

ZBA MEETING – APRIL 22, 2010

(Time Noted – 7:22 PM)

DANIEL HESIDENCE

28 WARING ROAD, NBGH
(65-3-13) R-3 ZONE

Applicant is seeking an Interpretation of 185-19-C and/or area variances for one and combined side yard setbacks, the rear yard setback and the maximum lot building coverage to convert a vacant garage to a 1-family residence and a Special Permit to conduct a home occupation use as an artist studio.

Chairperson Cardone: The next applicant Daniel Hesidence.

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

Mr. Valdina: My name is Frank Valdina representing Dan Hesidence. You have before you an application which we're requesting an Interpretation. If the interpretation is not as I believe it is then we're requesting variances in accordance with the application and also in conjunction with the application a Special Use Permit for an art studio within the residence. What we have is an existing structure. If you can't see the photos I have others. I have copies of that if the Board would like those.

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

Chairperson Cardone: We're very familiar with it.

Mr. Valdina: All right. Basically just to give you an idea this is the structure, an overview of Waring Road, it sits back about 140-feet from Waring Road very close to the rear property line. The structure was built in 1930. Its been used for a garage and various, I believe, storage of construction equipment over the years. We said the purpose is to convert this into a single-family residence in which there will be an art studio contained within the confines of the building. It is not the purpose to extend the building in any manner beyond its present configuration. It will of course be renovated as far as the interior to accommodate the residents and the art studio. The exterior will be treated with a neutral colored grout. The Building Permit, of course, was denied due to the interpretation by the Building Inspector office pertaining to the Code. The request for the interpretation is that my interpretation of the Code is under Section 185-19-C (1) we have an existing building which is going to be converted to a use conforming use of whether the Code does allow for pre-existing conditions to exist as long as there is no increase in the non-conformity. That's the request for the interpretation. If the Board disagrees with that interpretation then it's requested the variances I've set forth in the Building Permit denial can be considered and granted to the application. Of course, the art studio under the Code is a permitted use however it does required a Special Use Permit to be issued by the Zoning Board of Appeals. The applicant presently lives in Long Island City. His intent is to relocate to this location to live and proceed or continue with his artwork. His artwork is distributed and set forth in galleries throughout Europe, the United States and

Canada. There will not be any employees involved with the art studio. It's basically a one-person operation. I believe that is the presentation.

Mr. McKelvey: Is the front of the building going to remain the same with the garage doors?

Mr. Valdina: No I have this façade for the front of the building, this is a plan that was submitted with the building plans to the Building Department. It's not in the application but I do have copies.

Mr. McKelvey: Oh, O.K.

Mr. Valdina: As you can see there is going to be quite a difference in the esthetics of the building when its completed versus what is there now.

Ms. Drake: Will the studio be open to the public?

Mr. Hesidence: Hi, I'm Daniel Hesidence. No actually my studio is New York City, in Long Island City so that's where my main studio is. I just painted since I was two whether it be in my folk's basement or whatnot. So I won't be open to the public or anything like that. Its not a...you know all my business is done in the City and kind of outside of the States actually so its really just...

Ms. Drake: So it's for you to be able to paint in there?

Mr. Hesidence: Yeah, well paint and draw things like that it's just what I do when I'm at home.

Mr. McKelvey: Are you going to live there too?

Mr. Hesidence: Yeah, it's going to be my primary residence.

Mr. McKelvey: O.K.

Chairperson Cardone: Would you be selling any of the paintings from there? I mean would there be trucks coming in?

Mr. Hesidence: No, no selling or anything like that out of Newburgh. Now if a truck comes in it might be smaller than a UPS truck and it would maybe be five times out of 365 days of the year. There is nothing going in and out of this. This isn't a business its my home, its just...this is what I've always done.

Chairperson Cardone: You wouldn't be conducting classes?

Mr. Hesidence: No, nothing like that.

Mr. Hughes: Jerry, let's go to the videotape what does it say about Special Permit Use for this? How could this be licensed in a residential area with a Special Permit?

Ms. Gennarelli: Ron, I'm sorry, could you just pull that microphone in a little bit?

Mr. Hughes: Sure.

Mr. Canfield: Rephrase your question Ron.

Mr. Hughes: Well I just, its really not a question, I'm looking for some guidance on how a Special Permit Use is attached to something like this. This is a residential area, its an artist's studio, the applicant is indicating that the art studio won't be heated and it's on the opposite side of the two-car garage from the living/dwelling? Could that be? Do you paint in the cold?

Mr. Valdina: The art studio will be heated.

Mr. Hughes: It doesn't list it as a heated area here, on what Frank just passed up.

Mr. McKelvey: Use the microphone.

Ms. Gennarelli: We have two mics. We have another one if you want to grab that one.

Mr. Hesidence: No it will be heated.

Mr. Hughes: Oh, O.K. I was looking at the little boxes on the side where you calculated your square footages. Right. I see it there now. Yeah. O.K. Now I also and its not this diagram but I saw something that appeared as though a part of the existing building is on another property is that so?

Chairperson Cardone: Yes, that's true.

Mr. Valdina: There are exceptions in the neighboring deed...

Ms. Gennarelli: Frank, I'm sorry, could you take back that microphone?

Mr. Valdina: Yes. The deed of the adjoining property excepts from their land this portion of the structure. It's in the deed.

Chairperson Cardone: Do we have questions or comments from the public? Please state your name and address.

