ZONING BOARD OF APPEALS

MEETING – APRIL 27, 2017

(Time Noted – 7:05 PM)

Mr. Manley: Good evening, 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 relief under the Code. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard and will try to render a decision this evening; but may take up to 62 days to reach a determination. I would ask if you have cell phones to please put them on silent or turn them off and when speaking, speak directly into the microphone as it is being recorded. Ms. Gennarelli the roll call please.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Anyssa Griffin, NFA (Government Class)

(Time Noted – 7:07 PM)

ZBA MEETING – APRIL 27, 2017 (Time Noted – 7:07 PM)

RANNE, LLC.-RICHARD SOLOMONS 5349, 5351, 5359 ROUTE 9W, NBGH

 (9-3-22.1, 22.2, 23) B/SSO ZONE

Applicant is seeking an area variance the non-conforming front yard setback of the existing kennel building for the proposed new construction of a pet hotel and day care center and lot line change application before the planning board.

Mr. Manley: The first application before the Board this evening is Ranne, LLC.-Richard Solomons, 5349, 5351 and 5359 Route 9W requesting an area variance the non-conforming front yard setback of the existing kennel building for the proposed new construction of a pet hotel and day care center and lot line change application before the planning board. Is the applicant present?

Audience Member: I’m the General Manager of Pet & Play our engineer Tom Depuy actually is supposed to be here to do the presentation and he is not here yet.

Ms. Gennarelli: Okay, we can skip over and come...

Mr. Donovan: Do a second call.

Mr. Manley: Yeah, we could...

Ms. Gennarelli: ...do a second call.

Audience Member: I’ll try and reach him.

Mr. Manley: ...give him a little time, okay.

 (Time Noted – 7:08 PM)

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(Time Noted – 7:30 PM)

Mr. Manley: Is Mr. Depuy here? Okay. At this point we’ll go back and hear the Ranne, LLC.-Richard Solomons of 5349, 5351 and 5359 Route 9W seeking the area variance the non-conforming front yard setback of the existing kennel building for the proposed new construction of a pet hotel and day care center and lot line change application before the planning board. Ms. Gennarelli are all the mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. McKelvey: You can put that over there on the board.

Mr. Manley: If you could just for the record introduce yourself to the Board?

Mr. Depuy: I’m Tom Depuy, Depuy Engineering, I represent the Pet Day Care Center. As it says in the Public Hearing Notice, they’re proposing an addition onto the existing pet care center. They’re also consolidating a lot and you got a lot line change with the adjoining property a...basically there’s a lot line change in order so that we didn’t need any other variances for a side yard on the left side as you’re facing the drawing. So basically what we’re looking for is a variance of a pre-existing structure a...of the front, we’re thirty feet off and the requirement is forty feet. We actually had received this variance once before but since we changed the scope of the project we came back and...

Mr. Donovan: So it’s the same...right, it’s you didn’t move the building didn’t move right, so it’s the same variance.

Mr. Depuy: No, yeah, yeah the same variance.

Mr. Maher: So in the description of the variance sought I think the comment is reducing...reduction of front yard from forty to thirty. You’re not actually reducing you’re just continuing the current.

Mr. Depuy: Yeah, continuing but that’s the variance we’re asking for.

Mr. Maher: Yeah.

Mr. Levin: You’ve lost some parking spaces here you...it’s not our area but the parking, the amount of parking spaces you have (Inaudible)...

Mr. Depuy: Yeah, what happens we actually reconfigured the parking so we actually end up with additional parking on the site and then we have employee parking on the far side that’s a...

Mr. Levin: Where on this thing?

Mr. Depuy: Yeah on...all the way on the other side of the property.

Mr. McKelvey: That would be planning board anyhow.

Mr. Levin: Planning board yeah.

Mr. Manley: Does anybody else from the Board have any other questions for the applicant? I’m going to go ahead and read into the record the response from the County Department of Planning. They’re comments are as follows: The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area, it does not appear that intermunicipal or countywide impacts would result if the board finds that granting relief is warranted in this matter. We note that while the planning board referred this project to the Zoning Board of Appeals, the planning board has not referred the project to County Planning at any time. While this is not the responsibility of the ZBA, we ask you share this letter with the planning board, so that our concerns may be addressed. We recognized the improvements from the previous site plan, and we commend them. We remain concerned about the potential for groundwater contamination through pet waste disposal, and appropriate handicapped access between the parking lot and both buildings onsite. The recommendation of the County is Local Determination. If Ms. Gennarelli you would make sure that the planning board receive a copy of our comments from the Department of Planning.

Ms. Gennarelli: Okay, yes.

Mr. Donovan: Tom, if I could ask just one question, on your application number two you’re also appear to indicate that you’re looking for some interpretation on buffer strips and screening?

Mr. Depuy: A...no a...we actually want to withdraw that. That was on the far side that was from a previous a...

Mr. Donovan: Okay.

Mr. Depuy: ...a that...

Mr. Donovan: That’s fine I just wanted to make sure I’m clear, that’s all.

Mr. Depuy: Yes.

Mr. Manley: If there’s no further questions at this point from the Members of the Board I’ll open the Public Hearing up to members of the public. Is there anyone that has any comments with regard to this application? We’ll start with the...the first gentleman there. Sir?

Mr. Bartell: Yes, good evening, my name is Richard Bartell, I reside at 24 Lattintown Road, Newburgh, NY. My house is directly behind this a...veterinary clinic and a...day spa grooming facility. I purchased my home in 1994 and at the time there was only the one existing veterinary clinic the small one-story building on the a...southern part of that piece of property. Numerous years later they purchased a building which is just north of the original veterinary clinic which was a single or two-family residence and they converted that into the spa and they built a play area outside of that. My sits on the hill right behind this whole thing within a hundred to...two hundred feet from the existing kennel and spa. I...I am totally against anymore construction there. At times, all day and the evening there’s up to twenty and even more dogs running around in that play area barking continuously all day. My wife works nights she tries to sleep in the daytime and you can’t even sit out on my patio in the summertime because of the continuous barking of these dogs. Like I said there’s many times there’s twenty or more dogs in that play area barking continuously. If they construct anything larger than that how many more dogs are they going to have in there barking all day and all night? I can’t rest; I can’t get any sleep because there’s dogs barking there twenty-four hours a day. Oh yeah a...I can smell dog feces, they have these dogs out there all the time so I can smell dog feces that’s coming up right, because my house is so close to the business it’s ridiculous. What kind of noise abatement are they construct to keep the noise down? I mean this is absurd, I have constant barking. If I ever plan, which I do plan on selling my house in the future the only person that’s going to buy my house is somebody that’s deaf because who is going to want to stand there and listen to this barking all day and all night? And like I said with an addition put on there there’s going to be more dogs so there’s going to be more noise and more odors coming from this a...this facility. So I’m totally against any more construction there.

