ZONING BOARD OF APPEALS

MEETING – JANUARY 22, 2015

(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. The Board will then consider the applications in the order heard. The Board will try to render a decision this evening on all applications; but may take up to 62 days to reach a determination. And I would ask if anyone has a cell phone to please put it on silent or to turn it off. And also when speaking, please speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Mr. John McKelvey

(Time Noted – 7:05 PM)

ZBA MEETING – JANUARY 22, 2015 (Time Noted – 7:05 PM)

WEBB PROPERTIES, INC./ ROUTE 17K/AUTO PARK PLACE

BIRKS REALTY, INC. 400, 600, 201 & 801 AUTO PARK PLACE, NBGH

(97-2-11.2, 13.22, 32, 35 & 43) I / B ZONE

Applicant is seeking area variances for the front yard setback on Lot #6 and front yard setbacks for Lot #7 for a proposed subdivision and lot line changes before the Planning Board to create seven lots from five existing lots.

Chairperson Cardone: Our first applicant this evening Webb Properties.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, January 14th and in The Sentinel on Friday, January 16th. This applicant sent out sixty-six letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. James: My name is Robert James with A. Diachishin & Associates.

Chairperson Cardone: Proceed.

Mr. James: This application concerns two tax lots…

Ms. Gennarelli: Excuse me, you can take the mic off you’ll have to hold it a little bit closer and speak into it or otherwise it won’t record whatever is comfortable. Thanks.

Mr. James: This application concerns two tax lots mainly Section 97-2-32 owned by Webb Properties, Inc. and 97-2-11.2 owned by Birks Realty, Inc. Both lots are…front on 17K and an existing road named Auto Park Place. A…the a…application is part of a larger plan of development for lands owned by Webb Properties and Birks Realty. A…the a…reason that we are asking for the variance is we have a situation where we have existing buildings on…along…a line along existing roads that would be 17K and Auto Park Place. The existing setbacks a…are under the fifty foot requirement a…the front setback to the Chase Bank building a…that’s at the corner of Auto Park Place and Route 17K a…the front setback is a…existing it’s forty nine point six feet. We’re asking for a point four foot variance in the front and as you come around Auto Park Place which is also would be considered a front yard a…the overhang to the bank building where there’s the drive-thru we’re proposing a thirty-one point four foot setback and our requested variance is eighteen point six feet. On the east side of Auto Park Place and the south side of Route 17K is a building that was formerly a…Newburgh Park Motors. It’s now Hudson Valley Chrysler a…our existing setback is a… forty-six point nine, we’re asking for a three point one foot variance. A…all of these a…a…improvements are existing, Auto Park Place, the buildings and Route 17K and there are no proposed a…proposed buildings a…or additions a…to this a…to these buildings.

Mr. McKelvey: The buildings are going to remain the same then?

Mr. James: That’s correct. The road is in the same position since a…1986, ’87.

Mr. Scalzo: It’s not a Town maintained road, correct?

Mr. James: No it’s a private road.

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

No response.

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

Mr. Feder: I’m Bill Feder, 29 Rockwood Drive, Newburgh. Just a question this change, variance facilitates future a…development, it clears the way for other things to happen on the property a…is that the need for the variance or otherwise why isn’t it just grandfathered in?

Mr. James: No I wouldn’t say that. There’s a…there’s a shifting of lot lines a…because of a sale of…of one lot.

Mr. Feder: Okay. Thank you.

Chairperson Cardone: Do we have any other questions or comments?

No response.

Mr. Donovan: Just to be clear, to a degree you are facilitating additional development cause you have a sub-division application in front the planning board where there’s going…there’s five parcels now, there’s going to be seven parcels. When you’re done we have a situation now where these are…were grandfathered pre-existing non-conforming but they lose their protective status because of the new approval you are seeking in front of the planning board.

Mr. James: That…that is…that is correct.

Chairperson Cardone: Yes? Please identify yourself for the record.

Mr. Barton: Hi, I’m Ron Barton and these are my projects here. I just want to clarify that the area we’re looking for variances on a…the Chrysler store was owned by my brother-in-law and he sold the Chrysler store. That’s an eight acre parcel and he’s got a building in the back where Enterprise has their regional headquarters. The people that bought the franchise have the right to buy that four acre parcel. Four…it’s not four acres yet but it will be once we sub-divide it. So we’re sub-dividing the dealership from the two story a…Enterprise building in the back. That’s to facilitate the sale of that property to the new owners of Hudson Valley. As we’re going through the process with the planning board the property line was to one side of the road. So as we sub-divide the parcels going over towards the Chevrolet dealership, the Chevrolet showroom and to facilitate the new showroom that’s going to be going out on 17K the planning board had asked that we clean that up and that we put the property line in the center of the road. So here we are, we’re…we’re sub-dividing the Birks Realty parcel from eight acres into two four acre parcels there about. No new development over there. They will be refurbishing that showroom as part of what they need to do with Chrysler. They’re before the planning board right now also on that agenda but what happened is when we moved that property line into the center of the road the setbacks fell into play again. And both those buildings the Chase…the Chase branch bank building and the Chrysler showroom don’t have the proper setbacks from the road so one of them is within a half a foot, I think and as Bob explained, maybe the other one is between three and four feet. So the development will be towards the western side of the parcel which is over by the old HSBC bank building and that new development is actually going to wrap around that bank building.

Chairperson Cardone: Thank you.

Mr. Scalzo: Was the proposed curbing…

Ms. Gennarelli: Excuse me Darrin; please pull your mic in. Is it on?

Mr. Scalzo: I’m on.

Ms. Gennarelli: Okay, thank you. Thank you.

Mr. Scalzo: Was the proposed curbing on the south side of 17K which abuts this property a…was that curbing requested by the D.O.T.?

Mr. James: No it was not. It was asked for by Ron Barton. And we are in negotiations with D.O.T. on that at this time.

Mr. Scalzo: Okay, I a…well…if…this has nothing to do with what variances you’re asking for… I’m just curious.

Mr. James: Right.

Mr. Scalzo: You have a…a couple of dropped curbs, twelve inches wide at various locations on here which kind of prevents you from having sheet flow off the road. Now you’re having shallow concentrated flow that it fills through the curbs a…which lends to more erosion in that case. Was there any particular reason? Is there another treatment we’re not seeing…?

Mr. James: I a…

Mr. Scalzo: …after that?

Mr. James: No, there…no there’s not. Like I say we’re in negotiations with D.O.T. as to what a…they’re going to be looking for in that…in the frontage there.

Mr. Scalzo: Okay. And just a housekeeping comment a…the entrance that’s opposite the bus terminal you called for a proposed right turn lane…that’s a left, right?

Mr. James: Yes, a typo.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:13 PM)

ZBA MEETING – JANUARY 22, 2015 (Resumption for decision: 8:50 PM)

WEBB PROPERTIES, INC./ ROUTE 17K/AUTO PARK PLACE

BIRKS REALTY, INC. 400, 600, 201 & 801 AUTO PARK PLACE, NBGH

(97-2-11.2, 13.22, 32, 35 & 43) I / B ZONE

Applicant is seeking area variances for the front yard setback on Lot #6 and front yard setbacks for Lot #7 for a proposed subdivision and lot line changes before the Planning Board to create seven lots from five existing lots.

Chairperson Cardone: The Board is resuming its regular meeting. On the application of Webb Properties seeking area variances for the front yard setback on Lot #6 and front yard setbacks on Lot #7 for proposed subdivision and lot line changes before the Planning Board to create seven lots from five existing lots. This is a Type II Action under SEQRA. Do we have discussion on this application? But first I would like to read the County report which is Local Determination although there is a paragraph here ‘although we received a Lead Agency request from the Town of Newburgh planning board in June the proposed site plan of the subdivision were never referred to this office as required under NYS General Municipal Law 239-l, m and n. While the Zoning Board of Appeals is not responsible for the planning board referrals we would appreciate notice being taken of this issue’. It is so noticed in the minutes. Any discussion on this application?

Mr. McKelvey: I think part of it was caused by the Dodge business being sold them wanting to enlarge.

Mr. Scalzo: I think what they’re proposing really neatens it up.

Mr. Maher: There’s no increase in what’s currently existing. I’ll make a motion for approval.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:52 PM)

ZBA MEETING – JANUARY 22, 2015 (Time Noted – 7:13 PM)

JOHN & CAROL HUDELSON 200 OAK STREET, NBGH

(9-3-50.11) R-3 ZONE

Applicant is seeking an Interpretation of 185-15-A-1 and/or an area variance for the maximum allowed height of accessory structures to build a two-story garage (40 x 30 x 19’6”).

Chairperson Cardone: Our next applicant John and Carol Hudelson.

Ms. Gennarelli: This applicant sent out twenty letters. All the mailings, publications and postings are in order. If you could just grab that microphone Carol it pops off.