Ms. Sottile: Hi, I'm Janet Sottile, Town of Newburgh. I live next door to this building. My question is is why does he need the special variance or whatever that to have an art studio when other people in Town including myself do thing out of their house and we don't have a special variance as a business? Is it because of painting and not sewing?

Chairperson Cardone: Maybe you shouldn't be saying that, with a Building Inspector sitting right there.

Ms. Sottile: Well no, no, no, no...it's not like I'm running the rugs out of the house or anything. I'm just saying if it's painting or sewing or it it's crafting or this...teaching a kid the piano whatever it could be?

Ms. Gennarelli: Mrs. Sottile could you tilt the microphone?

Ms. Sottile: Oh, why does he need a Special Permit and nobody else? I don't understand that.

Mr. McKelvey: I wouldn't stand there and...

Chairperson Cardone: Anyone who has a Home Business is supposed to have a Special Permit.

Ms. Sottile: O.K. everybody?

Chairperson Cardone: Yes.

Ms. Sottile: Let me ask you another question. How are we going to be sure that nothing...? And if you give somebody an inch they are going to take a yard and we've all been there. And you all know what I'm talking about...so how do we know that as time goes by year after year and (inaudible) I don't know you but I'm just saying, a couple kids come in for class, a couple of trucks come into pick up something, somebody comes in to commission some work and before you know it there's four or five cars, then there's five or ten. How do we know that's not going to happen when you don't put in these guidelines for him that that can never be done so we don't have to go through what we went through before? And this is something maybe we're all talking about for now.

Chairperson Cardone: That can be done.

Ms. Sottile: And this is something the neighbors are all talking about now.

Mr. McKelvey: That can be done.

Ms. Sottile: I mean so where do you get...? O.K. who is going to give you the information as to set down and say you cannot do this, you cannot do...I don't care what he can do. I want to know what he can't do because that's going to be the problem.

Mr. McKelvey: We can specify that he is only going to do this.

Ms. Sottile: Right, I'm just saying, O.K. but you know what I'm trying to say, O.K., you can't run a business because running a business entails lessons, people coming in. I don't

mind the supply trucks for there because they are UPS stuff that's not a problem but I don't what I'm trying to say is I don't want happens here happened at Sloane Road. You give somebody a little bit and they're going to take a lot. O.K. That's all I'm asking is that it could only be done and no attorney is going to look through this and say oh, well there's a loophole here and we could do this. Do you know what I'm trying to say?

Chairperson Cardone: I know what you're saying.

Ms. Sottile: O.K. All right so you all understand. Thank you.

Mr. Hesidence: And Miss, Miss to help you. Miss, maybe it will put you at ease?

Chairperson Cardone: If you could speak directly into the mic? O.K.

Mr. Hesidence: Maybe it would put you at ease; I think that you have my resume. Just to show what I do. You know the work is...you know there's no art classes or anything like that.

(Inaudible)

Chairperson Cardone: Excuse me. Just...O.K.

Ms. Sottile: Sorry, sorry I understand what I'm saying but we've been through a real bad situation there before. O.K.? And a lot of the neighbors are not here because some of them have to work and we've all discussed it. We just...we're happy to have you. It would be great to have somebody next door that has some talent doing something. O.K.? But we don't want to have a problem with trucks and cars and people and kids and lessons and all that. We don't want it that way. That's all I'm saying.

Mr. Hesidence: I completely understand.

Mr. McKelvey: We're aware of the problems in the past.

Ms. Sottile: Yeah, I know. I'm sure the whole Town knows. But I'm just saying it's not a real big lot. It gets real crowded on that. You could put on sidewalks and the parking gets a little crazy sometimes.

Chairperson Cardone: O.K.

Mr. Sottile: Ed Sottile, Town of Newburgh.

Ms. Gennarelli: Ed, you are going to have to make it higher or take it off the stand.

Mr. McKelvey: You can pull it right off.

Mr. Sottile: So my question is this and don't get me wrong I would like to see something in that building no doubt about it. The problem is when you're looking at it the way it's pictured there the left side that small room that's on the end of the building that room is the property line but I had it surveyed. The surveyor came in and he said that building, that wall is actually the property line. So my question is this if you're going to do something with the exterior for a finish you are going to be on my property to do that and I'm not keen on that idea because of insurance and whatnot. They've had in the past there was guys up on the roof and they were putting ladders on my property and going up the roof and my attorney told me if somebody falls that ladder and falls on your property you've got a situation. So I would have to know how you are going to finish it and also on the left side from the previous owner because that was all one piece of property at one time. When they divided it they divided it but they didn't tell anybody but there's underground septic tank on the left hand side of that building so that would also have to be removed. I got stuck with it. I don't mind having to remove it and like when I get time to move it but that is something that's going to have to be dealt with. And the only other question I would have is where are the bathrooms and the sewer lines and all that stuff going to be?

Mr. McKelvey: Do you want to see a drawing?

Mr. Valdina: Well on the floor plan in that little addition that protrudes to the east shows the master bathroom in there and there's a bath near the easterly third of the building. There is Town water and Town sewer on Waring Road.

Ms. Drake: Use the microphone.

Chairperson Cardone: Use the microphone.

Mr. Sottile: (Inaudible)

Chairperson Cardone: No its being recorded and it goes directly in from the microphone.

Mr. Sottile: All right so if you look at this building right here, this end...

(Inaudible)

Ms. Gennarelli: We have two microphones gentlemen. You have to use both of them. Thank you.

