ZONING BOARD OF APPEALS

MEETING – SEPTEMBER 22, 2016

(Time Noted – 7:04 PM)

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

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

Pledge of Allegiance to the Flag led by Betty Gennarelli

(Time Noted – 7:06 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time Noted – 7:06 PM)

DAVID MARCINAK 79 SUSAN DRIVE, NBGH

(46-4-12) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a second floor addition and new roof over the entire dwelling.

Mr. Manley: The first applicant this evening on the agenda is David Marcinak, 79 Susan Drive in Newburgh seeks an area variance for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a second floor addition and new roof over the entire dwelling. Ms. Gennarelli are the mailings in order?

Ms. Gennarelli: Yes, one moment, I’m sorry.

Mr. Marcinak: Yes, hello a…

Ms. Gennarelli: One moment please.

Mr. Marcinak: Oh, wow, let me know.

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

Mr. Manley: Thank you.

Ms. Gennarelli: You can begin now.

Mr. Manley: Good evening.

Mr. Marcinak: How are you?

Mr. Manley: Good.

Mr. Marcinak: I’m David Marcinak and I’d like to propose to you we have a variance here in a a house that was probably built in the ‘50’s to early ‘60’s in the Balmville area. It was unfortunately a compromised by fire and about ten percent maybe eight to ten percent of the structure has been a compromised and I wish to rebuild it and there are…there’s something on the…on the east side or the actual west side and east side of the Hudson River and a…this ranch…ranch (1-family contemporary) home I wish to do a a…a new construction possibly of a second story but the new…the second story doesn’t a compromise the…some of the neighbors that may be here this evening a I could do a possible ranch but I’m looking for a two story dwelling on top of a a foundation that is there and existing probably since the early ‘60’s and since new zoning regs have changed the side yard setbacks a…I…I’m here in front of you this evening to say a I have a very nice plan to make this house absolutely beautiful in the area that it is in but unfortunately under the new zoning regs one of the side yard setbacks which is beyond my control is less than what is deemed necessary under the new current zoning laws for a single family house in that area.

Mr. Manley: Mr. Marcinak when did you take possession the home? When did you buy the home?

Mr. Marcinak: A…it was probably in a…in May like May 20th, May 29th in that area.

Mr. Manley: Of what year?

Mr. Marcinak: Of this year.

Mr. Manley: And did you purchase it from the current owner or…?

Mr. Marcinak: I did, I did yes.

Mr. Manley: Okay, so you knew the condition of the home…

Mr. Marcinak: Absolutely.

Mr. Manley: …when you purchased it?

Mr. Marcinak: That’s correct.

Mr. Manley: Okay. Were you aware prior to buying the home what the zoning was in the Town?

Mr. Marcinak: A…not to the extent that a…much of the Town had been in the early to mid ‘90’s zoned non-conforming by a new jurisdictional a side yard setbacks and front yard setbacks so I do believe…

Mr. Manley: My question is did you prior to purchasing the home…

Mr. Marcinak: I did not.

Mr. Manley: …did you go to the Building Department did you…

Mr. Marcinak: I did speak with them yes and they said as long as your a...your engineer could a create a set of plans that would make the existing structure a sound to be a single family home you could move forward.

Mr. Manley: Did you mention going up?

Mr. Marcinak: A…I did, yes.

Mr. Manley: Okay and what was they’re…did you present any plans or did you…?

Mr. Marcinak: No not until I just got submitted my plans for application for a Building Permit.

Mr. Manley: Okay.

Mr. Marcinak: The house just south of me it’s a two-story a…the house to…which would be the north it’s not a two-story but yet the elevation would create a…probably a story and a half beyond where I wish to be.

Mr. McKelvey: We like to point out that all the Members have visited the properties that are on the agenda tonight.

Mr. Marcinak: Excuse me? I’m sorry.

Mr. McKelvey: We…we have visited the properties…

Mr. Marcinak: Great yeah, yeah and…?

Mr. Levin: Are you staying completely in new footprint…in the old footprint?

Mr. Marcinak: I’m not changing the footprint at all. That’s why it was…it was…

Mr. Levin: All the (Inaudible)…

Mr. Marcinak: …to my surprise that I needed to get a variance.

Mr. Levin: …of the roof are not any different than they were?

Mr. Marcinak: Excuse me sir?

Mr. Levin: The overhangs of the roof are not going to be any different…?

Mr. Marcinak: No.

Ms. Gennarelli: Richard could you pull your microphone in more? I don’t think it’s projecting.

Mr. Marcinak: Richard or David?

Mr. Levin: Richard.

Ms. Gennarelli: Richard. No you’re fine.

Mr. Marcinak: Okay.

Ms. Gennarelli: Thank you.

Mr. Marcinak: Thank you.

Mr. Manley: I’d like to at this time read some letters that the Board has received from some of the neighboring property owners. The first one is dated September 14, 2016 to the Town of Newburgh Zoning Board of Appeals: Dear Members, This is to formally state my objection to the David Marcinak’s non-conformity requests 79 Susan Drive (46-4-12) section, lot and block, Town of Newburgh Hearing scheduled for September 22, 2016. Regards, Daniel J. Sheehan Jr.

The next is dated September 22, today, 2016:

Dear Members, In addition to my previous statement I would like to make the following clarification due to the fact that it is understanding that the north side of the house already infringes on the setbacks I object to adding a second floor as this will definitely create too much mass for the area. Regards, Dan Sheehan, 18 Susan Drive.

The next letter dated September 14, 2016:

To whom it may concern: I am hereby stating my objection to David Marcinak’s non-conformity request for 79 Susan Drive, Section 46, block 4, lot 12. I don’t believe that changing the side yard setbacks is at all in the interest of the owners of the adjacent properties. I have no objection to the construction of a second floor addition or to the re-roofing of the property. Thank you for your attention, Charles and Joyce Kuhar, 20 Susan Drive.

There’s another letter:

Dear Sir, Due to the fact that it is understanding that the north side of the house already infringes on the setbacks I object to adding a second floor as this will definitely create too much mass for the area. I also object to the fact that there is not enough room between my property and the proposed addition. They would be staring directly into my bedroom as well as my guest bedroom. I also object that I would lose my privacy. This extension would appear too large in size for the next door neighbors and surrounding area. Regards, Hemlatta and Naren Patel, 77 Susan Drive.

Mr. Marcinak: That’s the next lot uphill…

Mr. Manley: I’m not exactly sure where…

Mr. Marcinak: …correct, it’s north, well we have like…we have to determine understand what they’re speaking about.

Mr. Scalzo: We have a copy of the survey here a…prepared by Stephen Green, PLS and it says lands now or formerly of Patel is the lands directly to the north of the parcel.

Mr. Marcinak: It is, correct, it’s probably about sixteen to twenty-two foot in elevation higher. It is a ranch probably built in the’50’s. It’s still probably about that elevation above where the top of my roof is right now.

Mr. Manley: How many bedrooms does the a current a…

Mr. Marcinak: Three.

Mr. Manley: …home have?

Mr. Marcinak: Three.

Mr. Manley: And what is the proposal for?

Mr. Marcinak: We were thinking about four but we’re probably going to keep it to three.

Mr. Manley: Have you a run that by the Orange County…?

Mr. Marcinak: Oh, absolutely.

Mr. Manley: …Department of…?

Mr. Marcinak: Yeah, that area is very a…it’s been there for quite some time. You know you have the sewer, the water a…the sewer there is totally complacent for a three bedroom home so we’re willing to do a three bedroom home at this point. Even though if we added a second story the Patel…they…their elevation would still be higher.

Mr. Manley: So if the…

Mr. Marcinak: It’s interesting that someone that’s like two hundred foot away would object. As far as to the north as that their sight of view which may be towards the river or to…towards the a…you know, the eastern rising sun would not be…would not be blocked at all.

Mr. Manley: So if the Board were to grant a variance request…

Mr. Marcinak: Yes, yes.

Mr. Manley: …and put in the decision and resolution that not to exceed three bedrooms…

Mr. Marcinak: Yes.

Mr. Manley: …that would that or would that not be an issue?

Mr. Marcinak: No, it would be no it be fine with me.

Mr. Levin: And you would not be putting up the addition going up…?

Mr. Marcinak: No I wouldn’t say I wouldn’t go a second story, it would be nice to go a second story since with the elevation of the house to the north of me and the house to the south of me a the elevations are higher than the roof level that I have now and probably equal to if you struck a parallel line with the topography of the road of Susan Drive from 79 up to Patels and from the neighbor to the South would be an equal parallel line of the sight of the visual since we don’t necessarily have someone from the west side a…commenting what is happening on the west side.

Mr. Levin: The west side is the road.

Mr. Marcinak: Well the road is on the west side but the view is on the east side. So we have someone on the north who is already Patel who is quite eighteen, I would say, eighteen to twenty-five foot above elevation from what would possibly be my second story.

Mr. Scalzo: Sir, can I ask a were you familiar with the neighborhood prior to purchasing the home?

Mr. Marcinak: A…I was born in Cornwall, you know, that was ’68 a…

Mr. Scalzo: Okay.

Mr. Marcinak: …yes I was and I noticed it was a very nice area. A little bit of an older neighborhood not much of a a young neighborhood where some young families would want to come in and establish you know, a home and a want to set up shop.

Mr. Scalzo: Correct. So you would characterize the neighborhood as being an old, established neighborhood?

Mr. Marcinak: oh, absolutely.

Mr. Scalzo: As…as you…

Mr. Marcinak: However but across the street there’s been pretty nice a renovations where the houses are very…

Mr. Scalzo: I had seen that actually…

Mr. Marcinak: …nice. Yes.

Mr. Scalzo: …on the other side of the street…

Mr. Marcinak: Sure.

Mr. Scalzo: …there was a (Inaudible)

Mr. Marcinak: …and none of the people that that…

Mr. Donovan: Excuse me, if you could just do me a favor?

Mr. Marcinak: Yeah (Inaudible)

Mr. Donovan: One person can talk at once because I’m sorry Betty is going to have devil of a time…

Mr. Marcinak: Sure, hey…

Mr. Donovan: …trying to get the a…

Mr. Marcinak: …it’s all good.

Ms. Gennarelli: Thank you, Dave

Mr. Donovan: But you just interrupted me so…

Mr. Donovan: …you interrupted other peoples…

Mr. Marcinak: …you interrupted you, okay…

Mr. Donovan: …you interrupted other peoples…

Mr. Marcinak: …okay, I’m here…

Mr. Scalzo: Yeah, no, I…

Mr. Marcinak: I a…was talking…speaking with this gentleman a…I’m not sure like what’s happening so it’s cool.

Mr. Donovan: It may or may not be cool but only one person can speak at a time if we are going to have a record of the proceeding.

Mr. Scalzo: To extend on you’re a…point that your roof elevation, the top roof elevation would be almost level with your neighbors next door. As you come down Susan Drive…well perhaps it won’t be level…as you come down Susan Drive all of the roof lines follow the topography of the road. Correct?

Mr. Marcinak: Okay.

Mr. Scalzo: So if you were to be elevated much higher than them if…if…the way I’m understanding then the house that’s even lower than you, you know, in theory if that were as level as the top of your house that would be acceptable. The rooflines are following the topography of the road…

Mr. Marcinak: Okay as stated, yes. But most of the people we’ve been talking about have been on my side of the street.

Mr. Scalzo: Right and…

Mr. Marcinak: Yes.

Mr. Scalzo: …making…

Mr. Marcinak: …which from…

Mr. Scalzo: (Inaudible)

Mr. Marcinak: …westerly to easterly is an…an non-issue.

Mr. Scalzo: Correct. Across…

Mr. Marcinak: Okay.

Mr. Scalzo: …the street I did see a home that had an addition. I think it had a stone face…

Mr. Marcinak: Across the street…

Mr. Scalzo: …across the street and (Inaudible)…

Mr. Marcinak: …which direction…?

Mr. Scalzo: …south of you…

Mr. Marcinak: …to the south…?

Mr. Scalzo: … there was a driveway that was just sealed directly across the street from you the one so…

Mr. Marcinak: So is that on the other Susan Drive that loops down by the river?

Mr. Scalzo: No, no directly across the street.

Mr. Marcinak: A…oh…

Mr. Scalzo: I visited the property on Tuesday…

Mr. Marcinak: Heading north?

Mr. Scalzo: Heading south.

Mr. Marcinak: South…south…

Mr. Scalzo: Opposite side of Susan Drive south there’s a home that had…appears to be a relative new addition a…

Mr. Marcinak: So there would be no sight of distance between myself and the river at that point, correct?

Mr. Scalzo: Oh, no, no, you wouldn’t be a…I don’t think that you would impede the…

Mr. Marcinak: So he’s south so okay, tell me what is relevant about south.

Mr. Scalzo: So what is relevant about that is while it is a two-story which is what you’re also proposing here they have a very low roof, perhaps a three…

Mr. Marcinak: Yeah.

Mr. Scalzo: …three pitch… (Inaudible)…see that you were…

Mr. Marcinak: It’s an old…it’s an old kind of high ranch kind of thing yeah.

Mr. Scalzo: Okay, just stating what I observed… (Inaudible)

Mr. Marcinak: Sure I…I absolutely agree, yes. So south of me yes.

Mr. Manley: Do any of the other Board Members have any other questions for the applicant?