Audience Member: Thank you very much for your time.

Mr. Manley: Okay, so just so you know the scope of the Zoning Board is to specifically look at the requirements with respect to the a...the distances and our...our scope is not beyond that because this is the Zoning Board. Your questions which you know some may be very, very valid points are more appropriately directed towards the planning board because they’re the ones that actually are in charge of looking at the project and they’re the ones that can address the items that you just mentioned specifically screening and things that may be able to be done to abate the noise. So what I would recommend that you do, unfortunately I did read the information from the planning board minutes that they had, they’re not going to have a Public Hearing however, you can send your comments to them in writing and specifically address those issues and ask them to please address those issues during the planning board process. And I do know that Mr. Depuy here probably will bring those comments back to his client and you know, see if there’s things that they can do to try and abate your concerns and you know, address some of that. I’m not sure that all of it will be addressed but you’re main concerns a...maybe something. I probably even recommend you go to the planning board hearing a...or not the hearing, the meeting so that you can, you know, see exactly what’s happening with...with the project. But we certainly would take your comments under advisement with respect to your concerns.

Mr. Bartell: Because as far as I know this addition is going to come towards my house. Am I correct, I mean a...?

Mr. Manley: Well I can give you a copy...

Mr. Donovan: Yeah, so understand that the reason why they’re here tonight is because of the location of the existing building. The planning board has jurisdiction over whether or not to approve the addition or not. It’s because the...all this Board is being asked to is to grant a variance to allow the existing building to stay where it is. That’s the only issue before the Zoning Board this evening.

Mr. Manley: And being the building is existing it’s not like they can move it...

Mr. Bartell: Exactly.

Mr. Manley: ...to try to make it conform to the lot because it’s...it’s already there, it’s preexisting. If they were building a new building this Board could say well then move it a little bit this way or make it smaller. We would have the ability to make those recommendations or determinations but you know it’s...it’s an existing building. I would be happy to give you my copy of this if you...

Mr. Bartell: I have one of those.

Mr. Manley: You have one of those? Okay. Do you have any other comments for the Board this evening?

Mr. Bartell: No, no. Thank you very much for your time.

Mr. Manley: Thank you. Is there anyone else from the public here this evening that has any more comments with regard to this application?

No response.

Mr. Manley: Hearing none I will then proceed back to the Board for any final questions or comments for the applicant.

Mr. Levin: I have a question on the a...I see the building, are the yards where the dogs are out, are they going to be expanded?

Ms. Gennarelli: Please come to the microphone.

Mr. Donovan: If you could just tell us who you are for the record please.

Ms. Schaper: I’m Charlene Schaper, I’m the general manager of Middlehope Veterinary Hospital and the Pet and Play Luxury Resort. The two yards that are...the two yards that are currently there are not going to be expanded. We recently purchased the property north of the pet hotel and we do plan to put a play yard right near 9W adjacent to our existing one. I’m pretty sure it’s on this drawing.

Mr. McKelvey: Take the mic, take the mic.

Ms. Gennarelli: Or Jerry, you just give them the mic.

Ms. Schaper: So these are our three existing yards a...and the plan is to put another play yard here along 9W.

Mr. Maher: Are these the site plans that were submitted to the planning board?

Mr. Depuy: Yes, (Inaudible)...I think there have been little updates since then, I’m not positive.

Ms. Gennarelli: I’m sorry; you have to talk into the microphone so they can hear.

Mr. Depuy: Yeah, there’s been a slight update on something on the State Highway but nothing with respect to the site itself.

Mr. Maher: No but (Inaudible) plans to add another play area that I thought was submitted with the package?

Mr. Depuy: A, yeah, I think we just had a general note there because of we were working out on where the play area would (Inaudible).

Ms. Schaper: We’ve been in business for over ten years and we’ve never had a single noise complaint issued to us. Mr. Bartell’s filed a Noise Complaint last week after receiving the notification and Barry from Code Compliance came out and visited me. I understand he has concerns; he is interested in selling his house or what not. He asked us if we were interested in purchasing it but we...I mean the dogs...if you’ve ever been to our facility which I know you guys came out and did a tour, we have canine grass on all of our yards. It...we pick up all hard feces as soon as it happens and it’s rinsed down. All of our yards are completely disinfected every evening and there’s definitely not any a...you know odor that’s coming that’s coming up through the thing...it’s not how we run our business.

Mr. McKelvey: Which...where dies he live?

Ms. Schaper: He lives on the top of the hill.

Mr. McKelvey: The big, yeah, that’s what I thought the one way up on the top.

Ms. Schaper: Yes.

Mr. Masten: Way up on the turn.

Ms. Schaper: And he has never has approached us, even without a...ever a...about a noise issue or any other complaint. And when Barry visited me last week I gave him my card saying if there’s an issue please ask him to contact me directly so that we could address it a...but it didn’t seem to be anything specific that a...you know, we could really address. He had, you know, there’s a lot with the night...we are there 24 hours a day but the dogs, the last walk is 11:00 then you know, after that if the dogs crying to go out of course one of our staff members would take it out but it’s not like the majority of the dogs are being walked all night.

Mr. Manley: Is there any other questions from the Board?

No response.

Mr. Manley: At this point, do we have a motion to close the Public Hearing?

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

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 James Manley: Yes

Mr. Manley: At this point, before proceeding the Board is going to take a short adjournment so that we can confer with Counsel regarding legal questions raised by tonight’s applications. If I could ask in the interest of time if you could wait out in the hallway and as soon as we’re completed we’ll call you back in very shortly.

 (Time Noted - 7:45 PM)

ZBA MEETING – APRIL 27, 2017 (Resumption for decision: 7:55 PM)

RANNE, LLC.-RICHARD SOLOMONS 5349, 5351, 5359 ROUTE 9W, NBGH

 (9-3-22.1, 22.2, 23) B/SSO ZONE

Applicant is seeking an area variance the non-conforming front yard setback of the existing kennel building for the proposed new construction of a pet hotel and day care center and lot line change application before the planning board.

