ZONING BOARD OF APPEALS

MEETING – JULY 24, 2014

(Time Noted – 7:02 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 from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening; but the Board may take up to 62 days to reach a determination. And I would ask if you have cell phones either turn them off or put them on silent. And when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:03 PM)

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

ZBA MEETING – JULY 24, 2014 (Time Noted – 7:03 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: Our first applicant this evening Jin (Kanjanakiritumrong) Grabek.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, July 16th and in The Sentinel on Friday, July 18th. This applicant sent out thirty-six letters for each application, for the use variance and for the area variances. And all the mailings, publications and postings are in order for both.

Chairperson Cardone: Please take the microphone and identify yourself for the record. You can take it off the stand or…

Ms. Gennarelli: It comes right off.

Mr. McKelvey: Take it right off.

Ms. Gennarelli: Very good.

Mr. Doce: My name is Vince…

Ms. Gennarelli: Vince, you just have to get closer to the microphone though.

(Inaudible)

Ms. Gennarelli: Vince, I don’t think the microphone is on. Sorry.

Mr. Doce: My name is Vince Doce; I have an engineering and surveying business located here in the Town of Newburgh. And a…this evening I’m here to represent my client a…Jin Kanjanakiritumrong on an application for a…area variances and a use variance on her property located in the…on Meadow Avenue in the Town of Newburgh. On the easel before you we have shaded in green the property as it exists with the existing former house on it, a garage and a little shed in the back. The property is located in an I/B zone and it is directly adjacent to the mini mart that is located on the south side of Meadow Avenue adjacent to the bank which is at the corner of Meadow and 300. It is across the street from a mini mall that runs from Route 300 to Meadow Avenue, houses an office structure and a…a number of row a…commercial a…properties along Route 300. As I said before we are appearing tonight for area variances and a use variance for the subject property. Specifically my client would like to place her existing business which is a hairdresser termed a personal service use in the Town of Newburgh on…in the house that is located on the parcel. On this same side of Meadow Avenue running from my client’s parcel down to Charlile Circle there is a number of I believe nine other a…parcels that are similarly shaped and have the same kind of a dress to it. First I’d like to address the need for area variances. As I said the parcel lies in an I/B zone and the parcel and the structure on the parcel have existed in essentially its present form for fifty-nine years. The parcel predates zoning regulations in the Town of Newburgh which were established in the late 1950’s. The variances requested are for…area we have sixteen thousand square feet in an I/B zone minimum requirement would be forty thousand square feet. The lot…lot width is ninety feet in an…in an I/B zone the requirement is a hundred and fifty feet. The rear yard is okay, the side yard the minimum is fifty feet and we have six feet. Both side yards are required to be a hundred feet and we have forty-five feet. The entire parcel is only ninety feet wide. All lots on Meadow Avenue in this area have the same zoning restrictions and the same a…problems should they try to use it for anything other than what they’re using it now. All of the area variances are necessary for virtually all of the uses allowed on any of these parcels in this zone. The problem primarily stems from the fact that it’s zoned I/B and all of the parcels from inception have been sixteen thousand square feet with the exception that the mini mart is on eighteen thousand square feet. There’s not really anything we can do about that, they exist as they exist and there are no available lands or properties that we can purchase or anybody near that can purchase to alleviate the need for these variances. I’ll get back to that in a moment. Now I’d like to address the need for a use variance, namely permission to operate a personal service business on the subject parcel. Service…personal service business, a hairdresser or barber shop a…things of that nature that a…a…a…a tailor, a…a shoe repair, the personal services and they are not allowed in an I/B zone as a free standing business. I/B is the most intense business zone in the Town of Newburgh. Permitted uses within this zoning designation are malls, restaurants, theatres, car dealerships, hotels, motels, automatic service...automotive service, self-storage facilities, manufacturing, warehousing, travel centers, large office buildings, they’re the uses that are geared for an I/B zone. The subject parcel is sixteen thousand, two hundred square feet, I/B zones require a minimum of forty thousand and usually much more than that, up to ten acres. Now in this zone on these parcels by zoning - gas stations would be allowed, mini warehousing would be allowed, hotels, motels however, a personal service store like a barbershop, cosmetology a…hairdresser, tailor would not be allowed. It makes it extremely difficult to do anything with these parcels of property that meets the zoning. If I can just get that picture to you, nothing, virtually nothing allowed in an I/B zone could be built on these parcels of property, simply too small. Every parcel on the south side of Meadow Avenue is approximately sixteen thousand square feet as I said the mini mart is eighteen thousand and is therefore in need of variances for the uses allowed. Now that’s only a few small parcels within a very large I/B zone. The rest of the zone is fine. You’ve got the Newburgh Mall in it. You have Perkins Pancake, you have a…Valvoline or whatever that a…automotive a…service a…business is there. You have gas stations, you’ve got the Newburgh Cinema, they’re allowed, they’re accommodated and they work well in this mall…in this area. These structures here, these parcels do not work. To find a buyer or a user able or willing to combine parcels so as to be in conformance with the Bulk and Use Regulations in tandem of the I/B Zone would be virtually impossible. Nobody is going to buy…you couldn’t buy enough parcels to put another mall there or a gas station or whatever. In fact, the uses allowed in the intended regulations are so onerous and so completely at variance with the size and nature of the subject particle…parcel as well as the other neighborhood parcels they would…that they would discourage almost all otherwise potential users. Consequently there is virtually no interest for the purchase of the subject parcel for the uses that I just mentioned that are permitted there. What are other possibly…what are the possibilities exist for these aggrieved parcels? Existing homes are also allowed within the I/B zone, not new ones but existing homes would be allowed a…to continue. However, Meadow Avenue is an extremely busy connective Street, running between Route 52 and Route 300. There are no sidewalks the neighborhood is clearly is commercial in nature. As I said before minimart a…office buildings, bank a…by the way, there is existing now a personal service store, which is diagonally across or a personal business which is diagonally across from my client’s parcel. I’ll address that a little bit more…later. A…free-standing residential structures on small parcels in this environment are out of place, they’re not in demand and there should there be children living there it would be dangerous. Potential sale or use of the parcel, residential purchase is extremely challenging and it’s not likely at a…any kind of a reasonable price. As you can see from the use report, as the Board can see from the use report prepared by Arthur Fowler, if marketed for residential use the parcel would sell for less than ninety-five thousand dollars in his appraisal. The applicant purchased her property on April 14th of this year for a hundred and ninety thousand dollars for commercial use. A hairdresser, a personal service store which she had every reason to believe would be allowed there since on the adjacent parcel to this there was in fact a hairdresser located and in fact, that hairdresser or that…the people controlling that parcel asked my client to move into that existing hairdresser shop. She declined and opted to buy her own par…building adjacent to it where she thought there’s a hairdresser existing here I…in fact, she was told that she would be allowed to do so.

Chairperson Cardone: I don’t think she was told by the Town.

Mr. Doce: No, no, no…she was…

Chairperson Cardone: There were no Permits issued for hairdressing salon at that address.

Mr. Doce: And it existed for some seven years or so as I recall because I had done the survey on it and there was never an objection to it being there a...it was never brought up to my previous client that owned that…that…he had a hairdressing there that was not operating. What I was alluding to before they thought that since they were so long that it was…nobody objected to it that it was permissible for them to be there.

Mr. McKelvey: I don’t think they had any Permits.

Chairperson Cardone: They didn’t.

Mr. Doce: No, I don’t know what they did, we just did the survey, I have no idea what went on, you know, beyond that a…except the hairdresser there was for…for a number of years. Diagonally across from this there is another personal service it’s a, you know, cosmetology (inaudible) of some sort. I think its hair braiding a…eyebrow waxing and things of that nature, that’s in the exact same zone. And if you go by there, there’s a sign up there in the window that says it’s, you know, an existing business. At any rate, a…I’m just pointing out she was unaware that she was having any sort of a problem there a...when she bought the property. Now if forced to sell for a residential use a…a…the applicant would receive or denied any economic benefit there would have to sell the parcel a…for considerably less than she paid for it and would suffer a…about a ninety-five thousand dollar loss. The aforesaid Fowler report has been prepared by one of the more respected and accredited real estate professionals in the area and said report is in total agreement with the narrative that I just presented you.

Mr. Donovan: Can I interrupt you for one second? What…what report are you talking about?

Mr. Doce: The Fowler report. We submitted a report a…by Arthur Fowler, a real estate a…professional which he a…gave his estimations of value of what could be sold for different uses.

Chairperson Cardone gave Mr. Donovan a copy of report.

Mr. Doce: Would you like me to continue or do you…?

Chairperson Cardone: Please continue.

Mr. Donovan: No, I feel included now so it’s good.

Mr. Doce: Okay, now another use that would be possible there is rather remote but to use the property for an office. Again this is problematical there is such a glut of office space that potential users or buyers are extremely difficult to secure particularly for office space in freestanding buildings with what few potential users as there are opting for suites in larger, more prestigious office complex. Even in such complexes there are high vacancy number. Right across the street if you go by there you can see there are vacancies in that existing office building and there are vacancies in a number of office buildings in the Town of Newburgh. There’s very little demand for freestanding offices in converted houses. A good example of this occurs on the adjacent parcel to the east the one…one we were previously discussing, the same parcel was purchased in 19…in 2013, November 2013 for a hundred and eighty-two thousand five hundred dollars according to the tax records a portion of the structure thereon was used as an office, that office in that structure is now vacant. However there is a second structure located on this adjacent parcel in the back and that houses a…an apartment, a fifteen hundred and seventy six square foot apartment structure. Therefore, without a variance the hundred and eighty-two thousand dollar parcel next door is worth considerably more than the subject parcel that was worth a…that was purchased for a hundred and ninety thousand dollars. The appli…the reason the applicant, my applicant purchased the subject parcel for a hundred and ninety thousand dollars is that her intended use was for the personal service uses allowed in the B zone and not in an I/B zone. Again, the aforementioned Fowler report points out that if the applicant’s parcel is to be sole…just a sole use for office purposes it will not sell for more his appraisal of a hundred and eight thousand dollars. Therefore, if forced to sell for an office use the applicant would receive no positive economic benefit in fact, she would suffer an eighty two thousand dollar loss and potential purchasers or users will be extremely difficult to find. Considering all of the above, it is incumbent to realize that the applicant will suffer a loss of eighty-two thousand to ninety-five thousand dollars or more if she is disallowed personal services use of her parcel as allowed in an I/B zone (B zone) and is forced to sell under duress if she in fact can find a buyer under such duress. Or she is forced to rent the building for an office at very low rates in an extremely depressed market as it has been for a number of years. In either case the applicant could not support carrying her investment, would lose the parcel and would be estranged from all economic benefits that would have naturally accrued had the variance been granted or if the prop…the…the property was in my estimation zoned properly. A…my client purchased the property because she believed that she could thereon locate her hair salon in fact, as I said before, when she contracted to purchase the property a hair salon was located in the…in the adjacent former house to the east having located there several years ago, under the identical zoning that covers both parcels. As I said before, my client was offered space in that building. Now invariably I’m sure no one in the Town objected to such a personal use on the adjacent parcel and there was no objection to the hair salon. In the way of supporting corroboration for the…arguments presented in our application we have submitted the following documents: the aforesaid Fowler report has been prepared by as I said by one of the top a…in…most respected accredited real estate a…professionals in the area and said the form…report is in total agreement with the narrative that I just presented. One of the reasons that we were a…so a…inclined to present the Fowler report is that a report of that nature is under the guidelines of the Department of State one of the documents that should be submitted for use baring in decisions. A…in this what you might call a suggested check list as illustrations of financial evidence a…they give one, two, three, four, five a…a…suggestions so to speak in a realtors statement of inability to rent or sell a…it is one of the documents that they recommend be considered…

Mr. Manley: Mr. Doce, in that light you’re indicating that the Fowler report being an accredited real estate professional and you wishing to, of course, submit that documentation to this Board why didn’t your professional sign the document?

Mr. Doce: He put it…a…it’s a report, it isn’t as a letter, it’s a report submitted by him it was submitted directly to the town and it’s under his letterhead and I can get him to sign it of course.

Mr. Manley: Right.

Mr. Doce: That’s the way he…he wrote it.

Mr. Manley: Well your CPA that submitted the document signed that report. I would imagine we would need this copy, to be considered, it should be signed.

Mr. Doce: I’m sure he…he will sign it and I’m sure he would verify it. He did the report and submitted it a…under his…

Mr. Manley: I understand, but for our records, I think that you know, the Town and the Board would probably want a signed copy that he’s acknowledging that this report came from him directly.

Mr. Doce: Okay, that’s fine.

Mr. Donovan: And if I could just add one other thing, it would be better if it was in affidavit form so it’s sworn to and notarized since he is obviously making important statements a…based on his professional expertise but typically in a capacity in the nature of a use variance those…those things are sworn to so the Board can rely upon their representations.

Mr. Doce: So, you’re saying you’d like it under his signature and with a…a…and notarized.

Mr. Donovan: Well it’s a form where he says that he swears under the penalties of perjury the following is accurate to the best of his ability.

Mr. Doce: Okay.

Mr. Manley: Unless you want make him available for the Board to cross examine.

Mr. Doce: If I could get him in here now, I would a…but I…I wouldn’t be able to locate him right at this moment. A…but I’m sure he would do that he did print the report. Okay a…as was just mentioned another document that was submitted was by Kathleen Smith a…certified public accountant in which she a…a…addresses the issues along these lines. She points out that a…that a…Jin has been the sole proprietor of her business since 2010 was located on Old North (South) Plank Road and this is after operating as a hairdresser for twenty years. A…over the past few years the rent was escalating and Jin decided with her accountant that it would be prudent for her to buy a…since a hairdresser is a unique kind of business for personal service as barbershop it would be well if she had her a…her own building…her own a…a…plant at which to operate, thereby removing some of the ups and downs of a…of a…the business and a…removing having to pay rent a…and getting no…no a...benefit other than the…the benefits of a renter. A…she points out that if a…if the variance is not granted Miss Jin would be forced to suspend her business activities and being the sole proprietor this is her main source of income and she would not be able to cover her mortgage and other personal liabilities. She goes on to say in her erosion, her claim base would be eroded and if she a…was in fact be able to rent another place which she’s in tremendous duress now because she has to get out of where she is, I believe, during the month of August a…that she certainly wouldn’t be in operation and would lose some of her client base and if she were able to relocate she still would suffer the inability to cover the carrying costs of the Meadow Avenue property, still incurring the rent expenses for her…a…on a new place of business and a…this would…she would lose the property and thereby lose her…or her investment in it and any opportunity to benefit from the…from the property a…a…financially or otherwise. In fact, she would lose money on the property and because the considerable amount at that. Now, all this having been said a…it isn’t really in my estimation an encumbrance on the neighborhood in any way to have her operating there a…it’s…it’s an appointment type business a…you would probably not have more than several clients there at a time a…and the…the…the nature of the neighborhood wouldn’t con…change considerably. Personal service stores have existed next door and across the street and I don’t think it’s really a…that anybody would object to such a thing. The alternatives, those allowed in…uses allowed by zoning a…I think could be rather onerous for such a small congested neighborhood to get things in there like (inaudible) things like that or a repair stor…automotive repair shops although allowed I think they would not be good. Basically I’m saying what she is proposing to do is beneficial certainly to herself but is beneficial to the neighborhood, it stabilizes the neighborhood and it’s a far better option than any other option that we have in there in my estimation.

