ZONING BOARD OF APPEALS

MEETING – APRIL 24, 2014

(Time Noted – 7:01 PM)

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

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:02 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 7:02 PM)

LAKE CREEK PROPERTIES, LLC / 65 NORTH PLANK ROAD, NBGH

LINGO ASSOCIATES, LLC. (76-1-1.1) B ZONE

(McDONALD’S)

Applicant is seeking an Interpretation of 185 Attachment 11- Schedule 11 - Use Interpretation - to demolish and rebuild the existing drive-thru McDonald’s establishment.

Chairperson Cardone: If anyone is here in regard to the Lake Creek Properties, we will not be hearing that…we may not be hearing that tonight. I have a letter:

Our office would like to request that the appearance scheduled for April 24, 2014 be adjourned to the May 22nd 2014 Zoning Board of Appeals Hearing for the above referenced project. If you should have any questions or require any additional information please do not hesitate to contact the undersigned. Lauren Monaghan, Bradford Bohler from Bohler Engineering.

Chairperson Cardone: Do I have a motion to hold adjourn the meeting (hearing) for the May 22nd?

Mr. McKelvey: I’ll make a motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:04 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 7:04 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: Also if anyone is here in reference to the Bannerman Drive which is C D & Sons Construction, I have a communication from Charles Brown.

Regarding the application of 12 Bannerman View Drive, I have just received the attached comments from the Health Department and will be addressing them within the next couple of business days. Obviously based on this, I will not have approval for the water service to these lots by the ZBA meeting tonight. Therefore I am, on behalf of my client, requesting that the decision of this application be Reserved for another month. If you have any questions or need additional information, please call on me.

And that was just a Reserved Decision which they had requested.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:05 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 7:06 PM)

ALAN B. CRAWFORD 1836 & 1834 ROUTE 300, NBGH

(14-1-17 & 14-1-18) A/R ZONE

Applicant is seeking area variances for Lot #1-the rear yard setback; for Lot #2-the lot area, lot width, lot depth, the front yard setback and the maximum lot building coverage for a lot line change to relocate the boundary line between two parcels.

Chairperson Cardone: Our first applicant Alan Crawford.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, April 16th and The Sentinel on Friday, April 18th. This applicant sent out twenty-three letters. All the mailings, publications and postings are in order.

Chairperson Cardone: For the record please state your name.

Mr. Crawford: Alan Crawford.

Chairperson Cardone: And your request.

Mr. Crawford: What I’m trying to do, my mother passed away in 2012, the property that I have has been in the family for over two hundred years, I’m just trying to increase the lot side on my grandparent’s house in the front to bring it more in line with what the Town’s present standards are which is one acre. And the other variances that were brought up at the planning board hearing existing conditions where the back house was when the Thruway cut through our property in the early 50’s, which is no road frontage and close to the back boundary line that’s where it’s been since 52.

Chairperson Cardone: And I should mention that all of the Board Members have been to all of the properties that we will be discussing tonight.

Mr. Crawford: I should also mention part of the purpose of this was after my mother’s passing, the rear house which was my parent’s I grew up in, that has a one acre deed because my Dad was a WW2 combat vet and that had an exemption. I’m trying to do away with that put all deeds current into my name and that’s…I’m not trying to change anything.

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

No response.

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

No response.

Chairperson Cardone: I have a report from the Orange County Department of Planning, which is Local Determination. If we have nothing from the Board do we have a motion for approval?

Ms. Smith: I’ll make a motion.

Ms. Gennarelli: To close the Public Hearing?

Chairperson Cardone: To close the Public Hearing.

Ms. Smith: To close it.

Mr. Donovan: I think Jerry has a comment.

Mr. Canfield: There is a discrepancy in the map that was submitted to the planning board. It’s somewhat different that what was initially sent to the planning board to now what is here. A…there is a date of revision on the surveyor’s map dated March 12th. The original referral from the planning board cites four variances that are requested. The current map that is submitted now to the Zoning Board a…the degree of variances have been lessened. It appears now they are looking for four variances; there’s been a slight change in one of the property lines that’s proposed however, they are not to scale.

Mr. Crawford: Dan Yanosh had contacted I can’t pronounce the gentleman’s name, the head of the planning board and asked if we could make that change to avoid an easement which just…the driveway is wide enough that there’s room to allow a driveway into the front house and into the back house. He had called and got a verbal confirmation on that. I didn’t know we’d need Dan here tonight.

Mr. Canfield: Should the Board choose to entertain the application and move forward it should be noted the actual dimensions that the variances are for. A…Mr. Yanosh has starred the correct numbers a…that they’re asking for other…for the variances now but like…

Chairperson Cardone: Which is the one that’s before the Zoning Board or the one before the planning board is correct?

Mr. Canfield: (Inaudible) map…that’s a different map.

Mr. Crawford: He resubmitted all the diagrams after, you know, discussing it with the planning board.

Mr. Canfield: You’re saying this was done at the request of the planning board?

Mr. Crawford: He discussed it with him and they said okay and he gave me the maps and I went and picked them up and I brought all over and I dropped it off at the Zoning Board.

Mr. Canfield: Do you know who in the planning board requested it?

Mr. Crawford: The director, I can’t…Mr. …It begins with a W, I’m sorry I’m not good on pronouncing it.

Chairperson Cardone: Ewasutyn?

Ms. Gennarelli: Ewasutyn, John Ewasutyn?

Mr. Crawford: Yes, yes.

Mr. Donovan: Jerry, what…what exactly is the difference?

Mr. Canfield: Well, for example the original lot area, lot requirement is (40) forty thousand square feet. Originally it was 14,219 for Lot 2, the map before you tonight now is 15,253 so the degree of a variance is a lesser degree a...lot width was originally a hundred and a hundred forty-five and this is the issue that I have a problem with…the current map says it’s a hundred and seventy-three but that’s not the way it scales which...

Mr. Crawford: I can’t…I don’t know. Can I walk over and see? Which one you are looking at? (Inaudible)

Mr. Canfield: Absolutely, absolutely…

Mr. Crawford approached Mr. Canfield

Mr. Canfield: This is the revised map.

Mr. Crawford: (Inaudible) the discrepancies…

Mr. Canfield: Originally they had listed as the a…lot width as 145, the new map shows it at 173 but the 50 scale depicted on the new map does not scale out to be the 173 feet. It may just be a…an error on Mr. Yanosh’s part but it should be clarified.

Mr. Donovan: What do you scale it out to be Jerry?

Mr. Canfield: I don’t know what scale it is. If you use the old map it still measures the 145 feet that was on the original map.

Mr. Crawford: That’s the old one in the orange…(Inaudible)?

Mr. Canfield: This is here.

Chairperson Cardone: Is that the only one that is off, Jerry? The lot depth?

Mr. Crawford: (Inaudible)

Mr. Canfield: Perhaps it can be clarified by a statement from Mr. Yanosh and what scale he used and actually him properly depicting on the correct map of what the dimension is.

Chairperson Cardone: And that was the only discrepancy, the lot width?

Mr. Canfield: The lot width and then also the…lot coverage which was originally 11.1%...

Chairperson Cardone: Right.

Mr. Canfield: …and now with the change which increase the lot size of Lot 2, the lot coverage and variance requested if for 10.6%. The requirement is 10%, they are depicting 10.6.

Chairperson Cardone: Which is less.

Mr. Canfield: Correct.

Mr. Donovan: And we can’t tell Jerry, where he is measuring…measuring lot width?

Mr. Canfield: That’s correct we can’t…can’t tell.

Mr. Donovan: Because it doesn’t…yeah. And if you…if you just add what he there along the front property line it’s less than 173.

Mr. Canfield: That’s correct. According to this scale.

Chairperson Cardone: So what you’re saying is that he would not need that variance for the lot width? If it’s 173.

Mr. Canfield: If that dimension is correct.

Chairperson Cardone: Right.

Mr. Canfield: That’s correct. But the map that was submitted per the scale does not show that it is 173.

Mr. Donovan: And Jerry, forgive me where do we measure lot width? Do we measure it at the setback or do we measure it at the…at the…?

Mr. Canfield: Yes, at the setback.

Mr. Donovan: Okay. Well, the Board could move to close the Public Hearing and then ask for clarification from Mr. Yanosh…

Chairperson Cardone: Or keep it open.

Mr. Donovan: …or you could keep it open.

Chairperson Cardone: Okay, we really need to clarify that before we could really take any action on it. And what is the wish of the Board? To hold the Public Hearing open or to…?

Mr. McKelvey: I would say hold it open.

Chairperson Cardone: Do I have a motion to that effect?

Mr. McKelvey: I’ll make a motion to hold it open.

Mr. Manley: Second.

Mr. Donovan: And that would be to hold it open until the May…May meeting.

Chairperson Cardone: May 22nd.

Ms. Gennarelli: Okay, roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Crawford: Thank you.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 7:17 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 7:17 PM)

CITY OF NEWBURGH 1200-1210 ROUTE 300 & 167 LITTLE BRITAIN ROAD

Aka 1000-1006 UNION AVENUE, NBGH

(CRYSTAL RUN HEALTHCARE)

(97-3-1, 2, 6, 7, 8, 26) I / B ZONE

Applicant is seeking an Appeal of the issuance of the Clearing and Grading Permit (# 14-0084) issued to CRH Realty VIII, LLC. (Crystal Run Healthcare).

Chairperson Cardone: Our next applicant is The City of Newburgh.

Ms. Gennarelli: This applicant sent out seventeen letters and we sent out five from the Town. All the mailings, publications and postings are in order.

Mr. Golden: Thank you Madam Secretary.

Chairperson Cardone: For the record please introduce yourself.

