’s happened in the past I’m here to correct now and I’m trying to do that with my client to get this property completely within compliance. Whatever he’s done here though I can tell you that in terms of the existing structures a…this is…this is something that, as I understand, they were in disrepair causing problems and he…he wanted to repair them. As to anything that he didn’t pay for, any compliance from a compensation from, quite frankly sir twelve years ago I…I just haven’t addressed it, wasn’t involved a…at all. I…I know that I was provided with some sequence of things that…that appeared that my client just did not take seriously some things that he should have and he’s aware of that now a...and I think that overall if you look at the quality and quantity of what he’s done, he hasn’t tried to, except for the large accessory building, hasn’t tried to pull any a…wool over anybody’s eyes in that sense but I think that he has been very lax in complying with your local Code.

Mr. Manley: Well…well that’s evident because it’s…

Mr. Tarone: Yeah.

Mr. Manley: …this has been going on from what I can see the history for two years that the Town has been attempting to get some sort of compliance with the other items.

Mr. Tarone: And I appreciate what you’re saying.

Mr. Manley: Do you have anything that you can enter into evidence with this Board to show that those items the front porch and the side porch and the garage extension are pre-existing non-conforming and weren’t added prior to that?

Mr. Tarone: I think we did have a survey that we…that I submitted that showed that sir…and I had checked with the surveyor or with records I had and I believe some (Inaudible) Are you talking about the overhang now? Not the a…the a…

Mr. Manley: This here, the overhang here.

Mr. Tarone: On the side foyer, right. I thought I had submitted with this some time ago so… I thought it might…I provided a survey that showed pre-existing. Whatever Mr. Lowitt got when he bought the property is the survey that I…that I have. He did not have anything up…up…updated to my knowledge because he didn’t have any (Inaudible)

Mr. Scalzo: Jim, I think I have May of 2012 and May of 2014 here and it (inaudible) show the pre-existing (Inaudible)

Mr. Manley: All right, I got it right here May 23rd, thanks. Counsel I have a copy of it here.

Mr. Tarone: Yeah, I…I…

Mr. Manley: May of 2012.

Mr. Tarone: Yes, fine.

Mr. Manley: Mr. Canfield, was the Town satisfied that those items were pre-existing to the best of your knowledge?

Mr. Canfield: Based upon what Mr. Mattina has provided me with I have two surveys, one is dated May 23, 2012 and the survey that I’m looking at does not depict this overhang that I think is in question. The May 19, 2014 most recent survey does depict the overhang off the front of the house or the side of the house, I believe that it’s…that’s in question. I think that’s in all the Board Member’s packets

Mr. Maher: Yeah, the one on the left side is depicted on the…on the new a…survey.

Mr. Canfield: The other one is not there?

Mr. Maher: The one in the front is missing.

Chairperson Cardone: Well I…I personally don’t think that that is as much of an issue as the large building that was built. I mean because, as I said, we’ve all been to the site looking at it and eyeing it…it looks like it’s in conformance because I believe the one is only six inches off. But once he was notified and I think that that’s the point that Mr. Manley is making, once he was notified of that for then to go ahead and build this large building which appears to me to be used for a business a…

Mr. Tarone: I’m sorry maam; you’re talking the 30 by 60?

Chairperson Cardone: ...yes, I am. I think that’s the problem that we’re having that after being notified of these what I would call minor variances that he would have needed to then build this large structure and for all appearances to me it seems like there is a business being run there.   
  
Mr. Tarone: I…I can tell you that I have had this discussion extensively with my client in detail. He’s not running a business from that location. He has uses that building for personal use. He originally was looking to get a building, something to cover his RV and then he found this other thing…when he found it he was going to get a building to just for a couple of his a…recreational vehicles and things that he...that he uses for his kids and a…quite frankly, he told me, he will…the building got a little bit larger than… he kept adding some things but when he went to get the building he asked the people at the company in North Carolina where he bought the building…he got on-line with them and talked with them and they indicated to him oh, we’ve done a building in Orange County. We’ve one…we have one already designed, everything ready and he indicated that to him and they told him that they would provide everything, soup to nuts, this building is already engineer approved, everything is ready. He gave him the price; he said okay, he didn’t have to put down a slab or anything. He said, I’d like to put a slab down, they told him what to do and my client did not read something that they sent to him. He read the plans, the small print on the right hand side that you…that you’d have to be in compliance with your Building Code. He didn’t read…he didn’t see that. That was on the plan they sent to him later after he paid for the building. So, this is ignorance on his part so I can…totally assure you if I was his attorney at that time, we wouldn’t be here tonight. We wouldn’t have this discussion but I can’t undo what he did and to…to take that building and change it…it would be either expensive or a complete loss. There…there’s no way to just take a piece off or just…just…it’s…it’s all one structure and engineered to be one structure so that’s the hardship a…and frankly I don’t mean to try to justify this that it’s fair for him to somehow put up what he wants and expect you to say well that’s okay, do what you want. That’s not what you’re here for and I’m not here to certify that kind of conduct but a…we’re in a difficult situation because he wasn’t careful and he wasn’t listening and he didn’t have reverence for the things that are important to this community. So what I can do for you is I can try to clean up whatever I can going forward but whatever happened 2002 or two years ago I can do nothing about. At this point a…and I don’t…I don’t say this lightly, I have a story that I can tell you about myself and if you’ll indulge me for (inaudible) two minutes…

Ms. Gennarelli: If you can just get closer to the microphone please, Greg.

Mr. Tarone: …oh, I can tell you what happened to me. Eighteen years ago, I went to build my first house in a village on Long Island, a very unfriendly village. A…there was a tree, a gorgeous tree, people told me that I had to call an arborist to come in and look at and tell me if this tree was that valuable, what it was. He told me it looks dead. It’s going to die and said in fact it’s not going to last, he confirmed it in writing. I decided to put a driveway through. As I’m building the house and took the tree down a neighbor who happened to be on the planning board and the adjoining property whose husband is the former owner of this property is crying for a half hour and wouldn’t leave me alone and I begged her not…to stop. What happened was, I did go and get a plan approved for a modular house, a beautiful colonial, blended in nicely everything was all set. Went through architectural review, to detail, I personally was the general contractor. I personally went to the Building Inspector and checked every detail, even the sheetrock over the garage to have living space. And at the last moment, as the modular factory was going to build the house I talked to the guy, hey, you know the build…the window with the back that’s square, can the 10 by 20, 24 by 32 whatever, can you make that a oval? Yes. Could you add two dormers on the garage? Yes, what will that cost? Good, do that. I never thought about it. I’m putting up the house. All the house is erected, the modular company came and I get a Stop Work Order. I have to go to the planning board and the architectural review board for violating the Code as an attorney. I was embarrassed, humiliated, I did everything I could to comply but I made a stupid mistake. I didn’t realize that that little change required that procedure even though everybody agreed it was beautiful and looked better except for the one person on the planning board who said it was an eyesore from her window, three hundred and fifty feet away. And so I understand that we all make mistakes even when we don’t intend to and whatever my clients motivations were however you view his character I think it may be a little bit unfair in the end because there were people who twelve years after my incident reminded me of violating that provision in the Code in that village and I thought that was pretty (inaudible). A…I’m here to tell you that the resolution of the problems of…of the size of that building are going to be extensively expensive and a hardship to my client though.

Mr. Donovan: Well one of the factors is…I’m sorry to interrupt, one of the factors the Board has to consider is whether or not the hardship that confronts your client is self-created or not. In the situation Mr. Manley is pointing out is that he knew, or he should have known, that there were a…he should have got a Permit because he had Code issues prior to this…

Mr. Tarone: Yes.

Mr. Donovan: …he needed to comply with those and in fact, didn’t comply with that and then he put up an (1800) eighteen hundred square foot building without a Permit.

Mr. McKelvey: It doesn’t…it doesn’t make sense in this day and age that you know he…

Mr. Donovan: It’s not like he put up a 10 x 12 shed.

Mr. McKelvey: …he needed a Permit.

Mr. Tarone: A…his…his explanation to me the first day that I heard from him, I can only go by what my clients tell me, I’m here to tell you that his explanation day one was I relied on these people, they’re going to deliver the building they said I...they’ll take care of the everything soup to nuts. He thought it was a compliant building. That’s his fault. In terms of the…the porch and the two other things, those two other things a…in my view, they’re plain and simply wrong. They’re not offensive, they’re not excessive. I think, as I’ve told him, a…as I would tell you and I think you would tell me if reversed that him not checking with that building and the Building Inspector was stupid. To just rely on a company to put up a building without a Building…it’s a building, we have Building Codes. But I think a lot of people still think that it applies just to building a house that you need Permit for, ridiculous, but that’s what happens often.

Mr. Manley: Well the other issue that…that I have, the concern that I have is what do we do about all the people that take the time to do it the right way…

Mr. Tarone: I understand.

Mr. Manley: …because they want to comply with the law because that’s what the Building Code says that you have to do and then those people come here for relief for a similar building they want to build a similar building and we deny that person because the Board feels it’s excessive, it doesn’t fit in the neighborhood. And now we have somebody that’s built one without going through that process, okay, and now that person is asking for, so to speak, forgiveness for not following the rules and if we grant it to that person how fair is it to the person we didn’t grant it to? So that’s…that’s the issue and the balancing that I’m trying to…to, you know, really grapple with is…is this something that perhaps if the applicant had followed the proper procedure that I would have maybe granted. And it’s you know, two hundred and forty-five percent over what is allowable. It’s not ten percent or even fifty percent, its two hundred and forty-five percent…

Mr. Tarone: I hear you and appreciate it.

Mr. Manley: …bigger than what it should be…

Mr. Tarone: I hear you and I appreciate it.

Mr. Manley: …and that’s, that to me is…is that’s a huge amount to overcome…

Mr. Tarone: He…he looked at it like it was a garage but nothing more looking like a garage and put it up, you can put a garage anywhere but I told him that you…it’s the size of a house, this is not a canopy like it’s just not a canopy, this is an actual building. He secured it to a foundation, a slab, it’s a building and he didn’t run plumbing in it, there’s electric in it…

Mr. Manley: There is electric and heat.

Mr. Tarone: There’s electric in it, the gas, somebody come in and put electric in it and I said anytime you touch electric ever again you get a Building…you have to get a Building Inspector, you can’t touch electric (inaudible).

Mr. Manley: There…there’s electric heat, it looks like also air conditioning.

Mr. Tarone: I don’t know if they have air conditioning. I don’t know, I frankly don’t know. Do you have air?

Mr. Lowitt: (Inaudible)

Mr. Tarone: Heat, maybe he’s got a heat pump. It’s a…a…you’re put in a difficult position, I’ve thought about this for weeks and I a…fully appreciate where you are, that you…what you’re doing here. I think that a…you look at the general character of that community and you look at other…there…there are other buildings that are similar at a 1958 and 1979 a…Route 300…a they have accessory buildings that are pretty large. A…next to this a…property is a farm with a fairly big barn that’s maybe a hundred…hundred and fifty yards away a…it’s fairly closed in, not out in the open a…so what I’m hoping you can do is find a…a…some kind of ground here to be able to grant relief that’s not too economically a…disastrous. That a…that is not a bad precedent but certainly anything that you would want done to the property to cure it in any way, any type of landscaping, fencing, anything you would require he would do. At…at this point a…I think the choices are very, very drastic for that building.

Mr. McKelvey: We have to be careful in setting precedent. I mean, if somebody else sees that he did this and they do the same thing…

Mr. Tarone: Well the only thing that I could say to you and my clients not…my clients not going to like me saying this but I’m going to be frank with you, I mean, I don’t…I don’t see your options that…you have options here, you have a lot of power. This is…this is a police power that you have, this is zoning. I understand it real well. A…you can fine him and sting him and a…you can do certain things but the…the most drastic thing would to have to remove the building…he couldn’t remove part of the building is what I want to tell you, we’re pretty well clear on that, to remove the whole thing and or nothing would be drastic and a lot of money. And a lot more than I think it may be worth to everybody. It’s a very difficult situation and I a…only ask that if you could find a way that makes sense to the community that he cure it however he possibly can now.

Chairperson Cardone: You said that this would not be used for a business…

Mr. Tarone: Yes.

Chairperson Cardone: …however, the address across the street which I believe is his address is listed as a business address on-line.

Mr. Tarone: Well, I think that if it is it’s that’s he get…he may have his corporate…his…his company a…his company Lowitt Ventures, LLC. is a personal a…limited, liability company that may be the home address that…that’s what you’re talking about. Yeah, that’s his…that’s his home, he…a lot of people use that as a lawyer I could tell you that eight percent of my clients LLCs are…they use their home address, they don’t use an actual commercial office.

Mr. Scalzo: Madam Chairwoman, when I made my site visit a…I did see the business trucks that you’re describing…

Chairperson Cardone: Yes.

Mr. Scalzo: …a…the applicant was there at the time, invited me into the building, it is a hobby shop. A…they had a…race cars in there, so there was no business, I…I saw nothing related to the business trucks that I saw outside, inside the building.

Chairperson Cardone: Right, but I saw when I was there though.

Mr. Scalzo: Okay.

Mr. Tarone: In…in…in the…

Ms. Gennarelli: Darrin, could you pull that microphone a little closer?

Mr. Scalzo: Sure.

Ms. Gennarelli: Thanks.

Mr. Lowitt: Hi, I’m…I’m Steve, I own Lowitt Ventures and there’s no business across the street. I do own a business and I do own trucks but that garage was not put up for anything to do with any businesses, warehouses or anything else. It’s strictly recreation. We sponsor two race tracks in the area, Middletown Racetrack and Accord Racetrack and that garage is mostly everything that we use there, tires, racecars, you know, I mean that’s our (inaudible) shop and I mean, there’s no stock, trucks, nothing that has anything to do with that garage. I do own a few trucks that I use for work. I own a bucket truck, I own a crane, I own a a service truck that I use every day. I have two sons, that also live at the house, that work for the same company who have trucks and my son also lives across the street so there’s trucks over there for that. They’re used for work. That garage I…I…then, you know, Mr. Tarone pretty much told you what I did. I mean, I screwed up, I mean I called the company…last year we were building a garage…a…a…our cars, the racecars and everything else in that two little car garage. It was too much. I go to visit other people, work on their cars and everything else, they’ve got these big garages it…I looked into it; I called the company they have engineered Orange County drawings. Okay? They told me what I could build in this area and I could only go a maximum of thirty wide, everything else can go as long as I want. When…when…when you’re on the phone talking to these people you really don’t process how big something actually is until you actually see it. Is it a little excessive? Yes. Did I screw up by thinking Orange County engineered drawings doesn’t mean that you guys approved it? It just means that you know, from what I’m told now that an engineer from Orange County approved what would be okay to bring to you guys. That’s where the whole mishap, you know, lead to. Was it me being maybe thinking that every thing’s peaches and cream? Yes and usually it isn’t. As far as other violations on the house, when we bought the house the house was almost condemned. We fixed the house up. Mostly everything that was there, the porch, the overhangs, everything else were all metal, hanging off, ready to fall off and hurt somebody. We fixed the house up. We pretty much didn’t do anything but shorten the deck that was there. The Town did ask me to pull Permits and it told me to…asked me why I did what I did. I explained to them that it was there, they said it wasn’t, I need to pulled Permits (Applications) and I...abide by everything that you guys told me to do and you know, I…I thought all that was put to bed with the overhang over the garage there was one there and when they told me I had to get a variance for it, to tell you the truth, I was going to tear it down. I mean, it wasn’t worth me coming to get a variance for that one little porch on the back. A…I didn’t, we built the breezeway to keep the water out of the basement and then the garage and that’s just where we stand now where there’s three of ‘em but the intentions were never to the point that I’m just going to keep building stuff and you know, not get Permits or abide by what my Town wants. I mean, I’m next to a house that’s condemned, another house that’s abandoned and you know, I…I…I put a lot of money into this house that’s next to the stuff not knowing what the value is going to be. But, I mean, I’m proud of what we did and you know my son lives over there and I try to make it as neat as possible. We put the fence up and you know, the…the last thing I intend to do is to you know, disgrace my neighborhood or my town or my own property for that matter so…but then I…I hope that puts everything into perspective and you guys understand, you know, what happened.