Mr. Manley: The Board is resuming its Public Hearing for this evening. The first item that the Board is going to consider tonight is the application of Ranne, LLC.-Richard Solomons, 5349, 5351 and 5369 Route 9W, Newburgh and they’re seeking an area variance the non-conforming front yard setback of the existing kennel building for the proposed new construction of a pet hotel and day care center and lot line change application before the planning board. It’s is a Type II Action under SEQR. At this point we’re going through our five tests for a area variance. The first being whether the benefit can be achieved by other means feasible to the applicant. Is there discussion amongst the Board?

Mr. Levin: I don’t believe so.

Mr. McKelvey: I don’t believe so either.

Mr. Levin: No.

Mr. Manley: The next is whether or not there will be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: I’ll be the first to say I don’t think there will be any detriment to properties around them...surrounding.

Mr. McKelvey: He keeps the property very neat.

Mr. Levin: It’s very neat yes.

Mr. Manley: I believe the applicant also testified that the business has been there for quite some time...

Mr. Masten: Yes.

Mr. Levin: Yes.

Mr. Manley: ...and there hasn’t been previous noise complaints. Whether the request is substantial in nature?

Mr. Levin: I don’t feel it is.

Mr. McKelvey: I don’t feel that it is either.

Mr. Bell: No.

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

Mr. Bell: No.

Mr. Levin: I don’t think so.

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Manley: And the last is whether the alleged difficulty is self-created? This is a relevant factor but it is not completely determinative.

Mr. Bell: Yeah, think so.

Mr. Manley: They can’t move the building.

Mr. McKelvey: No, they can’t.

Mr. Levin: No.

Mr. Bell: No.

Mr. Masten: No. It’s a permanent structure.

Mr. Manley: With these factors being weighed would some like to make a motion?

Mr. Levin: I’d like to make a motion for approval.

Mr. McKelvey: I'll second that.

Mr. Manley: We have a motion and a second. Roll call.

Ms. Gennarelli:

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 James Manley: Yes

Mr. Manley: The variance is approved.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:59 PM)

ZBA MEETING – APRIL 27, 2017 (Time Noted – 7:08 PM)

SARA EGAN-DAVIS 25 HOPEVIEW COURT, NBGH

 (23-2-44.2) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to add an additional 85 sq. ft. (8’6” x 10’) to a previously ZBA approved accessory building.

Mr. Manley: In that case we’ll move on to our next application this evening Sara Egan-Davis, 25 Hopeview Court, Newburgh requesting an area variance for the maximum allowed square footage of an accessory buildings to add an additional 85 sq. ft. (8’6” x 10’) to a previously ZBA approved accessory building. Good evening.

Ms. Gennarelli: One second, please, the Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, April 19th and The Sentinel on Friday, April 21s. This applicant sent out forty letters. All the mailings, publications and postings are in order. Thank you.

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening, okay if you could just explain to the Board exactly what you are returning to the Board for this evening.

Mr. Davis: (Inaudible)

Ms. Gennarelli: Oh, I’m sorry; I don’t think I turned the microphones on.

Mr. Davis: So again, thank you for your time, we’re back again hopefully for the last time. On the exterior of the pool house and the garage on the back side so it’s opposite the street they had an exterior door that we went away with, we took the door out and we actually moved it inside. The overhang of the roof there’s nothing there so it kind of looks incomplete so we wanted to make an extension to fill in that open air space that would line up with the rest of the existing extension roofline. I believe my contractor gave me the idea that it is called a shed roofline.

Mr. Manley: Okay, if you could just for the record so that we have it in the record, just your name and a...your name again for the record.

Mr. Davis: My first name is Muraah; last name is Davis, 25 Hopeview Court.

Mr. Manley: Thank you.

Mr. Davis: You’re welcome.

Mr. Manley: Does anybody from the Board have any questions regarding the additional square feet that are being requested by the applicant?

Mr. Levin: No.

Mr. Manley: I had reviewed the previous decision just to a...the original variance was eight hundred and ninety-eight square feet because you get a thousand under the Code.

Mr. Davis: Okay.

Mr. Manley: So eighteen, ninety-eight so the...we would be adding an additional eighty-five feet on to the eight ninety-eight that’s already been approved. Is that...?

Mr. Davis: Yes, square, we’re just going to come up to the...and match the existing length of the over...the extended roofline.

Mr. Manley: And you’re absolutely sure that that eighty-five square feet will give you enough because I mean if we grant you the eighty-five feet and let’s say it ends up being ninety you’re going to be short. So I just want to make sure...

Mr. Davis: No it shouldn’t be we took the measurements.

Ms. Davis: Inaudible.

Mr. Manley: Unfortunately not whatever you request...

Ms. Davis: Yes.

Mr. Manley: ...is what the Board considers...

Ms. Davis: Okay.

Mr. Manley: ...so if...if you’re over that’s not an issue, if you’re under the issue becomes the Building Department can only grant you...can only give you legally what this Board grants you so...

Ms. Davis: Yeah, okay.

Mr. Manley: So you know if...if you...if your contractor goes over...

Ms. Davis: Yes.

Mr. Manley: ...and when they do the inspection or whatever and it’s not accurate you’ll be back again for...if you needed six feet or ten feet unfortunately you’d have to come back.

Ms. Davis: We definitely don’t want that.

Mr. Manley: So we just want to make sure that you’re adequately covered.

Ms. Davis: I think we’re pretty sure but if there’s opportunity to just round it up to ninety to be safe? We prefer not to have to come back for that. Obviously all that we’re trying to do is square it off right now (Inaudible).

Mr. McKelvey: You’re just going to the end of the house.

Ms. Davis: Exactly.

Mr. Davis: Yes.

Ms. Davis: That’s all that’s....

Mr. Davis: Right were the...on the plans...right where the existing extension will be a...do you want to call the extending of the roof awning or whatever you want to call it, it’s on one of the plans that show the exterior door, we eliminated that and then the roofline would just match what’s already there that’s approved that support.

Mr. Donovan: So there’s no additional space inside, this is just additional roofline to match the roofline that’s already there.

Mr. Davis: Right, right.

Ms. Davis: That’s right.

Mr. Davis: The gentleman that came over the Board to see it they actually...two of them thought that it was an addition. It’s not it’s just an overhang for the...for the roofline just to match it right.

Mr. Donovan: So if I’m looking at the picture of what you have you’re just...you’re just...

Mr. Davis: Can I come up and show...I’m used to being in court...

Mr. Donovan: Yeah.

Mr. Davis approached the Board.

