ZONING BOARD OF APPEALS

MEETING – SEPTEMBER 25, 2014

(Time Noted – 7:02 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions 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 may take up to 62 days to reach a determination. And I would ask if you have a cell phone to please either turn it off or put it on silent. And also everything is being recorded so when you speak, speak directly into the microphone. Roll call please.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:03 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 7:04 PM)

GREGORY PASCHALL 18 MERRITT LANE, NBGH

 (7-1-24.1-1) A/R ZONE

Applicant is seeking area variance s for the maximum allowed square footage of accessory buildings, accessory buildings shall not project closer to the fronting street than the main dwelling, accessory buildings shall be located in a side or rear yard, accessory buildings shall be set back 5 feet from the side or rear property lines and building shall not occupy more than 10% of the required yard in which it is located to build a detached garage (28 x 40).

Chairperson Cardone: Our first applicant Gregory Paschall.

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 17th and The Sentinel on Friday, September 19th. This applicant sent out eighteen letters. All the mailings, publications and postings are in order.

Chairperson Cardone: State your name for the record.

Mr. Brown: Okay, my name is Charles Brown the engineer for the applicant. This proposal is for a 28 x 40 garage to replace his hundred and sixty year old that collapsed a…tail of last winter a…due to snow loads a…the a…applicants requesting a…setback variances for the rear, it’s a down to one foot a…front down to four foot. Size of the building exceeds the thousand square foot so there’s a variance requested on that and a…ten percent lot coverage. The a…this is a pretty unique situation a…this piece of property a…was in the middle of a subdivision that was filed back in ’06 done by Ham Staples as part of that subdivision the…the yellow is the a the parcel as far as that subdivision a all of these green areas were supposed to be deeded a…to my client a…in which case he would have substantially more property. He would then…

Ms. Gennarelli: (changed the microphones)

Mr. Donovan: You’ve got to start over Charlie.

Mr. Brown: From the very beginning? I will. This right here is a copy of the file map that shows the land that was supposed to be deeded to my client a…which again wasn’t done. Ham Staples never followed through with that. A…if that was deeded a…the setbacks would be different because of where the yards…the streets are a…in that case the only…only variance request would be for the a…over a thousand square foot unless we kept it out of all setbacks together which I will be addressing on the next application. A…the garage was there since like I said a hundred sixty years so this is really not going to have a detrimental effect on the neighborhood. It’s very well screened with…with existing vegetation so a…the impact to the environment and the neighborhood will be minimal. A…there’s really no other place to put it on the property as the property now exists because the area behind the house is very steep and you would not be able to get a driveway a…into the garage.

Chairperson Cardone: Who is the owner of the a…that property?

Mr. Brown: A…the other parcels right now are not owned by anybody they’re floating so a…you know and that…that also a…you know should…means that we have minimal impact on the neighborhood because nobody owns them, nobody can build on them, nobody can do anything with them. My client is in the process of…of working with a lawyer to, you know, see if he can a…effect that transfer but a…at this point that’s not eminent. He does need the garage before the winter again this…the old garage collapsed before…the end of last winter.

Chairperson Cardone: Right, my question was why he hadn’t asked to purchase that property.

Mr. Brown: It was…it was an agreement that was made a…as part of the subdivision a…and the filed map shows it being transferred a…as far as a…getting a transfer from…from a…Mr. Staples I…as far as I know nobody can even find him right now.

Mr. McKelvey: Who Ham Staples?

Mr. Brown: Yup.

Mr. McKelvey: He passed away.

Mr. Brown: The son?

Mr. McKelvey: The son or the father?

Mr. Brown: The son.

Mr. McKelvey: Huh?

Mr. Brown: The son.

Mr. McKelvey: Oh, I’m sorry. The father is the one that…

Mr. Manley: I think the Chair brings up a good point that a…obviously one of the things that we look at is you know, is there another way to achieve what you’re trying to do without the need for a variance so you know, I would want to rule out the possibility that the applicant couldn’t you know obtain some additional land or…and you never say never because…

Mr. Brown: And again I can’t speak for lawyers and whenever they’re involved either things get done or they don’t but when they do it takes a very long time so a…we would rather not be at the mercy of that and…and again it’s been a impossible to get in contact with…with Mr. Staples. So…

Chairperson Cardone: Who has been maintaining the property? Because it’s well maintained.

Mr. Brown: A…you have? My client has been maintaining the property.

Mr. Paschall: Can I say something?

Chairperson Cardone: Certainly, come to a microphone and just identify yourself for the record.

Mr. Paschall: Paschall, the owner of the property…

Mr. Gennarelli: You can tilt it (the mic) up towards you.

Mr. Paschall: The land…the land is listed a…as future lands of Gregory Paschall if you go over here in the next office (pointing toward the Assessor’s office). It just…the very last part didn’t occur because Ham disappeared. Then I’ve maintained the property since.

Mr. Brown: These…these transfers would actually more than double the size of the lot so you know it…it would a…certainly you know, it would be no impact if the transfer would happen and we could actually a put the garage in a spot that a…met all the setbacks and was…was in the front down in here where it’s level but again we can’t rely on that at this point.

Chairperson Cardone: Well then it would be…actually it would then be a corner lot. Is that not correct Mr. Canfield?

Mr. Brown: Right.

Mr. Canfield: (Nodding yes).

Chairperson Cardone: And then it looks like it would be in a front yard.

Mr. Brown: Well we would move it in that case I mean, you know, again if…

Chairperson Cardone: Right.

Mr. Brown: …he owned the property the garage would have been placed over here, this is the side yard because again, like you said it’s a corner lot and we would have met the setbacks so we would presumably not even be here.

Chairperson Cardone: Well you would be here for having it in the front yard.

Mr. Brown: Oh a…

Chairperson Cardone: Further to the street than the house, closer to the street than the house.

Mr. Brown: I actually…I actually…

Chairperson Cardone: Because if it were, you’d have two front yards in effect.

Mr. Brown: Correct. I actually laid it out and I can send these and it shows that it’s further back from the street a…and, and not in any of the setbacks. I got a stack of these that I could pass out if you want. It’s the same as…as what’s show up here.

Chairperson Cardone: Could I take a look at that?

Mr. Brown approached the Board with the copies.

Ms. Gennarelli: Can I get a copy please for the record and one for Mike, please, he’s not here. Thanks.

Mr. Brown: So again on this map that you have in front of you the a…red square, red rectangle that says PG that’s proposed garage, the other one house that’s obviously the house, these setbacks would be a…based upon after the property is transferred a…and a…as…as the Chairman said this is a corner lot so we have two front yards. The one behind the house would be the rear and the other one would be the side. The green rectangle represents the same size building we’re proposing a…and you know, clear…clearly meets the setbacks and it’s further back than the a…primary building.

Mr. Scalzo: Are you sure where the red setback lines (inaudible)

Mr. Brown: Correct.

Mr. Scalzo: …the road.

Mr. Brown: That’s the property, that road was supposed to be abandoned as part of the subdivision that was filed in ’06 a…and the…the property was supposed to be deeded to my client. That never happened.

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

Mr. Canfield: Yeah, I mean looking at what’s before us tonight, the boundary lines of the existing parcel and the variances requested in the paperwork and as the agenda that’s correct and accurate. The corner lot does not become an issue until such time that these properties are conveyed. Should the Board choose to grant these variances tonight a…and in the future when this a…the property is conveyed to the applicant it does become a corner lot…

Chairperson Cardone: Right.

Mr. Canfield: …and two front yards are in existence however the garage that’s granted the variance for becomes existing non-conforming and it can therefore stay that way forever until such time something is changed in the garage. If it’s enlarged or relocated at that point in time so a…my suggestion to the Board is that I believe all things being proper and in order the Board can move forward should they choose on this application. A…a future conveyance I think is a…is a total separate issue. I don’t know if Dave would you know concur…

Mr. Donovan: Well I…I think we need to proceed with the facts on the ground. What we’re saying is that this property was supposed to have been conveyed, it’s a 2006 subdivision so it hasn’t happened in eight years a…so I don’t anticipate that it was going to happen anytime in the near future I think we have to rule on the application in front of us as it’s presently presented.

Mr. Brown: I agree.

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

Mr. Manley: The existing shed that is going to stay or is that being removed?

Mr. Brown: A…this application shows that to stay a…

Mr. Manley: The question would be if the Board is going to be granting greater square footage than existed previously then why would there still be a need for a shed if there is going to be additional square footage to make up for what this shed would be needed for?

Mr. Brown: Well a…I’d have to talk to my client about that but I believe we do have a little bit of flexibility there a…if the variance was granted a…a…I’m pretty sure he’d be willing to take the shed down because like you said he has additional area inside the a…the garage to store his equipment and whatnot.

Mr. Manley: Right, that would just help with the a…with the lot coverage area. It would decrease that.

Mr. Brown: It would decrease that and also a…drop it down to…it…it would take ninety-six square feet off the a…the variance request for the a…overage on the size of the building.

Mr. Donovan: And we looking at an overage now of a hundred and twenty square feet so...

Mr. Brown: Two sixteen…

Mr. Donovan: …on a…on a percentage basis even though it’s not a lot of square feet, on a percentage basis it would be…

Mr. Manley: Significant…significant percentage.

Mr. Donovan: Correct, yes.

Mr. Brown: Yeah, almost half of the overage, right.

Mr. Manley: I mean the Board is…you’re aware, is bound by giving the least amount required for the variance as…as possible.

Mr. Brown: Understood.

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

Mr. McKelvey: The client is here. Would he take the shed down?

Mr. Paschall: Yes, I would.

Chairperson Cardone: Anything else from the Board?

Mr. Scalzo: As it sits now with the property line the proposed structure being one foot off you consider an overhang you actually on or over and that’s just as it sits now. I…I know there were some other conveyances intended.

Mr. Brown: Well that a…that particular piece in the back that abuts that so again was supposed to be conveyed there’s almost a half an acre a…and it’s certainly not buildable by anybody else so it can’t be transferred anywhere else either so a…you know I a…as far as this code is the…the a…soffits are not included when you…when you include a…building envelop and setbacks (inaudible) exempt so you know, I do understand what you are saying we couldn’t have any part of that building over the property line a…and I would assure that that would…didn’t happen.

Mr. Manley: Just keep in mind a foot doesn’t give you much margin for error.

Mr. Scalzo: Well there’s also a maintenance factor here too to consider.

Ms. Gennarelli: Could you pull that mic in?

Mr. Scalzo: A maintenance factor to consider I don’t know if it’s going to be vinyl sided, if it’s going to be painted. If you have somebody painting it a…to and I know what’s coming later but a…you’d have to have awfully skinny folks you know, in that one foot trying to paint that corner.

Mr. Manley: I don’t paint anymore.

Mr. Scalzo: Me neither.

Mr. Donovan: I…I do but I’m not skinny so.

Mr. Paschall in audience speaking inaudibly.

Chairperson Cardone: Yes but please pick up the microphone.

Mr. Paschall: We’re not waiting for the developer here. The Town of Newburgh has a road that’s supposed to get approved in back of my place and I’m supposed to give a piece of property so the Town of Newburgh for their new road has the right curvature for the turn that’s right there. So this is something we’re working out amongst ourselves it has nothing to do with the developer. I’m supposed to donate a piece of land and I’m going to get those two properties as a result. So it’s not…it’s not that we’ve been waiting for the developer all this time, the Town of Newburgh and myself owns this.

Mr. Donovan: Just to be clear, when you say owns this we were given…

Mr. Paschall: Owns the problem.

Mr. Donovan: But…but what…what property are you referring to?

Mr. Brown: The…the property he’s talking about is this little tiny triangle a…a…

Mr. Donovan: But Charlie you’ve given us, I’m sorry to interrupt, your site plan that shows it the lands of Rocky Height Inc. Is that what you’re talking about? That’s what I’m looking at.

Mr. Brown: Okay, no, this colored map that I gave shows it more clearly because again it was part of the subdivision. There’s a little tiny triangle right there.

Mr. Donovan: Okay what I’m referring to is where you would have your one foot offset.

Mr. Brown: No, that’s not affected by this what he…what he just said.

Mr. Paschall: The two pieces of property that are being conveyed though are part of that though. I’m…they’re listed under my name as future lands of me because when I trade the piece that the Town of Newburgh needs for the road…see right now the roads aren’t approved up there and that’s what they need.

Mr. Donovan: Right. My…my question was whether or not the transaction you are talking about would do anything to ameliorate the one foot offset.

Mr. Paschall: Yes. Yes, oh yeah. I’ll own the entire half acre in back of the garage.

Mr. Donovan: So if I understand correctly then when Mr. Paschall he…he would at some point in time acquire the property that would ameliorate the one foot offset. So in other words he wouldn’t need a variance for that.

Mr. Brown: If…right if…if he acquired the property before he built this he would not need a variance for…for the one foot rear yard setback, correct.

Chairperson Cardone: Do we have anything else from the Board or the public?

Mr. Manley: You wouldn’t happen to have anything from the Town itself that indicates that this transfer is process at some point?

Mr. Donovan: I…I…for the benefit of the Board, I can tell you that I did get a call from the Town attorney, Mark Taylor at about 4:45 just kind of indicating that this was being discussed a…he, he asked me if there was any condition that I thought we could impose. You know, it’s not typical of our Board that we impose a requirement for a dedication of any lands and we can’t compel the conveyance of any lands but he…he was very clear with me that a…they were in the process the Town and the property owner of trying to resolve this situation. Whether that will happen I…I can’t say that to the Board and I don’t think that there is anything in the power of this Board to make it happen.

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

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

Ms. Gennarelli: And Mr. Masten has joined us.

John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:22 PM)

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ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:12 PM)

GREGORY PASCHALL 18 MERRITT LANE, NBGH

 (7-1-24.1-1) A/R ZONE

Applicant is seeking area variance s for the maximum allowed square footage of accessory buildings, accessory buildings shall not project closer to the fronting street than the main dwelling, accessory buildings shall be located in a side or rear yard, accessory buildings shall be set back 5 feet from the side or rear property lines and building shall not occupy more than 10% of the required yard in which it is located to build a detached garage (28 x 40).

Chairperson Cardone: The Board is resuming its regular meeting. On the application of Gregory Paschall at 18 Merritt Lane seeking area variance s for the maximum allowed square footage of accessory buildings, accessory buildings shall not project closer to the fronting street than the main dwelling and shall be located in a side or rear yard and be set back 5 feet from the rear or side property lines. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Scalzo: I think it’s difficult with a one foot setback from the property line with the a…undetermined a…property behind it. It’s very difficult to make that determination without the conveyance already in place.

Mr. Manley: I’d have to agree with a…Mr. Scalzo. I think that a…if the applicant could have move that maybe in further a…I think there’s a lot of extra space there that the applicant probably doesn’t need and he could probably fit it if he reconfigured things a little bit but it’s…it’s a little bit too close to that property line.

Chairperson Cardone: And the applicant is not…is here?

Mr. Brown: Well I’m here to represent him.

Mr. Scalzo: The utility room in the back is probably close to ten feet a…I don’t know how a…if…if that would be a little smaller and we could get the five feet to you know setback…

Mr. Manley: That would do away with one of the variances.

Mr. Scalzo: Yes. Is that something that the applicant would be willing to consider?

Mr. Brown: A…yes.

Mr. Donovan: So…I’m sorry, let me make sure I understand what you’re suggesting.

Mr. Scalzo: The overall length of forty feet if…if that were to be reduced…the appropriate say five or six feet…

Mr. Donovan: Okay, so we’re shrinking the building, we’re not moving it closer to Merritt to…

Mr. Brown: Oh, we’re going to be shrinking it by, I’m sorry, four foot, correct?

Chairperson Cardone: Four feet.

Mr. Brown: To maintain…he has to maintain the five foot…of…right.

Mr. Scalzo: All depending, all right I’m with you now.

Mr. Donovan: Okay.

Mr. Manley: Along that whole side right?

Mr. Brown: The whole rear of the…a structure, correct. The closest point would be five foot to that rear property line and then we’ll get further away for the rest of it. The building will still be rectangular; it’ll just be four foot shorter.

Mr. Manley: Which will probably bring you closer to the old footprint?

Mr. Brown: As far as a…the…the overall size, yes.

Mr. Manley: Now it’s also going to bring down the area variance, the overage on the a square footage for the maximum, maximum allowed.

Mr. Donovan: Where’s Mike when you need him to give you the calculation.

Chairperson Cardone: You can do that, can’t you?

Mr. Brown: In my head.

Mr. Donovan: You’re an engineer, come on.

Mr. Scalzo: Just looking at this, would it be possible, I mean if…if he maintained the same footprint but rotated it? He might be able to maintain the same a…

Mr. Brown: The way the driveway and the terrain goes a…we’ve…we had to kind of follow the same line of the existing garage on the one side so that’s why it’s cocked a little bit the way it is. It would be a thousand eight square foot for this building and if he took the a…shed down then we’re only eight over on the square footage A…so that would just be the a…further forward in the front of the existing a…residence, primary building.

Mr. Donovan: So basics, if I understand then so we’re looking at two (three) variances, one is you’re eight foot over by the formula and that you’re a…project closer to the…

Mr. Brown: Closer to the front a…yard than the primary building…

Mr. Donovan: Yeah.

Mr. Brown: Right?

Mr. Donovan: Okay.

Mr. Brown: And that one there’s really nothing we can do about. Again the a…on the other side of the house it…it goes up steeply so there’s no way to put a garage there and get a car into it.

Chairperson Cardone: Okay, thank you.

Mr. Manley: At this point the variances are very minimal and the applicant has demonstrated that they are willingness to bring it down as much as possible to bring it into conformity. I…I’d make a motion at this point to make a motion to approve with those changes.

Mr. Scalzo: I second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

Mr. Brown: Thank you.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:18 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 7:23 PM)

RAYMOND QUINONES 40 DEVITO DRIVE, NBGH

 (23-2-32.2) R-3 ZONE

Applicant is seeking an Interpretation of 185-15-A and/or area variances for the maximum allowed square footage of accessory buildings and the maximum height to build an accessory building (detached garage 40x30x22’8.1”).

Chairperson Cardone: Our next applicant Raymond Quinones.

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

Mr. Brown: Okay, Charles Brown again engineer for the applicant. We’re here because a…it’s been my experience in this Town and…and several other towns a…where they have a…a…waivers for…for accessory structures inside a rear yard setbacks where they allow you to a…put those structures in the yards a…they…they tie that to restrictions on the size and height of the structure. A…this particular application a…we are over the thousand square foot and over the height however, we are not in the setbacks a…so a…it’s my understanding based upon my codes and work I’ve done in this Town and several others that a…those provisions of that Section 185-15 a…don’t apply. So a…that’s we’re here first for an Interpretation a…if, you know, in the event a…this Board interprets it the way I do a…then, you know this application we’re finished. If…if not, then a…I’m willing to proceed with a…the variances that we need.

Chairperson Cardone: I have to stop you, according to the information I have there’s an overage on the square footage also.

Mr. Brown: Yes, but again Section 185-15 accessory buildings it says a permitted accessory building may be located in any required side or rear yard provided that a…it can’t be any taller than fifteen feet a…and they also give the square footage. Those are conditions that apply to accessory buildings that are in the yards. We’re not in the yard a…and we’re here for…for a determination on that.

Chairperson Cardone: I don’t understand what do you mean they are not in the yard?

Mr. Donovan: Well…

Mr. Brown: We meet the setbacks the same as the primary structure the…the proposed building is more than seventeen and a half feet from the side yard and the minimum required is fifteen. So we’re not in a side yard setback.

Mr. Donovan: I think the issue is this and obviously we’ll ask Jerry to…to weigh in, but 185-15-A says a permitted accessory building may be located in any required side or rear yard provided that and then we have our…our four requirements, one of which the building height shall not be higher than fifteen feet then we have the thousand square foot maximum. So the issue is, if you are outside of the required side yard do those restrictions apply and I would, not to put Jerry on the spot although it’s my favorite thing to do, I don’t know how Code Compliance has interpreted that Section in the past if you have, those specific words required yard.

Mr. Brown: And, and a…before we get to that Jerry…

Mr. Donovan: You don’t sound anything like Jerry, Charlie.

