ZONING BOARD OF APPEALS

MEETING – TUESDAY DECEMBER 23, 2014

(Time Noted – 7:00 PM)

CHAIRPERSON CARDONE: I’d like to call the meeting of the ZBA to order. The first order of business is the Public Hearing scheduled for today. The procedure of the Board is that the applicant will be called upon to step forward, state their request and explain why it should be granted. The Board will then ask the applicant any questions it may have and then any questions or comments from the public will be entertained. After all of the Public Hearings have been completed the Board may adjourn to confer with Counsel regarding any legal questions it may have. The Board will then consider the applications in the order heard. The Board will try to render a decision on all applications this evening; but may take up to 62 days to reach a determination. And I would ask if anyone has a cell phone to please turn it off so that we won’t be interrupted. And also when speaking, speak directly into the microphone because it is being recorded. Roll call please.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

Pledge of Allegiance to the Flag led by Mr. John McKelvey

 (Time Noted – 7:02 PM)

ZBA MEETING – DECEMBER 23, 2014 (Time Noted – 7:02 PM)

DAVID A. VIOLANTE 53 EAST ROAD, WALLKILL

 (2-2-30) R/R ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the side yard setback to enclose the existing rear deck.

Chairperson Cardone: Our first applicant David Violante.

Ms. Gennarelli: The Public Hearing Notices for all the new applications being heard this evening were published in The Sentinel on Friday, December 12th and the Mid-Hudson Times on Wednesday, December 17th. This applicant sent out thirty-one letters. All the mailings, publications and postings are in order.

Chairperson Cardone: And if you would identify yourself for the record.

Mr. Violante: Hi, I’m David Violante of 53 East Road.

Chairperson Cardone: And state your request.

Mr. Violante: I’d like to ask the Board for a variance for the use of our back deck to increase the degree of non-conformity by putting a roof on the structure and enclosing it with screening. We currently have a back deck that has a…C.O. and so we’re just enclosing it in.

Chairperson Cardone: Do you know the year that the deck was constructed?

Mr. Violante: It had to have been approximately six years ago perhaps. I do have that with me.

Chairperson Cardone: Was it prior to you owning the house?

Mr. Violante: No, it was after owning the house, no.

Mr. Donovan: I believe the information submitted by Code Compliance would indicate a C.O. was issued in 2005.

Mr. Violante: Okay.

Chairperson Cardone: Do we have questions from the Board?

Mr. Scalzo: Do you have any plans to a…as I was looking at the 4 x 4 posts that hold up the double 2 x 12’s…

Mr. Violante: Yes?

Mr. Scalzo: …it appears as though you don’t have full surface area coverage. I don’t know if you know where I’m going with this. But it…it appears as though there were shims between the…the top bracket and the actual portion of the deck…

Mr. Violante: I know.

Mr. Scalzo: Is that something that…?

Mr. Violante: Right, I took the plans to an architect and they took them to a structural engineer and those are temporary that were pending results from the engineer and from the architect and what we are going to do is change those to 4 x 6 posts that will be in full length. We had to lift it up a little bit because it was initially on an angle when it was first built so we didn’t want to keep up that angle.

Mr. Scalzo: Okay, you answered my question. Thank you.

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

No response.

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

No response.

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

Mr. Canfield indicated no.

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

Mr. Maher: Second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:05 PM)

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ZBA MEETING – DECEMBER 23, 2014 (Resumption for decision: 7:33 PM)

DAVID A. VIOLANTE 53 EAST ROAD, WALLKILL

 (2-2-30) R/R ZONE

Applicant is seeking an area variance for increasing the degree of non-conformity of the side yard setback to enclose the existing rear deck.

Chairperson Cardone: Chairperson Cardone: Okay. We do need to confer with the attorney on pending litigation but I thought maybe we could first vote on the two applications that are here this evening unless anyone has any legal questions on those two applications. If not, on our first application David Violante seeking an area variance for increasing the degree of non-conformity of the side yard setback to enclose the existing rear deck. This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. McKelvey: He’s just asking to enclose his porch, right?

Chairperson Cardone: Right.

Mr. Maher: I'll make a motion for approval.

Mr. McKelvey: I'll second.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:34 PM)

ZBA MEETING – DECEMBER 23, 2014 (Time Noted – 7:05 PM)

RALPH & SARANN GIDDENS 118 MEADOW HILL ROAD, NBGH

 (60-1-11) R-3 ZONE

Applicant is seeking an area variance for an accessory structures shall not project closer to the fronting street than the main building to keep a Prior Built Gazebo.

Chairperson Cardone: Our next applicant Ralph and Sarann Giddens.

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

Chairperson Cardone: Okay and for the record please identify yourself.

Mr. Giddens: Good evening, my name is Ralph Giddens. My wife Sarann and myself reside at 118 Meadow Hill Road, Town of Newburgh. We are asking that a…our actually it’s a…actually a gazebo that was a tenth wedding anniversary present be allowed to remain where it’s been for the past thirty-five years. Through some other dealings we were found to be in Violation of a rule we didn’t know about. It was purchased by my late in-laws and like I say as a tenth wedding anniversary present. It’s been there since that time thirty-five years ago and we’d like to leave it there if that’s at all possible.