Mr. McKelvey: Who do you build these cars for?

Mr. Lowitt: Who…? …Do I build them for?

Mr. McKelvey: Yeah.

Mr. Lowitt: A…my sons, both my sons race. I haven’t gotten the guts yet to get in the car but I’m leaning towards it. That…the…the cars are for my sons. Both my sons and we do a lot of sponsorship at the tracks and stuff. We help out the local tracks and donate money to them and help ‘em out, you know, with…the track, electric, lights, everything else so… You know I, it’s all on me and I admit you know, that just…I was stupid, I mean, and you know, I can assure now that I have a lawyer I’m not doing anything else ever again without…without him so. Any other questions? I mean, it would just be easier if I answer ‘em instead of going through Greg but…

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

Mr. Maher: Just one question actually. So on the application, did you fill out the application or did…?

Inaudible

Ms. Gennarelli: Excuse me…excuse me…Greg…

Inaudible

Mr. Maher: Who actually filled it out?

Ms. Gennarelli: …Greg can you go to the microphone?

Mr. Maher: …is what I’m asking…

Inaudible

Mr. Maher: …okay.

Ms. Gennarelli: Excuse me…

Chairperson Cardone: Go to the microphone.

Mr. Tarone: I…I wrote…I wrote it so a…

Mr. Maher: That’s fine.

Mr. Tarone: I can decipher for you.

Mr. Maher: On the a…on, sorry about that, so on the application labeled as “A” which is the first one for the side yard…

Mr. Tarone: A…is this for the side foyer?

Mr. Maher: Yes.

Mr. Tarone: Okay.

Mr. Maher: So based on the fact that it’s not depicted in the 2012 survey then the prior built foyer a…in the area variance request number six, letter A, says the prior built foyer actually existed when the applicant bought the property that’s not actually correct then, right?

Mr. Tarone: Well actually what I believe is…I want Mr. Lowitt to address this since (inaudible) discuss the specific (inaudible)…

Ms. Gennarelli: Please get closer to the microphone.

Mr. Tarone: …if I remember correctly this…this wasn’t shown on it but it was there and it was just not functioning well to let rain…

Mr. Scalzo: Was it all the way down to the ground or…?

Mr. Lowitt: No, it…it…that part it had a…like I said the side porch, the breezeway over the garage and that had a metal, you know a…

Inaudible

Mr. Lowitt: …the seventies, you know whatever, you know. That’s what was there and the water would rush underneath it. It…it had a little bit of a…a foundation but it wasn’t completely enclosed. We enclosed it. I don’t know why that overhang never showed up the survey but…it didn’t.

Inaudible

Mr. Tarone: I would just like to note that surveyors don’t always show that kind of overhang on a survey in my experience unless they are asked to.

Mr. Scalzo: I understand that. If it doesn’t make it to the ground sometimes you don’t show it, you don’t see roof overhangs, that’s why I was asking pre…

Mr. Tarone: I appreciate that very much because I think that...

Mr. Scalzo: …pre-existing condition went to the ground or was just attached to the house.

Mr. Tarone: All right. A…and…and the main function was for drainage, really. (Inaudible)

Mr. Lowitt: That’s all that thing really is for is for weather, not getting into the basement other than that I mean it’s, you know, a little bigger than a dog house.

Chairperson Cardone: I have a report from the Orange County Department of Planning, which is Local Determination. Do we have any questions or comments from the public? If so, please step to the microphone and identify yourself.

Ms. Moschitta: My name is Trish Moschitta, I’ve been an active member in this community since 1987 a…I live on Schoolhouse Lane which looks right at the property we’re talking about. In over a quarter of a century I’ve watched this property slowly fall into neglect and disrepair and I was pleased that the Lowitts purchased it ‘cause I was afraid it would succumb to the same disrepair to the house which is next door which is condemned and the house that is adjacent to that which is basically borderline porting now. There is an abandoned house behind them. What the Lowitts have done to both of their pieces of property a…we’ve watched with joy as they resided it, fixed it, made it something that the neighborhood…at least as a neighbor I am proud of. I drive down Schoolhouse Lane three, four times a day that’s the immediate structures I look at. There’s plants hanging, there’s hummingbird feeders a…it’s the betterment of the neighborhood what they have done to it. A…I could only wish that all of the neighbors, those in question, could take the care and concern that the Lowitts have taken in straightening out the house that was…I was afraid was going to become condemned a...I ask that you would allow this variance, allow them to continue to further beautify our neighborhood and perhaps look at the condemned houses that are ruining our neighborhood which are dangerous, kids are hanging out there, porches are falling down. That is a real concern to me in living here for over a quarter of a century and nothing is being said about that but this has done…it looks beautiful. Thank you.

Chairperson Cardone: Thank you.

Mr. Tarone: Anything else for me?

Chairperson Cardone: I think someone else wants to make a comment. Just identify yourself for the record.

Mr. Moschitta: John Moschitta, I’m at 17 Schoolhouse Lane also and a…again to reiterate…reiterate what my wife had…had said that the…the property was in total disrepair before the Lowitts a…purchased it and have worked very diligently keeping it clean and neat and improving a…the neighborhood and a…I ask the Board to grant them the variance cause I think it…it’s an improvement and you know, it’s for racecars, for personal use for the boys and those boys work really hard. And I’ve seen those boys work, so…

Chairperson Cardone: Thank you.

Mr. Moschitta: …please consider that. Thank you.

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

Mr. Tarone: I don’t Madam Chairman, thank you very much for…

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Mr. Donovan: It’s really not fair Betty to make the new Member be the first

Chairperson Cardone: Actually we…we did discuss that.

Ms. Gennarelli: I did apologize to him and pre-warned him.

Chairperson Cardone: Right.

(Time Noted - 7:35 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:20 PM)

LOWITT VENTURES LLC. 444 QUAKER STREET, WALLKILL

(11-1-12.1) A / R ZONE

Applicant is seeking an area variance for the side yard setback to keep the prior built (5’9”x4’9”) side foyer addition; area variances for the maximum allowed square footage of accessory structures and the required 10 foot separation from dwelling to keep the prior built (8x20) garage side extension; and area variances for the maximum allowed square footage of accessory structures and the maximum allowed storage for not more than (4) four vehicles to keep the prior built (30x60) accessory building.

Chairperson Cardone: The Board is resuming its regular meeting. On the first application Lowitt Ventures, LLC., 444 Quaker Street, Wallkill, seeking an area variance for the side yard setback to keep the prior built (5’9”x4’9”) side foyer addition; area variances for the maximum allowed square footage of accessory structures and the required 10 foot separation from dwelling to keep the prior built (8x20) garage side extension; and area variances for the maximum allowed square footage of accessory structures and the maximum allowed storage for not more than (4) four vehicles to keep the prior built (30x60) accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: We had a couple of neighbors come in and said they have improved the property.

Mr. Scalzo: Looking at it from the road they also did put up stockade fencing to block any view of, you know, what was going on which stopped right out easily visible from the street.

Chairperson Cardone: I don’t have a problem with the other, the variances, but I personally have a problem with the size of the accessory building.

Mr. McKelvey: That’s true.

Mr. Donovan: You have the option to a…someone can make a motion to deny or approve all the variances or you can vote on them individually or in some sort of group.

Mr. Manley: I…I would like to make a motion that the a…area variance for the a…the one accessory structure which is the one that requires the ten foot separation from the dwelling, it was the prior built 8 x 20 garage side extension, I’d make a motion to approve that.

Mr. Scalzo: I’d second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Okay, that motion is carried. We still have two other.

Mr. Donovan: I think you have three other, right? Total of three.

Mr. Masten: Two other.

Mr. Donovan: Well you have the side yard setback to keep the prior built side foyer addition and the variance for the maximum allowed square footage of accessory structures as well as the 30 x 60. I don’t know what the calculation would be if the 30 x 60 was denied. I don’t know if that falls under or not. If my math is correct, if…and I don’t know what the Board intends to do but if the 30 x 60 was denied then you’re looking at a total square footage of 832 sq. ft. assuming that everything else is kept. I don’t know if Jerry, if you want to verify that for me? Or Mike?

Mr. Maher: Yeah, it would be 69.27 would be the variance after that and about eight percent or so or (69.27) sixty-nine point twenty-seven feet once you remove the (1800) eighteen hundred. And that’s strictly caused by the overhang on the garage, right Jerry?

Chairperson Cardone: In the meantime do we have a motion for approval on the minimum side yard of thirty feet of existing twenty-eight feet and they need a two foot variance on that?

Mr. Manley: I don’t see that as being excessive at all.

Mr. McKelvey: I’ll make that motion to approve.

Mr. Manley: I’d second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Mr. Maher: Just for the record, the application lettered “B” just address the square footage also.

Chairperson Cardone: The side yard was “A”.

Mr. Maher: Then “B” already addressed it, the garage; the ten foot minimum identified the square footage also for the area variance as “B”. Right, I understand now.

Chairperson Cardone: And now we have “C”. Okay, do we have a motion for approval and we’re looking at “C” now for the maximum allowed square footage and the maximum storage of four vehicles to keep a prior built accessory building.

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

Mr. Masten: I’ll second it.

Mr. Donovan: And…and just to be clear, so that would be for the approval of the 30 x 60 building. Correct?

Mr. Scalzo: That’s right.

Ms. Gennarelli: Okay, roll call.

Richard Levin: Yes

John McKelvey: No

Michael Maher: No

James Manley: No

John Masten: No

Darrin Scalzo: Yes

Grace Cardone: No

Mr. Donovan: So the motion, that means the motion to approve fails a…I would suggest so that the record is clear, if you are inclined, that you make a motion to disapprove the 30 x 60 prior built accessory building, if that is the Board’s inclination.

Chairperson Cardone: Do we have a motion to disapprove?

Mr. McKelvey: I'll make the motion to disapprove.

Chairperson Cardone: Do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried. Are we clear on the square footage on the other without that?

Mr. Donovan: I think we voted on each application, correct?

Chairperson Cardone: Right.

Mr. Donovan: So, you’ve approved…

Chairperson Cardone: Are we clear on that, Jerry? On the square footage on the…with the disapproval.

Mr. Canfield: So that building is to be removed then?

Mr. Donovan: Well this Board doesn’t have the authority to that obviously. We denied the variance request.

Mr. Canfield: You denied the variance but it’s a prior built so I agree it’s another matter. It now becomes an enforcement matter.

Mr. Donovan: It now becomes an enforcement matter that’s correct.

Mr. Canfield: For the benefit of the applicant though, the applicant’s attorney, that means that the building is to be removed. I mean we could further discuss it tomorrow at my office but that’s basically the next step.

Mr. Donovan: And the Board approved the 832 sq. ft. which is 69.27 square feet over for the other structures.

Mr. Canfield: The other garage.

Mr. Donovan: If you look at packet “B” that was…that was approved.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:31 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 7:35 PM)

MICHAEL ACEVEDO 954 ROUTE 32, WALLKILL

(2-2-8.11) R / R ZONE

Applicant is seeking a Use variance for unspecified uses shall be prohibited to keep fowl on the property.

Chairperson Cardone: Our next applicant Michael Acevedo.

Ms. Gennarelli: This applicant sent out twenty-two letters for the use variance and twenty two letters for the area variances. All the mailings, publications and postings are in order.

Mr. Acevedo: Michael Acevedo, 954 Route 32 in Wallkill, NY. I built three sheds, 12 x 16, 12 x 14 and 8 x 12. I have poultry which I’m told I’m not allowed to have but all my neighbors seem to have them. And if you said you came to my house I’m sure you saw signs, ‘Fresh Eggs for Sale’, along the road and you’ve seen chickens because I have pictures of them roaming the neighbor’s yards. They’re not my chickens, they are penned up.

Chairperson Cardone: I didn’t see that sign. In fact I didn’t even, the day I came, I didn’t see the sign that was supposed to be posted.

Mr. Acevedo: She (Betty Gennarelli) told me that.

Chairperson Cardone: Right.

Mr. Acevedo: The lawn landscaper took it down. Here is a sign of fresh eggs for sale. This is a neighbor, not me. I have other pictures of people with chickens, chicken coops, chickens out by the road with a number on the mailbox. My neighbor across the street has chickens, my neighbor behind me has chickens, the neighbor to the left of me has chickens. Okay? I am allergic as well as my daughter to many different foods and it is because of the eggs that keep us this way. I have many problems sleeping a…sleep apnea, I get all kinds of infections, snoring, all that stuff from eggs. So that’s why I have chickens. Okay? I also have quail because quail are very high in protein, the eggs.

Chairperson Cardone: There are organic eggs that can be purchased in any supermarket.

Mr. Acevedo: Okay. I enjoy having chickens.

Mr. McKelvey: But they are not allowed.

Chairperson Cardone: But the thing is we don’t make…we don’t make the laws…

Mr. Acevedo: I understand that.

Chairperson Cardone: …and you had mentioned that you have many neighbors that also have chickens….if you have so many people that have chickens and want to have chickens then they should see about getting the law changed.

Mr. Acevedo: Okay, but I feel that it selective enforcement when you are telling me not to have chickens and everybody else does.

Mr. McKelvey: Well you just opened it up to Code Compliance.

Mr. Acevedo: Oh, oh I’m sorry I did open that up before when I stood in court and I told the Judge the same thing. It seems like everybody has got blinders on when they drive down the street and they come to my house and see my chickens. And if you were there at my house I’m sure you saw to the left of my driveway there’s a big barn up in the back that’s falling down. That’s allowed? I’m sorry.

Chairperson Cardone: The original complaint came from the Assessor’s Office and that was in 2012.

Mr. Acevedo: Okay.

Chairperson Cardone: And I believe what the complaint was because they saw the structures that were there without a Building Permit.

Mr. Acevedo: Correct.

Chairperson Cardone: At the time they had no idea what the structures were used I’m sure.

