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January 16, 2008

John P. Ewasutyn, Chairman
Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, New York 12550

RE: ZBA Decisions

Dear Chairman Ewasutyn:

I write to you in my capacity as counsel for the Town of Newburgh Zoning Board of Appeals.

I am in receipt of correspondence authored by Marshall A. Courtney, Esq., counsel for Howard Picard, III addressed to the attention of the Planning Board. Mr. Courtney's letter identifies an issue that has arisen not only in connection with Mr. Picard but also in a number of other instances where decisions authorized pursuant to Resolutions of the Zoning Board of Appeals have not been memorialized in writing.

I write to advise you that the Zoning Board of Appeals discussed this matter at our meeting of December 27, 2007. The result of our discussion is that the Zoning Board of Appeals has determined that the minutes of the meetings wherein Resolutions of Approval or Denial were adopted shall constitute the Board's decision relative to each application for which a formal decision was not prepared. The absence of any conditions set forth in the minutes should be construed by the Planning Board as the absence of any conditions imposed by the Zoning Board of Appeals.

Please contact me should you have any questions regarding the foregoing.

Very truly yours,

David A. Donovan

DAD/lrm

Cc: Grace Cardone, Chairperson, Town of Newburgh Zoning Board of Appeals
Michael H. Donnelly, Esq, Counsel, Town of Newburgh Planning Board
Betty Gennarelli, Secretary, Town of Newburgh Zoning Board of Appeals
Dina R. Hines, Secretary, Town of Newburgh Planning Board
Marshall A. Courtney, Esq.

TOWN OF NEWBURGH

Crossroads of the Northeast

ZONING BOARD OF APPEALS
OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

OFFICE OF ZONING BOARD
(845) 566-4901

ZBA MEETING – APRIL 27, 2006
MINUTES
(Time Noted – 7:00PM)

approved 5/25/06

CHAIRPERSON CARDONE: I would like to call the meeting of the ZBA to order. The first order of business is the public hearing scheduled for today. The procedure of the Board is that the applicant will step forward and state their request. The Board may then ask questions of the applicant. The public will be invited to ask questions or make comments, which should be addressed, to the Board. We will try to render a decision this evening. However we have up to 62 days to render a decision.

Chairperson Cardone: Our first order of business is the Roll Call.

Ms. Gennarelli:

PRESENT ARE:

- GRACE CARDONE
- JOHN MC KELVEY
- RUTH EATON
- RONALD HUGHES
- ROBERT KUNKEL
- JAMES MANLEY

(Time Noted - 7:03 PM)
April 27, 2006

DZIEGELEWSKI, JOSEPH & CHRISTINE

13 DISANO LANE
(34-1-1.11) R-1 ZONE

Applicants are seeking area variances for a (4) four-lot subdivision with one existing house.

Area variance(s) for lot width.

Chairperson Cardone: Our first applicants this evening are Joseph & Christine Dziegelewski. First have you given your mailing receipts to the Secretary?

Ms. Gennarelli: All mailings were in order.

Chairperson Cardone: Thank you.

Thomas Vanderbeek: Good evening, my name is Thomas Vanderbeek. I am the President of Greater Hudson Valley Engineering and Land Surveying, PC representing the applicant on this project. Our request is for a lot width variance on a proposed (four) 4 Lot subdivision and we were positively referred here by the Planning Board. Since I have not yet presented before the ZBA, could I give a short overview?

Chairperson Cardone: Would you please?

Mr. Vanderbeek: Of what we are requesting. The property is a 5-½ acre parcel on a private road named Disano Drive with an existing 1, 2-story, single-family house on the property.

We have presented to the Planning Board a proposed 4-lot subdivision, which was a buy right subdivision, but it has very irregular lot lines. We had also requested of the Planning Board to consider average density so that we could produce the same subdivision with regular lot lines. The Planning Board opted against average density and set us to the ZBA with a request for a lot width variance for these properties. We have in your packet two presentations. One of the presentations requests one lot width variance, so we would have three (3) conforming lots and one (1) lot that is less than the 150 ft width, that would be 135 ft width. That is in the middle of the project. And the other request, which we feel produces a nicer subdivision, is a request for three (3) lot width variances, all equal so all three lots will be 145 ft in width. There are no other variations for both.