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

Mr. McKelvey: Did she ever check the zoning before she bought the property?

Mr. Doce: She didn’t…a…she did not realize that there were variance in zoning. She asked the question as she will attest; can I go in this neighborhood? You know, is there any problem it? People told her no, she saw there was an operating place next door and she really had no…she didn’t have the background, the expertise and she wasn’t advised by anybody, real estate wise that there could be any problem. She just didn’t think there was a problem.

Mr. Manley: Was the…was the property purchased through a real estate agency or was it a private sale?

Mr. Doce: Well, when you bought it you purchased it through whom?

Ms. Grabek: Through the agent.

Mr. Doce: Through the agent? Yes.

Ms. Gennarelli: You need to use the microphone.

Ms. Grabek: Through the agent.

Mr. Manley: Okay, what real estate agency?

Ms. Grabek: Coldwell Bank.

Mr. Doce: Coldwell Banker.

Mr. Manley: Okay, was there any inquiry made to the real estate agency or any…were there any representations made by the real estate agent as to what uses were allowed in that building?

Ms. Grabek: It said mixed use. It said on it mixed use.

Mr. Doce: Did the agent or anybody tell you that you could operate a hairdresser there?

Ms. Grabek: A…

Mr. Doce: She knew you were going to be putting a hairdresser there? Is that what you…?

Ms. Grabek: No.

Mr. Doce: They didn’t know what you were going to do there Ms. Grabek. As you can see my client has…does have a slight language problem and sometimes doesn’t quite understand what she is being asked so that’s why I’m belaboring the questions with her. And oddly enough she did operate, I don’t know if it’s the same zone or a similar zone, Darren, when she was operating on South Plank Road she had a hairdresser and what zone was that. That would be across the street from where a…

Mr. Doce (Darren): Inaudible.

Mr. McKelvey: Use the mic.

Ms. Gennarelli: You have to please use the microphone, thank you. We have two microphones if you want to pass them back and forth.

Chairperson Cardone: And identify yourself for the record.

Mr. Doce: Darren Doce, she was operating in a B zone across from a…Pat Tarsio Lanes.

Mr. Doce (Vincent): Inaudible.

Ms. Gennarelli: Can you take the mic back please. It is being recorded. Thanks Vince.

Mr. Doce (Vincent): She was on Old South Plank Road across from Tarsio Lanes. She was over here, Tarsio Lanes is here, she was across 52 in that zone. She was just moving to that zone, she honestly di…I…I…I’m there’s no doubt in my mind just thought that one place was as good as the other. And I hate to belabor the same thing, I realize that a…ignorance can only carry us so far but a…she did see a…she was asked to move into the building next door and never…never suspected she had a problem. In fact, had she moved in she a…it would have a…probably going unnoticed for some time. She went to tell the Building Department that she was moving into that building. A…you know, just to tell them that I’m going to be working around here. I don’t think she needed any Permits really but she was just double checking if she needed any Building Permits and that’s when she found out she had a problem.

Chairperson Cardone: Mr. Canfield do you have anything to add?

Mr. Canfield: Well procedurally a…should the Board chose to grant this use variance a…there’s a couple of things that come in to play. I know that Mr. Doce gave an extensive rendition on what area variances are needed however, there’s a section of the Code 185-54-B-2 that basically indicates should the Zoning Board chose to grant a use variance a…it permits the Bulk Use Tables to be used from a zone or a use that’s permitted. Okay, so that’s what brings us to the B zone and sets up, you know, the lot area and what have you.

Chairperson Cardone: Right.

Mr. Canfield: There’s also another section 185-18 that deals with existing lots of records which may exempt the area required so that would exempt the need for an area variance of the forty thousand square feet on the actually it’s fifteen thousand or it’s exempt. And it also exempts lot width so then the other area variances that would be required would be a side yard, combined yards and then the accessory structure setback. And these are all comments that the planning board attorney Mike Donnelly has noted in his referral. But I think before you get to that and I just give the Board that information as…as a backdrop but what I think what’s before you procedurally first is the use variance.

Chairperson Cardone: Correct.

Mr. Canfield: I can add for the Board’s benefit that there has been some activity at the structure a…which the owner has been asked to stop work. There has been a Stop Work Order issued. The owner has complied. There has been some site improvements done which we have asked to have stopped as well a...but at this time I think that’s all I have to offer the Board.

Chairperson Cardone: Thank you. Do we have any comments from the public? Please go to the microphone and state your name for the record. You can use the microphone right in the center there…the center.

Ms. Gennarelli: Right here, you can just tip it down towards you. No, it bends, it swivels, the top…the top.

Mr. McKelvey: The top. You can take it off.

Mr. Wesneski: My name is Anthony Wesneski, I reside at 7 Starrow Drive, and a…I’m a neighbor. I never met her as a matter of fact, I’ve never seen her a…but a…our…our property lines abut and that is to say the…our…our back lines abut and a…I…I’m going to say in…in the past month or so she has cleaned up that property. She has removed that…that…that ugly fence, she’s cleaned up the back of the property. I…I…I mean it really looks…it really looks great. And…and again, not only have I never met her I never saw her except here tonight. I would say give her a break, I mean we need a…a…we need to help these, these small a…the small businesses and…and she’s made a, you know, a hell of a big investment and and that’s something you guys ought to consider and you gals as well. What I’d like to refer to however, I’m going to walk over to that map and…

Mr. Wesneski approached the easel.

Mr. Wesneski: Okay, I…I…I thought it was on this map but it’s…I stopped at your office a…and I saw the map that you guys have in…in front of you and on the a…what side would that be?

Mr. Doce: Your property is here, Tony.

Mr. Wesneski: This is the former Morgan property.

Chairperson Cardone: Is this the map you were referring to?

Mr. Wesneski: Yes.

Chairperson Cardone: You can take this.

Mr. Wesneski: No, no, no. What I’m referring to is the survey that was made and on the …I…I…I’m going to say on the east side of the property that is to say the a…the side that faces the…the previous…the previously owned property but a…but Mr. Morgan right here about three years ago, the previous owner brought in a machine and…and ran a culvert almost from the street all the way to the back line and…and filled that with gravel and…and I spoke to him and…and I said…I said what you are doing is your taking care of your drainage problem but a…you’re creating a problem for me and perhaps another neighbor too. I…I…I…said you ought to you know get permission from the Town to do that. Oh, I got permission, no problem. So anyway he finished and a…when we have heavy rains that water comes out there and it pools up on my property. In…in…in….the culvert might be you can have two feet deep but it builds up there and…and after a heavy rain and that water just sits in there for two, three, four weeks and a…my question a…I’m bringing this to your attention because I actually should have brought it to your attention a…when it was in process of being constructed a…but…but…again I thought I’d use this venue and bring it up this evening. Additionally I would like to say that before coming here this evening I actually went and took a close look at her property again a…and I took a look at that culvert and by gosh, all of a sudden I don’t know if the…apparently some people that a…that were working for her but the put a couple of rows of soil at the end of that culvert to eliminate that problem so I…I mean it may eventually ultimately become a problem for her but a…it…I…I’d just like to bring it to your attention that culvert and gravel and…and a….and again this is the first time I’ve seen her, give her a break. Okay I…a big investment and her property looks better the way I look at it and I…I…I’m…I am an abutting neighbor so good luck to you.

Chairperson Cardone: Thank you. Do we have any other comments from the public?

No response.

Chairperson Cardone: Any other questions or comments from the Board?

Mr. McKelvey: Do we want to wait for that signature?

Chairperson Cardone: Well the report from the Orange County Department of Planning is Local Determination.

Mr. Donovan: The question from Mr. McKelvey is whether or not the Board should wait for the a…signed, notarized affidavit from Mr. Fowler before rendering a determination that’s up to you. I recommend that you certainly have that before you take any action whatever that action may be and I would just a…if we might want to take a second to go through the four areas that need to be considered in granting a use variance. Because we don’t get use variances here with any degree of regularity, there are mostly area variances so we should just run through the four items that we should consider before issuing a use variance. And the first is that the applicant must demonstrate they cannot realize a reasonable return, provided that lack of return is substantial, it is demonstrated by competent financial evidence. And I’m assuming that that’s what the correspondence from Mr. Fowler is meant to demonstrate. I would indicate that the letter accountant Ms. Smith is not necessarily germane to our deliberations because it speaks to the financial hardship of the applicant. It doesn’t discuss the issues related to the property. The second element is whether or not the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The third factor is whether or not the use variance if granted would alter the essential character of the neighborhood. And the last factor is whether or not the alleged hardship has been self-created. And we deal frequently with the self-created nature of a hardship in an area variance context. In the context of an area variance, the self-created nature of a hardship is not a bar to relief. Even if the hardship is self-created in an area variance we can still grant the area variance. It’s a…it’s not the same with a use variance. If in fact the hardship is self-created then you cannot issue the use variance. And the example I’ll give is that if someone buys a piece of property and it’s zoned for a use that is not allowed or it doesn’t allow the use that they want and that is what the zoning was when the property was acquired the person is charged with the knowledge of the zoning and as a result the use variance would not be appropriate in those circumstances.

Chairperson Cardone: John, were you making a motion to hold the Public Hearing open or do you feel at this point you are ready to close the Public Hearing?

Mr. McKelvey: We could a…

Mr. Donovan: I’m sorry if my answer was longer than your question anticipated.

Mr. McKelvey: We could make a stipulation that that has to come in.

Mr. Donovan: It’s up to the Board.

Mr. Manley: I think it might be a good idea to keep the Public Hearing open in the event that there’s additional information that needs to be entered into the record…

Mr. McKelvey: Yeah.

Mr. Manley: …at a later date and if there’s not additional information entered next month then we can then close the Hearing.

Mr. Doce: Am I allowed to ask any questions here?

Chairperson Cardone: Excuse me?

Mr. Doce: Am I…am I allowed to ask…ask any questions here?

Chairperson Cardone: Sure.

Mr. Doce: Okay, I realize that sometimes that I…I…my…the empathy side of my nature requires me to ask things that puts the Board on a spot. However, my client has been battling this for several months, her business will be closed down shortly and I understand that you have to do things within the…the perimeters of the Law but I would ask that perhaps you…you address the issue and make any approvals that you might grant subject to the presentation of Mr. Fowler’s affidavit because we are in a position now that she is hanging on by her fingernails. A month will mean…would cause her to have a suspense of business as the a…as the accountant put it. A…that’s the one thing I would say, if I could ask that it be ent…that the decision be rendered subject to a…presenting Mr. Fowler’s affidavit. The other thing I would just like to clear out the accountant does say in there that should she not be able to a…a…if the…the variance isn’t granted that she would not be able to pay for the property, would have to dispose of it, it would be encumbered with a loss. I certainly wouldn’t a…take umbrage with a…the position of Counsel but I would think that that is a financial hardship, that is exhibiting some financial hardship and a…I…I would hope the Board would take that into consideration much like when a Judge says to a…a…the jury, you have to discount that, the jury doesn’t discount it, they…they…I would like to make the same plea to this Board if I could.

Chairperson Cardone: Well I think you are discounting what the attorney has said by…by Law the alleged hardship has not been self-created; that has to be met also. In the case of a use variance you have to meet all four. It’s not as an area variance where you can give weight to one or the other but in a use variance you must meet all four.

Mr. Doce: Yes, I…

Chairperson Cardone: And…and that is the Law.

Mr. Doce: I understand that but again…I would…I would throw myself upon the shades of nuance. She had no reason, I mean coming from her background, coming to this country, working here she saw the building next door has this business in it and the Town has done nothing. If nothing else it seemed to be tacit approval that it’s allowed. There is a personal service business operating diagonally across from the parcel as we speak. I mean, she is not an attorney. She’s not even educated in this country. She’s just…sees what’s going on here and has every reason to believe that it’s okay so she really doesn’t really create that (inaudible). She hasn’t done something in defiance. She done something that she recognized as being tacitly approved or existing. I’m going to move next door. I can be existing. It’s not like she failed to take any consideration a…it’s…it’s what becomes obvious and I know that’s…that’s lunging for a nuance of shading but that’s the truth of the matter. She…she saw the people operating doing the thing that she wants operate, one of them next door.

Mr. McKelvey: It doesn’t work like that though.

Mr. Doce: I’m asking that perhaps it should work that way if we take an empathetic position and realize that it does no injustice to the neighborhood or to the Town.

Mr. Manley: But where…where it does do an injustice is what about all the other people that were denied on the same…

Chairperson Cardone: Criteria.

Mr. Manley: …criteria that they were denied a use variance because it was self-created? Is it fair to them that the fifteen or twenty before this applicant that we had to deny because the Law says we have to deny it? And I understand your plea, trust me I feel bad for the applicant but at the same time what you’re asking this Board to do is to go against the letter of the Law, what the Law says and maybe the Law is flawed, maybe it needs to be changed but that’s something that would have to occur. What you’re asking this Board to do is to look a blind eye to the Law and that…

Mr. Doce: Not that, I don’t know what the other applications entailed. I don’t know how many people are denied and I don’t know if there were the nuances in their applications that I’m presenting this evening and I’m not saying it’s a blind eye. I’m saying it’s quite open eyed. We’re looking at this in the…I do not believe the spirit of the Law wants an application like this denied. Obviously the Town made a mistake here. I mean you can’t have those properties zoned like they are, that’s insane and I…I would submit…

Chairperson Cardone: That would not be an issue for this Board though. If you’re talking about changing the zoning that’s an issue for the Town Board that’s not an issue for the Zoning Board.

Mr. Doce: We know that would take perhaps a year or so. A…believe me, I understand your position but I just can’t not present in…in as much fervor in which…as much intensity how strongly I feel about the injustice that will be done by denying my applicant. I think she deserves to have this granted. She would hurt nobody. Now to bring up people from the past and what they did and not…not do I can’t argue to that but I can say that by her getting this does no harm to those people. I mean if you could you know…

Chairperson Cardone: That…that is not the…that is not the issue and you know it’s pointless to argue that point and I think…

Mr. McKelvey: A use variance is very hard to get.

Mr. Doce: I realize that and I…I…I…again, let me say this I think we…I think we have cleared the bar on what we’ve done here. I really think it would be an injustice not…

Mr. McKelvey: We don’t make the Law though Vince.

Mr. Doce: I’m saying that you should be…I realize have to perhaps interpret the Law, I think that’s one of your duties and I’m asking to interpret it in a favorable way. She just simply did not…had no reason to believe that she would not be able to open that business and I think that in the court of common opinion when a person walks up and sees other people operating why doing the same thing she wants to do and she’s denied I think that’s an injustice. A…I’ve plead it as best and as inadequately as I can a…I’d be severely disappointed if she didn’t…a…have her interest in prevail. I realize I’m taking it personally but it is personal. Everything is personal. Thank you.