Mr. Acevedo: Okay, now I…I…I…you know, I have…right after that I applied for Permits and then I was told that I had to go for a variance after I got Permits. The problem was I was going through a divorce and money was very hard and then all of a sudden I was told that I didn’t have to pay for the variances…after I had paid for the Building Permits two hundred and fifty dollars per Permit; they wanted another nine hundred dollars for variances, I didn’t have the money. I have property that is unusable it’s all shale behind my house where the chicken coops are or the sheds are.

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

Mr. Donovan: Just for purposes of clarity there’s two applications in front of us, a use variance and an area variance, are we just dealing with the use variance at this time or are we dealing with both of them?

Chairperson Cardone: Well I think we first need to deal with the use variance.

Mr. Donovan: That’s fine, just as long as that’s clear, that’s all.

Mr. Manley: Dave, perhaps you could for the benefit of the new Board Members just go over the requirements that the Board Members need to consider with respect to the use variance.

Mr. Donovan: Sure. To obtain a use variance the State Law requires that this Board look at four different factors. The first factor is whether or not the applicant can realize a reasonable return on his property provided a lack of return is substantial as demonstrated by competent financial evidence. In other words, is there anything else Mr. Acevedo can do with the property that would give him an economic return other than raise the chickens and I don’t know…do you sell…do you sell eggs?

Mr. Acevedo: No, I don’t sell the eggs. There’s other use for the sheds, I mean, I have a tractor in there. I have a four car garage but I have four cars in my garage.

Mr. Donovan: Sure. We’re just talking about the…the chickens at the present time.

Mr. Acevedo: Oh, okay, I’m sorry.

Mr. Donovan: So, the second and understand if you go through the R/R Bulk Table it’s going to tell you that the permitted accessory uses you can have, I believe dogs up to five. Jerry, is it felines as well or…? I believe. It doesn’t say anything about fowl though so that’s why they’re not permitted.

Mr. Canfield: Yeah, a…Schedule One of the Bulk Use Requirements for the Restricted (Reservoir Residential) Residential District and I think that’s the key issue here that this is an RR Zone. Keeping up to five dogs or cats up over six months of age, keeping up to two horses on two acres that’s it with respect to animals. If this were an A/R Zone…

Mr. Acevedo: I can keep a horse but I can’t keep chickens?

Mr. Canfield: Excuse me. Let me finish, please.

Mr. Acevedo: Okay.

Mr. Canfield: If this was an A/R Zone which is Agricultural there would be allowed up to twenty-five birds (fowl) but because this is restricted (Reservoir) residential that’s where the difference is. And if I can continue Dave while I have the mic? With respect to the selective enforcement a…I’d like to address that. If you have complaints to make about your neighbors please do to my office.

Mr. Acevedo: I’m not going to complain about the chickens, they don’t bother me, I don’t care that they have chickens but I think it’s ironic that you drive down the street…

Mr. Canfield: Excuse me, sir. Can I finish please? If they’re your neighbors they are in an R/R Zone they too are in violation and if you chose to make a complaint, give us the address and we enforce that as well as well as for the falling down barn. The Town does have a serious problem with abandoned and falling down structures which we do have a schedule to address them. It’s a lengthy process through the Town Board however I’d be more than glad to get that unsafe structure on that list.

Mr. Acevedo: There’s two of them, there’s that one and there’s another one about four houses away…

Mr. Canfield: Perhaps tomorrow you can come to my office and give me that information and I’d be more than glad to enforce it.

Mr. Acevedo: Sure.

Mr. Canfield: Thank you.

Mr. Donovan: So just continuing on, the second factor is whether or not the alleged hardship relating to the property is unique and does not apply to a substantial portion of district or neighborhood. The third factor is that the requested use variance if granted will not alter the essential character of the neighborhood and the last is that the alleged hardship is not self-created. I just want to talk about that for a second because we talked about that with the prior application and in the a…area variance request if a hardship is self-created you can still grant the area variance. It’s just one of the five factors to be considered with an area variance. If however, the alleged hardship has been created in the use variance context you may not issue the use variance. It is an absolute bar to relief. So, someone who owns property and purchases it there is an implied knowledge of the Zoning Ordinance. And if they violate that Ordinance then it is a self-created hardship and you’re not in a legal position to issue the variance.

Chairperson Cardone: And we have to go by the law and in order to get a use variance, as our attorney has said, you have to meet all four of the criteria. If any one of them is not met we are not permitted to grant a use variance.

Mr. Acevedo: Okay.

Chairperson Cardone: At this point, a…we could discuss the area variance. Now you said you had other uses for the sheds?

Mr. Acevedo: Yes, I do.

Chairperson Cardone: So, not being able to keep the chickens you would still want to keep the sheds?

Mr. Acevedo: Absolutely.

Mr. Scalzo: Sir, I have one question on the Short Form Environmental…

Ms. Gennarelli: Darrin, can you just pull that microphone in closer, we’re recording this. Thank you.

Mr. Scalzo: Sorry. Sir, on the Short Form, Environmental you are listing your address as 73 Carpenter Avenue, is that a…?

Mr. Acevedo: That’s my mailing address, my legal mailing address where my office is.

Mr. Scalzo: Okay, very good.

Chairperson Cardone: Do we have any questions from the Board in regard to the area variance?

No response.

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

No response.

Chairperson Cardone: On the day that I was there I saw a piece of heavy equipment there, there was a trailer and a…

Mr. Acevedo: Back hoe.

Chairperson Cardone: A back hoe?

Mr. Acevedo: Yes, it’s mine.

Chairperson Cardone: And that was there…?

Mr. Acevedo: I use that to dig up…to dig out the backyard thinking I was going to be able to level it until we hit shale. The whole yard is full of shale from about eight feet from behind my house all the way to the mountain. It’s all shale.

Chairperson Cardone: Nothing from the Board?

No response.

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

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

Mr. McKelvey: I’ll second.

Mr. Donovan: For clarity, is this on both applications or do you want to do one after the other, the use variance and the area variance?

Mr. Manley: That’s probably a good idea. I’ll make a motion that we close the Public Hearing for the area variance.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

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

Mr. Manley: So moved.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Acevedo: Thank you for your time.

(Time Noted - 7:50 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:31 PM)

MICHAEL ACEVEDO 954 ROUTE 32, WALLKILL

(2-2-8.11) R / R ZONE

Applicant is seeking a Use variance for unspecified uses shall be prohibited to keep fowl on the property.

Chairperson Cardone: On the next application Michael Acevedo, 954 Route 32, seeking a Use variance for unspecified uses shall be prohibited to keep fowl on the property. And the County report on that was Local Determination. Do we have discussion on this application?

Mr. Manley: Well the keeping of fowl is clearly an unspecified use within the Code. It’s not listed. The applicant’s testimony clearly indicated that he’s the one that brought the fowl there so that means that the use has been self-created and this Board is unfortunately barred from approving that based on that testimony.

Chairperson Cardone: Do we have a motion for approval?

No response.

Chairperson Cardone: Do we have a motion for disapproval?

Mr. Scalzo: I’ll make a motion for disapproval for the use variance.

Chairperson Cardone: Do I have a second?

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:33 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 7:35 PM)

MICHAEL ACEVEDO 954 ROUTE 32, WALLKILL

(2-2-8.11) R / R ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to keep three Prior Built accessory buildings - fowl pens (A) 12x16; (B) 12x14; (C) 8x12.

Chairperson Cardone: Our next applicant Michael Acevedo.

Ms. Gennarelli: This applicant sent out twenty-two letters for the use variance and twenty two letters for the area variances. All the mailings, publications and postings are in order.

Mr. Acevedo: Michael Acevedo, 954 Route 32 in Wallkill, NY. I built three sheds, 12 x 16, 12 x 14 and 8 x 12. I have poultry which I’m told I’m not allowed to have but all my neighbors seem to have them. And if you said you came to my house I’m sure you saw signs, ‘Fresh Eggs for Sale’, along the road and you’ve seen chickens because I have pictures of them roaming the neighbor’s yards. They’re not my chickens, they are penned up.

Chairperson Cardone: I didn’t see that sign. In fact I didn’t even, the day I came, I didn’t see the sign that was supposed to be posted.

Mr. Acevedo: She (Betty Gennarelli) told me that.

Chairperson Cardone: Right.

Mr. Acevedo: The lawn landscaper took it down. Here is a sign of fresh eggs for sale. This is a neighbor, not me. I have other pictures of people with chickens, chicken coops, chickens out by the road with a number on the mailbox. My neighbor across the street has chickens, my neighbor behind me has chickens, the neighbor to the left of me has chickens. Okay? I am allergic as well as my daughter to many different foods and it is because of the eggs that keep us this way. I have many problems sleeping a…sleep apnea, I get all kinds of infections, snoring, all that stuff from eggs. So that’s why I have chickens. Okay? I also have quail because quail are very high in protein, the eggs.

Chairperson Cardone: There are organic eggs that can be purchased in any supermarket.

Mr. Acevedo: Okay. I enjoy having chickens.

Mr. McKelvey: But they are not allowed.

Chairperson Cardone: But the thing is we don’t make…we don’t make the laws…

Mr. Acevedo: I understand that.

Chairperson Cardone: …and you had mentioned that you have many neighbors that also have chickens….if you have so many people that have chickens and want to have chickens then they should see about getting the law changed.

Mr. Acevedo: Okay, but I feel that it selective enforcement when you are telling me not to have chickens and everybody else does.

Mr. McKelvey: Well you just opened it up to Code Compliance.

Mr. Acevedo: Oh, oh I’m sorry I did open that up before when I stood in court and I told the Judge the same thing. It seems like everybody has got blinders on when they drive down the street and they come to my house and see my chickens. And if you were there at my house I’m sure you saw to the left of my driveway there’s a big barn up in the back that’s falling down. That’s allowed? I’m sorry.

Chairperson Cardone: The original complaint came from the Assessor’s Office and that was in 2012.

Mr. Acevedo: Okay.

Chairperson Cardone: And I believe what the complaint was because they saw the structures that were there without a Building Permit.

Mr. Acevedo: Correct.

Chairperson Cardone: At the time they had no idea what the structures were used I’m sure.

Mr. Acevedo: Okay, now I…I…I…you know, I have…right after that I applied for Permits and then I was told that I had to go for a variance after I got Permits. The problem was I was going through a divorce and money was very hard and then all of a sudden I was told that I didn’t have to pay for the variances…after I had paid for the Building Permits two hundred and fifty dollars per Permit; they wanted another nine hundred dollars for variances, I didn’t have the money. I have property that is unusable it’s all shale behind my house where the chicken coops are or the sheds are.

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

Mr. Donovan: Just for purposes of clarity there’s two applications in front of us, a use variance and an area variance, are we just dealing with the use variance at this time or are we dealing with both of them?

Chairperson Cardone: Well I think we first need to deal with the use variance.

Mr. Donovan: That’s fine, just as long as that’s clear, that’s all.

Mr. Manley: Dave, perhaps you could for the benefit of the new Board Members just go over the requirements that the Board Members need to consider with respect to the use variance.

Mr. Donovan: Sure. To obtain a use variance the State Law requires that this Board look at four different factors. The first factor is whether or not the applicant can realize a reasonable return on his property provided a lack of return is substantial as demonstrated by competent financial evidence. In other words, is there anything else Mr. Acevedo can do with the property that would give him an economic return other than raise the chickens and I don’t know…do you sell…do you sell eggs?

Mr. Acevedo: No, I don’t sell the eggs. There’s other use for the sheds, I mean, I have a tractor in there. I have a four car garage but I have four cars in my garage.

Mr. Donovan: Sure. We’re just talking about the…the chickens at the present time.

Mr. Acevedo: Oh, okay, I’m sorry.

Mr. Donovan: So, the second and understand if you go through the R/R Bulk Table it’s going to tell you that the permitted accessory uses you can have, I believe dogs up to five. Jerry, is it felines as well or…? I believe. It doesn’t say anything about fowl though so that’s why they’re not permitted.

Mr. Canfield: Yeah, a…Schedule One of the Bulk Use Requirements for the Restricted (Reservoir Residential) Residential District and I think that’s the key issue here that this is an RR Zone. Keeping up to five dogs or cats up over six months of age, keeping up to two horses on two acres that’s it with respect to animals. If this were an A/R Zone…

Mr. Acevedo: I can keep a horse but I can’t keep chickens?

Mr. Canfield: Excuse me. Let me finish, please.

Mr. Acevedo: Okay.

Mr. Canfield: If this was an A/R Zone which is Agricultural there would be allowed up to twenty-five birds (fowl) but because this is restricted (Reservoir) residential that’s where the difference is. And if I can continue Dave while I have the mic? With respect to the selective enforcement a…I’d like to address that. If you have complaints to make about your neighbors please do to my office.

Mr. Acevedo: I’m not going to complain about the chickens, they don’t bother me, I don’t care that they have chickens but I think it’s ironic that you drive down the street…

Mr. Canfield: Excuse me, sir. Can I finish please? If they’re your neighbors they are in an R/R Zone they too are in violation and if you chose to make a complaint, give us the address and we enforce that as well as well as for the falling down barn. The Town does have a serious problem with abandoned and falling down structures which we do have a schedule to address them. It’s a lengthy process through the Town Board however I’d be more than glad to get that unsafe structure on that list.

Mr. Acevedo: There’s two of them, there’s that one and there’s another one about four houses away…

Mr. Canfield: Perhaps tomorrow you can come to my office and give me that information and I’d be more than glad to enforce it.

Mr. Acevedo: Sure.

Mr. Canfield: Thank you.

Mr. Donovan: So just continuing on, the second factor is whether or not the alleged hardship relating to the property is unique and does not apply to a substantial portion of district or neighborhood. The third factor is that the requested use variance if granted will not alter the essential character of the neighborhood and the last is that the alleged hardship is not self-created. I just want to talk about that for a second because we talked about that with the prior application and in the a…area variance request if a hardship is self-created you can still grant the area variance. It’s just one of the five factors to be considered with an area variance. If however, the alleged hardship has been created in the use variance context you may not issue the use variance. It is an absolute bar to relief. So, someone who owns property and purchases it there is an implied knowledge of the Zoning Ordinance. And if they violate that Ordinance then it is a self-created hardship and you’re not in a legal position to issue the variance.

Chairperson Cardone: And we have to go by the law and in order to get a use variance, as our attorney has said, you have to meet all four of the criteria. If any one of them is not met we are not permitted to grant a use variance.

Mr. Acevedo: Okay.

Chairperson Cardone: At this point, a…we could discuss the area variance. Now you said you had other uses for the sheds?

Mr. Acevedo: Yes, I do.

Chairperson Cardone: So, not being able to keep the chickens you would still want to keep the sheds?

Mr. Acevedo: Absolutely.

Mr. Scalzo: Sir, I have one question on the Short Form Environmental…

Ms. Gennarelli: Darrin, can you just pull that microphone in closer, we’re recording this. Thank you.

Mr. Scalzo: Sorry. Sir, on the Short Form, Environmental you are listing your address as 73 Carpenter Avenue, is that a…?

Mr. Acevedo: That’s my mailing address, my legal mailing address where my office is.

Mr. Scalzo: Okay, very good.

Chairperson Cardone: Do we have any questions from the Board in regard to the area variance?

No response.

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

No response.