Mr. Brown: I…I’d just like to say that nowhere else in the Code is there any restriction on the height or size of accessory building except for the thirty-five foot height which applies to a primary building. A…and then again you have lot coverage too I mean, you know, we’re not exceeding that either a…so…

Mr. Canfield: We have always viewed and interpreted accessory structures just as such and 185-15 has applied. If there’s been a second building on the individual lot and which is permissible but then it becomes a site plan. You have two structures on one lot so that’s not the case typically when we see an accessory structure a…such as a garage, a pole barn or whatever, which is a building for storage or vehicles or farm equipment or whatever it’s always been viewed as an accessory structure and 185-15 we have applied. Before this Board have been several applications for accessory structures that exceeded the limitations of 185-15 whether it be the thousand feet or the application of the formula which is generally the lesser of the two a…because it’s in the building envelope or whatever has never become an issue. So I have to say if my memory serves me correctly this is the first time I’ve ever seen this request for an Interpretation and I got to be honest with you I’m not really clear Charlie on…on how you’re interpreting that. I don’t know what I’m missing, I don’t. We’ve never had this request before. Everything has always been an accessory structure and 185-15 has applied.

Mr. Brown: Well I’m going to have to defer to Dave because, you know again, this…these are conditions that a…apply to allowing an accessory structure to be placed in the rear or side yard. We’re not placing it in the rear or side yard so these...

Mr. Donovan: Well just to be clear you’re not…

Mr. Brown: …don’t apply.

Mr. Donovan: …you’re not placing it in a required side or rear yard.

Mr. Brown: Right.

Mr. Donovan: So…so the required yard the argument is, Jerry, that if the side yard minimum required is fifteen feet, the required yard is from the property line fifteen feet in, if you’re beyond fifteen feet since the language says you can put it in any required side yard provided that it doesn’t exceed fifteen in height. The argument is then if I’m outside of the required side yard I go up to whatever the maximum building height is. Now that’s the argument.

Mr. Brown: That’s the argument.

Mr. Donovan: I don’t know how Code Compliance has interpreted that. And I have seen other municipalities that have a…gone along with that.

Mr. Brown: Well.

Mr. Donovan: If I could just say, going down to the maximum allowable square footage I don’t know why that would relate to whether or not you’re in a required yard. I don’t know what the…what the…I can…you can understand the logic if that’s how you interpret it and that’s in fact what this say then if you’re closer to a lot line you want a lower structure but I don’t know what the reason would be to limit the total square footage of structures only if they’re in the required yard. I don’t know what the…why…why that would make any sense at all.

Mr. Canfield: Well to answer that I think the logic…

Mr. Brown: No…the…the a…that’s all under A and B, no building shall project closer to the front street than the front of a primary building that is in the planet of A so that applies to all accessory structures a…and clearly we’re behind the primary building on this one. So again, we’re here for an interpretation. My position on this is…is we meet the zoning a…if the Board a…disagrees with me then we’re prepared to move forward with the requested variances.

Mr. Canfield: …If we can go back though, it’s the determination that this is an accessory structure which puts us in to 185-15. If we were viewing it of anything other than, this section wouldn’t even be mentioned and in that case I would agree with Mr. Brown that yes, that’s correct such as the initial structure. If that were the case then you’re Bulk Use Requirements for the applicable zone which in this case is an R-3 would apply and then your lot size, your setbacks, building height, square footage, lot coverage, lot density they would all apply but the very fact that we are deeming this as an accessory structure opens the door for 185-15 and all of the requirements that apply to an accessory structure now apply to it. I understand that it’s a…an arguable or defensible point and I commend you on it, I’ve never seen it presented this way before however, I can only advise the Board that consistently we have always deemed garages, pole barns, tool sheds, what have you as accessory structures and that’s how we applied it. Should the Board choose to make a determination to change that then from this point forward we must adhere to what the Board’s decision is but I just urge you that in the past we’ve always maintained that they are accessory structures.

Mr. Donovan: And…and I would just say to the Board that it can kind of turn or it will turn on your interpretation of the phrase required side or rear yard. If you find that the required side or rear yard is the setback then if you’re beyond the required setback it could go up to the maximum height allowed in the zone. If you determine that the required side yard or rear yard is the distance and there is no definition in the Code because I’ve looked for it, if you determine that’s the distance from the side or rear yard to the…to the house then a…they would have to meet the fifteen feet requirement and the one thousand maximum square foot requirement. That’s a matter up to the Board’s interpretation…

Mr. Brown: And a…

Chairperson Cardone: But I think we have to look at the definition of accessory which is a…

Mr. Brown: But the…

Chairperson Cardone: …term applied to a use or structure clearly incidental to…

Mr. Brown: But the…

Chairperson Cardone: …or subordinate to principal building or permitted use on the same lot.

Mr. Brown: We’re not disputing this. This is an accessory building. That’s not what we’re challenging. It’s an accessory building, it meets the retired…criteria for an accessory building a…what I’m questioning is the application of what I believe are provisions that only apply if this building was put into a required rear or side yard setback which it’s not. That’s…that’s the only thing that that I’m bringing before this Board. It is an accessory building, it meets the setbacks, it is not in a required yard, it’s not in the required side yard or rear yard therefore these provisions under A don’t apply. B still applies; we still have to be further back than the primary residence.

Mr. Manley: I think what you’re, where you’re asking the Board to interpret is to basically reinterpret the Code which would completely change the zoning as it relates to this type of structure in the Town of Newburgh, right…

Mr. Brown: That’s not the case at all. This Board’s job is actually to interpret the zoning.

Mr. Manley: It…it is but what you’re asking is if the decision is made that this Board were to interpret it the way that you feel that the Code…the intent of the Code is based on the way you’re reading it that would ultimately change and open up the door for a whole host of new buildings to be built in the Town that probably was not the intent of the Board, not this Board the Town Board when they enacted that law. So I think from my perspective I have to look at what was the Town Board’s intent and had they had perhaps wanted it interpreted the way that you did why did they not expand upon their definition in the Code? Can you…can you maybe…?

Mr. Brown: If it was their intent to limit the height and the size of the building regardless of where it was place on the lot then why wouldn’t it just say that? A required side yard is defined, a required rear yard is defined they are in the zoning table. In this case it’s fifteen foot side, forty foot rear, we’re clear of that so this right here A does not apply. We’re not locating it those yards so if we’re not locating it in those yards why are we restricted with the fifteen foot height and a thousand square foot. Nowhere else in here does it say we’re restricted on the height or the size.

Mr. Manley: Now you’ve indicated that there’s other towns that interpret it the way that you’re stating, can you provide this Board with any documentation of those municipalities that…?

Mr. Brown: Well I can provide you with similar…a similar verbiage in the Code, you would have to talk to the Building Inspectors in those towns. If you want, maybe I could talk them and maybe get something in writing from them.

Mr. Manley: Well it wouldn’t be up to this Board to actually seek out that. That would be up to the…you’re the…you’re representative of the applicant you would have to provide this Board with something in writing from those municipalities from the Building Departments that interpret their code that way that you’re saying that every, you’re saying than many municipalities interpret it that way. I’d like to see some…

Mr. Brown: I didn’t say many. I said other municipalities that I work in do a…Dave, do you want to comment on this or you’re not allowed to talk about other towns?

Mr. Donovan: Well, here’s what I’ll tell you, relative to your obligation to interpret the Code what the Town of X, Y, Z does is not relevant. Okay? A…I can tell you that there are municipalities that I represent do interpret it in a way that is consistent with Mr. Brown. There are municipalities that do not interpret it in a way consistent with Mr. Brown. A…so what I said before is while there it’s clear what the side yard - rear yard setback is there’s not definition of the word required side or rear yard setback so I…I…in my view this hinges on what the word required means.

Mr. Brown: Well I would refer you to the zoning table where they have the required yards listed.

Mr. Donovan: They…they don’t use the word though, required, right?

Mr. Brown: Minimum setbacks I mean isn’t that a requirement a…a…?

Chairperson Cardone: Minimum and required do not mean the same thing.

Mr. Brown: Oh boy, okay.

Chairperson Cardone: That’s my interpretation.

Mr. Brown: Okay. Well what do we do with this? Do we vote on this now and or do I proceed with the variance application assuming…?

Mr. Donovan: My…my suggestion is…well…

Chairperson Cardone: Go ahead.

Mr. Donovan: …my suggestion, I’m sorry, my suggestion is to go ahead and make your argument for the variance and then the Board will vote when it comes time to vote.

Mr. Brown: Okay. So a…a…according to the Building Department a…the minimum size for this building is a thousand square foot, we’re proposing one that’s fourteen hundred forty square feet for an overage of four hundred and forty square feet. A…the minimum height according to the Building Department is fifteen square foot (fifteen feet), we’re a…just under twenty-three. A…this is a proposed garage to the primary residence a…we’re seventeen and a half foot off of the side yard setback and more than forty off of the rear to minimize the impact to the a…the neighbors in the community. A…the lot is substantially oversized so I don’t see that this a…this building would have a…a negative impact on the environment or the neighborhood a…I don’t believe it’s substantial because I don’t agree with your interpretation.

Mr. Manley: What is the use of the garage going to be for?

Mr. Brown: Cars.

Mr. Manley: How many cars?

Mr. Brown: Two.

Mr. Manley: Two cars?

Mr. Brown: Two cars.

Mr. Manley: That leaves a lot of extras pace, is there plans…

Mr. Brown: He’s got…he’s got boy toys, ha-ha.

Mr. Manley: Is there going to be heat in the garage?

Mr. Brown: No.

Mr. Manley: Electric?

Mr. Brown: Yes.

Mr. Manley: Any type of plumbing?

Mr. Brown: No.

Mr. Manley: Twenty-two feet, fairly high, what a…there’s going to be a second floor?

Mr. Brown: Just added storage.

Mr. Manley: Is there going to be any future conversion of that into a living space?

Mr. Brown: No.

Chairperson Cardone: Would it be possible to keep the footage and bring down the height of the building?

Mr. Brown: To fifteen feet?

Chairperson Cardone: Oh, I wouldn’t necessarily fifteen feet on a structure that size but…

Mr. Brown: Yeah, I mean, we…we could bring a…we could bring it down a…it was, you know, there should have been copies of the a…plans for it. A…it…it’s made to look consistent with…with the primary residence as far as a, you know, the architectural look a…by dropping the pitch which we certainly could do a…it’ll, you know, it…it won’t look consistent with the primary residence but it can be done, yes. Those architectural plans also show the a…the parking area for the two cars and then the storage beyond those it’s…all on the architectural plans.

Ms. Gennarelli: You didn’t submit the architectural plans. I made copies of whatever I could and that’s what the Board got. You didn’t submit the big plans.

Mr. Brown: I apologize for that. I have a set here with me but I only have one set.

Ms. Gennarelli: As I said, I made copies of whatever I could but those extra things I don’t believe they have.

Mr. Brown: Okay.

Chairperson Cardone: No, we don’t.

Mr. Brown: I can give you one set now, I mean, again I apologize for that.

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

No response.

Chairperson Cardone: Do we have any questions or comments from the public? Yes, please take the microphone and state your name for the record.

Ms. Zurl: My name is Lyn Zurl and my property is a…like borders the piece of land where they want to put this garage and a…my backyard does anyway and my neighbors also. I’m not speaking for them but we’re all here. When I got the letter from the Town about that they were going to build it I was like kind of freaking out because after…I mean a 30 x 40 you call the footprint and I measured like my whole house and how tall my house is…it’s you know, it’s an older neighborhood and we have nice yards. We’re all very proud of our life trying to keep it that way. I mean this structure is the size of a good sized two story house. I mean it’s huge and you know way more closer to the size of a house than it is of a two-car garage. I mean I measured my garage too and you know a car fits in it seems like you can fit a fleet of cars in this, again, not because it’s my business but because even if they have to put it forty-two feet back from my backyard property line I mean, it’s going to be looming so huge and so tall that it’s going to seem like it’s in my backyard.

Chairperson Cardone: Would you show me which is your property on this map?

Ms. Zurl approached the Board.

Chairperson Cardone: This is his here.

Ms. Zurl: I’m kind of like from here to there.

Chairperson Cardone: Okay.

Ms. Zurl: So a…well a little bit further but I don’t know if you want me to go back to the microphone to say this?

Chairperson Cardone: Right.

Ms. Zurl: And the thing is why I came tonight cause I’m kind of you know concerned or at least curious when you think about, you know, perspective of how it goes I realize that it’s going to be forty-two feet away from the property line but when you look up it seems like it’s like there you know, on the edge or something and it’s so huge. I mean our houses aren’t even that tall. Not even close to that tall.

Chairperson Cardone: Okay, thank you. Do we have anything else from the public? I think there’s a…you can come up and then you’re next.

Ms. Tarsio: My name is Tracy Tarsio, I…my property is if you’re looking at the flag, I’m to the right. I’m right in front of his house. And I along with this lady have concerns too. It’s a very large structure. It’s going to be seen from the road. It exceeds forty-five percent. I mean its fourteen forty square foot. That to me is more than forty-four percent more than what the Town allows in square footage and that’s quite a bit to me. And I’m very concerned, I have three young kids, they have a two-car garage I mean if more cars are going in there I’m…I’m concerned that there’s going to be you know more activity than what’s going on.

Chairperson Cardone: Thank you.

Ms. DeSantis: My name is Jacqueline DeSantis and my entire property line abuts up their back property line and I’ve lived there for almost fifty years, we have such good neighbors and I want to be a good neighbor, I truly do and I also expect to have good neighbors. I had to kind of chuckle when I looked at the application because it said this building will be set in the back, behind the house, no one will see it, no impact on people or the environment but I think they don’t realize how close I am to their house. I hear the trucks, the SUV’s, the motorcycles, the four wheelers, the Bobcat; I hear their conversations when I’m out there doing my yard work. So there is a lot of activity going on. In this building, they have a right to build a garage, I have no problem with that even though they have a two car garage in the house, there’s also another large accessory building already a…but they do have that prerogative. I only wish that it weren’t so tall because twenty-three, I mean it’s going to tower, I can’t grow tree and shrubs fast enough to try to hide that. That’s all.

Chairperson Cardone: Thank you. Do we have anything else? Yes. Please state your name for the record.

Mr. D’Amato: Frank D’Amato, I live at 42 Devito, I a…live right next door to Mr. Quinones. The…the garage is going to affect me actually the most; I’m looking directly at it. And, and I don’t see the problem. In reference to her comments it’s a million dollar neighborhood, a lot of the houses are six thousand square feet in the neighborhood so it..its…the garage is not really as big as they’re saying. You know what I mean. A lot of the houses are very large in the neighborhood so...and Mr. Quinones collects old motorcycle and cars and you know, that’s his prerogative so for the amount of taxes we pay in that neighborhood I think he should be able to build whatever he wants. Thank you.

Mr. Brown: I just want to clarify that the a…the proposed garage is thirty by forty so that’s twelve hundred square feet, the other two forty is the existing a…building that’s already on site so I just wanted the Board to know the application is consistent. We’re not asking for another building that’s fourteen hundred and forty square foot. This…this proposed building is twelve hundred square foot.

Chairperson Cardone: We understand. Yes?

Ms. Zurl: Even though like all the houses in that whole development their cute, their mansions compared to our little street of just regular houses but this structure is way, way, way, way closer to us than it is to anybody else in the mansions. I mean it’s like if I stand at my back door, I mean you know I know forty two feet is more than a couple feet its but what’s the perspective? It seems like it’s here and then when I just try to imagine how tall it’s going to be it’s really high and all the homes in…in that development as I said, they are…they’re mansions but this is set that we’re the ones that’s going see…nobody else is going to be able to see it. It…it’s almost like it’s in our backyards.

Chairperson Cardone: Okay, thank you. Do we have anything else from the public or anything else from the Board?

Mr. McKelvey: How…how much would you drop that roof?

Mr. Brown: Well we would want to keep it you know a minimum pitch of at least a three-twelve so twenty-three, I could probably get it down I can get down below twenty, I mean again it’s going to change the look, we were trying to stay consistent with the look of the house but I can get it below twenty.

Chairperson Cardone: I have the other shed on the property and that’s going to stay, correct?

Mr. Brown: Right.

Chairperson Cardone: Okay and that’s for garden equipment or…?

Mr. Brown: Yes.

Chairperson Cardone: Do we have anything else from the Board?

Mr. McKelvey: He’s going…he’s going to have…he’s got two-car garage in the house too, right?

Mr. Brown: Right, so this will…this will be the four max.

Mr. McKelvey: Yes, that’s the max.

Mr. Brown: Yup, understood.

Chairperson Cardone: What about decreasing the size? Because on the percentage, you’re fifty one point one percent on the height, you’re forty-four percent over on the square footage.

Mr. Brown: So if we drop this thing below the a…thousand square foot, got the a height down to less than fifteen then we could put it within five foot of the rear and side property lines? Right? We wouldn’t even be here. Ray? If we dropped this down to a thousand square foot and fifteen foot maximum height I could put it within five foot of the rear and side property lines?

Mr. Canfield: That’s correct.

Mr. Brown: Without even coming here a…I mean we could reduce the size of it a…I would have to discuss this with my client and see what a…you know how, how, how small he’s willing to go. A thousand square foot, you know, for a…for a lot this size is not really that big of a structure.

Chairperson Cardone: Well it would have to be under a thousand.

Mr. Brown: Right.

Chairperson Cardone: It would have to be seven sixty.

Mr. Brown: Well, if they took the shed away, you know again I would have to talk this over with my client. (spoke with Mr. Quinones) No, no we would not consider reducing the size of it.

Chairperson Cardone: No, you’re saying?

Mr. Manley: What is it you wouldn’t consider?

Mr. Brown: We would consider…we would not consider reducing the size of it just the height.

Mr. Manley: Okay, so you’re…you’re sticking at the square footage?

Mr. Brown: Twelve hundred, right.

Mr. Manley: I…I…I think I’d need to know specifically because I think the concerns of the residents that…that I’m hearing is it didn’t seem as though they were very upset about the size, the square footage that’s a bit of an issue but I think the real issue was…was the height so…

Mr. Brown: Well, we’ll bring the height down, we…we agreed to that.

Mr. Manley: But I think we’d need some sort of…

Mr. Brown: And I…I could also…

Mr. Manley: …number.

Mr. Brown: Yeah, I could also move it; you know, maybe up to fifteen, twenty foot further away from the rear property line a…to address the concerns of both neighbors so…

Chairperson Cardone: Well my suggestion is that we would keep this Public Hearing open and…

Mr. Brown: Are we going to get a determination on the interpretation request tonight?

Mr. Donovan: Well they are part of the same application so if we are going to keep the Hearing open both of them will be kept open.

Mr. Brown: Okay.

Mr. Donovan: But I…I think a…what I’m understanding from the Board is if you’ve got to reduce the height you should give us that number whether it’s under twenty if it’s nineteen feet, eleven inches or nineteen feet and if you are going to move the location you should probably just submit a revised drawing showing the new proposed location.

Mr. Brown: A…three, twelve, twenty feet…three…about eighteen, eighteen feet. I believe where they can keep it under eighteen feet.

Mr. Manley: So then…

Mr. Scalzo: (Inaudible) I don’t believe (Inaudible) standing at the house looking toward the rear property line the topography decrease so if you are going to move it forward it will appear higher.

Mr. Brown: A…that’s true, that’s true, we are going to have to build it up a little bit anyway to get the a…the driveway into it and a…that’s a good point…good point.

Mr. Scalzo: (Inaudible)

Ms. Gennarelli: Darrin, it’s not picking up I’m sorry.

Mr. Scalzo: Sorry, I turned it off I thought it was me feeding back.

Ms. Gennarelli: Turned it off?

Mr. Scalzo: I thought it was me feeding back.

Ms. Gennarelli: Please don’t be turning it off.

Mr. Brown: It’s relatively flat back there.

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

Mr. Levin: Second the motion.

Ms. Gennarelli: Richard is your mic on? Please pull it in a little closet it’s not picking up. You’re the second.

Mr. Levin: Yes.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, the neighbors would not be re-noticed and our next meeting is…

Ms. Gennarelli: October 23rd.

Chairperson Cardone: October 23rd.

Mr. Brown: Thank you.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:55 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 7:55 PM)

261 NORTH PLANK ROAD, LLC. 261 NORTH PLANK ROAD, NBGH

 (34-3-23.2) I/B ZONE

Applicant is seeking area variances for the minimum lot area, the minimum lot depth, the front yard setback and the rear yard setback for the conversion of a retail establishment to a professional office building.

Chairperson Cardone: Our next applicant 261 North Plank Road, LLC.