Mr. Golden: My name is Richard Golden from the law firm of Burke, Miele and Golden. I am special counsel to the City of Newburgh with respect to various issues surrounding the Crystal Run project in the Town of Newburgh that is adjacent to the City’s reservoir, Lake Washington. I just to make it clear to the Board that the reason that we are here and the proper jurisdiction that we have. The Building Inspector issued a Building... Clearing and Grading Permit based upon a prior review from the planning board a…and this Board has the jurisdiction to make the same kinds of determinations that the Building Inspector did if it's brought to your attention that an applicant wishes to a…modify or reverse that particular determination. In this case we believe as set forth in the papers before you that the planning board and the Building Inspector respectfully did not take the requisite look at the environmental issues that a…would result from that Clearing and Grading Permit specifically during the planning board's review the planning board's engineer indicated that they thought that there was no problem with the environmental impacts the quote and this is on page 2 of my application, he did not envision any significant environmental impacts that can't be overcome during the technical review of the project, we’re going to look for supporting documentation, the site has been through various environmental reviews before and we feel comfortable with the Negative Dec to keep the project moving along with the supporting documentation to follow and the various reports we're into dissipating. So in other words they came out and said, we don't think there's going to be any problem as far as environmental impacts because we expect some other reports to come to us in the future will justify that decision. And I believe that's an incorrect assumption to be made. I think it's improper for both the planning board to have approved it and the Building Inspector to have issued the Clearing and Grading Permit on the basis that they anticipated that future reports that are unidentified would somehow support a decision that they’re making at that time. Now the reason that the City is here is because it is their reservoir and it's of vital importance obviously to all of the City residents and indeed some of the Town residents as well I believe at times. And the City wants to make sure that there are sufficient environmental and other protections in place so as to not to compromise the integrity of that drinking water. Now since the filing of this appeal, the City and Crystal Run the developer on the project have gotten together both the officials as well as the consultants. The officials got together on at least two occasions and the consultants have gotten together on several other occasions. As a result of those meetings a…the applicant and the planning board, Crystal Run has made modifications to its plan to address a lot of the City’s concerns. And we appreciate that and it's been a very constructive effort on both the part of the City as well as Crystal Run. There was a recent revised submission by Crystal Run; I believe it was on April 17, to the planning board that incorporated many of those objections that the City originally had however it didn't resolve all of them. There is a letter that I am going to hand out, with your indulgence this evening, that was drafted today by the City engineer outlining those items that have been corrected in their most recent submission as well as several items outstanding.

Chairperson Cardone: Could I just ask you, were you referring to the Stormwater Agreement when you said the April 17 agreement?

Mr. Golden: No, no the…there is a…I believe it was an…the attorney for Crystal Run is here so he will correct me if I'm in error but I believe that there was a new submission made on April 17 to the planning board in addition to that agreement. Okay? There has been an agreement between…excuse me, a…Crystal Run and the City with respect to certain of those aspects access to the storm water retention ability to take some remedial effort if necessary in emergency, etc. And those are that's one of the areas in which Crystal Run and the City have been able to come to an agreement. But there's still some outstanding issues I will address them a…briefly before this board today but I would like to hand out, obviously I don't expect you to be reading this tonight…but I'm going to hand out the letter that was drafted today otherwise I would've sent it to you earlier if I had an earlier a…that outlines those items that have now been incorporated…the objections that the City have been incorporated into the most recently revised plan of Crystal Run Crystal Run as well as about half a dozen items that still have not yet been agreed to a…and just as part of that I think they were six that were still outstanding of some substance and in conversations among counsel for Crystal Run, myself and the consultants for Crystal Run and the City, the engineers, that we’ve agreed, I believe, on five of those six and there's really only one outstanding agreement so we are moving forward with this. We would like to make sure that these last a…concessions by Crystal Run a…are somehow memorialized in an agreement or in a further set before the planning board. And we were left with then just one item that we believe ought to be corrected and Crystal Run a…believes that to correct that would be a substantial burden on the application that they have and I will address that in a second. But if I would have your indulgence I’ll go ahead and pass out this letter?

Mr. Golden approached the Board

Chairperson Cardone: Have you seen the report from the Orange County Department of Planning referring to this?

Mr. Golden: The recent one?

Chairperson Cardone: Yes.

Mr. Golden: No, I have not.

Chairperson Cardone: Okay.

Mr. Golden: I have not seen the recent one.

Chairperson Cardone: When you are ready I can read it into the record.

Mr. Golden: I am all ready.

Chairperson Cardone: Okay. County Planning is in receipt of GML-239 referral for the above referenced appeal. Based upon our review of the submitted materials, our office has found potential inter-municipal or county-wide impacts that would result from its approval. As initially stated in our letter dated October 15, 2013 our office would like to reiterate to the Board the high sensitivity of this project site due to its proximity to Washington Lake, which is approximately 600 feet from the southern property line. The areas currently slated for development drain directly to Washington Lake, a drinking water supply owned and operated by the City of Newburgh. Consistent with the County Comprehensive Plan and the County Water Master Plan, both adopted by the County Legislature, source water supply protection is of the highest importance. Additionally, the County is actively involved in at least two relevant regional inter-municipal initiatives: a Watershed Management Plan for the Quassaick Creek (Washington Lake ultimately drains to the Creek), and a water supply facilities plan for interconnections between the towns of Newburgh and New Windsor and the City of Newburgh to address predictable future demand and to define alternative supplies when NYC aqueduct water is unavailable. Information about both of these projects is available at: <http://waterauthority.orangecountygov.com> With both of these projects, absolute protection of of current water supply sources, such as Washington Lake, is an essential element. Therefore, based upon our review, we offer the following advisory comment:

At the time the clearing and grading permit was approved by the Town Planning Board there were significant outstanding concerns with the proposed site plan. This was in the form of a review letter from our office dated January 24, 2014, see attached, and from the city of Newburgh Engineer. Many of the outstanding comments had the potential to significantly change the site plan prior to its approval. Therefore it is logical that the clearing and grading associated with the limits of disturbance at the time could significantly change. And the County Recommendation is Local Determination

Mr. Golden: And what is the date of that?

Chairperson Cardone: March 24th today.

Mr. Donovan: Actually, I’m sorry just for clarification the date is April 9th.

Chairperson Cardone: April…April 9th, I’m sorry.

Mr. Donovan: April 9th.

Ms. Gennarelli: April 24th …

Mr. Donovan: Mine says April 9th.

Ms. Gennarelli: Oh, on the inside, I’m sorry; on the front it says full statement, yes.

Mr. Golden: Apparently that was not forwarded to me from the City so I apologize for not being aware of it.

Ms. Gennarelli: We just got it today (received April 22).

Mr. Golden: Okay. What I am going to do for purposes of the record in case a…it’s needed to go back to it, I’m going to be referring to several sections of the City Engineer’s letter that I handed out this evening to identify which issues are still live with respect to the Clearing and Grading Permit and the underlying planning board application. And we believe they are part and parcel of the same analysis that they didn’t look into all these things prior to issuing the Permit which is why we’re here before you. I’m asking that the issuance of that Permit be reversed and be remanded back to the planning board to come up with a new approval based upon a…a fully record than they had at the time a…and that’s what we’re asking for.

Mr. Donovan: Mr. Golden, if I could interrupt for just one second before you begin?

Mr. Golden: Sure.

Mr. Donovan: My understanding of your appeal is that you are asking the Board as you just indicated to a...remand this matter back to the planning board to properly consider the impact of Permitted work on Washington Lake. You essentially want to overturn the Clearing and Grading Permit that was issued?

Mr. Golden: More precisely than that, this Board has certain powers and it doesn’t possess all powers to do everything. The Building Inspector went ahead and issued the Clearing and Grading Permit. That was a discretionary act on his part it was not a ministerial act although it was based in part under your Code upon a review by the planning board prior to the Building Inspector’s determination. We believe that determination by the Building Inspector was in error because not all the environmental issues had been looked at, significant environmental issues. I’m not talking about tangential ones but things that go to the very essence of the health and safety of the people in the City of Newburgh. And we believe that it…a…that Permit was issued in error without considering these things so we’re asking for a reversal of that determination which would necessarily in a positive way a…should be remanded back so that the a…planning board can go ahead and a…make further findings if necessary. I don’t know that you specifically have the power to remand directly to the planning board but as a practical matter in these cases if that application or that approval with the planning board and the application for the issuance of the Clearing and Grading Permit came to the Building Inspector. The Building Inspector determined as we’re asking you to determine in the Building Inspector’s place that it was insufficient. I believe that the Building Inspector would notify the planning board of those deficiencies and then they would, I would assume, try to correct those deficiencies and that’s really what we’re asking.

Mr. Donovan: Okay, because I guess where I’m going is I…I look at the Permit dated March 11, 2014 and it indicates that this is for removal of trees only at this time, no stumps. So it’s a removal of trees only and I understand…Mr. Canfield, has the work been completed?

Mr. Canfield: Yes, that’s correct, it has been.

Mr. Donovan: So, if the work…if it was limited to the removal of trees and the work has in fact has been completed what relief can this Board afford you? We can’t undo the Permit. The Permit is closed, right, if the work is done?

Mr. Golden: Well I don’t know that…that all the trees that were identified in there have already been removed or whether there are some that are remaining that they’d want to do work under their Clearing and Grading Permit.

Mr. Donovan: Just…just…I’m only so smart because I have the Clearing and Grading Permit in front of me but the work was to be completed by March 31st. That’s been done?

Mr. Canfield: That’s correct.

Mr. Golden: Well to me lots of things happen when there are Permits out there and there are times practically when applicants will piggyback upon a Permit that was previously given to ask for some additional Permits to be given without actually applying for a new Permit. So in that sense, I don’t believe as a practical matter that it’s really moot but that’s up for…to the Board to determine.

Mr. Donovan: Well just an issue that I have and…and I just was looking at it for preparation for tonight’s meeting so now my question to you is…is what it was, what can the Board do now that the work has been done but I don’t want a…?