Chairperson Cardone: Do we have questions from the Board?

Mr. Hughes: Well, I have a couple. If you had one less lot you wouldn't have to go through any of this?

Mr. Vanderbeek: That is correct.

Mr. Hughes: So, I think your choice of options that are available is a little bit off, but. You said in your overview that you received a positive referral from the Board and the letter that I get from the Attorney doesn't say positive or negative, it's just that you have to come here, so, I don't think that when they told you that you had to come here it was with their blessing. Let's just get that off the top there. That's enough for now.

Mr. Manley: What was the reason for the Planning Board's decision to not do the lot line changes? Did they give you a reason why they didn't want to go in that direction?

Mr. Vanderbeek: Yes, they agreed that we have a dimensional buy right subdivision which the State allows. What they said when I asked for average density was they did not want to set a precedent, so they generally wanted to use average density when there was

other environmental considerations where there was a large area, let's say wetlands to be preserved or environmental consideration and actually that is one of the parameters in the Town code. We did offer to place a conservation easement along the bottom of the properties as that environmental conservation, but they felt we should come to the ZBA first.

Mr. Manley: So, they weren't opposed to doing that, they just felt that you first needed to come here and exhaust your remedy here first.

Mr. Vanderbeek: I believe so, yes.

Mr. Manley: O.K. One other question and that was, based on the way the lot lines are drawn now, would it not create the potential for future requests by this Board to give future variances based on the lot lines the way they are drawn currently, versus if you drew them as a straight line? Do you follow what I am saying?

Mr. Vanderbeek: No, if you could point out the

Mr. Manley: Do you see the distance between that building and the lot line?

Mr. Vanderbeek: Yes.

Mr. Manley: And the house?

Mr. Vanderbeek: Yes.

Mr. Manley: All right. If you drew these straight down, it would increase the distance from the lot line to the house. Therefore, in the future potentially not requiring a variance whereas the people now would potentially require a variance if they put on a deck as it stands now.

Mr. Vanderbeek: I understand your question. You understand this is not what we are requesting. This is the conventional way.

Mr. Manley: Right.

Mr. Vanderbeek: That does not lead into it. We are requesting to draw straight lines down.

Mr. Manley: O.K.

Mr. Vanderbeek: To make it more uniform, more consistent.

Mr. Vanderbeek: Your same comment would apply to the side lots because the lots are all approximately 150 ft in width. So, with the two side setbacks there is very little that the house has the setbacks that you could build without coming back for clearance. So, Mr.

Dziegelewski is talking about putting deed restrictions on these houses as to the types of houses that can be constructed, the architecture, where best to fill, where the garages could go. So, I am sure we could work something out that would aide in not having the potential buyer come back to this Board.

Mr. Dziegelewski: In answer to the same question, if we went with the conventional plan that could yield the potential for someone to come back for a variance just based on the irregular lot lines. So, we created the rectangular box that we detailed in the first plan, it was with the potential to create, from coming back to, by using the conventional plan to that.

Ms Eaton: And these all would need their own septic system and wells.

Mr. Vanderbeek: That is correct.

Mr. McKelvey: How many Bedrooms in these houses do you plan?

Mr. Dziegelewski: 3 to 4.

Mr. McKelvey: 3 to 4.

Ms. Eaton: And that would make a difference in the size of the septic system.

Mr. Dziegelewski: Yes, we designed that for 4 Bedrooms, the septic size (inaudible), 4 Bedrooms (inaudible)

Mr. McKelvey: It only shows it on two, see. You only showed it on two. You show a septic tank on ... there is no size on this one or these three have 15

Chairperson Cardone: That is the current.

Mr. Dziegelewski: This is the existing.

Mr. McKelvey: Oh, that's O.K., I am sorry. I am looking at the wrong angle.

Ms. Eaton: Do you live in this area?

Mr. Dziegelewski: Yes, I , this is the residence.

Chairperson Cardone: Any other questions?

Mr. Hughes: Yes, I do. On Reggero and Henry's property here I don't see enough distances or an indication of where the well is on Henry's and where the well is on Reggero is very close to the septic on what's labeled lot number one here, I believe. What do you intend to do about that? This is down gradient here, it goes from 585 ft down to 550 ft and about 70 yards. That is running right down into that Reggero's well there. So, you have all the other ones, it shows 200 ft or plus. But, then you have Reggero and

Henry and no indication on Henry and the well from Reggero is about 20 ft from the property line. What do you intend to do about that?