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

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

Mr. Gaba: I’m Steven Gaba, I’m the owner of 261 North Plank Road, LLC. The property on this application is located at the intersection of Route 32 and Paffendorf Drive. It’s a little bit less than an acre of land. It’s improved by approximately eighteen hundred square foot building. It’s located in the I/B zoning district. A…the property for many years has been the site of the Whinnies and Knickers Tack Shop; I assume the Board is familiar. What it is we proposed to do is to replace the existing retail store and tack shop with a professional office particularly an attorney’s office. A…we don’t propose to may any structural changes to the building on the property. We don’t plan to change the signage or the lighting or the parking or anything else. What we’re doing here is we’re taking the retail use out and we’re putting an attorney’s office in. Now the lot itself if a legal non-conforming lot and that’s the reason that we’re here. Both retail sales and professional offices are permitted uses in the I/B district. But under the Town Code when you change from one permitted use subject to site plan approval to another permitted use subject to site plan approval on a legal non-conforming lot you have to come before this Board and get area variances with regard to any of the non-conformities with the Town Codes Bulk Requirements. Now this particular lot has four non-conformities a…lot area, front yard, rear yard and lot depth. A…they’re all, in my opinion, pretty minimal as far as that goes. Lot area is just slightly under an acre, an acre is required. Front yard a…the property…the building rather is set twenty feet in throughout the front yard that’s in keeping with pretty much, I won’t say most of but many of lots up and down Route 32 in that area. Lot depth is just a technical non-conformity. The lot itself is plenty deep; it’s well over a hundred and fifty feet. The issue with Bulk Requirements arises because under the Town Code lot depth is measured from the midpoint of the building. The midpoint of the building just happens to be the shallow part of the lot hence when lined up you get a much shallower lot depth than the lot actually has, again it’s a technical non-conformity. Rear yard is the result of a prior subdivision, a flag lot was created behind this lot, the entrance is over here and the front yard is set this way and that’s why there is very small rear yard in that area. The rest of the rear yard is plenty deep as you can see. It’s a long existing condition. The building is where the building is. There’s really nothing that can be done about it. Now in regard to this application one of the things I’d like to stress more is that professional office is a less intense use than retail uses, retail stores. A quite of less traffic from a professional office, you have less light, less noise a…the amount of waste generated by a professional office is less than a retail store and the amount of litter than you can expect up and down the neighborhood is substantially less than a retail use would be. The Town recognizes this, the Bulk Requirements for a retail use are greater than the Bulk Requirements for a professional office so in seeking this variance what we’re seeking to do actually is to decrease the amount of non-conformity from Town Code from that that exists now or would exist if another retail store were to come in here. So we think that the request is fairly straight forward. We want to switch from retail to professional office and that’s what we’re asking for to approve.

Mr. Donovan: And just to be clear you are also in front of the planning board. Correct?

Mr. Gaba: We applied for site plan approval and once this, assuming this is granted, we’ll go back, we’ll get site plan approval from the board.

Mr. Donovan: So issues traffic, parking, drainage, they’ll all be handled by the planning board site plan review process.

Mr. Gaba: Absolutely.

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

Mr. Levin: I have a question. Do you have a tenant already for this building?

Mr. Gaba: Well not a tenant, my wife is an attorney as well and she is expanding her law practice and she is going to a…move into the building. It’s going to be the Law Offices of Stephanie J. Donato, Esq. and hopefully bringing some funds for the Gaba family (Inaudible).

Chairperson Cardone: Do we have any questions or comments from the public? Yes, please identify yourself for the record.

Mr. Oliva: Yeah, hi my name is Steve Oliva and I’m 263 North Plank Road and my…my property is behind a…Steven’s property and I’ve been there for about oh guess going on nine years and I don’t have any objection to his variances as long as it has not affect my footprint of my property and my zoning I’m totally fine with it. There’s plenty of room there for parking and I don’t see any issue with it at all.

Chairperson Cardone: Are you directly behind it?

Mr. Oliva: I’m almost directly behind. I don’t know if you are familiar. It used to be the Newburgh monument…

Chairperson Cardone: We do make site visits and I did walk in back of the…the building.

Mr. Oliva: I’m the yellow building there behind him, almost directly behind; it’s like a bit off to the side.

Chairperson Cardone: Okay.

Mr. Oliva: It…it’s quieter there already and it’s cleaner so I don’t have any problem with it. Okay?

Mr. McKelvey: You’re going to have less traffic.

Mr. Oliva: And there’ll be less traffic exactly so…thank you.

Chairperson Cardone: Any other comments from the public or anything from the Board? Do we have a motion to close the Public Hearing?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 8:02 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:18 PM)

261 NORTH PLANK ROAD, LLC. 261 NORTH PLANK ROAD, NBGH

 (34-3-23.2) I/B ZONE

Applicant is seeking area variances for the minimum lot area, the minimum lot depth, the front yard setback and the rear yard setback for the conversion of a retail establishment to a professional office building.

Chairperson Cardone: On the application of 261 North Plank Road, LLC. seeking area variances for the minimum lot area, the minimum lot depth, the front yard setback and the rear yard setback for the conversion of a retail establishment to a professional office building. This is an Unlisted Action under SEQRA do I have a motion for a Negative Declaration?

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Also I’d like to read into the record that the report from the Orange County Department of Planning is Local Determination. Do we have discussion on this application?

Mr. McKelvey: I think what they’re a…changing it to office from being a grocery store going to cut down on parking and it won’t be detrimental to the neighborhood.

Mr. Donovan: I do want the minutes should be clear that having more attorneys in Town is not detrimental to the neighborhood.

Mr. Scalzo: I appreciate it that he had a…his neighbor in support of his project as well.

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

Mr. Scalzo: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:21 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 8:02 PM)

WATCHTOWER BIBLE AND TRACT 1292-1294 ROUTE 300, NBGH

 SOCIETY OF NEW YORK, INC. (97-2-30.1, 97-2-30.22, 97-2-33) I/B ZONE

Applicant is seeking area variances for one side yard setback for the existing (diner) building and one side yard setback for the existing (hotel) building to construct a new 2-story, 100-room hotel.

Chairperson Cardone: Our next applicant Watchtower Bible and Tract Society of New York, Inc.

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

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

Mr. Cordisco: Yes, good evening, my name is Dominic Cordisco I am an attorney with the law firm of Drake, Loeb. My partner Steve Gaba just left and I am here tonight in behalf of the Watchtower Bible and Tract Society of New York and I am here as well with Justin Dates of Maser Consulting as well as representatives of Watchtower. We have pending before the Town at this point an application for an addition onto the property that was the former Hampton Inn located off of Route 300 behind the former Gateway Diner both of which have been purchased and being utilized by Watchtower for their operation. Watchtower is proposing an extension in addition to their building a…which is currently before the Planning Board and we here on behalf…(inaudible)…as a result of the planning board’s referral to you a...for two a…what I would characterize as fairly minimal variances for side yard setbacks for the existing buildings, the existing hotel and the existing former restaurant. A…I will turn it over now to Justin Dates to walk you through those variances. I believe one is two and a half feet and the other one is actually six inches and before I turn it over to him I must say that I didn’t think a…surveyors actually got that accurate as far as six inches is concerned but that is nevertheless where we are so I’ll turn it over to Justin. Thank you.

Mr. Dates: Hello, my name is Justin Dates from Maser Consulting, just as Dominic a…mentioned the a…the parcel itself is a…about eight point six acres in size and its located in the Town’s I/B zoning district a…along the western boundary is Route 300 a just to the east of that is the existing or former Gateway Diner and then behind that is the former a…Hampton Inn Hotel. A…basically the front two thirds of the property a…are existing are developed and the rear third is where the additional building is proposed. A…the variances as Dominick described are the side yard a…variance a…the northern property boundary here offset is fifty feet the side yard, the…diner structure a…is only forty-seven point one a…feet off the property boundary or two point nine feet less than the fifty foot requirement while the a…the Hampton Inn the northwest corner here a building is a…only forty-nine point five where fifty is required. So six inches is…is correct so, those are the two…two area variances we’re seeking. I’ll point out that the a…proposed building does meet all the a…zoning requirements.

Chairperson Cardone: And this proposed building that you’re calling a support center has one hundred rooms?

Mr. Dates: That’s correct.

Chairperson Cardone: Are they conference rooms? Are they a…?

Mr. Dates: A…no a…units similar to a…

Chairperson Cardone: Oh, units?

Mr. Dates: Yeah, yup.

Chairperson Cardone: Okay.

Mr. Dates: Yup.

Chairperson Cardone: Similar to a hotel.

Mr. Dates: That’s correct, yes.

Mr. Cordisco: Yes, that’s correct; the use is as a hotel. This is a hotel for Watchtower and its invitees.

Chairperson Cardone: Right, that’s what I had thought but then when you called it a Support Center I thought maybe something had changed.

Mr. Cordisco: That’s the name of the facility itself is…is they’re calling…calling it the Support Center because it’s a support for their operations throughout the region.

Mr. McKelvey: Are they still going for an exit to 17K? Because you are going to have a lot of traffic.

Mr. Cordisco: We have been asked by the planning board and other representatives in the Town to look at the 17K access issue a…just a brief bit of history there, it’s part of the Palmerone Farm’s a…site plan application they were proposing a second means of access into that site from 17K and as they were going through the approvals for that process it turned out that the right of way a…for the New York State Department of Transportation, which a…operates and oversees 17K a…was not adjacent to the property, that there was actually a small sliver of property that was owned by the Thruway Authority and the Thruway Authority a…would not, as I understand it, allow an easement across an easement across its property but rather a…would prefer to sell the property and a…at the time that Palmerone Farms was constructed that a…that transaction never was completed obviously. And as a result the second means of access was not included. A…Watchtower has a…approached the Thruway Authority. The Thruway Authority is…is interested in once again in resolving and finalizing that transaction. A…we recently wrote to the planning board a…indicating that the Thruway Authority told a…Watchtower that while they’d be willing to have those discussions now a…the proper a…parties would need to be…would need to include the Town and Palmerone Farms as part of that discussion because Watchtower is actually not adjacent and could not be a legal owner of that small strip of land. Alternatively a…we are looking at a second means of…of access that could instead from 17K actually go out through Route 300 and so that’s something that we’re looking at as well. A…so when we’re back before the planning board, the planning board has raised these concerns as well and so we fully expect to a…be looking at the feasibility of any secondary means of accesses into the site. In other words, it’s not the only means a…to 17K.

Mr. McKelvey: I was reading, we…we have a copy of the planning board minutes and that’s why I asked that. There is going to be a lot of traffic.

Mr. Manley: Well one of the things that I would be concerned…that…that I have concerns with is and I’ve been over there, you know, recently I’ve…I’ve been over there to utilize Chili’s and with everything that’s built out there right now. There is in…in…in my estimation and I’ve been involved in emergency services for over twenty years, my concern is if a worst case scenario happens there…fire a…let’s say, God forbid, there is a gas explosion and you have to get people out of that area and get emergency services in to that area, it’s going to be near to impossible. And adding another hundred rooms a…I really have concerns granting a variance and part of the factor that I look at is does the granting of the variance affect potentially the health, safety and welfare of any of the residents or any of the visitors within the Town of Newburgh. That is a…a…a factor that weighs on me a…and I…I need to feel comfortable that in granting the variance that this is going to be something that is…is going to be a…and I understand that it’s going to be addressed at the planning board level that that’s within their purview but also I need on the…on the zoning board side I think we have I…I…feel like I have an obligation to look at safety as huge, you know, consideration in granting a variance a…in granting a variance is it going to be cause for concern and that’s…that’s a big, a huge concern.

Mr. Cordisco: Well and as I indicated Watchtower has committed to looking at and studying this issue a…it’s not entirely up to Watchtower to resolve. Certainly a…I understand your comment regarding the additional rooms a…that Watchtower is proposing to put in at this location a…however, I would point out and…and please don’t take this the wrong way but the…the reason we’re here the building itself, the proposed addition is actually compliant with all the zoning codes. The only reason that we are here is for a…what I would characterize as apparently a minor variance for two existing buildings a…for existing setbacks. So the…we’re talking about two and a half feet on one building and half a foot on another existing building. That’s not to downplay the concern. I’m obviously we’re aware of it a…as soon as we started discussions with the Town we engaged Phil Greeley of Maser Consulting a…who is preparing traffic analysis as well as feasibility studies for secondary means of access into the site. We’re not ignoring the situation at all. A…so I think that…that in order to proceed to the next level, I would encourage you to consider granting the, what I would characterize as minor variances, a…you’re of course free to disagree but a…we would then be in a position to go back to the planning board to continue on. A…certainly, as you pointed out, in the minutes to the planning board meeting, the planning board is very sensitive to this issue as well so a…I don’t see a…I…I don’t see us a…proceeding without having to address it in one form or another.

Mr. McKelvey: They’re going to…in other words to but reading the…the minutes a…they are going to use vans to take these people to the different sites?

Mr. Cordisco: Correct.

Mr. McKelvey: How many vans?

Mr. Cordisco: Richard Devine is here so Richard if…if you’d like to address the Board regarding the specific observations.

Ms. Gennarelli: You can take that mic off if it’s too low?

Mr. Devine: Oh, okay.

Ms. Gennarelli: You can pop that right off because it has to be close.

Mr. Devine: Yeah, right now because the who are…are coming to our various facilities such is missionaries who are hear for health treatment or a…people here for legal or human right seminars, things like that that we’re putting up as well as right now we’re putting up some construction volunteers for our new headquarters construction. A…they…many of them do not have their own personal vehicles so we do use these sprinter vans, they have…they have about twelve seats in each sprinter van so potentially if the entire thing was full it could be a…ten to twelve a…sprinter vans of course, which would be lot…a lot less traffic than you’d have with a typical hotel with a hundred rooms in it a…as we’d be moving people more in bulk than we would a…in individual cars. Although some will come if they’re here in the states they may come with their own car for a time.

Mr. McKelvey: I’m just concerned like Jim is for the safety for everybody in the Town.

Chairperson Cardone: Do we have any comments from the public? Yes, Mr. Hughes.

Mr. Hughes: Good evening.

Ms. Gennarelli: I’m sorry; you have to use the microphone.

Mr. Hughes: Sure. I’ll direct my question to the Board and to the Chairperson. Mr. Cordisco suggested that there was another means that they were seeking to get in and out of there; I’d like to know what that is, if you care to comment.

Chairperson Cardone: Do you have an answer to that question? What the other means would be for exit?

Mr. Maser: A…yes, the other means we’re looking at was on the a…the northern side of the site over here along the 300 frontage of something that would be able to...

Ms. Gennarelli: Can you pull that microphone around or take it off? Thanks.

Mr. Maser: A…emergency access that would come off of the northern parking of the diner here and out to 300 a…then again its preliminary a…we obviously have to…to a…engage D.O.T. a…in that but a…that is the second means.

Mr. Hughes: Am I correct in hearing you say that that’s an emergency exit?

Mr. Maser: That’s what we were looking at, yes.

Mr. Hughes: So it’s not a legitimate exit for ingress and egress? It’s an emergency exit.

Mr. Maser: At this point an emergency…

Mr. Hughes: Okay, so let’s get down to some real hard basic facts here. This is a map of what they’re trying to push through. The diner and the hotel as it were, were supposed to be under a sole proprietorship and continued that way. We already have some interference. They’re trying to make three separate lots so they can play a game to gain access over which is already an overburdened corner. The corner serves two major projects, Palmerone Farms which includes a various amount of restaurants, public space, (Inaudible), Starbuck’s, this and that. This project was not designed to just haphazardly designed to add another hundred room hotel on the back. Your water, your sewer, your gas, your electric, your road maintenance agreements, your snow plowing and the reciprocities that were supposed to go back and forth with these properties. Now we have a brand new owner that wants to make three separate parcels that is thumbing their nose at the requirement by the Town’s conditions that they became and operated under one proprietorship. So I can understand why Mr. Milano sold it twenty plus million. I can understand why these guys want to operate this three ring circus tax exempt I’m going to guess, I hear in the background. Why would we as a Municipality and especially as a Zoning Board contribute to a segmented approach to a project that has too many questions and not enough answers? I agree with Mr. Manley, I agree with Mr. McKelvey there’s concerns here, safety, welfare, egress, ingress. There’s two slivers that encompass this corner which makes it cost prohibitive for anybody to get there. To get an emergency exit oh, that’s a real big deal. What are we going to do about the overburdened right of way, the overburdened water, the overburdened…and by the way I didn’t see any EAF Forms that suggested that this last property in the back is right up against a five acre wetland that was remanufactured and under very severe DEC constraints. At best, this Board should take the responsible position and leave this Public Hearing open and not contribute to a segmented approach to allowing somebody to fly under the radar because all the cards are not on the table. Please pay attention to what I’m telling you. There’s a lot here that leaves to be desired. Thank you for letting me speak.

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

No response.

Chairperson Cardone: I do have the report from the Orange County Department of Planning and that is Local Determination.

Mr. Cordisco: Mrs. Cardone…

Chairperson Cardone: Yes?

Mr. Cordisco: …if…if I may make a one additional clarification?

Chairperson Cardone: Certainly.

Mr. Cordisco: While the site is in…in existence right now as three lots we did indicate and commit to the planning board that we would consolidate all three lots a…as part of the site plan application process so we would expect that that would be a condition of the approval so this would be treated as one lot for the planning purposes before the planning board.

Chairperson Cardone: Does the Board feel that you have enough information at this point to close the Public Hearing or would you require more information?

Mr. Donovan: If I can just add a little bit, I think if I understand the concerns expressed by Mr. Manley and Mr. McKelvey and probably shared by other members of the Board it’s relative to the construction of the hundred room hotel addition. Right? Is that…did I characterize that correctly?

Chairperson Cardone: Right.

Mr. Donovan: The application before the Board is a…limited however, we have a side yard setback for the existing diner building that already exists and a side yard setback for the motel building which already exists a…so I know it can be frustrating at times when there is clearly a bigger picture a…but you know our focus, by law, is…is a narrow one and this is the application before the Board. You…it is well within your a…purview if you choose to leave the Public Hearing open to gather additional information if you think that’s going to help you to make a decision. You get to do that, you get to close the Public Hearing; you get sixty-two days to make up your mind as well. I…I just point out that the…the issue before the Board is…is narrow.

Mr. McKelvey: I…I understand I mean the a…ingress and a…all that’s…the vehicles is up to the planning board. We don’t control that. I’m just…I’m just…like I said that I’m concerned with safety.

Chairperson Cardone: That’s… Mr. Hughes?

Mr. Hughes: I would like to know under what legal guidance you can say that you’re looking for this with three lots now but you’re going to change it to something later and then still rule on what’s narrow here tonight? That’s a true and false test with multiple choice answers. It doesn’t jive no matter how you play the game. So you can’t convince me that they can’t come back with another plan and that you can’t leave this Public Hearing open and then go back and forth with the Town and the planning board and get something that might work instead of ten pounds of dung in a two pound bag. Let’s pay attention to what’s going on here. This this is overburdened to the hilt. It was designed not for an additional one hundred room unit and who knows how many people are going to be in that room. Tax exempt too don’t forget that. That will be divided up against the rest of us.

Chairperson Cardone: What is the wish of the Board?

No Response.

Chairperson Cardone: I need a motion to either hold the Public Hearing open or to close it.

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

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

No Response.

Chairperson Cardone: Okay, guess we don’t have a motion then since we don’t have a second. Do we have a motion to keep the Public Hearing open?

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

Chairperson Cardone: Do we have a second?

Mr. Scalzo: I’ll second that.

Mr. Cordisco: If I may have a brief discussion before you take on…on that motion. If…if the Board is going to keep the Public Hearing open, we’d ask that you provide us with specific guidance as to what it is exactly that you would like. We have only heard from Mr. Hughes tonight. This is a variance application, if I may; this is a variance application for side yard setbacks none of the neighbors that could possibly be impacted from these existing buildings where they’re situated now have shown up tonight. No one else has bothered to comment. The County Planning Department has indicated they are no countywide issues in connection with the variances that we’re seeking. As I stated before, we have committed to consolidating the lots, we’ve also committed to working through the planning board process where the planning board rightfully looked at traffic, safety and all those other issues. I don’t understand if that is your good wish but I don’t understand what it is that you would be looking for from us in connection with a two and a half foot variance and a six inch variance. I don’t quite understand it. I understand that there’s a concern over safety. I’m standing here, I’m telling you that’s something that we’re aware of. It’s something that we’ve already discussed. It’s already in the minutes of the planning board meeting. We’ve already engaged Phil Greeley who is…who is the premier renowned expert regarding traffic. We’ve already in…in…communicated to the Thruway Authority, we’ve approached them. They’ve said they would be happy to be part of that discussion but that they couldn’t actually sell it to us if we were willing to purchase that strip of land. We’re looking at other engineering options. Those are things that are going to play out quite frankly and quite rightfully before the planning board. There is no mixing of metaphors here a…and a…so I don’t think that a…it would be proper or appropriate for this particular use to be held open or to be held over or to be delayed in connection with variances for existing side yard setbacks.

