ZONING BOARD OF APPEALS

MEETING – SEPTEMBER 26, 2013

(Time Noted – 7:00 PM)

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

PRESENT ARE:

 GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:02 PM)

ZBA MEETING – September 26, 2013 (Time Noted – 7:02 PM)

DOUGLAS & RHEA FLECKENSTEIN 125 DOGWOOD LANE, NBGH

 (78-2-3) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to build a covered front porch (8’4” x 7’8”) on the residence.

Chairperson Cardone: Our first application this evening Douglas and Rhea Fleckenstein.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, September 18th and in The Sentinel on Friday, September 20th. This applicant sent out twenty-four letters. All the mailings, publications and postings are in order.

Mr. Freeman: Good evening my name is David Freeman and I am the architect for the project.

Ms. Gennarelli: Can you turn that (mic) up a little bit towards you?

Mr. Freeman: Sure, I’ll be here a while.

Ms. Gennarelli: Thank you.

Mr. Freeman: My name is David Freeman and I am the architect for the project. I am here tonight to request a variance to install or build an addition of a small front porch on to the front of the building going approximately two feet, well eighteen inches beyond the existing house. The variance required a front yard setback from fifty feet to forty-seven feet. At that point there shouldn’t be much else.

Chairperson Cardone: No. Do we have any questions from the Board? Do we have any questions or comments from the public?

No response.

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:03 PM)

-------------------------------------------------------------------------------------------------------

ZBA MEETING – SEPTEMBER 26, 2013 (Resumption for decision: 7:37 PM)

DOUGLAS & RHEA FLECKENSTEIN 125 DOGWOOD LANE, NBGH

 (78-2-3) R-1 ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the front yard setback to build a covered front porch (8’4” x 7’8”) on the residence.

Chairperson Cardone: We will resume our regular Meeting, on our first application Douglas and Rhea Fleckenstein, 125 Dogwood Lane, seeking an area variance for increasing the degree of non-conformity of the front yard setback to build a covered front porch (8’4” x 7’8”) on the residence. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I don’t think it will cause any problems along the road and it will improve the look of the building. I’ll make a motion we approve.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:38 PM)

ZBA MEETING – SEPTEMBER 26, 2013 (Time Noted – 7:03 PM)

JAMES & DEBORAH PALMINTERI 29 SMITH AVENUE, WALDEN

 (32-3-2) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to enclose part of the rear deck to create an enclosed sunroom (14 x 16’1.5”).

Chairperson Cardone: Our next applicant James and Deborah Palminteri.

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

Chairperson Cardone: Okay.

Mr. Freeman: I worked this out very well.

Chairperson Cardone: Right, I think so.

Mr. Freeman: My name is David Freeman; I am an architect for the project. We are requesting actually several area variances for the project to construct a family room on top of part of the existing porch. We will not be extending the existing deck to the side, to the rear we extend about two inches but the non-conforming deck is what we seek to add onto vertically.

Chairperson Cardone: I also have the report from the Orange County Department of Planning, which is Local Determination. Do we have any questions from the Board?

Mr. McKelvey: The two feet you’re going in the rear the setback is still going to be alright?

Mr. Freeman: Yes. We add on slightly just for a structure and for a bay window.

Mr. McKelvey: Yeah, I see that.

Mr. Freeman: I think we improve the look of what’s there if you’ve been to the sight.

Mr. McKelvey: Yeah, I think it will.

Chairperson Cardone: I’ve been to the site, I’ve been there.

Mr. McKelvey: I think it will improve it, yes.

Mr. Freeman: It will look much better than the railings.

Ms. Smith: Yes.

Mr. McKelvey: Yes. We saw it.

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

No response.

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

Ms. Smith: I’ll make a motion.

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:06 PM)

--------------------------------------------------------------------------------------------------------

ZBA MEETING – SEPTEMBER 26, 2013 (Resumption for decision: 7:38 PM)

JAMES & DEBORAH PALMINTERI 29 SMITH AVENUE, WALDEN

 (32-3-2) R-1 ZONE

Applicant is seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to enclose part of the rear deck to create an enclosed sunroom (14 x 16’1.5”).

Chairperson Cardone: On the application of James and Deborah Palminteri, 29 Smith Avenue, seeking area variances for increasing the degree of non-conformity of the rear yard setback, one side yard setback and the combined side yards setback to enclose part of the rear deck to create an enclosed sunroom (14 x 16’1.5”). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: Well the applicant is just…

Mr. McKelvey: It will be an improvement to the building.

Mr. Manley: The applicant is also just pretty much the same space that’s there and reducing the size of the deck.

Ms. Smith: Right.

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

Mr. Masten: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:39 PM)

ZBA MEETING – SEPTEMBER 26, 2013 (Time Noted – 7:06 PM)

ANTINORI ENTERPRISES, INC. 5217 ROUTE 9W, NBGH

 (43-1-4) R-2 / O ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, the maximum allowed storage of (4) four vehicles and the maximum allowed height to build an accessory building (24’ x 48’ x 16’) pole barn.

Chairperson Cardone: Our next applicant Antinori Enterprises.