Mr. Sottile: So again looking at this this small piece of the building here. There is a tank on the outside wall there in the ground that I ended finding because when I had to get a Permit to have my small pool put in I had the guy come in with a small grader and have him put the...the thing just had to take the grass off, I told him to dump it in the back and when he dumped it he says come here I got to show you some thing. He exposed the tank so that's why I know its there.

Mr. McKelvey: Which property is the tank on?

Mr. Sottile: Well, when the property was one, it was on that property and now its I got stuck with it.

Ms. Drake: So it's on your property is what you're saying?

Mr. Sottile: Yeah, unfortunately the tank is on my property. What they did was the pipe that comes out of that wall they cemented it up, very conveniently and they buried it and you wouldn't have known it was there if I didn't have the guy that you know, the guy to go over it with the grader.

Ms. Drake: One of the proper ways to abandon a septic systems is fill in the septic tank with gravel or something and leave it in the ground.

Mr. Sottile: Right. Yeah.

Ms. Drake: So, that may have been what happened. I don't know whether it was filled or not.

Mr. Sottile: That was not filled. It's hollow.

Ms. Drake: Oh it is?

Mr. Sottile: Oh yeah.

Ms. Drake: O.K.

Mr. Sottile: I can guarantee you that. O.K.? Because I've exposed the lid and looked in, it's hollow.

Ms. Drake: O.K.

Mr. Sottile: So again the only thing I would be concerned about is this building is the property line so I don't know how you would do any refinishing here. I was kind of hoping that somebody would take that piece off. Even if you kept that piece of land, I would care but just to take that off because that would alleviate a lot but...

Mr. Valdina: (Inaudible) the floor plan that supposed to be utilized as a bathroom for the master bedroom.

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

Mr. Hughes: I have some. You're saying there is water there?

Mr. Valdina: There is water on Waring Road and sewer.

Mr. Hughes: And sewer?

Mr. Valdina: Yes.

Mr. Hughes: And you're going to have to connect to that?

Mr. Valdina: Yes, that's the intent.

Mr. Hughes: Now, what about...

Mr. Valdina: There's no wells so I mean there's no other facilities. The building is entirely stripped right now.

Mr. Hughes: Yeah. So now even though you're saying that it shows that the water comes up through that protrusion there to the master bedroom how does the applicant feel about having that tank removed and eliminating that part of the building that's on the other guy's property?

Mr. Valdina: The owner isn't here to respond to that.

Mr. Hughes: Pardon?

Mr. Valdina: The owner available to respond to that question. I don't know what the...

Mr. Hughes: Aren't you the owner?

Mr. Valdina: He's the applicant; he's the contract vendee.

Chairperson Cardone: But he is planning to buy it.

Mr. Valdina: That's correct.

Mr. Hughes: So you're in contract but you don't own the property?

Mr. Hesidence: Right.

Mr. Hughes: All right so you're going to be the new owner if you're allowed to do what you're asking to do and as the new owner would you be willing to use some common sense and take that tank out of the ground and take that protrusion off the other guys property? If this thing that you're talking about for the future plan of refurbishing this building includes being on the other guys property I don't know if we can rule on that.

Ms. Gennarelli: Please use the microphone.

Chairperson Cardone: Yes we can.

Mr. Hughes: Let's get back to basics here first things first. You've got a hell of a hurdle to come over here before you can convince that I'm going to say yeah, you can hook the water and hook the sewer and you don't need to have that on the other guy's property because of that. You're going out to the road. You're not using the well and you're not using that tank. Speak to me.

Mr. Hesidence: This is the builder, Mike. If you want to take...

Mr. Pomarico: Hi, Michael Pomarico. How are you? I built the two homes adjacent to this property. This property had one owner, I guess, at a prior time and it was later subdivided so the septic tank and the additional area that is in that gray area of the property and basically it was all one property at one time that's what I was told. As far as the septic tank if it's O.K. the neighbor to work on his property...if he is worried about liability, you know, I think that's not a hurdle that can't be cleared. He could be held harmless, you know, or we could have a named additional insured for as far as ladders setting up in the little area. But that could be filled in; the tank pumped out and filled in provided we have permission to go on the property to do it. You know it wouldn't be a big thing to do maybe 10-yards of material stone could be easily dumped in there.

Mr. Hughes: Counsel? The adjacent property owner is here, the two things are here with imposing conditions can we insist that this be cleared up or is this a civil matter that we can't even rule on?

Mr. Donovan: Well we can suggest. I don't know what the connection to the variance request and I don't mean to...as I frequently do but we do have to, you know, focus on the issue in front of us.

Mr. Hughes: Well, this is a big hinge point here as far as I see it that's why I'm asking for your legal counsel.

Mr. Pomarico: The filling of the tank is that the main...

Mr. Hughes: That's up to you and this guy, not me.

Mr. Pomarico: ...hurdle as far as the tank itself, right, to fill it in?

Ms. Drake: Please use the microphone.

Chairperson Cardone: Yes, you have to use the mic.

Mr. Sottile: One is the tank and the other one would be that the building is the property line.

Mr. Pomarico: Yes.

Mr. Sottile: So how are you going to get around being on my property and finishing it off that building?

Mr. Pomarico: Being it is on this line he can make the same argument when you mow the lawn next to his property what if you got hurt? So I mean you got to be neighbors and work with each other for a very brief window and after that...

Mr. Sottile: I understand that but...

Mr. Pomarico: ...its done. You know, you can twist your ankle walking right next to the building so then its like...

Mr. Sottile: You know when the guys that were on the ladder...

Mr. Pomarico: Right.

Mr. Sottile: ...so when I asked them very nicely, I said, look you know the ladders I appreciate, you know...