Chairperson Cardone: Yes?

Mr. Hughes: I’d like to see the real plan. I…I…

Ms. Gennarelli: I’m sorry; can you set to the mic?

Mr. Hughes: Yes, I will. If what Mr. Cordisco says has any truth in it whatsoever I’d like to see the real plan and there is no reason we can’t wait. We’re not rushing here to play beat the clock. They’re rushing to fly under the radar. Make no mistake about it.

Mr. Cordisco: I’m happy to address any concerns that the Board may have. Luckily I don’t have to convince Mr. Hughes anymore. I have convince you so if you have any concerns I’d be happy to address them. You want to take a look at the plan? The plans are the plans that are in front of you. This is an expansion of the hotel. We’ve laid out the plans. The plans for the expansion of the hotel meet all the current requirements that are out there. The reason that we’re before you is as I explained because the existing buildings, the two and a half feet and six inches to close to the property line.

Chairperson Cardone: Well I think that the issue that Mr. Manley brought up and it was Mr. Manley who brought up the issue of the safety and the exit and I think that’s something that the Board would like to have a little more information on that.

Mr. Cordisco: What…what information? And that’s…that’s what I’m asking, I mean, I…I…I’ve stated that this is a situation that wasn’t created by the Hampton Inn. It wasn’t certainly wasn’t created by Watchtower. A…Palmerone Farms completed their construction without completing that secondary means of access. When we purchased the property…me…we being Watchtower purchased the property a…they were asked to look at possibly a…contributing towards the a…resolution of that issue. They took it on themselves to agree to have those discussions with the Thruway Authority. As I said, the Thruway Authority said that they would be happy to continue those discussions but they actually would not sell it to Watchtower because Watchtower doesn’t own a contiguous piece. We are at other alternatives. Like these are all things that will play themselves out and this is all part of the record. What I’m stating here is part of the record. It’s in the minutes of the planning board meeting. It’s actually under my signature because I wrote a letter that said exactly this to the planning board. So, you know, unless this Board is going to take over some kind of site plan approval authority regarding details regarding an access issue that is before the planning board I think it’s beyond your scope of review. And I’m being very respectful in that regards but and I understand the concern. My recommendation to you would be that this is obviously a concern, it’s a concern shared by some of your member’s and obviously it’s given you some hesitation to close the Public Hearing. My recommendation is is focus on the two narrow variance issues and then state your concerns in your decision to make sure that the planning board knows that this members of the Board are concerned with as safety and traffic and access as well. So that will just emphasize to the planning board that it’s something that they are rightfully looking at already.

Mr. Manley: Presently that’s all one big piece of property or…?

Mr. Cordisco: Its three parcels. Its three parcels that are being merged as part of the site plan application.

Mr. Manley: And presently they have been split up? Were they ever together as one? Was…was the front parcel the diner and the…the other property which is the a…hotel, the Hampton Inn were they ever one parcel? And were they split apart?

Mr. Cordisco: Not…not during anytime that I’ve been involved with the project or familiar with that site at all. I’m not aware of any subdivision applications or…

Mr. Manley: What I’m wonder is what created the buildings to now not have the proper setbacks? That’s kind of what I’m trying to…when they were built originally they must have originally been approved and met all the proper setbacks, yes?

Mr. Cordisco: That’s assuming that those were the setbacks were in place then at the time. I don’t recall the history as to… (Inaudible)

Mr. Manley: What I’m trying to…what I’m trying to get a handle of is, how did we get where we’re at? The…and that’s what I’m trying to understand is apparently there’s…something happened along the line which caused these buildings to not fall within the proper zoning requirements and then now that there’s new construction that’s going on, now all of a sudden we have something that’s not conforming and requires a variance because it’s not conforming in order for the applicant to proceed.

Chairperson Cardone: Yes, Mr. Hughes.

Mr. Hughes: I’ll hit the microphone again.

Ms. Gennarelli: Thank you.

Mr. Hughes: I’ll address the Board but in direct response to Mr. Manley’s inquisition, when these parcels were put together to begin with a diner was not allowed in the I/B zone and so in order to accommodate the owner, I’ll use that word, there was a stipulation that if they were to put a diner there and a hotel that the third lot would be non-developable and that the one owner would own in parcel on one piece of land both the diner and the hotel, which lasted that way for the last twenty years or better. Now all of a sudden, we want to make three lots. I’ll bring the map out again if you want to see it and maybe Mr. Cordisco would like to know what is going on with this project because he apparently he doesn’t know about the history of what’s existing right now and by the written record in the Zoning Board and the planning board meeting at the end of last year it seems as though he was involved enough to know what was going on but now his memory seems to fail him. I’ll start again, the hotel and the diner were granted under their stipulation that it be in one ownership continuous. And now we want to change that because we have a need where somebody wants to put a third one hundred room hotel on a very overburdened corner. No storm water, no water, no sewer was ever designed into the program for this corner. So I hope Mr. Manley can get a better grip on why that was the way it was to begin with. When they acquired that land from Palmerone Farms, the stipulation required that that stay in a sole ownership for the duration. There’s a lot of things going on here. There’s a want for water, there’s a want for sewer, there’s a want for storm water management. There are no papers that I’ve seen that indicates any increase of any of those things. As far as the implication that Palmerone Farms did not acquire the second exit that was a planning board issue and a matter that was in their lap. It has nothing to do with this Board. So again, I’ll urge you to keep the Public Hearing open so we can gather real information.

Mr. Maser: Chairperson Cardone.

Chairperson Cardone: At what point did they become separate? If they were one at one time, at what time did they become separate? Just a…for a little history…

Mr. Maser: But a…but what I wanted to point out that the…there are three current tax lots and the plan provided to you shows that a…there’s a small sliver along Route 300 a Tax Lot 33, the second Tax Lot coming into the site is Tax Lot 30.1 which a…comes to about this area here and does have the existing hotel and diner on that parcel and then there’s a rear parcel, a little over three acres a…Tax Lot 30.22. A…and as presented on your plan, the project involves those three Tax Lots but we’re looking to dissolve the shared lot line a…between them a…creating a single parcel of about eight point six acres all together.

Mr. McKelvey: Jerry was it operated when the motel and the diner were operating, was that considered one lot?

Mr. Canfield: Yes, it was. I saw the site plan, the approved site plan. Also to answer…answer Mr. Manley’s question, how did these non-conformances come about? When these buildings were constructed, the diner and the existing hotel, which I believe were in the late ‘90’s a…mid ‘90’s to late ‘90’s, which I might add was under another management of the Building Department, a…the buildings were built in the wrong locations. The setbacks were as they are today but when they were built, they were built non-compliant. A…as Mr. Cordisco indicated its six inches in one area and two point five in the other and it was missed at the time. It’s real simple. So by virtue of the site plan, the new hotel, these non-compliances were identified and they need to be addressed.

Mr. Manley: So Mr. Canfield just to piggyback on what your statement was, if those buildings had been built in the proper spots without the technical errors that occurred the applicant then would not be here, is that…?

Mr. Canfield: That’s correct.

Mr. Manley: …is that…?

Mr. Canfield: That’s correct there would be no non…

Mr. Manley: …is that a correct statement?

Mr. Canfield: …-conformities, that’s correct.

Mr. Manley: Thank you.

Mr. McKelvey: But how…how did they…you know if they were one lot when he was operating the hotel and the diner, how did they get separated?

Mr. Cordisco: The hotel and the diner are on one lot now.

Mr. McKelvey: Oh.

Mr. Cordisco: Yeah, the lines…it’s three lots all together but the motel and the diner a…have been and are on one lot.

Mr. Manley: I think what he said is there’s a small sliver that’s on its own parcel…yes? And then the next sliver would be the diner and the Hampton Inn, the old Hampton Inn…

Mr. Cordisco: Yes.

Mr. Manley: …and the last sliver is the new property that they want to construct the hotel on.

Mr. Cordisco: But it’s an addition to the existing hotel. Correct. And all…all three lots a…would be merged into one large lot. We’ve committed to that to the planning board already.

Mr. Manley: Could they built on separate lots or no? You need the lots to be joined together in order to make the project work, correct? Or no?

Mr. Dates: A…the…the…the parcel in the rear lot a…30.22 is three point two three acres, a…under the a…the Town zoning requirements a hotel would have to have a minimum lot area of five acres.

Mr. Manley: So it creates an interdependency therefore the need for the variance in order to create that one lot?

Mr. Dates: They’d like to a…combine all three lots so that it is one facility.

Mr. Manley: Correct, but in order to do that that interdependency is the variance which would then allow you to combine the lot. Without the variance you can’t combine the lots?

Mr. Dates: By…by combining the lots it creates us coming to you for the variances.

Mr. Manley: Correct.

Mr. Dates: But the rear lot itself could not have a hotel on it, but just surely based on the a…the acreage.

Mr. Manley: So what…what I’m trying to get at is the…the requirement for the variance is also self-created because you are joining the lots?

Mr. Dates: Well I believe that the variances are created, not…not self-created to a pre-existing condition.

Mr. Manley: It is, but if you kept the lots separately and you kept the hotel and the diner as is you don’t need a variance because it’s pre-existing. Correct?

Mr. Dates: Correct.

Mr. Manley: So when you want to add that third lot and join them together that’s where it creates the interdependency of needing the variance in order to make the whole three…to combine all three so there’s an interdependency between the two.

Mr. Dates: Yes.

Mr. Manley: Okay, that’s just what I was getting at so in…in that perspective it’s self-created in that without doing that it’s not self-created.

Mr. Cordisco: Well I…I would defer to your Counsel but I…I mean you know the…the…the self-created aspect of variance applications as I understand it is it…it…it’s a difficult concept because nearly every application conceivable that comes before you is self-created in the sense that someone is coming in asking permission to do something that they otherwise wouldn’t normally be allowed to do. So while the…the rear lot you know would not on its own be…be able to support the addition to the hotel we could have come in seeking different variances to that would have allowed that on a separate lot. For instance, we could have seen a…sought an overall lot area variance because the lot itself is not large enough to support a…a standalone hotel and we’re proposing a standalone hotel but just theoretically it’s possible, you know, but the hotel addition that is being proposed meets all the requirements conditioned on the fact that you’re taking multiple lots and combining them.

Mr. Manley: Okay, I’m just trying to look at the big picture and kind of get an idea of why things are being done and why the variance is needed if you weren’t combining the lots you necessarily wouldn’t need the variance because you wouldn’t be combining the lots. The combining of the lots is requiring the variance.

Mr. Cordisco: Well you know in this Town, yes. I mean we…we’re here because this Town a…routinely determines and…and its part of your practice…

Chairperson Cardone: But that’s where it’s located in this Town so…

Mr. Cordisco: Yeah, no, no I understand. Allow…allow me to finish you know is is that we’re not seeking variances for our expansion. Technically we’re not. I mean we’re seeking variances for two existing buildings that were built slightly in the wrong place, you know and we’re not increasing the degree of non-conformity for those buildings as far as it relates to any of the neighbors in that…in that area. Those build…I mean the Gateway Diner and the former Hampton Inn those buildings aren’t moving. They’re staying where they are and the existing setbacks are what they are. I might add the addition our only neighbor is of course is the Thruway Authority with a former ramp a…that went to the Thruway before it was reconfigured.

Mr. Manley: But part of the reason for my questioning is also to determine is there any way to achieve what you need to achieve without needing to grant a variance, that’s part of the process that you know, that we need to wrestle through when you know we’re determining the granting of a variance. I’m trying to rule out other alternatives.

Mr. Cordisco: No I understand that and actually there are no other alternatives because any addition, anything that was…that would need to be a…have site plan amendment out here would have triggered a referral to this Board because of the existing non-conforming setbacks for the Gateway Diner and former Hampton Inn.

Mr. Donovan: And that’s consistent with the prior application this evening, with the…with the…even though it’s a change of permitted use to permitted use, the change of use triggered the requirement to come here for the series of area variances.

Mr. Manley: There’s a…there’s a motion on the floor with a second to hold it open so we probably move on the motion.

Chairperson Cardone: Yes we should.

Ms. Gennarelli: Okay we’re ready for a vote.

 Richard Levin: Yes

 James Manley: No

 John Masten: Yes

John McKelvey: No

 Darrin Scalzo: No

 Grace Cardone: Yes

Mr. Donovan: Three, three Betty?

Ms. Gennarelli: Three, three.

Mr. Donovan: So the motion fails because it’s a seven member Board. And there’s no way I’m seeing Derek Jeter play tonight is there?

Ms. Gennarelli: Unless there’s a big rain delay.

(Inaudible)

Mr. Cordisco: But before…before…before you move on, if I may…?

Mr. Manley: That’s what they make TiVo for.

Mr. Cordisco: Yes.

Mr. Donovan: I don’t make that kind of money Jim I don’t know if you know.

(Inaudible)

Mr. Cordisco: Richard Devine would like to speak to you for a moment regarding the emergency access and…and traffic safety issue.

Ms. Gennarelli: You can take that mic and…hold it or I can make it higher for you.

Mr. Devine: My name is Richard Devine; I’m an ordained minister of Jehovah’s Witnesses representing the Watchtower Bible and Tract Society. A…as far as the emergency access we’re very concerned about our people who are going to be staying there and a…we don’t want to create any kind an unsafe condition. We want to rectify this. We’re committed to doing whatever is necessary to protect the health and welfare of those people. The only reason that we didn’t commit to what we’re going to do is because at this point we can’t control what happens with the Thruway Authority. They will not allow us to negotiate with them directly. We have a plan to put another means of egress onto our property because we can control that and we’re willing to do that. We still have to work with the planning board and the a…to make sure they’re comfortable with that and also with the a…a…the Department of Transportation to make sure that a…we can get the easements necessary to get the on Route 300. So we want this to be resolved, this is not something that we’re a…interested in forgetting about or hoping it goes away. So I just wanted you to…I wanted to assure the Board of our commitment to make sure that a…safety is the primary thing and we’re really concerned about that. We have a high regard for the sanctity of life and we want to make this right. It’s just how we’re going to do it. We just haven’t gotten it fully under our control yet to be able to say how we can do it because there’s others involved that have to weigh in on whatever the final decision is.

Mr. Cordisco: Thank you Richard. And with that I do ask the Board that if you consider closing the Public Hearing and making whatever decision that you make if it is in the affirmative we certainly would urge the Board to make its concern known to the planning board but this would allow us to continue with that process a…if we don’t get the variances then we…then we’re back at square one and as I said before any addition out there, any change to the site plan would result in a referral to this Board for variances for existing buildings. So we…we have to address it.

Mr. Donovan: So right…right now we are pretty much nowhere in terms of what we’re doing in connection with the Public Hearing.

Chairperson Cardone: That’s correct.

Mr. Donovan: The motion that was on the floor that…that failed was a motion to keep the Public Hearing open. I don’t know if the Board is inclined to take further action or…or just stay and hold hands until the night’s over.

Chairperson Cardone: Well I would wait for a motion. Do we have a motion to close the Public Hearing?

Mr. Manley: If we do close the Public Hearing we still have the sixty-two days to a…make a determination if…if the Board so deems necessary at a later point. Correct?

Mr. Donovan: That’s correct.

Mr. Manley: And certainly that might be if some of the other members if…if that’s a concern that may be a compromise to get whatever Board Members time if they need additional time to do additional research or get additional information if they don’t need information from the applicant.

Chairperson Cardone: That’s correct.

Mr. Manley: I…I’d be happy to make a motion to a…close the Public Hearing.

Mr. McKelvey: I’ll second that.

Ms. Gennarelli: Roll call. Richard Levin…

Mr. Levin: The motion is to close now?

Mr. McKelvey: Close the Public Hearing.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

(Inaudible)

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: No

Chairperson Cardone: Okay, the Public Hearing is closed but you had one final remark?

Mr. Hughes: The Public Hearing is closed?

Chairperson Cardone: Yes, the motion carried.

Mr. Hughes: I…I was trying to get your attention…

Chairperson Cardone: We were in the middle of a vote.

Mr. Hughes: Well the vote came rather rapidly a…if the Hearing is closed the Hearing is closed.

Mr. Cordisco: Thank you very much.

 (Time Noted - 8:51PM)

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ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:21 PM)

WATCHTOWER BIBLE AND TRACT 1292-1294 ROUTE 300, NBGH

 SOCIETY OF NEW YORK, INC. (97-2-30.1, 97-2-30.22, 97-2-33) I/B ZONE

Applicant is seeking area variances for one side yard setback for the existing (diner) building and one side yard setback for the existing (hotel) building to construct a new 2-story, 100-room hotel.

Chairperson Cardone: Our next application Watchtower Bible and Tract Society of New York, Inc., 1292-1294 Route 300, seeking area variances for one side yard setback for the existing (diner) building and one side yard setback for the existing (hotel) building to construct a new 2-story, 100-room hotel.

Mr. Donovan: Dominic we have a question if you don’t mind if you could come up? Here is the issue when Code Compliance reviews, and Jerry is not even here for us to ask him this question, but when Code Compliance reviews a matter such as this it’s a pre-existing, non-conformity. Right? We have this setback issue and there is an addition in addition to that if you will. Code Compliance deems that to be an increase in the non-conformity that the mass of the building that doesn’t conform is increased therefore it’s increased the degree of non-conformity. The planning board referred it here just for two side yard setbacks a…the issue has now come up and this Board is concerned that that base has not been covered. A…and I don’t know if you agree or disagree a…but the concern is now there is another variance that’s required but we can’t…we don’t have jurisdiction to issue that variance. And, in fact the planning board may not think you need that variance but I think a…I’m just articulating the issue that you may want to consider asking the planning board if they believe that you need that variance. If…if they think that you do we’re in a situation where we’re going to need another Public Hearing. If they that you don’t we can’t compel that to happen and then we…we vote on…on the issue that’s before us.

Mr. Cordisco: I…I…I think…I think the…I…I understand the question and I…I think from my experience practicing before the Town and how things have been interpreted is that the a…the concepts are being intermingled and the reason why we’re before you is not getting after the fact approval of the fact that the buildings themselves were built slightly in the wrong spot. Six inches in…in one case and two and a half feet on the other but rather because we are applying to the planning board to increase the use of the building and even though the increase of the use of the building and that increased area complies with all other Code requirements the increased use of the building itself triggers the need for the variances for the pre-existing non-conformities. So I think the concepts are mixed so I think what I’m saying to you as I understand it is that the very reason that what you’re asking of a variance that we need, the variance that we need is the variance that we applied for and the reasons that we’ve applied for them because the planning board and Code Compliance determined that you need to get variances for those pre-existing non-conformities because overall the intensity of the use of the site is being increased. That’s so I think the…the concepts are comingled but I think we come out at the end all together on the same page. I don’t think and maybe to answer your question more directly I don’t believe that there is another variance that is needed technically because you’re increasing the use of the site overall.

Mr. Donovan: Here’s the concern that’s been raised and…and I’ll give my example, let’s assume that you have a single family home, let’s assume that that single family home needs a…a twenty foot setback and only has ten feet and you have a single…single story that you’re going to put a second story on now Code Compliance…and so you’re not extending anymore, you still have your ten foot what Code Compliance says is that’s an increase of the non-conformity because the mass of the building has increased and they…they send it to...back to us for that variance. The planning board did not send it here for the variance and the concern that’s been raised is there’s a missing piece here.

Mr. Cordisco: I understand that. I…I don’t believe that there is a…I think that the reason that we’re here is because of the degree of non-conformity itself is being considered to be made greater by the fact that the building itself is being extended, even though the extension is compliant the…you have to deal with the fact that the non-conformities are the existing a…setbacks.

Mr. Donovan: Okay.