Chairperson Cardone: On the day that I was there I saw a piece of heavy equipment there, there was a trailer and a…

Mr. Acevedo: Back hoe.

Chairperson Cardone: A back hoe?

Mr. Acevedo: Yes, it’s mine.

Chairperson Cardone: And that was there…?

Mr. Acevedo: I use that to dig up…to dig out the backyard thinking I was going to be able to level it until we hit shale. The whole yard is full of shale from about eight feet from behind my house all the way to the mountain. It’s all shale.

Chairperson Cardone: Nothing from the Board?

No response.

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

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

Mr. McKelvey: I’ll second.

Mr. Donovan: For clarity, is this on both applications or do you want to do one after the other, the use variance and the area variance?

Mr. Manley: That’s probably a good idea. I’ll make a motion that we close the Public Hearing for the area variance.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

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

Mr. Manley: So moved.

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Acevedo: Thank you for your time.

(Time Noted - 7:50 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:33 PM)

MICHAEL ACEVEDO 954 ROUTE 32, WALLKILL

(2-2-8.11) R / R ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to keep three Prior Built accessory buildings - fowl pens (A) 12x16; (B) 12x14; (C) 8x12.

Chairperson Cardone: On the application of Michael Acevedo seeking an area variance for the maximum allowed square footage of accessory buildings to keep three Prior Built accessory buildings. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Donovan: And I would just like to point out that if the Board is inclined to approve these variances they would simply be for accessory buildings not as fowl pens.

Chairperson Cardone: Yes, understood. Do we have discussion on this application?

Mr. Masten: I’ll second it.

Chairperson Cardone: We haven’t had a motion yet. Do we have a motion for approval?

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

Mr. McKelvey: Just as long as we don’t call them fowl pens.

Mr. Donovan: Just accessory structures…accessory buildings.

Chairperson Cardone: As accessory structures.

Mr. Maher: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:35 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 7:50 PM)

JAMES McWILLIAMS 48 FIFTH AVENUE, NBGH

(73-1-23) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of one side yard setback and accessory buildings shall be 10 feet from the main dwelling to build a kitchen addition (8x13) on the residence.

Chairperson Cardone: Our next applicant James McWilliams.

Mr. Scalzo: Madam Chairwoman, I was sent a Legal Notice for this action. It’s far enough away from my home where I could make a reasonable determination however I will recuse myself if…

Mr. Donovan: Just for the record, you are under no obligation just because you get a Notice it doesn’t mean that you have a conflict so you are not required to recuse yourself. If for any reason you think you couldn’t be impartial one way or another or you just want to avoid the appearance of impropriety you could recuse yourself. I just want to make clear you are not required to and I think that it’s happened and it’s going to happen in a small community at some point in time you are going to get a Notice that your neighbor wants a variance.

Mr. Scalzo: I can’t see it from my house so I’m…I’m going to remain seated. Thank you.

Chairperson Cardone: Please identify yourself for the record.

Ms. Gennarelli: One second, this applicant sent out fifty-three letters. All the mailings, publications and postings are in order. I’m sorry, go ahead.

Mr. Cella: Good evening, I’m Jonathan Cella, I’m representing the applicant James McWilliams who was sitting in the back with me and had to step out to pick up his daughter. He will be back shortly. So we’re here for 48 Fifth Avenue which is a existing single-family residence in the R-3 District. It’s a high density neighborhood. And we’re proposing a hundred, one hundred-fifty square foot addition to the existing residence on the northeast side of the building. In this location there’s an existing covered porch. It’s a covered deck on the rear of the home which we will not be increasing the footprint of; we’ll just be covering part of that area to construct an addition which is adjacent to the existing kitchen which he wishes to expand. Based upon the current zoning we need a…two area variances, one for increasing the degree of non-conformity for the single side yard setback which we’re requesting nine feet and there’s fifteen foot required. And the second area variance we need is for a setback to a…a existing accessory structure. The accessory structure was there at the time of the building purchase and I believe at that time there was no…there was no a…provisions for accessory structures which had the a…ten foot setback requirements, based upon the construction will be approximately six feet from the…the accessory structure. We did a…prepared building plans for the residence which were submitted to the Building Department and in the application process for rejection which we were aware would happen. The existing residence is only approximately eleven hundred square feet and we’re only going to add a hundred and fifty and we feel this is minor and would be very helpful to the applicant. The existing residence is very small now and it would help his lifestyle to have this small addition. And we were looking at a…if we were to build the addition on the southern side of the building it would be adjacent to bedrooms which would require him to a…reconfigure the whole residence to have the…the addition to the kitchen so we didn’t want to go that direction.

Chairperson Cardone: And you are on Town water and Town sewer?

Mr. Cella: Yes, I’m sorry, we are on Town water and Town sewer and a…it’s just for the kitchen and we won’t be increasing any bedrooms or anything else. The addition will just be a single story off the back…the back of the building.

Chairperson Cardone: Any questions from the Board?

Mr. McKelvey: I think we run into another section of Town where the houses are close together.

Mr. Masten: Yes.

Mr. Cella: Yeah, we are in a high density neighborhood.

Chairperson Cardone: Right.

Mr. McKelvey: Yes.

Mr. Cella: And they are all small homes.

Chairperson Cardone: Right.

Mr. Cella: And people that wish to stay most likely have to come here.

Mr. Manley: But the new addition is basically going to take up part of what the old…the old porch was?

Mr. Cella: Correct. We’re not increasing any impervious area. It’s already covered by a structure. It’s just that it’s a…with the accessory structure provision reads that it’s the actual residence and not the…not the deck…not the setback from a deck which we have now.

Mr. Manley: So you are actually going to cut part of that porch off and then just reattach it with a…an addition?

Mr. Cella: We’re going to put wall, yeah.

Mr. Manley: Okay.

Mr. Cella: Construct a foundation and walls. And the map I prepared has the…has provisions for the accessory building which everything else meets all those requirements. Well actually the accessory structure is pre-existing, non-conforming slightly larger than it’s allowed to be, the footprint.

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

No response.

Chairperson Cardone: Anything else from the Board?

No response

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Cella: Thank you.

(Time Noted - 7:57 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:35 PM)

JAMES McWILLIAMS 48 FIFTH AVENUE, NBGH

(73-1-23) R-3 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of one side yard setback and accessory buildings shall be 10 feet from the main dwelling to build a kitchen addition (8x13) on the residence.

Chairperson Cardone: On the application of James McWilliams, 48 Fifth Avenue, seeking an area variance for increasing the degree of non-conformity of one side yard setback and accessory buildings shall be 10 feet from the main dwelling to build a kitchen addition (8x13) on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: I would just like to commend the applicant for going through the proper process to get his addition completed.

Chairperson Cardone: Right.

Mr. McKelvey: Because all the properties on Fifth Avenue are small.

Chairperson Cardone: Do we have a motion for approval?

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

Mr. Manley: I would second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

Mr. Cella: Thank you.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:36 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 7:57 PM)

MICHAEL & ELISA PODLAS 71 COCOA LANE, NBGH

(34-2-71.31) R-2 ZONE

Applicant is seeking an area variance for no building shall be closer to the fronting street than the main building to keep two prior built accessory buildings (12x24 & 12x24 storage/garages).

Chairperson Cardone: Our next applicant Michael & Elisa Podlas.

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

Mr. Maher: Madam Chair, Mr. Donovan, ironically I also received a Notice on this application a…I don’t feel there is any conflicts though for me.

Mr. Podlas: My name is Michael Podlas, this is my wife Elisa Podlas and we’re here for an area variance on a…two storage buildings that we put on the property 12 x 24 but they are considered part of the front yard.

Chairperson Cardone: It looked like there was some other building going on there.

Mr. Podlas: Well, oh, when you came actually a…I was building platforms for inside the house. There was no other building on the exterior. It was for inside, remodeling.

Chairperson Cardone: Okay, off to the…in the back of the house there was some kind of a metal structure, what was that for?

Mr. Podlas: The trampolines? I’m not sure.

Chairperson Cardone: Oh, maybe they…

Mr. Podlas: We have trampolines and there’s a shed in the back with trampolines on the side of it. I’m not sure if that’s what you’re referring to.

Chairperson Cardone: It just looked like a metal frame.

Mr. Podlas: It’s just trampolines next to the…are you talking about by the shed in the back or…? I’m not sure how far back you’re speaking of.

Chairperson Cardone: As you’re facing the house it would be all the way on the right hand side. It looked like a metal frame to me.

Mr. Podlas: Oh that’s a…a…like a tent, like a party tent, that was just a frame for a party tent. We didn’t have the canopy over it. That just collapses, you take it apart.

Chairperson Cardone: And the lumber was for something internal?

Mr. Podlas: Yes, inside the house.

Mr. Manley: Are they used at all to store vehicles, the sheds?

Mr. Podlas: Yeah, we a…I spoke with the Town, they mentioned it because I do have the garage doors on the front a…it’s basically for convenience, the garage doors, it’s open, it’s easier to get things out of there but it’s basically our house, with three girls, it’s shrinking so it’s basically for storage. So we have like some old furniture in there a…tools, I have work tools in there, hand tools, things like that.

Mr. Manley: Okay. All used for personal use then?

Mr. Podlas: Yes.

Mr. Manley: Any electric?

Mr. Podlas: No, not at all. No electric, no water, none of that. It’s just…it’s basically modeled after the Amish built storage buildings that they just come and drop on your property. That’s what it’s modeled after but there’s no electric or any of that.

Mr. Manley: What was the reason for picking the area that you’ve decided to locate them? Is there any reason why you picked that particular spot?

Mr. Podlas: Yeah, when we moved up here and we had the driveway done, we had like a little spot to the side there where they are for additional parking and it just seemed like the…the best choice for to if we wanted to get something out of the house go down the driveway. It’s convenience more than anything.

Ms. Podlas: The driveway was already like set to that spot so it was easiest to walk towards it.

Mr. Manley: Okay that’s why I asked if you kept a car in there because I thought perhaps with the driveway there you might store a vehicle in there.

Mr. Podlas: No, it’s not necessary and I think when I spoke with the Town regarding a Permit if this gets approved he mentioned that I would have to put a narrower doorway, that I’d have to close it up a little bit per Coding which is not a problem.

Chairperson Cardone: You had some other outstanding a…Permits that has expired. Have they been taken care of…for the pool and the pool deck?

Mr. Podlas: Yeah, the pool a…is basically held up because of the pool deck and that’s a whole nuther story but a…when we, I don’t know if you want to talk about it now…

Mr. Manley: Sure.

Mr. Podlas: …but when we had it built a…the footings, I guess there was an issue with the footings, the span for I’m not sure what it’s called but what holds up the deck a…the footings were too far apart according to the Town Code. The deck has been there for about nine years. They offered me the option to a…get a structurally sound certificate from an architect or something and it would be fine. They would disregard the span width a…but the deck has been there for at least nine years holding up strong. A…I…when it was built they told, the guy who constructed it told us it wasn’t an issue as far as the span but I guess, it was the Coding with the Town. But that…that’s the other thing, they gave us the go ahead for the footings, they came and inspected the footings but after it was already built that’s when we were advised that the…the a…span of the footings was too far apart.

Chairperson Cardone: Excuse me. Mr. Canfield, what would have to be done for that to be corrected these outstanding issues?

Mr. Canfield: The applicant has described the options that were presented to him a…evidently the Inspector that went observed what he felt to be a non-compliant issue with the spanning. The option is if you have a design professional who will certify structurally what’s there then the Town will accept that. If not, then I think you are going to have to re-dig and install the footings as per perhaps initially designed and submitted. So that’s your options.

Mr. Podlas: I mean, with all due respect, I mean the deck has been standing for over nine years, at least nine years. I think it’s kind of…it’s structurally sound just given the fact that it’s been up for so long. We have a lot of people over a…family and friends so it’s not like it’s just the two of us in the house using that deck…a…so I think that the test…test of time, I think, is just as good as that certificate that I’m going to have to pay at least five hundred dollars for.

Mr. Donovan: What we deal with is the test of the law though so…

Mr. Podlas: I understand.

Mr. Donovan: …but Mr. Canfield is not, his subjective analysis of whether his Department thinks it’s right or wrong nor is it the Town Zoning Ordinance. It’s the New York State Building Code and...

Mr. Podlas: I understand.

Mr. Donovan: …he and his Department have an obligation to enforce New York State Building Code.

Mr. Podlas: I understand that but the issue...that we’re in that issue because the Town failed to tell us this before a…the footings were actually poured. We found out about the span width being too far apart, according to the Code, after the deck was already put up and it was the Final Inspection they were coming for.

Mr. Donovan: I can tell you, you know I don’t doubt what you’re saying but I have no way to verify that. Just to be clear what the law is, let’s assume a…let’s assume that the Town made a mistake, if they did and they discover the mistake, they are duty bound to fix it.

Mr. Podlas: At my expense though?

Mr. Donovan: Well it should have been your expense to begin with.

Mr. Podlas: Right, but I’m incurring this expense because the Town failed to point something out to us before the deck was built.

Mr. Donovan: Okay, I understand your point; I don’t mean to be argumentative. You’re wrong.

Mr. Manley: Who built the deck, who built the deck? Was it…?

Mr. Podlas: It was a contractor.

Mr. Manley: Now the contractor is supposed to know the Building Code.

Mr. Masten: Yes.

Mr. Podlas: Right, but the Permit was…she wants to say something but the Permit was given to us.

Ms. Podlas: I don’t know…

Mr. Manley: The Town issues hundreds of Building Permits and it’s…it’s the reliance of the contractor to know the Code. The Town just simply goes out to verify that the contractor acted within the course of the Code and if the contractor didn’t build it correctly, let’s say, the Town only points it out to the home owner…hey, this is…this is not proper.

Ms. Podlas: So is it correct for the Town to approve blueprints and give you a Permit and let you build that and then say…no, that’s wrong? That’s what happened. And then we had two different a…Inspectors come to the house. One pointed out the footings were wrong, the second one mentioned nothing about the footings and then the original one came back he said the footings were wrong. And then I asked him…well, how come the second person that was here never mentioned anything? He said well, it’s my opinion, I’m not an engineer but it’s my opinion that these are wrong. So blueprints were approved by…from our contractor, submitted to the Town, the Town approved it, gave us the Permit. Then he built it and then we were told no it was wrong. That’s they only point that we’re making.

Chairperson Cardone: Did they say the blueprints were wrong or…

Ms. Podlas: No, they didn’t.

Chairperson Cardone: …the way it was constructed?

Ms. Podlas: No.

Chairperson Cardone: That’s what I’m asking. Maybe it wasn’t constructed according to the blueprints.

Mr. Podlas: The only issue was the footings but the footings match, if you look at what’s there now; it matches exactly with what the Town was given when we filed for the Permit.

Mr. Donovan: Just…just, the point is New York State Building Code has requirements, either they were met or they weren’t met. What…what somebody may have said or not have said is not the determinative issue. It’s whether or not it complies with New York State Building Code.

Mr. Podlas: That Building Code…I mean they dismiss the Building Code if we have a…a letter from an architect saying it’s structurally sound?