Mr. Pomarico: Yeah.

Mr. Sottile: ...I mean they started swearing at me so...

Mr. Pomarico: No that's their mistake.

Mr. Sottile: And I'm not saying that you guys are going to that but you know what I've got to assume the worst.

Mr. Pomarico: Sure.

Mr. Sottile: So I don't want to get sued.

Mr. Pomarico: No.

Mr. Sottile: And so something is going to have to be done in order for you guys to get access in order to finish that building.

Mr. Pomarico: Well I think once he purchases there would be...there would be a homeowner's policy and possibly even a builder's risk policy if there is a bank involved with a mortgage. You could probably be named additional insured to give you that protection for just the duration of the construction, you know, if that would suffice.

Mr. McKelvey: Does that satisfy you?

Mr. Sottile: Yeah but I want you to come over and look at it before you...

Mr. Hesidence: No problem.

Chairperson Cardone: O.K. This lady has been waiting to speak if we could just let her speak now.

Ms. Dinitto: Bernadette Dinitto, Town of Newburgh, former owner of this controversial property of forty years at which time we were never allowed even a truck on that property and today even if you make baskets in your house you know who delivers your supplies? A tractor-trailer. So Mr. Hesidence is this a hobby or is this your livelihood because if it's your livelihood it constitutes a business? And we don't want the traffic. The last business to enter there without our permission actually ruined our road ruined the Town road. So how many times are we going to appear here about this building? And what would you like to know about it? After forty years, I'll tell you a lot about and you don't need that much property for a hobby, absolutely not. You'd have to be rich just to pay the taxes on that building if you ain't going to make money there...

Mr. Hesidence: I'm just trying to make the best of a situation. Like I said my studio is in New York City. This is what I always do. I understand your concerns.

Ms. Dinitto: ...and then the business then you're going to bring a business to Waring Road.

Mr. Hesidence: I understand your concerns but this is a win, win for everybody. I found this place because quite honestly I'm from Ohio and it reminded me of where I grew up.

Ms. Dinitto: Right.

Mr. Hesidence: My business, all that stuff is in New York City. My studio is going to remain there. This is just what I do.

Ms. Dinitto: And, and...

Mr. McKelvey: He is going to live on...

Ms. Dinitto: The studio is in New York City...

Mr. McKelvey: He is going to live on the property too.

Ms. Dinitto: ...he's going to live on the property and you're going to commute everyday to New York City?

Mr. Hesidence: I don't know about everyday but yeah.

Ms. Dinitto: Oh, yeah, right, but there won't be any big trucks coming into that property, right? That's what we want to be guaranteed.

Mr. Hesidence: There will be no monster trucks coming into that property.

Ms. Dinitto: And do you think a small truck is going to deliver your supplies?

Mr. Hesidence: I'm not...there's going to be no truck larger than a UPS and there's not going to be a bunch of trucks at all.

Ms. Dinitto: Right.

Mr. Hesidence: And it's just...

Ms. Dinitto: Just you?

Mr. Hesidence: Me and someone else.

Ms. Dinitto: We'll see.

Mr. Pomarico: I would just like to add something to that to. I would guess if we're going to disallow any truck larger than a UPS we could also have to tell all the neighbors that you're not allowed to move in the moving van. You're not allowed to get a refrigerator delivered from Lowe's, you know, you know, this goes both ways. The man is clearly...

Ms. Dinitto: (Inaudible)

Chairperson Cardone: Excuse me please address all comments to the Board not to each other.

Mr. Pomarico: ...the man is an artist his art is his inspiration. When he gets the inspiration to paint it could be three in the morning and he'll have the shades down I'm sure he won't bother anybody and he'll paint. This is what the man does. O.K.? This is his...in his DNA...no matter what he does with it at that point it's really no issue to anyone outside of the building as long as there's no large trucks. The problem the neighborhood was traumatized by a sunroom business that had eighteen-wheelers running in and out.

Chairperson Cardone: We're aware of that. Yes.

Mr. Pomarico: That's what I'm saying so it left a bad taste in everyone's mouth. So now this poor guy comes along and he wants to just live there and paint and do his art and if the UPS truck pulls up, I mean, it's no different than anybody else's house, you know? I mean, I'm going to get new appliances delivered soon from Lowe's and guess what a truck bigger than a UPS will pull into my driveway but you know, you have to understand it's a one shot thing. It's not like it's going to be every day, you know, so you have to give him that slack too, I feel.

Mr. McKelvey: We are aware of what went on on that property. There's two copies of minutes from the meetings before.

Mr. Pomarico: I really think that the residents and the neighbors and this Board and this Town is missing a golden opportunity to take an obvious eyesore, an obvious wart on the Town and turn it into something beautiful. It's going to be a nice carriage house and you're going to have a responsible owner there. This is an opportunity that is knocking and it may not knock again. So if you want to have that building with graffiti on it and weeds growing it? If that's one choice and the other choice is to have a responsible owner then you really have to put that on a scale and weigh it and it goes for the neighbors too. I mean its for the greater good of the community and provided, as he said, there will not be large tractor trailers like the last bonehead that ran a business out of there. You know, that basically traumatized everyone and their children around there.

Mr. McKelvey: He's also stated that he's not going to run a business from there.

Mr. Pomarico: A sunroom business is a vastly different world than if you can call art a business. Art is what you do, its an inspiration and you know what, if drew a picture and someone wanted to buy it from me, I'd sell it to them if I could. But they wouldn't buy my pictures. That's the problem. I think we're missing an opportunity here.