Chairperson Cardone: Okay, I’m looking for a motion to either hold the Public Hearing open or to close the Public Hearing.

Mr. Scalzo: I make a motion to close the Public Hearing contingent upon receipt of the materials that Mr. Doce was going to provide.

Chairperson Cardone: Do I have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: No

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: No

Mr. Donovan: So at a…it’s a seven member Board, we have a three to two vote, right Betty?

Ms. Gennarelli: Yes.

Mr. Donovan: So the motion does not pass. The motion to close with contingents does not pass.

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

Mr. Manley: I’ll make a motion to keep the Public Hearing open until next month to allow the applicant get some additional documentation that was requested. At that point, the Board can make a decision based on all the facts.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Donovan: And just so the record is clear that’s on both applications? Both for the use variance and the area variances?

Chairperson Cardone: Yes, because the area is dependent upon the use.

Mr. Donovan: Correct.

Ms. Gennarelli: That’s August 28th.

Chairperson Cardone: Anyone who is here in reference to that application you will not be re-noticed. Your notice comes this evening and the date of the next meeting is August the…

Ms. Gennarelli: 28th.

Chairperson Cardone: 28th. Thank you.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 7:58 PM)

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

ZBA MEETING – JULY 24, 2014 (Time Noted – 7:03 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: On the area variances application for Jin Kanjanakiritumrong-Grabek.

Chairperson Cardone: Our first applicant this evening Jin (Kanjanakiritumrong) Grabek.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, July 16th and in The Sentinel on Friday, July 18th. This applicant sent out thirty-six letters for each application, for the use variance and for the area variances. And all the mailings, publications and postings are in order for both.

Chairperson Cardone: Please take the microphone and identify yourself for the record. You can take it off the stand or…

Ms. Gennarelli: It comes right off.

Mr. McKelvey: Take it right off.

Ms. Gennarelli: Very good.

Mr. Doce: My name is Vince…

Ms. Gennarelli: Vince, you just have to get closer to the microphone though.

(Inaudible)

Ms. Gennarelli: Vince, I don’t think the microphone is on. Sorry.

Mr. Doce: My name is Vince Doce; I have an engineering and surveying business located here in the Town of Newburgh. And a…this evening I’m here to represent my client a…Jin Kanjanakiritumrong on an application for a…area variances and a use variance on her property located in the…on Meadow Avenue in the Town of Newburgh. On the easel before you we have shaded in green the property as it exists with the existing former house on it, a garage and a little shed in the back. The property is located in an I/B zone and it is directly adjacent to the mini mart that is located on the south side of Meadow Avenue adjacent to the bank which is at the corner of Meadow and 300. It is across the street from a mini mall that runs from Route 300 to Meadow Avenue, houses an office structure and a…a number of row a…commercial a…properties along Route 300. As I said before we are appearing tonight for area variances and a use variance for the subject property. Specifically my client would like to place her existing business which is a hairdresser termed a personal service use in the Town of Newburgh on…in the house that is located on the parcel. On this same side of Meadow Avenue running from my client’s parcel down to Charlile Circle there is a number of I believe nine other a…parcels that are similarly shaped and have the same kind of a dress to it. First I’d like to address the need for area variances. As I said the parcel lies in an I/B zone and the parcel and the structure on the parcel have existed in essentially its present form for fifty-nine years. The parcel predates zoning regulations in the Town of Newburgh which were established in the late 1950’s. The variances requested are for…area we have sixteen thousand square feet in an I/B zone minimum requirement would be forty thousand square feet. The lot…lot width is ninety feet in an…in an I/B zone the requirement is a hundred and fifty feet. The rear yard is okay, the side yard the minimum is fifty feet and we have six feet. Both side yards are required to be a hundred feet and we have forty-five feet. The entire parcel is only ninety feet wide. All lots on Meadow Avenue in this area have the same zoning restrictions and the same a…problems should they try to use it for anything other than what they’re using it now. All of the area variances are necessary for virtually all of the uses allowed on any of these parcels in this zone. The problem primarily stems from the fact that it’s zoned I/B and all of the parcels from inception have been sixteen thousand square feet with the exception that the mini mart is on eighteen thousand square feet. There’s not really anything we can do about that, they exist as they exist and there are no available lands or properties that we can purchase or anybody near that can purchase to alleviate the need for these variances. I’ll get back to that in a moment. Now I’d like to address the need for a use variance, namely permission to operate a personal service business on the subject parcel. Service…personal service business, a hairdresser or barber shop a…things of that nature that a…a…a…a tailor, a…a shoe repair, the personal services and they are not allowed in an I/B zone as a free standing business. I/B is the most intense business zone in the Town of Newburgh. Permitted uses within this zoning designation are malls, restaurants, theatres, car dealerships, hotels, motels, automatic service...automotive service, self-storage facilities, manufacturing, warehousing, travel centers, large office buildings, they’re the uses that are geared for an I/B zone. The subject parcel is sixteen thousand, two hundred square feet, I/B zones require a minimum of forty thousand and usually much more than that, up to ten acres. Now in this zone on these parcels by zoning - gas stations would be allowed, mini warehousing would be allowed, hotels, motels however, a personal service store like a barbershop, cosmetology a…hairdresser, tailor would not be allowed. It makes it extremely difficult to do anything with these parcels of property that meets the zoning. If I can just get that picture to you, nothing, virtually nothing allowed in an I/B zone could be built on these parcels of property, simply too small. Every parcel on the south side of Meadow Avenue is approximately sixteen thousand square feet as I said the mini mart is eighteen thousand and is therefore in need of variances for the uses allowed. Now that’s only a few small parcels within a very large I/B zone. The rest of the zone is fine. You’ve got the Newburgh Mall in it. You have Perkins Pancake, you have a…Valvoline or whatever that a…automotive a…service a…business is there. You have gas stations, you’ve got the Newburgh Cinema, they’re allowed, they’re accommodated and they work well in this mall…in this area. These structures here, these parcels do not work. To find a buyer or a user able or willing to combine parcels so as to be in conformance with the Bulk and Use Regulations in tandem of the I/B Zone would be virtually impossible. Nobody is going to buy…you couldn’t buy enough parcels to put another mall there or a gas station or whatever. In fact, the uses allowed in the intended regulations are so onerous and so completely at variance with the size and nature of the subject particle…parcel as well as the other neighborhood parcels they would…that they would discourage almost all otherwise potential users. Consequently there is virtually no interest for the purchase of the subject parcel for the uses that I just mentioned that are permitted there. What are other possibly…what are the possibilities exist for these aggrieved parcels? Existing homes are also allowed within the I/B zone, not new ones but existing homes would be allowed a…to continue. However, Meadow Avenue is an extremely busy connective Street, running between Route 52 and Route 300. There are no sidewalks the neighborhood is clearly is commercial in nature. As I said before minimart a…office buildings, bank a…by the way, there is existing now a personal service store, which is diagonally across or a personal business which is diagonally across from my client’s parcel. I’ll address that a little bit more…later. A…free-standing residential structures on small parcels in this environment are out of place, they’re not in demand and there should there be children living there it would be dangerous. Potential sale or use of the parcel, residential purchase is extremely challenging and it’s not likely at a…any kind of a reasonable price. As you can see from the use report, as the Board can see from the use report prepared by Arthur Fowler, if marketed for residential use the parcel would sell for less than ninety-five thousand dollars in his appraisal. The applicant purchased her property on April 14th of this year for a hundred and ninety thousand dollars for commercial use. A hairdresser, a personal service store which she had every reason to believe would be allowed there since on the adjacent parcel to this there was in fact a hairdresser located and in fact, that hairdresser or that…the people controlling that parcel asked my client to move into that existing hairdresser shop. She declined and opted to buy her own par…building adjacent to it where she thought there’s a hairdresser existing here I…in fact, she was told that she would be allowed to do so.

Chairperson Cardone: I don’t think she was told by the Town.

Mr. Doce: No, no, no…she was…

Chairperson Cardone: There were no Permits issued for hairdressing salon at that address.

Mr. Doce: And it existed for some seven years or so as I recall because I had done the survey on it and there was never an objection to it being there a...it was never brought up to my previous client that owned that…that…he had a hairdressing there that was not operating. What I was alluding to before they thought that since they were so long that it was…nobody objected to it that it was permissible for them to be there.

Mr. McKelvey: I don’t think they had any Permits.

Chairperson Cardone: They didn’t.

Mr. Doce: No, I don’t know what they did, we just did the survey, I have no idea what went on, you know, beyond that a…except the hairdresser there was for…for a number of years. Diagonally across from this there is another personal service it’s a, you know, cosmetology (inaudible) of some sort. I think its hair braiding a…eyebrow waxing and things of that nature, that’s in the exact same zone. And if you go by there, there’s a sign up there in the window that says it’s, you know, an existing business. At any rate, a…I’m just pointing out she was unaware that she was having any sort of a problem there a...when she bought the property. Now if forced to sell for a residential use a…a…the applicant would receive or denied any economic benefit there would have to sell the parcel a…for considerably less than she paid for it and would suffer a…about a ninety-five thousand dollar loss. The aforesaid Fowler report has been prepared by one of the more respected and accredited real estate professionals in the area and said report is in total agreement with the narrative that I just presented you.

Mr. Donovan: Can I interrupt you for one second? What…what report are you talking about?

Mr. Doce: The Fowler report. We submitted a report a…by Arthur Fowler, a real estate a…professional which he a…gave his estimations of value of what could be sold for different uses.

Chairperson Cardone gave Mr. Donovan a copy of report.

Mr. Doce: Would you like me to continue or do you…?

Chairperson Cardone: Please continue.

Mr. Donovan: No, I feel included now so it’s good.

Mr. Doce: Okay, now another use that would be possible there is rather remote but to use the property for an office. Again this is problematical there is such a glut of office space that potential users or buyers are extremely difficult to secure particularly for office space in freestanding buildings with what few potential users as there are opting for suites in larger, more prestigious office complex. Even in such complexes there are high vacancy number. Right across the street if you go by there you can see there are vacancies in that existing office building and there are vacancies in a number of office buildings in the Town of Newburgh. There’s very little demand for freestanding offices in converted houses. A good example of this occurs on the adjacent parcel to the east the one…one we were previously discussing, the same parcel was purchased in 19…in 2013, November 2013 for a hundred and eighty-two thousand five hundred dollars according to the tax records a portion of the structure thereon was used as an office, that office in that structure is now vacant. However there is a second structure located on this adjacent parcel in the back and that houses a…an apartment, a fifteen hundred and seventy six square foot apartment structure. Therefore, without a variance the hundred and eighty-two thousand dollar parcel next door is worth considerably more than the subject parcel that was worth a…that was purchased for a hundred and ninety thousand dollars. The appli…the reason the applicant, my applicant purchased the subject parcel for a hundred and ninety thousand dollars is that her intended use was for the personal service uses allowed in the B zone and not in an I/B zone. Again, the aforementioned Fowler report points out that if the applicant’s parcel is to be sole…just a sole use for office purposes it will not sell for more his appraisal of a hundred and eight thousand dollars. Therefore, if forced to sell for an office use the applicant would receive no positive economic benefit in fact, she would suffer an eighty two thousand dollar loss and potential purchasers or users will be extremely difficult to find. Considering all of the above, it is incumbent to realize that the applicant will suffer a loss of eighty-two thousand to ninety-five thousand dollars or more if she is disallowed personal services use of her parcel as allowed in an I/B zone (B zone) and is forced to sell under duress if she in fact can find a buyer under such duress. Or she is forced to rent the building for an office at very low rates in an extremely depressed market as it has been for a number of years. In either case the applicant could not support carrying her investment, would lose the parcel and would be estranged from all economic benefits that would have naturally accrued had the variance been granted or if the prop…the...the property was in my estimation zoned properly. A…my client purchased the property because she believed that she could thereon locate her hair salon in fact, as I said before, when she contracted to purchase the property a hair salon was located in the…in the adjacent former house to the east having located there several years ago, under the identical zoning that covers both parcels. As I said before, my client was offered space in that building. Now invariably I’m sure no one in the Town objected to such a personal use on the adjacent parcel and there was no objection to the hair salon. In the way of supporting corroboration for the…arguments presented in our application we have submitted the following documents: the aforesaid Fowler report has been prepared by as I said by one of the top a…in…most respected accredited real estate a…professionals in the area and said the form…report is in total agreement with the narrative that I just presented. One of the reasons that we were a…so a…inclined to present the Fowler report is that a report of that nature is under the guidelines of the Department of State one of the documents that should be submitted for use baring in decisions. A…in this what you might call a suggested check list as illustrations of financial evidence a…they give one, two, three, four, five a…a…suggestions so to speak in a realtors statement of inability to rent or sell a…it is one of the documents that they recommend be considered…

Mr. Manley: Mr. Doce, in that light you’re indicating that the Fowler report being an accredited real estate professional and you wishing to, of course, submit that documentation to this Board why didn’t your professional sign the document?

Mr. Doce: He put it…a…it’s a report, it isn’t as a letter, it’s a report submitted by him it was submitted directly to the town and it’s under his letterhead and I can get him to sign it of course.

Mr. Manley: Right.

Mr. Doce: That’s the way he…he wrote it.

Mr. Manley: Well your CPA that submitted the document signed that report. I would imagine we would need this copy, to be considered, it should be signed.

Mr. Doce: I’m sure he…he will sign it and I’m sure he would verify it. He did the report and submitted it a…under his…

Mr. Manley: I understand, but for our records, I think that you know, the Town and the Board would probably want a signed copy that he’s acknowledging that this report came from him directly.

Mr. Doce: Okay, that’s fine.

Mr. Donovan: And if I could just add one other thing, it would be better if it was in affidavit form so it’s sworn to and notarized since he is obviously making important statements a…based on his professional expertise but typically in a capacity in the nature of a use variance those…those things are sworn to so the Board can rely upon their representations.

Mr. Doce: So, you’re saying you’d like it under his signature and with a…a…and notarized.

Mr. Donovan: Well it’s a form where he says that he swears under the penalties of perjury the following is accurate to the best of his ability.

Mr. Doce: Okay.

Mr. Manley: Unless you want make him available for the Board to cross examine.