Ms. Hudelson: Like so? Okay, if I could put my notes over here so I won’t forget what I’m saying. Thank you. We were here, as you may remember, in July a…looking for a variance a…for an accessory building at 200 Oak Street and you granted a variance with respect to the area but not height. The building was eight plus feet I think above the fifteen foot a…limit that required asking for a variance. A…so we are back again a…for a second time with a different building that is shorter a…taller seemed like the wrong way to go so we…thought we would make it shorter. A…I wanted to bring a…this one is roughly I think four feet above the fifteen foot a…level but I wanted to say some more about that in…in a minute. I wanted to bring with me a couple of pictures from the family album to pass along. These are pictures of our house when it was under construction in 1986 a…we bought a burned out shell of a stone building and gutted the building and then built it up to the…the house that’s there. And I bring those along partly because we’re proud of what we did but partly because one of the objections at our last hearing from a neighbor to our building, the accessory building that tall, one of the concerns that they had was that a…that Oak Street is such a bucolic a…neighborhood and…and so a…so quiet and that what makes it a wonderful place to live and I…I just bring these photographs because we agree with them entirely and we like to think we’ve been part of a…adding to that and making Oak Street a lovely place to live and that we’ve been there and had…have had a long investment in that house and we’ve put our own work into that house so a…we’re…we’re on board with that idea. There’s nothing in what we’re doing that intends to change the nature of Oak Street or to violate the…the peace of a…of that…of our neighborhood. A…we a…another concern that our neighbor has and I think that the neighbor’s concerns were reflected in your decision making as I remember so I did want to address those. A…was it they would be able to see the house I thought a…rather the accessory building, I thought that and in fact on our application I said would not be visible from a…to anyone else and they pointed out that it would be when the leaves are down a…so I’ve taken some winter pictures and there are four of those a…if you want to take a look at what the visibility is. So they’re all the same so there’s four different a…ones there. The top row…in the top row it was Thanksgiving so it had just snowed a…but I was standing in the a…foundation there and looking in the top row toward their property, toward the drive that they use to come to their home that kind of swings along beside that…you know that area and then in the bottom row I’m looking at Oak Street and two different directions. A…I hope that you see that even when the leaves are down a…there’s a good deal of vegetation there a…and that we not, you know, like right at somebody’s doorstep by any means. Oh, this is another winter picture, this is…this is the picture we needed to bring to show that we had posted the notice a…if somebody were on Oak Street coming up and looking for that accessory building from the road they would not be able to see it because the house would be in the way so from that angle a…they couldn’t see it and if they go any further it will be blocked by hemlock trees which are of course evergreens so. Let’s see, are there other points to make…a…I asked also for an interpretation of the Code because it seemed to me that we had a few reasons to ask that the Board be flexible on this fifteen foot height a…limit. One is that we are not at…at the closest point that we could be to Oak Street. I don’t…I can’t remember now what the setback requirement is. Maybe you can remind me? It’s what twenty feet? Is that even to (Inaudible)? We’re what forty, sixty. We’re at the far end of the property. We’re not anywhere near as close to Oak Street as we could and if Oak Street is the concern and the visibility from Oak Street this is a…this is a building that is at the…you know, well protected on all sides. It’s a two and a half acre parcel of land and this building is way a…tucked up away from roads. A…another question that I had about or another reason for the Board to give some flexibility is that it seemed to me that you could use either face of the building and call that the front of the building a…because Oak Street curve is in the building is at an angle so I’ll pass around this aerial view and you can see the a…the red roof is us. It’s sort of near the front and the little white rubble sort of in the back is the…you can see the outline of the accessory building. If you look at one surf you can see Oak Street you know…you know down one side and Oak Street down a different surface and that smaller face of the building can easily be bermed up two of the faces of the building already are below grade and that could be brought up if that’s a concern. So…let’s see, that brings me to yet another reason to ask for some flexibility and that is that much of this building is below grade on two surfaces as I said it’s below the level you are measuring from and our architect is measuring the height of the building from the interior ground but the grade of the ground as you can see here is up I think at this point it’s you know four to five feet higher than a…the…the bottom that he’s measuring from. And if you were to take an average height of that building we might not even be over the fifteen feet. I haven’t done the math but if the Board would be wanting that information I’d be happy to…to do that and we could even on any…any surface but this one, any face but this one we could bring ground up so he’s heavy. And on these plans he showed the grade sloping at the sides. So a…another concern that the Board had at the last meeting was that a tall building here would be out of…out of step the neighborhood that it would be you know be too tall for the size of garages on…you know, in the general neighborhood but if you look at that aerial view a…again maybe if you pass it back the other way a…I think you’ll see some much larger buildings in the immediate vicinity. Some of them have attached garages in which we see garage doors and then rooms on top of those garage doors. We have a number of very large houses down on a…River Road and then of course farther down on Oak Street a…again very, very big buildings and if you look at that I think both our house and the Reed’s house for that matter a…they’re quite modest and so we don’t feel that this building at…at now four feet above the a…the fifteen foot a…limit is a…is really out of scale or is going to hurt the aesthetics of the neighborhood. Let’s see a…and one other concern that was raised was well if this building is going to be this nice then we’re concerned that somebody may want to live in someday and all I can say is…well several things, one if it…if it is that nice, you know, if it’s built that you know and is that attractive I think that’s a good thing. We think it adds value to the…to our property we…we’ll like looking at it. And I think that there is not a way to build something that some future owner cannot possibly misuse. I…I don’t think that it’s possible to build a structure that somebody can’t misuse in the future and I don’t think that’s required for a variance. A…we…it’s certainly not our intention to put that…to make that living space that is not in our plans at all and if that should happen I think there is a recourse that anybody who objected and the Town you know, would have to that but that’s…that’s just not part of what we’re planning and I…I don’t know how to respond when there are concerns about what someone in the future might do with something that we build for the purpose that we’re telling you. So…and our friend and architect has arrived so if you have any questions about this he would be in better shape…in better position to answer them than I will be.

Mr. McKelvey: You have no plans of making a rental living space there then?

Ms. Hudelson: We have absolutely not. No we created an accessory building in our house which is, you know, perfectly fine and in fact the Town encourages that as I read the a…you know publications from the Town. Because it allows people to stay in their homes and because it provides low rent housing and my husband and I have both academic jobs. We work out of state during the school year and since we are in this quiet bucolic area we worry about the house when we’re not there. And we realize that one solution to that would be to create a small apartment, have someone who is there going in and out all the time, keeping the building occupied a…so I don’t feel creepy when I come home after you know...for spring break wondering if the house is secure. A…it…it is and I…you know we…it has worked very well so that’s why we put that apartment there.

Chairperson Cardone: Mr. Canfield, would you please address the a…building height determination?

Mr. Canfield: The height as we see the drawings a…is nineteen foot, six inches. Of course, as you are aware the maximum height permitted is fifteen feet so as it appears they would be four foot, six inch variance requested; if you’re looking at percentages that’s a thirty percent percentage on the variance. I believe the applicant though has displayed supportive a…information for the basis for an interpretation and I do somewhat agree with her in…in…in that respect however Mr. Mattina from our office has taken the position and I can see his reasoning a…that the front side or the side that the height of the building would be measured is the street side. Now because of the uniqueness of the lot and the curvature of Oak Street it makes it difficult to determine which is the street side of the structure. Mr. Mattina has taken the position that the north side is which is the nineteen foot, six side a…the applicant has, I believe, has just filed reason to believe that it could be the east side a…I think that’s a determination that perhaps the Board may need to make.

Mr. Donovan: And…and if it was the east side?

Mr. Canfield: I don’t have those numbers and I understand the architect is here perhaps he can share them with us.

(Inaudible)

Ms. Gennarelli: Excuse me can you...

Chairperson Cardone: Please use the mic.

Ms. Gennarelli: …and please just introduce yourself for the record.

Mr. Wilkinson: My name is Jeff Wilkinson architect, Beacon, New York. I did the drawings for the Hudelsons. The median height would be a…approximately a…the four and a half feet or a…the Town Code height because of we are banking it into the foundation. This part is actually less than as required in this…the middle section or the ridge section as we have planned to a…grade that building around a…would be the four and a half feet less than we’re required so the fifteen feet.

Mr. Donovan: Okay, let’s just…cause I’m married to a math teacher so you said the median height as opposed to the Code calls for the average…

Ms. Hudelson: Inaudible.

Mr. Wilkinson: The mean is probably a better term, right?

Mr. Donovan: I’m just look at what the Code says average.

Mr. Wilkinson: This…I’m sorry, I’ll just be more simple, this section here.

Mr. Donovan: That would be helpful, thank you.

Mr. Wilkinson: The gable end sections and I maybe a…which is…which is basically the east end that we’re talking about…if it were measured from the east side which is the most visible side a…from the road, in my opinion, it would be fifteen feet.

Mr. Donovan: Okay.

Mr. Canfield: I’m sorry, what was the height on the east end?

Ms. Gennarelli: Could you give Jerry the microphone?

Mr. Wilkinson: I’m sorry.

Mr. McKelvey: Give Jerry the microphone.

Ms. Gennarelli: We have two.

Mr. Canfield: So then in terms as we were speaking then if I understand this correctly if the Board determines that the east side is the street side that we will calculate the building then there is no need for a variance. If I understand correctly you are going to comply with the fifteen feet should the Board make that determination?

Mr. Wilkinson: Yes.

Mr. Canfield: Okay.

Chairperson Cardone: Are you sure about that figure because if…if indeed you say that it’s fifteen and then when it is constructed you are over fifteen…

Mr. Maher: Well…

Chairperson Cardone: …it would not be in compliance so...

Mr. Maher: …the fact that it would be graded, they’re able to adjust that accordingly to meet that requirement.

Mr. Canfield: Right, which can be done.

Mr. Wilkinson: (Inaudible)

Ms. Gennarelli: Excuse me, excuse me you have to use the microphone, there is another one here.

Mr. Donovan: It’s not a matter of hearing you; it gets recorded through the microphone.

Ms. Gennarelli: It’s being recorded. Thank you.

Mr. Wilkinson: I understand. That is exactly right we have the ability to bring the grade line to that point at the east and west ends but the east end is what we’re talking about so yes a…you have that ability to do that.

Mr. Scalzo: There were four sheets of paper that went down with photographs on them. Could you send one of those back please?

Ms. Gennarelli: Sure.

Mr. Donovan: Any one in particular Darrin or…?

Ms. Gennarelli: He wants the one with the five pictures or four…

Mr. Donovan: Why don’t we send them all back?

Mr. Scalzo: Just one, it’s the same photos.

Ms. Gennarelli: The one, yeah, anybody else want one? I have extras here. We only need one for the file.

None requested.

Mr. Scalzo: Do you have a copy of this?

Ms. Hudelson: No we don’t.

Mr. Scalzo: The upper right hand corner of the photograph is that what you’re considering to be the east side?

Ms. Hudelson: A…let’s see, yeah, it’s that and I…I think I’d want to shift slightly to the right on that because…it would be this side going off to the right here.