Mr. Davis: So right here it would just be coming down to match right there at that point.

Mr. Donovan: It’s just going to fill it in.

Mr. Davis: Yes, yes sir, thank you.

Mr. McKelvey: There was going to be a door underneath where they’re doing it.

Ms. Davis: Yeah, we just didn’t need another.

Mr. McKelvey: We were the two that talked to you.

Mr. Davis: Yes, I remember.

Mr. Manley: So you would like an additional five square feet just to make sure, is that...?

Ms. Davis: If...if you’re okay with that. I don’t think we need it but I prefer not to have to come back here because this is our third time here.

Mr. Manley: Right, we would...we would just need you to state for the record that you would like to amend your application to request ninety feet...ninety square feet instead of eighty-five.

Ms. Davis: Okay, I would like to amend our application to request ninety square feet instead of eighty-five.

Mr. Manley: Okay.

Ms. Davis: Thank you.

Mr. Donovan: Just in terms of the notice requirements this is essentially the same variance it’s a...minimus increase so there wouldn’t be any additional increase required.

Mr. Manley: Does anybody from the Board have any other questions before I open it up to anyone from the public?

Mr. McKelvey: No.

Mr. Manley: Okay at this point, do we have anyone from the public that has any questions relating to this application before the Board this evening? If you do you just raise your hand, we’ll acknowledge you and have you step forward.

No response.

Mr. Manley: It does not appear that there’s any comments from the public so at this point I’ll go back to the Board for one last inquiry as to if they have any comments.

Mr. Maher: Just one, hey Jerry, on the a...on the setback from the corner of the pool house it shows forty feet is that the minimum there so it’s a little close to the...we’re very close to the...

Mr. Davis: (Inaudible) I triple checked it myself as well as the other contractors and the guys that we ran up to make sure that it wasn’t in violation.

Mr. Maher: I just want to make sure that you’re...you understand that it’s right there on the line so just be cautious about how close, you know, it’d be going.

Mr. Davis: Yes, that’s on the backside not the front though.

Mr. Maher: Okay so it’s going to be on the...

Mr. Davis: On the pool side.

Ms. Davis: Yeah.

Mr. Donovan: It’s on the pool side.

Mr. McKelvey: On the pool.

Mr. Bell: Yes.

Mr. Davis: Do you want me to...I could show it to you?

Mr. McKelvey: Yeah, go ahead.

Mr. Maher: Yeah, go ahead, that’s fine.

Mr. Davis approached the Board.

Mr. Maher: We’re doing this corner here?

Mr. Davis: Right here.

Mr. Maher: This corner here, okay, I’m looking at the reverse on the other side.

Mr. Davis: (Inaudible)

Mr. Maher: Yeah, okay, I got you, I got you.

Mr. Davis: Thank you, sir.

Mr. Manley: With no further question from the Board I would ask for a motion to close the Public Hearing.

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

Mr. Manley: We have a motion and a second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

Ms. Gennarelli: Darrin Scalzo, I’m sorry he is not here, have to cross him out.

 James Manley: Yes

Mr. Donovan: He’d have to vote very loudly.

Ms. Gennarelli: Yeah, he’s got to yell.

Mr. Manley: At this point, the Public Hearing is closed the Board will vote on the final application at the end of the meeting.

Mr. Davis: Thank you.

Ms. Davis: Thank you very much.

Mr. Manley: Thank you.

 (Time Noted - 7:15 PM)

ZBA MEETING – APRIL 27, 2017 (Resumption for decision: 7:59 PM)

SARA EGAN-DAVIS 25 HOPEVIEW COURT, NBGH

 (23-2-44.2) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory buildings to add an additional 85 sq. ft. (8’6” x 10’) to a previously ZBA approved accessory building.

Mr. Manley: The next variance this evening before the Board is the variance request of Sara Egan-Davis, 25 Hopeview Court, Newburgh Hearing this evening seeking an area variance for the maximum allowed square footage of accessory buildings to add an additional 85 sq. ft. to a previously ZBA approved accessory building. This is a Type II Action under SEQR. Going through the balancing tests before the Board this evening the first being whether or not the benefit can be achieved by other means feasible to the applicant?

Mr. McKelvey: No.

Mr. Bell: No, it can’t.

Mr. Levin: I don’t think so, no.

Mr. Masten: No.

Mr. Manley: The next would be whether or not granting the request would result in any undesirable change in the neighborhood character or a detriment to nearby properties?

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Manley: Whether the request is substantial?

Mr. Levin: Not at all.

Mr. McKelvey: No, not at all.

Mr. Bell: No.

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

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Masten: No.

Mr. Levin: No.

Mr. Manley: Whether the alleged difficulty is self-created? It is relevant but determinative.

Mr. Bell: No.

Mr. Donovan: And I would just, well for the Board’s edification, obviously they decided not to put the door in so to that degree it is self-created just...

Mr. Masten: Yes.

Mr. Manley: Weighing the factors and balancing tests on this particular application do we have a motion from the Board?

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

Mr. Masten: I'll second it.

Mr. Manley: We have a motion and a second, roll call.

Ms. Gennarelli:

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 James Manley: Yes

Mr. Manley: The application for the variance is approved. Also if you would note, Ms. Gennarelli...

Ms. Gennarelli: Yes?

Mr. Manley: ...that’s ninety square feet as opposed to eighty-five.

Ms. Gennarelli: Okay.

Mr. Manley: Because they did amend their application.

Ms. Gennarelli: Okay.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:01 PM)

ZBA MEETING – APRIL 27, 2017 (Time Noted – 7:15 PM)

MICHAEL AMOIA 30 McCALL PLACE, NBGH

 (23-2-11) R-3 ZONE

Applicant is seeking an area variance for the maximum lot surface coverage to keep prior built accessory structures (400 sq. ft. L-shape pool house) and prior built gazebo (12 ft.) and also area variance for the gazebo shall be located 10 ft. from the main dwelling.

Mr. Manley: The next application this evening before the Board is Michael Amoia, 30 McCall Place, Newburgh seeking an area variance for the maximum lot surface coverage to keep prior built accessory structure (400 sq. ft. L-shape pool house) and the prior built gazebo (12 ft.) and also area variance for the gazebo shall be located 10 ft. from the main dwelling. Ms. Gennarelli...

