

ZBA MEETING – AUGUST 28, 2014

(Time Noted – 7:01 PM)

LOWITT VENTURES LLC.

444 QUAKER STREET, WALLKILL
(11-1-12.1) A / R ZONE

Applicant is seeking an area variance for the side yard setback to keep the prior built (5'9"x4'9") side foyer addition; area variances for the maximum allowed square footage of accessory structures and the required 10 foot separation from dwelling to keep the prior built (8x20) garage side extension; and area variances for the maximum allowed square footage of accessory structures and the maximum allowed storage for not more than (4) four vehicles to keep the prior built (30x60) accessory building.

Chairperson Cardone: First I'd like to welcome our new Member Richard Levin to the Board, welcome Richard.

Mr. Levin: Thank you.

Chairperson Cardone: Our first applicant this evening Lowitt Ventures, LLC.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in the Mid-Hudson Times on Wednesday, August 20th and in The Sentinel on Friday, August 22nd and. This applicant sent out twenty letters. All the mailings, publications and postings are in order.

Chairperson Cardone: Please identify yourself for the record.

Mr. Tarone: My name is Gregory Tarone. I'm an attorney, my office is located at 5020 Route 9W, suite 104, Newburgh, here to represent Lowitt Ventures, LLC. in an application for the variances of a...on three different a...provisions of the Code, all for a Building Permit and essentially each one of them has different reasons but for all intent and purposes I think we could pretty much say that this application is a...a...clearly based on empirical evidence that shows where these structures are and why they are in violation or that is why they are technical in violation and also a...if I could just comment that a...the a...the biggest problem of course, is going to be the last one, which is the accessory building. But the two others which is a porch and then a...an overhang both were pre-existing structures that my client was totally unaware that he needed a Building Permit to repair or change in slight ways. This is his a...lack for a better term, ignorance of just how technical the law is on Building Codes. He's now been counseled about that. He wants to go forward with getting a Building Permit being in complete compliance that he can be issued a C. O. I'm happy to just take your questions for each of the specific area variances if that would be appropriate to proceed.

Chairperson Cardone: I should mention that all the Members of the Board have made site visits. We've all been to the site.

Mr. Tarone: Good. Thank you.

Mr. Manley: My first question would be, we have a chronology of events that occurred with regard to the applicant. A...back on September 13th of 2002 (2012) it appears as if the Assessor's Office for the Town made a visit to the property to do a a...this is an assessment check on the property and it was determined that there were no Permits for the front porch, the side porch or the garage extension. So at that point it appears as if the a...there was communication between the Town and the applicant with respect to those items and that there were no Permits and that there was a course of action that the applicant had to take. Knowing that, why would the applicant move forward and build an accessory structure after being put on notice that the other items, you know, had to be rectified and there were outstanding issues with that and that they needed Building Permits?

Mr. Tarone: I...I can't address that because I wasn't involved then. I don't even know about it. I'm totally unaware of that happening but...

Mr. Manley: Okay. Can the applicant address that then?

Mr. Tarone: Well I...I think so but I...I think that a...a...the one thing that I...that I can say if you want him to personally stand up and address it, if that's necessary I'll have him do that a...I think that the a...the way that some people sometimes unfortunately look at Building Codes is a...with a little bit of laxity and lack of respect that a...other people don't look at it that way. A...anything that's happened in the past I'm here to correct now and I'm trying to do that with my client to get this property completely within compliance. Whatever he's done here though I can tell you that in terms of the existing structures a...this is...this is something that, as I understand, they were in disrepair causing problems and he...he wanted to repair them. As to anything that he didn't pay for, any compliance from a compensation from, quite frankly sir twelve years ago I...I just haven't addressed it, wasn't involved a...at all. I...I know that I was provided with some sequence of things that...that appeared that my client just did not take seriously some things that he should have and he's aware of that now a...and I think that overall if you look at the quality and quantity of what he's done, he hasn't tried to, except for the large accessory building, hasn't tried to pull any a...wool over anybody's eyes in that sense but I think that he has been very lax in complying with your local Code.

Mr. Manley: Well...well that's evident because it's...

Mr. Tarone: Yeah.

Mr. Manley: ...this has been going on from what I can see the history for two years that the Town has been attempting to get some sort of compliance with the other items.

Mr. Tarone: And I appreciate what you're saying.

Mr. Manley: Do you have anything that you can enter into evidence with this Board to show that those items the front porch and the side porch and the garage extension are pre-existing non-conforming and weren't added prior to that?

Mr. Tarone: I think we did have a survey that we...that I submitted that showed that sir...and I had checked with the surveyor or with records I had and I believe some (Inaudible) Are you talking about the overhang now? Not the a...the a...

Mr. Manley: This here, the overhang here.

