

ZBA MEETING – NOVEMBER 25, 2014

(Time Noted – 7:04 PM)

JAMES B. ANDERSON

153 FOSTERTOWN ROAD, NBGH
(43-1-1.2) R-2 ZONE

DEC 12 2014

Applicant is seeking an use variance for 185-13-E-(2) to allow the parking of a commercial vehicle (greater than 16,500 lbs.) outside of a garage or carport at the residence.

Chairperson Cardone: Our first applicant this evening James B. Anderson.

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

Chairperson Cardone: If you would step up to microphone please identify yourself for the record and state your request.

Mr. Anderson: James Anderson, 153 Fostertown Road and I'm asking for a use variance to park a heavy truck at my residence as I've been doing for decades. I'd like to a...make two points to be highlighted a...first to address the complaint that I received which reads "possibly business being conducted out of house, there are trucks going and coming all day" and to that I say that I am one person, a sole proprietor, I drive the truck and I leave my driveway in the morning and return at the end of the business day and park the truck and that's the extent of the activity of my heavy truck at my residence. There are possibly other ways of looking at trucks coming and going because I have a pickup truck or because maybe UPS comes for my personal deliveries but I can't a...think of any reason to say that trucks are coming and going all day so I just wanted to address the a...the caliber of this complaint. As I say I've been parking in this driveway for decades and I'll explain that a...I'd like to a...respond to question one of the application and expand on that a little bit to paint a total picture as quickly as possible. So question one reads whether under applicable zoning regulations the applicant cannot realize a reasonable return from the property in question.

Mr. Donovan: Mr. Anderson, if I could I'm sorry. I have a kind of a basic question and Code Compliance is not here. My...my...do we know if they're coming Betty?

Ms. Gennarelli: I am not sure. I thought he would be here but I'm not sure.

Mr. Donovan: Is it possible that he'd be involved in the accident or would that mean that...? There's an accident in front of Citizens Bank that's what I'm...

Ms. Gennarelli: Oh, I didn't know.

Mr. Donovan: Okay. A...my...my question is 185-13-E, off street parking of commercial and recreational vehicles indicates that off street parking of commercial vehicles is allowed so long as a...they're basically in the garage. So if it's allowed I'm...I don't under...I don't know that it's a use variance. And I don't know why it's characterized as a use variance.

Ms. Gennarelli: He is parking it outside the garage and not in the garage.

Mr. Manley: I think that's what the...

Ms. Gennarelli: That's what Code compliance...

Mr. Donovan: But if it fit in the garage...if it fit in the garage...

Mr. Anderson: A...it doesn't fit in the garage.

Mr. Donovan: No, but if it fit in the garage...

Mr. Maher: It wouldn't be an issue.

Mr. Donovan: ...you wouldn't be here. My point being it seems to me the use is allowed but he can't fit it in the...in the garage therefore it requires a variance.

Chairperson Cardone: Right. Well this is how it came to us as a...from Code Compliance as a use variance. Do you have other trucks that are in...do you have other trucks that are in the garage?

Mr. Anderson: No.

Chairperson Cardone: And you just have...you just have the one truck but it doesn't fit into the garage?

Mr. Anderson: It's a tractor trailer combination and it doesn't fit in forty-five foot garage.

Mr. Maher: Does the tractor fit into the garage?

Mr. Anderson: Yes, it does.

Mr. Maher: But the trailer doesn't?

Mr. Manley: The complaint as alleged by Code Compliance on 6-10-2014, it says Inspection: on the inspection it was observed that there was a commercial tractor trailer, semi, and what appeared to be an LP tank trailer parked on the premises. The complainant alleges a possible business being conducted but this could not be verified. There was no one home at the time of the inspection to field questions. The only violation was the parking of commercial vehicles and it says vehicles plural in a residential zone.

There appeared to be a garage large enough to house at least one vehicle, commercial vehicle. This is an R-1 (R-2) Zone and park commercial vehicles in residential zones provided the vehicles are completely enclosed in a carport or garage, pursuant to 185-13-E.