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Paladino: Good evening, my name is Giovanni Paladino; I’m actually here representing my father-in-law. We’re here today to just go over the application both for an area variance and also for the actual structures themselves. If I could just give you a little bit of history, the building itself was built sometime in the late 50’s, early 60’s and in the 80’s it was sub-divided so the structure in the back that’s being labeled as a pool house is not a pool house. It’s actually a structure...it’s actually a shed and inside is the equipment for the pool house but that’s been there since just about the house...when the house was actually built so I went as far back as...I found an aerial actually as far back as 1965 that shows a structure back there. Back in the 80’s...mid 80’s sometime there was a pool house that I mean a pool that was in...installed, went through the inspections. I think there was an open permit on it. At that time, the previous owner painted it, put some flower boxes on it and made it seem more like a house. They resided it with Texture 111 and he added a small little greenhouse off the front of it, an avid gardener. Everything that we’re here for tonight so that everybody understands none of this work was done by this current owner. It was done all by the previous owner. So...so that’s the issue with the clarification of the pool house. I can show you the...the map, I did bring copies, the aerial. The second part of it, there was a...a I guess a violation in regards to lot coverage area. We ended up contracting with a licensed professional surveyor in the State of New York who...who ended up doing the survey as you can see the...he is below the thirty-eight percent maximum and again I think a lot of it has to do with the fact that at one time the parcel was larger and it was subdivided so we had her back in September, October to confirm the values and I think the total coverage is somewhere around twenty-six point four square feet...a...percent. The second part of it is the gazebo, the gazebo has been there again since the 80’s, it’s...it’s under a hundred square feet, it’s seventy-seven square feet to be exact, seventy-seven and a quarter a...it’s approximately 10 foot from the structure a...it’s...it’s a non...it’s an existing non-conforming use. As far as, you know, historical information I...you know, we’ve gone back as far as the 80’s and that structure has been there. So those are the two things that we’re here before you a...to get clarification.

Mr. Levin: When did your father-in-law buy the house?

Mr. Amoia: About 3 years ago.

Mr. Paladino: Three years.

Mr. Levin: Three years ago.

Mr. Amoia: Yes.

Mr. McKelvey: It’s up for sale now?

Mr. Amoia: Excuse me?

Mr. McKelvey: It’s for sale?

Mr. Amoia: I’m trying to, my parents’ house, yes.

Mr. McKelvey: Yeah.

Mr. Levin: When you bought the house it never came up that it had the violations?

Mr. Amoia: It never came up to me; nobody ever brought it to my attention.

Mr. Paladino: They went through a Title report, the Title Search nothing came up. And it was several months after he had closed. I think what sparked it was an open Permit and the Building Inspector can clarify that but I think it was an open Permit for the pool house that was actually built...

Mr. Amoia: It was a pool.

Mr. Paladino: a pool...years prior so I think when they came out just to sign off on the pool they saw the shed in the back and labeled it the pool house they saw the gazebo that was all there and also further clarification there was an addition put onto the building also in the mid ‘80’s and at that time that should have ended (Inaudible) so and that was fully permitted, fully inspected so this all came a little bit as a shock to us. If you a...I brought pictures, I think they were part of the submittal where you can see inside the building in no way is it finished. It stores a...pool, some pool equipment, shelving, in fact, cleared it all out.

Mr. Amoia: I cleared it all out there’s nothing in it now.

Mr. Paladino: The only thing that might have been a little semi-finished was the little greenhouse that’s actually in front of it that some insulation inside of it and I directed him to remove the insulation. And I can show you the aerial photo if you want me to put it up on the easel. I brought also extra copies here but I’ll show you this aerial photo this is from 1965. That’s the furthest back that I could go but you can see here here’s the building and here’s the structure in the back. It’s a little longer now because of the greenhouse that was attached to the front of it but...

Ms. Gennarelli: Sorry, can you just speak into the microphone this is being recorded. Yeah, either one, that’s fine.

Mr. Paladino: ...and so again this aerial is from 1965 it’s, you know, the only one I could really find. You could see here that the structure was in the back. The parcel used to be much larger, it was actually a one-car garage at one time and a...I guess when they did the addition and they did the pool house they just cleaned it up and made it look like a pool because they ended up selling this parcel here, another house was constructed and then built a garage here in front when they did the addition back in the mid 80’s sometime.

Mr. Manley: Do any of the members have any questions for the applicant at all?

No response.

Mr. Manley: If there’s no questions for the applicant at this point I’ll open up for questions or comments from the public, if there’s anyone here with regard to this application...

No response.

Mr. Manley: Hearing none at this point I’ll return back to the Board for any further questions, comments, concerns.

Mr. Maher: So the surveyor come up with a lot surface coverage of 26.5%, correct?

Mr. Paladino: Correct.

Mr. Maher: Which equaled out on a twenty-one thousand square foot lot there it’s thirty-five, fifty-five hundred five feet?

Mr. Paladino: That’s right, correct. I think the survey that you have is actually stamped by the surveyor.

Mr. Maher: Yeah. So Jerry, on the surface coverage aspect of it, I’m just curious as to do you see a difference or where the difference may be or am I missing...?

Mr. Canfield: Well I see the difference in the numbers that the surveyor has submitted. I’m not certain that Mr. Mattina has reviewed this. If he had seen this and he agreed with it I don’t think he would have sent the applicant to the Zoning Board but the question I ask perhaps you can answer for the surveyor you are aware that the surface coverage is everything including driveways, sidewalks, decks, it’s not just building coverage there’s two different thing here.

Mr. Paladino: Yes, yes we had this conversation back in August and then she came back and after we got the a...there was a survey done...was done originally and actually had a lower percentage and then we had her back twice I think once in September and once in October to make sure that had clarification had been made so right now she’s...anything that’s considered pervious or impervious is either pavers, driveways, walkways, the pool itself, everything’s in there.

Mr. Donovan: And Jerry, just I’m looking at the survey and there is a note on there that lot surface coverage equals or is the percentage of the area of the lot covered by buildings, parking areas, accessory structures and any other impervious materials or surfaces so that appears what the surveyor based her calculation on lot surface coverage.

Mr. Canfield: My suggestion with the Board with that would be then is to give us the opportunity to speak with Mr. Mattina and assure that he did review this survey as what his calculations are based on. I...I don’t have any information to verify that that’s you know, what Joe looked at.

Mr. Manley: Based on this information that’s come to light do you have any objection holding this over until next month so that...

Mr. Paladino: A...

Mr. Manley: ...they can...

Mr. Paladino: I don’t have an objection. Are you okay with that?

Mr. Donovan: Young man if you could just for the...for the record if you could just tell us who you are?