Mr. Bell: Yes, I do. Did you…did you mention that the…that you have a sewer that it’s connected to city (Town) sewer or septic?

Mr. Marcinak: You know, I do believe that a…there is a well there and there could possibly be a septic there as well.

Mr. Bell: Because I don’t see a septic on this.

Mr. Marcinak: Do you know what the rest of that area would be? Mr. a…?

Mr. Bell: Bell.

Mr. Scalzo: I thought was municipal sewer, I mean...

Mr. Bell: Yeah.

Mr. Marcinak: So is that municipal sewer, okay, that’s what I thought.

Mr. Bell: Do you?

Mr. Marcinak: So Mr. Bell that would be mister…that would be municipal sewer there in that area there where I am?

Mr. Donovan: Just for the record, the information from Code Compliance indicates Town water and private…private sewer.

Mr. Scalzo: Oh, individual sanitary service?

Mr. Marcinak: Okay, so we have…we have a Town water and private sewer correct?

Ms. Gennarelli: Septic.

Mr. Bell: Septic, yeah.

Mr. Marcinak: So I think with the a three bedroom which was there prior a, you know, it would be in conformity of what is…can be found in the area.

Mr. McKelvey: It was three bedrooms before.

Mr. Marcinak: Yup.

Mr. McKelvey: Okay.

Mr. Scalzo: Sir, the…

Mr. Marcinak: Yes.

Mr. Scalzo: …there’s a lovely mature oak tree in the front yard. Were there any plans to trim that or lose that as you were…?

Mr. Marcinak: Are you sure it’s really like good? Cause…cause a my friend said oh, my god that oak tree is like…is like really kind of shot so…

Mr. Scalzo: (Inaudible)

Mr. Marcinak: …but if I haven’t removed it would you like to see that tree, do you…?

Mr. Scalzo: No, I’m just curious what your intentions are.

Mr. Marcinak: A…I really haven’t thought about it that much but if something is healthy I’m all into keeping it. If it’s not healthy then…then it must be removed. It’s a…it’s a health issue you know as far as the tree is concerned.

Mr. Manley: If there is no other questions for any of the other Board Members at this point I’d like to open up the meeting to the public. If there is anybody here from the public if you could just raise your hand, come to the mic. First gentleman here with the purple.

Mr. Patel: Couple of facts…

Mr. Manley: If you would just state your name for the record and address.

Mr. Patel: Oh, okay, my name is Naren Patel I’m 77 Susan Drive, up north. I’d like to bring to your attention a couple of things that may not be accurate like he mentioned. There are three bedrooms upstairs and there’s a lower bedroom downstairs. It’s not a ranch the house that we are talking about, 79, it’s not a ranch it’s a bi-level. There is a room below, bedroom and there are three bedrooms upstairs. And the other thing I would bring is a I am on the north side and there’s hardly any room between my wall…my bedroom, guestroom and the proposed extension. Right now, again I disagree with him the roofline is a little bit lower right now a…at my roofline but it will be a massive roof line. I will be looking from my family room; I will be looking at that massive wall on the right side. So that’s my one objection and if you want to see I have some pictures taken as to how it’s going to look down the road, what it looks now.

Mr. Manley: Okay, most of the Board Members have been out to the site, to see the site and have walked the site. I myself have…have been back there with the pool and the fence in the back and I went around the other side. I do understand what you’re…what you’re speaking of when you say that the wall will be much higher. So instead of being up twelve or thirteen, fourteen feet it’s going to be probably twice that.

Mr. Patel: Correct, correct, yes.

Mr. Manley: Okay, do you have any other comments for the Board or anything else that you wanted to a…?

Mr. Patel: Another thing is that is there is a septic. All of Susan Drive has Town water and septic, our own septic. There is no city’s (Town) sewer system there.

Mr. Manley: Okay, alright, thank you very much.  
  
Mr. Patel: Thank you.

Mr. Manley: Yes sir?

Mr. Catanzaro: My name is Charles Catanzaro; I live on 26 Susan Drive. I’ve lived there for thirty-nine years. I find the neighborhood a very aesthetically beautiful neighborhood. I would not like to see a large mass of a building going up in that location and what bothers me more than all is that the gentleman just purchased the property. He should know what the regulations are and if no other reason I don’t think you should give him the right. I think it’s just a slap in the face to the Town to go ahead and build something that he knew before he purchased it was not going to qualify.

Mr. Manley: Thank you. Is there anyone else from the public that has any questions or comments for the Board?

Mr. Marcinak: So we…rebut that…?

Mr. Manley: Well if there is something you’d like to add certainly.

Mr. Marcinak: Yeah, a…I do believe that in the early 2000’s or late 1990’s a…the zoning in Newburgh was changed for the side yard setbacks…a…from side yards to front yards to rear yards and I do believe that approximately, I could be incorrect, eighty percent at that point was deemed a…non-conforming to what…

Mr. Manley: Eighty percent where?

Mr. Marcinak: Well in the Town of Newburgh in general.

Mr. Manley: In the entire Town?

Mr. Marcinak: Yeah, yeah. It was just…this is just general, it’s not a…I’m not asking you to quote me. So what we have is I’m not asking to move the side yard setbacks, I’m not asking to be above and beyond a…the people that were here this evening that I…I totally a…am respectful of them showing up. They’re north of me, south of me, there’s nobody west of me so when I go up the second story I will still be less than would be 77 Susan Drive, elevation lower and of the high ranch that’s I’m not sure of what the number is, it’s just below me so I’ll be a little bit above that for the second story and it’s actually like a two hundred and forty foot a…master bedroom that’s above…that’s there. And so we have is that absolutely I would say ugly structure a…as far as the soffits are concerned and the type of roofline that is there. So in that neighborhood what I wish to do would completely a…compliment the properties to the north, to the south, to the east, maybe to the west that would be absolutely a endearing to a young family that wanted to come to Balmville and have a family and not in…encumber anyone’s view that may have presented a opinion here this evening.

Mr. Manley: So this actual home is not going to be for your personal use, is that correct?

Mr. Marcinak: That’s correct, that’s correct.

Mr. Manley: Okay.

Mr. Marcinak: But I would, you never know, I mean it’s just…

Mr. McKelvey: The setbacks are not going change if…

Mr. Marcinak: Excuse me?

Mr. McKelvey: The setbacks will never change.

Mr. Marcinak: Well they did change in the late…

Mr. McKelvey: Yeah, but I mean…

Mr. Marcinak: …they, they did.

Mr. McKelvey: …what they are now is what they are going be…

Mr. Marcinak: … (Inaudible) totally wrong.

Mr. McKelvey: … (Inaudible) unless you tear part of the house down.

Mr. Marcinak: But like I said we’re…we’re speaking with people this evening that are the north of me and south of me, so west of me they have no visionary blockage. So it’s just, what I wish to do it would be nice to have a second story home there. The soffits a…there…it’s…it’s a very unattractive home so I would probably guess that the people that like in actual conform, you know, in my three or four, five or six neighbors, you know, it…it’ll be a beautiful benefit to what they have there as far as a home to what’s there now, it’s a burned out a…building from the ‘50’s that’s absolutely unattractive, unlivable. And I’m going to build something that’s absolutely beautiful and a…a new young family would love to be there.

Mr. Manley: Well I’m…I’m going to be bluntly honest with you and I’m only one person on the Board. There’s other votes here, I don’t know how they’re going to vote but I’m going to be perfectly upfront with you. If you had owned this house and the zoning had changed I think I would be more inclined to grant relief under the Code because you already owned the property and it was changed while you owned it. But the fact that you purchased the property just this May…

Mr. Marcinak: Yeah.

Mr. Manley: …you know, you should…you should have and you’re charged with knowing the zoning whether or not you, you know…

Mr. Marcinak: You can search the files and everything that you can do that’s non-conforming a…respectfully Mister…

Mr. Manley: I’ve…I’ve given you to speak so…

Mr. Marcinak: …Manley, yes so…

Mr. Manley: …if you can hear me out at this point…

Mr. Marcinak: …until you actually a…a…a…actually put in application do you realize these laws that are there. Unless you followed the minutes for the last twelve or thirteen years in the Town of Newburgh you would not know these…

Mr. Manley: … (Inaudible)…

Mr. Marcinak: …you would not know what we’re dealing with right now.

Mr. Manley: We’re going to…we’re going to have to agree to disagree because there’s…

Mr. Marcinak: Well that’s…

Mr. Manley: …avenues that you can…

Mr. Marcinak: …okay…

Mr. Manley: …can take to…

Mr. Marcinak: …that’s fine…

Mr. Manley: …to explore….

Mr. Marcinak: … (Inaudible)…

Mr. Manley: …to determine what the zoning is…

Mr. Marcinak: …like I said…

Mr. Manley: …for a particular property.

Mr. Marcinak: …I would not have known and I asked and there was nothing in the files. You usually check a file. When I go buy a property I’ll check a file for non-conformities and things that may be against zoning and they will not show up in this case even though it’s you know, something that the zoning changed back in the a…early 2000’s…you would not know that until you actually try to apply for a Building Permit or renovation permit. I am not extending the building. I’m not moving the original footprint. I am a adding a second story that’s still probably the same height a little bit probably like twelve foot higher than the house to my right and less than the elevation of the first floor of the house to my north. That’s what I’m asking for.

Mr. Manley: And I’m very clear…

Mr. Marcinak: And this house has been there since ’58, people have been living there, and I just wish to recreate and build a very, very nice home for a young family to come in and I wish to move forward.

Mr. Manley: And I’m explaining to you my position. I don’t know what the other Board Member’s position is here but this is my position. My position is that you know, you just purchased the home you should have…you should have had an opportunity to look at…

Mr. Marcinak: You should have…you should have…the you should have thing…is…is no I did ask the Building Department and unless I can pull up the file which I did under a…

Mr. Manley: I’m not…I’m not here…to dispute…

Mr. Marcinak: …under a FOIL…a FOIL respective it does not come up to me respectfully; it does not come up to me where we are with the side yard setback.

Mr. Manley: If you’re not going give me an opportunity to explain to me my position then there is no…no reason for me to continue any further.

Mr. Marcinak: Go ahead, that…that’s very fine, thank you.

Mr. McKelvey: I was just going to say he’s speaking…let him finish.

Mr. Marcinak: I will.

Mr. Manley: The second item is the request for the variance has to take into account a number of factors that I’m looking at one is does it fit the character of the neighborhood? Now, my opinion is based on the…the height that you’re looking for the homes that are in that are mostly one-story, one and a half story. There’s not a lot of two-story homes. It doesn’t necessarily fit the character of the neighborhood. I really can’t get my arms around the request because the request that, from what I see, is significant, what you’re asking and there is considerable public concern with regard to what, you know, you’re looking for as far as your request. So, you know I’m…I want to at least give you the understanding that I just, you know, as…as one Board Member on this Board I…I don’t necessarily support your submittal as you have it before the Board.

Mr. Marcinak: Okay.

Mr. Manley: That, that…

Mr. Marcinak: I can respect your…

Mr. Manley: …may not be the…

Mr. Marcinak: …opinion, yes, thank you...

Mr. Manley: …case with…with the other Board Members…

Mr. Marcinak: That’s great…

Mr. Manley: …but that’s my opinion…

Mr. Marcinak: I can respect you…

Mr. Manley: …and I wanted you to have…

Mr. Marcinak: …one out of seven, yes…

Mr. Manley: …absolutely.

Mr. Marcinak: …I respect that, yes.

Mr. Manley: Alright, if there’s any other questions or comments from any other Board Members.

Mr. McKelvey: There’s a hand up.

Mr. Manley: Yes, sir?

Mr. Catanzaro: Now that I know the gentleman is a builder it’s all the more reason. He’s looking to make a bigger profit by increasing the square footage. If he wants it…if doesn’t like the looks of the building he should have thought about that when he purchased it. He certainly can change the siding and the soffits and all the exterior he wants to change. We’re not look…asking for him not to change the square footage.

Mr. Manley: And I will add that’s one of the factors that…that I don’t….I respect the fact that he’s a builder. He can certainly come in just like anybody else and request it. What I look at is specifically the request. Does it fit the character of the neighborhood? Is it something that, you know, is large in size? That’s really the whole crux of the area variance. The applicant is charged with knowing the zoning. It’s kind one of those things that you can’t buy something and say well I didn’t know what the zoning was or I didn’t look into it. So those are the things that…that I’m looking at and I really don’t, you know, feel that that it has met those tests. Now there’s another gentleman here that had additional comment?

Mr. Patel: The house on the south side has recently been sold. It’s in transition right now. The new owner doesn’t even know what’s going on in the next door house. If he had known I’m sure he would have been present here and the current owner probably hasn’t told the old…new buyer that what is going on in the house next door.

Mr. Manley: Yes, sir in the back?

Mr. Milton: My name is Rick Milton; I’m at 88 Susan Drive directly across the street from the proposed property. The more I listen the more against this whole proposal I am. I mean if he was going in and renovating the house that’s existing there I would certainly have no problem with that. I do not like the idea of looking across my street and seeing an additional story going on, in my opinion, unnecessarily and that’s my opinion. Thank you.

Mr. Manley: Okay, thank you sir.

Mr. Scalzo: Jim if you could, if this application were in front of us that were a straight rebuild or reconstruct from the damage, this gentleman wouldn’t be here today, correct? It is the increasing of the degree of non-conformity by going up with the second story that has led him here.