Mr. Tarone: On the side foyer, right. I thought I had submitted with this some time ago so... I thought it might...I provided a survey that showed pre-existing. Whatever Mr. Lowitt got when he bought the property is the survey that I...that I have. He did not have anything up...up...updated to my knowledge because he didn't have any (Inaudible)

Mr. Scalzo: Jim, I think I have May of 2012 and May of 2014 here and it (inaudible) show the pre-existing (Inaudible)

Mr. Manley: All right, I got it right here May 23rd, thanks. Counsel I have a copy of it here.

Mr. Tarone: Yeah, I...I...

Mr. Manley: May of 2012.

Mr. Tarone: Yes, fine.

Mr. Manley: Mr. Canfield, was the Town satisfied that those items were pre-existing to the best of your knowledge?

Mr. Canfield: Based upon what Mr. Mattina has provided me with I have two surveys, one is dated May 23, 2012 and the survey that I'm looking at does not depict this overhang that I think is in question. The May 19, 2014 most recent survey does depict the overhang off the front of the house or the side of the house, I believe that it's...that's in question. I think that's in all the Board Member's packets

Mr. Maher: Yeah, the one on the left side is depicted on the...on the new a...survey.

Mr. Canfield: The other one is not there?

Mr. Maher: The one in the front is missing.

Chairperson Cardone: Well I...I personally don't think that that is as much of an issue as the large building that was built. I mean because, as I said, we've all been to the site looking at it and eyeing it...it looks like it's in conformance because I believe the one is only six inches off. But once he was notified and I think that that's the point that Mr. Manley is making, once he was notified of that for then to go ahead and build this large building which appears to me to be used for a business a...

Mr. Tarone: I'm sorry maam; you're talking the 30 by 60?

Chairperson Cardone: ...yes, I am. I think that's the problem that we're having that after being notified of these what I would call minor variances that he would have needed to then build this large structure and for all appearances to me it seems like there is a business being run there.

Mr. Tarone: I...I can tell you that I have had this discussion extensively with my client in detail. He's not running a business from that location. He has uses that building for personal use. He originally was looking to get a building, something to cover his RV and then he found this other thing...when he found it he was going to get a building to just for a couple of his a...recreational vehicles and things that he...that he uses for his kids and a...quite frankly, he told me, he will...the building got a little bit larger than... he kept adding some things but when he went to get the building he asked the people at the company in North Carolina where he bought the building...he got on-line with them and talked with them and they indicated to him oh, we've done a building in Orange County. We've one...we have one already designed, everything ready and he indicated that to him and they told him that they would provide everything, soup to nuts, this building is already engineer approved, everything is ready. He gave him the price; he said okay, he didn't have to put down a slab or anything. He said, I'd like to put a slab down, they told him what to do and my client did not read something that they sent to him. He read the plans, the small print on the right hand side that you...that you'd have to be in compliance with your Building Code. He didn't read...he didn't see that. That was on the plan they sent to him later after he paid for the building. So, this is ignorance on his part so I can...totally assure you if I was his attorney at that time, we wouldn't be here tonight. We wouldn't have this discussion but I can't undo what he did and to...to take that building and change it...it would be either expensive or a complete loss. There...there's no way to just take a piece off or just...just...it's...it's all one structure and engineered to be one structure so that's the hardship a...and frankly I don't mean to try to justify this that it's fair for him to somehow put up what he wants and expect you to say well that's okay, do what you want. That's not what you're here for and I'm not here to certify that kind of conduct but a...we're in a difficult situation because he wasn't careful and he wasn't listening and he didn't have reverence for the things that are important to this community. So what I can do for you is I can try to clean up whatever I can going forward but whatever happened 2002 or two years ago I can do nothing about. At this point a...and I don't...I don't say this lightly, I have a story that I can tell you about myself and if you'll indulge me for (inaudible) two minutes...

Ms. Gennarelli: If you can just get closer to the microphone please, Greg.

Mr. Tarone: ...oh, I can tell you what happened to me. Eighteen years ago, I went to build my first house in a village on Long Island, a very unfriendly village. A...there was a tree, a gorgeous tree, people told me that I had to call an arborist to come in and look at and tell me if this tree was that valuable, what it was. He told me it looks dead. It's going to die and said in fact it's not going to last, he confirmed it in writing. I decided to put a driveway through. As I'm building the house and took the tree down a neighbor who happened to be on the planning board and the adjoining property whose husband is the former owner of this property is crying for a half hour and wouldn't leave me alone and I begged her not...to stop. What happened was, I did go and get a plan approved for a modular house, a beautiful colonial, blended in nicely everything was all set. Went through architectural review, to detail, I personally was the general contractor. I personally went to the Building Inspector and checked every detail, even the sheetrock over the

garage to have living space. And at the last moment, as the modular factory was going to build the house I talked to the guy, hey, you know the build...the window with the back that's square, can the 10 by 20, 24 by 32 whatever, can you make that a oval? Yes. Could you add two dormers on the garage? Yes, what will that cost? Good, do that. I never thought about it. I'm putting up the house. All the house is erected, the modular company came and I get a Stop Work Order. I have to go to the planning board and the architectural review board for violating the Code as an attorney. I was embarrassed, humiliated, I did everything I could to comply but I made a stupid mistake. I didn't realize that that little change required that procedure even though everybody agreed it was beautiful and looked better except for the one person on the planning board who said it was an eyesore from her window, three hundred and fifty feet away. And so I understand that we all make mistakes even when we don't intend to and whatever my clients motivations were however you view his character I think it may be a little bit unfair in the end because there were people who twelve years after my incident reminded me of violating that provision in the Code in that village and I thought that was pretty (inaudible). A...I'm here to tell you that the resolution of the problems of...of the size of that building are going to be extensively expensive and a hardship to my client though.