Mr. Golden: I’m still asking that the…the Board even if the work was done that the…the Permit to be determined to be issued in error. I can’t undo certain things that they’ve done but this Board can still, I believe, indicate that the Permit was issued in error and a…and reverse it. And that’s what I’m asking. Thank you. As I said, many of the issues have been folded into the most recent approval by Crystal Run that’s before the planning board. There were about a half a dozen items that were not that were requested previously but as a result of today’s determination I believe five out of those six a…were actually agreed to although there is no memorialization yet. And if Crystal Run if they get up and they see a need to or desire to can go ahead and confirm that on the record so at least that can be resolved and we can be down to one issue. A…in Mr. Morris’s letter that I handed out, the city engineer, under his title of SEQRA number seven, it talked about anticipated user a…I’m sorry, water usage calculations, that we wanted those actually incorporated into the plans to make it clear as to what those needs are and those calculations are a…and I believe that they have agreed to do that. On…under the PLANS section of that letter, paragraph twenty-two, there were three items essentially under that paragraph that we were asking for in order to have these additional protections. One was to have a valve box key which is basically a tool a…located in a…a reasonable position so that the City could have access to it under its access agreement that was referenced earlier. And that the City be notified exactly where that tool is going to be placed so that they could utilize it in the case of emergencies or otherwise and I believe that Crystal Run is agreeable to do that although it is not yet in the plans. He also notes the removal of a prior note that is now no longer needed because of some changes in the plan and I believe that Crystal Run has agreed to do that. Also in that paragraph there is a request to have a one foot deepening of the outlet structure in order to assist with settling out solids before they move on. And again, I believe that Crystal Run has agreed to do that a…although it’s not in the most revised plans yet. On the SWPPP section, paragraph five, there are statements that are contradictory in the plans and in the SWPPP and that was noted by the City engineer and so my understanding is is that Crystal Run is willing to go ahead and a…rectify that a…contradiction. So those are the five elements a…that I believe that Crystal Run has agreed to in order to help protect Lake Washington…Washington Lake. The one that is not is listed under the PLANS section, paragraph eighteen and that has to do with…with the…basically the area of the lot that’s being developed. Because so much of the lot is being developed there is insufficient room to put what the City engineer believes to be an important protective item and that is a vegetative buffer between the parking lot and the edge of the property line. Crystal Run believes that all of the parking that they have is necessary even though it’s well in excess of the minimum required of the Code and the available land that they’re transferring over to another entity is as a result of something that’s not within the control of Crystal Run but owing to a prior lawsuit. So it’s not that they have the ability to go ahead and say well we’ll use some of that land for parking spots. So that’s Crystal Run’s reason why it says that we can’t provide enough room for the vegetative buffer. We believe the City believes that this vegetative buffer is an important aspect of this. It has not really been referenced prior to the removal of any of the trees or in the Clearing and Grading Permit, any part of which that may be extant. And so are asking that that vegetative buffer be continued to be included. And those are all the substantive that we believe with remain with respect to this and I’ll entertain any questions from the Board and attempt to answer anything from the public if there’s any public comment.

Chairperson Cardone: The planning board has a Public Hearing on May the 1st and they will have this a…communication before that time?

Mr. Golden: Yes they will and I will be appearing at that Public Hearing as well to try to get this information incorporated into the…the site plan. I believe that the Crystal Run applicant will agree to all but the one that I had noted and to me the Clearing and Grading part…Permit was part of this and the danger that a…I had is that if there was a failure to object to the Clearing and Grading Permit that somehow they would say that that bound the board and I could no longer object with respect to the…the site plan issues.

Chairperson Cardone: Does the Board have any questions or comments?

No response.

Chairperson Cardone: Do we have any questions or comments from the public? Yes, Mr. Hughes would you please take a microphone.

Mr. Hughes: Do you believe I need one?

Chairperson Cardone: Only if it is going to go into the record.

Mr. Hughes: I have no problem with that. Thank you for recognizing me. My name is Hughes; I live in Middlehope, Town of Newburgh. I was a long time Member of the Board that I am speaking in front of right now for a dozen years and I am the President of the Orange County Planning Federation. However, I am speaking here as a taxpayer and as a citizen, as a resident of the Town of Newburgh. And I’d like to bring to the attention of this Board and everybody that’s got a part or a piece of this in any fashion and I agree that the Permit may have been issued improperly based on several things I’m about to bring to your attention at this moment. I don’t know if your Board is aware, your Chairpeople or whatever or your other Boards or the City of Newburgh either for that matter but the City of Newburgh and the Town of Newburgh are cooperative operators of the sewage treatment plant which has a maximum of twelve million gallons a day that it can support. As this project was brought forward there was an IDA session which they set a Public Hearing and in the State of New York if you set a Public Hearing there has to be a quorum for the meeting to proceed further. The meeting took place at 10 o’clock in the morning, a very opportune time for the working public to come and hear what their taxpayer dollars are being spent on and in that proceeding only the Chairperson showed up of a seven Board membership. State Law says if you have no quorum, you have no meeting. It was brought to several attorneys that were in the room. Some of them are in this room at present. But seemingly they wanted to stay quiet or had not the wherewithal to uphold the Law that they’re sworn to uphold the Constitution in the State of New York and regulate and make sure that things go according to the Law that we’re supposed to abide by. I thought we were supposed to lead by example. Moving forward the Chairman decided to move forward with the meeting with the absence of six of his seven Members. The attorney that was in attendance as a representative for that body was told about the absence of the Members and the appearance of impropriety of the meeting proceeding and there were several others attorneys in the rooms and all for both sides of the table. None of which were willing to comment on its impropriety or the appearance of its impropriety. Moving forward from that point, it was shuffled over and ruled upon as a Grading…as a Cutting Permit only, no grading was to be involved and as the person speaking before me suggested that it was to be no stump removal, cutting only. I tend to believe that maybe it was issued incorrectly based on the fact that with a project of this size and depending on which one that you listen to and at which moment you listen to two what their words were, one report says its (3000) three thousand gallons a day, the EAF says its (6525) sixty-five twenty-five. Big difference. Now either the attorney that said that onto to the record didn’t know what he was doing or did he say (3000) three thousand because he wanted to keep it below the Cap when the City and the Town have to talk to each other to approve a project of such size? Something is rotten in Denmark. So now we move forward and we’ve got, let’s go and cut and move this forward, now we’ve got well in a close proximity within (600) six hundred feet when really we have a contiguous border. One property is right up against the other one. So that (600) six hundred feet is another figure that well, can we really believe that? Or is it the (3000) three thousand dollar in one sentence or the (6525) sixty-five twenty-five on the application. The City and the Town of Newburgh have an agreement on a sewage treatment plant, they’re total build out is (12) twelve million gallons a day, with the geography, the real estate, the SPEDES Permit, the gallons per day and all the bells and whistles that come with it. Plus the County is looking at this end of the County for an Inter-municipal hook-up that can reciprocally feed back and forth New Windsor, Cornwall, the Town of Newburgh, the City with the manifold using the Lake and using other water resources to put together for the protection in the future for all of our drinking water needs. I would recommend that this Board keep this Public Hearing open, go back to your Town Supervisor, go back to your Engineering Department and get all of the Municipalities involved with this primarily the City and the Town to get the signals clear and straight on what’s supposed to really go on here. We only have so much that we can build out with. What comes in in good water has to go out in bad water and you have to have some place for it to go, you just can’t plug it into nowhere land. It’s got to go somewhere. This project would just make a domino effect if things went on this way. The segmentation of this project as it’s been presented. The piecemeal information that has gone on that has got us to this precipice is dangerous. We’re talking about drinking water here. This isn’t a garbage landfill. This isn’t a dump. This is what we are putting in our bodies. Now the Town of Newburgh and the City of Newburgh have papers that thick. I can give you copies if you are unaware of them about how they are supposed to proceed with build out, with major projects and all of the stuff to connect the total build out of both Municipalities with that hinged pin sewage treatment plant. They can only get (6) six million gallons a day per Municipality. Projects like this, if it’s (3000) three thousand because the guy wanted you to think it was (3000) three thousand so it wouldn’t be a major project and it would be another way to slide under the radar, I think that’s what’s going on here. So please, keep this Public Hearing open, make the two Municipalities come to grips and terms, stop the building, stop the nonsense and take a look at what we’re doing for our water for the next hundred years. Thank you.

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

No response.

Chairperson Cardone: Do we have anything from the Board? Yes, Mr. Golden?

Mr. Golden: Given the fact that the City and the Town have been working together with their consultants a…the City would certainly have no objection to a…the Board a…adjourning this matter. I’ll leave it to you whether or not you believe the Public Hearing ought to be left open that’s a separate matter. I’m just talking about the adjournment of this matter on a substantive basis because if in fact we are able to work out things then there would be no need and we could withdraw the appeal. A…but that’s an avenue that I offer to you that the City is willing to…to do in order to a…try to further the cooperation between the City and Town on this particular project and for the importance of the Lake.

Chairperson Cardone: Right. Thank you.

Mr. Manley: Mr. Golden.

Mr. Golden: Yes.

Mr. Manley: I just have two things that I just wanted to ask you. One was a…obviously I think I have some questions that I need to direct towards legal counsel a…at a different time but what I want to specifically ask you is based on how the Board moved and if necessary the Board did hold this open until next month and there was additional information that the Board needed to get. For example, an independent consultant to provide the Board with counsel with respect to some of the questions and issues that you brought up, not being an expert myself in some of the areas that you’ve identified I think I would need some sort of outside independent body, independent of the Town and independent of the City engineer to take a look at something and if that were to be needed would the City be willing to a…pick up the expense of that consultant? Because the Board, this Board doesn’t have consultants readily available to it so that would obviously be an expense and there have been times in the past where we have needed to obtain consultants and the applicants did in fact pick up the cost. One example was the Marketplace with respect to signage. We needed a expert sign person to come in and give us some direction and questions and they did pick up that cost for that. A…the question is would, you know, the City as the person requesting the Appeal be willing to do that?

Mr. Golden: And I can’t answer that question. I certainly have not asked my client that, the City, and I would never go ahead and…and obligate the City on something that I have not spoken to them about. You’re correct that it’s not unusual, in certain circumstances, to go ahead and have an applicant take on the expense of that so this Board does not and this Town does not have that expense because it’s an application being brought by a particular person. I believe that that’s normally a…with respect to private entities, private applicants rather than Municipalities and I just don’t know whether or not the City would be willing to go ahead and…and pick up the cost of that when they have provided their own engineering analysis of this but I certainly can ask. And I’m not…it’s not out of line for you to ask obviously but I just can’t obligate the City on something I haven’t spoken to then about.

Mr. Manley: Well depending on what happens this evening could you report back to the Board a…through our Counsel whether or not the City would be willing if that were to come up?

Mr. Golden: Yes, I…I…obviously I’ll talk to them, I’ll talk to corporation counsel and then I will report back.

Mr. Manley: Thank you.

Chairperson Cardone: Do we have any other comments?

No response.

Chairperson Cardone: My suggestion would be that we hold the Public Hearing open but what is the wish of the Board?

Ms. Smith: I agree.

Mr. Masten: Yes.

Mr. McKelvey: I’ll make the motion we keep it open.

Ms. Smith: And I will second it.

Mr. Donovan: And again that…that is to the May meeting.

Chairperson Cardone: May 22nd and anyone who is interested in this particular project you will not be re-noticed on this. The notice is right here. We are telling you that it is the 22nd but I also would like to remind everyone that the planning board is having a Public Hearing on May 1st related to this project.