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

Mr. Antinori: Good evening, I’m a little bit shorter than my friend here. My name is Andy Antinori; it’s a pleasure to address the board tonight. I’m here to ask for several variances regarding that I would like to build. The building is a…24 x 48 x 16 feet high. The piece of property is fairly large. It’s almost a…thirty-three acres, I think it comes out to like one point four million square feet. So there’s three variance, the first is a request a…according to the Zoning Law it can only be fifteen feet high, I’m asking for a sixteen foot high building. Primarily because I need to have a twelve foot ceiling and then by time you pitch the roof we need sixteen feet. The second variance we’re a…asking for is a a an area variance for the square footage. The way the Zoning Law reads I guess there’s a formula they can calculate or a thousand square feet whichever is smaller. When you plug it into the formula because the property is so large I can…I could actually build per the formula, a fourteen thousand square foot building. The building I seek to build is one thousand, one hundred and fifty-two square feet. There are a couple existing sheds on the property so as I said, we…you have to go by the lesser of the thousand square feet. So if it weren’t for the additional sheds I had on the property we would only be talking about a hundred and fifty square feet for the variance but because of those old sheds…one is like 10 x12, a…one is 10 x 15, I need to ask for a variance of three hundred and eighty-two square feet and that’s my second variance and then the third variance is a…there’s a Zoning Ordinance that doesn’t allow you to park…put more than four vehicles, I guess, in a building and it’s not our intention to do that. Maybe I got that wrong but in any case a…I’m seeking a variance for that. The…the primary reason why we really need this is because we just need the storage. A…the property used to be a farm and a long time ago there were some barns there but they…they’ve been gone and then secondly a…unfortunately we’ve experienced a lot of vandalism and theft a…we have a couple of these little portable a…portable garages I guess you would call them. Through this process I actually learned you’re not even supposed to have them. But unfortunately somebody had come, hiked up through the woods and taken a razor knife and cut a doorway into the back and stole a bunch of my equipment so a…the Police suspected that it was probably some…I’ll just use this term “a crack head” that was a…staying in the motels down on 9W but a long story short is, you virtually can’t see another house from this property. It’s very much in the middle of the woods; the closest house is about fifteen hundred square feet…a…fifteen hundred feet away. I could put a larger map upon the board if anybody if anyone would like me to.

Chairperson Cardone: In relation to that, the house that’s there you’re saying it’s the garage will be fifteen hundred feet from the house?

Mr. Antinori: No, no I apologize, I meant to say that the garage would be right behind my house but the…

Chairperson Cardone: That’s what I thought.

Mr. Antinori: …the nearest neighbor is…

Mr. McKelvey: Yes.

Chairperson Cardone: Oh, the house down on the bottom the…?

Mr. Antinori: That’s my house as well.

Chairperson Cardone: Okay.

Mr. Antinori: The nearest neighbor is the house owned by Segali that’s about fifteen hundred feet, that’s about fifteen hundred feet up and through the woods and you can’t even see it from my house.

Chairperson Cardone: Right. Now once you have that garage up, you will no longer have all of these structures on the property?

Mr. Antinori: When you say the structures…the temporary…?

Chairperson Cardone: I’m talking about these (showing picture of green temporary buildings).

Mr. Antinori: Yeah, yeah absolutely correct.

Chairperson Cardone: But you would keep the shed that you have?

Mr. Antinori: There’s two sheds maam, there’s one that’s…

Chairperson Cardone: Right.

Mr. Antinori: …10 x 12 and one that’s 10 x 15.

Chairperson Cardone: Right.

Mr. Antinori: And I factored the square footage of those in with the variances, with the variance that I asked for so the plan is to…that those sheds would remain and I…I have pictures of them if it’s useful to you.

Chairperson Cardone: No I saw them.

Mr. McKelvey: Do you need them?

Mr. Antinori: Excuse me?

Mr. McKelvey: Do you need them?

Mr. Antinori: Yeah, absolutely.

Ms. Smith: Even with this large building, if it’s approved, you’ll still need the two?

Mr. Antinori: Yeah, to be honest, I mean if I took the sheds down I would have to estimate this building a little bit bigger and it seemed kind of inefficient to tear something down and then rebuild the square footage so, yeah.

Ms. Smith: And you did say you’re not going to store…your intention is not to store more than four vehicles?

Mr. Antinori: No it’s not, you know, we…we…we cut about five cords of firewood a year so we…we heat our house with wood and we have a huge garden so I have like three tractors, I have a log splitter, we have two cars and it’s a…it’s amazing how fast these things fill up. I mean, quite frankly, another real good reason for this is just…if you’ve been there, I don’t want to embarrass myself but it looks a little bit like a junkyard and we just need to clean the place up so that my a…my finance isn’t embarrassed when people come over.

Mr. McKelvey: You cut a lot of trees, I know that.

Mr. Antinori: Yeah, yeah.

Chairperson Cardone: I can’t imagine anyone hiking up there. You said people hiked up from the motel…that…that’s quite a climb.

Mr. Antinori: You know, yeah, it is very steep, you’re correct and the…the garages that you’re talking about…they’re about three hundred and fifty feet up the property line and the Policeman surmised that somebody just out of the corner of their eye caught them and they took a…a very…a small, just paid five hundred bucks for it, one of those little rototillers that goes in between the rows and they took two a…weed whackers so the suspicion was that you know, they just took whatever they could carry.

Mr. McKelvey: We could stipulate about the cars right Dave?

Mr. Donovan: Well…

Chairperson Cardone: And this is not going to be used for any kind of a business?

Mr. Antinori: No maam, I have a full time job. I work for the New York Power Authority. I…I work more than I want to already.