Mr. Vanderbeek: The well on Henry is, excuse me, the well on Reggero is approximately shown on here 150 ft from the edge of the expansion area and what we can do there is, all the tests kits that we performed on this property, the soil was virtually identical. I can move that up, move it up closer to the house. We get at least 200 ft, maybe 250 ft. With respect to Henry's, I am not sure where the well is on that property.

Mr. Dziegelewski: According to the subdivision plat, the well at Henry's is approximately where that parcel juts out at the bottom of the property.

Mr. Hughes: The stone wall right of way?

Mr. McKelvey: The Planning Board is going to handle that, anyhow.

Mr. Vanderbeek: We'll just verify those.

Mr. Dziegelewski: (inaudible)

Mr. Vanderbeek: Back on the conventional subdivision, the middle lot is why the house is set back more, so we can (inaudible) against the Reggero's property.

Chairperson Cardone: Any other questions or comments from the Board? Do we have any questions or comments from the public? If so, please stand and state your name and address. That mic should be on.

Neighbor 1: Yes, good evening. My name is _____. So I am talking about the _____ lot and I am very concerned about this. First of all, I am totally disgusted, but obviously there is nothing I can do. It seems that every time we have any kind of piece of land with trees or animals or anything else, it's taken away. But that is not unusual. But, I am very concerned as they pointed out the egress to my well. I'd like to know how close the house is going to be coming to the stonewall. Would there be any wooded area left? And again my main concern is my well and what I am concerned with is I have been in that house almost 40 years and God bless us, we never had a problem with the well. But, it seems to me with the more and more construction and the more disturbance and now this going right behind me, how do I know it's not going to drain into where my spring is or I don't know how that works underground. I am not an engineer. But, I am very concerned. Now if I have a problem with my well, a year or two years from who is going to address that? Is it just going to be, oh too bad you are out of water after 40 years of no problems? That's a big concern of mine.

Chairperson Cardone: Thank you.

Neighbor 1: Oh, no, we don't get an answer? Is that what we just do, is we state what we are saying and will we ever get an answer to this? Because I am concerned to as he

pointed out, where is my location and why was this access to the spring location called out and then that small piece of parcel? Why was that addressed? On my property?

Mr. Dziegelewski: I can only answer from what I know of the previous subdivision that referred to your property. And I know that its, if I recall correctly from the minutes I've read, back in 2002 the first subdivision was done. I think there was a similar concern, with obviously establishing a buffer between my property and the property that's being developed. I think that was accommodated in the minutes and in the approval of the last (inaudible) of the plat was approved and that's, you know, I am looking to follow those same conditions. I am not looking to clear down to the rock wall or stop myself (inaudible) would be to replicate the land. As you know there is a buffer between the (inaudible) existing residence and the lower properties in 1996 and my goal is to maintain that buffer.

Neighbor 1: So, will the new houses probably be up like where yours is, up in that?

Mr. Dziegelewski: Exactly, we are going to keep the same frontage off the road, that's where our thoughts are with that and to maintain, you know, through the course (inaudible) a wooded buffer.

Neighbor 1: O.K. And, when will I have like answers about the well? How does that work? I don't understand now. Will someone get back to me?

Chairperson Cardone: This is before the Planning Board right now and a lot of these issues would be addressed at the Planning Board. And you got a notice about this evenings meeting?

Neighbor 1: Yes.

Chairperson Cardone: When there is Public Hearing with the Planning Board, you would get a notice. So, that you could go before the Planning Board and discuss a lot of these issues.

Neighbor 1: All right.

Chairperson Cardone: Right now we're just considering the one issue, which is the relief that they needed, which was on the second page. It was actually 5 ft for three (3) of the lots.

Mr. Dziegelewski: That is four (4) in the alternate, 15 ft for one lot.

Chairperson Cardone: Right.

Mr. McKelvey: You have been before the Planning Board?

Mr. Dziegelewski: Yes, with the Town Planning Board, yes.

Mr. McKelvey: Did they get noticed?