Ms. Gennarelli: Okay, roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 7:52 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 7:52 PM)

OLD PLANK LLC. 102 OLD SOUTH PLANK ROAD, NBGH

(AVATAR SPORTS BAR) (64-4-22) B ZONE

Applicant is seeking an area variance for one side yard setback and the combined side yards setback to renovate an existing vacant commercial space for a sports bar.

Chairperson Cardone: Our next applicant Old Plank LLC.

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

Mr. Donovan: It’s good that they did that they should have come tonight though too.

Ms. Gennarelli: Is there anyone here from Fusco Engineering?

Chairperson Cardone: For the record please identify yourself.

Mr. Johnson: Ernie Johnson, Fusco Engineering representing Avatar Sports Bar.

Chairperson Cardone: And state your request.

Mr. Johnson: What we’re requesting is an existing building; we’re requesting two variances one for total side yards combined and one for one yard side yard going from fifteen feet to eight feet.

Chairperson Cardone: And this project is before the planning board? Is that correct?

Mr. Johnson: Before the planning board, yes.

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

Mr. Donovan: What was in the space before?

Mr. Johnson: Before I believe offices and a…and just commercial property. I’m not exactly sure what was there. It was retail space it said in the back.

Mr. Donovan: Well I’m just looking at the map so is it going to stay with one; two…is the proposal one, two, three, four, five?

Mr. Johnson: They’re all existing the only one was a change of…

Mr. Donovan: The only thing is going to be the change of use…the only thing is the proposed sports bar.

Mr. Johnson: Right, right.

Mr. Donovan: And no exterior dimensions are changing?

Mr. Johnson: No exterior dimension change. It was exact same parts that were on the…an old survey by a…Mr. Doce.

Mr. McKelvey: What’s the size of the total project?

Mr. Johnson: The whole size of the whole project? I believe it’s on a zero point eight one acres for the entire parcel…and the part that we are going to change for the sports bar is twenty-four hundred square feet.

Chairperson Cardone: Do you know if there is going to be a Public Hearing at the planning board level?

Mr. Johnson: We haven’t got to that part yet.

Chairperson Cardone: Because there are probably a number of issues that people may be concerned with that this Board is not able to deal with.

Mr. Johnson: I’m sure there are.

Mr. McKelvey: Do you think you have enough parking?

Mr. Johnson: Yes, there was enough parking. We…this a…it was required by Code for twenty-five and we provided thirty.

Mr. Manley: Now the requirement for parking, does that take into account the other…

Mr. Johnson: Right, yes.

Mr. Manley: …entities that are currently there?

Mr. Johnson: Yes, it does. It takes in all the…all the entities that are in…in the building.

Mr. Manley: Now, I know in the minutes to the planning board meeting that I read there was discussion with respect to determination of parking based on hours of operation of the other…?

Mr. Johnson: Of the other parcels.

Mr. Manley: Correct. Was that used in your calculation of the twenty-five?

Mr. Johnson: Right. Yes, it was.

Mr. Manley: So what hours were you looking at with respect to the ones in the…in the businesses that are in the front?

Mr. Johnson: I believe…I believe the front ones were (8) eight to…(8) eight to (6) six or you know, you know, mid-morning you know businesses and then just the back…the…the sports bar being, you know, an afternoon to late evening.

Mr. Manley: What hours of operation were you looking at for the sports bar?

Mr. Johnson: I don’t have that information on the top of my head right now, from the owner.

Chairperson Cardone: I would see…

Mr. Johnson: I would imagine, you know…

Chairperson Cardone: …until 4 (four) AM probably?

Mr. Johnson: I would imagine, you know, noon to 4 (four) AM.

Mr. Manley: Now I also noticed in the planning board minutes you also a…discussed during the hours of operation that there would be some DJs as well as a…there was discussion about having outside events. A…could you touch a little bit on how frequent you’re looking at outside events? That obviously is going to take up parking.

Chairperson Cardone: And where…where would they be held? Because aside from the parking area there is no room for an outside event.

Mr. Johnson: The…the only part and it would have to a small outdoor gathering in the one part right in front of it where it shows the little trees and stuff. But I mean, that would…they would have to be very small outdoor gathering.

Chairperson Cardone: And what is the capacity of the building?

Mr. Johnson: Of the building?

Chairperson Cardone: Of not the building, of the sports bar that’s…?

Mr. Johnson: Well it…it’s twenty-four hundred square feet, it’s a sixty by forty building.

Ms. Smith: One of the commercials in the front is actually…isn’t it a Chinese Restaurant? So that would be open late into the evening also, they don’t close at 6 (six) PM.

Inaudible audience member

Ms. Smith: Yeah, so they would need some of that parking that you calculated into your estimation.

Mr. Johnson: Okay.

Chairperson Cardone: Mr. Canfield, can I ask you a question?

Mr. Canfield: Sure.

Chairperson Cardone: Based on…you have the plan for this…the interior plan?

Mr. Canfield: Yeah, this…this project has history. It was back before the planning board a…I believe twelve, fourteen months ago and it...from Fusco Engineer, it was a Brendon Connor who was the design professional that brought the concept plan forward to the planning board. At that meeting and I believe part of your packet is the minutes from that meeting. There was a…a lot of conversation with respect to the calculations that were utilized that were to come with the occupant load. You may be familiar with the requirements in the Zoning Code with respect to parking is relevant to the occupant load. In an assembly type occupancy which this is the calculation is one on four a…at the planning board meeting Mr. Connor was directed to contact my office and sit down and review the interior floor plan which was submitted to the planning board which I’m not certain that the Zoning Board has had the opportunity to see this floor plan. But the floor plan that I was given and sat down with Mr. Connor as we calc’d it out and again, being a dance club a…the general occupant load calculation for assembly space with seating is fifteen square feet per person. If you have twenty-four hundred square feet and you use fifteen square feet per person that gives you a hundred and sixty people occupant load. The plan that was submitted depicts a hundred seats which again the calculation for parking one on four for a hundred seats gives you the twenty-five. The plan, the interior floor that was submitted a…depicted a small bar which calculation is three square feet per person and there was a thirty by twenty-eight dance floor which the calculation for the dance floor is seven square feet per person which was a hundred and twenty. At that time we come up with the potential occupant load of two-hundred and eighty-seven people. So again, parking on that is much greater than what’s depicted here. A…I still feel that we do have an issue with how the applicant’s representative has come up with the one hundred a…occupant load. I would like to see that in the floor plan a…there was conversation on restricting the occupant load which then becomes a babysitting issue of the Code Compliance Department a…to constantly maintain. Generally what happens with a…an assembly, we set the occupant load and that’s the maximum that’s permitted to be in the building. But like I said it is still unclear how they come up with that calculation of only one hundred when there potentially a square foot…square footage for much more. A…even given the twenty-four hundred square feet it would put your parking requirement at forty for just this occupancy.

Mr. McKelvey: I’d be afraid that they’d grab some of that parking in the front. People would just park it out there if there was space.

Chairperson Cardone: Along the road.

Mr. McKelvey: Yeah.

Ms. Smith: Yeah.

Mr. Canfield: The Code doesn’t make provisions for parking along the road.

Chairperson Cardone: Right, exactly.

Mr. Canfield: However there are provisions to allow a…

Chairperson Cardone: No I’m saying that would be a problem.

Mr. Canfield: …to allow a shared…

Mr. McKelvey: Yeah, it would.

Mr. Canfield: I’m sorry.

Chairperson Cardone: That would be a problem if they parked on the road.

Mr. Canfield: Yes, yes, yes it would. Yes it would.

Ms. Smith: I know it’s an existing structure but another thing that caught my eye on the site inspection, Jerry, was ingress/egress on the side of the building. If you have a lot of traffic activity in the back that…that could present a potential problem also over there it’s not very wide.

Mr. Canfield: Yes, there’s just one way in and one way out in the back. That’s correct.

Chairperson Cardone: Right.

Mr. Manley: The property next door is vacant?

Ms. Smith: Oh, where the house is falling down or something?

Mr. Manley: Where Mary’s used to be.

Ms. Smith: Right.

Mr. Masten: Mary’s Hideaway.

Ms. Smith: Yeah.

Mr. Manley: That is a still there, correct? Has the applicant looked at purchasing additional land to alleviate the necessity of one of the variances?

Mr. Johnson: No, he hasn’t. Not being that it was an existing structure.

Mr. Manley: One of the criteria for granting a variance is there another way to alleviate the variance without needing to go with the variance. So if there’s a possibility that you could acquire some additional land in order to alleviate the variance. The other issue that I have is specifically in the granting of the variance, you know, would there be an undesirable change? And the answer to that would be yes there could be…in my estimation. A…you know, an undesirable change would be produced in the character or a detriment to nearby properties will be created by the granting of the area variance. You know, you’ve got a lot of residential neighbors that live, you know, in the area and…

Mr. Johnson: I understand that but it is in the Code, right as a…as a permitted use?

Mr. Manley: It is but in this particular case you’re needing a variance which is something that the Board does or doesn’t have to a…

Mr. Johnson: It’s existing…it’s already an existing violation already because it’s non-conforming as it is right now.

Mr. Manley: As long as it stays the way it is you’re not in violation.

Mr. Johnson: (Inaudible) …staying, just…just the use is changing.

Mr. Manley: Correct but the use is subject to review.

Mr. Canfield: If I may? The change of use or the introduction of this sports bar which is…which constitutes the change of use, our Municipal Code requires a site plan when there is a change of use. So once you did the site plan you have lost all existing non-performing…conforming a…protection and that’s what brings you to this Board.

Mr. Johnson: Okay.

Chairperson Cardone: Do we have any questions any questions or comments from the public? Okay the gentleman right here if you would come to the microphone and identify yourself for the record.

Mr. Dabroski: My name is John Dabroski. My property is back to back with this property that they want a variance. This is no place for a sports bar because it’s…they’re…they’re renting it out now. Two weeks ago the place was so full of cars if there was…if anything ever happened it would be a catastrophe. There’s only one lane going in and one lane coming out of that place…one lane…

Chairperson Cardone: Right, yeah we have been there.