Mr. Cordisco: I’m…I’m…I’m…I’m mindful of the…if I may, the…the example that I…that I would refer to is a…the one where that most recently I was before this Board for Crystal Run Healthcare on Route 300 where setting aside the issues with the Crystal Run Building itself there was the existing a…a…Simone, I believe how you said it, Simone Tailor building that was located on the corner and even though that lot was being reconfigured and the lot itself was conforming, the building at that time…it’s gone now, that’s a whole nuther story a…but that building at that time was proposed to stay but that building was going to be on a…another…a lot that otherwise be conforming but it was actually too close to all Old a…Little Britain Road. And as a result, the planning board referred us to this Board because we were con…reconfiguring that lot and even though the building itself wasn’t proposed to be moved its very similar I think to the situation that we were before you…for tonight.

Chairperson Cardone: Not really though because the a…you were not enlarging that building. You were not enlarging that particular building.

Mr. Cordisco: Right.

Chairperson Cardone: But you are enlarging the hotel, correct?

Mr. Cordisco: Yes. Certainly that’s…that’s why we’re here.

Chairperson Cardone: So that’s why you would need the a…because you’re increasing the degree of non-conformity by enlarging that building.

Mr. Cordisco: Right, but the only non-conformity in this situation for the Hampton Inn and the Gateway Diner are the existing setbacks and those aren’t being increased at all.

Mr. Manley: Right but it’s…it’s the…if you weren’t…if you weren’t changing…if that…let’s just say you take the whole other building out of the…out of the mix and they were just going to use the diner and the hotel there would be not issue.

Mr. Cordisco: Yeah, we wouldn’t need a site plan amendment to do what we’re doing out there which is using those facilities…

Mr. Manley: Right.

Mr. Cordisco: …you know, and we wouldn’t need to come before this Board in…at all.

Mr. Manley: Correct. It’s that non-conformity of that building that’s causing, that’s triggering the other two things so they become one in the same as far as requiring that variance that…that…that non-conformity of that…

Mr. Cordisco: Once again, I think concepts are being comingled because the…the addition is conforming because it meets all the setbacks from various different property lines and it meets the overall lot coverage from…as far as the…the lot is concerned. The only thing that’s non-conforming here is those two existing setbacks. I would ask…ask the question in…in reverse if…if there was something else that you thought that we needed in terms of a Bulk Requirement what is it?

Mr. Donovan: It’s not in terms of the Bulk Requirements, what this Board has done in the past consistently one could argue maybe too consistently with every variance of…of this type and by that I mean when you have a non-compliant yard and you increase the size of the building it’s not only a variance for the non-compliant yard it’s a variance for increasing the degree of the non-conformity.

Audience Member Inaudible

Ms. Gennarelli: Excuse me, excuse me, if you are going to speak you have to go to the microphone if…if the Chair wants to let you speak.

Mr. Brown: (Inaudible) Town of Newburgh and I do a lot of additions and I…I happen down this road quite a bit, if the addition itself to the building does not violate the yard, they consider the yard volumetric so if the addition itself does not violate the yard then Dominic is good with the variances applied for.

Mr. Donovan: That’s not what they said to us Charlie.

Mr. Brown: Really?

Mr. Donovan: Oh, yeah, yea.

Mr. Brown: I’ve done additions on houses…

Chairperson Cardone: And anyway the Public Hearing is closed on this we’re just getting information from a…

Mr. Cordisco: Mr. Dates just…just a...reminded me and I think this is a pertinent fact is is that the…the addition that we’re talking about here isn’t actually physically connected to the existing hotel so even though it’s going to be one over…

Chairperson Cardone: Then it’s a second building.

Mr. Cordisco: A second building, correct. So this…

Chairperson Cardone: That was not represented to us.

Mr. Cordisco: It was shown on the plans, I’m sorry that I did that…

Chairperson Cardone: Right, right I mean that’s what I had understood but then as you were discussing it you were discussing it as a enlargement of…

Mr. Cordisco: It’s an enlargement of the use because it’s one ownership, it’s one use, it’s Watchtower…Watchtower is going to operate the entire thing but it actually is a separate standalone building and on the site. And under that…under that clarification I don’t believe that we require…

Mr. Donovan: Well why…maybe if it’s okay with the Board just put it up on the…so we…we can see how far apart it is?

Mr. Dates approached the Board

Mr. Donovan: But you should grab the microphone and sing Karaoke and then you can show us where it is.

Mr. Dates: You don’t want to hear me sing. A…a…so the Gateway Diner on this side of the site stands alone on itself. This U shaped building is the existing Hampton Inn or building and here’s parking between the proposed building and the existing a…hotel. So this grey shaded area is our proposed building a…and the…the a…the extent of the existing building comes to here so they’re…they’re completely separate.

Mr. Donovan: Show…show us relative to those buildings where you need the variance.

Mr. Dates: The variance is up on the a…is this the northwest corner of the Hampton building? And then the northeast corner of the diner. A…the proposed building, again this grey shaded box here is within all the a…the setbacks.

Chairperson Cardone: The confusion came in when he said he was enlarging…the statement was made that you were enlarging…

Mr. McKelvey: Yeah.

Chairperson Cardone: …the current hotel and that’s…

Mr. Cordisco: I apologize for the confusion.

Mr. Scalzo: And help me understand, I have my copy…

Mr. Dates: Okay.

Mr. Scalzo: …thank you, currently it is two lots?

Mr. Dates: It is three lots.

Mr. Scalzo: It is three lots.

Mr. Dates: Yes.

Mr. Scalzo: So the consolidation has not occurred…yet?

Mr. Dates: That’s correct. It’s still a…

Mr. Scalzo: So the hotel in the shaded that we’re looking right now is non-compliant? It doesn’t cannot…it doesn’t meet the Bulk Requirements to sit on that lot?

Mr. Dates: It meets the Bulk Requirements if all three lots were combined.

Mr. Scalzo: If all three lots are combined but as of right now it does not?

Mr. Dates: As of right now it’s three separate tax lots.

Mr. Cordisco: But just for one clarification, the existing hotel building and the existing restaurant Gateway Diner building are both on the same lot.

Mr. Donovan: Okay, with…with that clarification from my point of view it’s not an increase in the degree of non-conformity…

Chairperson Cardone: Right, right.

Mr. Donovan: …as has been previously ruled on by this Board.

Mr. Cordisco: Thank you for the…for the opportunity to address the question.

Chairperson Cardone: And now that we’ve cleared that up, do we have discussion on this application?

No Response from the Board.

Mr. Donovan: I’m kind hoping to see Yankee Classics too so maybe we can...

Mr. McKelvey: Tomorrow morning.

Chairperson Cardone: This is an Unlisted Action under SEQRA. Do I have a motion for a Negative Declaration?

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

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: We do have up to sixty two days to make a decision. What is the wishes of the Board?

No response from the Board.

Mr. Donovan: Just to kind of go back to what we talked about before, the…the issues involving the application extend beyond the jurisdiction of the Board, I mean there’s other…obviously there’s concerns with additional a…rooms, additional traffic, additional number of things. In terms of what’s before this Board though it’s…it’s the two variances on the existing buildings a…we’ve done this before…the Board has concerns and obviously concerns have been raised this evening if you want to communicate those concerns in your decision that can be passed along to the planning board to make sure that they pay attention to those things in their deliberations.

Mr. Scalzo: Just so I’m clear, if these buildings the old diner was two and a half feet almost three feet to the south and the hotel was a half a foot to the south the applicants wouldn’t be here, correct?

Mr. Donovan: That’s correct.

Mr. Manley: Well the scope of this Board is very narrow with respect to what we have to rule on here and where we’re at right now is pre-existing diner and hotel that was built in the wrong spot in the ‘90’s, there’s nothing that the applicant can do about it now a…with respect to fixing it. There are concerns; I think, that we all have on this Board I certainly have them. The applicant has expressed he’s going to do everything within his power to take care of the safety issues a…I think in the decision if it’s the Boards pleasure to move forward with approval that the a…the approval is strongly worded with respect to the health, safety of not only the residents of the Town of Newburgh but obviously any guests that are going to be there or people traveling from out of Town. That is a very, very tight area as far as traffic a…it’s certainly not the applicant’s fault that that area is like that a…but they are adding to the impact of what’s there now. It really is going to have to be addressed and looked at very carefully. I would a…I’d be willing, at this point, make a motion that a…the a…variance as requested be approved with…with those admonitions.

Mr. McKelvey: I’ll second that on…on agreeing with what you just said.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:39 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 8:51 PM)

ANTHONY ALAN GIANCOLA 613 GIDNEY AVENUE, NBGH

 (76-9-2) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory structures to build a carport (26 x 30).

Chairperson Cardone: Our next applicant Alan (Anthony Alan) Giancola.

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

Mr. Giancola: Excuse me, I’m a little nervous. Is this (mic) working?

Chairperson Cardone: Yes it is.

Mr. Giancola: Okay a…good evening…

Chairperson Cardone: State your name for the record.

Mr. Giancola: My name is Alan Giancola; I live at 613 Gidney Avenue for the past thirty-four years. Good evening Board Members and other people in the room. I’m here for a Permit for a non-permanent carport and it meets all the requirements except for by a formula. I believe it’s 186-15-A-4, it’s just that “c” in there, it’s thirty feet that’s all I’m allowed and I have sixty-six feet but a…Joe had told me that’s the only number he can put in there which makes me need a variance.

Chairperson Cardone: We have a…some other issues that were brought to my attention. There was a Permit taken out in 1989 to convert a garage into a bedroom.

Mr. Giancola: Yes.

Chairperson Cardone: This was closed, according to what it says here, this was closed out in Violation, according to our records no inspections were ever done on this Permit.

Mr. Giancola: All the inspections were done Maam.

Chairperson Cardone: They were done?

Mr. Giancola: The only inspection that wasn’t done was the final. I had started the project in July and I got every inspection like three or four fire…a…plumbing inspectors were there. I have that paperwork here to prove it. I do have receipts from the inspectors. A…plumbing inspectors, it was all done, Building Inspector was there three or four times and it dragged on till December, near Christmas and I just kind of like went into the house…went into the room because it was Christmastime and then it was like the following year they sent me a letter saying they were charging me taxes on it and I was like oh, okay and I just kind of forgot about it. But I have full intentions of getting that taken care of and there’s one other one you have on a ramp that I installed for my mother and my two aunts that are handicapped…

Chairperson Cardone: Correct.

Mr. Giancola: …yeah, my mom got really bad and I just needed a way to get her in the house and she owned part of it until last year. My mom just passed away. And a…I still have an aunt in a wheel chair that I use to get her up into the house but a…I never got to decide on these railings that I really didn’t need but they told me I did and it was like I was doing the internet thing, trying to figure out the right pipe and I didn’t want the rusted ones on my nice new ramp because everywhere I go I see like all these pipes are rusted and I wanted something like coated in plastic and trying to meet the Code and I just kinda got disgusted but I will get to it, I promise you. I want to be able to have my house sellable and up to Code so I…I will get to all of those. This is kind of a priority now for me with a…snow coming and a…you know, just seeing if I can get the boat worked on and hopefully be able to show it and sell it or use it and also not have to shovel my car anymore. I am getting older. Last year was a killer with the snow. The reason I need it a little wider because the boat has a eight foot beam and I needed the extra room on the sides to work on it so it’s like if I got it a little smaller I’d only have room for just the boat. And it’s like I want to be able to put my car under there too. This is something that if I don’t like because I’m kind of fussy with my property I can take down. Sell it or move it somewhere else. I believe it’s just for the extra footage which is…he has it marked down as one ninety-two point four square feet. I’m so nervous; I hope I’m doing okay.

Chairperson Cardone: You did fine. The…I don’t know if you’re aware that the…they did a new computation on the variance and the percentage?

Mr. Giancola: No that I’m not aware. These are the papers that I have from my friend over there. You know Betty and Joe and…

Chairperson Cardone: And what I have…what I have here now and I’m looking for a date on it…it says the percentage is ninety-nine point seven percent whereas on the original paper I had I think it was thirty something percent.

Mr. Giancola: May I approach and give you these? This is what they gave me.

Chairperson Cardone: Right, this is as of…this is as of today.

Mr. Giancola: It changed as of today?

Chairperson Cardone: Right.

Mr. Donovan: Well I think it didn’t change, it was corrected.

Chairperson Cardone: Because…it was corrected.

Mr. Manley: Initially it was no Town sewer but because there is Town sewer it changes the a…the maximum percentage.

Mr. Giancola: Yeah, every time I went to a…what is it Code Compliance…is that what it’s called? Betty?

Ms. Gennarelli: Yes, that’s the name of the Department.

Mr. Giancola: Every time I went there it was like something new, somebody didn’t know something and I was like…oh my God, okay, I’ve lived here for thirty-four years and it was like there was another issue and another issue and I was like just taken back by all of it.

Ms. Gennarelli: You were the one who pointed out to me that you had a…Town sewer and that’s why it changed.

Mr. Giancola: Yeah, I mean it was they did that year after year…

Ms. Gennarelli: They corrected it, they only corrected it.

Mr. Giancola: …I brought those pictures too, it’s like they destroyed the front of my yard, hello.

Chairperson Cardone: Well that’s what changed the percentage and…

Mr. Giancola: Is the fact that I have sewer….

Chairperson Cardone: …made more of a problem…

Mr. Giancola: …and not sewage or…?

Chairperson Cardone: …for yourself, right.

Mr. Giancola: How did that change the percentage I don’t understand that. I don’t understand the whole thing anyway.

Chairperson Cardone: Maybe Mr. Canfield could clarify that.

Mr. Canfield: I’m researching it right now.

Mr. Giancola: Okay. Great. Yeah, this is some idea I came up with as…as to solve a lot of different problems. I had my one…two wonderful neighbors here and a…they’re…they are in agreement with me, we don’t like the blue tarps sticking out on my boat and I have no choice but to put it so high to make a peak so that the snow slides off of it.

Chairperson Cardone: Right.

Mr. Giancola: And it would be, you know, cosmetically I hate looking at it too and I figure this would be a nice little place to put it so that I can work on it. What happened last year my friend who is a fireman who just recently died, Davis Tragis here in the Town of Newburgh, was the one who primarily helped me cover it and uncover it along with my neighbor who helped me many times. But now it’s to the point where it’s like there’s no one to help cover, uncover it, let me just get it somewhere where I can work on it possibly show it to sell it and then if I don’t want this thing no more I could get rid of it or sell it or give it to somebody. But it was like an answer to like, you know, all these little problems I was having. It will be like twenty something feet from my house…

Chairperson Cardone: Right.

Mr. Giancola: …I have sixty-six foot of land on that side, it’ll be twenty six wide and it will be twelve feet from my property line.

Chairperson Cardone: And these issues that are still open a…

Mr. Giancola: Yeah, I would like to take…

Chairperson Cardone: …would you, would you be able to…

Mr. Giancola: …them one at a time because…

Chairperson Cardone: …meet with the Code Compliance and…

Mr. Giancola: …I…yes…

Chairperson Cardone: …set up some type of a schedule?

Mr. Giancola: …if I may I would like to do them one at a time. I’m still taking care of two elderly aunts, eighty two and ninety and ones in a wheelchair and the other ones in the walker. I just brought one home from the hospital but…I am their primary caregiver. I do their bills, take them to doctors, I would just like…there’s a lot on my plate so if I may just do one at a time and get one done and… It’s just like so overwhelming, everything. I do have to do that. I want my house sellable so I will be doing it. There’s also a money issue I have to build up because of course I just paid the…I’m going to be paying my school taxes tomorrow and then we have Town taxes due in December and so I was hoping to get to that by like the spring and get the railing put up on my ramp and I have a carpenter friend that does…will help me and a…then deal with the rest of the issues. I mean if I may.

Ms. Gennarelli: Do you need the microphone Jerry?

Mr. Giancola: Do you need this?

Mr. Canfield: Thank you. The question that was presented was why did the square footage allowable change because of the fact that you do have Town sewer. And the answer to that question is, as discussed in earlier applications, the formula used for allowable square footage for accessory structures is in 185-15 of our zoning code. The formula, there are several factors that’s plugged into a predetermined formula that will give us the square footage that’s allowable. And one of those factors is the minimum requirement in the zoning district for one side yard in feet. Now in an R-3 zone, which this is okay, there is a difference of thirty feet if its non-water and sewer as opposed to fifteen feet if its water and sewer. So in this case because it does have sewer the lesser of the two the fifteen was plugged into the formula. So that is the reason why the square footage allowable has changed. And as Betty as indicated I believe it was the applicant’s and indication to our office that it does have Town sewer. Is that correct?

Mr. Giancola: Yes.

Mr. Canfield: Okay, so that’s the reason why the formula changed.

Mr. Donovan: Just if I can, the formula didn’t change. The formula was the formula.

Mr. Canfield: Correct.

Mr. Donovan: The information used to utilize the formula was inaccurate when the first number was developed and is now accurate.

Mr. Canfield: That’s correct. Through no change within the Department, there was more, more accurate information presented to us and that’s what changed the formula or the factors that were utilized in the pre-determined formula.

Mr. Giancola: I can see if this was a permanent structure though but it’s just something temporary and it’s…

Mr. Canfield: You’d have to ask the Board that, I’m sorry.

Mr. Giancola: I’m not really understanding it. You do have the pictures right, of my property?

Chairperson Cardone: We’ve made site visits. We’ve been to the property.

Mr. McKelvey: We’ve been to the property.

Mr. Giancola: And site visits…so you can see where my car was and then I’ll need that extra room to put the boat there. But if you’ve made a site visit you’ve seen that big ugly tarp and I’m like…I’m tired of looking at it. Roy, would you like…

Ms. Gennarelli: Excuse me, excuse me.

Chairperson Cardone: Just go to the microphone if you’d like to speak.

Mr. Kappes: My name is Roy Kappes, I live at 615 Gidney Avenue, I’m right next door to Alan’s property. The side of my house will actually be facing the new carport if he’s allowed to put it up. My wife and I have no objection to him doing it. I am kind of confused on the formula. Now if is…did you say he’s now allowed nine hundred and some odd square feet to build the shed or it changed to a lower number to a higher number so…

Chairperson Cardone: That was the percentage over the allowed. Previously we had something that said he was thirty-two percent over what he should have…over what he should build. And now it says he’s ninety-nine percent over.

Mr. Kappes: I have a question about the formula if I may? And the question is, when you have no sewer and no water with the Town he’s allowed less? I mean he…

Mr. Giancola: More.

Mr. Kappes: …it’s…it’s, he’s allowed a bigger building than if he has Town sewer. If you put the numbers in…

Chairperson Cardone: Right.

Mr. Kappes: …it means that actually having a sewer penalizes him on the size of the building as does if a…

Chairperson Cardone: And you’re looking for the reasoning behind that?

Mr. Kappes: I…yeah...well I…why if he has a sewer can he not put a bigger building in…?

Chairperson Cardone: And Mr. Canfield…

Mr. Kappes: …as if he had nothing?

Chairperson Cardone: …will answer that question.

Mr. Canfield: That’s a very good question, sir. But the reasoning behind it is a single-family dwelling without water or sewer, lot size is required as forty thousand square feet. And the reason for that is there’s separation requirements between the dwelling, the in-ground septic system and the well. So that’s why you need that much square footage. If you have water or sewer the lot size then can be reduced to as little as twelve thousand five hundred square feet. Now with that being said to keep things into proportion with the requirement of lot coverage the size building that’s allowed with water and sewer is smaller than the building that’s allowed with water and sewer than the building that is allowed without water and sewer because it’s a larger lot. That’s the reasoning behind that. Do you understand that?

Mr. Kappes: I’m sort of following you but a…it still seems counter. In other words, if he had a bigger building on this piece of property that he…if it existed and is a bigger building using the formula he could put a bigger shed up?

Mr. Canfield: No.

Mr. McKelvey: No.

Mr. Canfield: No.

Mr. Kappes: The formula…

Mr. Canfield: No, no.

Mr. Kappes: Yes, yes, yes…

Mr. Canfield: No, well, you can’t mix. You have to…when you use the formula the numbers from the chart that you plug in are based on what you have available as far as the services.

Mr. Kappes: But if two pieces of property this size but one has seventeen hundred square feet of building and other one has twenty-one hundred square feet of area, if you clunk it into the formula, the property…same property, same zone, same everything…the ones with twenty-one hundred square feet of property is allowed a larger size building by square feet according to the formula. That doesn’t really make sense but it does because if you note the formula says to take the square footage of the lot and then you take the size of the building, the square foot of the livable area times the minimum side yard and you add back to the square foot by the lot and divide by a hundred gives you one number. So here you multiply say, in his case, fifteen times seventeen hundred it’s a smaller number divided by a hundred than if it was a twenty-one hundred square foot building plus or times a…fifteen would give you more square foot for the accessory shed. It seems to be working backwards. The bigger the house the bigger the shed.