Mr. Manley: Correct.

Mr. Scalzo: Do you understand that sir?

Mr. Marcinak: Absolutely.

Mr. Scalzo: Okay, so if you were to just rebuild the house you wouldn’t be here in front of us today.

Mr. Marcinak: I can’t use the…the a…late ‘50’s roofline…?

Ms. Gennarelli: Can you get a little closer to the microphone, please, David? Thank you.

Mr. Marcinak: It’s absolutely unattractive that what is there and I can totally respect the neighborhood that says, you know, maybe even though…the last gentleman I’m glad that he stepped up, he is directly maybe west of myself. I don’t think that the twenty-four by twenty-two depth towards the east…twenty-two foot depth towards the east is going to affect his view, nor will it affect the view of the 77 Susan Drive which is north of me. Elevation wise I do not believe it will affect their view. I do understand that we have an older house here. It’s absolutely unattractive a…the rooflines that were created there was probably more of a (Inaudible) than almost in the Orange County building. People hate it. It’s not attractive. I wish to do an attractive building a…the second story would be nice which I do believe I did not hear from anyone in the audience this evening that said, you know, he’s going to block my view. I did not hear that. We had north and we are south of what I am doing. I wish to create a really nice house with a second story that is much more in the times of physically, you know, actually how it looks in the neighborhood would be very attractive to a young family who wishes to come to Newburgh and say this is my home, this is my house and I love it. That’s what I wish to create.

Mr. Manley: Thank you. Any other questions, comments from any other Board Members?

No response.

Mr. Manley: At this point, if there’s no further questions I’ll look for a motion to close the Public Hearing.

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

Mr. Manley: I have a motion from Mr. Scalzo? Do we have a second?

Mr. Masten: Second.

Mr. Manley: We have a second from Mr. Masten.

Ms. Gennarelli: Roll call.

Darrell Bell: No

Mr. Donovan: This is just to close the Public Hearing.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed. The Board will consider this application at the end of the meeting this evening and vote.

Mr. Marcinak: When will I find out? At the end of the evening or tomorrow at a certain time?

Mr. Manley: A good chance at the end of the meeting you’ll find…

Mr. Marcinak: Alright so may I ask the Board if the second story is not a…in…indecisive with the Board…I’d like to keep it the ranch. I just want to change the look of the building. It’s not necessarily that I have a second story. I just wish to rebuild a building that has been burnt and there’s no family living there and I wish to rebuild it and whatever the Board would deem consistent with what they feel would be a very good vision of that neighborhood to rebuild I wish to do since I am buying the structure and it right now is uninhabitable and I wish to make it habitable. Second story not a necessity however from the north to the south to the west we have not had any considerations or disagreements with the west as far as the view. So I wish to respectfully say to the Board I a…wish to…move forward…

Mr. Manley: At this point…

Mr. Marcinak: …with this structure and make it a…conforming to what the…the a Board would like to see…

Mr. Manley: At this point, the Public Hearing…

Mr. Marcinak: …and move forward, yes.

Mr. Manley: …Mr. Marcinak is closed.

Mr. Marcinak: Thank you I just wish to that be on the record. And I’m asking that to be on the record. I wish that to be moved forward because…

Mr. McKelvey: The Hearing is closed.

Mr. Marcinak: …because you…you have a building that’s…that’s really degrade to…to the neighborhood…

Mr. Manley: We will…we will vote on it at the end of the meeting today.

Mr. Marcinak: Thank you so much and I would receive your decision when? I’m just curious. I just don’t know that when you say that. I don’t know.

Mr. Manley: At the end of the meeting.

Mr. Marcinak: And you will…I will stand by and you will tell me what we have come about?

Mr. Manley: The Board will vote on it at the end of the meeting.

Mr. Marcinak: Alright, great, thank you so much. I…

Mr. Manley: You’re welcome.

Mr. Marcinak: …appreciate your and respectfully appreciate your time.

(Time Noted - 7:25 PM)

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ZBA MEETING – SEPTEMBER 22, 2016 (Resumption for decision: 9:07 PM)

DAVID MARCINAK 79 SUSAN DRIVE, NBGH

(46-4-12) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a second floor addition and new roof over the entire dwelling.

Mr. Manley: The Board is resuming its regular session. Tonight we’re going to be voting on the applications that are before us. The first application before the Board this evening is the application of David Marcinak, 79 Susan Drive in Newburgh requesting area variances for the increasing the degree of non-conformity of one side yard setback and the combined side yards setback to build a second floor addition and new roof over the entire dwelling. This is also a Type II Action under SEQR. Do we have discussion application starting with the area variance criteria that the Board must go through? The first item being is whether the benefit can be achieved by other means feasible to the applicant. Do we have discussion on that item?

Mr. Scalzo: Well the pre-existing, non-conforming condition I…I believe that there is no other alternative.

Mr. Manley: Okay.

Mr. Scalzo: For the side yard a…that’s close to the Patels. That standing on its own, I’m not considering the height difference at that point but for the pre-existing, non-conforming I can’t see it being any other way.

Mr. McKelvey: You can’t change the setbacks.

Mr. Scalzo: Correct.

Mr. Manley: The second item for the Zoning Board to consider is does the request create any undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: Well and that’s where as we were discussing earlier the topography of the land follows the rooflines of the homes. My opinion is with a second story would change the character of the neighborhood. That’s my opinion.

Mr. McKelvey: Absolutely.

Mr. Levin: I agree.

Mr. Bell: I agree.

Mr. Manley: Okay. The next item that the Board has to consider is whether or not the request before it is substantial in nature.

Mr. Levin: I feel it is. It’s changing the neighborhood…

Mr. Scalzo: And that’s with regards to the second story, correct?

Mr. Levin: Yes.

Mr. McKelvey: Yeah.

Mr. Scalzo: As the footprint of the home is now as a bi-level or a 1-story I don’t…I don’t think it’s…

Mr. Marcinak: (Inaudible)

Mr. Scalzo: …a ranch? (1-family contemporary) I don’t consider that to be significant. However with the second story I would consider it to be (Inaudible).

Mr. Levin: Right, yeah.

Mr. Manley: The next item is whether the request will have any adverse physical or environmental effects on the neighbors?

Mr. Scalzo: I don’t believe it would have a physical or environmental, no?

Mr. McKelvey: No, no.

Mr. Levin: No.

Mr. Manley: And the last item that the Board must consider is whether or not the alleged difficulty is self-created? This is relevant but it’s not necessarily determinative in nature.

Mr. Scalzo: As you had mentioned earlier in the meeting a…when you purchase a property you are charged with the knowledge of the zoning that comes with it, so yes.

Mr. Manley: And we will note that there has been significant comment from the neighbors with regard to this application. With that information that the Board has and going through the area variance criteria do we have either a motion for approval or a motion for disapproval on the application?

Mr. Scalzo: Jim, can we split this in two? One being the side yard variance and the other being the…

Mr. Manley: You certainly may, they’re different variance.

Mr. Donovan: Well, let’s just take a look at this for a second because I believe that the need for the a…combined is as result of the…

Mr. Manley: Non-conformity.

Mr. Donovan: …(Inaudible). They are related so in other words there’s no…as testified the building footprint is not going to change so the combined yard setback that variance also relates to the second story addition. That’s increasing the degree of non-conformity, the increase of the mass of the building increases the degree of the non-conformity.

Mr. Manley: If it was a height variance then you could do that separately.

Mr. Donovan: That’s correct, yeah.

Mr. Manley: Okay.

Mr. Scalzo: I do.

Mr. Manley: They’re interrelated.

Mr. Scalzo: Which would also go back to my comment a…prior to the…our executive session (adjournment to confer with counsel) if this were just a rebuild Mr. Marcinak wouldn’t be here.

Mr. Manley: Correct.

Mr. Donovan: Correct.

Mr. Manley: As is, right now it could just be rebuilt without the second story.

Mr. Marcinak: (Inaudible)

Mr. Manley: I don’t mean to interrupt you but the Board right now is in the middle of its deliberation…

Mr. Marcinak: (Inaudible)

Mr. Manley: …and we’ve…we’ve already closed our Public Hearing so unfortunately we can’t take any further comments.

Mr. Marcinak: (Inaudible)

Mr. Levin: I make a motion for a negative declaration.

Mr. Donovan: Well it’s a Type II Action under SEQR so we need a motion to either approve or deny the variance.

Mr. McKelvey: Approve or deny.

Mr. Levin: A motion to deny.

Mr. Manley: So Mr. Levin is making a motion to deny the application before us this evening. Is there a second on the Board?

Mr. McKelvey: I'll second it.

Mr. Manley: We have a second for denial from Mr. McKelvey. If the Board Members vote yes that is to deny the variance, no would be that you’re not wishing to deny the variance.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried. The application for the variance has been denied.

Mr. Marcinak: (Inaudible)

Mr. Manley: I would talk to the Code Compliance Department. We can’t unfortunately give you any…

Mr. Marcinak: (Inaudible)

Mr. Manley: Yes, yes, you just…I would speak to Code Compliance and they can…they’ll…they’ll work with you on what your options are after that. Okay.

Mr. Marcinak: (Inaudible)

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:13 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time Noted – 7:28 PM)

MOZO PROPERTIES, LLC. 286 NORTH PLANK ROAD, NBGH

(34-2-55) B ZONE

Applicant is seeking area variances for the front yard setback of an existing dwelling and a side yard setback for a framed garage that is proposed to be converted into an office for an application before the planning board for site plan approval.

Mr. Manley: The next application before the Board this evening is Mozo Properties, LLC., 286 North Plank Road, Newburgh, Type II Action under SEQR, seeking area variances for the front yard setback of an existing dwelling and a side yard setback for a framed garage that is proposed to be converted into an office for an application before the planning board for site plan approval.

Ms. Gennarelli I am going to be stepping down on this application.

Ms. Gennarelli: Okay, you are recusing?

Mr. Manley: Yes.

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

Mr. Brown: Thank you; I am Charles Brown, the engineer for the applicant a…

Ms. Gennarelli: One second…Richard did you want to read something?

Mr. Levin: Yes, the Mozo Properties is asking for variances, area variances for the front yard setback of an existing dwelling and a side yard setback for a framed garage as proposed to be converted into an office for an application before the planning board for the site plan approval.

Mr. Brown: Thank you. I am Charles Brown, the engineer for the applicant as further noticed this application is before the planning board for a change of use, a site plan approval for a change of use. There’s an existing residence on the a a on the property. It’s forty-eight point three feet from the property line and in the Town of Newburgh anything on a State highway has a sixty foot front yard. We don’t meet that a so we’re looking for a variance on that of approximately eleven point seven feet. In addition to that there’s a free standing garage structure which part of our application before the planning board is proposed to be converted into an office a…that structure is thirteen point eight feet off the property line a because we’d be converting it to an office a we would have to meet the side yard setback a and we’re short one point two feet on that for a fifteen yard…foot side yard setback. The property is in a B zone, it’s a large parcel three acres a the minimum zoning based upon the sewer and water here is fifteen thousand square foot so we’re roughly ten times the minimum lot size. It’s not going to be out of the character of the neighborhood. The adjoining office building is actually closer to both the side yard and the front a front yard, front setback. The buildings are existing so it’s not going to have a detrimental effect on the environment or the neighborhood and a we’re here hopefully to get a variance so we can proceed with our planning board application. Thank you.

Mr. Scalzo: So just to restate or…or my impression of what you said, Mr. Brown, is pre-existing non-conforming is why you’re here?

Mr. Brown: Correct as soon as you go in to put an application for the planning board for site plan approval of any pre-existing, non-conforming a setbacks have to be reaffirmed by this Board here.

Mr. Scalzo: And those are the only two variances we’re looking for, correct?

Mr. Brown: That’s correct.

Mr. Scalzo: I have no other questions myself.

Mr. McKelvey: Any other questions from the Board?

No response.

Mr. McKelvey: Is there anybody from the public that would like to speak on this?

No response.

Mr. McKelvey: If not, I’ll look for a motion to close the Public Hearing

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

Mr. Bell: I second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

James Manley: Recused

Mr. Donovan: That’s definitely a record for Charlie.

Mr. Bell: Yes, it was.

(Time Noted - 7:32 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Resumption for decision: 9:13 PM)

MOZO PROPERTIES, LLC. 286 NORTH PLANK ROAD, NBGH

(34-2-55) B ZONE

Applicant is seeking area variances for the front yard setback of an existing dwelling and a side yard setback for a framed garage that is proposed to be converted into an office for an application before the planning board for site plan approval.

Mr. Manley: The second application this evening will be read by Mr. McKelvey.

Ms. Gennarelli: And you’re recusing?

Mr. Manley: Yes.

Ms. Gennarelli: Okay.

Mr. Levin: Variances for Mozo Properties, 286 North Plank Road, area variance for the front yard setback of an existing dwelling and a side yard setback for a framed garage that is proposed to be converted into an office for an application before the planning board for site plan approval.

Mr. McKelvey: Betty, do you want to go through the five points?

Ms. Gennarelli: Okay. I shall do that. The first is whether the benefit can be achieved by any means feasible to the applicant. Do we have discussion on that?

Mr. Scalzo: It is a pre-existing, non-conforming, it cannot.

Ms. Gennarelli: Will there be an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Levin: I don’t believe so, no.