Mr. Manley: Mr. Valdina, would the applicant be willing to accept a lot of conditions being added to this application? If the Board were to consider approving this, stipulations such as no sales to be done out of, you know, out of the property, no public in and out for the purposes of classes or even for the purchasing of art, restrictions like that on the...any type of approval for the protection of the neighbors? Would there be any...?

Mr. Hesidence: That's no problem. You can put that in.

Mr. Donovan: O.K. let me...

Mr. Valdina: He already stated to what it was going to be and basically its as you outlined none of that is supposed to be taking place or will be taking place.

Mr. Donóvan: Now if I can, I'm having a hard time getting my arms around what you're in the first instance asking us to do and then if you tell us you're not going to have a business and the conditions that Mr. Manley suggests are acceptable then why is there an application for a Home Occupation?

Mr. Valdina: Because it's being proposed on the building plan as an art studio. Under the Code, an art studio requires a Special Permit from the ZBA and that is the reason for that portion of the application.

Mr. Donovan: Well, let me just because I am a lawyer so I'm going to look at the definition of a Home Occupation and it says a gainful occupation or profession customarily conducted within a dwelling by the residents thereof. I'm a lawyer I have a

room in my house that has a computer and it has some books but I don't see clients there. It's not a home occupation even though I may do something in that room and so my question that I can't figure out the answer to is if you're not going to do any of this stuff, and that's a legal term, that constitutes a home occupation why are you applying for a Home Occupation?

Mr. Valdina: Basically because the Building Department denied the permit stating that they needed a Special Use Permit for an artist's studio.

Chairperson Cardone: All right. Jerry will address that.

Mr. Valdina: So...and that goes along with my other interpretation as far as the variance requirements.

Mr. Hughes: What table did you cite for this Home Occupation and Special Permit?

Mr. Canfield: I think I can clear some of this up and you started to ask that question before, Ron. This is an R-3 district. The Bulk Use requirements for an R-3 as an accessory use list home occupation with a footnote of #2 and if you go to #2, footnote #2 signifies that it must have a Special Use Permit from the Zoning Board. If you go to 185-3 under definitions of home occupation the first identification is Art Studio. That being said, the art studio which is what was on the application that's what triggered the Building Department to say, get to the Bulk Use Tables, gets you back to 185-3 it's a Home Occupation. Now if the applicant is telling you something or explaining differently and I'm not implying that they are telling the Building Department and the Zoning Board two different things but if the clarification is made by the applicant that it is not a Home Occupation per say and a hobby then I believe its up to the Board to determine whether that Home Occupation Permit is needed or not. If that clarifies it?

Mr. Donovan: No, it absolutely clarifies it for me.

Mr. Hughes: Absolutely.

Mr. McKelvey: Absolutely.

Mr. Hughes: So one other thing, counsel, does it specify the difference between home occupation, art studio and casual use? Or is casual use not mentioned?

Mr. Donovan: Well casual use is not mentioned.

Mr. Hughes: O.K.

Mr. Donovan: But it says gainful occupation or profession.

Mr. Hughes: O.K.

Mr. Donovan: And so if you're not carrying on your profession there but you may, at certain times, you know...I don't know... What kind of artwork do you do if I may ask?

Mr. Hesidence: I'm a painter.

Mr. Donovan: My cousin does set designs in Manhattan so he paints on big things as opposed to, you know, Picasso may paint on little things so I...

Mr. Hesidence: Along the lines of the Picasso.

Mr. Donovan: O.K. you hope right?

Mr. Hesidence: We all hope, yeah.

Mr. Hughes: Or at least the price tag be there, right?

Mr. Hesidence: It would be real nice.

Mr. Hughes: Before you're done?

Mr. Hesidence: Yeah, before.

Ms. Drake: So you paint whether you paint at home or wherever you paint and then you take them to New York City and sell them in your galleries down there?

Mr. Hesidence: Yeah.

Ms. Drake: O.K. So it is the work that you do but you're not...its only if you get inspired to do it at that hour of the night or day or whatever, I don't know.

Mr. Hesidence: Yeah, the only...I mean the easiest way to describe it is kind of like a Hemingway thing wherever he lives he is constantly writing whether it actually materializes into something who knows?

Mr. Donovan: So I think it comes down to this, if he withdraws his application for a Home Occupation then he does what he does in there and he can't run a business, a gainful occupation or a profession then he runs afoul of the Zoning Ordinance. Alternatively if we issue you a Home Occupation I really don't think the conditions that you suggest are appropriate because we're saying you can...we'll approve your home occupation with the condition that you don't have a home occupation condition. That's what we're saying.

Mr. Hughes: Isn't that an annual thing too? You don't want get into that? A Special Permit with an annual inspection.

Mr. Manley: The only thing you would do under a home occupation is limit hours but it doesn't sound like the applicant...

Ms. Gennarelli: Mike.

Ms. Drake: Microphone.

Mr. Pomarico: I mean his work its not that he does something and then calls up a guy and says O.K. come see what I painted see if you want to buy it or whatever or I'm having a viewing tomorrow where thirty people show up. He's strictly...I'm a builder by trade all my life, sometimes I bring plans home and on my kitchen table I work on the plans but I have an office near Lowe's where I meet my clients where I do my actual business. So I think this is just a unique place for him to operate and he needs...it's a very spatial and visual business that he's in obviously that he needs, you know, the room around him and he wants a big open area like a studio so this really fit with where he has place in Queens that he does all of his operations out of. So this is like a place he can still operate out of but not really see clients or have any kind of commerce there. And that could be a condition, you know, obviously.