Mr. Canfield: The bigger the lot size...is the piece you’re leaving out.

Mr. Kappes: The lot size remains the same, assuming the same lot size...

Mr. Canfield: No, it…that’s not, you’re not utilizing the formula correctly.

(Inaudible Audience Member)

Mr. Canfield: I don’t understand that. I don’t see that.

Mr. Manley: But you’re also going to be limited by lot coverage so the smaller the lot…

Mr. Kappes: Well according to my…

Mr. Manley: …okay, you’re not going to be able to build as big of a house because of the…you go over the lot coverage percentage.

Mr. Donovan: If I could just interject the Board doesn’t write the law, the Town Board does.

Mr. Kappes: I understand. Yeah.

Mr. Donovan: And so the way it works is the Building Inspector determines pursuant to the formula, pursuant to the law that the Town Board adopted what the maximum square footage is. Then the…the applicant, as he’s doing tonight, can appeal to this Board…

Mr. Kappes: Right, I understand.

Mr. Donovan: …this Board can rule on that appeal. They can’t say that this is a good formula or a bad formula, that’s not for us to say.

Mr. Kappes: Oh, okay, I understand and I apologize but it sort of came up with the discussion of the coverage. But it was my understanding a…before the formula became involved the coverage was alright. It’s just application of the formula made it not alright. Is that no longer true? It was the formula that caused coming…before the Town Board not the initial figuring on coverage, now that was my understanding but I’m…I’m second hand on this.

Mr. Manley: The issue is that the applicant wishes to have a larger structure than what’s permitted.

Mr. Kappes: By…by formula?

Mr. Manley: By whatever the Building Department determines is the allowable square feet the applicant is exceeding that square footage so that’s why the applicant is here.

Mr. Kappes: Right I understand, no I understand that. Just trying to understand the process that got him in non-compliance and apparently it’s not your place to determine whether the formula is right it’s just that’s what it is.

Mr. Manley: But the formula determines the square footage that he’s allowed.

Mr. Kappes: I…I understand that.

Mr. Donovan: And then this Board determines whether to issue a variance or not, that’s the process (Inaudible).

Mr. Kappes: Right, I understand that and it’s just only because of the question of coverage and…and the reason that he was here. I didn’t understand but since that’s the way it is all I can say is that my wife and I approve of him putting it up. It makes sense so, thank you very much.

Chairperson Cardone: I want to the a…other issues there that are not compliant and maybe Mr. Canfield can help out with this. What would be a reasonable amount of time for these to be taken care of?

Mr. Canfield: That…that is on the applicant how fast he can reapply for the Permit and get the inspections.

Mr. Giancola: (Inaudible) Spring (Inaudible) start in the Spring (Inaudible) because taxes that are due (Inaudible) three thousand dollars…

Chairperson Cardone: But I…I understand there’s a…right, and I understand the railings would be…you know something that would be a financial burden but a…there was another one that just hasn’t been completed. You know, I’m asking Mr. Canfield how many of these are outstanding…

Mr. Giancola: There’s only two as far as I know.

Chairperson Cardone: There’s two?

Mr. Canfield: We have two that I’m aware of…

Mr. Giancola: 1990 when I built my…converted my garage into a bedroom which took like I said and I do have all the CO’s…

Chairperson Cardone: So that’s something that could be taken care of without a…

Mr. Giancola: Then I have a…the railings about… (Inaudible)

Chairperson Cardone: Right.

Mr. Giancola: …it was basically my mother (Inaudible)…

Chairperson Cardone: Right.

Mr. Giancola: …I don’t need a railing…(Inaudible)…

Chairperson Cardone: So the other one could be taken care of…?

Mr. Canfield: I’m a little confused. What I’m looking at is I have two open Permits. One for the garage conversion to a bedroom and a ramp.

Mr. Giancola: (Inaudible)

Chairperson Cardone: And the one for the garage is just an inspection, that’s what I’m asking?

Mr. Giancola: (Inaudible)

Mr. Canfield: What I’m seeing on the Worksheet is there was a framing inspection done on May 9, 2006 that Failed and then there were no other inspections.

Mr. Giancola: (Inaudible)…the ramp.

Mr. Canfield: That’s on? I’m sorry, that is the ramp. Correct, okay, that’s that one. And on the…

Mr. Giancola: (Inaudible)

Mr. Canfield: Can…can I finish please?

Mr. Giancola: (Inaudible)

Mr. Canfield: Can I…?

Mr. Giancola: Please.

Mr. Canfield: When the conversion of the…

Mr. Giancola: (Inaudible)

Chairperson Cardone: Go ahead…Mr. Canfield.

Mr. Canfield: …the conversion of the bedroom we have no inspections at all. So I’m not sure what…

Mr. Giancola: (Inaudible)

Chairperson Cardone: Please, please use the microphone because it is being recorded and I can only hear one person at a time.

Ms. Gennarelli: And so can the recorder.

Chairperson Cardone: And so can the recorder, right.

Mr. Canfield: 1989 is the Permit for the…

Mr. Giancola: (Inaudible)

Chairperson Cardone: I think that I wanted to get that clear in…in my mind and I…I think perhaps Mr. Giancola a…I would advise you to make an appointment to meet with Mr. Canfield or someone from the Building Department so that you can see exactly what you have there and try to reconcile this.

Mr. Giancola: Yeah I mean a…plan to do.

Chairperson Cardone: Use the microphone, please. Where is the mic?

Mr. Giancola: Thank you, yes ma’am that’s what I plan on doing. But like I said…

Chairperson Cardone: I…I do understand that but I think on the one issue it’s a matter of you…you do have some papers and you need to get together with the Building Department and sort that out.

Mr. Giancola: Yeah, because it’s like they don’t know what’s been or…I don’t know everything seems…

Chairperson Cardone: Well, that’s why it’s necessary for you to meet with them and I’d really like to see that happen.

Mr. Giancola: I mean I...I…I’m really considering making an appointment with my senator over some of this because it’s…it’s kind of really…

Chairperson Cardone: Well I don’t know if he can help you with this. I think the…

Mr. Giancola: Yes he can.

Chairperson Cardone: I think the Building Department is the place to go to first.

Mr. Giancola: I don’t know what page is in…I have those re…

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

Mr. McKelvey: He has to clear this stuff up before we can go forward.

Mr. Giancola: Yeah, here’s my receipts…(Inaudible) six hundred and fifty dollars.

Chairperson Cardone: Do we have any comments from the public or anything else from the Board?

No response.

Chairperson Cardone: And I’m looking for a motion to close the Public Hearing?

Mr. Masten: I make a motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Okay, thank you, the Public Hearing is closed.

Mr. Giancola: What does this mean that it’s closed I’m not understanding.

Chairperson Cardone: It means that later we’ll be voting on the application.

Mr. Giancola: So I can’t do anything then?

Mr. McKelvey: We haven’t voted on it yet.

Chairperson Cardone: We haven’t voted on it yet. The Hearing is closed. I’m going to the next applicant at this time.

 (Time Noted - 9:16 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:39 PM)

ANTHONY ALAN GIANCOLA 613 GIDNEY AVENUE, NBGH

 (76-9-2) R-3 ZONE

Applicant is seeking an area variance for the maximum allowed square footage of accessory structures to build a carport (26 x 30).

Chairperson Cardone: On the application of Anthony Alan Giancola, 613 Gidney Avenue, seeking an area variance for the maximum allowed square footage of accessory structures to build a carport (26 x 30). This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. Masten: I’ll second it.

Chairperson Cardone: I just want discussion right now.

Mr. McKelvey: I think he’s got to clear up a few things with the Code Compliance.

Mr. Scalzo: I don’t…I don’t know how we move forward and…and allow the variance without the outstanding items that he already has.

Mr. Donovan: Well, your…your options are to deny the variance if you choose to do that, you may want to consider focusing on the fact that it’s a pretty extreme variance as I recall, it’s almost a hundred percent a…

Chairperson Cardone: I…I know that in the past sometimes we have and I don’t know that we can do this legally but put a…

Mr. Donovan: Condition.

Chairperson Cardone: …condition with a time limit on it that would be somewhat less than fifteen years.

Mr. Donovan: I think that…I think that is within your power to do that. I think the issue that you run into potentially, especially with regard to this application, is the carport will be built before the violations are cleared.

Mr. Manley: Well and it didn’t seem…the applicant did not seem to be very a…energetic to get the other items addressed. It was well let me address one in the Spring and then…

Mr. Masten: And do another one later.

Mr. Manley: …do the next one at some point in the future and it’s…it’s almost as if…

Chairperson Cardone: Well then there are two that are outstanding and you know, I could certainly understand the financial issue of the…of the one but the other one didn’t seem to be…it seemed something that needed to be cleared up by…

Mr. Manley: Paperwork.

Chairperson Cardone: …working together, you know, with the Building Department, the paperwork.

Mr. Scalzo: I…I don’t want to seem callused when I say this but if it’s a financial issue then don’t put up the structure that he’s looking to put up and put that money into fixing the railings.

Mr. Masten: And you know, you know that that boat there has been covered with a tarp for…for the last four or five years.

Mr. Donovan: And I…I don’t know whether everyone has had the opportunity to review all the information from Code Compliance but there is a note that a…Jerry Canfield gave him a six month extension in March of 2007, spoke with the owner again in January of 2008, applicant said he would be in here in the Spring of 2008 to renew the Permit.

Mr. Manley: Well my feeling is the applicant hasn’t shown due diligence with respect to the stuff that he’s built in the past and he’s looking to exceed, what he’s looking to exceed with what he wants in the variance I mean, we’re looking at almost a hundred percent. We’re not looking at fifteen, twenty even thirty, we’re looking at a hundred percent variance a...for the size of the…

Chairperson Cardone: That’s true in numbers but looking at the property a…to have a carport in that location doesn’t seem excessive to me it’s just…

Mr. Scalzo: No he’s…

Chairperson Cardone: …just looking at the property, I mean…

Mr. Scalzo: I agree.

Chairperson Cardone: …there’s a great big parking lot there, there’s all kinds of space and you know I…I can understand the a…wanting that to be covered but you know, it’s these violations that are…that are troubling me and I…and I think that it would be a chance to get it taken care of.

Mr. Donovan: And let me just say with respect to the magnitude of the variance the law is that you just don’t look at it on a percentage basis, you look at the overall impact.

Chairperson Cardone: Right.

Mr. Donovan: If the overall impact, even though it may be a hundred percent over our requirement, the overall impact is minimal then that passes muster.

Chairperson Cardone: Right.

Mr. Donovan: So, it is within your authority to condition the issuance of the variance on remedying the violations.

Chairperson Cardone: Right, I know that.

Mr. Scalzo: If we were to grant this variance it doesn’t automatically give him a Building Permit does it? He could satisfy the requirements the a…the requirements of the outstanding issues that he has before getting issued a Building Permit. Could that be the case?

Chairperson Cardone: Right, he would have six months but then could apply for an extension with us for another six months so the variance would be effective for, you know, for a year in essence if he came back let’s say he wasn’t ready to…to put the carport because he hadn’t taken care of the other items. Then he could come back to us and ask for a six month extension.

Mr. Manley: And that would be…that would be fine, Dave?

Mr. Donovan: Sure.

Mr. Manley: That we could condition that the variance would be activated upon completion of those items…?

Mr. Donovan: I said yes a…I mean if he meets the criteria of the variance then Joe with a variance can issue is it…I don’t think you can withhold his Building Permit. You could…you could impose a condition that he clears all violations up but I don’t think you could withhold the Building Permit until he does that.

Mr. Scalzo: I did appreciate that he had a pretty sharp neighbor that questioned the way the calculations were for the lot, that’s for sure.

Chairperson Cardone: Yes.

Mr. Donovan: He’s right too.

Chairperson Cardone: And he is. So you’re saying we cannot…we cannot condition it upon the…

Mr. Donovan: I’m saying you can impose the condition but you can’t withhold…once you determine that he meets the criteria, you can’t say he can’t get a Building Permit until he clears up these violations.

Chairperson Cardone: Right, I understand, right.

Mr. Donovan: But…but you can, which was my point before that, he’s got to tomorrow and clear up the violations. So technically is he in violation, technically he is. I don’t know what happens. I have an idea that fifteen years from now we’ll be in the same situation.

Mr. Levin: But by a no vote we can wait a…what sixty-two days?

Mr. Donovan: We can.

Mr. Levin: And have him clear it up during that period of time.

Mr. Donovan: That’s not going to happen though. I mean, he could theoretically if he was motivated, you know, I mean this goes back to almost when Ronald Reagan was President so.

Mr. Levin: Well this certainly would be a motivation to clear it up.

Mr. McKelvey: If he can’t afford to clear up the violations…

Mr. Donovan: Then can’t build a carport.

Mr. McKelvey: …he can’t build a…but he wants to build a carport right away.

Chairperson Cardone: Well we don’t have to vote on it this evening. We have sixty-two days to make a determination.

Mr. Manley: Well I guess I’ll be the one to make a motion that we Reserve Decision.

Mr. Levin: I’ll second that.

Mr. Scalzo: I would have done it but I just didn’t know how to say that so I was going to vote a no vote.

Ms. Gennarelli: Okay. Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:47 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 9:21 PM)

MICHAEL & ELISA PODLAS 71 COCOA LANE, NBGH

 (34-2-71.31) R-2 ZONE

Applicant is seeking an area variance for no building shall be closer to the fronting street than the main building to keep two prior built accessory buildings (12x24 & 12x24 storage/garages).

Chairperson Cardone: Our next applicant held over from the August 28th meeting Michael & Elisa Podlas.

Mr. Podlas: My name is Michael Podlas, I’m at 71 Cocoa Lane, and a…the Hearing was held open from last month pending some research from Mr. Canfield on some outstanding a…or expired Permits that we have on other projects.

Chairperson Cardone: Yes, do we have information from Mr. Canfield?

Mr. Canfield: Yeah, last month we were talking about some a…Permits for a deck that was what was the problem, why the Permit was still open and there was a question as far as the spacing of the footings that was used.

Mr. Podlas: Right.

Mr. Canfield: What was changed from what was submitted to our Department was the size of the girders used. Now typically you lay out your footings as originally the plans called for I believe it was three two by twelves to be used, that allows “X” amount of feet separation between the footings. They were approved because that was acceptable. When the Building Inspector went to do the inspection he found that the span or the separation of the footings were the same but the size lumber used was three, two by tens I believe it was which was much smaller causing the footings to be closer together. So that was the differential or the problem that had happened at the time.

Mr. Podlas: If I can respond? The a…the drawing we submitted originally had two, two by tens and a…the only time that we heard about the three, two by twelves that was needed was an inspection a couple of years after the Permits were filed.

Mr. Canfield: I don’t know that to be accurate.

Mr. Podlas: I have a copy of the form.

Mr. Canfield: I’m going by what Mr. Mattina had conveyed to me what the difference and why the framing inspection had failed. I think if the plans were submitted and they were supposed to be three, two by tens and they went and seen three, two by tens I don’t think it would have been an issue. Somewhere, someone had submitted the original plans and perhaps you may want to come in to the Department and look at what was submitted.

Mr. Podlas: I have copies of what was submitted so I kept copies. So I have the original drawing and I have the a…

Mr. Canfield: But what you have may not be the same thing we have in our file, that’s all I can go by.

Mr. Podlas: Well if you brought it with you it would…it would be the same exact drawing. A…but what I was saying the Inspection Notice that we got two years later stated that we needed the three, two by twelves, two years after the fact. And I have that Notice as well with me.

Chairperson Cardone: Right, but essentially you have to get together with the Building Department and get this straightened out.

Mr. Podlas: Right, I just assumed that he had the same paperwork that I submitted and would bring copies.

Chairperson Cardone: Right.

Mr. Podlas: I called two days ago and left you a message asking if you needed anything from me and I didn’t get a call back.

Mr. Canfield: You called and asked for me?

Mr. Podlas: I left a voicemail for you Mr. Canfield.

Mr. Canfield: I did not get that. I did not receive that at all and I’ll be in the office tomorrow anytime, give me a call, stop by, bring your paperwork and we can compare what we have on file.

Mr. Podlas: When I called they said you were out in the field and they connected me to your voicemail and I left a message.

Chairperson Cardone: Because I’m sure you’re as anxious to get it cleared up as the Code Department.

Mr. Podlas: Absolutely, and this whole thing left a bad taste in my mouth from a few years ago so that’s you know, I’m a little upset still about it because I don’t feel like we’re getting any cooperation for a mistake that the Town made.

Mr. Canfield: If I may just ask one question? Why was there a two year lapse before there was an inspection done?

Mr. Podlas: A…there were other inspections done but the a…I guess at one point it was just verbal what needed to be done and two years later a…Mr. Campbell had mentioned to us that now they’re giving forms to people letting them know what needs be done in writing but prior to that time it was all verbal. That was my understanding in 2004.

Mr. Canfield: Well we’ve used carbon copy, you know, written forms on an inspection for a long, long time.

Mr. Podlas: (Inaudible)

Mr. Canfield: A…but a Building Permit is only good for eighteen months…

Mr. Podlas: Yes, I understand and…

Mr. Canfield: …so that’s why…

Mr. Podlas: …I believe it was extended.

Mr. Canfield: …I was wondering why it was two years had lapsed but we can clarify all of that.

Mr. Podlas: And I just want to make note also that this deck has been standing since 2002 without any problems.

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

Mr. McKelvey: I think the only thing we can do is wait till he meets with Mr. Canfield.

Mr. Podlas: And that’s…that’s what we were supposed to do last month. I really would like to get this taken care of. I mean, he had a whole month a…you know, getting in touch with me to try to resolve it for this meeting and that didn’t happen. So I’m not too confident that another month is going to make a difference.

Mr. McKelvey: It’s still got to be done.

Mr. Podlas: I’m saying if you guys want to keep delaying it…

Chairperson Cardone: I think that you have to, you know, take the initiative. You said that you did call and you left a message and when did you make this call?

Mr. Podlas: Two days ago, 11:30 in the morning.

Chairperson Cardone: Two days ago, well also you had a whole month to be in touch with him also.

Mr. Podlas: You’re right, but…

Chairperson Cardone: You can’t wait for…for that…that office to call you. I think it’s your obligation since you want to get this taken care of as soon as possible I’m sure, you know, to keep after it. I mean that’s what I do if…if somebody doesn’t respond to my call. I keep after them until they do respond.

Mr. Podlas: I understand that but I do believe at the last meeting he said he was going to look into it and take it from there, I mean…

Chairperson Cardone: Right.

Mr. Donovan: And report back to this Board, which he did.

Mr. Podlas: Okay but that’s it.

Mr. Donovan: I…I…I’m just; there’s a letter from the Code Compliance to you June 23, 2014, May 2, 2014…

Mr. Podlas: Yeah, that’s all fairly recent.

Mr. Donovan: …March 21, 2014, February 27, 2014, January 6, 2013, all…

Mr. Podlas: If I can respond, there’s been…there’s been Permits that have been filed since that…all those times too. So there are currently more than just a pool deck, the pool deck Permit is what’s up in the air but I’m applying for an area variance for something that is totally separate and I have other Permits that I had to get to. So there are other Permits that I did get in response to those letters.

Mr. Manley: Just to…Madam Chair for the record, Mr. Canfield a…this Board asked for some clarification and we received a response from Mr. Canfield on August 29, 2014. There is a copy of an email.

Chairperson Cardone: Right.

Mr. Donovan: It’s in the Board’s discretion to keep the Public Hearing open, you could close the Public Hearing and vote, you can close the Public Hearing and wait sixty-two days, it’s in your discretion.

Mr. Podlas: I’d also like to mention to, I work second shift so I work in the evening so now this is now the second time I had to take off from work to attend a Hearing that really hasn’t gone anywhere yet.

Mr. Donovan: Relative to, as I…as I understand it structures you built without a Permit.

Mr. Podlas: Correct, and I paid a penalty to then apply for those Permits.

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

No Response.

Chairperson Cardone: Any comments from the public?

No Response.

Chairperson Cardone: Well it could be up to the Board whether or not to leave the Hearing open or to close the Public Hearing and then we have sixty-two days to make a Decision.

Mr. McKelvey: I’ll make a motion to keep the Hearing open until he meets with Mr. Canfield.