Mr. Scalzo: The side that’s open…that’s open to grade right now?

Ms. Hudelson: Right, yeah, that hasn’t been built up yet.

Mr. Scalzo: Okay, can you point to that on your architectural drawing?

Ms. Hudelson: I think it’s actually…I think this is looking…well this says east, oh…

Mr. Wilkinson: Inaudible.

Ms. Hudelson: …oh, it does say east, I’m sorry.

Mr. Scalzo: Oh, east elevation, okay.

Ms. Hudelson: Yeah.

Mr. Scalzo: So any grading activity that is planned for this would not impede the ingress and egress to the house…

Ms. Hudelson: No.

Mr. Scalzo: …or, pardon me, not house to the shed, garage or…

Mr. Wilkinson: Right, it would not impede the…the ingress.

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

Ms. Reed: Hi, my name is Clare Reed; I’m the next door neighbor. A…I have a lot of questions actually because I thought I printed out the documents but I didn’t see any new plans because I was specifically looking. I noticed nineteen feet; I thought well maybe they’re taking the four feet that they thought you know that it’s down in the ground. I didn’t see any new plans so this is kind of a surprise to me.

Ms. Hudelson: We did file new plans.

Ms. Reed: I’m just…I’m saying they weren’t on the website. I looked at all the supporting documents, printed them out so I could be prepared obviously for tonight and I didn’t see them.

Ms. Gennarelli: They weren’t…they weren’t submitted to the Zoning Board. Maybe to the Building Department…?

Mr. Canfield: They must have, that’s how we got our calculations.

Ms. Gennarelli: Right. They weren’t with your Zoning Board Application.

Ms. Reed: It leave a bit of an issue.

(Inaudible)

Mr. Wilkinson: The plans were revised to…the original ones had a actual five…five foot knee wall or four and a half foot knee wall so that was removed so that there wouldn’t really be any possibility for a future a…habitable space.

Ms. Reed: So this used to go up.

Chairperson Cardone: Right.

Ms. Reed: So there’s no way with dormers you can have a second floor?

Mr. Wilkinson: Anybody can build a dormer and…

Ms. Reed: Well no, like I can’t build a dormer on my attic because there’s not enough space.

Mr. Wilkinson: My point is a…there…there really wouldn’t be even if you did a dormer there really wouldn’t be any habitable space there.

Ms. Reed: What’s the height from here to here, from the floor to the…

Ms. Hudelson: This shows (Inaudible) at this point, I think it’s about six - six or something in the middle so…

Ms. Gennarelli: Carol…

Ms. Hudelson: Inaudible.

Ms. Gennarelli: Carol…

Ms. Hudelson: Oh, I’m sorry, you could probably stand up at the peak…

Ms. Reed: Okay.

Ms. Hudelson: as I looked (Inaudible) …sorry.

Ms. Gennarelli: That’s okay.

Ms. Reed: Okay, that does change some things because that was a huge concern of mine. Go ahead.

Mr. Wilkinson: There’s no platform here, this an open gable a…it’s not built with a platform…

Ms. Reed: There’s no rafters anywhere?

Mr. Wilkinson: Rafters, well there’s rafters but there’s no floor rafters.

Ms. Reed: So that was changed because the last plan…

Mr. Wilkinson: Yes.

Ms. Reed: …had tongue and groove a…

Mr. Wilkinson: Right.

Ms. Reed: …white…white pine flooring.

Mr. Wilkinson: Right, correct.

Ms. Reed: Okay so that…

Mr. Wilkinson: That was removed.

Ms. Reed: Right, but that said at the last meeting that that was probably for a future anyway, that it was just rafters for now, there would be storage and at some point they’re planning on putting a floor there.

Mr. Wilkinson: (Inaudible) was from the drawing.

Ms. Reed: So but there still will be the pull down stairs…?

Mr. Wilkinson: No.

Ms. Reed: There’s no access to that upper space?

Mr. Wilkinson: It’s a big open space.

Ms. Reed: Oh so it’s open so you don’t need to…?

Mr. Wilkinson: Yes.

Ms. Reed: …but there are rafters for storage?

Mr. Wilkinson: No there’s just a…

Ms. Reed: There’s rafters so if you wanted…cause you were talking about laying things, last meeting they were talking about laying things on the rafters so that type thing.

Mr. Wilkinson: Inaudible.

Ms. Reed: So it’s just left open?

Mr. Wilkinson: There’s no floor rafters.

Ms. Reed: Okay which just means that there can’t be a second floor it could still wind up being living space but there just would be a second floor.

Mr. Wilkinson: Anybody can…

Ms. Reed: Right.

Mr. Wilkinson: …do anything…

Ms. Reed: I understand exactly. Thank you.

Mr. Wilkinson: Inaudible.

Ms. Reed: Exactly my point, thank you. Okay so terrific. A…definitely the height is an improvement. I also had a question because I printed out the site plan I guess it’s called and it’s different from the previous one. I’m wondering is that because…did you rotate the building now? The building is not, if you can look and I know Carol you had told me you drew this one and you tried to do it as best you could and I’m wondering who drew this one and I guess my concern is how accurate are either one of these? These are drawn on a survey that was certified but the drawings themselves aren’t certified. See what I mean this alignment is different here the point is to here? Here this looks as if the whole flat long side is to my house.

Ms. Hudelson: Right, this is the one that I am aware of that I did and so it may be that when we submitted…did this go with the later one? That was an earlier one that Jeff was doing. This one is one I measured off so this is the one I am familiar with.

Ms. Reed: Do you know what I’m talking about?

Mr. Scalzo: Oh I understand completely, yeah, until you said it though I had not noticed a…now I can tell.

Ms. Reed: Yeah, so…this is the line that was last time and this is the one now.

Chairperson Cardone: Right.

Ms. Reed: So I just wanted to know, did it turn? You know, this makes it look like I’m looking…originally I was under the impression I was looking more at the short side from my house…this is my driveway side. Now it would appear that I’m looking at the probably the longest side from my house and also that means that the roof, the red roof you know is slanted toward my house.

Ms. Gennarelli: Is that the one that was in the Code Compliance file? It says from Code Compliance?

Ms. Reed: Yes, yes.

Ms. Gennarelli: That was with the Building Permit Application.

Ms. Reed: So now who…who creates this?

Ms. Gennarelli: It came from the applicant.

Ms. Reed: That’s what I mean, I’m not sure whether…like who verifies this one way or another?

Chairperson Cardone: Mr. Canfield.

Mr. Canfield: What was the question maam?

Ms. Reed: These two site plans are different. This was the one that was posted last time and this was the one that was posted this time.

Mr. Canfield: This…this is the plan that we’re looking at.

Ms. Reed: Okay, who creates that?

Mr. Canfield: The applicant…

Ms. Reed: Okay.

Mr. Canfield: …submits it to us.

Ms. Reed: So my question is how is that ever verified? Who verifies that? Because this was not correct then…this was submitted by the applicant, this is a different one. How do we…is this the really the way it’s sitting on the property up till now? I thought this was the way it was sitting on the property.

Mr. Canfield: When it’s constructed and we go do our Inspections we check these measurements.

Ms. Reed: Okay, so somebody does check to see that it’s…it’s…

Mr. Canfield: Absolutely that’s the purpose of the inspections.

Ms. Reed: But this is the one I should believe, the way that the building facing…

Mr. Canfield: That’s the one we’re looking at.

Mr. Donovan: If I could just…

Ms. Reed: Okay.

Mr. Donovan: …interject for a second since we try to make a record up here. You can’t talk at the same time. Nothing is going to show up in the minutes. Okay, this is all being recorded you talk over each other it comes out as nothing.

Ms. Gennarelli: And we’re not sure which one you’re saying this is either.

Ms. Reed: Oh, I’m sorry.

Ms. Gennarelli: One says from Code Compliance Department that was with the Building Permit (Application) and the other one the applicant submitted with her application. So that’s why there’s two different ones, she submitted one to the Building Department to Code Compliance and the other one came with the Zoning Board Application.

Ms. Reed: I see.

Mr. Canfield: For the record, Code Compliance Department has reacted and commented on the plan submitted that’s stamped as the map of result of a field survey June 28, 1986 stamped by a George Corwin. That’s the map we have based our opinions upon.

Chairperson Cardone: Thank you.

Ms. Reed: My next concern is the photos a…I didn’t see the photos you took but a…clearly there’s an issue whether it’s visible or not from my property. It really depends where you take a picture. I can take a picture that you won’t see it at all. I can take a picture in another place where you see it very, very well. A…I did take some pictures from my driveway, I didn’t…to tell you the truth I didn’t think that they were that helpful to tonight I chose…I took a different picture that I took. And I think if nothing else it proves the point that you can take two pictures of the same thing and they come up very different. Guess I’ll show this to you first, this is the same, this is what I took the other day and it’s the same picture as one of the pictures that were submitted. If you notice these are the trees here, this is the branch, same branch. If you look it looks like the wall is totally hidden here and if you look here you can see that it’s higher here and you can see it just goes right down again which is reflected a little bit in the a…architectural drawings. The other thing is if you look at these pictures when they were taken, excuse me one second I just want to turn the page, it gives you an idea of how tall the grass was at the time and I think number one, it’s not as hidden as…it’s not as down as it appears to be and the other thing is that something can be visible, not visible depending on how and where you take the picture so that’s, you know, I…I can tell you that it’s very definitely visible both from my driveway and a…from my house. My concern is certainly the height that’s a big improvement but I…I question the a…you know as the need for something to be so much higher. There were a couple of other concerns some of them a little less relative now. At the bottom of the pile that I gave you, sorry, thank you very much. Did anybody else want to see these?

Ms. Gennarelli: Are you submitting them?

Ms. Reed: Do you want me to?

Ms. Gennarelli: You can if you wish.

Ms. Reed: Okay, I’ll submit them. Well one of the pictures is already submitted by the Hudelsons. Who do I give them to?