Mr. Donovan: Well the question is do you...are you going to modify your application to withdraw the home occupation aspect of it or not?

Mr. Valdina: Well if it is mutually agreed that its not considered a Home Occupancy then there isn't any need for the application.

Mr. Donovan: Well only if he is carrying on a gainful occupation or profession.

Mr. Valdina: Well I think, you being the attorney, is a gainful if he does the paintings at home, takes them to New York and sells them. I don't know. I'm not an attorney.

Mr. Donovan: Well the business is not being conducted there.

Mr. Valdina: No, he's not conducting the business there he's just doing his painting there. He's an artist.

Mr. Donovan: He's got to understand that if you decide after you finish this place you want to have a, you know, whatever you call when people come and view your painting.

Chairperson Cardone: A showing.

Mr. Donovan: You can't have that.

Mr. Hesidence: Yeah, again my...any business that's conducted for me is in London, its in Paris, its in Zurich and its in New York City, its...its not in the Town of Newburgh.

I'd love to live here. I'm trying to live here but business...that would be tough for me. There is no business here. There is no business for me here. If that's the way to...you know I'd love to do it that way.

Mr. Donovan: It sounds to me that it's not a home occupation

Mr. Hughes: I agree.

Mr. McKelvey: I agree too.

Mr. Donovan: And I would suggest that you modify your request or withdraw that.

Mr. Hughes: Jerry, do you have any divine wisdom you can share on this about a review on this to put it in the proper concept, I mean, I agree with the attorney. I don't think this is a home occupation.

Mr. Donovan: Betty, make sure that's in the minutes.

Mr. Hughes: We agreed on something.

Mr. Canfield: It's a first. I think, Ron, to best answer your question was my analogy before. I believe I'm in 100% in agree with what Dave is advising you. The Board must, I shouldn't say must but may want to look at what the applicant is telling you and then make a determination. If you feel satisfied that what the applicant is telling you that it is not a gainful employed occupation at home and make that determination. Once you make that determination and I think that's the Board's decision that that's what you have to do then you can proceed. If the applicant is willing to accept your determination and withdraw his portion of that of the application, the home occupation portion of it then you can carry on and then make determination on the other determination that's before you.

Mr. McKelvey: I think he agreed to what Jim asked or stated, you know, earlier.

Mr. Hughes: Having said all that now, let me make sure everybody in the room understands where we're going with this thing. If that's so and you withdraw the application...

Chairperson Cardone: That part of the application.

Mr. Hughes: ...that part of the application. Use is not an issue here either because it's listed.

Mr. Canfield: Correct.

Mr. Hughes: Right and if it's not a home occupation it is listed as an accessory item an art studio...

Mr. Donovan: As a home occupation.

Mr. Hughes: As a home, well no, as a dwelling as a residence.

Mr. Canfield: If you remove the home occupation segment of this application it now becomes a single-family dwelling.

Mr. Hughes: Right.

Mr. Canfield: Which is a permitted use in an R-3 zone.

Mr. Hughes: Better well said than what I tried to say. That's what I was getting. O.K.

Ms. Drake: Jerry, would the plan need to be revised so it doesn't say artist's studio.

Mr. Canfield: Let me say on the record, I'd like to renegotiate my salary. I think I'm on an attorney scale now.

Ms. Drake: Dave.

Mr. Donovan: So far you're doing good Jerry.

Mr. Hughes: All right. But then that brings us down to an area variance so...

Mr. Donovan: I would suggest that that has a different title to it. You know, den or just studio.

Mr. Maher: Drawing room.

Mr. Donovan: Drawing room.

Ms. Drake: Right.

Mr. Pomarico: Can I please add something? When this whole thing was in preliminary, you know, should I buy the place or not? We went back and forth. I took the time to meet with Tilford, Mark Taylor. We all sat in the office. Basically Mark Taylor went to the Zoning Ordinances, a studio is permitted, allowed in a residence provided that the studio is not 50% larger than the rest of the living area. So we clearly designed it so that it would not be, so that addressed that. And if the one caveat is that there is no money or any compensation being exchanged for any good or service on that property be it a painting or, you know, whatever you want to call it, if there is no commerce being done, no money changing hands then I really see why or I really don't see why he cannot live there and do his art provided he is also going to have his place of business in Manhattan.

Mr. Donovan: I think that is what we're saying. We're just saying it's not a Home Occupation that comes out of the equation.

Mr. Manley: And that would include, you know, the transport or, you know, the sending of paintings from that location lets say by FedEx somewhere. I mean all that would have to originate out of your studio down in Manhattan. You're going to, you know, because then you'd be looking at that being your office occupation there. That would be how I would look at it.

Mr. Pomarico: You'd have to transport things from there...

Ms. Drake: Use the microphone.

Mr. Pomarico: I mean if he...

Mr. Manley: What I'm saying is if he arranged for a sale at that location and then sent it from that location...

Mr. Pomarico: No, no to a client.

Mr. Manley: ...from that location to a client...

Mr. Pomarico: To a client, right, that wouldn't happen.

Mr. Manley: ...then in my mind that would be engaging in an occupation out of that property.

Mr. Pomarico: Right, yeah.

Mr. Manley: In my estimation that would be a no go.

Mr. Pomarico: Right, but it does needed to be noted that a truck like a UPS style truck would need to be allowed to actually take something from his residence and bring it to his studio in Manhattan.

Mr. Manley: Sure.

Mr. Pomarico: As long as that's O.K. that's the main thing. O.K. Thank you.