Mr. Donovan: Well one of the factors is...I'm sorry to interrupt, one of the factors the Board has to consider is whether or not the hardship that confronts your client is self-created or not. In the situation Mr. Manley is pointing out is that he knew, or he should have known, that there were a...he should have got a Permit because he had Code issues prior to this...

Mr. Tarone: Yes.

Mr. Donovan: ...he needed to comply with those and in fact, didn't comply with that and then he put up an (1800) eighteen hundred square foot building without a Permit.

Mr. McKelvey: It doesn't...it doesn't make sense in this day and age that you know he...

Mr. Donovan: It's not like he put up a 10 x 12 shed.

Mr. McKelvey: ...he needed a Permit.

Mr. Tarone: A...his...his explanation to me the first day that I heard from him, I can only go by what my clients tell me, I'm here to tell you that his explanation day one was I relied on these people, they're going to deliver the building they said I...they'll take care of the everything soup to nuts. He thought it was a compliant building. That's his fault. In terms of the...the porch and the two other things, those two other things a...in my view, they're plain and simply wrong. They're not offensive, they're not excessive. I think, as I've told him, a...as I would tell you and I think you would tell me if reversed that him not checking with that building and the Building Inspector was stupid. To just rely on a company to put up a building without a Building...it's a building, we have Building Codes. But I think a lot of people still think that it applies just to building a house that you need Permit for, ridiculous, but that's what happens often.

Mr. Manley: Well the other issue that...that I have, the concern that I have is what do we do about all the people that take the time to do it the right way...

Mr. Tarone: I understand.

Mr. Manley: ...because they want to comply with the law because that's what the Building Code says that you have to do and then those people come here for relief for a similar building they want to build a similar building and we deny that person because the Board feels it's excessive, it doesn't fit in the neighborhood. And now we have somebody that's built one without going through that process, okay, and now that person is asking for, so to speak, forgiveness for not following the rules and if we grant it to that person how fair is it to the person we didn't grant it to? So that's...that's the issue and the balancing that I'm trying to...to, you know, really grapple with is...is this something that perhaps if the applicant had followed the proper procedure that I would have maybe granted. And it's you know, two hundred and forty-five percent over what is allowable. It's not ten percent or even fifty percent, its two hundred and forty-five percent...

Mr. Tarone: I hear you and appreciate it.

Mr. Manley: ...bigger than what it should be...

Mr. Tarone: I hear you and I appreciate it.

Mr. Manley: ...and that's, that to me is...is that's a huge amount to overcome...

Mr. Tarone: He...he looked at it like it was a garage but nothing more looking like a garage and put it up, you can put a garage anywhere but I told him that you...it's the size of a house, this is not a canopy like it's just not a canopy, this is an actual building. He secured it to a foundation, a slab, it's a building and he didn't run plumbing in it, there's electric in it...

Mr. Manley: There is electric and heat.

Mr. Tarone: There's electric in it, the gas, somebody come in and put electric in it and I said anytime you touch electric ever again you get a Building...you have to get a Building Inspector, you can't touch electric (inaudible).

Mr. Manley: There...there's electric heat, it looks like also air conditioning.

Mr. Tarone: I don't know if they have air conditioning. I don't know, I frankly don't know. Do you have air?

Mr. Lowitt: (Inaudible)

Mr. Tarone: Heat, maybe he's got a heat pump. It's a...a...you're put in a difficult position, I've thought about this for weeks and I a...fully appreciate where you are, that you...what you're doing here. I think that a...you look at the general character of that community and you look at other...there...there are other buildings that are similar at a 1958 and 1979 a...Route 300...a they have accessory buildings that are pretty large. A...next to this a...property is a farm with a fairly big barn that's maybe a hundred...hundred and fifty yards away a...it's fairly closed in,

not out in the open a...so what I'm hoping you can do is find a...a...some kind of ground here to be able to grant relief that's not too economically a...disastrous. That a...that is not a bad precedent but certainly anything that you would want done to the property to cure it in any way, any type of landscaping, fencing, anything you would require he would do. At...at this point a...I think the choices are very, very drastic for that building.

Mr. McKelvey: We have to be careful in setting precedent. I mean, if somebody else sees that he did this and they do the same thing...