Mr. Doce: If I could get him in here now, I would a…but I…I wouldn’t be able to locate him right at this moment. A…but I’m sure he would do that he did print the report. Okay a…as was just mentioned another document that was submitted was by Kathleen Smith a…certified public accountant in which she a…a…addresses the issues along these lines. She points out that a…that a…Jin has been the sole proprietor of her business since 2010 was located on Old North (South) Plank Road and this is after operating as a hairdresser for twenty years. A…over the past few years the rent was escalating and Jin decided with her accountant that it would be prudent for her to buy a…since a hairdresser is a unique kind of business for personal service as barbershop it would be well if she had her a…her own building…her own a…a…plant at which to operate, thereby removing some of the ups and downs of a…of a…the business and a…removing having to pay rent a…and getting no…no a...benefit other than the…the benefits of a renter. A…she points out that if a…if the variance is not granted Miss Jin would be forced to suspend her business activities and being the sole proprietor this is her main source of income and she would not be able to cover her mortgage and other personal liabilities. She goes on to say in her erosion, her claim base would be eroded and if she a…was in fact be able to rent another place which she’s in tremendous duress now because she has to get out of where she is, I believe, during the month of August a…that she certainly wouldn’t be in operation and would lose some of her client base and if she were able to relocate she still would suffer the inability to cover the carrying costs of the Meadow Avenue property, still incurring the rent expenses for her…a…on a new place of business and a…this would…she would lose the property and thereby lose her…or her investment in it and any opportunity to benefit from the…from the property a…a…financially or otherwise. In fact, she would lose money on the property and because the considerable amount at that. Now, all this having been said a…it isn’t really in my estimation an encumbrance on the neighborhood in any way to have her operating there a…it’s…it’s an appointment type business a…you would probably not have more than several clients there at a time a…and the…the…the nature of the neighborhood wouldn’t con…change considerably. Personal service stores have existed next door and across the street and I don’t think it’s really a…that anybody would object to such a thing. The alternatives, those allowed in…uses allowed by zoning a…I think could be rather onerous for such a small congested neighborhood to get things in there like (inaudible) things like that or a repair stor…automotive repair shops although allowed I think they would not be good. Basically I’m saying what she is proposing to do is beneficial certainly to herself but is beneficial to the neighborhood, it stabilizes the neighborhood and it’s a far better option than any other option that we have in there in my estimation.

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

Mr. McKelvey: Did she ever check the zoning before she bought the property?

Mr. Doce: She didn’t…a…she did not realize that there were variance in zoning. She asked the question as she will attest; can I go in this neighborhood? You know, is there any problem it? People told her no, she saw there was an operating place next door and she really had no…she didn’t have the background, the expertise and she wasn’t advised by anybody, real estate wise that there could be any problem. She just didn’t think there was a problem.

Mr. Manley: Was the…was the property purchased through a real estate agency or was it a private sale?

Mr. Doce: Well, when you bought it you purchased it through whom?

Ms. Grabek: Through the agent.

Mr. Doce: Through the agent? Yes.

Ms. Gennarelli: You need to use the microphone.

Ms. Grabek: Through the agent.

Mr. Manley: Okay, what real estate agency?

Ms. Grabek: Coldwell Bank.

Mr. Doce: Coldwell Banker.

Mr. Manley: Okay, was there any inquiry made to the real estate agency or any…were there any representations made by the real estate agent as to what uses were allowed in that building?

Ms. Grabek: It said mixed use. It said on it mixed use.

Mr. Doce: Did the agent or anybody tell you that you could operate a hairdresser there?

Ms. Grabek: A…

Mr. Doce: She knew you were going to be putting a hairdresser there? Is that what you…?

Ms. Grabek: No.

Mr. Doce: They didn’t know what you were going to do there Ms. Grabek. As you can see my client has…does have a slight language problem and sometimes doesn’t quite understand what she is being asked so that’s why I’m belaboring the questions with her. And oddly enough she did operate, I don’t know if it’s the same zone or a similar zone, Darren, when she was operating on South Plank Road she had a hairdresser and what zone was that. That would be across the street from where a…

Mr. Doce (Darren): Inaudible.

Mr. McKelvey: Use the mic.

Ms. Gennarelli: You have to please use the microphone, thank you. We have two microphones if you want to pass them back and forth.

Chairperson Cardone: And identify yourself for the record.

Mr. Doce: Darren Doce, she was operating in a B zone across from a…Pat Tarsio Lanes.

Mr. Doce (Vincent): Inaudible.

Ms. Gennarelli: Can you take the mic back please. It is being recorded. Thanks Vince.

Mr. Doce (Vincent): She was on Old South Plank Road across from Tarsio Lanes. She was over here, Tarsio Lanes is here, she was across 52 in that zone. She was just moving to that zone, she honestly di…I…I…I’m there’s no doubt in my mind just thought that one place was as good as the other. And I hate to belabor the same thing, I realize that a…ignorance can only carry us so far but a…she did see a…she was asked to move into the building next door and never…never suspected she had a problem. In fact, had she moved in she a…it would have a…probably going unnoticed for some time. She went to tell the Building Department that she was moving into that building. A…you know, just to tell them that I’m going to be working around here. I don’t think she needed any Permits really but she was just double checking if she needed any Building Permits and that’s when she found out she had a problem.

Chairperson Cardone: Mr. Canfield do you have anything to add?

Mr. Canfield: Well procedurally a…should the Board chose to grant this use variance a…there’s a couple of things that come in to play. I know that Mr. Doce gave an extensive rendition on what area variances are needed however, there’s a section of the Code 185-54-B-2 that basically indicates should the Zoning Board chose to grant a use variance a…it permits the Bulk Use Tables to be used from a zone or a use that’s permitted. Okay, so that’s what brings us to the B zone and sets up, you know, the lot area and what have you.

Chairperson Cardone: Right.

Mr. Canfield: There’s also another section 185-18 that deals with existing lots of records which may exempt the area required so that would exempt the need for an area variance of the forty thousand square feet on the actually it’s fifteen thousand or it’s exempt. And it also exempts lot width so then the other area variances that would be required would be a side yard, combined yards and then the accessory structure setback. And these are all comments that the planning board attorney Mike Donnelly has noted in his referral. But I think before you get to that and I just give the Board that information as…as a backdrop but what I think what’s before you procedurally first is the use variance.

Chairperson Cardone: Correct.

Mr. Canfield: I can add for the Board’s benefit that there has been some activity at the structure a…which the owner has been asked to stop work. There has been a Stop Work Order issued. The owner has complied. There has been some site improvements done which we have asked to have stopped as well a...but at this time I think that’s all I have to offer the Board.

Chairperson Cardone: Thank you. Do we have any comments from the public? Please go to the microphone and state your name for the record. You can use the microphone right in the center there…the center.

Ms. Gennarelli: Right here, you can just tip it down towards you. No, it bends, it swivels, the top…the top.

Mr. McKelvey: The top. You can take it off.

Mr. Wesneski: My name is Anthony Wesneski, I reside at 7 Starrow Drive, and a…I’m a neighbor. I never met her as a matter of fact, I’ve never seen her a…but a…our…our property lines abut and that is to say the…our…our back lines abut and a…I…I’m going to say in…in the past month or so she has cleaned up that property. She has removed that…that…that ugly fence, she’s cleaned up the back of the property. I…I…I mean it really looks…it really looks great. And…and again, not only have I never met her I never saw her except here tonight. I would say give her a break, I mean we need a…a…we need to help these, these small a…the small businesses and…and she’s made a, you know, a hell of a big investment and and that’s something you guys ought to consider and you gals as well. What I’d like to refer to however, I’m going to walk over to that map and…

Mr. Wesneski approached the easel.

Mr. Wesneski: Okay, I…I…I thought it was on this map but it’s…I stopped at your office a…and I saw the map that you guys have in…in front of you and on the a…what side would that be?

Mr. Doce: Your property is here, Tony.

Mr. Wesneski: This is the former Morgan property.

Chairperson Cardone: Is this the map you were referring to?

Mr. Wesneski: Yes.

Chairperson Cardone: You can take this.

Mr. Wesneski: No, no, no. What I’m referring to is the survey that was made and on the …I…I…I’m going to say on the east side of the property that is to say the a…the side that faces the…the previous…the previously owned property but a…but Mr. Morgan right here about three years ago, the previous owner brought in a machine and…and ran a culvert almost from the street all the way to the back line and…and filled that with gravel and…and I spoke to him and…and I said…I said what you are doing is your taking care of your drainage problem but a…you’re creating a problem for me and perhaps another neighbor too. I…I…I…said you ought to you know get permission from the Town to do that. Oh, I got permission, no problem. So anyway he finished and a…when we have heavy rains that water comes out there and it pools up on my property. In…in…in….the culvert might be you can have two feet deep but it builds up there and…and after a heavy rain and that water just sits in there for two, three, four weeks and a…my question a…I’m bringing this to your attention because I actually should have brought it to your attention a…when it was in process of being constructed a…but…but…again I thought I’d use this venue and bring it up this evening. Additionally I would like to say that before coming here this evening I actually went and took a close look at her property again a…and I took a look at that culvert and by gosh, all of a sudden I don’t know if the…apparently some people that a…that were working for her but the put a couple of rows of soil at the end of that culvert to eliminate that problem so I…I mean it may eventually ultimately become a problem for her but a…it…I…I’d just like to bring it to your attention that culvert and gravel and…and a….and again this is the first time I’ve seen her, give her a break. Okay I…a big investment and her property looks better the way I look at it and I…I…I’m…I am an abutting neighbor so good luck to you.

Chairperson Cardone: Thank you. Do we have any other comments from the public?

No response.

Chairperson Cardone: Any other questions or comments from the Board?

Mr. McKelvey: Do we want to wait for that signature?

Chairperson Cardone: Well the report from the Orange County Department of Planning is Local Determination.

Mr. Donovan: The question from Mr. McKelvey is whether or not the Board should wait for the a…signed, notarized affidavit from Mr. Fowler before rendering a determination that’s up to you. I recommend that you certainly have that before you take any action whatever that action may be and I would just a…if we might want to take a second to go through the four areas that need to be considered in granting a use variance. Because we don’t get use variances here with any degree of regularity, there are mostly area variances so we should just run through the four items that we should consider before issuing a use variance. And the first is that the applicant must demonstrate they cannot realize a reasonable return, provided that lack of return is substantial, it is demonstrated by competent financial evidence. And I’m assuming that that’s what the correspondence from Mr. Fowler is meant to demonstrate. I would indicate that the letter accountant Ms. Smith is not necessarily germane to our deliberations because it speaks to the financial hardship of the applicant. It doesn’t discuss the issues related to the property. The second element is whether or not the alleged hardship related to the property in question is unique and does not apply to a substantial portion of the district or neighborhood. The third factor is whether or not the use variance if granted would alter the essential character of the neighborhood. And the last factor is whether or not the alleged hardship has been self-created. And we deal frequently with the self-created nature of a hardship in an area variance context. In the context of an area variance, the self-created nature of a hardship is not a bar to relief. Even if the hardship is self-created in an area variance we can still grant the area variance. It’s a…it’s not the same with a use variance. If in fact the hardship is self-created then you cannot issue the use variance. And the example I’ll give is that if someone buys a piece of property and it’s zoned for a use that is not allowed or it doesn’t allow the use that they want and that is what the zoning was when the property was acquired the person is charged with the knowledge of the zoning and as a result the use variance would not be appropriate in those circumstances.

Chairperson Cardone: John, were you making a motion to hold the Public Hearing open or do you feel at this point you are ready to close the Public Hearing?

Mr. McKelvey: We could a…

Mr. Donovan: I’m sorry if my answer was longer than your question anticipated.

Mr. McKelvey: We could make a stipulation that that has to come in.

Mr. Donovan: It’s up to the Board.

Mr. Manley: I think it might be a good idea to keep the Public Hearing open in the event that there’s additional information that needs to be entered into the record…

Mr. McKelvey: Yeah.

Mr. Manley: …at a later date and if there’s not additional information entered next month then we can then close the Hearing.

Mr. Doce: Am I allowed to ask any questions here?

Chairperson Cardone: Excuse me?

Mr. Doce: Am I…am I allowed to ask…ask any questions here?

Chairperson Cardone: Sure.

Mr. Doce: Okay, I realize that sometimes that I…I…my…the empathy side of my nature requires me to ask things that puts the Board on a spot. However, my client has been battling this for several months, her business will be closed down shortly and I understand that you have to do things within the…the perimeters of the Law but I would ask that perhaps you…you address the issue and make any approvals that you might grant subject to the presentation of Mr. Fowler’s affidavit because we are in a position now that she is hanging on by her fingernails. A month will mean…would cause her to have a suspense of business as the a…as the accountant put it. A…that’s the one thing I would say, if I could ask that it be ent…that the decision be rendered subject to a…presenting Mr. Fowler’s affidavit. The other thing I would just like to clear out the accountant does say in there that should she not be able to a…a…if the…the variance isn’t granted that she would not be able to pay for the property, would have to dispose of it, it would be encumbered with a loss. I certainly wouldn’t a…take umbrage with a…the position of Counsel but I would think that that is a financial hardship, that is exhibiting some financial hardship and a…I…I would hope the Board would take that into consideration much like when a Judge says to a…a…the jury, you have to discount that, the jury doesn’t discount it, they…they…I would like to make the same plea to this Board if I could.

Chairperson Cardone: Well I think you are discounting what the attorney has said by…by Law the alleged hardship has not been self-created; that has to be met also. In the case of a use variance you have to meet all four. It’s not as an area variance where you can give weight to one or the other but in a use variance you must meet all four.

Mr. Doce: Yes, I…

Chairperson Cardone: And…and that is the Law.

Mr. Doce: I understand that but again…I would…I would throw myself upon the shades of nuance. She had no reason, I mean coming from her background, coming to this country, working here she saw the building next door has this business in it and the Town has done nothing. If nothing else it seemed to be tacit approval that it’s allowed. There is a personal service business operating diagonally across from the parcel as we speak. I mean, she is not an attorney. She’s not even educated in this country. She’s just…sees what’s going on here and has every reason to believe that it’s okay so she really doesn’t really create that (inaudible). She hasn’t done something in defiance. She done something that she recognized as being tacitly approved or existing. I’m going to move next door. I can be existing. It’s not like she failed to take any consideration a…it’s…it’s what becomes obvious and I know that’s…that’s lunging for a nuance of shading but that’s the truth of the matter. She…she saw the people operating doing the thing that she wants operate, one of them next door.

Mr. McKelvey: It doesn’t work like that though.

Mr. Doce: I’m asking that perhaps it should work that way if we take an empathetic position and realize that it does no injustice to the neighborhood or to the Town.

Mr. Manley: But where…where it does do an injustice is what about all the other people that were denied on the same…

Chairperson Cardone: Criteria.

Mr. Manley: …criteria that they were denied a use variance because it was self-created? Is it fair to them that the fifteen or twenty before this applicant that we had to deny because the Law says we have to deny it? And I understand your plea, trust me I feel bad for the applicant but at the same time what you’re asking this Board to do is to go against the letter of the Law, what the Law says and maybe the Law is flawed, maybe it needs to be changed but that’s something that would have to occur. What you’re asking this Board to do is to look a blind eye to the Law and that…

Mr. Doce: Not that, I don’t know what the other applications entailed. I don’t know how many people are denied and I don’t know if there were the nuances in their applications that I’m presenting this evening and I’m not saying it’s a blind eye. I’m saying it’s quite open eyed. We’re looking at this in the…I do not believe the spirit of the Law wants an application like this denied. Obviously the Town made a mistake here. I mean you can’t have those properties zoned like they are, that’s insane and I…I would submit…

Chairperson Cardone: That would not be an issue for this Board though. If you’re talking about changing the zoning that’s an issue for the Town Board that’s not an issue for the Zoning Board.