Mr. Donovan: Well I don’t think…

Mr. Podlas: (Inaudible)

Mr. Donovan: …that a registered architect is going to say it’s structurally sound unless it meets New York State Building Code but…

Mr. Podlas: Okay.

Mr. Manley: I think that’s what Mr. Canfield said, if you get something from an engineer that says that that is perfectly fine the way it is, more than like then he’ll accept that based on…

Mr. Podlas: But if…

Mr. Manley: …the documentation that you provide.

Mr. Podlas: But if there’s one Code there shouldn’t mean…if the Town is saying it’s not going to be good, why am I paying someone to tell me the same thing…if it’s one Code that they’re both following?

Mr. Manley: They are the professionals.

Mr. Podlas: Just and it’s…

Mr. Manley: It’s their license and their insurance would if something happens that engineer or architect is on the hook. It’s their liability then, not the Town’s liability.

Mr. Podlas: So you’re just looking to put off the liability on to someone else? Basically.

Mr. Manley: It’s not about…it’s not a matter of liability, it’s a matter of somebody certifying it.

Mr. Canfield: If I may ask something or…? I didn’t realize that this was going to be an issue on the application that’s before you. I can tell you though that I am not prepared to comment on what or did or did not happen. What I would like to propose for the Board a…to kind of assist them is if they would like to table this item, if the Board choses, that this is an item that will reflect on their decision on the application before you I would like to be given the opportunity and a chance to research what the applicant is claiming and also research what my Inspectors have found and then give the Board a chronological order of events and to verify the allegations that are being made tonight…

Chairperson Cardone: I would appreciate that.

Mr. Canfield: …I think that would be appropriate.

Mr. Podlas: Sounds good to me. I sure it’s going to haunt me if I don’t take care of it so I’d like to just get it all said and done with.

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

No response.

Chairperson Cardone: Would we have that information by next months’ meeting, do you think?

Mr. Canfield: Yes, I can.

Chairperson Cardone: Okay. Do we have a motion hold this Hearing open until our next meeting which is September…?

Ms. Gennarelli: September 25th.

Chairperson Cardone: 25th.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Mr. Manley: Just one thing if the Code Compliance does run where they need extra time then just next month we’ll…we have to extend it again, till we have the information, if something comes up or there is an emergency or something, we’ll just…you know, we can always wait another…

Mr. Canfield: I appreciate that, thank you.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Now if there is anyone here that is interested in that application you will not be re-noticed but we will be meeting September the 25th the fourth Thursday in September. Is there anyone here that would like to comment on that application?

No Response.

Chairperson Cardone: So we will see you September 25th

Mr. Podlas: Thank you.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:10 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 8:10 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

(66-2-3) I / B ZONE

Applicant is seeking a use variance to allow a personal service business in an I / B Zone to convert an existing single-family dwelling into a hair salon.

Chairperson Cardone: Our next applicant Jin (Kanjanakiritumrong) Grabek. Okay this was held over from our July meeting. Did you…?

Mr. Doce: Just waiting to see if you were ready.

Chairperson Cardone: We’re ready.

Mr. Doce: Ladies, gentlemen, my name is Vince Doce. I have an engineering surveying business located in the Town of Newburgh and we’re here to represent a…our client, Jin Grabek, on her application to place a hairdressing salon on Meadow Avenue in the Town of Newburgh on the South side adjacent to the existing a…Minimart. Now, so as to refrain from unnecessarily using more of the Board’s time that you generously afforded thus far may I just respectfully, repugnantly, perhaps passionately summarize our position to date? We previously discussed the following documents at the July meeting: we presented our ZBA application and the attendant arguments including those for hardship and those that showed there would be no change in the neighborhood and things that are a…boiler plate attendant to these types of applications. We presented the a…a evaluation report by a very well respected local real estate professional that a…the Board asked us to have notarized, signed and notarized and we did so. That has been presented to the Board a couple of weeks ago. We also reported a report from an accountant and of course we submitted our entire ZBA presentation that everybody patiently a…entertained. We were at a point a…where we were discussing or the…the merits of the application when the Board a…voted to table the application as such time as we could present the a…notarized Fowler report. Now if you would please I just ask for a few more minutes of long suffering so that I can summarize our position somewhat to date. The Town planning board asserted that my client’s intention to operate a hair and beauty salon in the building she owns on Meadow Avenue is not to be entertained because of the need for use and area variances. The Town correctly found that my client’s building is presently located with an Interchange Business zone, an I/B zone. The Town alleges that my client’s business, a hairdresser and beauty salon is a personal service business. I’d like to point out that there’s no definition given for a personal service store or business in the Town regulations. There are a…definitions given for almost every other conceivable use so that is a…a…a…a…description of what that would be a personal service a...does not appear. However, let us assume that my client is operating a personal business which would be like a tailor, a…a…masseuse, a hairdresser, a nail salon, a number of other a…uses that are particularly attendant to the personal needs of the public. Now the Town further found, rather inexplicable to me, that personal services business…businesses are not allowed in an I/B zone. I would argue for my client somewhat as follows: The Town has allowed a number of personal service businesses to operate in the I/B zone even at present. Said businesses are opening, operating very openly and are obvious to anyone with an experienced professional eye. A…personal service store, in fact, a hairdresser operated for a number of years in the building located next door to my client’s building. Other non-compliant business are operating in I/B zones around the Town within a stones through there is a…a a…a hairdresser, there is a eyebrow waxing, threading, facials a…there’s a number of other a…personal service businesses operating in free-standing buildings or semi-free-stand a duplex, something of that nature. A…eyebrow waxers, health spa, travel agent, tailors, hair salon a…masseuse, a…things of that nature. Now I would submit that by not enforcing what the Town believes to be the law against the operation of personal service stores within an I/B zone the Town is and in fact informing and implying to the public that said personal services stores are in fact allowed in…within the I/B zone…

Chairperson Cardone: I have to stop you right there because that’s not a fact. If any business is operating outside of the law of the Town and is reported to Code Compliance it is addressed. If there are places that have not been reported Code Compliance is going out searching for the places but has to depend upon places being reported. They are not targeting certain places.

Mr. Doce: No, Grace I’m not arguing that point. What I’m saying is my client seeing them operating and now I know all the arguments that have been made and where John said, all I’m saying is my client would not recognize that what she was wanting to do wasn’t permitted because she saw one operating next door and not being stopped. That’s the only point I’m making at this time. She just didn’t recognize it. She saw one operating. She said I’ll buy this building, a building next door and do the exact same thing. I am pointing that there is some justification to her feeling because the Town didn’t shut down any of these buildings even though they’re rather open and notorious. If I could just proceed on from there I’d just like to make…

Mr. Manley: But would it be an affirmative defense for someone to say, ‘well, everybody else was doing seventy-five miles an hour on Union Avenue so a…I know the speed limit, now I see the sign says forty-five but because everybody else was doing it it was okay for me to do seventy-five, Officer’. Is that, is that an affirmative defense?

Mr. Doce: What I’m saying as you mentioned yourself before some people fly in the face of the law fully knowing it and they fly in the face. I’m pointing out there are reasons why she cannot be said to be flying in the face of the law. There’s legitimate reason why she would be doing herself. Whether it’s an affirmative I haven’t gotten to that point. Alls I’m saying…I want to point out she just didn’t know and she had every reason, in her mind, to believe that she could do what she wanted to do. That’s what I’m saying at this point. If I could continue, I would just like to wrap it up because I don’t want to take a lot of your time. Now, beyond the free-standing or semi-freestanding personal service businesses that I just mentioned there is a vast number of personal service businesses operating in mini malls and shopping centers. Now, the question that she posed and it’s a legitimate question, under what color are those personal service businesses allowed to operate in an I/B zone in a mini mall or a shopping center when she can’t operate in her own business? And that’s not a rhetorical question, I’m just asking under what color are they being allowed to operate? And there are a vast number of them. And is there…can I get…can I just get…? So we settle our minds as to what we should do next. Is there a reason they’re allowed to operate in these mini malls and shopping centers? They are allowed to operate there, in fact, some of the members of the Town said yeah, that’s where they should be.

Chairperson Cardone: Mr. Canfield, do you have a response to that question?

Mr. Canfield: Oh, I most certainly do.

Chairperson Cardone: Thank you.

Mr. Canfield: I’m not sure the relevance of what they’re relationship of that question to this application is. Okay. However, if Mr. Doce would like to challenge the Bulk Use Tables and what can and can’t be, if you would send my office in writing what you’re questions are I’d be certain to respond to them. Okay.

Mr. Doce: Well what I’m really asking is quite…it doesn’t need a lot of research, I mean they are allowed in the I/B zone, that’s where people are told to put their personal services businesses, in the shopping centers, in the mini malls and I’m asking not the Bulk Tables, not the Use Tables, I’m asking why are they allowed in the mini malls and the shopping centers and not on free-standing locations?

Mr. Canfield: Again, Counsel can advise the Board on this but in my opinion, response to your question has nothing to do with this application.

Mr. Manley: I…I would tend to agree with Mr. Canfield and this is not the platform for a soliloquy from Mr. Doce on…on the Zoning Code. I think what you need to do is present your case for the applicant as best you can and the Board will consider your comments and your, you know, your evidence that you provide the Board and we’ll make a decision based on that but…

Mr. Donovan: Am I…at the risk of…I understand you don’t want to go on to long, neither do I but, are you saying that personal service is allowed in the I/B Zone?

Mr. Doce: In shopping centers and in…which I’m told they’re allowed in shopping centers in I/B and obviously they are…

Mr. Donovan: I’m just, Jerry I’m looking…I’m sorry…I’m looking at the I/B Use Bulk Table. I mean, am I missing something? I don’t see personal service as a permitted use as a stand-alone permitted use.

Mr. Doce: No, when…when these mini malls and shopping centers come before the planning board they are approved personal service stores. There’s any number of hairdressers…

Mr. Donovan: I guess I’m just not understanding your argument. Is your argument that personal service is allowed in the I/B zone because all I’m saying is I don’t see it in the Bulk Tables.

Mr. Doce: I’m saying that I am advised by the planning board and have been over the years that personal service stores are allowed in the shopping centers and mini malls. And if you go into any mini mall or shopping center you’ll see personal service stores and they’re not…you know, they’re not cited for being there. They’re…they’re there. I mean that’s what…

Chairperson Cardone: They are also not stand-alone. They’re also not a stand-alone.

Mr. Doce: What’s the difference of a mall and a stand-alone? Let me read you something if I could, please? Because again, I get emotional over this because I see this woman who has saved and scrapped every penny for years to open up what’s her dream and I see…

Chairperson Cardone: And was informed that it was not allowed in that particular location.

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Chairperson Cardone: It’s my understanding that when went to the a…Building Office, she was informed that it was not allowed at that location and was not supposed to make any changes to the property. Is that correct Mr. Canfield? Am I right?

Mr. Canfield: Yes it is. Yes it is. And should the planning or Zoning Board choose a…I can have the Inspector that spoke with the applicant with their real estate agent and advised them that this was not permitted there and if the Zoning Board would like that we can provide you with an affidavit with that statement.

Mr. Doce: I’m not disputing that I’m saying she…

Chairperson Cardone: I would like that.

Mr. Doce: …didn’t know that.

Mr. Canfield: Also if I may Mr. Doce, that’s quite the contrary to what you said earlier.

Mr. Doce: What?

Mr. Canfield: You had made the statement that your client was totally unaware of what she could or couldn’t do with this property. And she was advised prior to purchasing.

Mr. Doce: (Inaudible)

Mr. Canfield: I just want to clarify that point that you made earlier.

Mr. Doce: No, that isn’t what I said. I said she did not know when she purchased this property and intended to put her hairdresser there. She found out when she went to your board to do some work within the building. She had already owned the…the property.

Mr. Canfield: She had already owned it and come into the office with the real estate agent? At that point?

Mr. Doce: I don’t know…I don’t know what had happened at that point.

Mr. Canfield: Well I think you may need to research that because it’s my recollection of the account of events that prior to purchasing she came in with the real estate agent.

Mr. Doce: I do not believe that was the case. I mean…

Mr. Canfield: And that’s what I will provide the Zoning Board with, an affidavit (Inaudible)

Mr. Doce: She’s nodding here, just so I can say…she’s saying that she went there after she bought it. She’s not arguing any of these points. I’m just trying to put it in perspective what her understanding of the situation is.

Mr. Canfield: And trust me I’m not trying to argue with you either. I just would like the record to reflect the actual events.

Mr. Doce: Yes. Let us leave that she says she bought it, she owned it before she real…was told that she couldn’t use it and she found out that she couldn’t use it by going to the board saying, I’m going to do work in here, what kind of Permits do I need. And that’s when she found out. She went to another engineer a…and then a…then she came to us and that’s it. But let us accept that, I mean, this…this…

Mr. Canfield: If I could just also add something and I’m not going to prolong this but. Again, for the record, the applicant was advised she couldn’t do any work, the proposed use was not permitted but there was work that was continually done and which a Stop Work Order was done and there was site work to the outside of the building done also, without any Permits. So that’s part of the reason why the application is even here…

Mr. Doce: Yeah.

Mr. Canfield: …but again, not to prolong it Vince, I just want to get that into the record.

Mr. Doce: Alls I’m telling you, quite factually, as I’ve met…this Board knows every time I’ve come to them and several years ago I came to this Board in a very painful situation when I stood before the Board when it appeared it was somebody else’s fault that a variances was needed and I stood before this Board and says it is not their fault, my firm advised them to do it the way they did and my firm made a mistake. So we’re quite willing to admit to that and we have in the past. So I…I…there is no way that I would ever mislead this Board. I…there may be things I don’t understand but that’s not the point at question. It’s generally accepted I think Jerry that personal service stores can operate in the shopping center or mini mall. Is that not the case? I mean, they’re all over…

Mr. Canfield: You keep hammering that point and again I’m going maintain I’m going to properly research whatever your request is in writing and I’ll answer you.

Mr. Doce: All right. Let us just say then there are personal service stores, there’s shoe shops in the Newburgh Mall, there, I mean shoe repair. There’s nail salons, there’s hairdressers, there’s stores in…in mini malls and shopping centers.

Mr. McKelvey: Not stand-alone.

Mr. Doce: There in it I just…

Mr. McKelvey: Not stand-alone.

Mr. Doce: I’m saying…there are some standing-alone but John the point I’m making there in mini malls and shopping centers. And I’m asking why are they there?

Mr. McKelvey: He’s telling you what to do.