Mr. Donovan: And therein lies my question. I mean if there's a business there is a business being conducted there obviously that's not permitted. The application I see is just that the commercial vehicle that which would otherwise be allowed the problem is it doesn't fit in the garage. In that case that use is permitted, you can have the vehicle there but he's got to put all the way in the garage. So my analysis is that's an area variance not a use variance. If Code Compliance has a different take on it a...we need to hear that.

Chairperson Cardone: I would think that we would have to hear from Code Compliance. Now just for the record, is there a business being conducted at this location?

Mr. Anderson: No, it's parking and I do repairs on my tractor but those repairs are done inside the garage.

Mr. Manley: Does that have any impact on it? Being that it is a business vehicle...

Mr. Donovan: Well...

Mr. Manley: ...repairs being done within the garage...?

Mr. Donovan: ...if that was...if that was the...the referral here to us then it would clearly be a use variance because clearly business isn't allowed. The referral to us is you know 185-13-E. And that's what's throwing me off.

Mr. McKelvey: You do use it to run a business though right?

Mr. Anderson: Excuse me, sir.

Mr. McKelvey: You run a business with the truck?

Mr. Anderson: I make my living as a trucker. I'm semi-retired now but I still work part time with it. But at this location I just park. I don't transfer freight or fuel or do other trucking activities.

Mr. McKelvey: How often does UPS come in there?

Mr. Anderson: Not often.

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

Mr. Manley: Is 153 Fostertown Road your legal address, is that where you reside?

Mr. Anderson: Yes.

Mr. Manley: Okay, so that is your home?

Mr. Anderson: Yes.

Mr. Manley: Okay. And the LP tank trailer is that...that...?

Mr. Anderson: That's been removed from the premises. I used that last a...late a...winter and do to an oversight I didn't move it. I didn't set a priority on it and that's probably what triggered the complaint. It was...it's now gone.

Mr. Manley: Okay does that...do you still own it and is it stored off location now or...?

Mr. Anderson: It's parked off location.

Chairperson Cardone: Would it be possible to put a carport attached to the garage?
Reading the...it does allow for it to be under a carport.

Mr. Anderson: Sorry to say I would need a definition of a carport as compared to a garage. I'm not clear on that.

Mr. Maher: In essence a roof, well you know, the...the idea is to screen it from public view is technically what they're looking for there. A...I mean it is off the road currently but a carport generally, you know, could be a roof with a...

Mr. Anderson: As far as screening it from view I could park it behind this forty-five foot garage which I do and it's very hard to see and if a...a...Mr. LaPierre was here...I won't quote him but I think he would a...agree that it's difficult to see the truck.

Mr. Scalzo: There's also a (Inaudible) box, the green (Inaudible) box is that for storage of...?

Mr. Anderson: That's for storage.

Mr. Scalzo: That's not on wheels?

Mr. Anderson: A...there's a...there's two wheels on it but they're in the dirt, it's been there for...since 1990 so it's...

Mr. Scalzo: It's not moving?

Mr. Anderson: It's not moving today.

Ms. Gennarelli: Dave, Jerry is not coming.

Chairperson Cardone: I would think that we would have to hear from Code Compliance regarding this so I think we would have to keep it open.

Mr. Donovan: Well I...I think...Betty has indicated that Mr. Canfield is not going to be here tonight. A...I think...I...we definitely need to hear from Code Compliance because the issue that would be implicated if in fact a...you can't...I just want to read the Code for you. Vehicles on a private lot, this...it's allowed a..., is operated by an occupant of the principal building and the commercial vehicle is totally contained within a garage or carport. So I think if that was the case you wouldn't need to be here. If you...if...if...if in fact an area variance is required and if in fact I'm correct a...we're going to re-notice the hearing because we...we noticed it for a use variance.

Chairperson Cardone: Right.

Mr. Donovan: Because that's what the referral is...so that's what we had to do.

Mr. Anderson: I asked for a use variance because that's what was written on the top of the recommendation.

Chairperson Cardone: Right, that's what Code Compliance had written.

Mr. Donovan: And we handle appeals from Code Compliance and I'm questioning whether or not a...a use variance is the appropriate variance. And it...it's not an insignificant issue. Use variances are very difficult to obtain, extraordinarily difficult to obtain.

Mr. Scalzo: Dave if the trailer is not attached to the tractor is that still considered individually a commercial vehicle or is it just storage?