Mr. Tarone: Well the only thing that I could say to you and my clients not...my clients not going to like me saying this but I'm going to be frank with you, I mean, I don't...I don't see your options that...you have options here, you have a lot of power. This is...this is a police power that you have, this is zoning. I understand it real well. A...you can fine him and sting him and a...you can do certain things but the...the most drastic thing would to have to remove the building...he couldn't remove part of the building is what I want to tell you, we're pretty well clear on that, to remove the whole thing and or nothing would be drastic and a lot of money. And a lot more than I think it may be worth to everybody. It's a very difficult situation and I a...only ask that if you could find a way that makes sense to the community that he cure it however he possibly can now.

Chairperson Cardone: You said that this would not be used for a business...

Mr. Tarone: Yes.

Chairperson Cardone: ...however, the address across the street which I believe is his address is listed as a business address on-line.

Mr. Tarone: Well, I think that if it is it's that's he get...he may have his corporate...his...his company a...his company Lowitt Ventures, LLC. is a personal a...limited, liability company that may be the home address that...that's what you're talking about. Yeah, that's his...that's his home, he...a lot of people use that as a lawyer I could tell you that eight percent of my clients LLCs are...they use their home address, they don't use an actual commercial office.

Mr. Scalzo: Madam Chairwoman, when I made my site visit a...I did see the business trucks that you're describing...

Chairperson Cardone: Yes.

Mr. Scalzo: ...a...the applicant was there at the time, invited me into the building, it is a hobby shop. A...they had a...race cars in there, so there was no business, I...I saw nothing related to the business trucks that I saw outside, inside the building.

Chairperson Cardone: Right, but I saw when I was there though.

Mr. Scalzo: Okay.

Mr. Tarone: In...in...in the...

Ms. Gennarelli: Darrin, could you pull that microphone a little closer?

Mr. Scalzo: Sure.

Ms. Gennarelli: Thanks.

Mr. Lowitt: Hi, I'm...I'm Steve, I own Lowitt Ventures and there's no business across the street. I do own a business and I do own trucks but that garage was not put up for anything to do with any businesses, warehouses or anything else. It's strictly recreation. We sponsor two race tracks in the area, Middletown Racetrack and Accord Racetrack and that garage is mostly everything that we use there, tires, racecars, you know, I mean that's our (inaudible) shop and I mean, there's no stock, trucks, nothing that has anything to do with that garage. I do own a few trucks that I use for work. I own a bucket truck, I own a crane, I own a a service truck that I use every day. I have two sons, that also live at the house, that work for the same company who have trucks and my son also lives across the street so there's trucks over there for that. They're used for work. That garage I...I...then, you know, Mr. Tarone pretty much told you what I did. I mean, I screwed up, I mean I called the company...last year we were building a garage...a...a...our cars, the racecars and everything else in that two little car garage. It was too much. I go to visit other people, work on their cars and everything else, they've got these big garages it...I looked into it; I called the company they have engineered Orange County drawings. Okay? They told me what I could build in this area and I could only go a maximum of thirty wide, everything else can go as long as I want. When...when...when you're on the phone talking to these people you really don't process how big something actually is until you actually see it. Is it a little excessive? Yes. Did I screw up by thinking Orange County engineered drawings doesn't mean that you guys approved it? It just means that you know, from what I'm told now that an engineer from Orange County approved what would be okay to bring to you guys. That's where the whole mishap, you know, lead to. Was it me being maybe thinking that every thing's peaches and cream? Yes and usually it isn't. As far as other violations on the house, when we bought the house the house was almost condemned. We fixed the house up. Mostly everything that was there, the porch, the overhangs, everything else were all metal, hanging off, ready to fall off and hurt somebody. We fixed the house up. We pretty much didn't do anything but shorten the deck that was there. The Town did ask me to pull Permits and it told me to...asked me why I did what I did. I explained to them that it was there, they said it wasn't, I need to pulled Permits (Applications) and I...abide by everything that you guys told me to do and you know, I...I thought all that was put to bed with the overhang over the garage there was one there and when they told me I had to get a variance for it, to tell you the truth, I was going to tear it down. I mean, it wasn't worth me coming to get a variance for that one little porch on the back. A...I didn't, we built the breezeway to keep the water out of the basement and then the garage and that's just where we stand now where there's three of 'em but the intentions were never to the point that I'm just going to keep building stuff and you know, not get Permits or abide by what my Town wants. I mean, I'm next to a house that's condemned, another house that's abandoned and you know, I...I...I put a lot of money into this house that's next to the stuff not knowing what the value is going to be. But, I mean, I'm proud of what we did and you know my son lives over there and I try to make it as neat as possible. We put the fence up and you know, the...the

last thing I intend to do is to you know, disgrace my neighborhood or my town or my own property for that matter so...but then I...I hope that puts everything into perspective and you guys understand, you know, what happened.

Mr. McKelvey: Who do you build these cars for?

Mr. Lowitt: Who...? ...Do I build them for?

Mr. McKelvey: Yeah.