Mr. Donovan: The issue with regard to the size if the structure and the number of cars is always kind of a question in my mind because I guess it’s generally put there from Code Compliance if you could have more than four cars (vehicles) to request a variance for more than four cars (vehicles) but I don’t…I don’t know that anyone who has come before us at least since I’ve been here has ever wanted more than four cars (vehicles). So we…it’s not really an application for a variance from that requirement a…but what we’ve done in all of our decisions as I recall is we’ve indicated you can’t have more than four cars (vehicles)…

Mr. McKelvey: Yes.

Mr. Donovan: …which is what we would do here because you’re not asking for more than four cars (vehicles).

Mr. Antinori: To be honest, I probably didn’t understand well enough what that regulation said, the Building Inspector just flagged it and said this is a problem so ask for a variance for that. So if I understand you correctly now what I would be asking for a variance to park (store) more than four cars (vehicles) in there?

Mr. Donovan: Or if you’re not going to do that then you wouldn’t ask for anything.

Mr. Antinori: I mean can I tell you absolutely that there would never ever be more than four cars (vehicles) in there? It’s likely that there wouldn’t but I guess if it’s just as easy to ask for it, I would…would ask for it too. I guess my question is, so in other words, if I wasn’t going to park more than four cars (vehicles) I wouldn’t even have to include that in my variance you’re saying?

Mr. Donovan: But we would make a condition that you couldn’t which kind of piggybacks on what the Code says that you can’t.

Chairperson Cardone: That would be part of the decision that…that you cannot.

Mr. Antinori: Okay, well my preference would be to have the freedom to be able to do that just because, you know, why not? But I really can’t tell you that I have an absolute necessity for it.

Mr. Donovan: Well if that’s the request then…then you need to let us know how many cars (vehicles).

Mr. Antinori: Okay, then let’s…let’s…let’s make a condition upon the fact that I can’t park more than four cars (vehicles) in there. I’m fine with that.

Mr. Donovan: Okay.

Mr. Antinori: And I apologize I wasn’t as familiar with that as I probably should have been.

Mr. McKelvey: That’s the easy way.

Chairperson Cardone: Do we have else from the Board?

Mr. Manley: Will there be electric to the building?

Mr. Antinori: Not this year Jim, I mean I may at…at some point just put a…you know, an electric service in for lights or something but if I do that I would obviously, you know, do it and get it permitted and inspected and everything.

Mr. Manley: How about any heat or plumbing?

Mr. Antinori: Negative.

Mr. Manley: Okay.

Mr. Antinori: Well on the heat maybe throw a wood stove in there at some point down the road but you know, not…not in any time soon.

Chairperson Cardone: Jerry, do you have anything to add?

No response.

Chairperson Cardone: Anything else from the Board? Any questions or comments from the public?

No response.

Chairperson Cardone: Thank you.

Mr. McKelvey: Motion to close the Hearing.

Chairperson Cardone: Do we have a second?

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Mr. Antinori: Just one other thing if I may, I just like to publically thank Betty because it was the first time I’ve ever gone through one of these things and she held my hand through the process and I apologize for...

Mr. Donovan: Don’t tell your fiancé that though.

Ms. Gennarelli: Thank you.

Mr. Antinori: Thank you very much.

Ms. Gennarelli: Thank you, they just closed the Public Hearing, they didn’t vote on your ap…they didn’t vote on…

Mr. Antinori: Oh I thought they voted.

Chairperson Cardone: No.

Mr. McKelvey: No, no.

Ms. Gennarelli: They just closed the Public Hearing…you can thank me again later.

Mr. Donovan: Do you take back the thanks now?

Mr. Antinori: No I don’t.

 (Time Noted - 7:15 PM)

ZBA MEETING – SEPTEMBER 26, 2013 (Resumption for decision: 7:40 PM)

ANTINORI ENTERPRISES, INC. 5217 ROUTE 9W, NBGH

 (43-1-4) R-2 / O ZONE

Applicant is seeking area variances for the maximum allowed square footage of accessory buildings, the maximum allowed storage of (4) four vehicles and the maximum allowed height to build an accessory building (24’ x 48’ x 16’) pole barn.

Chairperson Cardone: On the application of Antinori Enterprises, Inc., 5217 Route 9W, seeking area variances for the maximum allowed square footage of accessory buildings, the maximum allowed storage of (4) four vehicles and the maximum allowed height to build an accessory building (24’ x 48’ x 16’). This is a Type II Action under SEQRA. And I also have the report from the County on this which is Local Determination. Do we have discussion on this application?

Mr. McKelvey: I will say it looks like it will be hard to see from 9W Route.

Chairperson Cardone: And I do think that it should be included that those temporary should be removed.

Mr. McKelvey: Yes.

Mr. Manley: The applicant also has testified that he is not going to use it for business purposes. I think he also demonstrated that currently there is not going to be any electric and that if in the future he were to add obtain electric he would obtain the necessary Permits.

Chairperson Cardone: And also would not be storing more than four vehicles.

Mr. Manley: I would make a motion with those conditions.

Ms. Smith: I would second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:41 PM)

ZBA MEETING – SEPTEMBER 26, 2013 (Time Noted – 7:16 PM)

NEWBURGH COMMONS, LLC. - 114-118 ROUTE 17K, NBGH

 ROUTE 17 CARS LLC. (95-1-53) I / B - AO ZONE

(VOLKSWAGEN OF NEWBURGH)

Applicant is seeking area variances for the front yards setbacks to build an automobile dealership. (has two front yards - Route 17K and Mulbury Lane).