Mr. Doce: Okay but alls I’m saying, presenting to this Board, why are they there? Now to cut to the chase if they are allowed there in shopping cen…and if they didn’t have em there you’d have em almost no place. They’d wouldn’t be…they’d be almost non-existent. You have to have em some place. In an I/B zone is a business zone and it’s the most logical place or one of the logical places that you would have hairdressers, shoe repair, travel agents, tailors, whatever. They’d be in an I/B zone. The question here is my client is being told she can’t have it in the I/B zone and we’re trying see if we can justify that she can have it. But you…you said and rightfully so that they’re in the…you’re feeling is that they’re in the mini mall or a shopping center. Okay, I’m saying the Town has viewed that as being okay or it must be they’re…I mean, they’re all over the Town in shopping centers and mini malls. The point is this if I could cut to the chase. The point is exactly this, in this matter a mini mall is a group of four to six…your Town…not your but the Town a…definition, a mini mall is a group of four to six stores retail stores, shops or similar commercial establishment otherwise permitted within that zoning district. In other words, they’re saying you can have it in the mini mall because it’s allowed someplace else allowed in the district. And if that’s the case, then what am I doing here? She wants to do it in someplace else in the district, shopping center the same kind of verbiage. Shopping center says…a group of stores, shops or similar commercial establishments otherwise permitted within the zoning district, again otherwise permitted within the zoning district, you can have a personal service store and many eye…and many minds in the Town you can have a personal service store in a shopping center because it’s allowed in that zone elsewhere. Now, nowhere in your zoning does it preclude having it, it just doesn’t give it as a permitted use when they listed the I/B zone. What I’m saying here is, if that in fact is the case, they are being allowed in shopping centers and mini malls because they are allowed in the I/B district then we are the I/B district. We are asking for the same treatment. We’re saying, the mall allows it because it’s allowed in the I/B district, we’re in an I/B district, we should have that granted. Unless this is straighted out, it’s going to be havoc in the Town. All these people that are operating in malls that were allowed to go in there, that got they’re building permits to put their hairdressers, their barbershops in malls, they’re not operating legally if this is not allowed in the rest of the I/B district. I don’t know if I can make it any clearer than that but that is what we arguing. We were sent here; you’ll recall I said, to…to get a use and area variance. I submit that if…if…if we can get an area variance and that’ll do the job I accept that. But I think it’s much simpler. I think a determination by this Board that they are allowed, period, under what I’ve argued or whatever someone can more eloquently argue than I am then it’s your opinion, your rendered opinion, my client can do what she…have her personal service store. I’m saying it’s not necessary perhaps to get a use variance. Just recognize what is either defacto, implied or what was meant in the zoning. You can say what was meant in the zoning. This Board can say, yes, they were meant to be in an I/B zone. They were meant to be in a…in a mini mall and if that’s the case then the only way you can do that is to have them allowed elsewhere in the zone. Again, as I’ve said before, this is very personal to me because I just can’t believe that this woman has come to sixty years old, come to this point and she has no relief. Yes it is personal. I’ll answer any other questions, discuss anything you want but I feel strongly that we have an argument here. And now that I’ve said…put everybody to sleep here.

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

Mr. McKelvey: Have you been…have you been involved with this right from the beginning?

Mr. Doce: I…no, I wasn’t involved. It came to me after they had been told they had to get the variance and they asked me to go to the planning board and the planning board agreed that they…they found that they needed the variance for the reasons I cited but I can assure everybody here that what I tell you is exactly the way I understand it. There is no way I’m going to move…tell you, imply to you or leave it open to inference, anything that isn’t exactly the way I say it is for I believe this.

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

Ms. Nelson: My name is Nona Nelson. I see her work very, very hard; always pay the rent, all the money go to the landlord. I bought that building, I’m her sister, I saw its commercial zone. It’s America…Bank America over there and a Citizen back over here and across is big building, all in commercial. I bought that her so she didn’t have to pay the rent anymore. So she can retire in ten year and then when I saw the backyard, then a dentist, then another lawyer in her private home in the backyard. I look right through. Wow, what they do…and that allow me to do, build…build a salon in…in this place because…because of the surrounding commercial, everything. Maybe she get more a… (Inaudible)…more customers so she make more money for retire in the future, ten years from now. She wouldn’t have to work anymore. She…she pay for the landlord every month and broke. What a life she has. She bought the building because around and around, could I have…I’m fortunate, I have cash, more cash than she has. I married well. I live well, eat well, not my sister. She works seven days a week from 8 sometimes to 10, 9 to 9, what a (inaudible) she can have her money to pay the rent. That’s very, very difficult. I even take care of her son from one months old so she can work. And I really want you to grant her variance because next door is a commercial. I stay there, so they open the Dairy Mart department, the car pull in, pull out non-stop, the radio play on. And nobody can stay there and live there or sleep there. So I said that’s a very good idea. You can just have a beauty salon. Maybe you have more customer. Maybe you have more money left, ten year from now you can retire well. I have no…otherwise I wouldn’t buy it. If the banks not there, the commercial buildings are there they cannot deny you that that all…I never know that your order or person (inaudible) will say she cannot do it, I don’t know. Nobody can…the poor couple, all people who live there they have to move. There is no peace; nobody can live except do some other thing like commercial business. That’s all I can say. Please allow the variance to have a beauty salon. Ten year from now she’ll retire. Fifty-nine years old what else she can…she can do next? Can’t work for the landlord, pay the landlord every month and go broke.

Mr. Doce: Thank you very much for time. A…I hope you understand what I said, one bottom line would be if they’re allowed in the Newburgh Mall or any other mini mall or any other shopping center then by your own definitions in the Zoning it has to be allowed on my client’s property. If it is not allowed on my client’s property then everybody operating in those mini malls and shopping centers will have to be cited. A…I don’t treat this lightly because I realize when I researched this, when I got into the B Zone a whole other pleather of confusion operates where you have two, three, four a…business operating in one building and it’s not clearly covered in the Zone. I’m not trying to release a Pandora’s Box but I’m saying that item by item, step by step, in fairness and in justice I think we have to start addressing it. Of course, I want my client’s problem addressed first. To delay it would just be unreasonable because well justice delayed is justice denied. Thank you very much for your time.

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

No response.

Chairperson Cardone: Do we have a motion to keep the Public Hearing open so that we may get the affidavit?

Mr. Doce: You have the affidavit.

Chairperson Cardone: I’m talking about from Mr. Canfield.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you. This will be held open to September the 25th.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:40 PM)

**Same minutes used for both the use variances and the area variances**

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 8:10 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

(66-2-3) I / B ZONE

Applicant is seeking area variances for the lot area, the lot width, one side yard setback, the combined side yards setback and accessory structures setback to convert an existing single-family dwelling into a hair salon in an I / B Zone.

Chairperson Cardone: Our next applicant Jin (Kanjanakiritumrong) Grabek. Okay this was held over from our July meeting. Did you…?

Mr. Doce: Just waiting to see if you were ready.

Chairperson Cardone: We’re ready.

Mr. Doce: Ladies, gentlemen, my name is Vince Doce. I have an engineering surveying business located in the Town of Newburgh and we’re here to represent a…our client, Jin Grabek, on her application to place a hairdressing salon on Meadow Avenue in the Town of Newburgh on the South side adjacent to the existing a…Minimart. Now, so as to refrain from unnecessarily using more of the Board’s time that you generously afforded thus far may I just respectfully, repugnantly, perhaps passionately summarize our position to date? We previously discussed the following documents at the July meeting: we presented our ZBA application and the attendant arguments including those for hardship and those that showed there would be no change in the neighborhood and things that are a…boiler plate attendant to these types of applications. We presented the a…a evaluation report by a very well respected local real estate professional that a…the Board asked us to have notarized, signed and notarized and we did so. That has been presented to the Board a couple of weeks ago. We also reported a report from an accountant and of course we submitted our entire ZBA presentation that everybody patiently a…entertained. We were at a point a…where we were discussing or the…the merits of the application when the Board a…voted to table the application as such time as we could present the a…notarized Fowler report. Now if you would please I just ask for a few more minutes of long suffering so that I can summarize our position somewhat to date. The Town planning board asserted that my client’s intention to operate a hair and beauty salon in the building she owns on Meadow Avenue is not to be entertained because of the need for use and area variances. The Town correctly found that my client’s building is presently located with an Interchange Business zone, an I/B zone. The Town alleges that my client’s business, a hairdresser and beauty salon is a personal service business. I’d like to point out that there’s no definition given for a personal service store or business in the Town regulations. There are a…definitions given for almost every other conceivable use so that is a…a…a…a…description of what that would be a personal service a...does not appear. However, let us assume that my client is operating a personal business which would be like a tailor, a…a…masseuse, a hairdresser, a nail salon, a number of other a…uses that are particularly attendant to the personal needs of the public. Now the Town further found, rather inexplicable to me, that personal services business…businesses are not allowed in an I/B zone. I would argue for my client somewhat as follows: The Town has allowed a number of personal service businesses to operate in the I/B zone even at present. Said businesses are opening, operating very openly and are obvious to anyone with an experienced professional eye. A…personal service store, in fact, a hairdresser operated for a number of years in the building located next door to my client’s building. Other non-compliant business are operating in I/B zones around the Town within a stones through there is a…a a…a hairdresser, there is a eyebrow waxing, threading, facials a…there’s a number of other a…personal service businesses operating in free-standing buildings or semi-free-stand a duplex, something of that nature. A…eyebrow waxers, health spa, travel agent, tailors, hair salon a…masseuse, a…things of that nature. Now I would submit that by not enforcing what the Town believes to be the law against the operation of personal service stores within an I/B zone the Town is and in fact informing and implying to the public that said personal services stores are in fact allowed in…within the I/B zone…

Chairperson Cardone: I have to stop you right there because that’s not a fact. If any business is operating outside of the law of the Town and is reported to Code Compliance it is addressed. If there are places that have not been reported Code Compliance is going out searching for the places but has to depend upon places being reported. They are not targeting certain places.

Mr. Doce: No, Grace I’m not arguing that point. What I’m saying is my client seeing them operating and now I know all the arguments that have been made and where John said, all I’m saying is my client would not recognize that what she was wanting to do wasn’t permitted because she saw one operating next door and not being stopped. That’s the only point I’m making at this time. She just didn’t recognize it. She saw one operating. She said I’ll buy this building, a building next door and do the exact same thing. I am pointing that there is some justification to her feeling because the Town didn’t shut down any of these buildings even though they’re rather open and notorious. If I could just proceed on from there I’d just like to make…

Mr. Manley: But would it be an affirmative defense for someone to say, ‘well, everybody else was doing seventy-five miles an hour on Union Avenue so a…I know the speed limit, now I see the sign says forty-five but because everybody else was doing it it was okay for me to do seventy-five, Officer’. Is that, is that an affirmative defense?

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Chairperson Cardone: Mr. Canfield, do you have a response to that question?

Mr. Canfield: Oh, I most certainly do.

Chairperson Cardone: Thank you.

Mr. Canfield: I’m not sure the relevance of what they’re relationship of that question to this application is. Okay. However, if Mr. Doce would like to challenge the Bulk Use Tables and what can and can’t be, if you would send my office in writing what you’re questions are I’d be certain to respond to them. Okay.

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Mr. Donovan: Am I…at the risk of…I understand you don’t want to go on to long, neither do I but, are you saying that personal service is allowed in the I/B Zone?

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Mr. Donovan: I’m just, Jerry I’m looking…I’m sorry…I’m looking at the I/B Use Bulk Table. I mean, am I missing something? I don’t see personal service as a permitted use as a stand-alone permitted use.

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Mr. Doce: I’m not disputing that I’m saying she…

Chairperson Cardone: I would like that.

Mr. Doce: …didn’t know that.

Mr. Canfield: Also if I may Mr. Doce, that’s quite the contrary to what you said earlier.

Mr. Doce: What?

Mr. Canfield: You had made the statement that your client was totally unaware of what she could or couldn’t do with this property. And she was advised prior to purchasing.

Mr. Doce: (Inaudible)

Mr. Canfield: I just want to clarify that point that you made earlier.

Mr. Doce: No, that isn’t what I said. I said she did not know when she purchased this property and intended to put her hairdresser there. She found out when she went to your board to do some work within the building. She had already owned the…the property.

Mr. Canfield: She had already owned it and come into the office with the real estate agent? At that point?

Mr. Doce: I don’t know…I don’t know what had happened at that point.

Mr. Canfield: Well I think you may need to research that because it’s my recollection of the account of events that prior to purchasing she came in with the real estate agent.

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Mr. Canfield: And that’s what I will provide the Zoning Board with, an affidavit (Inaudible)

Mr. Doce: She’s nodding here, just so I can say…she’s saying that she went there after she bought it. She’s not arguing any of these points. I’m just trying to put it in perspective what her understanding of the situation is.

Mr. Canfield: And trust me I’m not trying to argue with you either. I just would like the record to reflect the actual events.

Mr. Doce: Yes. Let us leave that she says she bought it, she owned it before she real…was told that she couldn’t use it and she found out that she couldn’t use it by going to the board saying, I’m going to do work in here, what kind of Permits do I need. And that’s when she found out. She went to another engineer a…and then a…then she came to us and that’s it. But let us accept that, I mean, this…this…

Mr. Canfield: If I could just also add something and I’m not going to prolong this but. Again, for the record, the applicant was advised she couldn’t do any work, the proposed use was not permitted but there was work that was continually done and which a Stop Work Order was done and there was site work to the outside of the building done also, without any Permits. So that’s part of the reason why the application is even here…

Mr. Doce: Yeah.

Mr. Canfield: …but again, not to prolong it Vince, I just want to get that into the record.

Mr. Doce: Alls I’m telling you, quite factually, as I’ve met…this Board knows every time I’ve come to them and several years ago I came to this Board in a very painful situation when I stood before the Board when it appeared it was somebody else’s fault that a variances was needed and I stood before this Board and says it is not their fault, my firm advised them to do it the way they did and my firm made a mistake. So we’re quite willing to admit to that and we have in the past. So I…I…there is no way that I would ever mislead this Board. I…there may be things I don’t understand but that’s not the point at question. It’s generally accepted I think Jerry that personal service stores can operate in the shopping center or mini mall. Is that not the case? I mean, they’re all over…

Mr. Canfield: You keep hammering that point and again I’m going maintain I’m going to properly research whatever your request is in writing and I’ll answer you.

Mr. Doce: All right. Let us just say then there are personal service stores, there’s shoe shops in the Newburgh Mall, there, I mean shoe repair. There’s nail salons, there’s hairdressers, there’s stores in…in mini malls and shopping centers.

Mr. McKelvey: Not stand-alone.

Mr. Doce: There in it I just…

Mr. McKelvey: Not stand-alone.

Mr. Doce: I’m saying…there are some standing-alone but John the point I’m making there in mini malls and shopping centers. And I’m asking why are they there?

Mr. McKelvey: He’s telling you what to do.