Mr. McKelvey: No.

Ms. Gennarelli: Is the request is substantial?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Masten: No.

Mr. Bell: No.

Ms. Gennarelli: Will the request will have adverse physical or environmental effects?

Mr. McKelvey: No.

Mr. Bell: No.

Ms. Gennarelli: And whether the alleged difficulty is self-created which is relevant but not determinative?

Mr. Levin: This we always get hung up on.

Mr. Donovan: Well, I mean, almost every area variance is self-created.

Mr. McKelvey: (Inaudible)

Mr. Levin: (Inaudible)

Mr. Scalzo: (Inaudible)

Mr. Bell: Yeah.

Mr. McKelvey: So do we have a motion…?

Ms. Gennarelli: Okay, no, I have a report from Orange County Department of Planning which I’ll read into the record. The Planning Department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that inter-municipal or county-wide impacts would result if the Board finds that granting relief is warranted in this matter. We have no objection to the variance proposed in this appeal. The applicant is not proposing to include signage at this time. We advise the Town and the applicant that additional variances may be necessary if the applicant is unable to conform to the signage requirements for the business which they have stated they will be able to meet. And then the County recommendation is Local Determination.

Mr. McKelvey: After going through the five points do we have a motion?

Mr. Bell: I'll make a motion for approval.

Mr. McKelvey: Do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

James Manley: Recused

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:15 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time Noted – 7:32 PM)

GRZEGORZ SIEROTA 6 HIGH LONESOME TERRACE, WALLKILL

(1-1-77.2) A/R ZONE

Applicant is seeking area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures, the maximum allowed (4) four vehicle storage and no such building shall project closer to the fronting street than the main dwelling to construct an accessory building (40 x 60 x 25).

Mr. Manley: The next item before the Zoning Board this evening is the Public Hearing for Grzegorz Sierota, 6 High Lonesome Terrace, Wallkill, Type II Action under SEQR requesting area variances for the maximum height of accessory buildings, the maximum allowed square footage of accessory structures, the maximum allowed (4) four vehicle storage and no such building shall project closer to the fronting street than the main dwelling to construct an accessory building (40 x 60 x 25). Ms. Gennarelli are the mailings in order?

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

Mr. Manley: Thank you.

Ms. Gennarelli: You’re welcome.

Mr. Manley: Good evening.

Mr. Winglowitz: Good evening, Ross Winglowitz with Engineering & Surveying Properties on behalf of Mr. Sierota regarding his application for an area variance for a garage that he would like to build on his property. I don’t know if you’ve had an opportunity to get up to Mr. Sierota’s property but it sounds like you guys are pretty diligent based on what I heard to this evening. Mr. Sierota has a several adult a vehicles that he has up there, trailers, snowmobile trailers a he has a little back hoe that he uses around the property. He would like to build this garage so that he could store these a these vehicles inside the building as opposed to where he has them now which is stored outside on the property.

Mr. Manley: Roughly how many vehicles does he have that he’s looking to store? Could you run through…?

Mr. Winglowitz: Yeah and I…I guess we had a question regarding the the use of the word vehicle and how it was being interpreted in the zoning you know, are we talking registered vehicles? Is it cars only? It…there is no real definition…I know that was the opinion, I guess of the Building Inspector that a the four vehicles in this. He’s not looking to have four cars sort of I mean it’s more of a the trailers he has, he…I’m just looking at his aerial photo, his five trailers on the property a…

Mr. Manley: What…what type of trailers are they?

Mr. Winglowitz: Two snow mobile trailers, ones a small dump and ones a flatbed a he has a little backhoe on the property a…

Mr. Manley: So we’ve got three trailers?

Mr. Winglowitz: Yup.

Mr. Manley: How long are the trailers?

Mr. Winglowitz: It’s actually four trailers, two snow mobile trailers…

Mr. Manley: Roughly what’s the size of the snow mobile trailers?

Mr. Winglowitz: Ones a dou…ones a single so they’re about eight foot wide by twelve foot long, the single, the doubles probably eight foot by twenty foot long. I should say four up. He’s got a little dump trailer there, you know, eight by twelve. He’s got a flatbed for his backhoe that looks about eight by twenty.

Mr. Manley: Are they all registered?

Mr. Winglowitz: I believe they are, yes. That’s my understanding.

Mr. Manley: Are any of them used commercially?

Mr. Winglowitz: No a not to my knowledge.

Mr. Manley: And what is the applicant’s occupation?

Mr. Winglowitz: He actually a works for FedEx as a contract hauler so he…he has a fleet of trucks and he actually just got approval for a building down on 17K where he a basically FedEx no longer owns their own trucks. They hire people who own their FedEx trucks and he’s one of those guys, I mean, has several vehicles that he keeps down in 17K.

Mr. Manley: And are they tractor-trailers?

Mr. Winglowitz: FedEx box trucks like the delivery trucks.

Mr. Manley: Okay.

Mr. Winglowitz: So the twenty-three foot long box trucks or twenty-four long box trucks that you’ll see the FedEx deliveries in.

Mr. Manley: Does he have a tractor to pull them? Does he have a tractor?

Mr. Winglowitz: Does he have a trac…no, it’s they’re not…they’re…they’re a a box truck so it has it’s…well I mean, there’s no cab, no separate cab so.

Mr. Manley: And are those going to be housed cause this garage would certainly be big enough to house them.

Mr. Winglowitz: No, he has like I said just bought a new facility on 17K that he’s in the process of renovating just for that purpose for those vehicles.

Mr. McKelvey: Why is this building so big and so high then?

Mr. Winglowitz: Because the number of vehicle that he has…

Mr. Scalzo: Heighth?

Mr. Winglowitz: …on the property. Well in…when you get to that width you know he’s talking about twenty-four foot a…excuse me, forty foot wide you basically once you get to that width you have a stan…a normal eave height by the time you get a traditional peak that’s why the height is being exceeded.

Mr. Manley: This structure is bigger than this house.

Mr. Winglowitz: A…the square…the…the footprint is probably bigger than his house, yes.

Mr. Manley: That’s (Inaudible)

Mr. Winglowitz: The house is over three thousand square feet but the the footprint of the building since this is only one story you are correct it is larger than his house.

Mr. Manley: I mean, that’s huge.

Mr. Winglowitz: A…it’s a…it’s a substantial building, yes.

Mr. Scalzo: Yeah, the accessory building setback requirement I believe is five feet in this case?

Mr. Winglowitz: Yeah.

Mr. Scalzo: However, the size of the structure would again it’s the footprint of the house size perhaps it would be more appropriate to have that within the a say a primary residence setback line?

Mr. Winglowitz: Certainly could a that is the flattest area of the site that’s got…that’s why it’s there if you saw the site it slopes steeply up to the house, it slopes steeply away from the house in the back so there is really not another good location for it a without a lot of grading. We could certainly pull it to the south a in order to accommodate the side yard setback a you know, if that was the Board’s decision based on the size of the structure. I’m sure my client would agree to that.

Mr. Scalzo: Well yeah I also see that he’s looking for a…

Ms. Gennarelli: Darrin, I’m sorry, could you…?

Mr. Scalzo: Pardon me Betty; I’m sorry I was looking at the plans. He’s looking for a twenty-five foot building heighth and as you just explained it had to do with it’s a function of the width of the building.

Mr. Winglowitz: The width of the building, yes.

Mr. Scalzo: However, he also has an excavator out there and he can probably excavate into the hill to set that building a little lower if it was possible, it may not need the full twenty-five, the additional ten feet of variance in that case.

Mr. Winglowitz: Well since it’s a one story building he couldn’t really a set it into the hill because he’ll need access to the building for the garage doors on this side and this side is flat so the only…I guess the only way you could do that would be to set it into the hill…

Mr. Scalzo: Would be to rotate it and a…

Mr. Winglowitz: (Inaudible)

Mr. Scalzo: (Inaudible)

Mr. Winglowitz: …shove it back up into the hill. You’d still have the twen…you know the same eave height on that downhill side as you would if it was up hill. And…

Mr. Manley: Now if you’re…if you’re only storing small equipment like you saying why would you need (Inaudible) feet high?

Mr. Winglowitz: A…he has a backhoe on a trailer, a boom on the backhoe and the trailers located when it’s on the trailer it gets pretty high. It won’t be residential height door we’re talking a commercial…

Mr. Manley: And the need for a door in the back, that he can’t get out of?

Mr. Winglowitz: No, I don’t know if that was plan. Does he have a door on back?

Mr. Manley: He’s proposed having a door in the back there.

Mr. Winglowitz: Yeah.

Mr. Manley: With only ten feet in the back how would you…?

Mr. Winglowitz: A…I don’t know why he has that in the back. I can’t…can’t answer that question.

Mr. McKelvey: What does he use the backhoe for?  
  
Mr. Winglowitz: On his property, if you seen he likes to play around his property. He graded a little area over here to make it a lawn area.

Mr. Levin: So what’s the need for the trailer?

Mr. Winglowitz: Pardon me?

Mr. Levin: What’s the need for the trailer?

Mr. Winglowitz: I don’t know. If he…if he uses it on the properties…that he owns, he owns several properties. The world has changed you know I mean it used to be a riding mower now everybody has all kinds of toys that a they they use on the property. I just think it would be a big improvement to the property a if he’s able to build this building, tastefully build it, right colors, store his equipment inside and clean up the…

Mr. Manley: (Inaudible)

Mr. Winglowitz: …his property.

Mr. Manley: Could you share with the Board what other properties in the neighborhood are consistent with this size structure that have structures this big that are in the…in the neighboring area?

Mr. Winglowitz: A…not accessory structures, there is an accessory structure a garage right…basically in the same orientation on the neighboring property just to the north and I’ve got a few aerial photos to show that, just to kind of…

Mr. Scalzo: The one (Inaudible) as well I believe (Inaudible)

Mr. Winglowitz: Yeah just to kind of show that you know…this isn’t a…something that’s a…not been done, there’s a…the neighboring property has a garage in his…in his front yard as well. Kind of mirror image of what we’re looking to do here.

Mr. Winglowitz approached the Board with the photos

Mr. Winglowitz: Albeit not as large as this building. So that is a a accessory building here, there’s another accessory building on the neighboring property a directly east of us right in the vicinity of where this structure is proposed.

Mr. Manley: I think it will pale in comparison to the one that is there.

Mr. Winglowitz: I would not disagree.

Mr. Scalzo: Sir, would you know if there is any intention of putting a lift in there?

Mr. Winglowitz: Not to my knowledge.

Mr. Manley: That doesn’t look like…are you certain that that’s a garage here?

Mr. Winglowitz: To the a…

Mr. Scalzo: North.

Mr. Winglowitz: …yeah, I believe that’s a garage, I’m not certain but there’s paved right up to the front doors, car sittin in front.

Mr. Donovan: Yeah, Ross, as you know one of the five factors that the Board has to consider is whether or not the variance is substantial, so…

Mr. Winglowitz: Correct.

Mr. Donovan: …when you look at the a information provided by Code Compliance in terms of the a square footage I mean it’s a variance of like a hundred and fifty-five percent…

Mr. Winglowitz: That is correct.

Mr. Donovan: …and the height is a variance of sixty-seven percent. I don’t know that the Board has ever granted at least in my seven or eight or nine years here a height variance or…or a square footage variance to that degree.

Mr. Winglowitz: One thing I would like to point out is that the Code also has a calculation for the size of an accessory structure and then goes further on to limit the size of it. But if you use that calculation actually this and and we provided it on the plan a…the calculation would permit a building of two hundred…two thousand, four hundred and two square feet. So from a planning perspective it was kind of contemplated that based on the size of your property and your size of your house that a size of an accessory structure this this size a was appropriate. The Code further limits it back down to a thousand square feet after you go through the calculation a and I understand it. If he were to a look at a smaller building a…I…I could have that conversation with him. I just think it would be a bad opportunity to miss for Mr. Sirota and his neighbors for him to not get something here, I think it makes a lot of sense whether its this size building or something slightly smaller. I think it would just be a benefit to the area.

Mr. Manley: Well I’ll be…I’ll be perfectly honest, most people that are building a garage that big in my experience and from what I’ve seen over the years they are using it for business purposes. There’s no, you know, you don’t…

Mr. Winglowitz: I could name a couple in the Town that are…that are housing boats that are twenty-five foot long and a lot of things (Inaudible)…

Mr. Manley: They’re the exception to the rule.

Mr. Winglowitz: Yup.

Mr. Manley: But most of them end up morphing into other stuff.

Mr. Winglowitz: Yeah.

Mr. Manley: And then the problem becomes now you have neighbors that are upset because now all of a sudden, you know, it’s being used as a machine shop and there’s hours, you know, all hours of the day there’s noise coming from there and now you have noise complaints. So that’s really why the Town has limited the size of these accessory structures because they tend to morph into other things and one the horse is out of the…out of the barn, hard to get it back so...

Mr. Winglowitz: I understand your concern, I mean, you know, I can only tell you what my client’s intention said…he’s voiced to me I know that he’s extremely busy with his other business so for him to actually run a business out of this thing would not be illogical because he has a very successful business doing what he’s doing for Federal Express.