Mr. Amoia: I’m trying to deal with a...

Mr. Donovan: That’s a weird name.

Mr. Amoia: I’m trying to deal with a realtor...

Mr. Donovan: Your name, your name, your name.

Mr. Amoia: Oh, I’m sorry, Michael Amoia, I’m trying to deal with a realtor and the house is up for sale and they see the sign, every time they up, I’ve lost four people so far, walked away. I would really like to try and get it over and done with and find out if I can move forward and I bought the house this way. This never came up when I had it.

Mr. Manley: The issue with the Zoning Board is right now we don’t know what we’re approving because the information that was requested differs from what is in front of us and you may not need a variance if the Building Inspector reviews this and sees that indeed you’re within the threshold then you don’t have to come back here next month. If...

Mr. Donovan: I think you still have to deal with the gazebo though.

Mr. Paladino: There’s two separate applications, so the gazebo is one application...

Mr. Manley: So we could handle the one, you know we could handle the one tonight...

Mr. Paladino: Sure.

Mr. Manley: ...and then leave open the other one, if indeed you don’t need the other one...

Mr. Paladino: Okay.

Mr. Manley: ...then at that point you’re done with us.

Mr. Paladino: That’s more than fair.

Mr. Manley: If indeed...and then you would just withdraw your application...

Mr. Paladino: Sure.

Mr. Manley: If it ends up that you end up needing it and he sends you back...

Mr. Paladino: Okay.

Mr. Manley: ...well then at that point we just close the Public Hearing for that and...

Mr. McKelvey: Vote on it.

Mr. Manley: ...and then we vote on it and you know, we call it a day.

Mr. Paladino: That’s fine.

Mr. Manley: So that would...that would be the best...

Mr. Paladino: When he received the violation I...I wasn’t clear where that thirty-four percent coverage area came from and that’s why when I called the Town at that time and spoke to someone on the phone and they told me make sure that all your impervious areas, all that was calculated so I had the surveyor myself, personally I spoke to her and I had her back out twice so everybody understands my background licensed professional architect here in the State of New York, I also live in the Town a...so I made sure of it several times. She actually sent me the CAD file and I double checked her for her account. Now I...again she’s...she’s certifying it under her license I’m not going to challenge that I’m not a surveyor in any way but according to what she’s told me that’s why she’s got that bulk table on there showing that twenty-six percent.

Mr. Manley: Okay, our next meeting is May 25th at 7PM.

Mr. Canfield: Mr. Chairman, one important thing to add, I don’t refute that the applicant may or may not have a sale at this time but I can attest to this Board that this issue has been pending for a couple of years. It’s nothing that has just arrived so it’s been a couple of years that we’ve been dealing with this so again I request that we have the ample time to review the documents that have been submitted to verify that that is the same thing that Mr. Mattina has been looking at.

Mr. Paladino: I could just further clarify that the open item relates to the Building a...Building Permit being issued for the shed. Again I’ve showed that the structure has been there since 1965 a...and also it had to do with the gazebo and I’m not disputing the fact that the gazebo is definitely ten foot from the building, the area coverage became an issue for us last August and then I took the time to have an engineer, I mean a surveyor come being out both in September and October to reconfirm. It’s taken us a little bit of time to put the information together, partially my fault because I’ve been doing some research so then currently last month he wasn’t selling the house and now we’re selling the house and we’re trying to close this out and wanted to do a little research because it’s...there’s not a lot of information on these buildings, you know, anything prior to 1985 it’s hard really challenge. I know this is the only picture that I was able to find to show any structure back there.

Mr. Manley: Well I’m hopeful that probably by the 25th of May you’ll have everything resolved.

Mr. Paladino: Fine, that’s great news, thank you.

Mr. Manley: Does the Board have any further questions for the applicant?

Mr. McKelvey: I think this is the proper thing to do.

Mr. Levin: Yes, I agree.

Mr. Manley: So I would recommend that we leave the Public Hearing open for the lot (surface) coverage area for the variance for that. If the Board wants to go ahead and close the Public Hearing for the gazebo requiring a minimum of ten feet, it’s an existing four requiring a six foot variance if you want to go ahead and close that one. Do we have a motion to close?

Mr. Maher: But Jim, unfortunately the...the variance for the gazebo has lot surface coverage on it.

Ms. Gennarelli: Right. The gazebo has both.

Mr. McKelvey: The gazebo has both.

Mr. Levin: Yeah.

Mr. Donovan: Well I think if you want to you can deal with the less ten foot issue...

Mr. Maher: Okay.

Mr. Donovan: ...the lot coverage or the lot surface coverage is a different issue that includes the gazebo because it includes all surface coverage.

Mr. Maher: So we could actually vote and vote on the actual...

Mr. Donovan: On...

Mr. Maher: ...on the separation issue.

Mr. Donovan: ...on the separation issue. If the Board is so inclined you could.

Mr. Manley: What’s the Board’s pleasure? Close that one and deal with the other one next month or leave both open?

Mr. Levin: What’s the advantage to them by closing the depth? I...I say do the whole thing next month.

Mr. Donovan: Well the advantage to....

Mr. Levin: It appears there’s no advantage to...

Mr. Donovan: Well if they don’t need the lot surface and you grant the gazebo then they’re done.

Mr. Maher: They don’t come back.

Mr. Donovan: That would be the advantage to that.

Mr. Levin: Oh, okay, I suggest we do that then.

Mr. Manley: Okay so do we have a motion to close the...

Mr. Donovan: Gazebo separation.

Mr. Manley: ...gazebo separation?

Mr. McKelvey: I’ll make that motion we close the gazebo separation.

Mr. Levin: I’ll second that.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 James Manley: Yes

Mr. Manley: So the Public Hearing on the gazebo separation is closed. We will go ahead and put on for next month, the 25th of May, the lot surface coverage area at which point if they tell you...you don’t need it you just need to send a letter or get something to the Zoning Board Secretary withdrawing the lot surface coverage area from the agenda and then that will take care of it. If it doesn’t then just show back up, it won’t be re-noticed and we’ll deal with the lot surface coverage.

Mr. Paladino: Fine. All set?

Mr. Manley: All set.

Mr. Paladino: Thank you.

 (Time Noted - 7:30PM)

ZBA MEETING – APRIL 27, 2017 (Resumption for decision: 8:01 PM)

MICHAEL AMOIA 30 McCALL PLACE, NBGH

 (23-2-11) R-3 ZONE

Applicant is seeking an area variance for the maximum lot surface coverage to keep prior built accessory structures (400 sq. ft. L-shape pool house) and prior built gazebo (12 ft.) and also area variance for the gazebo shall be located 10 ft. from the main dwelling.