Chairperson Cardone: Our next applicant Newburgh Commons LLC.

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

Mr. Cordisco: Good evening everybody, I’m Dominic Cordisco from the law firm of Drake Loeb, it’s good to see you all again.

Ms. Gennarelli: Is that (the mic) too low?

Mr. Cordisco: I think it’s okay. Is that better? Okay?

Mr. McKelvey: Because everything is being recorded.

Mr. Cordisco: I know and this just does not come natural to me I have to tell you. I dread coming before you guys because of the microphone, I have to say.

Mr. Manley: You could break the ice and sing a tune for us.

Mr. Cordisco: I could try, you know, I could do a soft shoe, you know, anything that would help. I’m here tonight with Joe Sarchino from John Meyer Consulting as well as Peter Burac who is representative of Newburgh Commons and we’ve been before the planning board now for our first appearance and they referred us over to you. This is a…our proposed Volkswagen of Newburgh which will be located on Route 17K. We were referred over to by the planning board because we a…a…unbeknownst to us we had considered Mulbury Lane which is a drive off of Route 17K a…to be a driveway because it leads back to a…to two houses. But it turns out that it’s actually a private road and that creates basically a corner lot rather...even though our lot fronts Route 17K because it also abuts Mulbury Lane a…it treats the lot as a corner lot which means that we have to meet the front yard setback on both side. With that said, I think at this point I’d like to turn it over to Joe Sarchino a…one thing I do want to make clear though is is that in the referral from the planning board it referred to the fact that a…we needed to provide a (60) sixty foot setback along Mulbury Lane but in our review of the Code we subsequently determined that it’s actually...it’s a (50) fifty foot setback. A…there is a (60) sixty foot setback on this property and that is the front yard setback from 17K. The setbacks in this zone are (50) fifty feet unless you abut a State or County highway in which case you have to add (10) ten feet so our front yard along 17K meets the (60) sixty foot setback. The (60) sixty feet does not apply to Mulbury Lane. It’s (50) fifty feet. And a…with that said I’ll turn it over to…

Mr. Donovan: If I could, just one other question, in the referral Mike talks about a sign area variance as well. Is that? That’s not part of your application so I just wanted to…

Mr. Cordisco: It is not and we do not anticipate requesting at any time a variance for signage. It was just our first appearance and we weren’t sure if we were going to need it. We…we know based on other applications and other projects in the Town is that sometimes we need sign variances. A…and we weren’t sure we were going to need it but we wanted one referral to cover it. We then went and looked at our…our anticipated signage and we decided that we were going to meet a…what a…what’s allowed in the Code.

Mr. Sarchino: Thank you Dominic. Again, Joe Sarchino I am with firm of John Meyer Consulting. I’ll just review the plan with you so everybody can understand exactly where it is and what we’re talking about here. So a…here’s Route 17K a… the National Guard driveway is located in this location here. We are proposing to dwell up our access point at that intersection where the National Guard driveway is, right across from it and modify that traffic signal. A…the plan, as you can see the site is long and narrow a…and that’s part of the reason why we are asking for that (10) ten foot variance. We have, if you look at the site plan, this is the proposed building here its twenty-three thousand square feet approximately and we have…the front door is facing Route 17K here. We have some parking in the front and some pad areas for display parking. A small amount of parking on the side here but most of the storage of cars would occur in the rear of the property here. So this would be a relatively inactive area of the property and most of the business would be in the front facing 17K. We have an access driveway that comes around the side of the building. Here is Mulbury Lane right here that comes around the side of the building a…and then the building is located here. I have the side, the (50) fifty foot side yard setback or front yard setback actually shown in this red dash line. I hope the Board can see that. The (10) ten feet is from the (50) fifty foot here to (40) forty feet there. It’s that section of building right here. And what that will allow us to do, we have a class A stream along the bottom of the property here that we need to provide a…a extensive amount of storm drainage for that…for the design of this property. So we have a vegetated swale, for a bay here and a storm water basin here in this location. So we’ve tried to fit a…those storm water features here and still maintain a relatively small parking lot here which means that’s why we’re asking for that (10) ten foot variance on the side here of the building. A…the…as you come down Mulbury you’ll see the grey area here we brought the a…pavement back to the 50 foot front yard setback along the entire stretch the back of the property. And the parking lot would be set approximately 12 to 15 feet lower than Mulbury Lane so this would be an embankment here; we have a retaining wall on the side of the driveway here. So that's how we were able to develop the site plan. A…I have another drawing just so you could see a…how the property is set with the surrounding area again 17K a here, here's a driveway, National Guard access drive, here's our property a…the Mulbury Lane which is a…a relatively small driveway here. There's large trees along the perimeter here and large trees…

Chairperson Cardone: Are they going to remain, those pine trees?

Mr. Sarchino: A…the trees will not remain a…probably along the extent of the a…driveway to a point at this location here where this is potentially a future a…parking lot but they would…would have to come out probably be extent from here and then everything would remain here a…from there on toward the back of the property and there is a house in this location here. So we tried to make sure that we offset the pavement and again it's about 12 to 15 feet down from Mulbury and this would be an embankment here but the trees would stay within this area here.