Mr. Manley: I’d like to read two things into the record before we entertain any comments from the public. The first one is a letter dated September 20, 2016 and this is to the members of the Zoning Board,

I’m writing to you to oppose the variance application for the following reasons:

The individual has eight reasons. The first one is the structure would take a bigger footprint than any other structure in High Forest Ridge Subdivision development of seven lots, filed 8/30/01 map 164.01. It would be as tall as if not higher than any structure in the development. Two, the backside of the structure would be ten feet from my yard…from my front yard with a garage door opening and I find it hard to believe that anything could go out that door without going onto my property. Three, most all vegetation would be eliminated making a twenty-five high building within plain view above most any tree remaining making it very visible from my front porch and line of sight. Four, the land which is at issue is a wet area because it is the drainage area of my property and his making the structures footing having to be built above grade level increasing the total height above the proposed twenty-five foot structure. Five, concerns of water runoff could be an issue for all neighbors. Six, when speaking to someone at the Zoning Office they kept referring to it as a shed. It is not a shed; it is a commercial steel building garage that is being placed in front of his home and in my line of sight from my porch. Seven, the steel building adds nothing to a residential development. Eight, I believe that such a structure does not belong in a residential planned development. A normal garage would not exceed…would not need to exceed twenty-five feet plus in height and not have the overall cubic dimensions described in his proposal. I vehemently oppose the variance for the above reasons; in addition, a blank steel commercial garage building has no redeeming value to the neighborhood. Sincerely, Todd W. Schrecker, 5 Deer Meadow Drive.

The next item is a County referral. This is from the Orange County Department of Planning. Their comments with regard to this particular application is Local Determination. At this point, I would like to open up the Public Hearing to comments from the public. Is there anybody here from the public that would like to comment? Yes sir?

Mr. Barry: Good evening, my name is Shawn Barry, I’m a lifelong resident here of the Town of Newburgh. I was born and raised in Meadow Hill. My wife Jean and I owned a residence in Colden Park and fourteen years ago we built the property…the residence that we reside in now at number 4 (four) High Lonesome Terrace. First before I go into a list of objections that I have to this project is just to address some of the things that the gentleman mentioned. He did list the fact that this is a garage on his property. He listed that the vehicles are adult vehicles however; they don’t constitute what meets the criteria vehicle if we look at the New York State Vehicle and Traffic Law what the definition of vehicle is. This is construction machinery which if we look at Article 185 of the Town of Newburgh Zoning Law or Town Code prohibits the storage of such vehicles on residential property. So the gentleman did admit that there is not to be any storage of cars in this structure. He did also identify that the applicant owns and operates a FedEx trucking routes and there’s been several instances in the past where these vehicles have been at the residence and they’ve been worked on at the residence, mechanical work, body work. So we have had those vehicles there being worked on. He listed the formula and the total lot size which would allow for a much larger building than which is a being proposed however that would be on total lot size not on usable area would…which is very limited on this property due to the grading. The footprint a of the house is a thousand forty square feet of the main residence that’s not inclusive of the garage of this structure. In reviewing the documents available to us on line at the Town of Newburgh’s website we’re able to identify that the applicant is requesting a variance of the current Town of Newburgh Zoning Laws as you mentioned in excess of a hundred and fifty-five percent of current…what is currently permitted. The structure being proposed is sixty foot long by forty foot wide by twenty-five foot tall, a steel commercial industrial type garage building. This building, a footprint is proposed as twenty-four hundred square feet. That’s more than double the size of any of the residences structures that are in High Forest Ridge Subdivision. The height of the proposed building is equivalent or higher than any of the residences in this subdivision and the proposed building is again of a commercial steel garage building which does not fit into the residential area nor meet the character of the neighborhood. We oppose the granting of the applicant’s appeal in that this variance will produce an unreasonable change in the character of the neighborhood and be a detriment to nearby properties and that the proposed building is a commercial steel type building consisting of large roll up doors. As you noted in your comments there’s two fourteen foot garage doors on the front and one fourteen foot roll up garage door on the rear. The proposed location of the building is in front of the applicant’s residence and would require the removal of (Inaudible) very a well-established trees. These currently shield the view between the properties, my property and the applicant’s property. The removal of the trees and foliage for the construction, not only the placement of the building but the construction of the building, would have a negative impact and put that directly in view. If you look at the plans that side wall of this structure is just that, a wall. We’ll be looking at a massive wall. Additionally the location the applicant has chosen is regularly a wet area. This has been exasperated because of the use of the machinery on the property to clear and change the topography which has now caused more of a drainage issue coming down the hill. We sit below. If you look at the topography of the map you can see that it’s significantly low…we’re significantly lower. Additionally on the front of the applicant’s property there’s is a a septic and that area is considered part or would be considered part of leech. The benefit sought by the applicant can be achieved by the applicant pursuing other feasible methods. The applicant has another commercial building a that type of material or equipment would be better suited to be stored there and not in a residential area. If he is seeking a an adequate structure to store personal vehicles…where are personal vehicles stored in a twenty-four hundred square foot building is excessive. That’s approximately four hundred and sixteen percent larger than two car attached garage that the applicant has right now. The applicant re…and a…under New York State Vehicle and Traffic Law Article 159 lists a vehicle as every device in, upon or by which any person or property is or maybe transported or drawn upon a highway. These aren’t registered farm vehicles so they can’t be legally driven upon…on a highway. Can’t drive a backhoe on a highway, an excavator, can’t drive these vehicles and hence they’re also unregistered. The requested area variance is substantial that the size of the structure and drainage on to and views from neighboring properties will be negatively…negatively impacted. The size of the aforesaid structure exceeds current Zoning Laws as mentioned. It’s not consistent and would be a negative impact to the current neighborhood. The proposed location of the structure is the applicant’s front yard and would be directly visible from ours and neighboring properties. The proposed variance will have an adverse effect and impact on the physical and environmental conditions in the neighborhood and that the proposed location of the structure is regularly a wet area. We already have issues with drainage. This would just exasperate those issues. Additionally the applicant would need to remove a mature vegetation which acts as a screen between the properties. The hardship the application is self-generated. This isn’t something that’s been there because of a…established previous existing conditions. It’s something he generated himself by obtaining that type of equipment. We’re not opposed to the applicant putting in a a structure that is suitable to storing vehicles such as those cars or something used for transportation, something that meets the architectural a and appeases what the other area and what is suitable for the neighborhood. You brought up the property to the north, that’s a a twenty-eight by twenty-eight structure, I believe, that matches the architecture of the residence that it sits in front of, same siding, same roof panels, same architectural appeal. The granting of this variance would negatively impact the overall character of the residential neighborhood as well as negatively impact both physical and environmental conditions to the surrounding area as mentioned. Additionally, a large, steel, commercial, industrial building such as the one being proposed would not add any redeeming value to the neighborhood and negative impact property values of neighboring properties. Thank you.

Mr. Manley: Thank you. Do we any of the other Board Members have any additional questions?

Mr. McKelvey: Yeah, I have one. You say it’s…I’ll wait.

Ms. Orr: Good evening, my name is Jen Orr, I live…

Ms. Gennarelli: You can tilt that (mic) down towards you.

Ms. Orr: Thank you.

Ms. Gennarelli: Yes, that’s better.

Ms. Orr: …I live at 5 High Lonesome Terrace, just south of the applicant. I think my neighbor Mr. Barry explained everything pretty well. My husband and I, who was not able to be here because he’s coaching right now, we also oppose the variances being granted, I think what I find…my biggest opposition for this would be that he does currently work on his FedEx trucks in his driveway. So on a Saturday afternoon if you’re trying to have a nice family picnic or any sort of fun activity outside you’re listening to machinery a and though the applicant I believe, as you said sir, said that this would not be utilized for such…he’s already utilizing his…his driveway to fix these trucks. So there’s no guarantee that he won’t continue to do so.

Mr. Winglowitz: I’d…I’d heard there were complaints. I was just relaying to the Board that he now has a new facility where he’s a…to take care of all his…all his trucks.

Ms. Orr: Right.

Mr. Levin: How long has he had that facility?

Mr. Winglowitz: Pardon me?

Mr. Levin: How long has he had that facility?

Mr. Winglowitz: Oh a just got a…we just got a the approval from the planning board I want to say in June…of this year.

Mr. Levin: And he’s using it right now?

Mr. Winglowitz: Yes.

Mr. Levin: And when was the last time…

Ms. Gennarelli: Richard, Richard, you are so far away from the microphone.

Mr. Levin: …when was the last time that you were disturbed?

Ms. Orr: This as recently as this summer.

Mr. Levin: This summer?

Ms. Orr: Which was I believe yesterday so…

Mr. Levin: Yesterday?

Ms. Orr: I would say this summer at at some point within this summer, yes.

Mr. Levin: Okay.

Ms. Orr: And actually just one more…one more point I would like to make I believe this gentleman here said that there were ‘like structures’. He gave an example of a north structure and one to the east and he said those were comparable. I believe, you even used the term ‘mirror image’ for the north facing a structure and that’s completely inaccurate, with all due respect sir. This is a monstrosity of a steel industrial building. It’s going to make our property, our housing area look like an industrial park. We are a residential area. So to compare a very…both structures that you compared them to have beautiful landscaping, they have vinyl sidings; they are aesthetically pleasing to look at versus and industrial park monstrosity. So I would just like that to go on record. Again, my name is Jen Orr, thank you.

Mr. Manley: Thank you.

Mr. Bell: Can I ask…could you show me on here which one is your…where you live?

Ms. Orr: Certainly.

Ms. Orr approached the Board

Mr. Bell: Can you see alright? That’s you, right?

Ms. Orr: No, wait this is the applicants.

Mr. Bell: Oh, okay, that’s the applicant. So you’re over here.

Ms. Orr: I’m over here. This is my driveway.

Mr. Bell: Oh so you’re on the other side.

Ms. Orr: So as he says here this is the ‘mirror image’. Okay so this structure that the applicant…the structure that the applicant is applying for is going to be twice the footprint of this home as well as this home.

Mr. Bell: Right.

Ms. Orr: You can see right here there is no way this small building is a mirror image of that so…

Mr. Bell: I got that, right.

Mr. Orr: …to suggest these two are comparable to that monstrosity is not accurate.

Mr. Bell: So then you’re actually on this side only you have…

Ms. Orr: I am on, yes, I am on this side.

Mr. Bell: Okay, not a problem, appreciate it.

Mr. Masten: On the left.

Ms. Orr: Yes. Thank you.

Mr. Manley: Yes sir, did you a…?

Mr. Barry: Yeah, I do have a a…an image that may put that in a better clarity for you Mr. Bell. If I could approach…?

Mr. Bell: Sure. We might be already (Inaudible)

Mr. Barry approached the Board

Mr. Barry: So you can see the building is sketched in the side where it would be. It’s not to scale.

Mr. Bell: Okay. And where are you located?

Mr. Barry: This is my house here.

Mr. Bell: Okay, got you, right there, okay, appreciate it.

Mr. Barry: One last question for the gentlemen on the Board. Because you mentioned that he had approval for a building, a new building, is he in compliance with the Zoning with the Town of Newburgh with this new building?

Mr. Winglowitz: I am not aware.

Mr. McKelvey: Where is the new building, do you know?

Mr. Winglowitz: It’s on 17K and Cochecton Avenue, right across from the a…what is it a…the aviation Cessna Citation basically.

Mr. Manley: Is that the old real estate building that was there?

Mr. Winglowitz: It was a trucking building at one point. It’s a steel (Inaudible) you wouldn’t even know it’s there, it kind of sits back off the road a Cochecton Avenue…

Mr. Scalzo: It’s the old Edy Messenger service building…?

Ms. Gennarelli: Did you want to see this (picture) that he brought up?

Mr. Manley: Pass that down.

Mr. McKelvey: Also when I was there he had I think three small trailers parked on the property. They’re not snowmobile trailers. What does he use them for?

Mr. Winglowitz: A…I haven’t been there probably since the spring so I don’t know what specific trailers that you’re speaking of.

Mr. McKelvey: They’re enclosed small trailers.

Mr. Winglowitz: One…there was a snowmobile trailer a…two…two…a two machine snowmobile trailer and a four machine trailer that were there when I was there.

Mr. McKelvey: No, these aren’t snowmobile trailers.

Mr. Masten: Yes.

Mr. Winglowitz: I…I…I just would like at the point of the Hearing here…what I would ask, obviously I’ve heard the comments of the Board and Mr. Donovan, the comments of the public, what I would ask is if the Board would a…table this decision because I would like to take it back to my client and give him the opportunity a…to get my input and the input of everybody here a and see if there is anything that we can do to modify this because I, like I said I think it’s an opportunity for him and an opportunity for the neighborhood to have this site a…be improved and come back at the next meeting and if we can modify it in such a way that can satisfy some people then we will. And if we can’t, we’ll ask you to make a decision.

Mr. Scalzo: That would certainly be your choice. A having heard Ms. Orr, Mr. Barry and having the letter from Mr. Schrecker a about I can see it, I can see it, I can see it. Now I see the topography is challenging behind the house a perhaps if he were to consider a serpentine driveway leading to a structure up behind his house he would take the visual aspect completely out of it. I know it’s difficult but a it can be done. There’s a lot of room behind the house up on the hill.

Mr. Manley: Well the other…the other consideration that the Board has to make is if the project can be achieved in a different manner than requiring a variance we have to explore that avenue versus you know, like Mr. Scalzo said a there may not be a need for a variance here if he’s willing to put something that’s a little bit more…

Mr. Winglowitz: I…I think one of the issues with getting there is the septic is right in front of the house so that would be in the way.