Mr. Manley: The next application before the Board this evening is we’ll call it Part I, the application of Michael Amoia, requesting an area variance for the gazebo requesting a six foot variance as the gazebo should be located 10 ft. from the main dwelling. It is only four feet. This is a Type II Action under SEQR. The Board looking at the balancing tests, can the applicant...whether the benefit can be achieved by other means feasible to the applicant, is there any way...

Mr. McKelvey: I don’t...

Mr. Manley: ...be achieved.

Mr. McKelvey: I don’t think he can move it.

Mr. Manley: I would say barring actually moving it.

Mr. Levin: That would be the only way to do.

Mr. McKelvey: That’s the only way.

Mr. Bell: Yeah, that’s the only way to move it.

Mr. Manley: Will the granting of the variance create any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: It’s been there a lot of years.

Mr. McKelvey: It’s been there a long time.

Mr. Bell: Long time, no.

Mr. Masten: No.

Mr. Manley: Whether the request is substantial?

Mr. Levin: No it’s not.

Mr. Masten: No.

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

Mr. Bell: No.

Mr. Levin: I don’t believe so.

Mr. Bell: None.

Mr. Manley: It hasn’t up to this point.

Mr. McKelvey: Hasn’t up to this, I was going to say it’s been there...

Mr. Levin: A lot of years.

Mr. Manley: Whether the alleged difficulty is self-created? It’s relevant but not determinative. The applicant has testified that he bought it and it was there.

Mr. Bell: Right.

Mr. Manley: The Board taking into account the balancing test for approval or denial, does the Board wish to make a motion?

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

Mr. Manley: Motion to approve, do we have a second?

Mr. McKelvey: I’ll second.

Mr. Masten: We have a second.

Ms. Gennarelli: Roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 James Manley: Yes

Mr. Manley: The variance is granted.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:03 PM)

ZBA MEETING – APRIL 27, 2017 (Resumption for decision: 8:03 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

 (8-1-97) A/R ZONE

Applicant is seeking a Use variance for 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

Mr. Manley: The last item this evening is a Reserved Decision from our February 23, 2017 meeting. It’s a request from Troon Properties, Inc., Bessie Lane and Old Post Road in Newburgh, it’s an A/R Zone requesting a Use variance for a use under 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district for a two-lot subdivision before the planning board. This is an Unlisted Action under SEQR. At this point the Board will go through its use variance criteria. I was absent for the last two meetings but I have been following this particular application closely through the minutes as well as the documents that have been given to me so I feel confident that I’m able to vote on this particular matter. That being said the first item that must be looked at with a use variance and just so the public is aware with a use variance all four criteria must be met in order for this Board to grant a use variance. If any of the four criteria are not met this Board is barred by Law from voting to approve a use variance. The first item that the Board must consider is whether or not the property cannot realize a reasonable return substantial as shown by competent financial evidence. Does the Board have any discussion with respect to that?

Mr. Levin: I think there’s other methods of getting...receiving a reasonable return and they have not shown any financial evidence that I’ve seen...personal evidence on it.

Mr. Manley: I would a...I would have to concur that the documents that were provided to the Board really do not show enough financial evidence a...in my opinion, they didn’t show that they could not get a reasonable return a...nothing was...nothing was presented to the Board as far as any comparisons that were being made. Any other comments from the Board?

Mr. Maher: I...I think I’d actually...I would disagree. I think...I think there was...I think there is a decent amount of evidence. I don’t know if it meets your...obviously your criteria but I...I think there was enough evidence there and I also think that obviously based on the a...the appraisers’ that submit the information also documenting each of the...each of the areas that why they feel they wouldn’t get a return on it.

Mr. Manley: Generally in the prior case law you usually have an economist that actually looks at what would be considered a reasonable return for the property as long as you can get a reasonable return then that would be something that would knock them out of the box.

Mr. Donovan: So if...if I can just so that there’s...there is an objective criteria a...that applies to this specific element that must be proven. Now in that degree of objectivity of course there needs to be sufficient evidence what the cases call dollars and cents proof so that...that becomes a case by case determination whether or not the information in front of you is sufficient. Let me just quote the general language from a case called DeFeo v. Zoning Board of Appeals, Town of Bedford. What that case says is...is well settled that a land owner who seeks a use variance must demonstrate factually by dollars and cents proof an inability to realize a reasonable return under existing permissible uses. So, you know, the determination for the Board is whether or not the information which consists of the application that’s put together by counsel for the applicant which includes correspondence from McGrath & Co. authored by Al DeKrey, I apologize if I have mispronounced his name and there was also an affidavit from a woman whose name I am sure I am going to mispronounce Donna Manicone who is Vice President of Troon Properties. There’s additional legal arguments but those are the two attachments to the submission that deal with the financial evidence and the task of the Board is to determine whether or not that satisfies the dollars and cents proof. I don’t know if I’ve helped or not Mike but...but that’s the general standard by which you need to determine whether or not the specific proof submitted satisfies that criteria.

Mr. Maher: But it is subjective though obviously.

Mr. Donovan: Well there...there’s...

Mr. Maher: I mean...

Mr. Donovan: ...there is a degree of subjectivity, yeah I will...you’re point is well taken.

Mr. Maher: So we’ll agree to disagree.

Mr. Manley: Does anybody else have anything to add with regard to whether or not there is a reasonable return that could be obtained on the property?

Mr. Masten: I don’t see any more.

Mr. Manley: The next is whether or not the alleged hardship is unique and does not apply to substantial portion of district or neighborhood. So is the...is the hardship unique?

Mr. Donovan: And the idea behind this factor is is it unique to this property? And does it not impact other properties...substantial other properties in the same zoning district...in the same neighborhood if you will?

Mr. Levin: I don’t believe it’s unique to the property.

Mr. Manley: The next...the third item the Board would need to consider is whether the requested variance will not alter the essential character of the neighborhood. Do they feel that if the variance...the use variance is granted will it...will it alter the character of the neighborhood or really it wouldn’t have a really big impact on the character of the neighborhood?

Mr. Masten: I feel it will change the neighborhood.

Mr. Bell: It will.

Mr. McKelvey: (Inaudible) big thing.

Mr. Masten: Yeah.

Mr. Bell: The grids.