Mr. Levin: I’ll second it.

Mr. Donovan: Well let me just make this suggestion I think you need to keep the Hearing open to a date certain.

Mr. Levin: (Inaudible)

Mr. Donovan: I’m sorry to keep the Hearing open to a date certain on.

Chairperson Cardone: In other words, when you keep it open, you have to state the date it’s open to…

Mr. McKelvey: Next month.

Chairperson Cardone: …which would be next month’s meeting.

Ms. Gennarelli: October 23rd.

Mr. McKelvey: Okay, October 23rd.

Ms. Gennarelli: Okay, we have a motion and a second.

Mr. Masten: I’ll second it. (Richard Levin had seconded)

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The Hearing is held open.

Mr. Podlas: May I just ask how many times it can be Hearing be held open? Just out of curiosity.

Chairperson Cardone: Until we get the information that we’re requiring.

Mr. Podlas: Okay so there’s no like limit?

Chairperson Cardone: I…I would say that you said you work a night shift…

Mr. Podlas: Yes.

Chairperson Cardone: I would suggest tomorrow that you try to get together with Mr. Canfield and get this taken care of.

Mr. Podlas: Is there a good time to meet you or are you out in the field a lot?

Chairperson Cardone: You’ll have to talk with him later about that.

Mr. Podlas: Okay.

Chairperson Cardone: The Public Hearing is closed (for tonight) and I have to move to the next application.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 9:32 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 7:03 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: Our next applicant Jin (Kanjanakiritumrong) Grabek which was held open from the July 24th and August meeting.

Mr. Sullivan: Daniel Sullivan, Catania, Mahon, Milligram & Rider for the applicant, good evening…a…my client retained us, she had called our office a…months ago and she called us this morning a…yesterday asking for some advice in…in regard to the application that she made. A…there was some confusion and I’d just like to clear it up for the record. She purchased the property on March 18th this year, the deed was dated March 5th a…because the seller was out of town and they pre-signed it. I have records of the closing of the actual date that it was. A…we received a letter, on…on line I saw the letter from Mr. Mattina from the office and the a…the letter states that a…in February or March the applicant along with other female a…companions came into the Building Department and asked a…for some information a…I spoke to my client this morning, there is a language barrier, we spent kind a bit of time discussing exactly what happened and the time frame. She said that she bought the building and then somebody had said she has to go to the Building Department for a Permit. So, she went to the Building Department for a Permit and I asked her did she have a copy of the Permit (Application) and she does and she gave it to me…here. Here she said that this is the first time that she went into the Town was with the Permit (Application) and she listed herself as the owner. She said that it was after she purchased it. So it was in March but she’s stating that it’s after the date she bought it which was sometime in March, after March 18th. A…the tone of the letter is that she…she knew before she bought it that she needed this use variance and after speaking to her at length today she said that the first time that she knew she had to go through this use variance was after she purchased it, when she went with this Permit and it’s marked by the Town. There’s no date on it at all, there’s no date for her to put in or there was no stamp so…but she stated that she did go after she purchased it. A…I understand a…from Mr. Doce, the engineer, that he’s been in contact with the Town Board about a…a local law resolution regarding this. The issue is that a…in my review of the Town Law and again it was just today. I don’t really know where you can have beauty parlors. It just doesn’t seem to fit into anyplace. They say where you can’t and where they are.

Chairperson Cardone: In shopping centers.

Mr. Sullivan: It…it…there was a question about that with the zoning but that’s not the issue that we have and I just wanted to clear up to the last fact right after speaking to my clients, seeing the documents that she brought that she…the first time that she knew about this was after she purchased it. Her attorney was from Rockland County, recommended by the real estate a…broker a…I asked her if they asked if…if she actually told them what she…she was a…a…going to intend to use the property for. A…if she had come to my office I probably would have asked her and then I would have done some due diligence beforehand. I can’t comment on what the attorney said to her or what but just what she recalled to me. The issue may be moot after the passing of the proposed local legislation. I don’t know if the a…Town has contacted anybody on the Board.

Mr. Donovan: Yeah, Mark and I spoke for a while this afternoon. So a…this issue did come up a…he indicated that this was something that the Town Board was considering and whether they’ll vote on it or not or act on it or not we can’t say. I asked him is there a timeframe a…and to the best, I mean you can’t hold him to this obviously because it’s up to the Town Board, the Public Hearing process, we…it would be referred to us if it got to Local Law format for us to comment on but he indicated they were interested in doing something by the end of the year and they were looking to add this use or a personal service use to this zone. What…he doesn’t vote obviously though so…just that I did have that conversation with him this afternoon.

Mr. Sullivan: Mr. Doce had spoken to the…

Mr. Doce: (Inaudible)

Ms. Gennarelli: Excuse me you are going to have to use the microphone.

Mr. Scalzo: There’s one there.

Chairperson Cardone: There’s one on the table.

Mr. Doce: We a…spoke to the Town Clerk about two o’clock this afternoon and what we were advised at that time a…after having spoke to the Supervisor on last Friday, I met with the Supervisor and the Town Clerk said a…told me that when I went there the other day they did a…make a motion to pass a local…a…a…a resolution for the local law and Andy Zarutski told me today that that was on the agenda for October 20th now…

Mr. Donovan: Yeah, I…I…I don’t…I’m not privy to that much information, the process would generally be the Town Board would authorize the Town attorney to prepare an Introductory Local Law that would be on the agenda for the Town Board. The Town Board would refer it to the planning board and to this Board for our comment, have a Public Hearing, refer it to the Orange County Department of Planning. You have to let the…there’s a time period that needs to…to occur to accommodate that and so, you know, if it all happens you’re looking November, December.

Mr. Doce: Yeah, the only thing I’m pointing is that Andy said that it definitely was a…the a…the motion had been made and the resolution in fact, when I was there that night Mark already had prepared the…the verbiage a…a…for the a…qualifying a…

Mr. Donovan: So with…with that in mind…Dan, what do you want to ask the ZBA to do?

Mr. Sullivan: Well I would…I would probably ask the…at this point in terms of not knowing whether they would pass it or not that you would close the Public Hearing unless you had other questions, the applicant is here. A…I’ve tried to resolve any inconsistencies that she may have brought up in applications and testimony and whatnot if…and there is a language barrier and I spent…I spent a lot of time with her this morning and she said that she did not know that she had to do this. That’s what she told me and she is here a...she’s very confused about it a…you’ve heard, I…I’ve read the minutes so I don’t have to rehash what was said you know, there was a place next door that kind of looked the same and same business. So I would ask that unless you have questions, to close the Public Hearing and a…you know, possibly vote on it a…based on what was presented a…if the Board is satisfied with what was presented.

Mr. Donovan: So just so I’m…the…the real focus is whether or not the hardship was self-created. Code Compliance believes that…right Jerry because I don’t want to mischaracterize what…what Joe Mattina is saying but Code Compliance believes that they spoke to the applicant before she purchased the property and advised her the use was not permitted. Dan it’s…it’s your position, which you’re telling, is that’s not what she is saying to you. She’s saying that she didn’t realize that it was not a permitted use until after she purchased the property.

Mr. Sullivan: Yes, when she presented a…a…the Town Building Permit (Application) that’s when she was told what she needed and which is consistent with the letter from the…from the Code Compliance Office it’s…it’s accurate. A…there’s one…she told me…I asked her because I was trying to figure out maybe an accessory with a dwelling in it, a home occupation and she said no, I can’t live there because it’s too small. She always thought it was too small. And there was something in the letter that she indicated this. That I’m not going to argue she may have mentioned that it may have been something in passing. I’m not saying the letter is false it’s just that the…the timing in the letter is February or March. Yes, it could be March, the end of March and that’s when she told me she came in so…we’re not saying anything is inaccurate it’s just the timeframe and…

Mr. Manley: There’s also multiple visits though to the Code Compliance Office…

Mr. Sullivan: Well she went back again because there was a…she hired a…a contractor to put windows in and while they were doing the work apparently there’s…there was some issue and she went and got a Building Permit (Application) and then of course she went back because she was confused and didn’t know what to do. She hired Mr. Doce in April which was kind of like a month after she a…a…you know went there but she said the first time she went there was to hand in this Building Permit (Application) and…and she listed herself as the owner. She wasn’t the owner before March 18th and she said she didn’t have…she wouldn’t have went there if she…she didn’t…wouldn’t have no reason to put in a Building Permit (Application) because she didn’t own the property. She waited until after closing to…to proceed.

Chairperson Cardone: Does the Board have any further questions?

Mr. McKelvey: I think she was told not to put the windows in and they put a Stop Order on it. Is that right, Jerry?

Mr. Sullivan: She…well…

Ms. Gennarelli: Vince could you give him the microphone please? Thank you.

Mr. McKelvey: She was told not to put the windows in.

Mr. Canfield: She was advised that there wasn’t any work to take place.

Mr. McKelvey: But she put the windows in.

Mr. Canfield: The work that did take place was more than just windows, it was electrical work and…and what not. But just for clarification, what Mr. Mattina has written was that the applicant stated that she was interested in purchasing the property at 349 Meadow Avenue. She was interested in purchasing it. That’s what the initial contact was. I agree that date is vague it says February or March because it wasn’t a scheduled appointment we don’t have any documentation…

Mr. Sullivan: Yes, I understand that.

Mr. Canfield: …so it’s not in the book. So, but what Mr. Mattina is indicating is that the applicant or the proposed applicant indicated she was looking to purchase this property and that’s where that first conversation took place.

Mr. Sullivan: I…I…I again say…

Mr. Canfield: Just to clarify things…

Mr. Sullivan: …my client does have…

Mr. Canfield: …

Mr. Sullivan: …there is a language barrier and today I spent a lot of time with her and there were things that you know the grasp of the English language was not that good. Maybe what she said was I’m going to buy it or I’m…but she stated to me and… she came after and then she presented this…this was the first contact with the Building Department and I think that if she went beforehand she probably would have called our office because this was bad news that she got. And I’m sure she probably went to her attorney to complain why that am I buying this when I need this. You know, it just…not…it’s just that the language barrier to quote her against her in this fashion is you know maybe a little a…you know, what she said on an unscheduled visit so…

Mr. Canfield: Just…just one thing, I’m not certain that that Building Permit application you have filled out there is accurate that that was the first encounter with the Building Department.

Mr. Sullivan: This is…this is what she told me…

Mr. Canfield: Okay.

Mr. Sullivan: …if you want her to come up and make…

Mr. Canfield: I think Mr. Mattina’s letter is referring to the first encounter that…

Mr. Sullivan: Right.

Mr. Canfield: …she encountered with the Building Department and that’s what the Board had asked for us…Board, that’s what I offered this Board that we would supply, just to clarify.

Mr. Sullivan: No, I…I understand, I’m not saying anything in the letter is…is incorrect. It’s February, March to date, it could have been March 30th and she owned it. It could have been March 19th she owned it. A…that’s what she said and…and we spent a lot of time her. She called up and she was very concerned, she was very upset a…you know about the whole process and…and we had to sit down and…and guide her and come up with the information you know, the closing statements and whatnot, she brought them to my office. It’s not our intention to mislead the Board or to…to do anything, she wants…she wants to create a business, she has a business in the City…in the Town, she just wants to relocate it and…and you’ve heard the…I’ve read the minutes so you’re aware of this.

Chairperson Cardone: Any other questions from the Board?

No Response.

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

No Response.

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

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Sullivan: Thank you very much.

Ms. Gennarelli: And that was to close the Public Hearing on both the use and the area variance, I’m sorry, just for clarification.

Mr. Donovan: Yes.

Chairperson Cardone: Yes.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If I would ask in the interest of time if you could wait out in the hallway and then we’ll call you in shortly.

Mr. Brown: Ms. Chairman, I…I…

Chairperson Cardone: That will be after when we go to the decisions because the Public Hearing is already closed on the particular application you’re referring to.

Mr. Brown: Okay. Thank you.

 (Time Noted - 9:45 PM)

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ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:48 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: Okay, our next application Jin (Kanjanakiritumrong) Grabek, 349 Meadow Avenue, seeking a use variance to allow a personal service business in an I / B Zone to convert an existing single-family dwelling into a hair salon. Do we have discussion on this application?

Mr. Manley: We’ve certainly taken a lot of testimony with regard to this application.

Chairperson Cardone: And we have the report that we had requested.

Mr. Scalzo: Two separate variances going on here correct? Use and area?

Mr. Donovan: If the use variance is denied then there is no need to move on to the area variance because then we determined the use is not allowed. Conversely if the use variance is granted then you need to rule on the area variance application.

Chairperson Cardone: Do I have a motion for approval?

No response.

Chairperson Cardone: Do I have a motion to disapprove?

Mr. Scalzo: Can I make a motion we Reserve Decision on this? The Town Board I understand it may be on the agenda?

Mr. Donovan: Well that’s what’s been reported, I can tell you that the Town attorney told me this was under consideration. That’s kind of why I…I was asking the attorney before if he wanted us to hold off until such time as the Town Board acted and then he can withdraw the application. He was looking for a vote so you have up to sixty-two days by law. After sixty-two days it’s a fault approval so you want to make sure you act one way or another before then but you absolutely have the sixty-two days.

Chairperson Cardone: Well I…I have to respect the testimony of Mr. Mattina and a…he affirms that the applicant was told that that was not allowed.

Audience Member Inaudible

Ms. Gennarelli: Excuse me; you are not on a microphone.

Chairperson Cardone: Briefly, yes, briefly.

Mr. Manley: We have to certainly be careful that it has nothing to do with our decision process at this point…

Chairperson Cardone: Right.

Mr. Manley: …because the Public Hearing is closed.

Mr. Doce: Just a matter of clarification here and that is…I…I was hoping that we’d have a vote on the area variance because if the area variance was granted and then the Town Board does change the rule as I believe they will it would be over. But if…if we don’t get the vote on the area variance then when we go to the Town Board we’re going to have to reapply to the Board for the area variance. This is my concern.

Mr. Donovan: The application for the area variance indicates that you need these variances to convert an existing single family dwelling to a hair salon. So if…if the use variance is denied then there is no conversion so we wouldn’t vote on it.

Mr. Doce: No, what I’m saying…

Chairperson Cardone: I understand what you’re saying then it would seem to me that what you would be asking for is for us to Reserve Decision.

Mr. Doce: No, I mean…

Chairperson Cardone: If you…if you are thinking that the feeling of the Board might be a denial a…and then depending upon the Town to change the…for the ruling, you know, to change the law a…and then you wouldn’t want to have to reapply again that’s my understanding that you’re saying.

Mr. Doce: If I had my druthers I’d rather you’d approve everything.

Chairperson Cardone: But I wasn’t…I’m just saying in…in that case what might be…and you can correct me if I’m wrong…

Mr. Donovan: Well that’s why I asked the question.

Chairperson Cardone: …right, is to Reserve Decision and the applicant can ask as we well know but we don’t want to let it go for a year, a…the applicant can request that the Decision be reserved past the sixty-two days.

Mr. Donovan: If they waive…waive the requirement.

Chairperson Cardone: They can waive the requirement.

Mr. Donovan: Sure, that’s why I asked the attorney the question.

Mr. Manley: The only issue that I think we get in with that is if the Town does change, we don’t know what the Bulk Use amounts are going to be so what’s going to happen is we would then have a requirement to re-notice because then I think the public would be entitled to another Public Hearing, right?

Mr. Donovan: It depends, it depends. If they don’t change, if they just add it, we don’t…we don’t know what the Local Law will look like because it hasn’t been referred to us yet. We don’t know if it will be modified. If it just adds personal services to the zone with no change in the Bulk Requirements then we wouldn’t need to do that. And if they do, then we can react at that time.

Chairperson Cardone: Now certainly whatever the law is the building is not going to change, it is still going to need a side yard setback, combined side yard setbacks and so forth. It’s still going to need you’re saying essentially those very same variances?

Mr. Doce: Yes. The only other thing I was thinking was I don’t know if it could be amended to say, here variances are…that are being requested are not tethered to this being a hairdresser, I don’t know if that bollixes it up worse.

Mr. Donovan: Potentially, I mean the Board is free to do as what they choose in their discretion. I think there is a good argument to be made to hold this open to see what the Town Board.

Mr. McKelvey: That is the safest.

Mr. Doce: I…a…

Mr. Donovan: I…I think that’s what…I can’t tell you, I can’t give you advice but I…I…

Mr. Doce: Well what I’m saying is a…if you’re not going to vote yes, then hold it open.

Mr. McKelvey: Well I think…I think like you said it’s…it’s on the agenda.

Mr. Doce: Yeah, it’s on the…they did call me…

Mr. McKelvey: So they are going to set a Public Hearing and a…it’ll probably be done by the end of the year.

Mr. Doce: Yeah, I think but a…you’ve been so patient for so many weeks now I don’t want to hold you up anymore now.

Mr. McKelvey: He missed it…he missed the Yankee game.

Mr. Doce: And Jeter hit a grand slam at his last at bat.

Mr. Donovan: Yeah, sure.

Mr. Doce: I mean I’m taking…I’m stepping out here into you know, using a sky hook but I don’t think I can jeopardize my client having to go through all of this in turmoil, I think the easiest way out is just say, you’ve close the Public Hearing and a…

Chairperson Cardone: And we have sixty-two days to make a decision.

Mr. Doce: And I would prefer I think, that you do that.

Mr. Manley: Well Mr. Scalzo, already has a motion on the floor for a Reserved Decision.

Chairperson Cardone: Right.

Mr. McKelvey: Well I’ll second it.

Ms. Gennarelli: Thank you.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Manley: No Mr. Doce you would have to if you did not want us to make a decision by next month would have to request that the sixty-two days be waived another month.

Mr. Doce: Okay, I will do that but I’m hoping you forget all about it. Okay, I really appreciate your time, I know it’s been very difficult but I do appreciate where we are today. Thank you.

Chairperson Cardone: Okay, next...

Mr. Doce: Can I say that Dave told me to do this?

Mr. Donovan: Sure, no you can’t.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:58 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 7:03 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

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

Chairperson Cardone: Our next applicant Jin (Kanjanakiritumrong) Grabek which was held open from the July 24th and August meeting.

Mr. Sullivan: Daniel Sullivan, Catania, Mahon, Milligram & Rider for the applicant, good evening…a…my client retained us, she had called our office a…months ago and she called us this morning a…yesterday asking for some advice in…in regard to the application that she made. A…there was some confusion and I’d just like to clear it up for the record. She purchased the property on March 18th this year, the deed was dated March 5th a…because the seller was out of town and they pre-signed it. I have records of the closing of the actual date that it was. A…we received a letter, on…on line I saw the letter from Mr. Mattina from the office and the a…the letter states that a…in February or March the applicant along with other female a…companions came into the Building Department and asked a…for some information a…I spoke to my client this morning, there is a language barrier, we spent kind a bit of time discussing exactly what happened and the time frame. She said that she bought the building and then somebody had said she has to go to the Building Department for a Permit. So, she went to the Building Department for a Permit and I asked her did she have a copy of the Permit (Application) and she does and she gave it to me…here. Here she said that this is the first time that she went into the Town was with the Permit (Application) and she listed herself as the owner. She said that it was after she purchased it. So it was in March but she’s stating that it’s after the date she bought it which was sometime in March, after March 18th. A…the tone of the letter is that she…she knew before she bought it that she needed this use variance and after speaking to her at length today she said that the first time that she knew she had to go through this use variance was after she purchased it, when she went with this Permit and it’s marked by the Town. There’s no date on it at all, there’s no date for her to put in or there was no stamp so…but she stated that she did go after she purchased it. A…I understand a…from Mr. Doce, the engineer, that he’s been in contact with the Town Board about a…a local law resolution regarding this. The issue is that a…in my review of the Town Law and again it was just today. I don’t really know where you can have beauty parlors. It just doesn’t seem to fit into anyplace. They say where you can’t and where they are.

Chairperson Cardone: In shopping centers.

Mr. Sullivan: It…it…there was a question about that with the zoning but that’s not the issue that we have and I just wanted to clear up to the last fact right after speaking to my clients, seeing the documents that she brought that she…the first time that she knew about this was after she purchased it. Her attorney was from Rockland County, recommended by the real estate a…broker a…I asked her if they asked if…if she actually told them what she…she was a…a…going to intend to use the property for. A…if she had come to my office I probably would have asked her and then I would have done some due diligence beforehand. I can’t comment on what the attorney said to her or what but just what she recalled to me. The issue may be moot after the passing of the proposed local legislation. I don’t know if the a…Town has contacted anybody on the Board.