Mr. Vanderbeek: It wasn't a public hearing.

Chairperson Cardone: They didn't have a public hearing yet.

Mr. McKelvey: It wasn't a public hearing, oh, O.K. I am sorry.

Mr. Vanderbeek: The public hearing will be next, after we get the results of this one.

Chairperson Cardone: Are there any other questions or comments? O.K. Would you state your name and address please?

Neighbor 2:

Looking at this whole diagram, it would be taken into consideration in the future of the Town of Newburgh to put town sewage to eliminate some of these septic tank and wells over here interrupting the water coming down hill. I think for the years that I have been living here, since 1987, I know those lots before those guys ever came in here. I took a walk in those roads in wintertime, summertime. Looking at the latter line, if you notice the hill is not straight down, comes slanted diagonally, from upper right hand corner to the left. A lot of people neighbors, we are living as the lower part towards Hickory Hill Road, the water comes down. As the years go by, the soil gets eroded, gets corrupted underground. Thank the Lord, we never had a problem with the well water, but in the future when these houses are being built – upon removing soil, rocks, tree stumps, perhaps the stone wall, it's got to be up there somewhere. I think it's not around here. O.K. And, there is a utility pole, what kind of pole is it? What height is it? It state here, but there is not the height of it. I don't know what kind of pole is it. Telephone? Electrical? But, I think, personally though, Town sewage would be much more beneficial for you to be able build houses, in the future, back there in those lots, in the future.

Chairperson Cardone: Thank you.

Mr. Manley: Were you speaking of sewers, ? Or were you speaking more for drainage run off, storm water?

Neighbor 2: When I say like Town sewage, O.K., it means like, we call black water. Where we don't need to use septic tank anymore. The pipes underground, when you take a shower or use the bathroom whatever, it goes underground the pipe is Town sewage. That is what I mean.

Mr. Manley: O.K. Thank you.

Chairperson Cardone: Are there any other questions or comments? If not, I declare this part of the hearing closed. Thank you.

(Time Noted – 7:20PM)

DZIEGELEWSKI

(Resumption for decision: 9:00 P.M.)

Chairperson Cardone: The Board is resuming its regular meeting. On the first application, Joseph & Christine Dziegelewski at 13 Disano Lane, seeking an area variance for lot widths for a four (4) lot subdivision. Do we have discussion on this application? This is a Type II Action under SEQRA. This application had two plans submitted and they were asking us to consider each of those plans. Do I have any discussion from the Board on the two plans?

Mr. McKelvey: I think the second plan made more sense.

Chairperson Cardone: The second page?

Mr. McKelvey: The second page.

Chairperson Cardone: You are saying the one with the ...

Mr. Hughes: Parallel lines.

Chairperson Cardone: Parallel lines.

Mr. McKelvey: Makes more sense.

Mr. Kunkel: And, I tend to agree.

Mr. Manley: It might be a little more work, but I think that in the future it may deter reoccurring visits to Zoning Board in the future if they wish to put a deck on or other ...

Mr. Hughes: Yeah, for the purpose of swimming pools or decks and whatever else may arise and sheds.

Chairperson Cardone: Right.

Mr. Hughes: I think that the parallel lines relieves this Board and gives the Planning Board what they are looking for all at the same time.

Chairperson Cardone: And, on that one there were seeking a five foot (5) relief on the lot width on three (3) of the lots.

Mr. Hughes: I would also like to note the concerns about the drainage in that area with the drop to those adjacent properties. That some concern should be addressed there and make a way that whatever comes down off that hill won't effect existing neighbors.

Chairperson Cardone: Right. And that should be addressed by the Planning Board. Do I have a motion for approval on this application?

Mr. McKelvey: I'll make a motion we make approval on the drawings on the second page.

Mr. Kunkel: I'll second that motion.

Mr. McKelvey: Which is parallel lines.

Mr. Kunkel: With equal lots.

Chairperson Cardone: We have a motion and approval. I'll ask for a roll call vote.

Ms. Gennarelli:

Grace Cardone: Yes

John McKelvey: Yes

Ruth Eaton: Yes

Ronald Hughes: Yes

Robert Kunkel: Yes

James Manley: Yes

Chairperson Cardone: O.K. the motion is carried.

(Time noted: 9:05 P.M.)