Mr. Doce: We know that would take perhaps a year or so. A…believe me, I understand your position but I just can’t not present in…in as much fervor in which…as much intensity how strongly I feel about the injustice that will be done by denying my applicant. I think she deserves to have this granted. She would hurt nobody. Now to bring up people from the past and what they did and not…not do I can’t argue to that but I can say that by her getting this does no harm to those people. I mean if you could you know…

Chairperson Cardone: That…that is not the…that is not the issue and you know it’s pointless to argue that point and I think…

Mr. McKelvey: A use variance is very hard to get.

Mr. Doce: I realize that and I…I…I…again, let me say this I think we…I think we have cleared the bar on what we’ve done here. I really think it would be an injustice not…

Mr. McKelvey: We don’t make the Law though Vince.

Mr. Doce: I’m saying that you should be…I realize have to perhaps interpret the Law, I think that’s one of your duties and I’m asking to interpret it in a favorable way. She just simply did not…had no reason to believe that she would not be able to open that business and I think that in the court of common opinion when a person walks up and sees other people operating why doing the same thing she wants to do and she’s denied I think that’s an injustice. A…I’ve plead it as best and as inadequately as I can a…I’d be severely disappointed if she didn’t…a…have her interest in prevail. I realize I’m taking it personally but it is personal. Everything is personal. Thank you.

Chairperson Cardone: Okay, I’m looking for a motion to either hold the Public Hearing open or to close the Public Hearing.

Mr. Scalzo: I make a motion to close the Public Hearing contingent upon receipt of the materials that Mr. Doce was going to provide.

Chairperson Cardone: Do I have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: No

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: No

Mr. Donovan: So at a…it’s a seven member Board, we have a three to two vote, right Betty?

Ms. Gennarelli: Yes.

Mr. Donovan: So the motion does not pass. The motion to close with contingents does not pass.

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

Mr. Manley: I’ll make a motion to keep the Public Hearing open until next month to allow the applicant get some additional documentation that was requested. At that point, the Board can make a decision based on all the facts.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Donovan: And just so the record is clear that’s on both applications? Both for the use variance and the area variances?

Chairperson Cardone: Yes, because the area is dependent upon the use.

Mr. Donovan: Correct.

Ms. Gennarelli: That’s August 28th.

Chairperson Cardone: Anyone who is here in reference to that application you will not be re-noticed. Your notice comes this evening and the date of the next meeting is August the…

Ms. Gennarelli: 28th.

Chairperson Cardone: 28th. Thank you.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted - 7:58 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 7:58 PM)

JOHN & CAROL HUDELSON 200 OAK STREET, NBGH

 (9-3-50.11) R-3 ZONE

Applicant is seeking area variances for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23’ 8.5”)

Chairperson Cardone: Our next applicant John & Carol Hudelson.

Ms. Hudelson: Okay, my name is Carol Pauli Hudelson and I live with my husband John Hudelson at 200 Oak Street in Newburgh. We have three acres of land there, some of it in garden, some grapes. We have a stone house and with a stone and cedar house with a steep pitched roof a…it’s red. We have been there, we have built that house from a burned out foundation thirty years ago. So we’ve been here almost thirty years ago, we’ve been there almost thirty years. Up in the back of the house a…on a higher level than the road and not visible from the road there is another stone foundation that we had wanted for some time now to turn into a building and now that the mortgage is paid we can think about having this…the building back there. We contacted a a friend of ours who is an architect and said what would you do with this. You know, we want storage space; we have many things that need to be stored. There’s a boat that is sitting in the backyard with tarps over it that rot through every winter when we try to protect it. There are…there’s mowers and gardening equipment and you know I have some pictures of the tarp covered objects that are out in the yard because we have no out buildings there. A…so the a…our friend drew up some pictures, some drawings of what he would propose and he uses some of the foundation wall that’s already there but one of the walls is not stable enough so he brought that wall out farther to…to create a more stable wall and he has drawn something that covers about a hundred, maybe two hundred square feet more than the area allowed under the Code. It depends if you count the area that’s under a roof that is not foundation because he’s got kind of an L-shaped building there. A…it also goes up higher than we expected but if we want the roof to match and to…kind of have the same pitch as the house then it should go up that high and it gives us lots of room then for storing things and that’s the primary use of this building is just to store stuff. We’ll have plenty of room then above the rafters like netting for the gardens and poles and…and just all the things associated with…with that land. A…the…the ground there is uneven so at one end of the lot, at one end of the building the ground or the foundation is actually three feet below grade so that it’s not quite as tall as it appears in the drawings. I think his…his drawing is over twenty-three feet at the peak so let’s see, I’m trying to think what else…I think that…that’s the reason we’re requesting the variances for that…that height and for that area…

Chairperson Cardone: Are you planning to put cars there?

Ms. Hudelson: Cars and…

Chairperson Cardone: There…there’s no…

Ms. Hudelson: …and storage above it.

Chairperson Cardone: …and how will…are you planning to build a driveway leading to it…?

Ms. Hudelson: There is a driveway that goes out to it.

Chairperson Cardone: …because there is a…it seemed like it’s kind of inaccessible but a…

Ms. Hudelson: It’s a better place to put it. We also think that it will be a very pretty building and not…not visible to other people but I think we will like it when we look out the back window so a…that’s…that’s the idea now.

Chairperson Cardone: On the second story there, are…are they balconies that you have? Balconies on the…

Ms. Hudelson: There are…there are…you’ll know this drawing better than I do…there are rafters up there and eventually we could put flooring but we don’t intend to do that right away it’s just really…it’s just places to store stuff.

Mr. McKelvey: Are you going to have electrical in there?

Ms. Hudelson: Yes.

Mr. Hudelson: Yes, there will be electrical.

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

Mr. Hudelson: There will be electrical; there will be 220 for necessity. Basically we have a no place to store our cars, no place to store any of this a…

Chairperson Cardone: And what about plumbing?

Mr. Hudelson: Pardon?

Chairperson Cardone: Plumbing?

Mr. Hudelson: A…no, no we have no plans for plumbing.

Ms. Hudelson: There will be a drain.

Mr. Hudelson: We will take up a hose during the…during part of the year when we need it. There’s a possibility of plumbing later but at this point no.

Chairperson Cardone: And it will be used strictly for storage, not for any kind of living quarters?

Mr. Hudelson: No, strictly for storage.

Ms. Hudelson: Right.

Mr. Hudelson: These windows on the end are the only windows and they’re for light but a…I am not planning on putting both those windows in quite yet. We’re trying to save money.

Ms. Hudelson: It will cost less if we don’t do windows right away so…

Mr. Hudelson: Well basically you have the garage front and a…the two doors because there’s one section a little higher than the other and actually at the left hand end of this it’s five feet in underground so and three feet for the back so the actual height to the top from the back is twenty feet, from the a…a…from the eastern side it’s actually more like eighteen feet.

Mr. Manley: The Chair had asked a question before whether or not…is this area open? On the second floor here, is this area open?

Ms. Hudelson: Oh that.

Mr. Hudelson: The architect built a…yeah…

Ms. Gennarelli: Can you just go to the microphone?

Mr. Hudelson: Okay, the architect built a…a…basically only half of the eastern side, the left hand side a…will have a second floor and we’re not actually putting in the floor at that time. The builder is not putting in a floor. A…this is for future use of storage if we need it. Okay? Below that floor is actually only about seven feet, six to seven feet high so it’s not very good for storage. A…the a…there is no balcony, he put a balcony, I don’t know why he put the…the railings on there.

Ms. Hudelson: John I think that what they’re seeing here is this business, the vertical lines, I think that’s the exterior cedar like board and batons…

Mr. Hudelson: Oh, there’s an (inaudible) wall that goes up three feet, maybe that…? Which…which part are you looking at again?

Ms. Hudelson: I think it’s that’s what he’s trying to indicate and that’s what our house has as well. So where it isn’t stone there’s like a…

Mr. Manley: It almost looks like a railing.

Mr. Hudelson: No, no, no, no that’s not a railing, that’s the…that’s the baton.

Ms. Hudelson: This…the baton, just vertical boards. So it isn’t…

Chairperson Cardone: And the question a…

Mr. Hudelson: This thing, I think he had something on there about a...

Mr. Manley: It just said installed wood rail.

Chairperson Cardone: Oh, right.

Mr. Hudelson: Rail, yeah, we weren’t going to put a railing across there or anything like that.

Chairperson Cardone: And I think Mr. Manley asked you, is that area open? And I don’t think you…

Mr. Hudelson: Yes, it’s open, the whole place is open. So any place in there you can see everything.

Mr. Scalzo: Open to the interior not to the exterior? Correct?

Mr. Hudelson: Not to the exterior, there’s nothing on the exterior.

Ms. Hudelson: I’m glad you’re understanding each other because I lost that apparently.

Mr. McKelvey: When you put a floor in you’re not thinking of…of a living space up there? Do you?

Mr. Hudelson: No, no, although a…

Chairperson Cardone: You currently have an accessory apartment in the main house?

Ms. Hudelson: We do.

Mr. Hudelson: We do at this time and it’s being a…a…looked at a…no, we have no reason to have…

Chairperson Cardone: I don’t think that would be permissible anyway.

Ms. Hudelson: (Inaudible)

Mr. Hudelson: There wouldn’t be.

Ms. Hudelson: There would be a different set of permissions I imagine. Right now we’re talking about…

Chairperson Cardone: And maybe Mr. Canfield can clarity that if you already have an accessory apartment at the location?

Mr. Canfield: Yes, that’s correct. There’s only one accessory apartment permitted which is applicable. But while I do have the mic, I do have a couple of questions perhaps for the applicant. Grace, if I’m allowed?

Chairperson Cardone: Sure.

Mr. Canfield: Just on the short environmental impact form, there’s just a couple of questions that sparked my interest was one that there’s a…does the site proposed contain any species of animals associated habitat listed by the State and Federal Government are threatened or endangered and you have yes. And my question is, is that the eagle?

Ms. Hudelson: Yeah. That’s what I was thinking of and I went to that site on…the State has a website where you can put in your address and it will answer all those questions for you but then when I tried to research a little further on some of those questions I…I couldn’t see supporting information. On that one I just assumed that there are some kinds of species that go through our area that are probably endangered. I have no reason to think that there weren’t and I thought I know that from time to time in our region generally we see eagles so…

Mr. Canfield: Okay.

Ms. Hudelson: …that’s why I went ahead and wrote that.

Mr. Canfield: Okay, thank you. The other question was with respect to wetlands and floodways a…

Ms. Hudelson: I was wrong about that and again that came up on the State website and then when I checked with neighbors they said no, we…we don’t have wetlands here, so...

Mr. Canfield: That should be a no then?

Ms. Hudelson: That’s right. And I’m sorry I should have come back and corrected that.

Mr. Canfield: Thank you.

Ms. Hudelson: And I didn’t.

Mr. Canfield: Thank you.

Chairperson Cardone: And also number nine, you have a yes under exceeding the State Energy Code requirements.

Ms. Hudelson: I think that’s a good thing.

Mr. Canfield: Well the form asks for a yes or no. In this case it would probably not be applicable because there is no heat and the Energy Code deals with heat loss so the answer would be not applicable.

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

No response.

Chairperson Cardone: Any questions or comments from the public? Yes, please come to the microphone and state your name for the record. You can come to the center mic.

Ms. Reed: Hi my name is Clare Reed, my husband Tom and I live next door to the Hudelsons. Our property is kind of a weird shape so we kind of are on two side of the proposed building. First of all I want to say we don’t have any problem with the Hudelson’s building a storage building. Carol told me a while ago that they wanted to build something to house some of their wine making equipment. And the building itself is a…I…there only appear to be two exterior elevations at least to what I could see on-line and both of them are really lovely and they do match the very, very well but a…I do have some big concerns and some of this goes beyond if there is somebody that moves into the house after you. A…so…a…and they both are based on the size a…you know when you first mentioned it to me, well okay a building and I got the Notice in the mail and then I lost it and so today I had to go on-line and look up everything. And it seemed kind of big because my pool is 20 x 40 and I go that’s kind of a big building, it’s bigger than that then I went out and measured my garage. I have a free-standing two-car garage and it’s 22 x 24 I think and (13 ½’) thirteen and a half feet high and my garage would kind of be almost in line, not quite with this building and I thought, oh my God it’s going to be ten feet higher than that, it’s huge. And it’s somewhat true that I won’t always see the…the building from…from my house when the trees are fully leafed out, I will not see it. But more than half the year I will see it. The other thing is when I come up my driveway because of the way it’s situated I head actually toward the building and then, the proposed building, and then turn right to go up my driveway. I can, even when the trees are leafed out, see like I can see the stone wall that was being, the foundation or whatever that was being built so I…I can see that currently and the trees are fully leafed out. And my concern is with the size of this building that first of all that I will feel like when I am pulling in my driveway that it looks like there is another house because certainly the one little and I realize it says that this is one inch is fifty feet, something is not right here with that scale but the…if you look at the two buildings the foot print of one is pretty close to the footprint of the other and there’s a twenty-four hundred square foot house and somewhere between eleven and twelve hundred square foot building it seemed like there’s another house on the property and I guess, so that…that’s a big concern is just looking and it and the other concern is and this is where it’s not you guys, future a…I’m concerned with the building in terms of because in the past the only access for cars was through my property for that second height so a…I was under the impression it was not for cars because I didn’t think at this point you could get cars up from the way your property is graded now and to seem like so much room for winemaking and other, the boat whatever with the second. Because my garage has storage overhead I have…I don’t pull down stairs like your plans but I do have a access door but it’s just storage, you can’t stand up there. I guess my concern with so much space you can stand there, it looks like…it’s a lovely building to look at, it would be a lovely place to live, it would I think, rather easily be converted to living space and I know you do have the accessory apartment which I wasn’t going to bring up because I didn’t know if I should.

Ms. Hudelson: (Inaudible)

Ms. Reed: But since it was brought up, that’s fine a…in the future maybe somebody gets rid of that then you don’t have an accessory apartment and maybe they might investigate trying to make this an accessory apartment so I don’t know what guarantees as someone…as you know, somebody next door I have it this can either officially or be used as an apartment because it’s certainly big enough to be a…it’s 1200 square feet and that’s the ground floor. Right? That’s not any space up top and there’s certainly a space to stand up, that’s a…that’s a big chunk in the middle that will have flooring and I…that…that’s a real…that would be a real problem for me…a…for my husband and I. Did I remember everything? I’m sorry I don’t like doing this a…I…I think that it. I think that’s basically it. Thank you.

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

Mr. Manley: Could you work with a height of fifteen feet having storage space upstairs a…maybe you won’t be able to stand up in there but you know providing you with enough storage space to at least get your Christmas decorations, things that you, you know, maybe even would want to put upstairs?