Ms. Gennarelli: Me.

Chairperson Cardone: Mrs. Gennarelli.

Ms. Gennarelli: I am the Secretary. Thank you.

Chairperson Cardone: I think one of the issues last time was the possibility of that second story and I think that that has been eliminated. Am I correct in that?

Mr. Wilkinson: Yes.

Chairperson Cardone: Thank you.

Mr. Wilkinson: I also want to note from an architectural point of view the roof pitch of this eight over ten matches the house roof pitch and will have the metal standing seam roof which will match the house and I consider that an asset and an upgrade to the project a…those materials were…it’s not standard roofing, it’s a higher end roofing a painted metal standing seam roof so dark red is the color that will match the existing house.

Ms. Reed: One of the other concerns, I can’t find my paper which I thought would make it…I’d be very organized and succinct so I apologize, but the conversation last time when reading the minutes there were several comments that me think that perhaps despite assurances to the contrary that they weren’t thinking of it for living space or rental a…there were several I forget the name of the person…I know somebody asked about living space and…or…somebody asked about plumbing and they said not now but maybe at a future date…so plumbing at a future date, there will be electricity a…would you use it and I know Carol said several times that that would be another set of Permits, we’re not thinking of that now. So certain comments didn’t do much to convince me that they were not looking at this for living space and when Carol and I spoke after the…a…after the meeting she mentioned we’re not thinking of living space maybe down the road a caretaker cottage or something like that which as Carol mentioned, I certainly understand, I like the fact that they want somebody on their property because they’re gone for, you know, lengthy periods of time. A…but it made me wonder especially and this may be changed somewhat but the way the original plan to me looked like it was very easily cut in half because it is a tremendous amount of storage even now. It’s a big building. There’s already an area variance a…two sets of doors and this one had access to an attic so there’s no air but it is open and this part will have a wonderful river view. So my thought was it just seemed too convenient that it could easily be divided in half that sitting up on the high part of the property that has a view a…that that really gave me a lot of cause for concern that there was an intention not future down the road like with if you move somebody else but you guys were thinking of this. The other thing is that I kind of…I understand…you house certainly…I’ve seen the pictures your house is beautiful at the last meeting I said this building is beautiful, the other building was beautiful, very nice. It’s not the beauty of the building a…John at the last meeting Carol’s husband mentioned he was disappointed that a…years ago the Town switched from two acre to and I written down I don’t remember what it is now, three quarters of an acre or something zoning and he wasn’t happy with that and he didn’t want to contribute to that…but and yet they’re putting basically a small house, on a second building which is almost a small house on a two and a half acre lot so they kind of are contributing to that and he’s the one who acknowledged that he wasn’t happy with that zoning and here he’s putting on there so I…I kind of think that it’s like I know it doesn’t look good but…but I want it. Not the building doesn’t look good, the building looks great…a…but so that really hasn’t changed.

Mr. Wilkinson: It’s really a garage function, there’s no habitable space, there will be electric and a…water like a hose bib but there’s no sewer connection.

Ms. Reed: There’s a…that’s not what John said last time, John said we’re going to bring a hose up now there’s water.

Mr. Wilkinson: At this phase there is not a plan for water but there is no…it’ll be similar to a garage use where you would have an electric…

Ms. Reed: You just said a hose bib, isn’t that water?

Mr. Wilkinson: Hose bib, they will be using a hose bib at some parts but that’s coming off of the house but there’s no plans for anything like septic off which…

Ms. Reed: Does the water come into the garage, go out of the garage?

Mr. Wilkinson: There is no plans for any habitable space here.

Ms. Reed: That wasn’t my question. Is there water in the garage? Or are you carrying…are you attaching a hose to the house and watering something up by the garage? That’s what John said last time, we’re going to bring a hose up from the house but you’re saying that’s not it.

Mr. Wilkinson: I believe he’ll continue that use, bring the hose up from the house.

Ms. Reed: It just seems like people aren’t really sure of some of these things…

Mr. Wilkinson: Well people that have…

Ms. Reed: …and I don’t understand that.

Mr. Wilkinson: …a garage often have water…

Ms. Reed: You’re the architect; you designed the building, right?

Mr. Wilkinson: …no, they’re not doing…there’s no plumbing Permit for this so…

Ms. Reed: How does water get there?

Mr. Wilkinson: Inaudible.

Ms. Hudelson: The bottom line is we no plan to use this for rental space or living space. I don’t know how to say it any more clearly.

Ms. Reed: You’re the one who said potentially a caretaker because that’s where the word came from…

Chairperson Cardone: I think…could I interrupt for a minute? When she was talking about that she was talking about an apartment in the house currently and I’m looking through the…the minutes and I don’t see anything in the minutes where she said anything about using it eventually as a caretaker.

Ms. Reed: No, no, I specified that that was in a conversation we had afterwards, after the meeting we spoke.

Chairperson Cardone: Oh, because this evening we can only go by what’s on the…on the…

Ms. Reed: Sure.

Chairperson Cardone: …record and if we are told it is not going to be living space it cannot be. No, because any decision that this Board would make would have to be based upon what we hear this evening.

Mr. McKelvey: And if they sell the property it couldn’t be living space.

Chairperson Cardone: Right.

Ms. Reed: So then the…the main reason for having it have to exceed the height…?

Ms. Hudelson: I’m sorry?

Ms. Reed: …the main reason for having to exceed the height?

Mr. Wilkinson: One of the main reasons is to maintain the eight over twelve pitch which is a compliment to the existing house so it’s an architectural reason.

Ms. Reed: What was the ten eight you mentioned? You said ten…

Mr. Wilkinson: We reduced it that was a previous…

Ms. Reed: But this was on the original plans twelve eight is that the slope?

Mr. Wilkinson: That’s the slope that we are committing to the eight over twelve pitch.

Ms. Reed: Which was on the original plans?

Mr. Wilkinson: I believe it was, yes.

Ms. Reed: Well then that hasn’t changed?

Mr. Wilkinson: Yeah, I don’t think it’s changed you mentioned the ten…

Ms. Reed: You just said it changed.

Mr. Wilkinson: No.

Ms. Reed: Okay.

Mr. Wilkinson: You’re confusing me, sorry, but it’s always been a…it’s matching the roof pitch on the house which is an eight over twelve.

Ms. Reed: Okay.

Mr. Donovan: Just to be clear though a component of your application is that you believe you do not need a variance and in the first instance you are asking this Board to determine that you fall within the permitted building height as that is defined by the Code. If the Board determines that the east side of the a…proposed accessory structure is in fact nearest to Oak Street. And then in that event no variance would be required.

Ms. Hudelson: Yeah, I understand that.

Chairperson Cardone: I have a further question for Mr. Canfield. You and Mr. Mattina both visited the property I understand.

Mr. Canfield: Yes, we were there today.

Chairperson Cardone: And at that time did you discuss whether or not it fronted Oak Street on the east side or the north side?

Mr. Canfield: Yes, we did.

Chairperson Cardone: And you did not come to an agreement?

Mr. Canfield: No, we did not and that’s why we’re here.

Chairperson Cardone: Okay, thank you.

Mr. Scalzo: I have an orientation I never even picked it up on the difference between the two plans that we had from the original list to this one. The plan that was submitted the eleven by seventeen a…with the latest application a…is not the latest map. The one that we have from the original had an on-site inspection on…in 1987 a…this one does not reflect that and the orientation of the foundation which isn’t labeled on either as what it was or certified by Mr. Corwin as to its location. So the orientation here for me a…its…I can’t wrap my head around it. If we were to look at both, the original plan submitted on the smaller eight a half by eleven sheet it appears that north side of the foundation is actually the wide side. However, if you look at the plan that’s submitted on the eleven by seventeen sheet the north side on that would be equivalent to the east on the small sheet.

Ms. Hudelson: Do you have the aerial view (Inaudible)?

Chairperson Cardone: Betty, do you have the aerial view?

Ms. Gennarelli: I have that, yes.

(Ms. Hudelson approached)

Ms. Hudelson: And could I have back our album pictures?

Ms. Gennarelli: I thought you were submitting them.

Ms. Hudelson: No.

Ms. Gennarelli: I’ll make a copy of them, yes.

Chairperson Cardone: In the meantime I think there’s another question while you’re studying that if…just identify yourself again.

Mr. Feder: A…Bill Feder, 29 Rockwood Drive, Newburgh. If the building isn’t staked on the property by a surveyor or whoever or at least measured out how are you establishing grades?

Mr. Scalzo: There’s currently a stone foundation there so that…that’s not moving.

Mr. Feder: Oh, I apologize, okay. But that’s that’s shown on the plans?

Chairperson Cardone: Yes, it is. The stone…the garage is being built on an existing stone foundation.

Mr. Feder: It’s not shown on a site plan?

Mr. Scalzo: There are two different rotations if you will of where this foundation is.

Mr. Feder: And they’re superimposed on a site plan, a survey? Site survey?

Mr. Scalzo: That’s correct.

Mr. Feder: Thank you.

Mr. Scalzo: (Looking at the aerial picture) Mrs. Hudelson I can’t make out…I mean I can see where your house but I can’t make out the a…the actual form of the foundation it’s kind of obstructed by the trees it’s…

Ms. Hudelson: And this was drawn onto something that was there. Obviously there wasn’t a plan back when this was surveyed. (Inaudible)

Mr. Scalzo: No, no and that I understand however typically on a…on a survey you would see if there were foundation remains…

Ms. Hudelson: Yeah.

Mr. Scalzo: …they would be indicated on a map…

Ms. Hudelson: Right.

Mr. Scalzo: …with a note that says foundation remains.

Ms. Hudelson: Right, yeah.

Mr. Scalzo: And it’s on neither.

Ms. Hudelson: And this is the one where I tried to measure it off the a…we don’t have anything by a surveyor.

Mr. Scalzo: Okay.