Mr. McKelvey: I think that you have such a long front yard from the road that it’s really not distracting to any of the neighbors.

Ms. Giddens: It sits back a hundred and twenty-five feet off the road.

Mr. Giddens: Actually these are our neighbors that look out there front window to see it every day so they’re the ones that share our view.

Chairperson Cardone: Okay.

Mr. Scalzo: It even appears that the house to the right of you there’s a play house behind the house and your gazebo is even further back than that.

Mr. Giddens: Yes it is. Yeah, we’ve got a fairly deep lot but it’s kind of like a bowling alley. It’s long and skinny.

Chairperson Cardone: Any questions from the Board?

No response.

Chairperson Cardone: Any questions or comments from the public?

Inaudible

Ms. Gennarelli: If you are going to speak, hello, if you…you just have to stand up and just identify yourself. Come to the microphone please. This way it will get on the record.

Mr. Salcedo: Good evening my name is Gilbert Salcedo and I’m across the street from them right in front of the gazebo. We love it. My daughter’s wedding picture was taken right there. What else can I say? We love it. We all love it. Thank you.

Chairperson Cardone: Any other comments?

Ms. Lancaster: Hi, I’m Marilee Lancaster I’m at 73 Meadow Hill, we’ve been there for fifteen years and the gazebo is a part of the culture of our neighborhood and we would really appreciate it let it stay, thank you very much.

Chairperson Cardone: Thank you.

Mr. McBride: Tom McBride my kids have played in that since we got to know them and a…we really don’t think it’s a distraction from the neighborhood at all.

Chairperson Cardone: Okay, thank you.

Ms. Cosgrove: Hi my name is Sharon Cosgrove and I’m their neighbor also and I think it’s the prettiest view from my house. It was actually part of my Christmas card this year so and I have a picture, its snow covered and it’s actually beautiful.

Chairperson Cardone: I should mention that the Board Members have visited the sites we discuss.

Mr. Giddens: My wife thought that Mr. McKelvey was me following her into the driveway.

Ms. Giddens: He has the same kind of grey truck that my husband has.

Chairperson Cardone: Any other questions?

Mr. McKelvey: You know I think the bare lawn between the house and the road would be really distractive without that gazebo there.

Mr. Giddens: Thank you, I agree with you.

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

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

Mr. Masten: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: Thank you.

 (Time Noted - 7:09 PM)

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ZBA MEETING – DECEMBER 23, 2014 (Resumption for decision: 7:34 PM)

RALPH & SARANN GIDDENS 118 MEADOW HILL ROAD, NBGH

 (60-1-11) R-3 ZONE

Applicant is seeking an area variance for an accessory structures shall not project closer to the fronting street than the main building to keep a Prior Built Gazebo.

Chairperson Cardone: On the application of Ralph and Sarann Giddens seeking an area variance for an accessory structure shall not project closer to the fronting street than the main building to keep a Prior Built Gazebo. This is a Type II Action under SEQR. Do we have discussion on this application?

Mr. McKelvey: I think since he had the support of all the neighbors there should be no problem. I'll make a motion we approve.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT

JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:35 PM)

ZBA MEETING – DECEMBER 23, 2014 (Time Noted – 7:09 PM)

JAMES B. ANDERSON 153 FOSTERTOWN ROAD, NBGH

 (43-1-1.2) R-2 ZONE

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

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

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

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

Mr. Canfield: That’s correct.

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

Chairperson Cardone: Do we have questions from the Board?

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

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

Mr. Levin: ’75.

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

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

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

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

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

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

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

Mr. Levin: Trailer.

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

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

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

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

Mr. Canfield: No I believe sir…

Mr. Anderson: Or the year before?

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

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

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

Chairperson Cardone: That’s correct.

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

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

Mr. Canfield: That’s correct.

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

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

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

Mr. Maher: The tractor and the trailer.

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

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

Mr. Anderson: Correct.

Mr. Scalzo: I misunderstood that, okay.

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

Mr. Canfield: I’m sorry.

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

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

Mr. McKelvey: Yeah.

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

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

Chairperson Cardone: That would be a very large carport.

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

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

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

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

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

Mr. Scalzo: Okay, thank you.

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

Chairperson Cardone: Right.

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

Chairperson Cardone: Right.

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

Chairperson Cardone: Right.

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

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

Mr. Canfield: No that’s correct.

Chairperson Cardone: Right.

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

Chairperson Cardone: Right.

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

Chairperson Cardone: Right.

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

Chairperson Cardone: Right.

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

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

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

Ms. Gennarelli: Yeah…no.

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

Ms. Gennarelli: Might if we replay the tape.

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

Mr. Canfield: Correct.

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

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

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

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

Chairperson Cardone: Right.