Mr. Manley: I...I...my personally...the enormity of the panels...

Mr. Bell: Yup.

Mr. Masten: Yes.

Mr. Manley: ...once it’s there it’s...it’s...

Mr. Masten: It’s there.

Mr. Manley: ...and it’s, you know, never going to go away. The fourth that the Board would have to consider is whether or not the alleged hardship has not been self-created. I think in that one I think the applicant has you know provided us with you know, evidence to show that you know it was not self-created that it...actually there was a zoning change that you know, resulted in...in that, the solar farm change.

Mr. McKelvey: That would be true.

Mr. Manley: So based on the four criteria that are here and based on the discussion this evening that the Board has had between the four items if the Board feels that the applicant has met all four requirements for a use variance at that point you could make a motion for a Negative Declaration and then after that we would make a motion for approval. If the Board does not feel that the applicant has met all four of the standards then someone would need to make a motion to disapprove the use variance. Do we have a motion for either?

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

Mr. Manley: I have a motion for disapproval is there a second to the motion?

Mr. McKelvey: I’ll second it.

Mr. Manley: We have a second for disapproval. A yes would mean that you agree with the disapproval, a no would be that you don’t disagree you...you don’t agree with the disapproval.

Mr. Donovan: Yes is to deny.

Ms. Gennarelli: Okay, roll call.

 Darrell Bell: Yes

 Richard Levin: Yes

 Michael Maher: No

 John Masten: Yes

John McKelvey: Yes

James Manley: Yes

Mr. Manley: The use variance has been defeated and disapproved. At this point the Board will not go to the next which is the area variance because the area variance is only voted on if the use variance was approved.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 JAMES MANLEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:14 PM)

ZBA MEETING – APRIL 27, 2017 (Resumption for decision: 8:03 PM)

TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

 (8-1-97) A/R ZONE

**AREA VARIANCE**

Applicant is seeking area variances (should a Use variance be granted by the ZBA) - Lot #1 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback; Lot #2 - lot area, lot width, lot depth, front yard setback, rear yard setback, one side yard setback and the combined side yards setback of a two-lot subdivision to create two solar “electric generating” farms for a Two-lot subdivision application before planning board.

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The Use variance request was not approved and this area variance application was contingent on the use variance being approved to move forward.

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TROON PROPERTIES, INC. BESSIE LANE/OLD POST ROAD, NBGH

 (8-1-97) A/R ZONE

Applicant is seeking a Use variance for 185-83 Solar Farms shall be permitted in an I (Industrial) District to create two solar “electric generating” farms in a residential district. (For a two-lot subdivision before the planning board).

--------------------------------------- See Use variance minutes. ---------------------------------------

Mr. Manley: The use variance has been defeated and disapproved. At this point the Board will not go to the next which is the area variance because the area variance is only voted on if the use variance was approved.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 JAMES MANLEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:14 PM)

ZBA MEETING – APRIL 27, 2017 (Time Noted: 8:14 PM)

OTHER BOARD BUSINESS

CUMBERLAND FARMS, INC. 270 ROUTE 17K, NBGH

 (86-1-14 & 86-1-15)

Mr. Manley: At this point the Board will now go to Other Board Business which is Cumberland Farms variances. Cumberland Farms has submitted a letter to the Board, the letter states that the office represents Cumberland Farms which obtained from your Board variances for the development of its site plan which were granted following the June 23, 2016 public hearing, which decision was filed with the Town of Newburgh Clerk on September 23, 2016. On December 15, 2016 the Town of Newburgh Planning Board granted conditional site plan approval for this project. It is our client’s understanding that the six month expiration on variance approval would commence upon the Planning Board approval. Our client is requesting one additional six month extension of these approvals. It is anticipated that the construction on this project will commence in July and be completed by December 2017. If you need anything further please advise. Very truly yours, Richard J. Olson, McCabe & Mack LLP.

Mr. Manley: Do we have a motion from the Board to extend?

Mr. McKelvey: I'll make that motion.

Mr. Manley: We have a motion, do we have a second?

Mr. Bell: I'll second.

Mr. Manley: All if favor.

Aye all.

Mr. Manley: Opposed.

No response.

Mr. Manley: Okay, the extension is granted.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 JAMES MANLEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:16 PM)

ZBA MEETING – APRIL 27, 2017

END OF MEETING (Time Noted – 8:16 PM)

Mr. Manley: The next item we just have to get through is the minutes from last month’s meeting. Did anybody, everybody have a chance to review the minutes? Are there any corrections, additions or deletions?

Mr. Bell: Yes.

Mr. Masten: I did.

Mr. Manley: Okay, if so do I have a motion to approve last month’s minutes?

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

Mr. Masten: I’ll second.

Mr. Manley: All those in favor say Aye?

Aye - Mr. Bell, Mr. Masten, Mr. McKelvey, Mr. Levin.

Mr. Manley: Abstained.

Mr. Maher: Abstained.

Mr. Manley: Two abstained. The minutes are approved. At this point, we’re concluding our meeting this evening. Does the...? Yes sir?

Audience Member: (Inaudible) make a comment? (Inaudible) I am Mr. Edward Winfield Jr., I’m been a teacher for thirty-four years, seventy-one and getting married Sunday... (Inaudible)

To summarize, Mr. Winfield wanted to thank the Board for all their service and to say, educating the children and respect is very important, love all people and put your total trust in God.

Mr. Manley: Thank you. Thank you, Mr. Winfield.

Audience applauded.

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

Mr. McKelvey: I’ll make that motion.

Mr. Bell: Second.

Mr. Manley: We have a motion and a second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The meeting is adjourned. Thank you. Before we go folks, we are celebrating a milestone. Mr. Winfield’s getting married but we have an anniversary here this evening which it would be remiss if I didn’t take a minute to actually acknowledge our Zoning Board Attorney, Mr. Donovan, as of today this is actually his ten year anniversary with the Zoning Board of Appeals. You wouldn’t think that he’s been here that long but he has and we just want to say thank you for your service.

Mr. Masten: Yes.

Mr. Manley: And thank you for everything you do for our Board.

Mr. Bell: Yes.

Ms. Gennarelli: Thank you.

The Board Members: Thank you.

Mr. Donovan: And thank you for your checks every month.

Mr. Manley: Thank you.

Mr. Donovan: Thank you.

PRESENT ARE:

 DARRELL BELL

 RICHARD LEVIN

MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 JAMES MANLEY

ABSENT:

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:18 PM)