Mr. Sottile: I'm sorry I have a question about I see you got the bathroom over here in the small part of the building and the kitchen over here in the middle of the building. How do you plan on running the waste line from that small part of the building?

Mr. Pomarico: What we would do is saw cut the concrete in the existing building. We would open a channel up that would route that plumbing from that little gray area bump out totally into the building and then down to the street. So nothing would travel through your property at any point it would all be internal in building. Then we pour a new floor, which we have to do anyway and resurface it.

Mr. Sottile: O.K. Thank you.

Mr. Pomarico: You're welcome.

Mr. Valdina: The other portion of the application pertains to the interpretation. The Building Inspector Department indicated that variances were required for setbacks, side yard, rear yard, percentage of lot coverage of the building. Under the Code 185-19-C- (1) indicates any non-conforming building doesn't meet Bulk Requirements can still be utilized as long as the use is in accordance with the Code and you do not need a variance. That's why the interpretation was requested because we have a difference of opinion.

Mr. Donovan: Actually it doesn't say that.

Mr. Hughes: It doesn't.

Mr. Donovan: Because its got a double negative any house which does not house a non-conforming use that's 185-19-C- (1) so that means if it housing a conforming use then you get the benefit. But the use here according to the Notice of Disapproval is a non-conforming.

Mr. Valdina: The use as a residence is conforming that's an R-3 district.

Mr. Donovan: But its being converted from a use that's is...

Mr. Valdina: Coming from a non-conforming use...

Mr. Donovan: Right.

Mr. Valdina: ...it's a lot building, a vacant lot building.

Mr. Donovan: Right. That only applies to uses that are not non-conforming which are conforming since you're conforming this paragraph doesn't apply. Hey listen, I didn't write it I'm just reading it.

Mr. Valdina: O.K. I think you'd find all kinds of little items of that nature in that Code. Of course, no matter how many times you review it. Well therefore that was the reason if the interpretation is in accordance with the Building Inspector the variances for the side yard setback and lot area coverage are requested. Again its an existing building built in the 1930 well before zoning. What happened when the lots were subdivided I do not know the time frame as what the zoning status was at that point in time and how it may have gotten through the Planning Board. But I know the deed does accept that portion of the building on the adjoining property as was stated by the adjoining owner. It is not proposed to increase any existing non-conformity pertaining to the Bulk Regulations. Of course I would think a garage is a conforming use. If the Boards compares an existing building use not a non-conforming use then I think we meet the requirements.

Chairperson Cardone: I think the issue is that it was not used as residence before and even though a residence is conforming to the district that particular building was not a residence and I think that's what our attorney was referring to.

Mr. Valdina: Well again, I'm not an attorney but if it was considered a garage which is not a non-conforming use which means it's a conforming use then changing it from one conforming use to another conforming use I believe that section of the Code indicates that the variances are not required. If the Board and the attorney do not agree...

Chairperson Cardone: I don't have to agree but I...

Mr. Valdina: Well if there's not an agreement then the other portion of the application is the request for the variances.

Mr. Pomarico: I would just also like to add that its in a residential zone so you can just reinforce the use of it by allowing it to conform to residential use now instead of keeping it this (inaudible)...

Chairperson Cardone: Right.

Mr. Pomarico: ...that it currently has been.

Chairperson Cardone: Right but it would still need the variances.

Mr. Hughes: Do we have any kind of interference with continuance here? Attorney? Counsel?

Mr. Donovan: No because there is none.

Chairperson Cardone: Different, it's a different use.

Mr. Hughes: There's no continuance on anything here.

Mr. Donovan: Yeah correct. That's why.

Mr. Hughes: It was abandoned.

Mr. Donovan: Correct. So that's why there's a conversion to a conforming use but we have the setback issues and the lot coverage issue.

Mr. Hughes: So we're back down to the area variances only if he withdraws?

Mr. Donovan: That's correct.

Chairperson Cardone: Right.

Mr. Hughes: I think we've got it where it belongs now as far as understanding the project. I don't know whether what we're going to do with it but...

Chairperson Cardone: There's no exterior change to the building except cosmetic?

Mr. Valdina: That's correct. Now as indicated on the sketch I presented to the Board its just cosmetic for the whole building.

Chairperson Cardone: O.K. Thank you. Yes?

Mr. Makita: My name is Joe Makita. I own the property immediately behind it about 2-foot away from my property line. Last time they did work like the other neighbors we had problems with the workers littering glass on my property and things like that. So I'm afraid of that. But I do want to see an artist's rendition of what it's going to look like as far as the back and the front.

Chairperson Cardone: Do you have that?

Mr. Pomarico: We did not do a rear elevation. However I could prepare one there would probably be a couple of new windows cut in to meet egress for what would be bedrooms along the back. Otherwise it would pretty much stay the way it is and more than likely be resurfaced for the parking or whatever. In regards to the other contractors who made a mess they didn't hire Pomarico that was the problem.

Mr. Makita: Well I know that Mike. But I am concerned even about the colors. I don't know an artist might come out and have a big red house. I'm not sure where it's heading to.

Mr. Pomarico: Earthy tones, I guess, we want it to blend into the woodwork there.

Mr. Makita: I hope so.

Mr. Pomarico: He showed me some...through his travels in Europe he sent me a lot of pictures and he liked things that are very traditional looking. The kind of stuff you see in the English countryside with like a stucco finish or you know, parching pretty much like that. No eyesores.

Mr. Makita: Will we get to see these artist's renditions?