Mr. Lowitt: A...my sons, both my sons race. I haven't gotten the guts yet to get in the car but I'm leaning towards it. That...the...the cars are for my sons. Both my sons and we do a lot of sponsorship at the tracks and stuff. We help out the local tracks and donate money to them and help 'em out, you know, with...the track, electric, lights, everything else so... You know I, it's all on me and I admit you know, that just...I was stupid, I mean, and you know, I can assure now that I have a lawyer I'm not doing anything else ever again without...without him so. Any other questions? I mean, it would just be easier if I answer 'em instead of going through Greg but...

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

Mr. Maher: Just one question actually. So on the application, did you fill out the application or did...?

Inaudible

Ms. Gennarelli: Excuse me...excuse me...Greg...

Inaudible

Mr. Maher: Who actually filled it out?

Ms. Gennarelli: ...Greg can you go to the microphone?

Mr. Maher: ...is what I'm asking...

Inaudible

Mr. Maher: ...okay.

Ms. Gennarelli: Excuse me...

Chairperson Cardone: Go to the microphone.

Mr. Tarone: I...I wrote...I wrote it so a...

Mr. Maher: That's fine.

Mr. Tarone: I can decipher for you.

Mr. Maher: On the a...on, sorry about that, so on the application labeled as "A" which is the first one for the side yard...

Mr. Tarone: A...is this for the side foyer?

Mr. Maher: Yes.

Mr. Tarone: Okay.

Mr. Maher: So based on the fact that it's not depicted in the 2012 survey then the prior built foyer a...in the area variance request number six, letter A, says the prior built foyer actually existed when the applicant bought the property that's not actually correct then, right?

Mr. Tarone: Well actually what I believe is...I want Mr. Lowitt to address this since (inaudible) discuss the specific (inaudible)...

Ms. Gennarelli: Please get closer to the microphone.

Mr. Tarone: ...if I remember correctly this...this wasn't shown on it but it was there and it was just not functioning well to let rain...

Mr. Scalzo: Was it all the way down to the ground or...?

Mr. Lowitt: No, it...it...that part it had a...like I said the side porch, the breezeway over the garage and that had a metal, you know a...

Inaudible

Mr. Lowitt: ...the seventies, you know whatever, you know. That's what was there and the water would rush underneath it. It...it had a little bit of a...a foundation but it wasn't completely enclosed. We enclosed it. I don't know why that overhang never showed up the survey but...it didn't.

Inaudible

Mr. Tarone: I would just like to note that surveyors don't always show that kind of overhang on a survey in my experience unless they are asked to.

Mr. Scalzo: I understand that. If it doesn't make it to the ground sometimes you don't show it, you don't see roof overhangs, that's why I was asking pre...

Mr. Tarone: I appreciate that very much because I think that...

Mr. Scalzo: ...pre-existing condition went to the ground or was just attached to the house.

Mr. Tarone: All right. A...and...and the main function was for drainage, really. (Inaudible)

Mr. Lowitt: That's all that thing really is for is for weather, not getting into the basement other than that I mean it's, you know, a little bigger than a dog house.

Chairperson Cardone: I have a report from the Orange County Department of Planning, which is Local Determination. Do we have any questions or comments from the public? If so, please step to the microphone and identify yourself.

Ms. Moschitta: My name is Trish Moschitta, I've been an active member in this community since 1987 a...I live on Schoolhouse Lane which looks right at the property we're talking about. In over a quarter of a century I've watched this property slowly fall into neglect and disrepair and I was pleased that the Lowitts purchased it 'cause I was afraid it would succumb to the same disrepair to the house which is next door which is condemned and the house that is adjacent to that which is basically borderline porting now. There is an abandoned house behind them. What the Lowitts have done to both of their pieces of property a...we've watched with joy as they resided it, fixed it, made it something that the neighborhood...at least as a neighbor I am proud of. I drive down Schoolhouse Lane three, four times a day that's the immediate structures I look at. There's plants hanging, there's hummingbird feeders a...it's the betterment of the neighborhood what they have done to it. A...I could only wish that all of the neighbors, those in question, could take the care and concern that the Lowitts have taken in straightening out the house that was...I was afraid was going to become condemned a...I ask that you would allow this variance, allow them to continue to further beautify our neighborhood and perhaps look at the condemned houses that are ruining our neighborhood which are dangerous, kids are hanging out there, porches are falling down. That is a real concern to me in living here for over a quarter of a century and nothing is being said about that but this has done...it looks beautiful. Thank you.

Chairperson Cardone: Thank you.

Mr. Tarone: Anything else for me?

Chairperson Cardone: I think someone else wants to make a comment. Just identify yourself for the record.

Mr. Moschitta: John Moschitta, I'm at 17 Schoolhouse Lane also and a...again to reiterate...reiterate what my wife had...had said that the...the property was in total disrepair before the Lowitts a...purchased it and have worked very diligently keeping it clean and neat and improving a...the neighborhood and a...I ask the Board to grant them the variance cause I think it...it's an improvement and you know, it's for racecars, for personal use for the boys and those boys work really hard. And I've seen those boys work, so...

Chairperson Cardone: Thank you.

Mr. Moschitta: ...please consider that. Thank you.