Mr. Dabroski: We don’t need a sports bar. I’ve been there fifty years and we can hear at night from the bowling alley alone which we put up with. We don’t need a sports bar in my backyard or all along that creek to everybody else’s side and backyards. It’s just no place for a bar. It would be hidden and there’s already problems there because there’s a sign on the window they want to rent out to parties. Some Saturdays and Sundays it’s crazy in the back of that place. So that’s my comments. I don’t want anything like that in my backyard and I’ve been there fifty years.

Chairperson Cardone: A…if they’re renting…excuse me…

Mr. Dabroski: It started out as a boat place.

Chairperson Cardone: … if they’re renting out to parties has that been brought to the attention of Code Compliance because that would be a change of use, would it not, Mr. Canfield?

Mr. Canfield: It just has been brought to the attention of Code Compliance.

Chairperson Cardone: Thank you.

Mr. Dabroski: There’s also been a church back there before...before the sign on there. There…there’s four…four doorways in there and they can’t do anything with it. The…the Chinese place is open until twelve o’clock at night. So I wish you’d consider all of this.

Chairperson Cardone: Right, thank you. The lady in the back.

Ms. Gutierrez: Hi, my name is Susan Gutierrez and I’m the owner that I guess would be there neighbor if they don’t buy Mary’s Hideaway. And my business is a child based business and we’re there at night and I don’t know how many of you who have children would want your children leaving a dance studio and I’m all in favor of dancing. I’d be the first one to get up and you know, dance with you but already with traffic flow and that being a very precarious exit in, exit out, where do you stop, where do dodge the pothole, where do you watch the bowling alley, where do you watch this, that and the other thing a…I would hate for the ambulance to be coming more times out of not because somebody is having an accident to it. And again, yeah, that business is a very narrow, narrow entrance in and out. So I just wanted it for the record. And how will we be notified after this point to what you all are doing with letting it go forward or standing still? Like I got your letter in the mail so I knew to come…

Chairperson Cardone: Right, well if the planning board has a Public Hearing you would receive a letter in the mail the same as you did…

Ms. Gutierrez: So then is it up on that May 1st one?

Chairperson Cardone: No, no that’s a…the May 1st was particular to what we were talking about before.

Ms. Gutierrez: Okay.

Chairperson Cardone: So far there has not been a Public Hearing scheduled for this…

Ms. Gutierrez: Okay.

Chairperson Cardone: …but at the point that one would be and hopefully one would be…

Ms. Gutierrez: Okay.

Chairperson Cardone: …then you would be notified.

Ms. Gutierrez: Okay.

Chairperson Cardone: Because a lot of the issues I think that the neighbors would bring up are issues that need to be said to the planning board.

Ms. Gutierrez: Okay.

Chairperson Cardone: Thank you. Yes? The gentleman in the back.

Mr. Johnston: Hi, my name is Ken Johnston and a…we live on Innis Avenue which is right behind where this sports bar is supposed to be and I went through the whole stuff on line that…the whole application and all that.

Ms. Mendola: The minutes.

Mr. Johnston: And there’s residential dwellings on three sides of this thing…

Chairperson Cardone: Yes, I saw that.

Mr. Johnston: …and if you go in that back parking lot…

Ms. Gennarelli: Excuse me; can you just get a little closer to the mic?

Mr. Johnston: I’m sorry, if you go in that back parking lot you can see our house and a lot of the people who are here tonight are right directly across from it. A…the Town Code of the Noise Ordinance in there 83-13 says it…the variance can’t be granted if it’s a nuisance. I mean, clearly this would be a nuisance. The hours posted…

Ms. Mendola: The parties there already have been a nuisance till 4 (four) AM.

Mr. Johnston: Yeah, my understanding the police have been there several times over the last year or whatever so somebody knows about it. A…the fact that they’re making a sports bar without a kitchen, it’s going to be catered, what’s kind of sports bar doesn’t have a kitchen? It’s shady, I mean…

Ms. Mendola: In the minutes it says that the food will be catered.

Mr. Johnston: Yeah. There will be people who go outside if they want to smoke, the lighting in the parking lot…  
  
Ms. Mendola: The noise...

Mr. Johnston: …fights…

Ms. Mendola: …drunkenness…

Mr. Johnston: Well there was just a shooting in New Paltz Easter Sunday somebody got killed, Highland in January. I mean our windows are a hundred feet from that back parking lot. It…you know, the gentleman over here mentioned about the bowling alley, it’s a little noisy but we… you know, it’s far enough away. There’s probably five or six bars within two miles, Chili’s, Friday’s…

Ms. Mendola: There is a bar in Tarsio’s.

Mr. Johnston: …right…

Ms. Mendola: Why do we need another one right across the street?

Mr. Johnston: I know some people who live on the other side of Town by the Golden Rail. It’s the same…similar situation and I know that there’s constant complaints and police cars there because of the noise. It’s in a residential area a… Well there’s definitely a better use for this space, doctor’s office or something that’s nine to five, you know, another dance studio, anything, another Chinese Restaurant, anything but something that’s open until 4 (four) AM. There’s no need for it a…that’s about it.

Ms. Mendola: What about and pollution to that stream? I don’t know where that stream leads to but I’m sure that they’ll be pollution, excess pollution to that stream right behind there in between there and our homes.

Mr. Johnston: And I think they made a mistake on the Sunday hours it said 12 (twelve) AM to 12 (twelve) PM. Hopefully they mean noon to midnight not the opposite.

Ms. Gennarelli: Excuse me, just what is your name please?

Ms. Mendola: Joanne Mendola.

Mr. Johnston: We live at 9 Innis Avenue so just hope you take all that into consideration. Thank you.

Chairperson Cardone: Thank you.

Ms. Mendola: Thank you.

Chairperson Cardone: Yes? The gentleman with the black jacket.

Mr. Roncini: My name is Richard Roncini; I’ve been living in 12 Innis Avenue for about twenty-two years. Nice neighborhood, quiet a…that’s how we want to keep it. A…I don’t need to have anything music…loud music a...you know, screaming, cops being called. I hear the fire siren every time it goes off. I don’t need to hear ambulances there so…I just want to let the Board know that if you grant this to…as a sports bar you are doing major damage. Thank you.

Chairperson Cardone: Thank you.

Mr. McKelvey: I think I would have concerns about the outside parties. It’s got to be noisy.

Inaudible Audience Member

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

Mr. Donovan: May I…if I could ask Jerry? Jerry are you concerned that there is insufficient parking?

Chairperson Cardone: Yes.

Mr. Canfield: Yes, that’s correct.

Mr. Donovan: And are you…do you need more information or would you like more information from the applicant’s consultant regarding that? I mean, do you have an agreement or a disagreement or insufficient information relative to the occupancy load?

Mr. Canfield: As we last left it with a…Mr. Connor a…the floor plan that he had submitted a…depicted the excessive occupant load that I had earlier mentioned, two hundred and eighty-seven. If my memory serves me correctly when he left he was going to resubmit another floor plan. Based upon the submission tonight and the plate information that they submitted I would be very curious to see the floor plan that you come up with a hundred people for a twenty-four hundred square foot bar. So yes, in short answering your question I would like to see a floor plan and I would like to see justification of his hundred…hundred people how…how’d he come up with that a…that calculation.

Mr. Donovan: So just reviewing the planning board minutes Mr. Connor indicated that this was a…just kind of…quoting from him now, “just kind of presented because it was just a preliminary basis to show the space, to show the bathroom areas and everything that’s included. I don’t think it was an accurate depiction of what the applicant wants to do with the space as far as the dance floor in the center”. So it sounds to me like we do need to know what an accurate depiction would be so we can determine what the appropriate parking would be.

Mr. Canfield: That’s correct, that’s correct. Also if I might add and…and just for clarification, procedurally if this Board chooses not to grant this variance I don’t believe the planning board can proceed forward with the project. Is that correct?

Mr. Donovan: That’s correct.

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

Mr. Manley: The only thing I see is there is just…parking is just not the only issue…

Chairperson Cardone: No, it’s not.

Mr. Manley: …I think there’s a whole host of issues that I think we’ve all outlined tonight and I…I just don’t see it as being something that is going to a…to work. I think it’s excessive.

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

Ms. Smith: I’ll motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 8:17 PM)

ZBA MEETING – APRIL 24, 2014 (Resumption for decision: 9:08 PM)

OLD PLANK LLC. 102 OLD SOUTH PLANK ROAD, NBGH

(AVATAR SPORTS BAR) (64-4-22) B ZONE

Applicant is seeking an area variance for one side yard setback and the combined side yards setback to renovate an existing vacant commercial space for a sports bar.

Chairperson Cardone: Okay, the Board is resuming its regular meeting. On the first application Old Plank LLC. (Avatar Sports Bar), 102 Old South Plank Road. This is a Type II Action under SEQRA. Do we have discussion on this application? Seeking an area variance for one side yard setback and the combined side yards setback to renovate an existing vacant commercial space for a sports bar.

Mr. Manley: Well I think the neighbors made some very good points with respect to the a…the a use that’s proposed there. You know, it’s definitely going to have a major change in the character of the neighborhood based on what has been there previously. That’s definitely one…one major fact. The other thing is the applicant when I asked specifically the question of has he looked at other opportunities of you know, how they could alleviate the need for the variances he had no a…nothing that he could show the Board that he…he’s done that due diligence.

Chairperson Cardone: And it’s clearly self-created.

Chairperson Cardone: Do I have a motion for approval on this application?

No response.

Chairperson Cardone: Do I have a motion to disapprove this application?

Mr. Manley: I would so move a motion to disapprove.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion to disapprove is carried.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:10 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 8:18 PM)

JAMIE YANNONE 2 BLACK ANGUS COURT aka 728 GARDNERTOWN ROAD, NBGH (47-1-61.1) R-1 ZONE

Applicant is seeking an area variance for no accessory buildings shall be closer to the fronting street than the main building to build an accessory building (52x40x20).

Chairperson Cardone: Our next applicant Jamie Yannone.

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

Chairperson Cardone: For the record please identify yourself.

Mr. Yannone: Jamie Yannone, 2 Black Angus Court in the Town of Newburgh.

Chairperson Cardone: And state your request.

Mr. Yannone: I recently built a new pole barn and now I’m currently building a new house on the same property and the house is sitting roughly thirty feet behind the pole barn so I received a Stop Work Order on the pole barn…

Chairperson Cardone: Which is already built.

Mr. Yannone: Yup. And a…I just wanted…I’m just requesting a variance so I can continue working on the pole barn.   
  
Ms. Smith: On the pole barn or the house?

Mr. Yannone: Pole barn, pole barn.