Mr. Donovan: It depends if you ask Kevin Roberts that question I think. Didn't we have that issue? That may have been before your time Darrin but there was...there was an issue on whether that was an accessory building or a storage container or...?

Chairperson Cardone: Right.

Mr. Maher: Well it's still there, it must be an accessory...it must be allowed because it's still there. Right?

Mr. Manley: The question would be that would a...a...would a car that's not registered be considered a motor vehicle still?

Mr. Maher: Yeah, because you're only allowed two (one) on the property I believe unregistered so. The question is is it considered commercial, you know it has commercial plates on it ultimately the trailer does.

Chairperson Cardone: In the meantime I'll read the Orange County Department of Planning which is Local Determination.

Mr. McKelvey: We're going to have hold this open then.

Mr. Maher: Is it feasible to park the trailer in the...sorry, park the tractor in the garage nightly?

Mr. Anderson: A...the problem with that is the work involved in dropping and hooking the tractor becomes significant especially in...in bad weather...a...and...

Mr. Maher: Right, I...I do understand that I mean I...the reason I ask is...is...well two reasons, one because in your letter you only work two or three days a week which means it would only be two or three hook ups a week number one. Number two the reason for the variance for the garage was to park the tractor in the garage.

Mr. Anderson: Tractor.

Mr. Maher: Right, park it in the garage.

Mr. Anderson: Okay.

Mr. Maher: That's right, so when the variance was applied for in 2005 that was part of the reasoning for the variance was that you could...could park that in there so those two things I'm looking at, you know, as...as...

Mr. Anderson: Excuse me sir, 2005 I'm not familiar.

Mr. Manley: I think it was 1990...'95...

Mr. Maher: Oh it was earlier than that, I'm sorry.

Mr. Manley: ...maybe I think is when the original...when the a...

Chairperson Cardone: Height requirement was ('92) ninety-two.

Mr. Maher: I thought the a...

Mr. Anderson: When I replaced the...the existing barn with a metal barn.

Mr. Maher: Oh, okay, I'm sorry I just confused the '92 with 2005.

Mr. Manley: (92) Ninety-two.

Mr. Donovan: Well...

Mr. Manley: Dave, the original Zoning Board decision was January 23, '92.

Chairperson Cardone: Right.

Mr. Donovan: Okay.

Mr. Manley: Is the a...garage door height high enough where the tractor could actually go into it or...?

Mr. Anderson: Yes, I put the tractor in there when I need to work on it, change a tire or such.

Mr. Manley: Why wouldn't you be able to keep it in there all the time then if it's a matter of that if it fits?

Mr. Anderson: Well because where do I put the trailer? And the work involved with dropping the tractor and trailer.

Mr. Manley: So the trailer is kept in the...?

Mr. Anderson: In the parking behind the barn, drive around, park behind where it's hidden.

Mr. Manley: Okay, but you just said a trailer is kept in the garage.

Mr. Anderson: No, sir.

Chairperson Cardone: No, he said not in the garage.

Mr. Manley: Okay.

Chairperson Cardone: Behind the garage.

Mr. Manley: Okay, so you drop the trailer in the back and then do you detach...

Mr. Anderson: Yes.

Mr. Manley: ...the tractor from it?

Mr. Anderson: Yes, to work on the tractor. I don't work on the trailer. I don't own the trailer. Could I read...?

Chairperson Cardone: Go ahead read.

Mr. Anderson: ...a little bit more of a statement...?

Chairperson Cardone: Right.

Mr. Anderson: ...to show the broader picture here, if I could? I just want to say I've been parking a tractor trailer on my property for thirty-nine years. The history of this property is that the previous owners Ed and Susie Nelson and thereafter Andy and Carol Nelson had been parking the large packer trucks for their garbage pickup business in this open driveway since WWII. About 1991 where sir as you pointed out '92, I replaced the existing barn with a new metal building a variance was needed to do this. The building houses my tools and I do repairs on my own truck tractor inside this building. The tractor will fit in the barn. The trailer will not. I'm the sole proprietor of my business. I've never had any employees. At this time I am partially retired working a few days a week. Please find attached my Schedule C from my Federal tax filing in 2013 a... which showed a...that my gross income was fourteen thousand a...my profit was fourteen thousand nine-hundred and not sufficient to allow renting a commercial parking area. I need to continue parking behind the barn until I am no longer in the trucking business. I respectfully submit that.