Mr. Scalzo: As I understand your topography here if he were to utilize the existing driveway to bring it up right behind the house…

Mr. Winglowitz: Behind the house.

Mr. Scalzo: …and you’re an engineer and you understand…

Mr. Bell: Yeah.

Mr. Scalzo: …that he would follow the contour and then swing it up and around.

Mr. Winglowitz: I understand your comment and I’ll bring it to my client.

Mr. Manley: I…I…I think based on how it’s presented I…I couldn’t support anything, I mean, even having a lot of concerns of the neighbors and you know they bring up, you know, some valid concerns that that they have a if it’s going to remain a steel structure I have issue with that being it doesn’t really fit the character of the neighborhood.

Mr. Winglowitz: Understood.

Mr. Manley: So I think that there’s a lot of work that has to be done. I don’t know whether you want the Board to vote and then if it doesn’t go through perhaps refile with a significant change at that point?

Mr. Winglowitz: I really would like I…my opinion I would like the Board to table. Let me discuss it with him. It only makes sense to have a conversation, I think. If that conversation doesn’t go anywhere a we’ll be back and tell you that and you can vote. And if it does, we’ll be back with an alternative proposal. I think this a…

Mr. Manley: And so you’re aware normally the Board will grant an adjournment but usually one adjournment but next month we will want to move forward because we obviously have this stuff…

Mr. Winglowitz: Absolutely.

Mr. Manley: …holding up the agenda. It holds it up for other people that need to come before the Board.

Mr. Winglowitz: I can appreciate that.

Mr. Donovan: So if the Board is so inclined it would be a motion to continue the Public Hearing or adjourn the Public Hearing until the October meeting.

Mr. Scalzo: I would make that motion, leave the Public Hearing open.

Mr. Masten: I’ll second that.

Mr. Manley: We have a motion from Mr. Scalzo, a second.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion to keep the Public Hearing open until next month has passed. The members of the public that are here for this particular application there will not be a re-notice. So the meeting is going to be on October the…

Ms. Gennarelli: …27th.

Mr. Manley: …27th at 7PM, I recommend that anybody that is here for this to come back so that you can see what the applicant is or is not re-proposing differently.

Mr. Winglowitz: Thank you very much for your time.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 8:15 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time Noted – 8:15 PM)

MICHAEL & MARGARET MAHER 50 COCOA LANE, NBGH

(34-2-71.34) R-2 ZONE

Applicant is seeking an area variance for no building shall project closer to the fronting street than the main dwelling to keep a prior built accessory building (12 x 24) on the premises.

Mr. Manley: The next item on this evening’s agenda is the application of Michael & Margaret Maher, 50 Cocoa Lane, Newburgh requesting an area variance for no building shall project closer to the fronting street than the main dwelling to keep a prior built accessory building (12 x 24 shed) on the premises. Type II Action under SEQR. Ms. Gennarelli are all the mailings in order?

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

Mr. Manley: Good evening.

Mr. Greene: My name is Donald Greene, I’m representing a the Mahers…a Michael and Margaret are away out of town on a…so they could not make the meeting. Mike asked me to sit in his place. I here for this evening request a variance granted for a 12 x 24 shed in the front yard. The property is located at 50 Coach (Cocoa) Lane and a variance from this Board was in fact granted for a shed in the front yard in September of 2003. Variance was for a 10 x 20 shed a perpendicular to the house. It actually a was built a 12 x 24 shed was constructed parallel to the house and therefore (Inaudible) in the front yard by eight feet but it did not fully conform to the variance granted. The property is a large about five acre lot; the shed sits off the private road about a hundred and thirty-seven feet and off the side of the house and driveway so it is not really noticeable. As you can see from the information in your packet no other variances are required. The front, rear and side yard setbacks all conform to the R-2 zoning and there are no height issues, building coverage issues nor accessory use square foot issues. If you look at the picture of the shed it’s by far not a regular shed. It’s a very a nicely constructed storage building. As stated if you ride into Cocoa Lane there’s only a glimpse of it for a few seconds. It’s back in a…you know, sort of in the woods. It does match the house a…I a…the yard is landscape I would call almost like a park. I know Mike he keeps everything a…

Mr. Masten: Pristine.

Mr. Greene: …pristine not a I wish my house…I got keep my wife away from that house otherwise she’s been on my case. To keep piece in the family we don’t go to Mike’s house very often but a so he’s requesting this variance a and on behalf on his behalf we ask that it be approved. Any questions?

Mr. Manley: Does the Board have any questions for the a applicant’s representative?

Mr. Masten: No.

Mr. McKelvey: I just want to know why he took so long to come back?

Mr. Greene: Well we…we do keep him busy down the firehouse so a…he’s…he’s our…our maintenance guy, you know, so…

Mr. McKelvey: It’s been a few years.

Mr. Greene: Yeah.

Mr. Manley: At this point, I’ll open up the a Public Hearing to members of the public. Is there anyone in the public that has any questions or comments…regarding this application?

No response.

Mr. Manley: Hearing none I’ll look for a motion from the Board to close the Public Hearing.

Mr. Masten: I’ll make that motion.

Mr. McKelvey: I’ll second it.

Ms. Gennarelli: Who was the first motion?

Mr. Masten: I did.

Mr. Manley: Dave.

Ms. Gennarelli: I’m not used to hearing…

Mr. Manley: John.

Mr. Donovan: John for the minutes.

Ms. Gennarelli: …your voice anymore. John…

Mr. Manley: John for the minutes.

Ms. Gennarelli: …and for the other things.

Mr. Donovan: Inaudible.

Ms. Gennarelli: And who was the second? The other John, okay.

Mr. Manley: The other John.

Ms. Gennarelli: Okay, alright, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The Public Hearing is closed.

(Time Noted - 8:20 PM)

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ZBA MEETING – SEPTEMBER 22, 2016 (Resumption for decision: 9:15 PM)

MICHAEL & MARGARET MAHER 50 COCOA LANE, NBGH

(34-2-71.34) R-2 ZONE

Applicant is seeking an area variance for no building shall project closer to the fronting street than the main dwelling to keep a prior built accessory building (12 x 24) on the premises.

Mr. Manley: The next application before the Board to vote on is the application of Michael and Margaret Maher, 50 Cocoa Lane, Newburgh seeking an area variance for no building shall project closer to the fronting street than the main dwelling to keep a prior built accessory building (12 x 24) on the premises. This is also a Type II Action under SEQR. Do we have discussion considering the area variance criteria before us? The first being can the benefit be achieved by other means feasible to the applicant?

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

Mr. Levin: I can’t see him moving it…can’t do it.

Mr. Bell: What did he say?

Mr. Manley: He just said he can’t see him moving it… that it’s…

Mr. Bell: Oh, okay, yeah.

Mr. Manley: The undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Bell: No.

Mr. McKelvey: No.

Mr. Levin: No, absolutely not.

Mr. Bell: Sits behind the trees can’t see it.

Mr. Manley: Whether or not the request is substantial in nature?

Mr. McKelvey: No.

Mr. Levin: No.

Mr. Bell: No.

Mr. Levin: Very small.

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

Mr. Bell: No.

Mr. Levin: None.

Mr. Manley: And whether or not the alleged difficulty is self-created? Relevant but not determinative.

Mr. Bell: Yes.

Mr. Levin: It is self-created.

Mr. McKelvey: Self-created.

Mr. Manley: At this point, knowing the criteria does the Board wish to have a motion for approval or a motion for disapproval?

Mr. Masten: I'll make a motion for approval.

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

Mr. Bell: I'll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: Thank you.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:18 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time Noted – 8:20 PM)

THOMAS LENT 1768 ROUTE 300, NBGH

(14-1-32) R/R ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to enclose the rear open deck (16 x 20) and create a 3 season room.

Mr. Manley Mr. Manley: The next item on this evening before the Board is the application of Thomas Lent, 1768 Route 300, Newburgh seeking an area variance for the increasing the degree of non-conformity of one side yard setback and the combined side yards setback to enclose the rear open deck (16 x 20) and create a 3 season room. Type II Action under SEQR. Ms. Gennarelli are all the mailings in order?

Ms. Gennarelli: Yes, this applicant sent out thirteen letters. All the mailings, publications and postings are in order.

Mr. Manley: Thank you. Good evening.

Mr. Lent: How are you doing? My name is Thomas Lent and I request an area variance to enclose the porch…rear deck into a sun room…three season room, the existing deck.

Mr. Manley: Okay.

Mr. Lent: I really have no neighbors to the rear of me and so I don’t see it being a disadvantage to anybody.

Mr. Manley: Do you recall when the deck was built, how long ago?

Mr. Lent: I don’t, I bought the house in 2010.

Mr. Manley: And the deck was already there?

Mr. Lent: The deck was already there. And it received a variance when it was built, it didn’t meet a, you know, the side setback in the rear at the time. It’s got a C.O. on it already. I just want to enclose it make my house a little bigger, it’s only nine hundred square feet.

Mr. McKelvey: There’s a big tree line back there too, right?

Mr. Lent: Yeah, oh yeah, got big trees all the way around my house.

Mr. Levin: Do you plan on having storage underneath the deck?

Mr. Lent: A…it’s got lattice around the bottom of it, I mean, I got a couple of lawn mowers under there but that’s about it. I wasn’t planning on putting anything under there.

Mr. Levin: I don’t think it has any bearing on how we vote but you do have a lot of stuff in your backyard.

Mr. Lent: Yeah, I know, I know I need to clean up a little bit. You were there?

Mr. Levin: Oh, yeah.

Mr. Scalzo/Mr. McKelvey/Mr. Masten/Mr. Bell: We were all there.

Mr. Lent: Okay.

Mr. Masten: I was there today and I seen six turkeys in your backyard.

Mr. Lent: Really. Hey, Thanksgiving is coming up.

Mr. Masten: Well you might as well get ready for Thanksgiving next month.

Mr. Manley: That actually would be seven with you there, right?

Mr. Masten: Inaudible.

Ms. Gennarelli: Oh, oh…Jim.

Mr. Lent: Just for the record I don’t think you’re a turkey.

Mr. Scalzo: I…I…it was a one of the more difficult driveways to get out of a…(Inaudible)

Mr. Lent: Oh yeah, no fooling around when you pull out of there.

Mr. Scalzo: …very challenging.

Mr. Lent: Yeah, a race track that 300.

Mr. Scalzo: Yup, and sir if I could ask, in our package we have a a drawing that shows that an additional parcel was supposed to be added to your lot did that ever happen?

Mr. Lent: No, it didn’t.

Mr. Scalzo: Oh, okay.

Mr. Lent: I was going to do a lot line change the guy I bought the house from actually lived next door and he was going to give me some land behind me but a it got to be too costly so I…I abandoned that.

Mr. Scalzo: That also has no bearing on how we’re going to vote.

Mr. Scalzo: I just was…

Mr. Manley: The Orange County Department of Planning a was notified as required by law and they responded to the a…proposed action for the area variance, their comments were simply a Local Determination by the County. Are there any other questions or comments from any members of the Board at this time?

No response.

Mr. Manley: If not, do we have any members of the public that are here with regard to this application that would like to make a comment?

No response.

Mr. Manley: There being none I would ask the Board for a motion to close the Public Hearing.

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

Mr. Bell: Second.

Mr. Manley: We have a motion from Mr. Scalzo and a second from Mr. Bell.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

(Time Noted - 8:25 PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Resumption for decision: 9:18 PM)

THOMAS LENT 1768 ROUTE 300, NBGH

(14-1-32) R/R ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to enclose the rear open deck (16 x 20) and create a 3 season room.

Mr. Manley: Alright that takes care of this evening we’re ready to go.

Ms. Gennarelli: We have one more.

Mr. Manley: I’m just kidding…a little humor. The last application of Thomas Lent, 1768 Route 300 in Newburgh seeking the area variance for increasing the degree of non-conformity of one side yard setback and the combined side yards setback to enclose the rear open deck (16 x 20) and create a 3 season room. This is also a Type II Action under SEQR. Considering the area variance criteria before us do you feel that the applicant achieve this by other means feasible?

Mr. Levin: I don’t think so.

Mr. Bell: No.

Mr. McKelvey: I don’t think so, the porch is there he’s going to enclose it.

Mr. Manley: It’s there.

Mr. Manley: Whether or not there is an undesirable change in the neighborhood character or detriment to nearby properties?

Mr. Scalzo: I don’t think you’ll see it from...

Mr. Bell: You won’t see it back in the woods.

Mr. McKelvey: Not through those trees.

Mr. Manley: He didn’t have any neighbors…

Mr. Bell: No.

Mr. Manley: …commenting or complaining. Whether or not the request is substantial?

Mr. Bell: No.

Mr. Levin: No.

Mr. McKelvey: No.

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

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Manley: Whether or not the alleged difficulty is self-created? Relevant but not determinative?

Mr. Bell: Pre-existing deck, I don’t think so.

Mr. McKelvey: It’s self-created.

Mr. Bell: Yeah.

Mr. Manley: But not enough to weigh.

Mr. Bell: Not enough to weigh, no.

Mr. Levin: I make a motion for approval.

Mr. Masten: I'll second it.