Chairperson Cardone: With the house.

Ms. Smith: You want to continue work on the pole barn…?

Mr. Yannone: Yeah.

Ms. Smith: …or on the house?

Mr. Yannone: Well they stopped the work on the pole barn.

Ms. Smith: Okay.

Chairperson Cardone: How did it happen that the house, which is under construction right now, ended up behind the pole barn?

Mr. Yannone: Well it was originally supposed to be in line with the pole barn but with height issues and grading issues to have a positive pitch away from the house it needed to be moved back thirty feet. It saved me thirty thousand in excavating.

Chairperson Cardone: A lot of nice stone work around there.

Mr. Yannone: Yeah, a little bit of work.

Chairperson Cardone: Did you do it?

Mr. Yannone: Most of it.

Ms. Smith: A lot of field stone.

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

No response.

Chairperson Cardone: Any questions or comments from the Board?

No response.

Mr. McKelvey: I think it would be pretty hard like you say to move that house.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

(Time Noted - 8:20 PM)

ZBA MEETING – APRIL 24, 2014 (Resumption for decision: 9:10 PM)

JAMIE YANNONE 2 BLACK ANGUS COURT aka 728 GARDNERTOWN ROAD, NBGH (47-1-61.1) R-1 ZONE

Applicant is seeking an area variance for no accessory buildings shall be closer to the fronting street than the main building to build an accessory building (52x40x20).

Chairperson Cardone: On the next application Jamie Yannone at 2 Black Angus Court, seeking an area variance for an accessory building that is closer to the fronting street than the main building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Ms. Smith: Well I understand what he pointed out to us the problem he had, where he had to put this pole building opposed to where his residence is going to be. So with that in mind, I make a motion to approve.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE (Time Noted – 9:11 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 8:20 PM)

LAMBRINI ANDRIANIS 32 COMMONWEALTH AVENUE, NBGH

(46-5-8.1) R-1 ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings and the maximum allowed storage for not more than (4) four vehicles to build a carport (Two - 18 x 21 combined) 18 x 42 on an accessory building.

Chairperson Cardone: Our next applicant held open from the March 27th meeting, Lambrini Andrianis.

Mr. Manley: Madam Chair, I’m going to actually recuse myself on the next two. I wasn’t here for the meeting for those two. I haven’t had a chance to fully a…get up to speed on them.

Mr. Donovan: So just to be clear Jim, if you recuse yourself the Boards not…if they don’t decide tonight you are recused.

Mr. Manley: Correct.

Mr. Donovan: You can’t…un-recuse yourself.

Mr. Manley: Correct.

Mr. Andrianis: What if I brought you up to speed?

Mr. Manley: Well I haven’t had a chance to review the minutes from the last meeting so I don’t feel comfortable voting on what’s here without reviewing that first.

Mr. Andrianis: I’ll allow it.

Mr. McKelvey: I have a problem too. I wasn’t here.

Mr. Donovan: Well just to be clear…

Chairperson Cardone: That is a problem.

Mr. Andrianis: The whole reason that we are redoing this is because you weren’t here to begin with.

Mr. Donovan: We’re not redoing anything.

Mr. Andrianis: Well whatever you are doing.

Mr. Donovan: Okay, so the fact that you weren’t here…there’s no legal impediment to you voting. Okay? To you hearing the rest of it and voting. If you feel like you’re not able to a…then you may ask for more time. I would suggest perhaps though unless you feel you have some sort of inherent conflict…

Mr. Manley: I don’t.

Mr. Donovan: …that you could not vote tonight and in which case you won’t have a vote because there’s not enough members but in order not to hamstring the Board in the future a…that you don’t…because if you recuse yourself you are done.

Mr. Manley: Right.

Mr. Donovan: So that may cause the Board some problems because…

Chairperson Cardone: Well we then we would not be able to hear it then.

Mr. Donovan: That’s correct.

Chairperson Cardone: If both of them recuse themselves we would only have three members.

Mr. Donovan: That’s correct.

Chairperson Cardone: And so we need four members to hold a hearing.

Mr. Manley: The only thing I would…I would ask is, because I didn’t want to the a…I didn’t want to delay the applicant but a…I wouldn’t mind hearing it but then I’m going to have to have some time to review the minutes.

Mr. Donovan: The Public Hearing is open and you have sixty-two days by law if you decide to close the Public Hearing tonight.

Mr. McKelvey: I…I would agree Jim. I haven’t had time to go through the minutes.

Mr. Andrianis: Take your time.

Chairperson Cardone: So I would suggest that if…if the two of you are willing that we hear it tonight and then review the materials so that then we have enough people so that we’re able to have a vote.

Mr. Andrianis: Thank you.

Mr. McKelvey: Yeah, I agree.

Mr. Manley: Okay.

Mr. Andrianis: The reason that we are here…

Chairperson Cardone: Speak into the microphone directly.

Mr. Andrianis: …if I may speak is that I…I requested to a…put up a carport to store some things at my house and I needed some additional space. A…I have had a little conflict with my neighbors unfortunately and I do apologize to my neighbors and I’m willing to civilly compromise. I…I will remove any business related vehicles and things from the property and keep them at my place of business which is 60 Fairview Avenue in Poughkeepsie, New York. I have a large facility there where I keep these things but however, I did want to bring home my…my classic cars. I have two or three vehicles; they’re older BMW’s and ones older Eagle Town which has been in my family for many, many years. My parents bought brand new. This is the reason. I’m willing to compromise. I do apologize if I have offended anybody and a…you know, I’d like to be a good neighbor.

Ms. Smith: Well I think when you were before us last time a…the conversation was a little different. You had said you wanted to store equipment in these…this facility and you wanted to put them end to end.

Mr. Andrianis: If I may, only…only…only equipment that’s related to the house not commercial equipment, smaller things, lawn tractors, things of that sort for the maintenance of the two acre property.

Ms. Smith: Quite a large storage…

Mr. Andrianis: Right, two acre property I have.

Ms. Smith: No, not the property. I mean the fact that you’re going to put this metal…

Mr. Andrianis: Right.

Ms. Smith: …storage facility end to end…

Mr. Andrianis: Right.

Ms. Smith: …you wanted two of them, correct?

Mr. Andrianis: Right, right, right. So I could put my vehicles and my tractors and various little things in there.

Ms. Smith: Over forty feet long?

Mr. Andrianis: Yes.

Mr. McKelvey: You are going to remove the construction equipment?

Mr. Andrianis: Yes.

Ms. Smith: And you have a…classic vehicles?

Mr. Andrianis: Yes.

Chairperson Cardone: Where are they being stored right now?

Mr. Andrianis: At my shop in Poughkeepsie. And unfortunately a…a couple of them were vandalized and a…it’s really bothered me a lot. And this is a…you know a…

Ms. Smith: And all of that commercial equipment is going to be removed from your property?

Mr. Andrianis: I swear to God.

Mr. Manley: Is there a reason why the equipment hasn’t been removed up to this point, I mean…?

Mr. Andrianis: I was just doing some periodic maintenance to prepare for the season and now that that maintenance has been completed I will remove it.

Mr. Manley: Okay, but there has been some Court action correct? On the part of the Town to…

Mr. Andrianis: Which I’m…I’m working with legal counsel to remedy.

Mr. Manley: Okay but I…I guess my…my question is if you knew you were coming before this Board to seek a variance and you’re already in court with respect some of the construction equipment wouldn’t it have been to at least show good faith on the part of you wanting to move some of that stuff and start…at least start the process of moving some of it?

Mr. Andrianis: I already have.

Mr. Manley: What has been moved up to this point?

Mr. Andrianis: A pickup truck…a…two pickup trucks and a…some smaller equipment.

Chairperson Cardone: I did see a difference. I made another site visit. In fact I was there today.

Mr. Andrianis: Yes, I have been cleaning up, yes.

Chairperson Cardone: And I did notice that there has been some cleanup…

Mr. Andrianis: Yes.

Chairperson Cardone: …based on what I saw when I was there a month ago. But I…I think the concern were the a…the two big vehicles that were there.

Mr. Andrianis: Yes, yes they’re no longer going to be there.

Mr. McKelvey: The blacktop equipment?

Mr. Andrianis: I don’t have any blacktop equipment. I…I…I have a small tree service business…

Mr. McKelvey: Okay.

Mr. Andrianis: …and I have a shop, a facility in Poughkeepsie that I’ve had there for a few years now. And I’m also willing to a…put up a…put up a plant kind of vegetative barrier as to a…you know, block off anything that may be unsightly to the neighbors, I mean…

Ms. Smith: Where would you put that?

Mr. Andrianis: That would be on the side of the proposed structure where it would be visible to the neighbors.

Ms. Smith: Okay.

Chairperson Cardone: That’s on the side that backs Susan Drive?

Mr. Andrianis: Yes.

Chairperson Cardone: Do we have…as you go through the minutes you’ll see that there were many comments by neighbors but I’m going to ask if there’s anything new that anyone wants to contribute? We do have all of your comments in the minutes from last month but…yes, if you would go to the microphone, identify yourself…

Ms. Bush: My name is Catherine Bush and I live on Overdell Lane. I would have a concern on that structure he’s saying that he would put vegetation on side but in fact there are three sides that are a…open to neighbors. It’s just the one in the front to him. The other question I would have of the vehicles in there, is it necessary for those vehicles to be registered vehicles? How many unregistered vehicles are allowed in the Town? And a…finally I would ask that you would consider if you were going to approve this that the stipulation be that first all of that industrial equipment, the…the log…log splitter or…or a wood chippers or whatever are there, the dump truck, that all of that industrial equipment be taken out of there and removed before this would be approved. Thank you.

Chairperson Cardone: Thank you. Mr. Canfield, would you like to answer that question about the unregistered vehicles?

Mr. Canfield: Yeah, the requirements of the Town of Newburgh Zoning Code is one unregistered vehicle. There’s also a…I believe its sixteen thousand pound commercial weight vehicle… weight of one commercial vehicle to be parked in the driveway and that has to be registered.

Chairperson Cardone: Thank you.

Mr. Andrianis: I won’t be parking any commercial vehicles…

Ms. Gennarelli: You have to go to the... You can tilt it up Pano.

Mr. Andrianis: I don’t intend on parking any of my commercial vehicles there for a (Inaudible)

Chairperson Cardone: Okay. Do we have any additional comments? Yes? Please go to the microphone.