Chairperson Cardone: Okay but I have a letter from a neighbor who could not…I think I'll read it at this time. This is really a matter for the planning board but I like to read it anyway.

Thank you for the opportunity to voice our concerns regarding the proposed use of the 114-118 Route 17K property. We own the home at 120 Route17K; our family has owned this house for 65 years. Originally when we first located there the homes on 17K were affluent and beautiful homes. Over the years the desire to focus on the commercial value of the property and essentially left the homes in ruin and created a tremendous eyesore to the neighborhood Route. We have enjoyed our privacy and wish to continue in that regard. If this appeal is granted we ask that it be done with consideration to our property. There a large pine trees that run the length of Mulbury Lane and we would ask they remain. Also we would like to see a dirt berm with additional pines to protect the division between the new use of commercial property and the long-established residential property. We are not against progress but wish to remain as residential as possible. Thank you for your consideration. Sincerely, The Smolinski family.

Mr. Cordisco: These are if I may, these are the photographs that we submitted as part of the application so I think from these…these are…these are views along Mulbury Lane and so that you can see that there are trees that abut that directly about Mulbury Lane and a…as Mr. Sarchino was mentioning in this portion of…of the site we are going to be maintaining the full 50 yard setback. A…to answer your question however, as to what trees are going to remain we obviously want to have as…as least amount of site disturbance as possible. It's difficult for us at this early stage to commit to which particular trees are going to remain. Obviously as they get closer to Mulbury Lane were going to be disturbing less and less in that area. We have to counterbalance this however with the fact that we are also in the Airport Overlay District and we are required to confer with both the Port Authority and with a…a…a…the FAA. We for he met with Port Authority and the Port Authority would very much like us to take everything down on the site because they consider all those trees in that area a…to be a hazard to a…air…air…a…air navigation. In fact it's my understanding that the Port Authority has done a letter writing campaign for everyone, all the lands along 17K and has asked those owners to take the trees down voluntarily along that site. With that said, we'll…we'll have to, you know, we're…we're caught between a…you know we're caught between those competing interests. Our preference would be not to take the trees down a…in that area.

Mr. McKelvey: That's…that's planning board though anyhow.

Chairperson Cardone: Will there be any kind of fencing in addition to the trees or any kind of the barrier, physical barrier?

Mr. Sarchino: One of the things that we are a…happy about is that, I've mentioned it previously, but Mulbury Lane is approximately 12 to 15 feet would be 12 to 15 feet above the proposed development so naturally by dropping everything we're providing the screen of that area. As Dominic has indicated we will try to save these trees along especially from this point back a…here it will be difficult because we’re required a…we need to go adjacent to the property line but a…by…by in itself that the…that the project is below you…you know, the views from here will just look over it.

Mr. Manley: Dave, I have a question has to…with respect to screening. Because the applicant is asking the Zoning Board for abatement with respect to the…the line and being 10 feet closer does that not fall within our ability to regulate screening for the neighbors? Being that that is one of the concerns that the neighbor has expressed is they’re not against the project but they're asking for some relief with respect to give-and-take. If the Zoning Board give a little bit with respect to the number of feet, and they would like something in return which is obviously not hearing cars, you know screen their property from perhaps the view, you know, mitigating the view of the a…the a…the property.

Mr. Sarchino: Dimension, one point to that relation I…I was just going to discuss, along the area here this entire perimeter adjacent to the building we will have a retaining wall and the slope will step up. We will have a fence on top of the retaining wall and that could be a privacy type fence along this entire perimeter.

Mr. Donovan: In terms of our jurisdiction Jim and what we look at in connection with this specific issue is whether or not the removal of those trees would create an undesirable change in the character of the neighborhood. Because you know when we undertake our deliberations we have a five part balancing test. We look at whether or nor there will be an undesirable change in the character of the neighborhood, can they achieve their objective by some other method, is the variance substantial, will it result in any adverse physical or environmental effects and is the difficulty self-created? Those are the…that's the balancing test we have to engage in determining whether or not to grant an area variance. In terms of…certainly screening is generally a planning board site plan issue but with respect to our specific charge if…if the Board has a…a basis to conclude that the removal of trees would result in an undesirable change to the character of the neighborhood then you may well perhaps have the ability to impose reasonable conditions. Now as…as I understand what you're saying to us is you need to put the building and that location because of the restraints of the size and shape of the lot and the existence of the stream I… I can't…I'm going to call it the bottom of the map, I don't know was that's north, south, east or west, but that's…that's essentially the reason for the location of the building, correct?

Mr. Sarchino: Correct, correct…

Mr. Donovan: A…so…

Mr. Sarchino: And…and most likely even if we did not get the variance this road wouldn't change, you know, the 10 feet wouldn't matter as far as that goes so the condition here would…would remain the same and again it would be a planning board issue.

Mr. Manley: Do you have something from an engineer that states that the physical constraints with respect to the property are preventing you from moving the building at all so that you're required to have this variance that there is a need for this variance?

Mr. Sarchino: Well we're…we’re the engineers on the project and in order to design a…a sufficient storm water system that…since…since we have a Class A stream along the perimeter here a…the Town engineer is requiring more extensive storm water management for the project. Apparently, you know, in the Town a…whenever you have Class A stream that that engineer requires you to increase the amount of storm drainage treatment that you are providing or that we’re providing. So with…with that being said, we also have a retaining wall along the perimeter here just so could maximize the amount of storm water a…detention and/or treatment that we’re providing along this perimeter. So we're…we…it…it is very tight as it is right now and we are using the entire length of this property from here to here a…for storm water treatment and it's long and narrow and that's the difficult part of it all but we think by keeping every…the 10 feet doesn't sound like a lot but it is in this case a…for us.