Ms. Hudelson: So I…(Inaudible)

Mr. Scalzo: And that’s where I’m…I’m having a difficulty establishing just the orientation of the foundation that’s there.

Ms. Hudelson: Right.

Mr. Scalzo: I don’t know how much difference that makes but from our conversation in the field you understand where I’m coming from.

Ms. Hudelson: Yes.

Chairperson Cardone: Mr. Canfield did you want to add something?

Mr. Canfield: Perhaps a suggestion is to suggest to the Board that they may request the applicant submit a signed survey delineating where this foundation is if there is that much confusion as to you know, what was proposed and what is. Okay? Typically with accessory structures we don’t require certified stamped plans a…there is a degree of responsibility expected of the applicant to supply us with accurate information which also is double checked in the field when we do our inspection. However if there is that much controversy and discussion about it then I would think it would be appropriate to ask the applicant to submit us a survey with the foundation to be utilized to be delineated, stamped by a licensed professional.

Chairperson Cardone: I would agree with that because this Board needs to know whether or not it’s facing the east or the north elevation on Oak Street.

Mr. Scalzo: I didn’t realize we were allowed to do that. But if we were allowed to do that it would be wonderful if could get elevations from an arbitrary a…datum on each corner of the foundation at break that way we’ll have real numbers to determine you know heights on each corner.

Chairperson Cardone: Right.

Mr. Donovan: Darrin, I think the answer to that is within reason you are entitled to ask what you need to make a determination. As…as Jerry is indicating typically we come in with an accessory structure the Building Department is not going to make you field located it because quite frankly with an accessory structure they can tell when they get on the field if it’s too close or not.

Mr. Scalzo: Well…

Mr. Donovan: This is a little bit of a different situation in that now there is…there is an issue identified at least by a couple of members of the Board that say I can’t get a feel for exactly where this is so in order for me to make a reasoned determination on both the interpretation and the variance request I…I need this showed with specificity. You have the authority to do that.

Mr. Scalzo: Quite honestly I don’t know how it relates to the boundary line either. It…it…what if it’s seven feet from the line and our…our Code calls for fifteen. I don’t know.

Mr. Maher: Well that…that obligation falls on the…on the applicant and then the Town to check it obviously.

Mr. Wilkinson: I have a question if so in essence we get a survey showing that the east side which is considered, can we assume that the east side or understand that the east side would be considered the road side if we did confirm that do we need to come back for a zoning variance because then we are…

Mr. Donovan: I thought you were an architect not an attorney that was a very good leading question to get us to…in all seriousness…

Mr. Wilkinson: Architecture is legal right now so it’s not as much fun as it used to be (Inaudible).

Mr. Donovan: I…I think the answer to that is the Board is going to need to see, I don’t think Code Compliance would be comfortable, I think this is…the Board is going to need to see the information before you make the determination.

Mr. Scalzo: I…I think if they re-submit a certified survey to the Building Department that shows if they had the front elevations and showed they were within the fifteen feet I don’t understand why they need to be back in front of us.

Mr. Donovan: Because…

Mr. Wilkinson: That’s what I tried to get at just to save the additional expense.

Mr. Canfield: If we see similar to what we’re seeing here, it’s very difficult to make that determination and I think you may still need that interpretation from the Zoning Board what is considered the street side. If the survey depicts clear that the east side is the street side and the Board is satisfied with us making that determination I would be comfortable with it but I don’t want to begrudge the Zoning Board the opportunity to review a...

Mr. Donovan: And I think Darrin the point I was trying to make is that it’s going to depend on what that survey shows.

Mr. Scalzo: Right.

Mr. Canfield: Yes, yes.

Ms. Hudelson: Well my question is this, I mean this is now the expense and time of a survey in order to build an accessory building that’s four feet at some points above the level and I’m wondering what the Board would say about a variance instead which may be, you know, the faster route to go if the Board were willing to grant the variance then we wouldn’t have to worry about the determination. Do you what I’m saying? A…because that…that was one question is…is, you know, do we need a variance and I’m starting to think that the variance might be a more reasonable to request. I…maybe you can give me some guidance here? Because now I’m hearing survey and I’m think further expense and we’re talking about an accessory building for storage so…

Mr. Wilkinson: That was to the point I was trying to make was we’ll be right back asking for the same four foot six variance anyway a…

Mr. Maher: Right but what happens is the…the…obviously the Board is to grant the minimum amount of variance required so if in fact it was deemed in the end that we grant a variance for four foot six and it was deemed that the east faced in fact was on…on the…Oak Street and in fact, you only had a fifteen foot elevation at that point then you could legally go another four and a half feet above that. So it becomes the…it becomes an issue of granting the…the minimal…a minimal variance as needed based on the application.

Mr. Wilkinson: Yes and no, this is an existing foundation, that’s been there for many years, hasn’t changed; the neighbors know exactly where it is.

Mr. Maher: Right, it’s a question of orientation currently.

Mr. Wilkinson: Orientation. Still it will be six, nineteen foot six on this gable…on this…side of the building so it’s…that’s a fact as well, no change.

Chairperson Cardone: Also Mike, if I…I would like to remind you any decision the Board makes is based on the…

Mr. Wilkinson: (Inaudible)

Chairperson Cardone: …plans that were submitted. They could not then change what they were doing because then that would be a change and they would have to come back to the Board.

Mr. Maher: No, I understand but by the same token if in fact it is deemed the variance is not needed one shouldn’t be given to begin with.

Chairperson Cardone: That’s if they have the survey.

Mr. Maher: That’s my point…

Chairperson Cardone: But what…

Mr. Maher: …so if in fact there is a…there is a survey done and it’s deemed that the orientation that if the orientation is correct in that manner then there was no need for a variance to begin with.

Ms. Hudelson: If…if you’re…if you’re in a situation where you’re wishing you had not granted a variance we could always dig down a little bit and make it bigger…and…I mean and make it needed to have been granted. How is that? If I’m understanding you sort of don’t want to have granted a variance unnecessarily but it…it’s sounding to me like the variance may be the easier route to go then to go out and survey this and come back for this.

Mr. Maher: Well in essence it would be less costly.

Ms. Hudelson: For us, yeah.

Mr. Maher: Yes, I am aware of that. I understand that part of it.

Ms. Hudelson: And…and less…and less delay between now and building season if the build were…if the Board were amenable to this variance which has you know, is less than we asked for, quite a bit less than we asked for before a...I think we’ve you know shown that it will be aesthetically pleasing a…and that from most angles at most times a…it won’t be you know in anybody else’s life.

Chairperson Cardone: Do we have anything else from the Board? So at this point, are you a…withdrawing the request for an interpretation and asking just for the variance…?

Ms. Hudelson: Last time I answered a question like this I was sorry. I…I…a…because I was asking for both in this application...right a variance and an interpretation. Do I have to withdraw one like for all time in order to ask for a vote on the variance? Can I ask for a vote on the variance before we go through the you know survey and stuff like that…?

Mr. Donovan: Understand I am the Board’s legal advisor not your legal advisor so let me…let me say this to you, you have the right at any time to withdraw any aspect of your application. You also have the right at any time not to withdraw any aspect of your application. The Board typically in requests for an interpretation and in the alternate a variance would make a determination on the interpretation in the first instance. Because if they determine that a variance is not required they don’t need to get to the second part. So if you elect not to…if you elect to withdraw your application for an interpretation you are in effect, to a degree you know, you modified your application and resubmitted tonight but you are and to a degree rolling the dice do see if the Board is favorable to your variance or not. If alternatively if you want to go for the interpretation as plans are submitted then the Board has the authority to say to you we want more information before we can rule on that aspect of your application which we would have to rule on first before we got to the variance part. If that hopefully…is somewhat clarified.

Ms. Hudelson: I…I understood much of that a…I…I would like to know how the Board would vote on the variance before going to the harder thing. A…I’m happy to keep this open a…and to continue working with people here if…if it’s voted down a…but I wonder if I could do it in that order and request that the Board do it in that order because then there’s a possibility that we would have an answer tonight and then we could avoid the you know the issue of the survey and the additional time so…

Chairperson Cardone: Well I think that a…I know that at least one Board Member and I’m going to count myself also so that’s at least two Board Members have requested further information which would be a survey, a signed survey and I don’t know how the rest of the Board feels…you know so I don’t feel ready at this point to make a determination on the interpretation.

Ms. Hudelson: Oh, the interpretation.

Chairperson Cardone: And I think Darrin you expressed the same?

Mr. Scalzo: I do, yeah, I…I am in agreement with you Grace.

Mr. McKelvey: I think it makes sense.

Chairperson Cardone: So that’s the point that…that exists.

Ms. Hudelson: So the Board is requesting more information and…

Chairperson Cardone: In order to make that interpretation, yes.

Ms. Hudelson: And just to understand that’s for the interpretation of the Code? Or the interpretation of which way this faces?

Chairperson Cardone: Right.

Mr. Maher: Correct.

Ms. Hudelson: But…if the Board were to vote on…let’s…let’s just imagine that we say okay the north side is side that we’re concerned with and it’s, you know, four and a half feet higher than the fifteen feet allowance…can…can the Board vote on that and still allow me to then supply information regarding the a…interpretation if they vote down the variance? Does that make sense? I…I’m still…

Mr. Scalzo: That’s a question for Grace.

Ms. Hudelson: Yes.

Chairperson Cardone: Actually it’s a question for the attorney.

Mr. Donovan: So just as I explained before…

Ms. Hudelson: Yeah, and I’m still trying to understand…

Mr. Donovan: That’s okay.

Ms. Hudelson: …if I ask for that first.

Mr. Donovan: If you want…if you want the interpretation and or the variance the Board needs to rule on the interpretation first.

Ms. Hudelson: I see so they cannot rule on the variance first.

Mr. Donovan: That’s correct.

Ms. Hudelson: Unless I withdraw my request for an interpretation.

Mr. Donovan: Correct.