Mr. Doce: Okay but alls I’m saying, presenting to this Board, why are they there? Now to cut to the chase if they are allowed there in shopping cen…and if they didn’t have em there you’d have em almost no place. They’d wouldn’t be…they’d be almost non-existent. You have to have em some place. In an I/B zone is a business zone and it’s the most logical place or one of the logical places that you would have hairdressers, shoe repair, travel agents, tailors, whatever. They’d be in an I/B zone. The question here is my client is being told she can’t have it in the I/B zone and we’re trying see if we can justify that she can have it. But you…you said and rightfully so that they’re in the…you’re feeling is that they’re in the mini mall or a shopping center. Okay, I’m saying the Town has viewed that as being okay or it must be they’re…I mean, they’re all over the Town in shopping centers and mini malls. The point is this if I could cut to the chase. The point is exactly this, in this matter a mini mall is a group of four to six…your Town…not your but the Town a…definition, a mini mall is a group of four to six stores retail stores, shops or similar commercial establishment otherwise permitted within that zoning district. In other words, they’re saying you can have it in the mini mall because it’s allowed someplace else allowed in the district. And if that’s the case, then what am I doing here? She wants to do it in someplace else in the district, shopping center the same kind of verbiage. Shopping center says…a group of stores, shops or similar commercial establishments otherwise permitted within the zoning district, again otherwise permitted within the zoning district, you can have a personal service store and many eye…and many minds in the Town you can have a personal service store in a shopping center because it’s allowed in that zone elsewhere. Now, nowhere in your zoning does it preclude having it, it just doesn’t give it as a permitted use when they listed the I/B zone. What I’m saying here is, if that in fact is the case, they are being allowed in shopping centers and mini malls because they are allowed in the I/B district then we are the I/B district. We are asking for the same treatment. We’re saying, the mall allows it because it’s allowed in the I/B district, we’re in an I/B district, we should have that granted. Unless this is straighted out, it’s going to be havoc in the Town. All these people that are operating in malls that were allowed to go in there, that got they’re building permits to put their hairdressers, their barbershops in malls, they’re not operating legally if this is not allowed in the rest of the I/B district. I don’t know if I can make it any clearer than that but that is what we arguing. We were sent here; you’ll recall I said, to…to get a use and area variance. I submit that if…if…if we can get an area variance and that’ll do the job I accept that. But I think it’s much simpler. I think a determination by this Board that they are allowed, period, under what I’ve argued or whatever someone can more eloquently argue than I am then it’s your opinion, your rendered opinion, my client can do what she…have her personal service store. I’m saying it’s not necessary perhaps to get a use variance. Just recognize what is either defacto, implied or what was meant in the zoning. You can say what was meant in the zoning. This Board can say, yes, they were meant to be in an I/B zone. They were meant to be in a…in a mini mall and if that’s the case then the only way you can do that is to have them allowed elsewhere in the zone. Again, as I’ve said before, this is very personal to me because I just can’t believe that this woman has come to sixty years old, come to this point and she has no relief. Yes it is personal. I’ll answer any other questions, discuss anything you want but I feel strongly that we have an argument here. And now that I’ve said…put everybody to sleep here.

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

Mr. McKelvey: Have you been…have you been involved with this right from the beginning?

Mr. Doce: I…no, I wasn’t involved. It came to me after they had been told they had to get the variance and they asked me to go to the planning board and the planning board agreed that they…they found that they needed the variance for the reasons I cited but I can assure everybody here that what I tell you is exactly the way I understand it. There is no way I’m going to move…tell you, imply to you or leave it open to inference, anything that isn’t exactly the way I say it is for I believe this.

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

Ms. Nelson: My name is Nona Nelson. I see her work very, very hard; always pay the rent, all the money go to the landlord. I bought that building, I’m her sister, I saw its commercial zone. It’s America…Bank America over there and a Citizen back over here and across is big building, all in commercial. I bought that her so she didn’t have to pay the rent anymore. So she can retire in ten year and then when I saw the backyard, then a dentist, then another lawyer in her private home in the backyard. I look right through. Wow, what they do…and that allow me to do, build…build a salon in…in this place because…because of the surrounding commercial, everything. Maybe she get more a…(inaudible)…more customers so she make more money for retire in the future, ten years from now. She wouldn’t have to work anymore. She…she pay for the landlord every month and broke. What a life she has. She bought the building because around and around, could I have…I’m fortunate, I have cash, more cash than she has. I married well. I live well, eat well, not my sister. She works seven days a week from 8 sometimes to 10, 9 to 9, what a (inaudible) she can have her money to pay the rent. That’s very, very difficult. I even take care of her son from one months old so she can work. And I really want you to grant her variance because next door is a commercial. I stay there, so they open the Dairy Mart department, the car pull in, pull out non-stop, the radio play on. And nobody can stay there and live there or sleep there. So I said that’s a very good idea. You can just have a beauty salon. Maybe you have more customer. Maybe you have more money left, ten year from now you can retire well. I have no…otherwise I wouldn’t buy it. If the banks not there, the commercial buildings are there they cannot deny you that that all…I never know that your order or person (inaudible) will say she cannot do it, I don’t know. Nobody can…the poor couple, all people who live there they have to move. There is no peace; nobody can live except do some other thing like commercial business. That’s all I can say. Please allow the variance to have a beauty salon. Ten year from now she’ll retire. Fifty-nine years old what else she can…she can do next? Can’t work for the landlord, pay the landlord every month and go broke.

Mr. Doce: Thank you very much for time. A…I hope you understand what I said, one bottom line would be if they’re allowed in the Newburgh Mall or any other mini mall or any other shopping center then by your own definitions in the Zoning it has to be allowed on my client’s property. If it is not allowed on my client’s property then everybody operating in those mini malls and shopping centers will have to be cited. A…I don’t treat this lightly because I realize when I researched this, when I got into the B Zone a whole other pleather of confusion operates where you have two, three, four a…business operating in one building and it’s not clearly covered in the Zone. I’m not trying to release a Pandora’s Box but I’m saying that item by item, step by step, in fairness and in justice I think we have to start addressing it. Of course, I want my client’s problem addressed first. To delay it would just be unreasonable because well justice delayed is justice denied. Thank you very much for your time.

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

No response.

Chairperson Cardone: Do we have a motion to keep the Public Hearing open so that we may get the affidavit?

Mr. Doce: You have the affidavit.

Chairperson Cardone: I’m talking about from Mr. Canfield.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you. This will be held open to September the 25th.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:40 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 9:39 PM)

C D & SONS CONSTRUCTION CORP. 12 BANNERMAN VIEW DRIVE, NBGH

(22-4-6) R-3 ZONE

Applicant is seeking area variances for Lot #1 (Building Permit #13-0428) for one side yard setback and the minimum lot width and for Lot #2 for the minimum lot width for a proposed Two-lot subdivision.

Chairperson Cardone: Okay, on the Reserved Decision for C D & Sons Construction, I received an e-mail today and they have asked for an extension until our September meeting where they feel that they will have all of the documentation that they need to proceed.

Mr. McKelvey: A…give them one more month.

Mr. Manley: I have a concern and that concern is with the new members that are on the Board. There may be some new information and some new testimony that they’re going to need to be refreshed you know, a…it’s been almost a year…

Chairperson Cardone: I think we all need to be refreshed.

Mr. McKelvey: Yes.

Mr. Manley: …and the problem with the Reserved Decision, the Public Hearing is already closed.

Mr. Donovan: Correct.

Chairperson Cardone: Right.

Mr. Manley: So we can’t introduce anything new…

Chairperson Cardone: Well what we were…what we were asking for was for them to give us the documentation of the a…the hook-up of the line.

Mr. Manley: Correct.

Chairperson Cardone: And that’s all that we were waiting for in order to make our decision. It’s been a long process.

Mr. McKelvey: I think it was October, last year.

Mr. Manley: And the tough thing is the, you know, the new Board Members may have questions that they may want to ask the applicant which they now don’t have the benefit of asking the applicant because the Public Hearing has been closed and when we first did this we thought we were going to have an answer and a letter within a month or two and it’s been almost twelve months. I just don’t…

Chairperson Cardone: The minutes are on-line a…you know and as far as asking questions to the…to the applicant, I believe we can do that.

Mr. Donovan: You can certainly ask questions and you can…you can tell the applicant or his representative to come back in, you have questions and what needs to be refreshed as to where the property is and what it’s all about. I mean, you certainly have the ability to do that and it’s…it’s not only…not only for the benefit of the new Board Members but for the benefit of everybody.

Mr. McKelvey: Yes.

Chairperson Cardone: Because I don’t know that we a…do we have four, yeah, we have four that were on the Board at the time.

Mr. Donovan: Yes.

Mr. Masten: I was here Grace.

Mr. McKelvey: I got five.

Mr. Donovan: I should point out in terms of a new Board Member, just because it’s a prior application before tonight, you could vote. You can absolutely can even if you haven’t read the minutes. You should read the minutes but even if you hadn’t the law allows you to vote.

Mr. Levin: I didn’t go back that far.

Mr. Donovan: Well, you know I would have found that application and nothing else, you know.

Mr. McKelvey: I think it was October of last year when it came in.

Ms. Gennarelli: I gave them all the files.

Mr. Manley: Do you think we could let the applicant know that next month is the last…?

Mr. Donovan: Well I think…

Mr. Manley: …that we have to make that… and then they’ll just have to re-apply.

Mr. Donovan: I think you’re well within your rights to say to the applicant, to write to them, we can have Betty do it, you can have me do it, or whatever you want to do, but the Board is going to vote in September and would like you to be there. We can’t subpoena him but we’d like you to be there…

Mr. Manley: Right.

Mr. Donovan: …to review your application, briefly and the Board votes. The Board will vote. If that’s the pleasure of the Board…

Mr. Maher: Do we have any knowledge as to what the delay is?

Chairperson Cardone: The delay is…I think initially it was their fault that there was a delay. I think that they didn’t go through the proper channels at the very beginning and you can correct me if I’m wrong but I think that’s what happened. And they kept saying we’re going to make this…we’re going to make this application when in fact, they weren’t going to make the application, they had to first meet with the engineer, with the Town engineer and it had to be done through that office. And I think in the beginning it took them, if I remember correctly, it took them a couple of months to get to that realization that that’s what they were supposed to be doing. Then when it got to that point it had to go to the County. So they’ve been waiting for a few months now for a response from the County. You know…

Mr. Maher: Who actually files the application?

Chairperson Cardone: The…I believe the Town does. Is that correct, Jerry?

Mr. Canfield: No, it’s the applicant’s…it’s the applicant’s responsibility. Just to not get long winded, I know it’s late but this…if…if you recollect this involved a sub-division that was before the planning board and a key issue in this particular zone is whether there is or is not public water available. If you don’t have water available the lot sizes change dramatically. So, the planning board realizing that they didn’t show the water, the lot size was to be “X” amount of square foot. It was referred to this Board. A…the applicant at that time said ‘we’re going to extend the water main’. Well, we picked up on it and said well, you just don’t extend the water main, it requires Orange County Board of Health approval to do so and you need supporting documentation from engineers and approval from the County to do that and the applicant’s representative had stated that ‘yes, we’ll secure that and come back to this Board’. A…and like Grace had said, there were several months that went by and it kept being asked to be postponed because the Count didn’t respond and when we found out that the County actually didn’t even get an application then they did get an application and the County is sometimes slow in…in responding to these things. So I believe at this point, there is a response from the County a…indicating some concerns that they have specifically with volume and pressure because of the location of the sub-division. The Town of Newburgh water system is based on a tank system so elevation of the properties a…is imperative to what type of pressure and volume you get. This happens to be off of Brooker Drive in Middlehope which is one of the highest points in the Town so the water pressure is minimal and the County I think wants an acknowledgement that the jurisdictional fire department is aware of that. A…whereas the pressure that will come out of the hydrant, I wouldn’t say substandard but it’s…it doesn’t meet the bare minimum of required for fire protection. Okay? Being involved in the fire service for forty years I know what Middlehope’s response is going to be, it’s going to be acceptable because it’s only a single family dwelling that’s here. It’s not like it’s a commercial building. But with all that being said a…all this documentation still needs to be put in place, referred to our engineer’s office who in turn can then sign off on it. And then they can come back to this Board. Will that happen within thirty days? That’s a good question, Jim, I don’t know. I don’t know.

Chairperson Cardone: At…at this point, the Middlehope fire department has this documentation to look at?

Mr. Canfield: No.

Chairperson Cardone: No.

Mr. Canfield: I only know that Grace because I spoke with Charlie Brown who is the engineer on the project on another matter and he had said to me that that’s coming and you know, we’re going to need the fire department’s input so…

Mr. Maher: So it isn’t there...

Mr. Canfield: …but I advised him to send me the paperwork.

Mr. Maher: …it is in the hands of the County right now? They are the one, not holding it up but…

Mr. Canfield: No Mike it’s actually out of the County’s hands, its back in Charlie Brown’s hands. It’s his responsibility to submit that to the Town who in turn will contact the jurisdictional fire department.

Mr. Donovan: Jerry, I…I know it’s getting late but I mean, is there the issue that there is potentially insufficient fire flows? Because I…I’ve seen certain circumstances before where the Health Department has written a letter and they say, ‘hey you have insufficient fire flows, we’re going to approve this, Municipality, but you have to say it’s okay’.

Mr. Canfield: Yes, that’s correct. That’s correct and basically the way it goes Dave is what the County is asking for is, the National Fire Protection Association has a grading of hydrants system and in that is color coding and you may see the hydrants around the Town of Newburgh some are green, some are blue, some are yellow in the bonnets and the caps. What that color means is the fire department can anticipate what flows will come out of that color hydrant, that’s what it’s supposed to be. In this case, because it’s less than five hundred gallons a minute a…it would have to be red not to be confused with a…Kennedy a manufacturer of hydrants typically are red. We use Clow Eddys which are yellow. It’s specifically the bonnets, the top and the caps are color coded. So what the County wants to be assured is that this is a red coded fire hydrant knowing that it will give you less than five hundred gallons a minute. It may give you…with that…and part of his response is to show the actual hydraulic calculations, what kind of water pressure is going to come out. It may be three hundred and ninety-eight pounds or gallons a minute at 18 psi. Can I put a fire out with that? Sure I can, you know, it would be very tricky for the pump operator to do that and Mike will understand this, you know, you can’t drop below zero. A…but can it be done? Yes. It… does it meet the…the industry standard? No, it doesn’t so that’s the difference. And…and Jim may chime in on this also, a substandard hydrant and I don’t want to use that term but that’s what it is may affect insurance rates whereas the local insurance company or the underwriters will look at it and say ‘hey, there’s a red marked hydrant there, we’ll insure it but your premium is going to be “X” amount of dollars more, so…

Mr. Manley: That…that could be.

Mr. Maher: Now they might…should bring a new hydrant to the top of the hill is that the rea…the issue?

Mr. Canfield: Yes.

Mr. Maher: The hydrant that covers that now.

Mr. Canfield: Yes, yes, yes because it’s all the way up top. The tank that serves that is down on Lexington Drive which is actually a little low.

Mr. Maher: Right.

Mr. Canfield: You know it’s actually lower than this. So the head pressure, the amount of water in the tank, is going to affect the pressure you get at that hydrant.

Mr. Manley: Jerry is there…do you know if there’s a hydrant on Bannerman now? That’s at the end of the line where the line ends now?

Mr. Maher: The line doesn’t end it come across.

Mr. Canfield: Yes there is but they’re extending this even further to create these two lots.

Mr. Maher: I believe it goes east to west now it’s actually going further west…correct?

Mr. Canfield: Correct, correct, that’s correct.

Mr. Manley: Do you know about how many feet? Just…it doesn’t have to be exact, but…a couple of hundred…three hundred?

Mr. Canfield: Yeah, I think it’s two or three hundred feet at least, yeah.

Mr. Manley: And they have to put in a…how many inch line into the…?

Mr. Canfield: That would be an eight inch main.

Mr. Manley: So an eight inch main going three hundred…that…that’s going to be fairly costly, no doubt.