Chairperson Cardone: Will there be a Public Hearing at the planning board level do you know?

Mr. Cordisco: Yes the planning board…

Ms. Gennarelli: I'm sorry have to use the microphone because is being recorded. Thank you.

Mr. Cordisco: Yes the planning board already requested that we submit the planning board application a…Public Hearing fee. So we're anticipating that as well.

Chairperson Cardone: Because that would be an opportunity for the neighbors to give their input.

Mr. Cordisco: Absolutely and of course, when we before the planning board we would advise them of the fact that we would here before the Zoning Board and that the neighbors did of course right and request that a…the Boards give consideration to their concerns.

Mr. McKelvey: Does this…is this the size of the lot to where this yellow line is?

Mr. Sarchino: Correct.

Mr. McKelvey: And there is a drop off there to on that side.

Mr. Sarchino: Yes there is that's…that's the reason for that retaining wall on the lower side. Yes there is a drop off here as well. So what we’re doing is when you look at the site, the site kind of slopes like this…

Mr. McKelvey: Yeah.

Mr. Sarchino: …what we’re doing is…we're…we’re finding the midpoint, where cutting on this side and were filling on the side so a…that's why the site is lower and it drops down which works out well for properties along this perimeter.

Mr. McKelvey: And you lucked out you got a traffic light there.

Mr. Sarchino: We did.

Mr. Manley: Do you have any documentation from either the FAA or the Port Authority that their preference is to have those trees removed? Do you have anything from them?

Mr. Sarchino: We met with them and a…Dominic…

Mr. Cordisco: Yeah a...we…we don't have anything in writing from them on this particular project. We did meet a…with a…with…with Mike Torelli and Greg Reska who is the director of operations a…as well as a…a Derek Martin, I believe is his name whose a…works for Greg Reska as well….a...to go over the project with them. My reference to the letter that I…that I was referring to was in connection with the Newburgh Toyota a…further up the road. They did specifically request in writing a…that trees along a…their property be taken down. A…and when we talked about that for the Newburgh Toyota…a…they informed us that they had sent letters to the…everyone along the 17 K corridor…a…

Mr. Manley: Because that's the first time I've ever heard of that because I mean they've approved other projects that, you know, height wise or even larger than a lot of these trees that are there. I mean they've got the a…a…WGNY towers that you know were right in the flight path that are over 100 feet high and they approve that they didn't have a problem with that. And they didn't have a problem with the Town water tank on the top of a…you know, the hill which is higher than a lot of those trees so I…I just you know, not that I’m saying I think that the…the Port of Authority I think, is just trying to exercise their…their muscle and I don’t…I don’t think that any of trees pose a significant a…hazard to you know, to the flight path.

Mr. Cordisco: Well as long as we're talking about it a…when we showed them our site plan we had provided to them in advance and when we met with them they rolled out their maps and they had identified all of these parcels on their maps as acquisition parcels. Of course, they…they didn't buy them…ha ha…ha, you know but I think in…in a larger scale of thing from Port Authority’s a…perspective you know, they would like to see those par…parcels become part of the airport.

Mr. Manley: Sure and let the landowners do the job and the work of cutting the trees down to mitigate what they're going to have to do. I got it.

Mr. Donovan: Cheaper flights in any…in the horizon anyplace? Because it doesn't really matter unless…

Mr. Cordisco: Those questions are so far above my pay grade a…

Chairperson Cardone: I have the report from the Orange County Department of Planning which is Local Determination. Do we have any questions or comments from the Board? Any questions or comments from the public? Do I have a motion to close the Public Hearing?

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

Mr. McKelvey: Second.

Ms. Gennarelli: Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Mr. Cordisco: Thank you.

Chairperson Cardone: Would…before declaring a short adjournment to confer with Counsel I’d like to ask if the Board feels that’s necessary this evening. If they have any legal questions raised by tonight’s applications?

Mr. McKelvey: I have none.

Ms. Smith: I don’t have any.

Mr. Masten: No.

Chairperson Cardone: No? Then…

Mr. Donovan: You won’t hurt my feelings.

Chairperson Cardone: Then we will not take a short adjournment.

 (Time Noted - 7:37 PM)

----------------------------------------------------------------------------------------------------------

ZBA MEETING – SEPTEMBER 26, 2013 (Resumption for decision: 7:41 PM)

NEWBURGH COMMONS, LLC. - 114-118 ROUTE 17K, NBGH

 ROUTE 17 CARS LLC. (95-1-53) I / B - AO ZONE

(VOLKSWAGEN OF NEWBURGH)

Applicant is seeking area variances for the front yards setbacks to build an automobile dealership. (has two front yards - Route 17K and Mulberry Lane.