Mr. Manley: We have a motion for approval and a second, Mr. Levin and a second from Mr. Masten.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: Yes

Mr. Manley: The motion is carried and the variance is granted.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:21PM)

ZBA MEETING – SEPTEMBER 22, 2016 (Time noted 8:25 PM)

RAM HOTELS, INC. / AUTO PARK PLACE/UNITY PLACE, NBGH

NEWBURGH AUTO PARK LLC. (97-2-37) I/B ZONE

Applicant is seeking area variances for 185-27-C-1 - The site must have principal frontage on a State or County highway and the maximum 50 ft. building height to construct a 5-story, 112 room hotel.

Mr. Manley: Our final item this evening’s before the Board is a holdover from our August 25, 2016 meeting and that is Ram Hotels, Inc./Newburgh Auto Park LLC., Auto Park Place and Unity Place in Newburgh. They were requesting area variances for Section 185-27-C-1 - The site must have principal frontage on a State or County highway and the maximum 50 ft. building height to construct a 5-story, 112 room hotel. The mailings were in order. I do have something that I need to read into the record...or actually put on the record. We had solicited each of the individuals that were here, the attorneys that were here with regard to whether or not this was an area variance or whether this was a use variance. Both attorneys supplied two separate opinions, they were reviewed by our Counsel who in turn issued an opinion that was for the Board indicating that this would be…the Board should continue this as a a area variance. So at this point forward we’re looking at a area variance with respect to this particular application. Good evening Mr. Gaba.

Mr. Gaba: Good evening, Mr. Manley. Thank you very much. This is the continued Public Hearing on the application for area variances…

Ms. Gennarelli: Stephen, can you just tilt it (mic) up a little bit towards you it’s not picking up and if you could get a little closer.

Mr. Gaba: Alright, how’s that?

Ms. Gennarelli: Okay, keep talking we’ll see.

Mr. Gaba: Talking, I haven’t heard that in a long time.

Ms. Gennarelli: Okay.

Mr. Gaba: Better?

Ms. Gennarelli: Yeah, thank you.

Mr. Gaba: It’s an application for two area variances for the Hilton Garden Inn. We began the Public Hearing last month; a few issues arose as Mr. Manley has alluded to, one of them was the nature of the variances sought. Apparently that has been resolved at this point. The only thing I would request in regard to that, just to complete the record, I have copies of the a…referral on the Milano application for the Hampton Inn that was kind of the nub of the dispute and as well as the letter withdrawing it from the Zoning Board previously. I’d just like those placed in the record if that would be acceptable.

Mr. Manley: Yes, absolutely.

Mr. Gaba approached the Board

Ms. Gennarelli: Thank you.

Mr. Gaba: So aside from legal issues which again apparently are behind us now. There were some issues regarding the dimensional aspects of the two variances so with us, of course, is our engineer Larry Marshall and he’s written to the Board. I…I think we’d like to just briefly recap that and then hopefully provide answers to the outstanding issues. So I’ll…I’ll hand it over to Larry at this point

Mr. Marshall: Good evening, as Stephen said my name is Larry Marshall from Mercurio, Norton, Tarolli & Marshall we’re the applicant’s engineering land surveyor. We did provide a brief recap of a…responses to some of the questions that were raised both by the Board and the public at the previous meeting. I’d like to start a actually at the very end a because I placed the a rendering of the building up on the a…on the easel. The…the public had claimed that we didn’t submit renderings of the building a…they were included in the original application on a…on page two of the plan set. What we’ve provided this evening is an…a…a better print of what’s printed on is is just plain paper. This is on photo paper; a little more realistic to what would be a…what’s being proposed on the site. It’s a Hilton Garden Inn, 5 stories a…with a total height of sixty-nine feet, four inches from ground level. This, the rendering that’s being shown here, is what the…the intended colors a…a…and look of the building would be during the daytime. We have a similar elevation showing how it would appear in the evening, how it would be lit a… and it a…shows that. Again these…these renderings are...are provided in the plan set on on page two but it’s a little bit more evident here. In addition to the renderings we provided floor plans a…and cross sections of the a…of the proposed hotel. We’ve shown a…the ground floor plan, the first floor plan as well as the…the upper floors and then we’ve provided the cross section of the a…of the entire building with the indication of the heights being the sixty-nine feet four inches. As previously stated at the last meeting we are seeking two variances; the variance for having a hotel on Town road and the overall height variance. The maximum height permitted in this zone is fifty feet. We’re seeking a sixty-nine foot four inches, a variance of a nineteen, feet four inches. Now I’d like to go back to the top of the transmittal letter a regarding the comments from the planning…or from the planning board and the public. There was questions regarding fire access and and accessibility of this site or this building being sixty-nine feet, four inches by the local fire district. The Goodwill Fire Department has issued a letter a stating that this building would would be a covered under the mutual aid a that letter came from the the current fire chief. We’ve provided copies of that letter to the Board for consideration. There was concerns also raised regarding the amount of traffic this this proposal a…would generate onto Unity Place. Unity Place is not a very well-traveled road a for the size of the road that it is a and this proposal based upon Institute of Traffic Transportation Engineers trip generation rates would a at full occupancy of the hotel it would have it would be anticipated to generate seventy-four trips in the morning, seventy-seven trips in the evening a at a…at a first floor footprint of that twenty thousand square feet and a hundred and twelve rooms. As a comparison, purely as a comparison, a twenty-five thousand square foot supermarket would generate three times that in the afternoon hour a so as far as comparable a construction the footprint of this building versus a…a separate use this is a relatively low a traffic…traffic generator. A I do state that the traffic any traffic issues or concerns on Unity Place would be a…would be resolved at the planning board level. Regarding the FAA concerns the proposed…this proposed building has a…a finished floor elevation of approximately two hundred and ninety-eight feet above sea level, a sixty-nine foot, four inch building would…would provide the maximum building height at approximately three hundred and sixty-eight feet above sea level. The end of the runway a…at Stewart Airport is at four hundred and fifty-five feet and that’s approx….approximately eighty-seven feet above a…the top of…of this building. As a purely as a comparison because I was the engineer on the on the project the Restaurant Depot that’s under construction currently has a maximum height of the building of four hundred and thirty-eight feet. We received FAA clearance without any sort of indicator lights on the top of that building. A…this building with three sixty-eight maximum height would be approximately seventy feet below that (Inaudible)…seventy feet below that…

Mr. Donovan: You’re talking about topography…

Mr. Marshall: Yeah, yeah.

Mr. Donovan: …the building is not going to be four hundred and thirty feet tall.

Mr. Marshall: No, no, no, four hundred and thirty feet above sea level…above sea level.

Mr. Gaba: Thank you Dave.

Mr. Marshall: Yes, a talking purely…about topography. Yeah, so the…the Restaurant Depot just got approved from FAA a with no indicators and it’s significantly higher a than this building is currently proposed a we have submitted a request from FAA or to FAA to review this application based upon those elevations a they have begun the review but have not finalized that review. I don’t anticipate given the heights in the surrounding buildings and really I there are many, many buildings in in and around a…the Stewart Airport that a are significantly higher in elevation than this proposed building is. Regarding the hotel on the Town road a…we have provided a sketch plan for the Board a this sketch plan was provided to the planning board a when Unity Place was being developed. This sketch plan shows two a hotel or a hotel and a motel on being as a potential development. We understand that this sketch plan was purely for determining what could be developed on the site a…but from this from this submission it was obviously intended that a hotel and a motel could be located on the proposed Unity Place with the intention that Unity Place would be a Town road. A…that coupled with the existing Sheraton…the Four Points Sheraton that is located on a Town road a we don’t feel like this would be a burden on a Town road. I think Unity Place was…was constructed for commercial purposes and for a use similar to what we are…are being that we are proposing. The height in comparison to the Hampton Inn, we stated at the previous meeting by the public that the variance that we were requesting was substantially higher than the one that the vari…the variance that was granted a by this Board for the Hampton Inn that’s currently under construction. That that height is six foot seven inches a in comparison, the…the reason that the Hilton Garden Inn, this, this model a is higher in elevation a stems from many different a different reasons. The main being that the entry way as you or the…the lobby area as you walk in the Hilton Garden Inn is sixteen feet tall a that and the floor to floor height for this for this hotel is higher. The higher ceilings a project a a…a level of luxury that is very important to the Hilton Garden Inn a so that is is paramount to their…their brand their model a so that’s the main reason why the height is being requested a that’s a little bit higher than the Hampton Inn is. And that is very wordy response to some of the comments we received at the last meeting.

Mr. Manley: You had mentioned in the last page that the when you compared them it’s a six foot seven increase, just so I understand this, if you go to the front of that picture of the hotel and you see where the a the G is in Garden there…

Mr. Marshall: Here?

Mr. Manley: …see the top of the parapet there?

Mr. Marshall: Yes.

Mr. Manley: Okay, is that at that level right there is that the sixty-nine feet, four inches?

Mr. Marshall: Sixty-nine foot four inches is to…bear with me…

Mr. Manley: Because you mentioned the elevator shaft.

Mr. Marshall: The elevator shaft does project above a…I’m sorry, let me get to that. If you look on the…if you look on the render…or the cross section that’s provided on sheet 3 of the plan set, you can see the projections a…and that…that’s correct, that is to the top of the elevator shaft.

Mr. Manley: So could you estimate for me to the top of the parapet? If we were to take out the elevator shaft and pretend it didn’t exist, how tall is that roof?

Mr. Marshall: The…the…the…

Mr. Manley: The…the top of the building?

Mr. Marshall: So the top of the building if you removed the parapet is sixty feet.

Mr. Manley: The parapet adds another how much?

Ms. Gennarelli: We’re not on…we’re not on…if you want to get on the record… yeah.

Mr. Marshall: Alright, coming up is Manish Patel. He is an architect and…and one of the applicants.

Mr. Patel: Good evening.

Mr. Manley: Good evening.

Mr. Patel: I’m Manish Patel and I’m the owner of the Ram Hotels and I’ll explain to you the building section where the height…

Mr. Manley: You can bring that microphone with you it comes right off the…

Ms. Gennarelli: You can pop it off, yeah.

Mr. Manley: …it might make it easier for you.

Mr. Patel: The top of the area of the shaft where the sixty-nine foot, four inch comes and right from the top of that to the floor here that’s eight feet height if you add another four feet, the sixty-nine four minus eight feet that becomes sixty-one feet four inches when you add another four feet parapet that sixty one…plus four foot becomes sixty three eight.

Mr. Manley: So without the elevator shaft it’s sixty-one feet four inches?

Mr. Patel: Sixty-four feet.

Mr. Marshall: Sixty-five feet four inches. You said sixty-nine four minus the eight…

Mr. Patel: Sixty-nine five minus eight for sixty-one …

Mr. Marshall: Four…

Mr. Patel: …four and then four feet parapet so sixty-five four.

Mr. Manley: Sixty five-four…

Mr. Patel: To the top of the parapet.

Mr. Manley: Is with the parapet?

Mr. Patel: Correct.

Mr. Manley: Sixty-one four is the…

Mr. Patel: Top of the roof…top…

Mr. Manley: Top of the roof.

Mr. Patel: Top of the roof and then the parapet goes on top.

Mr. Manley: And of course, the elevator shaft only takes up a very small…?

Mr. Patel: Right.

Mr. Manley: Are we talking probably eight by eight?

Mr. Patel: Eight by…eight by twelve…almost by fifteen because we have two elevators.

Mr. Manley: Right, okay. So eight by fifteen is the part that is getting you above that…

Mr. Patel: That’s right.

Mr. Manley: …that’s getting you at that sixty nine…

Mr. Patel: Sixty-nine point four and nobody is going to see that because it’s very behind inside.

Mr. Donovan: As a percentage of the overall a roof…a linear percentage? Can…can you do that calculation?

Mr. Patel: The linear…you mean this way?

Mr. Donovan: Yes.

Mr. Patel: Oh, that is very little; this is like two hundred and…

Mr. Marshall: I think it’s like two hundred and twenty-five feet.

Mr. Patel: Two hundred and twenty-five feet versus…

Mr. Marshall: Fifteen feet.

Mr. Patel: Fifteen.

Mr. Marshall: Fifteen out of the two hundred and twenty-five. So like…so say less than ten percent.

Mr. Patel: And I notice this way, if you look at this way, it’s only eight feet from the two hundred and twenty-five. It’s more this way because the elevators are side by side this way.

Mr. Manley: I think that it makes it a little bit more palatable with me knowing that we’re only talking about an eight by fifteen area is the part that’s actually exceeding the height versus the entire structure.

Mr. Patel: Right. That’s the only area it’s going higher.

Mr. Manley: And then of course you have the parapet which there’s actually I mean that’s not usable…

Mr. Patel: No, no.

Mr. Manley: …so.

Mr. Scalzo: As David said linearly you’re looking at six point six percent of the roof.

Mr. Patel: Right.

Mr. Scalzo: Six point seven.

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

No response.

Mr. Manley: At this point, we’ll go back to the public. Is there any questions or comments from the public with regard to this application? Yes sir?

Mr. Bittner: Ron Bittner, 186 Forest Road, we’re talking about an area variance. Forgive me, I didn’t follow up to well on…on this thing. They’re going to put this new hotel, haven’t started construction yet, there’s a hotel being constructed in…in front of an old hotel that’s no longer a hotel next to a Orange County Chopper building. Where is this going? It’s going to be in front of the dealership?