Mr. Palermo: My name is Tom Palermo; I live on 8 Susan Drive. A…he keeps saying he…he takes the vehicles out of there…they’re still there and he works from them every day which I think is the proof that he…he’s got two shredders brings…comes back in with the stuff on the truck, the next day he goes back out again. He’s working from his place and then I count five vehicles here, commercial vehicles that’s been there for about three years now maybe and he just keeps bringing other ones in. Do you want to see the pictures I…? These were taken yesterday.

Mr. Palermo approached the Board with the photographs.

Chairperson Cardone: Do we have any other comments? Yes?

Mr. Gozza: My name…my name is Anthony Gozza; I live at 10 Susan Drive. I agree with Mr. Manley. Okay? We were here a month ago, March 27th there was some attempt at cleanup but a…I also have photographs as recently as yesterday. My main concern is the devaluation in the equity in my property. Okay? A…there’s no guarantee that magically, you know, there’s an epiphany and the property, his property is going to look clean and neat. Okay? I suspect it probably will not and the reason why I suspect that is because this has been going on for years. There’s a file over there on that side this thick and it just doesn’t seem to rectify itself. And if you care to see my photos I’d be happy to submit them.

Chairperson Cardone: Okay.

Mr. Gozza approached the Board with the photographs

Mr. Andrianis: May I have a rebuttal?

Chairperson Cardone: Yes.

Mr. Andrianis: Yes, a…I do apologize again Mr. Gozza for that. I did start a small business at my house, a small tree service business. Fortunately business is good. I have power at my facility. I have secured a…secured the place so I feel more comfortable as to bring my belongings there and not have them be a…stolen or you know, tampered with. A…I do apologize if this has caused any inconvenience to my neighbors and a…I’m more than willing to comply with the Code Compliance and the Town and rectify the a…any issues or complaints and also a…a…make the place beautiful and add value to the adjacent properties.

Chairperson Cardone: Thank you.

Ms. Smith: Well a…you are operating a business there then and last…?

Mr. Andrianis: No, no not at this time.

Inaudible Audience Member

Ms. Smith: Wait…I asked you that last month…

Chairperson Cardone: Excuse me, only a…

Mr. Andrianis: That is my mother she is the owner of the property.

Chairperson Cardone: Okay, but she needs to address the Board and use the microphone. Hand her…hand her the microphone please.

Mr. Andrianis: Yes.

Chairperson Cardone: You can take it off of there and just for the record have her identification and…

Lambrini Andrianis

Ms. Andrianis: First of all there is no business run, a tree business cannot be run from somebody’s house, number one. Number two, I have two acres of property. The question…the only part that the neighbors are questioning is right around the carriage house and around my house where I have parking. Okay? They are not abutting me in any way, there’s a lot of property between their houses and my house. Nobody’s…trucks are not going in and out to create noise, there is not a lot of a…garbage or anything. People go through Susan Drive and Commonwealth, you can check at any time. It’s always neat and clean. You can’t see my property from anybody’s house except two, three houses that are here can look at it but from afar. They’re not right next to it to be bothered in any way. Okay? But we have…issues with my son about certain things and he is working on cleaning up. The only reason the trucks are there because they were broken because of the winter. They…one plow truck broke and I couldn’t plow my yard. I need the equipment, a certain amount of equipment for maintenance of my property. I’ve had three threes go down on my parking lot. If I didn’t have my son there with his equipment I would have had to pay a few thousand dollars to get it cleaned up. I’ve also had to rent chippers to chip up branches and trees that have fallen. I have a large property that needs maintaining and that’s why the…that equipment is there.

Chairperson Cardone: Well there is an opportunity if we hold the a…if we vote to hold this open, the Public Hearing, to get everything cleaned up by that point.

Ms. Andrianis: Yes, what I basically… what we were trying to do to help the neighbors so we don’t annoy people because we don’t like to annoy anybody is building the shed so we can put everything contained inside the shed.

Mr. Andrianis: Non-commercial.

Ms. Andrianis: Non-commercial.

Chairperson Cardone: Right, because that would be against the…

Ms. Andrianis: Right.

Chairperson Cardone: …Town law.

Ms. Andrianis: It’s…I…I don’t want a business run from my house which by the way when I bought the house there was a business run from the carriage house which was a knife sharpening business. Then I don’t think anybody was complaining about but it was there and it was a commercial business. That was being run on that property.

Chairperson Cardone: Obviously nobody reported it to Code Compliance.

Ms. Andrianis: Well, obviously so I think I have some very a…neighbors who like to take pictures of my property. I don’t take pictures of their property but there’s a lot of Town…houses in the Town of Newburgh who have a lot of things that are not in compliance but nobody is putting attention to them. But because we want to be good neighbors we’re trying to clean up every misunderstanding and have a shed containing everything in it so we have no complaints.

Chairperson Cardone: Okay, thank you.

Ms. Andrianis: Okay. Thanks.

Mr. McKelvey: But remove the commercial equipment.

Mr. Gozza: I brought something I downloaded today a…she stated that she doesn’t understand what the complaint is. There is a mattress out there amongst a lot of other garbage. It’s in the photographs. Okay? A…the breeding ground for rodents. I’m embarrassed to have anybody come and sit on my patio. I’m embarrassed to have anybody come and sit on my deck. Okay? Because of the junk and the garbage that you can see really good. All right? And I’m tired of it and I’ve been there since I was twelve years old, since 1960. Right and in fifty-four years the previous owners, the Saffioti’s and subsequently had it very, very nice. There was no…no reason to complain. I don’t want to be here tonight. I don’t want to con…continually go to Court. I’m tired of it but the place is a mess. Okay? Here’s something if you care to look at? There’s a mattress, it’s there, it was here a month ago. Take the damn mattress away.

(Inaudible)

Mr. Gozza: No, no it isn’t. When I left and drove up an hour, two hours ago it was still there, okay, so what you saying and what your Mom is saying is incorrect.

Mr. Gozza approached the Board with his paperwork.

Chairperson Cardone: Okay. Any other questions or comments?

Mr. Bush: My name is Robert Bush, Overdell Lane. A…our property, regarding their property about a hundred feet away there is a dead sit-down lawnmower, there are pallets, there are barrels, there are tarps that have been there for years…for years. A month ago these folks said we’re going to be good neighbors. I’m going to be a good neighbor. Nothing has happened. Nothing has happened at all. If this is been going on for years when is there going to be action? That’s my question.

Chairperson Cardone: Thank you.

Mr. Andrianis: With all due respect, the weather just has started to get…gotten better but a…there will be action sir.

Chairperson Cardone: Thank you. Is it the wish of this Board to keep this Hearing open or to close the Hearing?

Mr. McKelvey: I would like to keep it open so I can read the minutes.

Chairperson Cardone: Could I have a motion to that effect?

Mr. McKelvey: I’ll make that motion.

Mr. Masten: I’ll second it.

MR. Donovan: And again that is to hold the Hearing open to the May meeting?

Chairperson Cardone: Yes.

Mr. McKelvey: Yes.

Mr. Masten: Yes.

Chairperson Cardone: To May 22nd, you will not be re-noticed. Anyone who is interested in that application the notice is this evening letting you know that it is the 22nd of May.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted - 8:40 PM)

ZBA MEETING – APRIL 24, 2014 (Time Noted – 8:42 PM)

LOUIS GALLO 197 SOUTH PLANK ROAD, NBGH

(DAIRY QUEEN) (60-3-6.1) B ZONE

Applicant is seeking an Interpretation of 185-14-C-2 and 185-14-C-4 and/or a Use variance or an area variance to erect a double light strip along the perimeter of the façade of the Dairy Queen Restaurant.

Chairperson Cardone: Okay, our next applicant Louis Gallo.

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

Mr. Gallo: Louis Gallo, applicant, has the Board decided what I’m supposed to apply for yet? Well I’m serious I mean I’m a business man. You told me last week…last month you didn’t know what I was going to apply for. So now I applied for an area variance.

Chairperson Cardone: Mr. Canfield, do you have additional information for us?

Mr. Canfield: Yeah, I believe that the a…Counsel for the Board had sent me a memo and your question was with respect to the Local Law #5 of 2009 that the Town Board enacted where they amended the Section of 185-14 to permit the LED lighting whereas the previous Code did not. After research, I did pull that Local Law from the Town Clerk’s Office today. And I do have a copy of it with me a…for Counsel to read. Basically the key issue here is the definition of direct or indirect lighting.

Chairperson Cardone: Yes.

Mr. Canfield: That Local Law does not make mention of that definition at all. To take it a step further I did research some sign companies simply because I don’t have the expertise of sign term ins…terms and definitions and pretty much what I’ve learned is that there are a few standards out there and I’ll forward that to the Town Board as you may know that the Board is in the process of examining the signage ordinance. I believe both Zoning Board and planning board has received a memo from the Board requesting your input.

Chairperson Cardone: That is correct.

Mr. Canfield: A…I have some information for both the Boards to look at but in any event what I found is that direct lighting is defined by an object being luminated by another light source such as a spotlight shining upon an unlighted…unlighted or unilluminated object. Indirect lighting is where as the light for it comes from within, internally. So with that being said…and I see Counsel smirking…

Mr. Donovan: Since I think many lawyers have written Sign Ordinances saying exactly the opposite.

Mr. Canfield: That’s the…

Mr. Donovan: Or meaning exactly the opposite where...where you know, the light shining on the sign is favored while the light from internally is not favored.

Mr. Canfield: But the verbiage fabored…favored is not in question here…it’s direct or indirect lighting. That’s the verbiage in the Code. And that’s what I think we’re faced with and struggled with.

Mr. Donovan: Well I think that what the Board was also struggling with is that if in fact what is proposed is LED or LCD lights because they are not prohibited by Local Law 5 of 2009 would in fact what the applicant is proposing be allowed?

Mr. Canfield: I think that the determination that is before the court (Board) to make is the definition of direct or indirect lighting. I could give you my opinion but I don’t sit at that dais. I’m not sure if you…you want my opinion but...

Mr. Donovan: Well, I think we did. I can’t speak for the Board but I think that’s why we asked.

Chairperson Cardone: We’ll listen to it knowing it’s your opinion and not fact.

Mr. Canfield: Boy, it’s getting warm in here. Well the Code says specifically that outlining of a building is not permitted by direct lighting. In Mr. Gallo’s case the lighting, I don’t believe, fits the definition of direct lighting. I believe the lights that he’s proposing is indirect lighting so therefore in my opinion I don’t think that it’s not in compliance with what’s existing.