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

Mr. Tarone: I don't Madam Chairman, thank you very much for...

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

Mr. Scalzo: I'll make a motion to close the Public Hearing.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Mr. Donovan: It's really not fair Betty to make the new Member be the first

Chairperson Cardone: Actually we...we did discuss that.

Ms. Gennarelli: I did apologize to him and pre-warned him.

Chairperson Cardone: Right.

(Time Noted - 7:35 PM)

ZBA MEETING – AUGUST 28, 2014 (Resumption for decision: 9:20 PM)

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Chairperson Cardone: The Board is resuming its regular meeting. On the first application Lowitt Ventures, LLC., 444 Quaker Street, Wallkill, seeking an area variance for the side yard setback to keep the prior built (5'9"x4'9") side foyer addition; area variances for the maximum allowed square footage of accessory structures and the required 10 foot separation from dwelling to keep the prior built (8x20) garage side extension; and area variances for the maximum allowed square footage of accessory structures and the maximum allowed storage for not more than (4) four vehicles to keep the prior built (30x60) accessory building. This is a Type II Action under SEQRA. Do we have discussion on this application?

Mr. McKelvey: We had a couple of neighbors come in and said they have improved the property.

Mr. Scalzo: Looking at it from the road they also did put up stockade fencing to block any view of, you know, what was going on which stopped right out easily visible from the street.

Chairperson Cardone: I don't have a problem with the other, the variances, but I personally have a problem with the size of the accessory building.

Mr. McKelvey: That's true.

Mr. Donovan: You have the option to a...someone can make a motion to deny or approve all the variances or you can vote on them individually or in some sort of group.

Mr. Manley: I...I would like to make a motion that the a...area variance for the a...the one accessory structure which is the one that requires the ten foot separation from the dwelling, it was the prior built 8 x 20 garage side extension, I'd make a motion to approve that.

Mr. Scalzo: I'd second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: Okay, that motion is carried. We still have two other.

Mr. Donovan: I think you have three other, right? Total of three.

Mr. Masten: Two other.

Mr. Donovan: Well you have the side yard setback to keep the prior built side foyer addition and the variance for the maximum allowed square footage of accessory structures as well as the 30 x 60. I don't know what the calculation would be if the 30 x 60 was denied. I don't know if that falls under or not. If my math is correct, if...and I don't know what the Board intends to do but if the 30 x 60 was denied then you're looking at a total square footage of 832 sq. ft. assuming that everything else is kept. I don't know if Jerry, if you want to verify that for me? Or Mike?

Mr. Maher: Yeah, it would be 69.27 would be the variance after that and about eight percent or so or (69.27) sixty-nine point twenty-seven feet once you remove the (1800) eighteen hundred. And that's strictly caused by the overhang on the garage, right Jerry?

Chairperson Cardone: In the meantime do we have a motion for approval on the minimum side yard of thirty feet of existing twenty-eight feet and they need a two foot variance on that?

Mr. Manley: I don't see that as being excessive at all.

Mr. McKelvey: I'll make that motion to approve.

Mr. Manley: I'd second that.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Mr. Maher: Just for the record, the application lettered "B" just address the square footage also.

Chairperson Cardone: The side yard was "A".

Mr. Maher: Then "B" already addressed it, the garage, the ten foot minimum identified the square footage also for the area variance as "B". Right, I understand now.

Chairperson Cardone: And now we have "C". Okay, do we have a motion for approval and we're looking at "C" now for the maximum allowed square footage and the maximum storage of four vehicles to keep a prior built accessory building.

Mr. Scalzo: I'll make a motion to approve.

Mr. Masten: I'll second it.

Mr. Donovan: And...and just to be clear, so that would be for the approval of the 30 x 60 building. Correct?

Mr. Scalzo: That's right.

Ms. Gennarelli: Okay, roll call.

Richard Levin: Yes

John McKelvey: No

Michael Maher: No

James Manley: No

John Masten: No

Darrin Scalzo: Yes

Grace Cardone: No

Mr. Donovan: So the motion, that means the motion to approve fails a...I would suggest so that the record is clear, if you are inclined, that you make a motion to disapprove the 30 x 60 prior built accessory building, if that is the Board's inclination.

Chairperson Cardone: Do we have a motion to disapprove?

Mr. McKelvey: I'll make the motion to disapprove.

Chairperson Cardone: Do we have a second?

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

John McKelvey: Yes

Michael Maher: Yes

James Manley: Yes

John Masten: Yes

Darrin Scalzo: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion for disapproval is carried. Are we clear on the square footage on the other without that?

Mr. Donovan: I think we voted on each application, correct?

Chairperson Cardone: Right.

Mr. Donovan: So, you've approved...

Chairperson Cardone: Are we clear on that, Jerry? On the square footage on the...with the disapproval.

Mr. Canfield: So that building is to be removed then?

Mr. Donovan: Well this Board doesn't have the authority to that obviously. We denied the variance request.

Mr. Canfield: You denied the variance but it's a prior built so I agree it's another matter. It now becomes an enforcement matter.