Chairperson Cardone: Do I have anyone from the public that would like to comment? Yes, please step to the microphone, state your name...

(Inaudible audience member)

Chairperson Cardone: You have to go to the microphone, speak into the microphone, identify yourself for the record.

Mr. Maruco: Yes, my name is David Maruco, I reside at 280 Fostertown Road in the Town of Newburgh. A...you...as you go up the hill you're on the left hand side, the building that...that...?

Mr. Anderson: Yes.

Mr. Maruco: Okay, I was just on his defense a...I travel back and forth three, four times a day a...going home a...and to work and to...to the stores and shopping whatnot and I actually honestly have not seen the trailer there in a long time so the way he's hiding it he's doing a good job on it because I haven't seen it in a long time and I always wondered who...who was there that owned the trailer because I...I saw it a long time ago and he keeps his property clean, he keeps the trailer hidden a...you really have to look to see the trailer on his property cause he put...he does keep it far back so a...I...as far as a neighbor, I don't have a problem with it.

Chairperson Cardone: Okay, thank you. There was a gentleman in the back.

Mr. Carney: My name is Kevin Carney, I live directly next to Jim, I have for thirty-one years. I've never had a problem with him doing his activity a...like he says a couple of days a week. Comes in, parks a trailer, parks a, you know, the truck. It's quiet. I've never had a problem.

Chairperson Cardone: Okay, thank you.

Mr. Carney: I...I can vouch for him. The Nelsons, I bought my house from the Nelsons too and there was a garbage service there.

Chairperson Cardone: Right, I remember that.

Mr. Carney: Okay, thank you.

Chairperson Cardone: Thank you. We had someone else, yes.

Mr. Whalen: Good evening, William Whalen, 23 Jacks Pond Road, Newburgh, which is a small private road off of Fostertown Road. My concern would be twofold a...one is setting the precedent it is a residential area. The whole area is residential. I haven't seen the vehicle. I just looked at the property a week ago. Unhooking and hooking a trailer is a fifteen, twenty minute operation. I spent my entire career in the moving and storage business and had fleets of vehicles and when I first started it was me and the truck and I worked out a deal with the local apple orchard to park my truck there until I got big enough to buy a warehouse. A...I really don't think it's that big a deal if you can fit your tractor inside. It sounds like you're dropping the trailer everyday as it is or every time you put the tractor in the garage. What's the difference if you drop it there of if you drop it somewhere else? That would be my point.

Chairperson Cardone: Okay, thank you.

Mr. Anderson: I...I'm not dropping it every day.

Mr. Whalen: Well you're dropping it when you're using it is what you're saying. I thought I heard you say that you unhook the tractor and put it in the garage and the trailer is outside.

Mr. Anderson: Sir, only when I need to work on the tractor.

Mr. Whalen: Okay... That's my point.

Chairperson Cardone: Okay, thank you.

Mr. Whalen: You're welcome.

Chairperson Cardone: Is there anyone else that would like to comment? Do we have a motion to hold the Public Hearing open?

Mr. McKelvey: I'll make a motion we keep the Public Hearing open.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

John McKelvey: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Mr. Manley: I just have one comment with respect to that. We have to first verify whether or not Code Compliance...whether we're in agreement, whether it's a use or a area variance because if it's an area variance then it has to be re-noticed, yes?

Mr. McKelvey: Right.

Mr. Donovan: That...that's correct.

Chairperson Cardone: That's correct but what we're holding open is this request for a use variance.

Mr. Manley: Okay.

Chairperson Cardone: That could later be closed and...

Mr. Manley: And then a new one reopened for area. Okay.

Chairperson Cardone: And people will not be notified. Our next meeting will be in December and it is...

Ms. Gennarelli: It's December 23rd, on a Tuesday.

Chairperson Cardone: ...which is also a Tuesday. Okay, are you clear on that?

Mr. Anderson: Just you said that you will not be re-notified.

Chairperson Cardone: They will not be re-notified as to this application. We're giving the date right now which is December the 23rd, Tuesday.