Chairperson Cardone: On the application of Newburgh Commons, LLC., 114 to118 Route 17K seeking area variances for the front yards setbacks to build an automobile dealership. This has two front yards. (Route 17K and Mulberry Lane). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Manley: I…I feel that a…in many cases in the past where we've had issues especially if it only impacts one or two people, we had that instance a…when we had the Vitamin Shoppe and that one lady that had an issue with water and there was no Public Hearing (at planning board) and we battled and finally we got some resolution to it. But it was only because they really wanted to cooperate… I think that you know, it's just my opinion that there's going to be a change in…in the neighborhood and it is a commercial zone but it's a changing zone. You still have, you know, residences and a…I'm not opposed to granting the variance I think with what Mr. Donovan said reasonable conditions I…I…I think should be added to the approval if it's granted whether it be, you know, additional screening or to limit the number of trees that they take down a…to protect the…the neighbor. That’s my only comment.

Mr. Maher: Yeah, I concur with Jim. I’m not opposed to but by the same token though even though it’s to be set down below you can imagine the sight. It’ll be nothing but a sight there constantly because you’re driving down the driveway and all you’ll see is the actual parking lot and the top of the building for that fact so…anything they can do to…to assist in keeping the neighborhood, you know, consistent with what it is now I…I…I would a…like to see that done.

Mr. Donovan: Well you have a…a…I think a couple of options on how to accomplish that. I mean I don’t know whether you want a landscape plan presented or whether you want to indicate that a…they need…you…you…that a condition of the approval is they preserve as many trees as to the maximum extent as practicable a…in view of development of the site and add any additional screening that may be imposed by the planning board and their landscape consultant in terms of site plan review. I don’t…I know that’s kind of a little vague but I don’t know if the Board will be satisfied with that. Otherwise, I think you need…you need something a little bit more substantial because I don’t know what kind of direction you’re giving the applicant in terms of what kind of a…tree preservation or landscaping or screen you’re looking for.

Mr. Manley: Or if that…if that question could be answered by the planning board’s landscape architect as to what could be done to mitigate this and for example, I’ll give you an example, a…and this was an example of how the Town and the developer worked very well together. When Target wanted to move into the Town of Newburgh there was an issue where Zayre’s had been out for many years and the residents that are up on the hill, they’re way up on the hill and Zayre’s was down here there was an issue that were concerned about noise. They were concerned about the lights coming from, you know the property. And a…the Supervisor at the time worked with the a…with Target Corporation and they came up with pretty much putting these huge fences and I mean it really looks nice. It was done very nice. Everything was landscaped properly and in the end the neighbors were happy. And you know, that’s the only thing that, you know, I want to make sure and Mike just mentioned it too that…that the neighbors are protected. Because who knows what’s going to happen in fifteen or twenty years they may sell out and you may get something else next to it. Who knows? But at least for now the neighbors have something that they can you know, at least still enjoy their property, their health, safety and welfare.

Mr. Canfield: Just one thing for the Board’s benefit a...if you look at the pictures that were submitted what I observe is this tree line. I’m not certain whose trees they are but in any event the tree line has a power line that goes right through it...the pole line. It looks like the service that serves that house in the back…that’s how these people receive their power but as I see these trees with that power line in there, to me that indicates a potential problem. Now if I were to be the property owner that owned those trees my first concern would be to limit my liability and remove those trees or remove those lines. So just when we speak of a…a suggestion to the board is when you…when you speak of potentially limiting the developer or directing the developer to what trees to remove or leave a…you may want to take that into consideration because those power lines there do create a public health hazard so it’s just something to consider.

Chairperson Cardone: But as Jim said the…the screening can also be done by an attractive fence. You know, but that is…

Mr. Canfield: …There’s no question Grace, yes.

Chairperson Cardone: …high enough and not you know, not because I know when you’re sitting above the property even though a fence is put up and a…a six foot or eight foot fence is not going to block your view.

Mr. Manley: You know, is it…is it possible that and I don’t know I’m not a landscape expert but maybe a berm? You know, with plantings on top of a berm somehow? You know, I’m just coming up with ideas a…

Mr. Canfield: And I agree and I think a…the letter that you received had requested some type of berm but I do know that the planning board and its consultants are facilitated with expertise in the landscape, you know, area. A…I do know also that 185-21 a…is a Section of the Code that governs for the planning board to request screening. Okay? A…they also have the ability to make the determination if existing vegetation suffices for the required screening a…but I also know because I do attend the planning board meetings as well and I was there the night of this project. As Dominic Cordisco has advised they’ve only made their first visit to the planning board. The plan that you are seeing is a conceptual plan in nature. The level of detail that you’re ac…asking for or questioning is not existent at this time. Typically lighting throws which would be a great concern here especially for the neighbors a…landscaping, mitigation measures they’re all further developed and revealed as the project progresses on so a suggestion may be is the valid points I believe that the neighbors have raised and the Board is concerning but should you choose to approve a…perhaps some type of communication a…conveying your thoughts in between the boards, from the Zoning Board to the planning board. I did speak briefly with the planning board chairman tonight. He is aware of this letter a…which he has copied his board members as well. So I’m certain at that level it will be reviewed a…but just a suggestion may be is to convey your concerns to the planning board as well.

Mr. McKelvey: I think Karen will have a lot to say too.

Mr. Manley: Could we a…could we maybe ask Karen Arent before we make a decision? Could we table our decision and perhaps ask Karen to provide the Board with just a…a suggestion of what would be something that would you know, facilitate that and…?