Mr. Donovan: Yeah, Mark and I spoke for a while this afternoon. So a…this issue did come up a…he indicated that this was something that the Town Board was considering and whether they’ll vote on it or not or act on it or not we can’t say. I asked him is there a timeframe a…and to the best, I mean you can’t hold him to this obviously because it’s up to the Town Board, the Public Hearing process, we…it would be referred to us if it got to Local Law format for us to comment on but he indicated they were interested in doing something by the end of the year and they were looking to add this use or a personal service use to this zone. What…he doesn’t vote obviously though so…just that I did have that conversation with him this afternoon.

Mr. Sullivan: Mr. Doce had spoken to the…

Mr. Doce: (Inaudible)

Ms. Gennarelli: Excuse me you are going to have to use the microphone.

Mr. Scalzo: There’s one there.

Chairperson Cardone: There’s one on the table.

Mr. Doce: We a…spoke to the Town Clerk about two o’clock this afternoon and what we were advised at that time a…after having spoke to the Supervisor on last Friday, I met with the Supervisor and the Town Clerk said a…told me that when I went there the other day they did a…make a motion to pass a local…a…a…a resolution for the local law and Andy Zarutski told me today that that was on the agenda for October 20th now…

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 to that much information, the process would generally be the Town Board would authorize the Town attorney to prepare an Introductory Local Law that would be on the agenda for the Town Board. The Town Board would refer it to the planning board and to this Board for our comment, have a Public Hearing, refer it to the Orange County Department of Planning. You have to let the…there’s a time period that needs to…to occur to accommodate that and so, you know, if it all happens you’re looking November, December.

Mr. Doce: Yeah, the only thing I’m pointing is that Andy said that it definitely was a…the a…the motion had been made and the resolution in fact, when I was there that night Mark already had prepared the…the verbiage a…a…for the a…qualifying a…

Mr. Donovan: So with…with that in mind…Dan, what do you want to ask the ZBA to do?

Mr. Sullivan: Well I would…I would probably ask the…at this point in terms of not knowing whether they would pass it or not that you would close the Public Hearing unless you had other questions, the applicant is here. A…I’ve tried to resolve any inconsistencies that she may have brought up in applications and testimony and whatnot if…and there is a language barrier and I spent…I spent a lot of time with her this morning and she said that she did not know that she had to do this. That’s what she told me and she is here a...she’s very confused about it a…you’ve heard, I…I’ve read the minutes so I don’t have to rehash what was said you know, there was a place next door that kind of looked the same and same business. So I would ask that unless you have questions, to close the Public Hearing and a…you know, possibly vote on it a…based on what was presented a…if the Board is satisfied with what was presented.

Mr. Donovan: So just so I’m…the…the real focus is whether or not the hardship was self-created. Code Compliance believes that…right Jerry because I don’t want to mischaracterize what…what Joe Mattina is saying but Code Compliance believes that they spoke to the applicant before she purchased the property and advised her the use was not permitted. Dan it’s…it’s your position, which you’re telling, is that’s not what she is saying to you. She’s saying that she didn’t realize that it was not a permitted use until after she purchased the property.

Mr. Sullivan: Yes, when she presented a…a…the Town Building Permit (Application) that’s when she was told what she needed and which is consistent with the letter from the…from the Code Compliance Office it’s…it’s accurate. A…there’s one…she told me…I asked her because I was trying to figure out maybe an accessory with a dwelling in it, a home occupation and she said no, I can’t live there because it’s too small. She always thought it was too small. And there was something in the letter that she indicated this. That I’m not going to argue she may have mentioned that it may have been something in passing. I’m not saying the letter is false it’s just that the…the timing in the letter is February or March. Yes, it could be March, the end of March and that’s when she told me she came in so…we’re not saying anything is inaccurate it’s just the timeframe and…

Mr. Manley: There’s also multiple visits though to the Code Compliance Office…

Mr. Sullivan: Well she went back again because there was a…she hired a…a contractor to put windows in and while they were doing the work apparently there’s…there was some issue and she went and got a Building Permit (Application) and then of course she went back because she was confused and didn’t know what to do. She hired Mr. Doce in April which was kind of like a month after she a…a…you know went there but she said the first time she went there was to hand in this Building Permit (Application) and…and she listed herself as the owner. She wasn’t the owner before March 18th and she said she didn’t have…she wouldn’t have went there if she…she didn’t…wouldn’t have no reason to put in a Building Permit (Application) because she didn’t own the property. She waited until after closing to…to proceed.

Chairperson Cardone: Does the Board have any further questions?

Mr. McKelvey: I think she was told not to put the windows in and they put a Stop Order on it. Is that right, Jerry?

Mr. Sullivan: She…well…

Ms. Gennarelli: Vince could you give him the microphone please? Thank you.

Mr. McKelvey: She was told not to put the windows in.

Mr. Canfield: She was advised that there wasn’t any work to take place.

Mr. McKelvey: But she put the windows in.

Mr. Canfield: The work that did take place was more than just windows, it was electrical work and…and what not. But just for clarification, what Mr. Mattina has written was that the applicant stated that she was interested in purchasing the property at 349 Meadow Avenue. She was interested in purchasing it. That’s what the initial contact was. I agree that date is vague it says February or March because it wasn’t a scheduled appointment we don’t have any documentation…

Mr. Sullivan: Yes, I understand that.

Mr. Canfield: …so it’s not in the book. So, but what Mr. Mattina is indicating is that the applicant or the proposed applicant indicated she was looking to purchase this property and that’s where that first conversation took place.

Mr. Sullivan: I…I…I again say…

Mr. Canfield: Just to clarify things…

Mr. Sullivan: …my client does have…

Mr. Canfield: …

Mr. Sullivan: …there is a language barrier and today I spent a lot of time with her and there were things that you know the grasp of the English language was not that good. Maybe what she said was I’m going to buy it or I’m…but she stated to me and… she came after and then she presented this…this was the first contact with the Building Department and I think that if she went beforehand she probably would have called our office because this was bad news that she got. And I’m sure she probably went to her attorney to complain why that am I buying this when I need this. You know, it just…not…it’s just that the language barrier to quote her against her in this fashion is you know maybe a little a…you know, what she said on an unscheduled visit so…

Mr. Canfield: Just…just one thing, I’m not certain that that Building Permit application you have filled out there is accurate that that was the first encounter with the Building Department.

Mr. Sullivan: This is…this is what she told me…

Mr. Canfield: Okay.

Mr. Sullivan: …if you want her to come up and make…

Mr. Canfield: I think Mr. Mattina’s letter is referring to the first encounter that…

Mr. Sullivan: Right.

Mr. Canfield: …she encountered with the Building Department and that’s what the Board had asked for us…Board, that’s what I offered this Board that we would supply, just to clarify.

Mr. Sullivan: No, I…I understand, I’m not saying anything in the letter is…is incorrect. It’s February, March to date, it could have been March 30th and she owned it. It could have been March 19th she owned it. A…that’s what she said and…and we spent a lot of time her. She called up and she was very concerned, she was very upset a…you know about the whole process and…and we had to sit down and…and guide her and come up with the information you know, the closing statements and whatnot, she brought them to my office. It’s not our intention to mislead the Board or to…to do anything, she wants…she wants to create a business, she has a business in the City…in the Town, she just wants to relocate it and…and you’ve heard the…I’ve read the minutes so you’re aware of this.

Chairperson Cardone: Any other questions from the Board?

No Response.

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

No Response.

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

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

Mr. Scalzo: I’ll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

Mr. Sullivan: Thank you very much.

Ms. Gennarelli: And that was to close the Public Hearing on both the use and the area variance, I’m sorry, just for clarification.

Mr. Donovan: Yes.

Chairperson Cardone: Yes.

Ms. Gennarelli: Thank you.

Chairperson Cardone: Before proceeding the Board will take a short adjournment to confer with Counsel regarding legal questions raised by tonight’s applications. If I would ask in the interest of time if you could wait out in the hallway and then we’ll call you in shortly.

Mr. Brown: Ms. Chairman, I…I…

Chairperson Cardone: That will be after when we go to the decisions because the Public Hearing is already closed on the particular application you’re referring to.

Mr. Brown: Okay. Thank you.

 (Time Noted - 9:45 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Resumption for decision: 10:48 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: Okay, our next application Jin (Kanjanakiritumrong) Grabek, 349 Meadow Avenue, seeking a use variance to allow a personal service business in an I / B Zone to convert an existing single-family dwelling into a hair salon. Do we have discussion on this application?

Mr. Manley: We’ve certainly taken a lot of testimony with regard to this application.

Chairperson Cardone: And we have the report that we had requested.

Mr. Scalzo: Two separate variances going on here correct? Use and area?

Mr. Donovan: If the use variance is denied then there is no need to move on to the area variance because then we determined the use is not allowed. Conversely if the use variance is granted then you need to rule on the area variance application.

Chairperson Cardone: Do I have a motion for approval?

No response.

Chairperson Cardone: Do I have a motion to disapprove?

Mr. Scalzo: Can I make a motion we Reserve Decision on this? The Town Board I understand it may be on the agenda?

Mr. Donovan: Well that’s what’s been reported, I can tell you that the Town attorney told me this was under consideration. That’s kind of why I…I was asking the attorney before if he wanted us to hold off until such time as the Town Board acted and then he can withdraw the application. He was looking for a vote so you have up to sixty-two days by law. After sixty-two days it’s a fault approval so you want to make sure you act one way or another before then but you absolutely have the sixty-two days.

Chairperson Cardone: Well I…I have to respect the testimony of Mr. Mattina and a…he affirms that the applicant was told that that was not allowed.

Audience Member Inaudible

Ms. Gennarelli: Excuse me; you are not on a microphone.

Chairperson Cardone: Briefly, yes, briefly.

Mr. Manley: We have to certainly be careful that it has nothing to do with our decision process at this point…

Chairperson Cardone: Right.

Mr. Manley: …because the Public Hearing is closed.

Mr. Doce: Just a matter of clarification here and that is…I…I was hoping that we’d have a vote on the area variance because if the area variance was granted and then the Town Board does change the rule as I believe they will it would be over. But if…if we don’t get the vote on the area variance then when we go to the Town Board we’re going to have to reapply to the Board for the area variance. This is my concern.

Mr. Donovan: The application for the area variance indicates that you need these variances to convert an existing single family dwelling to a hair salon. So if…if the use variance is denied then there is no conversion so we wouldn’t vote on it.

Mr. Doce: No, what I’m saying…

Chairperson Cardone: I understand what you’re saying then it would seem to me that what you would be asking for is for us to Reserve Decision.

Mr. Doce: No, I mean…

Chairperson Cardone: If you…if you are thinking that the feeling of the Board might be a denial a…and then depending upon the Town to change the…for the ruling, you know, to change the law a…and then you wouldn’t want to have to reapply again that’s my understanding that you’re saying.

Mr. Doce: If I had my druthers I’d rather you’d approve everything.

Chairperson Cardone: But I wasn’t…I’m just saying in…in that case what might be…and you can correct me if I’m wrong…

Mr. Donovan: Well that’s why I asked the question.

Chairperson Cardone: …right, is to Reserve Decision and the applicant can ask as we well know but we don’t want to let it go for a year, a…the applicant can request that the Decision be reserved past the sixty-two days.

Mr. Donovan: If they waive…waive the requirement.

Chairperson Cardone: They can waive the requirement.

Mr. Donovan: Sure, that’s why I asked the attorney the question.

Mr. Manley: The only issue that I think we get in with that is if the Town does change, we don’t know what the Bulk Use amounts are going to be so what’s going to happen is we would then have a requirement to re-notice because then I think the public would be entitled to another Public Hearing, right?

Mr. Donovan: It depends, it depends. If they don’t change, if they just add it, we don’t…we don’t know what the Local Law will look like because it hasn’t been referred to us yet. We don’t know if it will be modified. If it just adds personal services to the zone with no change in the Bulk Requirements then we wouldn’t need to do that. And if they do, then we can react at that time.

Chairperson Cardone: Now certainly whatever the law is the building is not going to change, it is still going to need a side yard setback, combined side yard setbacks and so forth. It’s still going to need you’re saying essentially those very same variances?

Mr. Doce: Yes. The only other thing I was thinking was I don’t know if it could be amended to say, here variances are…that are being requested are not tethered to this being a hairdresser, I don’t know if that bollixes it up worse.

Mr. Donovan: Potentially, I mean the Board is free to do as what they choose in their discretion. I think there is a good argument to be made to hold this open to see what the Town Board.

Mr. McKelvey: That is the safest.

Mr. Doce: I…a…

Mr. Donovan: I…I think that’s what…I can’t tell you, I can’t give you advice but I…I…

Mr. Doce: Well what I’m saying is a…if you’re not going to vote yes, then hold it open.

Mr. McKelvey: Well I think…I think like you said it’s…it’s on the agenda.

Mr. Doce: Yeah, it’s on the…they did call me…

Mr. McKelvey: So they are going to set a Public Hearing and a…it’ll probably be done by the end of the year.

Mr. Doce: Yeah, I think but a…you’ve been so patient for so many weeks now I don’t want to hold you up anymore now.

Mr. McKelvey: He missed it…he missed the Yankee game.

Mr. Doce: And Jeter hit a grand slam at his last at bat.

Mr. Donovan: Yeah, sure.

Mr. Doce: I mean I’m taking…I’m stepping out here into you know, using a sky hook but I don’t think I can jeopardize my client having to go through all of this in turmoil, I think the easiest way out is just say, you’ve close the Public Hearing and a…

Chairperson Cardone: And we have sixty-two days to make a decision.

Mr. Doce: And I would prefer I think, that you do that.

Mr. Manley: Well Mr. Scalzo, already has a motion on the floor for a Reserved Decision.

Chairperson Cardone: Right.

Mr. McKelvey: Well I’ll second it.

Ms. Gennarelli: Thank you.

 Richard Levin: Yes

 James Manley: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Mr. Manley: No Mr. Doce you would have to if you did not want us to make a decision by next month would have to request that the sixty-two days be waived another month.

Mr. Doce: Okay, I will do that but I’m hoping you forget all about it. Okay, I really appreciate your time, I know it’s been very difficult but I do appreciate where we are today. Thank you.

Chairperson Cardone: Okay, next...

Mr. Doce: Can I say that Dave told me to do this?

Mr. Donovan: Sure, no you can’t.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 10:58 PM)

ZBA MEETING – SEPTEMBER 25, 2014 (Time Noted – 10:58 PM)

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

 (22-4-6) R-3 ZONE

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

Chairperson Cardone: Next on the agenda C D & Sons Construction, 12 Bannerman View Drive, and at last month’s meeting, this has been going on for a year and I think there are a lot of reasons for it and I don’t think that the fault lies entirely with the County. That’s just my own opinion but we’ve waited, we’ve been very patient and here we are a year later and at last month’s meeting the motion was made that we would only waive it for one more month which would be to this month. I believe you received a letter to that effect or some received a letter to that effect.

Mr. Brown: I received a letter requesting my presence here to a…essentially bring the a…new Board Members up to speed on the project a…

Chairperson Cardone: I think that it said more than bring the new Board Members up to speed on the project.

Mr. Brown: Well the situation we have here is we have a waterline that doesn’t have sufficient pressure for fire flows.

Chairperson Cardone: Understood.

Mr. Brown: We’re…we’re extending the waterline and…and relocating the hydrant and…and a…in…in a…hindsight we would have been much better off eliminating the hydrant and putting a blow up pump so that the a…water department could…could blow out the line a…and keep it clean. A…unfortunately a…by moving the hydrant a…the health department now wanted information from a…both the local fire department that has jurisdiction and the public works department that they’re okay with underflow…under pressured hydrant on the line. The hydrant it…where it’s at now has a…insufficient pressure, where we’re putting it its going to have slightly more because it’s downhill…a…but it does not have enough for fire pulls. We have been around with Orange County Health Department. Unfortunately the way they’re operating these days is every time we make a submission we get a review from a different engineer over there and we get a whole new list of criteria a…you know, that’s that’s the way it sits. I’ve been, you know, working on the job when I get a response from the Health Department I address it. A…some of it is beyond my, you know, beyond my a…out of my hands. For instance, this last round they wanted something again from the fire department which I haven’t seen but my understanding from Jerry is that…that he sent that over today a…so that would allow me to make my final application to the Health Department. In addition to that a…and this became a Town wide problem, the Health Department is now involved whenever any a…backflow preventer RPZ valve is installed whether it be on a residence or a commercial use. That’s new a…there was a letter of reprimand that went from the County to John Platt here in the Town because a…the Town has been approving them and a…apparently when they decided they wanted jurisdiction on this they didn’t notify the Town. A…we got caught in the net too because both of these residences need booster pumps and therefore they both have a…to have the RPZ backflow preventer valves. A…so again, I understand where the water is coming from and a…you know, this is the…I’m here to bring you up to speed and…

Chairperson Cardone: You have to understand, this…this is also taking a spot on the agenda and you can see we have very full agendas…

Mr. Brown: I do.

Chairperson Cardone: …every month and like I said this has been a whole year that this has been going on and…and my feeling was that at the….at the very beginning going back to last October, November, December you know I just felt like, you know, I got the impression that nothing was being done. I mean I know in the last couple of months there’s been some activity. You know, that’s why I say I don’t think it’s entirely the fault of the…of the County.

Mr. Brown: Well we…

Chairperson Cardone: This is something that to me anyway should not have taken a year.

Mr. Brown: And when we first a…came before this Board, the…we had…we had…before we came here we…we called 811to get the waterline marked out. The water department marked out the waterline to in front of our other lot that was an error. That was an error on the department of the water department. That wasn’t corrected until much later on. A…here’s the suggestion that I have, I’m willing to withdraw this application right now and a…bring it back before you when I have approval from the Health Department and you know, this way I’m not wasting your time and you’re not wasting my time and a…if that’s okay, then I’m okay with that and my client will be too.

Chairperson Cardone: I would appreciate that because right now if we were to make a decision on this…

Mr. Brown: I understand.

Chairperson Cardone: …you know…

Mr. Brown: I understand. It’s been frustrating for me too.

Mr. McKelvey: So you want to make…you want to withdraw this?

Mr. Brown: Withdraw this, yes.

Mr. Donovan: Charlie, would you just do us a favor just you know, send a letter…

Mr. Brown: I will send.

Mr. Donovan: … into Betty.

Mr. Brown: Okay, I can email it right, okay, okay. Thank you very much.

Chairperson Cardone: Thank you.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 11:03 PM)

ZBA MEETING – SEPTEMBER 25, 2014

END OF MEETING (Time Noted – 11:04 PM)

Chairperson Cardone: Okay.

Ms. Gennarelli: Okay, I checked the timeframe and it’s actually sixty-one days to our next meeting…the November meeting, the Tuesday meeting, if I counted right.

Mr. Donovan: Oh by the way, the new member has to bring turkey that night.

Ms. Gennarelli: Yes, that’s right, if it’s chocolate turkeys, dark chocolate please.

Chairperson Cardone: I did have one other…well a couple of other items. I think Betty gave everyone a copy of the Orange County Municipal Planning Federation classes that are being held. Is that correct, Betty?

Ms. Gennarelli: I did, yes.

Chairperson Cardone: I would advise people to look at some of these classes. There are some very interesting classes. I know I’m planning to go to at least one of them, maybe more. And then also, thank you for running this off for me, Betty. I have copies of the New York Planning Federation Conference this year with the dates and this is a register form if anyone is interested in attending that. Okay and everyone should have the minutes from last month. Were there any corrections, additions, deletions?

Mr. Scalzo: I was just hoping that these minutes would be shorter for this meeting but it doesn’t seem like that’s going to be the case.

Ms. Gennarelli: Even longer.

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

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

Chairperson Cardone: Second?

Mr. Masten: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Do we have any other business to come before the Board? If not do I have…

Mr. McKelvey: I’ll make a have a motion we adjourn?

Mr. Masten: Second.

Mr. Scalzo: Can we make a motion next time there is candy?

Chairperson Cardone: Yes.

Ms. Gennarelli: Oh, I’m sorry.

Chairperson Cardone: We didn’t have the vote yet. All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The meeting is adjourned.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 JAMES MANLEY

 JOHN MASTEN - ARRIVED AT 7:10 PM

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 MICHAEL MAHER

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 11:10 PM)