PRESENT ARE:

GRACE CARDONE
RICHARD LEVIN
MICHAEL MAHER
JAMES MANLEY
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY

(Time Noted - 7:27 PM)

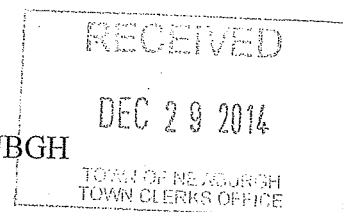
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ZBA MEETING – DECEMBER 23, 2014

(Time Noted – 7:09 PM)

JAMES B. ANDERSON

153 FOSTERTOWN ROAD, NBGH
(43-1-1.2) R-2 ZONE



Applicant is seeking an use variance for 185-13-E-(2) to allow the parking of a commercial vehicle (greater than 16,500 lbs.) outside of a garage or carport at the residence.

Chairperson Cardone: Our next applicant James B. Anderson held over from the November 25th meeting James B. Anderson.

Mr. Anderson: Well I'm James Anderson 153 Fostertown Road and a...I'm seeking permission to continue parking my a...tractor trailer behind my barn at my residence.

Mr. Donovan: So when this was here last month I had a...raised the issue as to whether or not this application is properly characterized as an area variance as opposed to a use variance. Since that meeting I've had two conversations with Mr. Canfield from Code Compliance and it remains Code Compliance's position that the application is for a use variance not an area variance. Is that correct, Jerry?

Mr. Canfield: That's correct.

Mr. Donovan: And the reason I raise the issue is the standard of proof before this Board is different for a use variance than an area variance. It's a...it's a...if you will a lesser standard for an area variance, a much more difficult standard for a use variance. For better or worse we have clarity on that issue now.

Chairperson Cardone: Do we have questions from the Board?

Mr. Levin: How long have you lived there sir?

Mr. Anderson: I've lived there since 1975.

Mr. Levin: '75.

Mr. Anderson: I bought the property in approximately 1978 from the Nelsons. The Nelsons had been running a a garbage trucking business out of that driveway. It's a...a I think an important point that I want to make that there's been heavy trucks in that driveway since World War II. I've been a a tractor trailer trucker since I moved into that residence on a continual basis and a...I just want to refresh a...everyone that there were three neighbors that spoke at the last meeting. A...one neighbor Mr. Whalen expressed a concern that a precedent would be set and I just want to respond by saying that a...having trucks there continually for that length of time is a legacy in itself and a...the other two neighbors a...were supportive. Mr. Carney who is my immediate neighbor adjacent property for thirty-one years expressed that he has no problem with this parking at all.

Mr. McKelvey: Jerry was it legal back in those days?

Mr. Canfield: I'm sorry, could you repeat that John?

Mr. McKelvey: Was it legal to have the trucks there back...back in those days?

Mr. Canfield: Probably not, probably not. As the applicant has indicated, being from that area as a child I remember a...the garbage trucks being there. I can vouch for that. Has the zoning changed in that area? And I'd have to say no a...the parking requirements have changed and that's where this section of the Code comes from. Although we had a difference of opinion with Dave and as Dave said, Dave and I have discussed it and...and we still maintain that if it's not permitted in the Code...if it's not listed then it's not permitted. Although the applicant has displayed information that he's had his business there and if you may recall he did receive a variance, an area variance for height of the building I believe it was back in the '80's but that variance was just for parking of the tractor as the minutes only reflect. Now we've introduced trailers. Unfortunately as I see it it's not permitted per the Code. I don't know if there's any other alternatives that the applicant can offer the Board to help the situation perhaps an off-site parking or something of that nature but a...as I see it it must maintain to be a use variance which of course as we know is very difficult to obtain but that's...that's where we're at at this point.

Mr. Levin: Jerry, what would happen if the truck was put in the garage?

Mr. Canfield: If the tractor itself was put in the garage it would comply just as the original area variance was for. I don't believe it's the tractor that's the issue, it's the trailer.

Mr. Levin: Trailer.