Mr. Canfield: Oh, absolutely, absolutely. It is not cheap. But I think anything that goes before the County a…for a water main extension has to be a minimum of eight inch.

Mr. Manley: And that’s just to serve two properties.

Mr. Canfield: Yes, yes.

Mr. Manley: A couple of hundred feet for two properties at the cost of the applicant.

Mr. Canfield: Yup. A…and…and ironically the main reason for fire hydrants, especially at the end of a dead end water main is hydrant is basically a flushing valve. It’s to flush the main out. It’s not initially intended for fire protection so…guess you’re getting firefighting 101 tonight.

Chairperson Cardone: Right.

Mr. Canfield: It’s a bonus.

Mr. Donovan: I think Mike asked that question. Right Mike?

Mr. Maher: He actually answered (inaudible)…

Chairperson Cardone: So he told you that it’s at…it’s in his hands right now but yet did not take it to the next step?

Mr. Canfield: Right. The next step is he has to get it to Jim Osborne, the Town engineer.

Mr. Manley: And he has to get it to (inaudible)?

Mr. Canfield: Yes.

Mr. Manley: And they have to answer it and get it back to him.

Mr. Canfield: Yes, that’s correct.

Mr. Maher: So if we’re in communication with Mr. Brown obviously it would be nice to know when he…when he got it back obviously, if in fact it’s recent, then obviously it’s proceeding. If it’s three months ago then obviously…

Mr. Canfield: Is it feasible, of course, it can be done in couple of weeks.

Mr. Donovan: Well does…is it the inclination of the Board to tell him that he has to be here next month or do you want to wait? Jim suggested to vote next month but…

Mr. McKelvey: What’s surprising is…

Chairperson Cardone: Well I think to…

Mr. McKelvey: … is four months I was gone in the beginning of the year and I come back and it’s still on the Agenda.

Chairperson Cardone: Here’s what he actually wrote in the e-mail:

With respect to the Reserved Decision at 12 Bannerman View Drive, I have completed putting together the information required for the Orange County Health Department to approve the water line extension and left four copies with Jim Osborne for submission.

Is that correct or not?

I anticipate Health Department approval prior to September ZBA meeting therefore I am respectfully requesting that. Thank you for your attention to this request.

Mr. McKelvey: Then we tell him to be here then.

Mr. Manley: So he’s saying that he’ll have it.

Chairperson Cardone: So he…he’s saying that he left four copies with Jim Osborne. I don’t know if that’s true or not.

Mr. Canfield: I can’t confirm that. I don’t know if that’s true. I don’t know.

Chairperson Cardone: People don’t always deal with facts when they communicate with us.

Mr. Canfield: Tonight was a good example of that.

Chairperson Cardone: Yes. So, you know and it’s not up to us to follow through on that. I mean it’s up to the…the applicant I…I just can’t imagine him taking all of this time unnecessarily.

Mr. Canfield: I think more importantly Grace is that they’re… he’s gobbling up your agenda.

Chairperson Cardone: Yes.

Mr. Canfield: And we…we are very busy. Betty has applications backed up.

Chairperson Cardone: I know.

Mr. Canfield: Because of these carry-overs it’s limiting the new ones that we can get to.

Chairperson Cardone: Right.

Mr. McKelvey: What month are you working on now?

Ms. Gennarelli: September.

Chairperson Cardone: We’ll have to ask the Assessor to slow down or break his computer or something.

Mr. Manley: Maybe the Assessor’s Office can have a Lois Lerner moment.

Ms. Gennarelli: It’s popping up because the people are selling their houses and all that too and you know, they get caught so…

Mr. Levin: You know I was supplied with that information a…from the Secretary and with what you spoke about I think I could vote on it. A…I haven’t seen the property but I think a…the information you gave would be…and you could probably vote on it too.

Mr. Scalzo: Oh, I’ve seen the property and I’ve read everything Betty supplied me with. I am very familiar with it.

Chairperson Cardone: Right.

Mr. Manley: You may have some question so…you know I would say that he should be here.

Chairperson Cardone: I agree with you Jim.

Mr. Manley: Answer the questions, if he has the material great. If not vote on it anyway.

Chairperson Cardone: Maybe Dave if you sent the letter.

Mr. Donovan: Yes, okay.

Mr. Manley: Get it off the agenda.

Mr. Masten: Yes.

Chairperson Cardone: Okay Dave will send him a letter letting him know that we will be voting on…

Ms. Gennarelli: September 25th.

Chairperson Cardone: September 25th.

Ms. Gennarelli: Okay.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:55 PM)

ZBA MEETING – AUGUST 28, 2014 (Time Noted – 8:41 PM)

LZL EQUITIES LLC. 301 ROUTE 32, NBGH

(DUNKIN DONUTS) (14-1-43) B ZONE

Applicant is seeking an Interpretation of Article II Definitions 185-3 - Definitions; word usage - Convenience Store, Drive-Up Establishment, Eating and Drinking Place, Food Preparation Shop and Restaurant for a proposed Dunkin Donut shop in Business (B) Zone.

Chairperson Cardone: Our next applicant LZL Equities LLC. (Dunkin Donuts).

Mr. Manley: Madam Chair, as was last month I’m going to abstain from this.

Chairperson Cardone: Okay.

Mr. Donovan: Just make sure you come back Jim.

Mr. Bloom: Good evening, ladies and gentlemen, my name again is Dan Bloom. I’m represent the applicant this evening in conjunction with the architect Joseph Minuta who is here with me. A…ladies and gentlemen you’ll recall at the last meeting a…you wished to adjourn it I believe for an ultimate determination. I believe this evening you wanted an opportunity I believe to a…personally view some of the other a…a…businesses that were referenced in my last presentation in the interim so that you could have some first-hand knowledge before you made that determination. A…Madam Chair is there anything that you would like me to address particularly at this time or would you like a…Mr. Minuta to address before we start?

Chairperson Cardone: I think the issue was that the Board needed to go over the material that was presented and a…I would ask if the Board in going over the material has any further questions or comments?

No response.

Chairperson Cardone: If a…you would just do a review for us of what is being offered in this store in addition to the…the donuts and what other types of products.

Mr. Bloom: Yes, Madam Chair, I’m told by my client and…and I believe, we’ve submitted some documentation to that effect that Dunkin Donuts is expanding its…its presentation to the public because it has to compete. And in the process of doing that at the present they’re offering a…fresh produce a…they have con…they have entered into a contract with a…a manufacturer, Chiclets gum a…mints, that type of thing and what I’m informed by my client is is that there is a continuing effort on the part of Dunkin Donuts to ever expand that offering again in order to stay…stay competitive in the market. So that it’s no longer just walking into Dunkin Donuts and getting a coffee and a donut there’s now more options to them and they’re hoping in the near future to expand that even further.

Mr. Donovan: And…and so it’s your argument is that the use that is proposed is a permitted use falling under the category of convenience store?

Mr. Bloom: That’s correct Mr. Donovan. A…our…my position basically let’s look at the essence of the operation and not it’s nomenclature. And…and what I’m really saying is obviously we don’t offer as many items as a convenience store would but I…but I believe if we look at the way a convenience store operates vis-a-vis the way our operation is in existence I believe that the differences are really non-substantial. For example, I’m sure or at least I’m assuming that the reason for the original dichotomy in the Code was because of baking on the premises which brings with other considerations but there is no baking on the premises anymore. These…the product arrives in a frozen state, it gets a quick microwave and it’s on the shelf. So it’s no longer the old-fashion French pastry shop so…

Mr. Donovan: So that’s how they get the donuts to be so doughy? Microwaving? Not any other kind of special…? I’m sorry, Dan.

Mr. Bloom: I’m sorry, I’m sorry, your…your Counsel is too quick for me this evening Madam Chair.

Mr. Donovan: And just…just for the Board’s edification or a…information, the definition of a convenience store in the Code is retail business selling non-durable consumer products including but not limited to groceries, prepared and packaged foods and gasoline, which obviously doesn’t apply here, but providing those services. That’s the definition, our Code definition, of a convenience store.

Mr. Bloom: And…and as part of my a…forgive me, may I…?

Chairperson Cardone: Yes.

Mr. Bloom: As part of the presentation I last made I also indicated that if we wish to put a gasoline station on the premises as an accessory use that would be permitted if that were a convenient market. Of course, we’re not interested in doing that but I…I make that illusion simply by way of indicating the intensity of the operation is really less than most convenient markets. At least convenient markets when associated with gasoline and station.

Chairperson Cardone: Any questions or comments from the Board?

Mr. Levin: I have a question; can I assume that the parking meets the Town of Newburgh regulations?

Mr. Bloom: Well I will defer to my architect if I may on that.

Mr. Minuta: Joseph Minuta, Minuta Architecture, yes they do.

Mr. Donovan: And Dan, if I may a…Mr. Bloom, you wrote to the Board on August 19 a…indicating that if you got a favorable interpretation because the original application was in the nature of a use variance, you wanted this Board to establish the a…setbacks.

Mr. Bloom: I deferred on Counsel on that, to you Dave on that because…

Mr. Donovan: I…I used to play second base so I’m going to actually pivot over to my short stop, Jerry.

Mr. Bloom: Okay, the reason why I did that was is because of the unique nature of this application and…and it’s a…limitation by definition. Of course we’re looking for a definition but had we come here a…in the form of a use variance as…as…as the Board is aware then if we received a favorable interpretation the Board would cover whatever associated area variances were involved but since we’re here on simply an interpretation I was trying to analogize to the use variance and asking would the Board consider waiving or subsuming so to speak the other associated area variances in any favorable determination if that…if I can make that remark without sounding presumptive?

Mr. Donovan: My…my question for…for Jerry is, if...if the Board is inclined to interpret this as a convenience store, meaning that it’s a permitted use a…would the building be entitled to the protection of 185-19-C which talks about non-conformity with Bulk Requirements for existing buildings? Unless you have a better idea Jerry.

Mr. Canfield: Well I’m…I’m thinking a…perhaps Joe could best advise the Board if his proposal as convenient store, okay, complies with the Bulk Use requirements, his familiarity with the site, okay? A…for example, lot area is twenty thousand square feet, does the lot comply with twenty thousand square feet and…and across the Board with the Bulk Use Tables. Now, keep in mind, previous applications that’s been before the Planning Board by virtue of it being a site plan a…technically loses its existing non-conformance, therefore, the new use a…must comply with all the Bulk Use…Bulk Use requirements for the proposed use. So, if this Board determines that yes, in fact it is a convenience store then the next step to be achieved would be compliance with the Bulk Use requirements for that approved use. Did I answer that correctly Counsel?

Mr. Donovan: Yeah, you did. Basically you said they don’t get the protection of 185-19-C because of the change of use but if they were determined to be a permitted use then we’d have to demonstrate and…and probably it’s…it’s not going to comply with some of the yard setbacks, I would assume.

Mr. Canfield: That’s correct and that’s why I had asked Joe Minuta, the architect for the project perhaps he could better answer that question (Inaudible) non-compliance (inaudible)...

Mr. Donovan: But, I think jumping ahead, assuming that the Board was comfortable with the interpretation, I…I don’t think under…under an interpretation we could issue the area variance. I think we need to…we need to Notice that.

Chairperson Cardone: That would be my feeling also that we have that happen.

Mr. Donovan: And I always agree with the Chair so that’s it.

Mr. Minuta: Do I need to speak?

(Inaudible)

Mr. Minuta: Is there a question for me at this moment?

Mr. Donovan: Well I…I…probably not at this moment.

Chairperson Cardone: No.

Mr. Donovan: I think not at this moment, I think a…depending upon what the Board does ultimately there may be…there may be a subsequent application at which you have to, you know, basically here is the side yard required, here’s the variance that we need or the rear yard, whatever it may be or the front yard because I don’t think you are going to meet some of those.

Mr. Canfield: I think you were just jumping ahead, Dave, and you’re a hundred percent right. I agree with Counsel a…

Mr. Donovan: I’m just agreeing with the Chair, Jerry…

Mr. Canfield: I think the Board needs…

Mr. Donovan: …so that’s who you’re agreeing with.

Mr. Canfield: …the Board needs to make a determination a…but my…I thought Dave was asking for what extent would be, perhaps, the area variances. And…and I think you’re just trying to establish the fact that if you go that way then there may be…

Mr. Donovan: Correct.

Mr. Canfield: …area variances.

Chairperson Cardone: Right.

Mr. Donovan: Correct.

Mr. Canfield: So no, they are not asking you anything.

Mr. Minuta: I’ll stand over here.

Chairperson Cardone: Okay. Do we have any other questions or comments from the Board?

No response.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Recused

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Bloom: Thank you very much ladies and gentlemen; it’s been a long haul. I appreciate your time and patience.

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

(Time Noted - 8:55 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:36 PM)

LZL EQUITIES LLC. 301 ROUTE 32, NBGH

(DUNKIN DONUTS) (14-1-43) B ZONE

Applicant is seeking an Interpretation of Article II Definitions 185-3 - Definitions; word usage - Convenience Store, Drive-Up Establishment, Eating and Drinking Place, Food Preparation Shop and Restaurant for a proposed Dunkin Donut shop in Business (B) Zone.

Chairperson Cardone: On the application of LZL Equities LLC. (Dunkin Donuts) seeking an Interpretation of Article II Definitions 185-3 - Definitions; word usage - Convenience Store, Drive-Up Establishment, Eating and Drinking Place, Food Preparation Shop and Restaurant for a proposed Dunkin Donut shop in Business (B) Zone. This is a Type II Action under SEQRA. Do we have discussion on this application?

No response.

Chairperson Cardone: Don’t everyone talk at once.

No response.

Chairperson Cardone: Well what we’re looking at here is whether or not we would consider this a convenience store and we’ve heard the testimony of the attorney.

Mr. Scalzo: The applicant’s got some…some compelling exhibits of why it should be considered convenience.

Mr. Donovan: Well if the Board feels it’s persuaded that the a…use as proposed does fall within the definition of convenience store then a motion to issue an Interpretation saying the use a…as described by the applicant in his application and his oral testimony falls within the definition of a convenience store as that term is defined in the Town of Newburgh Code.

Chairperson Cardone: Okay, do we have a motion to that effect?

Mr. Maher or Mr. Scalzo: I'll make a motion.

Ms. Gennarelli: Who was that?

Mr. Maher, Chairperson Cardone: Darrin. Do we have a second?

Mr. Levin: I'll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Recused

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: And the motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY - (RECUSED)

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:39 PM)

ZBA MEETING – AUGUST 28, 2014

END OF MEETING (Time Noted – 9:56 PM)

Chairperson Cardone: O.K. Do we have any other business? Everyone has the minutes from last month? Are there any additions, corrections?

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

Mr. Scalzo: I'll make a motion we approve them.

Chairperson Cardone: Do we have a second?

Mr. McKelvey: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response

Chairperson Cardone: The motion is carried. Is there any other business to be brought before the Board? Any other business? No?

No Response

Chairperson Cardone: Do we have a motion to adjourn?

Mr. Masten: I make a motion.

Chairperson Cardone: A second?

Mr. McKelvey: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

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

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

JOHN MC KELVEY

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 10:05 PM)