Mr. Pomarico: We could...I could prepare a blank of the building of how the back would look but its up to Mr. Hesidence to pick the color and then, you know, I'm sure he would have no problem sharing that with the people immediately around that if need be.

Ms. Jacobs: Hi I'm Eileen Jacobs, Town of Newburgh and I just wanted to ask you did you intend to just...do you paint on canvass with your studio or was there any other medium you were going to work in?

Mr. Hesidence: I do drawings and paint on canvass.

Ms. Jacobs: No sculpture or bound materials?

Mr. Hesidence: I don't do heavy stuff no.

Ms. Jacobs: O.K. that's my only question.

Mr. Hesidence: Yeah.

Ms. Jacobs: Thank you.

Chairperson Cardone: Any other questions?

Ms. Eaton: How about the front of the house with the lawn are you going to have blacktop into the garage?

Mr. Valdina: There will be a driveway to the garage.

Ms. Eaton: And it will be wide enough for two cars, the blacktop coming in? Will be blacktop or gravel or...?

Mr. Valdina: It will be a 12-foot wide asphalt driveway. It will widen out as you get to the structure for two parking spaces but it's not going to be a 24-foot asphalt strip from the building on to the road.

Chairperson Cardone: It would be about where the driveway was? I know it's over grown now with...

Ms. Gennarelli: If you don't speak into the microphone it won't get into the record.

Mr. Pomarico: The driveway would probably be relocated to the right side actually its work better on that side. Right now there is kind of a shale driveway on the left and its all overgrown so its like its not there anymore anyway.

Mr. McKelvey: Is not going to head right into the garage?

Mr. Pomarico: Oh yeah, its going to head for the doors on the right, on the right side there, yeah, towards that area or the central, yeah, right in the middle, you know, coming in and kind of turn.

Chairperson Cardone: Any other questions or comments?

Mr. Manley: Just one other is there going to be an entrance door, an exterior exit and entrance door from the studio out to the front of the house there? Or is it only going to be an entrance into the garage?

Mr. Valdina: No there is an entrance door shown on the plan...right here and one over here. This is a three-foot door.

Mr. Manley: It would be a direct entrance from the outside into the studio?

Mr. Valdina: Yes, for safety reasons you have quite an extended area to get out in an emergency if you have to if you had to go all the way over to the other side. It's a safety consideration.

Mr. Pomarico: The doors were set up with a carriage house effect essentially so you're going to have sets of double doors and then some triple doors but they are all going to be operable. You know, they'll all have egress. With each room you need egress out. We need to address the egress issues in the back like I say for bedrooms that would be via window or bedroom door. However the big rooms in the front to provide egress we have to make sure that all those areas are, you know passable where you can go outside in case of emergency or whatever which I'm sure that the a...

Mr. Manley: So how many doors will be in the front?

Mr. Pomarico: Oh, we're replacing all the garage doors there's going to be five sets of doors, one garage doors and then a combination of French doors, you know, surrounding it. They're all like French doors with the transoms, decorative arch transoms but they'll all be operable.

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

Ms. Drake: I'll make a motion to close the Public Hearing.

Ms. Eaton: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted – 8:14 PM)

ZBA MEETING – APRIL 22, 2010 (Resumption for decision: 10:26 PM)

DANIEL HESIDENCE

28 WARING ROAD, NBGH
(65-3-13) R-3 ZONE

Applicant is seeking an Interpretation of 185-19-C and/or area variances for one and combined side yard setbacks, the rear yard setback and the maximum lot building coverage to convert a vacant garage to a 1-family residence and a Special Permit to conduct a home occupation use as an artist studio.

Chairperson Cardone: On the application Daniel Hesidence, 28 Waring Road, seeking area variances for one and combined side yard setbacks, the rear yard setback and the maximum lot building coverage. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: I think its going to be a big improvement to the property and he's not going to run a business out of there.

Mr. Donovan: Yeah, just for clarification purposes the Special Permit application request has been withdrawn, right?

Mr. Hughes: Yes.

Mr. McKelvey: Right.

Mr. Manley: I think by changing this to a home also ensures that in the future there's no plumbing business that's operated out of there. I mean, if this isn't converted to a

residence what does the future hold for this property and I think that, you know, the neighbors have a choice either have a residence or, you know, risk having maybe a business that you don't want in the future and I think this would be a huge improvement.

Mr. McKelvey: They have to take care of that septic tank too.

Mr. Hughes: You have no problem working that out with the neighbor?

Mr. Maher: One question though, Jerry, how did it get to be a subdivided piece of property with an accessory building only on it?

Mr. Canfield: It's nothing Mike that we had done, that building was constructed I would say in the 30's or the 40's. It's constructed I believe with cinderblock.

Mr. Hughes: It is cinderblock.

Mr. Canfield: Which they don't make anymore but that building has been there that long.

Mr. Maher: When they broke the lots off it didn't make a difference that you were creating a new non-conforming lot though?

Mr. Canfield: No, no.

Mr. Hughes: They probably did it before we had zoning.

Mr. Canfield: Yeah, yup.

Ms. Eaton: I'll make a motion for approval.

Ms. Drake: Second.

Ms. Gennarelli: Roll call.

John McKelvey: Yes

Brenda Drake: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Michael Maher: Yes

James Manley: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE
JOHN MC KELVEY
BRENDA DRAKE
RUTH EATON
RONALD HUGHES
MICHAEL MAHER
JAMES MANLEY

DAVID A. DONOVAN, ESQ.

(Time Noted – 10:28 PM)

BS 5/17/10