Mr. Donovan: It now becomes an enforcement matter that's correct.

Mr. Canfield: For the benefit of the applicant though, the applicant's attorney, that means that the building is to be removed. I mean we could further discuss it tomorrow at my office but that's basically the next step.

Mr. Donovan: And the Board approved the 832 sq. ft. which is 69.27 square feet over for the other structures.

Mr. Canfield: The other garage.

Mr. Donovan: If you look at packet "B" that was...that was approved.

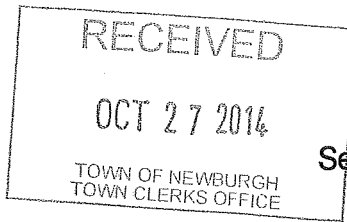
PRESENT ARE:

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

ALSO PRESENT:

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

(Time Noted – 9:31 PM)



Section 11, Block 1, Lot 12.1

TOWN OF NEWBURGH: COUNTY OF ORANGE
ZONING BOARD OF APPEALS

-----X
In the Matter of the Application of

LOWITT VENTURES, LLC

DECISION

For area variances as follows:

- *Grant of a variance allowing a side yard setback of 28 feet where 30 feet is required to allow the applicant to keep a prior built side foyer addition;*
- *Grant of a variance allowing the applicant to keep a prior built accessory structure having dimensions of 30' x 60' which is in excess of the maximum square footage allowed for accessory structures;*
- *Grant of a variance allowing the applicant to keep a prior built 8' x 20' garage side extension which is in excess of the maximum square footage allowed for accessory structures;*
- *Grant of a variance allowing an accessory structure that would provide storage of more than 4 vehicles;*
- *Grant of a variance allowing an accessory structure to be separated 9 feet, 6.5 inches from the dwelling where a minimum of 10 feet is required.*

-----X

Introduction

Lowitt Ventures, LLC seek area variances as follows: (1) Grant of a variance allowing a side yard setback of 28 feet where 30 feet is required to allow the applicant to keep a prior built side foyer addition; (2) Grant of a variance al-

lowing the applicant to keep a prior built accessory structure having dimensions of 30' x 60' which is in excess of the maximum square footage allowed for accessory structures; (3) Grant of a variance allowing the applicant to keep a prior built 8' x 20' garage side extension which is in excess of the maximum square footage allowed for accessory structures; (4) Grant of a variance allowing an accessory structure that would provide storage of more than 4 vehicles and (5) Grant of a variance allowing an accessory structure to be separated 9 feet, 6.5 inches from the dwelling where a minimum of 10 feet is required.

The property is located at 444 Quaker Street in the AR Zoning District and is identified on the Town of Newburgh tax maps as Section 11, Block 1, Lot 12.1.

A public hearing was held on August 28, 2014, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code.

Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk regulations set forth in the bulk and use schedules set forth within the zoning ordinance. These schedules required a side yard setback of 30 feet.

Accessory Building

Section 185-15 [Accessory buildings] of the Code of Ordinances of the Town of Newburgh provides that a permitted accessory building may be located in any required side or rear yard, provided that (1) such building, except for farm purposes, shall not exceed 15 feet in height; (2) an accessory use to a principal residential use, as listed in Article IV, Schedules of District Regulations, Use Table, Column A, that is housed within an accessory building shall be limited to a

maximum of 1,000 square feet or to a lower number as may be determined pursuant to the formula set forth in the code; (3) an accessory structure shall not be located closer to the fronting street than the main dwelling; and (4) an accessory structure must be separated from the main dwelling by at least ten (10) feet.

These schedules also state, for this single-family dwelling in the A/R Zoning District, that a private garage or carport for not more than 4 vehicles is the maximum permitted.

This board has determined in the past that renovations and enlargements of existing non-complying buildings that increase the mass or volume of the existing building are events that cause the protection of Section 185-19 to be lost unless the renovation or enlargement decreases the degree of nonconformity.

The construction performed by the applicant did not decrease the degree of the separation nonconformity (it remained the same). Therefore, the trigger of Section 185-19 (B)(1) is met and, as a result, the protection granted under Section 185-19 is lost, thereby requiring the applicant to apply for an area variance for the existing nonconformity.

Background

After receiving all the materials presented by the applicant and the testimony of Gregory Tarone, Esq. and Steve Lowitt, at the public hearing held before the Zoning Board of Appeals on August 28, 2014, the Board makes the following findings of fact:

1. The applicant is the owner of a 33,250 +/- square foot lot (tax parcel 11-1-12.1) located at 444 Quaker Street.

2. The lot is improved by a single family dwelling. The applicant has constructed a foyer, a 30' x 60' accessory structure and a garage extension all without the benefit of building permits. The accessory structures exceed the maximum allowed square for accessory structure on the premises and also provide for storage of more than 4 vehicles. In addition the accessory structure is set back only 28 feet from the side yard and a 30 foot minimum side yard setback is required.