Ms. Hudelson: And if I do withdraw my request for an interpretation can I…and they vote down the variance, then can I request the interpretation again?

Mr. Donovan: A…I…well the…

Mr. Scalzo: They could request the…but then you’d understand what we’re looking with the…with the determination.

Mr. Donovan: Well Darrin let me just think that through because the…the…what the law requires is when you have a variance and it’s denied and you come back with the same application you need a unanimous vote from the Board to rehear that matter. So the question that I don’t know the answer to right now is whether or not the request for an interpretation is in fact a different request therefore allowing you to just make an application and I’m just not prepared to answer that right now, sorry.

Ms. Hudelson: It’s hard for me then to know…to know how to respond so a…and I know you’ve got other people to deal with too. This has been much more time than I anticipated a…so what I’m under…what I’m hearing is the Board would like us to do a survey and then to come back to you. Is that…that what you’re saying? And in the event that you look at the survey and you say no well we really think it’s the north face is the one we have to deal with then you look at everything that we’ve said and the photographs, etc. and decide whether to vote…to grant a variance? Right?

Chairperson Cardone: Right.

Mr. Donovan: Correct.

Ms. Hudelson: And you don’t know tonight whether you’d be inclined to grant that variance at that point?

Chairperson Cardone: Well we have a couple of options; we could leave the Public Hearing open and…and that…get more information…

Ms. Hudelson: That’s better than closing it and starting all over.

Chairperson Cardone: Right or if in closing it we would have sixty-two days to make a decision but probably the best alternative is to leave the Public Hearing open.

Ms. Hudelson: Okay.

Mr. Wilkinson: I would…I would request that so that we don’t have to resubmit but we will submit a…a site plan with a…bonified survey with the existing foundation and the proposed.

Mr. Donovan: And just to be clear, Darrin, Mike you guys are going to look for …the surveyor should indicate the distances to the a…property lines, correct?

Mr. Scalzo: Correct.

Mr. Maher: Could you…Dave could you clarify for the applicant if in fact the variance is voted down what it takes to either reopen it or to reapply?

Mr. Donovan: Well so if you want to…if you want…if the variance was denied and you wanted to reapply for a variance, if you wanted to reapply for the same variance you need a unanimous vote from the Board allowing you to reapply or to reopen the Hearing. Alternatively you could modify your application much as you’ve done this evening and then the Board could entertain that new modified application.

Mr. McKelvey: I’ll make a motion that we leave the Hearing open.

Mr. Scalzo: I’ll second that.

Mr. Donovan: And that is to February…?

Ms. Gennarelli: 26th, February 26th.

Chairperson Cardone: And now if there is anyone interested in that application you will not be re-noticed but you have the date this evening that would be February the 26th.

Ms. Gennarelli: Darrin you were the second?

Mr. Scalzo: Yes, I was.

Ms. Gennarelli: Okay.

Mr. Scalzo: And for the next meeting can a…can we be supplied with the latest architectural drawings please.

Ms. Hudelson: I…I…I assumed that you got those; I just didn’t understand the process I guess.

Ms. Gennarelli: Okay, roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:07 PM)

ZBA MEETING – JANUARY 22, 2015 (Time Noted – 8:07 PM)

LZL EQUITIES, LLC. / ESTATE 301 ROUTE 32, NBGH

OF JOHN O’CONNOR (14-1-43) B ZONE

Applicant is seeking area variances for the front yard(s) setback abutting State Highways shall be 60 ft. in depth on NYS Route 32 and NYS Route 300 to build a new Dunkin Donuts building and a freezer.

Chairperson Cardone: Our next applicant LZL Equities.

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

Mr. Minuta: Good evening Chairman Cardone and Members of the Board. Joseph Minuta with Minuta Architecture representing LZL Equities and also on behalf of the Estate of John J. O’Connor. We’re here to…a…before you this evening a…for a area a…variance for an existing building. We were previously before you a…last on August 28th where a…a zoning interpretation for the use of Dunkin Donuts was a…was a granted. A…that was four, almost four months ago a…part and parcel to this a…process and this project just wanted to…it came to my light so I want to bring it to yours. A…this property is currently a…in an estate, that particular estate is to a young boy a…who lost both of his parents a…Mr. O’Connor and his wife and a…this project and its process and approval hangs in the balance for his future. A…so to move this expeditiously I’d like to first and foremost state that it’s an existing building a…we have a…existing setbacks a…that are non-conforming and the plan for this project is to utilize part of that building a…mainly the foundation as it sits as well as all of the a…utilities that are currently existing at the site. I have a image of what the property will look like. The drawing here on the right represents what the front entrance will look like facing Route 32 a…yes, and then this would be the side entrance facing Route 300 actually the rear and the other side of the building facing the parking area. I think it’s a pretty simple application. We have an existing building, existing site, we’re seeking to a…a…seek a variance for its existing non-compliance. And if there any other questions from the Board I’d be happy to answer them.

Mr. Scalzo: It’s not a question more of a statement but at your last visit here somehow I…when you had left I was under the impression that the existing building was going to be modified and I see it’s going to be razed. Not that and any…and the cooler is in addition to. Correct? To the original footprint.

Mr. Minuta: The cooler yes a…to that end a…whether we remove the existing wood framing and simply replace it with wood framing, that’s essentially what we’re doing. If you’d like us to leave those walls and build upon them we can certainly do that but new construction is certainly better than old.

Mr. Scalzo: Just a statement I didn’t necessarily…

Mr. McKelvey: Are you before the planning board?

Mr. Minuta: We a…met with the planning board a…nearly a year ago a…and we are not currently before them, we will be going before them pending the outcome here.

Mr. Scalzo: Are there plans for the installation of new sanitary disposal system?

Mr. Minuta: No. The premise here is we’re going to utilize the existing site, the existing utilities. We’ll obviously bring in the sprinkler main because sprinkler is now required but other than that the site will remain essentially as it’s…with marked improvement.

Mr. Scalzo: It…it’s…is it a one hundred and fifty gallon tank or fifteen hundred?

Mr. Minuta: Fifteen hundred.

Mr. Scalzo: Okay, housekeeping.

Mr. Minuta: Thank you.

Mr. Maher: And the entire structure remains in the same foundation footprint? Correct?

Mr. Minuta: A…that is correct, as a matter of fact we’re…we’re moving it back just a little bit from the existing foundation a…and there’s a small a…addition off the back corner which basically squares off the building. The equipment which is a walk-in cooler is considered a piece of equipment and not part of the building.

Mr. Scalzo: Jerry is that…is that the case? That the cooler is not considered part of the building?

Mr. Canfield: If it’s attached to the building it’s part of the building. If it’s physically attached it’s part of it. We deem it as part of it.

Mr. Minuta: Okay, regardless of that we are not increasing the degree of non-conformity so I think that we can leave that to a Building Code interpretation.

Mr. Canfield: I think Joe at this time while you’re before this Board if it’s a concern of the Board it should be addressed at this time. Rather than wait or you may end up back here, you follow me, so if a Board Member raised the question and they ask our interpretation I would have to reply that if the cooler is attached to the building it’s part of the structure so…

Chairperson Cardone: And it would not be within the original footprint.

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

Mr. Scalzo: I have a different concern actually I…I’m pretty sure the minimum a…separation distance between a building and a leech field is twenty feet. And with that additional walk-in cooler the line of approximate location of wastewater disposal field is not twenty feet.

Mr. Minuta: This is a concrete pad. It has no a…structural influence on that area.

Mr. Scalzo: Sanitary design, six foot on center for your laterals…

Mr. Minuta: Right.

Mr. Scalzo: If you’re not six feet away then you’re not going to get that full benefit of your wastewater.

Mr. Minuta: I suppose that’s a fair question. I think the…we have an approximate location of that field cause that’s the best it can be ascertained by others then…

Mr. Scalzo: But you going to…and you’re…this really isn’t a zoning question but you’re…I’m surprised that you would utilize the system that was probably installed in the ‘70’s without adding upgrades or...

Mr. Canfield: Probably in the ‘50’s.

Mr. Scalzo: Oh, okay…

Mr. Canfield: Probably the 50’s.

Mr. Minuta: No, no, no actually I met with the Department of Health, Orange County Department of Health. This was designed and I believe installed in 1971 or ’73, correct, I may be mistaken on the…

Mr. Scalzo: Is that the same Horowitz map that you supplied the first time, I believe, right?

Mr. Minuta: I believe so. I believe so a…and I did meet with them and they have a…deemed that this system a…they will accept, as a grease trap was used as a restaurant previously.

Mr. Scalzo: Okay, I’m aware of that, yes.

Mr. Minuta: Okay.

Mr. Canfield: Just a point of information though while we’re talking about it. At some point in time before this is all done a…the applicant will need to achieve Board of Health approval for occupancy so a…during the planning process and/or the Building Permit process this would…this will be addressed...the septic system.

Mr. Donovan: Jerry, let me ask this question, let’s assume that the new walk-in cooler is a fixed in structure and part of the building would we not be increasing the degree of non-conformity since we’re increasing the mass of the structure in an area where it doesn’t satisfy the setback?

Mr. Canfield: Based on past determinations that the Board has made, yes, they would be increasing the degree a…taking the example of currently you have whatever the length of the building is a…is the current linear footage of non-conformity. If you add the length or the width of the cooler which still doesn’t meet the setback you’re increasing that linear…linear footage of the non-conformity.

Mr. Donovan: So there is an argument to be made that if…if you are not as non-conforming as the existing non-conformity, which you wouldn’t be because you would be set back a little bit further that you shouldn’t need a variance to increase the degree of non-conformity. However, this Board has consistently ruled over the years that a…any expansion a…that a…is not conforming increases the degree of the existing non-conformity. So as I look at this you…you would need a variance for that a area that’s the…you show as new equipment walk-in cooler.

Mr. Minuta: Okay, in that case it’s a very simple a…solution. A…the building or this building becomes separate from the equipment and therefore it’s a piece of equipment.