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

Chairperson Cardone: Do you understand that Mr. Anderson?

Mr. Anderson: Not fully.

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

Mr. Anderson: Okay, I got that.

Chairperson Cardone: Okay, a…

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

Mr. Donovan: No.

Chairperson Cardone: No.

Mr. Donovan: It would be for an Interpretation.

Chairperson Cardone: Interpretation.

Mr. McKelvey: Interpretation.

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

Mr. Anderson: I see.

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

No response.

Chairperson Cardone: Anything else from the Board Members?

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

Chairperson Cardone: No, go ahead Darrin.

Mr. Scalzo: But if I…just looking…

Mr. Donovan: Darrin you started it.

Ms. Gennarelli: Darrin, pull you mic in.

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

Chairperson Cardone: Right.

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

Mr. McKelvey: Yeah.

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

Chairperson Cardone: Do you got that part?

Mr. Anderson: Yes.

Chairperson Cardone: Okay.

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

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

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

Mr. Anderson: Okay, get an application there.

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

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

Mr. McKelvey: He could withdraw this to.

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

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

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

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

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

Chairperson Cardone: You would withdraw this application…

Mr. Anderson: Yes.

Chairperson Cardone: You have to put that in writing.

Mr. Anderson: Okay.

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

Mr. Anderson: All right I’ll do that.

Chairperson Cardone: Okay.

Mr. Anderson: I thank the Board.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JAMES MANLEY

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 JOSEPH MATTINA, CODE COMPLIANCE

 (Time Noted – 7:32 PM)

ZBA MEETING – DECEMBER 23, 2014 (Resumption for decision: 7:35 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

Chairperson Cardone: Under Other Board Business Jin (Kanjanakiritumrong) Grabek, I have a letter from Mr. Doce

At the December 10, 2014 Town Board Meeting there was a Public Hearing on a Local Law that would allow personal service establishments in the I/B zone. The Town Board did not vote on the proposed Local Law. I was told by the Town Clerk that the Town Board may vote at their December 29th meeting, if not then, they may possibly vote at their second meeting in January 2015. Ms. Grabek requests to be placed on your January 2015 agenda and reserve your decision so that we can see how the Town Board acts upon the proposed law. Ms. Grabek understands that the ZBA has decided that she must make this request on a month by month basis. At the November 25, 2014 ZBA meeting, and upon the direction of the ZBA, Ms. Grabek had agreed to a waiver of the 62-day period under Town Law Section 267. Ms. Grabek continues to agree to/requests this waiver and also understands she must make this request on a month to month basis. Thank you for your time and consideration. Respectfully, Darren Doce

Okay, do I have a motion to accept this extension?

Mr. McKelvey: I’ll make that motion.

Chairperson Cardone: Do I have a second?

Mr. Levin: I’ll second it.

Ms. Gennarelli: Roll call.

 Richard Levin: Yes

 Michael Maher: Yes

 John Masten: Yes

John McKelvey: Yes

 Darrin Scalzo: Yes

 Grace Cardone: Yes

Chairperson Cardone: At this time the Board will adjourn to confer with Counsel concerning pending litigation and I would ask if people would please step out into the hallway or you may leave whatever you choose.

(Some students from the audience approached to get signatures that they attended the Zoning Board Meeting from Chairperson Cardone.)

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:37 PM)

ZBA MEETING – DECEMBER 23, 2014 (Resumption for Decision – 7:35 PM)

JIN KANJANAKIRITUMRONG-GRABEK 349 MEADOW AVENUE, NBGH

 (66-2-3) I / B ZONE

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

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

Chairperson Cardone: Under Other Board Business Jin (Kanjanakiritumrong) Grabek, I have a letter from Mr. Doce

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 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:37 PM)

ZBA MEETING – DECEMBER 25, 2014

END OF MEETING (Time Noted – 7:53 PM)

Chairperson Cardone: The Board is resuming its regular meeting. Okay, is there any other business to come before the Board? Everyone has the minutes from last month? Are there any additions, deletions, changes?

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

Chairperson Cardone: Do I have a second?

Mr. Masten: Second.

Chairperson Cardone: All those in favor say Aye?

Aye - All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: Is there any other business to come before the Board?

No response

Chairperson Cardone: If not do we have a motion to adjourn the meeting until next month?

Mr. McKelvey: I’ll make a motion.

Mr. Masten: Second.

Chairperson Cardone: All in favor say Aye?

Aye All

Chairperson Cardone: Opposed?

No response.

Chairperson Cardone: The motion is carried. The meeting is adjourned.

PRESENT ARE:

 GRACE CARDONE

 RICHARD LEVIN

 MICHAEL MAHER

 JOHN MASTEN

JOHN MC KELVEY

 DARRIN SCALZO

ABSENT:

 JAMES MANLEY

ALSO PRESENT:

 DAVID A. DONOVAN, ESQ.

 BETTY GENNARELLI, ZBA SECRETARY

 GERALD CANFIELD, CODE COMPLIANCE

 (Time Noted – 7:55 PM)