Mr. Canfield: Also in this section of the Code, the parking section, not only the parking of the trailer but they also talk about a restriction of 16,500 lbs. per vehicle. Now I'm not a...a trucker, I do have some experience with fire trucks, I would assume this is like a forty-five, forty foot trailer empty it may not exceed 16.5 but if it were loaded then it would. So that would be another section of the Code that would not comply. Like I said as an empty box, a box trailer probably doesn't exceed 16.5 though.

Mr. Anderson: It's my understanding a...I could be wrong that that's a new Code though as far as the weight limit.

Mr. Canfield: Yes, you're correct that section of the Code is relatively new.

Mr. Anderson: Was it new in the springtime this past spring?

Mr. Canfield: No I believe sir...

Mr. Anderson: Or the year before?

Mr. Canfield: ...it goes back a few years ago. It was definitely after the '80's. It was probably in 2000....2006...2008 somewhere in that area that they introduced that section of the Code. And again the reasoning and the intent of that was to limit commercial vehicles in a residential zone.

Mr. Anderson: Does it help to have the vehicle shielded from view where a...? It's very difficult to see this truck when it's parked behind the barn. That was even the a...a...impression of a Mr. LaPierre who said I couldn't even see the barn let alone the...the a...truck that was behind it because of the pine trees and so forth.

Mr. Canfield: And I agree being familiar with the area the large pine trees that are there I believe you're referring to do shield the building and as the Chairman had stated and I believe they have made an inspection, a site inspection, if not a few of them...

Chairperson Cardone: That's correct.

Mr. Canfield: ...so they're all familiar with the site as well.

Mr. McKelvey: Even...even if you hid it from view the Code stills says you can't have it.

Mr. Canfield: That's correct.

Chairperson Cardone: It says it must be contained in a garage or carport completely screened from view.

Mr. Scalzo: How does that...reading Section 185-30 outdoor storage A- it lists a...outdoor storage of motor vehicles, trailers, building supplies, raw materials, finished products or machinery and equipment is prohibited except in accordance with the following. And then you go down to number three which says all outdoor storage areas shall be appropriately screened with landscaping which we just heard it is so as to provide a...an opaque sight barrier of at least eight feet in height. So it...it doesn't appear that the eight in height or opaque barriers...in no case shall materials be stored to exceed the height of the sight barrier but I'm...I'm hearing that we're not able to see it...but I understand...

Chairperson Cardone: You're looking at it as two...two separate things the trailer that a...

Mr. Maher: The tractor and the trailer.

Chairperson Cardone: The tractor...right...and the trailer and the trailer you're looking as a storage unit and the...the tractor within the garage? Right?

Mr. Scalzo: Right Grace, you know what I think I did misinterpret that I...the trailer I would consider storage when it's...but it's really not storage you're just parking it there until the following work day, correct?

Mr. Anderson: Correct.

Mr. Scalzo: I misunderstood that, okay.

Mr. McKelvey: And if we allowed this it would set a precedent. Right? Is that right, Jerry?

Mr. Canfield: I'm sorry.

Mr. McKelvey: If we...if we allowed this it would set a precedent?

Chairperson Cardone: Well first we'd have to meet the criteria which means we have to meet all four.

Mr. McKelvey: Yeah.

Chairperson Cardone: And item four is that it has not been self-created and in fact, it has been self-created. And if you look at the first item it cannot realize a reasonable return on the property and that has to be demonstrated by competent financial evidence.

Mr. Levin: Then technically the trailer cannot be put in a carport? (inaudible) ...would qualify?

Chairperson Cardone: That would be a very large carport.

Mr. Maher: Yeah if it's enclosed or shielded then...because the tractor can be parked in the garage. The tractor is not the issue that way, the question is...is the outside storage...it's with the trailer.

Mr. Scalzo: The a...decision and resolution from 1992 a...the seventh item that just conclusion, that by reason of the foregoing the Board finds that the applicant has demonstrated economical difficulty sufficient to grant a variance so I'm not sure if that applies to what we're talking about here either.

Mr. Donovan: So Darrin, I'm sorry, what year was that?

Mr. Scalzo: The resolution that we got from 1992.

Mr. Donovan: Yeah, so historically for an area variance the a...legal standard was a demonstration of practical difficulties. In 1994 the State changed the law and they put in place the five part balancing test for the grant or denial of an area variance. So essentially the practical difficulties which was enunciated by the court in this case Otto vs. Steinhilber a long time ago is out the window. So in...in...I would say relative to the issue before the ZBA now that determination has no significance.