Ms. Hudelson: I’ll show you all the pictures of things to go in there. We were…we were actually hoping for much more storage than that. A…we talked to the architect about bring that roof down some just because I wondered if it would save us some money and he said it really wouldn’t save that much a…if we ever wanted to change the use of that building that would require a whole different set of permissions, I understand and so I don’t…that’s not our plans, storage is the plan a…if planting evergreens would make the neighbors happier so that it would be screened all year I happy to do it. We have done a number of you know, conifers between the two lots just so as we, just increased his privacy a…but…

Mr. Manley: Are you…is your plans to use this facility for the wine making?

Ms. Hudelson: For storage related to the wine making but not wine making.

Mr. Hudelson: We have a…we’ll have a small tractor, we’ve had tractors in the past and this is for grape growing. Okay? So we have machinery for grape growing, a sprayer, small sprayer, other a…equipment but there’s no a…no…

Chairperson Cardone: There would be no business conducted...

Mr. Hudelson: No wine making is done…will be done in this a…

Chairperson Cardone: …no business would be conducted there?

Mr. Hudelson: No, no, no…its use is for storage. Storage of our…our things, things we own.

Chairperson Cardone: You know it’s considerably higher than what is permitted. You know fifteen feet; we’re looking at twenty-three feet.

Mr. Hudelson: I understand but if you...

Ms. Hudelson: Some of it is below grade of that.

Mr. Hudelson: It is partly below grade. It’s also…you can see the grades right there…it’s also a…fits with the structure. Our…our house is forty by thirty that’s a…a…basically it a…on twelve hundred square feet footprint, you know, three stories high. A…so…this is nowhere near as tall as the peak of our house at this point so a…even though it’s up on…

Ms. Hudelson: It’s on a higher level.

Mr. Hudelson: …on a higher level behind.

Ms. Hudelson: But it’s also shorter than the trees that are…

Mr. Hudelson: It’s shorter than all the trees around it, the larger trees, and it a…basically, you know a…this is an area that a…unfortunately has been growing real rapidly in terms of housing unfortunately and the…the Zoning Board changed it to one third acre from two acres to one third acre about fifteen years ago.

Chairperson Cardone: Just a correction, it wasn’t the Zoning Board that did that. It was the Town Board.

Mr. Hudelson: Yeah, I know it was the planning board.

Chairperson Cardone: It was the Town Board.

Mr. McKelvey: Town Board.

Mr. Hudelson: Town Board. It’s unfortunate a…we don’t want to contribute to that. What we want to do is basically we have something that sets a…and the architect feels this is true and I think it is too…it sets a…well within the…the structure that was started that…that’s there already. As she said, extends the wall a little bit so it’s more secure and that’s basically it.

Chairperson Cardone: Any other questions from the Board?

Mr. Manley: I think that just the one thing that…that I can see is the height is a lot higher than what the Board has normally approved in the past a…and you know one of the big reasons that you know the Town set the height limitation was specifically because a…unfortunately with you know large heights they generally morph into other things. A…as the neighbor testified here before that may not be the case with you but two owners, three owners from now the next thing you know the Building Department, Mr. Canfield’s department is getting a phone call that you know, in the middle of the night it was converted to a…a…you know a…you know, rental and that’s where those things become a, you know, an issue down the road.

Ms. Hudelson: Yeah. Do you mind my asking? When you have granted height variances what kind of range are you comfortable with, I’m not to suggest I want you to not vote for this but I was just wondering what it was?

Mr. Manley: It all…it all varies on…

Ms. Hudelson: I have no sense of that.

Mr. Manley: …it all varies on a number of…of factors. There’s no hard and fast rule but I…I can tell you twenty…twenty-three feet, twenty-three and a half feet is you know, considerable. Meaning you’re looking at that’s more than two, that’s two and a half stories almost.

Ms. Hudelson: Yeah, I…I can only say that some of its below grade but I…I understand your point.

Chairperson Cardone: Well would you be open to looking at this again and coming up with some kind of modification, working with your contractor, architect?

Mr. Hudelson: Actually, can I step in? At the…at the eves of this, if you understand a…we’re actually down, I mean, this is not…you’re not, this is a three foot wall on your second story so it’s not a two and a half story building. At the peak it’s very high, yes. But…but when you’re at the edge of that interior on the second floor…right here, it’s about three and a half feet. Okay? So it’s…it’s not really a large second story.

Ms. Hudelson: So this is…this is the part that’s twenty-three feet; here it’s…how far is this off…?

Mr. Hudelson: I think that’s a nine and a half feet or nine something. In the back it’s actually only about a six so the…the roof, now if you think the roof would look nice coming down and squatted that’s fine. I don’t think it would. I mean it…this is actually less of an incline than we have on our house. Our house is ten and ten, I think this is like a…a…ten and six so it’s…I don’t know exactly what it is. So it’s just a question of yes, you know, we spent more than we wanted to for the architect to come up with these drawings and…and…

Ms. Hudelson: A friend though he is.

Mr. Hudelson: …and a…we really would like to just to go ahead with it as it is so it’s…

Ms. Hudelson: And that…that would…I mean we asked a number of questions of the architect as well and he said well let’s…the first thing you’ll need to do is, I mean the first thing to do is see about a variance, you know, because this was the best design that he could do with what was there and a…and making it look like it would go with the house so…sorry.

Mr. Hudelson: One last thing, we do have a road that comes around and we take our cars up there quite often to deliver groceries, unload groceries a…we’ve taken every type of vehicle up there and at one time there was a cement mixer that went up there so a…it’s not impossible.

Chairperson Cardone: Do we have anything else from the Board? Do we have a motion to close the Public Hearing?

Audience member speaking

Chairperson Cardone: Sure, if you would go to the microphone and identify yourself, please.

Mr. Lease: My name is Jeff Lease and I’m a distant neighbor of the Hudelsons. I’ve known Oak Street for over thirty years. A…if you know their property, they’ve done a beautiful job there. They’ve improved what was really a…a a very plain looking house with a foundation and they…they’re really been an addition to Oak Street. The one thing that I’d like to say as a registered architect is that you cannot legislate necessarily a…the height limitations when you’re doing an older structure and asking to a…use the footings and foundations because the width of the foundations to some extent will determine the size and height of the building. And if you start using general parameters to start to make rules for every single building in the Town you are going to get just a mess. They came here to do a building which is more expensive than what a normal would likely do and it’s in keeping what they…what they’ve already done. And I think two hundred feet and something in height is going to cost them more money but I think it’s going to add to the area. I…I only live less than a half mile away and I vote for somebody doing a better than average job. And if you just say well it’s over the height limitation then you can just expect everything to look the same within the Town. And you’ve got extra…I mean they went to an architect for a building, I mean for an accessory building that’s extraordinary. That I…I think I would reward them. Three foot on a second floor, if…if somebody decides to put a…another building up there or enclose it well that will be…that will be another issue but the issue is area and height and I don’t see how the height of the roof peak whether it’s fifteen feet or whether it’s twenty-three is going to make that much difference. It’s architecturally fitting what they already have there which is pretty spectacular. That’s all I need (inaudible)

Chairperson Cardone: I should comment that the Board Members do visit all the sites that are on the agenda so we’ve all been there.

Mr. Lease: Okay, it’s a great piece of property and they need to do something above and beyond what the average person would normally do.

Chairperson Cardone: Thank you. Yes?

Audience member speaking

Chairperson Cardone: Yes, go to the microphone and identify yourself.

Mr. Reed: My name is Tom Reed, husband of Clare Reed. And a I have no problem with in terms of the absolutes of where this is fitting. I can tell you where we live is absolutely beautiful. It is…it’s a sanctuary. And I don’t mean my property; I mean the Hudelson’s property, the property to my right. There’s wildlife, I have seen eagles not every year once in a while a…but it’s an absolutely beautiful place. And part of the beauty of this place is the quiet and the sanctuary of it. It is not the design of the building; I am certainly not an architect. It’s not the beauty of the building, I’m sure it would turn out beautiful. My concern as Mr. Manley stated is that future owners okay, may turn this into something that it was not intended to be. And then I’m back here again. That’s my big concern. It’s not the design or whatever the rules are, it’s my concern is the future of a…where we live now.

Chairperson Cardone: Right. Thank you.

Mr. Reed: Thank you.

Chairperson Cardone: That is our concern also, thank you. Do we have a motion to close the Public Hearing?

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

Mr. Manley: Second.

Ms. Gennarelli: Before I do roll call I just wanted to say, this applicant sent out twenty letters, all mailings, publications and postings are in order. Okay, roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

 (Time Noted - 8:25 PM)

ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:29 PM)

JOHN & CAROL HUDELSON 200 OAK STREET, NBGH

 (9-3-50.11) R-3 ZONE

Applicant is seeking area variances for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23’ 8.5”).

Chairperson Cardone: The Board is resuming its regular meeting. On the application of John and Carol Hudelson, 200 Oak Street, seeking an area variance for the maximum allowed height of accessory structures and the maximum allowed square footage of accessory structures to build a two-story garage (40 X 30 X 23’ 8.5”). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I kind of think the height though is…is a little high.

Ms. Gennarelli: John, is you mic on? Can you pull it in a little closer?

Mr. McKelvey: I think that the height of it is high.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Would a…the Public Hearing is closed however if you want to make a brief statement.

Mr. Hudelson: There are in that neighborhood attached a…garages to houses that are over a…twenty-three feet high so it’s actually as a garage it’s not that high. A…and that would be my major point. Once again it’s a question of what looks right for that dimensions. That’s all.

Mr. Manley: There were some concerns by one of the neighbors with respect to the concern about the future potential if the neighbor were to sell…the applicant were to sell whether or not there’d be an issue with a potential business. The square footage itself seems to be fine, the twelve hundred square feet.

Chairperson Cardone: That…right, that’s not excessive. If the Board would like we could handle that as two separate motions for the variances?

Ms. Hudelson: (Inaudible)

Chairperson Cardone: Do I have a motion pertaining to the square footage?

Mr. Manley: I would make a motion for approval of the twelve hundred square feet.

Mr. McKelvey/Mr. Masten: I’ll second that.

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

Chairperson Cardone: It was John (McKelvey)

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

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: And now on the building height. Do I have a motion concerning the building height?

No response.

Chairperson Cardone: Do I have a motion to disapproval?

Mr. McKelvey: I’ll make a motion for disapproval.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is denied.

Ms. Hudelson: Inaudible

Chairperson Cardone: The Public Hearing has actually been closed.

Ms. Hudelson: Inaudible

Chairperson Cardone: Right, I know, I understand. I think we all understand that.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:33 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 8:25 PM)

CHRISTOPHER & JENNIFER ORPHAL 213 MOUNTAIN VIEW AVENUE, WALLKILL

 (4-1-43) R / R ZONE

Applicant is seeking area variances for the rear yard setback, one side yard setback, the combined side yards setback, the maximum allowed lot building coverage and the maximum allowed lot surface coverage to build a two-story addition on the resident.

Chairperson Cardone: Our next applicant Christopher and Jennifer Orphal.

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

Ms. Orphal: Good evening, my name is Jennifer Orphal, I’m here tonight to ask for your consideration to grant variances for a rear and side yard setback, combined side yard setback and the maximum allowed coverage for building and surface coverage for my two-story rear addition of my existing home. My existing home is about seven hundred and twenty-nine square feet and with our expanding family we really could use the extra space. A…a little bit of history, we have had the house on the market before and we have not been able to sell it a…last year our septic failed and we had to put a considerable amount of money down to have it updated and fixed, we’ve had a new well dug so we have quite a bit of money invested into this property now. Born and raised in the Town of Newburgh where we would love to stay a…and pretty much just need more room.

Chairperson Cardone: And with the addition you would have three bedrooms?

Ms. Orphal: It would be three bedrooms.

Chairperson Cardone: Two up and one down?

Ms. Orphal: Yes, maam.

Chairperson Cardone: Any questions from the Board?

No response.

Chairperson Cardone: Any questions or comments from the public?

No response.

Chairperson Cardone: You have your septic tank in the back, right behind the house, correct?

Ms. Orphal: It’s actually off a…if you’re facing the house to the right side of the house.

Chairperson Cardone: Right.

Mr. Donovan: Do we know if it is large enough to support the additional bedroom?

Ms. Orphal: Yes. I actually have septic plans with me but that was all taken care of last year and it was upgraded.

Mr. Donovan: You might want to ask Mr. Canfield that.

Chairperson Cardone: Mr. Canfield?

Mr. Canfield: Inaudible.

Ms. Orphal: Inaudible.

Ms. Gennarelli: Can you give him the microphone?

Ms. Orphal: Sure.

Ms. Gennarelli: Thank you.

Mr. Canfield: Yeah, the size of the septic tank and system must be increased to facilitate the additional bedrooms. That would be a condition of approval should the Board choose to approve.

Ms. Orphal: It is my understanding that that was already taken care of and that it was upgraded to…

Ms. Gennarelli: I’m sorry, Jerry, could you give her the microphone? Thanks. It is being recorded.

Ms. Orphal: Yes, I’m sorry. Yes you may. It was my understanding that when we had the septic done it was already upgraded to accommodate at least a three bedroom house.

Mr. Manley: Did you wind up getting a Permit for the…

Ms. Orphal: Oh, yes.

Mr. Manley: …the reinstall of the a…

Ms. Orphal: Yes.

Mr. Manley: …and you went through a…you filed it through the Town.

Ms. Orphal: Yes, and I believe…I believe out in my car I actually have the approval letter from the Town.

Mr. Scalzo looking over the septic plans.

Mr. Scalzo: (Inaudible) …percolation rates…the Elgin system here is it’s the state of the art.

Mr. Canfield: The applicant has presented a plan that will facilitate the additional bedrooms however what I do not know and I’m not certain is that there has been a Permit and it’s actually been done. I’m basing my comment on Mr. Mattina’s notes, okay, on his sheet and he has a note a…that if a variance is granted the septic system must be upgraded. A…we can verify our records at the break very easily and see if there is a Permit and if it’s been installed.

Mr. Donovan: The other thing we can do, if the Board is inclined to grant the variance, is condition it upon satisfactory a…

Mr. Canfield: Yes.

Mr. Donovan: …septic system.

Mr. Canfield: Exactly.

Mr. Donovan: And if it’s there, great.

Mr. Canfield: And for the applicant’s benefit that’s Health Department requirements to its…it’s not an issue.

Chairperson Cardone: Thank you Mr. Canfield.

Mr. Donovan: What that means is you don’t have to go through the papers tonight on the…on the fly.

Ms. Orphal: Okay.

Chairperson Cardone: Is there any other questions from the Board?

No response.

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

Mr. Masten: I make a motion.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 8:32 PM)

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ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:33 PM)

CHRISTOPHER & JENNIFER ORPHAL 213 MOUNTAIN VIEW AVENUE, WALLKILL

 (4-1-43) R / R ZONE

Applicant is seeking area variances for the rear yard setback, one side yard setback, the combined side yards setback, the maximum allowed lot building coverage and the maximum allowed lot surface coverage to build a two-story addition on the resident.