Mr. Donovan: I…I mean…if that’s what the Board wants to do, I mean you…you know you closed the Public Hearing, you have sixty-two days to make a determination. You don’t have to decide tonight. I mean, I think the issue that I raised before that…Jerry is raising too I believe, is that you know I…I think you have two options. The one option is to have some sort of landscape plan but recognizing what Jerry is saying is as it goes through the site plan iterations things may happen that result in that plan being amended. We don’t know that until it goes through the site plan process. The other alternative is to and we have done this in the past, I don’t know necessarily with landscaping but with other issues, drainage specifically where we’ve said it, approved it, sent it to the planning board with a condition that says to them to the maximum extent practicable, you know, address these concerns that have been raised be they drainage, be they landscaping. The Board could do that. You’re able to do either of those things. It’s really it’s in the Board’s discretion what you think is most appropriate under the circumstances.

Chairperson Cardone: Well I think the fact that the…the a…the board…the planning board members now have copies of the letter, you know I…I think that your last suggestion, as far as I’m concerned, I think would cover it.

Ms. Smith: Yeah, I agree, yes.

Mr. Maher: Yeah I think it…I think it’s too early to have specifics come back from Karen at this point.

Mr. McKelvey: Yeah. I think they’re going to address it at the planning board because of this letter.

Chairperson Cardone: Do we have a motion to that effect? A motion for approval with wording in the Decision to address these issues?

Ms. Smith: To go to the planning board…?

Mr. McKelvey: I'll make that motion.

Mr. Manley: So now the motion, the condition of the motion is that it’s approved with the condition that it must…it must go before the a…planning board to specifically address the issue of screening?

Mr. Donovan: As I understand it…it would be…

Mr. Maher: Well you stated it.

Mr. Donovan: Yeah, what I said before.

Ms. Smith: We’re sending a letter?

Mr. Donovan: No but as a condition of our approval would be that the planning board landscape consultant and the planning board would review the application and to the maximum extent practicable a…given site conditions would a…develop a landscape plan to accommodate the neighbor’s concern.

Mr. McKelvey: Sounds good to me.

Ms. Smith: That’s acceptable, sure.

Mr. Maher: Sounds good, write that up.

Ms. Smith: Very good.

Mr. Donovan: That’s what I get paid the big bucks for.

Chairperson Cardone: Right. Okay.

Ms. Smith: I'll second that motion.

Ms. Gennarelli: Thank you. Roll call.

 John McKelvey: Yes

 Michael Maher: Yes

 James Manley: Yes

 John Masten: Yes

 Roseanne Smith: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:52 PM)

ZBA MEETING – SEPTEMBER 26, 2013

END OF MEETING (Time Noted – 7:53 PM)

Chairperson Cardone: O.K. Has everyone has seen the minutes from last month? Are there any corrections, additions?

No response.

Chairperson Cardone: Do I have a motion to approve the minutes?

Mr. McKelvey: So moved.

Chairperson Cardone: Do we have a second?

Mr. Masten: I’ll second it.

Chairperson Cardone: All in favor?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Is there anything else anyone would like to bring before the Board? I just have one quick thing there is the Land Use and Planning Courses and everybody should have received a copy of that… John (Masten) has stated that he would like to attend the one on Tuesday, October the 29th, “Zoning Boards of Appeals and Area Variances, The Difficult Applications”. Is there anybody else interested in going to that particular one or any of the others?

No response.

Chairperson Cardone: Please let Betty know because…

Ms. Smith: I’ll check my calendar and call you.

Chairperson Cardone: …I will not be around.

Ms. Smith: I’ll call you.

Mr. McKelvey: Have a nice trip.

Chairperson Cardone: You wanted to go Jerry?

Mr. Canfield: No. (Inaudible)

Mr. Donovan: Are you kidding?

Mr. McKelvey: That’s what I thought you wanted to know.

Mr. Canfield: I did have a question but not on that.

Chairperson Cardone: Okay, go ahead.

Mr. Canfield: A…just there…there are new requirements, I guess Dave you know more about this a…with respect to SEQRA?

Mr. Donovan: Well they’re not a…there’s going to be new forms and some new requirements. I don’t think they’re effective now. October, November…I believe they come into actually…Dominic did a program a…last week or the week before on those.

Mr. Canfield: Will that impact the ZBA’s application process?

Mr. Donovan: I…I would…I would…

Mr. Canfield: The EAF form.

Mr. Donovan: …a…the form would.

Ms. Gennarelli: The short EAF will.

Mr. Donovan: Yeah, that will be different but not really anything else.

Mr. Canfield: Okay.

Ms. Gennarelli: And it may go through by October 7th but we don’t know…

Mr. Donovan: Correct.

Ms. Gennarelli: …for sure…

Mr. Donovan: Right.

Ms. Gennarelli: …because they’ve pushed it many times.

Mr. Donovan: Yes, they have, yes, yes. And another just kind of a detail but I’ve been following the Appellate Division’s Decisions and they reflect when cases were argued and Decisions are now being issued from the many June arguments that were being decided that’s when the Exeter appeal was argued in June. And so perhaps by next month we’ll know something if I get a Decision I’ll make sure I circulate it to everyone by email.

Mr. Manley: Please.

Mr. Donovan: Good, bad or indifferent.

Chairperson Cardone: I haven’t closed the Meeting yet. Do we have a motion to close the Meeting?

Mr. Maher: So moved.

Mr. Masten: I’ll second it.

Chairperson Cardone: All in favor say?

Aye All

Chairperson Cardone: Opposed?

No response.

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

PRESENT ARE:

GRACE CARDONE

 JOHN MC KELVEY

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

 ROSEANNE SMITH

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 8:00 PM)