Mr. Donovan: I think it’s easier the other way but it’s you application.

Mr. Minuta: A…there…there…there’s many different to you know discuss it and…and resolve it.

Mr. Canfield: If you pull it away from the side of the building and…and provide the ten foot separation it becomes an accessory structure and…and it’s a moot point, at this point. And my question is, is there any interconnection between the cooler and the building?

Mr. Minuta: A…my understanding is that there is a door between the two and there’s also a door to the exterior…from the exterior so it’s accessed from the outside…

Mr. Canfield: And the inside?

Mr. Minuta: …and the inside.

Mr. Canfield: It’s definitely connected then, Joe.

Mr. Minuta: Okay, fair enough.

Mr. Donovan: Unless you’re like (Inaudible) and you leap through the…

Chairperson Cardone: I have the report from the Orange County Department of Planning which is Local Determination.

Mr. Minuta: And a…if I may, I’m also being signaled by my client that if that’s an issue we’ll simply remove it and place that to the interior side of the building and just lose some space.

Mr. Donovan: I mean I…well the Board gets to vote. I don’t…I don’t vote. It seems to me it’s easier (Inaudible) building than get a variance for it. But that’s up to…that’s up to the Board.

Mr. Minuta: So I guess a…to sort of to…to recap or…or refocus us the…the reason we’re here tonight is because of the two front yards…front yard a…setbacks and that’s our primary purpose for being here.

Mr. McKelvey: You’re only going to have one area where you drive in off the highway?

Mr. Minuta: A…that is correct, that is on Route 32 where…where there’s an existing curb cut.

Mr. Maher: Joe if in fact you do utilize the walk-in cooler, based on the elevation, the concern I have with that is obviously the visual impact of a stainless steel or…or a steel walk in cooler behind the building there…

Mr. Minuta: Understood that could be clad in the same material as the building.

Mr. Maher: (Inaudible)…just my…it is a concern right there obviously exposed there. I didn’t see it…I didn’t see it in the elevations.

Mr. Minuta: Now and we don’t have it on the elevations cause typically we say…consider it equipment a…but then in a case where it’s connected I…I…I can see a…Mr. Canfield’s point.

Chairperson Cardone: So, Jerry the…the interpretation by the Building Department was that it was being built on the original footprint, am I correct?

Mr. Canfield: That’s correct. That’s the information that we received.

Chairperson Cardone: Okay.

Mr. Canfield: Which leads me to another point, this…this cooler has kind of thrown a wrench into this. 185-19 which deals with existing structures…

Chairperson Cardone: Right.

Mr. Canfield: …non-conformity with Bulk Requirements, basically it says it’s permitted provided that the dimensional regulation is permitted a…it can be built within the same footprint providing that you do not increase the degree of non-conformity.

Chairperson Cardone: Right.

Mr. Canfield: So, if you add the cooler you are increasing the degree of non-conformity.

Chairperson Cardone: Exactly.

Mr. Canfield: That’s…that’s 185-19-C-1 a…

Mr. Donovan: Which would mean that you’d need the variances they’re asking for tonight?

Mr. Canfield: Well basically it says it can’t be done…

Chairperson Cardone: It can’t be done.

Mr. Canfield: …if you’re increasing the degree of non-conformity, if you deem that the cooler is increasing the degree of non-conformity.

Mr. Minuta: But…

Mr. Canfield: If the applicant is willing to remove the cooler than that’s a horse of another color so to speak then it’s not increasing the degree of non-conformity and they can proceed within the same footprint.

Chairperson Cardone: And then they would need the variances.

Mr. Canfield: Correct.

Chairperson Cardone: That’s what I was driving at before that they can’t do it if they’re not within the original footprint.

Mr. Canfield: Correct.

Mr. Maher: So does that also create an issue with the back corner of the building being squared off?

Mr. Canfield: Say that again.

Mr. Maher: The back corner…

Chairperson Cardone: Right.

Mr. Maher: …the back…the a…what’s going to be the northwest corner that was going to be squared off. There’s…there’s no old…you don’t have an old plan, do you? An old existing?

Mr. Minuta: (Inaudible) Here we go, that…this little tiny piece right here that would be squaring off the building.

Mr. Maher: Which seems innocuous but…but to Jerry’s point that becomes, you know, what is that maybe a three by ten section or so…?

Mr. Minuta: Correct.

Mr. Maher: Could you do…and I’ll call it a trade, you’re…you’re increasing the side that one’s…if the square foot remains the same because he’s eliminating…

Mr. Minuta: This is true.

Mr. Canfield: Actually if they move the cooler to the north side of the building… Okay? It’s…it’s no longer a linear footage thing in the front yard on Route 300. Not to redesign it for you but I mean…that is what is increasing the degree of non-conformity, the cooler where it’s located right there.

Mr. Minuta: Well I thank you for that because my experience has always been as long as we’re keeping the same line it was never a deg…increasing the degree of non-conformity a…if you are coming closer to it than that…then that was increasing the degree of non-conformity. So there’s a couple of ways of looking at that various different municipalities do (Inaudible)…

Mr. Canfield: There…there is a…you’re a hundred percent right however, the…the way that’s the deciding way here is the way this Board has you know, historically determined and it has been increasing the degree.

Mr. Minuta: Thank you.

Mr. Canfield: So I think that’s the rules we have to play by.

Mr. Minuta: As long as it’s consistent that’s fair. So with the advent of the cooler discussion this evening if we were to remove the cooler or place it to toward the interior of the site so as not to have that as a hurdle a…we are simply dealing with the existing building and this little area in the back that we’re squaring off which we’re offsetting by the area that we’re pulling back from the front so we’re actually providing a little bit more room than there already is there in the front.

Mr. Maher: Well the only…but say if you move the cooler to the north side connected or not connected?

Mr. Minuta: Does it matter?

Mr. Maher: Well, yes because…

Chairperson Cardone: Yes.

Mr. Maher: …what Jerry brought to the attention is the…well actually no wouldn’t it…right…because it’s you’re not impeding on any setbacks at all then?

Mr. Canfield: Correct.

Mr. Maher: Okay.

Chairperson Cardone: But the issue there is they are not in the original footprint if they move that which means that they can’t do it.

Mr. Maher: Well but you’re not impeding…

Chairperson Cardone: According to Code.

Mr. Maher: …you’re not increasing the degree though.

Mr. Canfield: Correct. If you stay out of that area you are increasing the degree of non-conformity.

Mr. Minuta: So to clarify this for a moment a…so by adding on to the building were there a specific section that you’ve seen that has that provision?

Chairperson Cardone: Yes.

Mr. Canfield: It’s not about adding on, all it is if the addition increases the degree of non-conformity…

Mr. Minuta: Correct, however…

Mr. Canfield: …as it is what we’re looking at.

Mr. Minuta: Correct, however if the addition is placed to the back side we’re not increasing the degree of non-conformity, is that correct?

Mr. Canfield: That’s correct.

Mr. Minuta: Therefore that provision does not apply any longer.

Mr. Canfield: Correct.

Mr. Minuta: So we can make the building larger, right? As long as we’re not increasing that degree of non-conformity?

Mr. Donovan: Yeah, so let…let’s…let’s just take a look at what…as Jerry referenced before 185-19-C-1. Am I right, Jerry?

Mr. Canfield: Correct.

Mr. Donovan: Okay, so maintenance repair, structural alteration, relocation, reconstruction or enlargement. Normal maintenance and repair, structural alteration, relocation, reconstruction or enlargement of a building which does not house a non-conforming use…some lawyer must have written this, it means it has a…that’s a conforming use but is non-conforming as the district regulations for lot area, lot width, lot depth, front side, rear yards, etc. is permitted if the same does not increase the degree or create any new non-conformity. So my read of that is, as Mr. Minuta described, squaring off the building in the back would…would be permissible whereas the new equipment walk-in cooler would not be.

Mr. Minuta: In that location.

Mr. Donovan: In that…in that…in the location shown on the map you provided with your application. Correct.

Mr. Canfield: Correct.

Mr. Donovan: Darrin looks like he doesn’t believe me. Go ahead.

Chairperson Cardone: But Jerry, it would not…even with the cooler moved, it would not be in compliance.

Mr. Minuta: So…

Chairperson Cardone: If the…if the cooler is moved you’re saying…and the building is non-conforming right now… Right?

Mr. Canfield: The two front yards are non-conforming, correct.

Chairperson Cardone: That’s right, they still would be.

Mr. Canfield: If the cooler is moved to the other side of the building, out of the front yard…

Chairperson Cardone: It’s not there now.

Mr. Canfield: It’s not there now, correct but it’s not a linear footage thing. I mean if you want to take to another dimension and say the surface area of the building increasing the surface area of the building a…is increasing the degree of non-conformity than okay, I can understand that.

Mr. Donovan: I mean this Code provision specifically allows enlargement of a building as long as you don’t increase the degree or create any new non-conformity.

Mr. Canfield: Right and that’s the way I would (Inaudible)

Mr. Donovan: I…I’m just looking at the non-conformity being the front yard setback.

Mr. Canfield: Correct. And that’s the way I’m looking at it.

Mr. Scalzo: Joe, can you point on the survey where we…where you can move this cooler that it would…that…that Jerry is saying that it would not be an issue?

Mr. Minuta: There.

Mr. Scalzo: Thank you. I feel better now.

Mr. Minuta: Let me just illustrate this very quickly. Our degree of non-conformance are our two front yard setbacks. Correct? We have two front yards here.

Chairperson Cardone: Right.

Mr. Minuta: So…if we are adding this way and along that same line, according what I just heard from Mr. Canfield that would be increasing the degree of non-conformity.

Chairperson Cardone: Right.

Mr. Minuta: If we add along this line that’s increasing the degree of non-conformity. If these two lines here stay fixed and we add to the building in the back and we are not increasing or…or going into those areas we are there…no longer increasing the degree of non-conformity we’re permitted to expand this building, whatever is necessary and that fixed point remains. Is that succinct?