Chairperson Cardone: On the application of Christopher and Jennifer Orphal at 213 Mountain View Avenue, Wallkill, seeking area variances for the rear yard setback, the side yard setback, the combined side yards setback, the maximum allowed lot building coverage and the maximum allowed lot surface coverage to build a two-story addition on the residence. This is a Type II Action under SEQRA. And I believe we were going to get further information from Mr. Canfield.

Mr. Canfield: Yes, during the break, the applicant’s contractor, I believe, representative Mr. Cox has presented a Septic Permit from 2012 that has been issued for that system.

Chairperson Cardone: And that does accommodate the three bedroom?

Mr. Canfield: Correct.

Chairperson Cardone: Thank you.

Mr. Manley: Well based on that I would make a motion then that we approve the required variances. You know the property is in conformity with the other properties in the neighborhood. The current house that is there is extremely small, the square footage, they would just be bringing the home to what most of the square footage is most of the homes in that location.

Chairperson Cardone: Okay, we have a motion do we have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:34 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 8:32 PM)

5182 ROUTE 9W, LLC. 5184 & 5182 ROUTE 9W, NBGH

 (DEPEW ENERGY COMPANY) (43-5-42 & 41.2) B - LHI O ZONE

Applicant is seeking an area variance for the front yard setback to build a storage addition on the existing building.

Chairperson Cardone: Our next applicant Depew Energy Company (5182 Route 9W, LLC.)

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

Mr. Lynch: Good evening, my name is Michael Lynch, I work for Engineering Properties, I’m here tonight representing Depew Energy. A…what we have here is an application that was before the planning board. We have a service building on existing lot, section 43, block 5, lot 42. What the applicant would like to do is put an expansion on the rear of the building which would meet all the required setbacks however the existing building does not meet required setbacks as a non-conforming, pre-existing structure. The B Zoning District requires a forty foot setback however; Section 185-18 of the Code requires a sixty foot setback a…front setback for lots that abut a County or State Highway. There’s also an exception in that stating other existing buildings within 300 feet of the property have a lesser set a…lesser front setback and then we could take the average of those or fifty feet whichever is greater. We’ve looked at the building to the north and the building to the south and included the two existing buildings on our applicant’s property and we’ve come up with a front setback of approximately forty-one feet a...so we’d have to be required to have a setback of fifty feet. We currently have thirty-eight point three and we’re seeking a variance for eleven point seven feet.

Chairperson Cardone: And of course, this addition is not going to bring any closer to the highway because you’re doing the addition in the back?

Mr. Lynch: Correct, yes, everything would be done to the rear of the building and a…any expansion would conform to the current zoning.

Chairperson Cardone: I have a question that or a statement maybe that has…maybe has nothing to do with this addition but I drive on 9W unfortunately every day and there are always a lot of signs, temporary type signs out in front or small signs or different and sometimes close to the street so if you’re leaving…like I was looking at the property and as your leaving the property sometimes those signs can block your sight. And it’s difficult enough to get on to 9W without these little signs that seem to block the view. And I know that Depew Oil was before us in the past and this was brought up. And now, I am…I’m…you know I would just want to be sure that there wouldn’t be any additional signs than what is permitted that has been permitted by the variances.

Mr. Lynch: And right, that’s not why we’re before you tonight a…

Chairperson Cardone: Right.

Mr. Lynch: …you know we’re just seeking the a…front yard setback variance as far as you’re concerned with the free-standing signs that are out there. Our applicant is here tonight and that’s…it’s been brought to his attention so it’s something he can consider but as far as this application no that’s not a part of this.

Mr. Donovan: If I…if I may while we’re on the topic of signs I note the referral from the planning board also talks about a variance for the existing sign located on the premises which does not meet the fifteen foot setback requirement. That’s not part of the application or…?

Mr. Lynch: Well yes, it originally was a…because I believe that in 2007 there was a variance granted for the a…existing sign that’s out there. I have the minutes from that meeting if you would like a…we were asked to provide that documentation and since we were able to then we were able to take it off of this application.

Mr. Donovan: Is that your understanding Jerry?

Mr. Canfield: If I understand correctly then it’s the applicant’s understanding that this existing sign is permitted based upon the 2007 granted, is that correct?

Mr. Lynch: Inaudible.

Ms. Gennarelli: We have two microphones, I’m sorry, could you grab that? Thanks Mike. It pops right off.

Mr. Lynch: Yes, the a…ruling in 2007 to the best of my knowledge is permitting the sign that’s out there.

Mr. Canfield: The location of it? I think the referral from the planning board was the distance from the street line a…it’s required to be fifteen feet. I think this is only about ten or twelve or something like that. So that’s what the referral was. I don’t believe that the planning board was aware nor did the applicant’s representative at that time bring forward the variance from 2007. I personally have not reviewed that variance…

Mr. Donovan: No that’s what the…I…I do have the variance a…

Mr. Canfield: Okay.

Mr. Donovan: It just reminded me of the old joke, do I know it, yeah I wrote it. But I just want to make sure that the a…since the referral letter from the planning board did talk about the sign that we have that covered in our discussions this evening that’s all.

Mr. Lynch: Right, and since we were able to produce that documentation that’s why we omitted it from the a…actual application itself.

Mr. Canfield: It was at that meeting as well Dave and I don’t think they were aware of a previous variance. For the record though there is only one free-standing sign perhaps that is the one they are talking about then.

Mr. Donovan: There was a variance for that free-standing sign from its distance from the street issued by this Board in 2007.

Chairperson Cardone: Right, on the condition that all other signs would be removed.

Mr. Canfield: Point well taken. I hope the applicant’s representative hears you too.

Mr. McKelvey: Yeah, there’s quite a few little signs there.

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

No response.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 8:39 PM)

ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:34 PM)

5182 ROUTE 9W, LLC. 5184 & 5182 ROUTE 9W, NBGH

 (DEPEW ENERGY COMPANY) (43-5-42 & 41.2) B - LHI O ZONE

Applicant is seeking an area variance for the front yard setback to build a storage addition on the existing building.

Chairperson Cardone: On the application of Depew Energy Company (5182 Route 9W, LLC.) 5184 and 5182 Route 9W, seeking an area variance for the front yard setback to build a storage addition on the existing building. This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

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

Chairperson Cardone: Do I have a second?

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: All right, do we have discussion on this application? Do we have a motion for approval?

Mr. McKelvey: I’ll make motion we approve and that the little signs come down.

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

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(From at the end of the next applicant Webb Property minutes:

And if I could just back up to Depew Energy, just for the record the report from the Orange County Department of Planning was for Local Determination.

Mr. Canfield: Excuse me Grace, back on Depew…

Chairperson Cardone: Yes?

Mr. Canfield: The motion and approval was for the front yard setback and with respect to the signage the determination was that there was no variance needed…

Chairperson Cardone: Right.

Mr. Canfield: …because of the 2007?

Chairperson Cardone: That’s correct.

Mr. Canfield: Okay, would it be appropriate to have a correspondence to the planning board so that they are aware of that.

Chairperson Cardone: Okay, I think one of them is aware of it already. (Frank Galli in the audience)

Mr. Canfield: Okay.

Chairperson Cardone: We could do that.)

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PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:35 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 8:39 PM)

JOHN W. CURTIS 12 ROSALINE LANE, NBGH

 (111-2-24.1) R-1 ZONE

Applicant is seeking an area variance the maximum allowed square footage of accessory structures to build a one-story garage (30 x 24).

Chairperson Cardone: Our next applicant John W. Curtis.

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

Mr. Curtis: John Curtis, living at 12 Rosaline Lane.

Ms. Gennarelli: John can you just tilt that down towards you?

Mr. Curtis: Okay. How’s that?

Ms. Gennarelli: Better.

Mr. Curtis: All right.

Ms. Gennarelli: Now we can hear you, thanks.

Mr. Curtis: And I’m just asking for my approval for my variance on the garage.

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

Mr. Curtis: No, just for the approval of the variance. I’ve given you all…all the literature I have, all the codes, all the...everything I had to give.

Mr. McKelvey: At least you had the area marked out.

Mr. Masten: Yes.

Chairperson Cardone: Yes.

Mr. Curtis: I had it marked out. The lady came up and saw it.

Chairperson Cardone: Yes, yes I did.

Mr. Curtis: This gentleman came over and saw it.

Mr. McKelvey: I saw it.

Chairperson Cardone: And this garage would be used to store your lawn equipment and so forth?

Mr. Curtis: I want to park cars in it and storage; I got things covered up in the yard with canvases and stuff, the tractors. I have to get them inside before winter breaks out. I have no storage at all.

Chairperson Cardone: And if I remember correctly there was a shed that you are going to remove?

Mr. Curtis: That shed is going to be tore down as soon as I can get a place to put the stuff I got packed in it.

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

No response.

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

Mr. McKelvey: You own all that land up behind there, right?

Mr. Curtis: Yes, five acres.

Mr. McKelvey: I don’t know if it was you but somebody was mowing the day I was there up in the back.

Mr. Curtis: Yes.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Curtis: Thank you very much.

 (Time Noted - 8:43 PM)

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ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:35 PM)

JOHN W. CURTIS 12 ROSALINE LANE, NBGH

 (111-2-24.1) R-1 ZONE

Applicant is seeking an area variance the maximum allowed square footage of accessory structures to build a one-story garage (30 x 24).

Chairperson Cardone: On the application of John W. Curtis, 12 Rosaline Lane, seeking an area variance the maximum allowed square footage of accessory structures to build a one-story garage (30 x 24). This is a Type II Action under SEQRA. Do we have discussion on this application?

No response

Chairperson Cardone: Do we have a motion for approval?

Mr. Masten: I'll make a motion.

Mr. Scalzo: I'll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:36 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 8:43 PM)

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

 & 801 AUTO PARK PLACE, NBGH

(97-2-35 & 43) I / B ZONE

Applicant is seeking an area variance the front yard setback and the required 35 ft. setback from State Highways 185-18 C (4)-(c) to construct a new automobile dealership.

Chairperson Cardone: Our next applicant Webb Properties, Inc.

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

Chairperson Cardone: If you would identify yourself for the record.

Mr. James: My name is Robert James, I am with A. Diachisin & Associates, and I prepared the site plan for Webb Properties. The proposal is a new car dealership along 17K just east of Unity Place or Auto Park Place a…virtually directly across from the Shortline Bus Terminal and Park and Ride. We’re asking for a variance, the applicants asking for a variance of a Code 185-18-C-4-(c) which is a landscape buffer between the property line and a…improvements which varies. The landscape buffer is thirty-five feet but within three hundred and fifty feet it’s forty-five feet. So we’re asking for that variance to be virtually along the property line for improvements a…proposed parking…parking a…area. A…the area that this is in, along 17K, there is significant existing a…State buffer because the property line is so far off of the shoulder of 17K. The existing landscaped area is probably…ranges anywhere from thirty-five feet to fifty feet a…in the frontage. I’m going to turn it over now to Ron…Ron Barton who is the owner, the applicant for further comment.

Mr. Barton: So I’m Ron Barton, it’s the dealership that actually sits behind this property now where the existing Cadillac Chevrolet showroom is. The manufacturer has a…come up with all new standards as to how they want their buildings. And they are looking to have Cadillac separated a…I have a rendering so this rendering here would be more…maybe I should be showing this to the back. Should I put it up there?

Chairperson Cardone: Okay, yeah.

Mr. Barton: It shows more of a separation between the Cadillac and the Chevrolet. So the Chevrolet is very similar to the existing building. This Chevrolet building is actually narrower than the showroom that we have now combined the two of them are similar in square footage. As we move to 17K with the existing setbacks it seems to be well it is different. It’s different than all the other dealerships along 17K so as I look at the Pontiac store and the Chrysler store that we’ve had since 1970 a…the display parking is pretty much up where the telephone poles are. We’re actually hoping to eliminate those. We are working with Central Hudson now to try to get those below grade the same way all the other utilities are within the property that we have there.

Mr. James: Also as you travel east that would be in this direction to the left along 17K you’ll notice that the Enterprise Rental Car building, there are improvements also at Newburgh Park Motors and the next office building.

Mr. Barton: The (Inaudible) (Time Plaza) office building.

Mr. James: They have virtually no setback to the property line.

Mr. Barton: In the event that and I’m sure that the Board is aware and I don’t know whether it makes a difference.

Mr. Barton handed out some photographs to the Board

Mr. Barton: So these are all similar properties along 17K that a…may be…I don’t know if the zoning was different back then or whether they were variances. So what we’re for is to be able to construct this building and display the vehicles in a similar manner.

Mr. Manley: What are the plans for your existing building in the back?

Mr. Barton: Find a tenant. It’s a…yeah, that’s a…that’s a twister. Because this building actually one of the things that’s changed now a…I know back in 1982 when we got Olds Cadillac and we move Olds Cadillac out in 1985 to what used to be the old Marine Midland Bank building which is now Chase that was a showroom and we had separate service facility and that was because General Motors back then a…wanted separate showrooms for Chevrolet and Olds Cadillac. I was able to combine service that’s how we got separate. Now the big thing is keeping all your customer touch points at one place so part of the push is not only to a…split the showrooms but also to get service up behind it. So I not only have a showroom to find tenants for I’ve got a forty thousand square foot service building that a…we will be looking to find tenants for.

Mr. McKelvey: Is that bank building staying?

Mr. Barton: Yes, the bank building is staying, and if you pull that off the…so they can see that, what we’re looking to do both the bank building and the existing parcel are part of the variance and that’s to a…for that setback in the frontage. I’m currently working with the people that purchased the Chrysler store a…who are trying to get Fiat and another one so all they are going to need is a showroom so I’m hoping that we are going to be able to utilize that which would mean that the front awning would come off of it. It would look more like a car dealership than a drive-up teller in the front. Because I do the 17K line with the State we’re looking to put curbs along 17K which I think is what they’re going to want the same way they have them from the City of Newburgh line out to a…well actually it ends by Enterprise now, the curbing. And that prevents people from pulling up at 17K and coming into the front of the building and stuff. So I’m pretty sure for drainage and everything else a…we’re working with them now. And that curbing would go all the way up to in front of the band so as we do the…the landscaping here and the grass area and everything we would do the same thing through the bank property.

Chairperson Cardone: Any questions or comments from the public?

No response.

Chairperson Cardone: Any questions from the Board?

Mr. McKelvey: I think…didn’t we grant a…Nissan closer to the highway too?

Chairperson Cardone: Mr. Canfield?

Mr. McKelvey: Didn’t we, Jerry?

Mr. Canfield: Repeat the question, John please.

Mr. McKelvey: Nissan, it was granted closer to the highway?

Mr. Canfield: I knew this was going to come up.

Mr. McKelvey: Because they are close.