Chairperson Cardone: And I agree with you.

Mr. McKelvey: Are you alright?

Mr. Donovan: However… I…I just wanted to see what he was going to do when I said it.

Mr. Gallo Inaudible

Mr. Gallo: You’re never supposed to ask a question that you don’t know the answer to, remember that, right as a lawyer I mean I hate to tell you that.

Mr. Donovan: I didn’t actually ask a question.

Chairperson Cardone: Right. So this was before us for an interpretation. This was before us for an interpretation.

Mr. Donovan: I think the application was amended from a use variance to an area variance and or an interpretation. So if the Board is comfortable with the interpretation that this is fact indirect illumination then it would be allowed.

Chairperson Cardone: Yes, I am comfortable with that.

Mr. McKelvey: I am too.

Chairperson Cardone: I don’t know about the other Members of the Board.

Mr. McKelvey: I am comfortable with it.

Chairperson Cardone: So we would need a motion, I am waiting for a motion.

Mr. Donovan: To close the Public Hearing.

Chairperson Cardone: Yes.

Mr. Masten: I’ll make a motion.

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. I believe that Mr. Manley had a number of questions for Counsel. If in the interest of time if you would wait out in the foyer and we’ll call you in shortly.

(Time Noted - 8:47 PM)

ZBA MEETING – APRIL 24, 2014 (Resumption for decision: 9:12 PM)

LOUIS GALLO 197 SOUTH PLANK ROAD, NBGH

(DAIRY QUEEN) (60-3-6.1) B ZONE

Applicant is seeking an Interpretation of 185-14-C-2 and 185-14-C-4 and/or a Use variance or an area variance to erect a double light strip along the perimeter of the façade of the Dairy Queen Restaurant.

Chairperson Cardone: On the application of Louis Gallo, Dairy Queen at 197 South Plank Road, seeking an Interpretation of 185-14-C-2 and 185-14-C-4 and/or a Use or area variance to erect a double red (blue & orange) light strip along the perimeter of the façade of the Dairy Queen Restaurant. First we need to discuss the interpretation.

Mr. Manley: I did want to just ask Mr. Canfield something that I just needed some clarification on. And that was a…the applicant went and received a variance for an addition back in 1994. That I would imagine would have also been involved with the planning board. Would they have had involvement?

Mr. Canfield: Say that again Jim, what…what are you asking?

Mr. Manley: There was some expansion done in 1994 to the a…to the Dairy Queen and this Board, I believe, provided an area variance to the applicant. Let me get the exact…so I guess my question is the planning board would have been involved in that also, along with the…?

Mr. Canfield: 1994 was before Jerry, I don’t know. Without seeing the application I don’t know if they did or didn’t go to the…to the planning board.

Mr. Gallo Inaudible

Chairperson Cardone: I was going to ask you that.

Mr. Gallo Inaudible

Ms. Gennarelli: Excuse me; you just have to go to the microphone.

Chairperson Cardone: No, we just want to know…do you know if you went before the planning board in 1994?

Mr. Gallo: I don’t…I don’t know how to answer that. You know, if I say…if I…I’m serious…

Mr. Donovan: You don’t know?

Chairperson Cardone: You’ve been honest up to now, don’t change it.

Mr. Gallo: Yeah, I went before the planning board and I got approval. And I’ve been there forty years and I haven’t done anything wrong. So I…I don’t expect to go to the planning board for this lighting band...if that’s what you’re driving at.

Chairperson Cardone: No, no. That’s not what we’re driving at, relax.

Mr. Gallo: I had…I had planning board approval twenty years ago, yes. Yes I did.

Chairperson Cardone: Okay.

Mr. Canfield: If I may though, what’s the significance of that?

Mr. Manley: Well, I was inquiring as to…especially because anytime there’s…what I was getting at was the architectural review. If there was an architectural review done at the time with respect to signage and all of that…I’m sure that if it went before the planning board…

Mr. Canfield: Are you looking for Jim that perhaps restrictions or something that the ARB did back then?

Mr. Donovan: No, if there was some level of architectural review and that was granted it does need to go back for...

Mr. Manley: For just architectural review.

Mr. Canfield: (Inaudible) negate those original approvals.

Mr. Donovan: So in other words if the architectural review was given to and approved to A and now you are going to have B does it…does it need to be modified or approved, that’s all.

Mr. Canfield: I understand. I can tell you back in 1994 till now procedures are…are much different. I don’t know. I’d have to check the planning board file to see factually if there was an ARB done.

Mr. Manley: Right. They may have not even had ARB back then, I don’t know.

Mr. Canfield: I don’t know either. It was before I came to the Building Department. So I don’t know.

Chairperson Cardone: Okay. Jim?

Mr. Manley: That answers my question.

Chairperson Cardone: Okay. Okay and on the interpretation, according to the opinions that we’ve heard and which I tend to agree with that this is indirect lighting.

Ms. Smith: Yeah, I agree.

Mr. Donovan: And if in fact this is indirect illumination then what’s being proposed would not be prohibited…I apologize for using a double negative but would not be prohibited by 185-14-C-4 which prohibits the outlining of the perimeter of the building by direct illumination as what’s being proposed is indirect illumination. So if the Board is comfortable with that then you can issue an interpretation saying that the lighting that is proposed is allowed as it is indirect illumination not direct illumination.

Chairperson Cardone: And a further question, then would we need a area variance? No?

Mr. Donovan: If you issued that you would not need any variances.

Mr. Canfield: I concur with Counsel.

Mr. Donovan: I have to rethink that then.

Chairperson Cardone: It’s nice when we all agree. Okay.

Mr. McKelvey: I’ll make a motion to that effect.

Chairperson Cardone: Do we have a second?

Mr. Masten: I'll second that.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

James Manley: Yes

John Masten: Yes

Roseanne Smith: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:17 PM)

ZBA MEETING – APRIL 24, 2014

END OF MEETING (Time Noted – 9:17 PM)

Chairperson Cardone: We are in receipt of, under Other Business, of a communication from Mark Taylor asking for our input on two issues. Everyone should have received that communication. Is there anyone who did not?

No response.

Chairperson Cardone: Okay, it was sent by email. You did get it? Or we’ll have to get it to you. One was on the signs; the Town is working on the Sign Ordinance.

Mr. Masten: Yes.

Chairperson Cardone: And they would like our input on that. We’re under really a time restraints on that so I would appreciate if by the end of…let’s see today is Thursday…in a week that you would email. Everybody has my email address?

Mr. Masten: Yes.

Chairperson Cardone: I would compile it all and send it to our Counsel and he will write our response.

Ms. Gennarelli: I checked with Mark for you, there was not attachment, they want pre…

Chairperson Cardone: Right.

Ms. Gennarelli: …input.

Chairperson Cardone: Now there is another very important issue that has come before this Board that they are also going to be working on and that’s the solar panels. And that’s not only the ground mounted but also the roof mounted solar panels so…and there was a lot of information on the attachment.

Mr. Manley: Lots.

Ms. Smith: Lots.

Chairperson Cardone: 104 pages.

Ms. Gennarelli: 140.

Chairperson Cardone: 140, I didn’t count.

Mr. Manley: There was something on there about like the fire department now too.

Chairperson Cardone: Yes that is a concern.

Mr. Manley: Some sort of patch or something, I was…

Chairperson Cardone: Jerry can address that. I know that Jerry has mentioned that before.

Mr. Canfield: Yeah there’s…there’s several concerns from a firefighting aspect for roof mounted solar panels a…first and foremost, as you know solar panels are a source of backup power (Inaudible) secondary power you know, for residents or collecting some type of sun rays. But with that is the proper disconnects. The fire departments in many cases have to turn power off in the structure to you know, fight the fire effectively and by just throwing the breaker you may think you have the power shut off but these stored energy from these solar panels a…could perhaps provide power you know unexpected. The other issue is as you know sometimes fire departments have to access roofs for ventilation purposes and again if there’s panels up there a…that could create a hazard. There’s also additional structural concerns because of the extra work load on these roofers…roofs in today’s standard lightweight construction such as trusses a…are…are paramount…weight loads become paramount, trusses opposed to conventional framing creates great hazards to firefighters under fire simply because trusses fail a lot faster than conventionally frame so with the additional weight load a…the bottom line is its paramount to the safety of the firefighters that they recognize that there are a…panels on that roof so and even an array of panels on the ground that feed the power support…source of the building. And it…it may not be electric, it could be hot water as well. It creates another hazard so there is a great deal of concern.

Ms. Smith: So, if a…a procedure is put in place for solar panels will there also be an additional procedure where the fire departments, depending upon which district these homes are in, they’ll be notified of a specific house that has the solar panels?

Mr. Canfield: Not necessarily notified Roseanne but probably the more appropriate way would be applicable placarding.

Ms. Smith: Oh, alright.

Mr. Canfield: Okay?

Ms. Smith: Okay.

Mr. Canfield: Typically an incident commander or a first responding chief of a fire department, one of his initial duties is to size up the emergency and that may be a visual from his vehicle or actually getting out and walking around the building and fully assess what’s burning. Where is it burning? A…at that point during his total assessment he may be able to pick up panels but again at three o’clock in the morning on a rainy night he may or may not have seen that there’s panels on the roof so…a…some type of placarding you know, would be…would be paramount to…to tip him off. Just like backup generators if a house has a backup generator some type of external placarding to tip you off that even though you shut the power off there still could be another secondary power source…

Ms. Smith: Right.

Mr. Canfield: …you know that’s going to energize the building for you so…yeah, it becomes a real issue.

Chairperson Cardone: Okay, thank you. Do we have any other business? Do you have the minutes from last month? Everyone has had a chance to look at them…no?

Mr. Manley: Not all of us.

Mr. McKelvey: No.

Chairperson Cardone: Not all of us and not enough people to vote on it so we will take care of that next month and we’ll have hopefully enough people to vote on them. Do we have a motion to close the meeting?

Mr. Masten: I make a motion.

Mr. Manley: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. See you May 22nd.

PRESENT ARE:

GRACE CARDONE

JOHN MC KELVEY

JAMES MANLEY

JOHN MASTEN

ROSEANNE SMITH

ABSENT: MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

GERALD CANFIELD, CODE COMPLIANCE (Time Noted – 9:30 PM)