3. The applicant's proposal is set forth on a set of photographs and a survey prepared by Daniel P. Yanosh, L.L.S. dated May 19, 2014. Those photographs and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

4. The required, existing and proposed dimensions (in feet) and the extent of the variances requested are as follows:

Bulk Requirement	Allowance	Existing	Proposed	Variance	Percentage
<i>Accessory Building</i>	762.73 S.F.	2,632 S.F.	2,632 S.F.	1,869.27 S.F.	245%
<i>Accessory Building</i>	762.73	862 S.F.	862 S.F.	69.27 S.F.	9.081%
<i>Side Yard</i>	30'	28'	28'	2'	6.64%

5. Members of the public were heard during the hearing. They spoke in favor of the requested variances.

6. The Building Inspector denied a building permit applications by letters dated July 1, 2013, February 7, 2014 and May 28, 2014.

The applicants have appealed the Building Inspector's determination seeking variances to maintain the previously constructed accessory structure,

foyer and extension.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

SEQRA

This matter constitutes a Type II action under the State Environmental Quality Review Act inasmuch as it involves the granting of an area variance(s) for a single-family, two-family or three-family residence [6 NYCRR §617.5(c)(13)]. As such, this project is not subject to review under the State Environmental Quality Review Act.

GML 239 Referral

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

Findings

In reviewing the facts presented for the requested area variances, the Board considered the five standards for determining whether the applicants have sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

(1) Undesirable Change—Detriment to Nearby Properties

The applicant testified at the public hearing that all improvements which are the subject of this application are in harmony with the neighborhood and does not result in any undesirable change in the neighborhood nor any detriment to any nearby properties in that neighborhood. However, the Board takes note of the fact that there was no evidence or testimony indicating that any other properties in the neighborhood exceed the maximum allowable square footage allocated to accessory structures to the extent the applicant has exceeded them - particularly with regard to the 30' x 60' accessory building. Each Board member visited the property and observed the property in relation to the surrounding neighborhood. The Board did not identify any other accessory structures as large as the 30' x 60' accessory structure built by the applicant. It is the opinion of the Board that this specific structure is a detriment to the neighborhood and results in an undesirable change to the neighborhood.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that the 30' x 60' accessory structure will result in a detriment to nearby properties while the other improvements will not result in any undesirable change to the neighborhood nor cause any detriment to nearby properties.

(2) Need for Variance

There was no real testimony or evidence submitted by the applicant that explained exactly why the variance was necessary or if the applicant could achieve whatever their objective may be by any less restrictive means.

(3) Substantial Nature of Variances Requested

The variances requested are substantial.

(4) Adverse Physical & Environmental Effects

The applicant testified that no adverse physical or environmental effects would occur if the variances requested herein were granted. No contrary testimony was submitted at the public hearing. Based upon the evidence and testimony submitted therefore, the Board finds that no adverse physical or environmental effects would result from issuance of the variances requested.

(5) Self-Created Difficulty

The need for the variances is clearly self-created especially with regard to the 30' x 60' accessory structure which was built without the necessary building permit at a time when the applicants had already received formal notice from the Town of Newburgh Code Compliance Department regarding prior violations that were the result of the applicant failing to secure building permits for prior work on the premises.

Decision

Upon deliberating on this matter, the Board determined to separate out the variances requested for the purpose of voting on this applicant. Specifically, the Board voted as follows:

In connection with that portion of the application which sought variances for the prior built foyer having dimensions of 5'9" x 4'9" to allow a side yard setback of 28 feet where the minimum required setback is 30 feet and in employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites

of Section 267-b and grants the area variances as requested upon the following conditions:

1. The variances hereby granted are granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
 Member John McKelvey
 Member James Manley
 Member John Masten
 Member Darrin Scalzo
 Member Richard Levin
 Member Michael Maher

In connection with that portion of the application which sought variances for the prior built 8x x 20' garage extension to allow a total separation of an accessory structure from the main dwelling of less than 10 feet and a total square footage of an accessory structure of 832 feet where the max-

imum allowed square footage is 762.73 square feet and in employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variances as requested upon the following conditions:

1. The variances hereby granted are granted for the purpose of authorizing construction of what is shown on the plans or described within the application materials only. No construction other than as shown or described (architectural refinements aside) is authorized by this decision.
2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variance shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period.

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
Member John McKelvey
Member James Manley
Member John Masten
Member Darrin Scalzo
Member Richard Levin
Member Michael Maher


In connection with that portion of the application which sought variances for the prior built 30' x 60' accessory structure to allow storage of more

than 4 vehicles and a total square footage of an accessory structure 245% in excess of what is allowed by Code in employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has not satisfied the requisites of Section 267-b and hereby denies the area variances as requested:

By roll call a motion to adopt the decision was voted as follows:

AYES: Chair Grace Cardone
 Member John McKelvey
 Member James Manley
 Member John Masten
 Member Darrin Scalzo
 Member Richard Levin
 Member Michael Maher

Dated: August 28, 2014



Grace Cardone, Chairperson
Town of Newburgh ZBA