Mr. Canfield: Let me try to choose my words very carefully. The 17 corridor as we are all aware of has become the automobile dealership section of the Town and not everyone chooses to display their vehicles in the same manner. That being said a…the variance that’s before you tonight has been existence for many years but like…like I had stated not every dealership proposes or does present their cars and store them and display them in the same manner. I spoke with the Supervisor today about this issue a…as we all know business as it is should we choose to enforce this thoroughly throughout 17K. To be quite frank, it would create havoc. Every dealer out there would be screaming in the Supervisor’s office. However to be fair and equal to everyone a…there should be a solution a…for all so that it is fair and equitable. Keeping in mind that the dealerships do have a need to display their vehicles in the fashion that they do, their visibility, the sighting of their product is imperative to the sales. A…the uniqueness of this lot is that the DOT right-of-way is so wide, if you look at the actual verbiage of the Code it refers to the property line which in this case is…I don’t know Bob, maybe you can tell me how far back from the street line is actually the property line?

Mr. James: It’s about thirty-five feet to the edge of pavement and the shoulder to the property line on the east side and there’s fifty feet on the west side.

Mr. Canfield: That’s what makes this particular lot unique. In many cases the lot line is the street line, they are one of the same and I believe that that’s was written was what it was intended for to keep the vehicles back off the main thoroughfare. The uniqueness of this lot does present that pretty much right now a…in this particular case. But back to John, your original question, the remaining dealerships and perhaps the Chrysler store will be addressed in the very near future. Like I said, I spoke with the Supervisor about it. I believe in the very near future we’ll come up with a…a approach to kind of bring everyone into compliance in the matter of either the Town Board may choose to waive the restriction or alter it but it will be addressed in the near future a…it’s…it’s not a simple thing where I can just issue an Order To Remedy to one particular dealer and say okay, you’ve got to bring back all of your cars or you have to stop putting tents out there. You have to have…stop having hotdog sales out there. It’s something that needs to be uniformly enforced. It is an issue that over the years has been creeping out further and further. I’m not certain that this particular case before you is of that nature because of the uniqueness of where the lot line is.

Mr. McKelvey: Yeah.

Mr. Canfield: So, hope that answers your question, John.

Mr. McKelvey: No, it answered because I mean, they…they…they use that property up on the corner, I mean, right up as close as they can to the highway.

Mr. Canfield: Yes, yes, agreed. I mean it has been that way for many years.

Mr. McKelvey: Yeah, tents…

Mr. Barton: And you can see I didn’t include any of those pictures because that’s not what we’re looking for.

Mr. McKelvey: No, I understand.

Chairperson Cardone: Any questions from the Board?

Mr. McKelvey: You have a…you have a…

Mr. Manley: I think one of the uniqueness’s about the…the Nissan dealership is it…it actually is a corner lot. You have Union Avenue and you have 17K and I think that that may create its own problems with tents and…you know these particular pictures that you know, Mr. Barton has provided us really show the dealerships not on you know, any of those…that…they’re on the corridor but…

Chairperson Cardone: They’re set back.

Mr. Manley: …yeah, they’re setback. I mean, the Nissan is apples and oranges to these photos that are here.

Mr. Masten: Yeah.

Mr. Barton: Each one of those car displays is right up on the property line of each one of the…so even though there’s grass in front whatever, that’s all State right-of-way. And it typically goes by the telephone polls as you go up and down 17K. They’re just within the State right-of-way, the telephone polls.

Mr. McKelvey: Was that all Colandrea’s I mean they’re up…

Mr. Masten: Yeah.

Mr. McKelvey: …they got hills.

Mr. Masten: Along with rocks.

Mr. McKelvey: They don’t have a problem.

Mr. Manley: Yeah I think like Colandrea’s you can actually see is back further than for example Sunshine. Sunshine is a little bit closer to…to 17K.

Mr. Barton: So if you look down towards the entrance at Colandrea you can see how tight it begins to…

Mr. Manley: Yeah, they’re a little bit they…it starts to spread out and come in closer.

Mr. Barton: So the…the distance between the cars and the State highway is probably ten foot to fifteen foot wider where we’re proposing and what that is.

Mr. Manley: They may even be in the right-of-way here perhaps. Who knows?

Mr. Barton: I didn’t mean to show that.

Mr. Manley: Jerry, is one of the considerations that’s a factor when the State did if there was a…if the State had to widened 17K then they wouldn’t want an issue where those vehicles were now on the State road if they added roadway to…?

Mr. Canfield: You’re correct and also your comment with Mr. Barton is one hundred percent accurate. The encroachment into the State right-of-way a…creates another layer of enforcement that the Town needs to negotiate through. It’s very difficult for us to negotiate someone else’s requirements and standards so we must be very careful in doing this and then include them as well because it is DOT right-of-way. So that is part of the complexity of what we’re dealing with.

Mr. Manley: Is that something…just to add one more thing that, that is going to be addressed at the planning board level? I mean, the State, in the planning board level they’re an involved agency based on their, I’m sure they’ve been notified through the planning board process. So if there is any issues that the State has I’m sure they are going to make their comments at the planning board level.

Mr. James: Well we need a curb cut permit obviously for the new roadway. Again to reiterate we are going to propose curbs all the way from Unity Place east all the way to the Enterprise where the curb ends at the Enterprise lot, right along the edge of the shoulder. So a…there’s going to be some negotiation with DOT to see exactly what they are going to want but we do have to go through that process and the planning board has asked for us to do that.

Mr. Canfield: Yes, also Jim, in the SEQRA process they’re required, they’ll be an interested agency and they will be listed and also there will be DOT Permits required so…

Chairperson Cardone: The report from the Orange County Department of Planning is Local Determination. Do we have anything else from the Board?

Mr. Canfield: Grace, one other question then. A…Ron had indicated at the planning board meeting there was discussion with respect to the bank but if I’m hearing you correctly then that issue may be off the table because this is an I/B zone and the bank in the I/B zones and all of that seems to be a hot topic but at that point we were uncertain where we were going with this so that will not be a variance request at this time?

Mr. Barton: To keep it a bank? No.

Mr. Canfield: Okay, good.

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

Mr. Masten: I’ll make a motion.

Mr. McKelvey: I’ll second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 9:01 PM)

ZBA MEETING – JULY 24, 2014 (Resumption for decision: 9:36 PM)

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

 & 801 AUTO PARK PLACE, NBGH

(97-2-35 & 43) I / B ZONE

Applicant is seeking an area variance the front yard setback and the required 35 ft. setback from State Highways 185-18 C (4)-(c) to construct a new automobile dealership.

Chairperson Cardone: On the application of Webb Properties, Route 17K/Auto Park Place and 801 Auto Park Place, seeking an area variance the front yard setback and the required 35 ft. setback from State Highways 185-18 C (4)-(c) to construct a new automobile dealership. This is an Unlisted Action under SEQRA. We have a motion for a Negative Declaration?

Mr. Manley: I’ll make a motion for a Negative Declaration?

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Manley: Well the applicant has really demonstrated here that his request for a variance is not out of the ordinary and really is in line with a lot of the other a…businesses that are on 17K presently. It doesn’t appear that his variance is excessive.

Mr. Scalzo: My only comment would be that…that one display be pulled back onto the property line at least (inaudible)

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

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Yes

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: And that motion is carried. And if I could just back up to Depew Energy, just for the record the report from the Orange County Department of Planning was for Local Determination.

Mr. Canfield: Excuse me Grace, back on Depew…

Chairperson Cardone: Yes?

Mr. Canfield: The motion and approval was for the front yard setback and with respect to the signage the determination was that there was no variance needed…

Chairperson Cardone: Right.

Mr. Canfield: …because of the 2007?

Chairperson Cardone: That’s correct.

Mr. Canfield: Okay, would it be appropriate to have a correspondence to the planning board so that they are aware of that.

Chairperson Cardone: Okay, I think one of them is aware of it already. (Frank Galli in the audience)

Mr. Canfield: Okay.

Chairperson Cardone: We could do that.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:38 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 9:01 PM)

LZL EQUITIES LLC. 301 ROUTE 32, NBGH

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

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

Chairperson Cardone: Our next applicant LZL Equities - Dunkin Donuts.

Mr. Manley: Madam Chair, I was absent from the June meeting, I haven’t really had a chance to fully go through the minutes for this particular applicant. In addition, a matter of full disclosure Mr. Bloom is a client of mine and I would also like to recuse myself from this particular application.

Chairperson Cardone: That will leave us with four Members.

Mr. Donovan: So Dan, I’m sure realize the import of that. We’re a seven Member board, we have had one resignation so it’s only six Members presently sitting but we are a seven Member board. So to get a favorable interpretation tonight you would need all four Members here to vote affirmatively. It’s been the customary practice of this Board to afford applicants the opportunity to defer the vote until there is a full board present or at least more than four. You don’t have to decide this as you…right now, a…but, go ahead and make your presentation but you should consider that, you know, before you ask us to go forward.

Ms. Gennarelli: Can you get closer to the mic? You can tilt it down or take it off. Thanks, Dan.

Mr. Bloom: Thank you Dave, if I may just have one second to consult with the…my architect I think we’ll have a decision.

Mr. Bloom spoke with Mr. Minuta

Mr. Bloom: Thank you for a…that information and after consultation with the architect on the project, Mr. Minuta, we’re going to a…take up the Board’s suggestion and we would respectfully request that this matter be put over to the next Public Hearing.

Mr. Donovan: If you’d like to make…to make any presentation you can do that. We’ll make a motion to continue it to August.

Mr. Bloom: Fine. I would like…

Mr. Donovan: You sat…you sat here for two hours so you might as well…

Mr. Bloom: Sure.

Mr. Donovan: …get your two cents in, Dan.

Chairperson Cardone: We always like to hear you.

Mr. Bloom: Thank you very much. If you recall the last time we were here we made our presentation and the Board wanted to keep the meeting open so that Board could make some inspections and inquiries of its own. In that period of time, my client was able to secure some additional information from Dunkin’ Donuts which I believe is relevant and should be considered by the Board in its final determination. And with a…with the consent of the Board I would like to hand up an affidavit that I prepared for my client to sign. It’s a little bit unique in the sense that a…the materials, I needed to attach to the affidavit, from Dunkin Donuts only arrived after my client had left for vacation in Europe. So I put the affidavit together I emailed it to him. He’s approved it in writing in form of the…in the form of an email of conformation and if I may present that to the Board this evening, I have a copy for each Member, I would make a representation to the Board myself that if, as and when the Board makes any determination that that affidavit will be signed upon his return from vacation which I believe will be next week or shortly thereafter. I have that in writing from him as well and that would be my personal commitment. A…just to very briefly give you an overview of the affidavit, it recites what we had discussed before which principally was, I’m respectfully suggesting to this Board that it take the approach of looking at this application not as a Dunkin’ Donuts as we commoners mostly and…and…and most frequently envision a Dunkin Donuts operation but as really what it is which is a store similar if not almost identical to a convenient market which would be an acceptable use in the zone. More specifically I delve into the actual counter displays which Dunkin’ Donuts has now entered upon and permitted their franchisees to incorporate into the stores which my client would wish to do in the store if permitted by this Board. And when you would walk into it there would not just be coffee for sale and donuts, it would also be produce, gum a…similar types of sundries and…and my…my suggestion again is the comparison and why I’m bringing it to the Board’s attention but my…my suggestion that perhaps if you look at this in the whole we’re really looking at the store that happens to be called Dunkin’ Donuts but legitimately could be classified a convenient market under the zoning ordinance itself and thus we’re here for this Board’s interpretation. And upon reflection, and with the permission of the Board to submit this affidavit I’m going to a…go out on a limb and take it upon myself to respectfully request that the Board consider this this evening. And a…if I may hand up the affidavit so…

Chairperson Cardone: Please do.

Mr. Bloom: …at this time.

Mr. Minuta approached the Board

Mr. Bloom: With the affidavits, Madam Chair, is the statement from my client (statement was not included) from Europe confirming that he’s reviewed the affidavit and that he’s reviewed the affidavit, he’s confirms everything in the affidavit and he will sign the affidavit before a notary public immediately upon return here. Also attached to the affidavit is a series of a…maps (one map and several duplicate maps) consisting of maps of similar types of operations in the Town of Newburgh within a two mile vicinity of the property itself, the subject property.

Chairperson Cardone: The Board would really need time to go over this material a…so, you know, I think that in any case with this new material that’s presented we really would need to have next month to actually make any kind of a decision.

Mr. Bloom: Well, thank you Madam Chair for allowing me to redeem myself in the presence of my architect this evening. I was afraid that I might have created an issue and thank you for the opportunity to redeem myself.

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

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

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 James Manley: Recused

 John Masten: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Ms. Gennarelli: And that’s August 28th.

Chairperson Cardone: Right, and if there is anyone here that is interested in that application we will be having the Public Hearing on August the 28th. Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I would ask you in the interest of time if you would wait out in the hallway and then we’ll call you in shortly.

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY - (RECUSED)

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:10 PM)

ZBA MEETING – JULY 24, 2014 (Time Noted – 9:38 PM)

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

 (22-4-6) R-3 ZONE

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

Chairperson Cardone: On the C D & Sons Construction:

We received comments from the Health Department on 6-23-14 and are currently addressing them therefore I am on behalf of client requesting that the Decision of this application be Reserved for another month. Thank you. (E-mail from Talcott Brown)

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:39 PM)

ZBA MEETING – JULY 24, 2014

END OF MEETING (Time Noted – 9:39 PM)

Chairperson Cardone: Is there any other business for the Board? We have the minutes from month? Has everybody have a chance to read them? Do we have a motion to approve those minutes?

Mr. Scalzo: I'll make a motion.

Mr. McKelvey: I’ll second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Mr. Manley: I abstain.

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Any other business before the Board? I was afraid of that, no, go ahead.

Mr. Canfield: Just one last thing, for the Board’s information, a…I think it was last meeting or a meeting ago we had talked about the activity of the Zoning Board and in particular one application, The Loop. A…I…I feel obligated to report to you that in speaking with the planning board, the planning board attorney and the Town attorney it was best advised to the applicant to return to the planning board with their ARB and then they will make one application with a referral from the planning board back to your board. Of course it’s at your pleasure how you feel you know to schedule that but just a heads up so to speak that you will see it in one application form and it will be for all of the building heights and the signage, it will be all packaged up in one.

Chairperson Cardone: Okay, thank you.

Mr. Manley: Jerry, Jerry that’s because their variance expired or no? They had a variance for signage.

Mr. Canfield: It’s because they’re changing Jim. They did receive a variance for signage if you remember a while back we…we had that long presentation…

Mr. Manley: Oh, yes…

Mr. Donovan: We had our own sign expert.

Mr. Manley: We had our sign consultant.

Mr. Canfield: Yeah, well the requirement or not the requirements but the requests and essentially the stores have changed so what they are going to be asking for is going to be different. And of course, with the stores changing there’s varying architectural features that put them over the building height. I don’t remember if you were here when we had talked about that briefly.

Mr. Manley: Not last month, no.

Mr. Canfield: No, okay.

Mr. McKelvey: Have they got many tenants coming in?

Mr. Canfield: Yeah, they do. Yeah they do.

Mr. McKelvey: Good to hear, hope they start breaking ground soon.

Mr. Manley: Are they going to need lights?

Chairperson Cardone: Do we have a motion to adjourn?

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

Mr. Manley: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

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

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 JAMES MANLEY

 JOHN MASTEN

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:46 PM)