Mr. Scalzo: Okay, thank you.

Mr. Canfield: If I may, I think Darrin brings up a good point though, the application of 185-30 which deals with outdoor storage...

Chairperson Cardone: Right.

Mr. Canfield: ...historically that's been viewed as storage of materials a... what have you, storage of items. But it specifically says storage of motor vehicles, trailers, building supplies raw materials, I think this provides the Board with an avenue a... should they choose to make such determination that this may not be a use and this would be more of an application of outside... outdoor storage a... the exceptions one through four appears to be complied with and if it doesn't a suggestion may be if the applicant is willing to comply with those conditions if the Board chooses to allow that as a... an applicable section of the Code. What we have cited was actually off street parking and loading facilities which typically...

Chairperson Cardone: Right.

Mr. Canfield: ...is associated with parking of vehicles. But I think it is a very observant find that this does apply a... I'll be quite frank with you; I wouldn't have a problem with either way the Board ruled on this, which way they decided to go. I think if... if they chose to go with 185-30 I think it would be appropriate. I also feel a... from Dave's point of view, that it would be a defensible... defensible approach this 185-30 as outdoor storage. I think we're speaking of the tractor and the trailer being separated and not parked as one. Is that correct? In reading of the minutes from the last meeting...

Chairperson Cardone: Right.

Mr. Canfield: ...I think there was a lot of conversation with respect to the trailer being affixed and unhooked from the tractor. If the tractor was separated and the tractor was within the building and the tractor outside standalone, again I guess what I'm saying in a nutshell, I wouldn't have a problem if you chose to deem it outdoor storage and allow 185-30 to comply or apply.

Chairperson Cardone: Because it would not be defensible under 13, 185-13.

Mr. Canfield: No that's correct.

Chairperson Cardone: Right.

Mr. Canfield: But if you chose to go 185-30 that's what I mean that...

Chairperson Cardone: Right.

Mr. Canfield: ...I could understand and would not refute that at all. The question becomes then are you viewing the trailer outdoor storage or are you viewing it as parking... off street parking? Which to be quite frank with you Code Compliance cannot make a decision on that.

Chairperson Cardone: Right.

Mr. Canfield: And that's why it's here before you.

Chairperson Cardone: Right.

Mr. Donovan: Okay, well let's...let's take a moment to think about this because at that stage if we look at it under 185-30 that's really an Interpretation because we wouldn't be issuing a variance from the provisions of 185-30. We would be requiring compliance with the provisions of 185-30 and...and Jerry if you could just, I'm very sorry, repeat that last part.

Mr. Canfield: Which one? I said a lot.

Mr. Donovan: The very end...the stenographer can read back the minutes.

Ms. Gennarelli: Yeah...no.

Mr. Donovan: Okay, that's not going to happen.

Ms. Gennarelli: Might if we replay the tape.

Mr. Donovan: What...what, the specific issue that you indicate Code Compliance, that's the storage of the trailer?

Mr. Canfield: Correct.

Mr. Donovan: So, if...if the Board said listen, we interpret this as being permissible under Section 185-30 so long as all four elements are satisfied which would include appropriate screening with landscaping for the trailer. Now I don't know who determines the appropriate screening, do we need to see a plan? Or...or would Code Compliance decide what's sufficient or not?

Mr. Canfield: If the Board requests Code Compliance to make that determination we could do so. Currently we'll get into another area, not to confuse the issue but, storage containers, cargo containers, recently the Town Board had enacted a Local Law to regulate those and where they will be and that also involves an amount of screening which it's up to the Code Compliance Department to make that determination if the screening provided is adequate so if that were the request from the Zoning Board it wouldn't be out of our realm of responsibility to do so and report back to the Board.

Chairperson Cardone: That would be fine with me. I don't know the feeling of the rest of the Board Members. So at this point we are not looking at the original 185-13-E-(2) but we are looking at 185-30.

Mr. Donovan: Now if that's the inclination of the Board my opinion would be that we would need to re-advertise because we advertised it as a Use variance not as an Interpretation request.

Chairperson Cardone: Right.