Mr. Manley: If you know where a…

(Inaudible)

Mr. McKelvey: It’s off on the side.

Mr. Masten: Right next to Honda.

Mr. McKelvey: It’s off on the side…

Mr. Manley: Right off of 17K.

Mr. McKelvey: …off of 17K.

Mr. Masten: Where Barton Chevrolet is.

Mr. Bittner: Okay.

Mr. Masten: Across the street.

Mr. Bittner: Alright. And this is going to be a Hilton Gardens?

Mr. Manley: Correct.

Mr. Bittner: And were…were you the owner of the old one?

Mr. Marshall: No.

Mr. Bittner: Because the old one is no longer a hotel.

Mr. Manley: Correct.

Mr. Masten: That’s right.

Mr. Bittner: You know, and I’m…I’m like…are we going to run…is history going to repeat itself and it’s like a big…

Mr. Manley: Well we can’t unfortunately predict the future.

Mr. Bittner: Yeah, I know, I know.

Mr. Manley: But there have been some zoning changes that have been implemented in the Town that would necessarily prevent that from happening in the future.

Mr. Bittner: And there…

Mr. McKelvey: There is a…there is a Town Law. They passed a Town Law that that this motel would have to be open to the public.

Mr. Bittner: Okay, and this application came in after the…the…law changes?

Mr. Manley: Yes.

Mr. McKelvey: Yeah.

Mr. Bittner: Okay, alright, thank you, I’m sorry.

Mr. Manley: That’s okay.

Mr. McKelvey: The law change came really the two motels that were sold, the one on Union Avenue and…

Mr. Manley: Yes sir?

Mr. Bazydlo: I am taller; I’ll put it (mic) up a little bit.

Ms. Gennarelli: You can take it off or…

Mr. Bazydlo: That’s okay, I don’t need to take it off I can talk loud once I start talking.

Ms. Gennarelli: Yes.

Mr. Bazydlo: As the Board knows, my name is Charlie Bazydlo, I was one of the people commenting at last month’s meeting. I am the author of one of the letters Mr. Donovan had referenced a in his opinion. Obviously we disagree with a a the Board’s astute Counsel as lawyers often do…

Mr. Donovan: I feel fortunate that out of the three letters we only had one opinion or two…two opinions.

Mr. Bazydlo: Two opinions that’s pretty good.

Mr. Donovan: I’d think we would have six or seven.

Mr. Bazydlo: Sure, sure, exactly. No it was a fifty-fifty shot one way or the other so okay. Anyway so we…we do disagree with that…with that conclusion a you know, we strongly believe it is a dimensional a…it’s not a dimensional requirement and as such it would be…it should be properly classified as a use variance. However, I understand the Board sounds like from the Chairman’s statement earlier that the Board is going to proceed with this application as an area variance. If that is the case a first and foremost I would ask this Board to leave the Public Hearing open. A…we…I personally was only made aware of a Dave’s conclusion on this late this afternoon. I was out of my office this afternoon and have not…haven’t really had a chance to prepare any kind of detailed comments on this application if it’s going to be classified as an area variance. So I would ask the Board to try to keep the Public Hearing open, give us an opportunity to comment on this application as an area variance. Short of that…short of that the…the two…the two things that I would bring to the Board’s attention is that particularly with this issue of not locating on a State or county highway: it’s a substantial variance. And as I know, the Board is well aware of the five criteria if you are going to proceed on an area variance it clearly does not have frontage, the applicant admits it doesn’t have frontage, they can’t get frontage on a State or county highway so the degree of non-conformity is you know, is a hundred percent essentially. You know, they have…they have zero compliance with that section. That’s a substantial…that’s a substantial variance that they’re asking for even under the area criteria. The second thing I would ask this Board to consider just in general terms here is that is the criteria about whether this is a self-created hardship or not. And I know the Board is well aware of the fact that out of the five criteria that is a criteria the Board could tend to shall we say overlook or give lesser weight to. However in this situation I would say that the Board should give substantial weight to that. This is…this is a a a variance from the section of the code that at least the Town fathers in their wisdom of acting this code a sought fit that these type of structures should be on a State or county highway. The applicant was well aware of that when they entered into their deal to purchase this property. As a matter of fact, I believe Chairman Manley you…you quoted one of the other applicants tonight…one of the other applications where you said that an applicant is charged with knowledge of the zoning code when they go to acquire the property. That’s the situation we have right here a that this is…this is a criteria that’s there. It was well known, it’s right in the code not very hard to find. So that combined with a…the degree of a non-conformity and how substantial this application is I…I think give more grounds to deny these variances. However that’s just a general, you know, position I have here now. Again I would ask the Board the opportunity to a provide more detailed comments on it once we have a chance to take a look at this application as an area variance rather than a use variance. Thank you.

Mr. Levin: May I ask you, before you sit down…?

Mr. Bazydlo: Sure.

Mr. Levin: Who do you represent?

Mr. Bazydlo: A…I…I…at last month, there’s two property owners; one is the LLC that is constructing the…the Hampton Inn right now and another is an LLC that owns a building right on 17K near this…near this property. Thank you.

Mr. Manley: Thank you. Yes sir?

Mr. Gaba: If I could just a briefly comment on that? In regard to keeping the Public Hearing open obviously the applicant wishes to have the Public Hearing closed and a decision from the Board. This was noticed as an area variance. Anyone who is interested in this had an opportunity to comment on it as an area variance last month, an opportunity to comment on it as an area variance this month and explain anything that they wished to. In fact, Mr. Bazydlo’s clients have Mr. Bazydlo here tonight to make whatever comments he may wish in regard to this being an area variance. It’s unfair to the applicant, it’s unfair to other applicants who may have come before you to continually hold open Public Hearings unless there’s some compelling reasons, some unfairness that there is that requires another opportunity to submit evidence or argument or whatever it may be. You’ve had plenty of that from Mr. Bazydlo’s clients. There’s really no reason I can see to keep this Public Hearing open. The other comment that I would make is in regard to this self-created aspect of a the criteria you consider in regard to area variances as your Counsel should tell you the Town Law specifically provides that although yes, whether a hardship is created or not in regard to area variances at least is a consideration. The code…the statute rather specifically says however this consideration shall not be determinative of whether or not the variance is granted; even if it is self-created the Board still may grant and indeed should grant if the other criteria are met the variance sought. So really that isn’t a consideration that….that…that I think mitigates toward denial of a variance particularly in a case like this. And lastly and its regard to being substantial well it’s true that they’re not on a State or county roadway if they were they wouldn’t be seeking a variance in regard to that but they are very, very close to a State roadway, Route 17K they’re located only a very short distance away from that. They’re located on a road which meets the building criteria for a county roadway, certainly it’s better than a lot of county roadways in the Town of Newburgh and the intersection with the State roadway is signalized so as far as being substantial this is certainly not qualitatively a substantial variance that’s being sought. They are tantamount to being on Route 17K. So those are the a the additional comments I wanted to make.

Mr. Manley: Thank you Mr. Gaba. At this point, are there any other comments from the public with regard to this application?

No response.

Mr. Manley: At this time does the Board have any further?

No response.

Mr. Manley: If not, what is the Board’s pleasure? Does the Board wish to…there’s a number of options…

Mr. McKelvey: Just…I just want to ask a question. You…you state the…well it’s a…well it’s a Sheraton Four Star now and that…that is on a Town road.

Mr. Marshall: Four Points that Sheraton, yeah.

Mr. McKelvey: Four Points, yeah.

Mr. Marshall: I think, Four Points Sheraton, it is on a Town road, yes.

Mr. Manley: At this point the Board could a…hold over the Public Hearing until next month and allow the other party to submit further, option number two would be to close the Public Hearing and move forward with the a vote or Reserve Decision.

Mr. Donovan: So ultimately the purpose of a Public Hearing is to assist the Board in its deliberations. I know a lot of the people in the public like it to be a question-answer session and have their questions answered but that’s not really the purpose of a Public Hearing. The purpose of the Public Hearing is for the Board to gather information to assist you in your deliberations. So if you think you require more information a then you may want to keep the Public Hearing open. If you think you have sufficient information then you can close the Public Hearing. You have sixty-two days to decide. I know you don’t like to keep your agendas full so you can decide this evening but to…to…I would suggest to the criteria for keeping the Public Hearing open is if you think you need additional information from the public to assist you in your…your deliberations.

Mr. Levin: I feel this is such a large project that we owe this gentleman the courtesy of listening to him, to come back next month, if he has something else to present.

Mr. Manley: Well and that’s going to be, I mean, you have to determine… so, what you’re saying Richard is at this time you don’t have enough information to fully make…

Mr. Levin: Well I don’t…

Mr. Manley: …a decision.

Mr. Levin: …know what additional information he’s going to come forth with. I don’t think it’s going to be anything that’s going to change my mind or anybody’s mind here but it’s giving him the courtesy of doing it.

Mr. McKelvey: But I…I also think, as Mr. Gaba said, it was presented as an area variance and our…our attorney has determined that it’s an area variance, that has to be taken into consideration.

Mr. Manley: So at this point, the Board needs to make a determination whether or not you’re going to seek additional information, if you do need additional information we need to know specifically what the applicant may or may need to provide the Board to leave the Public Hearing open or close the Public Hearing.

Mr. Donovan: Someone will need at some point in time, so we can go home, to make a motion. We either keep the Public Hearing open or close the Public Hearing.

Mr. Manley: Correct.

Mr. Donovan: Once you’ve made and seconded then you can have discussion and and figure out what your pleasure is.

Mr. Scalzo: And also this is an unusual situation because this has not passed through the planning board with architectural review that’s already been completed with, you know, a site plan review, with drainage review, with any other reviews, they’re here unusually first. I see that Dave your letter is dated the 22nd a today is the 22nd I…I think where Richard was going is there could be a little more information provided an opportunity to not dispute or refute what you’re determination is Dave but I’m myself am uncomfortable with voting to close the Public Hearing a while the lawyers fight it out.

Mr. Donovan: Well I think that from…I mean, unless the Board disagrees, there is no more fight…at this level. There may be a fight at at another level that’s…that’s the American way, I mean, you always have recourse at another level. I mean, this was originally Noticed as a Public Hearing for an area variance, right? Charlie came and raised an argument and I’m not saying this was not by any means a slam-dunk. I mean this is a kind of an interesting issue, it’s got kind of a square peg in a round hole so you advance the…the opinion that maybe we should look at it as a use variance. Respectfully, I disagree with his conclusion and so I think he’s asked the Board tonight he’d like to submit more information in opposition to the area variance. That’s in the Board’s discretion if they want to do that. It’s also in your sound discretion if you…if you think…I mean, Charlie’s advanced some…some arguments a this evening, I think you know what those arguments are going to be. If you want more information you’re absolutely within your discretion to continue the Public Hearing. If you think you have enough information to make a decision you can proceed.

Mr. Levin: I think I’m going to make the motion and we’ll see where everybody falls. I make a motion to a…well if I say to keep the Public Hearing open and they vote and a…I mean can get a second.

Mr. Manley: You may or may not, you never know until you make the motion.

Mr. Levin: I make the motion to keep the Public Hearing open.

Mr. Manley: We have a motion from Mr. Levin to keep the Public Hearing open. Is there a second to that?

Mr. Scalzo: I will second that.

Mr. Manley: We have a second to keep the motion open…to keep the Public Hearing open from Mr. Scalzo.

Mr. Donovan: I’m sorry, Jim, just to be clear that’s to the October…?

Ms. Gennarelli: 27th.

Mr. Manley: Keep in mind that I will not be here at that meeting so the Chairman will be at that meeting you (Mr. McKelvey).

Mr. Scalzo: That means it will go quick.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

James Manley: No

Mr. Manley: The motion is carried, the Public Hearing is going to be next month held over, no one will be re-noticed, the people that are here this evening for this particular applicant need to be here at the meeting next month at 7PM. At this point, the Board is going to take a short recess so that we can confer with Counsel with (legal questions raised by) this evening’s applications. I would ask in the interest of time if you could wait in the hallway and then we’ll call you in very shortly.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ABSENT:

MICHAEL MAHER

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 8:54 PM)

ZBA MEETING – SEPTEMBER 22, 2016

END OF MEETING (Time Noted – 9:21 PM)

Mr. Manley: The minutes were not quite complete.

Ms. Gennarelli: No, they were not.

Mr. Manley: So we can always vote on them next month, just remind me Betty if I forget.

Ms. Gennarelli: Oh, that’s right you won’t be here.

Mr. Manley: Mr. Masten has a comment for the Board.

Mr. Masten: I’d like to thank the Board for the Edible Fruit arrangement that was delivered to my house. My grandkids ate most of it.

Mr. Bell: You’re welcome.

Ms. Gennarelli: You’re very welcome.

All: You’re welcome

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

Mr. McKelvey: I’ll make that motion.

Mr. Bell: Second.

Mr. Manley: All in favor say Aye?

Aye All

Mr. Manley: Opposed?

No response.

Mr. Manley: The motion is carried. The meeting is adjourned.

PRESENT ARE:

DARRELL BELL

RICHARD LEVIN

MICHAEL MAHER

JAMES MANLEY

JOHN MASTEN

JOHN MC KELVEY

DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

BETTY GENNARELLI, ZBA SECRETARY

(Time Noted – 9:35 PM)