Mr. Canfield: That’s correct.

Mr. Scalzo: Any parking space issues there?

Mr. Minuta: No parking issues.

Chairperson Cardone: Right. The…the cooler would have to be…looking at it…on the left side in the back.

Mr. Minuta: Right about here, correct. So if…if we…if we increase this area this way in this area we’re under…the provisions we just discussed…we are not increasing the degree of non-conformity. You are allowed to expand the building.

Mr. Scalzo: And the main entrance to the building is that same side we’re discussing, correct?

Mr. Minuta: A…the entrance is right here.

Mr. Scalzo: Oh, okay.

Mr. Maher: And the…the stairs that are shown on the…on the east or the west…south… whatever, south side are going to be taken down, correct? Because they’re (Inaudible)

Mr. Minuta: The stairs that exist now?

Mr. Maher: Yes.

Mr. Minuta: A…that’s the access to the basement.

Mr. Maher: Okay.

Mr. Minuta: That’s exterior access to the basement.

Mr. Canfield: I think also though it should be clarified that this conversation is centered around relocation of the cooler.

Mr. Minuta: Agreed.

Chairperson Cardone: Right.

Mr. Canfield: And nothing else. You’re not going to come back with a full blown enlargement of the building?

Mr. Minuta: No, sir, not at all. Not at all.

Mr. Donovan: (Inaudible) so to speak.

Mr. Minuta: We’re very happy with the footprint you know, we would utilize the existing building however, with…with…with current energy and all the other a…things that we have today to reutilize this building is putting money into something, a structure, that we would be much better off simply rebuilding the walls of it and providing that extra insulation and so forth. So it’s just a much simpler idea to do this.

Mr. Maher: A…what’s the foundation made of?

Mr. Minuta: A…

Mr. Maher: Concrete block?

Mr. Minuta: A…yes.

Mr. Maher: You’re shaking your head Jerry.

Mr. Canfield: What was it made of?

Mr. Minuta: Concrete block.

Mr. Canfield: It is?

Mr. Minuta: CMU.

Mr. Canfield: Okay, I thought it was stone laid.

Mr. Minuta: No this was built in 1973.

Mr. Canfield: Okay, we’ll see that on the architecturals.

Mr. Minuta: Fair enough, fair enough. You know, while we’re on the subject of all of this not to…not to add but…

Mr. Donovan: Be careful you were doing pretty good so…

Mr. Minuta: …to explain, no…no…no…hold on, there were takings…there were takings from NYS DOT on this property and that therefore created some of the issues we’re here tonight for.

Chairperson Cardone: That’s true. And you would be redesigning the whole loading area and so forth if you have to when you change the cooler…

Mr. Minuta: Not necessarily. This cooler could go right here.

Mr. Donovan: Just if you could because you said right here a lot, it’s not show up in the minutes…

Mr. Minuta: Sure.

Mr. Donovan: …just try to kind of tie up where that would be.

Chairperson Cardone: Right.

Mr. Minuta: Absolutely, this is…this is the a…north corner of the building a…between the building face and the parking space.

Mr. Donovan: Thanks.

Mr. Scalzo: The taking you were referring to is only on 32 as I…as I look the survey the (Inaudible) line almost touches the building corner a…for…as I’m looking at your Liber you’re 3244 page 284? So it’s only on 32 you’re talking about, correct?

Mr. Minuta: I believe so, Mr. Stridiron did the survey and a…he’s real a…real a…studious about finding the a…those items.

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

No response.

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

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

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

(Time Noted - 8:36 PM)

ZBA MEETING – JANUARY 22, 2015 (Resumption for decision: 8:52 PM)

LZL EQUITIES, LLC. / ESTATE 301 ROUTE 32, NBGH

OF JOHN O’CONNOR (14-1-43) B ZONE

Applicant is seeking area variances for the front yard(s) setback abutting State Highways shall be 60 ft. in depth on NYS Route 32 and NYS Route 300 to build a new Dunkin Donuts building and a freezer.

Chairperson Cardone: On the application LZL Equities seeking area variances for the front yard(s) setback abutting State Highways shall be 60 ft. in depth on NYS Route 32 and NYS Route 300 to build a new Dunkin Donuts building and a freezer. This is a Type II Action under SEQRA. Do we have discussion on this application? Now am I understanding that the freezer is moved…is to be moved?

Mr. Minuta: It is our understanding and a…we’re indicating to the Board that yes, the freezer will be moved from the current location on the plan.

Chairperson Cardone: Okay, thank you. Do we have discussion on this application?

Mr. Masten: I’ll second it.

Chairperson Cardone: Well you didn’t get a motion yet.

Mr. Masten: Sorry.

Mr. Donovan: You could first it and then that would get things done with.

Mr. Maher: Yeah, that would get it started.

Mr. Levin: I’ll move that we approve this application.

Mr. Maher: Second.

Ms. Gennarelli: Is that Mike?

Chairperson Cardone: Yes.

Ms. Gennarelli: Okay, I got you that time. All right.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:54 PM)

ZBA MEETING – JANUARY 22, 2015 (Resumption for decision: 8:54 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.

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

Chairperson Cardone: We have a Reserved Decision from the September 25th meeting of Jin Grabek. First we had a request for an area variance to allow a personal service business in an I/B Zone to convert an existing single family dwelling into a hair salon. In the meantime, the Town has passed an ordinance which would allow this so I would need for the applicant to withdraw this…

Ms. Gennarelli: Grace, you said area.

Mr. Maher: Yeah, correction, use variance.

Ms. Gennarelli: You said area.

Chairperson Cardone: Oh, I meant to say use, I’m sorry, a use variance and we would need for the applicant to withdraw that use variance because that would no longer be necessary.

Ms. Gennarelli: Can you just step up to the microphone?

Chairperson Cardone: You have to identify yourself and make the request into the microphone.

Mr. Doce: Darren Doce, a…yes, we would like to…request we withdraw that application for the use variance.

Chairperson Cardone: Thank you. And now we have Jin Grabek, which is a Type II Action under SEQR, a request for an area variance for one side yard setback, the combined side yards setback, the minimum lot width, the minimum lot area and the ten foot required setback of accessory structures to convert an existing single family dwelling into a hair salon in an I/B Zone. Do we have discussion on this application?

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:56 PM)

ZBA MEETING – JANUARY 22, 2015 (Resumption for Decision – 8:54 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.

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

Chairperson Cardone: We have a Reserved Decision from the September 25th meeting of Jin Grabek. First we had a request for an area variance to allow a personal service business in an I/B Zone to convert an existing single family dwelling into a hair salon. In the meantime, the Town has passed an ordinance which would allow this so I would need for the applicant to withdraw this…

Ms. Gennarelli: Grace, you said area.

Mr. Maher: Yeah, correction, use variance.

Ms. Gennarelli: You said area.

Chairperson Cardone: Oh, I meant to say use, I’m sorry, a use variance and we would need for the applicant to withdraw that use variance because that would no longer be necessary.

Ms. Gennarelli: Can you just step up to the microphone?

Chairperson Cardone: You have to identify yourself and make the request into the microphone.

Mr. Doce: Darren Doce, a…yes, we would like to…request we withdraw that application for the use variance.

Chairperson Cardone: Thank you. And now we have Jin Grabek, which is a Type II Action under SEQR, a request for an area variance for one side yard setback, the combined side yards setback, the minimum lot width, the minimum lot area and the ten foot required setback of accessory structures to convert an existing single family dwelling into a hair salon in an I/B Zone. Do we have discussion on this application?

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:56 PM)

ZBA MEETING – JANUARY 22, 2015 (Time Noted – 8:56 PM)

JAMES B. ANDERSON 153 FOSTERTOWN ROAD, NBGH

(43-1-1.2) R-2 ZONE

Applicant is seeking an use variance for 185-13-E-(2) to allow the parking of a commercial vehicle (greater than 16,500 lbs.) outside of a garage or carport at the residence.

**OTHER BOARD BUSINESS**

Chairperson Cardone: Okay, under Other Board Business, if you recall James B. Anderson was here from 153 Fostertown Road and at that time he indicated that he would Withdraw his application and we asked to have that in writing and so far we have not received that so I would refer to our Attorney on this.

Mr. Donovan: So my suggestion is that I send him a letter just confirming the fact that his application is withdrawn and if he wants any further application…action by this Board he needs to submit a new application.

Chairperson Cardone: Okay. Is the Board in agreement with that?

Mr. Scalzo: I agree.

Mr. Maher: I agree.

Ms. Gennarelli: Do we need a vote on that…Grace?

Chairperson Cardone: Yes.

Ms. Gennarelli: Was there a first and second?

Mr. Maher: I’ll first it.

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Okay, okay roll call.

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 8:58 PM)

ZBA MEETING – JANUARY 22, 2015

END OF MEETING (Time Noted – 8:58 PM)

**RE-ORGANIZATION MEETING**

Chairperson Cardone: Okay, the next item is the Re-Organization Meeting. Every January we have a Re-Organization Meeting to vote on Chairperson and Vice Chairperson.

Mr. Maher: I make a motion that we continue as we are.

Mr. Scalzo: I second.

Mr. Levin: I’ll third.

Ms. Gennarelli: Roll call (for Grace Cardone-Chairperson).

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Abstain

Ms. Gennarelli: Roll call (for John McKelvey-Vice-Chairperson).

Richard Levin: Yes

Michael Maher: Yes

John Masten: Yes

John McKelvey: Abstain

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Okay, has everyone has the minutes from the last month? Do we have any corrections to the minutes? Okay, do we have a motion to approve the minutes?

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

Mr. Masten: I’ll second it.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response

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

Mr. Maher: So moved.

Chairperson Cardone: Do we have a second?

Mr. Masten: I’ll second it.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The meeting is adjourned.

PRESENT ARE:

GRACE CARDONE

RICHARD LEVIN

MICHAEL MAHER

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:00 PM)