Mr. Donovan: So for members of the public they wouldn't...they wouldn't know that's not...that's not the way it's supposed to work.

Chairperson Cardone: Do you understand that Mr. Anderson?

Mr. Anderson: Not fully.

Chairperson Cardone: Okay, because...because we're changing what we're looking at it would then have to be re-advertised in the paper and the neighbors would have to be re-noticed.

Mr. Anderson: Okay, I got that.

Chairperson Cardone: Okay, a...

Mr. McKelvey: That would be for an area variance?

Mr. Donovan: No.

Chairperson Cardone: No.

Mr. Donovan: It would be for an Interpretation.

Chairperson Cardone: Interpretation.

Mr. McKelvey: Interpretation.

Chairperson Cardone: Because looking at it under the original 185-13-E and what the criteria is for a Use variance it would be almost impossible to obtain that.

Mr. Anderson: I see.

Chairperson Cardone: Okay. So...in the meantime is there anyone from the public who would like to comment or ask questions on this application?

No response.

Chairperson Cardone: Anything else from the Board Members?

Mr. Scalzo: I don't want to muddy the waters than they are.

Chairperson Cardone: No, go ahead Darrin.

Mr. Scalzo: But if I...just looking...

Mr. Donovan: Darrin you started it.

Ms. Gennarelli: Darrin, pull you mic in.

Mr. Scalzo: Looking at the R-2 District the Use and Bulk Requirements, obviously this is an accessory use, Item #8 and it just...it says off street parking for commercial vehicles in accordance with 185-13. I'm just, here we are, we're...we're kind of torn between the two so that's I guess that's where our interpretation comes in. Correct?

Chairperson Cardone: Right.

Mr. Maher: But once...once we're breaking the vehicles we're not parking. The commercial tractor is in the garage, that eliminates that problem there and the trailer becomes storage so that eliminates the...so we don't really...we're not following 13, we're on 30...I believe then.

Mr. McKelvey: Yeah.

Mr. Canfield: You know 185-30 exception #1 such use shall be an accessory use so we're...if you make that determination you're deeming that storage of the trailer is accessory and yes, it would be I believe understood that it's detached.

Chairperson Cardone: Do you got that part?

Mr. Anderson: Yes.

Chairperson Cardone: Okay.

Mr. Donovan: The bottom line is as the Chair indicated you're likely not to meet the standard of a use variance.

Mr. Anderson: I understand. So from here I...I restart at the a...the Building Inspector's Office with the...for the mailings?

Mr. Donovan: Well, it would be an application for an Interpretation of Section 185-30.

Mr. Anderson: Okay, get an application there.

Mr. Donovan: Well my suggestion is is that a...I don't mean to muddy up the agenda but you might want to continue this Public Hearing and not close it in case there is no application unless you just want to vote on...on the application tonight for the use variance or you could continue the Hearing at such time and then they go on parallel paths and then you could make a determination when you have the information and the application on the Interpretation.

Mr. Maher: Or the applicant withdraws the application too.

Mr. McKelvey: He could withdraw this to.

Mr. Maher: He could withdraw the application and re-submit under the interpretation.

Mr. Canfield: That's what I was going to suggest if the applicant is willing to withdraw.

Mr. Donovan: So your other option is to withdraw the application. Does it sound better when I say it?

Mr. Maher: If it makes you feel better Dave, yes.

Mr. Donovan: It does by the way, thanks Mike.

Chairperson Cardone: You would withdraw this application...

Mr. Anderson: Yes.

Chairperson Cardone: You have to put that in writing.

Mr. Anderson: Okay.

Chairperson Cardone: And then make a new application for an interpretation.

Mr. Anderson: All right I'll do that.

Chairperson Cardone: Okay.

Mr. Anderson: I thank the Board.

PRESENT ARE:

- GRACE CARDONE
- RICHARD LEVIN
- MICHAEL MAHER
- JAMES MANLEY
- JOHN MASTEN
- JOHN MC KELVEY
- DARRIN SCALZO

ALSO PRESENT:

- DAVID A. DONOVAN, ESQ.
- BETTY GENNARELLI, ZBA SECRETARY
- GERALD CANFIELD, CODE COMPLIANCE
- JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted - 7:32 PM)

12/29/14